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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES

VOLUME XXXIII

1949

SECOND SESSION

9th to 19th August, 1949

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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.).

FINANCIAL SECRETARY AND MEMBER FOR FINANCE (HON. V. G. MATTHEWS, O.B.E.). (1)

CHIEF NATIVE COMMISSIONER AND MEMBER FOR AFRICAN AFFAIRS (HON. P. WYN HARRIS, M.B.E.). (2)

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).

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. GILFERT (Director of Agriculture)

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

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

HON. C. M. DEVERELL, O.B.E. (Secretary, Development and Reconstruction Authority). (3)

European Elected Members:

HON. M. BLUNDELL, Rift Valley.

HON. S. V. COOKE, Coast.

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. (4)

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

HON. LADY SHAW, Ukamba.

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

HON. C. G. USHER, M.C., Mombasa. (5)

HON. T. R. L. PRESTON, Nyanza. (6)

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. SHARIF MOHAMED 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. P. INGUTIA. (7)

Representing the Interests of the Arab Community:

HON. SHEIK SAID SEIB BIN SALIM.

Acting Clerk to Council:

A. M. Wilkie, Esq.

Reporters:

A. H. Edwards, Esq.

Miss Bennitt

(1) *Vice* MR. C. M. DEVERELL, Acting Financial Secretary, reappointed Secretary, Development and Reconstruction Authority

(2) Transferred to Gambia, as Governor

(4) Resigned, returned unopposed 23rd February, 1949

(5) *Vice* MR. W. G. D. H. NICOL, resigned, returned unopposed 2nd June, 1949

(6) *Vice* MR. G. M. FRY, resigned, returned 4th August, 1949

(7) *Vice* MR. B. A. OHANGA, absent from the Colony.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

9th August—

Hon. Attorney General

Hon. Member for Commerce and Industry

Hon. Director of Education.

10th August—

Hon. Special Commissioner and Chief Engineer, Public Works Department.

11th August—

Hon. Member for Central Area (Mr. Madan).

12th August—

Hon. Special Commissioner and Chief Engineer, Public Works Department

16th August—

Hon. Special Commissioner and Chief Engineer, Public Works Department

Hon. Member for Eastern Area (Mr. Patel)

17th August—

Hon. Special Commissioner and Chief Engineer, Public Works Department.

18th August—

Hon. Chief Native Commissioner.

19th August—

Hon. Solicitor General.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

SECOND SESSION, 1949

Tuesday, 9th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Tuesday, 9th August, 1949.

His Honour the Speaker took the Chair at 10.05 a.m.

The proceedings were opened with prayer

ADMINISTRATION OF OATH

The Oath of Allegiance was taken by: Mr. P. Ingutia, Acting Member for African Interests; T. R. I. Preston, Esq., Nyanza Electoral Area; C. G. Usher, Esq., M.C., Mombasa Electoral Area.

PAPERS LAID

The following papers were laid on the table:—

By MR. RANKINE:

By THE CHIEF SECRETARY (MR. RANKINE):

Select Committee report on the termination of services of pensionable civil servants, Development and Reconstruction Authority quarterly report for April-June, 1949, and report by East African Commissioner for 1948.

By THE SOLICITOR GENERAL (MR. HOBSON):

Report of committee appointed to inquire into the use of prison labour, Department of Immigration Annual Report, 1948.

By THE FINANCIAL SECRETARY (MR. MATTHEWS):

Schedules of Additional Provision Nos. 5 of 1948 and 1 of 1949; Colonial Audit Department report on accounts of the K.U.R. & H. for 1947.

By THE CHIEF NATIVE COMMISSIONER (MR. WYN HARRIS):

Report on Native Affairs, 1946-1947.

By THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (MAJOR CAVENDISH-BENTINCK):

Progress Report African Land Utilization and Settlement to 31st December, 1948, first quarter of 1949, and quarterly report for second quarter of 1949; "Improvement of Livestock in Kenya" (by H. R. Bischoff, Professor of Animal Husbandry, Onderstepoort, South Africa).

By THE ACTING DEPUTY CHIEF SECRETARY (MR. HARTWELL):

Select Committee Report on the Pensions (Increase) (Amendment) Bill.

By THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT (MR. MORTIMER):

Return of land grants under the Crown Lands Ordinance for April-December, 1948.

By THE DIRECTOR OF MEDICAL SERVICES (DR. MACLENNAN):

Medical Department Annual Report, 1947.

NOTICES OF MOTIONS

The following notices of motions were given:—

By MAJOR KEYSER (Trans Nzoia):

That this Council requests Government to appoint a commission of inquiry to review the working of the Registration of Persons Ordinance, 1947, and to make recommendations for any amendment to the Ordinance as the Commission may consider necessary or desirable.

By LADY SHAW (Ukamba):

This Council is of the opinion that the Commissioner of Police should be instructed to provide a sufficient number of traffic police to operate on roads outside the municipalities in order that the speed of heavy vehicles on the public roads be restricted and to ensure the roadworthiness and proper condition of such vehicles.

ORAL ANSWERS TO QUESTIONS

No. 32—AFRICAN SAWMILLING

MR. MATHE (African Interests)

Will Government please state (a) why it is the practice of the Forest Department to refuse to grant Africans forest concessions to enable them to exploit forests by saw-milling; (b) why African pit sawyers are only allowed to cut dead camphor and are not permitted to deal with any other type of trees; (c) will Government please undertake to improve this state of affairs?

MAJOR CAVENDISH-BENTINCK: (a) It is not the practice of the Forest Department to refuse to grant Africans forest concessions to enable them to exploit forests by sawmilling. The normal practice is that when any forest areas are to be exploited by sawmilling tenders for the right to install a mill are invited by notice in the Official Gazette and it is open to anyone to submit a tender in accordance with the terms of the particular notice. A recent notice calling for cypress milling tenders did not, however, elicit a single African tender. In point of fact, very few Africans have the financial resources, equipment

and knowledge necessary to set up and operate an efficient modern mill.

(b) African pitsawyers are not restricted to cut dead camphor only. They are allowed to cut any class of tree which the local Forest Officer may consider desirable to remove for silvicultural or other reasons, from the crop. In fact, African pitsawyers are currently converting in various parts of the forest estate, cedar, podo, musharage, museringu, musaisi, muna, mugonyone, muhuru, cypress, blackwood and grevillea, as well as camphor.

(c) In view of the foregoing this does not arise.

MR. MACONOCHE-WELWOOD (Uasin Gishu): Mr. Speaker, arising out of the reply, is it not a fact that pit sawing in forests leads to an enormous waste of timber?

MAJOR CAVENDISH-BENTINCK: No, sir, not if it is properly controlled as I think in most cases it is.

BILLS

FIRST READINGS

On the motion of Mr. HOBSON, seconded by Mr. RANKIN, the following Bills were read a first time: The Voluntarily Unemployed Persons (Provision of Employment) Bill, the Mombasa Shop Hours Bill, the Customs Tariff (Amendment) Bill, the Native Trust Fund (Amendment) Bill, the Trade Unions (Registration) Bill, the Kenya Police Force Reserve (Amendment) Bill, the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill, the British Nationality (Offences and Fees) Bill, the Evidence (Bankers' Books) (Amendment) Bill, the Protected Areas Bill, the Control of Hotels (Amendment) Bill, the Income Tax (Amendment) Bill, the Radio-active Minerals (Amendment) Bill, the Miraa Control (Amendment) Bill, the Crown Lands (Amendment) Bill, and notice given that the subsequent stages would be taken during this session.

EXCLUSIVE TOBACCO LICENCE

MR. GILLET (Director of Agriculture): Mr. Speaker, I beg to move: Whereas the Governor in Council by

[Mr. Gillett]

Order in Government Notice No. 574 of 1937, dated the 3rd of July, 1937, declared the area set out in the first column of the Schedule thereto to be areas in which the purchase and sale of specified native produce set out in the second column of the said Schedule shall be controlled and regulated: And whereas new or improved technical methods of preparation of the said specified native produce are essential; and whereas the Governor in Council is satisfied that the production of the said specified native produce in the said areas is susceptible of development and will be stimulated and advanced under special control: Now, therefore, be it resolved that this honourable Council under the provisions of section 5 of the Marketing of Native Produce Ordinance, 1935, hereby approves the grant by the Governor in Council of an exclusive trading licence for the purpose of the said specified native produce in the said areas.

SCHEDULE

First Column Second Column

- (a) Those portions of the Embu, Fort Hall and South Nyeri Districts forming part of the native reserves within a radius of 25 miles from Sagana Tobacco Leaf
- (b) That portion of the Kitui District within a radius of 25 miles from Kitui Tobacco Leaf

Hon. members are aware that the first exclusive tobacco licence was issued under section 6 of the Marketing of Native Produce Ordinance, 1935, to the British-American Tobacco Company on the 16th December, 1937. It was renewed by the Governor in Council in 1944 for a further five years. Under the terms of the Ordinance, it cannot be renewed again, and I am therefore to-day asking this Council to agree to the issue of a new licence to the same Company for a further seven years. The licence to be issued is only applicable to an area within a radius of 25 miles of Sagana station and 25 miles of Kitui township. When my predecessor moved the

original motion in 1937, he stated that my department was quite satisfied that the only way an efficient flue-cured tobacco industry could be set up was by the granting of an exclusive licence, and nothing has happened since that date to change my opinion on that matter.

It may be argued that under the terms of the Ordinance a twelve-year period is sufficient to establish a new industry, and also that no new technical processes have been developed in that period. With that idea I am afraid I cannot agree. In the first place, one must remember that development could only take place very slowly during the war years; in fact, the whole industry had to be put on a care and maintenance basis, and therefore you can really delete the war years. Furthermore, I am also perfectly satisfied that if the licence was withdrawn now the African growers would suffer very severely.

The growing of flue-cured tobacco is a highly skilled operation, requiring the very closest European supervision. In fact, the two main prerequisites for the successful growing of tobacco are staff and fuel; fuel is a very important point and one which has been to some degree a limiting factor in the past. Staff, however, is by far the most fundamental point, and that is really why progress to date has been rather slow. I would, however, point out that the British-American Tobacco Company are doing all in their power to increase the staff available at the earliest possible time. When the licence was issued in 1937 they had one and a half full-time officers working on the project. To-day they have eight Europeans fully employed and are expecting at least two more to join them very shortly.

Production has been stepped up in the last two years from the figure in 1947 of 320,000 lb. of flue-cured tobacco to 500,000 lb. in the last year. Development and expansion is taking place rapidly in the Kitui area, where the crop has been found to grow extremely well. Kenya is producing a very high quality tobacco, and the Company are confident that with careful and planned expansion there is no reason why we cannot look forward to the possibility of an exportable surplus in ten to fifteen years. That, of course, is

[Mr. Gillett] dependent on local demands, which are increasing considerably annually.

Under the terms of the licence my department does have a very considerable control over the licensee. In the first place, under the licence which is issued at the moment and which would be included in the terms of any new licence, the licensee has to employ a sufficient number of staff to my satisfaction. They have to produce seed, or grow plants and issue them free, to all African growers. They have to give free cultural advice to all African growers, they have to supply sufficient flue-curing barns to meet my requirements, and I would point out that you require flue-curing barns for about every six to eight acres of tobacco. They have to purchase all leaf grown by African growers, and they also have to agree to pay a price fixed in consultation with myself.

I am very happy to say that the relations during the last twelve years between the African growers and the company's staff have been of the very best, and the application for the new licence is very strongly supported by the Provincial Commissioner and the Local Native Councils in the areas concerned.

MAJOR CAVENDISH-BENTINCK seconded.

MR. MATIU: Mr. Speaker, in rising to support the motion moved very ably, if I may say so, by the hon. Director of Agriculture, I should like to elicit from him some information regarding one problem that the Kikuyu parents have faced during the last two or three years in conjunction with the operations of the British-American Tobacco Company. I refer mainly to three points that the hon. member mentioned in moving the motion.

He said that some of the chief desiderata in the proper operation of the tobacco industry were fuel and staff. Under staff he specifically referred to European staff, but I think there is a third desideratum which I should mention, and that is labour. The company employs a large number of juvenile labour, and the Kikuyu people during the last two or three years have requested the company to provide educational facilities for the juveniles, so that they

should not miss the education provided for juveniles not employed by the company. The request of the Kikuyu people last year or the year before was that similar arrangements should be made by the company as have been made by the tea companies in Kericho. I should like to emphasize that point very much indeed, because, although the hon. mover thinks that production has been stepped up very greatly since 1947, I think the production would have gone higher if there was not this lack of educational facilities for juveniles employed by the company.

I beg to support.

The question was put and carried.

KENYA INFORMATION OFFICE

SELECT COMMITTEE APPOINTED

MAJOR KEYSER (TRANS NZOIA): Mr. Speaker, I beg to move: In view of public doubt 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.

In speaking to this motion, I do not want to criticize any officer of this organization. It is a new organization, and I wish to draw the attention of this Council to what I consider are some of its defects, and hope that this Council will agree to the suggestion made in the motion.

In the discussion on the draft estimates for, I think it was, 1947, it was decided that the activities of this organization should be limited to African services as far as possible, but there is some information on Government services that is necessary for the European and Indian populations of the Colony, and in considering the whole set-up of this organization I hope that the committee will give some thought to a limited service for Europeans and Indians.

At present it would appear that this organization does not come under one particular member of Executive Council. It seems to be administered by the hon. Deputy Chief Secretary, but the policy is controlled by the hon. Chief Native Commissioner, and it would appear to me that, if it is going to be an effective

[Major Keyser] and efficient department, it should have one member of Executive Council who is going to be responsible for all its activities. I am also of opinion that that member of Executive Council should be on as high a level as possible, and the organization should come under the membership which is administered by the hon. Chief Secretary, in order to put it on as high a level as possible.

The organization at present appears to be a channel for issuing communiqués from Government departments, whereas its real function should be to receive requests from a department for certain information to be put out. It should receive the technical information necessary to put that information out, and the manner in which that information is presented to the people to whom it is desired to transmit it, the method of presentation, should be left entirely to the Information Office. The Information Office should be experts at presentation, they should know exactly in what form a matter would receive the attention of the public and that it will be received in the desired manner. It should be put out in understandable language and not just in legal or official jargon.

While the department will issue Government's information to the people, at the same time the organization should also be able to advise Government on public opinion. In other words, it should be very sensitive to public opinion and should keep touch with any changes in that opinion. The organization at present seems to function more as an extension to the Education Department than anything else. They are not only producing very useful and instructive films, pamphlets and posters, but they are also putting these across to the public and showing their films themselves. It would seem to me that that particular function should come under the officer whose designation is, I think, Director of Social Welfare. I think I have got it correct! But it does seem to me that he should be the officer to put these across and not the Information Office, which should merely produce them. They should be the experts on the information required in those particular subjects, and should be

able to produce the right thing. I have seen some of their films, and I think they are most instructive.

There are quite a number of Government activities also which could be explained to the people. It always astounds me that more trouble has not been taken to explain to the African where the money he pays in taxation goes and the uses to which it is put for them. I have spoken to Africans on this particular subject, and they seem to be under the impression that most of the money goes into the pocket of the administrative officer who collects it, and they have no information at all of where the money comes from to pay for the various Government services of which they make use. It does seem to me that some of the resentment at paying taxes—because everybody resents paying taxes, I do, and so does everybody else, there is a natural resentment to forking out your cash for some activity from which they may or may not receive a direct benefit—felt by the Africans at paying taxes could be removed if a simple explanation was given to them of where that money goes to and exactly how the services they use are paid for.

If the organization is to carry out the functions which I suggest it should, I think its status should be raised. It should not be at the beck and call of any head of a department, and the way things can go wrong if that is not done was well illustrated in my view in the publication of that pamphlet on national registration, where it would appear that the organization acquiesced to the publication of information from a technical department and had not really given consideration to the reception that a pamphlet of that sort would receive. And we know that the reception it did receive was disastrous.

While one of its activities is to give information to the Press and to try and influence the Press in its publications on Government policy or legislation, nevertheless it does seem to have failed to do so, certainly in the African Press, which is very full of information which, to say the least of it, is incorrect. I do know that they have made attempts to pass that correct information on, but for some reason or other they have failed

(Major Keyser)

to do so. It is one of the points that should be carefully investigated as to why they have failed.

I do not think the organization has really been given much consideration either by Government itself or by the unofficial side. I think we have been rather inclined to minimize its usefulness, and rather consider it a nuisance than anything else. We should, I think, look at it in a completely different light as a very useful department of Government.

I think that what I have said does show that there is a case for an inquiry into how the department is working, and I hope Council will pass the motion which I have moved.

MR. HOPKINS (Aberdare) Mr. Speaker, I beg to second.

As much of the material which emanates from the Information Office is destined for use in the native reserves, I would like to suggest that consideration is given by the committee to the provision of more adequate administrative advice as to the form propaganda in the native reserves should take to make it more acceptable and more effective. Most people realize that propaganda and information put out in a form acceptable to Europeans is very often of use to only a very small proportion of the African population, but in Kenya it must be realized also that many tribes differ so fundamentally in background, custom and tradition that a form of propaganda which is acceptable to one tribe could easily give offence to another. Experience has shown that very few officers are really suitable for carrying out propaganda. Nevertheless, when Government embarks on one of its intensive propaganda campaigns, it invariably makes use of officers of all departments and asks them to put over that propaganda. This they do according to their personal views, despite the fact that few know how to put propaganda across, and quite a large number—perhaps due to no fault of their own—do not even know anything about the natives; that is, their customs or traditions and how propaganda should be put across.

To summarize, therefore, I would like to ask firstly, that consideration be given

to the inclusion in the set-up of the Information Office of an experienced and suitable administrative officer; secondly, that the propaganda destined for use in any particular area should be related to the traditions, customs, and susceptibilities of the tribes which inhabit that area; thirdly, that both in the Information Office and in the native reserves the preparation and dissemination of propaganda should be in the hands of only the most suitable and experienced officers. I am not saying anything about propaganda among Europeans and Asians because there are many more qualified to speak on it than I am, but, if regard is paid to these three suggestions, the propaganda among Africans will in the future be far more effective than it has been in the past.

MR. RANKINE: Mr. Speaker, I would merely like to say that Government will be very happy to accept this motion. (Hear, hear.)

We are indebted to the hon. mover for his suggestions and for drawing attention to the various shortcomings in the organization of this office. Government is already aware that the Information Office is not all that could be desired, and is anxious to improve it, and I think I ought to say that no one is more anxious to improve it than the head of the office himself.

A glance through past debates which have taken place in this Council will show that opinion as to what that office ought to do and how it ought to do it is very divided. It is almost true to say that no two people have the same opinion as to what it ought to do, and I think that should be sufficient to show how difficult the task which falls on this officer is. Therefore, I was extremely glad when the hon. mover did make it clear, that he is not seeking to criticize any individual officer.

We have, as I have said, been anxious for some time to improve the organization of this office, and Government has already given a considerable amount of thought to it. As hon. members are aware, the Director of Information Services in the Colonial Office recently visited the territory, and while he was here we asked him to examine the office in so far as he was able in the short

(Mr. Rankine)

time at his disposal, and he has given us certain very helpful suggestions as to what ought to be done.

As regards the question of responsibility on the membership level for the office, I would merely like to say this; that at the moment, as members are aware, the office is under the general control of the Deputy Chief Secretary. Some hon. members have suggested that the large part in the activities of the office which the Chief Native Commissioner has to take suggests divided control. On the other hand, the hon. Member for Aberdare has already pointed to the extreme need for direction from the African point of view, and this does seem to me to illustrate the reason why the Chief Native Commissioner has to take such an active part in its direction.

As regards the suggestion that the Chief Secretary himself should assume responsibility for it, while far be it from me to shirk any responsibility, I would point out that in Sessional Paper No. 3 of 1945, when the machinery of Government was reorganized, it was stated that the whole object of the reorganization was to leave the Chief Secretary free to deal with development and reconstruction matters, and that the responsibilities which previously fell to him should be undertaken by the Deputy Chief Secretary.

In any case, however, I think those are matters which could best be left to the committee which is going into this question. As I have said, the Government will accept the motion, and I beg to support.

MR. MATHU: Mr. Speaker, I should like to comment on two points, one raised by the hon. Member for Aberdare and the other raised by the hon. mover.

In regard to the first one, the hon. Member for Aberdare emphasized the importance of knowledge on the part of any officer connected with the dissemination of information of African tradition and custom. I think he is quite right, but I should like to put it to him and to this Council that there is no better person to put propaganda across, with a background of the traditions and

customs of the people for whom he is working, than the African himself. It is for that reason that the then Chief Secretary, Sir Gilbert Rennie, as a result of the representations of the African members of this Council, did make provision for first class Africans appointed to the Information Office to do the work of dissemination of information in matters particularly related to development. No implementation was made of that, although there was a token vote in the 1946 or 1947 Estimates.

I pressed this point early this year in the Committee of Supply, and the Government wrote to me to say that they were satisfied that the staff of the Information Office was holding all the responsibility that was necessary at the present moment. I should like to say that I do not agree with that point of view, and I should like to emphasize further the necessity of making appointments in the Information Office of Africans of very high calibre, at a very good salary, to do the dissemination of information in the African areas. It is a point which the hon. seconder of this motion raised and which I share with him; only I am looking at it from another point of view, and that is that until we get African men of a high standard in the Information Office, the suspicion on the part of the African of the office will definitely continue.

The second point is that raised by the hon. mover, when he said that the Information Office is defective in one way, in that it does not explain to the African people how the money collected from taxes is expended on social services and so on, and he went on to say that he has spoken to Africans and they all seem to think that the money goes into the pockets of the district officers who collect the tax. I should like to say that that is not universally believed. A large number of Africans do know that the money collected from taxes is expended on social services by Government, and I am sure the hon. mover must have met only a very few, very few indeed, who do think that the money collected from Africans in taxes goes into the pockets of the administrative officers. That is an impression that

[Mr. Mathu] I should like to be corrected, and I must put it right.

I beg to support the motion.

MR. RANKINE: On a point of explanation, I was careful to wait until I thought all speakers had finished before replying on the part of the Government. The hon. member who has just spoken has since raised certain points, but he will appreciate that I am not in a position now to reply to them.

DR. RANA (Eastern Area): Mr. Speaker—

THE SPEAKER: Is there anything left to debate when a motion has been accepted by the Government? If hon. members insist on speaking I do not see how I can stop them, because having proposed the question from the chair it is open to debate, but, as it has been accepted, I should have thought that anything anybody wanted to say would be limited to agreement not to raising anything further controversial.

DR. RANA: Mr. Speaker, it is not my intention to bring up any controversial matter, as you have suggested. I only wanted to rise and give my wholehearted support to the hon. mover. I further take the opportunity of congratulating him because I feel that this Information Office has been a great source of misinformation, instead of information, and a waste of the money of the public. As far as the Asian community is concerned, I think they wholeheartedly agree with many of the remarks which have been made by the hon. mover, and I give my support.

MAJOR KEYSER: May I reply?

THE SPEAKER: If there is anything worth while replying to.

MAJOR KEYSER: Mr. Speaker, I should like first of all to thank the Government for accepting the motion, and I should very briefly like to reply to the remarks of the hon. member Mr. Mathu. I did say that in my experience the Africans I had spoken to over the question of taxation had the idea that the money collected in taxes went into the pockets of the administrative officers. He said that may not be generally held. If that view is not generally held, all I can say

is that it is very generally expressed, and I have come across it on a very wide basis, and so have others, other employers. It may not be held, but it is expressed.

MR. COOKE (Coast): Mr. Speaker, on a point of order, could you permit a short period between the last speaker and putting the question, because I noticed in the last motion that the hon. Director of Agriculture was making great efforts to rise, but the motion was put before he could get up. Could we have a short interval, even a few moments, between the speeches and putting the question, in order to give the hon. member in charge an opportunity of replying?

THE SPEAKER: I did not give the hon. Director of Agriculture any opportunity of replying, that is quite right, because no one had spoken after the motion had been seconded. No one had addressed the Council at all.

MR. COOKE: The hon. member Mr. Mathu had made a good point, which one would have liked the hon. Director of Agriculture to deal with.

THE SPEAKER: Yes, but he definitely supported the motion. The only object in the motion was the agreement of Council to an exclusive grant of a licence. There was no opposition at all raised. I did not think that it was necessary formally to ask the hon. Director of Agriculture who moved the motion whether he wished to reply, because I considered that there was nothing to reply to. That is the reason I did so.

MR. RANKINE: On a point of procedure, as you are aware, my hon. friend the Attorney General is indisposed and not here to-day, so I was going to suggest that the hon. member Mr. Patel's motion should be postponed until he is here and able to reply; or else, if it is agreeable to the Council and if the hon. mover would prefer it, he can move the motion, and I will then move that the debate be adjourned until a later date.

MAJOR KEYSER: On a point of order, has my motion been put to the Council? (Laughter.)

THE SPEAKER: It has been proposed, there has been some debate very

[The Speaker] vaguely in support, as far as I can gather, there is a definite statement that it is agreed to by a large body of members on that side, and I presume that, as you have moved it, you have a large body of agreement on your side, and that there was no necessity to formally put the question. But if you insist that I should put the question, I will willingly do so.

MAJOR KEYSER: I thought that under Standing Rules and Orders it had to be put.

THE SPEAKER: If you think so, I will do so.

The question was put and carried.

BUSINESS OF THE DAY

On the next Order being called, relative to the repeal of the Immigration (Control) Ordinance, 1948.

MR. PATEL (Eastern Area): Mr. Speaker, I personally would not mind the adjournment of my motion till tomorrow, but I think I should mention that I and my hon. friend Mr. Madan would not have been in this Council to-day but for this motion being on the agenda. The reason is that we three, the hon. member Mr. Madan, the hon. member Mr. Pritam and myself, feel obliged to remain absent on the first day of every session until the Legislative Council (Amendment) Ordinance, 1948, is off the statute book of this country, and that is the reason why I would prefer, unless there are objections, to move my motion to-day. But I have no strong feelings. I am prepared to move it tomorrow.

MR. VASEY (Nairobi North): On a point of order, would it therefore be advisable at this time to adjourn in order that Government and the leaders on this side may get together and decide whether there are not some Bills we could take the second readings of under suspension of Standing Rules and Orders, in order not to waste the rest of the morning?

MR. PATEL: If that is the intention, then I would rather move my motion. (Laughter.)

MR. COOKE: On a point of order, is this the first day of the session? This is not a new session to-day?

THE SPEAKER: No, it is an adjourned session. I think the hon. member Mr. Patel had better move his motion, as he is here, and then the debate can be adjourned and we can see what can be done.

MR. RANKINE: Government would have no objection to the hon. member proceeding, provided it is understood that the debate will then be adjourned until a later date. When he was absent this morning I was not aware that it was owing to political reasons. I thought that perhaps he had been misled by one of the leading newspapers in the Colony and had arrived yesterday! (Laughter.)

MR. PATEL: I do not mind my motion being adjourned if your ruling is that this is not a session, but a sitting.

THE SPEAKER: It is a sitting. There is only a session after a prorogation.

MR. PATEL: Then I do not mind taking my motion tomorrow.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

STANDING RULES AND ORDERS SUSPENDED

MR. RANKINE moved: That Standing Rules and Orders be suspended to enable the motion standing in his name relevant to the East African Naval Force to be taken this day and the Customs Tariff (Amendment) Bill, the Kenya Police Force Reserve (Amendment) Bill, the British Nationality (Offences and Fees) Bill, and the Mombasa Shop Hours Bill to be read a second time.

MR. HOBSON seconded.

The question was put and carried. Standing Rules and Orders were suspended.

EAST AFRICAN NAVAL FORCE

MR. RANKINE: Mr. Speaker, I beg to move: Be it resolved that this Council approves of the High Commission making, under the provisions of section 45 of the East Africa (High Commission) Order in Council, 1947, an Order adding the East African Naval Force to the list of services in the second Schedule to the said Order in Council in the following general terms:—

[Mr. Rankine]
The East Africa (High Commission)
Order in Council, 1947

Whereas under the provisions of section 45 of the East Africa (High Commission) Order in Council, 1947, the High Commission may, subject to the provisions of the said section, with the approval, signified by resolution, of the Legislative Councils of the Territories and with the consent of a Secretary of State, by Order to be published in the Gazette add to the list of services set out in the Second Schedule to the said Order in Council: And whereas it is considered expedient and desirable that the East African Naval Force should be added to the list of services in the said Second Schedule: And whereas by resolution passed on the day of

1949, the Legislative Council of Kenya has signified its approval to the making of an Order for the above-mentioned purposes. And whereas by resolution passed on the day of 1949, the Legislative Council of Tanganyika has signified its approval to the making of an Order for the above-mentioned purposes. And whereas by resolution passed on the day of

1949, the Legislative Council of Uganda has signified its approval to the making of an Order for the above-mentioned purposes: And whereas the High Commission is satisfied that there has been no substantial opposition in the Legislative Council of any one or more of the Territories to the passing of such resolutions: And whereas a Secretary of State has given his consent to the making of an Order for the above-mentioned purposes: Now, therefore, in exercise of the powers vested in the High Commission by section 45 of the said Order in Council and every other power thereunto enabling, the High Commission, with the approval of the Legislative Councils of the Territories and with the consent of a Secretary of State, is pleased to Order as follows: 1. This Order may be cited as the East African Naval Force (Addition to Schedules) Order, 1949, and shall come into operation on the

1949. 2. The Second Schedule to the East Africa (High Commission) Order in Council, 1947, is hereby amended by the addition at the end thereof of the following:—

“10. The East African Naval Force.”
By Command of the East Africa High Commission.

Nairobi.

1949 Administrator.
As hon. members will be aware, the defence requirements of the East African Territories have recently been reviewed with the advice and assistance of the Service Commanders. One of the fields, naturally, which was covered was naval defence.

Hon. members will also be aware that in 1931, I think it was, the Kenya Royal Naval Volunteer Reserve was created, and that in 1939 this comprised a small permanent nucleus. They may also be aware that in Tanganyika and Zanzibar there were small volunteer naval forces on a territorial footing. On the outbreak of the war, those forces came under the operational control of the Admiralty, their cost being continued to be met by the Territories concerned.

In 1942, owing to the expansion of the Kenya Royal Naval Volunteer Reserve, full operational and financial control were assumed by the Admiralty, the Territories concerned having to make contributions to cost. The operational control of the K.R.N.V.R. is still under the Admiralty, but with effect from 1st January, 1948, the Territories have resumed financial responsibility. Later in the war the Tanganyika and Zanzibar Volunteer Reserves were disbanded, and the personnel of them which was still required for service was transferred to the K.R.N.V.R.

It is now proposed that instead of these territorial units there should be established a full-time naval force. I would emphasize that this new force is not a territorial unit, but a regular full-time naval force, and that the Admiralty has agreed that the badges and uniforms should be similar to those of the Royal Navy except that there should be a flash on the shoulder “East Africa”, and that the cap letters should be “East African Naval Force”. So far as that is concerned, a small and rather silly difficulty

[Mr. Rankine]
has arisen in that the words “East African Naval Force” have been found to be rather too long to go on the ribbon round the cap. (Laughter.) However, the Admiral is going into that difficulty with the O.C. of the Force, and they are going to see how it can best be met. The Council may be interested to know that the longest words in the Royal Navy, I understand, which it has been found possible to put in the ribbon round the hat is “H.M.S. Queen Elizabeth”, and by a little arithmetic members will find that “East Africa Naval Force” has, I am told, even more letters!

It is proposed that the Commander-in-Chief should be responsible for the training of the force, and it is hoped that it will be possible to obtain on secondment or loan from the Royal Navy officers and petty officers for this force, and also that it will be possible to arrange for training courses to be done on ships of the Royal Navy. It is intended that the Force should consist of both regular full-time personnel and part-time personnel, both being voluntarily enlisted for a specified period and, in addition to the permanent Force, provision is to be made for an Auxiliary Force and Reserve of officers and a volunteer reserve.

The functions of the Force would be primarily the training in peace time of local personnel in the naval duties which they would be required to perform in war. The duties would be in the first instance local in character; that is to say, the seaward defence of the ports of the Colony, and coastal patrols. But the personnel would be available and would, in fact, be sent in time of war for general service in any theatre of war.

The first step to bring the proposed Force into being was an amendment to the Colonial Naval Defence Act, 1931, an Imperial Act, to make the Act applicable to Protectorates and Trust Territories. This amendment, I am glad to say, received His Majesty's assent in March of this year. The next step is this resolution which I am proposing now, to enable the Force to be organized on an East African basis and to come under the High Commission. As this is to be an East African unit in the proper sense

of the term, it has been agreed that it would be appropriate that it should be administered by the High Commission, and the various Governments concerned should contribute towards its cost. Accordingly this resolution seeks to approve of the High Commission making, under the provisions of section 45 of the East Africa (High Commission) Order in Council, 1947, an Order adding the East African Naval Force to the list of services in the Second Schedule to that Order, in the terms set out in the resolution.

Sir, this is a resolution which I hope will have the support of all hon. members of this Council as, indeed, of all the inhabitants of East Africa.

MR. HOBSON seconded.

MAJOR KEYSER: Mr. Speaker, I rise to support the motion, and in doing so I should like to say that we hope we are going to have a Force that we can all be very proud of.

I am not quite certain, however, of what the hon. mover said of the control which the Admiralty will have over this Force. He said that for operational purposes it would come under the Admiralty, later on he said it was hoped that we would be able to get officers seconded from the Royal Navy for this Force. I would like to see this Force come under the Admiralty for discipline and training as well. In fact, what the High Commission should do is purely to provide the funds, and necessary internal administration, but that for discipline, training, and operational purposes I believe it would be best if the Force came entirely under the Admiralty.

MR. HAVELOCK (Kiambu): Mr. Speaker, I should like to go a little further than the hon. Member for Trans Nzoia. I cannot see why this Force, which I welcome, cannot be administered in the same way as the military. I see no reason why the High Commission should have anything to do with it, and why all the administration of it should not come under the Admiralty. In that way I feel we could be guaranteed efficiency, and from what I have heard lately about certain activities of the High Commission I doubt whether we shall be able to be guaranteed efficiency.

Mr. BLUNDELL (Rift Valley): Mr. Speaker, I should like to ask the hon. Chief Secretary a question on the administration of certain things in this Bill. Under the Bill, it appears that the High Commission will be able to requisition goods or accommodation for this Force in the event of a state of emergency, and I should like to have the hon. member's views as to whether it will be the intention later on to—

Mr. RANKINE: On a point of explanation, there is no Bill before us this morning, there is only the resolution. I am not quite certain what the hon. member is referring to?

Mr. BLUNDELL: I stand corrected, sir. I am looking at the Bill published by the High Commission, and I suppose I translated myself into the Central Assembly! (Laughter.)

Mr. ERSKINE (Nairobi South): Mr. Speaker, on a previous occasion when a similar measure came before this Council I rose to strike a note of warning in regard to the possible financial implications that might arise in the future. When on a recent visit to Great Britain, very recent, I could not help but be struck by a certain trend of thought, quite legitimate thought, in regard to the defence of the Colonial Empire. For instance, I should like to quote from a pamphlet that I was given which came from His Majesty's Opposition, and which gives briefly the attitude that they would take up towards this matter, should His Majesty call upon them at any future time to form a Government. The words are: "The Conservative Government would endeavour to make agreements from time to time with the Colonial Governments concerned, of a fair apportionment of the cost of colonial internal security, so as to avoid placing too great a burden on the British taxpayer, or hampering unduly colonial social or economic development."

On this occasion I should like to say that, of course, a naval force in fact presumably is to look after our internal security. Now, I would not like it to be thought that I begrudge any money's that will be earmarked in future for the defence of my personal property, nor the personal property of any of my

fellow-citizens. But I do feel perhaps that it is wise to note that the result of this resolution may possibly mean that the financial aspect will have been further removed from the control of this Council.

With those few words of warning I should like to support the resolution.

Mr. MADAN (Central Area): Mr. Speaker, I only rise to ask a question. Will members of all races be given opportunities to serve in the East African Naval Force, regardless of anything else except merit?

Mr. RANKINE: Mr. Speaker, as regards the first point which was made by the hon. Member for Trans Nzoia, I think there has been a little confusion, which arose perhaps out of what I said regarding the K.R.N.V.R. I said that during the war full operational and financial control for the K.R.N.V.R. was assumed by the Admiralty, but I did not say that full operational control would be assumed by the Admiralty from the outset in respect of this new Force. This new Force is to be an East African Force, and therefore at the moment it must be administered by East Africa. But what is suggested, and what I hope the Admiralty will be able to accept, is that the Commander-in-Chief, East Indies, should be responsible for training, and also that he will advise the High Commission as to the officer who should be appointed to command the Force. I hope, too, that we will be able to obtain from the Admiralty, or rather I ought to say from the Royal Navy, officers and petty officers for the Force on secondment. They would be serving officers. If we cannot get Royal Navy serving officers, then at least I hope we will be able to obtain retired officers.

As regards the point raised by the hon. Member for Kiambu if I understood him aright it was suggested that the Navy, or the Admiralty, should administer the Force. As I explained, this is an East African Force and I am afraid that that would not be possible, but, as I have said, I hope that we will be able to get advice with regard to the administration of the Force from the Admiralty, and also that we will be able to get for the permanent staff regular Royal Navy personnel.

[Mr. Rankine]

As regards the point made by the hon. Member for Nairobi South, it is a fact that we will still retain financial control. The exact amounts which would be contributed towards this Force from the Admiralty have still to be negotiated, but at the moment it is expected that the cost will be in the region of £53,000, which will be shared by the East African Governments, but a contribution from Imperial funds is not ruled out. That amount will be taken into consideration when our contribution for defence generally is considered, and in any case our contributions to the Force will, of course, have to be voted by this Council each year, so that we will have full financial control.

Finally, as regards the point raised by the hon. member Mr. Madan, it is a fact that this Force will provide opportunities for persons of all races. What he meant by the rest of his sentence, I am afraid I did not understand, but it will, I hope, provide opportunities for Europeans, Asians and Africans.

The question was put and carried.

CUSTOMS TARIFF (AMENDMENT) BILL

SECOND READING

Mr. PADLEY (Acting Deputy Financial Secretary): Mr. Speaker, I beg to move: That the Customs Tariff (Amendment) Bill be read a second time.

Normally the East African Territories are self-sufficient as regards sugar, owing largely to the excess production in Uganda. Early this year, however, we were informed that, owing to conditions of drought in Uganda, Uganda would not be able to meet the full requirements of Kenya. As a result of that, steps were taken to arrange for sugar to be imported into Kenya.

Normally sugar is not imported into these Territories, and indeed the present customs duty, augmented as it is by what is known as a suspended duty, is intended to be prohibitive. The Government had no wish to take advantage of the situation which has arisen, whereby we must import sugar, in order to swell

the customs revenue fortuitously. On the other hand, owing to the shortfall of sugar produced internally, we did not wish to lose revenue, and for this reason the present level of customs duty, plus the suspended duty of Sh. 18 per bag, has been reduced to Sh. 2, which is the present level of the excise duty. I do not think that I need add much to that, except to say that we have already received some 5,000 tons of sugar, and a further 5,000 tons is on its way. We hope that towards the end of the year the Uganda production will be back to normal, and that this arrangement will only be transitory, and we hope that before long, perhaps by the end of the year, it will no longer be necessary to import further quantities. (Applause.)

Mr. RANKINE seconded.

Mr. VASEY: Mr. Speaker, I rise only as a matter of formality, to congratulate the hon. member who has just spoken on his maiden speech, and to express the regret of the Council at the fact that it has been thrust upon him at such short notice! (Applause.)

The question was put and carried.

KENYA POLICE FORCE RESERVE (AMENDMENT) BILL

SECOND READING

Mr. HOBSON: Mr. Speaker, I beg to move: That the Kenya Police Force Reserve (Amendment) Bill be read a second time.

Since the Kenya Police Force Reserve Ordinance came into operation a number of persons who are not British subjects, or British protected persons, and who therefore do not owe allegiance to His Majesty, have expressed the desire to join that Force. So as to make provision for this, this Bill seeks to provide that such a person may substitute for the oath of allegiance the oath which appears in sub-clause (2) of the new section 7 of the principal Ordinance. It is merely an oath swearing that the person will give faithful service.

This Bill also seeks to provide for rather an important amendment to section 9 of the principal Ordinance. That section at the moment provides that the reserve police may only be

[Mr. Hobson] called out where it is considered that any imminent danger has arisen. What this new clause seeks to do is to allow them to be called out not only when that happens, but where it is likely to arise.

Mr. RANKINE seconded.

The question was put and carried.

BRITISH NATIONALITY (OFFENCES AND FEES) BILL

SECOND READING

Mr. HOBSON: Mr. Speaker, I beg to move: That the British Nationality (Offences and Fees) Bill be read a second time.

The British Nationality Act, 1948, applies to all the Colonies. Under that Act applications for naturalization are made, and other similar applications. The fees for those applications are at the moment fixed in this Colony by the British Nationality and Status of Aliens Fees Ordinance, 1939. That is now quite out of date, and this Bill seeks to permit these fees to be fixed in future by the Governor in Council making rules. I need hardly say that that is a far better method than having an Ordinance fixing the fees.

The other purpose of this Bill is to create offences. For some reason, section 28 of the British Act does not apply. That is the section which creates offences in the British Act. Clause 4 of this Bill therefore seeks to create offences, the offences being of the nature of making false statements and so on, when these applications are being made.

Mr. RANKINE seconded.

The question was put and carried.

MOMBASA SHOP HOURS BILL

SECOND READING

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

I feel sure that this Bill will have the warm support of every hon. member; the Bill will be very warmly welcomed by shop assistants and journeymen in Mombasa. It has been agreed upon in its main provisions by all

parties concerned, and has been submitted as a generally agreed measure. It applies only to Mombasa, where conditions of trading are peculiar.

There is on the statute book the Shop Hours Ordinance, 1925, which may be applied to any part of the country. It has never been applied to Mombasa, because its provisions were quite unsuitable to application in that town. In Mombasa, being a port town, conditions of trading are not of general application. The application of the 1935 Ordinance would have been very inconvenient not only to shopkeepers but also to visitors, and also to residents, by reason of their somewhat irregular hours of working which would thereby have made shipping very difficult.

There was introduced in order to meet the special conditions of Mombasa an Ordinance in the year 1937. This did not go far enough by any means and was not acceptable to any of the parties concerned. It did not provide adequate protection for shop assistants, and was the subject of grave dissatisfaction. The subject was again considered in 1939, but the outbreak of war caused further consideration to be postponed. It was not until 1946 that it was again taken up. Then the Mombasa Municipal Board appointed a very representative committee to consider what ought to be done. All parties, all departments, and all associations concerned were represented on that committee, and they recommended the introduction of a completely new Bill, which hon. members now have before them.

This Bill will provide protection for shop assistants and journeymen against the pressure of unscrupulous employers, or employers who are indifferent to the welfare of their staffs. The draft legislation before hon. members has been approved by that committee, but there are three or four amendments, which I have no doubt will come forward in committee stage and which are acceptable. They reached me only a few days ago, and on a cursory examination I see no objection to the principles embodied in those proposals which are intended to improve the wording of the Bill and to make its operation still more certain and smooth.

[Mr. Mortimer]

As I have said, the Bill is limited in its operation to Mombasa. Its main provisions cover Sunday closing of all shops, the provision of half-a-day a week holiday for shop assistants, that on public holidays all shops must be closed at eleven in the morning, and on all occasions shops must be closed by 7 o'clock in the evening for general business and for the employment of shop assistants. It gives power to the Municipal Board of Mombasa to prescribe the precise hours of opening, and by order to say on which day the half holiday must be taken. It also gives power to the Board to provide for exemptions in cases where that will be justified, and it provides also that the working hours of any shop assistant or journeyman shall not exceed forty-nine in any one week except by a special dispensation for the purposes of stock-taking.

In clauses 7, 8 and 9 of the Bill, power is given to restrict the hours of working in shops, and provision is made that time must be allowed off for taking meals. Provision is also made for inspection to ensure that the provisions of the Bill are properly carried out. A welcome addition to the conditions of work is that provision will be made for a holiday not exceeding fourteen days per annum with pay, which is included in the measure. Penalties are laid down for infringements of the law, and rule-making powers to govern the detailed operation of the law are also covered and vested in the Member for Local Government.

Mr. RANKINE seconded.

The question was put and carried.

ADJOURNMENT

Council rose at 12 o'clock noon and adjourned till 9.30 a.m. on Wednesday, 10th August, 1949.

Wednesday, 10th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Wednesday, 10th August, 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 9th August, 1949, were confirmed.

VOLUNTARILY UNEMPLOYED PERSONS (PROVISION OF EMPLOYMENT) BILL

SECOND READING

CHIEF NATIVE COMMISSIONER (Mr. Wyn Harris): Mr. Speaker, I beg to move: That the Voluntarily Unemployed Persons (Provision of Employment) Bill be read a second time.

The title of the Bill is a mouthful, but the problem which it sets out to solve goes right back to the beginning of urban conditions. In 1547 in Great Britain the word "vagrant" was used. It was during Elizabeth's time "idle and dissolute persons, rogues and vagabonds", and one of the most ancient statutes mentions exactly this type of person, and I think it is worth quoting exactly what we mean: "Such as wake on the night and sleep on the day and haunt customary places and alehouses and the routes about, and no man wot from whence they come nor where they go". (Laughter). That is exactly the problem. It is a very old problem, and we have not had it in this country a long time because we have not had urban conditions a long time, but we have a modern name for it, and that is "spivs and drones". Such is the problem that the African has a word and knows exactly what is meant, and that is "Mikora". In fact, this Bill might be called "Sheria ya Mikora".

What is the problem? The problem is the spiv or drone who has no honest means of livelihood, has no intention of having any honest means of livelihood, but prefers to batten on his fellows and add to the quota of crime, particularly in our urban areas. It is a

[Mr. Wyn Harris] fact that, because our African community is the poorest of the communities, and the most numerous of the communities, and suffers from lack of housing, at the present time the problem is almost entirely confined to the African community, but I want to make this point—that the spiv and the drone is a bigger danger to the African community itself than it is to the other two communities, however much we may suffer from burglary and the other felonies. (Hear, hear.) That is fully recognized by the African Advisory Council of this town and by many African leaders who do realize that it is the idler who really causes the trouble.

If I might for a moment, before dealing with the Bill itself, go back into the history of this particular problem. Before the war we had a certain number of spivs and drones in this town, men who lived by their wits, and the machinery was reasonably adequate to deal with it. But on the outbreak of war, with the influx of troops into this town, they began to come into this town and into Mombasa, and into the other towns of the Colony, in ever increasing numbers. You had your peddler of liquor, your three-card trickster, your beggar, and all the rest of them that hang on to a large army, and they found a ready and lucrative means of livelihood by getting into some form of employment, which was certainly not approved employment, or even just getting out of employment and earning a livelihood by illicit means.

By 1947 the problem had assumed serious proportions, but two factors came in which made a great deal of difference to these particular towns, and to Mombasa. The first was that it became necessary to ration food, and in consequence it was very difficult for men who were not in proper employment to feed themselves. At the same time, due to the stress of war, we had conscription of labour, and by the end of 1944 some 18,000 Africans had been conscripted to essential services, but those 18,000 Africans had been drawn from the native land units. In 1944, at the same time, there came into being labour control in Nairobi, and it was decided that those men who were not

engaged in beneficial occupation in the towns should be directed to the essential services, and it may be of interest to the Council to know that during the years 1944 and 1945 the tribunal which dealt with the conscription handled no less than 7,000 people, and about half of them were either directed to essential industry or went into approved employment. Many of the others were returned to their homes. We do not know, of course, how many actually were kept out of the town, but they did realize that, if they came into this particular town, or into Mombasa, they would either have to work or they might be directed to conscription.

In 1946 the regulations were repealed and, as we all know, there was an immediate flood into this particular town. Early in 1948 the unofficial members of this Council had an interview with the Governor on the question of crime in the urban areas, and at that time the Governor adumbrated the legislation which is before the Council to-day, in order to control the town labour.

Now, I think it would be easier to explain exactly how this Bill will work, and show how we believe that it cannot affect any law-abiding citizen of this country, of whatever race, if I go through it clause by clause. I do not propose to deal with every single point in the Bill, but I shall deal with it clause by clause and explain the difficulties, and how we are endeavouring in this Bill to get over them.

Clause 1 only allows the Ordinance, if it comes into force, to exist for a period of two years from the date of its coming into force. The reason for that is, I think, quite obvious. This is experimental legislation. Every nation at various times has made attempts to deal with this particular problem, and this, we believe, is a new approach. We believe that it will be effective, but it may in many ways prove defective, and it is experimental. I might at this point mention that a large number of other colonies are watching this Bill with particular interest, to see if they can apply it to their territories with benefit to themselves. I would go further and say that as it is experimental, should it be found at any time not to be

[Mr. Wyn Harris] achieving its purpose, or to be interfering with the lawful rights of the law-abiding citizen, the Government would be prepared at any time to appoint a select committee of this Council to examine its workings.

Clause 2 is definitions. Definitions are usually dull, but the whole meat of the coco-nut actually occurs in the definitions of this particular Bill. First of all, I would call Council's attention to the expression "adult male". "Adult male" only includes the able-bodied males, so that there is a let-out there. But the most important definition is the definition "unemployed person". I should say straight away that it is unfortunate that the word "and" has crept in instead of the word "or". As it stands at present, the definition reads "means any adult male who is not in regular employment and has no lawful and regular means of livelihood". The "and" should be "or".

A great deal of thought has been given to that definition in order to cover only those people who have no intention of working and who are going to live by their wits, but it has been suggested that there is another class, and that is the man who may have been either in employment or else has had a lawful and regular means of livelihood and, for some reason outside his own control, that has ceased for possibly a period and he has the means by which to live while he is sorting out his private affairs. That is a perfectly good point and it is intended, when we come to the committee stage of the Bill, to re-define "unemployed person" to include the two we already have and also that group of people. I cannot myself conceive any other group who could fall within the definition of unemployed person and not be a yagrant, a vagabond, a spiv or a drone. In consequence, I would say that the only people who have anything to fear from this Bill are this particular class of people, because you have to be an unemployed person as defined before any of the succeeding clauses apply at all.

The next definition which is of some importance is "voluntarily unemployed person", which means an unemployed person who is not genuinely seeking work. When a man goes before the com-

mittee it may be found that he is in point of fact an unemployed person within the definition, but the committee has also got to decide that the man is not genuinely seeking work.

The next clause of importance is clause 4, which deals with the setting up of committees. It was intended in this Bill that the committees should consist very largely of the members of the community with which they would deal, and it may be necessary in any one area to set up possibly more than one committee. I understand from the hon. Attorney General that clause 4 does not quite achieve that object, and in consequence in the committee stage an amendment will be proposed to make it quite clear that each community will be dealing with its own people, because we will only be successful if we have the support of the law-abiding communities of the areas in which the Bill is applied. If it is disliked by, or if it has not the support of, these communities, the thing will fail.

Under clause 6 an unemployed person—and unemployed person means unemployed persons as defined, that is having no lawful or regular means of livelihood or who has not got the where-withal from regular livelihood and has no employment—has seven days in which he can seek employment before reporting to the labour exchange. On reporting to the labour exchange under clause 7, the officer in charge will do exactly what is the custom of the Labour Department at the present time: if he has any suitable work he will offer it; if the man is looking for some other type of work, he will be given an opportunity to find that work privately, or else he should go back to the exchange to see if there is any other work for him.

Under clause 8 there is one point which I should like to underline, and that is the words at the beginning: "Any unemployed person who, without reasonable cause, fails to report". This only applies to unemployed persons. If a man after reporting to the labour exchange has made his own arrangements for employment, he will not be liable to report back to the exchange under the provisions of clause 8.

Clause 9 reads: "Any administrative officer, or person authorized in writing

[Mr. Wyn Harris] so to do by an administrative officer, may arrest without a warrant any adult male whom he has reason to believe is an unemployed person who has committed an offence under section 6 of this Ordinance and take him before a committee. That, I know very well, is a clause which exercises the minds of the African because it is on him, as we all know, that that particular burden will fall. It is for that reason that it has been taken out of the hands of the police, because these people are not really criminals in the proper sense of the word, and it has been placed in the hands of administrative officers and such people as they delegate to exercise their powers under the Ordinance. This particular clause will have to be administered with understanding and, if it is not administered with understanding, this Ordinance will fail, but I cannot see any way in which one could work an Ordinance of this kind unless we have some power of arrest when a man is reasonably suspected of having failed to report.

Under clause 10 a court, upon convicting anybody of an offence under this Ordinance, may send him before the committee. I should like to make the point that there is nothing to prevent an administrative officer, or authorized officer, from actually collecting the spivs and drones who hang round the courts and who fall into petty crime, and taking them before the committee.

The next important clause is clause 14, which gives powers to the committee. Having called upon the person concerned to appear before them to show why he should not be declared to be a voluntarily unemployed person, then the powers of the committee come into force. First of all, they can permit him to engage in approved employment for such period as the committee may approve. It may be asked why, provided he is in employment, the committee should have to approve that employment. Well, the answer is simple. If the committee cannot approve the employment, the people that we are really trying to get into the net will get into some form of employment or other which will take them out of the scope of the Ordinance. They can direct him

to enter into a written contract of service, for any period not exceeding six months, in any national employment; and "national employment" is defined as "in any civilian capacity with His Majesty's Forces, in the service of the Government of the Colony, of the East Africa High Commission, or of any local government".

Finally, if an adult male is not domiciled within a "declared area" and has a regular place of residence outside, and if he has refused or failed to follow out the directions of the committee which I announced before, then he may be returned to his area and told to keep out of the proclaimed area for a prescribed period.

I have missed one point which I should like to go back to now. Clause 3: "The Governor may, by notice in the Gazette, apply the provisions of this Ordinance to any area in which a labour exchange has been established, from such date as may be specified in such notice". We are also getting in the native land units the problem of the spivs and drones, and many responsible Africans are objecting very seriously that unwanted natives should be returned to the reserves to cause trouble, and at places like Fort Hall, where there is a labour exchange, if this proves a success the Ordinance will be applied to such and such an area, so that Africans in the land units suffering from this particular problem can also protect themselves by directing to labour those able-bodied men who refuse to work.

Under clause 15 labour reception camps can be set up, to which people can be sent while the committee make inquiries. It is essential, of course, that a committee should be of the same community as the people who are being sent to the reception camp, because they are in the best position to know whether in fact a man is a spiv or drone or is a law-abiding citizen. The period is only seven days in order that any necessary inquiry can be made before deciding whether or not a man is voluntarily unemployed.

Finally, under clause 16 there is provision for appeal. Under clause 17 evidence of the burden of proof is placed on a person to show when he arrived in an area, and under clause 19

[Mr. Wyn Harris] there is power of exemption. The power of exemption is intended for two purposes. First of all, there will be some form of visitors to an area who should be exempted generally, and secondly, when we get the Ordinance working, we may even find we are gathering into the net somebody who should not be, and it will enable us to exempt those particular people.

The main criticism of the Bill is: Will it work? Well, certainly during the war, very similar legislation, conscription regulations for the control of labour, did work, and proved a great boon to this town and all races. I believe it can be made to work, and also will have the support of every community in this town to deal with what is an age-old problem, and make no mistake about it. It is not a new idea, and all we are doing is to re-define the term "vagrant", and then deal with it in a slightly different way from the past.

MR. RANKINE seconded.

MR. COOKE: Mr. Speaker, I feel a little bit wistful in rising to-day because, when the hon. mover was speaking, it suddenly crossed my mind that there were not many days left in which I would be able to cross swords with him, and the position is entirely unsatisfactory as I have to say to the hon. gentleman that I could not agree with him more in what he has said this morning! (Laughter.) In fact, I am in complete accord with him.

My hon. friend drew a happy little analogy with Queen Elizabeth's time, but he failed to mention what might have startled some of his hearers in this Council that the punishment for spivs and drones in those days was to be tied to the tail of a cart and whipped through the town, so I think that this Bill is almost inconceivably moderate in the punishment sections which are proposed.

I think we have got to consider this Bill from the aspect: do we or do we not wish to get rid of the spivs and drones from the big towns of the country? If we answer "Yes", then I think we must say we must be prepared to take the drastic measures envisaged in this Bill. I look upon this control as having a three-fold object. No. 1: It

clears a town of undesirable people; No. 2: it reforms, or should reform, those people; and No. 3: they can be used to do great constructive work badly needed in this country. When the United States of America was faced with a similar problem in Roosevelt's time, they did not hesitate to form from the unemployed people what was called a Civil Conservation Corps, and that corps was responsible, among other things, for the great Tennessee Valley scheme, which everybody knows has been a magnificent success. I think that if a great democratic people like the people of the United States did not hesitate to take action of this kind, in a little country like Kenya, a young country, we should be prepared to do the same.

There is no doubt that we are living in difficult and dangerous times. The war has only just finished. It has upset a lot of people, not only Africans but Europeans and Asians, and it is necessary in times like these to take drastic measures. When I say dangerous times, I am not referring to communists, because I think that menace is overdone and overpainted, and sometimes Government would like to make a communist a whipping boy for everything. But I think the moral atmosphere in which we live has greatly deteriorated of recent years. It is therefore necessary to take these drastic measures.

I propose to take a certain amount of credit for suggesting a Bill like this, because I advocated it for many years. I do hope, if I may express the opinion, that the African members will accept the Bill, at any rate in principle, if they have a certain amount of detail to criticize. With those words I heartily support the Bill.

MR. MATHU: Mr. Speaker, I should like to congratulate the hon. mover of the Bill and to say that it is perhaps a pity that he made the point during his last few days in the Colony that we may have to differ on some of the matters raised by this Bill. I am sure that he will appreciate that there is no bitterness in it.

Personally, I have been a supporter of the principle that this country has set for itself in the last few years, that everyone must work, and I have not diverted

[Mr. Mathu] from that principle. But when suggestions are made as to how people must be made to work, that is where the difference of opinion between me and others comes in, and it is brought out in the Bill before us this morning. I feel that this measure is too drastic, there is no question about it. The hon. Member for the Coast has suggested that it is too drastic, and while it is necessary it is going to work very heavily on the African community. I feel that I should put forward my reasons why I do not think this measure should go through.

Only yesterday the Municipal African Affairs Officer was reported in the *East African Standard* as saying that the by-law which was passed early this year for the removal of unemployed from Nairobi had worked most satisfactorily, and when that by-law came in I supported it. I said the reason why I did so was that the crime wave was so high in this and other towns that it was necessary that something should be done. In the report which I have quoted from the *East African Standard* it is said that the by-law has worked well. "The removal of the large work-shy element from Nairobi—it was brought about by the enforcement of the 'spivs' by-law resulted in a considerable reduction in crime, an increased respect of Government and a much greater degree of contentment among the permanent citizens of all races living in the town". I suggest, therefore, that that municipal by-law has functioned, as I have mentioned, most satisfactorily, and I do not see why it could not be extended to other municipal areas so that similar legislation can be achieved.

The question may be asked, what about the African land units? There again I think we can achieve a similar thing by local native councils resolutions, which they are empowered under the Native Authority Ordinance to pass.

The other reason why I feel this measure should not go through is that the safeguards provided by the Defence Regulations—The African Labour for Essential Undertakings Regulations, 1944—are not provided in this Bill, the safeguards to the worker. Under clause 14 of the Bill powers are given a committee to direct those who are proved

to be voluntarily unemployed into various undertakings, but there is no provision that those men will have any remuneration to speak of. If I may quote regulation No. 25, it says this: "Any registered employer and any native working for him under the provisions of these regulations, shall be subject to the provisions of the Employment of Servants Ordinance, 1937, to the same extent as if such native had been recruited, and were serving under a ticket contract entered into, under the provisions of that Ordinance". Clause 14 just enumerates the direction which a committee may give to a worker, and there is no provision for any remuneration.

If I may also refer to what was considered in 1932 quite a drastic measure, the Compulsory Labour (Regulation) Ordinance, there were quite a number of safeguards for the worker; such as (a) the execution of the labourers must be directed in accordance with the exigencies of their religion, social life and agriculture; (b) their work must be of important direct interest to their own community; (c) compulsory work for the benefit of private persons was forbidden during the last war; (d) labourers could not be removed from their habitual place of residence. Those were among the safeguards which are not provided for in the present Bill.

The principle of arresting a voluntarily unemployed person without a warrant is a principle that I think is most obnoxious. Clauses 6 and 7 and also 8 of this Bill—under clause 7 a fellow reports to a labour exchange and is given a certificate that he can go and get employment, so that there is a record in the labour exchange of him, but under clauses 8 and 9 he may be arrested without a warrant. That I oppose in principle, and I opposed it during an amendment to the Taxation Ordinance earlier this year, where those who defaulted paying their poll tax were to be arrested without a warrant, and it is a principle to which I should like to voice my opposition at the present time.

There is also the question, as the hon. mover has pointed out, in regard to the appointment of labour exchange committees. I was pleased to hear from him that it is the intention of Government

[Mr. Mathu] that each committee will be composed of members dealing with individuals of the same race, but there is no such provision in the Bill, and he suggests that an amendment be made during the committee stage.

The appeal provision is most disheartening. Under clause 16 we find that a person can appeal against a decision if he disobeys the provision of clauses 13 and 14 (b). Now, it means that, if a committee directs a person to approved employment under clause 14 (a) or (c) or (d), that person will have no facilities in a court of law to appeal, and clause 14 (a) can be interpreted as a possibility that the labour exchange committee might direct a person to work in a private undertaking where the benefits would go to a private individual. I would say therefore that the appeal provision is most uncomprehensive.

The penalty clause, No. 2, sets the fines so high that the Africans involved will have to go to gaol, because the fines of two thousand shillings, or even five hundred shillings, will be beyond the level of the majority of the people who will be affected by this Bill. It will mean therefore that the liberty of the individual, although affected throughout the provisions of this Bill, will be even more affected by the penalty clause.

I feel that it is possible to achieve what we want to achieve under the present law. The present law has been achieving exactly what we are aiming to achieve in this Bill, and I feel that it might be wiser for Government, if they do not withdraw this Bill, to at any rate defer it for a period of time, so that the African public will have an opportunity to discuss the whole thing and know exactly what is involved in its provisions. I beg to oppose the second reading of this Bill.

MR. VASEY: Mr. Speaker, I am beginning with a sentence that is often used in this Council—I had not intended to intervene in this debate. But I feel that I must remove some of the misapprehension under which my hon. friend Mr. Mathu is labouring. He has referred to the report of the Municipal African Affairs Officer of Nairobi, but has, I think, failed to realize that that report covered the period ending

December 31st, 1948, and is not text whatever of any legislation which has been passed during the present year.

Now, sir, on the Nairobi Municipal Council I had the honour to be chairman of the African Affairs Committee last year, having been chairman of that committee on several occasions before, and I think it is correct to say that experience is now proving that the fears that we had at the time that the by-laws to which the hon. member has referred were first put into operation are proving themselves well justified. They were that, while they gave us the power to get the unemployed natives out of the town, it gave us no power to make sure they were going to stay out of the town. That is the difficulty, and when the hon. Member for African Interests spoke about the "decrease in crime" I fail to believe that he has read any further than the front page of the *East African Standard*, because if he will read the inside pages he will see that there has been in the past few weeks a recrudescence of crime in Nairobi which is most disturbing to all law-abiding people, be they African, Indian or European. In my capacity, which I have now ceased to be, of chairman of the African Affairs Committee of Nairobi, I often went down into the African locations, and I can thoroughly support the hon. Chief Native Commissioner when he says that the African in those locations suffers far more from the deprivations of the criminal than we do, although we ourselves think we suffer heavily.

This Bill is a matter of defence against an unusual circumstance, and an unusual flood of crime. This is a weapon that I think we must place in the hands of those who are defending us on the point of law and order, while at the same time it is obvious that we must, as the hon. Chief Native Commissioner says, take such steps as are necessary to see that that power is not abused.

