KENYA NATIONAL ARCHIVES

PHOTOGRAPHIC SERVICE

Description of Document LEGISLATIVE COUNCIL DEBATES. VOL. XXXII.

Covering Dates 10th to 19th May, 1949.

Reference No. From Legislative Council Library.

Date of Reproduction 3rd January, 1966

O.P.K. 1093—1m—4/65

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES **VOLUME XXXII**

1949

FIRST SESSION

10th to 19th May, 1949

CHRONOLOGICAL INDEX

List of Members of the Legislative Council

President:

HIS EXCELLENCY THE GOVERNOR, SIR P. E. MITCHELL, G.C.M.G., M.C.

Vice-President and Speaker:

HON. W. K. HORNE.

Ex Officio Members:

CHIEF SECRETARY AND MEMBER FOR DEVELOPMENT (HON. J. D. RANKINE, C.M.G.).

ATTORNEY GENERAL AND MEMBER FOR LAW AND ORDER (HON. K. K. O'CONNOR, M.C.).

ACTING FINANCIAL SECRETARY AND MEMBER FOR FINANCE (HON. C. M. DEVERELL, O.B.E.). (1)

CHIEF NATIVE COMMISSIONER AND MEMBER FOR AFRICAN AFFAIRS (HON. P. WYN HARRIS, M.B.E.)

MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G.).

ACTING DEPUTY CHIEF SECRETARY AND MEMBER FOR EDUCATION (HON. C. H. HARTWELL). (2)

MEMBER FOR HEALTH AND LOCAL GOVERNMENT (HON. C. E. MORTIMER, C.B.E.).

Nominated Official Members:

HON. A. HOPE-JONES (Member for Commerce and Industry).

DR. THE HON. N. M. MACLENNAN (Director of Medical Services).

HON. R. PATRICK, E.D. (Director of Education).

HON. E. M. HYDE-CLARKE, M.B.E. (Labour Commissioner).

HON. J. B. HOBSON (Solicitor General).

HON. S. GILLETT (Director of Agriculture).

BRIG.-GEN. THE HON. G. D. RHODES, C.B. C.B.E., D.S.O. (Special Commissioner and Chief Engineer, Public Works Department).

HON. V. G. MATTHEWS, O.B.E. (Controller of Imports and Supplies). (3)

HON. W. PADLEY, O.B.E. (Acting Deputy Financial Secretary). (4)

European Elected Members:

HON. M. BLUNDELL, Rift Valley.

HON. S. V. COOKE, Coast.

HON. G. M. EDYE, Nyanza.

HON. D. Q. ERSKINE, Nairobi South.

HON. W. B. HAVELOCK, Kiambu.

HON. J. G. H. HOPKINS, O.B.E., Aberdare.

MAJOR THE HON. A. G. KEYSER, D.S.O., Trans Nzoia.

HON. L. R. MACONOCHIE-WELWOOD, Uasin Gishu.

VACANT, Mombasa. (5)

HON. LADY SHAW, Ukamba.

HON. E. A. VASEY, C.M.G., Nairobi North.

Indian Elected Members:

HON. C. B. MADAN (Central Area).

HON. I. E. NATHOO (Central Area).

HON. A. B. PATEL, C.M.G. (Eastern Area).

DR. THE HON. M. A. RANA, M.B.E. (Eastern Area).

HON. A. PRITAM (Western Area).

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

Arab Elected Member:
HON. SHARIFF MOHAMED ABDULLA SHATRY

Nominated Unofficial Members:
Representing the Interests of the African Community:
HON. J. J. K. ARAP CHEMALLAN.
HON. J. JEREMIAH.
HON. E. W. MATHU.
HON. B. A. OHANGA.

Representing the Interests of the Arab Community
HON. SHEIKH SAID SEIF BIN SALIM.

Acting Clerk to Council
A. M. Wilkie, Esq.

Reporters:
A. H. Edwards, Esq.
Miss Bennitt

(1) *Vice* Mr. J. F. G. Troughton, C.M.G., M.B.E., retired.
(2) *Vice* Mr. C. H. Thornley, on leave.
(3) *Vice* Mr. G. J. Robbins, Commissioner of Lands, Mines, and Surveys, retired.
(4) *Vice* Mr. N. F. S. Andrews, O.B.E., transferred on promotion to Sarawak.
(5) Mr. W. G. D. H. Nicol, resigned, 22nd April, 1949.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

10th May—
Hon. Member for Nyanza.

11th May—
Hon. Labour Commissioner.
Hon. Special Commissioner for Works and Chief Engineer.
Hon. Member for Nyanza.

12th May—
Hon. Member for Nyanza.

17th May—
Hon. Director of Education.
Hon. Member for Arab Area.

18th May—
Hon. Director of Education.
Hon. Special Commissioner for Works and Chief Engineer.

19th May—
Hon. Director of Medical Services.
Hon. Director of Education.
Hon. Special Commissioner for Works and Chief Engineer.
Hon. Member for African Interests (Mr. Chemallan).

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1949

Tuesday, 10th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Tuesday, 10th May, 1949.

His Honour the Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

ADMINISTRATION OF OATH

The Oath of Allegiance was taken by: Hon. C. M. Deverell, O.B.E., Acting Financial Secretary and Member for Finance; Hon. C. H. Hartwell, Acting Deputy Chief Secretary and Member for Education; Hon. A. G. Keyser, D.S.O., Member for Trans Nzoia; V. G. Matthews, Esq., O.B.E., Controller of Imports and Supplies.

H.E. THE GOVERNOR AND PRESIDENT

EXTENSION OF TERM OF OFFICE

THE SPEAKER: Hon. Members, it is three months or more since we last assembled, and one or two events have occurred which make it incumbent upon me to speak to you.

First I would refer to that very happy occurrence, the announcement that the term of His Excellency the Governor and President of this Council has been extended to 1951. (Applause.) I understand, in fact I am sure, that members would wish me to convey to His Excellency the congratulations of the Council and the best wishes of you all to him and the hopes that he will have an equally great success in the next two years as he has had in the past three years. (Hear, hear.) It has been my privilege in other colonies to swear in Governors, and I always remember the final words of the oath which they took: "Without fear, favour, or ill will". I think I am expressing your own views when I say that certainly our Governor has always conducted himself certainly without fear, without favour, and without ill will. (Applause.) He has had a more than unusually difficult task; in fact, a more than usually difficult time, and he has had, too, the difficulty of conducting the administration of a colony with a very difficult plural society, and he has done it in a most admirable manner. (Hear, hear.) I think, therefore, if I express something of these words to him in a formal letter, it will meet with your wishes.

OBITUARY

MR. A. R. COCKER

One other matter.

Since we last assembled there has been a much to be regretted event, and I refer to the death of Mr. A. R. Cocker, who was one of the representatives of the Central Area in this Council up to the end of last year. Our late fellow member took a very considerable interest in the affairs both of the Municipality and of the Colony, and always showed an independent turn of mind in his attitude towards such affairs. His death at a very early age is a loss to the public life of the Colony, and I ask you all to stand in silence for a few moments as a mark of respect to his memory and sympathy to his bereaved relations.

Council stood in silence accordingly.

MINUTES

The minutes of the meeting of 27th January, 1948, were confirmed.

PAPERS LAID

The following papers were laid on the table:

BY THE CHIEF SECRETARY (Mr. Rankine):

Labour Department annual report, 1947.

BY THE ACTING FINANCIAL SECRETARY (Mr. Deverell):

Annual account of Kenya for 1946 together with the report of the Director-General of Colonial Audit thereon, Standing Finance Committee report on Schedule of Additional Provision No. 3 of 1948, Schedule of Additional Provision No. 4 of 1948, Estimates of Revenue and Expenditure of the East Africa High Commission, Supplementary Estimates of Revenue and Expenditure for 1949 of the East African Customs and Excise Department.

BY THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (Major Cavendish-Bentinck):

Forest Department annual report, 1945 to 1947, Department of Veterinary Services annual report, 1947.

BY THE ACTING DEPUTY CHIEF SECRETARY (Mr. Hartwell):

Education Department annual report, 1947, Posts and Telegraphs Department annual report, 1947, Transport Licensing Board annual report, 1948.

BY THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT (Mr. Mortimer):

Report of Commissioner for Local Government, 1947, Government Chemist's annual report, 1948.

BY THE MEMBER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones):

Report of an inter-territorial committee on ground services for civil aviation in East Africa.

SESSIONAL COMMITTEE REPORT

SELECT COMMITTEES APPOINTED

Mr. Rankine reported that the Sessional Committee had appointed the following select committees:—

Accommodation for the Council—Chief Secretary (Chairman), Special Commissioner of Works, Major Keyser, Lady Shaw, Mr. Vasey, Mr. Patel, Mr. Nathoo, Mr. Mathu.

Revision of stamp duties—Financial Secretary (chairman), Messrs. Mortimer, Hope-Jones, Padley, Maconochie-Welwood, Erskine, Madan, Jeremiah.

Kazimi report on Indian education—Deputy Chief Secretary (chairman), Director of Education, Lady Shaw, Mr. Cooke, Mr. Patel, Mr. Nathoo.

Pensions (Increase) (Amendment) Bill—Acting Financial Secretary (chairman), Director of Establishments, Deputy Financial Secretary, Messrs. Blundell, Erskine, Madan, Chemallan (on the departure of the then Acting Financial Secretary, Mr. Hartwell was appointed chairman).

Termination of service of Government servants—Chief Secretary (chairman), Director of Establishments, Mr. Maconochie-Welwood, Mr. Havelock, Dr. Rana, Mr. Ohanga.

Salary scales of Indian principals of Indian secondary schools and Indian inspector of Education—Financial Secretary (chairman), Deputy Chief Secretary, Messrs. Havelock, Madan, Jeremiah.

ORAL ANSWERS TO QUESTIONS

No. 3—SPECIAL MAGISTRATES COURTS

MR. BLUNDELL (Rift Valley):

Will Government give the following information on the Courts of Special Magistrates in the Highlands during the year 1948:—

(a) The number of cases tried by Special Magistrates.

(b) The number of Appeals lodged against convictions in the Courts of Special Magistrates.

(c) The number of Appeals allowed against convictions in the Courts of Special Magistrates.

ATTORNEY GENERAL (Mr. O'Connor):

(a) Special Magistrates in the Highlands tried 2,851 cases during 1948.

(b) Six Appeals were lodged against convictions in Courts of Special Magistrates.

(c) One Appeal was allowed whereby the sentence was reduced to one

[Mr. O'Connor]

of one month's imprisonment with hard labour.

(d) During 1948, 93 cases tried by Special Magistrates were revised involving 97 persons. Of these, sentences were varied in the case of 38 persons and convictions were quashed and sentences set aside in the case of 59 persons.

MR. BLUNDELL: Mr. Speaker, arising out of that answer, in view of these figures does Government consider that the criticism of the special magistrates made by the hon. Acting Solicitor General in December, 1948, in the debate on the Judicial estimates was really justified?

MR. O'CONNOR: Sir, I am very glad that the supplementary question of the hon. member has given me the opportunity of making a further answer on the subject of special magistrates.

The remark of the hon. Acting Solicitor General, Mr. Lowe, in the debate on the judicial estimates last December to which the hon. member referred was as follows (I quote from Hansard): "I have had experience in our particular office of the work special magistrates do, and I know that they do do very good and hard work, but unfortunately, their work is not always up to standard and very often causes many delays".

It appears that the opinion of the Acting Solicitor General was based on a certain particular case with which he himself had dealt in the course of his duties, but it does not appear that the figures I have just given could give rise to any general criticism of the work of special magistrates. (Hear, hear.) I am happy, for my part, to pay a tribute to their work, and consider that we owe them a debt of gratitude for the way in which they give their time and labour to perform very important functions in the districts. I know that it is the opinion of His Honour the Chief Justice, and it is my opinion also, that the special magistrates have been and are doing most useful work and that without their services the administration of justice in the districts would be most seriously impaired.

The answer, therefore, to the question of the hon. member is in the negative. (Applause.)

MR. HAVELOCK (Kiambu): Mr. Speaker, arising from the original answer, is it not a fact that the reason for many appeals being laid and cases being revised is inexperienced prosecutors in the lower courts? If this is so, what steps are Government taking to rectify the position?

MR. O'CONNOR: Sir, I am not in a position to give figures in answer to this supplementary question, and can only say that Government has taken steps to instruct prosecutors, and has appointed a very experienced police officer with that particular task as almost his sole duty, and he is conducting a course for prosecutors. In addition to that, at the police training school they are being trained in the task of prosecution. I am not able to say to what extent there have been shortcomings in the past if there have been shortcomings, but Government is doing its best to remedy that position.

No. 6—NATIVE CIVIL HOSPITAL MOMBASA

MR. COOKE (Coast):

Are Government aware that the X-ray plant at the Native Civil Hospital, Mombasa, was closed between March 14th to March 31st inclusive?

If the answer is in the affirmative will Government state why no arrangements were made to have sufficient staff available to avoid such closing down?

In view of the importance of Mombasa as the main port town of East Africa, will Government give an assurance that immediate steps will be taken to rectify the situation and thus ensure that not only the local population but also merchant seamen and other visitors to the port may be assured of X-ray facilities?

DIRECTOR OF MEDICAL SERVICES (Dr. MacLennan):

It is not correct that the X-ray plant at the Native Civil Hospital, Mombasa, was closed from the 14th to the 31st March inclusive. The plant was in fact closed for only five days from the 14th March to the 18th March. This was due to shortage of staff, since at present there is only one other radiographer employed by the department who is posted at Nairobi and could not be spared for transfer to Mombasa. Although in the first place it was contemplated that the

[Dr. MacLennan]

plant would have to be closed down during the whole period of local leave granted to the radiographer, to whom such leave was long overdue, it was later found possible to provide a relief for part of the period. An additional post of radiographer will shortly be filled, and thereafter the Government does not expect any further difficulties in maintaining X-ray facilities at Mombasa.

No. 7—Exchange Bank of India and Africa

Mr. Vasey (Nairobi North):

Is Government aware of the distress caused to numerous Africans and Indians by the decision of the Exchange Bank of India and Africa to suspend payment? Will Government undertake to hold an inquiry into the conduct of the bank's affairs which resulted in such hardship?

Mr. Deverell:

Government is aware of the decision of the Exchange Bank of India and Africa to suspend payment but has at present no information as to the ultimate effects of this action on depositors.

With regard to the second part of the question, Government has taken steps under section 31 of the Banks Ordinance to appoint two inspectors to examine and report on the affairs of the two branches of this bank in Kenya.

BILLS

First Reading

On the motion of Mr. O'Connor, seconded by the Solicitor General (Mr. Hobson) the following Bills were read a first time and notice given to move the subsequent stages during this session: The Local Government (Rating) (Amendment) Bill, the Widows' and Orphans' Pension (Amendment) Bill, the Transport Licensing (Amendment) Bill, the Eviction of Tenants (Control) Bill, the Shop Hours (Amendment) Bill, the Vagrancy (Amendment) Bill, the Municipalities (Amendment) Bill, the Estate Duty (Consolidation) (Amendment) Bill, the Legislation (Application to High Commission) Bill, the Law Society of Kenya Bill, the Hospital Services (European) (Amendment) Bill, the Liquor (Amendment) Bill, the Nurses and Midwives Registration Bill, the Land and Water Preservation (Amendment) Bill, the Control of Grass Fires (Amendment) Bill, the Increase of Rent (Restriction) Bill, the Increase of Mortgage Interest (Restriction) Bill, and the Immigration (Control) (Amendment) Bill.

INCREASE OF RENT (RESTRICTION) BILL

Referred to Select Committee

Mr. O'Connor: Mr. Speaker, I beg to move: That the Increase of Rent (Restriction) Bill be referred to a select committee consisting of myself, as chairman, the hon. Solicitor General, and the hon. members Mr. Vasey, Mr. Cooke and Dr. Rana.

All these gentlemen except myself were members of the committee appointed to consider the Increase of Rent and Mortgage Interest (Restriction) Ordinance, 1940, and it is on the recommendations of that committee that the Bill which has just been read a first time is based. The reason I ask for a select committee at this stage is as follows.

I have just received from a gentleman who was a member of the committee, but who is not a member of this Council, a list of comments on and suggested amendments to the Bill. Some of those amendments deal with points of drafting and some of them are legal points, but he raises points of considerable substance which have not been considered by the committee and which be considered, I suggest, by this Council before the Bill is passed. The amendments would be too far-reaching to be conveniently considered by the whole Council, and the only way in which I can get them considered at this very late stage is to move for a select committee forthwith. I think that that is the only method by which we can hope to get the Bill through this session, and it would certainly enable us to have a more informed debate on the second reading if we were to be guided by the report of the select committee than we could possibly otherwise have.

There is a demand for this Bill to be passed into law, and therefore I take this somewhat unusual course of moving for a select committee after the first reading instead of waiting until after the second reading.

Mr. Hobson seconded.

The question was put and carried.

DIAMOND INDUSTRY PROTECTION BILL

Second Reading

Member for Commerce and Industry (Mr. Hope-Jones): Mr. Speaker, I beg to move: That the Diamond Industry Protection Bill be read a second time.

The purpose of this Bill is to bring the Diamond Industry Protection Ordinance of 1934, which was brought into operation in this Colony last year, up to date and into line with the law in Tanganyika. The Government of Uganda, so I am informed, is proposing to introduce a similar Bill in their Legislative Council. The purpose of this Bill, as I say, is to bring the law up to date and into line with the requirements that have been found necessary in a neighbouring territory where there is a large scale diamond industry.

Primarily, the Bill is an attempt to provide the legal framework by which the movement, cutting, prospecting for and mining of diamonds can be controlled. Generally speaking, it has been found necessary in every territory where diamonds are mined, and specifically in a neighbouring territory where diamonds have been found in quantity, to provide legislation of this character. Diamonds, although I personally have little first-hand knowledge of them, are obviously extremely easy to smuggle. They are small, they are durable, they are immensely valuable, and it has been found in Tanganyika that there has been considerable loss of diamonds through illicit diamond smuggling and selling. Diamonds are at the present time a very important dollar earner for the British Commonwealth and Empire. That is the prime reason for the introduction of this Bill into this Council, but there is a more positive reason also, and that is we have felt that, with proper safeguards, it should be possible for any honest person to prospect for diamonds in the territory of Kenya. We also felt that it was very necessary that, if they were so fortunate as to find them, there should be the legal framework by which their finds could be protected, so that both the finder and the Colony as a whole could benefit from them.

That is the positive side of the Bill. So far we have not found diamonds, but after all they were found in quantity in Tanganyika a very few years ago. There may be a pipe of wonderful blue earth just waiting for someone to find in Kenya, and if they do find it we want them to find it with the proper legal safeguards.

I do not propose to waste the time of Council talking about something which, as I have already said, is an expert subject. I should say that this Bill went in its entirety to the Mining Sub-Committee of the Board of Commerce and Industry, on which are all the experts, and they reported to the full Board most favourably in regard to this Bill. The Board of Commerce and Industry itself also considered the Bill and reported unanimously that they felt it should go through.

Mr. Hobson seconded.

The question was put and carried.

ADJOURNMENT

Council rose at 10.40 a.m. and adjourned until 9.30 a.m. on Wednesday, 11th May, 1949.

Wednesday, 11th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Wednesday, 11th May, 1949.

His Honour the Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 10th May, 1949, were confirmed.

SCHEDULES OF ADDITIONAL PROVISION

No. 3 of 1948

MR. DEVERELL: Mr. Speaker, I beg to move: That the Standing Finance Committee Report on Schedule of Additional Provision No. 3 of 1948 be adopted. The report of the committee recommended approval of all the items in the schedule, and it, together with the schedule, has been laid. I do not think there are any items in the schedule which call for particular reference at this stage.

MR. RANKINE seconded.

The question was put and carried.

No. 4 of 1948

MR. DEVERELL: Mr. Speaker, I beg to move: That Schedule of Additional Provision No. 4 of 1948 be referred to the Standing Finance Committee.

MR. RANKINE seconded.

The question was put and carried.

LAND AND AGRICULTURAL BANK

Reduction of Interest Rate

MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (Major Cavendish-Bentinck): Mr. Speaker, I beg to move: Be it resolved that the rate of interest charged by Government in respect of funds raised by the Land and Agricultural Bank by loan under the provisions of paragraph (*b*) of sub-section (1) of section 20 of the Land and Agricultural Bank Ordinance, 1930, be reduced from 3 per cent to 2½ for a period of three years with effect from the 1st day of January, 1949.

The object of this resolution is, in short, to provide the Bank with another ¼ per cent towards the costs of administration and bad debts. It will be remembered possibly that in 1945 I moved a motion which read as follows:—"Be it resolved that the rate of interest charged on loans issued to the Land Bank under the provisions of paragraph (*b*) of sub-section (1) of section 20 of the Land and Agricultural Bank Ordinance, 1930, be reduced from 4.7 per cent to 3 per cent in the case of a loan of £74,000, and from 3.7 per cent to 3 per cent in the case of a loan of £260,000, and from 3.07 per cent to 3 per cent in the case of a loan of £150,000, with effect from the 1st January, 1946." At that time the objective was, in the first instance, to reduce the rate of interest charged by the Bank to borrowers from 6 per cent to 4½ per cent and also to reduce the rate charged to the Bank by Government from 3.924 per cent to 3 per cent. On this occasion this resolution will have no effect on those who have borrowed from the Bank, but it will give the Bank, as I say, a small extra margin for its overhead expenditure on administration and for bad debts.

On the last occasion we allowed the difference between 3 per cent and 4½ per cent towards the working of the Bank, but it has always been the opinion of the Directors of the Bank that they must have at least 2 per cent. That opinion was not entirely shared by some of our previous Financial Secretaries, and they have been in fact working on 1½ per cent for the last few years. That has been possible, firstly because of the rather better conditions which the agricultural industry has encountered during the last few years, which has reduced bad debts and has, indeed, permitted people who had almost been written off by the Bank to pay their indebtedness in full. Secondly, there has been no salary revision during that period. Now, prosperous conditions may or may not continue, but certainly, so far as the salary revision is concerned, the same conditions will not continue. Therefore it has been found necessary, as I say, to give the Bank a slightly bigger margin.

The annual cost to revenue will be approximately £1,816, but that is only the annual cost to revenue; it is not the long term picture. The long term view is that the capital of the Bank represents a permanent investment by Government,

[Major Cavendish-Bentinck]

and interest is payable by the Bank only for so long as interest is in turn payable by the Government on the funds constituting the Bank's capital. If the interest rate payable by the Bank is reduced, a subvention can, of course, be avoided by requiring the Bank to continue to pay interest over a longer period of time.

The proposal has been submitted to Standing Finance Committee, and they are in agreement.

MR. O'CONNOR seconded.

The question was put and carried.

MUNICIPALITIES (AMENDMENT) BILL

Second Reading

MEMBER FOR HEALTH AND LOCAL GOVERNMENT (Mr. Mortimer): Mr. Speaker, I beg to move: That the Municipalities (Amendment) Bill be read a second time.

It will be within the knowledge of hon. members that the Municipal Council of Nairobi has taken the bold step of negotiating for the floating of a loan, of a very large sum of money, on the London market. The negotiations have been successfully completed and the loan will be floated at an early date. The legal advisers of the finance corporation who are acting as agents for the flotation of the loan, have, however, drawn attention to what they regard as a flaw in our existing law.

Section 88 of the Municipalities Ordinance provides for the borrowing powers of councils, and in sub-section (2) it is laid down that such loans shall be secured on the property and revenues of the council. It is that word "secured" that has caused some misgiving, as it seems to imply to the legal mind that there will be some document of security to ensure that the provisions of the loan are properly carried out. It is not intended, however, that there shall be any document implementing its security, but rather that the charge shall be, *ipso facto*, upon the property and revenues of the Council. In order to make the situation quite clear, so that there may be no doubts in the minds of investors, it is proposed to alter the phrase in the Ordinance from "such loans shall be secured on the property and revenues of the council" to the words "such loans shall be a charge on the property and revenues of the Council".

That is the whole purport of the present Bill. I should like to take this opportunity of warmly congratulating the Municipal Council of Nairobi on its enterprise and initiative in taking this very bold step, which I am sure will be extremely successful and will redound to the honour of Nairobi and this Colony. (Applause.)

MR. O'CONNOR seconded.

The question was put and carried.

LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL

Second Reading

MR. MORTIMER: Mr. Speaker, I beg to move: That the Local Government (Rating) (Amendment) Bill be read a second time.

In this short Bill there are two major points and a few minor ones. I will deal first with the major points falling within the measure.

The first is to insert in the Ordinance a new definition of rateable property under the exemptions rule. There are certain exemptions laid down in the Ordinance, and one of these deals with land laid out and used for the purpose of sport and recreation and controlled in accordance with rules or regulations approved by the local authority. That exemption has been somewhat loosely applied in past years, and it has sometimes been used to cover even residential clubs and buildings used purely for social purposes and not for sport or recreation in the accepted sense.

In order to make the matter quite clear, it is proposed to delete the words "and recreation" from the definition, leaving it quite clear that the exemption applies only to land laid out and used for sport. That implies outdoor sport, so that we may have a club with tennis courts, and the land occupied by the courts will be exempt from rating, the land occupied by the social club will be rateable. That, I think, is quite fair, and is in accordance with the intention of the Ordinance, which was based on the local government commission report, and is in line with the general principles of rating adopted everywhere.

The next major point deals with the time at which a valuation roll shall have

[Mr. Mortimer]
been deemed to have been made. Taking Nairobi as an example, there are something over 10,000 separate valuations appearing in the valuation roll. It is, of course physically impossible for any valuer to complete such valuations in one day or one month or one year; it takes quite a considerable time to carry out the task of preparing a valuation roll. It has been the practice of municipalities to assume that the date of valuation was the date when the valuer signed the roll and certified it. The law says that the valuation of a property shall be the value at which it would normally change hands between a willing buyer and a willing seller at the date of the valuation. It is obvious that the date of valuation has some real significance.

This practice of municipal authorities was recently called in question, but to make the situation absolutely clear it is proposed that the date of valuation shall be taken as a uniform date and shall be such date as a municipal council or municipal board itself may prescribe by resolution, subject to the approval of the Member for Local Government. The wording of the clause which provides for the insertion of a new definition of "time of valuation" as it appears in the printed Bill, does not precisely carry out the intention, and so a new clause has been drafted which was circulated to hon. members yesterday, and the wording of the new clause will be proposed at the committee stage in substitution for that appearing in the printed Bill.

The minor points are, first of all, the introduction of a definition of Member, as certain powers are given the Member and therefore there must be a definition of him in the definition section. The next minor point is purely a matter of wording. In various parts of the Ordinance the terms "date of valuation" and "time of valuation" have been used. They are, in fact, interchangeable, but lest some legal mind should imagine there is some subtle distinction to be drawn between date and time of valuation, it is proposed to use one phrase only, and to make it "time of valuation" wherever "date of valuation" appears.

The last minor point is to substitute "Member" for "Governor" in various sections of the Ordinance, in line with the present practice of giving what might be regarded as ministerial powers to Members and relieving the Governor of the necessity of dealing with comparatively minor matters of administration.

MR. O'CONNOR seconded.

MR. HOPKINS (Aberdare): Mr. Speaker, I should like to make a few remarks on clause 2 *(b)* which contains the definition of rateable property and which perpetuates the discrimination in the main Ordinance against land used as a racecourse as opposed to land used for other kinds of sport.

I do not know what principle is urged in support of this discrimination, but from a reading of the section it would appear it is considered that racing is carried out for the purposes of profit. I should like to be allowed to show hon. members that this is not the case—(laughter)—and to that end—I am quite serious about this!—(laughter)—I should like to read to you rule 4 of the rules of the Jockey Club: "The income and property of the club whencesoever derived shall be applied solely towards the promotion of the objects of the club, as herein set forth, and no portion thereof shall be paid or transferred directly or indirectly by way of dividend, bonus, or otherwise howsoever by way of profit to members of the club".

The objects of the club are set out in a number of sections, which I do not propose to read, but I should like to quote the first section, because all of them are governed by it. It reads: "*(a)* To promote and obtain honourable practice, and to repress malpractice, in racing in Kenya". It is clear, therefore, from the rules, which are enforced most strictly, that profits from race meetings cannot be given to individuals, syndicates or companies, but must be put back into racing for the benefit of that sport.

I happened to be a steward of the Jockey Club up to a year or so before the war, and during most of the war, and I can assure hon. members that it was not until the war was well on its way and the immediate threat to Kenya had passed and the troops showed definitely that they valued racing as a form of recreation and amusement that racing started to make any profit whatever. By that I mean that for years and years profits made from race meetings were always inadequate even to cover

[Mr. Hopkins]
running expenses and proper upkeep of courses.

Stakes in those days were so small that they could only be looked upon as a very small contribution towards the expenses of even the most successful owners, and racing was kept going by a comparatively few enthusiastic and loyal supporters. During this period, which was a long one, the buildings and the grounds fell into such a deplorable state that even now the Jockey Club and other race clubs in the country have not been able to save sufficient money to put them right. There are many urgent renewals and replacements which are necessary and, as I say, clubs are not yet in a position to carry them out. The Jockey Club of Kenya has no capital in the ordinary sense of the word, and is dependent on what it can make out of race meetings for prize money, running expenses, upkeep, renewals and repairs.

I should like to point out also that the Jockey Club of Kenya and other clubs have been most generous in regard to subscribing to charity, not only by making direct cash contributions from their somewhat meagre funds but also by putting their grounds and facilities at the disposal of those who wished to raise funds for desirable purposes.

Horse-racing is not only a sport enjoyed by thousands of Africans, Asians and Europeans, it without doubt brings prosperity and a great deal of money to the municipalities in which racecourses happen to be situate. Above all, it is the show-window of the horse-breeding industry, just as the agricultural show grounds are the shop-windows of agriculture generally. The improved position of racing during the last few years has given great stimulus to horse breeding. That in its turn has stimulated interest derived from the outdoor sports of polo, hunting and show jumping, children's pony clubs and rallies and riding generally. I think that these recreations are most desirable, and they are very largely dependent on horse breeding, which is again dependent on the prosperity of racing.

The first set-back which the Jockey Club sustained during the war, when it started to make some money for its own use, was when it was almost at once called on to pay income tax. That was during the period when I was a steward of the club. It not only had to pay income tax, but because it had always in the previous decade or so made a loss on racing generally it was mulcted for excess profits tax, because what it was making was so much in excess to nothing! (Laughter.) That is perfectly true. The next set-back is this demand for rates. I am well aware that the members of Nairobi Municipal Council are a reasonable and sympathetic lot of men, I am aware also they have most generously decided not to exact the full percentage of rates which they can under the law.

The position is, however, at the present moment that the municipality is convinced, and I think probably rightly, that the racecourse should be moved to make way for important developments from a town planning point of view. They wish to see the racecourse moved to some site outside the municipal boundary. I should like to make it quite clear that I am not implying that the rating of the racecourse has any connexion with this, or is being used as a means of putting pressure on the Jockey Club to fall in with the wishes of Nairobi Municipality. I am quite sure that this is not the case.

I am also not at all sure that it would not be in the interests of the Jockey Club to move, and I think that is the feeling of the stewards generally. What I wish to point out, however, is that there was a time when the present racecourse was outside the municipal boundaries. There will come a time, I am sure, in a decade or two perhaps, when the new racecourse site will have to be embraced in what will then be greater Nairobi. I can see no guarantee that at some future date other municipal councillors, wishing to finance social amenities for their citizens, will not feel they have to rate racecourses. So long as this clause, which discriminates against racecourses, remains in the Ordinance the Jockey Club and other race clubs cannot feel security.

I hope therefore that when in the committee stage I move an amendment to eliminate the discriminatory words I will get the support of all hon. members. I hope, in fact, that Government will accept the amendments. (Hear, hear.) I say this in the hope that race clubs may be given an opportunity of building up

[Mr. Hopkins]
some reserves against the days which will inevitably return when racing will again be in financial difficulties, to the detriment of horse breeding and to those healthy outdoor games and sports to which that industry gives rise.

MR. MORTIMER: Mr. Speaker, I regret that I am unable to accept the suggestion—(UNOFFICIALS: Shame!)—that at the committee stage there should be an amendment to this Bill to exclude racecourses from rating. The phrasing of this particular clause was proposed by the Local Government Commission in 1927, was passed into law in 1928, and has remained unaltered for over 20 years. It is in accordance with the general practice of rating, I think I am right in saying, throughout the world, and that practice prescribes that sports organizations run for profit shall not be exempt from rating. I am not personally a frequent racegoer—(laughter)—but I accept very fully the statements of the hon. member as to the great value of racing in this country, its great assistance to the horse-breeding industry and to the encouragement and development of horse-riding and various outdoor sports. That is all to the good, but there is no doubt that the racecourse is run for profit. The Municipal Council of Nairobi, which is mainly concerned, has, as the hon. member has said, treated the Jockey Club generously, in that only half the rates that could legally be imposed are in fact charged.

There are in law opportunities for appeal against a valuation; there are opportunities for appeal for exemption or more generous treatment. If the Municipal Council of Nairobi, which as the hon. member has said is a sympathetic body, recommends any relief or exemption, I have no doubt that the Government would favourably consider any such relief in an individual case. But certainly at such short notice one could not accept an amendment of this kind, which would have a far-reaching effect. It is always the practice when local government law is being amended to consult all the local authorities concerned before the law is actually drafted and placed before this Council, and one could not depart from that major principle in this case. I am pretty sure what the answer of the Nairobi Municipal Council would be if they were consulted on this particular point. At any rate, for the time being, I regret that I cannot accept such an amendment at the committee stage.

The question was put and carried.

VAGRANCY (AMENDMENT) BILL

SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Vagrancy (Amendment) Bill be read a second time.

This Bill is put forward as part of the policy of delegating powers exercised under Ordinances to the Member of Executive Council responsible for them. As is fully explained in the "Memorandum of objects and reasons", where no suitable employment within a reasonable time not exceeding three months is found for and accepted by a vagrant who has been committed to a house of detention, the Governor in Council may do one of two things. If the vagrant is not a British subject born in the Colony, the Governor in Council may order him to be repatriated; or, if the vagrant is a native of the Colony, the Governor in Council may order him to be returned to the area, if any, reserved for his tribe or sub-tribe. This Bill will enable those powers to be exercised by the Member for Law and Order, instead of each case having to go to the Executive Council. There are a number of cases in which those powers have to be exercised, and it is suggested that it is unnecessary to take up the time of the Governor in Council in each case. The law will not be altered in any other respect.

MR. HOBSON seconded.

The question was put and carried.

ESTATE DUTY (CONSOLIDATION) (AMENDMENT) BILL

SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Estate Duty (Consolidation) (Amendment) Bill be read a second time.

This Bill will do three things. It will, in the first place, supply a definition of the expression "principal value"; in the second place it will do away with statutory mention of approved valuers; and in the third place it will insert a section

[Mr. O'Connor]
permitting the Governor in Council to remit the whole or part of the estate duty in cases of exceptional hardship.

First of all, to deal with the definition. As I have said, the proposal is to insert a statutory definition of the phrase "principal value". As hon. members are aware, it is upon the principal value of an estate that estate duty is calculated. That expression will be defined to mean the price which, in the opinion of the Commissioners, the property would fetch if sold in the open market at the time of the death of the deceased. There is nothing revolutionary about that. That definition has been in force in England since 1894, and is in force in most colonial estate duty Ordinances of which I have any experience, and it is in fact the practice here. The effect of putting it in the Ordinance will therefore be mainly to give statutory effect to what at present depends upon the practice of the Estate Duty Commissioners. It will also have this advantage, that it will make more certainly applicable here the great body of case law upon this expression which is available in England.

To pass on to explain the second effect of the Bill—that is to say, the deletion of statutory mention of approved valuers—I would point out that that definition of approved valuer and the mention of it in section 20 of the Ordinance has, so far as I am aware, no counterpart in the law of England, and I have not come across it in any other comparable estate duty legislation. It seems that it performs no useful function here. So far as I can see, the only place in which the expression "approved valuer" is used in the Ordinance is in sub-section (3) of section 20, which allows the Assistant Commissioner to require that any valuation to be furnished under the provisions of this section shall be made and signed by an approved valuer. There is nothing to say that the valuation of the approved valuer, when it is received, must be accepted, or that a valuation which is not made by an approved valuer, but by some other valuer, will be rejected. In fact, valuations not made by approved valuers are very often accepted, and by no means all valuations made by approved valuers are accepted. So that the provision in actual practice seems to perform no useful function, and I am advised by the Assistant Commissioner, and it is the view, I think, of the Estate Duty Commissioners, that it is superfluous. I do not hold any very strong view one way or the other upon this definition, but if it is in fact superfluous we might as well get rid of it.

The third thing the Bill will do is to permit the Governor in Council to remit estate duty in whole or in part in cases of exceptional hardship. There is no attempt to define what exceptional hardship amounts to. That must, I think, be left to be considered in the individual consideration of each case. It may be said that to some degree it is always a hardship to have to pay estate duty, but that is not exceptional hardship; that is not what is aimed at. Where there are exceptional circumstances—and one is mentioned in the "Objects and reasons"—then I suggest that it is desirable to have some flexibility and to allow the estate duty to be remitted in whole or in part in those exceptional circumstances. I should be against giving power to any one individual to remit taxation, and it is therefore suggested that this power should be exercisable by the Governor in Council, and I suggest that it should be sparingly exercised; but it is an advantage to have the power in cases where exceptional hardship can be shown to the satisfaction of the Governor in Council.

MR. HOBSON seconded.

MR. MACONOCHIE-WELWOOD (Ustin Gishu): Mr. Speaker, I must in principle oppose the second clause of this amending Bill, because estate duty in itself is a peculiarly onerous tax in a new colony, and I cannot but believe that the placing of the valuation on a property entirely "in the opinion of the Commissioner" is extremely dangerous. It may be that it may have been so before, but to put here in so very draconic a manner "in the opinion of the Commissioner" will have a very unsatisfactory effect. In England at the present moment the valuation of estates is done by approved valuers whose valuations are not necessarily accepted, but, in fact, estates and properties are valued by expert valuers who have nothing to do with Government, and whose valuation is almost invariably accepted. I must join issue

[Mr. Maconochie-Welwood]

with the hon. Attorney General on the desirability in this matter of English case law becoming available to the courts, because I would submit that English case law is an exceedingly dangerous thing to bring into this country in matters such as this where conditions are entirely different and the objects of estate duty itself are different.

Estate duty, as I see it, was brought into this country more in order to have it on the statute book because it existed in England than because it was a large revenue-earning factor. In point of fact, it brings in very little, and many of us would like to see it done away with. For agricultural land in particular I would not like to see a clause put in which says the duty shall be on the market value at the time of deatth, because agricultural land is a very fluctuating affair. In fact, if land had been subjected to death duties during the last two years it would undoubtedly have been a very great hardship on the heir because since then land is already declining in value. For these reasons I must oppose this clause, and shall move an amendment in committee to delete clause 2.

