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COLONY AND PROTECTORATE OF KENYA

# LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

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COUNCIL INAUGURATED  
JUNE, 1952

VOLUME. I

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1952

FIRST SESSION — THIRD SITTING

25th September, 1952, to 1st October, 1952

# List of Members of the Legislative Council

## *President:*

HIS EXCELLENCY THE ACTING GOVERNOR, THE HON. H. S. POTTER,  
C.M.G.

## *Vice-President and Speaker:*

HON. W. K. HORNE

## *Ex Officio Members:*

ACTING CHIEF SECRETARY AND MEMBER FOR EDUCATION AND LABOUR  
(HON. C. H. HARTWELL).  
ATTORNEY GENERAL AND MEMBER FOR LAW AND ORDER (HON.  
J. WHYATT, Q.C.).  
FINANCIAL SECRETARY AND MEMBER FOR FINANCE (HON. E. A. VASEY,  
C.M.G.).  
CHIEF NATIVE COMMISSIONER AND MEMBER FOR AFRICAN AFFAIRS  
(HON. E. R. ST. A. DAVIES, M.B.E.).  
MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (MAJOR THE  
HON. F. W. CAVENDISH-BENTINCK, C.M.G., M.C.).  
MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT (HON. SIR  
CHARLES MORTIMER, C.B.E.).  
MEMBER FOR COMMERCE AND INDUSTRY (HON. A. HOPE-JONES).

## *Nominated Members*

\*HON. H. L. ADAMS (Secretary for Commerce and Industry).  
DR. THE HON. T. F. ANDERSON, O.B.E. (Director of Medical Services).  
\*HON. B. A. ASTLEY (Acting Director of Education).  
HON. D. L. BLUNT, C.M.G.  
HON. F. W. CARPENTER (Labour Commissioner).  
HON. E. N. GRIFFITH-JONES, Q.C. (Solicitor General).  
DR. THE HON. S. D. KARVE, O.B.E.  
HON. G. MAITLAND-EDYE.  
COL. THE HON. W. S. MARCHANT, C.M.G., O.B.E.  
HON. CHIEF U. MUKIMA.  
HON. E. J. C. NEEP, Q.C.  
HON. I. OKWIRY, M.B.E.  
HON. W. PADLEY, O.B.E. (Secretary to the Treasury).  
HON. SIR EDOO PIRIBIAL, O.B.E.  
HON. J. L. RIDDOCHI, O.B.E.  
HON. G. M. RODDAN (Director of Agriculture).  
HON. SHEIK MOHAMED ALI SAID.  
HON. R. W. TAYLOR, O.B.E. (Director of Public Works).

## *European Elected Members:*

HON. M. BLUNDELL, Rift Valley.  
GROUP-CAPTAIN THE HON. L. R. BRIGGS, MOUNT KENYA.  
HON. S. V. COOKE, COAST.  
HON. W. E. CROSSKILL, MOUNT KENYA.  
\*HON. A. J. D. SMALL, NAIROBI NORTH.  
COL. THE HON. E. S. GROGAN, D.S.O., NAIROBI WEST.  
HON. N. F. HARRIS, NAIROBI SOUTH.  
HON. W. B. HAVELOCK, KIAMBU.  
MAJOR THE HON. A. G. KEYSER, D.S.O., TRANS NZOIA.  
\*HON. W. G. D. H. NICOL, UASIN GISHU.  
HON. LADY SHAW, UKAMBA.  
HON. MRS. A. R. SHAW, NYANZA.  
HON. H. SLADE, ABERDARE.  
HON. C. G. USHER, M.C., MOMBASA.

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

Asian Elected Members:

Non-Muallim:

Central Area:

HON. CHANAN SINGH.

HON. C. B. MADAN.

Eastern Area:

HON. A. B. PATEL, C.M.G.

Western Area:

HON. J. S. PATEL.

Muallim:

East:

DR. THE HON. S. G. HASSAN.

West:

\*HON. ZAFRUD DEEN.

Arab Elected Member:

HON. S. M. S. MACKAWI.

Representative Members:

African:

HON. M. GIKONYO.

HON. J. JEREMIAH.

HON. J. M. O. TAMENO.

HON. E. W. MATHU.

HON. W. W. W. AWORI.

HON. F. W. ODIDE.

Acting Clerk to Council:

G. J. ELLERTON.

Assistant Clerk to Council:

F. V. BOTRETT.

Reporters:

Miss E. Fraser.

Mrs. P. D. Hubbard.

\*Temporary Member.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION—THIRD SITTING

Thursday, 25th September, 1952

The Council met at Ten o'clock.

[Mr. Speaker in the Chair]

PRAYERS

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following Members:—

Messrs. H. L. Adams, R. A. Astley, D. L. Blunt, C.M.G., F. W. Carpenter, C. B. Madan, Chanan Singh, J. L. Riddoch, O.B.E., A. J. Don Small.