There is only one other point on which I should like to comment, and that is I do trust that when we come to the committee stage we shall be able to agree to some amendment which will exclude what I may call the people of executive standing. As the Bill stands at present, unless I am wrong in my reading of it, if, shall we say, the Managing

[Mr. Vasey]

Director of Bata Shoe Company became no longer employed, he would have to go to the labour exchange and report immediately to the effect that he had no regular means of employment. I know that that will be met to some extent by the substitution of the "or" for the "and", but I think we do want to make clear that people who have, through their own efforts, arrived at a certain standard of earning in life, are exempted from the operation of the Ordinance.

I beg to support.

MR. PATEL: Mr. Speaker, I am entirely in agreement with the need for dealing with the problem of spivs, drones, vagrants and criminals, and all steps should be taken to see that they are properly dealt with, but I am not happy about the provisions of the Bill which is before the Council.

Two things arise in my mind when I take the Bill as a whole. Firstly, the general tendency to-day of every state to interfere with every detail of the life of the individual from birth to death, and I feel that one is compelled to do things unnecessarily on many occasions in the name of suppressing crime and vagabonds. It is said that an individual is often influenced in his actions by the actions of those whom he likes or hates, and I have a vague feeling in my mind that at present many states and democracies are influenced by the actions of those states in Eastern Europe whose system of government we hate. Now when I read this Bill very carefully I feel that we are trying to interfere unnecessarily in many respects, and we are also enacting provisions which may even be exercised against peaceful and law-abiding citizens. In any event, I feel that steps should be taken at the committee stage to amend the Bill as was suggested by the hon. mover and also by the hon. Member for Nairobi North.

I should like to mention one thing, and that is that on page 2 where the committees are given power to consider what is work of national importance, I think the powers are too wide. They should be defined; otherwise the committees might consider any work, where there is pressure brought upon

them, as of national importance. Again, the term "suitable employment" leaves an uneasy feeling in my mind. I entirely agree with the hon. member Mr. Mathu that this question of arrest without warrant can be misused. Lastly, the labour reception camps also create a feeling of uneasiness in my mind. Having read a lot about the concentration camps in Germany and Russia where human beings are tortured, one has a very uneasy feeling whenever one thinks of labour camps and the reception at these labour camps.

For these reasons I feel very unhappy about the provisions of this Bill though I entirely support the idea of taking measures against vagrants, vagabonds and criminals.

MR. O'CONNOR: Mr. Speaker, I also, like the hon. Member for Nairobi North, did not intend to intervene, but I think that there are some points which I ought to make from the point of view of law and order, and some points of law which have been raised which I should answer.

In the first place, the hon. member Mr. Mathu suggested that we should continue with the by-law and that this Bill was too drastic. Apart from the advantages of having an Ordinance, instead of merely a by-law, this Bill will I trust be much more effective than the by-law has been. In the first place, as the hon. Member for Nairobi North mentioned, although under the by-law it has been possible to remove the spiv and drone, the difficulty has been to keep them out when removed, and I am informed that on some occasions the police have knowledge that the gentleman when removed has actually beaten the escort on his way back!

Under the present Bill there is a clause, clause 8, which makes it an offence to disobey an order made under the Bill, and a considerable penalty can be imposed. That is one respect in which we think that the Ordinance will be considerably better than the by-law.

The next point made by the hon. member Mr. Mathu was that there should not be powers to arrest without warrant. How in the world could an Ordinance of this kind be administered if one did not have power to arrest

[Mr. O'Connor] without warrant? You cannot possibly know in advance who the spiv and drone is. You have to pick him up, and then you find out all about him.

I should like to refer to his next suggestion. He expressed anxiety with regard to clause 14 (a) and (b) of the Bill, which reads: "When any adult male has been declared to be a voluntarily unemployed person, a committee may (a) permit him to engage in any employment approved by the committee for such period as the committee may approve; (b) direct him to enter into a written contract of service, for any period not exceeding six months, in any national employment". I stress the difference in the language there—"permit him to engage in any employment approved by the committee", and "direct him to enter into a written contract of service . . . in any national employment". It is quite a misapprehension of the effect of the Bill to say that the committee may direct him into any employment which is not national employment.

Another point made was that national employment was not sufficiently closely defined, and I would invite reference to the definition of "national employment": "National employment" means any employment, which a committee considers to be of national importance, in any civilian capacity with His Majesty's Forces, in the service of the Government of the Colony, of the East Africa High Commission, or of any Local Government". That does not permit the committee to go outside those bodies, to say what is national employment.

I feel sure that the hon. mover of the Bill will deal with the other points which have been made in the debate. I merely wished to deal with those which are, perhaps, more particularly points of law. But before I sit down I should like to say that, although the enforcement of the by-law was very salutary, it has been found to contain a lot of loopholes, and we do want this Bill. The police want this Bill, the authorities want this Bill to help with their primary task of enforcing law and order, and I feel perfectly certain that this Council will

give us the weapons for which we are asking.

MR. INGUTIA (African Interests): Mr. Speaker, I rise to support all the statements made by the hon. members—Mr. Mathu and Mr. Patel. I should also like to make it very clear at the beginning that I support in every way the points made by the hon. mover about the wrong type of African whom we do not want in the towns as being parasites, but there are a number of things in this Bill which are causing anxiety to the African, and for that reason I should like to oppose the Bill in its present form, although I entirely agree that we do not want the vagabonds, spivs and drones not only in Nairobi and Mombasa but in the reserves.

What causes me anxiety is how this Bill, when put into operation, will work in the native reserves, and for that I should like to oppose it. There are enormous powers given to the authorities, namely the power of arresting without a warrant, and if that power is given to a chief it will mean that the person who is going to be arrested will also take measures to defend himself, so that there is likely to be a kind of war in the native reserves if the Bill is to be applicable in them.

Another point which causes some anxiety is the question of assuming that a man has not got proper employment. That would bring in a lot of people who have their own means of employment, and therefore this causes a lot of anxiety to people. Another reason is that a man may be detained for seven days without a trial. I do not know whether it is the British way of life to detain a man without trial for so many days. I have learnt that in England the law says that a man must not be assumed guilty until he is proved guilty in the court, but in this Council we are passing a law where we assume that a man is guilty although he is not proved to be guilty.

For that reason I am afraid that it may cause a lot of unhappiness to Africans, and a lot of worry. We do not know who is going to be put into this group of unemployed people, because it does not say how you are going to find out how a man is employed. Another

[Mr. Ingutia] reason is that the Bill will be applied not only to the Africans who live in the towns but to Africans in the reserves. From the hon. mover's statement it has been evident that even in the reserves Africans may not be quite free, and I fear the application of this Bill may cause a lot of unhappiness to Africans.

The hon. member Mr. Patel has mentioned the labour reception centres. We are trying to live in another form of Nazi Government, and this Council should be careful not to pass a law which says that we should have these centres existing in Kenya. For those reasons I should like to oppose the Bill so that it should not come into operation. (Applause.)

MR. ERSKINE (Nairobi South): Mr. Speaker, it gives me very great pleasure to open my remarks by congratulating the last speaker on his very able and lucid speech on this subject. Furthermore, although I am going to give my wholehearted support to this Bill, I do hope that the brief observations I have to make will commend themselves in some way also to the last speaker.

As a previous speaker has said, I did not really intend to intervene in this debate, but such a mild intention as I had was crystallized into iron resolve when I found myself unperturbed during the last two days by a certain political pressure group—they approached me in a general way and not in a particular way, and the points of the general approach I am going to read to this Council. They said in a letter to me: "We are asking that your contribution to this session of Legislative Council may be based on genuine regard for the rule of law which remains our chief safeguard against an executive which is trying ruthlessly to sacrifice freedom for doctrinaire socialism". (Laughter.) The particular point arising out of that general instruction which I received deals with this measure now before Council: "We hope it will not be taken an ass if we suggest that with regard to the 'anti-spiv' Bill its provisions should be restricted to those whose normal salary is not in excess of Sh. 200 per month". This letter purported to come from the Society for Civil Liberties—(laughter)—and I hope

that all hon. members of this Council will notice that this society draws a line, a distinct line, between those who are to enjoy those civil liberties and those who shall not. (Applause.)

I recall some lines written by a visitor to a great democratic republic on one occasion, when he wrote:—

This is the country of the free,
The cocktail and the ten cent chew,
Where you're as good a man as me,
But I'm a better man than you.

(Laughter.) I have always held that the British idea of law is that it should be non-discriminatory. (Hear, hear.)

With those few words I support the Bill.

MR. JEREMIAH (African Interests): Mr. Speaker, I stand particularly to support the request made by the hon. member Mr. Mathu for delay in the passage of this Bill. The Bill as it is, in my opinion, seems to be rushed, and the Africans as a whole have not had time to study it and understand really the implications and objects of it. I feel that Government has all the power necessary to deal with spivs and criminals, which I believe are the people we are after. It has been said that the Nairobi municipal by-law is ineffective because while it sends them out of the place it cannot keep them out. I do not think it is necessary to keep people out unless they are criminals, and we should not try to keep people out of a place that they want to go to simply because they are not employed.

The hon. Attorney General has himself said it is not possible to know who is a criminal or unemployed, and in that case it appears that the people will suffer for the sake of trying to find out who is unemployed. They have already suffered because of the municipal by-law, and if we extend this matter we shall not improve the relationship between the African and the Government, and if we are not going to improve that relationship and if the state of the country becomes such that people misbehave about it who is to be blamed? Therefore I request this Council to defer the Bill for further consideration, and I beg to oppose it.

MR. WYN HARRIS: Mr. Speaker, I rise more in sorrow than in anger. I am

[Mr. Wyn Harris] afraid that my hon. friends the Africans on the other side of Council have quite misunderstood the purpose of this Bill. It is in effect, if they look at it, a Vagrancy Ordinance. If we can get the definition of unemployed person and voluntarily unemployed merely to include the spivs and drones it is, in effect, a Vagrancy Ordinance and we can deal with them as such, and it will not work hardship if we can possibly help it on the African community. I have made every safeguard that I can to make this measure work, because this particular problem requires drastic cure, but to suggest that this Bill should not come in because the municipal by-laws are working properly to my mind shows that the position is completely misunderstood. If I was an African and knew exactly the by-law and this Bill, there would be no question as to which is going to be most effective with this particular problem and which is fairer to the African, because the by-law presupposes a criminal conviction, and if it is going to be effective quite a heavy prison sentence will have to be given to keep people out of the town. It also means that a large number liable to arrest without warrant by the police would remain in prison custody.

But that is not the only way in which we can deal with this particular problem, because we have had a law on our books for a long time, and to simply aim to put one more definition into the Vagrancy Ordinance to cover this matter would react very hardly on the African. When you convict a man as a vagrant, he goes back to the native land unit and ever afterwards he may not live in the native land unit without a permit, and it is an Ordinance which in my experience has in many cases manufactured criminals, because they are committing a crime by continuing to live in the land unit without a permit. What we are trying to do is to cover this question of the spiv and the drone, and then deal with him in the way we should, and that is by either making him work or driving him out of the town. If anyone can find any other effective way than by this Bill I should like to find it.

I do not propose to traverse all the points in detail which have been raised,

but I must mention the question of reception camps. During the war we had a reception camp at Nakuru, another at Thika, and another at Kisumu. I think I would prefer those reception camps to Belsen.

Finally, it was pointed out by one of the African members that the Native Authority Ordinance gives power to direct idlers to work in the native land units. Well, I am afraid it does not. It enables people to be called out for communal work for six days in all, but it is entirely ineffective, as every single responsible African in the reserves knows, in dealing with the young idlers hanging round the coffee shops. I know, and I speak for a very large number of informed African opinion who regard this particular problem of the spiv and the drone as really one of the most important from their point of view, that if this Bill is promptly and sympathetically administered, we will have done a good deal to relieve the anxiety of the law-abiding African on the subject of the spiv and the drone.

The question was put and carried.

NATIVE TRUST FUND (AMENDMENT) BILL

SECOND READING

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

I do not propose to take up the time of the Council very long on this Bill. The Native Trust Fund is controlled by Trustees, of whom I am the chairman. The revenue of the fund comes mainly from the Sh. 2 rebate from the Government poll tax. In consonance with the policy to give to members powers which are held in the main by the Governor in Council, it is proposed that the actual administration of the fund should be approved by the officer who holds my office, and that another trustee should be put on to the Native Trust Fund Trustees. That is the whole purport of this Bill and I beg to move that it be read a second time.

MR. RANKINE seconded.

The question was put and carried.

TRADE UNIONS (REGISTRATION) BILL

MR. HOBSON: Mr. Speaker, with regard to the Trade Unions (Registration) Bill, only this morning I received a letter suggesting certain amendments. In view of that, with your leave and that of the Council, I would ask that the second reading of this Bill be deferred until a later date during this sitting.

MR. COOKE: Could we be informed what was this evidence that was submitted and why it should come so late. Is it from some very important body?

THE SPEAKER: Is it not something that could be dealt with in committee?

MR. HOBSON: It is a matter which should receive the consideration of the hon. Attorney General first. It came in at the very last moment this morning and it is from a person who is very much concerned.

MR. COOKE: It is not from the Society of Civil Liberties? (Laughter)

MR. HOBSON: No.

The Order was accordingly deferred.

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) (AMENDMENT) BILL

SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move that the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill be read a second time.

The Motor Vehicles Insurance (Third Party Risks) Ordinance as it stands makes it obligatory to take out a policy of insurance against third party risks before using a motor vehicle on a road. To cause or permit to be used a motor vehicle on a road without a policy of third party insurance is an offence punishable with a fine of £100, or with six months' imprisonment, or with both. In addition, the convicting court must disqualify a person contravening the section from holding a certificate of competency for twelve months, or for a longer period if the court thinks fit, unless for special reasons the court considers fit to order otherwise. It has been held on the corresponding section of

the law in England that the special reasons must be special to the offence and not to the offender, and I think that that is, to some extent, the cause of the trouble.

At the last meeting of this Council the hon. Member for Nairobi North gave notice of a motion to delete the word "shall" and the words in brackets from sub-section (2) of section 4 of the Ordinance, and to substitute for the word "shall" the word "may". The effect of that would have been to leave it entirely to the discretion of the court as to whether the certificate of competency should or should not be forfeited. But it would also have taken away the power of the court to order a longer period of forfeiture than twelve months.

In the meantime, Government has considered the suggestion and has produced an alternative, which is embodied in the Bill now before Council. That alternative is to the effect that the disqualification should be discretionary, except in two cases; the first case being where the person concerned has never taken out a third party policy, and the second case being where he has taken it out but has omitted to renew it for a period of two months. It was thought that in those two cases there was exhibited either an intention to flout the law altogether, or such negligence in renewing, or in failing to renew, the policy as to merit a condign punishment.

Admittedly these penalties, in particular this penalty of forfeiture of the certificate of competency, are inserted *in terrorem*. That penalty is supposed to be a very severe penalty, and the object of it, I imagine must have been to make absolutely certain that people would take out a certificate of third party insurance. And it is very essential that they should do so, because if there is an accident and, let us suppose, a bread-winner is run down and killed or crippled for life, then it is a very serious thing indeed if the injured person can obtain no compensation because the driver, or owner, of the vehicle cannot pay and the vehicle is not covered against third party risks.

I think all hon. members would agree that the standard of driving in this country is not such that we could safely say that accidents of that kind would

[Mr. O'Connor] not happen. At the same time, it was thought that, having regard to the particular circumstances which exist in this country which are not in all respects the same as those which exist in the United Kingdom, the rigours of this penalty might be mitigated to a certain extent. Therefore the Government put forward the Bill which is before the Council as a kind of compromise. Government felt that this would offer some relief to owners and users of motor vehicles, while at the same time preserving the interests of the public.

However, I understand that it is the intention on the other side of Council to press for an amendment of the Bill which would leave the question of penalty entirely to the discretion of the court, and would not make the disqualification mandatory as it is at present, except in special circumstances. If that is the desire of the Council, that amendment would be accepted by the Government, but it is my duty to point out that it is very necessary that the law should be strong enough to ensure that third party policies are in fact taken out, and that the interests of the public are preserved.

It has also been represented that there should be an exception, in the circumstances which obtain in this Colony, in the case where a farmer has a road running through his land and it is necessary to use his tractor, or other agricultural vehicle, on both sides of the road. Obviously, he has to move his vehicle across the road, or he may have to move it along the road. In those circumstances it is reasonable, I think, that he should be allowed to do that without the expense of taking out a third party insurance to cover all his tractors and agricultural vehicles. At the same time, it is my duty again to point out that accidents might happen even in the transit along the road. However, again, if it is the wish of the Council that an amendment on those lines should be incorporated in the Bill, the Government would be prepared to accept that.

MR. HOBSON seconded.

MR. MACONOCHE-WELWOOD: Mr. Speaker, as one who has suffered under the present Ordinance, perhaps I could

explain to Council exactly the implications of the original Ordinance and why it was desirable to propose the present amendment, with the addition of other amendments which some of us intend to put up in the committee stage.

The real danger of the original Ordinance was due to the fact that its interpretation had to depend on the interpretation of the Chief Justice in England. I do not believe that it was the intention of this Council that special reasons should only be applicable to the offence and not to the offender. However, that was ruled by the Lord Chief Justice of England, and no doubt it fits the circumstances appertaining in the U.K. Unfortunately, in this country the situation is entirely different, for in this country we are a scattered population, with virtually no communications other than roads; whereas in England there are buses, trams, trains and all sorts of other methods of getting about. In fact, in this country, if the certificate of competency of the ordinary farmer is removed from him, he is to a great extent immobilized, unless he is sufficiently well off to afford an African driver, and even then the African driver is not necessarily available in cases of emergency, when the farmer may most require his services.

But there is another objection to this Ordinance as it stands in this country, and that is that in the United Kingdom the risks are quite enormous. To begin with, the number of people that you may run down or damage who are going to be far beyond the private means of the motor vehicle owner to compensate out of his own pocket, are infinitely greater than they are here. Let me put it this way. The average owner of a motor vehicle in this country, be he European, Indian or African, is perfectly capable, due to the circumstances of the country, to pay the necessary compensation to any African who may be damaged in an accident. The mere possession of a motor vehicle implies the fact that he can afford to do this. Therefore, you are left with the small population of something like 100,000 Indians and 30,000 Europeans who are the real risk in the matter. I submit that makes the case entirely different from the United Kingdom.

[Mr. Maconochie-Welwood]

On an up-country farm, in the circumstances in which people have recently had their licences suspended in my area—myself and several others—the risk was infinitesimal, due to the fact that the number of vehicles on the road was incredibly few. That is another reason why we do not want penalties of this sort in this country, particularly in the case of tractors. I know an unfortunate farmer whose licence has been suspended for twelve months because he had a tractor on the road, in entire ignorance that that tractor had to be insured. He had taken the trouble to licence it, but nobody knew it had to be insured, and the magistrate had no option in the matter but to suspend his driving licence.

The main reason why I object to the original Ordinance is that it seems to me that you cannot have the rule of law unless it is tempered with the rule of justice, and the whole idea of the original third party risks-law in England was to see to it that no judge, or no magistrate, could temper the law to the individual, and that, to my mind is a thing which is absolutely inimical to the whole system, and the whole principle, of British justice, and is certainly against the whole purpose of this legislature when it passes laws.

For that reason I support this amendment, but hope that in the committee stage I shall be able to take it a stage further and leave complete discretion to the magistrate.

The debate was adjourned.

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

IMMIGRATION (CONTROL) ORDINANCE, 1948

MOTION TO REPEAL

MR. PATEL: Mr. Speaker, I beg to move: That steps be taken to repeal the Immigration (Control) Ordinance, 1948.

I do not propose to go into details, because this question has been discussed at great length several times in this Council, and outside this Council also. I do not propose to narrate the struggle which took place several times against the prevention of Indian immigration, and I do not need to mention also that

if the effort to pass such a law in 1923 had not been frustrated by the movement which the Indians then made, perhaps many of my countrymen would not be now in this country, and perhaps my hon. friend Dr. Rana and I would not have entered this country. (MEMBERS: Shame!)

I wish to remind this Council that a Bill was published in April, 1946, for the control of immigration, and as we all know at that time opposition was offered from many quarters, and the delegation from the Government of India which was in the country at the time examined the provisions of it and made representations in regard to it. I would also remind Council that on account of those representations and criticisms several changes were made to the Bill published in April, 1946, in particular the amounts which were prescribed for immigrants under section 7, Classes B to E, were greatly reduced. Those amounts were then reduced on account of the case made out by those who criticized the heavy amounts which were provided for in the original Bill. Also, an amendment was made that a permanent resident living in this country could not be declared a prohibited immigrant if he went outside and then sought re-entry. Those two changes were made due to criticism of the original Bill.

In my opposition to the second reading of the amended Bill, which provided many changes, I made it very clear that the Immigration (Control) Bill of 1948 was stricter than necessary. I also made out a case that it did injustice, gross injustice, to several classes of people. In particular, I then mentioned that that Bill deprived certain people of the right of re-entry which was given under the immigration law of 1906. There were people who had obtained domicile certificates in good faith and had left this country, and by the Ordinance of 1948 they were prevented from re-entry. It is well known that there are people who entered this country during war-time, and yet the early pioneers in this country, who obtained domicile certificates, and then left the country for a certain number of years, because they left say in 1938 were prevented from coming in, as against the others who

[Mr. Patel]

came in in war-time. That was one of the grave injustices done by the Immigration (Control) Ordinance, 1948.

Then a select committee of the Council was appointed to go into detail of the provisions of the Bill, and finally an inter-territorial committee met in November, 1947, and went into the whole Bill thoroughly clause by clause. At the inter-territorial meeting Indian, European, and African members of all the East African territories were present—Kenya, Uganda, Tanganyika, and Zanzibar. They finally produced a report which was accepted by the Legislatures of all the four Territories.

I personally felt that unless the provisions of the Ordinance which were incorporated as a result of the investigations of the four select committees were given a fair trial, there would be no attempt to interfere with these provisions. Unfortunately, the expectations which I had proved wrong. An effort was twice made to interfere with the provisions of that Ordinance of 1948 which had the support of the select committees of the four Territories. In particular, this matter of the amounts which an immigrant should possess in Classes B to E has been disturbed without a fair trial being given to the provisions which were incorporated in the Bill. That is the reason why I personally, honestly and sincerely believe that that was a breach of faith. For that reason, I gave notice at the last session of Council that I would move for the repeal of the Immigration (Control) Ordinance, 1948.

In regard to the administration of the Ordinance also, I notice several grave difficulties.

People who had established businesses a long time ago, in the early days of this country, who had acquired properties, and who for some reason or other or to give their children education went back to their home country, say in 1936 or 1937 or 1938, now cannot get back unless they have an annual income of a certain figure. Yet they came to this country in the early days as pioneers, established their businesses or acquired property, and it is wrong in my submission, it is unjust, to allow provisions to remain on the statute book to prevent

such people from re-entering this country.

There is another thing. As far as I understood throughout the discussions of this law, the entry permit under Class G would not be refused to any class of people unless there was a serious threat of unemployment. I would therefore like to have a statement from the hon. Attorney General about the policy of Government in regard to the administration of this Ordinance, whether an immigrant wishing to enter under Class G should be given a temporary employment pass or an entry permit as provided under Class G if in a certain category of employment and there is no immediate serious threat of unemployment in the near future. I would like to have a statement of the policy of Government in regard to that matter.

There is another difficulty in regard to the issue of dependants' passes. I have noticed that in the administration of the law there are difficulties in regard to these passes. Supposing an individual earns a monthly salary of £15 or £20 and desires to bring in one of his dependants to whom he has to remit money for maintenance. The Immigration Department to-day say that this individual must have the income which is provided under Class H before he will be entitled to bring any dependant here. That means that people, the ordinary class of people whose monthly income is £15 to £25, will be debarred from bringing in their father or mother or any dependant to this country unless their income goes beyond a certain level. In my submission it was never intended that the ordinary man, the average clerk or artisan, should not be entitled to bring their dependants in.

Another point I wish to stress is the case of a person who has lived here for a long time, and who goes overseas and marries, and is not given an entry permit for his wife but has to apply for a dependants' pass for her. That in my submission is an absolutely wrong procedure in the administration of this law. If a person lived in this country for a long time and marries overseas, the wife should be endorsed on the entry permit of the husband.

In regard to the administration of the law, the Immigration Control Board is

[Mr. Patel] entitled to make decisions on certain matters only, particularly in regard to entry permits under Classes A to G. I think that in regard to all matters this board should be empowered to act in an advisory capacity, if not to give final decisions on Classes A to F the board should be entitled to give decisions, but in regard to all other matters such as dependants' passes and so on I think they should be placed before the board and their advice sought.

Mr. Speaker, I know that Council is against me on this motion. I am fully aware of it. I am also fully aware that even two of my colleagues do not see eye to eye with me in regard to this matter, and I know that my motion will be lost, but I am moving it with full confidence that the time and circumstances are on my side and that this law will have to be amended one day. The need for developing these territories is so great that we will require the necessary manpower, and I also submit that, if people from Europe are allowed to enter and take part in the development of these territories, the Indian also, who took part in the development of these territories in the early days, have an equal right to see that their countrymen also take part in the further development of these territories.

Sir, with full confidence that time and circumstances are in my favour and that one day this law will have to be amended, I move this motion.

MR. PRITAM seconded.

MR. HAVELOCK: Mr. Speaker, it may surprise the hon. mover that to a certain extent I am in sympathy with his motion. It is because I do not consider that the present Ordinance has worked well. I do not consider that it has been based on the proper principles, and in fact I would support this motion if we could get an assurance from Government that an amending Ordinance, based on the right principles, would be immediately laid before this Council.

The European elected members have been discussing this matter of immigration for the last few months and we have come to certain conclusions. I want mainly to deal with the principles of immigration, rather than the detail

of the Immigration Ordinance, although I will touch slightly on them later, if I may.

There is little doubt, I think, that at this moment we have in this country what might be termed a nation in embryo, and if that is the case we have got to be very careful to see that when that nation reaches its full status, as I hope it will in the not too distant future, the characteristics of that nation are right, and the type that we consider it should have.

This particular aspect, I submit, was not taken into account when the present Immigration Ordinance was framed. The immigration laws at present seem to be based much more on the economic side, on the economic aspect of the country, rather than on the character, and I believe that we should reorientate our minds in this particular aspect. It is the quality and the quantity of immigrants which we allow into this country, and indeed whom we may attract to this country, in the next few years who will shape the character and the financial standing of the new, we hope, East African nation in years to come. It is therefore a very great trust that remains with us in this Legislature to see that we shape our nation in the way it should be shaped.

What is the character that we wish to build for the peoples in these territories? During the discussions on immigration, both in this Council and outside, there has many times been mentioned the phrase "the British way of life". In modern conditions, in modern times, there have been certain doubts as to the meaning of the British way of life, and I would like to put it to you that we in this country wish to build a nation which will follow the ideals and the way of life of western civilization. I believe that that is really the object at which we should aim, and which indeed is the object that has been admitted to be the goal of the Government.

If it is accepted then that we should try to build a nation of this character, I suggest that we should build up here in East Africa, or in Kenya, a strong section of the inhabitants who base their way of living on such ideals and who will be able, by precept and by example, to teach the remaining inhabitants, in fact the present inhabitants of this

[Mr. Havelock] country, the right path to follow. Taking that into consideration, I suggest that the formation of the right national character in that way must be the first priority in our immigration policy. Naturally, economic considerations must be taken into account, but I feel that the national characteristics must take first place, and economic considerations second. In fact, if we do build a nation with the national characteristics which I have suggested, I believe that the economic balance will also be achieved.

I suggest in that connexion that a comparatively inefficient, or not very efficient and expensive, artisan or carpenter, who holds the right ideas as to the way of life, the right national characteristics, is of more real value to East Africa than a less highly paid and efficient carpenter whose political outlook and moral outlook are at variance with that of the western world.

So what is the machinery that we might build to achieve this particular object? I believe that, in order to mould the character of the future nation, we will have to adopt a method which has been successfully employed by the United States of America for the same object, and that method is the quota system, a quota system based on race and nationality. Within the national quotas the selection of trades and professions would take place. It should, I think, be the responsibility, and indeed the privilege, of the Executive Council to formulate this policy and to decide the quotas from year to year, it would be the job of the Principal Immigration Officer, advised by an Immigration Board, to put that policy into action. Naturally, any decisions made by Executive Council as regards immigration policy would be open to challenge in this Council.

Another point which I think is one of great importance is that under the present Ordinance the question of immigration, the question of granting entry permits, is mixed up with the other very important question of granting permanent residence certificates, which are in fact certificates awarding to a person a Kenya nationality, and I believe those two subjects—that of entry and that of granting Kenya nationality—should be kept separate. People should be granted entry permits, probably by the Principal Im-

migration Officer, advised by the Immigration Boards, but the permanent residence certificate is a much more important thing and should be granted by a separate body, possibly even by Executive Council itself. We can afford some laxity in the people who are allowed to immigrate into this country, but the privilege of becoming a Kenya national is not one to be accorded lightly.

Under the present law, an immigrant or intending immigrant who has been refused an entry permit has the right of appeal to the Immigration Tribunal. This is a very intricate matter; it is a difficult one, but on the whole we think that it is an unnecessary complication. There is no other country that I know of which gives such a right to an immigrant who really cannot be said to be a citizen of this country, or any country to which he emigrates, until he receives the national certificate. The matter of immigration is really, surely, a matter of executive direction; it is not a matter of law. If, say, Mr. X, Mr. Y and Mr. Z were refused entry into this country, then I suggest that the only remedy, or one remedy, is for the matter to be taken up in this Council on the policy level, because it is only owing to the policy that they are not allowed in. It is not a matter of law at all, it is a matter of the execution of the policy decided by the executive. On the other hand, if it is felt that the Principal Immigration Officer has not himself implemented the policy correctly in refusing Mr. X, Mr. Y or Mr. Z, then there might be an appeal from his decision to the Immigration Board itself, who should be the watchdogs of the Executive Council, to see that the Executive Council's policy is carried out properly by the permanent staff.

In this connexion, as I have described what I consider the duties of the Immigration Board should be, I feel that the Immigration Board itself should be reconstituted. I suggest that they should be appointed by the Executive Council, as their watchdogs, and its constitution might be much more practical if they were a chairman, three unofficial Europeans, two unofficial Asians, and one unofficial African. The Board, of course, would make rules and regulations as regards the actual detailed working of the Immigration Department, and naturally

[Mr. Havelock] these rules and regulations would be laid on the table of this Council. That is the principle which has already been fought out across this floor.

Reverting once again shortly to policy, I believe that in accordance with what I have said regarding the building of the character of a nation, that special favour should be accorded to European subjects of the Commonwealth of Nations. I also believe that second priority should be accorded to European subjects of the Western Union, with those valued characteristics that we wish to increase in this country. I believe also, and here I think the hon. Member for Eastern Area may agree with me (having no doubt disagreed with much that I have said up to now) that special protection against competition should not be accorded to those who enter under the national quota. Applicants should be carefully selected, but I think that the policy which is being followed at the moment in refusing entry to people because there may be on the unemployed registers one or two unemployed citizens of this country who want to take up the particular employment that the immigrant also desires to take up, I believe that principle of refusing immigrants because there are one or two without jobs in this country is wrong. I believe that no community can keep healthy and virile if there is no competition within itself.

I also feel in that connexion that people with the western outlook should be encouraged to immigrate to this country in all walks of life. It is obvious from what I have said that I feel that Asian immigration should be drastically curtailed. There are many sound reasons for this. There is no doubt that the continued Asian immigration at a scale even lower than at present will in the long run prove to be harmful both to the present Asian population and to other inhabitants of Kenya. And when I say the present Asian population, I would remind members that many of the Asian population can be, if they so wish, justly called Kenya nationals. As such we have a duty to protect their interests.

I will not develop the argument on this particular subject because I am sure there are people better qualified to do so who will wish to speak later. I only want to

underline one thing—that is the seriousness of the present situation. I consider that it is a matter of urgency that we adopt an honest, straightforward immigration policy, and provide the instrument for its enactment, which of course would be an amending Ordinance. The whole of western Europe is looking towards this corner of the world, they are looking towards us and asking us to help in bringing back the economic and political balance of the western world, and I believe we would be failing in our duty if we did not in every possible way build here a nation which can take the responsibility which is going to be thrust upon it.

As I have said, I support the motion, if Government will assure me they will introduce another Bill on the lines which I have outlined, but until that assurance is forthcoming I beg to oppose.

MR. COOKE: Mr. Speaker, I did not wish to interrupt the last speaker in his excellent speech, but I would suggest that a good deal of it was irrelevant to the present motion, and if he envisages other speakers we shall take up most of the remaining part of the morning. I would say this. He has made a rather risky assumption in thinking that the present Bill is so incomplete as he imagines. It was a Bill which received the most anxious consideration of three or four territories, and I cannot imagine that those of us who week after week gave so much attention to it could have been quite so wrong in our conclusions.

The point I wish to make is that if other speakers take the line of my hon. friend, I suggest they will be a little out of order on the motion.

THE SPEAKER: If an hon. member moves a motion in these terms, it seems to me that it is very difficult to limit the scope of the debate. But having heard the hon. mover, I have come to the conclusion that there are two things which he is taking the opportunity to debate. One is the allegation of a breach of faith; secondly, the maladministration of the existing measure; therefore he thinks it should be repealed. But having begun the debate, it is for hon. members to try and limit themselves to the scope which he has set.

MR. HOPE-JONES: Mr. Speaker, I crave your indulgence because some hon. mem-

[Mr. Hope-Jones] bers may ask me to sit down while they raise a point of order, but certain things were said by the last speaker, the hon. Member for Kiambu, which I think require some comment.

I personally was extremely interested in listening to the hon. member's speech. I particularly agree with him when he said it was time that we thought in terms that are economic. I particularly found myself in agreement with him when he went on to point out that we should not neglect economic considerations. In places, however, I found him a little difficult to follow, and here I should like to extend an invitation to him to give evidence to the Board of Commerce and Industry; there we meet in terms of economic necessity.

I do not propose to define the British way of life—nobody has yet succeeded in doing so—but I would point to one danger, and that is that any attempt to assume too narrow a definition from it and any attempt to draw conclusions from that definition might be too narrow for the economic health of any particular country. The present Ordinance certainly does not neglect the economic aspect of this very grave problem of immigrant people coming into this country, for we ask ourselves whether they can make a contribution to the wealth of this country. It may be that the Ordinance may not have succeeded in doing what we wanted, but surely this is a very reasonable criterion to apply to anybody wishing to come in, irrespective of race or colour or creed. But it cannot be the only criterion, and that is where I find myself in such complete sympathy with what the hon. member has just said. It may well be that we should consider these things, but I would like in my capacity as chairman of the Board of Commerce and Industry to suggest that his views are made known to that Board.

And here I do feel it is necessary to say this. We must be very careful what kind of artisan we let in, I entirely agree. On the other hand, when you get a new industry starting—

DR. RANA: On a point of order, sir, may I know whether the hon. member is supporting or opposing the motion? I fail to understand what he is saying. (Laughter.)

THE SPEAKER: The hon. member's failure is hardly a point of order.

MR. HOPE-JONES: If the hon. member would wait and see— (Laughter.)

THE SPEAKER: Order, order!

MR. HOPE-JONES: As I was saying, when a new industry is established, it is very necessary to know how to get it started. I can give a very good example. Recently an industry dealing with a certain type of textile has been under consideration by private enterprise here. It so happens that there are only one or two places in the world where the staff to get it started can be found. I put it to hon. members: Would they wish to keep out experts when, if they are kept out, an industry valuable to the economic progress of the country could not be established. (MR. COOKE: No.) I am glad to hear the hon. Member for the Coast agree with me for once!

I entirely agree, however, with the hon. Member for Kiambu that having led in these experts for a particular purpose, whether they should then remain as permanent residents is a separate question. I entirely agree that the privilege of permanent residence is another thing. On the other hand, if a man has made a valuable contribution to the economic life of the country for a period of years, I would submit that he has a prima facie right to stay here, all other things being equal. That, I submit, the present Ordinance allows. I am not suggesting that the present Ordinance is perfect in every respect, but as far as the industrial and commercial side is concerned I would say that the immigration authorities are taking the best advice available. In every case they go to the appropriate sub-committee of the Board of Commerce and Industry, the membership of which is entirely unofficial, and I think that in every case their advice has been accepted.

Before we get rid of that procedure, I would ask the hon. member Mr. Patel really to consider whether in fact he wants to get rid of it, whether in all honesty that is a procedure which he wishes to throw overboard, whether he can in all honesty argue that the sort of consideration given by an unofficial committee—the sub-committee of the Board of Commerce and Industry, with

[Mr. Hope-Jones] representation on it of the various communities, and I think that in almost every case their advice has been unanimous—whether he wishes to throw that overboard? I would also ask the hon. Member for Kiambu to consider whether he would disagree with the importance that that sub-committee attaches to the economic welfare of this country?

I think that to the hon. member Dr. Rana it is gradually becoming clearer (laughter) what attitude I am taking to this motion!

For the reasons I have given I must oppose the motion. At the same time, I would be the last to say that the Ordinance in its present form was perfect. What I would say is that we are building up a very useful body of case law on the commercial and industrial side. Of the other aspects of the operation of the Ordinance I do not know very much, but on the side where I and my colleagues are consulted I would say that the Ordinance is working reasonably well, to the satisfaction of organized commerce and industry, whether it be by Europeans or whether it be by Asian, and while none of us would say the job is being done perfectly we would say on our side, from the Board of Commerce and Industry, that it would be quite wrong and very foolish to get rid of the provisions of the Ordinance in that respect.

For those reasons I oppose the motion.

MR. MACONOCHE-WELWOOD: Mr. Speaker, I rise to oppose the motion, not because I think the existing Ordinance is perfect, but because I think it is better than nothing, and it seems to me that on the very occasions when we discuss this question of immigration we forget that the duty of this Council and every member of it, irrespective of race, is first of all to consider the body of the people of this country, rather than any personal feeling towards the people of the country from which he himself originates, and in considering that, we come to the question of the impingement of India on this country.

I think it must be categorically stated once and for all that Indian immigration, or further Indian immigration, into this country will be a disaster to it and to all the peoples who live in it, for

we here stand in a peculiar relationship to India, for purely geographical reasons. India is a country teeming with people, living for the most part at an incredibly low standard of life, and the pressure from that country to find somewhere else to go is quite enormous. I submit that we must sooner or later prevent any further immigration of those people here. Furthermore, the Indians when they come to a country are by far the most prolific race of the earth. When you lay in any other race you can get some idea that they will not increase beyond the bounds of the capacity of the country of their adoption to keep them, at least within a measurable time, but Indians are not in this category. They increase their numbers at an altogether fantastic rate, and in a country such as this where already we have the African increasing at a rate almost similar, and where the pressure of the population on the land is liable to bring about the ruin of these territories, I think we have to consider first of all the effect on the population question before we admit immigrants. As everybody knows, this country will be in imminent danger of being unable to feed itself in 40 or 50 years' time if the present increase of population goes on, and for that reason we cannot possibly afford to increase it even beyond the natural increase of the people here.

It may be said that the Indians have contributed something to the development of this country, and I am one of those who look upon these Indians today as part of the people of this country, but if you admit more Indian artisans they cannot contribute anything to the progress of the African because perforce, through no fault of their own, they dare not teach the African their trade lest they impinge on their own livelihood. Any race would do that. It so happens that the Indian people are the closest in competition to the African that they are a danger to the African. The European artisan is in a different position. Should a situation arise later where he is in competition, we should have to reconsider the matter, but at the present time it is only the European artisan who dares to teach the African his trade, and whatever we may say, we must teach the African a trade in order that he may advance to the standard of living which we would like to see him achieve.

[Mr. Maconochie-Welwood]

Above all, we must avoid bringing to this country the teeming population and the appalling squalor of the east. Western civilization has been mentioned in this debate, and I am the first to admit that western civilization and western science and western medicine have increased the problems both of the orient and of Africa, and I am also the first to admit that much of our science has produced disaster in every direction. Nevertheless, such as it is, I think all of us here must agree that western civilization is a better thing to impart to a primitive people than the ideas and the politics and the ethics of the east. I beg to oppose.

MR. MATHU: Mr. Speaker, I have only a few remarks to make in order to be consistent, because I have always held, even during the debates on the Immigration Bill, that our immigration laws have not been strict enough. The hon. mover said that the measure is stricter than is necessary. I say it is not, and I think, in spite of what the hon. member who has just sat down said, that Asian immigration should be restricted. I have had experience of the operation of the law as a member of the Board of Commerce and Industry, and I think the immigration from Asia has been extremely generous.

The reason why I have always held that our immigration laws should be stricter is that I naturally have to look at the whole problem from the African point of view, and my hon. friend the Member for Uasin Gishu has just made a point which I have always held, that it is actually very difficult for us to know what our economic future is. In Government departments our numbers are extremely limited, we cannot go higher; in the building trade the African people cannot get on; and in the engineering trade of the country the African has very little place. It appears to us that this situation that has been created as a result of immigration slows down the educational development of the African people, because they say that as far as manpower in the building trade, Government offices and so on is concerned, they already have the manpower required. So what is the point of raising the standard of education of the African people in those directions? That is a problem that is exercising our minds

terribly and we say, therefore, that the present immigration law should be made stricter in the interests of the people of this country. Similarly, in trade the African has come forward to take his place in the trade of the country, but the limitations and the restrictions existing as a result of those who have come into the country are such that it is very difficult for the African to go higher.

I feel that the hon. mover will agree with me when I say that it is in the interests of the present inhabitants of this country that stricter immigration laws should be enforced, because we must have a high standard of life, and when you have a large number of people who live at a lower level of life they influence the situation. That has been in evidence this morning, where a Bill got its second reading although it was opposed by the African people, because they were in the minority, and the members of this Council had to get it through because it is in the economic interests of the majority of them.

Largely the reason why we say that the immigration law has to be stricter is the point that has been raised by the hon. Member for Uasin Gishu, namely, the land situation. Once you have too many immigrant people here they, look round at the African people who move to a tribal rhythm, slowly, and they cast envious eyes at the land, and there is no doubt that it is possible for those immigrants to influence legislation to deprive the African peasant of his land.

Those are some of the points that I wanted to make, and before I sit down I should like to ask whether the hon. mover really intends that there should be no immigration law at all and that the door should be open, so that everybody can get on a ship from Timbuktu to the end of the world and come to Kenya. We must have some immigration law. There is no country in the world that has not got it.

The other point is in regard to the Immigration Board. I agree entirely with the hon. Member for Kiambu that the Board should be reconstituted. At the moment there is one African member on it, and I would suggest that if the Board is reconstituted there should be at least two African members on it. I beg to oppose the motion.

DR. RANA: Mr. Speaker, I rise to oppose the motion moved by my hon. friend Mr. Patel, on behalf of the Muslim community of this Colony who belong to the pre-partition India. At the outset I must say that I fail to comprehend the object of the hon. mover of this motion. I sympathize with him in what he says about the amendments which have been added to the present Ordinance. Regarding the question of breach of faith, I am not in a position to say, but if he is correct I must say that he has my sympathy.

It is not my intention to waste the time of this Council, but I must make one or two points very clear. First of all, regarding the principle of immigration, I must say that we cannot possibly stand up here and oppose it. After all, we are not angels; we are poor human beings, with all kinds of sins and so on, with grievances and so on, and all over the world the immigration law is applied. I think my hon. friend the mover will agree that when the new Dominions of India and Pakistan came into existence they immediately had to move immigration restriction legislation against Pakistanis going to India, and Indians going to Pakistan. I am one of those who cannot go to India to-day. Therefore it is very difficult for me, or any of us in a country which is inhabited by various races, to say that there should be free immigration. I believe that there is need for selective immigration for all races.

Now on the question of administration, I do not want to go into details. The hon. mover has been a member of the Immigration Board and may know more than I do, but I must say in all fairness to the present Chief Immigration Officer, and the Immigration Officer at Mombasa, that whenever I have approached them on behalf of some of my countrymen, they have been very fair and I have never known them go beyond the law. There may be certain defects, but I must say they are doing their best.

Further, I agree with the other speakers that, if there is going to be restriction, it should be on a fair and wide basis. In all other parts of the world, in the British Dominions particularly, there are special boards to deal with this matter of immigration. We already have a large

number of Indians and Pakistanis in this part of the world, and you cannot get rid of them, they are already here and they have to live and they want to live a respectable life. The only thing for this Government to do is to appoint committees, who should see that the proper type of people are sent to this part of the world.

Furthermore, there have been certain remarks regarding the production speed of the Indians, and various other fears, but I submit I am not an Indian and in the circumstances I have no right to plead the cause why they are producing more, and I would like to leave it to the hon. mover to give reasons for more production. In reply to those who say that we want western civilization here, I would say that this country is unique in the whole world, as three big races have been brought together here in the very closest touch. I think we will have to come to some sort of agreement or arrangement by which we take the best of the Asian and the western culture, whatever you call it. It is no good saying that because I belong to Europe, my civilization is the best; it is no good my saying that because I am an Asian or a Pakistani, my culture is the best. We should take the best of each and not get up and abuse the culture of each and every other civilization.

Before I sit down I should like to take the liberty of explaining my position, because the hon. mover said there was going to be opposition to him from his colleagues. He neither consulted me when he gave notice of motion, nor did he ask me about it. If he had asked me, I would have suggested to him that he should not bring this question up again and let us hear the abuses on this question which we have heard.

Originally when the Immigration Bill was moved in this Council I was one of those who kept mum, and I agreed to my colleagues' opposition. I am one of those who do not like to remain mum, and many times I have been blamed. I can see my hon. friend the Member for Mombasa looking at me, he knows I very rarely keep quiet, but during the debate on the Immigration Bill I did, but I agreed that the original Bill was defective in many ways, and that is why a select committee on an East African

[Dr. Rana] making too many mistakes. (Laughter.)

basis, composed of all races, was appointed to try and improve it.

With those few words, I oppose the motion, and if suggestions can be made so that the immigration law can work in a fair and reasonable way for the good of this country and for the benefit of all races, I should be very glad.

MR. MADAN: Mr. Speaker, I am in support of this motion. When I say that I wish it to be clearly understood that the Indian community is not opposed to the development as well as the advance of the African population of this Colony. I think that is where the hon. member Mr. Mathu missed the point. The hon. mover's motion, as you, sir, yourself have pointed out, relates to the breach of faith by Government in amending the law against the assurances given when the original Ordinance was first passed. I am glad that almost everybody here this morning has indulged in plain speaking—

MR. RANKINE: I hope the hon. member will say what the assurances were.

MR. MADAN: The first assurance which the hon. member Mr. Patel has brought to the notice of the Council is that no amendment would be made in the law unless a conference such as was held originally of all the territories was convened to go into the matter. I understood the hon. mover to say that that undertaking has not been observed.

MR. RANKINE: Would the hon. member quote chapter and verse for that?

MR. MADAN: I am recalling the statement made by the hon. member Mr. Patel in the last session of the Council.

MR. RANKINE: He cannot speak for the Government, sir.

MR. MADAN: May I not repeat what another hon. member says in this Council? I am speaking from memory, but the gist of it, I think, is correct.

As I was saying, I only want to answer the hon. member Mr. Mathu when he said that the Indian community has its eyes on the land in this Colony—

MR. MATHU: On a point of order, I never made that statement.

If the Indian people have their eyes on the land of the Colony and the Africans have no opportunities in Government offices and if they cannot make any advance in trade, I want to say this. It is not because the Indians are opposed to them. The Indians, as I have repeatedly said, are anxious to assist the Africans and to assure their advance in the economic life. If the Africans do not make any advance in that direction I say they have only themselves to blame.

The density of population in this Colony is 20 persons to the square mile, and that is hardly a population too big for any country. When we ask for the immigration law to be administered or amended so that it will give an economic opportunity to everybody concerned to enter this Colony and be able to contribute to its life, I want it to be clearly understood, specially by the hon. Members for African Interests in this Council, that we are not opposed to the advancement of the African. That is why I stood up to correct the misapprehension, if I can do so without making a mistake again, under which the hon. member Mr. Mathu is labouring.

MR. MATHU: I was under no such impression, sir.

MR. JEREMIAH: Mr. Speaker, I stand to oppose the motion. My main reason for supporting the hon. member Mr. Mathu that immigration should be more strict is because through my own experience I have seen in many departments of Government in many walks of life that the African advancement has been slowed down, if not actually hindered, by the position that we have Indians who get preference in all walks of life to the Africans; due to their being higher educated than the Africans they are given preference in all walks of life. Not only that, even when they get a chance to advance, it is difficult for an African to do so. It has usually been the case that the brother of some Indian has come in and taken the post. Besides that, Indians seem to me to be more attractive to the authorities, and it has been my own experience that an Indian who has come into a post under me has within a short time been put over me. Had he not been there, I think that I would have

[Mr. Jeremiah] been the man next to the officer. The hon. mover also forgot the position of Indian children themselves in this country. They are increasing, and to add more from overseas means that their source of living is not so safe. Furthermore, the less we have in this country of foreign people the better for the people themselves. I oppose the motion.

MR. RANKINE: Mr. Speaker, there is one statement which has been made in the course of this debate which I cannot allow to pass without challenge. That is, that in amending the original Ordinance Government was guilty of a breach of faith. I asked the hon. member Mr. Madan when he was speaking if he would be good enough to give chapter and verse, and he did not do so. In the short time available I have not been able to check, and therefore I would not guarantee that the statement or promise, as he suggested, was not made, but certainly I am not aware of it. As far as I know, it would be difficult to make it without abrogating the right of this Council to pass a law for the good government of the Colony (hear, hear), and it surely must be within the right of this Council either to repeal or to amend any law which it considers needs repealing or amending. (Hear, hear.)

However, if in fact such a statement was made, and if in fact there is a breach of faith, well, then, I would only say that so far as breaches of faith go the hon. member Mr. Patel must stand before us this morning self-convicted, because he is suggesting that not only should we amend the law but should repeal it altogether, so that he is the member who is guilty of breach of faith and not the Government!

MR. O'CONNOR: Mr. Speaker, I rise, albeit with some difficulty, to oppose the motion. May I say at the outset that I am very glad that the original Ordinance did not have the effect, as the hon. mover indicated that it might have had, of depriving us in this Council of his presence and of the presence of the hon. member Dr. Rana? (Hear, hear.) Indeed, if it had deprived us of the presence of the hon. member Dr. Rana, it would have deprived me of a supporter!

I do not propose to deal in detail with all the points which have been made in the course of this most interesting debate. In particular, the hon. Member for Kiambu has raised some points which go to the root of the whole immigration policy of the country, and I think that some of his suggestions merit the most careful consideration. But I feel upon this difficulty: that this Immigration Ordinance, 1948, was passed only last year after exhaustive consideration by representatives of all the territories involved, and I feel that without some very clear mandate from the Council I should not feel justified in advocating its amendment in such radical respects as were suggested by the hon. Member for Kiambu. It has to be borne in mind that what we do to this Ordinance also affects the other territories who are concerned, and there would have to be further consultation with them.

I will just deal with one point, if I may, which was made by the hon. Member for Kiambu. He said that he thought that the policy of refusing entry because one or two persons who had not got jobs were available here, was wrong. Well, that has already been recognized, and I think I mentioned in moving the second reading of the recent Bill to amend the Immigration Ordinance that regulation 22 was about to be amended to put that right.

Now I will endeavour to deal with the motion as moved by the hon. member Mr. Patel.

I would like to remind members of what this motion actually is. It is this: "that steps be taken to repeal the Immigration Ordinance, 1948". I find it exceedingly difficult to believe that the hon. mover really advocates the repeal of the Ordinance. I suggest there would be no one more dismayed than he and the solid members of his community if in fact the Ordinance were repealed. As has been pointed out by the hon. member Mr. Mathu, Kenya would be left without an immigration law at all. We should be left as a dumping ground for India's surplus millions and the surplus population of any other country who liked to use us in that capacity. We already have a population problem here, we shall soon have a severe population problem, or perhaps I should say, a soil

[Mr. O'Connor] and water problem, because it is not a fair criterion I suggest in this country to take merely density per square mile. (Hear, hear.) We shall have very shortly a position where our soil fertility and the water resources will be severely taxed to meet the needs of the continually increasing population which we already have. We have a housing problem, a school problem, a hospital problem. In all these respects the hon. mover has at other times in this Council drawn attention to the fact, that the available amenities lag far behind our needs in all these respects, and his criticism was justified.

Yet what is his remedy? To knock down the only barrier we have against the relentless pressure of hordes from outside, and to make the ordered assimilation into the Colony of the Colony's immigrants completely impossible. In fact, what he seeks to do would have the effect of reproducing here in Kenya, in a few short years or months, conditions of over-population, of overcrowding, of famine and of misery which make some of his fellow countrymen and others anxious to emigrate.

Does the hon. mover really consider that it would be in the interests of anybody, does he consider it would be in the interests of his own community, that we should open these floodgates, or is he putting forward the views of someone else, of an irresponsible section of the Indian community? It is that very section of the Indian community which is vociferous in denouncing our failures to find sufficient schools, to find sufficient hospitals, to find sufficient housing for their community, which is now clamouring for repeal of this Ordinance. They are the people also who want the capital sums which we suggest for intending immigrants reduced. So, what is the object? Obviously, then, they want to permit an unrestricted flow of indigent immigrants into this country. They must do, and yet they must know that the effect of that would be to make it completely impossible to solve the housing problem, the hospital problem and the schooling problem which they affect to wish to see solved. Now, what is the object? Is it that they are such good Indians that if the population pressure on India is relieved they do not care what happens

to Kenya? Or is it that, by sheer pressure of population, they wish to see Kenya become virtually an Indian colony?

There is a birthright involved. What is to happen to the Africans if this barrier is cast down? The Africans are just being educated to supply the country's needs in artisans, to supply the country's needs in white-collar workers, to fill the needs which we in this Colony require to see filled. Are they to be elbowed off their land, to be elbowed out of the jobs, by a horde of Indian immigrants, because that would be the effect of throwing down this barrier completely? The Europeans might survive, at any rate for a time, but make no mistake about it, the African, with his lower standard of education, would be nowhere in the economic struggle.

The immigration laws of this country are by no means perfect, but they have been framed as a result of careful and scrupulous consideration and discussion. All the points which have been made by the hon. mover have, I think, been made before and rejected, but I will deal with one or two of them.

In the first place we are accused of a breach of faith, and my hon. friend the Chief Secretary has dealt with that. I am unaware that any undertaking was given anywhere that this Ordinance would not be amended. If it were given I look upon it as a most extraordinary undertaking and one quite incapable of fulfilment, because it is a well-known principle that the Legislature retains, and must retain, the right to amend or repeal its own laws.

It has been said that some classes of individuals have left the country and cannot come back. If the hon. mover is referring to the people I think he is referring to, then they had a very long opportunity of coming back and plenty of notice, and there is no reason in the world why they should not come back now, if they are suitable immigrants to gain entry.

He raised a point on class G of section 7, which I am afraid I did not follow, but if he will make the point to me after this debate, I shall be very happy to try and answer it. His point as regards dependants I will deal with in a moment.

THE SPEAKER: I think that would be a good opportunity to interrupt the business, but before adjourning I understand the hon. Financial Secretary wishes to move a short formal motion.

The debate was adjourned.

COLONIAL AUDIT DEPARTMENT 1947 ANNUAL REPORT

MR. MATTHEWS: Mr. Speaker, I beg to move: That the Colonial Audit Department Annual Report for 1947 be referred to the Public Accounts Committee.

Hon. members are aware that the institution of the Public Accounts Committee is a new constitutional development in this country. In fact, the next meeting of the Committee will be only the second to be held. Moreover, at the first meeting the Committee considered it inappropriate to consider the 1946 report owing to the imminence of the 1947 report, and consequently, if this motion is accepted, the next meeting will see the first consideration ever given to an Audit Report by the Public Accounts Committee of this country. The historical interest of the matter will not be lost on the Council. I beg to move. (Applause.)

MR. RANKINE: seconded.

MR. VASEY: Mr. Speaker, I beg to support. I beg also to take this opportunity of expressing to the hon. member who has just spoken our congratulations and our commiserations upon his elevation to the post that he now occupies. (Applause.) I also, on behalf of the members on this side, extend our congratulations on the very, very brief maiden speech in his present position, and trust that it is the forerunner of his example in debates to come. (Laughter.)

The question was put and carried.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned till 9.30 a.m. on Thursday, 11th August, 1949.

Thursday, 11th August, 1949
Council reassembled in the Memorial Hall, Nairobi, on Thursday, 11th August, 1949.

His Honour the Speaker took the Chair at 9.40 a.m.

The proceedings were opened with prayer.

MINUTES

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

SESSIONAL COMMITTEE REPORT

SELECT COMMITTEE ON HOSPITAL SERVICES

MR. RANKINE reported that the Sessional Committee had appointed the following as a select committee to review the workings of the European Hospital Services Scheme: Hon. E. A. Vasey (chairman), Director of Medical Services, Deputy Financial Secretary, Hon. W. B. Havelock, and Hon. L. R. Maconochie-Welwood.

DISTRICTS COUNCILS BILL

FIRST READING

On the motion of **MR. O'CONNOR**, seconded by **MR. MORTIMER**, the District Councils Bill was read a first time, and notice given to take the subsequent stages later in the session.

MOTOR VEHICLES INSURANCE (THIRD PARTY RISKS) (AMENDMENT) BILL

SECOND READING (Continued)

The debate was continued.

MR. VASEY: Mr. Speaker, I feel that, in view of the remarks of the hon. Attorney General yesterday, it is only correct that on behalf of the European elected members I should explain the position of those members in regard to this Bill.

We understand, and I think it is correct to say that we agree wholeheartedly with the hon. Member when he says it is essential that it shall be known there is severe and drastic punishment awaiting anyone who does not cover their responsibility and liability with regard to third party risk against accidents on the public roads. However, the situation has arisen

[Mr. Vasey]

in this country in several agricultural areas wherein farmers owning motor tractors or agricultural vehicles have to traverse a main or public road to reach different parts of their farms.

In the Bill as it stood originally they did in fact commit an offence every time those vehicles crossed a public road to get from one part of the farm to the other, or they had to face the cost of insuring all their vehicles against third party risk. It was hardly considered necessary by quite a number of farmers that such insurance should take place, and they did not realize they were outside the bounds of the law every time their drivers crossed a road. The situation therefore arose that when the police, in fulfilment of their duties, prosecuted the drivers, the court had no option but to disqualify the farmer as the owner of the vehicle from holding a certificate of competency, a situation which was extremely difficult and, we felt, a very heavy and drastic punishment for a comparatively simple offence, and one which we venture to suggest would not have been inflicted had the court had power of discretion.

The hon. gentleman, as is the custom of Government, endeavoured to meet the pressure of what it feels is justifiable public opinion, but we do feel that the amendment now put forward may well, unless supported by some other distinct clause defining the position of farm vehicles, place the court in exactly the same position, because it says that if the owner has "never had in force in relation to the user of the vehicle a policy of insurance or a security in respect of third party risks which complies with the requirements of this Ordinance" the court shall disqualify him from holding a certificate of competency. That does, in fact, mean that unless a vehicle, an agricultural vehicle or tractor, crossing the main road is exempted in some way or other, the court will be compelled to disqualify the owner, the farmer, from holding his certificate of competency, and it is not placed within the discretion of the court.

I would respectfully suggest that the hon. gentleman could discuss this with members on this side and endeavour to see what compromise could be arrived at, which would save us the necessity of

having to move a motion and debate the principle of discretionary power for the court in cases of this kind. It is, I would emphasize and underline, not the desire of any member of the European Elected Members Organization to convey the impression that they do not regard any attempt to avoid taking out third party insurance against accidents on the road as something which merits severe penalty. I would suggest, therefore, that in the committee stage Government if possible meet us in this matter and accept an amendment which will allow the court to use its full discretion and exercise that power of common sense for which the law at times is noted.

MR. COOKE: Mr. Speaker, I hope the hon. gentleman will tell us when he gets up to reply whether in fact the police would put the law into effect if a vehicle merely crosses a road? Have they not instructions to use a certain amount of common sense?

MR. ENSKINE: Mr. Speaker, I rise to draw attention to what may have been something of an omission in this discussion. That is, in regard to what I have always been taught in regard to the elasticity and practice of insurance. We have been told of the terrible cost to a farmer who has a main road running through his farm, or any road, and the suggestion that he would have to insure all his vehicles at full cost merely to cross the road from one part of the farm to another. I would mention the astounding cinema film "Lloyd's of London", which explained that insurance companies were only too anxious to assist in these matters. Would it not be possible for Government to negotiate with the companies for a special policy, which would, for a very small fee, have allowed the hon. Member for Uasin Gishu to add the correct number of Africans, Indians and Europeans to his licence for a very small sum of money?

MR. RANKINE: Mr. Speaker, I should like to say a few words on the question of whether, in the event of a conviction, the disqualification should be mandatory or within the discretion of the magistrate.

The hon. Attorney General has already explained the position of Government in this matter. That is, that in the event of this Council feeling that it should be discretionary, Government is prepared

[Mr. Rankine] to accept that. But before Council comes to a decision on the matter, I would like to make an appeal to it, because I feel that there are some points which have been made by the hon. Member for Uasin Gishu which ought to be further considered.

In speaking to this motion I should like to make it clear that I am not referring to the question of the liability of owners of vehicles who are moving their vehicles on a road from one part of their property to another. The hon. Attorney General will reply to that question in a moment.

But the hon. Member for Uasin Gishu in his remarks rather—perhaps I should say at the beginning that I have a great deal of sympathy for his point of view, but I could not accept his arguments. Rather, it seemed to me that he regarded this matter from a very narrow standpoint, from the standpoint of the interest of the vehicle owner only. In fact, really an even narrower one than that—from the point of view only of the vehicle owner who has broken the law. But there is another point of view. What about the innocent party in this matter, the person who suffers damage or injury as the result of an accident? Because the other party has not taken out third party insurance, is he going to suffer? What are we doing about the interest of that person? Are we going to regard this question from the point of view only of the guilty party, the man who has broken the law, and not worry about the innocent party?

Let me give you an example to try and illustrate what I mean, and this example is a true one; I can vouch for it from my own personal experience. An accident happened in which one of the parties concerned was greatly at fault. As so often happens in a case like that, the party who was in the wrong, who was driving a large and heavy lorry, came off scot-free without any injury to himself or his vehicle. The other vehicle was overturned, but fortunately the driver escaped with his life, but the vehicle itself was wrecked. The party who was responsible for the accident was prosecuted by the police for dangerous driving, and was convicted. As part of his defence he pleaded, or rather admitted, full liability, and he pleaded

that he would be responsible for heavy damages. In consequence of that he got off with a lighter punishment than he would otherwise have done. A few days later he was declared a bankrupt. It then transpired that his insurance policy had expired, and so the victim of the accident had no redress whatever.

That, I think, is a good illustration of what can occur, and I can assure Council from my own experience that those facts are correct.

The hon. Member for Uasin Gishu made some comparisons with the United Kingdom over accidents. I do not wish to take issue with him as to whether accidents are more frequent in this country or in the United Kingdom, because I have not got the facts and figures to support my argument, but I would take issue with him on his suggestion that in this country vehicle owners are more likely to be men of substance who can, if necessary, meet claims for damages, and I would suggest that anyone who travels on the roads might look at the numbers of lorries and buses, and taxicabs for that matter, which are on the roads of this country and whose owners are not men of substance.

MR. MACDONCHIE-WELWOOD: On a point of explanation, what I said was that due to the fact that the vast bulk of the population had a low earning capacity, it was probable that the ownership of a vehicle alone was sufficient to meet the charge if a person of that type was run over.

MR. RANKINE: I am grateful to the hon. member for his explanation, but it does not affect my argument. My argument, irrespective of what he may have said, is that there are many vehicle owners in this country who, in the event of an accident, would not out of their own resources be able to meet claims for heavy damages. That is my point, and if I misquoted him I offer him my apologies. The point I was trying to make is that it is essential that everyone who runs a vehicle on the roads in this Colony ought to have a third party insurance policy.

He went on to suggest that there are many people in this country who are dependent on transport; they live a long way from towns and for them transport

[Mr. Rankine] is essential. I would agree with him entirely on that point, and I would suggest that that is all the more reason why they should obey the law and make certain that all the requirements of the law are complied with, particularly on the question of third party insurance.