MR. O'CONNOR: Mr. Speaker, with regard to the objection by the hon. Member for Uasin Gishu to clause 2, that definition of "principal value" is at the foundation of the whole assessment of estate duty. I have already said that it has been used since 1894 in England and it is the existing practice here. If we take that out of this amending Bill we shall have to continue putting that definition into practice as a matter of practice, or we shall have no criterion upon which to value estates for duty purposes. I do therefore urge on this Council to take time to consider what they are doing; by removing that definition they are removing the kingpin of the whole system. If you remove it from this Bill we shall merely have to continue the practice which we have adopted, but it will be difficult to do so in view of what will then appear to be the disapproval of this Council of the existing practice.

I urge, therefore, that if hon. members wish to upset the whole practice of collection of estate duty, they should take time and substitute something for it which will work. But this practice is universal. I must say that it is a great surprise to me to hear it attacked here, and therefore it will be impossible for me to accept the amendment which is suggested at this short notice.

The question was put and carried.

LAW SOCIETY OF KENYA BILL

SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Law Society of Kenya Bill be read a second time.

This is a Bill which has been asked for by the Law Society and is based upon the draft submitted by them. Another Bill is now being drafted and considered by a committee under my chairmanship which I hope to introduce at a later stage under the title of the Advocates Bill; that will deal with all matters affecting the legal profession in Kenya, but it is not yet ready.

The objects and contents of this Bill are fully explained in the "Memorandum of objects and reasons", and I need not say much in supplementation of that, but I will give a very brief outline of the contents of the Bill. The object is to incorporate the Law Society and give it certain statutory powers. On the commencement of the Ordinance the existing Law Society, which is an unincorporated body, will cease, and its property after the completion of the necessary formalities will pass to the new society.

The new incorporated society will be managed by a council consisting of the president, vice-president, and six other members elected annually. The members of the existing Law Society will be eligible for membership, and the objects of the society are set out in clause 4. The main objects are "to maintain and improve the standards of conduct and learning of the legal profession in the Colony; to facilitate the acquisition of legal knowledge by members of the legal profession and others; to assist the Government and the courts in all matters affecting legislation, and the administration and practice of the law in the Colony; to represent, protect and assist members of the legal profession in the Colony as regards conditions of practice and otherwise; to protect and assist the public in the Colony in all matters touching, ancillary or incidental to the

[Mr. O'Connor]

law"; and there are certain objects dealing with the acquisition and holding of property and other domestic matters.

I think hon. members will agree with me that it is important that the legal profession in the Colony should have up-to-date legislation which will enable it to deal adequately with its own affairs. The Advocates Bill which I mentioned will be a much more far-reaching measure than this. This is only an instalment, but in the meantime I commend this Bill to the Council.

MR. HOBSON seconded.

MR. MADAN (Central Area): Sir, I wish to support this Bill. I am very closely connected with the existing Law Society as treasurer. The members have discussed this Bill very thoroughly and, as the hon. mover has pointed out, the draft was submitted by them. The legal profession is a very noble profession, and we are very jealous as regards the exercise of our affairs, and this measure will enable us to manage our affairs and regulate the conduct of matters which affect the legal profession. It will also help advocates themselves, and render assistance to them.

The question was put and carried.

WIDOWS' AND ORPHANS' PENSION (AMENDMENT) BILL

SECOND READING

ACTING DEPUTY CHIEF SECRETARY (Mr. Hartwell): Mr. Speaker, I beg to move: That the Widows' and Orphans' Pension (Amendment) Bill be read a second time.

This Bill will affect only a small number of officers—less than 12—transferred from Palestine to Kenya. In April, 1948, the Secretary of State drew the attention of colonial governments to the fact that the mandate for Palestine was about to expire, and that the majority of officers in Palestine would therefore have to leave that Service. Under the Palestine legislation their own contributions and the Palestine Government's contributions to their funds were to be refunded to the officers, but the Secretary of State suggested that colonial governments might make provision in their laws so that an officer transferring from Palestine to enter a colonial government's service could pay his own and the Palestine Government's contributions into the fund of the government to which the officer was transferred and enable him to have that money put to his credit in the funds of the government to which he was transferred.

As a result of that, this Council enacted Ordinance No. 49 of 1948, section 2 of which covered this particular matter. With your permission, sir, I will read section 2: "Notwithstanding anything contained in this Ordinance, any officer who was a contributor under the Palestine Widows' and Orphans' Pensions Ordinance, 1944, immediately before the termination of His Majesty's jurisdiction in Palestine, and who is appointed to the service of the Government of the Colony, may become a contributor if, not later than three months after such appointment or after the commencement of this Ordinance, whichever is the later, such officer makes a lump sum payment under the provisions of the principal Ordinance, equal to the accumulated contributions he has paid under such Palestine Ordinance, and he shall then be deemed to have been a contributor, from the date he would have become a contributor, had such lump sum been contributed by way of annual contributions under the provisions of the principal Ordinance".

That Ordinance was passed, a copy of it was sent in the usual way to the Secretary of State for the Colonies, and it was examined there in collaboration with the Government actuary and the Crown Agents for the Colonies, who administer the Kenya fund and actually pay the pensions. As a result of that examination, the Secretary of State suggested that two amendments were necessary to that section of Ordinance No. 49 of 1948. The first amendment is a simple one. Our section reads: "who is appointed to the service of the Government of the Colony". The Secretary of State pointed out that the measure was intended to cover only people who were transferred from Palestine to another government with a break in service, and that the word "appointed" might be taken to cover a man who, after a considerable lapse of time, was appointed to this Government after leaving Palestine. The Bill which is now under con-

[Mr. Hartwell]

sideration substitutes the word "transferred" for the word "appointed".

The second amendment is a little complicated, but I will try to explain it as shortly as I can. Under the principal Ordinance the pension which the widow or children of the officer receive is calculated in two parts: the first part depends on the accumulated contributions at the date of marriage, and the second part depends on the current contributions at the date of marriage. There are attached to the Ordinance tables which were drawn up by the Government actuary. Table A is used for the purpose of calculating that portion of the pension which is determined by the contributions at the date of marriage. Table B is used for the computation of that portion of the pension which depends on current contributions. The Secretary of State has pointed out that the final words of our section 2 of Ordinance No. 49 of 1948—that is "and he shall then be deemed to have been a contributor, from the date he would have become a contributor, had such lump sum been contributed by way of annual contributions under the provisions of the principal Ordinance."—seemed to imply that the lump sum which is paid in by the officer will be treated as current contributions.

That was not the intention. The intention was that that sum should be treated as an accumulated contribution, and should be dealt with under Table A. All the other governments have enacted their legislation in that way, and the Secretary of State, after consultation with the Government actuary, has asked us to make the amendment, so that we can do the same thing.

As I said, only a very small number of officers have been transferred from Palestine to Kenya, less than 12 are affected. The original Ordinance was enacted at the request of the Secretary of State, he has now asked that these amendments should be made, and I think they ought to be made.

MR. DEVERELL seconded.

The question was put and carried.

TRANSPORT LICENSING (AMENDMENT) BILL

SECOND READING

MR. HARTWELL: Mr. Speaker, I beg to move: That the Transport Licensing (Amendment) Bill be read a second time.

The object of this Bill is to amend section 20 of the existing Transport Licensing Ordinance. The present section 20 (1) reads as follows: "Subject to the provisions of this section, any person who fails to comply with any condition of a licence of any class held by him shall be guilty of an offence against this Ordinance". The main object of the amendment is to bring within the section the driver of the vehicle who does not hold a licence. At the present time, since the driver is not the man who holds the licence, he is excluded from the operation of this section, because it says "a licence held by him". The amended clause reads as follows: "Any driver or other person . . . ".

As is clear from the "Objects and Reasons", paragraph 2, sub-section (2) of section 20 has been omitted. Section 20 (2) reads: "In the case of goods vehicle licence, and notwithstanding that a vehicle is an authorized vehicle, the conditions of the licence shall not apply while the vehicle is being used for any purpose for which it might lawfully be used without the authority of a licence". It is explained in paragraph 2 of the "Objects and Reasons" that that provision has now been omitted, because it has enabled people who ought in fact to have been convicted of an offence to escape. One of the conditions of a goods vehicle licence is that, only the driver, and I think two other persons, can be carried in the vehicle. Apparently a number of cases have occurred in which a larger number of persons have been carried, but it has not been possible to convict the driver under this Ordinance because it was not possible to prove that those people were being carried for payment. This section of the Ordinance has, I am informed, given rise to a good deal of difficulty and it has therefore been repealed by the present amendment.

MR. WYN HARRIS seconded.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I must oppose this amendment *in toto* for the following reasons. In the

[Mr. Maconochie-Welwood]

first place, if we pass this it may very well be that the perfectly legitimate holder of a licence would be unable to carry goods because he could not carry the personnel for loading and unloading. When this Bill was originally brought up last year that was pointed out to the then Attorney General. I have in front of me a copy of the amendment which was drawn up then, and it was withdrawn because of that. In the new one in front of me now there is no alteration of any sort. Precisely the same amending Bill is brought up which was withdrawn by the hon. Attorney General on representations, I think, from one of the hon. members for African Affairs and myself on these grounds.

It seems to me that at the present time it does not behove us to load the statute book with more and more legislation of this sort which merely gives temptation to the police to spend their time looking for very easy traffic offences instead of enforcing law and order, which is unfortunately so little enforced in this country. I cannot regard these traffic regulations as sufficiently important to warrant the time of the police being thus taken up, when the police are quite incapable, through no fault of their own, of keeping order in many parts of the country.

I have another objection to this, which has only an indirect bearing on this particular amendment, and that is that during the budget debate this side of Council asked for the repeal of the "C" licence, and that was more or less agreed to by the hon. member in charge of the matter at the time. Nothing whatever has been done about it, and all we have is an amending Bill of the greatest ferocity. I hope the whole of this side of Council at any rate will oppose this amending Bill.

MR. MATHU (African Interests): Mr. Speaker, I rise to oppose this amending Bill and to endorse every word that the hon. Member for Uasin Gishu has said against it. It is a fact that last year I and the hon. member who has just sat down made representations against the amending Bill at that time, and the Bill was withdrawn. We hoped that, if an amending Bill was forthcoming this year, it would be on a different line and not on the same line as the one we opposed at that time.

I feel that this Bill should be opposed by at any rate hon. members on this side of Council. As all the points have been covered by the previous speaker, I should not like to take more of the time of Council on this, except to draw the attention of Government again to the complaint that the African has against the whole question of transport licensing, namely, that it has not been possible so far to have permanent membership of Africans on the Transport Licensing Board. I beg to oppose.

MR. RANKINE: Mr. Speaker, in view of the objections that have been raised to this Bill, I beg to move that the debate on this particular measure be adjourned in order to enable the Government to investigate.

MR. O'CONNOR seconded.

The question was put and negatived on a division by 16 votes to 14. Ayes: Major Cavendish-Bentinck, Messrs. Deverell, Gillett, Wyn Harris, Hartwell, Hope-Jones, Dr. MacLennan, Messrs. Matthews, Mortimer, O'Connor, Padley, Patrick, Dr. Rana, Mr. Rankine, 14. Noes: Messrs. Blundell, Chemallan, Erskine, Havelock, Hopkins, Jeremiah, Major Keyser, Messrs. Maconochie-Welwood, Mathu, Nathoo, Ohanga, Patel, Pritam, Salim, Shatry, Lady Shaw, 16.

MR. RANKINE: In that case, and in view of the fact that the Council does not wish to give Government the opportunity to consider the objections raised to this Bill, which in the circumstances I can only say is most unreasonable, I would ask, with your leave and that of Council, for permission to withdraw the Bill.

MR. O'CONNOR: Mr. Speaker, I beg to second. I should like to have had an opportunity of investigating the statements which have been made—I have no doubt quite correctly made—but as the Council obviously is against this I think that the best course is to withdraw the Bill and ask that that should be done.

The Bill was, by leave of Council, withdrawn.

Council adjourned at 10.55 *a.m. and resumed at* 11.10 *a.m.*

EVICTION OF TENANTS (CONTROL) BILL

SECOND READING

CHIEF NATIVE COMMISSIONER (Mr. Wyn Harris): Mr. Speaker, I beg to move: That the Eviction of Tenants (Control) Bill be read a second time.

This Bill re-enacts almost in its entirety the Eviction of Tenants (Control) Ordinance, 1948. Council will recall the reason for that particular piece of legislation. It was to protect certain tenants living in and around Mombasa who have their own houses on land owned by other persons and who were being evicted under Mohammedan law. That Ordinance expires at the end of this year. The reason for that was that there is a committee of inquiry going into the whole matter which is shortly to report to Government; in fact, I believe the report is already on its way.

It was found, however, that the Mombasa Municipal Board was prevented by this Ordinance from carrying out its statutory duties, particularly with regard to putting roads in certain areas in accordance with the town plan. For that reason, certain amendments have been made, particularly in clause 6 of this Bill, which reads: "Nothing in this Ordinance shall prevent the Mombasa Municipal Board from executing any of its statutory duties or powers in relation to any land situated in the areas set out in the schedule to this Ordinance". That is the main alteration caused by this Bill.

There is also a definition of "house", to make clear exactly what is meant. Clause 4 (2) is new, that "The decision of the board to give or withhold consent shall be final and shall not be called in question in any court". The reason is that it is quite clear that this is a purely temporary measure, and it is not desirable that the board's decisions in this matter should be called in question but should be final.

MR. O'CONNOR: Mr. Speaker, I beg to second. It may be necessary in the committee stage to move an amendment to the definition of "house".

MR. PATEL (Eastern Area): Mr. Speaker, I think that before we pass this Bill it will be necessary to find out whether it does not make confusion worse than it was. The intention of the Ordinance passed in 1948 was to protect the owners of temporary houses on land which were held on a monthly tenancy. It was found last year that these owners of houses were evicted by owners of the land giving one month's notice, and they were compelled to pull down their temporary houses and were thrown into the streets. But the law was drafted in a manner that the court held that the buildings which were covered by the Rent Restriction Ordinance were also governed by this Ordinance.

The result was that no landlord was able to recover possession of a building even though it was covered by the Rent Restriction Ordinance, because the word "house" used in section 3 was used in section 2 of the Ordinance now being repealed. The court held that the word "house" included all the buildings covered also by the Rent Restriction Ordinance. Therefore no landlord could take any action even under the Rent Ordinance for recovery of possession, even if conditions were fulfilled as laid down in that Ordinance. Even the definition of the word "house" does not clarify that matter, and, in my opinion, to put the matter right it is necessary that the whole matter should be gone into by a select committee before the Bill goes for final approval. Otherwise the position, in my view, is not altered, and the courts will still hold that all buildings covered by the Rent Restriction Ordinance are still governed by this law, and therefore no landlord will be entitled to take any action under the Rent Restriction Ordinance for recovery of possession.

MR. SEIF BIN SALIM (Arab Interests): Mr. Speaker, I rise to support the Bill and have a few remarks to make on the subject.

The first is that in the "Memorandum of objects and reasons" of the original Bill it was said that landlords had commenced to take action for the eviction of tenants under Mohammedan law which had been held to apply in such cases and under a local custom. I would like to make it clear that the tenants themselves and not the landlords insisted that the cases should be held under the said law, and this was agreed to as both parties were Mohammedans.

Secondly, as a member representing Arab interests, and almost all Arabs are

[Mr. Salim]

Mohammedans, I feel it is my duty to state their wishes. I was disappointed to hear from the other side of Council when this Bill was introduced that this Council has every right to pass any Bill it thinks fit. After hearing those remarks I felt that if I did not clarify this point Mohammedan law might have no value in the future. For this reason I respectfully request Government that when such Bills appear they should be shown to members concerned for their approval before being introduced into the Council.

I should like to express my warm thanks to the then hon. Member for Mombasa for his opposition of the Bill when it was first introduced. I am sorry he is not here now, but his views were very clear when he mentioned that Mohammedan law and local custom should be retained on the coast as far as the Protectorate is concerned. I quite agree with him, and I am sure that most hon. members would have supported him if they knew the Arab history before the Protectorate was proclaimed.

The Arab history on the coast is very interesting. He played a gallant part with his sword, lost his life for the protection of his countries, and to-day he has been thrown out of the list and does not enjoy rights as other races do.

Hon. members may state that the Arab does not claim his rights. I quite agree with them. But what I should like to emphasize is this. If he has no weapon with which to defend himself how do you expect him to go to the field? When I say weapon I mean education, and up to the present nothing has been done for the Arabs as far as education is concerned. I think I am right in saying that the benefit of the country should first go to its inhabitants and then be distributed to the rest. But things in this complex world of to-day have changed entirely.

Before I sit down I should like to draw the attention of hon. members to the fact that, though justice is beyond human power, yet careful consideration should be given to these remarks.

MR. MADAN: Sir, I want to be helpful, and it seems to me that there is need to improve the definition of the word "house" in order to avoid confusion later on. When one looks at the definition of dwelling-house in the new Rent Restriction Bill it says "includes any house or part of a house or room let as a separate dwelling". I do not think the definition in this Bill is clear enough to enable the courts of Mombasa to proceed under the Rent Restriction Ordinance to make orders for the eviction of tenants unless all conditions have been satisfied. If the definition can be improved there may be no need to refer the Bill to a select committee, when that difficulty can be overcome.

MR. MATHU: Mr. Speaker, I supported the Ordinance that it is proposed to repeal under this Bill, and I think the present Bill is a great improvement in the points which the hon. mover raised, and I should hate to see any attempt to defer its passing. The hon. Member for the East Area (Mr. Patel) has outlined the present position where tenants find themselves in great hardship when they are given a month's notice to demolish their houses or dwelling-houses and are sort of put on the street. I feel that the war of nerves that goes on among those tenants in Mombasa who are affected by this Bill will end if this measure becomes law and operative, and I should like to support the second reading.

MR. WYN HARRIS: Mr. Speaker, it appears that Council is fully agreed with the principles underlying this Bill, that we should have a standstill order to protect tenants until such time as we have received and considered the report of the committee of inquiry into the matter.

I would point out to the hon. Member for Arab Interests that there is no question here of traversing Mohammedan law. All that happened was that Government found that real hardship was being caused to tenants and it was necessary that we should protect their interests until such time as we could see exactly how to proceed in and around Mombasa.

The only point at issue, as I see it, is whether the definition of house is sufficiently clear to let out those houses which are governed by the Rent (Restrictions) Ordinance. Although the hon. member Mr. Patel has suggested that it should go to a select committee, which we are

[Mr. Wyn Harris]
perfectly prepared to do, I suggest that it will shorten the proceedings if we give an undertaking that in the committee stage we will re-define the word "house" in a way which will satisfy the lawyers on the other side of Council!

The question was put and carried.

SHOP HOURS (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Mr. Speaker, I beg to move: That the Shop Hours (Amendment) Bill be read a second time.

This is a simple measure which I am sure will command the support of every member of Council. As the law stands at present regulating the hours in which shops may open, shops in native locations in municipalities and townships may remain open until 7 o'clock. It has been represented to Government that this is a real hardship upon many African dwellers in the locations, in that they do not finish their work until 7, or close upon 7 in some cases, and when they get back to their homes they find all the shops closed and they are unable to do their shopping. What is now proposed is the addition of a proviso giving a local authority power to make an order permitting shops in native locations to remain open until 9 o'clock in the evening of every day in the week other than Sunday.

MR. RANKINE seconded.

The question was put and carried.

LEGISLATION (APPLICATION TO HIGH COMMISSION) BILL

SECOND READING

MR. RANKINE: Mr. Speaker, I beg to move: That the Legislation (Application to High Commission) Bill be read a second time.

This is a very simple Bill which I hope will commend itself to all hon. members of this Council. The need for this legislation came to our attention as a result of the consideration of a somewhat similar Bill in Tanganyika. There it was discovered in connexion with the Municipalities Ordinance that the terms "Government property" and "Government purposes", for instance, did not include property, offices or buildings owned and operated by the High Commission. It has not been possible to make a complete examination of all our legislation here, but sufficient examination has been made to show that there is a need for this legislation in Kenya. For instance, to quote a very unimportant example, it has been discovered that in the Books and Newspapers Legislation Ordinance the provisions of the Ordinance do not apply to any book or pamphlet printed by or on behalf of the East African Literature Bureau. Obviously they should apply, and this Bill accordingly confers on the Governor in Council authority to extend the provisions of certain legislation to the East African High Commission and its purposes, when he considers it expedient to do so.

The passing of this Bill will mean that it will not be necessary to enact special legislation on every occasion to meet cases like this when they arise.

MR. O'CONNOR seconded.

MAJOR KEYSER (Trans Nzoia): Mr. Speaker, I find that I must oppose this, because in clause 2 it says "where any reference to the Government of the Colony or to public purposes occurs in any Ordinance". Of course, the question of public purposes occurs in the Compulsory Acquisition Ordinance, and I think it would be a very great pity to delegate powers to the High Commission to acquire land compulsorily for their own purposes. First of all, we are not satisfied, as Government is perfectly well aware, with the present definition of public purposes. A committee was appointed some time ago to go into the question of the Land Acquisition Ordinance. I understand that that committee has reported, but that the report has not been laid on the table of this Council, and until we are satisfied, first of all, that the Acquisition Ordinance is acceptable to us, it would be impossible for us to delegate these powers to another body. Even if we were satisfied with the Acquisition Ordinance, I still maintain that this Government should retain the right compulsorily to acquire land, and if the High Commission requires land this Government should acquire it compulsorily on behalf of the High Commission. Therefore I beg to oppose.

MR. ERSKINE (Nairobi South): Mr. Speaker, I must rise also to support my hon. friend the Member for Trans Nzoia

[Mr. Erskine]
in opposing this Bill. I feel that this is a very important matter because it, in effect, starts a method whereby bodies can apply for what amounts to extra-territorial rights in Kenya. Whether these bodies are the Army, the Navy, the Air Force, the High Commission, or even the Jockey Club of Kenya, I feel that one must be very careful about giving such powers, and I would prefer to have the matter left as it is and each case taken on its merits and placed before this Council.

MR. RANKINE: Mr. Speaker, I can fully appreciate the misgivings which the hon. Member for Trans Nzoia may have on this matter, and I would say straight away that it is not intended to confer powers of that kind on the High Commission at all. Also, as he will see from the "Memorandum of objects and reasons" this Bill merely confers on the Governor in Council authority to extend the provisions of certain legislation to the High Commission, where it is expedient to do so; so that every case would be considered on its merits. The main object of the Bill is to avoid the passing of special legislation in every case.

As I explained when moving the Bill, for instance under the Books and Newspapers Legislation Ordinance, it is provided that the Ordinance does not apply to any book printed by or on behalf of the Government. Well, the High Commission and the High Commission services do carry out many functions which I think hon. members will agree are functions of Government, and therefore they ought to be placed in the same position as any other Government department.

But, as I was saying, it is not intended to confer on it powers such as the compulsory acquisition of land, and I think I can give an undertaking straight away that if it was necessary to acquire land for the High Commission it would be acquired by the Government.

I hope that with that assurance hon. members will allow the second reading to pass. If necessary, the Government would have no objection at all to referring this Bill to a select committee, so that they could go into the full implications and satisfy themselves that, in fact, we are not giving greatly increased powers to High Commission departments.

MAJOR KEYSER: May I say that I think it would preferable to refer this Bill to a select committee, rather than put it to the vote now, because there may be other implications. We have not had time to consider the full implications. We did not realize how wide they might extend until just lately.

THE SPEAKER: Would it not be safe enough to give it its second reading and then send it to select committee?

MAJOR KEYSER: No, sir, I think it would be better to refer it to select committee.

THE SPEAKER: Will you move accordingly?

MR. VASEY (Nairobi North): On a point of order, as the hon. Member for Trans Nzoia has already spoken, I will, as his substitute, move.

THE SPEAKER: As we called upon the hon. member to reply, strictly we are not in a position other than to take the motion of the second reading. If we are going to be very strict about it I should have to put the question, that is all. Of course, it is open to anybody, even at this late stage, to move an adjournment. No, you cannot move an adjournment of the debate. I will have to put the question.

The question was put and carried.

REFERRED TO SELECT COMMITTEE

MR. RANKINE: Mr. Speaker, I beg to move: That this Bill be now referred to a select committee.

MR. O'CONNOR seconded.

The question was put and carried.

HOSPITAL SERVICES (EUROPEAN) (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Mr. Speaker, I beg to move: That the Hospital Services (European) (Amendment) Bill be read a second time.

The Hospital Services (European) Ordinance prescribes that the Member for Health and Local Government shall be *ex officio* chairman of the Hospital Authority. This provision dates back to the report of the Mundy Committee, in

[Mr. Mortimer]

which it was recommended, and the recommendation was accepted by this Council, that there should be three official members of the Hospital Authority—the Commissioner for Local Government, Director of Medical Services and the Financial Secretary, and that one of those three should be chairman of the Authority. When the select committee of this Council was dealing with the Hospital Services Bill it was decided that the appropriate chairman would be the Member for Health and Local Government. He has been the chairman since the beginning of the work of the interim Authority and throughout the work of the statutory Authority, that is from the 1st January, 1946, and speaking on his behalf I must say he has found it increasingly embarrassing to be the Member of Executive Council responsible for health matters, and at the same time chairman of the Hospital Authority.

This Bill is intended to put an end to that state of dual personality and to relieve the Member from *ex officio* chairmanship of the Authority, and it is intended to substitute as member of the Authority the Commissioner for Local Government, and to leave the chairmanship for appointment by the Member for Health and Local Government. Hon. members will notice that the clause as drafted leaves it entirely open for the Member to appoint as chairman either an existing member of the Authority or someone from outside, either an official or an unofficial. I may say, for the information of hon. members, that, if the Bill is left as drafted, I have every intention of appointing an unofficial gentleman as chairman of the Authority.

It was at one time thought that it was essential, as Government interests were somewhat involved in the work of the Authority and it was convenient for the staff of the Authority to be seconded staff from the establishment of the Member for Health, that there should be an official chairman. The Government no longer holds that view, and I personally do not hold that view after the experience of the working of the Hospital Authority. That body is a very responsible body, taking its duties seriously, and there is no necessity at all for an official chairman. I do not think I need say more at this stage.

MR. O'CONNOR seconded.

MR. VASEY: Mr. Speaker, it is so rare in one's political life that one has the pleasure of saying "I told you so" to the gentlemen on the opposite side of Council that I can hardly refrain from doing so on this particular occasion!

It seems to me that even now the suggested amendment does not go far enough to divorce, in the minds of the public, the European Hospital Authority from the Government. It is, I think, not sufficiently recognized that the European Hospital Authority which controls the services granted to it is an unofficial body, and that when I speak as a member of the Authority, whatever may have been the troublesome kind of child that that poor Authority had handed to it, any diseases that have developed since the time that this Authority took control are the responsibility of the unofficial community.

At the time when this measure was first introduced I tried to lay emphasis on the particular point that, as long as the chairman is either (*a*) a member of Government, or (*b*) a person directly appointed by a member of the Government this psychological position would remain. I suggest that we should recognize that, as it is an unofficial body, it should have power to elect its own chairman, and I believe that would lead to an instant recognition in the country of the unofficial aspect which this Hospital Authority has. I therefore propose to move an amendment to that effect in the committee stage.

MR. HAVELOCK: Mr. Speaker, I merely wish to ask if a new principle in the office of the Member has been inaugurated in this Bill. I notice that in the "Memorandum of objects and reasons" the Commissioner is called the Commissioner for Health and Local Government. Does that mean that that particular post now has authority over the Medical Department, or is he still confined to Local Government alone?

MR. MORTIMER: Mr. Speaker, as a matter of fact I had not noticed, until the hon. member pointed it out, that there is this error in drafting in the "Objects and reasons". The Commissioner is, of course, Commissioner for Local Government and has no direct responsibility for health matters, except in so far as he doubles up the duties of secretary to the Member for Health and Local

[Mr. Mortimer]

Government with those of Commissioner for Local Government.

On the point raised by the hon. Member for Nairobi North, I agree with him entirely that any measure that can be taken to emphasize to the public that the Hospital Authority is an unofficial body should be taken, and personally I have an open mind on the subject of the election of the chairman by the body itself or his appointment by the Member for Health and Local Government, and would raise no objection to the introduction of the amendment at the committee stage.

The question was put and carried.

LIQUOR (AMENDMENT) BILL

SECOND READING

MR. WYN HARRIS: Mr. Speaker, I beg to move: That the Liquor (Amendment) Bill be read a second time.

This is a very simple Bill to put right something we forgot to do when we passed the amendment in 1947. There are no less than 14 types of annual liquor licences, and all of them have annual and six-monthly licences. When we passed the new type of licence making it possible for liquor to be supplied to Africans, we omitted to provide for a six months' licence, and this Bill puts it right.

The other amendment is to increase from ten shillings to forty shillings the cost to those persons who hold wine merchants' licences who also want non-spirituous licences. It was felt that ten shillings was too small to cover the administration of this particular licence.

MR. RANKINE seconded.

The question was put and carried.

NURSES AND MIDWIVES REGISTRATION (BILL)

DIRECTOR OF MEDICAL SERVICES (Dr. MacLennan): Mr. Speaker, I beg to move: That the Nurses and Midwives Registration Bill be read a second time.

The proposal that there should be set up in Kenya a Nursing Council emanated from two different and widely divergent sources. The first of these was the Health and Hospital Sub-committee of the main Development Committee which recommended that a Nursing Council should be set up to advise the Member for Health and Local Government on questions concerning recruitment and registration of nurses of all races; further, that the so-called Nursing Council should be established under proper legislative authority. This recommendation was subsequently accepted by the main Development and Reconstruction Authority.

The other source was the Rushcliffe Overseas Committee, which stated that in the larger colonies at least there should be set up nursing councils which should take over the responsibility for the registration, training and so on of all nurses. That committee recommended that in the colonies the nursing council should combine with its work midwives' control. In England there is the Central Nursing Council and also the Central Midwives Board. Here it was suggested that there should be a combined nurses and midwives council.

There was, of course, a third recommendation, and that was from the general public of this country. I have heard ever since I came to this country that there is a general desire that we should have such a Nursing and Midwives Council. As a result of the recommendations of the Development Committee report, a committee was set up by Government to go into the whole question and to put forward some suitable draft legislation which could be considered by the hon. Attorney General. This committee sat for some time, its report was examined by the Kenya branch of the British Medical Association, which made some useful suggestions, and the committee was fortunate at the time it was sitting to have a visit from the Nursing Adviser to the Secretary of State for the Colonies, who was paying an official visit to the Colony. The Nursing Adviser was very helpful to the committee.

I think it is in order to mention the names of the non-official members of that committee, who sat for a long time and took a great deal of trouble over the matter, and I should like to thank them publicly. I was chairman, and the non-official members were Mrs. Ruth Archer, Dr. Adalji, Mr. Keith Duff, Dr. Shaw (Kikuyu Mission), and also Mrs. Montgomery, matron of Gertrude's Garden Hospital.

I do not need to go into the Bill clause by clause, and will merely say that it embodies the recommendations of our

[Dr. MacLennan]

committee that there should be established a Nursing and Midwives Council for the Colony for all races. The functions of the Council will include keeping a register of all persons, granting certificates of registration, procedure for admission to the register and power of removal from the register. Power is given the Member on the advice of the council and with the approval of the Governor in Council to make regulations governing the various matters for which the council is established.

Generally speaking, I would say that the Bill seems to safeguard the interests of the public in assuring it competent, adequate nursing facilities by qualified personnel. I commend the Bill to the Council.

MR. MORTIMER seconded.

The question was put and carried.

LAND AND WATER PRESERVATION (AMENDMENT) BILL

SECOND READING

DIRECTOR OF AGRICULTURE (MR. GILLETT): Mr. Speaker, I beg to move: That the Land and Water Preservation (Amendment) Bill be read a second time.

With one exception, this Bill merely regularizes and corrects one or two discrepancies which occurred in the principal Ordinance.

The first object of the amending Bill is to enable me as the authority operating the Ordinance on behalf of Government to declare a closed area. At the present time a closed area is defined, but I have no powers to declare such an area. The amending Bill makes provision for this, and I think hon. members will agree that the reasons are abundantly clear and that there is no need to enlarge on this. I would, however, point out that the new clause 2A gives retrospective effect. That is only in regard to closed areas and not in regard to other orders which have been issued under the Ordinance. In actual fact, it only refers to two instances.

The second point is that the Registrar of Titles will be required to register against the title of any land concerned any order made by me. It is quite obvious that under the Land and Water Preservation General Rules of 1943 it was intended that any closed area should be so registered, but it does not appear that similar orders given under those rules in sections 5, 6, 7, 11 and 12 were intended to be registered. This, I submit, is a mistake and one which should be rectified. There is no doubt that one cannot hide the fact that if an order is placed on a farm it must naturally decrease rather than increase the value of that property, and I feel it is only right that purchasers should, through their legal advisers, have that knowledge before entering into a contract to purchase. By registering it would also assist my department, inasmuch as soon as sales of farms are effected it would enable me, through the Registrar of Titles, to issue a new order to the purchaser, so that any order placed on a farm can run concurrently.

I sincerely trust that hon. members will not feel that this additional clause is in any way an attempt by Government to yet further regiment the already harassed farmer, but rather to correct the proper procedure for the operation of this Ordinance. I think it is relevant to state here that although some several hundreds of orders have already been placed on farms in this Colony, so far not one farmer has appealed to the Appeals Board against any order placed. I think that is sufficient evidence to show that the operation of this fundamental, though difficult, Ordinance is being performed by the officers of my department with the goodwill of the farming community and not against it.

MR. RANKINE seconded.

LADY SHAW (Ukamba): Mr. Speaker, I only want to ask a question. In the event of a closed area being imposed on anybody, has the officer of the Agriculture Department who gives that order to take local advice from the local production sub-committees or farmers' associations or anybody in the district, or does he do it entirely on his own responsibility and experience and knowledge?

MR. GILLETT: Sir, in reply I would state that orders at the present moment are placed by myself on the recommendation of the inspector, who discusses it with the agricultural officer and finally the senior assistant agricultural officer, before it comes to me to be issued.

The question was put and carried.

CONTROL OF GRASS FIRES (AMENDMENT) BILL

SECOND READING

MR. WYN HARRIS: Mr. Speaker, I beg to move: That the Control of Grass Fires (Amendment) Bill be read a second time.

This Bill seeks to increase the penalties with regard to offences under the principal Ordinance of 1941. There is a certain amount of misconception in the public mind, I think, as regards that particular Ordinance, because I saw in a paper the other day the suggestion that this Bill was increasing the penalties for arson. Well, arson is not an offence under this Ordinance. Arson is an offence under the Penal Code, and is defined as "Any person who wilfully and unlawfully sets fire to" certain things, and as far as grass is concerned section 327 of that Code is operative. I think it advisable to read it, so that hon. members may realize that the penalty for arson is something very different from the penalties under the Grass Fires Ordinance: "Any person who wilfully and unlawfully sets fire to (*a*) a crop of cultivated produce, whether standing, picked or cut; or (*b*) a crop of hay or grass under cultivation, whether the natural or indigenous product of the soil or not, and whether standing or cut; or (*c*) any standing trees, saplings, or shrubs, whether indigenous or not, under cultivation, is guilty of a felony, and is liable to imprisonment for fourteen years". When it comes to arson, that is the operative section.

The Control of Grass Fires Ordinance is an Ordinance which anybody who has any regard to knowledge of this Colony must believe must be rigorously enforced against anyone of any race who offends. We have only got to see during a drought the thousands of pounds—in fact, hundreds of thousands of pounds—of damage done all over the country, both in native land units and on the farms, to realize that negligence with fire or disobedience of orders is a very serious offence, and everyone of the inhabitants of this Colony must have it brought home to him that he has a heavy responsibility with regard to setting fire to grass vegetation under any circumstances.

I think it advisable to state what offences are thus covered. First, two days' notice of burning must be given to neighbours before a deliberate firing takes place, and in native areas notice must be given to the owner or occupier if within half a mile of the boundary. Secondly, powers to prohibit the burning of vegetation can be exercised either by the Director of Agriculture or local authorities in times of danger, and failure to carry out those orders brings the penalties now proposed. In addition, firebreaks have got to be kept, and there is also the restriction preventing people from removing honey or bees from land not their own property without the permission of the owner—that is very necessary, because a large number of our fires are started by persons trying to get honey.

Also, it is an offence to refuse to assist in putting out a fire when called on to do so. We have always regarded it for many years to be the duty of every citizen of the Colony if he sees a fire to assist in putting it out and that he should so assist.

Those are the various offences to which this penalty clause relates. I believe myself that we have got to be as strict as we possibly can in the administration of this Ordinance in the interests of everybody in this Colony, and I feel that it has got to be brought home to people that when they break the law with regard to setting fire to vegetation they will be rigorously punished.

MR. O'CONNOR: Mr. Speaker, I beg to second and to endorse what has been said by the hon. mover with regard to the distinction between this and arson. To some extent the provisions of the Code and one provision of this Ordinance overlap, but as the hon. member pointed out there are offences under this Ordinance with which, of course, the Code does not deal. I might add to the list he has given, contravention of an order prohibiting the burning of vegetation in certain areas or when a state of danger obtains the burning of vegetation by servants without consent and supervision of their masters.

MR. BLUNDELL: Mr. Speaker, I just want to make one small point on the amendment before Council. It is this. It really is no good increasing the penalties unless the penalties, once increased, are imposed. There is up-country, especially after the experience of the last year when

[Mr. Blundell]
we have had right through the area I represent very serious grass fires, the belief that many of the penalties imposed where the offenders are caught are not adequate to act as deterrents, even if they are not up to the maximum imposable. I would just like to take this opportunity of drawing the attention of the hon. Attorney General to this particular point.

MR. MATHU: Mr. Speaker, in supporting the second reading of this Bill I should like to ask one question, which refers to the complaints by some Africans in certain areas, and I have in mind particularly the area between Kibwezi and Athi River, where the Masai complain from time to time that the trains as they puff up along the Highlands spout out fire and catch the grass on fire. In a case of that kind, who is called to court? What happens?

LADY SHAW: Mr. Speaker, I should like to urge upon the attention of the hon. mover that one of the greatest criminals in the lighting of grass fires, from the purest ignorance, is the High Commission, and I hope that it will look after the Railway and insist that proper precautions are taken in areas where there is no settlement, either African or European, close at hand. When fires are lit in those areas they spread, quite uncontrolled and quite unstoppable, for miles and miles and miles, burning up large areas of country and finally impinging on valuable land. I think this should be brought home to the High Commission and its servants, the Railway.

MR. WYN HARRIS: Mr. Speaker, I have no doubt that my hon. friend the Attorney General will take note of the suggestion about adequate penalties being inflicted.

With regard to the High Commission and its servants, I think I am strictly accurate in saying that in this case the High Commission is a law unto itself, inasmuch as I think if you look at the Railway Ordinance you will find that the Railway is protected, provided a fire-break is cut. If my memory serves me aright, the landowner first has to cut his part of the fire-break, and then he calls upon the Railway to put in its part. If that is done the Railway is then liable. As the landowner very rarely calls on the Railway to cut a fire-break, the Railway is not liable. I do not say that is a complete statement of the law, but I think I am correct when I say the Railway, as far as setting fire to grass is concerned, is a law unto itself and it is not affected by this particular Ordinance

The question was put and carried.