COMMUNICATION FROM THE CHAIR

THE LATE LORD FRANCIS SCOTT

THE SPEAKER: Hon. Members, shortly after the Council went into recess, there passed away a much respected former Member, the late Lord Francis Scott. Several public tributes have been paid elsewhere, and a memorial service was held in the Cathedral, at which Members who happened to be in Nairobi attended; but I venture to believe that hon. Members will consider it proper that a tribute should be paid to our former Member's memory in this Council to-day. It is the first opportunity we have had of doing so.

The late Lord Francis represented the Rift Valley European constituency. He was also a member of Executive Council and, in his later days, Leader of the European Elected Members. Unfortunately, his very active political life was untimely interrupted by ill-health. Nevertheless, with great courage and despite extreme physical disability, he devoted himself to other spheres of public interest. It should, I think, go on record that he made in the course of his service

as a Member many valuable contributions to debate, and always maintained harmonious relations with all his fellow Members, and thus helped to build up that sense of unity and fellowship in this Council of diverse elements, which is so essential to effective and successful working.

I think it can be said that very few of us can expect to leave behind so fine a record of work well done.

May I take it, hon. Members, that it is your wish that I should convey to our former Member's family an expression of our deep regret at his passing, our sympathy with them in their loss and our appreciation of his service to Kenya?

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, speaking on behalf of Government, I should like to associate myself very sincerely with what you have said.

MR. BLUNDELL (Rift Valley): Mr. Speaker, speaking on behalf of all Members on this side of Council, we, too, would like to endorse fully your remarks.

THE SPEAKER: I shall make the communication.

PAPERS LAID

The following papers were laid on the Table:—

(a) BY THE MEMBER FOR EDUCATION AND LABOUR:

(1) Draft Estimates of Revenue and Expenditure of the East Africa High Commission Non-Self-Contained Services for the year 1953.

(2) Memorandum on the Estimates of Revenue and Expenditure of the East Africa High Commission Non-Self-Contained Services for the year 1953.



**(6) BY THE MEMBER FOR FINANCE:**

(1) Report—by the Acting Director of Audit on the accounts of the Colony and Protectorate of Kenya for the year ending the 31st December, 1951.

(2) Certificate of the Acting Director of Audit on the accounts of the Colony and Protectorate of Kenya for the year 1951.

(3) Supplementary Estimates of Expenditure, 1952 (No. 5 of 1952).

THE SPEAKER: I will call upon the hon. Member for Health, Lands and Local Government to make his statement on behalf of Government.

**MINISTERIAL STATEMENT**

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, with your leave I desire to make an important statement which the Secretary of State has intimated to His Excellency, the Acting Governor, that Her Majesty has given permission to be made. This statement is being made simultaneously in the Uganda Protectorate and in Tanganyika Territory:—

This Government, as well as the Governments of Uganda and Tanganyika, have been seriously considering many problems arising from rapid economic development going forward in East Africa, and from serious pressure on land in certain areas, caused by increasing population. The three Governments have represented that a general authoritative inquiry into these problems is needed, so as to devise measures for improving the general standard of living. This inquiry would cover means of improving farming methods so as to secure the best possible use of land in the interests of the inhabitants; means of preserving and improving soil; the development of industry so as to secure a balanced economic progress; wage policy and conditions of employment in industry, commerce, mining and agriculture; and problems of social security arising from the growth of urban populations.

I am authorized to state, after consultation with the Governors of the three East African Territories, that Her Majesty's Government proposes advising Her Majesty to appoint a Royal Commission to carry out such an

inquiry. I am informed that the terms of reference of the Royal Commission, as well as its composition, will be announced later. Meanwhile, in order that there may be no misunderstanding, I should perhaps add it is the intention that the Commission shall be instructed to take account of existing obligations incurred by Treaty Agreement or formal declaration of policy in relation to security of land reserved for different races and groups in various parts of the Territories concerned."

That, Sir, ends the statement which the Secretary of State has authorized to be made. (Applause.)

**MOTION****SUSPENSION OF STANDING ORDERS**

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that, under Standing Order 168, Standing Orders 91 and 94 be suspended to the extent necessary to enable any of the Bills set out in the Orders of the Day to be taken through all stages in one day and also that the Bills be exempted from the operation of Standing Orders 10 and 12.

Mr. Speaker, the object of this Motion is to make it possible to take at this special sitting of Council the Bills set out on the Order Paper. I do not propose in this speech to explain and describe the events and circumstances which, in the Government's opinion, make this legislation urgently necessary. That will be done by the Member for Law and Order when he moves the Second Reading of the first of the Bills.

I must, however, emphasize, Sir, that the Government, after the most careful consideration of the matter, is fully satisfied that this legislation is urgently necessary. I therefore hope that Members on the other side will find it possible to pass this Motion without debate.

The second part of the Motion, Sir, is designed to make it possible to sit in the afternoon, if that is necessary. We do not, however, propose to sit this afternoon, because I understand that certain Members on the other side of the Council wish to have this afternoon for further study of some of the Bills which they have not yet had time to study fully.