Now, his argument with regard to dependence on transport applies equally, in my submission, to the victim in the case of an accident. The victim may be equally dependent on transport. If he is injured so that he cannot drive a car himself, or if his vehicle is destroyed, what are we going to do about him? Are we not going to take any regard for his interest? He went on to suggest that the person concerned might be a farmer. I agree that a farmer is very much dependent on transport, but we must not overlook the fact that, although the guilty party may be a farmer, equally the victim may be a farmer, and what about his interest there?

It rather looks to me as if this is a case of the Societies for Civil Liberties! As we understood yesterday, they are apparently only interested in the liberties of persons whose incomes exceed Sh. 200 a month. I do not know whether his suggestion is that those who unfortunately have not Sh. 200 a month should not have any civil liberties. But do not let us overlook the other side of the case.

Now, in the opinion of the Government the law is a good one, and it is essential that third party insurance should be taken out by every vehicle owner. I suggest that it is not asking too much that persons who own vehicles and run them on the road should make themselves aware of this law and should comply with it. If they do not, they are a danger not only to themselves but to everybody else on the road, and I would suggest, with all due respect, that so far as this particular requirement goes, we ought to retain the power, or the direction, that disqualification should be mandatory and should not be discretionary. I do not think that it creates hardship. But, as I have already said and as my hon. friend has explained, if it is the view of the Council that this should not be mandatory but should be discretionary, the Government is prepared to accept that. However, before the Council comes to a conclusion I

hope they will consider the matter very carefully from both points of view.

MAJOR KEYSER: Mr. Speaker, the hon. Chief Secretary in his speech rather gave the impression that we on this side of Council did not understand the seriousness of such an offence as he described. We do, sir, and we are, of course, all in favour of third party insurance and that steps should be taken to make drivers of vehicles have third party insurances, but under the Ordinance there is a punishment. A person may be fined Sh. 2,000, or sentenced to a term of imprisonment not exceeding six months, or to both, which is a fairly stiff sentence, and it makes no difference really to the other person. If I ran into the hon. Chief Secretary with my car and bumped him off, it does not matter what sentence I received, it would not bring him back to life. You must remember that. But on the other hand I receive a sentence which no doubt would teach me a lesson, and that is really all that we want.

We are asking that the magistrate should have discretion over the question of the suspension of a licence. We are not asking that he should have no discretion at all. He could fine a person Sh. 2,000, sentence him to a term of imprisonment for six months, and suspend his licence for more than a year, if necessary; but we do think that he should have discretion as to whether he should suspend the licence or not. If he has not discretion, then there are cases in which injustices will undoubtedly occur. Take, for instance, a simple matter in a country like this where many people employ African drivers who are illiterate. An African driver might easily be relying on his master to renew a third party insurance certificate, and he may not be able to read and to know that the certificate had expired. Yet he may be caught and convicted, and under these circumstances he can have his licence suspended and his means of livelihood taken from him through no fault of his own, because possibly it was entirely his master's fault. That would be an injustice, but if the magistrate had discretionary powers he could probably suspend the licence of the owner of the lorry, and not that of the man who has not really committed an offence. I do think that, unless the

[Major Keyser] magistrate is given discretionary powers, it is extremely likely that injustices will occur.

When this Bill first came before Council my recollection of it is that it was the intention of Council that the magistrate should have discretionary powers under certain conditions, and it was only because of a case that came up in England that the magistrate will not exercise these discretionary powers. Indeed, I believe that when I discussed the matter with the hon. Attorney General a month or two ago he was fully convinced that the magistrate had the discretionary powers, and it is because of this question of case law that has come up, which is influencing our magistrates, that we want this amendment put in.

MR. PATEL: Mr. Speaker, I rise to support the Bill as it stands. I naturally endorse the arguments advanced by the hon. Chief Secretary. Here discretionary power has been given to the magistrate in a case where the owner of a vehicle has failed to take out a third party insurance policy for two months, but the magistrate has no discretionary power. I think, in cases where the owner has failed completely to take out a policy, or has failed to take it out within two months of its expiry, it shows complete and gross negligence on the part of the owner if he fails completely to take out a policy after purchasing a vehicle, or to renew it two months after the policy has expired. Therefore a person of that nature should not be allowed to have a competency certificate, in view of the circumstances, which have been very ably put by the hon. Chief Secretary, of the great risk to other people which such a person is causing.

In view of this I strongly support the measure before the Council.

MR. BLUNDELL: Mr. Speaker, I rise to make just two points. The first is this. I do think that we are allowing the question of mandatory or permissive powers to loom too large. As the hon. Member for Trans Nzoia said, the truth of the matter is that, if the law is passed with the amendment that it shall be permissive and not mandatory, then the law can still be enforced and the penalties can still be inflicted. You cannot get away from that.

The second thing is, I do hope the greatest publicity will be given to this debate, because at the present time every farmer who has a tractor and crosses a road with it is breaking the law and, if the amendment is not accepted, it seems to me that if all farmers have to take out third party insurance policies for their agricultural vehicles, I have no doubt hon. members on the opposite side will remember the fact in the price structure in respect of primary produce, which will need adjusting as a result. (Laughter.)

MR. MATHU: Mr. Speaker, I should like to support the second reading of this Bill, and emphasize further the point raised by the hon. Chief Secretary regarding the innocent party. The hon. Member for Trans Nzoia has mentioned the question of illiterate African drivers who might lose their certificates of competency although they are not really to blame. I sympathize with that point of view.

He further said that the owner of the vehicle may have forgotten that the time had come to renew his third party insurance certificate. I do not know exactly how many motor vehicles each farmer has on the average, because I have not very much experience, but I should not have thought that they have more vehicles than, say, the Overlanders in Nairobi, who cater for the tourist traffic. A fleet of cars, and presumably they get their third party insurances renewed regularly. I do not think it is a very strong point to say the farmer forgets. I do not think he should forget, he has not got very many vehicles; it would not be a fleet of them, but probably a few tractors. That does not weigh very much with me.

The point I want to emphasize is, what happens to the innocent party who suffers damage or injury as a result of an accident? In the cases that I know of where the persons concerned have been African illiterates, they cannot read the number of the car or lorry, the driver just goes off and the fellow does not know what to do next. I should like the advice of the hon. Attorney General as to what these fellows should do. They do not know where they can get redress.

MAJOR KEYSER: May I explain, sir—

THE SPEAKER: You can rise on a point of explanation if your speech has been misunderstood.

MAJOR KEYSER: I think the hon. member misunderstood my point about the illiterate driver. My point was that I thought it would be an injustice to the illiterate driver to have his licence suspended when it was no fault of his. I think the owner of the lorry should see that the insurance policy had been renewed.

MR. HAVELOCK: Mr. Speaker, what strikes me as curious about Government's argument as regards mandatory and discretionary powers, is that magistrates are not given mandatory instructions as to what punishments to impose for other serious crimes. In the case of driving while under the influence of liquor, or something of that sort, it is not mandatory that the licence should be suspended. Therefore it seems to me that in making it mandatory in this particular Bill to suspend a licence there is a certain amount of distrust by Government of the magistracy. I think the magistrates should be trusted as to what punishment they should impose. I cannot see any reason why it should be mandatory on the magistrate to impose any punishment for any particular crime.

MR. O'CONNOR: Mr. Speaker, the course I suggest that might be followed by Council is to give this Bill its second reading and to discuss what amendments are necessary for the committee stage before we reach the committee stage.

I have already said that Government will accept an amendment as to the mandatory forfeiture of the certificate of competency, if it is the wish of Council. I have outlined the dangers, and the dangers have been stressed by the hon. Chief Secretary. If, nevertheless, it should be the wish of Council, Government would accept an amendment making the question of forfeiture or not entirely discretionary, but I suggest that we deal with that point when we reach the committee stage. It can be arranged if necessary for an amendment to be moved and a free vote taken upon it.

I want to make it quite plain that the question of the mandatory forfeiture or discretionary forfeiture has nothing to do with the question of a tractor or agricultural vehicle. I think I said in my

opening remarks that I considered an amendment on those lines was reasonable, and if it were the sense of Council that would be accepted. They are quite different points and I hope they will not be confused.

I should, perhaps, answer one or two points.

The hon. Member for Trans Nzoia pointed out, which is quite correct, that there are already substantial penalties in the clause, apart from the question of the forfeiture of the certificate of competency. He took the hypothetical case of an accident which he had with the car of my hon. friend the Chief Secretary—(MR. BLUNDELL: Wishful thinking!)—and he pointed out that nothing we could do in this Bill would bring my hon. friend to life again if he unfortunately had been killed in the accident, but that he, Major Keyser, would be liable to a serious penalty. That is no doubt all true, but I think that what he omitted to mention is that if he had in force a third party policy of insurance my hon. friend's widow would be very much better off than if no such policy were in force. (MR. RANKINE: Hear, hear!) That is the point.

I think there is a difficulty about illiterate African drivers, and I quite see the point of that, but it is really a point which I think we shall have to refer to the hon. Member for Education, because I can do nothing about it in this Bill. (Laughter.) The course I suggest is that we give this Bill its second reading and that we can then discuss it before we get to the committee stage.

The question was put and carried.

EVIDENCE (BANKERS' BOOKS) (AMENDMENT) BILL — SECOND READING

MR. HOPE-JONES: Mr. Speaker, I beg to move: That the Evidence (Bankers' Books) (Amendment) Bill be read a second time.

This is a comparatively minor amendment to the banking law as it affects the inspection of copies of entries in the books of bankers under certain safeguards and conditions. It is necessary because as the banking business has become inter-territorial, in that all the major banks operate in Kenya and in the other territories, it is necessary to bring the

[Mr. Hope-Jones] law into line on an inter-territorial basis to recognize the effects of inter-territorial business. With those few words and in the assured confidence that hon. members are fully aware of the purpose of the Bill from reading the "Objects and Reasons", I beg to move.

MR. RANKINE seconded.

The question was put and carried.

PROTECTED AREAS BILL

SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Protected Areas Bill be read a second time.

This Bill is designed to increase the security measures for safeguarding arms, ammunition and military stores. In these days the question of the proper safeguarding of arms and ammunition is of very great importance. It has been established by experience in other parts of the world that if there is any question of civil disturbance then the dissident elements and criminal classes attempt first of all to acquire arms, and this they frequently attempted to do in other parts of the world by raids on military arms depots or by thefts from them.

The military authorities have asked for this legislation and Government is very happy that they should have it. Its provisions are explained in the "Memorandum of Objects and Reasons". It allows certain areas to be declared as protected areas by notice published in the Gazette. Notices must be put up and proper warnings given, and thereafter no person is permitted to be in a protected area without permission. Unauthorized persons may be removed, and I have inserted provisions which I think will be useful to us regarding the power to search persons and vehicles leaving protected areas. Any person who is within a protected area during the hours of darkness and who fails to stop when challenged may be arrested and may, if he resists, have such force used upon him as may amount to causing death.

The penalties are intentionally heavy. The penalty for being in a protected area without permission or failing to comply with orders is imprisonment which may extend to two years or to a fine which may extend to Sh. 5,000, or both. Anyone found in possession or to be conveying arms, ammunition or explosives

out of a protected area is liable to imprisonment for five years or to a fine which may extend to Sh. 10,000, or to both. With regard to the latter offence, it will be my intention to press for the heaviest possible penalties. It seems to me that anyone in these days who traffics in arms either for subversive purposes or for what sordid gain he can make out of it, is trafficking in the lives and security of the community and deserves condign punishment. (Hear, hear.) I should like that to be known, and I should like also the public to look to the security of arms and ammunition which may be in their possession, I should like them to be sure that their precautions are adequate, and that if they lose them the loss is reported immediately to the police.

I think that the rest of the provisions of the Bill are sufficiently covered in the "Memorandum of Objects and Reasons" and that I need say no more upon it, except that if any point is not plain I shall be happy to try and explain it.

MR. RANKINE seconded.

MR. BLUNDELL: Mr. Speaker, I rise to support this Bill strongly, and I congratulate the hon. Member opposite for bringing it into this Council. We on this side of Council have been much concerned over the disclosures of losses of ammunition at such places as Gilgil, and I know myself from personal experience how difficult it is for the military to protect dumps with any adequacy without some such measure as this.

There is one point I should like the hon. Member to refer to in his reply, and there are two small amendments which I shall move in committee which are designed to strengthen the provisions of the Bill against those who are attempting to steal public property. The point I should like the hon. Member to deal with in his reply is clause 3. This clause allows the Member, by publishing in the Gazette, to proclaim any area a protected area. I should like some amendment put into that clause whereby a proclamation of that nature could be notified to this Council, so that if any member objects it can be debated. We have provision, I think, by which rules are laid on the table of Council. My reason is that, although it is not likely to happen here for some time, in England there is, and has been for some years, a constant battle between the Service

[Mr. Blundell] departments and the public as to what areas should be declared protected areas. I should like to feel that there was some safeguard by which the public could, if necessary, make comments on the declaration.

With those words I beg to support the Bill.

MR. PATEL: Mr. Speaker, I support the object of the Bill, but I have one comment to make with a view to obtaining clarification. In clause 3 it says "If, as respects any area, place or premises, it appears to the Member to be necessary or expedient in the public interest . . ." I should like to have clarification of that position when it is stated that it will be "in the public interest", and whether we cannot substitute words something like "which for security reasons" or "military importance", because it is my experience that when the Government is given wider powers than are necessary they are likely to be used in the future for other purposes also. It is very clear that the object of this Bill is to prevent theft from military stores, but even the Government may have to use this power for other security reasons, but it should be made clear that the protected area can be declared only in circumstances where the military reasons or security reasons require it. Otherwise the words "public interest" are too wide.

MR. O'CONNOR: Mr. Speaker, with regard to the last point made by the hon. member Mr. Patel, I should see no objection to adding the words "for security reasons" or something of that kind. Perhaps he could consider what amendment he would like to move in committee, and I will consider it.

With regard to the first point made by the hon. Member for Rift Valley, he asked that the proclamation of a protected area should in some way be notified to this Council. Well, again, in principle I should have no objection at all, but there is this practical difficulty, that we should want to bring this proclamation into effect at once, without waiting for the next session of Council if the Council did not happen to be sitting. Possibly it could be laid at the next sitting of the Council and then debated, if necessary. If that would meet the hon. member's point I should have no objection.

MR. VASEY: On a point of explanation, my hon. friend the Member for Rift Valley did not suggest that it should be subject to the approval of the Council; it was merely a question of giving the Council information.

MR. O'CONNOR: I am afraid I misunderstood the object of the suggestion of the hon. Member for Rift Valley. If it is only a question of giving the Council information that a proclamation has been made, I could agree to its being laid on the table at the next session of the Council, if that would meet the point.

The question was put and carried.

CONTROL OF HOTELS (AMENDMENT) BILL

SECOND READING

MR. HOPE-JONES: Mr. Speaker, I beg to move: That the Control of Hotels (Amendment) Bill be read a second time.

This is an amending Bill to an Ordinance of some importance. Two points arise in the amendments, both of which have been recommended by the Hotels Authority. The first, I think hon. members will agree, is a very necessary amendment. At the present time the Hotel Authority has no power to award costs under any circumstances. Well, it is felt by the Authority, and I must say I entirely agree with them, that where a frivolous complaint is made costs should be against the person making that frivolous complaint. It is a very usual condition and it is a power they seek to possess.

The second point is, again, a matter that I feel should have been dealt with earlier and, owing to the experimental nature of the legislation, was not, and that is that at the present time the licence issued to a hotelier runs indefinitely. It is felt that it would be far preferable, and in the interests of the hotel-using public, that in this country, as in other countries where they have similar legislation—I am thinking particularly of Switzerland and certain of the American states where tourism is a major industry, such as Florida—licences should be renewable annually.

MR. O'CONNOR seconded.

MR. HAVELOCK: Mr. Speaker, I wish to make one or two points on this amending Bill. I agree entirely with the licensing aspect, as I said last time we debated this particular subject, and I also agree

[Mr. Havelock] to the annual licence, but I do feel the Hotel Control Authority should be a licensing authority only. It is time we considered reducing its powers to that extent.

When dealing with clause 3 of the Bill where power to make people pay costs is given to the Hotel Authority, I do feel that complaints as regards charges should be the responsibility of the Price Control and should be taken up in the normal course. I feel many other complaints should be taken up in the ordinary course by the health authorities, and I cannot really see what other matters the Hotel Authority need deal with, especially if it is a licensing authority. If a hotel proprietor treats his customers unfairly I would have thought that the mere fact that the Hotel Authority has the power not to renew his licence after one year would be sufficient to keep that particular proprietor in order. I cannot see why the Hotel Authority should become what might be called a people's court.

Mr. BLUNDELL: Mr. Speaker, I rise to support the hon. Member for Kiambu. I do not like clause 3 and I consider it is no part of the functions of the Hotel Authority to be able to award costs one way or the other.

Mr. VASEY: Mr. Speaker, I regret that on this particular point of clause 3 I cannot altogether agree with my hon. friends the Members for Kiambu and Rift Valley. Had either of those hon. gentlemen served, as I have had the misfortune to do, on an authority of this kind for the past four or five years, with the unpleasant job of trying to get some of the hotels of this country on to a reasonable standard and ensure fair treatment for the people who are compelled by circumstances to live there, they would, I think, understand the suffering of having to sit for four or five hours while you listen to a complaint obviously activated by nothing but personal motives. Therefore I feel that something of that kind is essential as a protection to the authority itself.

I can, however, support the hon. Member for Kiambu in his feeling, as I feel also, that this should move as rapidly as possible to a licensing authority only, and that the various aspects such as price control and public health

matters should move to the appropriate authorities, and that the procedure should be similar to that followed in the Liquor Licensing Ordinance, wherein the parties concerned appear before the court and launch their objections to the licence being issued.

There is one particular point I should like to draw attention to, and that is that when we discussed the continuance of this Ordinance I did receive an assurance that the rather objectionable section 9 of the present Ordinance would be withdrawn, and also that this would be retitled the Licensing of Hotels Ordinance. I deeply regret that this opportunity of carrying out these assurances has not been seized.

Mr. HOPE-JONES: Mr. Speaker, I feel deeply flattered by the amount of fire this somewhat innocuous Bill has drawn. First we had the debonair charge of the hon. Member for Kiambu; then we had the rumbling of the heavy artillery from the Rift Valley; finally, we had the, if I may say so, the very welcome supporting movement, from my point of view, of the hon. Member for Nairobi North.

The points made by the hon. Member for Kiambu are points that I do not find it difficult to agree with in principle, and what I said during the last session, at least what I think I said, was that as the measure had a time limit attached to it we would, in fact, make it, or try to make it, on the advice of the Hotel Authority, into a licensing Bill. However, I would not at this stage deny that he made a perfectly good point, and I think we might very well, even that this stage, have changed the title of the Bill, unless there is some legal objection.

On the point about annual licences, I am glad the hon. Member for Kiambu agrees, because that is the basis of any sound licensing system. On the question of costs, I can only ask hon. members to take note of what I would say was the very moving plea of the hon. Member for Nairobi North, who has sat for hours listening to complaints. I do not think this can be looked on as any further extension of what has been known as bureaucratic rule, or the rule of despotism. It seems to me it is a very sensible provision to prevent frivolous complaints and to prevent a lot of busy

[Mr. Hope-Jones] people who give their time voluntarily having their valuable time wasted.

If it is wished to move amendments to this small amending Bill, well, sir, I will naturally consider them, but I would ask hon. members at this stage to pass the second reading, and to make any proposals they have to in committee; or, better still, to defer them until we can make proper provision in a revised Ordinance which it is the purpose and desire of the Hotel Authority to make.

The question was put and carried.

INCOME TAX (AMENDMENT) BILL

SECOND READING

Mr. MATTHEWS: Mr. Speaker, I beg to move: That the Income Tax (Amendment) Bill be read a second time.

The object of this Bill is both simple and formal. It is to remove the proviso to section 27 (1) of the principal Ordinance. Hon. members will remember that this proviso was inserted last year because at that time the other East African territories were enjoying a rate of income tax higher than was being enjoyed in Kenya at that time. (A MEMBER: Enjoy? and laughter.) It was therefore necessary at that time to provide that that part of the income of a Kenya resident which accrued in another East African territory was taxed at that higher rate. It happens that the other East African territories have now come into line with Kenya rates, and the reason for the proviso has disappeared. The object of this amending Bill, therefore, is to remove it.

Opportunity has been taken at the same time to correct two typographical errors in the schedule to the principal Ordinance.

Mr. PADLEY seconded.

LADY SHAW: Sir, may I take the opportunity of asking a question on this? The hon. mover said the opportunity had been taken to correct typographical errors in the Ordinance. At the last session of Council an amendment was suggested to the Ordinance, and I would be very glad to know the effect of this further possible amendment which had reference to people who are old and whose income tax should be reduced in consequence. A select committee of

which I was a member sat on it, and it seems to have disappeared completely. Having seen this amending Bill, I cannot help wondering what has happened to the other part of it.

Mr. DEVERELL: I can reply to that, sir. The position is that the report of the select committee has been made known to the other East African territories who, I trust, will agree with the recommendation, and it is proposed to give effect to those recommendations in an amending Bill next session.

Mr. MATTHEWS: I can only repeat the remarks made by my hon. friend.

The question was put and carried.

RADIO-ACTIVE MINERALS (AMENDMENT) BILL

SECOND READING

Mr. HOPE-JONES: Mr. Speaker, I beg to move: That the Radio-active Minerals (Amendment) Bill be read a second time.

Under the original Ordinance of 1948 it was felt that it was necessary at that stage to control very closely prospecting for radio-active minerals such as uranium and thorium. At the present time we can take a somewhat different attitude in common with His Majesty's Government, which is towards exploiting the mineral resources of the territory by giving every possible encouragement to prospectors, public and private, to find any radio-active minerals, wherever they may be. I need not elaborate the point that uranium and thorium are of the greatest economic national importance and defence importance.

The Belgian Congo is at the present time the only satisfactory cheap source of both minerals. In saying that I am not suggesting that we will find them in Kenya, but with proper safeguards, and they are contained in the Mining Ordinance, we want to see prospectors go out with their geiger counters to find radio-active minerals as freely as they did in the older and more adventurous days with prospecting pans to find gold. It sounds a little fantastic, but this is happening to-day in the United States, and prospectors have gone out and found alternative deposits of radio-active minerals in the State of Nevada, though not as good as those in the Belgian Congo.

[Mr. Hope-Jones]

As a first step we are going through every specimen of rock that we have in the Geological Department, which is a considerable accumulation; we know where each comes from, and the type, and this examination should help quite a lot. We have not found anything yet, but we are at any rate living in hopes. I do not think any hon. member will wish to retain the restrictions on this matter, and none will disagree that we want to give every possible encouragement to the finding of minerals of such vast importance to this country, the British Commonwealth and the Empire as a whole.

Mr. O'CONNOR seconded.

The question was put and carried.

MIRAA CONTROL (AMENDMENT) BILL

SECOND READING

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

A short history of miraa, or *Catha edulis* to give it its technical name, shows that it is indigenous to parts of Kenya, particularly the Embu and Meru districts. It is a small apple-like tree, and in Meru it is cultivated; in fact the land under miraa cultivation is known as the miraa orchards in that district. It is consumed by certain Meru age grades, and also the Embu; it is also consumed by the Somali, and many other people in the Horn of Africa. It is an extremely deleterious drug, and the Council went into that particular matter in 1946 when the original Ordinance was passed; I do not propose, unless the question is raised, to adduce medical evidence and how necessary it is to control miraa, but we have ample evidence to show that it should be controlled and, if possible, stamped out.

The idea behind the original Ordinance was that it should be controlled locally in Embu and Meru districts and that addicts could get a certain amount from there by export. The Ordinance has not worked in that way at all because the control, if anything, has encouraged the production and export of miraa. District commissioners not only throughout this country but as far afield as Dar es

Salaam in Tanganyika have given permits for the export of miraa from the Meru district, and it may be interesting to members to know that the average weekly level of export from the Meru district was last year 550 *tandus* per week; each contained anything up to 3,000 sticks, roughly 6,500,000 sticks of miraa going out of Embu under control since the Ordinance came in. The Administration are satisfied that if we are to put down this drug, or at least to keep it in control, there has got to be total prohibition of export, possession or cultivation outside the two districts where it is indigenous, and that is what this Bill seeks to do. It removes the power from any district commissioner outside Meru or Embu to give a permit to export, and it controls the drug within those two areas.

I might say that this is a matter which gives very serious concern to the Administration, because in the Embu district it is no longer certain age groups which use it. I saw children the other day in large numbers using it, and there is no doubt in the minds of the authorities who really know that it has been taken to excess that it is extremely deleterious, and this Bill seeks to tighten up the regulations so that we can keep the use of this drug within bounds.

Mr. HOBSON seconded.

Mr. USHER (Mombasa): Mr. Speaker, I have been advised that in speaking first in this Council I should address you discreetly and preparedly. I hope I shall be discreet, but I must admit that I am not altogether prepared.

I am surprised to hear this drug is described as extremely deleterious. I know that there has been difficulty in the administration of the Ordinance as it stands, and I have had my attention directed to clause 3 of the Bill, which provides that where miraa is found in a dwelling or in a lorry all the persons present in the dwelling or lorry shall be deemed to be in possession of it. This is a provision with which I am unacquainted in other legislation. As a magistrate I have encountered it in certain legislation and as a magistrate I have strongly disliked it; as a human being I have also disliked it. It is a very strong measure, and adapted only to circumstances of the most grave kind.

[Mr. Usher]

This drug miraa I have personally consumed. (Laughter.) I have drunk it in beer, because it is a hops substitute, and very good beer it was, and it had no evil effect on me! I have, as a matter of fact, read most of the medical monographs on this subject, and if the hon. Chief Native Commissioner will allow me to say so, there is a difference of opinion, because I do know doctors who take the view that it is no more deleterious than a cup of strong coffee.

I had rather hoped that Government might be persuaded to defer this Bill until the next session of Council, because I think it possible that further investigation might prove that the whole of the legislation should be repealed. I think that the legislation itself—and I have really tried to administer the *Miraa Control Ordinance*—has given to a harmless habit the lure of a glittering vice. If Government is unable to withdraw this Bill until next session and pending further investigation, then I shall hope to persuade them at least in committee that clause 3, which I think I am bound to object to most strongly, should be withdrawn. I beg to oppose. (Applause.)

The debate was adjourned.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

IMMIGRATION (CONTROL) ORDINANCE, 1948 MOTION TO REPEAL

The debate was continued.

Mr. O'CONNOR: Mr. Speaker, when the debate was adjourned I had pointed out that this was a motion to repeal the whole of the immigration law of the Colony and to knock down the only barrier which stands between us and the "hungry generations" who would tread us down. I had pointed out that that would be to the benefit of no community, least of all the African inhabitants of the Colony, and, certainly, that it would not be to the benefit of the existing Indian community to be swamped by a flood of immigrants, and that it would raise innumerable problems of housing, education and the provision of hospital services. I had suggested that that was well known to an irresponsible section of the Indian com-

munity, members of which had sponsored this kind of protest, and that in fact their motive in pressing the hon. member to make this motion might be to see what they could make out of irresponsible propaganda.

I am now going on to examine, one by one, the alleged grounds for this motion. Firstly, it was alleged by both the hon. mover and the hon. Member for Central Area, Mr. Madan, that in amending the Ordinance at the last session of the Council the Government—and I suppose the Council, because it was they who did it—were committing a breach of faith. It was said that there was some undertaking, as I understood it, which was supposed to have been given in this Council when the original Ordinance was passed, that it would not be amended without inter-territorial discussion.

Mr. PATEL: On a point of explanation, I did not speak of any undertaking given in this Council.

Mr. O'CONNOR: That is what I understood. If I am wrong, then I stand corrected, but I propose to put before Council what in fact was said in this Council. Now, what in fact was said in the debate on this Bill?

My hon. and learned predecessor said in the first place: "It is not an endeavour on the part of Government to legislate by regulation, but I think that when this measure eventually becomes law—if it ever does—(laughter)—we want to be able administratively to alter our procedure in the light of experience, and it certainly is a very much more satisfactory method of doing it than to have to come back to Council every time. We might find something wrong, Legislative Council might not be sitting, and we might have to wait and probably cause considerable hardship while we are so waiting".

The next passage which has been found which bears upon it is this: "As hon. members know" (again this is Mr. Foster Sutton speaking) "it is the intention to carry on straight away tomorrow with our select committee, in Nairobi, and we have arranged for a meeting of all select committees of each territory in Nairobi on the 22nd and 29th of this month. I have no doubt that the select committee of this Coun-

[Mr. O'Connor] will consider it advisable to defer coming to a final decision on matters of detail until there has been an opportunity of discussing them with the representatives of the other territories.

Again Mr. Foster Sutton, talking about the rule-making clause, said: "I admit that there has been a tendency in this country for the last two or three years to object to wide rule-making powers being conferred on the Administration, but I would say this, that in a measure of this kind, when we are breaking new ground, it is better, anyway in the early stages, to allow a considerable degree of flexibility, and I think that it would be wise to leave the powers as they are now and see how the thing works. It is always possible to amend. We are often accused of sticking our heels in; it is argued that, once a law is on the statute book, nothing can be done about it. All I can say is, look at your laws and the hundreds of amendments that have been made from time to time—a very large number of them on representations of hon. members on the other side of Council. I have never come across a case yet when Government stuck its heels in and refused to do what was right when representations were made".

Later, in the last debate I think it was the Bill, on the 15th January, 1948, he said: "The hon. Member for Nairobi South asked for an assurance that we shall be in a position, if faced with difficulties under the Ordinance, to amend it if such a course was considered necessary. Without the slightest hesitation I give that assurance. Of course we shall, but I hope it will not be necessary to do it for some time, because a great deal of care and forethought has been given to this legislation and I am hoping the necessity will not arise. If it does, of course we will. It will be the duty of Government to bring a Bill amending it before this Council".

That was said in this Council by the representative of Government with regard to the amendment of this Ordinance. He assured the Council that, if it should be found necessary, the Ordinance would be amended.

On the last occasion when the Ordinance was amended it was done as a result

of an inter-territorial conference of Law Officers and Principal Immigration Officers. This legislature pronounced upon that result, and the other legislatures, in due course, will have to pronounce upon that result. I am unable to see what breach of faith has been perpetrated by Government, by the Council, or by anyone else.

The second reason for dissatisfaction was, as I understand it—again, if I am wrong I hope that I shall be corrected—that residents who left Kenya before the entry into force of the present Ordinance suddenly found themselves cut off from coming back because their travel documents were no longer valid. I think the hon. mover was referring to domiciled persons. I am informed that those persons who had left under the previous law were given a whole year from the entry into force of the 1948 Ordinance in which to return. I think hon. members will probably agree with me that that was not an unreasonable period. If, for their own convenience, they did not wish to return within one year, then they can apply again for entry and, if they are, in fact, permanent residents, and if they are respectable people, there will be no difficulty whatever in their obtaining entry permits.

The third reason for dissatisfaction, as I understood it, was, why were not more permanent entry permits given under Class 'G' instead of temporary employment passes? Now, permanent entry permits for prospective employees are usually given if in fact their employment shows a prospect of being permanent, and that very often boils down to whether or not the firm that they are intending to serve is or is not well established in Kenya. If it is not, then temporary employment passes are often issued instead, and that applies not to Asians only, or to Indians only, but to other communities as well. Many Indian employers, I am informed, in fact prefer temporary employment passes for their employees, and that is the kind of pass for which they ask.

The fourth reason related to dependants. It was alleged, I think, that only dependants of the well-to-do were allowed in, and I think it was said that a poor man could not get his dependants in. What are the facts? Wives and children are always allowed in, either by

[Mr. O'Connor] endorsement on the passport or by being given dependants' passes. Sympathetic consideration is given to bringing in mothers and fathers—I think those are the people the hon. mover mentioned—and if it appears that the immigrant can in fact house them and support them so that they do not become a burden on the rates, then they are admitted. But if a person wants to bring in as dependants his brothers, his uncles and his cousins and his male relatives by marriage, and so on, then some scrutiny is made to be sure (a) that they are really dependants and are not merely immigrants slipping in by a back door, and (b) that they can be housed and supported without becoming a burden on the rates. Again, I think, hon. members will probably agree with me that that is not an unreasonable procedure.

The fifth and last ground, as I understood it, for repealing this whole Ordinance was that a wife is not endorsed on the entry permit, but is given a dependant's pass; to which my reply is that, according to my information, she is endorsed upon the entry permit if she falls within the provisions of the allowances which allow that course, and in any other case she is given a dependant's pass.

Those are the grounds put forward by the hon. mover for the proposition that the whole of the immigration law of this Colony should be repealed. I venture to put forward the opinion that there is not a scintilla of substance in any one of them.

The immigration laws of Kenya, and of the other African territories, as has been said before in this debate, have been very carefully considered. They have been devised to admit immigrants of the type and in the numbers which can be assimilated into the economic structure of this Colony, and of the other territories, and I would say that certainly the Asians have no cause to complain. Temporary employment passes are the kind of pass for which they usually apply, and more of those are issued to Asians than to any other community. The immigration authorities are selective, as they should be, and they place emphasis on artisans and people whose trades are necessary to the development of these territories; they do let in more

easily types of immigrants of which the Colony stands in need.

May I diverge for a moment here to mention that the immigration authorities do not, as seems to be thought by some members of the public, accept blindly statements that intending immigrants are in fact able to practise the trades they say they are able to practise or that there are in fact vacancies for them. To the extent possible a pre-investigation is carried out to ascertain whether, in fact, the vacancy exists, and when a man has come into the Colony a post-investigation is, at some later stage, carried out to find out whether he is in fact employed in the employment he said he wanted to take up. He may not change his employment without informing the principal immigration officer, and if he fails to take up or continue in the employment for which he was admitted, the temporary employment pass is liable to cancellation and he is liable to deportation. In addition, there are heavy penalties for making false statements.

I do not for a moment claim that the system is proof against unscrupulous evasion. It is not. But we do our best to see that evasion does not take place.

As regards permanent entry permits, this type of entry permit is most favoured by Europeans. According to the figures which I have received for last year, the Asians are ahead even on that, and where the Asians completely outstrip the Europeans is in the matter of dependants. (Laughter.) This was one of the particular complaints of the hon. mover. I do not know whether he knows that five times as many Asian dependants are admitted as those of any other community. That in itself is likely to produce very serious problems of housing, schooling and hospitalization, and therefore the issue of dependants' passes has been to some extent tightened up to see that in fact there is housing for those dependants and that they are genuine dependants and that the immigrant has some means of supporting them. That is the only kind of means test which is applied, and as the alternative would be to have them supported by the community again I think hon. members will agree that that is not unreasonable. It may well be that further regulation will be required.

[Mr. O'Connor]

I have said that we try to restrict immigration to the quantities and to the types which the Colony can best assimilate. We know that a transfusion of fresh blood is good and that the body politic can benefit by it. But if the transfusion is excessive or is partly of the wrong type, we know that the results may be fatal.

I think that I have now answered all the points which were made by the hon. mover in moving the motion, and I trust that nothing I have said has been offensive to him personally, because I feel that he has come here with some courage to fight what he knows to be a losing battle at the instance, perhaps, of those who have not as much political wisdom in the whole of their bodies as he has in his little finger. (Hear, hear.) I feel that all that will probably result from this motion is an overwhelming expression of opinion from all other communities in this Council that the motion should be defeated, and possibly that Asian immigration should be even more restricted.

We have a duty in this matter to regulate immigration sensibly. We have a duty in particular and *in primis* to the African inhabitants of this country. We have a duty also, unfashionable although it sometimes is to mention this, to the Europeans who have come here to make this country their home, and we have a duty to the responsible elements of the Indian community to defend them from unrestricted immigration. As someone has already mentioned, we have a duty also to posterity, and I would say lastly that we have a duty to the hon. mover—to put him out of his suspense and to defeat his motion decisively and with expedition. (Applause.)

MR. VASEY: Mr. Speaker, I think that one point in particular has emerged from this debate and, indeed, from other debates this morning. That is, how essential it is that this Council should have at a fairly early time a daily record of its proceedings. (Hear, hear.) If I remember rightly, because Hansard is not yet available and I can but speak from memory, when the Immigration (Control) (Amendment) Bill was discussed a little earlier, the argument which has been repeated during this debate was put forward and I think covered by the then Attorney General, and I regret that hon. members

opposite have not had Hansard available to them so that they could check what the Attorney General of that day said in reply to any suggestion of breach of faith. I think it is important that the words used in this Council should be placed on record without alteration day by day, so that members should know exactly where they stand and should accept full responsibility for anything they have said.

Sir, the debate on this ill-conceived motion takes me back to November, 1947, when we were debating the principle of immigration, and when everything that was contained in this Bill was confirmed by this Council in no uncertain manner, I share with the hon. Attorney General regret that my hon. friend Mr. Patel has found it necessary to introduce this rather ill-conceived motion. Had it been a question of moderation and administrative adjustment I think we might have listened to the arguments, but the sweeping declaration that immigration legislation should be repealed, although it may be regarded as a vehicle for expressions of opinion, is, I suggest, not the type of motion that we want brought into this Council from time to time. It places people like my colleagues and myself in this unfortunate position, too, although we are conscious of the waste of time of the Council and conscious of taking up the time of Council, if certain things are said one hundred times then we must reiterate our position one hundred and one times, because at no time are we prepared to allow arguments to stand on the records of this Council unanswered.

In November, 1947, on the debate on the Immigration Bill, I endeavoured to warn the Indian members in these words: "If the Indian members are suspicious that this administrative measure is going to be directed against them (the Indians) they can only be suspicious because they see the full picture in front of them, because they realize the economic danger to the African for this quarter of a century to come is not the European, it is the Indian. The economic clash between the African and the European in the world of employment in East Africa cannot come for tens of years, but the economic clash between the Indian and the African is here—it is on our doorstep and we cannot ignore it. Therefore,

[Mr. Vasey] economically, from the point of view of the African, we must have this control".

I particularly welcomed the blunt and honest speaking by the hon. Attorney General on this particular point. This is not a question, however much we as Europeans may wish because we are Europeans—and, of course, we do—this is not a question of anything except a protection to the indigent inhabitants of this country in the main. At this particular moment in our industries, the economic clash between the Europeans and African does not exist, and I suggest that the skill and the leadership of the technical men from Britain is of great value to the African at this stage in his development. Had we got, and this is what I said in 1947, "a great Chinese immigrant population, we should be directing our remarks to the Chinese. It is merely the unfortunate incidence of the Indian artisan that compels our remarks to be addressed to the Indian community on this occasion". Perhaps I had better correct myself as to this, because I said in that particular debate: "And, indeed, even then only on behalf of the inhabitants of India, because the hon. Member for the Eastern Area did not mention Pakistan once". At that particular moment in that debate the hon. member Mr. Patel jumped up to say: "As a matter of explanation, India in this country is used in the sense of India and Pakistan, which the hon. member should know, and we are the Indian elected members". I endeavoured to point out then that "if the hon. Member for the Eastern Area read his own Press he would know that that is not accepted as a fundamental description", and I think the hon. member Dr. Rana in this debate has shown how correct I was at that particular time!

I feel that it is important that we should give Government the greatest possible support in its restriction of Asian immigration at this particular time, and I repeat that I believe that in a quarter of a century to come the Indian inhabitants of Kenya, the Indian who has made his home and built his life in East Africa, will be thanking the hon. gentlemen opposite and the team to which I have the honour to belong for the fact that by our stand at this moment in our history we protected the standard of

living of the Indian community in this country and we assured the Indian growing up in this country the right to earn his bread and butter and to live a decent life.

Sir, I beg to oppose the motion.

MR. RANKINE: On a point of explanation, it would not have been possible, even if a daily Hansard record had been available, in the time at our disposal yesterday to make a complete check. In fact, a check has since been made and, as far as I can discover, no assurances were given.

MR. PATEL: Mr. Speaker, I think that most of the members of this Council do not perhaps pay sufficient attention when an Indian member speaks. They are either inattentive or they do not try to understand. It is alleged that by moving this motion I advocate unrestricted immigration. Now, sir, you from the Chair remarked yesterday that the purpose of my motion was to show that there was a breach of faith in amending the immigration legislation which was passed in 1948, and to show certain maladministration. Any person with a little intelligence, or even a schoolboy I should say, would appreciate that that was the purpose of my moving this motion.

If I may, I should like to point out to the hon. Attorney General what I said when the Immigration Bill was moved: "I should like to state that some form of control of immigration cannot reasonably be objected to, though I am going to contend that the control now suggested in this Bill is stricter than is necessary and is obviously an injustice to several categories of people, which I shall show during the course of my speech". I have never in this Council for one second at any time advocated unrestricted immigration, but I think that certain members in their zeal for making their case have attempted to twist matters.

Another thing which I must point out is that it is suggested that I have moved this motion as a matter of propaganda, or for some motive to please some people outside this Council. Let me reiterate that I have done it because I feel honestly and sincerely that, in passing the amending Bill and in disturbing the amounts which were laid down for various categories of people

(Mr. Patel) under Classes B to E, there has been a breach of faith, even though anybody may produce arguments against it. I never mentioned in my opening speech that there was an undertaking given in so many words. (Mr. RANKINE: Mr. Madan did.) I am talking about myself, and I would say this, that conduct and circumstances are on many occasions more important than oral statements, and I would like to repeat the circumstances and conduct in this case which compel me to say that there is a breach of faith. I may be accused of repeating myself, but I must do so in view of the fact that I have been challenged on this subject and have been misrepresented.

I must repeat that the Bill which was published in April, 1946, had provided very high amounts for certain categories of people for obtaining entry permits and, in view of the special representations made by the Indian community and the Government of India, these amounts were lowered. The then hon. Attorney General said, during the course of his speech on the second reading of the Bill: "For the benefit of those who so vigorously criticized the monetary provisions in Classes B to H"—and let me repeat here that vigorous protests had come from my community—"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'. The object of that, as I say, is to introduce a certain degree of flexibility into the paragraph. That is to be found in paragraph (ii) of Class B. In Class C—a person wishing to come into the country for the purpose of mining—the capital amount required has been reduced from £1,000 to £800."

Later on he said: "Class E—a person intending to engage in manufacture on his own account—the original figure stood at £10,000, and that again has been reduced in the light of representations made to a figure of £2,500". An amount of £10,000 was reduced to a figure of £2,500 in the light of representations

made by my community. That was what the hon. Attorney General had to say when he introduced the second reading of the Immigration (Control) Bill in 1947. Again, I should like to say that when the select committee, and particularly the inter-territorial select committees which the hon. Member for Nairobi North referred to, sat in Nairobi in November, 1947, we had—

MR. VASEY: On a point of explanation, the hon. member has made a mistake, it was not I who referred to that particular committee. He is thinking of some other member, I think.

MR. PATEL: I am sorry if I made a mistake. But when these select committees sat and went through all the details of the Immigration (Control) Ordinance, the details were examined in an entirely different spirit, and the amounts which were reduced on account of the representations made by my community and the Government of India were confirmed unanimously by the four select committees of the four territories, and when the second reading took place not a single member of this Council, either official or unofficial, objected to the reduction of those amounts from those which were provided in the original Bill.

At the time when the select committee report was introduced in this Council I said that I still objected to the principle of the Bill, but that I had signed the select committee report on account of the unanimous agreement which was arrived at by the four territories, including all the European, Indian and African members. There may not be an undertaking and an oral statement in so many words, but that was the understanding on which the Indian members at that time in regard to details supported the select committee's report, reserving the right to oppose the Bill in principle.

Thereafter, the law came into force on the 1st August, 1948, and within a month or two agitation started that those amounts were too small and must be raised. As a member of the Immigration Board, I pleaded that those amounts were agreed after long negotiations, careful consideration and inter-territorial consultations, but those gentlemen who were bent upon restricting Asian immigration would not listen to my plea that before an amending Bill was introduced.

(Mr. Patel) at least an inter-territorial committee of unofficial members should be called, as was done in November, 1947. The hon. Attorney General says that these matters were examined by the law officers and the principal immigration officers of the four territories. What I have pleaded was that an inter-territorial committee, where there was unofficial representation of all the communities, as in November, 1947, should be convened to examine the amending Bill. When the amending Bill came before this Council I again moved that it should be referred to an inter-territorial select committee where there was unofficial representation before the Bill was finally passed, but the steamroller was applied.

Now I say again that the way in which all the details were examined, and the way in which the amounts were reduced on account of representations made by the Indian community, and the indecent haste with which the amending Bill was advocated and passed, is nothing but a breach of faith. Mr. Speaker, even a fair trial was not given to those amounts. Within a few months after the law came into operation agitation started that the amounts must be raised. I cannot believe that one section of those who did that had any other motive than upsetting the arrangements made in regard to those amounts, after very careful consideration for nearly two years. Then to say that there is no breach of faith, I would say every day in this Council, whenever an opportunity occurs, that in this matter there is a breach of faith on the part of everyone concerned who has helped in upsetting these arrangements.

Now, it has been said that this Council has the right to amend any law. I admit that this Council has the right to amend any law at any time. No one in his sense will ever contend that this Legislative Council has no right to amend the law. But there must be necessity for doing so. When a law like this has been arrived at, after much discussion, a fair trial must be given to it before it is amended, and the reasons advanced very carefully. I personally would never agree that there was any necessity for these amendments.

Now, sir, the hon. Attorney General at one stage said that perhaps this is

an attempt to make this an Indian Colony. I am astounded at that statement, for, for my part, would like to say this: I would like to see this an African Colony as early as possible. There is no desire on my part to make this an Indian Colony. I would say that there would be a transitional period during which all communities should have an equal say in legislation and the government of the country and, finally, when proper development takes place, numbers must count. That is why I do not desire to make this an Indian Colony, but I would like to see this ultimately an African Colony.

Having made these preliminary remarks, I should like to answer some of the arguments advanced yesterday in the order in which they were placed before Council.

Firstly, it was urged by the hon. Member for Kiambu and the hon. Member for Uasin Gishu that the Asian immigration should be restricted, that it was a disaster to allow Indian immigration, that it was a danger to have Indian immigration, and so on. It was urged that only people with the western outlook and those coming from western civilization should be allowed to enter these territories. I have a very high regard for western culture and civilization, and recognize the contributions they have made towards the progress of the human race, but I reject if anybody says that is the last word in the universe, the last word of God in the scheme of the universe. It may be a step in the progress of the human race, but it is not the only step the human race has taken in its evolution, and I should like to emphasize that western civilization and culture are not unalloyed good: it has made its own mistakes and has its black spots. We know that during the last 30 years it has brought about two great disasters on the human race, and brought the whole human race nearly to the point of destruction.

It is very easy to say that western civilization is the only good thing—I reject that categorically. I do not accept that any one system in the world is the only good one for the human race. I would say that in a country like this where mixed races live together and three races have been thrown

(Mr. Patel). together by accident or providential design good must come from everybody and the arrogant attitude of imposing the way of one small community on the others should be avoided.

I was reminded about the British way of living. I personally love the British way of living, but I want to repeat it again that that British way of living does not believe in racial discrimination, it does not believe in a society of a privileged class. In nature there is always a ceaseless change, any way of living is always changing, it does not stand still, and we should not in this Council say that the British way of living is the only criterion to allow people to come here.

One hon. member said he would like to see special and favourable preference given to immigrants from the European Commonwealth and the Western Union. That also I categorically reject for these reasons, that whether people here like it or not, the Commonwealth does not consist only of Europeans, and I am happy to say and glad to remind hon. members that as far as the relations between non-Europeans and Europeans in the Commonwealth are concerned they will be dictated by dynamic forces of the world and the British liberal spirit and not by the narrow spirit of those who have made their homes on the African continent.

I would like to say one thing: that the Indian community has an equal right to come to this country as the European race on account of historic reasons. It was stated that the Asian immigration must be stopped, restricted, that it was a danger, and many other things. I would like in that matter to say that the Indians have an equal right with the European race to come to this country, and I would like to give a few statements by responsible British statesmen.

Lord Salisbury, when Secretary of State for India in 1875, suggested that on grounds of humanity and with a view to promoting the well-being of the poorer class of Indian, Indian immigration to the east coast of Africa for the purposes of settlement and colonization should be actively encouraged, and emphasized "from the Imperial point of view the great advantages which must result from peopling the warmer British possessions which are rich in natural resources and only want population by

an intelligent and industrious race to whom the climate of these countries is well suited".

I would remind Council also that when the royal charter was granted to the British East Africa Company it was stated in so many words that one of the reasons was the protection of Indians who were residing here. Then Mr. Churchill had announced in the House of Commons in 1907 that Indians would be invited to immigrate into the country lying between the coast and Kiu and from Fort Ternan to the lakes on the Indian village community system. Again, in his book "My African Journey" in 1908, Mr. Churchill stated that "the Indian was here long before the first British official. He may point to as many generations of useful industry on the coast and inland as the white settlers, especially the most recently arrived contingent from South Africa" (the loudest against him of all) "could count years of residence".

Those are historic reasons for which I claim the Indian community have, if not greater, equal right to come to this country as any European race has.

I do not want to take up the time of Council by repeating this again, but I should like to mention one thing. I reject the whole theory that the Indian community have no right to come here, I reject completely the assumption made by some hon. members that the Asian immigration should be curtailed and restricted and is a danger and so on. If one wants to throw stones against others, one who lives in a glass house should not do it. I am sure that the African community can candidly say that they would like to see the European community leave and hand over the Highlands to them so that their demand for land can be satisfied. It is, thus, easy to argue on these points against each other and on all sorts of things.

There were many points made by hon. members against me, and I do not want to enter into arguments on each one, otherwise it would take up the whole morning, but there are two or three which I must mention.

One is that I was told that the Indians are a prolific race, and the hon. member Dr. Rana got out of that by saying that he is not an Indian but a Pakistani. (Laughter.) It must be remembered that

(Mr. Patel) the hon. member who referred to Indians as a prolific race referred to both of us. (DR. RANA: No! and laughter.) It is all very well to say that the Indians are a prolific race. Perhaps we are one hundred years behind the Europeans in that matter, because the European population a hundred years back went up 200 per cent and filled up all the empty spaces in the world, such as Australia, America and so on. (Laughter.) They were as prolific as the Indians are today. (Laughter.) There was a reference to control of the birth rate, and I personally, if I had my own way, would compulsorily apply birth control to the Indian community or any community the moment it threatened to increase rapidly.

It was also suggested that the teeming millions of Asians across the sea would swamp East Africa. There are teeming millions, and I might tell hon. members that I read a very good book about a year ago written by an American professor in Miami University. It is on world population, and in one chapter devoted to East Africa he says the British settler does unhappily allow the Indian to come and settle here—I am paraphrasing what he wrote—but one day if the population problem was not adjusted on an international basis the Indian would have to force the door open to come into the empty spaces of the continent. That may be wrong or right, but he did note that the British settler does not want the Indian to come here, although it is the right place to which he should be allowed to come. (MR. HOPE-JONES: What is his name?) Warren Thompson.

The hon. Member for Kiambu and the hon. Member for Uasin Gishu mentioned, among several other points, that Indians should not be allowed to come into this country. As I have stated, I personally am always going to insist that on account of historical associations and the pioneer work that the Indian community has done in this country, for which you will find many British authorities acknowledge, I claim that right of my countrymen to come here under reasonable conditions.

Yesterday I mentioned one thing. I wanted a statement from the hon. Attorney General that at the time when the Immigration (Control) Ordinance,

1948, was passed it was intended that for Class G, unless there was a serious threat of unemployment, a person coming for employment to this country should be given a permanent entry permit, and I should like to have a statement from the hon. Member on that point. I think he answered my point in regard to temporary employment passes, but he has not clarified the situation for the issue of entry permits under Class G. I know that temporary employment passes are given, but I think it should be clear to anybody that when a person comes here under a temporary employment pass and he gets permanent employment and he can show within a reasonable time that he is permanently employed and that there is no danger of unemployment in the near future, the temporary employment pass should be converted to a permanent entry. That is what was intended at the time Class G was drafted, and I should like the hon. Member to make the position clear. Unhappily, when I was speaking I think his mind was engaged somewhere else and therefore he was unable to realize what I wanted.

MR. O'CONNOR: Perhaps I might take the opportunity of answering that question, which I have now understood.

THE SPEAKER: The hon. member has given way to you.

MR. O'CONNOR: I understand that when a temporary employment pass is issued, if the employment proves to be permanent there is no objection to a permanent entry permit being granted. I understand it is constantly done.

MR. PATEL: Thank you.

Now, there is one point in which the hon. Member misunderstood me completely. He said that one year was given for the return of those who had permanent residence in this country and that they ought to have returned within that period. That one year's period was given for those who had left this country in June, 1940, or thereafter. What I contended yesterday was that there were several people who had obtained a domicile certificate under the Immigration (Restriction) Ordinance, 1906, and had left this country in 1938 or, say, 1937, and were prevented from coming back. The provision which was made by administrative practice to allow certain

[Mr. Patel] categories of people to return to this country was in respect of those who had obtained a domicile certificate under the old law. My contention was that when the legislature changes its law, it should not lightly abrogate the right of a person to come back. As the hon. Member is aware, the Ordinance of 1906 exempted anybody who held a domicile certificate from even complying with the rules of immigration, while by passing the Immigration (Control) Ordinance of 1948 that right was completely taken away.

Lastly, it was said by the hon. Member that the Government has a duty to the Africans, the Europeans, the resident elements of the Indian community, and so on and so forth. I might remind this Council that when restriction of Indian immigration in this country was originally advocated it was stated that it should be done in the interests of the white settlers. When the British Government did not accept that plea it was stated that it should be done in the interests of the African community, and when that did not carry much weight it was stated that it should be done in the interests of Europeans and Africans. The final argument, which was started during the war, was that it should be done in the interests of the local Indian youths. Thank you very much for this concern for us, but I may say that it reminds me of that story of the wolf and the lamb in which the wolf said to the lamb, "If you did not abuse me your father did or your grandfather did, but I want to kill you." (Laughter.) Similarly, the Europeans want to prevent Indian immigration anyhow.

I am going to lose this motion, but I sit down with full confidence in my own mind that time and circumstances are in my favour. (Applause.)

Mr. O'CONNOR: May I be allowed to say something on a point of explanation? The hon. member has complained that I did not listen to his speech and has said that he did not mean what his motion says, and that he had made that clear. He then quoted as his authority, I presume, for having made that clear, what he said not in this debate but on the 4th November, 1947, in another debate. I submit that I cannot reasonably be accused of not listening to a speech which the hon. member made about eight

months ago when I was 5,000 miles away.

The question was put and negatived.

SCHEDULES OF ADDITIONAL PROVISION

No. 5 OF 1948 AND NO. 1 OF 1949

Mr. MATTHEWS: Mr. Speaker, I beg to move: That Schedules of Additional Provision No. 5 of 1948 and No. 1 of 1949 be referred to the Standing Finance Committee.

Mr. PADLEY seconded.

The question was put and carried.

EXCHANGE OF LAND

KIKUYU NATIVE LAND UNIT

Mr. WYN HARRIS: Mr. Speaker, I beg to move: Be it resolved that this Council approves of the proposal for the exchange by way of grant of leases in accordance with the provisions of section 7 of the Native Lands Trust Ordinance, 1938, of a portion comprising approximately 22 acres of the Kikuyu Native Land Unit adjoining the eastern boundary of L.R. No. 1959/2 south of Fort Hall township at present held on leasehold tenure by Messrs. Samar, Ltd., and that the term of such leases to be granted under sub-sections (2) and (5) respectively of section 7 shall be for a term equal to the unexpired residue of the grant to Messrs. Samar, Ltd., of L.R. No. 1959/2.

I will be brief on this particular resolution, which concerns the Saba Saba River, which is the boundary between a sisal estate and the Fort Hall native land unit. The sisal estate for some years has been short of water because the river does not flow in the dry weather. In consequence they sought to dam the river, which flooded 22 acres of native land unit. In exchange they have offered 33 acres for this 22 acres. The land in the native land unit has been set aside by the provincial commissioner, who has seen that all the necessary safeguards in the interests of the African have been preserved. The Highlands Board, for their part, have agreed to the 33 acres of land to be taken from the Highlands. The Native Lands Trust Board has approved the exchange, and it now comes before this Council for formal approval.

Mr. RANKINE seconded.

Mr. MATHU: May I ask, on a point of clarification, in supporting the motion, whether the exchange on the African

[Mr. Mathu]

side, that is the piece of land the Highlands Board are going to release for African settlement, in exchange for the 22 acres flooded by the dam, is going to be leased to the Africans, or is it merely a complete exclusion to be attached to the Kikuyu land unit.

Mr. WYN HARRIS: They are both by way of leases, both areas.

The question was put and carried.

TRAFFIC CONTROL ON ROADS

LADY SHAW: Mr. Speaker, I beg to move: This Council is of the opinion that the Commissioner of Police should be instructed to provide a sufficient number of traffic police to operate on roads outside the municipalities in order that the speed of heavy vehicles on the public roads be restricted and to ensure the roadworthiness and proper condition of such vehicles.

In moving this motion I realize that this is only the latest of many debates on the vexed question of roads, but I do want in this particular instance to regard this question from one point of view only, and that is the policing of roads.

We all know the very different standards of roads that there are in this country, some tarmacadam, some earth, some murrum and so on, but all these roads, of every kind and description, are being destroyed month by month, week by week, by the excessive speeds of heavy vehicles. These roads represent a very large investment of public money in their original capital cost and in the cost of their maintenance, and also the vehicles that travel over them represent very large investment of private money, and sometimes of public money, which is being thrown down the drain as a result of the condition of the roads. I submit that the condition of these roads is largely due to the excessive speed of heavy vehicles. We all know that the tarred roads break up, the earth and murrum roads get pot-holed, all the surface gets shot into the sides of the murrum roads, until in the end a journey over some of them becomes almost an adventure instead of just an ordinary expedition to Nairobi.

For the purpose of this motion I should like just to look at the roads which radiate from Nairobi to a distance

of about 100 miles. Some of these roads are, comparatively speaking, first-class roads, but some of them are not so first class, and the one I should like to take for a moment is that remarkable piece of road between Nairobi and Athi River, not ten miles from the capital. From time to time, and I may say the times are not particularly close together, that road is graded. What happens? The pot-holes are filled up, the rocks covered, and the road becomes for about five minutes a speedway—at least it is used as a speedway by lorries of all sorts, kinds and conditions, military lorries, sand lorries, buses, milk lorries, privately owned lorries. They all tear along at speeds which, as far as I can see, are only limited by the power of the lorry to travel any faster. The whole of the surface is shot off, and within a fortnight the state of the road is worse than the first. At one point on this road there is a diversion, and on this diversion is a large notice to say that it is only open to light traffic, but, although most of the drivers can read the notice easily, the majority of the traffic on that diversion is lorry traffic.

I am speaking of something I know of, because for my sins I have to go up and down that road about four times a week, and I have seen this happen very recently. The expense of repairs to vehicles using these roads must be very heavy and the expense of regrading and repairing the roads themselves represents a very great loss of public money, and I believe firmly that it is the duty of the police force to protect public property and private property, and also to protect and ensure the safety of the road-using public.

Now that is another point of view—the safety of the road-using public. How many of these heavy lorries are really in a roadworthy condition? We know very many of them have defective brakes, no rear lights, and that the drivers have no conception of safe speeds. They bounce about on corrugations and pot-holes completely out of control, and there is absolutely nothing being done at present to stop them. They pull up on corners, they leave the stones that have been used to prop them up when they change a tyre out in the middle of the road, they scatter the contents of their lorries all over the roads, and the whole

(Lady Shaw) question is becoming, in my opinion, a public scandal. I think it is high time that the police provided a remedy for this matter.

We increased the Police vote very heavily last year, and I think certain police should be seconded for this job. I want to make it quite clear that I am not having a crack at the police. I think they do their job, the job they are largely there to do, with enthusiasm, but a certain number should be seconded for this particular job and I think it is high time, in fact very, very overdue, that this should be done. It would not need a very large number of police. The mere fact that drivers on the roads know that they might encounter a "traffic cop" would make them go along with rather more care. In fact I know it would be so, because for a short time we had a young policeman in Machakos who regarded it as part of his duty to police the roads personally. I am not suggesting for a moment that a policeman in a remote out-district like that can be expected to police the roads, but in this case he did, and the remarkable change in the attitude of the lorry drivers was a thing which had to be seen to be believed. And I must say the remarkable number of fines collected was also a thing worthy of note!

So I do ask Government that they should see that the Commissioner of Police is provided with the necessary vehicles and the necessary orders to attend to this matter, and to see that there are police on these roads. I only mention the ones near Nairobi because they happen to be the ones I know, but I expect the same thing applies all over the country. I do feel it is high time Government turned its attention towards the protection of the persons and the purses of the public.

MR. HOPKINS: Mr. Speaker, I would like to second the motion of the hon. Member for Ukamba.

She has covered the points so fully that it remains for me to say very little, except that practically everything she has said applies to the road I have to use four or five times a month. I refer particularly to the piece subjected to very, very heavy bus traffic. Everything the road authorities do is undone in a matter at the outside of ten days, due to the very

heavy bus traffic. I think it is quite obvious that we cannot have macadamized roads and roads to stand up to all this sort of traffic. The conditions of the country do not permit more roads being macadamized except at a small rate, and the only possible way to maintain our earth and murrum roads in proper condition is to have some control over speeding traffic. Apart from stopping the roads being smashed up it would stop some of the accidents and relieve the strain on our hospitals. I have seen five overturned buses on that road in one day.

MR. HAVELOCK: Mr. Speaker, I merely want to give a very strong reason for supporting the hon. Member for Ukamba on this subject.

Both she and I have raised it ever since the last budget debate, and I should like to give three instances of what I consider very dangerous practices and waste of public moneys. Two nights ago, about nine o'clock, I passed a lorry coming in the opposite direction to me just outside the municipality without any lights at all; it had no lights. There was a slight mist, and the lorry was travelling at least 45 miles an hour. Unfortunately, I could not get the number. That is just an instance of the extreme danger some drivers of heavy vehicles put the public to.

Another matter that I think should be kept in mind by the police is the passenger buses on the Thika road. I understand there are certain bus stops on that road where passengers are collected, and licensed passenger lorries make a habit of racing from one stop to another to be first to collect passengers. This habit should be stamped on immediately.

I would also ask—I think it falls within the terms of the motion—for more co-operation from the police in helping district councils to keep roads closed in wet weather. In the Trans Nzoia I know there has been good co-operation, but I believe that in Nairobi the co-operation has been very slight, and heavy vehicles traversing wet murrum roads cause extreme damage and waste of public money.

The debate was adjourned.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned till 9.30 a.m. on Friday, 12th August, 1949.

Friday, 12th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Friday, 12th August, 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 11th August, 1949, were confirmed.

MIRAA CONTROL (AMENDMENT) BILL

SECOND READING

The debate was resumed.

MR. MATHU: Mr. Speaker, I should like to say a few words on this and to support the request made by the hon. Member for Mombasa that this Bill be deferred, because I think an opportunity should be given to those concerned to study the provisions, and also that members of Council should have an opportunity to find out exactly whether total prohibition in dealing with this plant should be undertaken.

I have not personally been convinced by the arguments made by the hon. mover of the deleterious effect of miraa, and I feel that there are things worse than the consumption of miraa which we are not tackling. For example, I should have liked any sums of money that may be expended as a result of the implementation of this law spent on the improvement of some of our hospitals, on dealing with T.B., for example, or sleeping sickness, which I think are much worse than the control or prohibition of dealings in miraa.

The final point I want to make is that miraa at the moment has become of tremendous economic importance to the Meru and Embu Districts, and with total prohibition not only will such moneys not flow into those districts, but it will result in the continuation of, or rather worsening, of illicit traffic in miraa. Clause 3, as proposed here, will become a very harassing business, searching vehicles, houses and premises and the rest of it, and it will really become extremely irksome and, as I say, unnecessary.