INCREASE OF MORTGAGE INTEREST (RESTRICTION) BILL

MR. O'CONNOR: Mr. Speaker, I beg to ask that the consideration of this Bill be deferred. It is intimately connected with the Increase of Rent (Restriction) Bill which has been committed to a select committee, and I suggest it would be more suitable if the two Bills were taken together.

The second reading of the Bill was, by leave of Council, deferred.

IMMIGRATION CONTROL (AMENDMENT) BILL

MR. O'CONNOR: Mr. Speaker, I beg to ask that consideration of this Bill might also be deferred as certain points have arisen which we should like to consider further before the second reading debate.

The second reading of the Bill was, by leave of Council, deferred.

DIAMOND INDUSTRY PROTECTION BILL

IN COMMITTEE

MR. O'CONNOR moved: That Council do resolve into committee of the whole Council to consider clause by clause the Diamond Industry Protection Bill.

MR. GILLETT seconded.

The question was put and carried.

Council in committee.

Clause 1.

MR. O'CONNOR moved: That the clause be amended by the substitution of the figures "1949" for "1948".

The question was put and carried.

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

Clause 2.

MR. O'CONNOR moved: That the clause be amended by deleting the definition of "Commissioner" and substituting the following therefor: "'Commissioner' means the person for the time being performing the duties of Commissioner of Mines and Geology".

The question was put and carried.

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

Clause 16.

MR. O'CONNOR moved: That the clause be amended by substituting the word "three" for "two" in the eighth line.

The question was put and carried.

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

New clause.

MR. O'CONNOR moved: That the following new clause be inserted after clause 23: "Offences. 24. Subject to the provisions of the Criminal Procedure Code, any offence against the provisions of this Ordinance or of any regulation made thereunder shall be triable by a magistrate of the first class"; and that clauses 24 and 25 be renumbered 25 and 26 respectively.

The question was put and carried.

Council resumed, and MR. O'CONNOR reported the Bill with amendment.

THIRD READING

MR. O'CONNOR moved: That the Bill be read the third time and passed.

MR. HOPE-JONES seconded.

The question was put and carried, and the Bill read accordingly.

ADJOURNMENT

Council rose at 12.20 p.m. and adjourned till 9.30 a.m. on Thursday, 12th May, 1949.

Thursday, 12th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Thursday, 12th May, 1949.

His Honour the Speaker took the Chair at 9.35 a.m.

The proceedings were opened with prayer.

DISTINGUISHED VISITOR

His Honour the Speaker informed Council that Sir Gilbert Campion, K.C.B., formerly Clerk, House of Commons, and Editor of May's Parliamentary Practice, was visiting Kenya this month, and that a cocktail party in his honour would be given on the evening of the 18th May, when Sir Gilbert would address members on the subject of Parliamentary procedure.

MINUTES

The minutes of the meeting of 11th May, 1949, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY MR. RANKINE:

Volumes I, II and III of the Labour Department reprint of the text of International Labour Conventions and the Annual Report for 1948 on their application in Kenya; The Recruitment of Employees (Medical Examination) Rules, 1949, and the Employment (Contract and Return) Rules, 1949, made under section 79 of the Employment Ordinance, 1938.

BY MAJOR CAVENDISH-BENTINCK:

Department of Agriculture Annual Report, 1947.

ORAL ANSWERS TO QUESTIONS

No. 4—INTERNATIONAL LABOUR CONVENTIONS

MR. VASEY:

Will Government please state the present position with regard to the Colony's participation or otherwise in the International Labour Conventions?

MR. RANKINE: I have to-day laid on the table of the Council copies of three volumes published by the Labour Department which set out the position in detail.

[Mr. Rankine]

2. Volume I contains the 29 Conventions already ratified by the United Kingdom and applied to this Colony, together with Reports for 1948 rendered by this Government on measures taken to give effect to each Convention.

3. Volume II contains Conventions Nos. 68 to 76, and 81 to 86. His Majesty's Government only proposes to ratify Nos. 68, 69, 70 and 74 of Conventions 68 to 76, for the reasons given in the Secretary of State's despatch at page 10, and the others in this group are inapplicable to this Colony for the reasons given in the Governor's telegram at page 17. Conventions Nos. 81 to 86 were passed in 1947 at Geneva and accepted in 1948 at San Francisco; this Government's observations on them are contained in saving telegrams at pages 72 and 73.

4. Volume III contains proposed new Conventions which were recommended at the 1948 Conference at San Francisco and which are at present under consideration by this Government.

CONTROL OF HOTELS ORDINANCE, 1948

CONTINUATION OF

MR. HOPE-JONES: Mr. Speaker, I beg to move: Be it resolved that this Council approves the provisions of the Control of Hotels Ordinance, 1948, being continued in force until the 30th day of June, 1950.

Since this Ordinance was passed by the Council a year ago there has been some slight improvement in the question of hotel accommodation. That improvement has not, in my submission, been sufficient to enable us to do away with the control so far previously exercised. The history of this Control may be of interest to hon. members.

Under the Defence (Control of Hotels) Regulations, 1943, certain powers were exercised which, while wholly necessary and desirable during the war period, were no longer thought to be altogether appropriate in peacetime conditions which, it is hoped, will progressively approach normality. Therefore, in response to representations made by the Municipal Council of Nairobi and by the Chamber of Commerce, the Ordinance passed by this Council a year ago was prepared. That Ordinance was to run for a term of one year only, but it is within the provisions of the Ordinance that it can be extended for a further period by the Governor, with the approval of this Council.

The Ordinance contains, to refresh hon. members' minds, a number of important provisions.

First of all, a Central Hotel Control Authority was set up, an entirely unofficial body. Secondly, a tribunal was set up to hear appeals from decisions of the Hotel Control Authority, also an entirely unofficial body. The main provisions of the Ordinance were the annual licensing of hotelkeepers and hotel managers, the exercise by the Authority of general supervision over the manner in which the hotel business is carried on to ensure as far as possible a satisfactory standard of operation; and thirdly, the exercise of the power by the Authority of requiring in appropriate circumstances the proprietor of a hotel to effect such structural improvements or repairs necessary for the good conduct of the business. Fourthly, there is provision for cancellation of licences in cases where the conditions laid down in the Ordinance are not satisfied. Fifthly, arrangements can be made to carry on a business if a licence is withdrawn.

Those are the main provisions of the Ordinance. I believe that thanks to the very fine voluntary work carried out by the members of the Central Hotel Authority and by those gentlemen who have consented to serve on the Appeals Tribunal, thanks to their devoted efforts, the operation of the Ordinance has not been altogether unsatisfactory. Although there has been some improvement, demand is still greater than the supply of hotel accommodation, and I think that in the circumstances the Ordinance should be continued for another year.

The Ordinance is referred to as a Control Ordinance. Now, Controls are not the sort of things that should be continued for one moment longer than is necessary. (Hear, hear.) Therefore, in continuing this Ordinance for one more year, I think it will be necessary to produce during that period a revised Ordinance. I am told by those who are

[Mr. Hope-Jones]

expert in the hotel business that it is absolutely necessary, first of all, that those who provide the best hotel service in their power should be protected against the unscrupulous, and secondly that, through legislation, a minimum standard should be provided for the public—and, very important, for the travelling public and the tourist public. Therefore, as the period passes when there is this acute shortage of hotel accommodation, I submit that it will still be necessary, in the best interests of this Colony and Protectorate, to ensure that the hotel business lives up to the standards already set by those who are already conscientious operators within the industry. In other words, we must ensure that we have a hotel industry that is an advertisement to this Colony, that is an attraction to those who come here, and which is something that we can be proud of. That is looking to the future.

Quite obviously, this Ordinance needs revision. It has been necessary for the last year, and in my submission it will be necessary for the next year, but in the course of this year we hope to be able to introduce an amending measure which will put the whole matter on a satisfactory basis, not of control but of ensuring that there will be a proper service for those who make use of hotels.

I do not think I need detain the Council any longer on this matter, other than to say that I hope hon. members will have suggestions to make in the matter of amending this Ordinance, but, Mr. Speaker, I do submit that we should pass the motion standing in my name, and therefore I beg to move.

MR. VASEY: Mr. Speaker, I rise to second the motion of the hon. Member for Commerce and Industry. I had a suggested amendment which ran on lines: To add, "But suggests that the following amendments to the Ordinance be considered by Government; (*a*) that the Ordinance shall be re-entitled 'An Ordinance to make provision for the licensing of hotels in the Colony'; (*b*) that wherever the word 'control' appears in the Ordinance it shall be deleted and the word 'licensing' substituted therefor; (*c*) that section 9 be deleted and the succeeding sections re-numbered accordingly". However, as Government has intimated that it intends to bring in an amending Ordinance, I will at this stage content myself by asking that Government should pay attention to those particular points.

The reason for them is that section 9, which is the section which gives the Authority power to take over and carry on a hotel, was only necessary during the most difficult period which we were passing through in the last two or three years. I would say that the introduction of that power had a very salutary effect and that the attitude of certain hotelkeepers—not the majority—was altered completely when they realized the power that the authority had been given. However, now that the licensing system is getting into operation, we have been able to discourage, if I may put it that way, one or two undesirable people from pressing their claims too far.

I think it may well be said that the hotel industry is about to be dealt with in a proper manner, and that is through a system of licensing. I believe that the way in which the hotel industry will best be worked towards the standard we wish it to achieve will be through the industry itself interesting itself in the control of the industry through licensing. Therefore I hope that Government will get rid of the word "control", and make this purely into a licensing Bill at the earliest possible moment. With those remarks I beg to second the motion.

MR. NATHOO (Central Area): Mr. Speaker, I welcome the remarks of the hon. Member for Commerce and Industry when he said that during the course of the year he will bring in amendments of a prominent nature to make provision for the conduct of the hotel industry on sound lines. I hope that when this is done, several aspects of the case in regard to which in the past certain communities have brought pressure to bear on the Government to ensure that the attitude of these hotels should be reasonable in the conduct of their business, will not be lost sight of.

I beg to support.

MR. HAVELOCK: Mr. Speaker, while supporting this motion only because of the remarks of the hon. member with

[Mr. Havelock]
regard to amendments that are coming forward, I would like to ask for the opinion of the hon. member on the matter of classification of hotels. I have been approached by hotel owners on this particular matter, as they consider that there are definite tasks for certain hotels: some provide accommodation for local people, others for tourists, and so on, and they feel that if there is to be a licensing system there should be classification at the same time, especially in view of the fact that the Defence Regulations as regards Price Control are still in force.

MR. HOPE-JONES: Mr. Speaker, first I should like to thank the hon. Member for Nairobi North for pointing out certain ways in which we might be able to make the Ordinance more appropriate to the permanent condition of the hotel business. We will certainly bear his points in mind. Speaking personally as far as I can see at this stage, I see no reason why his proposals should not be adopted.

I also thank the hon. Member for Central Area who, like the hon. member for Nairobi North, knows what he is talking about as both of them serve on the Central Hotel Control Authority. I will certainly bear in mind what the hon. member has said when it comes to the preparatory stage for the amending Bill. I am very grateful to the hon. Member for Kiambu for pointing out to me that there should be classificatic.. of hotels. I need not say more, except that personally I entirely agree with him.

I do not think that it is necessary to say any more, except to thank hon. members for their suggestions and to assure them that when the draft Bill is ready we will need their further assistance in this Council.

The question was put and carried.

BILLS

IN COMMITTEE

MR. O'CONNOR moved: That Council do resolve into committee of the whole Council to consider clause by clause the following Bills: The Municipalities (Amendment) Bill, the Local Government (Rating) (Amendment) Bill, the Vagrancy (Amendment) Bill, the Estate Duty (Consolidation) (Amendment) Bill, the Law Society of Kenya Bill, the Widows' and Orphans' Pension (Amendment) Bill, the Eviction of Tenants (Control) Bill, the Shop Hours (Amendment) Bill, the Hospital Services (European) (Amendment) Bill, the Liquor (Amendment) Bill, the Nurses and Midwives Registration Bill, the Land and Water Preservation (Amendment) Bill, the Control of Grass Fires (Amendment) Bill.

MR. MORTIMER seconded.

The question was put and carried.

Council in committee.

Local Government (Rating) (Amendment) Bill

Clause 2

MR. O'CONNOR moved: That the clause be amended by deleting the proposed new definition "time of valuation" and substituting therefor the following: "time of valuation means such date, within a period of twelve months prior to the commencement of the financial year for which such valuation roll is to come into operation, as may be determined by resolution of the local authority and approved by the Member, as the date at which all valuations shall be deemed to have been made for the purposes of a valuation roll prepared in accordance with the provisions of sub-section (1) of section 3 of this Ordinance;".

The question was put and carried.

MR. HOPKINS: Mr. Chairman, I beg to move that clause 2 (*b*) of the Bill be amended by the deletion of the words "or as a race course" which occur in lines 18 and 19. As I went very fully into the reasons in support of this amendment in the second reading, I am going to confine myself now to putting up one or two comments on the arguments which were advanced by the hon. mover in opposition to my views.

It was clear from his reply that he was still under the impression that, in spite of what I said, race courses were conducted for profit. Now I can only explain that, if the meaning of the word "profit" was as used in this Bill, they are not conducted for profit, and if what I said does not convince him, perhaps the logical argu-

[Mr. Hopkins]
ment I am going to use now will. It seems to me quite clear that the Government when asking an officer to draft the Bill was quite aware that race courses were not conducted for profit; otherwise he would not have inserted the four words to which I am objecting in a clause which amply provided for the rating of any sports ground that would be used for profit. If race-courses can indeed be proved to make a profit within the meaning of this Bill, then of course it is amply covered by clause 2 (*b*) without the four words to which I object.

The hon. mover also argued in his reply that race-courses in England were rated and for that reason they should be out here. Now, I submit that conditions in England and conditions out here in regard to racing are totally different. In England racing is a well established and flourishing sport. Out here it is still struggling to establish itself, and I think it is very unfair to use that argument. It is rather a specious one. I should also like to point out that in England race-courses are very often on a commercial money-making basis, which is not the case out here, and I pointed out that, according to the Rules of the Jockey Club which I read out, they cannot be used as money-making concerns. In England they very definitely are, so that argument, I think, falls to the ground.

I am pleading for sympathetic treatment of a sport which gives pleasure to hundreds of thousands of people in this country, be they Africans, be they Europeans, or be they Indians, and I do ask that those four words be deleted in order to give racing a chance to establish itself on a sound basis, to catch up with the backlog of replacements and repairs which have accumulated because of the years of depression, and to enable them to build up some sort of reserve against the rainy days to come. If this is done, not only will it help racing, but, as I pointed out yesterday, it will assist the industry of horse breeding and the healthy out-door sports which arise from that industry.

MR. NATHOO: Mr. Chairman, I should like to support the previous speaker, and since he has put forward all the arguments which are valid in this country, as opposed to those in England, I do hope that the committee will see its way to accepting the amendment.

MR. PATEL: Mr. Chairman, I cannot persuade myself to support the amendment. (UNOFFICIAL MEMBERS: Shame!) After hearing both sides, it appears that in other countries a race-course is rated for the purpose of local government. If there are special circumstances in this country to exempt it from rating, I think the fair course would be to subsidize the race-course, instead of giving such a hidden subsidy, which in my opinion is one of the curses of this country. We make a habit of giving subsidies by way of exemption, and thereby do not give a correct picture of the country. I therefore oppose the amendment.

MR. BLUNDELL: Mr. Chairman, I rise to support the amendment, and I do so for several reasons—quite different from those put up by the hon. mover. (Laughter.)

Personally I do not see why we should slavishly follow in every exact detail the practice of other countries. My main reason for supporting the amendment are that it seems to me such a pity to force open spaces of this nature out of municipal areas. I do feel rather strongly about that, and I should like to say how sorry I am that the High Ridge golf course in Nairobi, for instance, is being broken up into building plots. In fifty years time we shall value enormously any open spaces, even if they are only used as race-courses, within the municipal area. It is argued, of course, that rating race-courses will not cause them to move out, but that I think is a fallacy, because as values increase it will be easy for a voracious municipal council —I do not mean voracious in a nasty way at all! (Laughter.) I mean a municipal council perhaps casting its eyes around for more money—it would be easy for it to raise the rates of a race-course to the building values, and that would automatically mean the race-course would leave. Although the power of remission is granted to the Municipal Council, I am doubtful frankly of the wisdom of giving power of remission in a case like this where the dice is so loaded against it.

[Mr. Blundell]

Again, so many of the poorer members of the community do enjoy racing very much, and it seems to me a tremendous pity to put into this Bill four words which may well cause—I do not say they will cause—which may well cause just that which I wish to provide against, the removal of the race-course, with a consequent very dry, and, if I may use the word, sweaty trek outside the municipal confines to enjoy the sport.

MR. HAVELOCK: Mr. Chairman, I support the amendment on an entirely different ground again. (Laughter.) I feel that this may create a precedent. I personally cannot see the difference between a race-course and an agricultural show ground. They are both the shop windows for different industries, and if a race-course can be rated, then to my mind it might not be very long before the Municipal authorities may request that an agricultural show ground, which in time may become part of the Municipality, shall also be rated. I feel that is a thing we should deprecate, and I cannot see that any real case can be made out for rating a race-course on those grounds.

MR. VASEY: Mr. Chairman, I regret that I cannot support the amendment. I have listened very carefully to the arguments, but I think that a lot of the speakers have forgotten that there is a fundamental financial principle involved in this. The race-course is to be found within the area under the control of a local government authority which is responsible for the services of that area. It is the local government authority which, if there is any burden, must bear that burden in regard to the race-course area, and I suggest therefore that it must be to the local government authority that the power of exemption from rating must be left. That, I think, is a fundamental issue. At a time when one is pressing for the development of local government in this country it would, I suggest, be entirely wrong to take the power of exemption from the hands of the local government authority and place it, in fact, in the hands of an automatic exemption by the Central Legislature, which is what we are now asked to do.

As the law stands, it is well within the power of the local government authority to remit the entire burden of rates, should the case put forward by the owners of the race-course be sufficient. I can imagine no local government authority not treating with full sympathetic consideration this particular aspect. As the hon. member Mr. Patel has said, one of the difficulties of this country is the hidden subsidy which exists in many cases. On the Nairobi Municipal Council, in order that we shall arrive at the right picture, we are having a complete survey made, for £1-m. of our rating roll is at present exempted on charitable and educational grounds. That means an additional burden to every other ratepayer.

I suggest that when you place, as you are doing, financial autonomy in the hands of local government, that is where you must leave the responsibility. I am a little unimpressed by the arguments put forward by the hon. member for Kiambu. The principle implied in the words "or as a race-course" is a principle which was in the original Bill and has existed for some twenty odd years, and it is a rather remarkable thing that it has been found only now, at a time when a Bill amending something else, some other principle, is brought in, that this particular subject has been seized upon. I cannot support the amendment, athough I sympathize, as a constant race-goer, with the people who put it up.

MR. ERSKINE: Mr. Chairman, I think perhaps it is just necessary for me to express my resentment at the inclusion of these words in this Bill, because I regard it as a question of straining at gnats and swallowing camels. The gnat I refer to is the 160 acres of the race-course, and for the camel I would go half-a-mile to the east—(laughter)—to the 1,020 acres of Eastleigh!

If this matter goes to a division I will not vote, because I think I should declare an interest. I have for the past twenty years been interested in racing for pleasure and for profit, and the fact that I have never made a profit—(laughter)—does not make any difference. I think we use the word "profit" in a very loose sense. Here it says "conducted for profit". The fact that it

[Mr. Erskine]

makes a loss does not alter the fact that it is still conducted for profit.

The right solution, to my mind, is firstly that the land should be valued at its actual value as a race-course, which I believe to a certain extent is already done, but only to a certain extent—something like a discount of 20 per cent off the actual amount for which it would have been valued as building sites. That I consider inadequate. The second concession I should like to see made by the Municipality would be that it should be rated at half rates as agricultural land in the Municipal area, on the analogy of agricultural land. I think that those two provisions would greatly reduce the actual amount of rates claimed by the Municipality each year, and yet would mean that we should not be depriving the local government of its right to assess the rates and charge rates on any land within the municipal area.

MR. BLUNDELL: Mr. Chairman, I rise just to ask a question. In view of the fact that the hon. Member for Nairobi South is not voting on account of his interest in this matter, may I ask whether the same sanction will apply to the hon. Member for Nairobi North, Alderman Vasey? (Laughter.)

MR. VASEY: I regret to say I have no personal interest in the race-course at all —(laughter)—and that question of direct interest is one which cannot, I think, be raised in this particular case. I rise, however, because the hon. Member for Nairobi South . . .

MR. RANKINE: On a point of order, I do not know how many hon. members on the other side wish to make two speeches in this debate. (MEMBERS: We are in committee!) I beg your pardon! (Applause.)

MR. VASEY: . . .

THE CHAIRMAN: Unless you have in advance arranged a timetable, or something of that kind, members are at liberty to speak as often as they wish.

MR. VASEY: Mr. Chairman, as I was saying when I was interrupted, the hon. Member for Nairobi South has raised a point which is underlying the point the hon. member Mr. Patel and myself have tried to make, and that is that the exemption of Eastleigh from Municipal rating means in fact that the Nairobi Municipal Council has subsidized the air services of this country for a considerable time, a position which would not be allowed to exist in England. I suggest the position needs revision and is an argument in favour of this Bill standing as it is.

MR. HOPKINS: Mr. Chairman, I should like to point out that one of the arguments used by the hon. Member for Nairobi North is most misleading. He pointed out that the original Ordinance has been in force for a very long time, and that under it power existed to rate. He did not point out that it was not until 1947 that these rates were imposed. I think that is a point which should be made. The other point I should like to make is that I have not heard anybody give any reason why racing should be singled out for differential treatment from other sports.

MR. HOPE-JONES: On a point that is troubling my conscience—(laughter)—I feel that as a member of the Jockey Club of Kenya I should ask for guidance as to whether, having declared that interest, I am free to vote?

THE CHAIRMAN: Having declared it I think so.

MR. MADAN: Mr. Chairman, I regret that I cannot support the amendment. I am struck by the force of the argument used by the hon. Member for Nairobi North. If the racing industry is still struggling, it may be due to the fact that the results here are more uncertain than at home! My own personal experience is very bitter: on one occasion I took the advice of the hon. Member for Nairobi South and I was badly let down. (Laughter.)

MR. RANKINE: Mr. Chairman, while I have some sympathy with the advocates of racing, I must say that I find some of the arguments produced on the other side singularly unconvincing or, I might say, rather hollow-sounding. In the first place, the hon. Member for Rift Valley a short time ago made a most impassioned plea in this Council for the development of local government and greater authority for local authorities. Here we have before us this morning a

[Mr. Rankine]
measure which is supported by the local government authorities, and we are asked apparently to overrule them. I think, therefore, that we ought to give that matter further consideration and, before we do so, at least we ought as a matter of courtesy to refer back to the local authorities.

Secondly, the hon. Member for Kiambu, if I understood him aright, argued that race-courses and, for that matter, showgrounds, ought to be exempted on the ground that they are the shop windows of certain industries. Well, I wonder if he has taken a walk down Government Road or Delamere Avenue, because he might there have seen the shop windows of many other industries in this Colony, big industries and small industries, and if those shop windows are to be exempted from rates well, perhaps he can suggest how the Municipality of Nairobi is to get its revenue.

MR. MORTIMER: I must say that I agree with the last speaker; I have found the arguments singularly unconvincing. There appears to be a certain amount of misunderstanding. Reference has been made two or three times to the insertion in this Bill of the phrase relating to a race-course. The principal Ordinance has been the law of the land since 1928——

MR. HOPKINS: On a point of order, I said it was the perpetuation of those words which appear in the principal Ordinance.

MR. MORTIMER: I was not referring to the hon. member, who understands the position, but to remarks made by some of the other speakers. This was on the recommendation of the Feetham Commission of 1927. It has passed unchallenged until now, when it appears in a Bill the object of which is to deal with some other matters entirely. This deals with the important question of local government autonomy, a matter with which, I think, the Council would be very unwise to interfere with unless it had first taken the opportunity of consulting the local authorities concerned.

I was somewhat misquoted by the hon. Member for Aberdare when he referred to me as having stated that this was the law in England and therefore it should be the law here. I do not think I mentioned England at all, but I did say that so far as I was aware this was a universal custom, applied everywhere in rating laws. We are not singling out racing because racing could be regarded as a sport run for profit, not the profit of the individual but the profit of the organizers of a race-course, not for their personal profit but for the profit of the racing industry, if you might call it such.

So far as the argument about the preservation of open spaces is concerned, while it is necessary to preserve open spaces in any municipality, I think anyone who knows the facts will agree that in Nairobi we have a super-abundance of open spaces, or "lungs" as the town-planners call them, and could do with a few less. The High Ridge golf course, to which reference has been made, was always intended for development as a residential area; it was only as a special concession that it has been allowed to be run as a golf course on a temporary occupation licence for the last several years, but always with the view before long it would be taken away and used for its proper purpose.

I found the argument put forward by the hon. Member for Kiambu somewhat specious, and I feel sure that he must have had his tongue a long way in his cheek when he suggested that at a future time the analogy might be applied to agricultural show grounds. Everyone must realize that the situation is entirely different.

I would strongly support the hon. Member for Nairobi North in saying that this is a matter for the local authority concerned. They have the power of exemption, and if a case can be presented to the local authority which will convince them as I have already said they are a sympathetic body of people then I am sure that the parties concerned will have no real or justifiable cause for complaint.

I feel that I could not recommend acceptance of this amendment.

MR. HOPKINS: Sir, may I ask the hon. member, if I withdraw my amendment, would he agree to an amendment to refer it back once more to the local

[Mr. Hopkins]
authorities in view of the debate which has taken place?

MR. MORTIMER: I will readily agree that I will consult the local authority and I will bring it before the elected members after I have had their views, and then any further action they may desire can be considered.

MR. HOPKINS: I move that the Bill be referred back to the local authorities to follow the course outlined.

THE CHAIRMAN: I do not see how I can accept an amendment to refer the Bill back to the local authorities. You could withdraw your amendment and rely on the undertaking given by the hon. member.

MR. HOPKINS: I am prepared to do that.

The motion was by leave withdrawn.

MR. MORTIMER: I hope it is quite clear that we are not referring the Bill back but merely this question which has been raised, which is outside the purview of the Bill.

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

Estate Duty Bill

MR. MACONOCHIE-WELWOOD: Mr. Chairman, I beg to move an amendment to clause 2 (*a*), to delete the words "in the opinion of the Commissioners", as it seems to me that that places too much power, both as judge and jury, in the hands of the Commissioners, and for that reason I should like those words deleted.

MR. PATEL: Mr. Chairman, I strongly support the deletion of those words, for the reason that their inclusion will give very wide powers to the Commissioners, while if the words are omitted the clause will mean that the price which property would fetch in the open market at the time of the death of the deceased will be a question of fact, to be proved by evidence, and not merely on the opinion of the Commissioners. Leaving in those words will make the position very dangerous, because opinion may not necessarily be fact.

MR. ERSKINE: Mr. Chairman, I should also like to support the amendment. I do not like to see "in the opinion of the Commissioners" here at all, because I do not think that value should in practice be a matter of opinion at all. "Principal value" means the price which the property would fetch, and I think that makes the position perfectly clear, the question of value to be fought over, as usual, like a couple of dogs over a bone, in the ordinary legal way, and there would be no need to have those words in at all.

MR. O'CONNOR: Mr. Chairman, I am glad to be able to say that I can recommend acceptance of the amendment to delete the words "in the opinion of the Commissioners". I do not think that the position has been quite clearly understood and, if I may take a moment or two, I should like to explain it.

Those words in fact are nothing like so alarming as they might at first sight appear. Under section 20 of the Ordinance, every person accountable for the payment of estate duty on the death of the deceased has to furnish an account of his property, showing its value. The account and valuation are to be delivered within six months after the death, or after such further time as the Assistant Commissioner may allow, and the Assistant Commissioner may require a valuation to be made and signed by an approved valuer. I need not go into the question of approved valuers, as that point has not been raised. Whether it is so signed or not, the Assistant Commissioner then checks the valuation and, if he thinks that the value of the property has been underestimated, he may summon the accountable person and the valuer and question them.

Then he may ask for a corrected valuation. If within 30 days a corrected valuation is not furnished, the matter then goes to the Commissioners, and they are, in the words of the section, to hold an inquiry and record a finding as to the true value as near as may be at which the property of the deceased should have been estimated. Then that is notified to the person accountable, and if he fails to accept it and pay, or make arrangements to pay, the Supreme Court is then asked to make an order. The court goes into the thing again (it may admit further evidence to prove the true value) and make an order which is finally binding. So I think it is perfectly plain that duty

[Mr. O'Connor]
has to be on the time value in the opinion of the Commissioners, subject to approval by the court.

Therefore I really do not think it makes very much difference whether we have the words "in the opinion of the Commissioners" in the definition or not, and I am perfectly willing that they should be deleted. I would point out that they do exist in a number of other estate duty enactments and, to my knowledge, they have never proved any impediment to appeals as to the valuations for estate duty, and I think that hon. and learned members opposite will support me on that. But, as I have said, the words look rather more frightening than they are and I am quite content to accept their deletion. What I did not want to do was to interfere with the words "the date of the death of the deceased" and "the market value", because we must have some date, and we must have some standard on which to assess the property.

LADY SHAW: Mr. Chairman, I want to add a further amendment. I want to move that clause 2 (*a*) should read "The expression 'principal value' means the price at which the property would be estimated at the time of the death of the deceased". I know I am saying that in opposition to what has just been said by the hon. Attorney General.

My point is this, that for probate the practice undoubtedly is that it is not necessary to judge an article by its value in the open market, but by its value to the owner or future owner. Such a thing as pictures in the open market might be worth thousands of pounds, and are normally valued for probate at ten per cent—not old masters. In this particular case I am speaking from personal knowledge. I know perfectly well that when an approved valuer is going through the property of an individual, he takes considerable note of the fact of whether the articles are to be sold to raise money or whether they are going to be kept in the house of the heir; the point being that in many cases articles of actual value are kept. Obviously, if sold, the estate duty would be charged on their sale value, but so long as they are preserved in the house of the heir, or the man who succeeds to the property, then in most cases they are not valued at their market value, if they are articles of vertu, or whatever you call them. I should like that position explained to me. I have moved this amendment in order to have the position explained.

MR. O'CONNOR: Mr. Chairman, I cannot recommend acceptance of this motion. It seems to be open to the objection that it is quite vague. It does not say by whom the value is to be estimated, or how it is to be estimated, and I do not really see how it could in practice be put into operation. My second objection to it is that it is the universal practice, so far as I am aware, to base valuations for probate, ostensibly at any rate, on market value. We all know that probate valuations are low, and they are always accepted to be so, and the question of who is likely to pay or whether the thing is put up for sale, are all gone into in assessing market value. That has been the practice for many years both here and elsewhere, and I do not think that there have been objections to it, but it is fundamental that there should be some basis.

The hon. Member for Ukamba has mentioned the question of pictures, but there are very many kinds of property other than pictures. For instance, shares —you must surely take the market value of shares. There are a number of different things one could think of. Suppose I have a motor car, I may think and I do think that it is worth about £500, but if I offered it in the market I may very well only get a bid for £350. Should it not be valued on the market value of £350? It is really the only fair criterion. One must give the Commissioners some standard on which they can operate, and I suggest that we ought to take the standard which is universally, so far as I know, applied and which also, so far as I know, has worked very well here. All I want to do is to put into the law what in fact has been the practice here. Up to now the Ordinance has only worked because of the common sense of the Commissioners, who have taken the date of death and the market value as their guide, without statutory authority, but they have done it. That is a position which I do not think should be perpetuated, and that is the reason for my putting forward this clause.

MR. VASEY: Mr. Chairman, I think by now the hon. Attorney General must realize that there is uneasiness on this side of Council about this particular

[Mr. Vasey]
clause. I cannot, I suppose, at this stage go into the question of whether estate duty in a developing country is in any case a wise tax, but of this we are fairly sure, that any tax which aims at the distribution of wealth can only take place after a period of development of a country where the opportunity has been given for the accumulation of the wealth to be distributed. We are a little worried about putting into the strict letter of the law the spirit in which this has been worked so far, and I should like the hon. member to go with me through the clause as it stands and to tell me what latitude the Assistant Commissioner or Commissioner would allow.

The expression "principal value" means the price which the property would fetch if sold in the open market. Now by practice and by custom, which is of course the foundation of British administration a common-sense procedure has been allowed which has enabled a latitude of mercy where hardship might be created, but this definition, I think, is mandatory. It says "the price which the property would fetch if sold in the open market". Our estate duty in this country starts, I think, at £1,001. If to-day a man died and his widow had just the house that he had built from his life savings to rely upon, she might well feel that she would keep that house and take in boarders as a means of supplementing her income. That house would have only a certain value to her, but if she was compelled to value the house at the price it would fetch on the open market it would be found, I think, that there was a fair measure of hardship on the individual.

That is the fear, I think, of this side of Council. We recognize that the goodwill of the Commissioner has enabled something to work by common sense and by practice, but this clause as it stands is rather mandatory, and it might well prove that he might not be able to exercise such custom and goodwill as has been the case in the past.

LADY SHAW: Mr. Chairman, I should like to say in support of the last speaker that when considering the value of articles or possessions of a deceased person, certain articles are obviously very easy to value, and other not quite so easy. I should like to point out to the hon. Attorney General that the value of such a thing as land is one of those vital questions of concern at the present time. If someone died two or three years ago, the market price of the land put on the open market would be quite beyond any possible value that land could possibly have had, and by this clause the land would have to be valued at a time when it bore no relation to the actual value. We have got to recognize the difference between price and value, which is what I am trying to point out, it is difficult because I have not thought about it before, but certain things cannot be dealt with on a market price. The stocks and shares which the hon. Attorney General quoted are not worthy arguments.

MR. COOKE: Mr. Chairman, I would point out that this seems to be developing into a full dress debate on matters which might more properly have been dealt with on the second reading. In the past we have in the committee stage merely "crossed the t's and dotted the i's". I do not know whether you agree with that, but these are amendments which should have been raised on the second reading of the Bill.

THE CHAIRMAN: Speaking quite off hand, it is possible for any member to move an amendment to a Bill in committee, and I cannot very well rule out an amendment unless it is in such terms as would make nonsense of a Bill altogether, or something of that kind. It may have been the custom in the past not to debate matters in committee, but unless you can show me some very specific rule which prohibits it I do not feel that I can take any action.

MR. COOKE: I am not protesting against amendments, but we are discussing principles in the committee stage.

THE CHAIRMAN: The difficulty of distinguishing principle and detail, as the hon. member well knows, is enormous!

MR. MACHONOCHIE-WELWOOD: Mr. Chairman, I should like to point out one reason why we are so insistent on this clause being very different in this country to England. I am aware that this is a direct copy of the Estate Duty Act in England, but the circumstances are very different. Let me take the case of a wealthy Masai who dies leaving 400 head of cattle in the Masai reserve in the dry weather. This cattle would be worth half or a quarter of what it would be worth if

[Mr. Maconochie-Welwood]

he died in the rains. I admit that it is a most far-fetched point, but I bring it to prove how unfair the Ordinance may work and how unfair it is to this Colony.

THE CHAIRMAN: There is one thing I must say—the general principles of estate duty as a whole-rather than the general principles of having estate duty or not are at issue on this amending Bill.

MR. O'CONNOR: Mr. Chairman, may I answer first the question of market value which has been raised, or rather of the date? I will deal first with the question of date which was raised by the hon. Member for Ukamba, and I think also by the last speaker.

Two examples were given. To take the last one first, the example of the rich Masai with 400 head of cattle. It was suggested that his property varied in value enormously, and that one would have to pay in the rains very much more than one would have had to pay six months before. What I want to do is to follow the existing practice which would make him pay as at the date of his death —six months before—if it was in the dry season, on the reduced value of the cattle, and if it was in the middle of the rains when he died, to make him pay on the enhanced value of the cattle, and I cannot for the life of me see that anything could be fairer. If the property was worth less he would pay less, and if it was worth more he would pay more. Although property does not consist so much of cattle in England there are species of property in England which also fluctuate in value violently in six months.

To come back again to my unworthy example of stocks and shares, I do not see how one can get a fairer criterion than date of death. That is when property "passes", and it is on the "passing of property" that this tax is levied. I am sure the hon. Member for Ukamba agrees with me that, to take her example a little further, if the person in question, instead of dying at the top of the boom, had died a little earlier, his estate would have to pay very much less, and if the person died when the boom had come all the assets (not only the land) would have increased in value and there would be a great deal more money out of which to pay the duty. It is true that this operates either way. If he dies at the top of a boom, the executors have to pay out of assets valued on a falling market, but one must take some date, and whatever date you take is liable to that fluctuation. So I do suggest that the best date to take is the date of death when the property passes.

I was asked by the hon. Member for Nairobi North if I could explain what latitude there would be in the section as it stood. The words "in the opinion of the Commissioners" which gave latitude to the Commissioners have been removed. I agree that there is not as much latitude as there was, but if it would help to put in some such words "it is estimated the property would fetch in the open market at the time of the death of the deceased" I would not object. I know that in a great many cases there is no "open market", but the "open market" as applied by the authorities is the best criterion. I can quote a number of cases where there has been no open market. There may be none with land in certain circumstances; there is seldom an open market for shares in a private company subject to restrictions on alienation, because their transfer is restricted. There are numerous other examples. That is where we have the advantage of the rules worked out by a long practice over 42 years for deciding these things.

As I have said, I do not think you will find this makes the slightest difference to the practice which is already in existence, but I do suggest that you should leave the "open market", because if you do not you leave the Commissioners with no standard. The amendment which is now proposed leaves the basis of assessment completely vague, and we shall have to go to court to decide every case, which I do not think anybody wants to do.

LADY SHAW: I have not made myself clear when talking about land. The hon. Attorney General said that if your land or whatever property may be was sold at the top of the market there would be more money to pay the duty. That is perfectly true, but nine out of ten people are not going to sell their land, and that is my point. That is where the unfairness comes in, and land is a classical case. When people die, the widows or children may want to hold that land. If valued on a very high market they might be forced possibly to sell, is neither here nor there, but my point is that they probably do

[Lady Shaw]

not want to sell, and that is where the unfairness of the Ordinance comes in.

MR. O'CONNOR: I find myself in very substantial agreement with the hon. member about the principles of estate duty as a tax, but you, sir, have ruled that subject out of debate. (Laughter.) All I want to do is to make it possible to work this tax.

MR. VASEY: I wonder if the hon. Attorney General would regard this as a possible compromise: "which the property would be estimated to fetch if sold at the time of the death of the deceased"? The phrase which is worrying a lot of members on this side is "in the open market".