[The Member for Education and Labour] Now, Sir, I must apologize for the fact that some Members, I know, received these Bills only a few days ago, and I quite realize that they have been put to considerable inconvenience by having to study them in a short time. We have, Sir, done our best to get them to Members as soon as possible and, as I said, we regard them as extremely urgent.

Sir, I beg to move.

THE MEMBER FOR LAW AND ORDER seconded.

The question was put and carried.

**BILLS****FIRST READING**

*The Evidence (Temporary Provisions) Bill.*—(The Member for Law and Order)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Special Districts (Administration) (Amendment) Bill.*—(The Member for African Affairs)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Police (Amendment) Bill.*—(The Solicitor General)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Printing Presses (Temporary Provisions) Bill.*—(The Member for African Affairs)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Societies Bill.*—(The Member for Law and Order)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Penal Code (Amendment) Bill.*—(The Solicitor General)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Trespass (Amendment) Bill.*—(The Member for Health, Lands and Local Government)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Evidence (Amendment) Bill.*—(The Solicitor General)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

*The Criminal Procedure Code (Amendment) Bill.*—(The Member for Law and Order)—Order for First Reading read—Read the First Time—Ordered to be read a Second Time to-day.

**BILLS****SECOND READING**

*(The Evidence (Temporary Provisions) Bill)*

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I beg to move that the Evidence (Temporary Provisions) Bill be now read a Second Time.

In doing so, I ask your indulgence, Mr. Speaker, and that of Hon. Members, to give some explanation of the circumstances in which, not only this Bill, but the other eight bills on the Order Paper are presented to this House. Some of the Bills are of an unusual character and constitute a serious departure from those principles which are normally applicable to our jurisprudence and indeed to the jurisprudence of all communities which follow the British tradition. It was because of their unusual character that the Chief Native Commissioner and myself visited London last week for the purpose of discussing them with Her Majesty's Secretary of State for the Colonies. It is right that this House should know that Mr. Secretary Lytton and his advisers have studied these bills with the greatest care and have accorded to them in their present form their full approval and support, whilst at the same time making it clear, as I am sure every Member of this House would agree, that it should be made clear that the restrictive measures of this kind and Police action are not the sole remedies which are required to build up a happy and contented land for the three races who live and have made their homes in this country. Nevertheless, these measures, Mr. Speaker, combined with the Police and Executive control which they authorize, must have first priority for all there is one principle above all others which, in my humble opinion, has to be learnt in this country, it is that which is expressed in the memorable words of Edmund Burke—"Good order is the foundation of all good things".

Hon. Members are aware that recently there has not been good order in certain parts of the Colony. There has been an

[The Member for Law and Order] increase in crime, in subversive activity, in intimidation and generally in a spirit of disobedience to lawful authority. I repeat that this has occurred in certain parts of the Colony only, because, to read some of the reports in the Press, particularly in the overseas press—as I did in London last week—one might easily gain the erroneous impression that there was a widespread disregard of law and order throughout the Colony. That is not so. It would be equally misleading to believe the reports which suggest that there is no subversive activity or intimidation in the Colony at the present time. The truth, as is so often the case, lies between the two extremes. There is a degree of unrest and tension in certain parts of the Colony, but not to such an extent as to justify panic.

The situation in the Colony has never been out of control—nor will it be allowed to get out of control. During the past few weeks, intensive Police action has, subject to certain exceptions which I will refer to later, brought about an improvement and an increase in public confidence. The operations by the Police during recent weeks may be described as pressure on the perimeter. As soon as adequate Police reinforcements could be made available from non-affected parts of the Colony—particularly from the Northern Frontier District—strong Police drives were launched in Nairobi City area, in the Nairobi rural area and in the Laikipia area of the Rift Valley Province, and, as a result, a great number of the criminal and subversive elements in those areas have been arrested and convicted, whilst others have returned to their native reserves, particularly to Fort Hall which is, in consequence, the worst affected area in the Colony at the present time. This steady pressure on the perimeter has achieved, I claim, good results and, moreover, has done so without precipitating any major incident either in the industrial or in the labour field without all the financial loss and, worse still, the bitterness and self-feeling entailed, which such a major incident would have brought. Steadiness, coolness, a sense of time and, above all, sound judgment have been required throughout this period and I should like to take this opportunity of acknowledging the manner in which both the Senior Police Officers

and the Administrative Officers of Government have displayed these qualities during a difficult time. (Applause.) It is perhaps invidious to single out individuals but I would be doing less than justice to them if I did not specially mention the Secretary for Law and Order and the District Commissioner of Nairobi whose knowledge and judgment of conditions in the Colony, in particular the activities of subversive elements in Nairobi, have been of immeasurable value to the Government. (Applause.)