I should like the hon. mover to indicate in his reply whether the danger of the consumption of miraa by the Meru, the Embu, the Somalis or the Arabs could be proved in figures of numbers of persons in mental asylums as a result of it, or of deaths as a result of the consumption of miraa, because I believe that, not taken in excess, as with everything else, it is harmless. The hon. Member for Mombasa (whom I congratulate on his maiden speech) said that he himself has tried the drug and he felt no ill effects, and he I am sure would be a better judge than myself because I have not tasted it! I have not seen any of the Meru sleeping as a result of it, or the Embu or Somalis, but I see sleeping sickness affecting quite a number of people in the Nyanza Province, and I think we should deal with that and not with something which is unnecessary. As I suspect the Government will force this legislation through, perhaps they will not accept a humble request to defer this Bill, and I must therefore at this stage oppose it.

MR. HOPKINS: Mr. Speaker, having spent a great many years of my service in Meru and Embu, more particularly in Meru, and never having once come across an instance which has led me to the conclusion that miraa was anything but a reasonably mild drug, I, like the previous speakers, feel somewhat doubtful as to whether this control is necessary. In my experience miraa is nothing like as potent a drug as coffee *buni*—(laughter)—which is consumed in very large quantities in the north. Yet nobody to my knowledge has proposed to restrict the output of *buni* any more than they have proposed restricting the sale of that very strong Meru snuff, which is habit-forming and also has a very large market outside the district. In my day the use of miraa was restricted to the old men of the senior age grades, and these restrictions had the full backing of public opinion. If since my day its use has become completely widespread, I cannot help feeling that this must in some measure be due to Government's ill-advised policy of trying to replace public opinion by legislation.

Before deciding what legislation is necessary in regard to miraa, I think that hon. members should know a bit more

[Mr. Hopkins] about it, and to this end I will try to amplify the information which has already been given you by the hon. member.

Now, as stated by the hon. Chief Native Commissioner, the occurrence of miraa throughout this Colony is fairly widespread, but to the best of my belief it never occurs in large quantities. I have actually found it as far from Meru as the Marakwet, Suk and Cherangani Forests, but only isolated trees here and there. Miraa is not an annual crop like bhang, which can be produced secretly and rapidly anywhere practically where conditions are favourable to its growth. Miraa is a tree which takes some years to mature, and to get a reasonably large production of miraa it is necessary to prune it and to treat it in a certain way in order to make it pollard as frequently as possible. When the pollarding twigs are about twelve inches long they are stripped and tied into bundles, and in this form of bundles they are kept and marketed, and carried about when being used. It is the bark from the twigs that is chewed—not the leaves, as is sometimes supposed.

Like my hon friend on my left (Mr. Usher) I, too, have tried miraa, but unlike him I did not mix it with my beer, and the result is that my memory of it is not quite as happy as his. In accordance with the instructions I got from the Meru as to how one should use it, I once chewed for about an hour. It had a mildly bitter and extremely astringent taste, but the only after-effect was the lingering, unpleasantly astringent taste in one's mouth and throat.

If since my day miraa has become a real menace and its consumption is so widespread, I think it is quite obvious that some drastic amendment to the law is necessary which will effectively control it. Miraa being the bark of a tree which has to be properly tended to make it pollard, it should be possible to control its production by some amendment to the law which would provide for owners to be allowed to keep sufficient for their own use, and for the rest to be destroyed. This could probably be achieved, I think, with the help of the local native council, and of course providing for compensation. Unless plantations and trees surplus

to the requirements of an owner are eliminated, it seems to me quite inevitable that the legislation contemplated in this amendment, taken together with the huge production which we are told is taking place in Meru, can only result in very very much larger and more widespread consumption inside Meru and Embu, and as these two tribes are particular friends of mine I should not like to be a party to this.

It seems to me quite essential that before passing legislation, the repercussions of which we are not quite able to foresee, we should make certain of the facts of the case. If miraa is indeed such a menace as it is believed to be by some people, then I think it is quite clear that we must not confine these huge quantities of miraa in the Meru District, to be consumed by the Meru themselves. We must take some more drastic steps on the lines which I have suggested. For that reason, I should like to ask Government if this Bill can be sent to a select committee, so that further investigation can be made into the facts of the case.

MR RANKINE: Mr. Speaker, there seems to be considerable confusion this morning, because some hon. members appear to be under the impression that we are discussing the principle of whether miraa should be controlled or not. That was thrashed out when the original Bill was introduced. All the amendment seeks to do is to alter the form of control. We have already discussed the question of whether there should be control or not, and the decision was that control was required.

From what has already been said it is apparent that there is a sharp difference of opinion as to whether this drug is deleterious or not. Like the hon. member Mr. Mathu, and unlike the hon. Members for Aberdare and Mombasa, I have no personal experience of this drug. It did seem to me that the hon. Member for Mombasa, in assuring us that he tried it and suffered no ill effects, was rather opening his defences, but I do not wish to take any advantage of him over that! I am quite prepared to take his word for it. Far be it from me to suggest anything to the contrary!

[Mr. Rankine] The position of the Government is that, having taken the best advice they can, both administrative and medical—and my hon. friend the Director of Medical Services will have something to say on this subject in a few minutes—Government is of opinion that the effects are deleterious and that, if taken to excess, it leads to physical and moral degeneration. It is probably like many other things that, if taken to excess, have ill effects; and the trouble is that apparently moderation has failed. Anyway, as I have said, Government being advised that the effects are deleterious, feels that it has a moral responsibility for the welfare of the African people concerned, and I sincerely hope that Government in its efforts to look after the welfare of the African will have the wholehearted support of the African members themselves.

The hon. member Mr. Mathu suggested that there were other things whose effects were worse. That may be so, but it does not seem to me that, because there are other things whose effects are worse, that should absolve Government from trying to deal with this particular one. (Hear, hear.) Again, mention has been made of the great economic value of this crop. Once more, I would suggest that, because drugs have an economic value though their effect is evil, is no argument why we should allow them to continue. Is there an argument that we should allow, or encourage, the cultivation of opium in this country? As everybody knows, the trade in opium has been an extremely valuable one, but that is not an argument for permitting it. As I have said, we are advised that the effects are bad and therefore Government has a responsibility to do what it can to safeguard the welfare of the Africans.

Finally, I would like to say this, that the hon. Member for Mombasa told us that it had no ill effect. As I have said, I do not wish to take advantage of him over that, but what I would say is, and I am not casting any aspersion at him, does anybody know of any drug addict who does admit that the drug has a bad effect? (Laughter.) On the contrary, I think it is usually the case that he would suggest that its effect is beneficial.

Sir, I beg to support this Bill.

MR USHER: On a point of explanation, the gravamen of my case against this Bill is that all the heavy guns of legislation have been brought to bear on a case which does not merit it. I quite appreciate the fact that we are not discussing the principle of the Bill, and passed over it very lightly. That is all.

MR HOPKINS: May I make a point of explanation, sir? (Laughter.)

THE SPEAKER: I do not recollect that in the last speech there was any specific reference to anything which you said, so therefore I cannot see that any point of explanation arises. You must not try and treat a point of explanation as an excuse to get in another speech. (Laughter.)

MR HOPKINS: I think there is some reason for it. The hon. member did speak as if I was speaking against the whole principle of the Bill. I am speaking against the amendment in that if it is a dangerous drug it is dangerous with high production going on to restrict it; you want other means of controlling it.

DR MACLENNAN: Mr. Speaker, as the hon. Chief Secretary has said, this Bill is devised to strengthen the administration of the control of production as well as export and consumption of miraa, and is not intended to conflict with the general principles in the main Ordinance that there should be control of the drug.

In view of the various remarks that have been made that the drug is not deleterious, it seems reasonable that I should give such advice to Council as I have that that is not quite a correct statement. When the Ordinance was before the Council in 1946, the general feeling was, after hearing the medical evidence, that some measure of control was necessary, and even though the Bill did eventually go to a select committee the main arguments were not centred around the principle of the Bill but were directed more or less to the methods of the administration of that control. I still recall that on that occasion one of the members for African Interests on this Council—and I think probably one of the greatest protagonists of the welfare of the African on either side of this Council—I refer to the Ven. Archdeacon

[Dr. MacLennan]

Beecher—supported the measure in no uncertain terms.

What is the medical evidence on the subject? I have here a copy of the East African Medical Journal for January, 1945, and if any hon. member wishes to refer to it I shall be glad to give it to him. In that issue of this Kenya Medical Journal, there are several articles by medical officers who have been resident in the Meru and Embu Districts and have had experience in the Northern Frontier Province among the Somalis; there is also an article by the Government psychiatrist on the subject, and the whole is summed up very well in the leading editorial. Actually, if one summarizes the evidence it may be recapitulated as follows.

Small quantities of miraa have no deleterious effect on the consumer; moderate quantities of miraa, while producing an initial stimulation and a feeling of well-being, lead eventually to mental lethargy, mental inanition, and lack of incentive; prolonged consumption of large quantities of miraa definitely lead to moral and mental degeneration. There is no question about that, because we have had in the mental hospital several cases of miraa addiction in which there is no cure, and those poor people have simply got to be returned to the reserves to consume further quantities to enable them to maintain their equanimity. The danger comes between the second and third categories; that is, the moderate consumer may easily become an addict, which is the danger with all drugs such as morphia, cocaine, and *cannabis indica*, the danger that a moderate consumer may become an addict.

That is the medical evidence, and there is no question that that has been summarized by fairly keen medical observers. It may interest Council to know that in 1939 our neighbouring Colony, British Somaliland, passed legislation prohibiting entirely the growth of miraa and the importation of it, and it is interesting to note that the army, during the operations in the Northern Frontier District in the early days of the war, had the most strict regulations against the consumption of miraa. Recent evidence has gone to show that there is

increased consumption of miraa among children in the Meru and Embu Districts. This I consider to be a tragedy, and I must support any measure that will prevent anything to the detriment of what I consider to be a loyal, cheerful and pleasant tribe of people.

I strongly support the Bill.

MR. SHATRY: Mr. Speaker, I have only a few remarks on this Bill, especially on the clause which does not allow a native to consume this miraa. I think hon. members are well aware that the Imam Arabs have been consuming miraa in their own countries for centuries. If under this control miraa trees are allowed to be planted in Embu and Meru but not exported, I think some illicit way will be found of bringing this drug into the Nairobi and Mombasa Districts, and what will happen to those people who have been in the habit of bringing it from their own countries? If you want control there must be strict measures and the trees destroyed in Meru and Embu. I am one who wholeheartedly supports the measure, but by leaving in the Bill the cultivation of trees in the Meru and Embu Districts I think danger will more and more arise to those poor natives. With those few remarks I support some of the statements made by the hon. member Mr. Mathu.

DR. RANA: Mr. Speaker, my excuse in getting up and saying a few words on this very controversial subject is that I was one of the members who voted for this measure to be brought in on the select committee. I agree with the hon. Director of Medical Services on the medical points. There is no medium. The evidence which we took from the medical point of view was that in certain cases it is not to the interests of the people who consume great quantities. Some hon. member, I think it was the hon. member Mr. Mathu, wanted statistics of lunatics—there are two Indians in Mombasa whom I would recommend should be sent to the asylum.

I think the matter has been dragged too far. The suggestion of the hon. Member for Mombasa and the hon. member Mr. Mathu is in regard to this clause 3, and I must confess that the

[Dr. Rana]

remedy suggested is not going to be very effective in controlling what we all desire. I think the request made by the hon. Member for Mombasa and other speakers on this side is reasonable, and I request Government to give further thought to it so that the amendment should be in such a way that it can really be brought in in an effective way.

From what I have been able to understand, the debate has been on the amendment suggested to tighten up matters, but I must confess that instead of tightening it will make the position worse. It is always good in a case of that kind to take further evidence, and I would suggest a select committee of hon. members who have had experience and others who can think the matter over and give the Administration some suggestions. I therefore request that this measure should not be forced through, because it is not the principle from the medical point of view but the desire to see this drug controlled. I think the issue is on the measures which are recommended by Government, and I believe there should be a committee to take further evidence and ask the people in Meru and roundabout to make suggestions. This amendment will not stop miraa being brought to the coast by lorry, as we know such things happen from our experience of controls and the prices people have had to pay for ordinary things. I request Government and the hon. Chief Native Commissioner to send the Bill to a select committee, and I oppose the amendment suggested.

MR. VASEY: Mr. Speaker, the point which the hon. Member for Aberdare wished to stress and underline is that if all that is said about this drug by the medical people is correct and accurate then the fundamental point of control should be in the production and growth. I think the debate has somewhat strayed from the effect of the amendment to the control as the hon. Chief Secretary did try to underline. There is obviously, however, some feeling of disquiet among members on this side as to whether control is necessary, and I would respectfully suggest that this Bill be allowed to go to the committee stage—the details whether control is going too

far can be discussed at that point—and that Government should agree to appoint a committee to investigate the need and principle of control in order that that committee could report to this Council and satisfy those members who have that feeling of disquiet. That procedure would enable us to get on with the business of the Bill and at the same time satisfy those members who may feel control is introduced at the wrong point or that the control introduced is unnecessary.

MR. JEREMIAH: Mr. Speaker, I rise to support the proposal that this Bill should be deferred. I myself do not quite understand the implications in the Bill. What I think is the main purpose of the Bill is to control the exportation of miraa from Meru and Embu. If that is the case, the suggestion is that miraa is deleterious to health and Government intends to restrict it. I think the result will be the contrary, because if there is no exportation consumption would be more, as the surplus would not be allowed to go out of the district, so that the object of protecting the health of the people is defeated. It has been said by some members that miraa has a deleterious effect, and the medical authority proved that to some extent it has. I do not know it except by seeing it, for I have never tried it, but it is not the only drug which has a deleterious effect, and you cannot in every case try to restrict all the drugs which are liked by people. This one is liked by many people, not only in Meru and Embu, and we are not doing justice in this Bill either to growers or consumers.

Whisky, brandy and so on are consumed in great quantity, and in my belief they are more deleterious to health because in most cases they cause heart failure, but nobody is taking any action on this. They also restrict income. The restriction of miraa will not only cause the health of the people to deteriorate, because it will give them a chance to consume more, but it will also restrict their incomes. For that reason I beg to oppose the Bill.

MAJOR CAWENDISH-BENTINCK: Mr. Speaker, I rise as much on a point of order as of discussing this Bill. I would like to support the hon. Member for Nairobi North and the hon. Chief Secre-

[Major Cavendish-Bentinck] tary in their remarks. We have spent an enormous amount of time in discussing three minor amendments to a Bill which has already been passed. In the year 1946 we had a lengthy discussion—

THE SPEAKER: If you are rising to a point of order, perhaps you will, let me know exactly what your point is and how I am to rule.

MAJOR CAVENDISH-BENTINCK: Thank you, I am really speaking to the Bill if I may.

THE SPEAKER: You say this Bill contains three minor amendments, and we are discussing a principle. That is the point, is it not?

MAJOR CAVENDISH-BENTINCK: Yes.

THE SPEAKER: Well, if you read the Bill, it is proposed in this amending Bill to repeal section 3, which is the third main and important section of the principal Ordinance, and to substitute another complete section, and thereby you leave the whole thing open to debate. That is the way I see it, and I cannot see how I can rule people out of order for debating a principle when you are proposing to re-enact the principle over again (Hear, hear.)

MAJOR CAVENDISH-BENTINCK: May I speak to the amending Bill?

THE SPEAKER: It would have been better if they had done the thing they should have done, and that is to make three minor amendments, but they have thrown the whole thing into the arena.

MAJOR CAVENDISH-BENTINCK: Mr. Speaker, with your permission, what I should like to say is that the object of these amendments is to make a Bill which we approved in 1946 workable, because those who are in charge of the implementation of the provisions of the Ordinance have found that there were certain loopholes. Very often in this country we pass Bills and we do not enforce them. Here is a Bill which we have attempted to enforce and we have found that there are certain loopholes. Council have been asked to pass certain amendments in order to make the principle of the Ordinance enforceable in practice. If hon. members feel, which I do not myself, that it is unnecessary

to control the consumption of miraa, then I suggest somebody should get up and propose a motion that the Miraa (Control) Ordinance, 1946, be repealed. Because that has not been done, I would appeal to hon. members to try and back an amendment which will enable us to enforce a law which is the law of the land to-day.

MR. WELWOOD: Mr. Speaker, I only want to say this, that I support the hon. Member for African Interests, Mr. Mathu, who asked for a committee on this Bill. My reason is this. Clause 3 is a clause in a law which is utterly unacceptable to me and to many others, unless it is definitely proved that the drug is a very serious one. Such a clause is perhaps justified in the case of hemp, opium and many other drugs of that sort, but I have got to be convinced that this is a very bad drug before I can pass a clause of this nature. We have had the evidence of the hon. Director of Medical Services, which I am quite prepared to accept, but obviously there are other sides to the matter and I have a feeling that if the Medical Department had existed at the time of Queen Elizabeth, we would not be allowed to smoke cigarettes now!

MR. WYN HARRIS: Mr. Speaker, first of all I should like to congratulate the hon. Member for Mombasa on his maiden speech which started this row, particularly as it was extempore and, unlike many of the extempore speeches in this Council, he had not thought it out before! (Laughter.)

First of all, I am a little concerned to find the use of the drug becoming widespread in this Council. (Laughter.) The Ven. Archdeacon Beecher admitted in the committee stage of the main Bill that he tried it, we have two on the other side of Council admitting that they have tried it, and I must confess that I also have tried it. (Laughter.) But, as has been pointed out by the hon. Director of Medical Services, in small quantities, or even moderate quantities, it is not deleterious. It is to the addict that the thing is really serious.

The question of whether or not this drug should be controlled was debated only two years ago in this Council, and it was accepted by everybody at that

[Mr. Wyn Harris] time that it was a deleterious drug and must be controlled. The whole reason why we allowed the export of miraa from Meru into other parts of this country was because the addict, if he did not get it, died. That was the only reason for allowing this measure of export, and I would quote, if I may, Mr. Foster Sutton on the select committee report. "We have considerable evidence before us which indicated that there are people all over the Colony who use it and have been in the habit of habitually using it, and medical evidence was to the effect that if you suddenly shut down on those people who are accustomed to using the drug and say they can no longer have it, they will go insane and become completely and utterly demoralized." That was the only reason why this particular section allowed a modified form of export. What the Administration have found is that that modified form of export has become a legalized trade and it is, as my hon. friend Mr. Mathu says, a very profitable source of income to the Meru, and I for one will regret the loss of that income. But the mere fact that it is a profitable source of income to the Meru shows exactly how this drug is increasing.

I submit that it is now a little late to go back on a Bill which really deals with the method of control, and has nothing to do with whether or not it is deleterious, and say we have to go over the whole matter again. But, as there is a feeling on the other side of Council that it may not be necessary to control this drug, I am empowered to say that this Bill will go to a select committee. I for one regret it. I believe that we have a plain duty. We believe this drug to be deleterious to the Africans of this country, and I feel that we have got to put in the most stringent measures of control. In view of the fact that it is going to a select committee, I do not propose to deal with clause 3 of the Bill.

The question was put and carried.

MR. VASEY: Mr. Speaker, although I do not particularly wish to see this Bill go to a select committee, but rather wished to see a committee appointed to consider the question of miraa control as a whole, I beg to move, in view of

the statement of the hon. Chief Native Commissioner, that a select committee be appointed to consider this Bill.

MR. USHER seconded.

The question was put and carried.

MR. COOKE: I submit, on a point of order, that we have gone a little bit out of order. Surely the resolution for a select committee should come before the second reading.

THE SPEAKER: That is an alternative. An alternative is that the Bill may be referred to a select committee and the second reading adjourned. When a Bill has been given a second reading, it may, however, be committed to a committee of the whole Council, or it may be committed to a select committee. The Council has decided to send it to a select committee, and I take it that is quite in order, and I take it the hon. Member for the Coast agrees? (Laughter.)

CROWN LANDS (AMENDMENT) BILL

SECOND READING

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

As hon. members are aware, the Crown Lands Ordinance, 1915, Chapter 140 of the revised edition of the laws, provides that the rents of all agricultural land held in lease under that Ordinance shall be revised every 30 years, and the first revision was to take place in 1945. It was, of course, quite impossible to carry out that revision in 1945, as it would have involved a very extensive investigation, a complete review of every farm held under that Ordinance, and a revaluation of the unimproved value of that land. An Ordinance was passed in 1945 postponing the date of the first revision to 1950.

It is still quite impracticable to carry out that revision of rents. When the revision is undertaken it will involve at least a year of preparation, it will involve the engagement of expensive staff and the setting up of expensive and somewhat elaborate machinery. It is quite impossible to do it at the present time without diverting staff in the Survey and other departments from extremely press-

[Mr. Mortimer]

ing and urgent work. It is therefore proposed that the first revision of rent under the Crown Lands Ordinance, 1915, shall be postponed to the year 1960—that is a ten-year postponement.

There may be people, lessees of land, who feel that they are harshly treated by that postponement, as they had been looking forward to the revision in 1950 to secure a reduction in their rent, because the law lays down that the revised rental for the next 30 years shall be 1 per cent of the unimproved value of the land. Therefore, if anybody claims that the unimproved value of his land is less than Sh. 20 per acre he would have the right to expect a reduction of rent proportionate to the value. If, therefore, the revaluation is postponed for another ten years, it will mean that they will be harshly treated for the whole of that ten years.

Provision has therefore been made in the Bill, as in the 1945 Ordinance, for appeals to be submitted with a request for revision to take place forthwith. The objection must be raised before 31st March, 1951, and the Commissioner of Lands will then go into the whole question. Although it is not in the Bill I can say that before coming to a decision he will consult that very fair and industrious body, the Advisory Land Board. In order to make sure that the budget situation of the Colony is not seriously affected adversely, consultations will take place also with the financial adviser to Government—before final decisions are reached on any particular case or group of cases. If after the Commissioner of Lands has given his decision after due consultation the lessee still objects, he will have an opportunity of raising his further objection which will then be submitted to arbitration under the arbitration provisions of the Crown Lands Ordinance.

MR. HOBSON seconded.

MR. BLUNDELL: Mr. Speaker, while I welcome the deferment of this revision for ten years and the provisions for reassessment in the case of those who may be suffering hardship, I would like to take the opportunity of asking the hon. Member for Health and Local Government whether, during the next ten years, he could not put the brains and abilities

of the department under his control to evolving a different form of land tenure, to wit, freehold?

I stress this because the present system not only involves us in administrative difficulties but, taking the peculiar circumstances of the country, we are attempting to evolve under considerable difficulty a considered and well-ordered farming practice, and a considerable amount of insecurity is forming in the minds of farmers by the provision for the revision of rents every so often.

MR. MORTIMER: Mr. Speaker, it is within the knowledge of most hon. members that there was set up in 1940 a special committee to go into this question of land tenure, with particular reference to the desirability or otherwise of establishing a freehold system or, at any rate, the abolition of revisable rents on agricultural land. That committee reported, I think, in 1942, and the majority recommended the introduction of freehold. The minority report which was accepted by Government recommended that the leasehold system should be maintained. The whole committee, however, recommended the abolition of revisable rents.

Different reasons actuated the members of the committee over that recommendation. The late Mr. Sidney Thornton and I made that recommendation for quite different reasons from those which attracted Major Grogan, the late Mr. Tannahill, and one or two other members of the committee. The view of Mr. Thornton and myself was that the principle of revisable rents was a sound one, and in a community like this where land values increase by reason of the efforts of the community as a whole, by reason of the expenditure of Government funds contributed by taxpayers as a whole, altogether regardless of any efforts that might be made by the individual landholder, there was good ground for exacting some portion of that increased value and taking it into Government coffers as a contribution from the landholder in recognition of the increased value of his land by reasons of the community efforts. (MR. BLUNDELL: Does he not pay any taxes?) He does, and so does everyone else.

I still adhere to that view, that the principle is sound enough, but we were all quite convinced as a committee that

[Mr. Mortimer]

the revision was not a practical proposition, because we felt that it would be almost impossible to arrive with equity and justice at the "prairie" value, that is the unimproved value of highly developed sections of the country as the years went by. It may be possible for the first revision, but for later revisions when, as I hope will be the case, all the land in the country is being developed to its optimum capacity, it will be almost impossible to arrive at what is in fact the "prairie" value of the land.

Anyhow, long discussions have taken place in this Council during past years. The subject has been under discussion with the Secretary of State. It will be quite impossible, even if this Council were in agreement—and I doubt if it would be—to obtain an alteration of the land laws to bring in freehold. The hon. Member for Agriculture and I during the last year had discussions with the Secretary of State, and we felt it would be very unwise at this stage to press further a proposal for the abolition of revisable rents. We did secure agreement, however, to postponing the first revision to 1960, and I do suggest to hon. members that that should be accepted with good grace as a very real concession, and that we should proceed on the assumption that no change will take place, at any rate until 1960.

The question was put and carried.

TRADE UNIONS (REGISTRATION) BILL

SECOND READING

MR. HOBSON: Mr. Speaker, I beg to move: That the Trade Unions (Registration) Bill be read a second time.

In 1948 the Trade Unions and Trade Disputes Ordinance was amended in the light of experience, and one amendment added three additional reasons for which the Registrar could refuse registration of any union applying for registration. This Bill is introduced in the interests of uniformity, because it is thought to be unfair that trade unions registered before the 20th April, 1948, when the amending Bill came into operation, should not be subject to the provisions of the amending Bill, and particularly those in regard to registration.

This Bill seeks to provide that within one month of its commencement as a law, any trade union registered before the 20th April, 1948, may apply for registration. Upon that application being made, re-registration may be granted, and if it is granted it may be ante-dated to the date of the original registration, or it may be refused on any ground on which registration could be refused, or cancelled under the principal Ordinance, that is the 1943 Ordinance, or on the ground that since its original registration the union has not complied with the provisions of the trade union law. Refusal is, of course, subject to appeal.

If there is no application within one month then the existing registration is cancelled. I understand that a certain amount of misgiving is caused by this particular provision, but I would point out that if that does happen the union may apply again for registration, possibly after re-forming.

I did mention when I asked that the second reading of this Bill be deferred for a little time that there might be a question of certain amendments as a result of a letter addressed to the hon. Attorney General. We have examined the request for amendments and we find that they really cannot be made to this particular Bill.

MR. RANKINE seconded.

MR. MATHU: Mr. Speaker, I had previously studied this Bill, and I failed really to see the point of it. I thought I had better wait until the hon. Solicitor General had moved it to try and see whether the Bill is really necessary, and up to now I have not seen whether it is really necessary.

The Bill seeks to re-register trade unions that were registered under the Trade Unions and Trade Disputes Ordinance, 1943; that is, those registered before the 20th April, 1948. Re-registration has to be done within one month after this Bill becomes law. The application for registration can be refused, and under clause 3 (3) it says that registration can be granted and ante-dated to the date of the original registration—and this is extremely important—or may be refused upon any ground upon which registration could be refused or cancelled under the provisions of the principal Ordinance. In other words, powers exist now under the law to cancel a registration.

[Mr. Mathu]

In reply to a question of mine, Government stated that there were 13 registered trade unions. I have a letter from the Secretariat saying that the registration of one had been cancelled—I have the letter in front of me now—and that a further two trade unions have been cancelled and that one union has been amalgamated with another because it did not want to operate by itself. As there is provision in the existing law for the cancellation of registration of a trade union or even refusing registration if it does not comply with the provisions of the Ordinance of 1943, when all these powers are there now under the present law I have definitely not been able to see the need for further powers.

The only question is this, and I stand corrected if I am wrong: In clause 5 (2), where it is provided that there shall be no appeal against a cancellation of registration, if that power does not exist under the present law—as I say I stand to be corrected—I think it should. There again, I think it is a most undemocratic provision to refuse a trade union access to the courts if its registration has been cancelled.

I think we are making it extremely difficult for trade unions to function, and the effect of this and of the amendment that we got through only last year, is that it will be extremely difficult for trade unions to function at all. If that is the intention of Government, let us be honest about it and say there shall be no trade unions at all, because the 13 trade unions that have been registered are all non-European. There remain ten after the cancellation of the certificates of the three that I have mentioned, and if we feel definitely that trade unionism is not an element that we would like in the economic structure of Kenya, let us say so. But, as the powers needed for cancellation of inefficient trade unions or those who do not behave as they should exist at present, I see no reason at all for introducing this law. If the hon. mover can prove to me that there is a loophole in the existing legislation that would require to be covered to give the Registrar more powers, I am with him, but I cannot see any powers which do not exist already.

It is for that reason that I feel I should oppose the second reading of this Bill, because I think we can achieve exactly what

we want to achieve under existing legislation. I beg to oppose.

MR. BLUNDELL: Mr. Speaker, I beg to support the Bill before the Council.

I think a great deal of nonsense is talked about trade unions. Properly used and properly controlled, they are one of the most useful elements in the lubrication of the machinery of industry. If this Bill is designed to increase the control and the proper development of reasonable elements in the trade union movement and outside it, I am wholeheartedly in support of it. At the present moment what originated as a method which was correct and proper for the worker, has become an instrument of despotism and a method of blackmailing not allowed to more reasonable members of the community. In England you have a system by which the Government is no longer really developed in accordance with the wishes of the great majority of the people: you have a system by which control is exercised by a small element within the Government, and consequently the trade unions themselves have largely lost control of their own people.

THE SPEAKER: The hon. member seems to be making a speech which has very little relevance to the matter of the debate.

MR. BLUNDELL:—Well, I will not deny the Council with irrelevance. I will support the Bill in the hope, and I hope the hon. Solicitor General will convince me, that it will result in the proper control and development of trade unions on the right lines.

MR. PATEL: Mr. Speaker, my objection to the provisions of this amending Bill is this, that when . . .

THE SPEAKER: With great respect, the Bill is not an amending Bill, it is an original Bill.

MR. PATEL: I am sorry, Sir. My objection to the further provision for the registration of trade unions is this, that there is a tendency in this country to legislate for a certain object, and then to undo by fresh legislation what has been done in the past. I experienced the same thing in regard to the immigration law, that it undid certain things which were done by the previous law. That, in my submission, is a very serious point. The Legislature while legislating should not lightly undo

[Mr. Patel] anything, or require to undo anything, which has been done by a previous law, unless there are very serious reasons. I do not say that the Legislature may not do it under any circumstances, but I would say that it should not do it unless there are very strong reasons for doing it.

As has been pointed out by the hon. member Mr. Mathu under the present law the Registrar of trade unions has power to cancel any trade union which has been registered, or to dissolve any trade union. In these circumstances I think it would be wrong for the Legislature to say that all these trade unions which have been already registered should re-apply for registration.

At this stage I should like to mention one thing, that I do not say that there is no need for provision of this nature being applied to trade unions. Because I myself am aware that in this Colony there are one or two Indian communists, supported by the Indian communists' daily paper here, who are misleading the labour movement in this country. I am also fully aware that, instead of encouraging the labour movement in the right manner, those gentlemen try to take their orders from Stalin in Russia and try to misguide these poor people. I may say further that there is need for supervision of trade unions and their accounts, because I have strong reasons to believe that this Indian daily communist paper, and one or two Indian communists, receive financial assistance from communists abroad. All these things are true, but even then my serious objection to the Bill is that, when power exists to cancel and dissolve these trade unions under the present law, it is wrong to legislate and require re-registration. The principle involved is that the Legislature should not undo something which has been allowed by the previous law, unless there are very strong reasons for doing it. That is why I oppose this Bill.

MR. MADAN: Mr. Speaker, I also rise to oppose this Bill. In saying that I, too, would like to make it clear that I do not hold any brief for any agitators or trouble-makers in this Colony. I am also not against exercising proper supervision where it should be exercised and, with the hon. Member for Rift Valley, I would say that, if properly developed and properly operated, trade unions can benefit

industry and development to a great extent. But, like some of the previous speakers, I also fail to understand the necessity for this Bill. It seems to me the real object, reading between the lines, is, if I may say so, to muzzle the labour movement and, because of the stricter and increased powers that would be granted to the Registrar if this Bill is passed, one result would be to frighten honest, decent workers into silence.

If it is intended to bring the legislation into uniformity, then the proper thing to do in this Bill was to provide for automatic re-registration of trade unions which were registered under the 1943 Ordinance. On the other hand, if we do not want trade unions, then, like the hon. member Mr. Mathu, I say let us say so, but if we do not wish to deprive honest decent workers of their right to claim, by legitimate methods, the privileges which are accorded to them under the Trade Union Ordinance, decent conditions of living and decent wages, I do not see the necessity for this Bill. I beg to oppose.

MR. O'CONNOR: Mr. Speaker, I should like in the first place to answer the point made by the hon. member Mr. Mathu about the effect of sub-clause (2) of clause 5. He pointed to that clause, which reads: "A cancellation of a registration under this section shall not be subject to appeal or be called in question in any Court." As I understand his argument, it was that there was some refusal of appeal to the court on merits. That is not so. If he looks at the first part of the clause, he will see that it reads: "If no application for re-registration is made within one month from the commencement of this Ordinance by any trade union to which this Ordinance applies, the Registrar shall cancel the registration". It is only if they are late that there is no appeal. There is an appeal on anything else. There is no question of shutting out any appeal on merits.

In 1948 this Council in its wisdom made amendments to the Trade Union and Trade Disputes Ordinance of 1943. Among those amendments was an amendment to section 10. Section 10 deals with the reasons why the Registrar might refuse registration, and there were added as additional reasons, these: "any other trade union already registered is sufficiently representative of the whole or of a substantial proportion of the interests

[Mr. O'Connor]

In respect of which the applicants seek registration; or the principal purposes of the combination seeking registration are not in accord with those set out in the definition of "trade union" contained in section 2 of this Ordinance; or the combination seeking registration is an organization consisting of persons engaged in, or working at, more than one trade or calling, and its constitution does not contain suitable provision for the protection and promotion of their respective sectional industrial interests."

Those provisions were inserted, I assume, to secure that trade unionism in this country should follow the pattern laid down by this Council, and that there should be adequate protection of sectional industrial interests, without overlapping and without a multiplicity of trade unions. If that was a desirable pattern in 1948, and I do not propose to reiterate the arguments which impelled this Council to make these amendments (personally I agree that it is a desirable pattern), then surely it is anomalous to have the bulk of the trade unions existing in the country not in conformity with the pattern which the Council has laid down as desirable? That, as is stated in the "Memorandum of Objects and Reasons", will be the effect of this Bill, which will bring the unions which were registered before this amendment came into force into line with the others, and we shall have in this country trade unionism regulated according to that pattern.

I want to repudiate with all the force that I can some statements which have been made in the course of this debate. In the first place, the hon. member Mr. Madan has said that he thinks that the real object of this Bill is to muzzle the labour movement and to frighten honest decent workers into silence. I challenge anybody to find anything in this Bill which can possibly be reasonably considered as having either one or other of these objects.

The debate was adjourned.

Council adjourned at 11.00 a.m. and resumed at 11.20 a.m.

TRAFFIC CONTROL ON ROADS

The debate was resumed.

MR. O'CONNOR: Mr. Speaker, at the adjournment yesterday I was about to

reply to the motion moved by the hon. Member for Ukamba. I always pay great attention to what is said by hon. members on the other side, particularly, if I may say so, to what is said by the hon. lady. (Hear, hear.)

She asks "that the Commissioner of Police should be instructed to provide a sufficient number of traffic police to operate outside the municipal limits to control the speed of heavy vehicles" and "to ensure the roadworthiness and proper condition of such vehicles". Now, the Commissioner of Police is only too anxious without additional instructions to carry out those objects. We have already given him instructions, and we can give him more instructions, but he cannot carry out those most desirable objects without the requisite number of men and motor vehicles.

This Council last year or some months ago voted a very considerable increase in the police establishment and voted supply for the provision of a considerably increased number of vehicles, but those increases take time to put into effect and time to recruit the individuals. The Traffic Department is still 25 per cent under strength, and of 79 vehicles ordered for the Force only 31 have so far arrived. I will not go into the reasons. We have made repeated representations, and there have been technical hitches, and so on and so forth, but that is the present position. I trust that it will be remedied shortly and that more vehicles will arrive. If the hon. member will bring up the question to me in about three months' time I hope to be able to tell a very different story.

Nevertheless, we have done and continue to do what we can. There have been many prosecutions for speeding, and I think these figures are significant. Between March, 1949, and the 10th August, 1949, 154 motor vehicles of all classes have been put off the road as unroadworthy by the Traffic Department of the Kenya Police Force (hear, hear), so that I think hon. members will agree that with the resources at our disposal we are doing our best. We fully realize that there is a great deal more that requires to be done. The arrangements for examining road vehicles for roadworthiness are not, in my view, satisfactory, and I shall do what I can to improve them. The police in various cases have

[Mr. O'Connor]

asked for exemplary penalties, and I have made representations and have been met with co-operation on the subject of deterrent penalties for speeding and, in particular, for driving on closed roads, which is to my mind a very serious offence, because it does exceedingly serious damage.

As I have said, the police are at the moment under strength, and are short of vehicles, and the resources which they have at their disposal have to be allotted so as to maintain a balance between traffic needs and the needs of crime prevention and crime detection and the arrest of criminals. I must say that where those two conflict, the bias is in favour of crime detection and prevention and arrest of criminals as against the traffic needs, and I consider that that is right. When we have our full resources we shall hope to be able to deal much more adequately with both.

In conclusion, I would just like to say that I will bring the remarks made in this debate to the attention of the Commissioner of Police, although I am perfectly sure that he is already very well aware of the conditions which exist, for we have discussed them on many occasions. But every effort will be made to remedy them as soon as possible. That will take time, and it is no good my making promises that it can all be done in a moment, because one cannot inculcate standards of road behaviour and so on in a moment, but we shall do our best to effect a steady improvement as soon as we get the vehicles.

MAJOR KEYSER: Mr. Speaker, I am sorry to say that I am disappointed at the reply of the hon. Attorney General. Ever since I have been in this Council this question of speeding of heavy vehicles on our roads has been under discussion. It nearly always comes up for discussion in select committees on the draft estimates. Ever since I can remember we have been fobbed off with the same answer, that the staff is not present.

First of all I should like to say that this is a service which we are asking for which will show, to my mind, a very big dividend. What is required? Recently I have not been on the road much because I have been flying, but in the past I used to do 2,000 miles a month on the roads between Kitale and here. Had I been a policeman I could have got 8 or 10 cer-

tain convictions almost every time of heavy vehicles for exceeding the speed limit. All you want in this case is a European policeman and an African askari with him for evidence, and a civilian car. It is quite useless having a yellow car with "Police" written all over it, because as soon as it appears on the horizon everything will slow to ten miles an hour and run in perfect order. All you want is an ordinary old "Tin Lizzie" with these two chaps sitting in ambling along at a slow speed and picking up these chaps. (Laughter.) I honestly cannot see why over a period of some six years or so we could not have got hold of these two chaps and the old "Tin Lizzie", for it would have paid enormous dividends, instead of costing this country a colossal amount of money on roads.

I repeat, I am disappointed at the reply given us.

MR. MATHU: Mr. Speaker, I am really in agreement with the motion, but I do not think it goes far enough. It asks us to control the speeding of heavy vehicles. I would like to go further and ask that control should be extended to all vehicles, because to say that light vehicles should have no speed limit is utter nonsense. I have seen on the roads that I travel over twice a day for 30 days a month cars doing 60 to 70 miles an hour. There was an accident only a few months ago on the Great North Road when an African was killed by a car, and nobody saw it at all. Light cars knock against everybody, trees, and so on. (Laughter.) Hon. members will recollect that I had a car which knocked against a tree! Why should not their speed be controlled? I shall support this motion if the hon. member agrees to a slight amendment, to delete the word "heavy", when I would vote wholeheartedly for it.

If you like, I formally move that the motion be amended by deleting the word "heavy".

MR. INGOTIA seconded.

MR. JEREMIAH: Mr. Speaker—

THE SPEAKER: I think the only question now before us is whether the word "heavy" should stay in the motion or go out.

MR. COOKE: I am in a rather difficult position, because I want to speak on the motion. If I am out of order you will no doubt warn me, Sir.

THE SPEAKER: The amendment takes precedence of the motion and we must get rid of it, if you do not speak and chance the amendment being put and disposed off!

MR. COOKE: I am voting for the amendment and the original motion.

THE SPEAKER: You will understand that I am not preventing you from speaking on the motion. When we have disposed of the amendment you will be able to speak again on the motion.

MR. COOKE: On the amendment as well as the motion? Speaking on the amendment, it is six months or more ago that I asked a question on the subject, when the assurance was given that in a short time there would be enough traffic police to control the roads. I hope the hon. Attorney General does not mean to say now that we have got to vote extra financial provision but that it comes within the present financial provision. I agree with the hon. member that we cannot go on asking for assurances indefinitely. I have not had time to consult Hansard, but it must be over six months ago that I got the assurance.

THE SPEAKER: The main subject of the motion is "That the opinion of this Council is that the Commissioner of Police should be instructed to provide sufficient number of traffic police to operate on roads outside the municipalities". The other part of the motion is largely a matter of redundancy and does not bind anybody to any opinion very much. I thought that if after debating whether this motion should apply to heavy or light vehicles, that could be disposed of quickly so that we could get to the substance.

MR. MACONOCHE-WELWOOD: I wish to speak against the amendment on these grounds. As there is no speed limit for light vehicles outside the built-up areas, I do not see how the police can control speed. In England, after a great deal of exhaustive study of the question, the speed limit on light vehicles was removed and imposed only in built-up areas. I do not see how the amendment is of any value at all or, in fact, correct in law.

THE SPEAKER: Does anybody else wish to speak on the amendment?

MAJOR KEYSER: Is the amendment in order seeing that the police cannot take action?

THE SPEAKER: The only way of disposing of that is to hear what the hon. Attorney General has to say.

MR. O'CONNOR: As soon as I was quite sure whether we were talking on the amendment or the motion, I intended to say that I really do not see how in the present state of the law this amendment could be put into effect. I think that if Council desires to introduce a speed limit on light vehicles, which would be a far-reaching change, this would not be the proper way to approach it, and therefore I must oppose the amendment because I do not see how we can carry it out.

The question of the amendment was put and negatived.

The debate on the original motion was resumed.

MR. COOKE: I thought that by making another point at that moment, I would give the hon. gentleman an opportunity of replying. In fact, I was cleverer than you thought, sir, but he has let that opportunity pass because he cannot speak again on the motion. Perhaps some other hon. member would reply.

MR. RANKINE: Mr. Speaker, my hon. friend has asked me to state that no further financial provision is required. All that he does want, in order to make an attempt to carry this out, is to get the vehicles and the men for whom he has already asked and who have been provided but have not yet arrived, or have not been able to be recruited.

He also asks me to add that the Police have set a large number of traps and have in fact obtained a large number of convictions.

LADY SHAW: Mr. Speaker, I do not wish to say very much in reply.

Although some of my colleagues have expressed disappointment at the fact that the hon. Attorney General can give no immediate assurances, I myself am not really disappointed, but I am extremely surprised to hear any assurances given which embrace so short a period as three months. I am personally rather gratified at that reply, because I believe it is the first time Government has ever made a reply to a question on roads or traffic which has raised so short a period as three months. (**MR. COOKE:** Wait and see.) Whether it happens or not, I feel

[Lady Shaw]
We have been given a date line and I have been asked to ask again about it if nothing happens, and I certainly shall. (**MAJOR KEYSER:** You will have to.)

The question of speed limits on vehicles being enforced outside the towns, the shortage of traffic police, and the balance between crime and speed, and that sort of thing, of course I perfectly recognize, but there are a large number of police operating on traffic not outside the municipal area. If you park your car anywhere you should not, you are fully aware that there are numbers of traffic police about.

The only thing I am very disappointed about is that throughout the debate the Special Commissioner for Works has not been here, because if he had been I should have asked him to second my motion!

The question was put and carried.

TRADE UNIONS (REGISTRATION) BILL

SECOND READING

The debate was resumed.

MR. O'CONNOR: When we adjourned I was repeating certain statements which had been made by the hon. member Mr. Madan, and I wish to emphasize that they are without foundation.

To leave that point, I want now to deal with the main point which has been made in objection to this Bill, and that, as I understood it, was this, that hon. members, especially the hon. Member for African Interests, Mr. Mathu, could not see the necessity for the Bill, because he said that there were adequate powers already existing for cancellation of the registration of a trade union, if that was desired, and he mentioned the three cancellations which in fact took place.

Now, those cancellations—I speak subject to correction—my impression is that those cancellations have all been voluntary cancellations upon amalgamation with other unions or because the union itself has become defunct. Power does not exist, as I read the Trade Unions and Trade Disputes Ordinance, for the cancellation of trade unions whose constitutions do not conform to the requirements which were inserted by the 1948 Ordinance. If it did, then possibly this

Bill would be unnecessary, but as it does not exist, the only way in which we can bring all the trade unions into conformity with the pattern which this Council has laid down for trade unionism here is by requiring trade unions which were registered before the recent amending Ordinance to re-register. Then they will be required to conform and to amend their constitutions or their organizations as required. That is what the Bill provides for, and if it is the intention of the Council that trade unionism in this country should be regulated in accordance with the law which was made in 1948, that I think is the only way to secure that that should be done.

Now may I deal with the hon. member Mr. Patel's point. He complained that there was a habit in legislation of doing something, and then undoing it. This is exactly the contrary case. This is doing something and obliging everyone to conform with what has been done, so that I trust that I may rely upon the support of the hon. member Mr. Patel to this Bill.

I think I have dealt with the points which were raised. I said that Council was wise in making these requirements in 1948 and, if we are to have a properly regulated trade union system in this country and if it is not to be open to great abuse, then those provisions should be complied with. I suggest that it is useless having them complied with by only a small proportion of the unions in the country. May I again reiterate that this is not a Bill against trade unionism; it is a Bill to regulate trade unionism on tried and proper and sensible lines. (Applause.)

MR. HOBSON: Mr. Speaker, after the careful explanation made by my hon. friend the Attorney General, who has replied, I think, to all the points which were raised on the other side of Council, I only wish to say one thing, and that is to thank my hon. friend the Member for Rift Valley for his support and to assure him what I think he must already know after listening to the debate and to my hon. friend's explanation of the Bill, that this measure will help the workings of trade unions in this Colony.

The question was put and carried.

DISTRICT COUNCILS BILL

LADY SHAW: Mr. Speaker, the European Elected Members, in view of certain representations that have been made, have asked that this Bill should be postponed.

MR. MORTIMER: I have no objection to the postponement. I understand that the reason for the postponement is that the district councils themselves have not had adequate time to study the Bill. Although I have no objection to the postponement, I do suggest that there has been ample time for district councils to study the Bill, in that it has been under discussion with councils in every detail for the last two years, but I quite understand that hon. members opposite have not themselves had full time to study the Bill and confer with district councils. I therefore have no objection to raise to a proposal that the second reading be postponed to the October Session of this Council.

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 Customs Tariff (Amendment) Bill, the Kenya Police Force Reserve (Amendment) Bill, the British Nationality (Offences and Fees) Bill, the Mombasa Shop Hours Bill, the Native Trust Fund (Amendment) Bill, the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill, the Evidence (Bankers' Books) (Amendment) Bill, the Protected Areas Bill, the Control of Hotels (Amendment) Bill, the Income Tax (Amendment) Bill, the Radio-active Minerals (Amendment) Bill, the Crown Lands (Amendment) Bill and the Trade Unions (Registration) Bill.

MR. HOBSON seconded.

MR. VASEY moved: That the motion be amended by deleting the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill.

This was accepted and the motion as amended was put and carried.

Council in committee. The Bills were considered clause by clause.

Kenya Police Force Reserve
(Amendment) Bill

Clause 3:

MR. HOBSON: moved: That the clause be amended by inserting the word "imminent" before the word "danger" in line 3.

The question of the amendment was put and carried.

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

Mombasa Shop Hours Bill

Clause 4:

MR. O'CONNOR moved: That clause 4 (1) (a) be amended by inserting after the words "carried on therein" where they occur the words "by any shop assistant or journeyman".

The question of the amendment was put and carried.

MR. O'CONNOR moved: That clause 4 (2) (b) be amended by substituting for the words "exempt any shop" the words "exempt, subject or not to conditions".

The question of the amendment was put and carried.

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

Clause 5:

MR. O'CONNOR moved: That clause 5 (3) be amended by substituting for the words "within fourteen days of" which occur therein, the words "so soon as may be practicable after".

The question of the amendment was put and carried.

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

Clause 6:

MR. JEREMIAH moved: That the words "forty-five" be substituted for "forty-nine" in sub-clause (1) of clause 6.

My reason for saying that is that I think 49 hours a week is rather too long. I believe that in most cases the number of hours' work performed by people is from 7 to 7½ or 8 per day, but in this case it is 9 hours for 5 days, and the balance on Saturday. I think that is too much, especially when we consider the type of people we are referring to, that is shop assistants and journeymen and so

[Mr. Jeremiah]

on. To expect them to work efficiently for 9 hours a day is too much.

MR. USHER: Mr. Chairman, I beg to oppose. The provisions of this Bill have been before all concerned in Mombasa, where also there is an African Advisory Council. The Bill has had the careful consideration of both the Chamber of Commerce and the Municipal Board, which is concerned very much in its administration, and no local representations have been received. It is difficult to oppose a mere matter of opinion which is of its nature entirely arbitrary. I am personally not convinced of the necessity for any such alteration, and I beg to oppose it.

DR. RANA: Mr. Chairman, I rise to oppose the amendment. I really cannot understand the object in moving it, but I can assure the hon. member, as a member of the Mombasa Municipal Board and living at Mombasa, that this question of 49 hours has been thoroughly discussed and agreed to by all the interested parties, including the African Native Council. I think he is labouring unduly the question of hours. Actually in Mombasa it is only for a few hours that most of the shops do business, at other times they are either sleeping or dozing in their shops. Also, as a medical man, I can tell him that I find the greatest amount of sickness among people who do not want to work. (Laughter.) You notice that politicians all over the world work up to the age of 70 years, and the more they work the longer they live! I would assure him that if he himself will devote more time to really honest work, he will see that it is more useful. I strongly oppose the amendment. If it had been a question of more hours I would have supported it.

MR. MORTIMER: Mr. Chairman, I must join in the opposition to this amendment. I would point out to the hon. member that the provision for 49 hours is a maximum and is, I venture to say, although I cannot prove it, a considerable improvement upon existing conditions in a great number of shops in Mombasa, where the assistants in the past have been required to work very much longer hours than are mentioned in the Bill. As has already been pointed out, this Bill has been discussed and re-discussed over quite a long period. Everyone in Mombasa who felt they ought to make representations about

it has had an opportunity of doing so, and never before to my knowledge has this question been raised. I must oppose the amendment.

MR. JEREMIAH: Mr. Chairman, I am very grateful for the explanation given by the hon. members concerned, but at the same time I think they forget one point, and that is the point of the labourer himself. It has been mentioned that the intention of this Bill was to improve the lot of the people, which I am quite sure is the reason, but if we include them we should include them in the proper category, and that is giving them the recognized hours of work, which is eight hours a day. That is what is done in Nairobi. Many people work less than eight hours a day. I am sorry I am being opposed, I myself have been a worker for a long period and know how hard it is. Most of the members have been masters nearly all the time. I still think the words "forty-five" should be substituted for the words "forty-nine".

MR. HOPE-JONES: Mr. Chairman, I do not wish to debate this question, but just to inform hon. members that this matter was considered by the Board of Commerce and Industry, which has African representation on it, and the Bill was agreed to unanimously by the Board of Commerce and Industry, including the African representatives. For the information of the hon. member who has just sat down, there is one aspect that the Board of Commerce and Industry was particularly concerned with, and that was service to the public. Shops, after all, exist not only to give good conditions to shop assistants and managers, but to serve the public. As most of the public have to work 8, 9, 10 and 12 hours, I think it is quite reasonable to ask shop assistants, in common with others serving the public, to work 49 hours, and that was the unanimous opinion of the Board of Commerce and Industry.

MR. VASEY: Mr. Chairman, I have only one comment, and that is, everybody desires to improve the conditions of labour, but in a developing economy, if you are not careful, you can improve conditions of labour to such an extent that you improve them out of employment. That is a possible danger.

The question of the amendment was put and negatived.

The question that the clause do stand part of the Bill was put and carried.

Clause 12:

MR. O'CONNOR moved: That there be substituted the following—"12. There shall be allowed to every shop assistant or journeyman leave of absence amounting to not less than fourteen days in every year of his service without any deduction in salary or wages, and such leave of absence may be taken, at the option of the shop assistant or journeyman, either in one period or in two periods of seven days each."

The main difference is to allow the Assistant to take his leave in two periods.

MR. VASEY: Mr. Chairman, we are of course instituting in this clause a principle which it took the United Kingdom some centuries to arrive at, the principle of enforced holidays with pay. I would not wish to oppose that principle, if the commercial people in Mombasa feel that they can afford it, but it is the second part of this that I find rather disturbing. It is that such leave of absence may be taken at the option of the shop assistant or journeyman over any one period or two periods of seven days each. You at one time hand to the employer the responsibility of providing a substitute for the shop assistant during leave of absence, or the economic necessity of meeting his pay, and at the same time leave it at the option of the assistant as to the manner in which he shall take that leave. I feel that is a principle which I cannot accept. Where these things are done on the best footing they are, I think, done by agreement between the employer and the employee, without its being put into legislation, and I feel that I should give notice of a further amendment to delete the comma after "wages" in the fourth line of the suggested substituted clause, and delete all the words thereafter.

MR. BLUNDELL: Mr. Chairman, I regret I do not feel I can support clause 12. I agree with the hon. Member for Nairobi North that it introduces a new principle which has been secured in Great Britain, but the difficulty in which I find myself is that I think it is the first time we have had it in legislation in this country and, if we agree to this now and it was established that the principle was accepted, it

might well extend throughout the country for all classes of labour.

The only point I want to make is that I do not like to agree to such a principle without very considerable thought upon the economic consequences which may follow if the principle extends to workers throughout the Colony. I would have preferred to have had clause 12 ending: "amounting to not less than 14 consecutive days, etc., on such terms and conditions as may be mutually agreed."

MR. USHER: It has been said before, and I must repeat it, that this is a measure which has had the full consideration for some considerable period of those who are concerned with it. An amendment to the original Ordinance—not the amendment which has been suggested now—was put forward by the Chamber of Commerce and Agriculture in Mombasa, and it may therefore be supposed to apply to the conditions of work of shopkeepers and journeymen there. As to the possibility of its affecting other parts of the country, I cannot say, but I must keep to what I have been asked to represent in this Council. I must oppose the amendment now before the committee.

MR. MACONOCHE-WELWOOD: Mr. Chairman, I must also oppose this clause from the same point of view as the hon. Member for Rift Valley. Furthermore, in a country where a large proportion of the inhabitants are in the habit of being absent without leave for long periods, far more than 14 days on the average, I do not think this country is ready for such a clause and, whatever the hon. Member for Mombasa may say, I feel that there is a very grave danger that, once it has been accepted in one town, sooner or later the Member for Labour will endeavour to introduce it for all classes of employees in the Colony.

DR. RANA: Mr. Chairman, I rise to oppose the amendment moved by the hon. Member for Nairobi North. I do not want to waste the time of the committee. As has been stated before, this matter has been thoroughly discussed. The only thing I would add is that there is no argument for putting Nairobi and Mombasa on a par as far as working hours are concerned. Already we get two hours for lunch, between 12 and 2. You get one. Nobody has grumbled about it. The same thing applies to leave, and I would re-

[Dr. Rana] in matters of this kind where the local inhabitants of all classes have been consulted, and the matter has been gone into thoroughly, there should not be personal views on the issue, and I strongly oppose the amendment.

MR. BLUNDELL: Would I be in order, Sir, in moving the deletion of the clause altogether?

THE CHAIRMAN: Yes.

MR. BLUNDELL moved: That the clause be deleted.

MR. PATEL: On a point of order, this matter of the principle of payment for leave was not raised at the time of the second reading. The hon. Member for Rift Valley says it is a matter of principle. If it is a matter of principle, it should have been raised on the second reading. (Hear, hear.)

MR. COOKE: Does not this clause show how much further advanced Mombasa is than the rest of the country, in the social sense?

THE CHAIRMAN: It is not a matter in which I can express an opinion.

MR. VASEY: Does not this clause show how irresponsible Mombasa may be in the economic sense from time to time?

MR. HOPE-JONES: I move that the question be put.

MR. VASEY: On a point of order, may we know which question? (Laughter.) The question was put and carried.

THE CHAIRMAN: The last immediate one is taken first, and then all the others are taken immediately automatically afterwards. The first proposal I have before me is to substitute a new clause for clause 12. It is then proposed to amend the new clause—that was the hon. Member for Nairobi North's amendment. I will take that first.

The question of the amendment of the hon. Member for Nairobi North was put and negatived on a division by 21 votes to 5, the hon. member pairing with the hon. Special Commissioner for Works. Ayes: Messrs. Blundell, Havelock, Maconochie-Welwood, Preston, Lady Shaw, 5. Noes: Messrs. Chemallan, Cooke, Deverell, Erskine, Hobson, Hope-Jones, Hyde-Clarke, Ingutia, Jeremiah,

MacLennan, Mortimer, Nathoo, O'Connor, Padley, Patel, Patrick, Rana, Rankine, Salim, Shatry, Usher, 21.

MR. HOPE-JONES: Mr. Chairman, is it in order for the hon. member moving an amendment, in the absence of any indication of the other party's views, as it was unknown that this amendment was coming up, for him to pair?

MR. VASEY: On a point of order.

THE CHAIRMAN: Order, order! I could not quite get what you said at the end.

MR. HOPE-JONES: On the assumption that the amendment was moved rather suddenly, as a result of a previous amendment, is it in order, in view of the fact that the views of the hon. member absent could not possibly be known, for the mover of that amendment to pair?

MR. VASEY: On a point of personal explanation, as I judged from the hon. Member for Commerce and Industry that, irrespective of his personal feelings, he was voting together with the Government, I surmised that my personal honour was involved in my agreement with Sir Godfrey Rhodes that I would pair with him during his absence on official business.

THE CHAIRMAN: Having heard the hon. Member for Nairobi North and the hon. Member for Commerce and Industry, as it has been the custom in the past for members to pair, having paired they cannot therefore vote.

The question of the substitution of the new clause 12 was put and carried.

MR. VASEY: On a point of order, was the hon. Member for Commerce and Industry in order in suggesting that the three questions should be put, and is it the intention to stifle debate from this side of Council?

MR. HOPE-JONES: On a point of personal explanation, when I moved that the question be put I was naturally referring only to one question; otherwise I would have said it be put three times.

MR. COOKE: My sense of propriety in such matters is that when anyone pairs, it means he is going to be absent from Council and, if he is absent from Council, he cannot propose an amendment or take any part. Otherwise I cannot see any meaning in the term "pairing".

Mr. HOPE-JONES: That, Sir, was the point.

Mr. VASEY: On a point of order, if pairing means that one is prevented from expressing one's personal opinion, then the system of pairing, which I think is essential to protect hon. members opposite, must break down completely.

THE CHAIRMAN: As you have raised this matter again, I should be perfectly willing to go into it and study it, to see whether that is so or not, but as at present advised I must adhere to what I said originally.

Mr. VASEY: I have no comment to offer. It was merely that I did not wish to see any practice instituted which stifles free discussion. Members may feel from time to time that time is taken up or wasted in the expression of opinion, but that is the basis of a parliamentary system and it is a basis we must try and stand by.

Mr. HOPE-JONES: On a point of personal explanation, if I had intended in moving that the question be put that the questions should be put on all three motions, I would have got up again and suggested that it be put, and then would have got up again. I have no intention of stifling discussion. I merely felt that the time was ripe, and hon. members apparently agreed with me, on the first amendment.

Mr. RANKINE: On a point of order, it is within the Standing Rules and Orders that a member at any time may move that the question be now put, and that is for the Council to decide. It is only for the Council to decide, and I do not think it is right to suggest that there is any desire to stifle debate. If the Council feels that further debate is required, it can reject the motion.

Mr. VASEY: I agree thoroughly with the hon. Chief Secretary. I merely wish to point out to members that when the majority are in favour of a certain measure, it is very easy for the majority to move that the question be put, but that is not a wise principle in parliamentary procedure to be adopted too often.

Mr. HOPE-JONES: I have not noticed the hon. Member for Nairobi North . . .

THE CHAIRMAN: I must stop points of order turning into a sort of inchoate debate in which we have no question and

cannot decide anything. The Council agreed to the question being put, and the Council having agreed to the question being put, I must put the consequential question which depended on the question, and the last one is that clause 12 be deleted.

The question that clause 12 stand part of the Bill was put and carried by 20 votes to 5, the hon. Member for Nairobi North pairing with the hon. Special Commissioner for Works. Ayes: Messrs. Cooke, Deverell, Erskine, Hobson, Hope-Jones, Hyde-Clarke, Ingutia, Jeremiah, MacLennan, Mortimer, Nathoo, O'Connor, Padley, Patel, Patrick, Rana, Rankine, Salim, Shatry, Usher, 20. Noes: Messrs. Blundell, Havelock, Maconochie-Welwood, Preston, Lady Shaw, 5.

Mr. O'CONNOR moved: That the Kenya Police Force Reserve (Amendment) Bill and the Mombasa Shop Hours Bill be reported with amendment and the Customs Tariff (Amendment) Bill and the British Nationality (Offences and Fees) Bill without amendment.

Council resumed, and the hon. member reported accordingly. The report was adopted.

THIRD READINGS

Mr. O'CONNOR moved: That the Customs Tariff (Amendment) 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 Kenya Police Force Reserve (Amendment) 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 British Nationality (Offences and Fees) 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 Mombasa Shop Hours Bill be read the third time and passed.

Mr. HOBSON seconded.

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

EAST AFRICA HIGH COMMISSION SERVICES

Mr. VASEY: Mr. Speaker, I wish to raise a matter of importance to this Council, with your permission.

The East Africa High Commission and the services under its control are now completing their first year of operation, and various annual reports are being issued. I do feel that these annual reports are of concern to members of this Council, because this Council must vote the money needed for the operation of those services from time to time. I would ask Government, therefore, to take steps to see that such annual reports of those services are laid on the table of the Council and that copies are made available to all members of the Council in order that those members may be fully informed of the operation of the services.

Mr. RANKINE: Mr. Speaker, I shall be happy to endeavour to see that the annual reports are laid on the table of this Council and that members are supplied with copies. I am not certain off-hand whether there is one annual report or a series of annual reports, but I will make inquiries into that. So far as the annual report of the High Commission is concerned, I have been in touch with the Administrator, and I am advised that a very limited number of copies were received by air mail but that the balance are coming by sea, and that is the only reason why copies have not been made available for laying on the table of this Council. As soon as the copies coming by sea are received it will be laid.

ADJOURNMENT

Council rose at 12.50 p.m. and adjourned till 10 a.m. on Tuesday, 16th August, 1949.

Tuesday, 16th August, 1949.

Council reassembled in the Memorial Hall, Nairobi, on Tuesday, 16th August, 1949.

His Honour the Speaker took the Chair at 10.05 a.m.

The proceedings were opened with prayer.

MINUTES

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

PAPERS LAID

The following papers were laid on the table:—

By Mr. RANKINE:
Annual Report for 1948 of the East African Tsetse and Trypanosomiasis Research and Reclamation Organization.

By Mr. MATTHEW:
Standing Finance Committee report on Schedules of Additional Provision No. 5 of 1948 and No. 1 of 1949.

By Mr. MORTIMER:
Select committee report on stamp duties.

By Mr. HOPE-JONES:
Annual trade report of Kenya and Uganda for 1948.

ORAL ANSWERS TO QUESTIONS

No. 38—WATER RESOURCES

Mr. HAVELOCK:

(a) Is it correct that applications for water permits are no longer referred to district councils?

(b) If the answer to (a) is in the affirmative, is it the policy of Government to dispense with the advice of district councils on matters concerning water, land, etc., in their areas which vitally concern them and about which they have local and detailed knowledge?

(c) If the answer to (b) is in the negative will Government revert to the former practice and refer such matters to district councils in future?

MAJOR CAVENDISH-BENTINCK: It is assumed that the question refers to water rights and sanctions, since the term "permit" is no longer in use.