Council adjourned at 11.05 *a.m. and resumed at* 11.20 *a.m.*

MR. O'CONNOR: Mr. Chairman, the last suggestion put to me was whether I could accept an amendment to the following effect: "The price which the property would be estimated to fetch if sold at the time of the death of the deceased". That pre-supposes a willing buyer and a willing seller, and I think it could be accepted.

LADY SHAW withdrew her amendment.

The amendment moved by Mr. Vasey was put and carried.

The question of clause 2 as amended was put and carried.

Law Society of Kenya Bill

Clause 16.

MR. O'CONNOR moved: That Clause 16 be deleted and the following substituted therefor—"16. All representatives of the Society on the Rules Committee or on any Advocates Committee to be established under any Ordinance shall be elected by the Society in general meeting".

The question of the amendment was put and carried.

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

Eviction of Tenants (Control) Bill

Clause 2.

MR. O'CONNOR moved: That the definition of "house" be amended by inserting after the figures "1940" the words "or any Ordinance amending or replacing the same".

The question was put and carried.

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

Clause 3.

MR. O'CONNOR moved: That subclause (1) be amended by inserting after the word "of" where it first occurs on line 3 the words "an owner of or".

The question of the amendment was was put and carried.

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

Clause 4.

MR. PATEL: Mr. Chairman, I beg to move an amendment to clause 4, that between the word "erecting" and the word "permanent" should be inserted the words "a building containing". The reason why I move this amendment is that in certain places the new buildings will contain shops on the ground floor and residential accommodation on the first and second floors. Therefore it is necessary to make it clear that the whole building would not necessarily contain residential accommodation. As it is, it may be interpreted that even on the ground floor they should have residential accommodation. That is why I move that amendment.

MR. O'CONNOR: I am obliged to the hon. member, and accept that amendment.

The question of the amendment was put and carried.

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

Shop Hours (Amendment) Bill

Clause 2.

MR. JEREMIAH: Mr. Chairman, I beg to move an amendment to clause 2: That the clause be amended by substituting the words "an African" for "a native". Although the word "native" is the proper word on special occasions, it does not appear to me to be the proper word in this case. The locations referred to are for Africans.

MR. O'CONNOR: Mr. Chairman, I fully sympathize with the motives of the hon. mover of the amendment, but the difficulty is that the phrase "native location"

[Mr. O'Connor]
is used in the Ordinance, and therefore it will create confusion if we alter it in this place. In fact, under the revision of the laws, all these references, where possible, will be altered to "African", so that, if the hon. member can wait for that, I suggest that is the better procedure.

MR. JEREMIAH: May I remind the hon. member that "African location" is the title used nowadays. We have superintendents of African locations in Nairobi, Mombasa and elsewhere. Actually the name is preferred by Africans, and I do not see any reason why it should not be used here. I hope the hon. member will reconsider it.

MR. O'CONNOR: As I have already said, I sympathize with the object of this amendment. I have no strong objection to it. It is quite true, of course, that "African location" is the phrase now used, but this is a 1925 Ordinance which we are amending. However, I think we can accept it. It is quite plain what it means.

The question of the amendment was put and carried.

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

MR. O'CONNOR: Mr. Chairman, I do not know whether it would be in order for me to say so now, but if I could be notified a little in advance of amendments of this nature I should have a little opportunity of looking through the amendments and seeing what the effect would be.

THE CHAIRMAN: There is nothing in the rules at present to compel a member to give notice of an amendment, but it is a great convenience to everybody to have notice, especially to the Chair.

Hospital Services (European) (Amendment) Bill

Clause 2.

MR. VASEY moved: That sub-clause (2) be amended by deleting all words after "the" on the second line of the proposed sub-section (7) and inserting therefor the words "members of the Authority shall elect annually not necessarily from their own members".

The question of the amendment was put and carried.

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

Nurses and Midwives Registration Bill

Clause 4.

MR. JEREMIAH: Mr. Chairman, I beg to move: That sub-clause (1) of clause 4 be amended by inserting after paragraph (*h*) the following—"(*i*) one person appointed by the Member to represent the African community", and re-lettering (*i*) and (*j*) as (*j*) and (*k*) respectively. I find that there is no specific mention of an African to represent African interests, and I believe that this is not confined to non-Africans, and it is fair that Africans should be represented on the Council.

DR. MACLENNAN: Mr. Chairman, the constitution of this Council really consists mostly of professional people, doctors and nurses, and it was felt that the Director of Medical Services, the matron-in-chief, the sister tutor and the person representing missionary societies would adequately represent African interests. But I have no objection at all to the insertion of that clause that the hon. member has suggested, that there should be somebody to represent African interests appointed by the Member.

MR. MATHU: Mr. Chairman, I think the hon. member suggested that one person should be appointed by the Member to represent the African community, not African interests. We do not want to introduce new matter that is not already included in the constitution as at present laid down in clause 4 (1).

DR. MACLENNAN: I have no objection to that. I accept that.

MR. ERSKINE: Mr. Chairman, I see from clause 4 (1), sub-clause (*c*), that one person shall be appointed by the European Hospital Authority, and I was wondering whether at this stage it would be possible for me to ask whether that indicates that, if nurses and midwives registered under this Bill visit patients in their own houses, there will be a claim on the Hospital Authority for a portion of the fees charged by the registered nurses.

THE CHAIRMAN: Can we leave that and decide how the amendment proposed by the hon. member Mr. Jeremiah is to be put in?

The question of the amendment was put and carried.

MR. ERSKINE: . . .

THE CHAIRMAN: May I suggest that that rather delays the work of the committee and should be raised by a question in the ordinary way?

MR. ERSKINE: Very well, Sir.

MR. O'CONNOR moved: That sub-clause (1) be amended by substituting the word "seventeen" for "sixteen" on line 1:

The question of the amendment was put and carried.

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

MR. O'CONNOR moved: That the following Bills be reported back to Council with amendment—The Local Government (Rating) (Amendment) Bill, the Estate Duty (Consolidation) (Amendment) Bill, the Law Society of Kenya Bill, the Eviction of Tenants (Control) Bill, the Shop Hours (Amendment) Bill, the Hospital Services (European) (Amendment) Bill and the Nurses and Midwives Registration Bill.

Council resumed and reported accordingly.

THIRD READINGS

MR. O'CONNOR moved: That the following Bills be each read the third time and passed—the Municipalities (Amendment) Bill, the Local Government (Rating) (Amendment) Bill, the Vagrancy (Amendment) Bill, the Estate Duty (Consolidation) (Amendment) Bill, the Law Society of Kenya Bill, the Widows' and Orphans' Pension (Amendment) Bill, the Eviction of Tenants (Control) Bill, the Shop Hours (Amendment) Bill, the Hospital Services (European) (Amendment) Bill, the Liquor (Amendment) Bill, the Nurses and Midwives Registration Bill, the Land and Water Preservation (Amendment) Bill and the Control of Grass Fires (Amendment) Bill.

MR. RANKINE seconded.

THE SPEAKER: I do not altogether agree with the idea of moving all the Bills in one motion, unless Council takes it as a means of saving time and there is to be no debate on any particular Bill.

MR. VASEY: Sir, on this particular occasion I suggest that we take them as has been moved, but I agree with you that it might well be advisable in future to take the Bills individually so that an individual vote may be registered.

THE SPEAKER: It may be that at some time a member may wish to move the recommittal of a Bill or something of the kind, and if they are all in a group it is cumbersome to take one out.

MR. O'CONNOR: I entirely agree, Sir, and will adopt the practice suggested.

THE SPEAKER: There is no amendment or debate on this motion?

The question was put and carried and the Bills read accordingly.

ADJOURNMENT

THE SPEAKER: That concludes the business. Does any hon. member wish to raise anything on the adjournment?

MR. HAVELOCK: Does that mean that any member has a right to raise a subject on the adjournment?

THE SPEAKER: The normal hour of concluding a sitting is 12.45 p.m. It is quite possible for a member to move that the Council do now adjourn and on that motion speak on any general subject on which he wants to speak. (Laughter.) Are you wishing to do so?

Council rose at 12 noon and adjourned till 10 a.m. on Tuesday, 17th May, 1949.

Tuesday, 17th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Tuesday, 17th May, 1949.

His Honour the Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

H.E. THE GOVERNOR AND PRESIDENT

Extension of Term of Office

The Speaker read the following letters:—

Legislative Council,
10th May, 1949.

Your Excellency,

It is the unanimous desire of the Legislative Council that I should express to you its pleasure and good wishes on the extension of your term of office to December, 1951. At the wish of the leading members I took the opportunity of referring to the matter from the Chair when Council met this morning for the first time since the public announcement was made, and my words, inadequate as I felt them to be, were very favourably received by all the members. We are all pleased that a change at the head of affairs has been avoided and our good wishes go with you in your efforts for Kenya and East Africa.

I have the honour to be,

Your Excellency's humble servant,

W. K. Horne,
Speaker of Legislative Council.

Government House,
Kenya.
13th May, 1949.

My dear Mr. Speaker,

I am deeply obliged to you and to the members of Legislative Council, for their expression of good wishes on the extension of my term of office to December, 1951. I very greatly appreciate the manner of the expression of those good wishes, and the kindly thought that prompted it.

The position of a Colonial Governor is by no means an easy one, being as he is at one and the same time the representative of His Majesty the King and also the chief executive authority in the Government. Ever since I have been in the Colony I have found the most sympathetic understanding of those difficulties in the legislature, and I am glad of this opportunity to express my gratitude for it.

I have had the privilege, during my term of office, of instituting the system whereby Members of the Executive Council drawn from within and without the public service are made responsible for groups of departments of the Government; for the creation of the high office which you, Mr. Speaker, have occupied since its beginning with such distinction; and for the establishment of an unofficial majority in the Council itself. I pray that it may also be my privilege to witness the consolidation of these important changes and to share with the Legislative Council the task of paving the way for further progress along the same path, the well-worn path which has been for generations the path of progress of British policy, the path of orderly evolution of responsible parliamentary government, which, as has recently been truly said, is the great contribution of Britain to the whole world. The road will no doubt be long, and the processes difficult, but with growing goodwill and confidence among all the communities of the Colony, and under the guidance of Almighty God, I have great hopes that it will be a road not beyond the genius of the people of Kenya to travel successfully.

Yours sincerely,
P. E. Mitchell.

The Hon. W. K. Horne,
Speaker of the Legislative Council,
Nairobi.

MINUTES

The minutes of the meeting of the 12th May, 1949, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By Mr. Rankine:

Annual report of the Development and Reconstruction Authority for 1948, and quarterly report of the Authority for the period 1st January to 31st March, 1949.

By Mr. O'Connor:

Select committee report on the Increase of Rent (Restriction) Bill.

By Mr. Deverell:

Standing Finance Committee report on Schedule of Additional Provision No. 4 of 1948.

By Mr. Mortimer:

Report of the European Hospital Authority covering the period 1946–1948.

ORAL ANSWERS TO QUESTIONS

No. 13—Gilgil Internment Camp

Mr. Blundell:

Will Government state whether the internment camp at Gilgil is occupied, and if so by whom?

If the answer is in the negative will Government state why the electric arc lamps have continued to burn at night since the departure of the Jewish internees?

Mr. O'Connor: The internment camp at Gilgil is at present occupied by the military authorities for storing certain types of ammunition. The arc lights are kept burning at night as part of the precautions taken against theft of that ammunition.

No. 14—Civil Riots Compensation

Mr. Nathoo:

(*a*) Is there a compensation Ordinance in Kenya in case of civil riot?

(*b*) If the reply to this is in the negative, will Government please state whether there is any intention of introducing such a measure?

(*c*) In view of the events in a neighbouring territory, will Government give a clarification to enable the public to know what the position is?

Mr. O'Connor: The reply to parts (*a*) and (*b*) of the question is in the negative.

Paragraph 3: In view of the two previous answers this would not appear to arise.

No. 16—Loss of Military Ammunition

Mr. Blundell:

Is Government aware of the public disquiet by the disclosure in a recent court case of the loss of ammunition from military stores? If the answer is in the affirmative, can Government state what steps it has taken and will continue to take in this matter?

Mr. O'Connor: The Government is aware of the loss of ammunition from military stores.

(*a*) Government has made energetic representations to the military authorities, with whom they are in close touch.

(*b*) The Command Ammunition Depot at Gilgil has been given close C.I.D. and police attention for months past.

(*c*) The civil police have recovered a large percentage of the ammunition lost.

(*d*) Eight persons have been prosecuted, convicted and sentenced for offences in connexion with ammunition.

(*e*) Arrangements have been and are being made by the military authorities for increasing security and a large works programme has been instituted.

No. 18—Sera and Vaccines Manufacture

Major Keyser:

Will Government make a statement in regard to the unsatisfactory state of the manufacture of sera and vaccines and the dire results that have been the consequence of this state of affairs?

Major Cavendish-Bentinck: The answer is in the affirmative and I propose, Mr. Speaker, subject to your leave and that of the House, to make such a statement on the adjournment.

SESSIONAL COMMITTEE REPORT

Select Committee on Bill

Mr. Rankine reported that the Sessional Committee had appointed the following as a select committee to consider the Legislation (Application to High Commission) Bill: Chief Secretary (chairman), Messrs. Erskine, Maconochie-Welwood, Nathoo and Jeremiah, and the Solicitor General.

CORYNDON MEMORIAL MUSEUM BUILDING FUND

Mr. Vasey: Mr. Speaker, I beg to move: That this Council recommends that a contribution of £5,000 should be made from the funds of the Colony towards the Coryndon Memorial Museum building fund, and that further payments

[Mr. Vasey]

should be authorized from the Colony's funds from time to time on the basis of a Government contribution of £1 for every £3 contributed by public subscription, provided that contributions from the funds of the Colony shall cease as soon as the total funds collected reach the sum of £60,000.

I do not feel that I need detain the Council very long by dealing at length with the necessity for some contribution towards the building extension fund of the Coryndon Memorial Museum. This museum was originally, I think, erected mainly by private subscription. It has served the Colony very well for many years as a building. The position has now arisen when extensions must be undertaken at the earliest possible moment. The trustees have launched a public appeal and they have received subscriptions of some £4,000. It is, however, estimated that something in the nature of £60,000 will be essential before the full extensions can be carried out. The trustees propose to raise every penny possible by means of public subscription.

The Indian community, or one section of the Indian community, has launched an appeal to have one of the main rooms named the Mahatma Gandhi Room, and they are attempting to raise some £7,000 in order to build that particular exhibition room. I myself hope that before long I shall be able, in my capacity as chairman, to announce that a prominent person in Great Britain has consented to let his name be used in connexion with another room in the museum. We have also approached people in America asking that our American friends, many of whom have been very generous to the museum in the past, should endeavour to raise funds for us, so that an America Room may be built. I mention these things to show that the museum trustees, if possible, wish to see the entire extensions built by public subscription, but they recognize that £60,000 is a very large sum and they wish to get on with some of the extensions at the earliest possible moment. If this motion is carried, therefore, there is to my mind no reason why the first most urgently needed exhibition rooms should not be proceeded with immediately.

The motion itself is, I think, self-explanatory. There is a capital contribution of £5,000 suggested, and there is what I should call an encouragement contribution from Government of £1 for every £3 contributed by public subscription. I do not propose to keep the Council any longer, but I cannot sit down without expressing my thanks to His Excellency the Governor for the great interest and encouragement he has given the museum trustees in the launching and carrying on of this appeal. (Applause.)

MAJOR CAVENDISH-BENTINCK: Mr. Speaker, I have much pleasure in seconding this motion.

I do not think anybody would dispute that the museum has played a very big part in the life of Nairobi, and not only Nairobi but East Africa as a whole. An enormous number of visitors of all races attend there almost daily, and it is an institution which, I think, should be supported in every possible way.

MR. DEVERELL: Mr. Speaker, the Government is usually very reluctant to agree to contributions being made from public funds towards any institution, no matter how deserving such——

THE SPEAKER: I understood we were going to have signification of the Governor's consent to this motion, I do not know——

MR. DEVERELL: Sir, I was about to say so. (Laughter.)

THE SPEAKER: Otherwise I do not think it would be in order without his consent.

MR. DEVERELL: Well, sir, I am pleased to say that the Governor has intimated that he has no objection to this motion being moved in this Council. (Applause.)

THE SPEAKER: I will now propose the motion.

MR. DEVERELL: Sir, I was endeavouring to say, when you so properly drew my attention to the necessity of announcing the Governor's approval to this motion, that the Government is normally extremely reluctant to agree to contributions being made from public funds towards any institution, no matter how deserving such institution may be. If, therefore, I rise to support this motion, it may be that I shall be accused

[Mr. Deverell]

of financial unorthodoxy. If such an accusation is made I shall base my defence, first on precedent—a very useful key to Treasury coffers!—and, secondly, on my sincere belief that the Coryndon Memorial Museum is in fact fulfilling a most valuable service, educational and cultural, to all communities in Kenya. (Applause.)

As regards the first point of precedent, the hon. mover, I think, mentioned that the original building was put up by public subscription. In fact, I am glad to say the Government of the day contributed, and contributed very generously, towards the fund, and it seems to me to be entirely logical and fitting that the Government of this day should also contribute generously.

As regards the second point, I think the fact that this Council, and previous Councils, for a number of years have contributed annually subventions towards the maintenance of the museum is sufficient indication that the Legislature approves Government support to this very valuable institution.

In conclusion, I should like to continue my unorthodox course by expressing the hope from this side that the response to the public appeal will be such that the Government will be forced to make the maximum contribution allowed under this motion. (Applause.)

THE SPEAKER: If no hon. member wishes to speak, I will give the hon. mover the opportunity to reply.

MR. VASEY: Sir, for once I have nothing to say!

The question was put and carried.

MOMBASA WATER SUPPLY

MR. COOKE: Mr. Speaker, I beg to move: That this Council, taking note of the fact that consulting engineers have been engaged to prepare a water supply scheme to meet the long-term needs of Mombasa, Mackinnon Road and neighbourhood, agrees that such a scheme is inescapable, and recommends if practicable it should be undertaken as soon as possible and should be financed by loan.

If my hon. friend the Acting Financial Secretary had not, if I may put it that way, omitted to mention to you in his excellent maiden speech the fact that he had His Excellency's consent to support the previous motion, I would have erred myself this morning and would have forgotten to mention to you that the Governor has given his permission for this motion to be moved.

I feel that, if this motion is accepted and if the schemes envisaged in the motion are put into force, the effects will be of great economic benefit not only to Mombasa and neighbourhood, but also to this country in general. I say this country in general, because I regard this country as a living organism in which all parts must play their necessary part in the organism which is set up. What I mean to say—(laughter)—is that all races are really inter-dependent and all sections of the community are inter-dependent, and what is good for Mombasa will probably be good for farming communities up-country, and what is good for the farming communities must have its repercussions in the port of Kilindini.

I hope to be brief this morning. I will first deal with Mombasa and the effects that the implementation of these suggestions might have on Mombasa.

Mombasa is a port with about 100,000 inhabitants to-day, but at the present rate of increase these inhabitants will probably be over the 200,000 mark in 25 to 30 years. The water for Mombasa is supplied from the Simba Hills, which are about 20 or 25 miles away, and it is impossible to increase the supply by more than at the most a quarter of a million gallons a day. The supply to-day is 2½ million gallons a day, and that means that the inhabitants of Mombasa can use 20 gallons of water a day each on the average. It is felt that this is much too small an amount, and that at least 50 gallons a day should be available for the inhabitants of Mombasa. This is all the more important when we consider that it is essential to have in Mombasa before very long a water-borne sewerage system. My hon. friend the Member for Nairobi North is, if I may say so, his excellent report on the Mombasa Municipality published recently, has said that, unless many thousands of water closets are installed in Mombasa within the very near future, there will be grave dangers of an epidemic. In fact, some people have gone

[Mr. Cooke]
so far as to describe Mombasa as having a large cesspool underneath the town. That to a certain extent must be true, because the formation is of coral and is very porous. Therefore it is very necessary, if an epidemic is to be avoided, that we should install as soon as possible water-borne sewerage.

There are other demands for water in Mombasa, not least of which are from factories. There are several firms which are anxious to establish factories in Mombasa, but I will not deal with that at any length at the moment because I understand the hon. Member for Commerce and Industry will make those points in his speech.

There is also the great danger of losing valuable shipping in Mombasa, because if ships feel that there is a danger of an epidemic, or that there is a shortage of water for them, they will be less eager to call at that port. There is also the possibility of a naval base being established at Mombasa, and if the Admiralty did at any time consider the scheme seriously they would naturally first inquire about the available water supplies. That is another point in favour of increasing the supplies.

My second point is this. At the present moment the Uganda Railway from Tsavo River and Voi to Mombasa are great consumers of water, and they have had considerable difficulty in obtaining water. They have had to resort to all sorts of expedients, and they are strongly in favour of this scheme, and they have informed us that if this scheme fructifies they will be prepared to purchase water from it.

There is also a very large demand from Mackinnon Road, where, as hon. members know, a big military store has been established, and there are also rumours that the military workshops of Kenya will be concentrated at Mackinnon Road and a large civil town will spring up there. The military are very anxious that we should establish this pipeline which I am going to refer to later on, and that they should be able to draw water from it, of course on payment.

There is a third and not less important point. Beyond Tsavo and Voi there stretches a large expanse of uninhabited country, at the moment given up more or less to scattered game and to the tsetse, and it is felt that a lot of that country could be used for ranching purposes. I remember Mr. Daubney, who was Director of Veterinary Services here up to a few years ago, telling me that the grass in that part of the country was very sweet and very suitable for cattle, and the only thing needed at present is water. As you know, it is very waterless country; the tsetse infestation which I have mentioned is not really very large and could be readily dealt with by clearing. At present the Dirumu tribe occupy a portion of that land, and the healthy state of their cattle shows how well cattle will do in that particular area.

It is therefore proposed, if these schemes go through, to open up all that large expanse of country to settlement by all races. I emphasize the word all because it must be open to all communities who possess sufficient capital and sufficient initiative and experience to settle there. The fertility of the country is great. You, sir, must have noticed on your travels to Mombasa how at the various railways stations fruit trees and palms flourish as a result of even the very exiguous supply which they get from the overflow from the railway engine water points, and although irrigation will of course be quite out of the question, because there would not be enough water for that, it would enable those who establish homesteads to have pleasant gardens, fruit trees, and other amenities which one requires in a hot climate like that.

I have only dealt with a few aspects of this proposal, because it is a very general motion. I have not mentioned anything about finance and I have not mentioned where it is proposed to take this water from.

To deal with the second point first, it is suggested that the pipeline should be laid from the Mzima Springs, which, if I may use the expression, is a gin-clear tributary of the Tsavo River. It is hoped that from there a gravity feed may be obtained. The distance from Mombasa is roughly 150 miles, so it would need a very long pipeline. Fortunately, the back of the work has been broken so far by a survey of the area, because the military, as hon. members know, have a pipeline from the Tsavo River to Mackinnon Road, so that a good deal of the preliminary survey has already been done. The normal dry weather flow of the Tsavo River is something over 60 cusecs, which is 30 million gallons per day. It is proposed to extract from that 20 cusecs or 10 million gallons, leaving 40 million gallons to pass down the Tsavo River in the vicinity of the railway station, so that one will not be drawing excessively on the flow of the river.

With regard to finance, it is impossible to say until the present survey is completed what it will cost, but it is felt it will be somewhere in the region of £5m. to £7m. That sum would be beyond the capacity of Mombasa Municipality to raise, so the Government, recognizing that it is an inescapable obligation, will, I understand, if the survey proves to be satisfactory, raise a loan on a Colony basis. Of course, the loan will not and cannot be serviced at once by the money accruing from the sale of the water. I think I am correct—and the hon. Member for Nairobi North will correct me if I am wrong—in saying that no big water scheme pays at once. It is only when it has been in operation for a number of years that it begins to pay its way, but I would make the point that there will be a very great indirect payment for this scheme.

If factories are established in Mombasa, I do not think it is an exaggerated statement to make that the four or five factories contemplating establishing themselves there will pay in excise duty and income tax something in the region of half a million pounds which, of course, will go into the Colony's Treasury, but it would be a set-off against the interest payable on the loan. There would also be the indirect effect. For instance, one brewery will spend £500,000 on buildings, and it hopes to start to function on the 1st January, 1951, if this water can be guaranteed. Of course, up-country farmers will benefit from the establishment of breweries, because it means the opportunity for the sale of more barley for beer. Of course, there are other indirect factors such as the payment of wages and the circulation of money following the establishment of factories in Mombasa.

For these and other reasons which the hon. Member for Agriculture will express more eloquently and with much more authority, I ask Council to accept the motion, and I should be very gratified indeed if it is accepted unanimously.

MR. PATEL: Mr. Speaker, I beg to second the motion.

My hon. friend the Member for the Coast has given reasons in detail why it is necessary that this Council should give its blessing to this motion. Therefore I need not enter into any more details, but there is one thing I should like to say, that it will be readily agreed that the further development and progress of Mombasa is largely conditioned by this water supply. It will not be possible for Mombasa to make headway unless there is sufficient water, and in my view a scheme should be prepared with a view to seeing ahead for a number of years. Unless we are prepared to make a scheme which will be good for 25 years, we shall simply be wasting the money. If we try to adjust the requirements of Mombasa from day to day, the scheme will be out of date very soon. Therefore it is essential that a long-range scheme be prepared at this stage for the purpose of Mombasa's requirements.

As the hon. Member for the Coast has stated, the health of Mombasa, the industrial development of Mombasa, the needs of Mackinnon Road, the needs of the Railways and Harbours, all these cannot be met unless a scheme like the one indicated in this motion is accepted by Government. I hope Council will give it its blessing.

MR. RANKINE: Mr. Speaker, on a point of order, I believe I am correct in saying that His Excellency's consent to a motion of this kind being proceeded with must be signified by a Member. I therefor take this opportunity of informing Council that His Excellency's consent has been given.

MAJOR CAVENDISH-BENTINCK: Mr. Speaker, I wish to support this motion strongly.

When the new set-up was introduced some three years ago, which was referred to in His Excellency's reply to Council this morning, one of the first things we did was to establish a Water Resources Authority on a country-wide basis. That Authority has been working for two

[Major Cavendish-Bentinck]

years and has produced a number of plans which have been submitted to the Member responsible for the Development and Reconstruction Authority. Obviously, Mombasa requirements were not overlooked, and a good deal of work was done in connexion with the water requirements of the main port of the country, and that is evidenced by the fact that in this motion it is mentioned that consulting engineers have already been engaged.

In the course of those inquiries certain facts have emerged which I think I would like to give the Council, because they will help to substantiate the statements made by the proposer of this motion.

Consumption in Mombasa for the last few years has averaged 1¼ million gallons per day, and during the last three months it has averaged over 2¼ million gallons. That is on the existing water supply to Mombasa, on which it was proposed, I believe, to spend a great deal of money to try to improve it. I believe the maximum that could possibly be produced by spending all the money possible on the existing system would be that at all times of the year three million gallons could be produced. Obviously in Mombasa at the moment no provision is made for water-borne sewage or future industrial development. The present off-take by shipping in the harbour amounts to 200,000 gallons a day against a peak during the war on one occasion of 750,000 in 36 hours, and naturally that will be an increasing demand, so that thinking ahead three million gallons is totally insufficient.

The usual method of calculating water supplies for a town, I am informed, is to reduce every type of requirement to a *per capita* basis. We are advised that the desirable minimum, including water-borne sewage, for a town situated like Mombasa, on coral in a very hot climate, would be somewhere about an average of 30 gallons per head per day. That is merely for ordinary consumption plus sewerage. In addition, there are of course municipal, non-domestic and shipping requirements, the needs of the Railways and Harbours, not to mention allowances for losses on a distribution system coming from a very long distance—and a substantial loss on a distribution system is inevitable when dealing with a large number of Africans and taps all about the place. Therefore we are trying to work on a calculation, all in, of 51 gallons per head per day. We may have to reduce that, but it cannot be reduced to under about 43 per head, including everything. That does not make any allowance for possible strategic requirements.

I am dealing at the moment only with Mombasa. It may interest hon. members, in case they feel doubtful when they hear the figure 40 gallons a day, to know that I do not think this is a very extravagant figure. Freetown, which suffered very badly during the war from lack of water when it became temporarily a very important strategic centre, at present only has a railway line of 70-odd miles behind it, and though admittedly a fairly large population, has very little industrial development, yet its consumption is 42 gallons a day. The Rand Water Board, which is a fairly experienced body, have cut their consumption down to 38 gallons a day *per capita*.

Mombasa, therefore, will undoubtedly soon be suffering from an acute water shortage, and thus there is a case for doing something very much more inspired than merely tinkering with its present water supply.

The hon. mover talked about Mackinnon Road and the country between the source of supply and Mombasa. As far as Mackinnon Road is concerned, as hon. members are aware there is a military installation there which has laid down its own supply system. They were obliged to make the best use they could of the materials available. They have put their source of supply down in the form of a double pipe-line, which is not very economical. It has not worked very well, and at the moment the peak demand is about half a million gallons per day which it is barely able to supply. They wish us to supply them with an amount which in four years time will reach one and a quarter million gallons per day.

Therefore our estimate of what will be required is that by 1954 we shall want for Mackinnon Road probably about one million gallons a day, if not one and a quarter, and for Mombasa probably at least two million gallons. By 1964 Mombasa may require seven million gallons a

[Major Cavendish-Bentinck]

day. Of course, these are merely shots in the dark, but we reckon that by 1974 possibly Mombasa alone may need something like ten million gallons a day.

That being the background, we approached a firm of consulting engineers. Financial provision was made for that last year or the year before. We have asked them to make a preliminary survey. I have had certain interviews with them. They naturally want to know what is the policy of Government in certain directions, and we have asked them to give us a rough idea of where the best sources of supply can come from and the probable approximate cost.

It is only a preliminary survey at the moment. The hon. member suggested the Mzima Springs as being the obvious source. It probably is, but we cannot entirely rule out the possibility of taking water below the Mzima Springs, or even going to another source altogether. The hon. member was a bit optimistic when he said the back of the work had been broken by the Army, because I am afraid it has not. We shall certainly not follow the present Army pipe-line.

Having explained (*a*) that the Government has not been entirely blind to this problem and (*b*) having, I hope, given some facts which will reinforce the hon. member's arguments, I beg to support. I have not, purposely, dealt with industrial development, although I have made allowance for it in my figures; nor have I dealt with the financial implications, which are very grave. I would rather leave those subjects to the proper authorities.

MR. MATHU: Mr. Speaker, I should like to support this motion, and in doing so I should like to emphasize one aspect of the problem which I do not think any previous speaker has emphasized.

I refer to the water supply requirements of Africans outside Mombasa Island and outside Mackinnon Road, because I feel—unless I am corrected by those who definitely know better—that removing water from the Tsavo River, or any other river, or even water-boring, has a tremendous effect on the water table, and if it has it will definitely mean that the Africans living in the Nyika region of the Coast Province who get their water from springs or from boreholes at Mariakani and Rabai will be very seriously affected. I should like to emphasize that aspect of it, so that that side of the picture may not be forgotten, because if they did the water supply of the areas I am referring to—the Nyika district, including the Digo, Duruma and so on—would be very seriously affected.

I admit that we have to take into consideration the need for water supplies for the inhabitants of Mombasa and the industrial development of Mombasa, but surely we should not use that argument to emphasize the antagonism between town and country. While we are looking after the interests of the town we should not forget to look after the interests of the country. I have had experience of this and I think I should illustrate what I mean. Some few years back the Nairobi Municipal Council wanted water from the Ondiri Swamp near Kikuyu railway station. There are two sources there, one the source of the Nairobi River and the other the Ondiri Swamp, which is the source of the Nyongara River. They took the water supply from these two sources, and in one case the Nyongara River dried up, and all the Africans along that river at the moment find it extremely difficult, because there is no water there.

This is a definite example of where consideration was not taken of those who lived in the area, and consideration was only given to Nairobi. It is a situation that I should not like to happen in the case of the Coast Province. With that reservation, I should very much like to support the motion.

MR. HOPE-JONES: Mr. Speaker, I rise to support this motion, and in doing so I would like to congratulate the hon. mover, not only on what he said to-day, because I know this matter is something very near to his heart and was also very near the heart of the hon. Member for Mombasa, Mr. George Nicol, who is no longer with us. It would have been a very great day for him as well as for the hon. Member for the Coast if he had been here.

In rising to support this motion, I do so because of reasons which have already been given. But there is one other aspect of the matter to which I wish to pay particular attention, and that is in connexion with industrial development.

[Mr. Hope-Jones]
Now, it might puzzle hon. members why I attach such importance to Mombasa in regard to industrial development. Well, there are a number of reasons. First of all, most industries require an importation of raw materials to a greater or lesser extent; some industries may use 99 per cent of locally produced materials; others, on the other hand—and they may be very profitable industries—depend almost wholly on the import of raw materials. In that case Mombasa, as the port of Kenya and Uganda, is particularly well situated. Secondly, there are industries that might well in future look for export markets. Now it so happens that, apart from the fact that Mombasa is obviously suitably placed for export industries, it is also particularly favourably placed in relation to possible export markets.

It is a most significant fact in the world to-day, although perhaps not generally appreciated, that the Persian Gulf, which is comparatively near Mombasa and an area with which Mombasa has traded for hundreds of years, it so happens that in that area are the greatest proved oil reserves in the world, and there at Abadan is the greatest refinery in the world, while at Bahrein on the Arabian mainland are others. I am not suggesting that the oil trade alone is going to be the making of Mombasa as an industrial centre, but we are near what we hope will become, and I underline the words "will become", a cheap source of oil fuel in these territories, but, more important than that from the point of view of export and trade is the vast increase in purchasing power in that particular region of the world, due to the discovery of these oil reserves. Purchasing power in the Persian Gulf to-day is increasing at the rate of 50 per cent or 60 per cent per annum, and has been doing so for the last five or six years and looks like doing so for the next ten or fifteen. There obviously is a market for export of enormous potential importance. I do not mention other obvious markets. They are well known to all of us—India, Burma, and so on.

Those are two of the reasons, as I see them, why Mombasa has a particularly favourable future ahead of it as an industrial centre. But hon. members might say that this is merely my imagination; it is not. Many industries, apart from the breweries my hon. friend the Member for the Coast referred to, many industrialists wish to come to Mombasa, and they wish to come for the reasons I have given. The site itself is favourable—and I do not mean just the Island, I mean, of course, the surrounding area as well; it is easy to get raw materials in and it is easy to build up an export trade. Not only do the brewers wish to come, but the glass manufacturers, the textile people, and so on. There is one thing almost all industrialists need in addition to labour, capital and raw materials—nearly all of them need water. They either need water in the way that, shall we say, bleach works need water, in vast quantities, or, shall we say, that brewers need water with which to produce beer—(laughter)—or they need water to get rid of affluents and so on. The industrial development of Mombasa at the present time is being held up, it is being frustrated, by the lack of water.

There is one aspect of water required for industrial development which should appeal to the hon. Acting Financial Secretary—on whose brilliant maiden speech I congratulate him—and that is that the cash return in terms of industrial demands for water is almost immediate. It is not a case of anticipating a demand which may or may not be made, or even providing for health reasons, which must, of course, be a priority, but the fact is that where water is supplied for industrial purposes we are meeting an "effective" demand; in other words a demand that will be paid for at a fair rate. That is why I am emphasizing the industrial aspect in connexion with the Mombasa water supply. If we provide the water, there is no doubt that there will be industry, and the industry will, of course, provide payment—I was going to say on the nail, but I do not think that such frivolity would appeal to the hon. Member for Nyanza!

I do not wish to detain Council any longer, except to say that it is my profound conviction, after giving a great deal of thought to this matter and taking advice from many well-qualified sources, that by the provision of adequate water for Mombasa and the Coast Province generally, not only will we be benefiting that part of the territory, not only will we be benefiting Kenya as a whole, we

[Mr. Hope-Jones]
will be doing more than that—we will be enabling Mombasa to take its rightful place as the queen city of the fairest province on the coast of Africa. I beg to support.

Council adjourned at 11 a.m. and resumed at 11.15 a.m.

MR. EDYE: Mr. Speaker, I only want to ask some Member on the other side dealing with this motion to let us know whether the sum required for this purpose will be found out of the Development and Reconstruction Authority or from capital entirely separate, and whether the amounts reserved in the Development and Reconstruction Authority for water schemes are to remain intact?

MR. BLUNDELL: Mr. Speaker, I want to deal in particular with the loan side of the motion.

At the outset I should like to say that I am happy to welcome the motion and shall support it, but I could not do so and be silent in so far as the commitment which this motion may cause to fall on our loanable capacity, and it is advisable to issue a note of warning.

Our loanable capacity we have been told by the Treasury is around £20m., and in addition we have the unexpended portion of the Development and Reconstruction fund money, a total probably in the region of £27m. I think it is obvious that before one could agree to support this motion, and in particular the lending of such a large sum of money to the Municipality of Mombasa, it is necessary to stress that every exploration must be made to finance this, if it is possible to coin a word, other than out of the extra-loanable capacity of the Colony. I think the hon. Member for Nairobi North may elaborate on that, but the particular point I want to stress now is that if the loanable capacity of the Colony is only £20m. we cannot tie ourselves now down to any unacceptable figures which will affect that loanable capacity, and we want to make quite sure when the figure is examined that every method of financing outside the loanable capacity will be reviewed, in view of the fact that this is largely a productive form of expenditure and is also, or would be shortly, self-reimbursing. I think, therefore, it is not necessary for it to be considered in relation to the general Colony's total loanable capacity. That is all I wanted to say, to make this short warning.

MR. RANKINE: Mr. Speaker, this is a motion which I believe has the support of the whole Council, and I am glad that my hon. friend the Member Agriculture has been able to announce already that it has Government support. He has already dealt with most of the points raised, but there are one or two additional points that I would like to make.

In the first case it seems to me that the need for this motion illustrates very clearly the stage of development which we in Kenya have reached. In my view we have come to a very important point. The first stage in our development, the pioneer stage, is finished. I know that there are many people who say the good old days have disappeared would like to look upon it as the "beginning of the end". I should prefer to call it the "end of the beginning". We have, in fact, passed the pioneering stage, and are now embarked upon what might be called, perhaps, the stage of consolidation and development.

During the first stage a few pioneers have laid the foundations of industry in this country, they have opened up the country, they have laid the first of our foundations. It remains for us now to develop the country, and as we do so we of course realize that there are many services which we require, services which are found in maturer and more developed countries, and a better water supply, for a big town like Mombasa is one of them.

But I would like to add to the note of warning that has been made by the hon. Member for Rift Valley, because all those services, if we are going to have them, are going to cost a very great deal of money. As the Council knows, the Planning Committee has just embarked on a complete revision of our development plans. So far it has not got very far, because a great deal of the material, the data, which we require is not yet available. But so far as I have been able I have made a preliminary review of what the requirements are likely to be in order to get some idea in round figures of what the cost may be.