Nevertheless, the situation, though contained, still calls for vigilance and special measures, for there are still certain parts of the Colony, particularly the Fort Hall District in the Kikuyu Reserve, where the state of law and order is, to say the least, unsatisfactory. While there are other parts of the Colony where, if there were a relaxation of police pressure, the result might well be a deterioration in the present position. During this period of steady intensive effort, every legal power which could be found in the Statute Book to fit the circumstances has been invoked. District Officers have been given the powers of Supreme Court Judges to deal with *Mau Mau* cases, curfews have been imposed, restriction orders proceedings have been instituted, forest rules have been made, and so forth. But experience has shown that in some respects the Statute Book, as it exists to-day, is deficient to deal with the situation with which we are confronted. There are gaps, which, in the present situation, must be filled, and these Bills, which the House is asked to approve to-day, are designed to fill those gaps. Our approach, therefore, has been a purely practical one. In that it is a typical British approach. For all our history shows that the British legislature, not to give effect to political theories about the authority of the executive, or about the rights of man, but to deal *ad hoc* in a realistic manner with practical difficulties, as and when they arise. Therefore, we are putting these Bills forward as severely practical and reasonable measures to deal with practical difficulties.

One such practical difficulty, and a most serious one, has arisen with regard to the intimidation of witnesses in certain classes of cases, and the object of this

[The Member for Law and Order] Evidence (Temporary Provisions) Bill is to deal with this problem. Within recent weeks charges against over 100 persons for intimidating or participating in the administration of *Mau Mau* oaths have had to be withdrawn, because the witnesses have disappeared, or been intimidated into changing their story.

Let me tell the House what a very experienced magistrate, who has been trying numerous *Mau Mau* cases, said only the other day:—

"The time has come," he said, "to warn certain people that it is my experience in dealing with *Mau Mau* cases in this place that there is an obvious reluctance on the part of many who could give valuable evidence to come forward. Even if a person has had a statement recorded by the police, when the time comes for him to give evidence in court, he has disappeared from his location. Either there is no trace at all of where the witness may be, or information has been received that he has been persuaded to go for a holiday to some unknown part of the Colony, the means to do so being provided by unidentified persons. This reluctance to appear as witnesses in these cases," the learned magistrate went on to say, "is quite obviously brought about by fear, either for themselves or their families or their relations."

Hon. Members, I think, will not be surprised that witnesses are afraid to come forward and give evidence, when they hear of the brutal methods and the vicious reprisals which *Mau Mau* leaders use against loyal and respectable Africans, who oppose their movement. In six cases of which the police have knowledge—undoubtedly there must be many more of which the police have not been notified—but in six cases Africans who have refused to take a *Mau Mau* oath have had ropes tied around their necks and have been strung up from rafters until they were unconscious. Women have been dragged from their homes and beaten by thugs and bullies until they agreed to take the *Mau Mau* oath. When these unwilling victims have sought—as loyal citizens should seek—to report these matters to the police, the

*Mau Mau* oath administrators have pursued them with reprisals. Recently an African in the Kinangop area informed the police that he had been forced to take the *Mau Mau* oath, a few weeks later he was found murdered. A short while ago two Africans at Nyeri made a report to the tribal authorities about *Mau Mau* activities; shortly afterwards they too were murdered, and the man who subsequently discovered the bodies and reported that fact to the police was likewise murdered soon afterwards.

Another African, a complainant in a *Mau Mau* case, in which the accused was successfully prosecuted and convicted, was murdered by strangulation shortly afterwards, and was found with his mouth stuffed with grass. Last week a tribal policeman's hut in Fort Hall was set on fire and three members of his family, who were inside it, were incinerated. His daughter, a witness in a recent *Mau Mau* case, is missing, believed killed by the *Mau Mau* criminals. A week last Tuesday an African hut was set on fire in the Meru Reserve; the owner had been a witness in a recent *Mau Mau* case. As he ran from his hut he was hit on but, fortunately, the bullet hit him in the arm and passed right through. Four days ago several cattle were ham-strung in the Kikuyu settlement Meru Reserve. The owner had given evidence for the Crown recently in a *Mau Mau* case. Last Monday, that is four days ago, a headman was murdered in the Fort Hall Reserve; he was cycling home at five o'clock in the morning and was about a quarter of a mile from his home when he was ambushed by three or four men. It is believed, from a statement procured, that a person, whose name I do not propose to disclose, is implicated, as the dead man had denounced this person as a member of the *Mau Mau* ten days previously.

Can anyone doubt that the learned magistrate, whom I have quoted, was right, when he said that witnesses were reluctant to appear in *Mau Mau* cases because of fear for themselves, or for their families.

I could go on multiplying these instances of reprisals and intimidation, but I submit, Mr. Speaker, that the case is made out for extraordinary legislation to deal with intimidation on this scale.

[The Member for Law and Order]

The plain truth is that a number of thugs, leaders and adherents of the Mau Mau are committing brutal and vicious crimes against loyal, law-abiding, respectable, peaceful Africans, and they are not being arrested and punished, because witnesses are afraid to come to court to give evidence. The fundamental test of the successful administration of criminal law in this, or in any other country, is whether criminals are caught and punished. If that does not happen then crime will continue to be committed and lawlessness will flourish. But if criminals are caught and punished—if especially if the punishment is, as it will be for Mau Mau oath administrators, imprisonment in a prison camp in the Northern Frontier District—the whole outlook for law-abiding citizens and those charged with the duty of maintaining order is completely transformed.