Applications for water rights and sanctions are referred to regional water boards on which district councils, production

[Major Cavendish-Bentinck] committees and many other interests are represented. It is open to regional water boards to refer applications to district councils in cases where such reference is desirable.

It is evident, therefore, that it is not the policy of Government to dispense with the advice of district councils on matters concerning water.

It is not proposed that Government should revert to the former practice of referring all applications for water rights and sanctions to district councils since regional water boards are fully representative of all interests, and their responsibilities correspond to natural drainage areas and not to the arbitrary administrative boundaries.

Before the existing procedure was introduced, district councils were consulted individually and also collectively at a representative meeting held with a committee of the Water Board on the 29th October, 1945, and all agreed to the setting up of five regional water boards, each concerned with a natural drainage area. It was also agreed by all concerned that regional water boards should take over the functions of district councils as far as water was concerned.

NO. 39—GILGIL-NAKURU REALIGNMENT MR. BLUNDELL:

In view of the public statement that the new alignment of the railway from Gilgil to Nakuru will be opened from 1st September, 1949, and the old (or existing) alignment closed from that date, will Government give an undertaking that the recommendations of the Boyd Committee on the Railway Realignment will have been implemented in full by that date?

MR. RANKINE: No, sir.

It is assumed that the hon. member is referring to the recommendation of the Boyd Committee respecting the provision of roads in the Elmenteita-Eburru area. The hon. member will recall that the committee recommended the construction of two new roads, namely the Gilgil-Elmenteita link road some 10½ miles in length, and a new circular road from Elmenteita to Gilgil via Eburru, a distance of approximately 23 miles. As the intention is to construct the latter road along the existing railway alignment, work on this

road obviously cannot be started until the existing track is lifted. As regards the Gilgil-Elmenteita road, it is expected that by the end of August this road will be opened to traffic throughout its length though the final surfacing may not be entirely completed.

In addition to these two roads, the committee recommended that the existing roads between Elmenteita and Enderit River should be improved. Both these roads are the responsibility of the Nakuru District Council and are considered adequate for present traffic requirements. The question whether any improvement is justified will be examined when the construction works in respect of the two new roads have been completed.

The hon. member will recall that the cost of constructing and improving the roads I have mentioned was estimated by the Boyd Committee to be about £69,000; this included bituminizing the Elmenteita-Gilgil link road and the road between Elmenteita and Enderit River. As however the present estimated cost of constructing these roads to an all-weather murrum standard exceeds £100,000, and negotiations with the East African Railways and Harbours Administration have so far resulted in an offer by the Administration to contribute £48,000 only towards the costs of these roads, it is not possible to contemplate a bitumen standard.

MR. BLUNDELL: Mr. Speaker, in view of the unsatisfactory answer to my question and in fairness to the hon. Chief Secretary, I shall beg leave to raise this matter on the adjournment, either on Wednesday or Thursday, when the hon. Special Commissioner of Works is present.

NO. 40—SWEEPSTAKES

MR. COOKE:

Is Government aware of the anxiety felt by a large section of the public of Kenya of all races regarding the dangers inherent in sweepstakes in this Colony? If so, will they state what steps they propose to take?

MR. O'CONNOR: Government is well aware of the anxiety felt by certain sections of the public regarding the dangers inherent in sweepstakes and has recently had the whole question under consideration. It is understood that the Commis-

[Mr. O'Connor] sioner of Police is about to impose new and considerably more stringent conditions upon the conduct of public lotteries.

PAIRING OF MEMBERS

MR. COOKE: Mr. Speaker, on a point of order before proceeding to the business, could you give a ruling on the question raised on Friday last about the right of a member who is here taking part in a discussion in this Council abstaining from voting when the question is put because he has paired with another member?

MR. VASEY: On a point of order, perhaps I might make a personal statement on this particular matter.

A number of members on this side of Council have felt that with the appointment of Sir Godfrey Rhodes as Special Commissioner for Works it will be far more advantageous to the Colony if he were free to go out into the Colony and tackle the work for which he was appointed. In consequence of that, it was arranged at the request of a number of members on this side of Council that whenever Sir Godfrey was absent and he would have been likely to vote with the Government, some member on this side would agree to abstain from voting. That position has arisen from time to time. It has fallen to my unenviable lot as chairman of the European Elected Members Organization, which agreed to this measure after discussions, to pair with Sir Godfrey from time to time. But I must state that if the result of this is that I am to abstain from discussion on any point during a sitting of this Council, obviously the arrangement must be withdrawn.

THE SPEAKER: Has that been a practice here of long standing?

MR. VASEY: It is correct to say that this practice was introduced with the unofficial majority.

MR. COOKE: It has never arisen before. I do not want to unduly impress you, sir, but I have a copy of May which I really brought to impress other members! But there is nothing in it bearing directly on the point.

THE SPEAKER: There is this, the learned author describes the system in this way: "A system known by the name

of 'pairs' enables a member to absent himself and to agree with another member that he also shall be absent at the same time. It is an arrangement normal in the House of Commons by mutual arrangement. That is as far as May goes."

MR. COOKE: That was my point.

THE SPEAKER: It would be quite easy to arrange, if you wanted to help the Special Commissioner, that one member or another should pair and should not vote. But we have no authority on it, and I ruled the other day that it seemed to me we were not doing any damage to anybody. It was only a question of following strictly House of Commons' practice, but I agree it is a practice which does no great harm as far as I can see to anybody.

MR. COOKE: The argument is this. For instance, the eloquence and persuasive power of the hon. Member for Nairobi North could persuade other members of the Council to vote, and thereby by losing his vote he captures others. That is the principal argument against pairing. Obviously if it is mentioned in May it must be for some good reason.

THE SPEAKER: Whatever has been done has been done, and no ruling I can give can alter that.

MR. VASEY: On a point of order, sir, I suggest that this is not governed by Standing Rules and Orders at all but is a matter left to the good sense of members opposite. As long as I am convinced that the good sense of the Council will prevail and enable members to go out and do the work for which they were selected to do I shall continue the practice, unless it arrives at the stage where it is an abuse of the privileges of the Council, when I am sure you will rule me out of order.

MR. COOKE: Mr. Speaker, I would like a definite ruling on it if possible as to whether it is in order or out of order, according to the customs and usages of the House of Commons.

MR. VASEY: Sir, on another point of order, may I ask whether the House of Commons has even seen Government in a permanent minority? (Laughter.)

THE SPEAKER: Never!

MR. O'CONNOR: Sir, may I suggest that your ruling on this point be post-

[Mr. O'Connor]

poned? It occurs to me that it may not be a point on which you should rule, because voting by members is a matter for themselves. I think the whole thing had better be gone into rather carefully, and I suggest we should have more time to consider it.

MR. COOKE: Yes.

THE SPEAKER: I will read a further passage from May: "There can be no parliamentary recognition of this practice, although it has never been expressly condemned; and it is therefore conducted privately by individual members, or arranged by the whips of the respective parties". It does seem to me that, having read this and having heard what both hon. members have said, it is not strictly a matter on which the Speaker should rule at all.

BILLS

FIRST READINGS

On the motion of MR. O'CONNOR, seconded by MR. HOBSON, the Deportation (Immigrant British Subjects) Bill and the Deportation (Allens) Bill were read a first time, and notice given to move the subsequent stages this session.

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 Native Trust Fund (Amendment) Bill, the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill, the Evidence (Bankers' Books) (Amendment) Bill, the Protected Areas Bill, the Control of Hotels (Amendment) Bill, the Income Tax (Amendment) Bill, the Radio-active Minerals (Amendment) Bill, the Crown Lands (Amendment) Bill, and the Trade Unions (Registration) Bill.

MR. HOBSON seconded.

The question was put and carried. Council went into committee. The Bills were considered clause by clause.

Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill

Clause 2:

MR. VASEY moved: That clause 2 be deleted and the following substituted therefor: "Amendment of section 4 of

the principal Ordinance. 2. The following sub-sections shall be substituted for sub-sections (2) and (3) of section 4 of the principal Ordinance: (2) if a person acts in contravention of this section he shall be liable to a fine not exceeding one hundred pounds or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, and a person convicted of an offence under this section may be disqualified from holding or obtaining a certificate of competency for a period of twelve months from the date of the conviction or for such longer period as the court thinks fit. (3) This section shall not apply to any motor vehicle owned by the Government of the Colony or by the East Africa High Commission, or to a motor tractor, or other motor vehicle used solely or mainly for agricultural purposes, if the use of such motor tractor or other motor vehicle on a road consists only of moving it by road from one part of the land of the owner thereof to another part of the land of such owner."

That, I think, maintains the principle of a very heavy fine or punishment for people who do not take out a third party insurance policy in accordance with the provisions of the Bill. It leaves it, however, to the discretion of the court as to whether the certificate of competency shall be suspended, and it leaves the period of suspension also to the discretion of the court. Sub-clause (3) allows motor vehicles used for agricultural purposes to be moved on a public road from one part of the farm to another without being subject to the provisions of the Bill.

MR. RANKINE: Mr. Chairman, we had an argument on this point during the second reading, and during that debate I expressed the view that it should not be discretionary on the part of a magistrate to cancel the certificate of competency in the case of a conviction; that it should be mandatory. I do not wish to go over all the arguments again. I think the hon. Member for Ukamba, in moving her motion the other day and describing some of the dangers that are encountered on the roads of this Colony, supported my arguments to the full. I would merely say that, in my view, anyone who fails to take out a policy of third party insurance is as much a danger on the roads as any bad driver. He is a menace

[Mr. Rankine]

not only to other users of the roads but to himself.

LUDY SHAW: Mr. Chairman, in supporting the motion before the Committee, I should like to say that I had no intention of supporting the arguments of the hon. Chief Secretary, but I think that in this case we should be able to trust the magistracy to impose the very strongest penalties within their power on people who have quite obviously intentionally evaded the law. I am all for it, and this motion does not for one moment suggest that the penalties should not be imposed on people who are acting in a dangerous manner with intention, or as a result of quite obvious criminal neglect. But there have been cases where such neglect is quite probably unknown to the person concerned. For instance, I might very well borrow the hon. Chief Secretary's car in order to go and find something for him at the Secretariat, and I would not think of asking him whether he had taken out a third party insurance policy, but if someone stopped me and asked me for it I should lose my licence, and so would he. I think there are very many cases where discretion on the part of the magistrate should be used and, if people who are driving to the danger of the public, or neglecting to take out third party insurance policies intentionally, then I think there is no argument about it, the heaviest penalties must be imposed on these people. But I do not think my arguments in any way supported the mandatory penalty that the hon. Chief Secretary suggested that they did support.

MR. COOKE: In the past the judiciary has issued circulars to magistrates advising them to be more stringent in certain cases and to inflict heavier penalties. Would that not meet the case?

THE CHAIRMAN: I should not be prepared to answer such a question without notice. (Laughter.) (MR. COOKE: It is a rhetorical question.)

MR. MACONOCHE-WELWOOD: Mr. Chairman, in supporting this amendment I should like simply to say this, that we are not really discussing the question of people not being insured. What we are discussing is whether we accept the principle that this particular offence is so much more heinous than almost any other offence on the statute book that discretionary powers cannot be allowed

to the magistrate. I submit that, if you are going to accept the idea that the penalty shall be obligatory on the magistrate in this case, logically you must put mandatory penalties for all sorts of other crimes. So far as I know, it is not done. There are no mandatory penalties as far as crimes of violence, burglary and all the more vicious crimes are concerned. It is always left to the discretion of the magistrate. It would appear to me from the arguments used on the other side of Council by the hon. Chief Secretary that he has the most lamentable opinion of the power of magistrates in this Colony to administer justice. I do not share his pessimism. I believe that it should be within the power of magistrates and within the power of judges to make the penalty fit the crime, and I would be no party to emasculating the powers of magistrates and judges in this way.

MR. RANKINE: Mr. Chairman, I am afraid that I have failed to make my point clear. I do not in any way doubt the responsibility or the proper sense of magistrates to inflict a proper penalty. My point simply was that by the time the offence takes place the damage is done, and it is no good then crying over spilled milk. The object of the suggested amendment, or rather the opposition to the amendment, was to make quite certain that everybody did take out a policy of insurance. If he fails to do that, and if there is an accident, it is no use then either penalizing him or disqualifying him, because as I have said the damage is done. That does not help the widow or other person who may suffer, and the whole object of having this in the law is, as my hon. friend the Attorney General suggested, *in terrorem*; in other words, to draw it to the attention of everybody, so that they do not forget to take out a policy of insurance.

MR. VASEY: Mr. Chairman, I must respectfully point out that we have not as it were lessened the penalty. There is still the fact that, if a man fails to take out a third party insurance policy, acting in contravention of this particular section, he is liable to a fine not exceeding £100 or to imprisonment for a term not exceeding six months, or to both such fine and imprisonment, as in the old Ordinance. I suggest that is a pretty heavy penalty for failing to take out a third party insurance policy. On top of

[Mr. Vasey] that, if the court feels that he has willfully neglected so to do, the court is now given the discretion to disqualify from holding a competency certificate for as long a period as is necessary. So I should like to point out that the threat of severe punishment still exists as a deterrent to neglect.

MR. HOPKINS: Mr. Chairman, it seems to me the hon. Chief Secretary's argument which he is labouring is illogical, because even were the penalty mandatory, the damage would still have been done at the time the accident took place.

MR. O'CONNOR: Mr. Chairman, may I first of all point out that there is a very small typing error in the last line of the amendment which has been moved. It should be "part of the land of such owner".

If I may try to crystallize the points in a very short compass, it is this: whether it should be mandatory or not upon the magistrates to forfeit the certificate of competency for one year. As the hon. Member for Nairobi North has pointed out, this amendment will not affect the penalty, which is a fine of £100 or imprisonment for up to six months, and neither does it affect the magistrate's power to forfeit a certificate of competency for one year, or even longer if he thinks fit. The only thing this amendment will do (I speak now of the amendment to sub-clause (2)) is it will remove from the magistrate the obligation to forfeit the certificate of competency for 12 months, unless for special reasons he thinks otherwise. Those special reasons have been rather confined by case law; otherwise it might not be necessary to have this discussion at all.

Having made that point clear, I just want to reiterate what I said in moving the second reading, that Government has put forward this Bill which it considered to be a reasonable compromise, but as I said before, if it is the general opinion of the Council, if there is substantial support for the proposition that not only the penalty but the forfeiture should be entirely discretionary in the court, then Government would accept that expression of opinion. There is no question of a Government block vote or anything of that kind, and I am authorized to say by the hon. Chief Secretary that every member on this side is entirely free to

vote in whatever way he thinks fit upon this question. (Applause.)

The question of the amendment was put and carried on a division by 17 votes to 11; 6 not voting. Ayes: Messrs. Blundell, Cooke, Erskine, Havelock, Hope-Jones, Hopkins, Keyser, MacLennan, Maconochie-Welwood, Mortimer, Preston, Pritam, Rana, Shatri, Lady Shaw, Messrs. Usher, Vasey, 17. Noes: Messrs. Deverell, Gillett, Hartwell, Hobson, Ingutia, Jeremiah, Mathu, O'Connor, Padley, Patrick, Rankine, 11. Not voting: Messrs. Chemallan, Hyde-Clarke, Madan, Matthews, Nathoo, Salim, 6.

The question that the clause stand part of the Bill was put and carried.

Protected Areas Bill

Clause 2:

MR. BLUNDELL: I beg to move: That the clause be amended by substituting six thirty for seven in line 13.

If we make it 7 o'clock, at certain times of the year it is darkness, and you are largely negating the object of the Bill, but by putting it back by just half an hour you will secure that throughout the year anybody in a protected area will be seen, or if they cannot be seen the Bill will apply.

MR. COOKE: It depends largely in what part of the Colony one happens to be. At Kisumu it is light until after 7 o'clock at night.

MR. O'CONNOR: That amendment can be accepted.

The question of the amendment was put and carried.

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

Clause 3:

MR. ERSKINE: I beg to move: That the clause be amended by substituting "the interests of public safety" for "public interest" in lines 16 and 17; "or expedient in the interests of public safety" would probably mean rather better what was intended. In the margin you will see the reference to the paragraph reads "Protected Areas". I think it is more in the interests of public safety. The words "public interest" have a rather wider scope and I think their scope might be rather too wide for the intention behind this clause.

MR. BLUNDELL: Mr. Chairman, I am a little doubtful whether we should

[Mr. Blundell]

accept that amendment. It is not only a question of public safety which is contained in this Bill. It is also a question of the interest of the public. If you reduce it to only public safety, then it seems to me that it would be difficult for the Member to declare as a protected area a clothing depot or something of that sort. We all know that what we want to get from this Bill is a tighter control of the people who are making depredations on stores of public property. So I would ask the hon. Member for Nairobi South if he would reconsider putting this amendment.

MR. ERSKINE: Mr. Chairman, if one refers to the "Memorandum of objects and reasons" I think it is clear that the intention of this Bill is to increase security measures for the safeguarding of arms, ammunition and other military stores. If there had been any reference to clothing depots, or depots, or to areas engaged in agricultural activity or economic activity, then I would have considered that "public interest" would have been the right words, but I have a feeling that there is a danger in those words "in the public interest" in a Bill of this kind.

MR. O'CONNOR: Mr. Chairman, I would prefer to keep the wording as it is, mainly for the reason which has already been put forward, that this does not only apply to arms and ammunition, but also to other military stores. Now, those, of course, must be military stores. I mean there is no question of agricultural pursuits or anything of that kind, as has been suggested. But I do feel that the Member would be considerably circumscribed if the suggested words were substituted for the words "in the public interest". It would be difficult, I think, for the Member to say that it was necessary for the public safety perhaps to proclaim even an ammunition dump as a protected area, unless there was in fact some threat to the public safety on a fairly large scale. Therefore I would prefer that those words, which are taken from a precedent, should remain as they stand.

MR. ERSKINE: I am prepared to withdraw my amendment, as I got the impression that the intention will be that public safety will be the guiding factor in this matter.

The amendment was, with leave, withdrawn.

MR. O'CONNOR: I beg to move: That the clause be amended by inserting the figure and brackets (1) after the figure 3 in line 1 and adding a sub-clause (2) as follows: "(2) Any order made under sub-section (1) of this section shall be laid upon the table of the Council at its next sitting". That amendment is introduced to fulfil the pledge which I gave on the second reading that orders would be communicated to this Council.

The question of the amendment was put and carried.

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

Clause 7:

MR. BLUNDELL: I beg to move: That the clause be amended by deleting the words "three times" in line 21.

This is a matter in which I have been much interested, because in the war I saw the terrible results of what thieves and people of that nature can do to these depots, and there is literally very little method of stopping them. If a man has to be challenged three times in the dark, you can write him off; there is no hope of catching him, as by the time you have bellowed three times you have given him the greatest possible warning, to vanish. I know my hon. friend opposite will tell me that this is the normal thing. I will ask this Council for once to be a little unusual. What we are trying to do is to prevent these people taking military stores and in many cases becoming a great danger to the public. I have no sympathy with them whatsoever. They are not even really entitled to be challenged once, but in the interests of mercy I would suggest that we allow them to have one challenge, and then if they do not take the challenge up and behave properly, that should be the end of them, provided the guards are doing their duty properly.

MR. HOPE-JONES: Mr. Chairman, I wonder if the hon. member would agree that doing the rounds is one of the biggest risks anybody took during the war.

MR. BLUNDELL: In answer to that question, surely a thief may be doing the rounds, but not the rounds the hon. Member for Commerce and Industry imagines.

MR. HOPE-JONES: The only point I wished to make was that there are some people who in their lawful duties have to make the rounds in any place where there are sentries. Unless there is some proper challenge, not only will they be written off, in the phrase of the hon. Member for Rift Valley, but so will those making their rounds on their lawful occasions.

MR. BLUNDELL: The point is that when you do your rounds you can carry a lamp or light, and in any case I have not deleted the word "challenge". What I want to get at is that if you have got to bawl out three times you might just as well not challenge at all, because no thief will be stopped or caught.

MR. O'CONNOR: Mr. Chairman, I fully appreciate the right of this committee to think independently upon this or any other topic. The object, of course, is to ensure that whoever is challenged in fact hears the challenge. This is a question where lives may be at stake, and I think it is as well to be perhaps over-cautious, and therefore, anxious as I am to see this Ordinance effective, I would prefer to see the wording remain as it stands. There is, however, this aspect, that I think it could well be argued that, although a man may not hear the first challenge, he is almost certain to hear a second challenge and, if the opinion of the Council is that three times is too much, then I suggest that twice be put in. Otherwise I suggest it be left at three times.

MR. BLUNDELL: By a process of bawling, I will accept twice. (Laughter.)

The question of the amendment was put and carried by 16 votes to 12, 2 not voting. Ayes: Messrs. Blundell, Cooke, Devereill, Erskine, Hartwell, Havelock, Hope-Jones, Hopkins, Hyde-Clarke, MacLennan, Maconochie-Welwood, Matthews, Mortimer, Preston, Lady Shaw, Mr. Usher, 16. Noes: Messrs. Chemallan, Gillett, Jeremiah, Mathu, O'Connor, Padley, Patrick, Pritam, Rankine, Salim, Shatry, 12. Not voting: Messrs. Madan, Nathoo, 2.

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

THE CHAIRMAN: May I again ask hon. members, if they are in favour of a motion, to say "Aye" in a distinct clear voice? It is difficult for me to decide

one way or the other except by collection of voices; by sound, and if members do not speak up for their own motion, there is nothing I can do about it. Can I also again ask members to assist the Chair by putting their amendments in writing beforehand, and not just at the opportune moment only?

Council adjourned at 11.10 a.m. and resumed at 11.25 a.m.

MR. O'CONNOR moved: That the Motor Vehicles Insurance (Third Party Risks) (Amendment) Bill and the Protected Areas Bill be reported back to Council with amendment and the Native Trust Fund (Amendment) Bill and the Evidence (Bankers' Books) (Amendment) Bill without amendment.

Council resumed and the hon. Member reported accordingly.

The report was adopted.

THIRD READINGS

On the motion of Mr. O'CONNOR, seconded by Mr. HOBSON, and question put and carried, each of the Bills was read a third time and passed.

TERMINATION OF SERVICES OF CIVIL SERVANTS

SELECT COMMITTEE REPORT

MR. HARTWELL: Mr. Speaker, I beg to move: That the select committee report on the termination of the services of pensionable civil servants be adopted.

This committee was appointed as the result of a motion by the hon. Member for Uasin Gishu passed in connexion with the salaries revision, and the motion read as follows: "This Council resolves that, in view of the extension of permanent and pensionable terms of service to a large number of civil servants in the lower and medium grades, a select committee shall be appointed to consider more expeditious means of discharge than those at present existing for such groups of civil servants, so that the services of inefficient and incompetent employees or those guilty of misconduct can speedily be dispensed with, and to make recommendations as to methods of achieving a more expeditious means of discharge if thought advisable".

For this purpose the public service can be divided into three main groups:

[Mr. Hartwell] First, minor employees not pensionable, whose terms and conditions of service were dealt with by Government Circular No. 69 of 1st October, 1948, which gave heads of departments powers of dismissal. The select committee was satisfied that the arrangements regarding this group are satisfactory, and therefore give it no further consideration.

The second group consists of contract officers and temporary officers on month to month terms of service. The standard form of contract makes provision for the termination of an officer's services, and the letter of appointment on a month to month basis makes similar provision. The select committee was satisfied that these arrangements are satisfactory and do not require any alteration.

The third group, the one with which this report is concerned, is the permanent pensionable establishment, and the committee confined its attention to this group.

The existing colonial regulations and the local regulations make a clear distinction between retirement on the ground of inefficiency and dismissal on disciplinary grounds. If an officer is retired for inefficiency he gets a pension in accordance with the pension law; if, on the other hand, he is dismissed from the service on disciplinary grounds he gets no pension, and he thus loses the pension value of his service. The committee kept that distinction in mind throughout its deliberations.

The present regulations divide pensionable officers for this purpose into two groups. Firstly, those whose pensionable emoluments exceed £600 a year. In the case of these officers the approval of the Secretary of State is required if the officers is to be dismissed or retired for inefficiency. The second group consists of officers whose pensionable emoluments are less than £600 a year. The present regulations require the Governor to deal with officers in this group. The committee reached the conclusion that while this arrangement may have been satisfactory in the past, when the pensionable establishment was comparatively small, they are not satisfactory now when, as the result of the salaries revision, the number of pensionable officers has been very largely increased. The committee was satisfied that some

delegation of authority in this matter to heads of departments is desirable. Their proposals are contained in paragraph 8 of the report.

With your permission, sir, I will read the vital part, because it is important to get it clear. Our proposals are as follows:—

"(i) The power to retire compulsorily or to dismiss an officer in one of the Unified Services, or an officer whose pensionable emoluments are £1,000 per annum or greater, should continue to be vested in the Secretary of State for the Colonies. The procedure at present prescribed by the Colonial Regulations should continue to be followed.

(ii) The power to retire compulsorily or to dismiss an officer—

(a) whose pensionable emoluments exceed £300 per annum, but are less than £1,000 and who has more than six years' service in a pensionable office;

(b) who has 15 years' service in a pensionable office; or

(c) who has professional qualifications (including Makerere qualifications) for the post he occupies, should be vested in the Governor. The procedure prescribed by existing regulations should continue to be followed.

(iii) The power to retire compulsorily or to dismiss an officer not falling within classes (i) and (ii) above should be vested in heads of departments."

The effect of (iii) is to give heads of departments authority to dismiss on disciplinary grounds or retire on grounds of inefficiency each group of pensionable officers who do not fall into (i) or (ii). In making recommendation (ii) (c), that which refers to professionally qualified officers, the committee had in mind the advice of the Director of Medical Services who thought that Makerere doctors should be included in the group falling under the Governor, because those officers would be stopped from practising their profession at all if removed from the public service. I should like to make it plain at this stage that under the pre-revision terms of service, heads of departments had powers of dismissal over large groups of the lower level of non-pensionable officers. It is now proposed to give heads of departments similar

(Mr. Hartwell)

power of dismissal or retirement in respect of the lower grades of pensionable officers.

The object of the regulations at the present time is, on the one hand, to ensure that people who are guilty of disciplinary offences or are inefficient are not retained in the public service and, on the other hand, to ensure that justice is done to the individual officer. Both of these considerations were borne in mind by the committee. Under paragraph 10 therefore, the committee has set out the essentials of the present disciplinary procedure, and we considered that a similar procedure should be followed by heads of departments in dealing with disciplinary cases.

The essentials are that an officer must be clearly informed of the charges against him; that an impartial inquiry must be held; that the individual must be given the opportunity of cross-examining witnesses if any are called against him; and that any documents used as evidence shall be made available for examination by him. Similarly, in the case of retirement for inefficiency, the officer must be given the opportunity of having his say and, of course, that will continue in cases where the matter is dealt with by the head of department. It is possible that individual officers may be dissatisfied with the decision arrived at by a head of department, and as now every officer will have the right of appeal to the Governor.

We have recommended in paragraph 12 of the report that in the event of an appeal, the head of department shall forward the appeal petition or whatever the document is with his own report and the file on which the inquiry was held. That will mean that another person, possibly myself or somebody else in the Secretariat, will examine the whole of the proceedings in the event of an appeal to the Governor.

We have mentioned in paragraph 13 that one of the civil service associations, the African association, which appeared before the committee at our invitation, did express objection to the delegation of this authority to heads of departments. The grounds of objection are set out in that paragraph, and I need not go into any detail. All the members of the committee were quite satisfied that heads

of departments can be relied on to deal with cases fairly and with proper care. In any event, the individual will have the right of appeal if he is dissatisfied.

That concludes the important part of the recommendations. There are two subsidiary matters.

One is the suspension of officers. At the present time the regulations require the Governor's approval if an officer is to be interdicted from the performance of his duties. In practice, it is often necessary for a head of department or an officer below him to put an officer off duty urgently. It is not difficult to imagine the circumstances in which that may be necessary. The committee recommends that the specific power of interdicting an officer should be given heads of departments, and that the head of a department should have power to delegate that to officers of the department at his discretion, informing Government of the persons to whom that power has been delegated. They also recommend that when interdiction is ordered the fact shall be reported to Government.

The second subsidiary matter is concerned with officers who are on probation in pensionable posts. It is the practice to appoint everybody who is appointed to a pensionable post on probation normally for a period of two years, the object being to enable the officer on the one hand to make sure that he has adopted the right career and is well suited for it, and for Government on the other hand to make sure that it considers the officer in every way suitable for permanent employment. At the present time the procedure for terminating the services of an officer on probation are set out in a circular which is very complicated and elaborate. The committee thinks this might well be simplified in the case of certain grades of officers, and therefore recommends in paragraph 15 that in the case of officers in the unified services whose pensionable emoluments are £1,000 a year or greater the existing arrangements should continue; but that in the case of other officers while on probation the heads of departments should have the powers and obligations set out in the report, such as the power to terminate the appointment prematurely or confirm the officer, or to extend his probationary period.

III Civil Servants

(Mr. Hartwell)

We also recommend that proper arrangements should be made for heads of departments to draw an officer's attention to any shortcomings, so that he can correct them if it is within his capacity to do so.

The select committee considered the matter very carefully and has reached a report which is unanimous, except in one small respect. The hon. member Mr. Okanga favoured the reduction of the period of 15 years' service in paragraph 8 (1) (b) to 12 years. Apart from that small difference, the committee reached unanimous conclusions, and I recommend their report for the approval of Council.

MR. RANKINE seconded.

MR. JEREMIAH: Mr. Speaker, I rise to support the report, but at the same time to ask for a few suggestions in its implementation. As we are all aware, many Africans are engaged on a low scale of salary for a long time. He may have been contributing to a provident fund scheme for six or eight years. Now that there is a pension I should like to know what happens to their contributions, whether Government would consider refunding the same.

Another point is that when such an officer has been admitted to a pensionable post, after six or eight years, and say after 14 or 15 years he is dismissed on disciplinary grounds and loses the benefit of his pension, what becomes of his previous contributions to the provident fund? I believe it would be fair that the contributions should be refunded to such person. So far he leaves the service without the benefit of a pension. Those are points I should like the hon. mover to clarify.

Another point which I should like the hon. mover to clarify is whether the period of 15 years referred to in paragraph 8 (2) (b) refers actually to the time when the person was engaged, or the time when he became pensionable. In the case of Africans, if it is the time when he was engaged it is reasonable, but if it is from the time he is pensionable, if he has already completed eight years and then has to do 15 years, that is a total of 23 years. I do not think that is the intention. I should like to ask the hon. mover to clarify that.

MR. HARTWELL: Mr. Speaker, on the first point, it was laid down at the time of the salary revision that, if an officer is on provident fund terms and then achieves pensionable status, he surrenders his provident fund contributions and the whole of his service counts for pensionable purposes. So on the one hand he loses his provident fund contributions, but on the other hand the period of service which he has already served counts for pension. If such a person after having achieved pensionable status was unlucky enough to be dismissed, then I am afraid he would lose the whole of his pension, but of course one might expect such cases to be very few. If the individual were retired for inefficiency, then he would get a pension, which would be based on the whole of his service and would include the period of service under the provident fund.

On the second point, paragraph 8 (2) (b) says that it is 15 years' service in a pensionable office. Well, service in a provident fund post is not service in a pensionable office, and therefore I think the intention of the committee must have been that, if a man had been, say, five years on the provident fund, and thereafter served in a pensionable office, he would have to complete 15 years' service in the pensionable office before he fell under paragraph 8 (2) and came within the powers of the Governor. So far as I am personally concerned I would see no objection in allowing the service in the provident fund post to count for this purpose, if the Council is agreeable. It is quite a small alteration of the report, and I can see no serious harm in it. The alteration could be made at the time that the regulations and the circular on the subject are issued.

The question was put and carried.

MOTION WITHDRAWN

MR. VASEY had given notice of motion to move: This Council is of the opinion that section 4 (2) of the Motor Vehicles Insurance (Third Party Risks) Ordinance, 1945, be altered to make disqualification from holding a certificate of competency permissible instead of mandatory on the court.

THE SPEAKER: I rather imagine that your motion would now be out of order,

[The Speaker] under the six-months rule, as we have already dealt with the matter.

MR. VASSEY: Mr. Speaker, I was about to say that, with your permission and the permission of Council, I should like to withdraw this motion. In doing so I should like to express my appreciation of the attitude of the members of Government who, despite what I know are their very sincere convictions upon this matter, did accept the feeling of the majority of the Council. I should also like to express my appreciation of the fact that Government allowed this matter to go to a free vote. I think that, despite the bandying of words in debate, we do appreciate the attitude that Government took up in this particular matter, in face of their own sincere conviction in many instances.

Sir, I beg to withdraw my motion. (Applause.)

The motion was by leave withdrawn.

THE REGISTRATION OF PERSONS ORDINANCE, 1947

COMMISSION OF INQUIRY

MAJOR KEYSER: Mr. Speaker, I beg to move That this Council requests Government to appoint a commission of inquiry to review the Registration of Persons Ordinance, 1947, and to make recommendations for any amendment of the Ordinance as the commission may consider necessary or desirable.

About a third of a century ago I was engaged in a war that was being fought in France. One evening I was riding across and I saw a Chinaman sitting on an unexploded enemy shell, trying to remove the rubber nose-cap with a hammer and chisel. (Laughter.) I feel that there is some similarity between the position of that Chinaman in the dim past and myself to-day, moving this motion. The great difference between his position and mine is that he was blissfully ignorant of the possible developments, whereas I am very conscious of them.

The majority of thinking people in the Colony are of the opinion that a universal registration system is essential to the good government of the Colony. There is, however, a great difference of opinion as to the method of such registration, and the object of this motion is to allow the system to be examined by a commission and, if they find it necessary or

desirable, to make recommendations for the amendment of the Ordinance. It is my earnest hope that this Council will adopt my motion and that a commission will be appointed as soon as possible, and that a full report in as short a time as is commensurate with the proper examination of the matter will be submitted.

DR. RANA: Mr. Speaker, I rise to second the motion moved by the hon. leader of the European Elected Members Organization. I have nothing to add except that the motion is very reasonable. There is no need to say how much opposition there has been to the Ordinance. As far as I and my colleagues are concerned, we opposed the Bill when it was originally moved. We are not against registration. I quite agree with the hon. mover that the commission should be given full power to see if any adjustment can be made. With those few words I second the motion.

MR. ERSKINE: Mr. Speaker, I rise to support this motion, though I appreciate perhaps the feelings of those hon. members of this Council who may think that this examination into the workings of a three months old Ordinance may be premature. I sympathize with them myself over it I still recognize that it has become necessary. During the three months in which this Ordinance has worked it will not, of course, be possible to ascertain how successful has been its working. We will not be able to gauge...

THE SPEAKER: The hon. member has carefully taken out the words about the working of the Ordinance, so it will be irrelevant to discuss it.

MR. ERSKINE: I had hoped, however, Sir, that when in due course, say after a year or two, a commission of inquiry had gone into the question of this Ordinance, evidence would have come forward to show what a grand Ordinance this would have been in this country. At this stage that will not be possible. The period of working, as I have said, has been three months only, and yet I think it is a matter of some significance to all of us that it has been successful in a very large measure. I am going to give one or two figures which I feel are of interest because they show the reason why I am supporting this motion. I would like to say that during the three months of the working of this Ordinance the organization for the registering of persons has only been in existence in certain areas of the country.

LADY SHAW: On a point of order, is not this a discussion on the working of the Ordinance, and not the question of the commission?

THE SPEAKER: I have already called the hon. member's attention once to the rewording of the motion, and have stated that it would be irrelevant to discuss the working of the Ordinance.

MR. ERSKINE: I will not discuss the working of the Ordinance, but I should like to make it very clear that in giving my support to this motion I hope that I will be permitted to go before this commission and to give evidence in regard to every aspect of the Ordinance, even the working of the Ordinance. (Laughter.) That, Sir, I take it will be my right, and I want to make that perfectly clear, and it is on that understanding, that understanding only, that I support this motion.

MR. MATHU: I, like the hon. Member for Nairobi South, would like to say that I support this motion on two understandings. One that in giving evidence to this commission, if I happen to do so, I shall give evidence on every aspect of this Ordinance, because if we do not, if you narrow it down to nothing except the whole comprehensive business, I do not think that we will get anywhere. It is on that understanding that I support the appointment of a commission.

I should also like to say that I support the last part of the motion on another understanding, that I do not commit myself or my community that the commission will take it for granted that the Ordinance should be amended. It may find that it is not necessary to amend the Ordinance. (Hear, hear.) It is on that understanding that I support it, because we now give the terms of reference in one sentence, that they can make the amendments if they find it necessary or desirable. I do not think that if the Commission will listen to the evidence given by people who have been at work on this thing for many years, they will find it necessary to make any amendment to the Ordinance.

MR. RANKINE: Mr. Speaker, I should like to make clear the position of Government with regard to this motion.

I think it is not in dispute that some system of universal registration in this Colony is necessary, and I am glad that the hon. mover in proposing his motion

has made it clear that that is his view too. (Hear, hear.) It seems to us that two things are necessary. First of all, that that system should be effective and; secondly, that it should not cost the Colony more than is necessary.

As regards the question of the form of registration, I do not wish to take up the time of Council by going into the history of the present Ordinance, but I think I ought to remind members that that Ordinance was passed after, first of all, a committee had been set up on which were many, I think a majority, of unofficial members. It toured the country and took evidence. A great deal of publicity was given to it. The committee reported, and after a Bill had been published and had been duly considered in this Council it was passed by and with the consent of the Council, and I believe I am right in saying that nobody voted against it.

That is the law at the moment, and so far as Government is concerned we know of no reason to take the initiative in making this inquiry. But if it is the general opinion of Council that an inquiry ought to be held, and I think Council this morning has made it clear that that is its view, Government will accept the motion—(hear, hear)—so that the position is, Sir, that Government will accept this motion.

MAJOR KEYSER: Mr. Speaker, I have very little to say except in answer to the hon. Member for Nairobi South and the hon. Member Mr. Mathu that I am quite prepared to leave to the president of the commission what evidence is or is not admissible.

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: Control of Hotels (Amendment) Bill, Income Tax (Amendment) Bill, Radio-active Minerals (Amendment) Bill, Crown Lands (Amendment) Bill, Trade Unions (Registration) Bill.

MR. HOBSON seconded.

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

The Bills were considered clause by clause.

Control of Hotels (Amendment) Bill

Clause 3:

MR. HAVELOCK: Mr. Chairman, I have given my reasons why I consider this extension of powers to the Hotel Authority to be unnecessary during the second reading of the Bill. I will not take up the time of the Committee to any great extent, but I would remind members that the hon. Member for Commerce and Industry, and I think the hon. Member for Nairobi North, both stated that they considered that the Hotel Control Ordinance should become a licensing Ordinance, so that the Authority should become a licensing authority only as soon as possible.

I see no reason why the Hotel Authority should be given powers to order costs against any authority for a frivolous complaint, because I do not see why they should have to deal with many complaints. I feel, as I said before, that the health authorities should look after anything to do with dirt and unhygienic conditions in hotels, taking the matter to the court in the proper way; that the Price Control should deal with anything in the way of overcharging, and that the powers which are being given in this Bill under clause 2, allowing the Hotel Authority to review the licences of hotel managers every year, that power in itself, I suggest, will be sufficient to keep hoteliers on their toes and up to the mark in any other aspects other than health and price. I feel that if we give the powers now suggested in clause 3 of the Bill, it will merely encourage the retention of the Authority as something other than a licensing authority, and I think it is now that we should begin to pare the powers; not in a year or two's time.

I propose to vote against this particular clause, the retention of it in this Bill, and I think in view of what I have said that the Council will support me.

MR. BLUNDELL: Mr. Chairman, I rise to support the hon. Member for Kiambu, on rather different grounds. I think it is a dangerous principle to admit that an authority can act as it were as a judge in its own case and award costs. Now, we do not always know that the Authority will have the genial chairmanship of its present Chairman, and I do not like the power put into its hands. If many complaints come before the Authority and they consider their time wasted, I am afraid I consider that is a concomitant

really of control, and it may well be that that will lead people on all the more to eliminate controls: I feel you cannot have your cake and eat it. What we want really is no controls, and if having controls gives us a few difficulties, it may spur us on eventually to remove the control altogether.

MR. VASEY: Mr. Chairman, I would just like to know how the hon. Member for Rift Valley knows the Chairman is genial. I feel he is under some misunderstanding as to who is the Chairman. The Chairman is genial, but I wonder how the hon. member knows that he is.

MR. HAVELOCK: I think the hon. Member for Rift Valley, and most citizens of this country, know the Mayor of this town!

MR. VASEY: Mr. Chairman, I should like to support this particular clause. It is, I think, largely a question in this country of throwing a terrific amount of work on to boards and committees. The Authority is not in this case judging its own case, it is merely being given the power that, where it is decided that a complaint in front of it is frivolous, it shall make the people pay the cost of listening. It is comparable to the decision of a court to some extent, and I feel that, if we do not give the Authority this particular power, which it has asked for after mature consideration, we are going to hamper it in its work. I therefore support the clause.

MR. BLUNDELL: I have only one consolation in this matter, and that is that the last speaker will not, of course, be able to further his views when he later on is paired with Sir Godfrey Rhodes!

MR. NATHOO: As a member of the Hotel Control Authority, I should like to support the views expressed by the hon. Members for Kiambu and Rift Valley, but I would suggest that there must be some provision to stop people from coming to the Hotel Control Authority with frivolous complaints, because it has been my misfortune, along with the hon. Member for Nairobi North, to sit for hours on end listening to something which could have been dismissed in a few minutes, if we had the arbitrary power which it is suggested we should have. But, after listening to these complaints, if we find they are not warranted, there must be some remedy to stop such people from coming forward.

MR. HOPE-JONES: Mr. Chairman, I have listened again to the views put forward by the hon. Member for Kiambu, and the characteristic intervention of the hon. Member for Rift Valley. I would, however, reinforce as strongly as I possibly can the plea made by the hon. Member for Nairobi North. Here we have a body of voluntary people, doing what is necessarily a very thankless, difficult, exacting and time-consuming job. I use every one of those words advisedly, because I know what the Hotel Control Authority has had to put up with in the way of claims on its time and patience during the last few years. When you get a body of that kind, willing to give its time, willing to endeavour to do its best to deal with the situation—while it is now becoming better it has in the past been a very difficult one indeed—taking the criticism that inevitably comes to people who are trying to do a difficult job to the best of their ability, when that authority comes to Government and says, "We want powers to stop frivolous complaints, we want powers to enable some of us to devote a little more time to our businesses than we have done previously, we want powers that will enable us to pay the attention we would like to to the difficult cases, and discourage those that are frivolous"; then I am sure hon. members will think twice, and indeed again, before they rejected a request from a body of that kind. That seems to me to be the principle involved.

There is, of course, the important point that the hon. Member for Kiambu raised, and the mistaken point that the hon. Member for Rift Valley made. They are not going to be judges in their own case. If they were, then I would have found it very difficult to come forward with a recommendation to this Council on these lines. But these are responsible people. They did not come forward with that recommendation. What they have asked this Council to do is to enable them to fulfil their functions more efficiently by dismissing frivolous cases and concentrating on the cases that matter, by putting on what I consider a perfectly fair penalty, that of costs, on the frivolous complaint.

I agree that all controls in themselves are bad. I have said that on many occasions, and I think it is fairly clear that that has been my policy and the policy of

Government. In this instance we are not discussing the principle. The principle of the Bill has been discussed. We are discussing one particular clause, which is as I say a particular power that the Hotel Authority has asked this Council to concede to. I do not think I need speak further. The hon. Member for Kiambu knows I have the greatest sympathy with the view he has expressed on general matters concerning hotel control. I have already said that, from the point of view of future development at the appropriate time, I consider that this should be, in the words of the hon. Member for Nairobi North, primarily a licensing authority, but I would commend to hon. members this request from the Hotel Authority, which is to have powers that will enable it to deal with its very arduous tasks more efficiently, more expeditiously and in what I would submit would be greater justice all round.

MR. HAVELOCK: Mr. Chairman, I welcome the remarks of the hon. Member for Commerce and Industry, and especially his remark as regards turning this Authority into a licensing authority. He submits that the power in clause 3 of the Bill is necessary in order to allow the Hotel Authority to carry out its proper functions. I submit that the Hotel Authority functions should be reduced, in which case these powers would not be necessary, and that is the basis of my case with which I am sure the hon. member has great sympathy. I am not satisfied with a vague promise to the effect that at the appropriate time certain steps will be taken. What is the appropriate time? I consider the appropriate time is now, and that is the reason why I am opposing the extra powers that have been suggested most strongly.

MR. HOPE-JONES: I have only one thing to say, and that is that, quite clearly, the appropriate time is when this Council thinks it is the appropriate time.

The question that clause 3 stand part of the Bill was put and carried.

Crown Lands (Amendment) Bill

Clause 3:

MR. HOPKINS: Mr. Chairman, as we are somewhat arbitrary and mandatory at times, I should like an assurance from the Member that when the Commissioner of Lands is determining the amount of rent on an objection from a lessee, he

Wednesday, 17th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Wednesday, 17th August, 1949.

His Honour the Speaker took the Chair at 10.05 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 16th August, 1949, were confirmed.

PAPER LAID

The following paper was laid on the table:—

BY MAJOR CAVENDISH-BENTINCK:

Meat Marketing Board statement of accounts for 1947 and 1948.

NOTICES OF MOTIONS

The following notices of motions were given:—

BY MR. MATTHEWS:

That whereas the Governor in Council has approved of a resolution of the Municipal Board of Mombasa to levy a rate of 2½ per centum of the unimproved site values in the municipal area for the year 1949, and whereas it is provided by sub-section (2) of section 87 of the Municipalities Ordinance, 1928, that the maximum amount which may be paid from the general revenue of the Colony as an annual contribution in lieu of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such land, this Council approves the payment to the Municipal Board of Mombasa of the difference between the amount statutorily payable and the amount which would be payable in respect of a rate of 2½ per centum.

BY MR. MATTHEWS:

That whereas the Governor in Council has approved of a resolution of the Municipal Board of Eldoret to levy a rate of 2½ per centum of the unimproved site values in the municipal area for the year 1949, and whereas it is provided by sub-section (2) of section 87 of the Municipalities Ordinance, 1928, that the maximum amount which may be paid from the

[Mr. Hopkins] would not be entitled, because he thought the complaint was frivolous or anything like that, to increase the rent. His only powers under clause 3 would be to confirm that the rent is fair, or to reduce it?

MR. MORTIMER: Yes, I agree that the power given does not include authority to increase the rent.

The question that clause 3 stand part of the Bill was put and carried.

Clause 4:

MR. HOPKINS moved: That clause 4 (2) and (3) be amended by substituting "three months" for "one month".

That would bring the clause into line with clause 3 and clause 4 (1), where the period allowed for objection is one month. As any decision in regard to the rent is going to be retrospective to the 1st January, 1951, it would seem preferable to allow three months for objections in all cases. There are lots of reasons which I need not go into. Restricting it to one month might cause hardship.

MR. MORTIMER: I do not personally see any very strong reason for any departure from the provision of one month in these days of airmail. It should be quite possible for any action that is required to be taken within the one month, but if it is the general wish of hon. members, I have no objection to the proposal now submitted.

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 Crown Lands (Amendment) Bill be reported back to Council with amendment and the remainder without amendment.

Council resumed, the hon. member reported accordingly.

The report was adopted.

THIRD READINGS

On the motion of MR. O'CONNOR, seconded by MR. RANKINE, and question put and carried, each of the Bills was read the third time and passed.

ADJOURNMENT

Council rose at 12.35 p.m. and adjourned till 10 a.m. on Wednesday, 17th August, 1949.

general revenue of the Colony as an annual contribution in lieu of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such land, this Council approves the payment to the Municipal Board of Eldoret of the difference between the amount statutorily payable and the amount which would be payable in respect of a rate of 2½ per centum.

BY MAJOR KEYSER:

That this Council is of the opinion that in view of H.M. Government's refusal to consider the refund of the difference between United Kingdom and Kenya income tax paid by either (a) officers on the Reserve who were recalled from unofficial occupations in Kenya; or (b) normal residents of East Africa who by design or accident joined the Forces in the United Kingdom, any excess of income tax paid by such officers over Kenya rates should be refunded to them from the revenues of the Colony.

ORAL ANSWERS TO QUESTIONS

NO. 34 RENTALS OF GOVERNMENT HOUSES

MR. MACNOCHIE-WELWOOD:

Will Government state whether the valuation of Civil Servants' houses for the purpose of computing rent is now completed?

If not, what steps are being taken to complete this survey?

MR. HARTWELL: The valuation of Government houses for the purpose of computing rent is not yet completed. The Public Works Department has been asked to complete the work as soon as possible and will do so, but, as the hon. member knows, they are handicapped by shortage of staff, and are fully occupied with other important work. The matter is being examined in collaboration with the Public Works Department with a view to devising some interim arrangement pending the completion of the survey, but no satisfactory interim solution has yet been found. When the valuation of quarters has been completed the reduction of rent, if any reduction is due, will naturally be made with retroactive effect.

MR. MACNOCHIE-WELWOOD: Mr. Speaker, arising out of that reply, is Government aware that considerable hardship is occasioned to some civil servants who are being charged uneconomic rents for Government houses pending this revaluation?

MR. HARTWELL: Sir, I think it is true that some civil servants are paying more than they would pay under the circular. The circular provides that an officer shall pay ten per cent of his salary, subject to the proviso that if the economic rent of the quarters is less than that he shall pay the economic rent. I do not think it is correct to say that anybody is suffering considerable hardship because, after all, he is going to get the money back in the end. It is merely a case of deferring it until after the valuation, when it can be made retroactive.

MR. VASEY: Arising out of that reply, has the hon. gentleman not realized that when you have a small fixed salary the delayed return of money still constitutes a hardship?

MR. COOKE: The answer is in the affirmative!

NO. 35 UNFIT IMPORTED SUGAR

MR. NATHOO:

(a) Is Government aware that the quality of sugar imported into Kenya from overseas was so bad that some of the sugar was unfit for human consumption?

(b) Is Government aware that the Uganda manufacturers have been pressing for a revision in their price owing to higher cost of production, and that the matter has been hanging fire for several months?

(c) If the reply is in the affirmative, will Government state whether they are prepared to intervene in the matter so that the impasse can be overcome at an early date and production resumed by the Uganda factories?

(d) Does Government not think that this is a matter in which the closest co-ordination with the neighbouring territories is desirable in the best interests of the country in matters of production affecting the East African territories as a whole?

MR. HOPE-JONES: The answer to questions (a) and (b) are in the affirmative.

In reply to question (c) it would not be proper for this Government to intervene in an internal matter which is primarily the concern of the Uganda Government.

(d) The answer is in the affirmative. The supply of sugar for consumption in the East African territories and for export from those territories overseas is co-ordinated by the East African Production and Supply Council which is an inter-territorial organization.

MAJOR KEYSER: Sir, arising out of the answer, could the hon. member tell us whether Government will get a refund for the sugar found to be unfit for human consumption?

MR. HOPE-JONES: Sir, at the moment it is not ascertained with any accuracy how much of that sugar is unfit for human consumption. It is likely to be a comparatively small percentage. If it is ascertained that the sugar is unfit for human consumption in the sense that it is deleterious to human health and well-being, we shall do everything possible to obtain compensation.

MR. MATHU: Is it being ascertained what amount of sugar is unfit for human consumption?

MR. HOPE-JONES: Yes, by the proper authorities.

MAJOR KEYSER: When this sugar was bought, was it not bought on definite conditions and under a sample?

MR. HOPE-JONES: The sugar was obtained through the Ministry of Food. When the sugar was obtained, the position in East Africa was extremely difficult in that we were down to a few days' supply. Undoubtedly there has been in my opinion—although this is not yet a proven fact—some slip up in regard to part of the first consignment.

MR. HAVELOCK: Arising out of the answer, did the damage to the sugar happen in transit or was it in bad condition when shipped?

MR. HOPE-JONES: I said that we were trying to ascertain the precise facts.

No. 36—WAKF COMMISSIONERS' ORDINANCE

DR. RAMA:

Is Government aware that the Wakf Commissioners' Ordinance is working against the interests of Muslim beneficiaries due to High Court judgments in Zanzibar and in Kenya? If the reply is in the affirmative, will Government introduce an amending Bill in order to bring the Ordinance into conformity with the Islamic Law?

MR. O'CONNOR: Government is not aware that the Wakf Commissioners Ordinance is working against the interests of certain Muslim beneficiaries, though that Ordinance requires amendment in certain respects. Government is aware that certain judgments of the courts as to the validity of certain classes of Wakf are against the interests of certain Muslim beneficiaries. Government is also aware of a judgment which affects the practice of registering Wakfs under the Registration of Titles Ordinance.

Government understands that the Wakf Commissioners are preparing suggestions for amending, or new legislation, which, if approved, will be introduced as soon as it can be fully considered, and which, if necessary, can be made retrospective in whole or in part.

No. 41—SPECIAL LIQUOR LICENSING MEETINGS

MR. COOKE:

In view of the fact that a sum of £15 must be paid to ensure a special meeting of a Liquor Licensing Board and that sometimes there are several applications for such a special meeting, would Government approve of an amendment to the law to enable the £15 to be shared among the applicants in place of the present regulation which demands £15 from each applicant?

MR. WYN HARRIS: Government is advised that the fee of £15 prescribed under section 20 of the Liquor Ordinance, 1934, as amended by section 5 (c) of Ordinance XXXII of 1938 is recoverable from each applicant. Applicants have the alternatives of having their applications heard at the meetings of the Licensing Court which are required by section 14 to be held on the second Mondays in May and December

(Mr. Wyn Harris) or of convincing the Governor, or any officer to whom the Governor's powers have been delegated, that there is adequate reason for convening a special court. Upon payment of £15 a single applicant can compel the convening officer to convene a special meeting of the Licensing Court. Since applicants should normally apply in time for the meetings to be held on dates prescribed by the Ordinance, in Government's opinion the fee for a requisitioned meeting should at the same time cover the expenses of a special meeting and be sufficient to discourage too ready use of this power of compulsion. Sharing the fee of £15 would serve to encourage carelessness.

MR. COOKE: Sir, arising out of that reply, does not the hon. gentleman realize that each applicant is not aware that everyone is contributing £15, so that it is not a deterrent in any way at all? (Laughter.)

MR. WYN HARRIS: £15 would be a deterrent.

DEPORTATION (ALIENS) BILL SECOND READING

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

It will be my duty presently to move the second reading of a Bill dealing with the deportation of immigrant British subjects, but this Bill deals with the question of the deportation of aliens.

Under the existing law British subjects and aliens are on the same footing as regards deportation. A deportation order can be made by a judge against either. That, I suggest, should be amended in two respects. In the first place, there is a sort of unwritten principle or convention that in ordinary times—I do not speak of emergencies—each part of the Commonwealth should control its own undesirable. That is to say, that an undesirable or criminal belonging to one part of the Commonwealth should not be deported so as to be foisted upon some other part of the Commonwealth. Accordingly, British subjects who belong to Kenya should not, I suggest, be deported at all. On the other hand, an immigrant British subject who belongs to some other part of the Commonwealth may be

deported without offending against that principle.

I am not going to discuss now the question of deportation of British subjects, and it would not be in order for me to do so. I propose to do so on moving the second reading of the next Bill. But I merely mention the point now in order to make it clear that the two classes are differentiated, or will be differentiated, if these two Bills become law.

In the second place, I suggest that it is wrong that aliens who abuse the hospitality of Kenya should be entitled to all the rights which one would naturally like to see conferred upon British subjects, rights that they cannot be deported without the cumbersome procedure of a judicial inquiry and the like. The power to deport aliens by executive order is one which most States retain, and often use. It is a power which the Home Secretary in England has had for the last 29 years, and it is fairly frequently exercised. Non-members will recall reading in the newspapers a few weeks ago of a case where it was exercised, a case in which some alien agitators arrived with the intention, judging from the newspapers, of taking part in the dock strike which was then continuing in the United Kingdom. The Home Secretary exercised his powers and deported them from the airport. That could not have been done here. Assuming they had passed the immigration authorities, we should have had to bring them up before a judge in chambers, with all the delay that that entails. Even in the case, let us say, of communist agitators, they could not have been deported at once, and the damage would probably have been done before we could make our procedure work. That action of the Home Secretary was denounced by a prominent communist in England as gross interference with civil liberties. I think that it is action which hon. members of this Council would be prepared to endorse, and I suggest that we should have here a procedure which will enable action to be taken swiftly when action is really necessary.

I have been speaking hitherto of the deportation of undesirables, but a deportation order may also be made if a court by whom an alien is convicted of any offence for which the court has power to impose imprisonment without the option of a fine recommends deporta-

[Mr. O'Connor] tion, or if a court certifies that the alien is an undesirable person and recommends his deportation, or if a court certifies that he has been sentenced in a foreign country within four years of his entry into Kenya for an extraditable crime. These provisions have been in force in England since 1920, and I suggest that it is time we had them here.

It sometimes happens that an alien cannot be deported. He may be a stateless person, he may have nowhere to go, it may be impossible to get his home state to accept him. In those circumstances, if he is recommended for deportation by a court or if he is an undesirable person as defined, he may under the Bill be restricted as to his residence. The Member may, in lieu of making a deportation order against him, make a restriction order, and under that he would be required to live within a certain area of Kenya. Or a security order may be made; that is to say, an order requiring him to enter into a bond with sureties to keep the peace and to be of good behaviour.

That is the main part of the Bill. The rest of the Bill contains practical provisions, in which the existing law is singularly lacking, for putting deportation orders and restriction orders into effect. These, I think, speak for themselves and they are fairly fully set out in the "Memorandum of Objects and Reasons", and I do not think that I need specially mention them now. I shall deal with some of them further when I move the second reading of the Deportation of Immigrant British Subjects Bill which contains similar provisions.

Hon. members will probably have noticed as they read through the Bill that sub-clauses (6) and (7) of clause 10 substantially reproduce the provisions of clause 4. It is my intention to move the deletion of those sub-clauses in the committee stage; they are redundant. I gave instructions for their removal as long ago as the 5th May but, by an error, they were not removed, and so appear in the Bill. I propose to move one or two other small amendments in the committee stage.

It remains only, I think, to explain who an alien is, and here I am reminded of the Irish policeman whom I used to know, who when you asked him where a place was, always began by explaining where it was not. I am afraid that I can only

describe who an alien is by telling you who he is not. He is a person who is not a British subject, a British-protected person, or a citizen of Eire (now the Republic of Ireland). In these days when constitutional changes are made within the Commonwealth and when we have a new conception of the status of British subject, namely a status attained through British citizenship, it is not always easy to say who a British subject is, or whether he will be one tomorrow. Therefore, I have considered that the safest course in this Bill is to tie the definition of alien to the definition of "alien" in the British Nationality Act, 1948. That is a matter upon which there must obviously be uniformity with the United Kingdom. The term "British subject", in spite of complications, is, however, I suggest still fairly well understood, and so are the term "British protected person", and "citizen of the Republic of Ireland". If, therefore, an alien is a person who is not any one of those, then I suggest that that is a sufficient definition and all we need to know.

MR. HOBSON seconded.

MR. PATEL: Mr. Speaker, I personally feel that when the Legislature passes a statute of this nature, very careful thought should be given to all the provisions in trying to find out if they are really necessary in the form in which they are placed before this Council. In a matter like this there is a tussle between the security of the State and the personal liberty of the citizen, and the wisest course is to harmonize both. I find that on occasions in this country, and also perhaps in other countries, there is at present a tendency to follow in some respects the totalitarian régimes for the purpose of having a short cut at solving the difficulties which are created by some agitators. I should say it would be wrong for any British Government or any territory under the United Kingdom to throw away lightly the experience of centuries of the British race in building up the law and also in the administration of that law.

I recognize that, owing to the restlessness of the human mind as a result of two recent world wars, there are in every state difficulties owing to certain people showing loyalty to régimes outside the territory on ideological grounds or on religious matters, but I would say that when passing a law to deal with these

[Mr. Patel] difficulties, the question of personal liberty should not be completely overlooked. I am quite aware that in this country there are certain newspapers who preach hatred either on religious grounds or on theories which they have borrowed from abroad, particularly in the name of communist theories. However, I should like to be very frank and say I am personally not prepared at any time to trust this Government with wider power than is absolutely necessary to deal with this situation. My experience with the subject of immigration law is so unhappy about this Government that I personally would every time say that I would not like to see more power placed in the hands of the Government than is necessary.

I should like to examine particularly three matters in this Bill. Firstly, the question of the definition of convicted person which appears in clause 2. I do not say that the power will be lightly used, or the interpretation will be made very lightly, but at the same time . . .

THE SPEAKER: The hon. member is apparently dealing with the other Bill which has not been moved yet. The expression "convicted person" is not in clause 2 of the Bill which has been moved.

MR. PATEL: I am sorry, Sir.

In regard to the Bill dealing with aliens, I should like to say that the question of the interpretation of "undesirable person" is important, as it could be used for purposes other than what the Government has in mind at present. "Undesirable person" means a person who is or has been conducting himself so as to be dangerous to peace, good order, good government, or public morals, or is or has been attempting or conducting himself in a manner calculated, to raise discontent or disaffection amongst His Majesty's subjects or inhabitants of the Colony, or to promote feelings of ill-will and hostility between different classes of the population of the Colony. I quite see the difficulty of confining the definition of undesirable persons to the type of person whom the Government intends to deal with, but this definition, in my view, includes all classes of people and could be used at any time when there is a difference of opinion between the Government and the citizens of this country on any important question.

I should like to reserve my remarks to this matter when speaking on the second Bill. Therefore, with those comments, I should like to say that I personally do not feel inclined to support these Bills in the form in which they are presented to us.

MR. O'CONNOR: Mr. Speaker, I do not think that a long reply is called for.

I would merely point out with regard to the definition of "undesirable person", to which the hon. member Mr. Patel has drawn attention, that the words are largely taken from the definition of "specious intention" which has been in the law for a very considerable time, and that if the hon. member will consider the existing Deportation Ordinance he will find somewhat similar words there. He has not pointed out in what respect he thinks that the definition is deficient or goes too far, but I suggest that it is absolutely necessary for Government to have these powers in respect of the class of person there defined. He said that it would be undesirable to throw away the experience of centuries of British government, but I have already pointed out that the Home Secretary in the United Kingdom has had similar powers to those which we ask for here since 1920.

I think there is only one thing more that I might usefully mention. He says that this will give the Government undesirable powers whenever there is a difference between the Government and the citizens of this country. I have already explained at some length, and I am sorry that I did not make myself plain to the hon. member that we are dealing with aliens in this Bill and not people who belong to this country.

The question was put and carried.

DEPORTATION (IMMIGRANT BRITISH SUBJECTS) BILL SECOND READING

MR. O'CONNOR: Mr. Speaker, I beg to move: That the Deportation (Immigrant British Subjects) Bill be read a second time.

The Bill which we have just been debating dealt with the deportation of undesirable aliens, this Bill deals with the deportation of undesirable British subjects who do not belong to Kenya. Under the existing law a British subject may be deported, however long he has been in Kenya, however much he has made it his

[Mr. O'Connor]

home. That is against the rational principle which I mentioned a few moments ago, that except in times of emergency each part of the Commonwealth, while fully at liberty to deport aliens and immigrant British subjects who do not belong to it, should keep control of its own undesirables. Accordingly, under this Bill, deportation orders may only be made against British subjects who are immigrant British subjects as defined and who do not belong to Kenya. That expression also is defined in the Bill.

I find that this Bill has been hailed in some quarters as an example of Government's encroachment on the liberties of the British subject. Objection has been taken that British subjects may be deported or restricted under it, and objection has been taken that in certain circumstances proceedings may be held *in camera*. What are the facts?