[Mr. Rankine]

It has not been possible to make a complete assessment, but on the figures available already there is little doubt that we shall need somewhere in the neighbourhood of about £4m., in addition to what is provided in the Development and Reconstruction Authority plan for the development of agricultural and veterinary services, forestry, water, etc., and that is leaving out of consideration this water supply for Mombasa. We need for communications, including airfields, something well over £7m. We need for education a sum over £4½m.; for health and hospital services something like £3m. That is all for capital development. Recurrent expenditure as a result of that capital development will run, on the figures which I have now, into something like £2m. That is in addition to what is provided already in the Development and Reconstruction Authority plan, so that I hope from these figures the Council can appreciate something of the dimensions of the problem which we have to face.

When we look at these things we need, naturally we conjure up dreams of development to come. The hon. Member for Commerce and Industry has explained something of the development that can be made in the way of industry. It depends, of course, on the way you look at it, and I was interested to learn that one hon. member conjured up in his mind a dream—taking out of this water scheme at one end gin-clear water and converting it at the other into what I presume he would call a beautiful amber liquid. (Laughter.) At any rate, those prospects are very pleasant!

I hope that what I have been able to say will enable Council to appreciate something of the nature and size of the problem of development if we are going to tackle it, and I suggest that there is only one way of going about it, because it is obvious that we will not be able to do everything that is desirable or, indeed, is needed. It may be, for instance, that if Mombasa wishes to have another museum that would have to be cut out as not entirely essential. But I was going to say, the only way of going about it is to endeavour to do first things first—(hear, hear)—and I do believe and I think hon. members would agree with me, that a water supply for Mombasa is one of the first things that we have got to do. (Hear, hear.)

That is the reason why Government has accepted this motion at this time. As the hon. Member for Agriculture has already explained, steps have been taken to engage consulting engineers to make an investigation, and if as a result of their investigations it is found that a scheme is practicable, Government proposes to go ahead with it.

One further word on the subject of finance. Some short time ago the hon. Financial Secretary stated that we had been advised that we ought to be able to raise money in the region of about £20m. by way of loan altogether, in view of the national debt which we have already incurred and of the sums included in the Development and Reconstruction Authority's programme. That left about an additional £10m., so that it will be necessary to explore other means of finance if we are going ahead to do even those things which we consider to be "first things".

Finally, with regard to what the hon. Member for African Interests has said regarding the interests of Africans and their water supplies. I do not think he need have any fears that their supplies will be overlooked when this scheme is worked out, because in the first case there is the Water Resources Authority, and that Authority works through the regional water boards on which there is very strong African representation, and there will be full opportunity for the Africans, if they think that their interests are in an any way to be prejudiced, to make their representations to those boards and to the Authority.

I beg to support.

MR. VASEY: Mr. Speaker, I think the point raised by the hon. Member for Rift Valley was that in view of the large call upon the £20m. which we have had indicated is the limit of the money we could raise, we should endeavour to find some outside method of financing this particular scheme. I am wholeheartedly in support of this motion, because water is an essential part of the industrial development of the town and the Colony. If other places than Nairobi have not an adequate and reasonably cheap water supply we may well see Nairobi become

[Mr. Vasey]

a top-heavy industrial centre with all the evils that centring upon one particular town in the Colony could bring out.

However, Nairobi Municipal Council has recently been granted powers to raise money on its own account, and one great advantage of that to Government and the Colony is, of course, that the money raised by Nairobi Municipal Council is not reflected in the public debt of the Colony. I would suggest that at a very early stage Government should go carefully into the case for granting Mombasa similar powers if a scheme of this magnitude is to be carried through. The other alternative I suggest to Government is one I know Government has already considered, and that is a Public Utility Corporation, which would remove again from the public debt this burden of loan expenditure which must be undertaken.

I have one other word of caution, a suggestion to make. That is, the hon. Member for Agriculture has said to us—he will correct me if I am wrong—that by 1954 the consumption of water in Mombasa would be 4½ million gallons, by 1964 the consumption is estimated to be 7½ million gallons, and by 1974 the full consumption of 10 million gallons is estimated to be reached. That means that the production costs per 1,000 gallons of water are going to be particularly high in the early stages when you will carry the full loan service charges of the scheme for 10 million gallons and you will only be getting 45 per cent usage. It is 1964 before 75 per cent usage is visualized. That means that the price per 1,000 gallons is going to be extremely high, and industry which wishes water may well be driven away from the point at which water is available in such quantity if it is not supplied to them at low prices. I would ask that very serious consideration is given to that particular point when any finance is dealt with or revenue expected from this scheme is taken into consideration. It may well be that capitalization of interest on the scheme may have to be carried beyond the point where the scheme enters the revenue-producing point to the point, in particular, at which a 50 per cent usage is able to be put into operation.

Those are the only points I wish to make, but I would not like it to be thought that any point I have made lessens my support for the motion proposed by the hon. Member for the Coast.

MR. COOKE: Mr. Speaker, there are just a few remarks I wish to make. I am grateful to hon. members for the support they have given to this motion, and especially to my hon. friend who has just spoken, who is an expert on these matters.

The hon. Chief Secretary as Member for Development has partly answered the hon. member Mr. Mathu, but I could perhaps more completely answer him by saying that, in fact, Rabai and the other African settlements mentioned are in a different catchment area from the Tsavo River, so that any water drawn from the Tsavo River would not in any way handicap the inhabitants of those parts. Actually, from the Tsavo River down to where it "winds its weary way", as the poet says, to the sea, there are no inhabitants until within two miles of Mulindi. Indeed, it is given up to the depredations of the larger pachyderms, and there are no inhabitants. What we have done to-day is that we have at last brought to the Taru desert water, and we hope that the desert will "flourish and blossom as the rose".

The question was put and carried.

KENYA REGIMENT (TERRITORIAL FORCE) (AMENDMENT) BILL

First Reading

For the motion of MR. RANKINE, seconded by MR. HONSON, the Kenya Regiment (Territorial Force) (Amendment) Bill was read a first time, and notice given that the subsequent stages of the Bill would be taken during this session.

IMMIGRATION CONTROL (AMENDMENT) BILL

Second Reading

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Immigration Control (Amendment) Bill be read a second time.

This Bill has been prepared as a result of a conference of the Principal Immigration Officers and the Attorneys General of Kenya, Tanganyika, Uganda and Zanzibar, and the Legal Secretary to the High Commission. Its object is to remedy certain defects in the practical working of the Immigration Control

[Mr. O'Connor]

Ordinance which have emerged as a result of experience in the four territories.

It has been found necessary to have a deputy to carry out some of the duties of the Principal Immigration Officer, particularly during absences from Nairobi. Also some of the functions of the Principal Immigration Officer have to be performed at the port of Mombasa. It is, therefore, proposed to amend the Ordinance to give power to appoint a Deputy Principal Immigration Officer, and also to give power to the Principal Immigration Officer to delegate some of his powers to immigration officers. The Bill contains the title "Deputy Immigration Officer", but, as the official will actually be a Deputy to the Principal Immigration Officer, I propose to move in the committee stage an amendment of that title, substituting the title Deputy Principal Immigration Officer.

It is often essential for immigration officers to know not only when a person enters the Colony but also when he leaves it. For instance, they have to keep track of visitors on visitors' passes, of persons on in-transit passes, of persons on temporary employment passes, and of aliens, and they must know not only when they enter but when they leave. Clause 4 (*a*) of the Bill will require the master of a ship, aircraft, vehicles, and so on, which is leaving as well as one which is arriving, if requested by the immigration officer, to furnish him with a list of passengers.

There is already in the Ordinance, under section 4 (*e*), a provision under which persons may be arrested without warrant if there is cause to suspect that they have contravened the Ordinance. The Bill will extend that to include cases where there is reason to suspect that their presence in the Colony is unlawful. There are cases in the Ordinance where, although the entry may not have been unlawful, the continued presence in the Colony of a particular individual is unlawful, and it is to cover those cases that this amendment is suggested.

The existing section 5 of the Ordinance enumerates the classes of persons who are prohibited immigrants, and states that it shall be unlawful for them to enter the Colony. The Bill will make it plain again that not only their entry into the Colony, but their continued presence in the Colony will be unlawful. Also a person against whom a deportation order is issued under any law other than this Immigration Control Ordinance will be a prohibited immigrant. That is, I suggest, an obvious and logical amendment.

On the other hand, some flexibility is necessary with regard to some of the categories of prohibited immigrants. As the law stands, it is a case of "once a prohibited immigrant always a prohibited immigrant". This Bill will sanction the provision of machinery by which a prohibited immigrant may be given a temporary pass and by which he may later, if he cures the defect, whatever it is, which caused him to be a prohibited immigrant, be given an entry permit. An example of that is a person who arrives with a passport which is not in order. He is, under the law, a prohibited immigrant, but that might be a defect which is easily curable, and this clause sanctions the machinery to cure it.

In section 5 (3) of the Ordinance there exists a provision by which a person who entered the Colony after the coming into operation of that Ordinance, which was on 1st August, 1948, and who is found by the Principal Immigration Officer to be a prohibited immigrant within four years after his entry, is deemed to have been a prohibited immigrant at the time of such entry. It is proposed by the Bill that the Ordinance be extended to cover prohibited immigrants who entered either before or after the 1st August, 1948. If is conceivable that that might, in some few cases, have the effect of involving a retrospective penalty, and if that clause is objected to on this ground, I shall have no objection to considering in committee an amendment to make it quite clear that the person concerned must have been a prohibited immigrant under the law in force when he entered, and not under the present law.

Section 6 of the existing Ordinance provides that no person to whom the section applies is to enter the Colony unless he is in possession of a valid entry permit or pass. There is already an exception in favour of diplomatic,

[Mr. O'Connor]

consular and Empire representatives and serving members of His Majesty's Forces and their wives and children. It is proposed to extend that exception to civilian employees of His Majesty's Departments of State and their wives and children.

The next amendment to the Ordinance is an amendment to section 7. Hon. members will remember what section 7 does. It is to the effect that any person other than a prohibited immigrant who satisfies the prescribed authority that he belongs to any of the following classes is entitled, upon application being made on that behalf in the manner prescribed, to a permit to enter the Colony. Then follow classes A to H. Each class has its prescribed authority, and I would point out that it is the prescribed authority, and not the Government or the Member, who has to be satisfied that the intending immigrant falls within any of those classes.

Class A deals with permanent residents, who obviously must have the right to entry, and with Government servants and other necessary entrants—I did not say necessary evils!

Class B deals with persons who are intending to engage on their own account in agriculture or animal husbandry. I propose to mention briefly who is the prescribed authority in each of these cases, in order that the working of the Ordinance may be appreciated and that the effect of the amendment which is proposed to this section may be better appreciated. We are sometimes accused of being something near a totalitarian state in matters of immigration. Well, you will see how in fact the Ordinance is administered.

As regards Class B, that is persons intending to engage in business, agriculture and animal husbandry, the prescribed authority is the Immigration Board, a body with an unofficial majority and an unofficial chairman, advised, as regards this class, by the Settlement Board, another body with an unofficial majority. An applicant under this class has to show that he is in possession of a capital sum of £800 or such lesser sum as the prescribed authority may determine in respect of the particular class of agriculture or animal husbandry.

Class C comprises persons intending to engage in prospecting or mining, and the prescribed authority is, again, the Immigration Board, advised, in this case, by the Commissioner of Mines in consultation with the Chamber of Mines, again two unofficial bodies. An applicant under that class has also to say that he is in possession of a capital sum of £800 or such lesser sum as the prescribed authority may determine in respect of any particular type of prospecting or mining.

Class D consists of persons intending to carry on trade or business on their own account and, again, the prescribed authority is the Immigration Board, in this case advised by the Board of Commerce and Industry, again two bodies with unofficial majorities, and again it is necessary for the intending immigrant to have £800 capital or such lesser sum as the prescribed authority may determine in respect of any particular class of trade or business.

Class E consists of persons intending to engage in manufacture on their own account. Again the prescribed authority is the Immigration (Control) Board, advised, in this case, by the Board of Commerce and Industry; and under this class it is necessary for the intending immigrant to have a capital sum of £2,500 or such lesser sum as the prescribed authority may determine in respect of any particular class of manufacture.

Classes F, G and H do not require capital sums, or rather, intending immigrants falling within those classes are not required to have capital sums. Class F relates to prescribed professions, and again the Immigration Board is advised by the appropriate persons. Class G consists of persons who have been offered and accepted employment other than temporary employment; again the prescribed authority is the Immigration Board advised in this case by the Labour Commissioner. Class H relates to persons in possession of an assured income—that is purely a question of fact, and the prescribed authority is the Principal Immigration Officer.

Any determination of any of these prescribed authorities is subject to appeal: Class A to the Supreme Court

[Mr. O'Connor]

and all the others to the Immigration Appeals Tribunal.

I am going to speak presently about the various maximum sums which the Bill seeks to alter, or rather to allow to be prescribed, but I would point out at this stage that every discretion which has to be exercised in Classes B to G is exercised by an unofficial body, and that every determination is subject to appeal either to the court or an appeals tribunal. Only in the case of temporary employment passes and in the case of aliens is the exercise of a discretion in the hands of an official. It would, of course, be quite impossible, owing to their very large number, that temporary employment passes should be decided by a board.

I should like to take this opportunity of thanking those unofficial gentlemen who give up so much time and labour upon these various boards and bodies, particularly the Immigration (Control) Board, and the Appeals Tribunal. I think that they carry out a most invidious and thankless task, and on the whole carry it out very successfully. (Hear, hear.) One does not always agree with every decision they make, but they have a particularly difficult job, and their task is not made easier by the constant efforts which are made to upset their decisions. It is a fact, I think, that people who will support a general proposition such as that the British character of the Colony must be maintained and that too many non-British people must not be admitted will, when it comes to an individual case, go to extraordinary lengths to get their own particular protégé admitted. (Laughter.) My own view, if I may mention it, is that where there is a statutory tribunal to whom statutory power is given, and particularly where there is an appeal, one should loyally support the decisions unless, of course, there are very cogent reasons for departing from them.

I have pointed out that an intending immigrant under Classes B to E had to have a specific sum as capital or such less sum as the prescribed authority may determine. Except for persons intending to engage in manufacture on their own account, the prescribed maximum is £800. It has been found in practice that that maximum is too little in certain cases, particularly in certain businesses. For instance, I am advised that it is quite hopeless, under present conditions, for a person who wishes to set up in business as, say, a builder, to attempt to do so on a capital of £800. A sum considerably in excess of that has been mentioned to me by the Board of Commerce and Industry as the maximum which should really be required. On the other hand, there may be, and certainly there are, I think, cases where a man could set up in a small business such as a shoemaker's—if one should mention shoemakers at this stage!—on a capital of £800 or considerably less.

It has therefore been suggested that it should be possible to alter these maximum sums without the business of amending the Ordinance on each occasion. The Bill therefore suggests that the maximum sums be left to be prescribed by the Government in Council. It may be that—and I must myself confess that I have a good deal of sympathy with the proposition—that the Legislature should keep legislative powers in its own hands and not hand them over to the Executive. As I have said, I share that feeling. I have always been a strong supporter of that proposition. At the same time, I think that this is a case where if you require in the interests of the subject himself speed and flexibility, you must give somebody power to vary these maximum sums, and I suggest the matter can be adjusted and the principle upheld if you give the Governor in Council power to prescribe the maxima and provide that any rule or regulation which the Governor in Council makes for that purpose must take effect subject to a resolution of the Legislative Council. In other words, by adding paragraph (*m*) to the regulations that are subject to a resolution of Legislative Council under section 13 (2). That reads: "Any regulations made under the provisions of paragraph (*h*) of this section shall be laid before the Legislative Council of the Colony and shall, subject to the terms of any resolution that may be passed thereon, come into operation thirty days after they have been so laid". It gives this Council power to move and pass a resolution disapproving of the regulation if they wish to do

[Mr. O'Connor]

so. If that course commends itself to Council, I shall be quite prepared in the committee stage to move the necessary amendment to carry that out.

To pass from that subject, section 7 (2) (*b*) of the Ordinance contains a provision that, if a person fails without reasonable cause to engage or continue in the same occupation or in similar occupation to that for which he obtained an entry permit, the prescribed authority may order him to leave the Colony, whereupon his presence becomes unlawful. For instance, if he got in, let us say, as an artisan, and leaves that employment and becomes, let us say, a tailor's assistant (which perhaps he may have been all along), the prescribed authority can call on him to leave the Colony. But the wording of this sub-section has given trouble; it is the words "fails to engage in or to continue in", and the words "without reasonable cause". Does a man "fail to" continue in employment without reasonable cause if he is dismissed from it? I do not think one could say that he does; it seems to me a very reasonable cause for failing to continue in employment.

But, if you do not cover that, immediately you open a very wide gap in the Ordinance, that is collusive dismissals, and that is what we want to stop by this amendment. On the other hand, if an immigrant wishes to continue in the same or similar employment, it will not be necessary for him to be called upon to leave. The position will be that he will be put back to the position of an immigrant seeking to come in, and his case will be re-examined by the Board in the light of the altered circumstances.

Clause 11 of the Bill increases the penalties for coming back to the Colony in breach of a deportation order.

I think the rest of the amendments are all of a trifling minor nature. They are explained in the "Objects and reasons" and I do not think I need mention them now, but I propose to say a word about the position with regard to temporary employment passes, because that has given rise to considerable difficulty.

The present position as regards temporary employment passes is as follows. They are covered by regulation 22 of the main Immigration (Control) Regulations, 1948, and sub-regulation (1) says: "A temporary employment pass may be issued by the principal immigration officer upon application made to him as in Form 11 in the first schedule hereto to any person who to his satisfaction is qualified to undertake employment of a particular class as to which he has been advised by the Labour Commissioner that no suitably qualified residents of the Colony are for the time being available for employment of such class".

That has been found in practice to be too far reaching. As a result of that, the Principal Immigration Officer could not issue a temporary employment pass unless the Labour Commissioner could advise him that no "suitably qualified resident of the Colony" was available for "employment of such class", and the Labour Commissioner was unable to advise to that effect if he had on his books any persons who might reasonably be said to be suitably qualified for that employment, notwithstanding the fact that those persons might, for one reason or another, be quite unacceptable to the prospective employer. That, I suggest, is manifestly too restrictive. It is suggested that the regulation should presently be altered by something on these lines:—"A temporary employment pass may be issued by the Principal Immigration Officer upon application made to him as in column 2 of the first schedule hereto by any person, if the Principal Immigration Officer is satisfied, after consultation with the Labour Commissioner, (*a*) that such person is qualified to undertake employment in respect of the trade, business or calling in respect of which application has been made". (That is an extremely necessary provision because people come in and say they are qualified to work at certain jobs and employment, when they are very far from being qualified in that respect); "(*b*) that there is not already over-employment in the class of trade, business or calling concerned; and (*c*) that the taking up of such employment will not be to the prejudice generally of the inhabitants of the Colony."

It is proposed to promulgate a regulation on those lines shortly after the passing of this Bill, and that should, I

[Mr. O'Connor]

suggest, do away with much of the difficulty that has been experienced in getting in suitable persons, particularly young men, for certain types of employment on temporary employment passes. The discretion as regards temporary employment passes will rest, as before, with the Principal Immigration Officer, and the Labour Commissioner will advise him on those lines.

I have nearly finished what I have to say about the contents of the Bill, but I think I must take this opportunity to remove a misconception which may be prevalent as to the contents of the Bill.

I noticed a report in the Press of a recent speech made by a gentleman for whose opinion I entertain great respect, but who on this occasion, if he was correctly reported, uttered words which might give rise to grave misapprehension as to the contents of this Bill. As his speech may have caused misunderstanding and perhaps some alarm in the minds of his hearers, and of those who read the Press report, I must take this opportunity of correcting that misapprehension. The remarks I refer to were to this effect: "Concern at the increasing tendency of Government to rule by regulations rather than statute which results in unjustifiable encroachment upon the liberties of the subject and tends to deprive him of legal redress in the Courts of Law was expressed by the new President. . . . In support of his case, the new President referred to the new Immigration Bill, which contained a clause giving the Governor in Council power to exclude any person, or class of persons, from the provisions of the Ordinance. That drove the proverbial coach and horses right through the Bill. The Governor might receive instructions from the Colonial Office, which he would have to carry out, to admit 300,000 displaced persons from England. He could make use of that emergency regulation to get round the statute passed by Legislative Council. The Attorney General had given an assurance that that regulation would not be invoked without previous debate in Legislative Council, but nevertheless, the power was there."

Those are statements to the effect that the new Immigration Bill contained a clause giving the Governor in Council power to exclude any person or class of persons from the provisions of the Ordinance, and that that provision could be used to get round the statute passed by the Legislative Council, and that the Attorney General had given an assurance that the regulation would not be used without previous debate in the Legislative Council, but that the power was there.

I was unaware of any such provision in this Bill or of any foundation for those statements. I thought that the speaker was referring to this Bill, which is the only Bill which, I suggest, could last week when the speech was made be correctly described as "the new Immigration Bill". It contains no clause allowing the Governor in Council to exempt any person or class of persons from the provisions of this Ordinance. The speaker was not, however, as I have ascertained, referring to this Bill, but to the Bill which was enacted in January or February, 1948, I think I am correct in saying, and became the Immigration Control Ordinance of 1948, and has been in operation since the 1st August last year.

It does contain a provision to that effect. I will read it: "The Governor in Council may make regulations for all or any of the following purposes:— . . . . (*h*) providing for the exemption or exclusion of any person or class of persons from all or any of the provisions of this Ordinance and prescribing any conditions subject to which such exemption or exclusion shall take effect." But, and it is an important but, that provision is subject to the provisions of sub-section (2) of section 13 which I have already read to the Council. It reads as follows:—"Any regulations made under the provisions of paragraph (*h*) of sub-section (1) of this section shall be laid before the Legislative Council of the Colony and shall, subject to the terms of any resolution that may be passed thereon, come into operation thirty days after they have been so laid."

So that, as you will see, the Legislature has retained control over those exemption provisions, and if the Government were to introduce a regulation which would exempt 300,000 displaced persons, or even 30, it would have

[Mr. O'Connor]

to be placed before this Council and I do not imagine it would pass without debate.

What the Government has in fact done so far under that paragraph is to exempt from one section of the Ordinance such persons as those holding valid inter-territorial passes, children of permanent residents, school boys and students undergoing courses of education outside the Colony, husbands of permanent residents, pensioners, and to make some special provision for Arabs who require special provisions. All those regulations, I am informed, were duly laid before this Council.

As I have said, the gentleman concerned was referring to the provisions of the Immigration Control Ordinance, 1948, when that was a Bill and before its enactment, and, speaking from memory as he was, I understand he had overlooked the provisions of sub-section (2) of section 13 which I have read, and of course I accept that. I do not say what I am saying in any spirit of antagonism, but merely in order to correct a possible misapprehension which the words were quite capable of giving, and did in fact give to me.

For the rest, may I say that I myself would naturally endorse the importance of preserving the principle that legislative powers and quasi-legislative powers should be kept under the control of the Legislature, unless there are very cogent reasons for departing from that principle.

I think that that is all I need say in introducing this Bill, and if any questions arise or if there is any point I have not made clear, I will endeavour to do so at a later stage in the debate, but I do want it to be appreciated how this machinery of immigration works and what a very large part unofficials do play, and I think rightly play, in its administration.

MR. HOBSON seconded.

MR. PATEL: Mr. Speaker, I rise to move the following motion under rule 29, sub-rule (2), to this effect: "That the debate on the second reading of the Bill to amend the Immigration Control Ordinance, 1948, be adjourned until an opportunity is afforded for examination of its provisions, and other matters regarding the working of the Immigration (Control) Ordinance, 1948, by an inter-territorial committee which should include unofficial members of all the East African Territories."

My reasons for moving this motion are that some of the very important provisions included in this amending Bill were very carefully examined for a long time by the members of the Legislative Councils of adjoining territories, in consultation with the members of this Council. As hon. members are aware, the first Immigration (Control) Bill was published in the first instance in February, 1946, for comments and criticism, and the two points which were very strongly criticized in many quarters were, firstly, that junior officers in the Immigration Department should not be given such very wide powers, because fears were expressed at the time that those powers might not be well used. The second point which was very strongly criticized was in regard to the provision of amounts under section 7, classes B to D. The amounts provided then were considered in certain quarters to be very high, and ultimately those amounts were reduced to the figures which appear to-day in the Immigration (Control) Ordinance, 1948.

Now, those are two very important points which were discussed at great length outside this Council, from the the platform and in the Press, and consultations took place between the representatives of the four East African Terriorties.

Now, sir, to make amendments with regard to these two very important points at this stage, without consultation with adjoining territories, is in my opinion not correct procedure. If I may read what Mr. Foster Sutton, the then Attorney General, said while introducing the Bill it will make my position clear. He said:—

"As hon. members are no doubt aware, this Bill was first published in the Official Gazette on 28th April, 1946, well over 18 months ago. It was published, of course, for comment and criticism, and after its publication we received a large number of comments and, I was going to say, almost an appalling number of criticisms. Meetings were held all over

[Mr. Patel]

the country, and I attended a fairly large number of them. Simultaneously with its publication here a similar Bill was published in Tanganyika Territory, in the Protectorate of Uganda and in Zanzibar. They had numbers of criticisms and comments. We also received a delegation which was appointed by the Government of India to make representations to the Governments of the East African territories in connexion with the policy incorporated in the Bill.

"In the light of all that comment and criticism, and in consultation with the representatives of the other East African territories, the Bill was revised, and I think that I can fairly say that the great bulk of the criticisms have been met in this Bill which is now before the Council. This new Bill was published in the Official Gazette on 30th April this year" (that means 1947) "and since its publication again we have received a number of criticisms and comments, and I have no doubt hon. members will have a good deal to say about it during the course of this debate. As hon. members know, it is Government's intention to appoint a select committee of this Council to consider the measure, and that select committee will, of course, fully and carefully consider any fresh criticisms levelled at the measure during the course of this debate, and which have been levelled against it since its publication in April this year."

After that a joint select committee of the four East African territories met in Nairobi on the 28th November, 1947. On that committee there were unofficial members from the four East African territories, and after long deliberations they made unanimous recommendations in regard to certain provisions of that Bill in which those two points which I mentioned were included.

If I may, I should like to refer to the speech of Mr. Foster Sutton while introducing the select committee report, column 845 of Hansard, January, 1948. He said:—

"As hon. members will no doubt remember, this measure has twice been published in the Official Gazette of this Colony, and when it came before this Council I, after the second reading, moved that it be referred to a select committee. That select committee held a number of meetings in Nairobi where the whole of the policy to be embodied in the legislation was fully and carefully reviewed, and members of the general public and public bodies were given a further opportunity of making representations in connexion with it. We held meetings at which evidence was offered in Nairobi on the 6th and 22nd November, at Nakuru on the 10th, at Kisumu on the 12th, in Mombasa on the 17th, and a combined meeting of all the select committees of the East African territories was held in Nairobi on 28th November. I only mention these facts to show that the Council may be satisfied that the measure has received the most careful attention and that the public have been given full and adequate opportunity of making any representations they wished to make". Then he says: "I am glad to be able to announce that, in spite of the controversial nature of this legislation, the meeting of the combined committees came to a unanimous agreement".

When on an important measure like this consultations took place between the four territories among official and unofficial representatives, and agreement was reached on very important points, I submit it is wrong to amend those points without consultation with the adjoining territories and the official and unofficial representatives.

Referring to the question of the amounts which were prescribed under section 7, Mr. Foster Sutton then said: "For the benefit of those who so vigorously criticized the monetary provisions in Classes B to H, I would draw attention to the fact that, in the light of all the representations that were made, the amounts have been considerably reduced. In the case of Class B, the amount has been kept the same, but we have introduced a certain degree of flexibility by keeping the figure at £800, but adding 'or such lesser sum as such prescribed authority may determine'."

On these two points, in regard to giving powers to junior officers in the Immigration Department and in regard to the question of prescribing the amounts of capital, a great deal of discussion took place in the country, and later on an agreed Bill and an agreed select committee report came before this Council. To amend the Ordinance without giving the same kind of opportunity to the territories and the unofficial members is, in my submission, not the correct procedure, and I venture to say that it is to a certain extent going back on what was unanimously agreed to in November, 1947.

[Mr. Patel]

There may be reasons why this Bill has been brought forward at this stage, but in regard to these amounts I would like to have some idea of the number of immigrants who possessed the amounts prescribed and have been unable to carry on their occupation and have become bankrupt or insolvent. Unless this Council is shown that any of these immigrants have got into financial trouble on account of these amounts, it will be incorrect to say that experience shows that it is necessary to put forward these amendments. We started the operation of the Ordinance on 1st August, 1948, and the demand for increased amounts from certain quarters came within two or three months, so that it is incorrect to say that the amending Bill has been brought forward in the light of the experience gained by the Immigration Board. I would say that it is in an arbitrary manner that some people have asked for these increased amounts, and in my view to give power to the Governor in Council to prescribe them is done with a view to getting these amounts increased to the amount that the gentlemen who are in favour of increasing them would like to have them.

There are also many other matters which could be discussed by an inter-territorial committee, where unofficial members could examine the working of the Ordinance. The experience of the Immigration Board of Kenya alone is not sufficient in a matter like this, and the short period of experience is also insufficient. When the Bill became law the terms of the Ordinance were the same in all the four territories, and that we should now at this stage amend it as we like in this territory is throwing away what we were told at the time, that there must be uniformity in all these territories.

For these reasons I move the adjournment of the debate on the Bill to give an opportunity for an examination on an inter-territorial basis.

MAJOR KEYSER: Mr. Speaker, I move that the debate be now adjourned in order to permit the hon. Member for Agriculture to make a statement on the manufacture of vaccines and sera, which is of much interest to a large number of people in the Colony.

Council agreed, and the debate was adjourned.

SERA AND VACCINES

STATEMENT ON MANUFACTURE

MAJOR CAVENDISH-BENTINCK: Mr. Speaker, in reply to a question this morning I said that Government was prepared to make a statement on the subject of sera and vaccines. I am afraid it will be rather long, because I felt that if it was to be of any use at all it must be fairly complete.

At the recent session of the East Africa Central Legislative Assembly held at Kampala on the 27th April, the following motion was passed: "That this Assembly requests the East Africa High Commission to appoint a Committee of Inquiry to inquire into—(*a*) The causes of the death of cattle inoculated with the K.A.G. and other vaccines during recent months and the causes of the apparent failure of the Kabete Laboratory organization to maintain a correct standard in the preparation of certain biological products; (*b*) whether such products were tested before being issued to users; (*c*) whether proper precautions were taken to ensure that the Kabete farms were kept free from outside infection; (*d*) whether any failure under (*a*), (*b*) and (*c*) was caused through culpable negligence on the part of any officer; (*e*) all other matters relevant to the recent breakdown of the biological products; (*f*) to make recommendations to prevent a recurrence of any such failure."

That being the case, members will appreciate that questions regarding any breakdown in the production of certain biologicals and the cause to which any such breakdown could be attributable are matters *sub judice*, on which, naturally, it would be improper for me, at this stage, to venture even a personal opinion. My statement is going to be, therefore, strictly factual. It will be in three parts: (*a*) past events, (*b*) mea-

[Major Cavendish-Bentinck]
sures taken to deal with a situation which arose, (c) a statement on the present situation.

Dealing first with the historical aspect of the troubles which have arisen in connexion with rinderpest K.A.G. virus, I would recall that about May, 1948, difficulties were experienced in carrying on the serial passages of the K.A.G. strain. For some reason which is still under investigation, the goats reacted poorly, or not at all, and dried tissues harvested from such animals failed to immunize cattle in reasonable dilutions.

In August, 1948, the Uganda Veterinary Department notified East African Veterinary Research Organization that rinderpest was spreading among 140,000 head of cattle that had been inoculated with K.A.G. virus two to four months earlier and investigations were made by staff from Kabete. In October, 1948, mortality occurred among a mob of native heifers which had been inoculated with bovine virus following inoculation with K.A.G. in the preceding August. The first positive intimation that untoward results were occurring from the actual use of K.A.G. virus in Kenya came from the Nanyuki District, and two officers of the East African Veterinary Organization immediately conducted an investigation. This was on 24th January this year. At about the same time reports were received from Kitale, Thomson's Falls and Rumuruti, all of which were promptly investigated, while infection was subsequently confirmed in Songhor and Solai, and also in the native areas of Masai, Kamasia and North Nyanza.

I would stress here that although the symptoms and post-mortem findings were varied and not always typical of rinderpest, and some people doubted whether the disease was in fact rinderpest, all K.A.G. virus in the hands of field officers was immediately recalled, and appropriate measures for the control of rinderpest were immediately adopted by the Kenya Department of Veterinary Services. They took no chances. This had the effect of confining the infection to all but two of the twenty European farms involved, and the only extensions which occurred were from one farm in Rumuruti and one farm in the Thomson's Falls area. In all, mortality associated with the breakdowns in the European areas has totalled under 700 head, the majority of which were young uninoculated, and therefore susceptible, stock.

In the native areas it is, I am sorry to say, less easy to assess the mortality which has occurred, but the only areas in which breakdowns are known to have occurred are the Kajiado district of Masai, two locations of North Nyanza, and the Eldama Ravine area of Kamasia, in which mortality is estimated to have been 8,000, 600 and 800 respectively. In Masai the picture is complicated by the fact that there was a co-existent outbreak of natural or "wild" rinderpest.

In all these instances investigation established that one or other of two very large batches of K.A.G. virus can be incriminated. It is also the case that breakdowns did not occur on a number of farms where the same batches were used.

On certain farms some cattle which had previously been treated with K.A.G., and which had been appropriately branded, contracted rinderpest by contact infection with stock inoculated with the contaminated batches of K.A.G. Although this suggests that the immunity of previously inoculated stock may be in doubt, it is considered that this is the case only on those farms where it has been the practise to use serum at the time of inoculation with K.A.G. Appropriate steps are being taken by the Veterinary Department to remedy the position in this respect by re-inoculating all animals whose immunity is in question.

That deals with the past, and I will now deal with the second part of this statement.

Members will appreciate from the foregoing brief historical précis that by the end of February or the beginning of March this year it became evident that a position was developing which obviously might become extremely serious. Immediate steps were therefore taken by the Government of Kenya to secure, via our Ambassador, through the good offices of the Government of Egypt, that an early visit should be paid

[Major Cavendish-Bentinck]
to East Africa by Mr. Daubney who has, as members know, unrivalled experience in research and production under East African conditions, and who is in fact an eminent authority on virus diseases. Mr. Daubney was able to visit East African within a few days, and I am sure I am voicing the opinion of all present in publicly expressing our gratitude to the Government of Egypt for their ready collaboration and assistance to this Government in this matter. (Hear, hear.)

I received Mr. Daubney's report just before Easter and immediately submitted it to the Governor, also to the Governor in his position as the Chairman of the High Commission, and to the Administrator. The report has also been sent to the Secretary of State. The report is highly technical, and does raise a number of contentious questions which have been and will be commented on by various authorities concerned, and as it is, I submit, *sub judice*, until a full report is made by the Commission of Inquiry, and I think it would obviously be improper to publish Mr. Daubney's report by itself under such conditions at the present moment.

One feature, however, which arose from the report was that one of the conditions which should be put right forthwith was the dual control which has obtained at Kabete during the past nine to ten months. In this respect it was evident that lack of suitable accommodation and overcrowding had made it impossible to arrange for a clear division of responsibility as between the Kenya Veterinary Department and the East African Veterinary Research Organization at Kabete. Immediate administrative action was, therefore, obviously indicated, and a meeting under the Chairmanship of the Governor was held at Government House on Good Friday followed by a further meeting on Easter Saturday, at which it was decided that as an interim measure complete control over all operations at Kabete should be reinvested forthwith in the Kenya Government—(applause)—and that the Kenya Government should resume full responsibility for the farm, the whole of the Kabete area, and for the manufacture and issue of biological products with effect from the 19th April. In accordance with this decision I made it my personal responsibility to supervise this change-over and placed Dr. Purchase in sole charge under, of course, our Director of Veterinary Services, Kenya. Dr. Purchase is an officer of very wide experience, in whom I have complete confidence.

You will note that this change-over is described as an interim measure, but it may be expected that this interim period will last for a very considerable time. In short, it is likely that for some years the production of biological products and research operations closely associated with the manufacture of biological products and diagnostic services for this territory will be operated by the Kenya Government at Kabete, who will, of course, welcome and appreciate such limited numbers of East African Veterinary Research Organization workers as may be posted as "guest" scientists to this Kenya institution.

I would stress that, apart from these responsibilities, there still remains the all important work of long-range research which will be and remain the function, and a very important function, of the East African Veterinary Research Organization. Thus nothing whatever is being done which affects the future long-range role of the inter-territorial organization which can now devote its energies to the true objectives for which it was primarily created.

I now turn to the present situation.

The present position is that as far as European areas are concerned, I think I can say that the disease is under control, and there is every reason to expect that all quarantines will have been withdrawn by the end of this month.

As regards native areas the position is satisfactory except in the Kajiado–Masai, where the disease is still active though not, I am glad to say, at the moment unduly alarming. It must be admitted, however, that in this area the situation has not been made easier by the fact that we have, I am afraid, lost the confidence of the people. In the Narok area there is an outbreak of "wild" rinderpest, but here, strangely enough, we have the fullest possible co-operation of the stockowners and the position is rapidly being brought under control.

[Major Cavendish-Bentinck]

As soon as it became evident that the Kabete material might be contaminated, seed material for the preparation of K.A.G. was obtained from Cairo and we are now preparing 50,000 to 70,000 doses per week from Cairo seed. The temporary demand occasioned by the fact that no K.A.G. has been available for four months exceeds 200,000 doses per week, and pending getting ourselves back into full production we are for the time being drawing supplies from Egypt and are thus able to meet the total requirements of the three East African territories.

Incidentally, thanks to Mr. Colville's assistance in nursing thermos flasks across Africa recently, we now also have seed from Vom in Nigeria and thus have an alternative safe line in case of necessity.

As regards spleen vaccine for use on grade cattle, all outstanding orders have been fulfilled and ample stocks are, and will be, available for immediate use. Indeed, in view of the emergency we could afford to take no risks and have in consequence, I am afraid, considerably over-produced. There is, therefore, now no excuse for farmers not to protect their grade stock against rinderpest by using this vaccine.

I will now briefly refer to the other major biologicals.

Blackquarter. — Arrangements have been made by the East African Veterinary Research Organization to replace, free of charge, all issues of this product which were dispatched between 14th October and 31st December. This does not necessarily infer that all issues between these dates were sub-standard—none were toxic, but it is known that a number of batches have failed to protect. For the present we are issuing South African vaccine, but 60,000 doses have recently been prepared at Kabete and will be available as soon as these batches have been tested as to their ability to confer a satisfactory immunity. I think the tests are out to-day.

Pleuro-pneumonia.—As regards pleuro-pneumonia vaccine, I can only give members an assurance that the product being issued is up to the highest standard possible.

Anthrax.—As regards this vaccine I am satisfied that our product is as effective as that prepared at Onderstepoort or in other parts of the world.