I hesitate to believe, Mr. Speaker, that any responsible person, least of all any Member of this Council, will seek to challenge the principles I have just outlined—(hear, hear)—and if he does not, then, in my submission, he cannot challenge this Bill unless he can suggest something better. I am confident that no better measure to deal with this difficult problem of intimidation can be devised than the present Bill. If it could, then I think I would have heard of it before now, as I have discussed this measure with many people in many different places on many different occasions but no better alternative has been suggested. I realize as clearly as anyone in this House that it constitutes a considerable departure from the normal principles of criminal procedure—I have said so in my Memorandum of Objects and Reasons attached to this Bill. It is unnecessary to emphasize that criticism to anyone who has been nurtured as I and other Members on this side of the Council have been, in the ancient Inns of Court, where not only the learning but the spirit of English jurisprudence and legal tradition are so zealously preserved. It is because I and other Members of this side of Council feel the force of this tradition so strongly that this Bill safeguard has been drafted in such a way to do as far as human ingenuity can go to do against misuse and abuse of its provisions.

If hon. Members will be good enough to look at the Bill they will see that the very first check occurs in the very first clause, where it is provided that the Bill shall expire at the end of one year, thus demonstrating that it is not the intention to make this exceptional measure a permanent addition to our system of criminal law.

The next clause, clause 2, contains the very kernel of the Bill. As hon. Members know, in the normal way, a police officer investigating crime records statements from witnesses who, in due course, are produced in court to give evidence based upon those statements. Thus the accused is confronted with his accuser and is entitled under our procedure to question and challenge the evidence of the prosecution's witnesses. It is here that the Bill authorizes the first serious departure from traditional practice. Instead of producing the witness in court, it will be sufficient, under the condition of clause 2, to produce this sworn statement. In the circumstances which I have already outlined to this Council, it is either that or nothing; and nothing means that these criminals who have been committing murder and arson and intimidating and terrifying innocent people can continue to set the law of the land at defiance, and continue unmolested in their career of violent crime. There is, therefore, in my submission, Mr. Speaker, only one choice for those who seek to uphold the authority of the law, and that is to accept the alternative which is set out in clause 2 of the Bill.

Hon. Members will observe the other safeguards which are attached to this new procedure to ensure that it will not be misused. Firstly, it is provided that the officer taking the statement from the witness must be an Assistant Superintendent of Police, that is to say an officer, who by virtue of his rank must have had greater experience and must have been accustomed to carrying very considerable responsibility. Moreover, he is the person who must swear before the magistrate that the deponent is unwilling to give evidence because he is in fear. There is yet another safeguard in sub-clause (2) (d). This sub-clause deals with the other limb of the normal procedure which is applicable to criminal cases. The first, as I have explained, is that the

[The Member for Law and Order]

witness should himself appear in court and confront the accused; the second is that the accused should have the opportunity of cross-examining him. This sub-clause provides a substitute for cross-examination. It is certainly a genuine and sincere attempt to provide an adequate substitute for cross-examination. In practice the accused might well be no worse off than if the witness appeared and the accused was left to do his own cross-examining, because under this procedure, cross-examination will be done for him either by a Law Officer or by someone deputed to do it by a Law Officer acting for the accused.

Again, in clause 3 there is provision for a further safeguard. It is there set out in statutory language, in mandatory statutory language the duty of the court when evaluating evidence which is placed before it by means of an affidavit. There can, I submit, Mr. Speaker, be little doubt that if a judge or a magistrate carefully follows the provisions of clause 3 and no one, I am sure, in this Council will suggest that he would not do so—that the provisions of that clause will provide another most valuable safeguard against misuse of the facilities provided by this Ordinance.

There is yet a further safeguard set out in clause 4. That clause provides that there must be corroboration of the evidence of a witness in a case of this kind. The corroboration must take the form of a minimum of two witnesses speaking to the same essential facts. That is, as everyone knows, who practises in courts, an invaluable safeguard against a fabricated and concocted story and, when combined with sub-clause (2) (d) of clause 2 which deals with the questioning of deponents, I think there can be little doubt that it will achieve its object of preventing the courts being deceived by a fabricated story.

Perhaps the most important safeguard of all is to be found in clause 5, which lays down categorically that no conviction can be executed unless the Supreme Court has confirmed it. I do not doubt that if a Supreme Court Judge, trained as he is to estimate and evaluate evidence—felt the slightest misgiving or uneasiness about a conviction, he would not confirm it.

Finally, as hon. Members are aware, the scope of this Bill is strictly limited to a few selected crimes, either Mau Mau crimes or those which have in practice, been closely associated with them. Altogether, therefore, there are five safeguards against misuses, each one more stringent than the one which goes before and I, for my part, have no fear that they will fall effectively to prevent any misuse of this Ordinance by the police or members of the public. Therefore, Mr. Speaker, I commend this Bill to the House, firstly because it is a real necessity; secondly because it is in the interests of the community as a whole and, in particular, of the African community; thirdly because it operates only for a limited time; and finally because every conceivable safeguard has been incorporated in its provisions. I am convinced that it is the only practical means whereby by those who seek by intimidation to defeat the course of justice can themselves be brought to justice, and as such, Mr. Speaker, I trust it will receive the unanimous approval of this Council. (Applause.)