You have had in force in Kenya since January, 1923, a Deportation Ordinance under which British subjects may be deported. All British subjects, not only immigrant British subjects who do not belong to Kenya but any British subject, and they may be deported after proceedings held before a judge not sitting in open court but sitting in chambers. But when Government, without altering the liability to restriction orders (which also exists under the existing law, although they are called deportation orders) puts forward a measure under which, not all British subjects, but only immigrant British subjects who do not belong to Kenya, may be deported, that is, or has been in some quarters, hailed as an example of repressive legislation in accordance with recent trends. There is no question of a recent trend: the Ordinance is based upon a model which is at least ten years old and, as I have already pointed out, you have had a deportation Ordinance under which all British subjects can be deported since 1923.

I have said that British subjects who belong to Kenya may not be deported under this Bill. What does "belong to Kenya" mean? It is usually accepted that a person belongs to a country when he is either born there or born of parents who at the time of the birth were resident there, or when he has been ordinarily resident in the country for a certain period of time, which is commonly (not

universally) taken as seven years, and has not since completing that period of residence been ordinarily resident continuously in any other part of the Commonwealth or any other country for seven years or upwards. I made a mistake in saying "any other country"—I should say in any other part of the Commonwealth for seven years or upwards. He is also taken as belonging to Kenya if he has been naturalized as a British subject in Kenya, or if he is the son of the wife of a person who belongs to Kenya. You will find "belong to Kenya" is thus defined in clause 2 (2) of the Bill. If a British subject belongs to Kenya within that definition, he cannot be deported.

I have been asked some questions with regard to this sub-clause, and I think I had better take them in order to try to elucidate them.

In the first place, I have been asked why a British subject, if he has not been born here of parents ordinarily resident here, should have to spend seven years before he is considered to belong to Kenya, whereas a person naturalized in Kenya is considered to belong to Kenya at once, although the actual residence has only been for one year, if he has spent four out of the previous seven years in the United Kingdom or some other British territory. It is suggested that there is an anomaly there, because a British subject has to spend seven years, and the naturalized person can get his status of belonging to Kenya at once by the naturalization, although he may only have spent a lesser time.

It does appear at first sight that this is anomalous, but I suggest that in fact there is no anomaly. What you have to consider is: where does the man belong? A British subject starts off by being a British subject, he therefore belongs to some part of the Empire before he comes here, and it is a question of his changing the part of the Empire to which he already belongs for Kenya, and it is provided that it takes seven years' ordinary residence to do that. On the other hand, take the case of a naturalized person. He is not a British subject *ex hypothesi*, but upon becoming naturalized as a British subject he will in many cases lose his nationality of origin and, therefore, if he is not accepted as belonging to Kenya, he has nowhere to go. That does not apply to a British subject, because he still

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[Mr. O'Connor]

retains his status of belonging to that part of the Commonwealth from which he came.

That is why it is generally accepted that when a territory by its own act accepts a person for naturalization (and, of course, the applications are scrutinized, and acceptance is the voluntary act of the Governor of the territory on behalf of His Majesty), when a territory accepts a person as a naturalized British subject by the act of the Governor of that territory, then that person is considered as belonging to that territory. If we were to try and deport him, where would he go? That is the reason for that apparent anomaly.

Next, I have been asked: what does "ordinary resident" mean? You will see that for the purposes of this Bill a person is to be deemed to belong to Kenya "if he or she is a British subject and (a) was born in Kenya or of parents who at the time of his or her death were ordinarily resident in Kenya; or (b) has been ordinarily resident in Kenya continuously for a period of seven years or more and, since the completion of such period of residence, has not been ordinarily resident in any other part of His Majesty's dominions" and so on. I am asked: what does "ordinary resident" mean?

I want to make it quite clear that continuous "ordinary residence" is not the same as continuous actual physical residence in a territory, and is not in my opinion broken by temporary absences. It is a question of fact in each case. If a man has a residence here and is ordinarily resident here and goes out of the country, let us say to the United Kingdom, intending to return, he will not, in my view, and so far as I can ascertain this is supported by the authorities, by that fact of leaving interrupt his ordinary residence here. I want to make that distinction quite plain, because hon. members will see when they come to examine the definition of "immigrant British subject" further down that there is a case of five years continuous residence. We are now talking about ordinary residence in the definition of "belong to Kenya".

I have said that if a person belongs to Kenya within the definition, he cannot be deported under this Bill as a British subject. Also, if he is not an immigrant British subject, he cannot be deported.

Under clause 2 (3) you will see the definition of an immigrant British subject: "For the purposes of this Ordinance a person shall be deemed to be an immigrant British subject if, at the date of the service upon him of a notice under section 7 of this Ordinance, or, in the case of a convicted person, the date upon which he is charged with the offence, he is a British subject and has been resident continuously in Kenya for less than a period of five years," and then there are certain provisos which I will deal with presently.

I had better mention now proviso (iii), which is to the effect that "residence in Kenya shall not be deemed to have ceased to be continuous merely by reason of the fact that it has been interrupted by a period or periods of absence from Kenya on leave or business, if such period does not exceed, or such periods do not in the aggregate exceed, nine months". I want to make these points with regard to that definition.

In the first place, this is actual residence, not ordinary residence, so that you cannot leave and come back, and that is the reason why this proviso of allowing absence of nine months is necessary to cover the case of a man who goes away on leave or business and comes back. In the second place, it must be actual residence prior to the date of the commencement of the proceedings. Ordinary residence, on the other hand, may be completed at any time. A man may have been here as a child and have completed his seven years ordinary residence, and, provided he has not resided continuously for seven years in any part of the Commonwealth, he retains his status of belonging to Kenya. On the other hand, a man who does not belong to Kenya but comes as an immigrant British subject, has to have done five years continuous residence prior to the commencement of the proceedings before he loses his status of "immigrant". I hope that that makes the position clear. In either case, if either of these periods has been completed, the man cannot be deported. That is subject to proviso (ii) at the top of page 3 of the Bill. That the Secretary of State may permit the period of five years to be increased in a special case.

I have not yet drawn attention to proviso (i). It simply says that any time during which an immigrant British sub-

[Mr. O'Connor] ject is subject to a deportation order or restriction order, or is in prison or in a detention camp, does not count in making up his five years, which I think hon. members will agree is a reasonable provision.

The next question I have been asked is. Why should British subjects be deported at all? It has been pointed out to me that they are not deported from England. So far as I can ascertain, it is true that British subjects are not, at present, deported from England, although they are from many parts of the Commonwealth. That, I suggest, is probably because England is a mother country. But even a mother's patience may fail if her sons attack her, and according to the newspapers—I have no official information on this, but hon. members may recall seeing a report in newspapers to the effect that legislation is under consideration in England to allow the deportation of British subjects.

I have already pointed out that Kenya has had that power for years, I am not introducing anything new in that respect. On the contrary, I am curtailing the classes of British subjects who may be deported to British subjects who do not belong to Kenya and who are immigrant British subjects, as defined. I think that hon. members will agree with me that we must retain that measure of control over British subjects which I have just indicated, because there are British subjects who, although they have that status and that honourable status, unfortunately abuse it. There are British subjects who, for the purpose of obtaining a British passport, or for the purpose of enjoying the benefits of British liberal ideas, or our free institutions, or our British judicial procedure, will be keen enough to claim that status but who, nevertheless, are implacable enemies of everything for which we stand. I suggest, that class that we should be able to control, either by restriction orders or by escorting them to Mombasa and pointing out that the whole world, except Kenya, is before them. (Laughter.)

We also desire to be able to deal with criminals who do not belong to Kenya and are immigrant British subjects, and that the Bill will permit—criminals of the class indicated; that is to say convicted

persons. A "convicted person" is defined as "a person in respect of whom any court certifies to the Governor that he has been convicted, either by that court or by any inferior court from which his case has been brought by way of appeal, of any offence punishable with imprisonment otherwise than only in default of payment of a fine".

There are certain differences between this Bill and the Bill to which you have just given a second reading, and I had better point these out. The deportation authority in the first place under this Bill is the Governor in Council, under the other Bill it is the Member for Law and Order. Only the Governor in Council may make a deportation or a restriction order, or a security order, under this Bill. Also, no order may be made under this Bill without the intervention of a court. In regard to aliens, you will recall that the Member may deport them by an executive order without the intervention of a court. An order, as I have already pointed out, may be made in respect of a person convicted of a crime for which imprisonment without the option of a fine may be imposed, and that may be done upon the recommendation of the court that recorded the conviction, and an order may also be made against an undesirable person.

The debate was adjourned.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

SCHEDULES OF ADDITIONAL PROVISION

MR. MATTHEWS: Mr. Speaker, I beg to move: That the Standing Finance Committee Report on Schedules of Additional Provision, Nos. 5 of 1948 and 1 of 1949, be adopted.

MR. RANKINE seconded.

The question was put and carried.

STAMP DUTIES,

SELECT COMMITTEE REPORT

MR. MORTIMER: Mr. Speaker, I beg to move: That the Select Committee Report on Stamp Duties be adopted.

The report of the committee has been placed in the hands of hon. members and it is fully detailed. Consequently, there is little need for me to enlarge upon what

[Mr. Mortimer] therein contained. The report is somewhat longer than it need have been, because it was felt that hon. members would find much interest in seeing the detailed figures of the stamp duty revenue over a period of years, not only in general but on the particular items on which revision had been proposed. It will be seen from the report that the committee rejected practically all of the suggestions contained in the original memorandum for increases in the rate of stamp duty. The reason for not recommending the adoption of those proposals was for the most part that, in the opinion of the committee, the adoption of the recommendations would retard development, and would also detract from the investment of new capital in this country. Consequently, the committee recommended the rejection of most of the major proposals.

There are, however, a few items to which I will draw special attention, and the first is paragraph (d) on page 4 of the report, dealing with share transfers. The share transfer rate at present is ½ per cent. In Great Britain it is 2 per cent. The stamp duty on the transfer of immovable property in this country is 2 per cent *ad valorem*. It is difficult to find in the present stage of the development of this country any logical reason why the stamp duty on share transfers should only be a quarter of the rate applicable to transfers of immovable property. The committee did not, however, feel that there was at present any justification for an increase, but we do suggest that the financial advisers to the Government might keep this item in mind when they are looking for a source of further revenue.

The only items in the original memorandum which the committee recommended for adoption are the items on pages 5 and 6, lettered (g), (h), (i) and (j). I will briefly refer to these.

Item (g): It is recommended that receipts for salaries and wages should not require the affixing of any stamp. Item (h): When a company is reconstructed, or when there is an amalgamation of companies, the committee recommends that there should be no stamp duty chargeable, except on the increased capital. Item (i): On trans-

fers and conveyances between associated companies, here again the committee recommended that legislation should be introduced, on the lines of the English law, to render such transactions subject to a nominal duty only of Sh. 10 instead of the present *ad valorem* duty. Item (j): The committee made a number of recommendations in line with the original memorandum on insurance policies. For the most part they consist of the introduction of a flat rate of Sh. 2 on a variety of insurance policies, instead of an *ad valorem* duty. There will be very little difference in the actual revenue derived, but it will make the administration easier and will be acceptable for the most part to the insurance companies. We recommend two small additions to the original memorandum by the introduction of the words "or air" in the section dealing with accident insurance policies for single journeys for travellers, and also the introduction of a new sub-article dealing with solicitors' indemnity policies which had previously been dealt with under an omnibus clause.

Those are the only items in the original memorandum which the committee felt able to recommend for adoption by this Council. We did, however, have brought before us a few other items which were regarded as anomalies in the existing stamp law. These were carefully considered by the committee. Some of them were rejected as being undesirable at the present stage of development of this Colony, but one item we do recommend for adoption, and that is mentioned in paragraph (b) on page 7. It refers to a class of instrument which is somewhat unusual but which nevertheless does occur from time to time, where a liquidator is disposing of the property under liquidation, and immovable property is being transferred to the real owners, that is the shareholders. It is merely a transfer from the liquidator of the shareholder's own property. It had been ruled by the courts in 1940 that *ad valorem* duty was payable on such transfers. It is felt, however, that the charge is unjust and that the law should be amended to remedy its incidence. When shares are transferred in those circumstances, no duty is payable and there is no logical reason why the same system should not be applied to the transfer of immovable property. The committee therefore recommends that the Ordinance be amended to provide for only

[Mr. Mortimer]
a nominal duty of Sh. 10 in such circumstances.

That completes the committee's recommendations. There will be very little alteration in the revenue either one way or the other by the adoption these proposals, but they do help to clear up a few anomalies in the existing law and remedy a few defects. Legislation will, of course, be required to carry out the intentions of the committee, if the report is adopted by hon. members.

MR. RANKINI seconded.

The question was put and carried.

PENSIONS (INCREASE)
(AMENDMENT) BILL
SELECT COMMITTEE REPORT

MR. HARTWELL, Mr. Speaker, I beg to move. That the select committee report on the Pensions (Increase) (Amendment) Bill be adopted.

I propose in the first place to give a very brief résumé of the existing legislation. The original Ordinance was enacted in 1945, and it was amended in 1948; in 1949 a Bill was introduced which would have made further amendments. That Bill was not passed by the Legislature, and was referred to the select committee, which has now reported, for examination of the possibilities of increasing the rates of increase. The essential features of the legislation are, firstly, the rates of increase; secondly, the ceilings above which no increase is payable; thirdly, the amount of income other than pension which may be disregarded in order to ascertain whether an individual falls below or above the ceiling; fourthly, the ratio of non-European to European ceilings and rates of increase; and fifthly, the age of the pensioner at which the increase begins to operate. These are the essentials of the legislation.

The 1948 Ordinance enhanced the rates of increase over the rates of the 1945 Ordinance fairly considerably. The 1949 Bill admittedly did not make any substantial improvement in the rates of increase over the 1948 rates, but it did introduce other substantial improvements in the scheme as a whole, or would have if it had been passed. The ceilings for European married pensioners were raised from £300 in the 1945 Ordinance to £450 in the

1948 Ordinance, and to £645 in the 1949 Bill. The 1949 Bill fixed the same ceiling, £645, for European unmarried pensioners. The Asian rates were determined by the appropriate ratio in all those cases. The amount of income other than pension to be disregarded in deciding whether an individual falls within the ceiling, for a European married pensioner, was £52 in the 1945 Ordinance and was raised to £200 in the 1949 Bill. The 1948 Ordinance did not alter the figure of the amount of income to be disregarded. The non-European to European ratio was 55 per cent in all three cases, that is the 1945 Ordinance, the 1948 Ordinance, and the 1949 Bill. The operative age was 60 in the 1945 Ordinance which was reduced to 55 in the 1948 Ordinance, and would have been reduced to 50 by the 1949 Bill. The 1949 Bill would have made the alterations it introduced effective from January, 1944, that is the date the original legislation began to operate; in other words, it was retroactive.

Turning to the report of the select committee, paragraphs 5 and 6 deal with the basis on which any increases in pension can properly be made. The select committee considered this point at very great length, very carefully, and after listening to a great deal of evidence, reached the unanimous conclusion that no pensioner has any right to any increase of pension; and that the use of public funds for increasing the pension which an officer has earned by his service could only be justified on the ground of hardship. That is, a pension increase is only justified if it can be shown that the individual will suffer hardship if no increase is given. That is the fundamental basis of the committee's report.

Paragraphs 7 and 8 of the report are concerned with the ceiling and, of course, in considering the ceilings the committee naturally had in mind the conclusions it had already reached regarding the fundamental basis of hardship. On that basis the committee came to the conclusion that there is no case for increasing the ceiling of £645 which appeared in the 1949 Bill, and which was to be applicable to both married and unmarried European pensioners. The committee did, however, think that the ratio of non-European to European increases and ceilings should be altered from 55 to 60 per cent. The 55 per cent came from the Mundy report on

[Mr. Hartwell]
the cost of living allowances, which was made I think in 1944 or 1945. The figure of 60 per cent was considered to be more appropriate, because that is the figure fixed by the Holmes report on salaries revision for the ratio of non-European to European salaries in posts of the unified services.

Paragraph 9 of the report is concerned with the amount of income other than pension which may be disregarded for the purpose of deciding whether an individual falls within the ceiling or not. We came to the conclusion, after listening to the evidence of a large number of pensioners, that there is a case for increasing the rate for married pensioners to £300 and for single pensioners to £200. There again the 60 per cent ratio will operate to determine in the case of non-Europeans the amount of income other than pension which may be disregarded for the purpose of deciding whether an individual came within the ceiling or not.

Here again it necessarily follows from our conclusion regarding the fundamental basis of increases, which was that they must be based on hardship, that one cannot ignore private income altogether for this purpose. You cannot pay a person a pension increase on the ground of hardship if he has a substantial income apart from his pension.

Paragraph 10 of the report is concerned with the rates of increase. Here we found it necessary to compare the pension-on-pre-revision terms plus increases with the pension which would be payable to an officer retiring from the same post, with a similar period of service, on post-revision terms. We discovered that the 1949 increases produced the result that the pre-revision pension plus increments impinges very closely, and in some cases actually exceeds, the pension which would be payable on post-revision terms. We therefore found it impossible to recommend any increase over the 1949 rates. You could go on for ever examining particular cases to see whether the pre-revision pension plus increases exceeds the post-revision pension. We had a very large number of cases worked out by the Accountant General's Department, and this conclusion we unanimously reached.

Paragraph 11 of the report is designed to cover special cases, in which even when an increase has been given, there is still

hardship. We think that cases of that kind may occur, and the report recommends therefore that an *ad hoc* committee should be set up to consider cases of that sort. Special increases under this provision would be limited to cases in which the pensioner is already in receipt of a temporary increase; he must be more than 65 years of age or certified unfit for employment on medical grounds; he must have completed ten years' service with the Kenya Government, and he must be resident in Kenya. I think that all these provisions are clearly necessary, except that the last one may require explanation. We came to the conclusion that it would not be practicable to operate this arrangement at all unless the pensioner were resident in Kenya, because it would not be possible to inquire into his circumstances. Moreover, at any rate in the case of European pensioners residing in the United Kingdom, there are many ways in which it is possible for such people to live economically which are not possible for a person living in Kenya. This is a very difficult subject. The committee gave it very careful consideration over a long period and examined a large number of witnesses. The committee managed to reach unanimous conclusions, except that the hon. member Mr. Madan and the hon. member Mr. Chemallan found it necessary to make a reservation in regard to the general principle of the 60 per cent rule, although they did not object to the utilization of the principle in those particular cases.

I beg to move.

MR. PADLEY seconded.

MR. COOKE: In conformity with rule 80 (3) of Standing Rules and Orders, I beg to move that this report be submitted to a committee of the whole Council where it can be more thoroughly gone into, paragraph by paragraph.

THE SPEAKER: I do not wish to put any obstruction in your way, but I have been looking up the minutes and I find that the Bill itself was withdrawn. The second reading had been moved, but then the Bill was withdrawn. Rule 80 applies when a Bill has been committed to a select committee in the ordinary way. The motion on which this present select committee was founded was a separate motion

[The Speaker]

made. I think, by yourself, after the Bill had been withdrawn, and I am therefore in grave doubt as to whether you can rely on Standing Rule No. 80. I should have thought that, if you were very much opposed to this report, you could move for its recommitment or something of that kind. Looking at it in May, it is said: "In some instances the House has resolved itself into a committee to consider the report of a select committee". Two instances are quoted, one in 1889 and one in 1796. (Laughter.) (MR. COOKE: That was before I was born, sir.) If you move, and your motion is duly seconded, it will be put.

MR. COOKE: I beg very respectfully to ask for reconsideration of that. I think you have based your conclusion on a technicality. It was only on my giving way in order to expedite the business of this Council that it did not go to a second reading and was referred to a select committee. If you look at rule 79, which is the rule I stand on, you will see "A Bill may be referred to a select committee either on its second reading as provided in rule 69 or while under consideration in committee of the whole Council." This rule 80 to which I refer now would have applied, provided ten members agreed, if I had not, in order to make it convenient to the Council and to save time, given way.

THE SPEAKER: It is because I did not wish to pass a ruling upon a technicality that I said at the conclusion of my ruling that I am quite prepared to put a motion, which is that the report be considered in a committee of the whole Council, if that motion is duly moved and seconded.

MR. COOKE moved: That the report be referred to a committee of the whole Council, to be considered paragraph by paragraph.

MR. BLUNDELL: I should like to second the motion, as I have had a difference of opinion with the hon. Member for the Coast on this matter. (Laughter.)

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

MR. VASEY: On a point of order, I take it no one can move an amendment to the report, since it is the report of the gentlemen concerned. I take it that all that can be done is that the recommenda-

tions of the report can either be accepted or not accepted. We are, I suggest, not endeavouring to alter the words in which the hon. gentlemen on the select committee have made their recommendations to this Council.

THE CHAIRMAN: I think the hon. Member for Nairobi North is correct. I think that all that can be done is what is stated in May: "On the consideration of the report motions may be made expressing the agreement or the disagreement of the Council with the report as a whole, or with certain paragraphs thereof, or for agreeing to the recommendations contained in the report generally, or that certain exceptions or omissions may be made which are founded upon or enforce the resolutions of the committee, or are otherwise relevant to the subject matter of the report or to the business of the Committee". "Agreeing to the recommendations contained in the report generally, or with certain exceptions" will allow something to be cut out, I suppose, but it really does not as far as I can see allow anybody to put anything in. That is how I see the matter at this stage.

MR. COOKE: It was the custom to recommend that such-and-such should be put in. For instance, on the Standing Finance Committee report one was allowed...

THE CHAIRMAN: All I am trying to do is to get the matter in order as to whether this report which you have moved to be taken paragraph by paragraph arises out of a general debate that the report be adopted. You want it in committee. Is it then really your intention to have the question whether this report be or be not adopted, or be adopted with exceptions, dealt with in committee?

MR. COOKE: Yes, it should be adopted with exceptions.

THE CHAIRMAN: Then, I will put the question in this form, that the first three paragraphs be adopted.

The question was put and carried.

Paragraph 4:

MR. HOPKINS: Mr. Chairman, I am myself a pensioner and I would not be speaking on this unless I had been requested to do so by other pensioners. I should like to draw attention to the fact that the select committee seems to have

[Mr. Hopkins]

overlooked one of the main points which was asked to consider, and that was to consider whether the ceiling should not be applicable to all pensioners. That point is not referred to at all, and the result of not doing so is that people who have worked less years and have presumably not held such important posts, are now being, not levelled down but are now being brought up to the pensions of those people who worked longer and more efficiently. The report, because of the lack of consideration of that point, only makes provision to help people with small pensions and to bring their pensions nearer to the level of those who merited higher pensions.

MR. HARTWELL: Mr. Chairman, I think that paragraphs 5 and 6 of the report satisfactorily cover that point. If it is accepted that the increase can only be granted on the basis of hardship, it necessarily follows that no increase can be granted above a certain level, whether it be an income level or a pension level. The essential basis of the committee's report is that an increase is justified on the ground of hardship. It therefore follows that when you reach the level where there is no hardship, no increase can properly be given.

MR. VASEY: I would suggest, however, that surely the select committee covered the point raised by the hon. Member for Aberdare, because if I read their terms of reference aright, it was that they were appointed to consider whether the provisions of the Pensions (Increase) (Amendment)-Bill, 1949, could be increased, and to make recommendations. So I take it they must in their terms of reference have covered that point.

MR. HARTWELL: That is so, Sir.

On the question put and carried, paragraph 4 was approved.

Paragraph 5

MR. COOKE: Mr. Chairman, I would also disclose the fact that I am a pensioner, but I would also disclose the fact, as I have done before, that I have no intention of accepting this increased pension, even if it is increased, and it may be no sacrifice in this matter, because I realize that the increase of my pension would be something in the nature

of £6/14/2d., about the price of half a case of whisky. (Laughter.)

It is only a year ago since I, especially, on this side of Council was fighting on behalf of the members on the other side of Council for increased salaries, and I think I can say without betraying any secret that I was probably the chief protagonist, or one of the chief protagonists, on this side of Council to ensure that that equitable demand on their part should be acceded to. Now, if I had employed the arguments which my hon. friends employed in this report, those gentlemen on the other side of Council would have received no increase of salary whatsoever, because it was not a right, but it was certainly an equitable thing to do, and some of us would prefer equity to a mere legal right.

Now, this paragraph to which I am now referring states that there is no right. I will admit that at once, there is no right. But I do say that for the common weal, the common good, and also for equity, it is only right that a pensioner who has retired at the time when he could calculate that the pound had a certain purchasing power, should in equity feel that the pound on which he had retired would continue to have that same purchasing power, accepting the normal fluctuations which everybody must expect. But nobody expected, for instance, the second war to come which reduced the purchasing power of the pound to about ten shillings.

It is for that reason that I refuse to accept the conclusions of this particular paragraph. For instance, it says: "It cannot be claimed that a pension must be of such order that its recipient should always be free from want". Well, I think it should be claimed that the recipient should always be free from want, certainly want in the term that the man should at any rate have enough money to keep himself in decency and very often the semblance of starvation. There are pensioners in England who are finding it very difficult indeed to keep free from want. If we apply the criterion to the gentlemen on the other side, we should say to them "Friends, we do thee no wrong", and notably two of the gentlemen who are signatories to this report, men who are signatories to the country when because they came to the country when the cost of living was very high. They came with the definite understanding, or

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knew exactly what their position was, what the purchasing power of the £ was, and they had not been five months in the country when they rightly, and very rightly, claimed an increase of salary. They knew what their contract was as soon as they entered into it, just as the pensioner knew what his contract was.

Therefore I move: That paragraph 5 be not adopted.

MR. BLUNDELL: Mr. Chairman, I was a member of the select committee, and I should like to assure the hon. Member for the Coast that in two aspects I was a member of the committee with a very open mind. They were particularly the question of an increase in equity, and particularly the question of the means test.

I do not think that you can accept that a pensioner has a right—and the hon. Member for the Coast has agreed to that

to an increase, and I believe that if you accept that in equity he must have an increase you will be committing a considerable wrong on many other members of the community. The community does not only consist of pensioners, and it would be an absolute wrong doctrine that because a man enters Government service he must automatically have welfare from the cradle to the grave. It would be impossible to base any system of pensions on a datum line sufficient to cover what for the simple reason that terms and length of service are so different. Some may serve the minimum time in Government service and then say to the community "Now you have got to see that I am free from want".

Such a situation is impossible. In fact, one must be very sorry for pensioners who entered terms of service which will give them in their old age—and I stress the point—after devoted service to the community, a reasonable standard of living, but the capitalism of the world war has altered that, and it is a risk which I think any individual who enters upon the uncharted seas of life must expect, because we have only to look at the man who serves us, we will say, behind the counter of a shop in Nairobi. He has built up by great abstinence his trade with no hope of a pension, he has built up his defence against want by savings during his life. He does this during his period in the shop in Nairobi, and invests

those savings. Owing to certain measures in England, there is no question whatsoever that savings of people of that sort have been enormously reduced and the cost of living has been increased and, in fact, those people who saved from their salaries against want are in exactly the same boat as the pensioner. You must remember that.

When you say that in equity you must increase every pensioner's pension, you must remember that the great majority of citizens are in exactly the same boat, and that must be carefully gone into because you cannot grant to one section of the community, in my view, special treatment because of the cataclysm of the world war. If we do so we should pass a motion in this Council urging the measures that Mr. Dalton took to reduce the incomes of people who invested in nationalized industries, and we should ask Government to take measures to increase the rates of interest. You have got to view these things not from the specific case of the pensioner.

For that reason, after the most exhaustive argument, the committee came to the conclusion that the only real test is one of hardship. No decent citizen here wishes to see a man who has given good service to the Crown or Government reduced to penury in his old age, but at the same time no decent citizen can accept the doctrine that because a man enters Government service automatically he need never want. (Hear, hear.)

MR. VASEY: Mr. Chairman, I find myself in a little difficulty on this paragraph. While one may agree or disagree with the conclusions of the gentlemen who signed this report, I suggest that this paragraph you cannot reject. It contains no recommendation, and that is what I tried to point out at the beginning. Unless it contains a recommendation, I suggest that we cannot reject a statement of their opinions after having appointed them. All we can do as a committee of the Council is to state that the recommendations are not acceptable—they must be either decreased or increased. I suggest that it is not possible, as the paragraph does not contain a definite recommendation, to reject it. That was the point of order which I tried to make clear at the very beginning. I cannot say that the hon. Acting Deputy Chief Secre-

[Mr. Vasey]

try did not come to this conclusion nor more than I can say that my hon. friends on the other side who signed the report did not come to this conclusion, while I say not be prepared to accept the recommendations they may make from that conclusion later in the report.

MR. COOKE: Mr. Chairman, the hon. Member for Rift Valley is in volcanic eruption again this morning, but we want to treat this from a more logical point of view. The fact that I cannot redress the grievances of everybody in this country suffering from the present high prices, should not debar me from trying to redress any grievance that I can.

My hon. friend had rather sarcastic remarks to make about civil servants expecting this and that increase of pension, but we are acting in complete consonance with the farmers of the country who, when the cost of their production goes up—I know, being a member of the Standing Finance Committee—from time to time they come and ask for an increased price of butter, sugar and maize. I think that maize has gone up three or four times in price. Does the hon. member wish that I should say "No, you have agreed to the price of maize. Cut down your commitments, have a less costly motor car and ride a bicycle instead, send your sons to a less expensive school, do not smoke cigarettes, and don't drink any whisky". That is what you are asking the pensioners to do.

That is the logical view to take, but I do not think it as equitable, and I have consistently, because it has peeved me, stressed equity. I have agreed, much to the discomfort of the poor civil servants who find their cost of living goes up and up, I have agreed myself to raising the prices of produce in this country to keep the farmers going. If we did not, what would they do? Go on strike and say they would not produce? Like the dockers of London and Sydney? Therefore that is just a threat and not equity at all.

MR. BLUNDELL: Mr. Chairman, I should like to disabuse Council of the opinion that I spoke in sarcasm. If I gave that interpretation I did not mean it. I think there is a vital difference between a farmer and a pensioner, for one is actually in production and the other is

not. A true comparison would be a farmer who had retired and a civil servant who had retired. I make that point because I do not think we want to waste time arguing the toss on these small matters.

THE CHAIRMAN: With regard to the point of order again raised by the hon. Member for Nairobi North, I would remind him that this Council passed a motion that the report should be considered and dealt with clause by clause. Therefore we have to deal with it clause by clause, and I am going to put again the question that paragraph 5 be adopted.

The question was put and carried.

The question that paragraph 6 be adopted was put and carried.

Paragraph 7.

MR. COOKE: Mr. Chairman, I oppose this paragraph because the ceiling is too low. It was suggested in evidence to the committee that the ceiling should be £720 a year, and following up what the hon. Member for Aberdare said, that the pension should be paid irrespective of the pensioners, up to the first £720 an increase should be made. I therefore oppose this paragraph and recommend that the ceiling should be £720.

MR. PADLEY: Mr. Chairman, with regard to this point, I do not wish to enter any argument based on any defence of £645, but it does seem to me that the point is this. We have accepted paragraphs 5 and 6, which said that there is a justification for a ceiling. The point which arises now is, at what point does hardship begin? Later on in the report there is a provision, which I do not think will be rejected, that with regard to private incomes which may be disallowed the amount should be increased to £300. This means that a pensioner may have on the present ceiling of £645 a pension of £644 plus private income of £300, i.e. £944 a year, and will have a small increase under the provisions of the Bill as amended by these proposals. I submit that an income of that order cannot be described as a small one and that the recipient cannot be said to be suffering from hardship.

MR. COOKE: Mr. Chairman, I would accept the hon. gentleman's argument if he will accept my argument, and that is

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that there should be a ceiling to his own salary. When he got his increase last year there was no ceiling to it, and I do not see how the hon. gentleman can have it both ways.

MR. ERSKINE: May I point out in regard to that particular argument that we all agreed in this committee that the labourer was worthy of his hire. We agreed to that in previous debates in this Council, but there is a slight difference when the labourer has ceased to labour. That really is the whole point, because if we continue with the liability of the labourer being worthy of his hire long after he has ceased to labour, then we are entering into a limitless liability, involving public funds in a limitless liability, and that we could not possibly do.

MR. VASEY: Mr. Chairman, I must say I find a certain illogicality in the argument just put forward by the hon. Member for Nairobi South. I feel that in all the arguments that I have heard bandied across this floor on the question of salaries I have heard both sides say that pensions are a part of a salary, and if you do bring pensions in as a part of a salary, then surely if you agree to an increase in salary, you must bear in mind that the pension is a fundamental part of the salary. It is merely deferred salary and must of necessity be subject to consideration for adjustment if you accept the one principle. Therefore I feel that I cannot accept the argument put forward by the hon. Member for Nairobi South, who is laying down a principle in the Council.

MR. ERSKINE: I think perhaps there is a misunderstanding there. The pension is fixed from the date of the retirement. When the labourer ceases to labour, at that moment he retires and his pension is fixed for all time. Any recommendations we have made here have been on the grounds of hardship, as has been stated.

MR. COOKE: The hon. gentleman has made an admission that I was expecting him to make, and I am very glad he has made it. The hon. Acting Deputy Financial Secretary was too clever to make it. Now we know the reason why salaries have gone up on the other side—it is because if they had not pressure would have been brought to bear on them. In fact, equity does not enter into the argu-

ment at all. It is because serving officers can either retire and, say, take another and better job, that we gave way apparently last year over the demand for increases in salary. I am sorry we had not these arguments last year at our disposal.

MR. HAVELOCK: Mr. Chairman, another point I should like the hon. Deputy Chief Secretary to answer if he would, is that I do not quite understand why there is no difference in salary between the married man and the bachelor, or one with dependants and a bachelor. It seems to me that, if the whole case is based on what really may amount to charity, the married man with dependants should be treated rather more generously than the bachelor.

MR. HARTWELL: On that point, we did consider the advisability of fixing a different ceiling, but we decided that as a concession to the unmarried officer the ceiling should be the same. But there is a difference in the rate of increase and there is a difference in the amount of income to be disregarded for income other than pension, in order to determine whether a man falls within the ceiling or not.

On the other point, of whether it follows that because there is a salary revision there should necessarily be a pension revision, I suggest that one of the main reasons for revising salaries is that, if you let the salary structure fall below what is paid to people doing corresponding duties either outside Government service or in other occupations, then you will not attract to the public service or retain in it the type of person you require. Moreover, you will have a discontented service. So it is a matter of practical necessity to adjust salaries. I suggest that the same arguments apply to pensions.

THE CHAIRMAN: Will the hon. Member for the Coast please inform me whether he wants these words added to the paragraph: "that the ceiling shall be £720 per annum, and that those in receipt of a pension exceeding that amount shall draw the equivalent increase on the first £720 of pension"?

MR. COOKE: Yes please, Sir.

The question of the addition was put and negatived.

The question that paragraph 7 be approved was put and carried.

On question put and carried paragraph 7 was approved.

Paragraph 9:

MR. COOKE: This really refers to what is known as the means test. I find it difficult to support the argument here, because I found some difficulty in supporting it last year. When we raised incomes and salaries of hon. gentlemen opposite we did not insist on a means test, though, as we all know, many civil servants in this country are in receipt of a good deal of private means. I am somewhat amazed at the hon. Member for Rift Valley, because on a hundred platforms in his wideswept constituency, if indeed he has been recorded correctly in the *East African Standard*, he has opposed with all the eloquence that he possesses a means test for farmers under the proposed Agricultural Bill. My hon. friend apparently thinks that the farmer earning say £5,000 or £10,000 a year, as some of the more fortunate ones do, should be absolved from a means test when the question of cheap money as proposed under the Agricultural Bill came up, but my hon. friend apparently thinks that a civil servant on a salary of £500 a year should be subject to the means test. I find it difficult to follow that logic.

MR. BLUNDELL: Mr. Chairman, I entered the select committee not realizing what a hornets' nest I was encountering, and I too was opposed to the means test, but after very exhaustive discussion I came to the conclusion that one must support it. My hon. friend the Member for the Coast continually makes the mistake of assuming that a man in production is the same as a man in retirement. Of course he is not. He himself is very fortunate; although retired he seems to be singularly productive. But apart from that there is a distinct difference. It is a significant thing that the pensioners who came before us, those pensioners who are not suffering hardship always objected to the means test, but in all the cases of pensioners coming before us who were suffering real hardship, not one of them had any objection to a means test. In every case they were only too happy to state—perhaps not happy, but had no objection to stating their financial conditions, and the people who object to doing so were those who really appeared

to be in no need of an increase at all. I say that in all sincerity, it was most marked before the committee.

MR. COOKE: I do not see what bearing that has on the argument, so I will not reply to it.

MAJOR KEYSER: I think the comparison the hon. member gives is an unfair one, when he refers to the objection of the hon. Member for Rift Valley to a means test in agriculture. In that case the farmer was going to be compelled to do something. The means test was going to be applied to him when he was being compelled to do something. I think the case is a very different one and quite unfair.

MR. HARTWELL: Mr. Chairman, all that it seems to me to be necessary to say to this is that, the committee having already accepted paragraph 5 and therefore the principle of hardship it must logically follow that income other than pension must be taken into account, and therefore there must be a means test. The committee considered very carefully what amount of income other than pension might be disregarded, and has reached the conclusions contained in paragraph 9 of the report. I think these conclusions are reasonable and should be accepted.

The question that paragraph 9 be adopted was put and carried.

Paragraph 10:

MR. COOKE: Mr. Chairman, the rates proposed by the committee coincide with the rates in the Bill, and we do not think that they are anything like high enough. For instance, a man on, say a pension of £500 a year, if a married man, will get an increase of £25 under the present rates. A single man gets about £15. I think that is quite inadequate to cover any hardship that a pensioner of that type is undergoing. If he is deserving of any increase of pension, surely he is entitled to an increase of more than £15 if he is, for instance, a single man. It seems to be simply a contemptuous expression of the committee's feelings to offer a man an increase of £15 if he was getting £500 a year.

Therefore I would propose that paragraph 10 be amended so that for a married man with one or more dependants the rates suggested in the amending Bill, clause 3 (2) (i), (a) to (f), should remain as recommended in the Bill. (a) to (m) should read 20 per cent of the amount of

[Mr. Cooke] the pension. That would mean a man on £500 a year would get an increase of £100, and in the case of an unmarried man with no dependants, clause 3 (3) (i), (a) to (d) in the amending Bill should stand; and that sub-sections (e) to (j) should read 15 per cent of the amount of the pension. If we are going to in any way mitigate the hardships pensioners are suffering—and I do not think those in this country are suffering the hardships they are in England—it is no use giving the contemptuous sums suggested by my hon. friend. Therefore I propose these amendments should be adopted.

MR. BLUNDELL: On a point of order, is the hon. Member for the Coast in order in moving from this side of Council amendments which involve an increase in expenditure?

THE CHAIRMAN: If it was adopted it might result in an increase in expenditure, but so far we are only dealing with certain recommendations. I would ask the hon. Member for the Coast whether he wants to vary the last five lines of the paragraph after the word "accept", or are these to be additions?

MR. COOKE: These are recommended additions.

MR. VASEY: I would suggest you would have to alter the last five lines at any rate to some extent, because it says "we recommend that the rates proposed in the Bill should remain", which of course could not be accepted. I think the hon. member means that that recommendation should not be accepted, but his own substituted.

THE CHAIRMAN: I will now put the question that the last seven lines of this paragraph be deleted.

MR. HARTWELL: Mr. Chairman, before the question is put, may we be allowed to speak on this proposal? What is proposed is to cut out the last seven lines and then to insert the amendment moved by the hon. Member for the Coast?

MR. MADAN: I am not sure I heard you aright. Did you say it was proposed to cut out the last seven lines?

THE CHAIRMAN: Yes, from the words "we recommend" down to the words "all purposes".

MR. MADAN: That would cut out Mr. Chemallan's and mine also—(laughter)—I am sure the hon. Member for the Coast did not mean to do that.

THE CHAIRMAN: I dare say it does, but then you need not vote for it.

MR. O'CONNOR: On a point of order, I confess to being a little bit puzzled. Are we in order in amending the language of this report, which I understand is the stage we have now reached?

THE CHAIRMAN: I was only putting the question that way, which is what the hon. Member for the Coast wanted, to get a different recommendation.

MR. O'CONNOR: Exactly, sir I was going to suggest it be put like this: "That the committee, instead of accepting the recommendation contained in these lines (whatever they are) wishes to substitute for it a recommendation as follows". But that we do not attempt to amend the actual language of the select committee report. I think that would cover the point made by the hon. Member for Rift Valley, because we should then merely have a recommendation to Government and not a decision of the committee, which would involve the Government in expenditure.

MR. PADLEY: Mr. Chairman, the proposals in the 1949 Bill, which the select committee have not seen fit to alter, were carefully arranged so that the maximum increase accrued where the pension was smallest. For instance, for a European pensioner, married, the increase proposed under the Bill on a pension of £100 is 40 per cent. The rates of increase then go down by steps until eventually, at the agreed ceiling of £645, there is no further increase. The effect of the recommendation of the hon. Member for the Coast would be to stop about half way down the scale, and thereafter to have a flat increase up to the ceiling of £645. Well, sir, the rates have been carefully calculated in order to see that the smaller the pension the larger the increase, which conforms, I submit, with the condition of hardship. I cannot agree that to accept this recommendation it would mean that a pensioner on receiving a pension of some £500 a year would attract an increase of £75, i.e. as much if not more

Mr. Padley] a pensioner lower down the scale. Also we should go on giving the increase up to £645 a year. I should think a man on a pension of £646 a year would have at least something to say about the fact that he perhaps just missed an increase of what might be £60 or £70. I consider the present proposals for tapering the rates of increase are as fair as any which could be devised.

MR. MATTHEWS: Mr. Chairman, I think it must be accepted that in any scheme which is designed to remove or mitigate hardship, it is necessary to draw a line. Sometimes in such schemes it is known as the "bread line", and it therefore follows that people who are nearer that line to begin with, on their existing income, naturally will receive smaller assistance than those who are very much further below it. Therefore this tapering off and the granting of small increases up to a certain stage is, I submit, inevitable in any such scheme.

MR. VASEY: Mr. Chairman, while agreeing with the hon. Financial Secretary that some tapering off is essential, unless I am greatly mistaken the point that is being made by the hon. Member for the Coast is that the tapering off is so fine that it tapers to nothing long before it should. It is, I think, on that point that my hon. friend has moved that these last four groups in particular shall be increased to 20 per cent. If the hon. Member for Finance and the hon. Deputy Financial Secretary feel that this tapering is out of proportion, I feel certain the hon. Member for the Coast will be prepared to compromise with them on the question of the point of tapering, if they in turn will be prepared to compromise with him on the actual amount of cash that will be received to mitigate the hardship that has been admitted on both sides of Council to exist.

By agreement, the motion was amended to read: That the recommendation at the end of paragraph 10 be rejected and that there should be substituted therefor the following: "That for those married or with one or more dependants the rates suggested in the amending Bill of 1949, clause 3 (2) (i), (a) to (f), shall remain, but (g) to (m) shall taper gradually from 20 per cent of the pension to 12 per cent; that for those

unmarried and without dependants clause 3 (3) (i), (a) to (d), shall remain, but (e) to (j) shall read 'from 15 per cent to 10 per cent of the amount of the pension'."

MR. HARTWELL: The committee has already accepted that there should be a ceiling, which should be £645, and above that no increase at all is justified. Therefore I submit as the hon. Acting Deputy Financial Secretary tried to explain, that it is only logical that as you approach £645 the increase should taper off to nothing, otherwise there will be a sudden jump, and the man who is just below the ceiling will get 10 per cent and the person just above will get nothing at all. The whole principle of the scheme is that you taper off as you approach the ceiling so that there is no big jump between the man just below and the man just above.

MR. COOKE: You must expect a jump some time, big or small. I would be prepared to see a tapering down to 10 per cent, and there would be no hardship.

MR. VASEY: Mr. Chairman, I think the point the hon. Acting Deputy Financial Secretary and the hon. Acting Deputy Chief Secretary wished to make is that it is impossible for tapering to go on like this in a downward curve, then take an upward jump and proceed on the downward curve again, and leave a big jump between the man at the end and the man who receives no benefit. It is quite correct to say that the point the hon. Member for the Coast is trying to make is that the rate of tapering is too drastic, and I would suggest with all due respect that as we are nearing the time for adjournment that we adjourn at this point in order that the hon. Member for the Coast may meet members of the select committee before we start tomorrow and explain his idea how this should be arrived at.

I move that the committee rise, report progress, and ask for leave to sit again. The question was put and carried. Council resumed; the report was adopted.

ADJOURNMENT

Council rose at 12.50 p.m. and adjourned till 9.30 a.m. on Thursday, 18th August, 1949.

Thursday, 18th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Thursday, 18th August, 1949.

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

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 17th August, 1949, were confirmed, subject to the preamble to the motion moved in the committee stage by the hon. Member for the Coast during consideration of the select committee report on the Pensions (Increase) (Amendment) Bill being amended to read: "That the Committee disagreed with the recommendations at the end of paragraph 10 and recommends:—"

ORAL ANSWERS TO QUESTIONS

No. 43—CATTLE POPULATION

MR. NATHOO:

In view of the statement issued to the Press that Government intend to introduce legislation for the erection of a central abattoir and cold storage, will Government inform this Council:

(1) the number of cattle in this country or, if no records are available, their estimate based on the veterinary supplies required—(a) cattle in native reserves, (b) cattle in European-owned land, (c) cattle in Asian and Arab hands, and (d) total cattle in the Colony and Protectorate; (2) the estimated, annual natural increase under favourable conditions free from epidemics; (3) the number which in their opinion will be economically available for slaughter stock without endangering the cattle wealth of the country; (4) the potential number, not value, of cattle that the natural resources of the Colony and Protectorate can support?

MAJOR CAVENDISH-BENTINCK:

1. The number of cattle in Kenya is estimated as follows:—

- Upwards of 5,000,000 in African areas.
- Approximately 550,000 owned by Europeans.
- Indian and Arab owners at Mombasa and near Kisumu are recorded

as owning 4,641 head of cattle; the number owned by Indians and Arabs in other parts of the Colony is not known.

2. The annual natural increase under favourable conditions is estimated by the Director of Veterinary Services to be 15-20 per cent, but factors other than disease, such as severe drought, have a considerable effect and may on occasions entirely wipe out the increase in limited areas.

3. Some 10 per cent of ranches herds under African conditions should be available for slaughter annually. Supposing that ranches in Kenya amount to 4,000,000 head the annual off-take would be about 400,000 head; a considerable proportion of these would be consumed locally in the African areas.

4. The answer to this question is not known since it must depend on the success or otherwise of existing and projected schemes of water development and pasture management; in any case, our first aim, particularly in some heavily stocked African areas, must be to improve environmental and nutritional conditions of African-owned cattle and so improve quality rather than to increase numbers.

DEPORTATION (IMMIGRANT BRITISH SUBJECTS) BILL

SECOND READING

The debate was continued.

MR. O'CONNOR: Mr. Speaker, at the adjournment yesterday I had pointed out an apparent anomaly between the fact that a British subject had to be ordinarily resident for seven years, whereas the status of belonging to Kenya might be acquired by a person who was naturalized at once, after a less period of residence in Kenya. That is a provision which I took from the model, and I suggested that the reason for it was that the foreigner on becoming naturalized would in some cases lose his original nationality.

Now, I do not wish to be understood as saying that that would apply in all cases. I did not in fact say so, but I wish to make it plain that that would not apply in all cases because, of course, as we all know, there are some foreign states where it is a case of once a national of that state, always a national

[Mr. O'Connor] of that state. In those cases, whether or not a national becomes naturalized in another nation, he still retains his original nationality and you then get a case of dual nationality. But hon. members will no doubt be aware that it was the law in England under the British Nationality and Status of Aliens Act, 1914, that naturalization of a British subject when in a foreign state, and not under disability by his own act, *ipso facto* resulted in the loss of his British nationality, and there are, or were (things are so changed now that it is very difficult to keep track of all the changes), so far as I am aware, a number of states where that works in reverse and where naturalization as a British subject would, *ipso facto*, result in the loss of the nationality of origin.

It is for that class of case and for the stateless person who has no nationality that this clause was inserted in the Bill, but if it should be the wish of the Council to amend, or even to delete, that paragraph in the committee stage of the Bill, I for one should not raise any very great objection. It would simply result in the fact that in some cases, notwithstanding the deletion, we should not deport the British naturalized person concerned because there would be nowhere to send him, and that could be dealt with administratively by a restriction order or something of the kind.

May I enter a caveat on this subject? Under clause 2 (2) we are dealing with two topics: first, ordinary residence, and secondly, when we get to paragraph (c), nationality. Both these topics are already sufficiently difficult without being complicated by the question of domicile. I have had questions asked me which were dependent upon the law of domicile. We are not dealing with domicile. Domicile is not the same as either nationality or residence. A man may have two residences at a time, he can only have one domicile, and so on. There are all kinds of distinctions, and I suggest that if we get mixed up with questions of domicile we shall merely complicate what is already a sufficiently complicated subject.

I should like to stress again that under clause 2 (2), which deals with the status of belonging to Kenya, the type of residence required is ordinary

residence for seven years and, as I said yesterday, that kind of residence can in my opinion be broken by periods when a man goes away on leave or on business, intending to return, and continues to be ordinarily resident here, and that period of seven years' ordinary residence may be completed at any time. As I said yesterday, and I should like to stress it again, a man may come under that if he has been resident here for seven years as a child, or something of that kind, if he has not gone away and lost it since.

On the other hand, the five-year period for ceasing to be an immigrant British subject is five years' actual continuous residence, not at any time but prior to the commencement of the deportation proceedings. That five years which is a specific proviso, proviso (iii), which is that it shall not be deemed to be interrupted by absence from Kenya on leave or business, if the period of absence does not exceed, or the periods do not exceed, in the aggregate nine months. Nine months is put in as a fairly reasonable period, but if it is the wish of the Council that that should be extended or decreased, that can be discussed in committee and I do not expect any difficulty about it.

I also mentioned yesterday, and I mention it again, that under the second proviso to sub-clause (3) the period of five years may be increased in any case where the approval of the Secretary of State has been given to the making of a deportation order at any time before it is made. That is the reason for the reference in clause 7 (2) to a deportation order made with the approval of the Secretary of State. All that the Secretary of State can do under that is to extend the period of five years required for a British subject to cease to be an immigrant British subject. His approval does not in any way affect the procedure which is laid down in the Bill, except that, as I have pointed out, the person concerned must be told of his approval.

At the adjournment I had mentioned that an order might be made against an undesirable person as defined, and I was about to refer to the definition "undesirable person". That definition is on page 2 of the Bill and it reads as follows:—"Undesirable person" means a person who is or has been conducting

I. Deportation (British)

(Mr. O'Connor)
himself so as to be dangerous to peace, good order, good government, or public morality, or is or has been attempting, or conducting himself in a manner calculated to raise discontent or disaffection among His Majesty's subjects or inhabitants of the Colony, or to promote feelings of ill-will and hostility between different classes of the population of the Colony." The first part of the definition is more or less common form, taken from the model, and the second part is taken from the definition of "seditious intention" in the Penal Code.

I will now go on to explain the working of the Bill.

Under the Bill proceedings are required before a judge or a legally qualified magistrate. The nature of these proceedings is outlined in clauses 7 and 8. In clause 7 (1) it is stated that a notice is to be served upon the person charged specifying, with sufficient particulars to give him reasonable information as to the nature of the facts alleged against him the grounds upon which it is proposed that an order may be made against him under the Ordinance, and requiring him to appear before a judge or magistrate at a place and time to be stated in the notice, why such order should not be made in respect of him. "Magistrate" means a magistrate having the legal qualifications necessary for a judge and appointed under the Ordinance.

In certain cases, as you will see from clauses 7 and 8, affidavit evidence may be received, and is to be received if there is a certificate by the Member that it is in his opinion necessary that the evidence be given on affidavit. It was found in Malaya, and I understand it has been found elsewhere, that in cases where a person to be deported was in a position to control some society or association or organization, which was capable of bringing pressure upon or intimidating witnesses, witnesses who had given circumstantial statements to the police which had been checked and found to be true and of whose truth there was no doubt at all, none the less refused point blank to repeat their statements in court if it was a question of their identity being disclosed so that reprisals could be taken against them-

self, or their families, by the associates of the man to be deported.

It is possible to nullify the whole enforcement of justice by intimidation or pressure upon witnesses so as to cause them to withhold evidence, and it is, I suggest, absolutely essential in an Ordinance of this kind to be able to afford some protection to witnesses and, in certain cases, to be able to receive evidence on affidavit. The general nature of that evidence has to be communicated to the accused who may in all cases call his own evidence and to be heard in his own behalf. The judge or magistrate may require a certificate from the Member that the affidavit evidence is necessary. Except in cases where that is necessary, the ordinary rules of procedure would be followed.

I stress in connexion with all this that we are not putting people in prison. This is a deportation or restriction Ordinance. Cases may be directed to be heard in camera. Obviously that, I suggest, is reasonable and necessary on security grounds, but I propose to move an amendment to clause 7 (6) in the committee stage providing that hearings in camera shall only be conducted on a certificate by the Attorney General (not the Member) that it is in the public interest that that course should be adopted. It is, I suppose, conceivable that in the future the office or Member for Law and Order might not be held by the Attorney General. We have to consider developments years ahead. It has been pointed out to me that that is a possibility, and therefore I propose to move an amendment to substitute the Attorney General for the Member for Law and Order in that sub-clause.

The rest of the Bill is mainly concerned with the machinery for putting orders into operation and with practical provisions for making them work, in which respect, as I said yesterday, the existing law is rather lacking. As an example of one of these clauses, there is clause 20, under which the Member may make orders in relation to persons subject to restriction orders, and he may impose in relation to such persons orders providing for "censorship, receipt or dispatch of communications, use or possession of any vehicle, boat, aircraft, machine, radio or other apparatus, camera, arms and explosives", and other

II. Deportation (British)

(Mr. O'Connor)
like things. I think hon. members will agree that persons who may be restricted for undesirable activities should not be permitted to carry on their undesirable activities by correspondence from the place of their residence, and also should not be permitted to receive or distribute subversive literature.

There are provisions, as hon. members will have seen, for revocation or variation of orders. There is a clause that no proceeding under the Ordinance is to be instituted except by or with the sanction of the Attorney General, and that orders made under the Ordinance are to be reported to the Secretary of State. I do not propose to go through those provisions in detail, but I shall be happy to try and answer any question which hon. members may raise upon them.

The general result of these two Bills if they become law should be to put the law relating to deportation upon a rational basis, distinguishing between aliens and British subjects, and between British subjects who do not belong to Kenya, or who are immigrant British subjects, and British subjects who belong to Kenya. The other effects of the law should be greatly to strengthen the position as regards aliens, and to strengthen the practical application of the law generally.

MR. HOBSON seconded.

MR. PATEL: Mr. Speaker, I made certain observations yesterday at the second reading of the Deportation (Aliens) Bill, stating my reasons why I was not willing to lend my support to this Bill. I do not want to repeat those observations, but merely to add this, that where Government is not responsible to the Legislature and cannot be removed by the Legislature, it is highly necessary that every power of this nature which is entrusted to that Government should be watched very carefully. In a Government which is responsible to the Legislature, it would be very easy to remove that Government if the powers entrusted to it by such a statute is misused.

I would like to make some observations on two or three matters. Firstly, in regard to "convicted person". I wish to submit that there should be an exception in the case of those offences in

which no moral turpitude is involved. If you examine carefully the history of the British Commonwealth, you will find that many persons who had opposed the Government with a view to bringing about a change in the system of government were prosecuted and sent to prison but later were found to be at the helm of affairs of the State. That has happened many times. Therefore, where Government is not removable by the Legislature it may become necessary to join issue with that Government. Even should Government find it necessary to commit such a person to prison, there should be no power to deport him.

The other point is in regard to "undesirable person", and in my opinion it is a very wide definition which may cover any class of people. The third point has been dealt with by the hon. mover which I intended to raise, in regard to the provision giving preference to those who obtain a certificate of naturalization. I do not think that such a class of people should be given preference by legislation.

The other thing I would like to comment on is in regard to evidence by affidavit. I would say that the hon. mover has made out a case why it may be necessary in special circumstances to take evidence on affidavit. At the same time, in a country like this, where the standard of education among the masses is not very high, there will be a temptation among illiterate people to blackmail people they do not like by giving evidence on affidavit. That temptation may exist, and at the same time for those who want to take an action in law the temptation may be great to obtain evidence on affidavit. I personally feel very unhappy about that provision, because it has not obtained in any other legislation as far as I am aware, that any witness can be used without an opportunity to test his veracity by cross-examination.

With those remarks, Mr. Speaker, I personally feel that I cannot support the Bill as it stands.

MAJOR KEYSER: Mr. Speaker, I rise to support the Bill. I have one observation on detail to make first, and that is on clause 2 (2) (b).

Under this, a person is deemed to belong to Kenya if he or she is a British

[Major Keyser] subject and "(b) has been ordinarily resident in Kenya continuously for a period of seven years or more and, since the completion of such period of residence, has not been ordinarily resident in any other part of His Majesty's dominions or any territory under His Majesty's protection or in which His Majesty has jurisdiction continuously for a period of seven years or more". I take that to mean that a resident of Kenya who goes to live in a place like Northern Rhodesia say for six years or so then loses his status as a resident in Kenya, but if he goes to a country like India he does not lose it, because India is not one of His Majesty's dominions nor is it a territory under His Majesty's protection, nor is it a territory in which His Majesty has jurisdiction. I think that that clause needs some amendment, and in the committee stage I will move an amendment.

Speaking generally about the Bill, I support it because while I realize that it does curtail the freedom of the citizen to some extent, nevertheless I do believe myself, and I think most people will agree with me, that the greatest interference with the liberties of the citizen arise when law and order break down completely. I support this Bill because I believe it will to a very great extent mitigate against circumstances arising that have caused the situation that we know exists in places like Malaya. Even if we are going to lose a certain amount, or possibly a certain amount, of our freedom, in order to prevent a situation such as that occurring then I think we are paying cheaply for that security. I do hope that all who have been talking so much recently about interference with civil liberties will remember that it is under these circumstances that civil liberties disappear almost completely. (Hear, hear.)

I am sorry that the hon. member Mr. Patel could not give his whole-hearted support to this Bill. He started off in his reference to a particular section, and I thought that now he is going to support this. Immediately came in a "but", which completely nullified my first hopes. I do think that every member of this Council and every member of the public of this Colony should give full support to a Bill of this sort, simply as

an insurance against conditions that have arisen in other parts of the world.

I beg to support.

MR. MATHU: Mr. Speaker, I have only two or three points I should like to raise in connexion with this Bill.

The first is that the Bill intends to narrow the field out of which persons in Kenya could be deported from Kenya. As paragraph 1 of the "memorandum of objects and reasons" says, the existing law allows the deportation from Kenya of any person, whether a British subject or an alien, and whether he belongs to Kenya or not. In this respect it is considered that the existing law is too wide. I entirely agree with that.

The hon. Attorney General in moving the second reading, which I think he did extremely ably, said that he is not introducing any new principle because the principle of deportation was introduced in 1923, and it is only, as he said I think this morning, putting the whole thing on a rational basis. It is on that rational basis that I should like to put some questions to the hon. mover, because I think there is some irrationality somewhere. Yesterday he said that there is no deportation from England, England is the mother country, and there is no person who would deport a British citizen here from England. This Bill does something similar. It says that, if you belong to Kenya—that is if you have the qualifications outlined in clause 2 (2)—then this law does not apply. What I should like to know is what happens to the person who is a British immigrant who becomes a convicted person as defined, or who becomes an undesirable person as defined in the Bill. He is not to be deported, because he belongs to Kenya.

The other question is, supposing such a person becomes undesirable, as perhaps he would if he said he would cut the ears of people who did not obey him, would he be deported to Kapenguria, Kabarnet, Lamu or Marabit? If he became the leader of the Dini ya Msambwa, what would happen? Would he be deported to the Northern Frontier or the places I have mentioned, or what becomes of him? Does he go to gaol? Why is it that those who belong to Kenya are not deported from Kenya, but are deported from their mother country, their mother tribe. It is on that

[Mr. Mathu] point that I feel there is some irrationality, and I should like to hear what the hon. member has to say about it.

The other point is the point which is included in the proviso to clause 2 (3). If an immigrant person who wanted to 'make mischief' studied this law he would wait until he belonged to Kenya—seven years' residence as defined in sub-clause (2)—then he causes trouble. What becomes of him if he becomes a convicted person or an undesirable person? That is where I feel there is some weakness. Perhaps I am working under a misapprehension.

The final point is a point which was raised by the hon. member for Eastern Area Mr. Patel, a point that I personally feel quite unhappy about. It is the powers given to the judges and magistrates to take evidence on affidavit. I am with the hon. Member for Eastern Area in feeling that those powers can be misused, and although the person will be brought before the court, the evidence will be given on affidavit when the witnesses may not appear to be cross-examined by the accused. There I think we encroach further into the liberties of the individual.

I should be most grateful if the hon. member could give me an explanation on the points I have raised.

LADY SHAW: Mr. Speaker, I should like very much to clear up one point. I think it is clear in the Bill, but I am not quite sure it was clear after the hon. Attorney General had spoken. (Laughter.) The question I want to ask is regarding children who go home for education from this country and are away, perhaps for more than seven years. The hon. Attorney General mentioned loss of nationality, and he linked it up with children who would retain their nationality if they came back to Kenya not having been away more than two years. I want to know what the position is of a child who perhaps was born in England and comes out here at the age of a year or eighteen months, stays here till he is eight, and perhaps then goes home until he is eighteen. I am sure the position is perfectly clear really, but I should like to have it cleared up, please.

MR. HOPKINS: Mr. Speaker, there appears to be one more sub-clause that may lead to difficulties. That is clause 2 (3) (iii), which reads: "residence in Kenya shall not be deemed to have ceased to be continuous merely by reason of the fact that it has been interrupted by a period or periods of absence from Kenya on leave or business, if such period does not exceed, or such periods do not in the aggregate exceed, nine months". It seems to me that under this clause no Government servant would ever be able to be deemed to belong to Kenya, because there would be continual periods throughout his service in which he has taken two periods of leave of five or six months, if he takes his leave every three or four years, and he will be continually disqualified from being deemed to be a resident of Kenya.

MR. BLUNDELL: Mr. Speaker, like the hon. Member for Ukamba, I was fairly clear originally and I am now slightly confused! There is one point I should like to ask the hon. Attorney General. Would he make it clear in his answer whether, under the clauses governing ordinary residence the case of people who are away on war service in the East African forces counts within or without the seven years' continuous residence?

MR. RANKINE: Mr. Speaker, I think that the support which has been given to this Bill, or to these Bills, is very gratifying, because it seems to me that it illustrates the fact that this Council is fully alive to the necessity, if civil liberties are to be of any value, for conditions being created in which those liberties can be enjoyed. (Hear, hear.) Liberty, like most other things, can be abused as well as enjoyed, and if liberty merely becomes licence to indulge in all sorts of undesirable practices, which in the long run merely impinge on or reduce the enjoyment of those liberties by other people, then the State ought to come in and do something about it.

The hon. member Mr. Patel has pointed out that in any colony in which the state of constitutional advancement falls short of full responsible government, it is our duty to scrutinize even more closely the powers granted to the Government. I would not dispute with him over that, and these Bills have been drafted with the very greatest care by

[Mr. Rankine] my hon. friend the Attorney General, who has paid every consideration to the need for preserving full civil liberties. This Council is now being asked to scrutinize those powers with the same care, and I think that the questions that have been asked this morning illustrate that it is doing so. But there is one point made by the hon. member Mr. Patel with which I would not entirely agree. He has suggested that where you have a Government which is not in power by popular support and which cannot be thrown out, the care paid to civil liberties would be greater. In my view, a Government which is dependent on popular support has an even greater temptation to get rid of its political enemies—(laughter)—and for that reason I do not entirely agree with his argument.

Again, he suggested that in a country in which education is not entirely universal, and in some ways falls short of the ideal, the temptation to blackmail people by giving evidence on affidavit is the greater. I would not agree with him there either, because it seems to me that where you have a large and perhaps ignorant population, the temptation to prevent other people giving evidence in a court of law, and to exercise other forms of blackmail, may be even greater, and I would suggest, with all due respect to the hon. member, that the powers in this Bill for providing evidence on affidavit are essential.