In conclusion, I wish to pay very sincere tribute to the Director of the East African Veterinary Research Organization and to all his officers for their full collaboration and assistance in ensuring that re-assumption by the Kenya Department was carried out without any friction. The majority of the East African Veterinary Research Organization officers have had to be temporarily seconded to the Kenya Government in order to carry on the work of producing sera and vaccine. Their loyalty to the new direction and their wholehearted co-operation under rather difficult circumstances is most remarkable, and I would like to express my personal gratitude to them. (Applause.)

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned till 9.30 a.m. on Wednesday, 18th May, 1949.

Wednesday, 18th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Wednesday, 18th May, 1949.

His Honour the Speaker took the Chair at 9.35 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 17th May, 1949, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

By Mr. Vasey:

Report of the Public Accounts Committee

Your Committee begs to report that, since the report of the Director of Audit on the accounts for 1947 has been completed and is now awaiting printing, it decided not to examine the report of the Director of Audit for 1946.

2 There being no Ordinance in this Colony similar to the Exchequer and Audit Acts elsewhere, and the Committee having been informed that a model Bill for such purposes was in preparation at the Colonial Office, the Committee advises that this matter should receive the attention of the Attorney General. It also advises that consideration should be given to the matter of the Committee being enabled to take evidence on oath, and to compel the attendance of witnesses, when the Committee deems either course to be necessary.

E. A. Vasey,
Chairman.

Nairobi,
17th May, 1949.

ORAL ANSWERS TO QUESTIONS

No. 2—Escarpment Indian Traders

Mr. Pritam (Western Area):

(*a*) Having regard to the great hardships caused to Indian traders of Escarpment by the non-implementation of the recommendations contained in paragraph 6 (*a*) of the report of the Railway Realignment Committee, will Government please state the precise reasons for the inordinate delay in implementing those recommendations?

(*b*) What steps does Government propose to take with a view to expediting these implementations in order to alleviate the distress of these Indian traders?

Mr. Mortimer: I regret that I am unable to give the hon. member a definite answer at this stage. This complicated matter is now under consideration by the Governor in Council and I hope to be able to make an announcement about it in the very near future.

Mr. Patel: Mr. Speaker, arising out of that answer, would the hon. Member be good enough to inform us why steps have not been taken to implement it earlier?

Mr. Mortimer: Mr. Speaker, there are many more factors involved in this question than appeared at the time when the Assessment Committee was dealing with the various claims. Situations have arisen since that date which have caused quite extensive inquiries to be made, and the whole matter is of sufficient importance to come before review by the Governor in Council, and that will be at a very early date.

No. 8—Fingerprint Booklet

Mr. Maconochie-Welwood:

Will Government state: (1) The cost of publishing the recent booklet on Fingerprints and Registration?

(2) By whose order it was issued?

Mr. Rankine: (1) £640 plus £10 for distribution.

(2) As stated in the booklet, it was edited and published by the Information Officer. It was issued under the authority of the Labour Commissioner.

Mr. Maconochie-Welwood: Mr. Speaker, arising out of that reply, is Government satisfied that publication of this curious booklet was in the public interest and not, in fact, an insult to public intelligence?

Mr. Hyde-Clarke: Mr. Speaker, in view of the answer given by the hon. Chief Secretary, I think, perhaps, that I should reply to this supplementary question.

[Mr. Hyde-Clarke]

It is obvious from its reception that the publication of this pamphlet was most unfortunate. It was, I need hardly say, produced with the best intentions —(hear, hear)—but after seeing its effect and upon more mature consideration it must be admitted that the necessary publicity of this most important measure should have been subjected to an entirely different approach. For my own part, I take the opportunity to express regret for the embarrassment caused to hon. members and those who gave support to the measure, and for the inclusion in the pamphlet of material which has given needless offence to any individual or any community. (Applause.)

MR. ERSKINE: Mr. Speaker, arising out of the replies, would Government then agree that, in the words of Macbeth, the pamphlet "but teaches bloody instructions which, being taught, return to plague the inventors"? (Laughter.)

MR. COOKE: Arising generally from the question, could we have the figures of the numbers who have been registered in the last two days in Nairobi?

MR. RANKINE: The figures, sir, are as follows: 147 Europeans, 145 Asians, 26 aliens, and 143 Africans, making a total of 461. I might add that that figure is about as many as the organization can reasonably cope with.

MR. HAVELOCK: Mr. Speaker, arising out of the answers, what steps are Government going to take to ensure that in future they obtain reliable information and advice on publicity matters?

MR. RANKINE: Sir, all the steps that we can! (Laughter.)

MR. MADAN: Mr. Speaker, arising out of the figures given by the hon. Chief Secretary, will he kindly state how many of these people were officials and unofficials?

MR. RANKINE: Mr. Speaker, the figures can be broken down as follows: 91 European civil servants, 56 European private individuals, 98 Asian civil servants, 47 Asian private individuals, 26 aliens (I do not think any of those are civil servants), 116 African civil servants, 27 African private individuals.

SCHEDULE OF ADDITIONAL PROVISION

No. 4 of 1948

MR. DEVERELL: Mr. Speaker, I beg to move: That the Standing Finance Report on Schedule of Additional Provision No. 4 of 1948 be adopted.

Hon. members will remember that earlier this session this Schedule was referred to Standing Finance Committee, which considered the Schedule on the 12th May and recommended approval of the expenditure contained therein.

MR. PADLEY seconded.

The question was put and carried

IMMIGRATION (CONTROL) BILL

SECOND READING

The debate was resumed.

MR. MADAN: Mr. Speaker, I beg to second the motion of the hon. member Mr. Patel. I do so because the hon. member Mr. Patel has very lucidly pointed out the procedure that was followed when the Bill came up for debate in this Council. For some reason or other, that procedure has been abandoned. For some reason or other, the procedure of consulting unofficial members on an important measure of this kind has been given up. Although I realize that certain points and difficulties which have come to light as a result of experience must be dealt with, and I have no objection to the clauses of the Bill which deal with those points, it is on the question of policy that I am opposed to the Bill. For example, the question of raising the various amounts as provided for in clause 7. We have been told that as a result of the working of the Ordinance it has become necessary that this power should be given to the Governor in Council to fix the amounts.

MR. VASEY: On a point of order, surely we are not at this stage debating the merits or otherwise of the amending Bill? Surely we are only considering whether debate on the Bill should be adjourned in order that an inter-territorial committee may consider its provisions?

THE SPEAKER: I think the hon. member should confine himself strictly to the motion.

MR. MADAN: While doing so, may I not give my reasons why this debate should be adjourned?

THE SPEAKER: You may give your reasons.

MR. MADAN: As I was trying to say, it is proposed that the power to fix the various amounts should be given to the Governor in Council. If you compare this tendency with the policy laid down in the Ordinance, you will find that under the Ordinance a sum of £800, for example, was arranged, or such lesser amount as the prescribed authority may see fit to order. The tendency of the present Bill is to increase these amounts, but we have not been told why it is necessary that these amounts should be increased. We have not been told the number of people who entered the Colony under these particular classes, or the number of people who, while having their £800 apiece, could not carry on or failed in the various ventures which they undertook.

I would recommend acceptance of the hon. member Mr. Patel's motion in this Council, because not only will you get the benefit of the advice of the unofficial members of the other territories, but we will have an opportunity of satisfying ourselves whether it is really necessary that these amounts should be increased, or that it is necessary that powers should be delegated to junior immigration officers. If we adopt the principles of this Bill it seems to me that it is becoming more in the nature of a deportation Ordinance, and we might as well re-title it as the Immigration Prohibition Ordinance instead of the Immigration Control Ordinance.

I cannot refrain from saying that, as a result of the bitter controversy that took place over the original Bill, when the amounts came to be fixed the Government apparently thought that, just as in the case of the Transport Licensing Ordinance, instead of continuing the struggle it was easier to put it in the form of an amending Bill. We had evidence of that kind of thing in connexion with the Transport Licensing Ordinance.

I should like to have definite figures to show why it is considered necessary that section 7 of the Ordinance should be amended as is proposed. I am only referring to the question of policy now. I should like also to hear from the hon. mover why the words in sub-section (3) of section 7: "and any person who is ordered to leave the Colony" have been deleted from the proposed new sub-section (3) in clause 7 (e) of the Bill. Perhaps we could deal with that when we deal with the Bill clause by clause.

I propose to oppose this Bill because we are not satisfied that it is necessary to amend it as is proposed.

THE SPEAKER: In putting the question, I do not think this Council can do anything more than recommend an inter-territorial committee; it cannot appoint one. I would suggest to the hon. mover that, though this may be quite in order and could be debated, the inter-territorial committee which was in existence before consisted of select committees which were appointed by each Council. However, there it is, it is open to debate.

MR. HAVELOCK: Mr. Speaker, as a member of the Immigration Board I wish to oppose this motion very strongly. There is no doubt at all that the great majority of the Board have made up their minds over a long period that the original Ordinance as it stands at the moment is unworkable, and the amendments which have been suggested are definitely necessary. In fact, most of the amendments were suggested, or a lot of them, by a majority of that Board. The hon. Member for Eastern Area is himself a member of the Board and has heard discussions going on about these things for many months, and I feel that even he in his heart of hearts realizes that as the thing stands at the moment the Board cannot work properly. In fact, some members feel so strongly on the subject that, if these amendments were not passed, they would consider they were wasting their time and would rather resign.

The amendments suggested, especially as regards the sums of money which have been referred to in debating this Bill, do offer a certain flexibility, as has been very lucidly explained by the hon. Attorney General, and that flexibility is definitely required by the Board to carry out their work.

[Mr. Havelock]

Also, it may be a sad thing to say, but it is necessary to say, I think, that to work on complete inter-territorial lines seems to be impracticable; although it has been tried under the original Ordinance, I think it has now been proved that it cannot be done. Conditions in each territory are so varied that we will have to have variations in the actual detailed working under the Ordinance in each territory.

I am surprised at the suspicion that has been shown by the hon. Member for Central Area as regards the operation of the Ordinance. It seems to me that since the Ordinance has been in effect with the Immigration Board itself as the prescribed authority under so many of the clauses, no possible suspicion, no possible recrimination, could be made against that Board, in any racial way anyway. It has been completely fair-minded and level-headed and has treated all immigration subjects with a completely open mind without any racial discrimination. As the hon. Member for Eastern Area has himself been a member of that Board for so long, I am extremely surprised that he should make certain innuendoes in his speech in proposing this motion, to the effect that there is something behind it and that there may be something against his own community in the suggested amendments. He himself must know that there is nothing of the sort.

There is one point, of course, that the hon. Member for Central Area has made, and it is one that is near to our hearts on this side of Council. He suggested that his motion will give an opportunity for unofficial members to be consulted. Naturally we always like to be consulted, but he was referring, I think, mostly to the sums to be prescribed, and I would suggest that, under the amendment as suggested by the hon. Attorney General when moving the Bill yesterday, there will be ample opportunity for unofficial members to state their case and to make recommendations in this Council.

As regards the unofficial members of the other territories being consulted on the working of this Bill in Kenya, I have dealt with that point, and I really think now that that is completely unnecessary. There is no doubt that there will have to be delay if there was to be an inter-territorial committee, and the actual work of the immigration authorities would suffer from that delay, as it has done for the last six to nine months.

I beg to oppose.

MR. O'CONNOR: Mr. Speaker, I rise to oppose the motion.

The main ground on which it has been put forward is that previously there was consultation between the governments of the various territories in which unofficials were represented. That was the first ground. What I believe actually took place, as you pointed out, sir, was that there was consultation between select committees appointed by each legislature. Instead of that, it is now proposed that this Bill—which has been agreed by the law officers in each territory—should be put before the legislature of each territory. I cannot see that there is anything which should give rise to the suspicion that the unofficials in each territory are not going to be fully consulted.

I have been in touch with the Attorneys General of Tanganyika and Uganda within the last two days, and I have confirmed that they are proceeding upon these lines and that they do not expect a great amount of opposition or any considerable opposition in their legislatures. That, of course, remains to be seen, and I say nothing which would bind them or their legislatures in that respect, even if I could. But I say this to explain the procedure and make the point that the legislatures, including unofficial members, are being and will be fully consulted. Why should Kenya lag behind if that is what the other territories are doing?

I said in moving the second reading of this Bill, that it was mainly designed to remedy certain defects in practice found in the working of the Ordinance, and that has just been endorsed by the hon. member who last spoke who is a member of the Immigration Board. I do suggest that it would be wrong to put upon the immigration authorities this burden of working an Ordinance which has been found in certain respects to be impracticable to work.

[Mr. O'Connor]

The next grave objection made by the hon. Member for the Eastern Area and the Central Area was to the proposed amendment of section 7, which would enable the Governor in Council to prescribe the maximum capital amounts which intending immigrants must have. I put forward, in moving the second reading, the reasons why I suggested that that was necessary, and I put forward a proposal by which complete control can be kept by the legislature. I must again emphasize that flexibility is necessary, and I think it will be quite obvious that it is necessary between trade and trade. Nobody suggests in common sense that the same amount of capital is required for one trade as for another or, I should have thought, that the same amount of capital is required in one territory as in another. I suggest that there is necessity for flexibility.

The point was made that no figures had been produced as to failures which have resulted from this section of the Ordinance. I agree that no figures have been produced because the Ordinance has only been in operation a short time. But why should we wait for the failures, why should we wait for the bankruptcies —(hear, hear)—when we are having these applications and the advice of the people on the spot, who should know, is that it is quite impossible for these people to come here and hope to succeed with that amount of capital? Why should we encourage these unfortunate people to come in to what we know is certain, or practically certain, financial failure? (Hear, hear.) I do suggest that we in this Council do retain control and that it is obviously sensible and practical business policy to have some flexibility in these matters.

Sir, I must oppose the motion.

MR. PATEL: Mr. Speaker, I am really surprised at the arguments advanced by those who have opposed this motion.

It appears that members of this Council have on occasion short memories. In the past there were occasions when certain Bills were forced upon this Council without amendments on the plea that there must be uniformity maintained in the laws of the East African territories. When the Defence Regulations were introduced into this country and I suggested certain amendments to suit the circumstances I was told, even by the Government of this Colony, that Uganda and Tanganyika had done it and that we must follow and maintain the uniformity. When the original Immigration Bill was introduced, we were told that we were taking all steps necessary to maintain uniformity between the four East African territories, and very solemnly select committees of the territories were convened in November, 1947, for the purpose of achieving that uniformity in the East African territories.

Now we are told that that sort of procedure is not necessary. The hon. Member for Kiambu asked us, why should there be such a conference on an inter-territorial basis? Well, we learnt from the hon. mover that an inter-territorial conference of the principal law officers and immigration officers took place, and I have suggested time and again as a member of the Immigration Board and in other places that when opportunity arose to amend this Bill there should be some sort of inter-territorial conference with unofficial representation for consultation. It is not the first time that I have put this forward in this Council.

The most important thing which has been overlooked is that when this Bill is passed here, members in Tanganyika and Uganda—where they have official majorities—will be told that Kenya had done this and they must follow. In my submission, the Government of this country is taking an action which makes the position in regard to the Immigration Bill passed in 1948 such that those who sat on that select committee will now be free to move a motion in this Council that the Immigration (Control) Ordinance, which went through its final stages after certain discussions and arguments on an inter-territorial basis, should now be repealed. I think I shall have to take the first opportunity in the next sitting to move a motion that the Ordinance be repealed, because I personally feel that the action of Government and of those who have opposed my motion have made it abundantly clear that they do not propose to allow opportunity for

[Mr. Patel]
criticism and comments on the basis on which opportunity was given for criticism and comments on the original Bill.

When that original Bill was passed it was very clear that all the criticisms and comments which were levelled against important points were taken into consideration on an inter-territorial basis.

Mr. Speaker, I personally think that no sound arguments are advanced for not accepting this motion, and I feel myself obliged to say that at the earliest opportunity I shall have to move in this Council for the repeal of the Immigration (Control) Ordinance, 1948.

The question of the motion was put and negatived.

The debate on the second reading was resumed.

MR. PATEL: Mr. Speaker, I wish to oppose the second reading of this Bill. I shall not repeat the arguments which I have already put forward when I moved by motion for the adjournment of the debate, but I shall take the opportunity of moving amendments in the committee stage clause by clause.

MR. MADAN: Mr. Speaker, I should also like to place on record that I am opposed to the second reading of this Bill.

MR. MATHU: Mr. Speaker, I rise to support the second reading of this Bill, for two reasons. Firstly, that when the original Bill came before the Council I supported it wholeheartedly because I believed, and still believe, that it was a piece of legislation that was in the best interests of the country as a whole. I mentioned at that time that the Bill did not go far enough, that it ought to have controlled immigration more than it was intended to do. Even this Bill does not even go far enough, I contend. We ought to have stricter measures to make sure that the interests of the people of this country are safeguarded, that their standard of living is kept as high as it can be. However, I am satisfied that what we have done may be a step in the right direction, and we may be able to persuade hon. members at a later stage to have stricter measures of control.

The second reason is that as a member of the Board of Commerce and Industry I would say that we get from the Immigration Board reports on people who apply for admission, and at times I feel the board is extremely lenient in letting applications through. The hon. Member for Kiambu on the previous motion this morning described the board as fair minded. I would have gone further, and said it was very fair minded, because some of the names on the lists are names that, without even seeing the faces of the people, I would not like to see in this country!

My second reason is that a sub-committee of the Immigration Board was consulted about this Bill. It is a very representative sub-committee, except that there is no African on it, but it is consulted, and I feel that this measure should be allowed to go through and I support it.

MR. HAVELOCK: Mr. Speaker, in supporting this Bill I would like to express the hope that the hon. Attorney General will implement his assurance or suggestion that the prescribed sums shall come under section 13 (2) of the main Ordinance. That is one of the reasons why I have great pleasure in supporting this Bill; without it, I should feel grave doubts in my mind.

In supporting the Bill I want to say, I think I am speaking on behalf of my colleagues, that I do not think all are satisfied with the immigration policy in this country, and maybe we will think out ways and means of overcoming our dissatisfaction in time. The point is that without this Ordinance the immigration authorities cannot work, and especially the board. I therefore support the Bill.

MR. O'CONNOR: Mr. Speaker, I do not think that I need reply further than to say that, as I indicated in moving the second reading, if it was the wish of the Council I would move an amendment in the committee stage to make these regulations subject to resolution of the Legislative Council, and I shall have great pleasure in doing so. (Applause.)

The question was put and carried.

KENYA REGIMENT (TERRITORIAL FORCE) (AMENDMENT) BILL

SECOND READING

MR. RANKINE: Mr. Speaker, I beg to move: That the Kenya Regiment (Territorial Force) (Amendment) Bill be read a second time.

As hon. members will be aware, the Kenya Regiment was first formed in 1937 and both before and during the war gave very valuable service. The services of the Regiment were temporarily suspended with effect from the 30th June, 1941, since it had then completed its task of training officers and N.C.O.s for wartime service, and the future intake for such training had fallen off and did not justify the retention of the Regiment for the time being.

As I think hon. members are aware, it is now proposed to reconstitute the Regiment, and the purpose of this Bill is to make certain amendments to the principal Ordinance, amendments which are quite simple and straightforward, to bring that Ordinance up to the requirements of the present time.

Taking the amendments one by one, they are carefully explained in the "Objects and reasons" and there is very little that I need add to the arguments set forth there. Clause 2 repeals sections 8 and 11 of the principal Ordinance because they are no longer required. Section 8 allowed the Governor to set up a special reserve. The War Office have now established an army officers emergency reserve which exactly resembles the special reserve, and therefore that special reserve would be redundant. Section 11 prescribed that cadets could be granted certificates of efficiency. Those certificates, which I believe were known as Certificate A, are now no longer recognized in the British Army and therefore, again, there is no need for that particular section.

Clause 3 merely rewords section 19 of the principal Ordinance and divides it into sub-sections, in order to make it quite clear that officers can be placed on the retired list and that the ages for compulsory retirement may be prescribed.

Clause 4 removes the existing obligation that was laid by section 21 of the Ordinance on officers to maintain their uniforms at their own expense, and prescribes that uniform allowance may be given. This is in conformity with the present Army practice. The clause also, and this is important, strengthens the provisions of the existing law and makes it an offence for any member or officer of the Regiment negligently to lose, sell or otherwise dispose of without proper authority any firearm or ammunition.

Clause 5 re-enacts the provisions of paragraph 6 of section 24 of the principal Ordinance requiring confirmation by the Governor of a sentence of court martial on an officer or member of the Regiment. This provision was suspended during the war when the Regiment came under more direct control of the War Department, and it is now reintroduced.

Clause 6 provides for the appointment of permanent staff by the Governor, after consultation with the General Officer Commanding, and for the employment of civilian staff, including such personnel as orderlies, cooks, drivers, etc. Clause 7 repeals sub-section (3) of section 35 of the principal Ordinance which is no longer required, and clause 8 makes provision for the General Officer Commanding to advise the Governor on the matters listed in that paragraph and on the enrolment of certain necessary African and Asian staff.

As I have said, I believe these amendments are all quite simple and straightforward. They are merely to bring the Ordinance up to present day requirements.

MR. HONSON seconded.

MAJOR KEYSER: Mr. Speaker, I rise to support the motion and to say how very much we welcome the reconstitution of the Regiment. (Applause.) The Kenya Regiment is one of the very youngest regiments in the British Army, and before this war suffered from the disability of having no traditions. During this war, although it never went into action as a unit, it trained a large number of officers and non-commissioned officers who in action covered themselves with glory and therefore built up a tradition for the Kenya Regiment

[Major Keyser]
which the young men, we hope, who will join the Regiment in large numbers will be able to look back on with pleasure and admiration. (Applause.)

As far as the Bill itself is concerned, there is only one point that I should like to ask, and perhaps the hon. Attorney General could answer it; that is with regard to clause 4 (iii), (4) and (5). Can he tell us what the court is that can inflict those penalties? It it a court martial, or is it a resident magistrate's court, or is it the Supreme Court, or what court is it?

I beg to support the motion.

DR. RANA: Mr. Speaker, I rise to support the Bill. Not only do I support it, but I beg leave to mention that the Bill is excellent and to-day we welcome the reconstitution of the Kenya Regiment. But, on behalf of my community, I would like it put on record that we as an Asian community do want some sort of military training too. My reason is that to-day the world is completely changing. To-day the Commonwealth and the different nations are coming together. Rightly or wrongly, in this country the different races and colours have chosen to come together, and in any kind of emergency I feel that the Asian community should play its part with that of the other races. I do not know whether they are not trusted or whether they have not got the ability to do a military job, but it is not fair. I submit that the average Asian may not be as good a soldier as the British, but I submit that reasonable attention should be paid to those Indians of these territories who were born and who intend to live here.

I am very keen on this matter, not only because I feel the Indian can become a good soldier, but in any kind of difficulty it will be a very great burden on the European and African communities to have to look after such a big section. I personally during the war many times made requests to the higher authorities that we should conscript some of these young Indians, but somehow or other the military authorities did not think fit. I submit to Government that this question should be taken up very seriously and we should try to train the Asian community, including Arabs and Indians and all other Asians residing in this territory, so that they may become good citizens. I believe that military training goes a long way in producing character and discipline in any race or individual, and even if you want peace in this country, we must ensure that every community is able to behave in a proper way in time of emergency.

I support the Bill.

MR. O'CONNOR: Mr. Speaker, with regard to the question asked by the hon. Member for Trans Nzoia, the jurisdiction under new section 35 (4) would be in a subordinate court of the first class by virtue of the new sub-section (6). The figure "(3)" in that section should read (4), and there is an amendment on the list which has been circulated to alter it. The jurisdiction under the new section 35 (5) would be, as therein stated, in a subordinate court of the first or second class. The Supreme Court would, of course, also have jurisdiction and, if the Regiment were on a war footing, there would no doubt be concurrent jurisdiction by court martial.

MR. RANKINE: Mr. Speaker, in reply I would merely like to say that the Government is extremely grateful for the support which has been given to this measure. It is also glad to hear that the Asian community wish to play their part in the defence of the Colony.

The question was put and carried.

INCREASE OF RENT (RESTRICTION) BILL

SECOND READING

MR. HOBSON: Mr. Speaker, I beg to move: That the Increase of Rent (Restriction) Bill be read a second time.

This Bill is the result of the recommendations of a committee of which I was chairman, and which reported to His Excellency late last year, that report being debated in this Council at great length late last year. The report was adopted *in toto* with one qualification, and that qualification referred to our recommendation that where the construction of business premises was begun after 1st January,

[Mr. Hobson]
1949, they should be decontrolled. As a rider to that recommendation, we said we thought it essential that, if that recommendation was adopted, building control should be retained with regard to business premises which came under our recommendation until materials were in free supply and building permits should be issued only where there was clear justification.

Between the time when our report was written and the time of that debate, it was announced that building control would be removed, and in view of that we were asked to consider very carefully whether that part of our recommendation should be implemented or not. We held a meeting over which the hon. Chief Secretary was kind enough to preside, and after very careful deliberation—and I might say all the members of my committee, or rather most, if not all, were present—as a result of that meeting it was decided that this Bill should contain a clause implementing our recommendation that these premises should be decontrolled, although building control no longer existed.

Our reasons for which that meeting came to that conclusion were that we did think that, in spite of building control having been removed, the words in which we made the recommendations still held good, and are very important, and those words are as follows: "We make this recommendation because we feel that it will encourage the building of business premises and that it may help the authorities in the unsuccessful fight which they are conducting to prevent landlords from obtaining the payment of premiums as a condition of the grant of tenancies". And that is why there is a clause in the Bill implementing that recommendation.

The Bill contains what, if I may call it so, my committee recommended, but hon. members will recollect that after the Bill was read a first time the hon. Attorney General moved that it be referred to a select committee. That committee sat, and has considered very carefully certain recommendations made by Mr. Nazareth, who was a very valuable member of my committee. He made them after seeing the Bill in its form as it appeared in the Gazette. We have also considered certain recommendations made by a sub-committee of the Law Society, and some of those recommendations are contained in the report of the select committee which was tabled yesterday.

Perhaps I ought to say something as to the procedure which we will as this Council have to follow in regard to the select committee report.

The select committee, having been appointed after the first reading, we do not propose to ask that the report be adopted *in toto* under the usual motion by which such reports are usually adopted. We propose instead in the committee stage to move the recommendations clause by clause as they come up. But in dealing with the principles which this Bill contains, I shall take the opportunity to refer to the more important recommendations of the select committee. I think it will help to clear the air and give notice of the more important recommendations.

Clause 1 is one the select committee have recommended should be amended, and the amendment suggested is that the Ordinance will only come into force on a date to be appointed by the Governor. The reason is that there are certain matters to be done such as perhaps, engaging staff, the appointment of a chairman of the Central Board and the Coast Board, and perhaps some little time will be required (I hope not long) before the machinery is ready for the working of the new Ordinance.

With regard to the application of the Ordinance, it will be observed that wherever rent control boards are appointed this Ordinance will apply. There are, of course, a number of exemptions; these are contained in paragraphs (*a*), (*b*), (*c*) and (*d*) of clause 1. The first of these arises from the recommendations of the committee, and relates to "premises of which the standard rent is in excess of Sh. 10,000 per annum and of which the landlord shall, after the commencement of this Ordinance, have recovered vacant possession under the provisions of this Ordinance". The second deals with business premises, to which I have referred. Paragraph (*c*) deals with "premises which are the property of a

[Mr. Hobson]
local authority or of a municipal council or municipal board". We on the committee made no recommendation as to that, but the select committee considered that particular paragraph and we put it forward and recommend it to this Council; we have also recommended in the select committee an amendment to include premises which are the property of this Government, the East Africa High Commission, and the East African Railways and Harbours, because it has come to the realization of the legal advisers of Government and the High Commission that it may well be said that, where rent is now being paid by an officer for a house, if you tell the officer to vacate the premises he may seek the protection of this Ordinance and that, of course, would be a completely impossible state of affairs. That is why the committee made that recommendation.

The present paragraph (*d*) deals with premises, or classes of premises, exempted by the Governor in Council. The select committee has also recommended that a further paragraph be inserted, and that reads as follows: "any building or erection in the Coast Province used as a place of residence built by the owner thereof on land rented by such owner as a monthly tenant". The purpose of that is to leave premises of that sort to be dealt with by the Eviction of Tenants (Control) Ordinance which has just passed through this Council.

Turning to clause 2, which contains the definitions, the select committee have suggested a new definition of business premises, and what we suggest reads as follows: "'business premises' means a building or part of a building let for business, trade or professional purposes or for the public service". But the Law Society recommended, so as to make it perfectly plain that any land within the curtilage of a building and which is comprised in the letting also came under the definition and the addition of these words has been recommended by the select committee: "and includes land within the curtilage of such building or part of a building and comprised in the letting".

The definition of dwelling house follows very closely the recommendation of the original committee. It provides that dwelling house includes a house or part of a house or room which is occupied by one or more tenants, and at the end of that definition we exclude a "house, part of a house or room which is shared by the landlord with one or more tenants". The select committee suggest that for those words the words "living room" be substituted. That, I think, will carry out the recommendation of the original committee.

With regard to the definition of landlord, it will be noted that it also includes a person "from time to time deriving title under the original landlord".

The only other definition which I think I need mention is the definition of tenant. That follows very much the present law, but under the present law it is only an intestacy which is referred to, which gives a widow or any member of the tenant's family the right to continue the tenancy. Our original committee could not not see why that should be allowed, and those words were therefore deleted. But Mr. Nazareth suggested a further amendment, and that has been adopted by the select committee and made part of their recommendations. It reads: "In the case of business premises of which the landlord could, but for the provisions of this Ordinance, have recovered possession, includes the legal personal representative of the deceased or other person entitled to carry on or wind up the business of the deceased, for such period as the board may decide to be reasonably necessary for winding up the business of the deceased". That will give an opportunity, where the tenant has died, for his executor or administrator to carry on the business for so long as would enable him to wind it up without loss to the tenant, and I do commend that to this Council.

Clause 5 contains the powers of the Central Board and the Coast Board, and these powers include a number which are the result of recommendations by the original committee. For instance, paragraph (*d*) of sub-clause (1) enables the board to fix the amount of the

[Mr. Hobson]
service charge of furnished premises; under paragraph (*e*) to fix an inclusive charge for a tenement house which enjoys common services; paragraph (*g*), to enable landlords to excise vacant land out of the curtilage of a dwelling house so that they can build additional premises if desirable in the public interest; paragraph (*h*), which empowers the board to allocate houses which have been left unoccupied for a month or more, and if the house is unfinished to cause it to be finished and rendered fit for habitation, and to recover the cost from the owner direct or from the rent. The select committee has suggested an amendment which deals, I think, more with the form of the clause than with any important principle. Finally, under paragraph (*i*), where the landlord does not carry out the repairs which he is liable to carry out, the board may carry them out and recover the cost either from the landlord or by requiring the tenant to pay the rent to the board.

Sub-clause (3) is the result of one of the recommendations of the original committee, that, in respect of a dwelling house where the standard rent was less than Sh. 25 a month, the board should have power to delegate any of their powers either to an administrative officer or to any other person authorized by the Board. The object of that, as I think I said last December, was that where humbler tenants in humbler premises are concerned with some complaint, they need not go to the Board at all. They may have the matter settled by a district commissioner or district officer.

Clause 6 contains the powers of the other boards, and those of course are not so full as the Central Board and the Coast Board which will have a legally qualified chairman. The powers which those boards will have in particular are those in paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*g*), (*h*), (*k*) and (*l*) of sub-clause 5. Under the provisions of clause 31 everything else goes to the court, and the court in this case will be that of a first class magistrate. Later on in the Bill provision will be found that where a person goes to the Supreme Court in a case which should have gone to a magistrate, he will only get costs on the scale of the subordinate court. No board will have jurisdiction in criminal matters. Where any offence against this Ordinance takes place, it will be tried by the ordinary courts of the Colony.

Clause 7 deals with appeals, and there we have provided that appeals from the Central or Coast Board, which have qualified chairmen, should go direct to the Court of Appeal for Eastern Africa. From any other Rent Control Board they go to the Supreme Court in the ordinary way.

Clause 8 is an important one, because it deals with one of the abuses which our committee tried to rectify. It makes it the duty of a landlord of any premises which are let for the first time after this Bill becomes law to have the standard rent assessed before the letting. That is to prevent the evil of tenants going into premises and then having to face making an application to the board at their own expense to determine what the standard rent should be.

Clause 9 makes it the duty of the board to investigate complaints regarding tenancies made either by the tenant or the landlord. Sub-clause (3) is redundant and ought never to have been in the Bill, because that is dealt with by clause 30, which makes it an offence for landlords to annoy tenants so as to make them vacate the premises. This really contains the old law, which is what we wanted changed.

Clauses 10, 11 and 12 are much as they were under the old law, but with regard to clause 12 we have increased the penalty for accepting rent in excess of the standard rent. We were actually asked to remove the penalty altogether, but with that argument we could not agree.

Clause 13 deals with a matter which was debated here at some length in December. It is the question of a flat increase of 10 per cent on the standard rents of dwelling houses, and 20 per cent on the standard rents of business premises, and of course there is the proviso that where the rent has previously been increased under the provisions of section 6, sub-section (4), I think it is, of the present law, the permitted increase is limited to such a

[Mr. Hobson]
sum as is required to make the total increase up to 10 per cent or 20 per cent.

The select committee has recommended that paragraph (*c*) be added to sub-clause (1), as follows: "In any case where the landlord has, since the prescribed date, incurred expenditure on the improvement or structural alteration of premises (not including expenditure or redecoration or repairs, whether structural repairs or not), by an amount calculated at a rate per annum not exceeding ten per centum of the expenditure so incurred". That, of course, will not include merely expenditure on redecoration or repairs.

Clause 15 seeks to enact that the various increases in rent under clause 13 may only be made during what is called a statutory tenancy. The select committee has recommended that the proviso to sub-clause (2) be deleted and that the following proviso be put in its place: "Provided that where an increase in rent has been permitted on account of an increase in rates, such increase in rent shall be payable by the tenant, without the service of any notice on him, from the date when the increase in rates became operative, and, if there has, since such date, been a change of tenant, such increase in rent shall be payable by each tenant in respect of the period during which he was tenant of the premises". The purpose of that is to allow landlords to recover increases in the rates retrospectively, and that was of course a recommendation of the original committee.

Clause 16 deals with the recovery of possession of premises and ejectment of tenants. It contains a great deal of the present law which is contained in section 11 of the present Ordinance, but there are new and very important paragraphs which are there as a result of our recommendations.

The select committee recommends that a new paragraph (*d*) be added, which reads: "The Central Board, the Coast Board or the court, as the case may be, is satisfied that the tenant has sub-let the whole or any part of the premises (such part being also premises to which this Ordinance applies) for a rent in excess of the rent recoverable under the provisions of this Ordinance". The next one, which is the result of a recommendation of the original committee, is sub-paragraph (ii) of what is now numbered paragraph (*d*); and reads: "the business premises are reasonably required by the landlord and (except as otherwise provided by this sub-section) the Central Board, the Coast Board or the court, as the case may be, is satisfied that alternative accommodation, reasonably equivalent as regards rent and suitability in all respects, is available". The committee has recommended that for the present paragraph (*h*) a new paragraph be inserted. I will deal with that more at length in the committee stage.

THE SPEAKER: I think this would be a convenient moment for us to adjourn.

Council adjourned at 11 *a.m. and resumed at* 11.10 *a.m.*

MR. HOBSON (*Continuing*): Mr. Speaker, when we adjourned I was dealing with clause 16 and pointing out those paragraphs of the sub-clauses which were the result of the recommendations of the original committee.

I would point out that paragraph (*j*) will have to be deleted as a consequential amendment if the select committee's recommendation with regard to the exemption of the East African Railways and Harbours is accepted. Paragraph (*k*) is the result of one of our recommendations, and enables an order for ejectment to be made where the landlord requires possession of the premises to enable the reconstruction or rebuilding of them to be carried out. The select committee has proposed an amendment to that, but it deals mainly with a technical matter and I will not trouble Council with it at this stage.

Paragraphs (*l*), (*m*), (*n*) and (*o*) are all the original committee's recommendations. They are very easily understood, I think, and I will not deal in detail with them; they were debated at some length in December on the report.

Clause 17 provides that no distress of rent may be levied except with the leave of the Central Board or the Coast Board or court.

Clause 18 deals with restrictions on premiums. It had been held that there is some doubt as to whether a person

[Mr. Hobson]
other than a landlord would be committing an offence by taking a premium. This clause seeks to remove that doubt, and also makes it an offence to give a fee or a premium. That was not formerly the case. The recommendation of our committee that where there is a conviction under this clause there will be no option of a fine but imprisonment must follow, is contained in sub-clause (2), and the last part of (3), which exempts the assignment of leases created not less than six months before the date of the Ordinance and having at such date an unexpired term of not less than two years to run, is also the result of one of our recommendations.

Clause 19 permits boards to fix a service charge in respect of furnished premises, a power which does not now exist, and the select committee has suggested a sub-clause (2) which will enable boards to control the amounts charged by landlords for goodwill or other similar considerations where business premises are concerned.

Under clause 20, not only the tenant but the board may call upon the landlord for a statement of the amount of the standard rent. That, of course, is only where the premises were let at the prescribed date or where the standard rent has been determined.

Clause 21 deals with the recovery by the tenant of sums which have been made irrecoverable by the landlord. It also permits a tenant to deduct the amount of such sums from future payments of rent. The select committee has suggested here one amendment, and that is the deletion of the words "in monthly instalments" which appear in lines 20 and 21 of sub-clause (1). This we think will be a considerable improvement, and I venture to think it will make some landlords more careful than what they actually are, from what I have been told, of accepting excess amounts of rent.

With reference to (2), it makes it an offence to make an entry in a rent book which purports to show the tenant in arrear in respect of any sum recoverable, and also where such entry has been made it makes it an offence if the landlord refuses to delete the entry, and the select committee has suggested one amendment. As the sub-clause now reads, in regard to punishment it says: "on conviction by the court be liable to a fine not exceeding Sh. 400, unless he proves that he acted innocently and without intent to deceive". The select committee suggests that for those words there should be substituted the words: "the landlord had a bona fide claim that such sum was recoverable".

In regard to sub-clause (3), the select committee recommends its deletion and the substitution of the following sub-clause: "Any sum paid by a tenant, which under sub-section (1) of this section is recoverable by him, shall be recoverable at any time within two years from the date of the payment thereof". That, in fact, does carry out what the original committee recommended; it was not intended that any question of a three months period should remain in the clause during which the tenant had to give notice.

Clause 22 implements another of our recommendations, that a landlord must supply a tenant with a rent book on demand, and makes it an offence if he fails to enter in it the payments of any sum on account of rent or fails to sign or cause to be signed the entry.