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

MAJOR KEYSER (Trans Nzoia): Mr. Speaker, on behalf of my colleagues I rise to support this Bill. We feel that the wave of crime and organized terrorism that has arisen in this Colony recently has been tolerated for too long, and while in normal times we are loath to support or recommend measures which interfere with liberty and are abhorrent to British conceptions of justice, yet we realize that there are times when drastic steps must be taken to suppress lawlessness—and this is such a time.

We are convinced that the malevolent form a small proportion of the population, but that the lawless disturbed and distressed a large majority who are entitled to look to this Council to ensure that they can carry out their normal undertakings in safety and peace.

Under a continuation of the present state of unrest it will be impossible to continue the improvement of the social conditions of the people of the Colony, when examined, have been on an enormous scale for a country so poor as Kenya and, admittedly, must continue to expand.

[Major Keyser]

For those brief reasons, Government and all men of goodwill in this Colony must rest assured that we will support all measures to restore security and stability to the Colony.

Sir, I beg to support. (Applause.)

Mr. NEEP (Nominated Member); Mr. Speaker, Sir, I only saw this Bill five days ago for the first time. Since then I have been very worried about it, and I want, if I may, to put before the Council quite shortly the reasons why, as a lawyer, this Bill, in its present form, seriously worries me.

Now, Sir, for 29 years I have been practising at the Bar in England, and I suppose in that time I have appeared in every type of court in the country—from the magistrates' courts to the House of Lords—and the whole of that time I have been struck most forcibly by this: that the British judicial system is undoubtedly a superb one. It is superb because it achieves these two things pre-eminently: first of all it is absolutely fair. It holds the scales between rich and poor—between the prosecution and the defence—and, secondly, it arrives at the truth.

That comes about for several reasons. For one thing, we have absolutely honest judges: for another thing we have an independent Bar; but perhaps most of all we have a system of practice in the courts which is designed to eliminate, as far as possible, trickery and double-crossing. And the essence of our system in that respect is this: that a witness has to stand up in court publicly and, out of his own mouth without prompting, give his evidence—and I assure hon. Members that that is not an easy thing to do if you are lying—and, following on that, a witness is cross-examined by the other side, and I have seen members of my own profession, giving evidence quite honestly in Parliamentary Bills, being cross-examined, and again I assure the Council that it really is an ordeal.

Now, Sir, that is a system which we have evolved—the British—over many years, and I do submit to this Council that if that system is going to be departed from, there should be the strongest possible evidence of, and the strongest possible limitations on, such departure.

Having said that, may I just turn to the Bill, and ask the Council to follow me and notice certain matters about the Bill itself. As my friend the hon. Attorney General said just now, the nub of the whole Bill is clause 2, because clause 2 is going to allow the oral evidence of the man standing up and facing the people on the other side, to be replaced by a statement which is put in. What I am constrained to point out to this Council is this: that once you allow that system to obtain—especially in Africa—you are going to open the door to frame-ups, to vendettas, to the payings of old scores and, of course, probably, you are going to introduce the informer—the gentleman that we know flourishes in the dictator states—and that will come about, I submit, because once witnesses know that they can make a statement to the police, and then either disappear or say to the police "I suspect that my family may be in peril from persons unknown"—and I am reading out the words of the Bill—then the door is open—wide open—to all sorts of lying statements which cannot be stopped.

Therefore I say, once one comes to that point, one wants to regard it as being a question of the amber light—a warning.

Now my friend the Attorney General went on to say that in section 2 (1) (d) there is a check. Now, forthwith, what is the check? Hon. Members will remember that, as I have pointed out and as he has pointed out, when a witness gives evidence, he is cross-examined, prosecution witnesses cross-examined by the defence, defence witnesses cross-examined by the prosecution. What does the Bill provide? That when one of these statements has been put in—and there is nobody to cross-examine at all—the statement, or rather the gist of it, is to be given to the defence. The defence is then to make submissions and then the witness, if he is there the may not be there at all, of course, but if he is there, is going to be questioned. Who by? By someone nominated by the Crown, possibly by the Director of Public Prosecutions in this country, who in a room, in a back room, with nobody else present presumably, is going to put some question on behalf of the defence. Mr. Speaker, the man is not human—and I

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[Mr. Neep]

and all men with some knowledge of the law—who will put his opponent's case vividly in cross-examination. It is asking too much. Therefore I say that this cross-examination clause is grotesque, and I use that word advisedly.

Then the Bill goes on to provide in clause 3 (according to the Attorney General) that there is a check. I do not want to read clause 3 to the Council, but I do assure the Council that the words in clause 3, and in clause 4, only sum up what any proper Judge would weigh in any case of this kind. He would weigh the evidence. Therefore I say clause 3 and clause 4 in the Bill are not in any sense of the word checks on what is proposed.