Sir, I beg to support.

MR. HAVELOCK: Mr. Speaker, as with most hon. members on this side of Council, although I had my doubts about this Bill, I am prepared to support it because I consider, continuing really from the remark made by the hon. member Mr. Patel, that there will be no abuse of power if this particular Bill is passed, as I consider that this Council as constituted at the moment has sufficient authority and influence on the Government to see that, should there be any abuse of power, it would be stopped immediately. That is the main reason why I feel this Bill can be supported.

There is only one other small point I wish to make, and that is to suggest to the hon. Attorney General that he might define ordinary residence. He has told us what he means by it when he moved

this Bill, but if it were definitely defined in the Bill itself I feel the whole matter would be much clearer and there would be few doubts about it. I beg to support.

MR. VASEY: Mr. Speaker, I too rise to support this measure.

There is one point on which I must disagree I think with the hon. member Mr. Patel, and that was when he referred to the Government as not responsible to the Legislature. While the Government and the members opposite may not be elected by the people of the country, I am sure that they will be the first to agree that they are responsible to the Legislature. The members on this side of Council have been granted an unofficial majority, and if the hon. members opposite so abuse their power as to make it repugnant to the members on this side of Council, I think I am correct in saying that, except where financial provision is involved, we could bring in an amendment to any Bill and have it rectified. The hon. gentleman has given us an example of thinking far more loose than that to which we are accustomed from him, and I cannot myself allow the statement to pass that the Government is not responsible to the Legislative Council.

I do not intend to go into detail on this Bill, but I would like to state the principle on which I feel it must be supported.

We should be foolish indeed if we closed our eyes to the fact that there is existent in the world to-day a conflict between two distinct types of thought and living. One of the combatants in this continuing war has chosen the weapon of insidious propaganda and the use of inflammatory methods particularly appealing to the illiterate, to secure a disruption inside those peoples whose type of living he dislikes. We who face him and his ideas with our own ideas of what are liberty and justice and the correct method of living, must continually in the years to come make up our minds as to how far we can maintain every last inch of our liberty, if that means giving those who support him licence which may be used to destroy us and our method of living. Recognizing that all thinking men must weigh up in the balance how far they are prepared to yield certain principles, knowing always that those principles are subject

[Mr. Vasey] when yielded, to the continual vigilance of the members they have placed in this Council, I feel that this is an essential weapon which must be placed in the hands of the Government in whom our defence against such attempts must be entrusted, and I support the Bill on those lines.

Now, sir, on the one question that has been dealt with, and that is evidence by affidavit, I am perfectly sure the hon. Attorney General will be able to deal with it, but perhaps it would assist if there came an expression of opinion from this side.

Those who read the history of the terrorist movements in other countries of the world will know that the chief weapon that the irresponsible and the deliberately destructive agitator has used has been the suppression of witnesses through threats of violence. He will know, if he reads the history of those other countries, that time and again the forces of law and order have failed to secure a conviction because witnesses dare not appear in public. The power of decision as to the value and reliability of the affidavit is placed in the hands of a member of the Judiciary, whose reputation and record for honesty and justice has been supreme in this world, and I have no doubt about the desirability of placing it in their hands, because I believe that this Bill provides the people of this country with a weapon of defence against the irresponsible agitator, against the man deliberately instructed to destroy our method of living. I support its provisions. (Applause.)

MR. NATHOO: Mr. Speaker, from remarks that I have heard from both sides of Council it seems to me that the impression may be created in this country that a certain section of the community is against taking any measures for the security of this country owing to some ideological idea about civil liberty. I do not think that is the case as far as the majority of my people who have made this country their home are concerned; they are anxious to secure the security of the country with all reasonable precautions. I think that the hon. Member for Eastern Area, when he was raising some objections to certain definitions in the Ordinance, had not the slightest intention of obstructing or

opposing Government in taking any measures which are reasonable for the security of this country. His only difference, as far as I could see, was on the methods to be used by Government.

In these cases I maintain that it is not enough that justice should be done, but that it should appear that justice is being done, and I can assure the hon. Attorney General on behalf of those who have the good of the country at heart that whatever reasonable measures of security are being taken to maintain the actual liberty of persons will be supported by me and all reasonable thinking persons.

MR. O'CONNOR: Mr. Speaker, dealing first with the points raised by the hon. member Mr. Patel, he asked that the definition of "convicted person" be altered to except cases where no moral turpitude was involved. That is a matter which, if necessary, can be considered in committee, but I feel it would be very difficult to make a sufficiently precise definition on those lines and that it is better left as it is.

He said also that the definition of "undesirable person" is too wide. Well, I would ask hon. members to refer to the definition of "undesirable person" and consider it carefully, because for my part I cannot see that anybody who falls within that definition is a person for whom we should entertain any great tenderness.

Then he said that there might be a tendency to blackmail persons by allowing evidence on affidavit, and that has been replied to by the hon. Chief Secretary. I agree that the provisions as to affidavit evidence must be carefully applied, and it will be my careful pre-occupation while I hold the office which I have at present the honour to hold to see that they are most carefully applied and that no injustice is, in fact, done, but of the necessity of having these provisions I am most entirely and sincerely convinced.

I was glad to hear that this measure has met with almost universal support in this Council. I will go on and deal as well as I can with the points made by the hon. Member for African Interests, Mr. Mathu. First of all, he pointed out that I had said there was no deportation at present from England. I would remind him that I also said I understood from

[Mr. O'Connor] newspapers that legislation for the deportation of British subjects, which I presume is what he means, is under consideration in England. Of course, there has been for years deportation of aliens from England.

He went on to ask what happens to a person who is a British immigrant who is a convicted person or an undesirable—I think he said who is a British subject but not immigrant—if he is not to be deported, then what happens to him? Well, under this Ordinance a restriction order or security order may be made against a British subject who is not an immigrant British subject.

MR. MATIU: On a point of personal explanation, I meant in the case of a convicted or undesirable person who was a British immigrant.

MR. O'CONNOR: If he is an immigrant British subject and does not belong to Kenya, he can be deported under the Bill.

The hon. member went on to say that restriction would be equivalent to deportation from the mother tribe. I agree that it would, but I do not think we can come down to tribes. We are dealing with the country as a whole. (Hear, hear.)

Then he asked, what happens to men who cause trouble after seven years. Again I assume he meant a British subject who causes trouble after he has acquired the status of belonging to Kenya by seven years' ordinary residence. He can be restricted, or a security order can be made against him, but he cannot be deported.

The hon. Member for Ukamba asked me about the case of a child who had acquired the status of belonging to Kenya by seven years of ordinary residence, and then went to England for, as I understood, education or some such purpose. The question was whether the child would thereby lose its status of belonging to Kenya. My answer is that, in my opinion, certainly not. The ordinary residence of a child would continue to be Kenya, notwithstanding that it went to the United Kingdom for education. I again speak from what I have seen in the Press, but I understand a ruling to that effect has recently been

given by the authorities in England on the question of national service.

With regard to the question of the hon. Member for Rift Valley, as to whether persons who were away on service during their period of seven years' ordinary residence would thereby have that residence interrupted, in my opinion again no. If a person is ordinarily resident here, he would not lose that ordinary service by going away on war service or national service, assuming that he did intend to return here and that this was his place of ordinary residence. If the army in the last war was anything like it was when I took part in it in the previous war, one would certainly not find it easy to acquire ordinary residence elsewhere, because immediately one thought one was settled anywhere one was immediately moved on! There is no question but that ordinary residence would continue to be here in the case put if there was no intention of changing.

The hon. Member for Kiambu pointed out, and the hon. Member for Nairobi North pointed out also, that this Council has an unofficial majority and it is the right of any unofficial member, except in financial matters involving a charge on the revenue, to introduce a Bill and to amend any part of this Bill which they may think fit to do at a later stage.

I was asked to define the term "ordinary residence". I should be very loath to attempt any such definition, because it would be almost incapable of definition. It is a question of fact in each case and the circumstances have to be considered, but it is a term which is fairly well understood.

It remains for me only before sitting down to say again that I am glad to find that this Bill has received such a very considerable and wholehearted support from this Council. Whether it will be successful in its object or not will depend upon how it is administered. We must do our best to see that it is successful. I do not expect myself that there will be injustice under it because, as has been said, we have scrutinized these provisions with very great care and have gone to the limit, bearing in mind the object of the Bill and the security which it is necessary to have, to see that all possible safeguards are inserted to preserve the liberty of the subject.

MR. HOPKINS: Mr. Speaker, may I ask the hon. member to deal with the point I raised about civil servants?

MR. O'CONNOR: I beg the hon. member's pardon. He wanted the period of six months in the proviso to clause 2 extended. I think I said in moving the second reading that if it was desired to extend or shorten the period there was no objection if an amendment was moved in the committee stage.

The question was put and carried.

BILLS

FIRST READING

On the motion of MR. O'CONNOR, seconded by MR. HOBSON, the Land Control (Amendment) Bill and the Departmental Offences Bill were read a first time.

With the leave of the Speaker, MR. O'CONNOR moved: That Standing Rules and Orders be suspended to enable the Increase of Rent (Restriction) (Amendment) Bill to be taken through all its stages without due notice and the Land Control (Amendment) Bill and the Departmental Offences Bill to be taken through the second reading and subsequent stages.

MR. HOBSON seconded.

The question was put and carried. Standing Rules and Orders were suspended.

On the motion of MR. O'CONNOR, seconded by MR. RANKINE, the Increase of Rent (Restriction) (Amendment) Bill was read a first time.

INCREASE OF RENT (RESTRICTION) (AMENDMENT) BILL

SECOND READING

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

When the Committee which was advising on amendments to the rent restriction law was sitting we considered, among other things, the question of appeals from decisions of the Boards and, on my advice, we decided to recommend that appeals from the Central and Coast Boards should go direct to the Court of Appeal for Eastern Africa. These

Boards, as this Council is aware, are to have a chairman of legal training and experience, and the idea was to save costs to litigants by going direct to the Court of Appeal. Since the principal Ordinance has become law it has been realized that, owing to the terms of the Order-in-Council for dealing with the Court of Appeal for Eastern Africa, there can in fact be only appeals from courts to the Court of Appeal, and it cannot be said that the Rent Appeal Tribunal is a court as defined under the Interpretations Ordinance. That is why this Bill has become necessary. It seeks to provide that appeals from all Rent Tribunals should go to the Supreme Court, from which of course there is an appeal to the Court of Appeal for Eastern Africa. Clause 3 of the Bill merely contains a consequential amendment.

MR. O'CONNOR seconded.

The question was put and carried.

LAND CONTROL (AMENDMENT) BILL

SECOND READING

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

The Land Control Ordinance provides, among other things, for the control of every kind of transaction relating to land in the Highlands. It provides also that such transactions must be reduced to writing and that the instrument evidencing the transaction shall for all purposes be void until it has received the assent of the Land Control Board. Now, it has been brought to the attention of the Government through members of the legal profession, and by the Land Control Board itself, that there is a defect in the existing law, in that it provides an opportunity for parties to quibble on harmless transactions, and transactions that would no doubt be approved readily in due course, to get out of their bargain and to refuse to ratify it, because the document evidencing the transaction is void until such time as the Land Control Board has given its decision. This is an undesirable state of affairs, and tends to weaken the validity of contracts that ought to be enforceable by law. It is proposed therefore to introduce an amendment, and this has been

[Mr. Mortimer] done by a complete redraft of clause 7, as it was felt desirable to take the opportunity of improving the drafting and making the meaning of that section clearer.

But the only feature appearing in it is in sub-clause (3) of the Bill now before the Council, and this provides that all documents evidencing land transactions shall be reduced to writing, and such agreements shall be declared void for all purposes if the Board refuses its consent thereto, as from the date of such refusal, or, if the Board has not signified its consent thereto within a period of four months from the date of the agreement, as from the expiration of that period of four months. That makes it quite clear that all such agreements are in fact not declared void until such time as the Land Control Board has had full opportunity of considering them and declaring its decision upon them.

At this stage I must draw attention to the fact that, in the redrafting, inadvertently an important clause in the original section has been omitted—that is sub-section (3) in the original section 7—and it is proposed in the committee stage to reinstate that clause as sub-clause (4), following on sub-clause (3) as it appears in the Bill. Notice of this has already been given to hon. members a day or two.

MR. O'CONNOR seconded.

The question was put and carried.

DEPARTMENTAL OFFENCES BILL SECOND READING

MR. HARTWELL: Mr. Speaker, I beg to move That the Departmental Offences Bill be read a second time.

This Bill replaces the original Ordinance, No. 35 of 1948, and is necessitated by the recent revision of salaries. The powers of my Department are limited to officers on certain salary levels, and that position has become absurd as a result of the salaries revision. The new salary limits are set out in clause 2 of the Bill. In considering the revision of this section the Hon. Attorney General advised that certain other small drafting amendments were desirable in the original Ordinance, and opportunity was therefore taken of

redrafting the whole Ordinance. The only really substantial amendment is that contained in clause 2 on salary limits—

MR. O'CONNOR seconded.

The question was put and carried.

GOVERNMENT CONTRIBUTIONS IN LIEU OF RATES

MR. MATTHEWS: Mr. Speaker I beg to move: That whereas the Governor in Council has approved of a resolution of the Municipal Board of Mombasa to levy a rate of 2½ per centum of the unimproved site values in the municipal area for the year 1949, and whereas it is provided by sub-section (2) of section 87 of the Municipalities Ordinance, 1928, that the maximum amount which may be paid from the general revenue of the Colony as an annual contribution in lieu of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such land, this Council approves the payment to the Municipal Board of Mombasa of the difference between the amount statutorily payable and the amount which would be payable in respect of a rate of 2½ per centum.

The position is that under section 15 of the Local Government (Rates) Ordinance, 1928, a municipal authority may not levy a rate on land exceeding 2 per cent in value without the permission of the Governor in Council. Furthermore, under section 87 (2) of the Municipalities Ordinance, 1928, payment of the contribution by Government in lieu of rates on Crown land exceeding 2 per cent requires special provision by resolution of this Council.

It is in those circumstances that this motion is moved.

MR. RANKINE seconded.

The question was put and carried.

MR. MATTHEWS: Mr. Speaker, I beg to move: That whereas the Governor in Council has approved of a resolution of the Municipal Board of Eldoret to levy a rate of 2½ per centum of the unimproved site values in the municipal area for the year 1949, and whereas it is provided by sub-section (2) of section 87 of the Municipalities Ordinance, 1928, that the maximum amount which may be paid from the general revenue of the Colony as an annual contribution in lieu

[Mr. Matthews] of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such land, this Council approves the payment to the Municipal Board of Eldoret of the difference between the amount statutorily payable and the amount which would be payable in respect of a rate of 2½ per centum.

The position here is precisely the same as in the case of the previous motion.

MR. RANKINE seconded.

The question was put and carried.

PENSIONS (INCREASE) (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. COOKE moved: That Council do resolve into committee of the whole Council to continue consideration of the report of the select committee on the Pensions (Increase) (Amendment) Bill paragraph by paragraph.

MAJOR KEYSER seconded.

The question was put and carried.

Council in committee.

Paragraph 10 under consideration

MR. COOKE: Mr. Chairman, when the committee adjourned yesterday I was moving with great eloquence and fervour that the tapering point for married men should taper to 12 per cent and for unmarried men to 10 per cent. That means that anybody drawing a salary of £645 a year, if a married man or an unmarried man with dependants, should receive 12 per cent and that that amount is increased in his pension, whereas the unmarried man with no dependants, whose salary has reached a pension of £645, should receive 10 per cent on that pension.

We had considerable discussion yesterday about analogies and that sort of thing. I know that no analogies can be exactly parallel, but I will mention one in connexion with the whole principle of this report, in which the committee say that the ideal they set before them was to adequately mitigate hardship. I do not want to be accused of being unsympathetic to the farmers of the country because, as a matter of

fact, inside and outside this Council I have always taken their side, or certainly nearly always, when the question of increased prices and germane matters came up. (MAJOR KEYSER: Question!) The hon. member says "Question", and I will sit down and he will perhaps mention any case when I have not done so. (Laughter.)

MAJOR KEYSER: If the hon. member will give me notice I will give him numerous cases.

MR. COOKE: That is a challenge I willingly accept. (Laughter.) He has challenged me, and I willingly accept, and hope he will take the first opportunity either inside or outside Council of giving facts on which to found this allegation.

The point I want to mention is this, and this curiously enough concerns my hon. friend himself, this matter of maize prices. Farmers get the minimum price, and everybody knows that that price is founded on what it will cost to grow maize in marginal areas—I do not think anybody will combat that point of view. On a marginal area, and I am speaking approximately now, there are probably seven to eight bags an acre grown. Therefore, the man producing seven to eight bags in the marginal area gets a fair price for his maize which keeps him going, but the man producing fifteen to the acre is getting far more profit from his fifteen bags and getting far more profit out of farming than the man with only seven bags to the acre. If the logic of the arguments I have heard put up on this side of Council really prevail, there should be a tapering after you have paid for the first seven bags at the twenty-two shillings a bag, from the eighth to the fifteenth a taper in price until when you get to the fifteenth bag the unfortunate farmer would get nothing at all, because already he has made enough to live on, and live well on seven bags to the acre.

I say that that is quite a good parallel to the position in which the unfortunate pensioners find themselves. A pensioner may be able to live on the marginal salary he receives, he may be able to struggle along as the farmer may be able to, but if the farmer is going to demand this extra payment then I submit that the pensioner has the same

[Mr. Cooke] is not relevant for another member to say much the same thing the other way round. (Laughter.)

MR. COOKE: The hon. member has not met my arguments. My arguments were the price of maize produced on the marginal lands. (MAJOR KEYSER: I am coming to that.) I hope more quickly than he has. How can he justify that fifteen bags should get the price based on production on marginal land? That is my point.

MAJOR KEYSER: The hon. member kept on reiterating "we gave them these good prices". I do not know who "we" is exactly. The point I am trying to make is that, far from giving the maize grower good prices, something is being taken from the maize grower. If he would like me to go on to the marginal area point, I will. First of all, his facts are wrong. He talks about the marginal areas giving yields of seven to eight bags. The average throughout the country is 7½ to the acre, so if some of us

MAJOR KEYSER: Mr. Chairman, I am afraid that I must take up the time of Council in replying to the hon. member.

First of all, there is one point on which I agree with him one hundred per cent, a thousand per cent if I could, when he says that the farmer gets the minimum price for his maize: he gets an abysmally low price. (Laughter.) He gets the minimum price it is possible to pay him. When the hon. member makes a comparison with agriculture, he puts the case very unfairly. That is what I said yesterday, and say so still.

On the question of price first of all. There is an idea prevailing among people who are not farming in this country that the farmer is getting a guaranteed price for his maize. That is not so in fact. The facts of the case are that he is getting the control price for his maize. He has been getting a price for many years which is many shillings a bag lower than the world price, and if he were allowed to export his maize—

MR. MATTHEWS: On a point of order, is this relevant?

MAJOR KEYSER: It would lead up—

THE CHAIRMAN: The unfortunate thing is that if a member uses arguments by analogy in which he raises, as the hon. Member for the Coast did, the question of payments elsewhere, it seems that it is very difficult for me to say it

is not relevant for another member to say much the same thing the other way round. (Laughter.)

MR. COOKE: The hon. member has not met my arguments. My arguments were the price of maize produced on the marginal lands. (MAJOR KEYSER: I am coming to that.) I hope more quickly than he has. How can he justify that fifteen bags should get the price based on production on marginal land? That is my point.

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MR. COOKE: I was just taking the illustration—the difference between marginal production and the production on very good land. It might be five or six bags to the acre.

MAJOR KEYSER: I take it he has withdrawn his figures then?

THE CHAIRMAN: I am rather afraid you are taking the hon. member's arguments as something which have to be refuted, not on the basis of the matter we are discussing but from general grounds. You must confine yourself to the subject of this debate, which is whether we disagree or not with paragraph 10 of this report. (Laughter.)

MAJOR KEYSER: He has made allegations which I feel I must be allowed to refute.

THE CHAIRMAN: I do not think it is permissible to regard analogies and arguments as allegations against the farmers. If these allegations are incorrect, well, they are incorrect, they will fall to the ground. If we are going to take one another up on every statement made in this Council, we shall never be able to keep to the point at all. I could stop the hon. member from

[The Chairman] developing his argument in his own way, but at the same time it is for the other members, if one member has departed from the point, not to go further and increase it, but rather to restrict it to the subject of the debate.

MAJOR KEYSER: Using his argument of the marginal areas, he wanted to know why you could not taper off the price of maize, as it was suggested the pensions should be tapered off. The reason why that cannot be done is because of the high yields on some of the land. Land that is furthest away from a station, for instance, may be brought into production because, owing to its increased yields, it can bear the greater costs, whereas on marginal land you could not sell maize, even at the price he is taking, two or three miles from a station. Lots of maize grown on good land is more than 25 miles from a station. That completely refutes the argument he has put up.

Using, again his analogy, he says that, if the farmer did not get a good price, he would not grow maize. Again, the analogy cannot be used, because if you taper the price of maize and butter and wheat, and everything else, then you put the farmer completely out and you have destroyed his means of living entirely; so you cannot use that analogy again.

MR. HOPE-JONES: Mr. Chairman, as an honest seeker after truth, I was very interested in the argument put forward by the hon. Member for the Coast, but I find that the ferocity of his remarks was only equalled by the ferocity with which the hon. Member for Trans Nzoia dealt with them. I am not in any way arguing about the points not in any way arguing about the points raised and I can quite see that it is necessary to deal with them as hon. members think fit, but, as an honest seeker after truth I should be very interested to know what the hon. Member for the Coast was in fact getting at before he got mixed up in his analogies.

MR. BLUNDELL: As I understand it, the hon. Member for the Coast's proposition is that, instead of having a ceiling at £645, we should extend that ceiling in one of two ways.

THE CHAIRMAN: I would remind the hon. member that we dealt with the ceiling in another paragraph a long while ago. We are at present considering a tapering off process, which I understand—correct me if I am wrong—comes within the ceiling of £645.

MR. BLUNDELL: Sir, I regret I must correct you. If you followed what I believe to be the hon. Member for the Coast's suggestions, it would be necessary to raise the ceiling.

THE CHAIRMAN: It may be necessary, if we follow his suggestion, but so far we have not done so. What we have done in this committee is to endorse the £645 ceiling. I must ask hon. members to try and confine themselves to the particular paragraph under discussion. (Hear, hear.)

MR. HARTWELL: Mr. Chairman, on the suggestion of the hon. Member for Nairobi North, the hon. Member for the Coast met four members of the select committee this morning in order that he might explain to them in detail what his proposals are. Those proposals would involve one of two things: either there would be an increase of 10 per cent right up to the ceiling, which would mean that a pensioner on the ceiling would receive an increase of something slightly over £60, and a person immediately above the ceiling would get immediately above the ceiling would get nothing; or it would mean that the ceiling would have to be raised in order to permit of tapering above £645. The second alternative, I submit, is impossible because the Committee has already approved a ceiling of £645. The proposal that there should be an immediate jump of about £60 from the person immediately below the ceiling to the person immediately above the ceiling is, I submit, totally unacceptable and entirely in conflict with the whole principle of the legislation. Moreover, it would stress another difficulty, which is that the pensioner at the top of the ladder nearest to the ceiling would be getting a much larger increase than the person lower down who, according to principles of the thing, should be getting a larger amount. Therefore, the select committee found itself quite unable to accept the suggestions made by the hon. Member for the Coast and found it

[Mr. Hartwell] necessary to adhere to paragraph 10 of the report.

MR. COOKE: In order not to waste the time of Council, I am not going to reply to the arguments of my hon. friend or the hon. Member for Commerce and Industry whose arguments I am too stupid to follow!

The question of the amendment was put and negatived.

The question that paragraph 10 be approved was put and carried.

Paragraph 11:

MR. COOKE: Mr. Chairman, I think sub-paragraph (4) of paragraph 11 is, if I may say so, a very fair paragraph, because it does provide for those who are exceptions and who may be in a state of poverty, but what I quarrel with is confining this to residents of Kenya. You will see in sub-paragraph (4) of paragraph 11 that the recommendations are merely for those resident in Kenya. Well, I suspect the reason for that recommendation is what I think it is, it is not a very good reason, but I am not going to mention it, but I do insist that there are a number of pensioners in England, and indeed I know several of them by name, who retired about thirty years ago, and one at any rate was a Provincial Commissioner who retired before the salary increases occurred on a salary which enabled the Provincial Commissioner of those days to obtain a reasonably good pension. I know that hard cases make bad law, but there are many cases occurring in England, and I do suggest that sub-paragraph (4) should apply to all pensioners, whether they reside in Kenya or outside Kenya.

I therefore propose that sub-paragraph (4) be deleted.

MR. HARTWELL: Mr. Chairman, when this paragraph of the report was being considered by the select committee we gave very careful consideration to the question whether this arrangement should be confined to pensioners resident in Kenya or whether it should also include pensioners elsewhere—that would be in the United Kingdom or India or Pakistan. We came to the conclusion that it would not be practicable to investigate cases of

pensioners—not resident in Kenya and that that in itself made it necessary to confine the arrangement to pensioners living in Kenya. We also thought that there was additional justification for that, at any rate in the case of pensioners living in the United Kingdom, because it is possible in a variety of ways, as I said in moving the adoption of the report, for people living in the United Kingdom to effect economies which they cannot do in Kenya. One example is that pensioners in the United Kingdom can manage perfectly well to use public transport and would have no need for a car, but it would be very difficult indeed for them to do that in Kenya. For these reasons the select committee found it necessary to restrict this arrangement to people resident in Kenya, although as I say we would have liked to have included others as well.

MR. MATHU: Mr. Chairman, we have kept very quiet during the course of this debate about pensions, and I have all along been in great sympathy with the tenacity of the hon. Member for the Coast in moving amendments and deletions and additions without success, but finally I think he deserves support in this case—(hear, hear)—because I feel it is absolutely clear that his present recommendation does not conflict with any principle which we have so far accepted, even the principle of the report of the select committee, and I should like to give him wholehearted support that paragraph (4) be deleted.

MR. VASEY: On a point of order . . .

THE CHAIRMAN: I can anticipate your point of order. We came to the conclusion yesterday that we cannot delete or alter. I therefore propose from the chair that the motion of the hon. Member for the Coast should be in these terms: "That the Committee disagree with paragraph (4)".

MR. MATHU: I entirely accept that I . . .

THE CHAIRMAN: All you need to do is to adumbrate your reasons for disagreeing.

MR. MATHU: I would say then that the hon. member's motion that the Committee should disagree with paragraph (4) of paragraph 11 be accepted. The

[Mr. Mathu] hon. Deputy Chief Secretary gave two reasons why that motion could not be agreed to. I do not agree that failure to investigate the conditions of pensioners in England, India or Pakistan, or anywhere else, should obviate the fact that the pensioners may be living under hardship. I feel that, if we can send cheques to these pensioners in the United Kingdom and elsewhere, we can also ascertain whether they are really suffering hardship. I feel that is not a point that would make me change my mind in supporting the hon. Member for the Coast's motion.

The other point is with regard to economies. The hon. Deputy Chief Secretary said that those in the United Kingdom and elsewhere can economize by using public transport. I think people in Kenya can economize in more ways than that. Pensioners in Kenya can have a garden and grow vegetables, they can have chickens behind their houses and in that way reduce their cost of living. Their firewood charges are less, they have not got a winter so they have not got to spend a lot of money on food and clothing and they can dress more cheaply. I for one feel that the hon. Member for the Coast has a very good case and I should like to ask the committee to support him.

MR. BLUNDELL: Mr. Chairman, there is a great deal in the contention that hardship might equally well affect somebody in another territory or country, and as a member of the select committee I personally do not object to this motion provided that some sort of machinery is set up to make sure that applicants do not abuse it. I think that is the essential thing, and I think machinery could be set up in another country to satisfy this country. If that is done, I personally would be happy to see the report amended in that respect.

MR. VASEY: Mr. Chairman, I find myself in a little difficulty here. As I understand the report we are considering under a procedure which I think has proved somewhat cumbersome, if I may say so—(MR. COOKE: Why did you not protest at the time?)—Because, as the hon. member knows, I did not endeavour to stifle discussion on any point. I find myself in a little difficulty. As I

understand the report, it is not actually a report on a Bill in existence, and therefore until a Bill embodying these recommendations—

THE CHAIRMAN: With great respect, it relates to a Bill in existence but a Bill which has been withdrawn.

MR. VASEY: Yes, but I imagine that when a Bill is withdrawn it will die and have to be re-presented.

THE CHAIRMAN: It will. All we have before Council is the report.

MR. VASEY: So that until we see the actual terms Government is prepared to present, we cannot say whether Government have accepted these recommendations or not. That I understand is the position. I have sympathy with the hon. Member for the Coast on this particular point—(MR. COOKE: Very good of you)—as I have tried to have sympathy with him on various points before, but I do feel this. If, as I understand it, Council has accepted that the ruling principle in the granting of an increase is proof of hardship, it is obvious that proof of hardship must be verifiable, and there may be a point at which that cannot be verified and proved. This committee asks Government to consider the possibility of granting some measure of relief to pensioners outside Kenya where cases of hardship can be readily verified. That should surely meet the most hard-hearted member of the select committee.

THE CHAIRMAN: The amendment does not strike me as being at all necessary. The paragraph proposes procedure for dealing with cases of hardship ex gratia, and it is subject to certain qualifying conditions, which might be as follows. One is sub-paragraph (iv) which members wish to get rid of. It seems to me that it is an unnecessary amendment, with great respect.

MR. VASEY: If I may continue on this. I speak with some experience in another place of the difficulty of verifying in certain countries the conditions because of the absence of such things as approved medical boards. In Nairobi Municipal Council we have had experience on this particular point. I therefore thought that if you could keep it to places where proof of hardship, not necessarily in (i) to (iii), were verifiable, it could easily be brought in and

(Mr. Vasey) Government might consider it as a recommendation.

THE CHAIRMAN: In that case you move to disagree with the whole of paragraph 11 and move to substitute something else?

MR. VASEY: With great respect, that is what I thought I was doing in this amendment.

THE CHAIRMAN: First of all, I want to get rid of paragraph 11, and we can then consider whether this or that can be done.

MR. COOKE: I am very grateful to the hon. member again rushing to aid the victors in this particular instance. He was very eloquent last January about the Bill, but I am grateful for his support now, though personally I think there is no necessity for the amendment.

MR. HARTWELL: May I say that, as chairman of the select committee, I would be prepared to agree in view of what has been said to the deletion of paragraph 4. The *ad hoc* committee to be set up will not recommend any increases unless it is satisfied there is a case and they will, of course, require evidence of hardship before recommending any increase. It will be much more difficult to obtain evidence if the pensioner is not resident in Kenya, but nevertheless in view of the feeling on the other side of Council I am prepared to agree to the removal of that sub-paragraph. (Hear, hear.)

THE CHAIRMAN: Does that meet the objection of the hon. Member for Nairobi North?

MR. VASEY: Under the circumstances I would say that I would deplore the remarks of the hon. Member for the Coast, but I do not propose to deal with them. If he had listened carefully he would have heard me say "Aye" sometimes with him when he was in a minority. The point I wish to raise is that there may be cases of hardship other than those outlined, below 65 years of age for instance. That is the point I have endeavoured to make in my amendment. If, however, Council is satisfied with the limitations in (i) and (ii), I have nothing further to say.

The proposed motion was therefore not proceeded with.

The question that the committee disagrees with sub-paragraph (iv) was put and carried.

MR. RANKINE: Mr. Chairman, I am most grateful for your indulgence. Now that the amendment has been dealt with I think I ought to say a few words regarding the position of Government, because there seems to be some confusion as to whether these proposals in the select committee report are the proposals of Government. The position is that Government's proposals were contained in the Bill which was brought before this Council. We understood that the Council did not like that Bill, and therefore it was withdrawn, and a select committee was appointed for the purposes set out in the first paragraph of its report. That select committee reports back to this Council, and its report contains the recommendations of the select committee, not of Government. Government still have to formulate its proposals in the light of the expressions of view of this Council on the select committee's report, but it would be wrong to consider those proposals as Government's proposals. Naturally Government's advisers have been first of all on the select committee and they have considered the proposals in the report, and they would advise Government to accept them, but at the moment these do not contain Government's proposals. I hope I have made that clear.

MR. HOPKINS: Sir, I have been trying to make one or two remarks of a general nature on this report right from the beginning of this debate, but as we were tied down to specific paragraphs it was rather difficult, so that I hope I can make some brief comments now.

I think the committee went extremely carefully into the whole of this matter, and I was myself given every opportunity to give evidence. The unfortunate part was that the committee did not take my advice, and therefore fell into one or two cardinal mistakes. I think the first fundamental mistake made is to pass recommendations of charity instead of equity, and this may give rise to repercussions in the future.

THE CHAIRMAN: May I for a moment interrupt? Like the hon. Member for Nairobi North I am averse to sitting

(The Chairman) back into Council, when the original motion moved by the hon. Acting Deputy Chief Secretary will be dealt with, to raise any general question or disagree with the report of the committee of the whole Council.

MR. HOPKINS: Thank you.

MR. COOKE: At the third reading of the Bill I shall move its rejection.

THE CHAIRMAN: We have not got to the Bill stage yet.

MR. VASEY: Does not the hon. member mean that when the committee report is submitted to the whole Council he will move the rejection of the select committee report, since there is no Bill before Council?

MR. COOKE: No, but when it does come.

The question that paragraph 11 subject to this disagreement be approved was put and carried.

The question that paragraph 12 be approved was put and carried.

MR. COOKE: Moved that the report be referred back to Council with the approval of the committee of the whole Council subject to the one exception in paragraph 11.

The question was put and carried.

Council resumed.

THE SPEAKER reported that the select committee report on the Pensions (Increase) (Amendment) Bill had been approved with the exception of sub-paragraph (iv) of paragraph 11 with which the committee of the whole Council disagreed.

MR. COOKE: Mr. Speaker, I beg to move the rejection of the report. I am not going to argue any further. My arguments have been rejected. The hon. Member for Aberdare has something of importance to say, and this will perhaps be an opportunity.

THE SPEAKER: I do not think I would be in order in accepting what is in fact an amendment to the motion moved by

the hon. Deputy Chief Secretary, which is that the report should be adopted. But that is my point of view. It would be quite possible for those who do not wish to adopt it to vote against it.

MR. HOPKINS: Mr. Speaker, when you quite rightly interrupted me when I was talking in committee, I was about to say that the committee had, I fear, fallen into several mistakes, and I was going to quote what I think are the most fundamental mistakes they have made.

One is that they have based their report and recommendations on charity rather than on equity, and that I think is liable in future to lead to repercussions and complications. The second thing is that I thought they were quite wrong in applying the means test instead of earned income. That is going to have the effect of discouraging the very people that we want to go on pulling their weight in the community from working. I think it is a great mistake. There may be justification in applying the means test to an unearned increment, but I think it is a great pity to have applied it to earned increment. A third point is that some of them overlooked the fact that a lot of people are going to come within the scope of their recommendations and get benefit because they have commuted their pensions. A man who has commuted his pension and wasted or busted the money at some previous date will now be brought within the scope of relief.

DR. RANA: Mr. Speaker, I rise to support the hon. Member for the Coast's motion for rejection.

THE SPEAKER: I have already said I was not going to put that motion, because there is a motion before the Council that the report be adopted, and that it being merely a direct negative of that the only thing to do was for me not to propose it from the chair. The motion proposed by the hon. Member for the Coast is in the name of the hon. Deputy Chief Secretary on the order paper, which is that the select committee report on the Pensions Increase (Amendment) Bill be adopted.

DR. RANA: Mr. Speaker, if that is the case I rise to oppose the adoption of the select committee's report and support

[Dr. Rana]

the hon. Member for the Coast, I do not want to waste time, but I have very patiently listened during the committee stage to all the various arguments which have been used, and I must say I agree with the hon. member Mr. Mathu when he remarked about the tenacity and so on of the hon. Member for the Coast. My object in supporting the rejection is that I think the principle on which the hon. Member for the Coast has been fighting is really genuine and honest.

On the question of economy, whether this country can afford to pay more to pensioners is a totally different question. We know that there is no place in the world where the cost of living has not risen, and I think it is only fair that the pensioners should get a bit more. I am not joining in the controversy regarding the producers, I think they have my sympathy, but they can carry on as long as they like. But the pensioners are those who have given hard and honest service, and I was very struck by the argument yesterday that anyone who takes Government service looks upon his pension as part and parcel of his salary, and if his salary is going to be increased, there is no reason why people who retire, particularly in the lower grades, should not be considered. If this country cannot afford it, I feel that the only remedy is that the departments which are over-staffed should see that they are brushed up and surplus staff removed. There is no reason why justice should not be done to those who have honestly given their services.

With those words I support the rejection of the select committee report.

MR. VASEY: Mr. Speaker, I, too, shall register my vote against the adoption of this report on the ground of paragraph 11. Although there is a suggestion that an *ad hoc* committee to deal with exceptional cases shall be set up, they are so tied by the provisions that a man of sixty could suffer hardship and they would not be allowed to grant him any relief, unless he were proved to be unfit for employment by an approved medical board. I consider that, if you are going to meet exceptional cases, then we should not tie the hands of the committee. It should be left to the good sense of the committee, which is why I

attempted to move an amendment in committee, and which is why I propose to register my vote in favour of the rejection of the report.

MR. RANKINE: Mr. Speaker, before the Council votes on this I think I ought to say that this is a matter which, in the opinion of Government, the unofficial members should decide, and therefore Government members will not vote on the motion.

MR. HARTWELL: Mr. Speaker, I do not think it is necessary for me to say very much in reply, because the whole report has been discussed in great detail and I think every point has been considered. The Council has accepted the principle of hardship, it has accepted not taking income other than pension into account, and it necessarily follows on the principle of hardship that you must consider earned income as well as unearned income. With regard to a man who has commuted his pension, it is quite likely that with the commuted pension he has bought a house, or some shares, and they will be reflected in his income other than pension.

MR. HOPKINS: On a point of order, I said when he has wasted or busted his money.

MR. HARTWELL: I think I need say nothing more, sir.

The question was put and lost on a division, 10 voting for and 10 against, Government members not voting, the Speaker declining to give his casting vote. Ayes: Messrs. Blundell, Chemallan, Erskine, Havelock, Keyser, Maconochie-Welwood, Madan, Preston, Lady Shaw, Mr. Usher, 10. Noes: Messrs. Cooke, Hopkins, Ingutin, Mathu, Nathoo, Pritam, Rana, Salim, Shatry, Vasey, 10. Not voting: Messrs. Cavendish-Bentinck, Deverell, Gillett, Hartwell, Hobson, Hope-Jones, Hyde-Clarke, Jeremiah, MacLennan, Matthews, Mortimer, O'Connor, Padley, Patel, Patrick, Rankine, Rhodes—17.

MOTION FOR ADJOURNMENT RAILWAY REALIGNMENT

MR. VASEY: Mr. Speaker, I beg leave to ask that this Council do now adjourn in order that the hon. Member for Rift Valley may raise a matter of public importance which he has asked for an opportunity to do.

MR. COOKE seconded.

MR. RANKINE: On a point of order, when the hon. Member for Nairobi North raised a similar motion the other day I did not object, because I did not think it felt that this, which is a new procedure, was objectionable to the Government, or that the Government was not prepared to take matters on the adjournment. But I think it is of importance that before matters are taken on the adjournment, the urgency should be proved, and I think it is for the Council to satisfy you, Sir, that they are of sufficient urgency to justify being raised on the adjournment.

MR. VASEY: On a point of order, I admit the soft impeachment.

THE SPEAKER: He gave notice that he would raise a matter on which he was dissatisfied with the answer to a question. That must be recorded in the minutes somewhere. He has never given notice that he would move the adjournment under rule 33.

MR. VASEY: No, sir, I think it is correct that what he did say was that he would raise the matter at the time when the adjournment came.

THE SPEAKER: According to the table which has been put before you the time would be 12.45, and the only question is whether we should advance the time and therefore not get through the other matters on the order paper.

MAJOR KEYSER: The other matter on the order paper is a motion in my name which I should like to defer in any case till tomorrow.

MR. O'CONNOR: There are a number of Bills on the order paper too, sir.

THE SPEAKER: If you do not go on with the motions, we must go back to the Bills.

MAJOR KEYSER: May I say that there is a question of urgency in the matter the hon. Member for Rift Valley wishes to debate on the adjournment, because it is a question of time; it is time bound.

MR. RANKINE: I was not suggesting that there was no urgency. I was merely suggesting that before it was allowed the question of urgency should be decided.

MR. HOPE-JONES: On a further point of order, in any case should not the hon. member follow the practice of the House of Commons by wearing suitable head-gear in moving the adjournment?

MR. VASEY: I should be delighted to borrow the hat of the hon. member who has just spoken!

THE SPEAKER: If it was a definite matter of public importance, that is under rule 33, then the motion could have been moved at the time that the hon. member was not satisfied with the question, or at least could have been moved on that day, before entering upon the order of the day. The hon. member did not do that, out of deference to the fact that the hon. Special Commissioner for Works was not in his place on that day, and he asked leave then and there to postpone it. I think there is nothing in Standing Rule and Order 33 about urgency. It simply says "A motion for the adjournment of the Council may be made at any time and shall be immediately decided without debate unless, in the opinion of the President, there is involved a definite matter of public importance and the mover is supported by at least two other Members". If two other members will rise in their places in support? (The hon. their places in support? (The hon. Members for Kiambu and Ukamba rose.) Thank you. Then I shall rule that the question which was raised by the question and answer some days ago is a definite matter of public importance, and therefore the motion can now be put from the chair.

MR. BLUNDELL: Mr. Speaker, with your permission I beg leave to address the Council on a matter of public importance.

The main question I wish to refer to is the position of those people who are affected by the railway realignment proposals in the Elmenteita-Eburru area. I wish in addressing the Council to make certain requests of the hon. Member for Development and, as many hon. members on this side of Council are new, and also members on the other side, with the permission of Council I must give a brief and very clear historical outline of the railway proposals.

The proposals were first mooted in 1937 and were considered by the

[Mr. Blundell] Government of that time. The question of compensation loomed large throughout the whole of the proposals, and the then Governor, Sir Robert Brooke Popham, was in favour of compensation. A committee was formed, called the Harragin Committee, which investigated the whole matter and did indeed recommend compensation to the people from whom the line was being removed, to a sum of £93,000, set out in various forms. The then Governor of Uganda, Sir Philip Mitchell, did not agree. I cannot say what action he took, but the view that compensation should not be paid was up-held by the Secretary of State.

Now, sir, in order that members on this side of Council may form an opinion as to whether I am right in making the requests I shall make from the hon. member opposite, I would like to state here that when Sir Robert Brooke Popham sent a despatch to the Secretary of State, despatch No. 87, he made reference to certain documents in that despatch, and although that despatch was laid on the floor of this Council—(MEMBERS FLOOR) (laughter) on the table of this Council—for the public, the disclosure of these documents has been consistently refused to the farmers and settlers interested in this matter.

Howbeit, as a result of the representations made by the Secretary of State, a further committee was formed known as the Troughton Committee. This committee sat eight years later, due to the incidence of the war, and that committee removed from its recommendations the question of compensation other than the question of compensation by roads for the removal of the facilities formerly granted by the railway. Mr. Troughton, in speaking to the report of that committee, made this statement in this Council: "and I have your authority to say, sir" (addressing the then Speaker, the Governor) "that this Council may assume that if the realignment is put into effect, the road system recommended by this Committee will in fact be constructed". That was about two years ago, and in order to decide upon the actual construction of the roads a further committee was appointed called the Boyd Committee, and it is upon the recom-

mendations of that committee that I asked my question. I stated that the answer to my question was extremely unsatisfactory and I reiterate that. The Boyd Committee recommended four main roads, a new road from Elmenteita Station to the Gilgil main road, a circular road from Elmenteita via Eburru to Gilgil, in addition to a road to what is called the Enderit Drift, and an improvement to the road from Elmenteita Station to Nakuru.

You will see that, throughout the answer, in my opinion the hon. Member for Development has consistently evaded the whole issue. These people are to have the railway removed from them and, after the committees had sat it was recommended that an adequate and proper road system should be constructed. In the first case the hon. member opposite says that, although the road will not be finished, there will be an adequate track—that is the road from Elmenteita to the Gilgil road. I, together with the hon. Member for Usin Gishu, drove down that road last Friday. It is true that there might be an adequate track, if you are prepared to concede that a track, bulldozed or graded through the grass alongside the main road, which is to be surfaced with stone, is an adequate track. But in my opinion it is gross inefficiency at this stage in the removal of the railway to suggest that a bulldozed track is an adequate method of compensating these farmers in the terms of the Boyd report.

And further, what in my opinion is worse and I really object—hon. members may not believe it but I am nearly speechless—(laughter)—the hon. member opposite has the neck to say that...

THE SPEAKER: I do not think we can allow that as a parliamentary expression.

MR. BLUNDELL: I withdraw that, sir. (MEMBERS: Substitute something else.) (Laughter.) Has the temerity, sir, to suggest that as the road to the Enderit Drift and from Elmenteita station to Nakuru is under Nakuru District Council and is considered adequate, the question whether any improvement is justified will be examined when the construction works in respect of the two new roads have been completed". The

Mr. Blundell] of this issue Government has consistently, from the word go, whittled down its assurances and promises to the settlers of that area. There are in that area not only European settlers—but Asian traders and African dealers in Elmenteita Township. You will see that we started off with the suggestion that these farms should be compensated by cash. That was reduced—

MR. RANKINE: Sir, I have made several attempts to interrupt the hon. member, who has said that in my reply I referred to a track. Would he be kind enough to state where I referred to a track?

MR. BLUNDELL: When I referred to a track—the hon. member will not put me off—when I referred to a track I was referring, although it was not in his reply, to the road down which I and the hon. Member for Usin Gishu proceeded last Friday.

MR. RANKINE: The hon. member said I said a track—if I did not say so I think he should withdraw the expression.

THE SPEAKER: If the hon. member misconstrued the answer he should withdraw the word.

MR. BLUNDELL: I should like to look at the answer for a minute, sir. Right. May I withdraw that, and say that the basis of my argument is this. When the railway moves, which will be the 1st September or slightly later, there will not be in my opinion the implementation of the Boyd report (which has not been debated in this Council), which I think in view of the assurances which the people of that area have the right to expect should be implemented—there will be no such implementation.

What upset me in the case of the hon. Chief Secretary's action is that whereas the Boyd report did make certain recommendations the hon. Chief Secretary wishes to whittle these recommendations down in the light of what he considers or other bodies may consider the needs for the traffic on those roads.

The point which I wish to put to Council really is this. The railway has moved. The people who were using the railway were entitled to certain compen-

sation. That compensation was whittled down from the original recommendation of £93,000 to a certain road system: It would appear now as if even that road system is to be further whittled down. My object in stating that—this was a matter-of-public-urgency is as follows. If the railway moves the 1st September, the people in that area—Europeans, Asians, Africans—will not in my opinion have an adequate road from Elmenteita station to the main Gilgil-Nakuru Road for their transport of such items as milk. They will have to use an obnoxious word, a track—they will not have a road. We have had the assurance that the road will be finished, but the hon. Member for Usin Gishu and myself when we went down it formed the opinion that it would not be finished.

THE SPEAKER: May I remind the hon. member that the normal time at which we interrupt business is 12.45 p.m., and that he must allow some time for other people to reply?

MR. BLUNDELL: I will delay Council one more minute.

The point I wish to make is that I do feel that there has been some very gross mishandling in this matter. The railway is moving on 1st September. In October last year I warned the hon. Chief Secretary that he must get speed on with this road. In January or February I reiterated the warning. The fact is that the railway is moving and none of the roads will be adequately completed. Some attempt will have been made to complete them. What I wish to request the hon. Chief Secretary is to give me an undertaking as follows.

The railway may be a little late in moving, but in the event of the railway moving, will he give me an assurance that he will put the strongest pressure on the railway to maintain a service through the loop until he with his workmen has completed the roads? Secondly, to ask him for an assurance that if that cannot be done, if his pressure is not sufficient, that he will do his utmost to put all the plant, men and materials either under the organization of the Special Commissioner for Works or by contract so that these people will have an adequate exit, not a track, a proper exit for themselves commensurate

[Mr. Blundell] with the recommendations of the Boyd report as soon as possible after the removal of the railway or immediately after it?

MR. RANKINE: Mr. Speaker, the hon. member who has just spoken has raised this matter in very strong terms, and I must deprecate straight away his allusions to me personally. He suggested that it was my personal decision that these recommendations were being whittled down. I think he ought to know perfectly well that that is not the case at all. The decision as to what action should be taken on the Boyd report was the decision of Government and not any particular member of the Government.

MR. BLUNDELL: On a point of explanation, I would like to apologise to the hon. member if, in my feeling on this matter, I raised it in a personal way to himself. When I referred to him as the hon. Member for Development I meant as a member of the Government, and not to him personally.

MR. RANKINE: Thank you I am glad he has made that withdrawal because that was certainly my impression.

As regards these roads, he said, first of all, that the Boyd Committee recommended that four new roads should be made. That, again, is not accurate. In fact, the Boyd Committee recommended that two new roads should be made and that two existing roads should be improved. The position is that, as the hon. member says, the railway realignment is soon to be completed and when it is completed the old line will be closed. He has suggested that he brought this to my attention and that nothing was done, and that secondly what has been done was done very slowly.

Well, sir, Government has made every effort to construct the new roads, but the Government has only certain staff and facilities at its disposal. The hon. member may remember the debate which took place in this Council a short time ago, when it was urged upon Government that no upset should be made in the road plans, that we should carry out our programme and that under no circumstances should a deviation be made from that programme. Well, Government could have put greater

facilities on these roads than it did by diverting plant and staff from elsewhere, but it weighed up the position carefully and it came to the conclusion that that would not be justified. It would have meant a delay in completing the Dagoiretti Road and delay also on the Limuru A route, with consequent delay on the Kiambu Road. That would have resulted in hardship to a very large number of people. On the other hand, as my hon. friend the Special Commissioner for Works will tell you, Government has made every effort to complete these roads with the resources available.

The Boyd Committee recommended two new roads, one from Elementita to the main Gilgil-Nakuru Road. That is being made, and I have been given an assurance by my hon. friend that by the end of this month that road will be through, although the surfacing will not be entirely completed. The surfacing should be completed during September. The latest information I have is that the railway will not start the new route before about the middle of September, so that I think it is reasonable to say that those farmers should have access to the main Gilgil-Nakuru Road by the time the railway use the new alignment.

As regards the second new road, the second road, as hon. members will be aware from reading the report, is to follow the line of the railway, so obviously that road cannot be made, it cannot even be started, until the track is lifted. So that, if the suggestion made by the hon. member is that the railway should continue to run a service down the old line until the roads are completed, it will merely make it impossible to complete the road. (MR. BLUNDELL: The one road.) As I have said, the one road I think will be through. In fact, I have been given an assurance that it will be through. The surfacing, I admit, will not be completed, but there is also the question of delaying the opening of the new railway on the new alignment. I have been in communication with the General Manager and he has given me some facts on the position.

As everybody will know, the railway at the moment is subject to grave strain, and there are delays at Mombasa owing to the fact that the railway cannot lift

[Mr. Rankine] all the goods that are lying there. This is what he says: "The new alignment will shorten the distance by thirteen miles; an average of twelve trains pass over this section every day or so that the daily saving in train miles on the existing train service is one hundred and fifty-six". That is a very significant saving, and I suggest it would not be in the interests of the community generally to delay the opening of the new alignment. I cannot therefore give the assurance that the hon. member has asked for, but I will certainly bring to the attention of the railway authorities what has been said in this debate this morning.

There is one other very important factor which I ought to mention—I am sorry the hon. member has given me so little time. (THE SPEAKER: You may talk the motion out in the usual parliamentary manner.) It is this, that the Boyd Committee's recommendations, on present day estimates, will involve us in a sum of over £100,000. It is a question of who should pay that—the railway users, through freights, or the taxpayers of this Colony through taxation. At the moment we are conducting negotiations with the Railway on that subject, but as you know it was the view of other users of the railway that there was no case for compensation at all. At the moment the Railway have offered some £48,000 towards the cost of making these roads. The balance will have to be found from some source, either through freight rates on the railway or from the pockets of the taxpayer, and while Government is making every effort to provide reasonable facilities for the people in that area, it does not consider it would be justifiable to provide more than reasonable facilities at very great cost.

There is very little more time . . .

THE SPEAKER: It is 12.45, and that is the usual time to interrupt the business. Council will adjourn now until 9.30 a.m. tomorrow.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on the 19th August.

Friday, 19th August, 1949

Council reassembled in the Memorial Hall, Nairobi, on Friday, 19th August, 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 18th August, 1949, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By MR. RANKINE:

Report on the administration of the East African Airways Corporation for 1948.

Interim report of the select committee appointed to consider whether the new Legislative Council chamber should be built in the near future.

PENSIONS INCREASES

PROPOSAL FOR SELECT COMMITTEE

MR. VASEY: Mr. Speaker, I beg to give notice of the following motion: That this Council is of the opinion that in view of the rejection of the select committee's report on the increase of pensions and of the delay which may be thereby brought about in granting relief to pensioners, further steps should be taken immediately to investigate the questions raised, and accordingly resolves that a select committee be appointed to consider further the matter of increased pensions.

I should like your ruling on this matter, sir, because I realize that it must conflict to some extent with Standing Rule and Order No. 34 which, if applied, means that the question of increases in pensions cannot be debated again for six months, and this means that by the delay a hardship will unwittingly have been inflicted on all pensioners. If possible, I would therefore ask that I could raise this motion under suspension of Standing Rules and Orders which, I understand, will be moved at a later time. Failing that, I would ask Government to make some statement regarding their intention with regard to the Pensions (Increase) (Amendment) Bill.

Mr. RANKINE: Mr. Speaker, the position is that the Council has rejected the select committee report on this question, but Government has heard all available expressions of view in Council, and I think that the best procedure now would be for Government to consider the Bill which has been withdrawn in the light of the select committee report and the expressions of views on that report, and it can then decide what proposals to bring to the Council. That, I hope, would avoid delay and hardship on pensioners.

THE SPEAKER: That means that you are proposing to reintroduce the Bill in the October session?

Mr. RANKINE: That or another amending Bill.

Mr. VASEY. With your permission, sir, in view of the Government statement, I withdraw my motion.

SESSIONAL COMMITTEE REPORT KENYA INFORMATION OFFICE

On behalf of the Sessional Committee, the hon. Chief Secretary reported that the following had been appointed a select committee to investigate the working of the Kenya Information Office and to make recommendations: Hon. C. M. Deverell (chairman), hon. Deputy Chief Secretary, hon. Director of Agriculture, hon. C. B. Madan, hon. J. J. Chemallan, and informed Council that one European elected member had yet to be named.

ORAL ANSWERS TO QUESTIONS

No. 37—MUSLIM FESTIVALS

Mr. SALIM (Arab Interests):

In view of the fact that the coast is predominantly Muslim and under the sovereignty of His Highness the Sultan of Zanzibar, will Government consider the advisability of declaring the two days of Id-el-Fiter and the two days of Id-el-Haj public holidays on the coast to conform with the custom in Zanzibar and other Muslim countries and to enable the local Muslims to celebrate their two great festivals fittingly?

Mr. HARTWELL: Public holidays are authorized by the Public Holidays Ordinance (Cap. 30 of Laws of Kenya),

and the public holidays recognized in the Colony and Protectorate of Kenya are listed in the Schedule to the Ordinance. In addition, by regulation 409 of the Code of Regulations, members of the various communities in Government service are enabled to have leave without loss of pay on the festival days listed in that regulation: the Id-el-Fiter and Id-el-Haj are both included in this list, the latter under the name of Id-el-Azha.

Government considers that adequate and proper provision has been made for Muslim festivals.

No. 42—INCREASE OF RENT (RESTRICTION) ORDINANCE, 1949

Mr. ERSKINE:

With regard to the recently enacted Increase of Rent (Restriction) Ordinance, 1949, will Government please state whether it is yet possible to estimate accurately the annual cost to be borne by public funds and, if not, will Government please give an approximate figure based on administrative arrangements made up to the present time?

Mr. HOPE-JONES: The estimated annual cost to be borne by public funds in connexion with the administration of the recently enacted Increase of Rent (Restriction) Ordinance, 1949, will be £9,146 4s.

Mr. MADAN: Mr. Speaker, arising out of that answer, will the hon. member state when he expects this Ordinance to come into force?

Mr. HOPE-JONES: We have been fortunate in obtaining the services of Sir Charles Belcher as chairman of the two main boards, and an office, and we confidently expect, provided a sufficient number of public-spirited ladies and gentlemen come forward and sit on the boards as volunteers, to implement this Ordinance within the next two or three weeks.

Mr. VASEY: Arising out of the answer to the question, would the hon. member not agree that direct expenditure will be more than balanced by direct saving to litigants in not having to go through two channels?

Mr. HOPE-JONES: I entirely agree with the hon. member that the convenience will more than counterbalance the slight expenditure involved.

No. 46—INDIAN TRADERS IN NATIVE LAND UNITS

Mr. PRITAM (Western Area):

In order to afford security of tenure to Indian traders in townships and trading centres situated in native land units, will Government please indicate when it will be able to complete the survey agreed to in letter No. C. LND. 30/3/19/47 of 5th May, 1945, and to consider applications for 33-year leases, and what is Government's policy with regard to trading centres in native land units?

Mr. MORTIMER: The hon. Member for Western Area is referred to the reply given in Legislative Council in November, 1947, in answer to a similar question.

The issue of leases in townships and trading centres in the native land units is subject to section 31 of the Town Planning and Development Ordinance, 1931, which prohibits the issue in trading centres of leases for longer periods than one year until a development plan has been prepared and approved.

It is still not possible to give any indication when surveys of the trading centres, situated in the native land units will be undertaken and the expense of preparing development plans and of the subsequent survey in such trading centres may not be justified for many years.

I wish to make it clear, however, that until such time as it is possible to issue long leases in the native land units, it is the policy of Government that traders in the trading centres should have reasonable security and a request for renewal of an annual lease of a plot in a township or trading centre, which has been duly set apart, will be refused only in exceptional circumstances, and for good and sufficient reason. It is not Government's policy to close down trading centres in the native land units, except in exceptional cases where the site is unsuitable from a planning point of view.

Mr. NATHOO: Mr. Speaker, arising out of the question, may I inquire of the hon. member whether he will not press for the erection of permanent buildings until such time as Government is in a position to give these leases?

Mr. MORTIMER: Mr. Speaker, it is hoped that with the reasonable assurance and security of tenure that has been given, and that has from time to

time been reiterated as Government policy, traders will endeavour to comply with reasonable building conditions and put up buildings that are worthy of them and their community. Many of our trading centres are in a deplorable condition because of the very inferior buildings that have been erected in the past, and I earnestly hope that traders will endeavour to build decently and in fairly substantial manner.

Mr. MATHU: Mr. Speaker, arising out of that reply, does the hon. member know that the Africans in the African land units, particularly the local native councils, view with apprehension the permanent extension of Indian traders in the native land units, in some cases to the exclusion of the interests of the African traders?

Mr. MORTIMER: Mr. Speaker, I am fully aware of many expressions of opinion from local native councils and from other African quarters on this subject. I am not aware, however, that the existence of the Indian traders in trading centres in native land units has been to the detriment of the African traders or to the exclusion of African traders. If evidence can be brought that African traders are being excluded from trading centres I shall be glad to receive it so that I may take it up.

I think it is entirely improper that Africans should not be allowed to compete on equal terms with Indian traders, but I do not agree that Indian traders should be turned out of the trading centres in the native land units just because African traders are now coming into the field. Let them enter the field in fair and open competition. (Hear, hear.)

Mr. PATEL: Mr. Speaker, arising out of the answer to the hon. member Mr. Nathoo, I should like to ask if the hon. Member for Local Government knows that the erection of permanent buildings by Indian traders in these trading centres has been retarded on account of the insecurity of tenure, and that, when security of tenure, and the authorities ask them Government or the authorities ask them to put up permanent buildings, if they do put up such buildings there will be a reasonable assumption that long leases will be granted in due course?

Mr. MORTIMER: I have nothing to add to the answer to the question I originally gave.

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 Deportation (Aliens) Bill, the Deportation (Immigrant British Subjects) Bill, the Land Control (Amendment) Bill, the Voluntarily Unemployed Persons (Provision of Employment) Bill, the Departmental Offences Bill, and the Increase of Rent (Restriction) (Amendment) Bill.

MR. RANKINE seconded.

The question was put and carried.

Council went into committee of the whole Council.

The Bills were considered clause by clause.

Deportation (Aliens) Bill

Clause 4.

MR. O'CONNOR moved: That the clause be amended by substituting for the first three lines of sub-clause (1) the following: "(1) The master of a ship or aircraft, guard of a train or person in charge of a vehicle, about to call at any port or place outside Kenya shall, if so required by the Member or by an immigration officer or police officer,".

The question of the amendment was put and carried.

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

Clause 9.

MR. O'CONNOR moved: That the clause be amended by deleting the words "be in the prescribed form and shall" in lines one and two of sub-clause (2).

The question of the amendment was put and carried.

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

Clause 10.

MR. O'CONNOR moved: That the clause be amended by substituting "ninety" for "sixty" in the second line of sub-clause (5). The reason for the substitution of 90 for 60 is that it has been represented to me that it might be impossible to obtain shipping facilities for a deportation within 60 days to the place desired, and therefore it is desired to extend the period to 90 days.

The question of the amendment was put and carried.

MR. O'CONNOR moved: That the clause be amended by deleting sub-clauses (67 and (7). These two sub-clauses are to be deleted because they are redundant, being already covered by clause 4.

The question of the amendment was put and carried.

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

Deportation (Immigrant British Subjects) Bill

Clause 2.

MAJOR KEYSER moved: That the clause be amended by inserting in sub-clause (2) (b) the words "in India or in" after the word "or" in line 5.

The question of the amendment was put and carried.

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

MR. PATEL moved: To amend the definition of convicted persons" by inserting the words "not involving moral turpitude and" between the words "offence" and "punishable" at the end of line 13

MR. O'CONNOR: Mr. Chairman, as I indicated in moving the second reading, I do not wish to accept that amendment, which would have the effect of making an extremely vague definition. There is, I think, no risk whatever of anybody who is convicted of some slight offence being deported under this Bill. I suggest it is much better to leave the definition as it is: otherwise it will make it extremely difficult to decide what offences are and what are not within it. It is more or less a matter of opinion, moral turpitude is, to some extent.

MR. PATEL: Mr. Chairman, the hon. Attorney General admits that under the definition as it stands, any person, even for a slight offence if he is sentenced to imprisonment for a day or two, could be deported, and my amendment that, where the offence does not involve moral turpitude, the law should not apply is very reasonable and I think that it is a necessary safeguard.

The question of the amendment was put and negatived.

MR. HOPKINS moved: That sub-clause (3) (iii) be amended by substituting "fifteen" for "nine" in the last line.

[Mr. Hopkins]

I am asking for this alteration to cover the case of Government servants or other people who may have accumulated leave, or who may have to have leave and go on business as well, for a period exceeding nine months in five years, as there seems to be no good reason why, if they are going on genuine leave or a business trip in excess of three months, they should be penalized by no longer being deemed to belong to Kenya. Sick leave is another thing which might intervene to make it necessary to go for more than nine months in the aggregate.

MR. O'CONNOR: Mr. Chairman, I indicated in moving the second reading that nine months was put in to test the opinion of the Council really, and that Government did not wish to insist upon that particular period. But, while I sympathize with what has been said by the hon. Member for Aberdare, I do suggest that 15 months is too long. That reduces the five-year period very considerably, and I would suggest that 12 months would be a reasonable compromise. I therefore would move an amendment to his motion substituting "twelve" for "fifteen".

MR. HOPKINS: I accept that, Sir.

THE CHAIRMAN: You withdraw "fifteen"?

MR. HOPKINS: Yes, Sir.

The question of the amendment substituting "twelve" for "nine" was put and carried.