Clause 23 lays down the conditions of a statutory tenancy, and there is no change from the present law. Clause 24 deals with the registration of tenement houses; that is the result of one of our recommendations. In regard to clause 25, that also is the result of one of our recommendations, that it should be an offence for a landlord to deprive or attempt to deprive a tenant of light, water, conservancy or other service without the consent of the board. That we hope will put a check to the practice some landlords have of shutting off the water or cutting off the light, where they have had some dispute with a tenant.

Clause 26 provides that where one of the employees of the board or a valuer appointed by them have valued premises for the purpose of having the standard rent fixed, a copy of the valuation shall be sent to both landlord and tenant, and that they shall be given an opportunity of appearing before the board and

[Mr. Hobson]
disputing the valuation one way or the other.

Clause 27 amends the present law by making the tenant responsible for keeping the premises in the same condition as they were when he entered them, fair wear and tear and damage from irresistible force excepted. The landlord for his part has to maintain the premises in a state of good structural repair and in a condition suitable for human habitation. That is in fact the position under the Indian Land Transfer Act which applies to this Colony. It is merely set out in this Bill for greater clarity and ease of reference. As I have already pointed out, the boards and the court have the power to carry out repairs and to recover the expenditure from the landlord afterwards.

Clause 28 contains restrictions on sub-letting, which is one of the recommendations of the committee. But the select committee has suggested that a new clause be substituted which will contain a proviso that where the consent of the landlord is unreasonably withheld, the board may give consent. It also contains a proviso that the provision of the clause shall not apply to a tenant holding a tenancy commencing after the commencement of this Ordinance for a term exceeding one year or holding a tenancy the unexpired residue of which exceeds one year at the commencement of the Ordinance. The whole purpose of this clause against sub-letting without consent is to check abuses due to the assigning or sub-letting of short tenancies, and that is the purpose of the suggested amendment.

Clause 29 contains changes from the present law. Under the present law a tenant may, with the consent of the landlord or board, sub-let for not more than twelve months. The original committee recommended that that period be cut down to one of not more than six months which period might, with the consent of the board, be extended for a further period of three months, and that is contained in this clause. Under sub-clause (3) the Bill permits a landlord who is in personal occupation of a dwelling house, with the consent of the board to let that

dwelling house for a period of not more than six months and he can recover personal occupation at the end of that time. That alteration from twelve months in the present law to six months was never really intended, and the select committee recommends that the word "six" be deleted and that "12" replace it. Sub-clause (5) gives the landlord all the rights against the occupier that he has against the original tenant under sub-clauses (1) and (2) of that clause.

Clause 30 implements a very important recommendation of the original committee. That is, that a landlord who deliberately subjects a tenant to annoyance for the purpose of making him vacate the premises shall be punishable by fine or imprisonment as having committed an offence. The alternation there from the present law is that under the present law the landlord first had to disobey an order of the Rent Control Board that he should cease to annoy his tenant.

In December when the committee's report was being debated, the hon. Member for Ukamba expressed some doubts as to whether that was quite fair. She said it seemed rather hard that the landlord who committed an offence of that sort for the first time should be punished with a fine or imprisonment. We have considered, as we promised to do, that representation, but the select committee felt that this was one of the most important recommendations of the original committee and that it should be allowed to remain in the Bill. It is quite true that the punishment is a maximum fine of £100 or a term of imprisonment not exceeding six months, or both such fine and imprisonment. But one must point out, of course, that those are the maximum punishments and that magistrates must be taken to exercise their discretion seriously and that, if they do not, there is the court of appeal before whom an appellant may go to have the sentence reduced.

Clause 31 I have already dealt with. It is the clause vesting jurisdiction in the court where there is no jurisdiction in a board. It gives a first class magistrate power to deal with cases:

[Mr. Hobson]
"notwithstanding that, by reason of the amount of penalty, claim or otherwise the case would not, but for this provision, be within the jurisdiction of the court".

The select committee has recommended a new clause which, if inserted, will become clause 32. That clause deals with the enforcement of determination or orders of the boards. It provides that these may be filed in a court by any party to the proceedings, and upon their being filed they may be enforced in the same way as a decree of the court. That is a most important and valuable suggestion which was made by Mr. Nazareth, and I really think there would have been some difficulty in working this Ordinance if that clause was not included.

The select committee also suggest a new clause 33, which empowers boards to grant compensation where there has been a frivolous or vexatious application on the part of either tenant or landlord, to grant a reasonable sum as compensation for the trouble and expense to which the other party may have been put by reason of a frivolous application.

For the remainder, the Bill contains the usual repealing clause and also a statement that the present Increase of Rent and Mortgage Interest Restriction Ordinance, 1940, is still in force and will continue so unless and until it is repealed by this Bill when it becomes law.

This is a complicated measure, and indeed it is very common knowledge among lawyers that any rent restriction legislation is extremely complicated. Only the other day, when I was looking up a point of law in connexion with rent restriction, I came across a judgment of Lord Justice Scrutton, who is perhaps one of the most able commercial lawyers, or was, in England, and he began his judgment by expressing horror at having to deal with another rent restriction case. As I said, this Bill contains suggestions and recommendations of my original committee, and also some very useful matter which has been recently suggested by Mr. Nazareth and by the Law Society.

MR. O'CONNOR seconded.

MR. ERSKINE: Mr. Speaker, my hon. and learned friend opposite in his very able description of this proposed Bill with the amendments recommended by the select committee, ended up on a note in which he explained that any rent restriction legislation must inevitably be very complicated. Now, sir, as far as I can gather, people in this country are in the main opposed to controls of any kind in principle. With regard to this particular control, I think we can safely say that the views of the public are divided as between landlords and tenants, but as these controls lose their popularity, as they tend to do as they become less and less important and less and less necessary, so the question of their cost will be examined with a greater degree of careful scrutiny by the public.

I was asked by the Nairobi Chamber of Commerce at a meeting held yesterday to draw the attention of Council to the last paragraph of the "Memorandum of objects and reasons", which I know is in the traditional pattern. When it is not possible to estimate the cost it merely says it is not possible to estimate what expenditure of public monies will be incurred. Then, so as not to go through the clauses of the Bill again and to weary the Council, I would, again referring to the "Memorandum of objects and reasons", point out that there is some emphasis laid on such matters as chairmen who must be barristers, solicitors or advocates, with not less than five years standing, and so forth. If it was at all possible I should be very grateful if my hon. and learned friend opposite when he replies would try and indicate, if he can, very roughly, the expense to the Colony of implementing this new Bill.

MR. PATEL: Mr. Speaker, there could be no two opinions about the improvement of the Rent Restriction Ordinance as a result of this new Bill and the report of the select committee. During the course of the speech of the hon. and learned mover he mentioned that Mr. Nazareth made very valuable suggestions in regard to the improvement of this Bill. Mr Nazareth also was

[Mr. Patel]

a member of the original committee and, as I can well understand, he made a very valuable contribution to the discussions of that committee. It is very unfortunate that it was not possible for that committee to accept the minority report of Mr. Nazareth on the question of whether rent should be increased or not. That was the only point where Mr. Nazareth differed from the other members of that committee. I think that on careful consideration his minority report should have been incorporated in this Bill. At the time when the report was debated I supported Mr. Nazareth's views in the minority report, and I still believe that it is very unfortunate that those views did not prove acceptable to the Government.

MR. O'CONNOR: Mr. Speaker, with regard to the last point, it was not a case, I understood, of Mr. Nazareth's views not proving acceptable to the Government but of not proving acceptable to this Council. I understood the position to be that the report was fully debated last December and that the vote of this Council went against the minority report which Mr. Nazareth had put forward. If that situation had been the other way round, of course we should have put it in the Bill.

MR. HOBSON: Mr. Speaker, with regard to the matter raised by the hon. Member for Nairobi South in connexion with the Chairmen of the Coast and the Central Board, I can only say this, that I do know it is the intention of the Government, if possible, to have only one Chairman for both Boards. It is hoped that he will be able to sit in Nairobi on certain days and in Mombasa on other days.

With regard to the matter of the salary which he will be paid I am unable to give any information at the moment, but if I may quote from the report of my committee, we said: "Although at first blush it may well be thought that the payment of the salaries of such chairmen would involve the Colony in considerable expense, we feel that a retired judge on a substantial pension might well be prepared to undertake work of such public importance for a moderate stipend". For my own part, I hope that that will be the case, but I am unable to give any further indication at this stage of what the amount actually will be.

The question was put and carried.

INCREASE OF MORTGAGE INTEREST (RESTRICTION) BILL

SECOND READING

MR. HOBSON: Mr. Speaker, I beg to move: That the Increase of Mortgage Interest (Restriction) Bill be read a second time.

The provisions in this Bill are exactly those which are contained in the present Increase of Rent and Mortgage Interest (Restriction) Ordinance, and all that has happened is that opportunity was taken while this legislation was being redrafted to split its provisions and to put them into a separate Bill where they will be more readily found, instead of having them mixed up with the sections concerning the increase of rent. I think I need only say that in the committee stage I propose to move that the definition of business premises be amended to bring it into line with the definition of business premises in the Bill the second reading of which I have just moved; also in clause 6 the words: "in monthly instalments" in the last line but one, I shall move an amendment that they may be deleted to bring that into line with a similar provision in the Increase of Rent Bill. I do not think I need say any more. This law has been in force since 1940 and has, I understand, been working quite satisfactorily.

MR. O'CONNOR seconded.

The question was put and carried.

SUSPENSION OF STANDING RULES AND ORDERS

MR. O'CONNOR moved the suspension of Standing Rules and Orders to enable the Special Districts (Administration) (Amendment) Bill to be taken through all its stages at this session.

MR. HOBSON seconded.

The question was put and carried.

SPECIAL DISTRICTS (ADMINISTRATION) (AMENDMENT) BILL

FIRST READING

On the motion of MR. O'CONNOR seconded by MR. RANKINE the Special Districts (Administration) (Amendment) Bill was read a first time.

SECOND READING

MR. WYN HARRIS: Mr. Speaker, I beg to move: That the Bill be read a second time.

The only addition to the original Ordinance is the definition that "'cattle' includes camels, sheep, goats, mules and donkeys". (Laughter.) Now, the actual effect of the Bill is as follows. Under section 16 of the principal Ordinance the Provincial Commissioner may allot grazing within the Northern Frontier District to certain tribesmen, and he may also prohibit grazing and watering in certain areas and, on payment of compensation, may also move back from the frontier villages which he considers to be in danger. The next section is the punishment section under which tribesmen disobeying the order can be arrested. Last year this Council amended the law so as to make it possible for the police to seize any cattle found and hold them pending a court case. It is a fact that large numbers of tribesmen come from Abyssinia, Somalia and the Sudan, and they are not, strictly speaking, accompanied by cattle in the sense of cows, bulls, or oxen—they come in with sheep, goats and the rest, and this amendment is to make it quite clear that the police have powers of seizing such stock.

The only point of principle that I can see in this particular Bill which might be raised by a purist of the English language, is why should we stretch the English language in order to keep peace on the frontier? I can only say that in point of fact cattle are defined in Chambers Dictionary as "beasts of pasture", and if a camel living in a country without grass and grazing on a thorn tree can be considered to be a beast of pasture, then I would suggest that, if Council will strain at that particular gnat, it will swallow the camel as well! (Laughter.)

MAJOR KEYSER: Mr. Speaker . . .

THE SPEAKER: Do you rise to second the motion?

MAJOR KEYSER: Yes; I will second it. (Laughter.) The only suggestion I should like to make is that I cannot see why all these animals should not be called stock. They do appear in a good many Ordinances as stock, and stock is defined as a bovine, a sheep, a goat, a camel, a donkey, a pig, and something else, and in order to keep them in line with all the other Ordinances in the country I think it is a pity the word "stock" was not used. But I will support the motion all the same. (Laughter.)

MR. MATHU: Mr. Speaker, I am not going to question the point of definition of cattle, but I should like to ask a certain question of the hon. mover and perhaps he would reply. In the "Memorandum of Objects and Reasons" it is stated: "Power exists under the Special Districts (Administration) Ordinance, 1934, to seize the cattle of tribesmen who come into the Northern Province and commit offences there". I should like to have a definition of the offences that are committed that enable the Administration to have powers of seizure under the 1934 Special Districts Ordinance, because I have gone through it and I have not come across the definition. It seems that the powers may be stretched too far.

The next question I should like to ask is under the section which is being amended, which contains the definitions, and the one I would like to know about is arbitral tribunals constituted under section 5. All Provincial Commissioners have power to appoint these tribunals. I have not heard of one, and would like to know on what basis such a tribunal is formed whenever it has to be formed.

My next query is, when offences are committed by tribesmen or an individual, why should stock, livestock or cattle be seized, why should not the offenders be treated in the ordinary courts of law in the ordinary way, why should there be a special way of treating these fellows? Under section 11 of the principal Ordinance we see that immovable property may be taken possession of.

[Mr. Mathu]

Finally, the amending Bill seems to refer, and the hon. mover referred, only to the Northern Frontier. Are there any other districts in the Colony to which this law applies? I should like to know because a number of us are unhappy about the provisions of the Ordinance that is being amended. Although we are supporting this amendment, we should like to be assured on the points I have raised.

I beg to support.

MR. WYN HARRIS: Mr. Speaker, dealing with the points raised by the hon. member Mr. Mathu, I feel that they have nothing to do with this amending Bill. Regarding the arbitral tribunals, I shall be only too pleased to explain to him afterwards how they work, but I could not do it at this short notice. As to seizure for offences, such as disobeying grazing orders—that is, going into somebody's grazing reserve, entering prohibited grazing, or failing to go when ordered by the Provincial Commissioner—and why it is necessary to have seizure of stock and not just arrest, the trouble is that there is an international boundary, and it is obvious that when the police appear on the scene the offender moves very quickly across the boundary, and any stock found must be held by the police. On the point of any other districts to which the Ordinance applies, I believe I am right in saying, but I should like notice of it to be certain, that Samburu, which is technically in the Northern Frontier, is also included in the Ordinance, and the same applies to Mukugodo, which is technically in that province. Otherwise I am not aware of any other province or district to which this particular Ordinance applies.

Regarding the question raised by the hon. Member for Trans Nzoia, I would only say that the Oxford Dictionary describes cattle as livestock! (Laughter.)

The question was put and carried.

IN COMMITTEE

MR. O'CONNOR moved: That Council do resolve into committee of the Council to consider the Bill clause by clause.

MR. RANKINE seconded.

The question was put and carried.

Council in committee.

The Bill was considered clause by clause.

Council resumed, and Mr. O'Connor reported the Bill without amendment.

The report was adopted.

THIRD READING

MR. O'CONNOR moved: That the Bill be read a third time and passed.

MR. RANKINE seconded.

The question was put and carried, and the Bill read accordingly.

ADJOURNMENT

Council rose at 12 noon and adjourned till 10.30 on Thursday, 19th May, 1949.

Thursday, 19th May, 1949

Council reassembled in the Memorial Hall, Nairobi, on Thursday, 19th May, 1949.

His Honour the Speaker took the Chair at 10.35 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 18th May, 1949, were confirmed.

NOTICES OF MOTIONS

The following notices of motion for consideration at the next session were given:—

BY MAJOR KEYSER:

In view of public doubts as to the effectiveness of the Kenya Information Office, this Council resolves that a committee be appointed to investigate the present working of and make recommendations as to the future of this organization.

BY MR. VASEY:

That this Council is of the opinion that clause 4 (2) of Ordinance No. 12 of 1945, the Motor Vehicles Insurance (Third Party Risks) Ordinance, be altered to make disqualification from holding a certificate of competency permissible instead of mandatory on the court.

BY MR. PATEL:

That the Immigration (Control) Ordinance, 1948, be repealed.

ORAL ANSWERS TO QUESTIONS

No. 9—NATURALIZATION

MAJOR KEYSER:

Is Government satisfied that the standards by which applicants for naturalization are judged are high enough to suit the conditions pertaining to the Colony?

MR. O'CONNOR: As the hon. Member for Trans Nzoia is perhaps aware, a committee has been working since December 1947, which interviews every applicant for naturalization, and advises Government on his suitability for the privilege of naturalization as a British subject. Its chairman is a senior official, and its other two members are unofficials, one of them an elected member of this Council, and the other a well-known lawyer. The committee requires to be satisfied on the following points regarding each applicant—

(1) that he has an adequate knowledge of English;

(2) that he has a sound reputation and moral character as far as this can be established on the basis of inquiry;

(3) that he has reasonable financial stability;

(4) that he has no adverse security report;

(5) that confidence can be placed on the applicant's loyalty to the British cause in all circumstances.

The local committee imposes a rather higher standard than that required in England owing to the difference in conditions, and its chairman is satisfied that the standards are sufficiently high. The committee expects an applicant to be able to offer a positive contribution, however humble, to the life of the Colony and to be of a type likely to be acceptable to his British fellow citizens.

The public have an opportunity to object to the naturalization of any applicant, and full attention is given to such objections.

MR. HAVELOCK: Arising out of that answer, will Government consider making it compulsory that the names of sponsors of applicants for naturalization shall be published together with the application?

MR. O'CONNOR: That suggestion will be considered.

No. 11—NAIVASHA AIRPORT

MR. BLUNDELL:

Will Government state whether it is in favour of the development of local government? If the answer is in the affirmative, will Government please state why the development of the Naivasha flying-boat airport at Naivasha, and its ancillaries in the way of roads and buildings, was made without reference to the Naivasha District Council?

MR. HOPE-JONES: The answer to the first part of the question is in the affirmative.

[Mr. Hope-Jones]

With regard to the second part of the question, after the East African territories had been consulted by the Colonial Office, official approval was given in February this year for British Overseas Airways Corporation to operate flying-boats to Lake Naivasha. This service, which replaces the York service, was arranged to come into operation in May and it was therefore of the utmost urgency that the necessary facilities should be arranged without delay.

It is regretted that the Naivasha District Council was not advised in the first place of the proposals to establish an airport on Lake Naivasha, although it was consulted by the Commissioner for Local Government on the 19th April and its agreement sought, as road authority, to the proposed road of access.

MR. PATEL: Arising out of that answer, may I know if there is any non-European member on the Nyanza District Council?

MR. MORTIMER: The answer is in the negative.

MR. PATEL: Arising out of that answer, may I know if that is really a local government, or should it not be called the Nyanza European District Council?

No. 15—COLOUR BAR IN HOTELS

MR. NATHOO:

(*a*) Is Government aware that a member of a commission of inquiry was prevented from attending to his duties on account of the refusal of local hotels to afford him accommodation on account of his race?

(*b*) Did the member in question write to various Government departments and, if so, will Government state why not even an acknowledgment was sent of this complaint?

(*c*) Is Government aware that the Government of Uganda is introducing a measure to put a stop to this most undesirable discrimination?

(*d*) Does Government contemplate any such measure in Kenya?

(*e*) If the reply is in the negative, will Government state why nothing is done to stamp out this obnoxious practice?

MR. RANKINE: (*a*) The Government is aware that a member of the commission was refused accommodation at a hotel in one of the centres visited.

(*b*) No. So far as the Government is aware the member concerned did not write to any Government department. It is understood that he wrote to the Cost of Living Commission, and the Government is informed that an acknowledgment was sent to him.

(*c, d*) The reply to (*c*) and (*d*) is in the negative.

(*e*) The Government believes that good race relations are an essential to the fabric of this Colony, but such matters as changes in social customs cannot be effectively dealt with by legislation too far in advance of public opinion. The Government believes that there are many signs that modifications of public opinion are occurring, but that legislation at this time would do harm rather than good to race relations between all races. (Applause.)

MR. MADAN: Arising out of that, will the hon. Chief Secretary consider helping the modification of public opinion through the Information Office?

MR. RANKINE: Yes, sir.

MR. PATEL: Arising out of that answer, should it not be the concern of this country to see that independent countries of the Commonwealth and their representatives are not insulted in this country?

MR. VASEY: Arising out of that answer, does not the hon. Chief Secretary think that more damage is likely to be done by giving this type of publicity to the matter than good?

MR. RANKINE: I believe that is already covered in the answer which I have given.

No. 17—POCKET REGISTERS

MR. HAVELOCK:

(*a*) How many domestic servants in Nairobi did not retain their pocket registers when they were issued with the new certificate?

(*b*) Has Government any knowledge to the effect that outside influences were brought to bear on such servants to persuade them not to retain their registers which included testimonials?

[Mr. Havelock]

(*c*) Will Government re-issue to the original owners without charge the registers which have been handed in?

MR. RANKINE: (*a*) The latest figures for Nairobi show that out of a total of 13,944 pocket registers handed in 270 registered servants applied for complete cancellation of the book; 1,513 applied for their pocket registers to be certified and returned to them, and the balance, 12,161, applied for their pocket registers to be exchanged for the new certificate.

(*b*) There is evidence that certain associations and individuals did advise servants to discard their red books. Figures from Kitale, Nakuru and Eldoret gave grounds for the belief that such influences were at work in Nairobi.

(*c*) The answer is in the negative. Even if all the registers which were handed in were available for return the Government considers it important to educate the African to a realization that proof of character, ability, and previous experience are essential preliminaries for obtaining a skilled rate of wage.

PUBLIC ACCOUNTS COMMITTEE

MR. VASEY: Mr. Speaker, as chairman of the Public Accounts Committee, I beg to move: That the report of the Public Accounts Committee dated the 17th May, 1949, be adopted.

I think the report is self-explanatory, and all I need to say is that your Public Accounts Committee was unanimous in its adoption.

MAJOR KEYSER seconded.

The question was put and carried.

EUROPEAN HOSPITAL SERVICES SCHEME

MR. VASEY: Mr. Speaker, I beg to move: That a select committee be appointed to review the working of the Hospital Services Scheme in the light of the report of the European Hospital Authority covering the period 1946-1948.

I would respectfully suggest that this is not the time to debate the successes or the failures of the European Hospital Scheme. The report has set out in great detail the difficulties that that particular Authority has encountered, and I speak, I think, for the whole of the Authority when I say that they would regard a select committee, which could receive public evidence and which could go into the suggestions set out in their report, as being the best channel by which they could arrive at the possible solutions of the problems that face them.

MAJOR KEYSER seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. O'CONNOR moved: That Council do resolve itself into committee of the whole Council to consider clause by clause the following Bills: The Immigration (Control) (Amendment) Bill, the Kenya Regiment (Territorial Force) (Amendment) Bill, the Increase of Rent (Restriction) Bill, and the Increase of Mortgage Interest (Restriction) Bill.

MR. RANKINE seconded.

The question was put and carried.

Council in committee.

Immigration (Control) (Amendment) Bill

Clause 2.

MR. O'CONNOR moved: That paragraph (*b*) be amended by inserting the word "Principal" after the word "Deputy".

The question of the amendment was put and carried.

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

Clause 3.

MR. O'CONNOR moved: That the following be substituted for paragraph (*b*): "(*b*) by inserting the words 'a Deputy Principal Immigration Officer and' after the words 'Immigration Officer' occurring therein."

The question of the amendment was put and carried.

MR. PATEL: Mr. Chairman, I beg to move: That paragraph (*c*) of clause 3 be deleted.

I have already stated that it is very improper to give such wide powers to junior officers in the Immigration Department. I do not propose to move amendments at every stage, I propose to do it once or twice, and also to vote against every clause. But in regard to this particular clause I think it was agreed at

[Mr. Patel]
one time that to give authority to junior officers was dangerous, and therefore I move that this paragraph be deleted.

MR. O'CONNOR: Mr. Chairman, I cannot accept the amendment. I think it must be obvious to Council that with the headquarters of the Immigration Department in Nairobi and the principal port in Mombasa, it must be necessary for the principal immigration officer to delegate some of his powers to immigration officers in Mombasa and sometimes in Kisumu.

The question of the amendment was put and negatived.

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

Clause 5.

MR. O'CONNOR: Mr. Chairman, I beg to move: That after the words in (*e*) "enters the Colony" be added the words "and by substituting the words to have been a prohibited immigrant under the law in force at the time of his entry" for the words "to be a prohibited immigrant".

That carries out the undertaking which I gave in moving the second reading, that this change would be applied only to persons who were prohibited immigrants under the law in force when they entered.

The question of the amendment was put and carried.

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

Clause 6.

MR. HAVELOCK: Mr. Chairman, may I receive an assurance that this will not complicate matters as regards Italian employees of the civil Government?

MR. O'CONNOR: I cannot see how this will affect them. I do not know whether the hon. member could explain his request more fully, as I cannot at present see how it could affect Italians.

MR. HAVELOCK: It does give free entry to any civilian employee in His Majesty's Department of State. I was wrong in saying employees of a civil government, I mean employees of the War Department coming into this country. It gives free entry to their wives and children. Is there any other way we can control the entry of such persons?

MR. O'CONNOR: I am obliged to the hon. member. Civilian employees of His Majesty's Department of State is used more or less as a term to describe permanent employees of departments in England and is not intended to apply to Italians.

Clause 7.

MR. PATEL: Mr. Chairman, under Standing Rule and Order No. 29 I propose that clause 7 be referred to a select committee. My reasons for moving this are that the amounts which were fixed when the Immigration (Control) Ordinance, 1948, was passed were considered after taking evidence in the whole country and after hearing representations from the delegation which arrived on behalf of the Government of India. In the original Bill the amounts were much higher, and then after due consideration they were reduced. The Ordinance has not been working for a sufficient period to justify a drastic change like the one suggested now. Moreover, the amendment offends against the general principle, that wherever possible the Ordinance should contain the law and not leave it to regulations. This system of government by regulation has been carried too far in this country, and has been commented on even by Nairobi Chamber of Commerce, and to provide that in a matter of this importance it shall be done by regulation is, in my opinion, handing over powers unnecessarily to the Government in Council. It is true that the Ordinance provides that regulations made will be placed before this Council, but I submit that when this matter was carefully gone into by a select committee and a committee of all territories it should not be altered now without reference to a select committee which could take evidence in the country as to whether such a course is justified or not. I move accordingly.

MR. O'CONNOR: Mr. Chairman, I cannot accept the motion. The hon. member who has just spoken raised this very question on a motion to adjourn the Council, when it was defeated. Then we had it out again on the second reading of the Bill, and this is the third bite at the cherry. The wish of the Council in this matter has already been quite clearly indicated on the motion which the hon. member himself moved. I cannot really think that the hon. member is under

[Mr. O'Connor]
any misapprehension as to the handing over of powers to make regulations to the Governor in Council after what has already been said, and after the undertaking which I have given to include any such regulations in sub-section (2) of section 13, as an amendment for that purpose is before the hon. member and that will enable this Council to keep complete control over any regulations which are made. I must oppose the amendment.

The question was put and negatived.

MR. O'CONNOR moved: That for the words "he fails to engage in or to" be substituted the words "he fails to engage in or does not" in paragraph (*b*) of new sub-section (2).

The question of the amendment was put and carried.

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

The question that clauses 8, 9, 10 and 11 do stand part of the Bill was put and carried on a division by 19 to 3, 3 not voting. Ayes: Messrs. Blundell, Cooke, Deverell, Gillett, Hartwell, Havelock, Hobson, Hope-Jones, Hyde-Clarke, Jeremiah, Keyser, Matthews, Mathu, Mortimer, O'Connor, Ohanga, Padley, Rankine, Lady Shaw, 19. Noes: Messrs. Madan, Patel, Pritam, 3. Not voting: Messrs. Nathoo, Salim, Shatry, 3.

Clause 12.

MR. O'CONNOR moved: That the following be substituted: "12. Section 13 of the principal Ordinance is amended by (1) inserting a new paragraph (*m*) in sub-section (1) thereof as follows and by relettering the existing paragraphs (*m*) and (*n*) as (*n*) and (*o*) respectively—'(*m*) prescribing the maximum capital sum which a person falling within paragraph (ii) of Class B, C, D or E, as the case may be, of sub-section (1) of section 7 must have in his full and free disposition'; (2) by inserting in paragraph (*n*) (as relettered) after the word 'issue' the words 'or renewal'; and (3) by inserting in sub-section (2) of section 13 after the words and letter 'provisions of paragraph (*h*)' the words and letter 'or (*m*)'".

The question of the amendment was put and carried.

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

MR. O'CONNOR moved: That the Bill be reported back to Council with amendments.

The question was put and carried.

Kenya Regiment (Territorial Force) (Amendment) Bill

Clause 4.

MR. RANKINE moved: That the following words "or wilfully and without lawful authority expends such ammunition" be substituted in new sub-section (5) after the words "when called upon to do so"; and that the figure "(4)" be substituted for the figure "(3)" in the last line of new sub-section (6).

The question of the amendment was put and carried.

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

Clause 8.

MR. RANKINE moved: That the word "paragraph" be substituted for the word "sub-section" in paragraph (iv).

The question of the amendment was put and carried.

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

MR. RANKINE moved: That the Bill be reported back to Council with amendments.

The question was put and carried.

Increase of Rent (Restriction) Bill

Clause 1.

MR. HOBSON: Mr. Chairman, I beg to move: That sub-clause (1) be deleted and the following substituted: "Short title, commencement, duration and application of Ordinance. (1) This Ordinance may be cited as the Increase of Rent (Restriction) Ordinance, 1949, and shall come into force on such a date as the Governor may, by notice in the Gazette, direct, and shall expire on the 31st day of December, 1950, unless extended for a further period or periods by resolution of the Legislative Council".

Beside the amendment appearing in the report, I have made a further amendment to include the words "for a further period or periods". The reason for this is that it has been suggested by Nairobi Chamber of Commerce that this subclause should be amended to permit this

[Mr. Hobson]

Council to extend the operation of the Ordinance for two further periods of six months only. The committee which was appointed by His Excellency, of which I was chairman, went into this matter with some care, and the conclusion to which we came was that Council should have power to extend the Ordinance for as long as it was clearly necessary to do so. These words make it quite clear that it can be extended for as many periods as are necessary in the future. I understand that the suggestion really came from Mr. Shapley, who is a well-known lawyer in this town. (Laughter.) (A MEMBER: Notorious!)

The question of the amendment was put and carried.

MR. HOBSON moved: That sub-clause (2) be amended (*a*) by inserting a comma after the word "premises" in line 6 of paragraph (*b*); (*b*) by inserting after the words "the property of" in paragraph (*c*) the words "the Government or of the East Africa High Commission or of the East African Railways and Harbours Administration or of"; (*c*) by inserting between paragraphs (*c*) and (*d*) the following new paragraph: "(*d*) any building or erection in the Coast Province used as a place of residence built by the owner thereof on land rented by such owner as a monthly tenant; and"; and (*d*) by renumbering the original paragraph (*d*) as (*e*).

The question of the amendment was put and carried.

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

Clause 2.

MR. HOBSON moved: That sub-clause (1) be amended (*a*) by deleting the definition of "business premises" and substituting therefor: "'business premises' means a building or part of a building let for business, trade or professional purposes or for the public service and includes land within the curtilage of such building or part of a building and comprised in the letting;"; (*b*) by amending the definition of dwelling-house by deleting the words "such house, part of a house or room" in line 7 and substituting the words "living room"; (*c*) by amending the definition of prescribed date by inserting the word "First" before "Schedule"; (*d*) by amending the definition of standard rent by deleting paragraph (*d*) of sub-paragraph (ii) of Part (A) thereof and by substituting the following: "(*d*) the cost of repairs for which he is liable; and"; (*e*) by amending the definition of tenant by adding at the end thereof the words "and, in the case of business premises of which the landlord could, but for the provisions of this Ordinance, have recovered possession, includes the legal personal representative of the deceased or other person entitled to carry on or wind up the business of the deceased, for such period as the Board may decide to be reasonably necessary for winding up the business of the deceased;"; (*f*) by deleting the definition of tenement house and by substituting the following: "'tenement house' means a dwelling-house occupied by a number of persons in excess of the number fixed generally for tenement houses by the Board;"; and (*g*) by deleting sub-clause (2) thereof and by substituting the following: "(2) Notwithstanding anything contained in the definition of 'standard rent'—(i) in any case in which the Board is satisfied, having regard to the temporary nature of the construction of the premises concerned or to the temporary nature of the lease or licence under which the land on which the premises are situate is held, or to the fact that the premises can be expected to be let only during a certain period of the year, that the standard rent as defined in sub-section (1) of this section would yield an uneconomic return to the landlord, the Board may fix the standard rent at such figure, as the Board shall, in all the circumstances of the case, consider reasonable; (ii) in any case in which the Board is satisfied that it is not reasonably practicable to obtain sufficient evidence to enable the Board to ascertain the rent at which the premises were let at the material date, the Board shall have power to determine the standard rent as being at such an amount as the Board thinks proper, having regard to the standard rent of similar premises in the neighbourhood".

The question of the amendment was put and carried.

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

Clause 4.

MR. HOBSON moved: That the word "judge" in sub-clause (2) be deleted.

The question of the amendment was put and carried.

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

Clause 5.

MR. HOBSON moved: That sub-clause (1) be amended (*a*) by substituting for the words "to put the landlords in possession thereof" in paragraph (*f*) the words "for the payment of arrears of rent"; (*b*) by amending paragraph (*g*) thereof by deleting the words "out of the premises comprised in a statutory tenancy," and by substituting therefor the words "out of premises of which, but for the provisions of this Ordinance, the landlord could have recovered possession,"; (c) by deleting paragraph (*h*) and substituting the following: "(*h*) (i) to allocate to any suitable tenant at such rent as the Central Board or the Coast Board, as the case may be, may fix, any house or portion thereof which, without good cause, has been left unoccupied for a period exceeding one month and, if any house is in an unfinished condition, to cause such house to be finished in all respects and rendered fit for habitation; (ii) to recover the cost of finishing any such house and rendering it fit for habitation either from the owner thereof or by directing the tenant to whom the house has been allotted to pay rent therefor to the Central Board or the Coast Board, as the case may be, and the tenant shall be bound to pay such rent accordingly, and the receipt of such Board shall be a good discharge for any rent so paid;"; (*d*) by adding at the end of paragraph (*f*) thereof ", and the receipt of such Board shall be a good discharge for any rent so paid"; and (*e*) by deleting the words "civil matters and" in paragraph (*n*) thereof.

The question of the amendment was put and carried.

MR. HOBSON moved: That the clause be further amended (*a*) by deleting the proviso to sub-clause (2) and substituting "Provided that where the Central Board or the Coast Board has deputed a valuer, inspector, officer or other person to inspect or view any premises any report made in that behalf shall be communicated to the landlord or tenant or their representatives."; (*b*) by substituting for the words "shall be deemed to be a tenant" in sub-clause (3) the words "in consideration of payment of rent shall be deemed to be a tenant of the person to whom such rent is paid"; (*c*) by amending sub-clause (4) by deleting the words "any criminal powers" and substituting "jurisdicition in any criminal matter".

The question of the amendment was put and carried.

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

Clause 6.

MR. HOBSON moved: That at the end of sub-clause (2) the words "Three members shall constitute a quorum" be added.

The question of the amendment was put and carried.

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

Clause 8.

MR. HOBSON moved: That the words "imprisonment for a term which may extend to" be deleted and the words "to a term of imprisonment not exceeding" be substituted therefor.

The question of the amendment was put and carried.

The clause as amended was put and carried.

Clause 9.

MR. VASEY: Mr. Chairman, I beg to move: That sub-clause (1) be deleted and the following substituted therefor: "(1) In addition to any other powers specifically conferred on it by this Ordinance, the Board may investigate any complaint relating to the tenancy of premises made to it either by a tenant or landlord of such premises".

Perhaps I should explain briefly the reason for this. Under the present clause it is mandatory on the Board to investigate every complaint, however trivial it may be. With this amendment it is hoped to save litigants a considerable amount of legal expense by preventing the duplication of costs which has occurred through the procedure of having first to establish their case with the Rent Control Board and, second, to establish their case with the court. It means therefore

[Mr. Vasey]

that the Rent Control Boards, particularly in the Coast Province and the Central Province, will be fairly high-powered, if I may put it that way, Boards, and I think we should prevent them having to waste their time by its being mandatory upon them to investigate every complaint, however trivial that complaint may be. I therefore beg to move the amendment.

MR. HOBSON: I accept that amendment.

The question of the amendment was put and carried.

MR. HOBSON moved: That sub-clause (3) be deleted and sub-clauses (4), (5) and (6) be renumbered as (3), (4) and (5).

The question of the amendment was put and carried.

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

Clause 10.

MR. HOBSON moved: That the clause be deleted and the following substituted therefor: "Penalty for failure to comply with lawful order of Board. 10. Any person who fails to comply with any lawful order or decision of the Board after the expiration of the time allowed for an appeal therefrom, or, if an appeal has been filed, after such order or decision has been upheld, shall be liable on conviction by the court to a fine not exceeding two thousand shillings or to a term of imprisonment not exceeding six months or to both such fine and imprisonment".

The question of the amendment was put and carried.

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

Clause 12.

MR. HOBSON moved: That after the word "premises" in line 2 be inserted ", or any agent, clerk, or other person employed by him," and after the word "landlord" in line 7 ", agent, clerk, or other person".

The question of the amendment was put and carried.

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

Clause 13.

MR. HOBSON moved: (*a*) to delete the words "one month's" in the first line and (*b*) to add the following new paragraph: "(*c*) In any case where the landlord has, since the prescribed date, incurred expenditure on improvement or structural alteration of premises (not including expenditure on redecoration or repairs, whether structural repairs or not), by an amount calculated at a rate per annum not exceeding ten per centum of the expenditure so incurred.".

The question of the amendment was put and carried.

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

Clause 14.

MR. HOBSON moved: That clause 14 be deleted and the following substituted therefor: "Penalties for false statement in notice. 14. If any notice served under the provisions of subsection (1) of section 13 of this Ordinance contains any statement or representation which is false or misleading in any material respect, the landlord shall be liable to a fine not exceeding four hundred shillings, unless he proves that the statement was made innocently and without intent to deceive. Where a notice of an increase of rent which at the time was valid has been served on any tenant, the increase may be continued without service of any fresh notice on any subsequent tenant.".

The question of the amendment was put and carried.

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

Clause 15.

MR. HOBSON moved: That sub-clause (2) be amended by deleting the words "or, where such increase is on account of an increase in rates, one week," and by deleting the proviso and substituting therefor: "Provided that where an increase in rent has been permitted on account of an increase in rates, such increase in rent shall be payable by the tenant one week after the service of a notice on him, and shall be payable as from the date when the increase in rates became operative, and, if there has, since such date, been a change of tenant, such increase in rent shall be payable by each

[Mr. Hobson]

tenant in respect of the period during which he was tenant of the premises;" and to delete sub-clause (3).

The question of the amendment was put and carried.

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

Clause 16.