Then the Attorney General said that clause 5 is an important one because the Supreme Court has got to confirm the conviction. Sir, by the time the matter gets to the Supreme Court it is on paper. There will not be the witnesses there will not have been any cross-examination to listen to. How can it be suggested, I ask, that the Supreme Court really can check the liar, if the lying has come in. And the House wants to remember that the price which someone is going to be asked to pay in this case is their liberty or possibly their life—a high forfeit. Now down to that point, I quite agree, the answer is quite simple—many Members opposite no doubt have been turning it over in their minds. They say—this is all very well, but here in Kenya we have special circumstances; there is intimidation—we must do something, even if it means breaking with the ordinary tradition of the law. Now, Sir, may I just deal with that and then I will have done.

My learned friend read out a statement by a magistrate or by magistrates. He quoted case after case of *Mau Mau* intimidation. I look at the memorandum of the Bill and I find this passage:—

"It is recognized that the Bill, if passed into law, will involve a considerable departure from the normal principles of criminal procedure but it is considered that the serious increase in the intimidation of witnesses in cases concerning the proscribed *Mau Mau* Society makes this temporary measure necessary and justified."

That is signed by the Attorney General—so be it. I accept that. I now look at the Schedule to the Bill to see what is the scope of this Bill which wants to abrogate one of the foundations of our legal system, to see if the Bill really is concerned with *Mau Mau* intimidation, and I find this—and I am going to explain to the Council what I do find. It is far more widely drawn than *Mau Mau*—it roams over a huge tract of country. Therefore the point I am putting, and I put it now to this Council, is, I suggest, it is wrong that the Attorney General should come here and base his case on *Mau Mau* intimidation and then should present this Council with a Bill so widely drawn that it affects hundreds and thousands of cases apart from *Mau Mau*.

Now I am going to show the Council why I say that. Would Members please look at the Schedule to this Bill and they will see that the scope of the Bill which is there defined is set out under two heads—A and B—and I want to begin with B. Now B are offences against the Societies Ordinance, 1952. Now the Societies Ordinance, 1952, is a Bill which is going to be made law at this session of Council and I, as hon. Members have, have got a copy of it beforehand. This Societies Bill simply says this, in effect. Every society in Kenya, with certain exceptions (like the Freemasons), of more than ten members has got to be registered, and if it is not registered, it is an illegal society. Now, Mr. Speaker, those words cover the Buffaloes, slate clubs, turkeys clubs, cricket clubs, film societies, and thousands of different societies in Kenya—and if they are not registered, they are illegal societies. Now all that mass of possible legal matter—

THE MINISTER FOR LAW AND ORDER: I am sure my hon. friend does not wish to mislead the Council. Those references are to particular sections in the Societies Bill which are lifted straight from the Penal Code and are limited to those provisions in the Penal Code which deal with unlawful societies of which the *Mau Mau* is one. It will be necessary, if the Societies Bill goes to a Select Committee, as has been proposed, that this Schedule should be read with reference to the existing provisions of the Penal Code and not to the Societies Bill. It is only on the

[The Member for Law and Order] assumption—that the Societies Bill will pass into law at the same time as this Bill that those references have been made to the Societies Bill instead of to the Penal Code—but they do not refer to any new matter in the law at all.

MR. NEEP: I am obliged to the Attorney General—I do not think he quite follows the point I made. The point I am making is this. I pick up the Bill we are now debating and I look at the Schedule, and Head B of the Schedule applies this Bill to offences against the Societies Ordinance, 1952. I look at the document which is going to become law—which is the Registration of Societies Bill, 1952—and I find, as I say, that that Bill covers every conceivable kind of society here with certain exceptions. What I am at pains to point out to the Attorney General and to the Government is that this Bill we are now debating at present—I do not know what he is going to do later on—is so widely drawn that it abrogates these fundamental considerations of the criminal law as regards thousands of cases which have nothing to do with the *Mau Mau* at all.

Now may I pass to Head A of the Schedule, because the point appears again. If I may direct attention to (iv) and (v) in Schedule A—here you have set out arson and attempts to commit arson. Now arson is not the monopoly of *Mau Mau*. Arson varies considerably—from a man who burns or desecrates a great public building or a dockyard, to a man who sets fire to a coffee tree on my *shamba*—(to pass from the sublime to the ridiculous)—but, Sir, it is surely not right that an ordinary criminal who, let us say, commits arson, should be deprived of British justice if he has nothing to do with *Mau Mau*. Then, if you look further up the Schedule, Sir, you will find that certain offences against the Penal Code are brought within the scope of this Bill, but those offences are not limited to *Mau Mau*. Now what I want to say to the Attorney General is this: why does he not, having opened and based his case for the Bill on *Mau Mau* intimidation, why does he not limit the Bill to *Mau Mau* matters; he wants on the contrary, at present to do a much bigger thing, he wants to abrogate these defences and fairnesses under our criminal law in a large group of cases.