MR. MACONOCHE-WELWOOD: I beg to move: That sub-clause 3 (ii) be deleted.

My reason for that is that I do not think it right that the Secretary of State should in this matter have overruling powers to take away the Kenya citizenship of any individual. It seems to me that this is a purely domestic matter, and therefore should be entirely in the hands of the people of this country. The Secretary of State in many cases would not be a suitable person to abrogate the rights of citizens here. If this clause is left in there does not seem to me to be very much point in an immigrant British subject achieving citizenship here at all, as at any time it may be overriden by the Secretary of State.

MR. O'CONNOR: Mr. Chairman, may I correct the impression that it would lie in any way with Secretary of State to take away the Kenya citizenship of anybody? the proviso is not a proviso to the definition of belonging to Kenya, which is in the sub-clause (2) of 2. It is merely a proviso which enables in certain cases the period of time during which a man must be here in order to cease to be an immigrant to be extended by the Secretary of State. What it says is: "Provided that any British subject is respect of whom the approval of the Secretary of State shall have been given to the making of a deportation order at any time before it is made shall be deemed to be an immigrant British subject, notwithstanding that he may have been resident in Kenya for more than the period mentioned in this sub-section". It seems to me that that is a valuable power to retain and I suggest that it should be left. I would emphasize again that it applies only to the extension of the time during which a person may be deemed to be an immigrant.

May I, before I sit down, say one thing more? I should like also to point out that the Secretary of State takes no initiative in this matter: the initiative comes from Kenya. As it is worded "any British subject in respect of whom the approval of the Secretary of State shall have been given to the making of a deportation order at any time" the initiative must come from here.

MR. HAVELOCK: Mr. Chairman, I will not say that I am more befogged now than I was before the Hon. Attorney General rose. I am glad to hear that, but under sub-section (2), if a man has been ordinarily resident in Kenya continuously for a period of seven years, then this particular proviso that we are discussing does not apply. Is that correct?

MR. O'CONNOR: Certainly, yes. I have attempted on numerous occasions in the course of this debate to make it quite clear that ordinary residence does not clear that proviso of this kind, because a man may go away and come back, go away and come back, and still retain his ordinary residence here. It is only in the case of actual residence that a proviso of this kind is needed. That is why it is put in this clause and not in the other.

The question of the amendment was put and negatived.

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

Clause 7.

MR. O'CONNOR moved: That the clause be amended by substituting the following for sub-clause (6): "(6) Notwithstanding the provisions of section 77 of the Criminal Procedure Code, the Attorney General may request the judge or magistrate to direct that any proceeding under this Ordinance in respect of a person charged with being an undesirable person, or any part of such proceeding, shall be held *in camera*; and, if the Attorney General shall certify to the judge or magistrate that it is in his opinion desirable in the public interest that the proceeding, or such part thereof as the Attorney General may specify, shall be held *in camera*, the public generally or any particular persons or class of persons specified by the Attorney General shall not have access to, or be or remain in, any room or building in which such proceeding is held during such proceeding or part thereof".

The question of the amendment was put and carried.

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

Clause 11.

MR. O'CONNOR: I move that the clause be amended by substituting "ninety" for "sixty" in line 2 of sub-clause (5).

The reason is the same as the reason for the amendment which has just been made to the Deportation (Aliens) Bill, that shipping facilities might not be available in time.

The question of the amendment was put and carried.

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

Land Control (Amendment) Bill

Clause 2.

MR. MORTIMER: I beg to move: That the clause be amended by adding the following as sub-section (4) of section 7: "(4) Nothing in this section shall be deemed to preclude any person, without

the consent of the Board, from—
(a) mortgaging any of his land to the Land and Agricultural Bank of Kenya; (b) depositing, by way of equitable mortgage or charge, his title deeds to any land, or any share, share transfer, debenture or stock in any company mentioned in paragraph (c) of sub-section (1) of this section, with any branch of Barclays Bank (Dominion, Colonial and Overseas), the National Bank of India, Limited, the Standard Bank of South Africa, Limited, or with any bank or body of persons, whether corporate or unincorporate, approved by the Governor in Council; (c) mortgaging or charging any part of his land to a mortgagee or chargee, as the case may be, who enters into a covenant in the mortgage or charge to the effect that he will not exercise his powers of sale or foreclosure except with the consent of the Board".

As I explained on the second reading, these words have been inadvertently omitted in the redrafting of this clause.

The question of the amendment was put and carried.

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

Voluntarily Unemployed Persons (Provision of Employment) Bill

Clause 1.

MR. JEREMIAH: I beg to move: That the clause be amended by substituting "one year" for "two years" in line 4.

As the clause stands it is very drastic, and owing to that I fear that innocent people may be penalized by the administration of the Bill. So I do not think it is necessary to prolong it for more than one year.

MR. WYN HARRIS: On behalf of Government, we will accept that amendment.

MR. VASEY: Might I just ask for information? If this amendment is accepted, would that mean that the total period of operation of the Bill would be limited to two years, or would it be possible to extend it, if necessary, for a further period without introducing a completely new Bill?

MR. O'CONNOR: The total period of the operation of the Bill, if this amendment is accepted, would be two years,

[Mr. O'Connor]
unless a Bill amending it is in the meantime introduced extending its operation.

MR. VASEY: Mr. Chairman, I would then ask Government if they would seriously consider an amendment to the proviso allowing this Ordinance to be continued from year to year on the wish of this Council, because what we are in fact doing is cutting one-third of the period of operation of this Bill out completely. While I am in full agreement with the hon. Member for African Interests, Mr. Jeremiah, that we should review this Ordinance annually, I do not think I can be in agreement if it meant a reduction of the period of time.

MR. JEREMIAH: I think the proviso provides that in case of necessity it shall be continued for one year.

MR. MATHU: Mr. Chairman, I think, if it had to go to Legislative Council after two years operation, with a minor amendment, there would be no harm. I should hate to have it reviewed annually because that suggests it is going to be almost in perpetuity.

MR. O'CONNOR: The amendment suggested by the hon. Member for Nairobi North I think should read as follows: "Provided that, if at any time while this Ordinance is in force, a resolution of the Legislative Council is passed praying that this Ordinance be continued in force for further periods of one year at a time, from the time at which it would otherwise expire, the Governor in Council may by order direct that this Ordinance shall continue in force for those further periods".

MR. COOKE: Surely we are making a great deal of pother about the Bill? I propose that it remains.

THE CHAIRMAN: I will have to put the whole thing to the Committee. The first question is that "one year" be substituted for "two years" in line 4.

The question of the amendment was put and carried.

THE CHAIRMAN: The second question is that the proviso should be amended as proposed by the hon. Attorney General.

The question of the amendment was put and carried.

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

Clause 2.

MR. CHEMALLAN: I beg to move: To amend the clause by inserting the words "other than the native land units" between "area" and "in" in the definition of "declared area".

The reason why I move the amendment is because I believe that the persons whom this law is intended to apply to are really resident in the townships, and there seems to be no justification for interfering with the freedom of the Africans enjoy in their homes. If Government is trying to take advantage of the provisions of this law to introduce forced labour, then they should say so.

MR. WYN HARRIS: I am afraid Government is not prepared to accept that amendment. The whole theory behind the Bill is that the spy and the drone, wherever he may be, shall work, and in places like Fort Hall particularly, around the coffee shops, there are large numbers of them who are a pest to the local community, and the Africans themselves welcome very much that the young men, who will not work and who batten on their fellows, should be made to work. I would point out that this Bill can only be applied to areas where a labour exchange has been set up. In consequence it will not apply to those reserves where there is no labour exchange.

MR. COOKE: I should like to support the hon. Chief Native Commissioner. It was only yesterday that an educated African, not a member of this Council, told me that he thought the effect of this Bill might be to drive the spivs into the native areas, so that it is all the more reason for keeping this clause in.

MR. O'CONNOR: May I say that it would have assisted the Government greatly if they could be given notice of amendments involving important changes, which really amount almost to changes in principle, at a slightly earlier stage? We first saw these amendments about five minutes before the sitting began to-day.

MR. JEREMIAH: Mr. Chairman, in support of the amendment, I personally believe that, if this law is going to be administered in the native land units, there is going to be great hardship, because it will be for the chief, or anyone appointed by an administrative officer, to try and chase anyone at all whom he sees

(Mr. Jeremiah) walking along the street. How can people attend to their duties unless they go through the street? Not only that, people visit the coffee shops to get refreshment. I do not believe it is going to serve any useful purpose in the reserves, but in the towns, where one cannot stay without working, it can be administered.

MR. VASEY: If I understand the amendment correctly, the law under these circumstances would, for instance, apply to the municipal area of Nairobi; it would not, however, apply to the native land unit just outside Dagoretti Corner. This would reduce the working of the Ordinance to a farce within 24 hours, because it is the easiest matter in the world, as we know from personal experience, both in the African locations and in the other areas of this town, to slip into the town, commit your crime, and be back in the African land unit territory before the police can get hold of you.

MR. WYN HARRIS: Mr. Chairman, I would say that this will be supported by a very large number of Africans in the units, in that they object most heartily to the way we dump the spivs and drones in the native land units, where we cannot get at them. As a district commissioner I have had protest after protest that it was most unfair that the vagrant from the towns should be returned to the native land unit, where he preyed on his fellow Africans. This Bill must be used to stop that.

THE CHAIRMAN: I want to endorse what has been said by the hon. Attorney General about this method of throwing amendments into the Committee at the last moment, even if it is permitted by Standing Orders. It is most inconvenient. Had I had this amendment and been able to compare it with the Bill some time ago, I should not have allowed it to be debated, because it is an amendment which simply makes no real effect in the Bill at all. The fundamental clause is clause 3. If you will look at it you will follow what I am driving at: "The Governor may, by notice in the Gazette, apply the provisions of this Ordinance to any area in which a labour exchange has been established". That is the first thing. A declared area is defined as an area to which the provisions of the Ordinance has been applied, and it can only be

applied where a labour exchange has been established. This amendment simply makes no real effect at all, and I shall not put the amendment.

MR. JEREMIAH: I believe that we sent in our proposed amendments three or four days ago. I am sorry to hear you have not had them.

I beg to move: That the definition of "unemployed persons" be deleted. The title of the Bill is "Voluntarily Unemployed Persons", and that is acceptable to us, but to include all unemployed persons is, in my view, quite unfair because it will be very difficult to know whether a person is employed or not.

MR. VASEY: As I am sure the hon. Attorney General is about to answer that point, perhaps, in view of the remarks of the hon. member Mr. Chemallan, he could also cover another point also. The hon. member for African Interests referred to forced labour, and I think perhaps the hon. Attorney General could clarify the position as to what is intended.

THE CHAIRMAN: That is, I think, upon the amendment which I afterwards decided should not be put.

MR. VASEY: Yes, I raise that point under "national employment".

THE CHAIRMAN: That is not strictly on the amendment now before the Committee. Would you mind leaving that over for the moment so that we do not have any confusion?

MR. O'CONNOR: On the definition of "unemployed person" I am not quite sure whether I have got the position right. Is there a motion to delete that definition altogether?

THE CHAIRMAN: The motion is to delete the definition.

MR. O'CONNOR: Because I have an amendment which I wish to move to that definition, but I do not wish to see it deleted. Would it be in order for you to put this amendment and let us see the result of it, or shall I move my amendment now?

THE CHAIRMAN: I think the best thing is to move your amendment.

MR. O'CONNOR: Then I move: That the following be substituted for the definition of "unemployed persons": "unemployed person" means an adult

(Mr. O'Connor) male other than a person (a) who is in regular employment; or (b) who has a lawful and regular means of livelihood other than an income derived from employment; or (c) who has, up to a date during the previous three months, been in receipt of a lawful and regular income sufficient for his livelihood whether or not derived from employment".

MR. MATHU: I am bit confused over the two proposals to amend clause 2 as far as the definition of "unemployed person" is concerned. The hon. member Mr. Jeremiah moved that the definition "unemployed person" should be deleted completely.

THE CHAIRMAN: In order to make the matter quite clear I will put the hon. Mr. Jeremiah's amendment; that is, that the definition of "unemployed person" be deleted.

The question was put and negatived.

The question of the second amendment was put and carried.

MR. VASEY: In view of the remarks that were made on the question of forced labour, and in order that no misapprehension should exist, I wonder if you would permit the hon. Attorney General to reply to that point?

MR. O'CONNOR: Mr. Chairman, with regard to that, I wish to draw attention to the definition of "national employment". "National employment" in the Bill means "any employment, which a committee considers to be of national importance, in any civilian capacity with His Majesty's Forces, in the service of the Government of the Colony, of the East Africa High Commission, or of any Local Government". It has been suggested in certain quarters that labour could be forced under this Bill to work for a private employer. There is no substance whatever in that suggestion. The definition of national employment is "work of national importance in any civilian capacity with His Majesty's Forces, in the service of the Government of the Colony, or of the East Africa High Commission, or of any Local Government". There is no question of forcing people to work for private employers under this Bill.

MR. WYN HARRIS: I want to point out that, according to the definitions, unemployed persons and voluntarily unemployed persons are the only people who can be compelled to work, even in national employment, and you will see that an unemployed person, as I said when introducing the Bill, is a vagrant.

MR. JEREMIAH: In view of the ruling—

THE CHAIRMAN: What I said does not apply to this at all. You completely misunderstood it. You can try and get at this clause as long as you like, but as long as clause 3 stands it was not worth while altering the definition of "declared area". A consequential amendment to "declared area" may become necessary if you can carry an amendment to this one, but before you move this one I want to see if we amend this one so that we do not make a nonsense of any others. I take it the powers to establish a labour exchange are of general effect anywhere throughout Kenya?

MR. O'CONNOR: Yes, sir.

THE CHAIRMAN: I leave it entirely to you whether to proceed with it or not.

MR. JEREMIAH: I will withdraw the amendment, sir.

The question of the clause as amended was put and carried.
Clause 4.

MR. O'CONNOR moved: That the clause be amended by inserting at the commencement of sub-clause (2) the words "separate committees may be appointed to deal with each community and".

The question of the amendment was put and carried.

MR. MATHU: I beg to move: That sub-clause (1) be amended by inserting after "Member" the words "after consultation with the local authorities concerned". The effect of that would be that the Member would take the advice of the local authority concerned when setting up these committees, because we feel that it is necessary that the Member should be advised by the community which is concerned in the matter of voluntarily unemployed persons. As it stands, he can choose anybody and everybody he likes with the advice of the local authority concerned.

MR. WYN HARRIS: On behalf of Government we have no objection to that amendment at all.

MR. VASEY: The only point I am not quite sure about, listening to the hon. member Mr. Mathu, is whether he is really achieving his object in this amendment. What I think he said was that he wanted the local authority to be consulted with regard to the members of any committee; whereas, if he puts it in this particular place, what he really does is to have the local government authority consulted as to whether the area shall be appointed.

There is one point I should like the hon. Attorney General to answer. Should it not be the Member after consultation, rather than in consultation? Does not "in consultation" bind the Member to some extent?

MR. HAVELOCK: Mr. Chairman, speaking to this amendment, I should like to go even further than the hon. member Mr. Mathu. I should like to see the labour exchange committees appointed by the local government authorities, and I have indeed made out an amendment to that effect. I apologize to you for not having given you notice of it, but Government have heard about it.

THE CHAIRMAN: When there are several proposed amendments to a clause, the other parties who have already moved one might be inclined to accept yours, if they knew about it. Therefore I should like to have it so that I can propose it from the chair, and leave these various amendments to be debated. Is the hon. member Mr. Mathu prepared to accept the word "after"?

MR. MATHU: Yes. I would like to go further—if the amendment proposed by the hon. Member for Kiambu is put. I would withdraw mine in favour of his, because I think his actually goes further than mine.

THE CHAIRMAN: The following amendments are proposed: First, to amend sub-clause (1) by inserting the words "after consultation with the local authorities concerned" after the word "Member". Second, to substitute for the sub-clause in question the following: "The Member may by notice in the Gazette specify the area or areas in which labour exchange

committees shall be appointed" and to insert a new sub-clause, to be numbered (2), as follows: "When an area by notice in the Gazette becomes an area as specified in the preceding sub-section, the local government authority or authorities, having jurisdiction over such an area or areas shall thereupon appoint a labour exchange committee or committees"; and that sub-clauses (2), (3), (4) and (5) should be renumbered (3), (4), (5) and (6).

MR. COOKE: On a point of order, is the hon. Member for Commerce and Industry in order in reading the *Kenya Weekly News* in Council?

THE CHAIRMAN: Quite out of order.

MR. HOPE-JONES: On a point of personal information, can I say that I know of nothing better and more educational in Kenya than the *Kenya Weekly News*, and I am surprised at the hon. member raising it.

THE CHAIRMAN: Having heard it, does the hon. member Mr. Mathu wish to withdraw his?

MR. MATHU: On further reflection, not unless I get an explanation from the hon. Member for Kiambu that in that case, as where you have no African local authority as in the settled areas, and where you have district councils with no African representation, what would happen? I think there is a snag there and I am inclined now to stick to my own amendment, sir. (Laughter.)

MR. WYN HARRIS: Government is unable to accept the hon. Member for Kiambu's amendment, for the reason that, although the interest of the spiv and the drone may be in the municipality, the national employment to which he may be directed, or the body to which he has to go, may not come within the same jurisdiction. Government is prepared to consult local authorities, and I take it Government would accept their nominees, but to give the power actually to municipalities Government is unable to accept.

MR. HAVELOCK: Mr. Chairman, the first point I should like to make is that in this Bill very wide powers indeed are given to the labour exchange committees, and I feel sure that there should be a means of access by the public to the

(Mr. Havelock) labour exchange committees, should such powers be abused. I feel that if the labour exchange itself were appointed by the local government it would give an opportunity for members of all races to make representations to their representatives on the local government authority, who in turn would be able to rectify any abuse that might be caused by the labour exchange committees. That was the whole idea at the bottom of my amendment which goes, as I say, further than the amendment of the hon. member Mr. Mathu.

As regards the district council areas, it is true that in those areas the district councils would appoint, under this amendment, the labour exchange committees, but on the other hand labour exchanges, I presume, will be set up in the townships and municipalities, and not in the country-side, and in that case it will be the townships and municipalities which will be specified, and they will, under my amendment, appoint labour exchange committees, and on most municipal boards there are African representatives. That, I think, answers the question the hon. member asked me. I do not think consultation goes far enough, and this is really an attempt to try to find some method to bring this very, very ferocious law under the control of the people.

MR. MATHU: In deference to what the hon. Member for Kiambu has said, may I point out that there is a labour exchange now in Fort Hall, which is not a municipality. Also, a place like (Thika, where you have no municipality, requires a labour exchange. I think that my amendment, although it is not as revolutionary as that of the hon. Member for Kiambu, gives opportunity for all communities to be consulted by the Member in appointing labour exchange committees. Actually I think Government has already accepted my amendment, and I ask that the question be put.

The question was put and carried.

The question of the second amendment was put and negatived by 22 votes to 10, the hon. Member for Nairobi North pairing. Ayes: Messrs. Blundell, Cooke, Erskine, Havelock, Hopkins, Keyser, Macnochie-Welwood, Preston, Lady Shaw, Mr. Usher. 10. Nocs: Messrs.

Chemallan, Deverell, Wyn Harris, Hartwell, Hope-Jones, Hyde-Clarke, Ingutia, Jeremiah, MacLennan, Madan, Matthews, Mathu, Mortimer, O'Connor, Padley, Patel, Patrick, Pritam, Rana, Rankine, Salim, Shatry, 22.

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

MR. RANKINE: Mr. Chairman, in order to save time, as I know we are anxious to conclude to-day if possible, and if no hon. member has any objection, may I suggest that after the interval we should resume in committee and try and finish the Bills.

Council adjourned at 11 a.m. and resumed at 11.20 a.m. in committee.

Clause 8.

MR. MATHU: Mr. Chairman, I beg to move: That the clause be amended by deleting the words "arrested, without a warrant," and substituting therefor "if a warrant has been issued, be arrested".

That also applies to clause 9, where arrest is suggested without warrant. We first heard about arrest without warrant during the taxation Bill, where defaulters were to be arrested without warrant, and we think that, in view of the fact that these people have already come before the labour exchange, some of them any way, under clause 7, it is going too far to arrest people who are just nothing but lazy. It is laziness which we are making a criminal offence.

MR. USHER: Mr. Chairman, I must oppose this amendment. I wonder if the hon. member Mr. Mathu is aware of the existing provision in the Penal Code with regard to rogues and vagabonds? It is there provided that every suspected person who has no usual means of subsistence and cannot give a good account of himself shall be deemed to be a rogue and vagabond, and he may be arrested without warrant. These powers might be regarded as dangerous and likely to be used indiscriminately, but I think it is the experience of all who have had to deal with the administrative side of the matter that they are not so used, that in fact a junior member of the Police Force does not arrest me, or anybody else, because my countenance is body else, because my countenance is displeasing to him. Moreover, the penalties in such case are severe. For a first offence they are imprisonment for three

(Mr. Usher) months, for every subsequent offence imprisonment for one year with or without corporal punishment.

The clause of the Bill as it stands, unamended, read with clause 9, gives, in my view, ample safeguard. It is not a question of a junior member of a Police Force arresting arbitrarily people whom he sees walking about the street: the power is to be exercised by an administrative officer, or somebody appointed by him, and presumably appointed with great discretion. I beg to oppose the amendment.

MR. COOKE: Mr. Chairman, I have a certain amount of sympathy with the hon. member Mr. Mathu, but I feel that a Bill like this has either got to be very drastic or no Bill at all. I think we should in no way curtail the penalties, the measures, suggested in the Bill. Therefore I support the clause.

MR. MATHU: With regard to the two points by the hon. Member for Mombasa, I would say that his quoting the Penal Code supports my contention which I put forward during the second reading of this Bill, that provision already exists in the law to deal with criminals, and I hope he will support me at the end of this when I move the motion for rejection.

In regard to the second point, that it is not the junior police officer who is going to arrest any person arbitrarily, may I say that experience has shown, particularly in the administration of the Nairobi Municipal Council by-law, that what he denies is exactly what is happening, and further there does not seem to be any redress in civil law as far as Africans are concerned. When a fellow is arrested without warrant, put inside for a day or two, and released, he has no redress at all. If the hon. Member for Mombasa would propose the inclusion of provision whereby a person arrested in that way and found to be a person not voluntarily unemployed, so that he could have redress in civil law, I would support him. As it is, the fellow is living in a vacuum and has no redress at all, is prosecuted and put inside. I would say that this amendment has been moved because I know from bitter experience what my people have gone through in the administration of some of

these laws. This Bill will make it impossible to walk, because whoever is going to do the arresting will have to run very hard. That other person we do not know yet who he is, and we are suggesting an amendment so that he should not be a member of the police force. As it stands, the hon. Member for Kiambu described it very well—the provisions are extremely ferocious.

MR. USHER: I quoted section 161 of the Penal Code by way of analogy, but the features are in a different category. In the one case they are reputed thieves or suspected persons; in this they are an entirely different class of person.

MR. O'CONNOR: Mr. Chairman, I am a little confused. We started off by an amendment to clause 8 and part of the discussion has been on clause 9 so far as I can follow it. I propose to deal only with clause 8.

There it is laid down that the person who may be arrested without a warrant is an unemployed person who, without reasonable cause, fails to report as required by a certificate issued under the provisions of clause 7 or disobeys any order issued under the provisions of that clause. The provisions of clause 7 are provisions which allow the office in charge of a labour exchange to issue a certificate in the prescribed form setting out a date he should report or allow the labour exchange committee to give orders. I suggest that it is not unreasonable, if a man deliberately ignores an order given him by the labour exchange committee, that it should not be necessary to go through the formality of obtaining a warrant for the man's arrest, otherwise it will be very difficult to see how these orders can be enforced.

The other part of the argument was on clause 9, and I will deal with it when we come to it. I do suggest that in order that these orders of a labour exchange committee may be given due attention, it is necessary to be able to enforce them, and the obvious way is to be able to arrest a person concerned for disobedience to them, so I oppose the amendment.

MR. JEREMIAH: Our main reason for suggesting that such a person be arrested with a warrant is because he is known. If that is so, why should he be arrested without a warrant?

MR. WYN HARRIS: For the simple reason that their names may be known but their addresses are not. It is the spivs and drones we are getting at.

The question of the amendment was put and negatived.

The question that the clause stand part of the Bill was put and carried.

Clause 9.

MR. MATHU: Mr. Chairman, I beg to move: That the clause be amended by inserting the words "other than a member of the Police Force" after the word "person" in line 1, and to substitute the words "may arrest with a warrant any adult male who is a voluntarily unemployed person" for the words "may arrest without a warrant any adult male whom he has reason to believe is an unemployed person".

We move this because we gather by implication that it was not the intention of Government to use the Police Force to administer this measure, and in order to make it statutory we have suggested that these words be included. If it is the intention of the Government to use the police to arrest these people without a warrant, in that case I say that they should explicitly say so so that we know exactly where we stand.

MR. WYN HARRIS: Mr. Chairman, I am afraid that Government cannot accept that amendment. Clause 9 makes it clear that the Administration will work the Ordinance. It is not the intention of Government to delegate its authority to a police officer at all, but circumstances may arise where it is necessary to give that authorization. I feel myself that it is a reflection on the Police Force to put in that specific exception here.

MR. MATHU: There was no intention whatever of making any reflection on the Police Force; I should be the last person to do that. We had thought that that was the intention of Government, and we now understand that it is, that in some cases, perhaps the majority, the Police Force will be used.

The question of the amendment was put and negatived.

The question that the clause stand part of the Bill was put and carried.

Clause 12.

MR. INGUTIA moved: That the clause be amended by substituting a full stop for the comma after the word "exemption" and deleting all words thereafter.

MR. WYN HARRIS: Government is prepared to accept that amendment, although it is rather unfortunate, as the clause would have allowed a number of exemptions had it stood as drafted.

The question of the amendment was put and carried.

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

Clause 14.

MR. MATHU: Mr. Chairman, we have a number of amendments to this clause. The first is that paragraph (a) be deleted, which says "a committee may (a) permit him (a male adult) to engage in any employment approved by the committee for such period as the committee may approve", and this may be construed to be employment in private enterprise. The hon. Attorney General did not make this point very clear, and if we could have a further explanation of what that means in actual fact we may consider withdrawing this amendment. But that is the intention behind it.

MR. O'CONNOR: The paragraph means exactly what it says: "When any adult male has been declared to be a voluntarily unemployed person, a committee may (a) permit him to engage in any employment approved by the committee for such period as the committee may approve". What I said was that there was nothing in this Bill which allowed labour to be forced into private employment, but it is perfectly plain that if the man concerned wishes to engage in any employment, national or private employment, the committee may permit him to do so. I hope that that is plain.

While I am on my feet, as regards this amendment, in view of what I said I do not know whether it will be pressed or not, but I think it would be very unfortunate if the right of selecting employment into which the man wished to enter were to be taken from the individual concerned. (Hear, hear.) There is no intention, at any rate on this side, of any such thing. If the man has entered into which he wishes to enter and it is reasonable employment it will of

[Mr. O'Connor] course be approved by the committee and he will be allowed to enter it.

MR. MATHU: The hon. member has put this on record, and in view of that I beg to withdraw the amendment.

The amendment was by leave withdrawn.

MR. MATHU: Mr. Chairman, the next amendment is to clause 14 (b), which reads: To insert after the word "employment" the words "and that the voluntarily unemployed person shall be subject to the provisions of the Employment Ordinance, 1938". Reading (a) and (b) for that matter, it seems to me that it will be employment without remuneration. I raised the point on the second reading of the Bill, and as the Defence Regulations had provided that employment would be on a salary basis we move this amendment, so that it will be known that employment will be remunerated. That will also apply to (a).

MR. O'CONNOR: Mr. Chairman, I do not think it entered anybody's head before this debate that these words could possibly be construed as meaning employment without remuneration. May I read the paragraphs again? "When any adult male has been declared to be a voluntarily unemployed person, a committee may (a) permit him to engage in any employment approved by the committee for such period as the committee may approve; (b) direct him to enter into a written contract of service, for any period not exceeding six months, in any national employment".

It is certainly not suggested that he should work without remuneration, and I think the amendment is quite unnecessary, because the Ordinance to which the hon. member has referred would in any case apply. If the hon. mover had given me a little more time, I would have come prepared with the Employment Ordinance: as it is, I have not got it, but there is no doubt in my mind that the amendment is unnecessary, because the Ordinance would in any case apply, and there is no authority whatever in this Bill for saying that this employment would be employment without remuneration.

MR. COOKE: Mr. Chairman, I should like to support the hon. member Mr.

Mathu. I do not think any harm is done by making assurance doubly sure, because we in this Colony would know perfectly well that it means remunerative employment but it might not be read that way outside.

MR. O'CONNOR: There would be no objection to the amendment if it is pressed. I merely think it is unnecessary, but for the reason put forward by the hon. Member for the Coast it might be as well to have it.

THE CHAIRMAN: As the paragraph provides for a written contract of service for any period not exceeding six months, it must automatically be under the Employment Ordinance—that is how I would construe it.

MR. COOKE: There is no harm in making it clear to outsiders.

MR. MATHU: If it was found necessary during the war period under the Defence Regulations to make such provision, in this case I do not think there is any harm. I am referring to the Defence Regulations, African Labour for Essential Undertakings, 1944, and section 25 is an exact copy of my amendment.

MR. WYN HARRIS: I would like to oppose it, sir, on the ground that a large number of people might not come under the Employment Ordinance. They may be bound by ordinary civil contract—any man drawing over Sh. 200 does not come under that Ordinance. In consequence of that, we shall have to add something such as "civil law of the land".

MR. COOKE: Any paid employment would cover it.

MR. O'CONNOR: May I ask the hon. mover, in view of the fact that we have had no notice of this and cannot possibly tell what the scope of the amendment is, whether he would not adopt the suggestion made by the hon. Member for the Coast and put in "in any paid national employment"? Would that cover his point?

MR. MATHU: Admirably.

The amendment was by leave withdrawn.

The question that the word "paid" be inserted before the word "national" was put and carried.

MR. MATHU: Mr. Chairman, I beg to move: That paragraph (c) be amended by substituting the words "a training centre" for the words "a rehabilitation or training centre".

MR. HAVELOCK: What are the reasons for this amendment?

MR. MATHU: Rehabilitation may have a lot of meanings and is not defined in the Bill.

The question of the amendment was put and negatived.

MR. MATHU: Mr. Chairman, I beg to move: That paragraph (d) be deleted. This provides for a system of moving a person from his own country, another system of deportation. We say that no person should be put in gaol to do what you like with him, and that he has a right to live as a citizen in any place in this country.

MR. WYN HARRIS: Government is not prepared to accept this amendment. If the clause is read closely, it starts off "If such adult male is not domiciled within the declared area". It is merely to keep a man who has no regular home in the area out of the area if he will not seek honest work in the area. I would remind the hon. member that on the second reading of this Bill he said he was in favour of making spivs and drones work—I can only say that the removal of this paragraph would make a complete mockery of the whole of this Bill.

MR. JEREMIAH: The clause restricts a man very severely, because if he is removed from the area he is also restricted from any other area; so that he is doubly restricted.

MR. WYN HARRIS: He is only restricted from going to any other declared area. Say Nairobi and Mombasa are declared areas, we do not want to turn him out of Nairobi to find him in Mombasa the following morning.

MR. MATHU: Why should he not have freedom to move as he pleases? If he is in Mombasa against the law, he should be put inside, but why should he not if he chooses go to Mombasa, why should he be told he must stop in one place? I feel that if a person goes against the law he should be dealt with, but to make provision for a person not to move to a particular place goes as far as saying

that he must not move so many steps a day.

MR. WYN HARRIS: I would only remark, as I did in introducing the Bill, that these people are really vagabonds. If he came under the vagrancy law, which I personally detest, he would be ordered to return to his native unit, and if he left there he would be guilty of an offence. Here he is ordered out of the area where he is found as a vagrant, and the whole wide world is open to him, and he is only kept out for a specific period.

MR. JEREMIAH: I hope the hon. member is aware that most of the declared areas will be townships where most of the work is available, and to restrict someone from going there is going too far.

MR. O'CONNOR: I think the last hon. member who spoke has forgotten that the man we are worried about at this stage is not the man who is seeking work but the man who is not seeking work.

MR. JEREMIAH: It is only an unemployed person.

MR. WYN HARRIS: If the hon. member would read the Bill carefully, it is not the unemployed person—it is the voluntarily unemployed.

The question that paragraph (d) do stand part of the Bill was put and carried.

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

Clause 15.

MR. INGOTIA: I move: That the clause be amended by deleting from sub-clause (1) the words "appearing, or". In view of the fact that I do not understand why the words "appearing, or" should be there, I should like them to be deleted.

MR. WYN HARRIS: They are necessary because I had assumed that at least one man under clause 7, when ordered by the labour exchange officer to report to the committee, will appear and will not have to be brought. (Laughter.)

The amendment was with leave withdrawn.

The question that the clause stand part of the Bill was put and carried.

Clause 16.

MR. MATHU: I move: That the clause be amended by substituting the words

[Mr. Mathu] "made under paragraphs (a), (b), (c) and (d) of section 14" for the words "made under paragraph (b) of section 14" appearing in sub-clause (1). In other words, a person will be able to appeal against judgment in all four parts under clause 14 in addition to clause 13.

MR. VASEY: I cannot see why any man should want to appeal to a first class magistrate because a committee has permitted him to do something!

MR. PATEL: I have never seen a Bill discussed in so many details and so many amendments accepted across the floor of the Council within so short a time. It appears to me that this Bill ought to have been sent to a select committee instead of being discussed in this way. Therefore, even at this late stage, I propose under Rule 79 that this Bill should be referred to a select committee for careful consideration of all the clauses and matters which have been raised during the consideration of the committee of the whole Council.

MR. WYN HARRIS: On behalf of Government I should certainly like to oppose that. There was no suggestion of a select committee when the second reading was introduced, and we have got pretty nearly to the end of it. It was not Government's fault, but we had no notice whatsoever of these amendments. They came to my knowledge personally five minutes before I was on my feet.

THE CHAIRMAN: I will put the dilatory motion, that the Bill be sent to a select committee.

The question was put and negatived.

MR. O'CONNOR: Mr. Chairman, I do not think that this amendment should be accepted. The provisions of the Bill have been very carefully considered beforehand and I find great difficulty in accepting far-reaching amendments, for there is no proper time for consideration in this way, and we must oppose the amendment suggested.

MR. VASEY: Mr. Chairman, I should like to point out to the hon. member Mr. Mathu that the clause we are now discussing gives fundamental right of appeal, and that is the appeal under clause 13, if an adult male is declared a voluntarily unemployed person, and only then can these things outlined in

14 happen to him. The unemployed person or adult male concerned is given the right of appeal against the decision under clause 13, which is the fundamental right, and if the magistrate declares that that was a wrong decision and that he is not a voluntarily unemployed person, then nothing further can happen to him. So I do not think there should be any impression left that the right of the individual is not fully protected under this clause.

The question of the amendment was put and negatived.

MR. MATHU: I move: That sub-clause (2) be amended by substituting the word "after" for the words "may, with or without". We feel that if there is no record of evidence it is difficult to know why a certain decision or judgment should be given by the magistrate, and we think it is right and proper that evidence be recorded.

MR. O'CONNOR: That could be accepted, sir.

The question of the amendment was put and carried.

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

Clause 18.

MR. MATHU: I move: That the clause be amended by inserting the figure and brackets (1) after the figure 18, and adding as sub-clause (2) the following: "(2) Such rules shall be laid on the table of the Legislative Council at its next meeting." We feel that this Council should know what rules have been made under this clause. We have a large number of laws which provide that rules should be placed on the table of Council.

MR. O'CONNOR: Mr. Chairman, there would be no objection whatever to that amendment.

The question of the amendment was put and carried.

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

Clause 19.

MR. O'CONNOR: I move: That the clause be amended by adding at the end thereof the words "or any part thereof". The clause as it stands gives the Member, or any person authorized by him by notification in the Gazette, discretion

THIRD READINGS.

[Mr. O'Connor] to exempt any person or class of persons from the operation of the Ordinance. It is conceivable that the Member might wish to exempt from a part of the Ordinance, and I suggest that there should be some flexibility in the matter.

The question of the amendment was put and carried.

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

Clause 20.

MR. CHEMALLAN: I move: That the clause be amended by substituting "one month" for "three months", "Sh. 50" for "Sh. 500", "three months" for "twelve months", and "Sh. 100" for "Sh. 2,000".—I must say I have no sympathy for spivs and people of similar trades, but these people are not criminals in the real sense of the word, and to impose upon them such fantastic sentences is unfair.

MR. WYN HARRIS: Mr. Chairman, Government cannot possibly accept this amendment. The discretion, of course, according to the offence, is in the hands of the magistrate, but we are going to deal with the three-card trickster of this world, who is a spiv and also a drone. He can make Sh. 50 in ten minutes, and there is no question that the fine has got to be substantial so that it will be a deterrent, and certainly a month is not nearly sufficient for a man who is determined to come into this town and is not prepared to stay in any form of work.

The question of the amendment was put and negatived.

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 Deportation (Aliens) Bill, the Deportation (Immigrant British Subjects) Bill, the Land Control (Amendment) Bill, and the Voluntarily Unemployed Persons (Provision of Employment) Bill, and the Departmental Offices Bill and the Increase of Rent (Restriction) (Amendment) Bill without amendment.

The Council resumed, the Bills were reported, and the report was adopted.

MR. O'CONNOR moved: That the Deportation (Aliens) 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 Deportation (Immigrant British Subjects) Bill be read the third time and passed.

MR. RANKINE seconded.

MR. PATEL: On the second reading of this Bill, and the other Bill which was passed just now, I have stated that for certain reasons which I have mentioned I cannot lend my support to its provisions. The Bill has come out of the committee stage without meeting my objections, and therefore I should even now like it to be on record that I do not feel inclined to lend support to the passing of the Bill as it stands.

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

MR. O'CONNOR moved: That the Land Control (Amendment) Bill be read the third time and passed.

MR. MORTIMER seconded.

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

MR. O'CONNOR moved: That the Voluntarily Unemployed Persons (Provision of Employment) Bill be read the third time and passed.

MR. RANKINE seconded.

MR. MATHU: Mr. Speaker, before you put the question, I should like under Standing Rule and Order No. 84 to move a motion of rejection of this Bill. I do so not because, as I made it very clear during the second reading, I disagree that we must make men work, but because I disagree with the method proposed. I submitted during the debate that the present laws could be used to make these men work. That has not been successful, and during the committee stage my colleagues and I have been trying to improve the provisions of this law, but what can four do against the steamrollers of the immigrant communities represented on this Council? We have been defeated in every case, but we have no doubt made slight improve-

[Mr. Mathu] However, we still feel men's to this Bill. However, we still feel most honestly and sincerely that Government would have been wiser to defer this legislation, as we suggested during the second reading, to give time to the African community to consider it. I do not think anything would have been lost in doing so. As we have not succeeded and as we feel it is a law that would be misinterpreted by the African community, because it is a law that would make them feel like slaves, I move that it be rejected.

MR. JEREMIAH seconded.

MR. RANKINE: Mr. Speaker, there are one or two comments which have been made which I cannot allow to pass unchallenged.

First of all, the Bill has been described as ferocious; secondly, it has been suggested that it will create slaves. It is true that the Bill contains wide powers, but in our opinion there are adequate safeguards for all the powers provided. The powers are not more than is necessary. This is a Bill which is designed in the interests of the inhabitants of this Colony. It is a Bill which is designed not to impose any ferocious penalty on any person at all, but it is designed to reform those persons who are voluntarily unemployed. It is, I believe, a Bill which should have the support of every responsible member of the community who is anxious to see the community improve—(hear, hear)—and who is anxious to discharge his responsibility for the welfare of his own people.

DR. RANA: Mr. Speaker, I did not intend to intervene, but a very definite statement has been made by the hon. Member for African Interests, Mr. Mathu, in which he has labelled all the immigrant races as steamrollers. The position as far as the Asian community is concerned is that the Bill is non-racial, and I as an Asian feel that the time will come when there will be a lot of Asians who will have to be put to proper work. You must not consider that it is only the African who is going to be brought into that state. Furthermore, he should realise that they are a population of millions, and we are only a population of thousands here. I take it the Bill applies equally to us. I admit some of the measures are very harsh, but after all we

have three or four sessions in the year, and if he finds the Ordinance is working very ferociously he can always bring it up here and he will have our support. I do not think we want to take undue advantage of anybody; but we agree with the principle of the thing, which is that everyone must work and those who are disdirected by some ulterior motive must be told what to do. I should like those words put on record to show him that we are not going to be exempted from the Bill, and I would draw to the attention of the authorities that they should not exempt the immigrant races from the Bill.

MR. O'CONNOR: Mr. Speaker, there are two or three points to make. In the first place I should like to endorse what has been said by the hon. Chief Secretary with regard to the aspect of this Bill which deals with the reform of the person concerned. There are certain powers in existence already, as hon. members know, but they do not permit of any reforming process. I want also to welcome what has been said by the hon. member Dr. Rana, as to the non-racial character of this Bill, and I also want to point out that Council has inserted in the committee stage at the instance of Government a provision to the effect that separate committees may be appointed to deal with each community, and it is the intention that each community shall be dealt with by committees upon which members of their own community are very fully represented.

I think that if this Bill is reasonably administered, as I am sure it will be, it should result in benefit to every community in this country. I therefore oppose the motion that it be rejected. I would also like to mention, in case it is thought that there has not been adequate time for consideration of this Bill by the hon. members representing African Interests, that to the best of my knowledge those members have had this Bill in their hands for a good many weeks past, and in my submission there has been ample time for consideration of its provisions.

MR. VASEY: Mr. Speaker, I rise merely to register a protest against one phrase used by the hon. member Mr. Mathu; that is, the use of the phrase "immigrant races". There are a large

[Mr. Vasey] number of Europeans and Asians in this country who were born in this country, who have their homes in this country, their lives and interests in this country, and have as much right to regard themselves as part of the inhabitants of the country as any African. (Hear, hear.)

MR. PATEL: Mr. Speaker, I would like to remind the hon. member Mr. Mathu about one thing, when he deliberately said that the immigrant races had steamrolled the Bill. At the second reading of the Bill I admitted the necessity of dealing with spivs and drones and unemployed vagabonds but at the same time I strongly criticized many of the provisions of the Bill, so that the hon. member cannot say I was a party to the steamrolling which he has mentioned.

MR. MATHU: There is nothing very much for me to reply to, sir, because I feel that the speakers have not raised any new principle which was not raised during the discussion of the Bill, except that I should like to repeat what I have said, that I am with hon. members that we should make people work. The point is the method, and if we were able to agree on the methods of dealing with these people I would have been absolutely happy, and my colleagues, to support the Bill right through. The second point is that it is said it is non-racial in character, but the method comes into it, for how is it going to be administered and who suffers most in laws of this kind? It is the African. It is that fellow I and my colleagues are trying to see is protected.

There was a further point made by the hon. Member for Nairobi North. I agree with him; and he will agree with me, that we have definitions of races in this country already, and I was dealing with those definitions. Natives are called natives sometimes, and sometimes Africans, and therefore perhaps to say the non-Africans steamrolled this would be more appropriate.

The question that the Bill be rejected 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 Departmental Offences Bill be read the third time and passed.

MR. RANKINE seconded.

The question was put and carried, and MR. O'CONNOR moved: That the Increase of Rent (Restriction) (Amendment) Bill be read the third time and passed.

MR. RANKINE seconded.

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

EXCESS INCOME TAX REFUNDS

MAJOR KEYSER: Mr. Speaker, I beg to move: That this Council is of the opinion that, in view of H.M. Government's refusal to consider the refund of the difference between United Kingdom and Kenya income tax paid by either (a) officers on the reserve who were recalled from unofficial occupations in Kenya or (b) normal residents of East Africa who by design or accident joined the Forces in the United Kingdom, any excess of income tax paid by such officers over Kenya rates should be refunded to them from the revenues of the Colony.

The officers referred to in (a) are retired officers or officers on the emergency list of the Royal Navy, Army and retired officers of the Royal Air Force. There was quite a large number of retired officers living in the Colony before the war, and on the declaration of war they were called up for active service. During the war, representations were made to the United Kingdom that these officers should pay Kenya rates of income tax on their pay and not the United Kingdom rates. Other colonies also asked for the same thing. The United Kingdom made a concession in the case of colonial officers who were transferred to the Imperial service or to officers of the Civil Service who had joined the Forces, but did not make that concession in the case of other persons who were not either in the Services or colonial service.

In April, 1947, Sir Alfred Vincent asked this question in this Council: "In view of the fact that officers who were on the reserve of a United Kingdom force at the outbreak of the 1935-45 war, and who were transferred, in East

[Major Keyser]

Africa from their civilian status to active service, have been subjected to United Kingdom income tax unless they happened to be in Government employment at the time of recall, will Government make urgent representations to the United Kingdom Government for a revision of their decisions in order that settlers may receive the same favourable treatment as Government officials, and be subject to tax on service emoluments at East African rates only? Will Government state why United Kingdom tax has been imposed on East African personnel who happened to be in the United Kingdom at the outbreak of the 1939-45 war and who joined the Forces direct in the United Kingdom?" Mr. Troughton, then Financial Secretary, replied: "The answer to the first part of the question is in the affirmative. As regards the second part of the question, Government is not aware of the precise reasons actuating His Majesty's Government, but the matter is being taken up with the Secretary of State for the Colonies".

Those representations were made to the United Kingdom and were not acceded to, so that in 1948 Sir Alfred Vincent then moved a motion in this Council, which was to the effect "that this Council is unable to accept the explanations of His Majesty's Government in the United Kingdom regarding the imposition of income tax at United Kingdom rates on the emoluments of members of the Forces in the last Great War who were grouped under the two following categories (a) officers on the Reserve who were recalled from unofficial occupations in East Africa; (b) normal residents in East Africa who by design or accident joined the Forces in the United Kingdom; and this Council most earnestly requests His Majesty's Government in the United Kingdom to amend the regulations and so remedy the present anomalous situation whereby there is inequitable and illogical discrimination between official and unofficial and between East Africans who were recruited locally and those who joined the Forces in the United Kingdom".

Again Mr. Troughton, on behalf of Government, pointed out that the motion constituted a criticism of two decisions

taken by the United Kingdom Government and that, for that reason, it was not possible for Government as a Government to vote on the motion, but he expressed the sympathy of himself and his colleagues with the objects of the motion, and he proposed that the Hansard of the debate should be forwarded to His Majesty's Government in the United Kingdom, and that it should be reinforced by strong representations from the Government of Kenya. The motion was carried by 31 votes with no dissentients. But again there was no result from it, as the United Kingdom Government did not accede to the request but made the suggestion that the Colonial Government should make the adjustment themselves. The Northern Rhodesian Government took that action and has made the adjustment asked for.

The European-elected members, after the Rhodesian Government had taken that action, asked the Standing Finance Committee to consider the matter, and the Standing Finance Committee decided that this matter should be the subject of a motion from the unofficial side of the Council, and that is why I am moving this motion to-day. It is with the object of rectifying what is a very apparent injustice, and I should like to appeal to members of the Council to support the motion. I beg to move.

MR. VASEY seconded.

MR. COOKE: Mr. Speaker, I should like to support the hon. member very heartily in the suggestion to rectify an injustice. Indeed the arguments which he used, at any rate by implication, to-day are exactly the arguments which I used the other day with regard to pensioners. Now, sir, these officers have of course no claim of right, but in equity they have every claim, and for that reason I would also give my wholehearted support to the hon. member.

MR. MATTHEWS: Mr. Speaker, as the hon. mover has stated, this is by no means the first time this matter has come before the Council, and on previous occasions I think Government has made it clear that it has great sympathy with the personnel involved. That sympathy still exists, and I will make it plain at once that in these circumstances Government is prepared to accept the motion in principle, subject to one small

[Mr. Matthews] reservation. The wording of the motion as it stands is a little sweeping, it makes no provision for certain necessary alterations.

Let me explain very shortly what I mean. You might get the case of a person who goes to the United Kingdom and joins the armed forces in the manner contemplated, and when the time comes for his normal discharge he finds that for one reason or another he does not want to be discharged; he wants to stay on. Such a reason might be that he is enjoying emoluments there far greater than he might expect if he came back. I believe there were cases where people got paid higher salaries during the war than they could ever hope to get in civil employment! That may not be so, but it is doubtful, and I hope Council will accept that, whether for the period after he could have left the service the revenue of this Colony should meet a refund in respect of that time. Therefore I think we must have something in the motion which will enable the practicable application of the scheme to be considered, and if the hon. mover is prepared to accept some such amendment as that Government will support it.

In these circumstances, and subject to that reservation, I beg to support.

MR. RANKINE: Mr. Speaker, if that is so I intend to proceed to move a slight amendment to the hon. member's motion. I beg to move that, following the words "of the Colony" at the end of the motion the following words should be added: "and invites the Government to formulate for consideration by the Standing Finance Committee a scheme to provide for the principles on which such refunds should be granted".

MR. O'CONNOR seconded.

MAJOR KEYSER: With the approval of my seconder, I should like to accept that amendment.

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

SELECT COMMITTEE REPORT

LEGISLATIVE COUNCIL ACCOMMODATION

MR. RANKINE: Mr. Speaker, I had given notice that I proposed to move the suspension of Standing Rules and

Orders in order to take the motion standing in my name, but in view of the late hour and the fact that members have had little time to consider the proposals in the Select Committee Report, with your permission and with the permission of Council, I will move my motion at the next sitting.

VALEDICTORY

HON. P. WYN HARRIS

THE SPEAKER: Hon. members, before we adjourn to-day, and I take it that when we adjourn to-day we shall adjourn until next October some time, there is one very pleasant duty that I have to perform on behalf of you all.

As you know, our friend Mr. Wyn Harris is about to become the Governor of the Gambia. (Applause.) I am sure you will all agree with me when I say that our good wishes go with him and Mrs. Wyn Harris in their new venture. (Applause.)

It is perhaps a strange whim of fate that one who has been accustomed to climbing the highest mountains should be sent to the flattest colony in the British Empire! (Laughter.) I have been in that colony myself, for my sins—in that colony myself, for my sins—but I hope that the surfeit (laughter)—but I hope that the surfeit of palm oil chop, jollof rice and groundnut stew with which he will be greeted by the hospitality of the people there will not overcome him any more than Everest did, and that he will survive perhaps—who knows, but we hope so—to come back to us. (Applause.)

I have very pleasant recollections personally of the new Governor of the Gambia, and I do not wish to enlarge on them because it would sound too much like reminiscences. But he has endeared himself, I think, to every kind of person in this Colony, both official and unofficial—(hear, hear)—and he leaves us with a reputation which I am sure will be maintained in his efforts in his new venture. All we can hope for is his health and strength will enable that his health and strength will come, him to carry on for many years to come, and we hope he will be able in his new colony to show the same force, strength and good humour which he has always shown in this assembly. (Applause.)

With those few words, we give him all our good wishes. (Applause.)

Mr. WYN HARRIS: Mr. Speaker, I would like to thank you for your very kindly words and I would like to thank the Council. In the two and a half years that I have been here I have met with nothing but kindness and good humour, however often we have differed politically, and I leave this Council with great regret because I have enjoyed many of the debates, and the more lively they have been the more I have enjoyed them.

It will be with great regret that I will no longer be able to cross swords with the hon. Member for the Coast. (Applause.)

ADJOURNMENT

Mr. RANKINE: May I say that it is not known yet exactly when the budget will be ready, but it is probable that it will not be ready until about the third week of October. In that event there would be no point, and I think hon. members' opposite would agree with me, in meeting in the second week and then adjourning, and I therefore suggest that we should adjourn now *sine die* until a date to be fixed.

Council rose at 12.55 p.m. and adjourned *sine die*.

WRITTEN ANSWERS TO QUESTIONS

No. 47—THIKA ROAD HOUSE

Mr. HAVELOCK:

Will Government obtain from the E.A. High Commission the following information:—

1. (a) The capital cost of the Thika Road House; (b) the profit or loss made on a normal commercial basis since its inception; (c) the charges made for (i) monthly residents, (ii) visitors at a daily rate.

2. If it is the Commission's policy to (a) make it pay as a commercial venture, (b) provide a special service for servants of the four East African Governments and the High Commission, and (c) compete with private enterprise in providing temporary accommodation for visitors.

3. If the Commission will close the Thika Road House when sufficient housing and hotel accommodation is available for the servants of the Commission and of the four East African Governments whose duties may take them to Nairobi?

Reply:

1. (a) The estimated capital cost of the Thika Road House is as follows:—

Equipment	£16,845
Materials, labour, etc., including cost of buildings	£40,000
Contingencies	£555
Total	£57,400

The above covers the actual but unaudited expenditure up to the end of 1948 and estimated expenditure from the 31st December until its final completion in May, 1949.

(b) Owing to the urgent necessity to find accommodation, the House was opened section by section as completed. The average loss over the first seven months during the period of building up to full capacity was £199 per month. Since it has been operating at full capacity there has been an average monthly profit of £26 per month. The House operates its own fire fighting service, water supply, etc., as public services are not available.

(c) (i) Prior to May, 1949, monthly residents were charged the following rates:—

	per month
Single accommodation	£14
Double accommodation	£26

Children—£1. plus £1 for each year of a child's age, up to a maximum of £14 per month.

(ii) Visitors on daily rates were charged Sh. 15 per day single and Sh. 30 per day double.

Since May, 1949, the monthly rates have been increased by Sh. 10 a head per month and daily rates by Sh. 1 a head per day. The present scale of charges is therefore:—

Monthly Rates.	per month
Single accommodation	£14 10 0
Double accommodation	£27 00 0

Children—Sh. 30, plus £1 for each year of a child's age, up to a maximum of £14 10/- a month.

Daily Rates.	per day
Single accommodation	Sh. 16
Double accommodation	Sh. 32

Children are charge *pro rata* according to their age.

2. (a) No. But to avoid a loss.

(b) The hostel was constructed as an emergency measure to house High Commission officers and their families, Kenya Government officers and their families and to provide accommodation for official and non-official visitors of all races from other territories visiting Nairobi on official business. The project was undertaken at a time when the accommodation situation was so serious that instructions had to be issued that newly appointed officers could not be accompanied by their wives and families unless accommodation could be guaranteed for them on arrival.

(c) No. There is no intention of competing with commercial hotels in Nairobi. An agreement was reached with the Hotelkeepers' Association when the project was still under consideration that if, and only if, Nairobi hotels were full and if the House had spare beds available, private persons might be accommodated for short periods at the request of the Association. Under no other cir-

cumstances can such persons be accommodated.

3. Thika Road House was built as a temporary measure to meet an emergency. It is not considered that the accommodation position has yet improved to an extent that would justify reaching a firm decision as to the future of the House. The position will be reviewed from time to time in consultation with the three East African Governments.

No. 49—TRACHOMA EYE INFECTION

Mr. ERSKINE:

Will Government please state whether any precautions are taken to ensure that immigrants entering Kenya at the Port of Mombasa are free from trachoma eye infection, and whether any statistics are available regarding the percentage of immigrants who show clinical evidence of this disease?

Reply:

No precautions are taken except that immigrants exhibiting signs of eye disease are advised to get treatment at Government hospitals or from private practitioners.

No statistics are available regarding the percentage of immigrants who show clinical evidence of this disease.

No. 51—KILIFI AND MTAPOWA PONTOONS
Mr. COOKE:

Will Government issue a full and complete statement giving the reasons for the delay in delivery of the Kilifi and Mtapwa pontoons?

Will they state if any disciplinary action has been taken or is contemplated against those responsible for this long delay?

Reply:

After calling for a tender a contract for two pontoons was awarded to a steel construction firm in Nairobi. At the time no other firm was capable of undertaking the work. A condition of the contract was that the steel plate would be provided by Government. When this order was placed, the firm in question also had a contract with the Kenya Bus Company for a pontoon for the Likiep Ferry which it was agreed should be

completed first. A delivery date for the coast pontoons was given as the end of August, 1948, for the first, and the end of September for the second.

During this period the firm was conducting experiments on a new type of jet propelled pontoon. As this method appeared to have certain advantage over the present type of pontoon, some time was taken up in investigating the new proposal, which was not, however, adopted since it was considered unsuited to local conditions at the two ferries in question.

In October, 1948, the firm was again asked to press on with the work, and a new delivery date of the end of December for the first pontoon was given.

At this time, the completion of the Dagoretti Corner-Limuru Road had become of high priority. As steel plate was urgently required for bitumen boilers, the material earmarked for the pontoons had to be diverted for this purpose as it was at the time the only steel plate in the country.

Consideration was then given to the question of transferring the contract to a new firm recently established in Mombasa. The original firm had, however, ordered replacement steel which was promised for delivery in April, and a new delivery date of the end of June, 1949, for the first pontoon was given. As the Department had ordered the diversion of the steel plate, it was not considered equitable to cancel the contract for non-delivery.

Certain improvements and modifications in the design were then suggested by the contractors, and they were sent to the coast for consideration. Owing to pressure of other work this was not finalized for six weeks.

The firm was again pressed for a delivery date, and the end of August, 1949, was given. The firm was, however, then moving to new and more modern premises, and a firm guarantee could not therefore be given. This transfer involved the transport of the partially completed pontoon to the new premises, but two successive contractors failed to fulfil their obligations. When this became known to the Public Works Department, the move was carried out with Public Works Department transport.

The latest delivery date for the first pontoon is now nearly October, with the second six weeks later. Electricity power cuts have also delayed the work and prevented overtime.

From the above it will be seen that the main delay was due to higher priority being given to the Dagoretti-Limuru Road and to the difficulty of obtaining steel.

The firm is doing all it can to expedite the work.

In view of the above reply, the second part of the question does not arise.

No. 50—NATURALIZATION PROCEDURE MR. HAVELOCK:

(a) Will Government make it obligatory for sponsors of applicants for naturalization to publish their names in the Press?

(b) If the answer to (a) is in the negative, will Government give their reasons why they do not think it advisable to adopt such a practice?

Reply:

(a) No.

(b) The notice which is published in the Press in connexion with an application for naturalization is inserted by the applicant, and not by the sponsors. The proposal that the applicant should be required to publish the names of his sponsors was first made by the Electors' Union at its annual conference in 1948, and has been very carefully considered, and an inquiry made as to the practice in the United Kingdom, where the number of persons applying for naturalization is very much greater than is the case in Kenya.

Government has not felt able to accept this suggestion for the following reasons:—

(i) It is felt that publicity involved might make it impossible for aliens to obtain recommendations from persons who hold responsible positions. Sponsors with little reputation to lose might be willing to expose their names gratuitously, but the suggested procedure, might frustrate the object, which is to ensure that the recommendations are given in good faith by persons whose opinions are worth having.

(ii) The publication of a particular name on two or three occasions might lead to the referee being inundated with other requests for support.

(iii) All information in connexion with an application is considered to be confidential.

It is, perhaps, not realized by the originators of this proposal that the bona fides of the sponsors is investigated in every application for naturalization, as well as that of the applicant, and that the sponsors are communicated with, and details obtained of their knowledge of the person concerned.

No. 44—QUESTIONNAIRES

MR. MACONNOCHIE-WELWOOD:

In view of the number of forms issued to the public for the purpose of obtaining information on matters pertaining to labour, agriculture, etc., would Government consider the annual issuance of one comprehensive form combining as many questionnaires as possible?

Reply:

The Government agrees that as far as possible forms and questionnaires should be amalgamated, and the Director of Statistics is being asked to examine the possibility of this, in consultation with representatives of the Labour Department and the Board of Agriculture.

No. 45—LAND FOR RAILWAY REALIGNMENT

MR. HAVELOCK:

(a) Is it a fact that it is the intention of Government compulsorily to acquire the land used by the East African Railways and Harbours in connexion with the realignment in the Kikuyu-Limuru areas, under the Crown Lands Ordinance, 1902, and that consequently no compensation is payable to the landowners concerned?

(b) If the answer to (a) is in the affirmative, does Government consider that such a procedure constitutes fair and equitable treatment of the landowners concerned, particularly having regard to the appreciation in the value of the land in such areas between 1902 and the present day?

(c) Would Government agree that it would be more equitable and in line with the doctrine of fair treatment of the individual if compensation, in such cases of compulsory acquisition of land for a public purpose, were the subject of an inquiry under the provisions of the applied Indian Land Acquisition Act, 1894, which provides for the setting up of what is, in effect, an arbitration court and lays down the procedure and general principles for establishing the amount of compensation payable to the individual affected, in accordance with the equity of the case.

Reply:

(a) The land required by the East African Railways and Harbours Administration for the realignment of the railway in the Kikuyu-Limuru areas is being resumed under the powers given in the Crown Lands Ordinances, 1902 and 1915, and compensation has been paid to the landowners concerned in accordance with the differing principles laid down in the respective Ordinances. In addition to the compensation prescribed by law the administration has paid ex gratia compensation for severance and disturbance. The attached schedule sets out the details of the land resumed and the compensation paid.

(b) The Government considers that the action taken by the Railways and Harbours Administration has been fair and equitable, as the principles upon which compensation has been assessed (apart from the compensation for severance and disturbance) are part of the contract with the Government entered into when the land titles were granted and there are no grounds for departing from the terms of that contract.

(c) The Government does not agree that it would be more equitable in such cases to apply the Indian Land Acquisition Act, 1894, as that measure is applied only where there are no contractual obligations on the part of the landowners concerned. Provision exists in sections 149 and 150 of the Crown Lands Ordinance for reference to arbitration in all cases of this kind where the amount of the compensation payable is in dispute.

Realignments Kikuyu—Limuru Area

1902 ORDINANCE

Farm No.	Registered Holder	Total Area taken	Area compensated for	Amount paid	Area not compensated for	Compensation Disturbance and damage	REMARKS
237/22 172	L. G. K. Way M. M. Hobden	14 approx. 14-1 "	14 Nil	12,320/00 Nil	Nil 14-1 acres approx.	8,912/00 25,639/00	Plus a fully equipped borehole.
1050 2370/10	Scott and Bradshaw A. S. Hutchinson	1-64 6-22 "	Nil Nil	1,640/00 Nil	Nil 6-22 acres approx.	Nil 2,080/00	Still under litigation as compensation assessed not accepted.
183/3	B. Hubble	8-37 "	Nil	Nil	8-37 acres approx.	11,450-00	Exclusive of area taken for tunnel. Still under discussion but being compensated in kind.
1054 4235	Mrs. Nicholas C. E. V. Buxton	1-7 16-85 "	1-7 Nil	2,057/00 Nil	Nil 16-85 acres approx.	1,043/00 1,400/00	
237/7	Bata Shoe Co.						
1915 ORDINANCE							
5945	Mrs. Nicholas C.S.M.	16-78 8-82	5-74 Nil	6,314/00 Nil	11-04 acres 8-92 acres	20,000/00 4,550/00	Not yet assessed, pending road reserve proposals.
7219/R 7497/I 7497/R	A. G. Chubb						
4955/R 4870 4886/4 4886/3 4886/2 4713/I 4713/2	Kikuyu Estates P. and Mrs. Mardigs Blaxenide Blaxenide Lionnet Mrs. Drury	11-34 12-6 23-2 20-61 2-72 7-16 15-81	Nil Nil 23-2 20-61 2-72 7-16 6-73	Nil Nil 20,416/00 20,403/00 2,692/00 6,300/00 5,922/00	11-34 acres 12-6 approx. Nil Nil Nil Nil 9-08 acres approx.	9,391/00 5,668/00 8,280/00 26,665/00 1,586/00 1,700/00 13,190/00	Still under discussion.
7490 and 7491 237/2/6	Bata Shoe Co. Mrs. Sweatman	9-45	9-45	8,316/00	Nil	5,600/00	

SUMMARY

Land taken under 1902 Ordinance—62.88 acres approx.
Land compensated for—17.34 acres approx.
Land taken under 1915 Ordinance—128.59 acres approx.
Land compensated for—75.61 acres approx.

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SECOND SERIES

9th to 19th August, 1949

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