MR. HOBSON moved: That sub-clause (1) be amended (*a*) by inserting in sub-clause (1) between paragraphs (*c*) and (*d*) the following new paragraph: "(*d*) the Central Board, the Coast Board or the court, as the case may be, is satisfied that the tenant has sublet the whole or any part of the premises (such part being also premises to which this Ordinance applies) for a rent in excess of the rent recoverable under the provisions of this Ordinance."; (*b*) by renumbering paragraphs (*d*), (*e*), (*f*), (*g*), (*h*) and (*i*) of sub-clause (1) as (*e*), (*f*), (*g*), (*h*), (*i*) and (*j*) respectively; (*c*) by amending sub-paragraph (i) of renumbered (*e*) by inserting after the words "tenant from him" the words "or for the occupation of the person who is entitled to the enjoyment of such dwelling-house under a will or settlement,", and by adding after the word "available" at the end of the words "or will be available at the time that the order takes effect"; (*d*) by inserting after the word "available" at the end of sub-paragraph (ii) of (*e*) the words "or will be available at the time that the order takes effect"; (*e*) by deleting the renumbered paragraph (i) and substituting the following: "(i) the tenant has, without the consent in writing of the landlord, at any time between the 1st day of December, 1941, or the prescribed date, whichever is the later, and the commencement of this Ordinance, has, without the consent in writing of the landlord, assigned or sub-let the whole of the premises, the remainder being already sub-let; or, at any time after the commencement of this Ordinance, has, without the consent in writing of the landlord, assigned, sub-let or parted with the possession of the premises or any part thereof. A landlord who wishes to obtain an ejectment order on this ground may have the option of obtaining a similar order against the occupier or having the occupier as his direct tenant. For the purposes of this paragraph, if the tenant is a private limited company or partnership the transfer, without the consent of the landlord, of more than fifty per centum of the share capital of the company or the interest of the partners in the partnership shall be deemed to be an assignment of the premises;"; (*f*) by deleting the original paragraph (*j*) of sub-clause (1); (*g*) by deleting paragraph (*k*) and substituting: "the landlord requires possession of the premises to enable the reconstruction or rebuilding thereof to be carried out, in which case the Central Board, the Coast Board or the court, as the case may be, may include in any ejectment order for such purpose an order requiring the landlord to grant to the tenant a new tenancy of the reconstructed or rebuilt premises or part thereof on such terms as may be reasonably equivalent to the old tenancy, and fixing a date for the completion of the new building and for its occupation by the tenant and imposing such reasonable conditions as the Board may think necessary;".

The question of the amendment was put and carried.

MR. HOBSON moved: That sub-clause (4) be amended by substituting for the words "paragraph (*h*) or (*i*)" in line 1 the words "sub-paragraph (i) of paragraph (*e*) or paragraph (*j*)".

The question of the amendment was put and carried.

MR. HOBSON moved: That sub-clause (5) be amended by inserting after the words "case may be" in line 7 the words "at any time before the filing of the order in court, or the court making or executing the order, as the case may be," and by deleting the words "or mesne profits" in line 11.

The question of the amendment was put and carried.

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

Clause 18.

MR. HOBSON moved: That sub-clause (3) be amended by substituting for "or to assignment of leases" the words "or to the assignment of any lease".

The question of the amendment was put and carried.

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

Clause 19.

MR. HOBSON moved: To insert the figure "(1)" after "19." and to add the following new sub-clause: "(2) Where the rent of business premises includes a payment for goodwill or for any other consideration, whether with or without a payment for the use of furniture or service, the Board may determine what part of the rent is attributable to the goodwill or other consideration and, if the balance of the rent exceeds the standard rent of the premises and any permitted service charge, the amount paid or charged in excess of the standard rent and of any permitted service charge shall, notwithstanding any agreement to the contrary, be irrecoverable by the landlord and, if already paid, shall be recoverable by the person by whom it was paid."

The question of the amendment was put and carried.

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

Clause 21.

MR. HOBSON moved: (*a*) That sub-clause (1) be amended by deleting the words "in monthly instalments"; (*b*) that sub-clause (2) be deleted and the following substituted: "(2) If—(*a*) any person in any rent book or similar document makes an entry showing or purporting to show any tenant as being in arrear in respect of any sum which under the provisions of this Ordinance is irrecoverable; or (*b*) where any such entry has been made by or on behalf of any landlord, and the landlord on being requested by or on behalf of the tenant so to do refuses or neglects to cause the entry to be deleted within seven days, then that person or landlord shall, on conviction by the court, be liable to a fine not exceeding four hundred shillings unles he proves that at the time of the making of the entry or the neglect or refusal to cause it to be deleted, the landlord had a bona fide claim that such sum was recoverable."; (*c*) by deleting sub-clause (3) and substituting: "(3) Any sum paid by a tenant, which under sub-section (1) of this section is recoverable by him, shall be recoverable at any time within two years from the date of the payment thereof."; and (*d*) by substituting the word "limitation" for the word "time" in sub-clause (4).

The question of the amendment was put and carried.

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

Clause 22.

MR. HOBSON moved: That after the word "fails" in line 2 the words "to enter or" be inserted.

The question of the amendment was put and carried.

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

Clause 23.

MR. HOBSON moved: That after the word "under" in line 1 the words "the provisions of" be inserted.

The question of the amendment was put and carried.

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

Clause 26.

MR. HOBSON moved: That the word "premises" be substituted for the words "the premises" in line 2; the word "such" for "the" in line 5; and that the word "to" be deleted from line 6 and where it first appears in the last line.

The question of the amendment was put and carried.

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

Clause 28.

MR. HOBSON moved: That the clause be deleted and the following substituted: "Restriction on right to assign or sub-let premises. 28. Notwithstanding the absence of any covenant against the assigning or sub-letting of any premises no tenant shall have the right to assign, sub-let or part with the possession of such premises or part thereof without the written consent of the landlord or, where such consent shall be unreasonably withheld, without the consent of the Board: Provided that this section shall not apply to a tenant holding a tenancy commencing after the commencement of this Ordinance for a term exceeding one year or holding any tenancy the unexpired residue whereof at the commencement of this Ordinance exceeds one year.".

[MR. HOBSON]

The question was put and carried.

Clause 29.

MR. HOBSON moved: That the clause be amended (*a*) by deleting the word "six" from sub-clause (3) and substituting "twelve", and (*b*) by deleting from sub-clause (5) the word "sub-section" in the last line and substituting the words "sub-sections (1) and".

The question of the amendment was put and carried.

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

MR. HOBSON moved: That a new clause 32 be inserted after clause 31.

THE CHAIRMAN: You should not introduce a new clause after the Bill has been disposed of. We have nothing in our rules dealing specifically with it, I quite agree, but when we have omissions in our rules we are supposed to follow House of Commons' practice, which is as follows: "New clauses are normally considered after the clauses of the Bill have been disposed of, and the insertion of any that are passed in their proper place in the Bill is not fixed by the committee, but is left to be settled between the Member in charge of the Bill and the Public Bill Office, which is responsible for reprinting the Bill as amended". The order in which new clauses are considered is that in which they stand on the notice paper, that is the order in which they have been handed in, except that clauses offered by the Member in charge of the Bill are placed first. "The procedure on a new clause gives an opportunity for a debate on its principle and then for the proposal of amendments before its incorporation in the Bill. The Member, in whose name it stands, on being called by the chairman, 'brings up' the clause in a speech, stating the reasons for its adoption. Under the provisions of Standing Order No. 37 a new clause is read the first time without question put, and the reading of the marginal note by the clerk is taken as complying with the standing order. The question, that the clause be read a second time, is then proposed, and, if this is agreed to, amendments may be moved in the ordinary manner. Finally, the question is put, that the clause, or the clause as amended, be added to the Bill".

MR. HOBSON: May I refer to Rules 70 and 71 of our Standing Rules and Orders? No. 71, which deals with amendments, says: "Amendments may be made to a clause; or clauses may be deleted; or new clauses may be added, provided they are relevant to the subject matter of the Bill".

THE CHAIRMAN: But in adding a new clause there is no procedure in detail laid down as to how it should be done. I know new clauses may be added, we have provided for that, but we have not provided in our rules for any method of adding them. It would be possible, simply by saying we will amend clause 30 of the Bill by adding a new clause, to alter the whole thing. In the case of the clause which is now being brought in, it has never been read a first time and there has been no second reading of that clause. It may vary the sense considerably. That is all I am pointing out. It is not for me, of course, to do anything more than that.

MR. HOBSON: Would you prefer me to take the new clause after I have dealt with the amendments?

THE CHAIRMAN: I think you should take clause 32 as it comes in the Bill and then move later to insert the new one.

MR. VASEY: Mr. Chairman, may I say from this side of Council that we would strongly support the procedure you have outlined as being the best safeguard we could have in regard to introduction of a new clause which might well involve a new principle without its being fully debated by the Council.

MR. O'CONNOR: Sir, may I say that I also support the procedure which you have outlined, which I understand is the correct one.

THE CHAIRMAN: Will you then take clause 32 of the Bill?

Clause 32.

MR. HOBSON moved: That clause 32 be amended by deleting sub-clause (3) and substituting: "(3) The Supreme Court may make rules prescribing the procedure for enforcing determinations or orders of the Board filed in the court

[Mr. Hobson]

under the provisions of section 32 of this Ordinance; and prescribing the time within which appeals may be brought and the procedure to be followed and the fees to be paid, in respect of any appeal to the Supreme Court or the Court of Appeal for Eastern Africa from any decision or determination of the Board".

The question of the amendment was put and carried.

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

Clause 33.

MR. HOBSON: I beg to move: That the words "together with the Ordinances specified in the Second Schedule to this Ordinance" be added.

The reason for that is that some of the Ordinances which in particular amended the Increase of Rent and Mortgage Interest (Restrictions) Ordinance, 1940, have substantive sections of their own which do not so amend that Ordinance. It was thought safer therefore to add a second schedule setting out these Ordinances specifically.

The question of the amendment was put and carried.

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

Schedule.

MR. HOBSON moved: That the word "First" be added to the word "Schedule" in line 1.

The question was put and carried.

New clauses.

MR. HOBSON moved: That the following new clauses after clause 31 be added: "Enforcement of determinations and orders. 32. (1) A duly authenticated copy of any determination or order of the Board may be filed in the court by any party to the proceedings before such Board, and on such order being filed and notice of such filing being served on the Board by the party filing the same such determination or order may be enforced as a decree of the court. (2) In any case in which such determination or order has been filed by a party the Board shall, on being served with notice of the filing of such determination or order, transmit to the court its record of the proceedings before it and the same shall be filed by the court along with the certified copy of the determination or order.

Compensation in case of frivolous or vexatious applications. 33. If on the dismissal of any application a Board shall be of opinion that the application was frivolous or vexatious, the Board may order the applicant to pay to any other party to the application a reasonable sum as compensation for the trouble and expense to which such party may have been put by reason of such application".

The first clause 32 (1) merely provides, as I pointed out yesterday, for the enforcement of a determination or order of the Board. Once they are filed in court they may be enforced just as a decree of the court. The second new clause merely provides for compensation where a frivolous or vexatious application has been made either by a tenant or a landlord, and the other party has had trouble and expense to which he ought not to have been put.

MR. VASEY: Mr. Chairman, I should like to support this, but I would just like to be perfectly clear. In going into 32 (1) I take it it is in the power of the Board itself to file an order in the court, because from my reading of this it looks as if only the parties in the proceedings before the Board can file the order. I thought it was the intention that the Board itself could file any determination or order, in order to ensure that it had the power of law?

MR. HOBSON: As the clause now stands, the determination or order may only be filed by any party and, if my hon. friend desires to have that power given to the Board, I suggest he moves an amendment which I shall be pleased to accept.

MR. VASEY: If the hon. Solicitor General would word the amendment to give intent to what I am driving at, I should be delighted to move the amendment, because I think it should rest within the power of the Board to file an order in court to give effect to its determination or order, and should not be left to one of the two contending parties to take action.

MR. HOBSON: Mr. Chairman, I beg to move, in view of the request for an amendment by the hon. Member for

[Mr. Hobson]

Nairobi North, that the sub-clause (1) of the new clause (32) should now read: "A duly authenticated copy of any determination or order of the Board may be filed in the court by any party to the proceedings before such Board, or by the Board" and then read on as it was before.

The question of the amendment was put and carried.

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

MR. HOBSON moved: That clauses 32 and 33 be renumbered 34 and 35 respectively.

The question was put and carried.

Second Schedule.

MR. HOBSON: moved: That the following be added after the First Schedule: "Second Schedule. The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1941 (No. 9 of 1941). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2) Ordinance, 1941 (No. 37 of 1941). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1942 (No. 16 of 1942). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1943 (No. 12 of 1943). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment No. 2) Ordinance, 1943 (No. 26 of 1943). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1945 (No. 4 of 1945). The Increase of Rent and of Mortgage Interest (Restrictions) (Amendment) Ordinance, 1948 (No. 41 of 1948)".

The question was put and carried.

MR. O'CONNOR moved: That the Bill be reported back to Council with amendment.

The question was put and carried.

Increase of Mortgage Interest (Restriction) Bill

Clause 3.

MR. HOBSON moved: That the definition of "business premises" be deleted and the following substituted: "'business premises' means a building or part of a building let for business, trade or professional purposes or for the public service and includes land within the curtilage of such building or part of a building and comprised in the letting".

The question was put and carried.

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

Clause 6.

MR. HOBSON moved: That the words "in monthly instalments" appearing in lines 11 and 12 be deleted.

The question of the amendment was put and carried.

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

MR. O'CONNOR moved: That the Bill be reported back to Council with amendment.

The question was put and carried.

Council resumed.

MR. O'CONNOR reported the Bills with amendment, and the report was adopted.

BILLS

THIRD READINGS

MR. O'CONNOR moved: That the Immigration (Control) (Amendment) Bill be read the third time and passed.

MR. HOBSON seconded.

MR PATEL: Mr. Speaker, I beg to move: That the Immigration (Control) (Amendment) Bill be rejected.

At the end of the sitting I do not propose to take the time of Council, particularly when most of the members are not in a receptive mood! (Laughter.) But I should like to say, in concise form, the reasons why I move this motion. In my view, this amending Bill is contrary to the spirit of the inter-territorial arrangement which was made in November, 1947. Secondly, it breaks the uniformity between the four East African territories, which was proclaimed to be necessary very solemnly by the Government some time back. Thirdly, it goes against the considered view which was arrived at by the joint select committees after taking evidence from the whole country. Therefore I beg to move that the Bill be rejected.

MR. O'CONNOR: Mr. Speaker, I rise to oppose the motion. I fear that I am one of those members who is not at all in a receptive mood. I cannot see that either

[Mr. O'Connor]
of the reasons put forward has the least validity. As has already been explained more than once, this measure is the result of consultation between the Immigration Officers and the law officers of the four territories, to seek to remedy defects which have arisen in practice, and it is proposed to put it in identical language before the Legislatures of the four territories. If that does not constitute inter-territorial co-operation, I do not know the meaning of those words. I must oppose the motion.

The question was put and negatived.

The question that the Bill be read the third time and passed was put and carried, and the Bill read accordingly.

MR. O'CONNOR moved: That the Kenya Regiment (Territorial Force) (Amendment) Bill be read the third time and passed.

MR. RANKINE seconded.

The question was put and carried, and the Bill read accordingly.

MR. O'CONNOR moved: That the Increase of Rent (Restriction) Bill be read the third time and passed.

MR. HOBSON seconded.

The question was put and carried, and the Bill read accordingly.

MR. O'CONNOR moved: That the Increase of Mortgage Interest (Restriction) Bill be read the third time and passed.

MR. HOBSON seconded.

The question was put and carried, and the Bill read accordingly.

ADJOURNMENT

Council rose at 12.30 p.m. and adjourned till 10 a.m. on Tuesday, 9th August, 1949.

WRITTEN ANSWERS TO QUESTIONS

No. 10—AFRICAN HOUSING

MR. VASEY:

Is Government aware of the policy, adopted by the Nairobi Municipal Council in the Gorofani scheme, of a local authority building houses to let at economic rentals on long lease to employers for their African staff?

Will Government investigate the possibility of other local government authorities adopting this principle as a means of (*a*) ensuring Africans are adequately housed, (*b*) assisting in the development of secondary industries, and (*c*) preventing too heavy a burden of subsidization falling on the taxpayers?

Reply:

The answer to the first part of the question is in the affirmative.

As regards the second part of the question, Government is at present considering the desirability of setting up a committee to examine the general problem of providing suitable housing for Africans in municipalities and townships.

No. 12—MILEAGE ALLOWANCES

MR. BLUNDELL:

Will Government state whether it is satisfied that the mileage allowances for labour inspectors, police and similar officers in the settled areas are sufficient for the proper execution of their duties? If the answer is in the affirmative, will Government state why one of the resident labour inspectors in the Rift Valley was recently motionless for 14 days as his mileage allowance of 600 miles per month was exhausted? If the answer is in the negative, will Government please state what steps they intend to take to remedy this state of affairs?

Reply:

The Government is satisfied that the funds provided to heads of departments for local transport and travelling are generally adequate to enable officers in those departments to perform their duties properly. It must, however, occur from time to time that departmental allocations of funds may lead to a situation when the funds provided to officers on a monthly basis are temporarily inadequate. In such circumstances if extra travelling is necessary, additional funds are normally released by the head of the department.

In the case in question, Government is not aware that a resident labour inspector was immobilized for 14 days; in one case, owing to exceptionally heavy travelling during one month, an officer found himself having less mileage than he required towards the end of the month, though in point of fact he still had 50 miles mileage in hand for emergencies, and was immobilized for four days. This is the first occasion as far as is known where a resident labour inspector has had to stop inspection due to lack of mileage.

The Labour Commissioner, out of his local transport and travelling vote, has been able to allocate 600 miles a month to resident labour inspectors and has recently requested a 50 per cent increase in the local transport and travelling vote of his department, which is at present under consideration.

It will be appreciated that it is essential to exercise the strictest economy in the matter of travelling as otherwise it can form a very serious and wasteful proportion of the expenses of the Government.

No. 19—AFRICAN ADMINISTRATIVE ASSISTANT OFFICERS

MR. OHANGA:

Would Government consider redesignating African administrative assistant officers as assistant district officers as the latter is more explicit of the duties these officers are actually performing and is also more in line with designations which have been adopted in other departments for officers holding offices of a similar nature?

Reply:

No. Government is satisfied that the designation African assistant administrative officer adequately conveys the position of and the duties which these officers perform.

No. 20—DIVISIONAL CHIEFS IN NYANZA

MR. OHANGA:

(*a*) With regard to the recent death of Paramount Chief Mumias in Nyanza, would Government please inform Council of its future plans regarding that office? (*b*) Would Government consider the often repeated request of the Nyanza people for the creation of the posts of divisional chiefs and senior chiefs as has already been done in certain districts in the Central Province?

Reply:

(*a*) Ever since the late Paramount Chief Mumias retired from public life nearly twenty years ago, the post of Paramount Chief has not been an effective office. The Government is satisfied that there is no place in the present structure of Government for a Paramount Chief and no further appointments will be made.

(*b*) The post of Divisional Chief only occurs in the Kisumu district and the post of Senior Chief has now disappeared. The Government does not intend to extend the policy of appointing Divisional Chiefs beyond the Kisumu district.

No. 21—LEPROSY IN NYANZA

MR. OHANGA:

Having regard to the recent announcement to the effect that a high proportion of the inhabitants of Nyanza, particularly the Luo, are affected with leprosy, would Government please provide the following information: (*a*) the number of people so affected, (*b*) whether the number given under (*a*) are all receiving treatment, (*c*) where such treatment is being given, and (*d*) the future of the Kakamega leper camp?

Reply:

(*a*) It has recently been estimated that there are from 20,000 to 30,000 cases of leprosy in Nyanza Province, the greater proportion of whom are non-infective.

(*b*) No.

(*c*) Treatment is being given at the Kakamega leprosy camp.

(*d*) The future of this camp has not yet been decided; the Government has accepted the principle that it is essential to set up a leper institution in Nyanza Province and it is expected that when this is in being the Kakamega leprosy camp will be closed down.

No. 22—Tsetse Fly Eradication

Mr. Ohanga:

(*a*) Would Government inform Council what progress has been achieved in the scheme to eradicate tsetse fly in the Colony?

(*b*) Is Government aware of the fact that sleeping sickness has assumed serious proportions in Nyanza Province and that at the moment about 3,000 individuals are suffering, particularly in South Nyanza?

(*c*) Would Government please take immediate measures to relieve the suffering and, further, to ensure a satisfactorily permanent eradication of the tsetse menace in African reserves?

Reply:

(*a*) Tsetse flies have been eliminated from more than 166 miles of river valleys in Nyanza Province; from 20 square miles of infested bush at Makueni (Central Province) and from smaller infested foci at Mariakani and Kilifi in the Coast Province. Much larger areas have thus been released for occupation and development. Anti-tsetse measures have been, or are being, taken also at Kibigori, Chepalungu and other parts of Nyanza and on the borders of the Kamasia (Subukia-Solai) with satisfactory results.

(*b*) Government is aware that the incidence of sleeping sickness has increased in Nyanza Province, but the statement that 3,000 individuals are suffering, appears to be greatly exaggerated, only 187 cases having so far been detected.

(*c*) Special dispensaries for the investigation and treatment of sleeping sickness in South Nyanza have been in operation for several years. The Medical Department is at present carrying out investigations and treatment measures in both South Kisii and the Kibigori areas and two teams under a European medical officer and an African assistant medical officer have been operating for some time. All cases detected are given appropriate treatment and suspected cases are kept under observation.

Rules under the Public Health Ordinance were recently applied to certain areas to require any person suspected of being infected with sleeping sickness to submit himself for examination and/or treatment, and to enable orders to be issued to arrest or prevent the outbreak or spread of sleeping sickness. In addition, in order to be able to proceed with the Chepalungu Scheme referred to in the first part of the question, the provisions of the Compulsory Labour Ordinance have been introduced in that area.

While, therefore, the Government has taken every reasonable measure to deal with this problem, its efforts can only be effective if the African population of the area give their full co-operation by presenting themselves for inspection and/or treatment, by making proper use of reclaimed land and by assisting in further work of reclamation.

No. 23—Great Trunk Road

Mr. Ohanga:

(*a*) Is it a fact that the Londiani-Kisumu-Busia section of the Great Trunk Road has been accorded no priority at all in the development plan and work on it is unlikely to start until after some years?

(*b*) In view of the fact that this section serves one of the most important areas in the Colony, both from agricultural and industrial points of view, and which so far has not got one mile of road bitumenized, in spite of its considerable density of traffic, will Government please consider giving this section the highest priority possible in order to speed up development?

Reply:

(*a*) The answer to the first part of the question is in the negative. The whole length of the Great North Road has been accorded a high priority, but its construction is dependent on the organization available to undertake it.

(*b*) The survey of the new alignment from Londiani to Busia has been carried out and is at present being examined by the Public Works Department. The date when work can start depends on the completion of the planning and design of this length based on the survey, and on whether a satisfactory tender can be obtained. In any case it is unlikely to be within the next two years, or before the portion between Nakuru and Londiani has been completed.

No. 24—African Travel on E.A.R. & H.

Mr. Ohanga:

Will Government please obtain the following information from the East Africa High Commission:—

(*a*) Would the Railway Administration please inform this Council whether it is a fact or not that no high grade senior African servants of the E.A.R. & H. are allowed better accommodation on the trains or steamers than 3rd class when travelling to and from their homes on leave, or proceeding home on retirement?

(*b*) If the answer is in the negative, can Council be informed what grades of servants are offered what accommodation and, if in the affirmative, adduce grounds for maintaining this policy, and further indicate when it will be possible to effect a change, if any?

(*c*) Is the Railway Administration aware of the very great inconvenience suffered by second and first class passengers travelling on trains between Nairobi and Kisumu by the lack of towels and soap in the sanitary compartments of those classes? Can steps be taken to rectify the position as soon as possible?

Reply:

The Commissioner for Transport has supplied the following information:—

(*a*) With effect from 1st June, 1949, all African staff of the East African Railways and Harbours Administration in receipt of a salary of Shs. 240/- and over per month have been granted second class travel privileges over the whole of the Administration's system.

Prior to last June, African staff were not granted second class travel privileges owing to the acute shortage of second class accommodation for fare-paying passengers. It was thought that accommodation would be easier in the post-war period. In fact the position has in no way eased, but as new coaching stock cannot arrive until the end of next year, it has been decided not to defer the granting of this concession to upper grade African staff any longer.

(*b*) In view of the answer at (*a*), (*b*) does not arise.

(*c*) The Administration is not aware of any such very great inconvenience as is alleged. Towels and soap are available to first and second class passengers on request from attendants on all passenger trains. The practice of supplying towels and soap in compartments was discontinued during the war owing to heavy losses due to theft. With effect from the 1st July, 1949, however, it is the intention to reintroduce the practice of supplying towels and soap with all bedding issues.

No. 25—Professional Recruiting Licences

Mr. Ohanga:

(*a*) Will Government please inform Council of the number of people who today hold licences as professional recruiters of African labour? (*b*) Would Government please consider abolishing immediately and completely the whole system of licensing individuals as professional recruiters of African labour, and thereafter make it illegal for anyone to so recruit for profit?

Reply:

(*a*) None.

(*b*) As the Commissioner for Labour informed the Council in 1947, the whole question of professional recruiting was then being investigated. This has been done, and as a result no further professional recruiting licences were issued. Recruiting is now carried out by employers under a "private recruiters" licence through assistant recruiters. In so far as these are employees, and therefore their wages may depend upon their efficiency as recruiters, they may be said to recruit for profit. Such men are, however, often of great assistance to those Africans seeking employment, since they save them from the expense of travelling all over the country looking for work. There may therefore be some advantage to the employee, as well as to the employer, in retaining their services.

No. 26—AFRICAN EMPLOYEES, MOMBASA PORT

MR. MATHU:

Will Government please ascertain whether the East Africa High Commission is aware of standing grievances of the African crane drivers and cable boys at the port of Mombasa in regard to their general conditions of work? If the answer is in the affirmative, will the authorities concerned look into the matter with a view to removing the existing grievances, particularly (*a*) those connected with the introduction of a new grade called the "supernumerary crane driver" which reduces the chances of promotion to higher grades, and (*b*) those connected with the duty roster which makes the workers concerned receive no overtime when on duty on a Sunday?

Reply:

The following information has been furnished by the East Africa High Commission:—

The East Africa High Commission is not aware of any standing grievance affecting African crane drivers and cable boys at the Port of Mombasa, whose general conditions of work and rates of pay compare favourably with those of any other African employees. The East Africa High Commission is satisfied that there is no grievance connected with the grade referred to as "Supernumerary Crane Driver". The grade is essential to efficient working and does not reduce the chances of promotion. Nor is there any bona fide grievance connected with the introduction of a duty roster for the drivers which ensures regular turns of duty and prevents excessive overtime hours of duty. Work performed on Sundays as a part of the rostered week does not entail any overtime. Any work done on a Sunday, if in addition to the rostered duty for that week, is paid for as overtime.

The opportunity is taken to remind the hon. member that there exists a well established means of ventilating grievances, real or imaginary, in the form of the Railway African Staff Union which has an effective branch at Mombasa.

No. 27—BOARD OF EXAMINERS

MR. MATHU:

Will Government please give the present composition of the board of examiners for various examinations of the African school system, disclosing the number of Africans on the board?

Reply:

The Board of Examiners for African Examinations is composed of six departmental officers, two educational advisers to missions, two supervisors of schools, seven principals of African secondary schools and two teachers in African schools.

Two of the members of the board are Africans.

No. 28—SCHOOL MEDICAL SERVICE

MR. MATHU:

Will Government give full details of how they have implemented the policy of school medical service? Will they please state how this policy has affected the African school population of the Colony?

Reply:

A medical officer has been appointed to begin a school medical service and she is assisted by a welfare officer who is a trained nurse and a health inspector. Medical record cards have been printed and a start has been made at European schools. The school medical officer has also visited some African schools, but at the present time medical inspections have been confined to European schools on account of the limited resources available. It is the intention to develop the school medical service to include schoolchildren of all races.

No. 29—TRADE UNIONS

MR. MATHU:

Will Government please reply to the first part of question No. 66 answered on 20th October, 1947, and will they give the answer to include information sought up to date? Will Government please indicate their attitude towards the recently formed East African Trade Unions Congress?

Reply:

According to the register of trade unions, which is a public document open to inspection, the number of trade unions at present registered under the Trade Unions and Trade Disputes Ordinance, 1943, is 13 of which the registration of one union has been cancelled at its own request, and the title of another union has been changed, also at its own request.

The names of the unions at present registered are as follows:

E.A. Ramgarhia Artisan Union.

The Labour Trade Union of East Africa.

The Muslim Labour Union of Kenya and Uganda.

The East African Standard Asian Union.

Nairobi African Taxi Drivers' Union.

Typographical Union of Kenya.

The Thika Native Motor Drivers' Association, whose registration was cancelled on the 23rd April, 1949, at its own request under section 11 (1) (*a*) of the Ordinance.

The Kenya Asian Civil Service Association.

The Kenya and Uganda Railway Asian Union.

The African Workers' Federation.

The Kenya African Road Transport and Mechanics' Union, whose title was changed on the 5th December, 1948, to that of the Transport and Allied Workers' Union.

Tailors' and Garment Workers' Union.

The Shoemaker Workmen's Union.

The attitude of Government towards the recently formed Trade Unions Congress will be conditioned by the behaviour of that body. If its conduct shows it to be a genuine effort to ameliorate the conditions of the workers by constitutional means, Government will welcome it. If on the other hand it proves to be an attempt by Communist elements to obtain control of organized labour for subversive objects, Government will be strongly opposed to it.

No. 30—CO-OPERATIVE SOCIETIES

MR. MATHU:

With reference to the reply to Question No. 67 of 1947, will Government please (*a*) give a list of the co-operative societies now registered or deemed to be registered under the Co-operative Societies Ordinance, 1945; (*b*) append the capital of each society so registered and its annual turnover, and (*c*) give the number of African inspectors and the qualifications for the work for which they are employed?

Reply:

(*a*) and (*b*). The information requested is attached as Appendix I to this reply. The information contained in this Appendix is not exactly that requested in the question but it will be appreciated that to give the facts separately for each society would involve a very great deal of clerical work. However, if the hon. Member for African Interests wishes further detailed information in respect of these two parts of his question, the Registrar of Co-operative Societies would be pleased, at any time convenient to the member, to furnish him with this information verbally.

(*c*) The details requested in this part of the question are contained in Appendix II to this reply. With regard to the qualifications for the work for which African inspectors are employed, the minimum qualification for appointment as an African inspector is now the possession of a junior secondary certificate. African inspectors are engaged, initially, as "learners" and are given departmental training for the specialized work which they are required to do.

DETAILS OF REGISTERED SOCIETIES WITH DISTRIBUTION IN PROVINCES. APP. I.

Type of Society	Race	Number of Societies	Number of Members	Working Capital	Turnover	Remarks
				£	£	
Nyanza Province						
All	All	70	3,630	15,729	53,931	
Thrift	African	2	30	—	20	Deposits made during the year are shown as turnover.
Consumers (including Supply Societies) ..	Asian	1	329	10,680	20,156	
	African	5	663	223	252	
Producers Marketing ..	Asian	1	91	2,204	27,782	
	African	61	2,517	2,622	5,721	
Central Province						
All	All	18	7,867	63,017	241,675	—
Thrift	African	2	72	—	325	Deposits quoted in place of Turnover.
Consumers ..	European	1	2,145	24,985	135,664	E.A. Co-operative Trading Society, Ltd.
	Asian	4	2,510	21,857	65,027	
	African	2	1,753	14,482	38,625	Includes Kenya African Association of Farmers & Traders (Co-op.), Ltd. (*vide* para. 9(*b*) of Part I).
	Total ..	7	6,408	61,424	239,316	
Producers Marketing ..	African	9	1,387	1,593	2,359	Figures for Turnover from four societies only. Remainder have not yet completed trading period.
Rift Valley Province						
All	All	3	163	640	2,426	
Consumers ..	African	2	126	402	750	One Society has only worked for five months.
Producers ..	European	1	37	248	1,676	Farmers Mart Co-operative Society, Ltd. (Eldoret).
Coast Province						
All	All	14	2,343	25,115	60,988	
Credit (Limited Liability)	Asian	1	558	11,762	37,000	Loans granted is taken as Turnover.
Consumers ..	Asian	3	1,058	12,500	17,341	Turnover figures for one Society not yet available.
	African	2	110	226	1,804	
Producers Marketing ..	African	5	481	627	4,843	
Thrift	African	2	136	—	362	Deposits are shown as Turnover.
Building ..	Asian	1	?	?	?	Figures not yet available.
Colony-wide Societies ..	All	6	5,007	1,178,178	5,030,112	

All above are Producers' Marketing and Supply Societies composed of European membership.

DETAILS OF REGISTERED SOCIETIES WITH DISTRIBUTION IN PROVINCE APP. I

Type of Society	Race	Number of Societies	Number of Members	Working Capital	Turnover	Remarks
				£	£	
Summary for whole Society by Types of Society and Race						
Credit (Limited Liability) ..	Asian	1	558	11,762	37,000	
Thrift	African	6	238	—	707	
Consumers ..	European	1	2,145	24,985	135,664	Total, £279,619.
	Asian	8	3,895	45,037	102,524	
	African	11	2,652	15,433	41,431	
Producers ..	European	7	5,044	1,178,426	5,031,788	Total, £5,072,493.
	Asian	1	91	2,204	27,782	
	African	75	4,385	4,842	12,923	
Building ..	Asian	1	—	—	—	
	Total ..	111	19,008	1,282,689	5,389,819	
All Types ..	European	8	7,189	1,203,411	5,167,452	
	Asian	11	4,544	59,003	167,306	
	African	92	7,275	20,275	55,061	

DETAILS OF SOCIETIES IN PROCESS OF FORMATION WITH DISTRIBUTION IN PROVINCES.

Type of Society	Race	Number of Societies	Number of Members	Working Capital	Turnover	Remarks
				£	£	
Nyanza Province						
Thrift	African	2	71	—	20	Deposits shown as Turnover.
Consumers ..	African	1	108	27	194	
Producers Marketing ..	African	82	2,700	318	2,617	
Central Province ..						
Consumers ..	African	2	754	218	—	Have not started functioning.
Producers Marketing ..	African	48	3,074	1,026	—	Have not started functioning.
Coast Province						
Producers Marketing ..	African	6	193	9	181	
Summary						
Thrift	African	2	71	—	20	
Consumers ..	African	3	762	245	194	
Producers Marketing	African	136	5,967	1,353	2,798	
	Total ..	141	6,800	1,598	3,012	

APPROVED ESTABLISHMENT OF REGISTRAR'S DEPARTMENT

Posts	Salary Scales			Establishment			Remarks
	1947	1948	1949	1947	1948	1949	
Registrar	£1,100	£1,100	£1,385	1	1	1	
Clerk (Asian)	I Grade	I Grade	B	1	1	1	
Snr. Inspector (African)	—	D	C.I	—	1*	1	*With effect from 1-7-48
Inspectors (African) ..	C	C	C.II	4	4	10	
Sub-Inspectors (African)	B	B	C.III	6	6	6	
Clerk (African) ..	—	—	C.III	—	—	1	
Office Boy	—	£15	£28	—	1	1	

Key to Scales:—

Prior to 1949 ..
- Asian I Grade .. £228–12–300–15–330
- African D .. £102–6–132–7–10–192
- African C .. £63–3–81–4–10–99
- African B .. £36–1–16–54

1949 .. ..
- Asian B.. .. £390–15–450
- African C.I .. £154–6–178–9–187–9–223–9–268
- African C.II .. £100–6–136–6–172
- African C.III .. £72–3–87–3–105

NOTE.—Cost of Living Allowance was payable on these scales, and they have been converted retroactively to new scales.

No. 31—MEETINGS UNDER POLICE ORDINANCES

MR. MATHU:

(*a*) Does Government consider it desirable for district commissioners to require Africans applying for permission to hold meetings under the Police Ordinance to have such meetings only at the place specified by the district commissioners?

(*b*) If the reply is in the affirmative, will Government please state what legal authority district commissioners have for such irritating regimentation?

(*c*) If the Government cannot back up such a policy, will they instruct district commissioners to permit Africans who wish to hold lawful assemblies to do so at places of the choice of the sponsors?

Reply:

(*a*) Government considers that (as provided by the legislature of the Colony as recently as 1948) it is desirable for administrative officers, in cases where there is no superior police officer or inspector of police in charge, to have power, when licensing the convening of any assembly or meeting in any public road or street or at any place of public resort, to be able to define the conditions (including, if expedient, a condition as to place) upon which permission is granted for any person (including an African) to convene such assembly or meeting; or to have power in his discretion to refuse to license a meeting in a public road or street or at a place of public resort.

(*b*) Section 30 of the Police Ordinance (Ordinance 79 of 1948) confers the powers mentioned in paragraph (*a*). There is no question of irritating regimentation, but of the proper control by public authorities of meetings and assemblies which are desired to be convened in public roads or streets or at places of public resort.

(*c*) In view of the answers to (*a*) and (*b*) this question does not arise.

No. 33—MEAT MARKETING BOARD

MR. MACONOCHIE-WELWOOD:

Will Government state the profit of the Meat Supply Board in the year 1948: (1) In the whole Colony as under (*a*) Native owned, and (*b*) European owned; (2) In the Uasin Gishu?

Reply:

(1) The net profit of the Meat Marketing Board for the year ending December 31st, 1948, was Shs. 303,956. This figure was on a total turnover of Shs. 12,313,461.

(2) (*a*) The profits made on Native owned cattle were: Gross Profits, Shs. 549,672. Net Profits, Sh. 38,806.

The foregoing are profits for the year 1948, towards the end of which a slight loss was shown on Native cattle.

(*b*) Profits on European owned cattle: Gross Profits, Shs. 306,160. Net Profits, Shs. 198,710.

(3) It is regretted that no figures are available showing profits derived by the Board from cattle purchased in the Uasin Gishu. Some idea of the proportion of cattle purchased by the Board in the Uashin Gishu, and the Trans Nzoia, can be obtained from the following figures:—

Number of cattle purchased by the Board in 1948—60,000.

Total European and Native owned cattle purchased in Trans Nzoia and Uasin Gishu—6,000.

(4) It should be emphasized that the policy of the Meat Marketing Board is to distribute profits to European and African producers in the form of increased prices, or possibly a bonus to encourage the production of better quality beef. Since the Board has been in operation only since January, 1947, it is considered advisable to build up reasonable reserves to cover such risks as are inseparable from buying, and at times holding, numbers of cattle. It should be understood that profits made by the Board are not paid into, and have no connexion with, the general revenue of Government.

Index to the Legislative Council Debates

OFFICIAL REPORT

SECOND SERIES — **VOLUME XXXII**

10th to 19th May, 1949

EXPLANATION OF ABBREVIATIONS

Bills: Read First, Second or Third time=1R, 2R, 3R; In Committee=IC.; Referred to Select Committee=SC.; Select Committee Report=SCR.; Recommitted to Council=Re.Cl.; Withdrawn=Wdn.

*For 1st Reading *see* Vol. XXXI.

† Select Committee's report taken in conjunction in committee stage.

KENYA NATIONAL ARCHIVES

PHOTOGRAPHIC SERVICE

Description of Document: LEGISLATIVE COUNCIL DEBATES, VOL. XXXII.
10th to 19th May, 1949.

Reference No.: From Legislatige Council Library.

END

G.P.K. 1039—1m—4/65