Surely he ought only to do that under the strictest possible control and watching? And as he has based his whole case on *Mau Mau*, I do suggest this Bill should not go one particle—at the present time—beyond *Mau Mau*.

Now, Sir, the only other matter is this; the Attorney General, as I listened to him, did suggest that because this Bill had been taken to London it had some additional quality because it had been approved in London. (Laughter.) Now, Sir, that is putting the cart before the horse with a vengeance. My view, for what it is worth, is that a little less London would be a good thing. (Laughter, applause.) But, Sir, let us be serious. The fundamental matter here is Kenya. It is a Kenya Bill: it is going to be dealt with by Kenya and not by London. While I have every admiration for Civil Servants (I like them very much, they are honourable, kind, hard-working people) I do not think a collection of Civil Servants five thousand miles away—not practical lawyers—ought to be allowed unduly to sway our deliberations. (Hear, hear.) Therefore, Sir, I do ask this Council with all the feeling I can, to decide itself on this matter without outside influence, to say if it please—“Yes, the Bill shall go through”—but to say to my learned friend “Limit your Bill to the only case you have got, the *Mau Mau* case”. (Applause.)

*Mau Mau* adjourned at ten minutes past Eleven o'clock and resumed at thirty minutes past Eleven o'clock.

MR. E. W. MATHU (African Representative): MR. SPEAKER, I rise to oppose this Bill and, in doing so, I should like to make some observations on it. The first, Sir, is that I agree with my hon. friend, the Mover, that there has been an increase in crime in this Colony during the past months, and I also agree with him, Sir, that the overseas Press, and some of the local Press, has, for some weeks at least, if not months, over-exaggerated the situation in Kenya to such an extent that people reading the news, particularly outside the Colony, can almost conclude, and speak to you, as if there has been a declaration of civil war. I want to emphasize this point, Sir, MR. SPEAKER, because I do feel that this has been prepared by some mischievous people who want to introduce ill-feeling between the communities of this country,

[MR. MATHU] and, Sir, in saying so, I would like to say how I sympathize with the Government, because this publicity has, as I said, prepared a situation where the Government feels that it must do something and I think the difference of opinion between myself, and those who think like I do, and the Government is what that something is.

I feel, Sir, that the Bill which is before this Council is not the answer and I feel, Sir, that, even if it were the answer, the matter was not sufficiently urgent to be brought before a special meeting of Legislative Council. It could, in my view, have waited for the ordinary meeting of the Council.

But, as I say, Sir, the feeling of alarm, panic and disgust has been created by over-rated, over-exaggerated and over-emphasized reports of the situation. My hon. friend, the Member for Law and Order, says, rightly, there is no widespread crime in the country, this was localized, and I should like to say, Sir, on that, if it were, then the measure before us would also have been localized, not only in respect to geographical respects, but to the evils it purports to kill.

Now, the Bill, MR. SPEAKER, if I may come to it, Sir, starts off by saying it is a temporary measure, which I feel gives a credit to the Government in that they agree with the tenure of my thoughts that the measure, so comprehensive and so revolutionary, need not go into the permanent Statute Book of this Colony. But, history does show that Government, having established a principle—and this does not refer to our Government only—as I say, in the annals of history once Government establishes a legal, financial, whatever principle you will, Sir, Government finds it difficult to remove themselves from that principle, and I do not blame any Government for doing so, it is inherent in the whole authority of Government and, therefore, although the fact that it is a temporary measure attracts some people in supporting a measure so revolutionary in departing from the standards and principles of British justice, it would not attract me to do so.

The Bill then goes on to attack, in clause 2, the principle which has been

very heavily defended by my hon. friend, MR. NEEP, the chairman of committees of this Council, and if I may be allowed I would like to congratulate him in the manner—objective manner—in which he approached this problem. I do not pretend to be able to come near him—unfortunately I have never been trained as a lawyer; it is in some ways fortunate—but, however, I should like to congratulate him.

Now, clause 2 does depart from this measure in the principle of allowing a defence to appear in court, allowing defence to cross-examine him, and allowing the court to see the witness in person and also to cross-examine him, and as my hon. friend, MR. NEEP, pointed out, we are here, in our special circumstances, yet in a situation where temptation for the misuse of this law could become a reality. I would just like to say, Sir, that when you have those who are given powers under section 2, the people to deal with the large cases, the African population and members of a different race, in many cases illiterate, who do not know law or do not even know how to read or to write, who are very low in their social standing, you can see, Sir, that possibilities of gullibility on the part of deponents, as they are called here, are terrific.

We have also to deal with people who are poor and people, who, if they were given an opportunity for the reward offered if they sign the necessary document, that it is not impossible for them to give false information as they do know they are protected in section 2—nobody will know anything about it and, therefore, they can, if they have a grudge against any person, they can say this person is associated with a crime within this law. And, therefore, Sir, I do feel that the dangers are terrific.

My hon. friend, the Member for Law and Order, did enumerate a number of safeguards so that these provisions may not be abused. But, Kenya being what it is to-day, Sir, I do not think that these safeguards are waterproof. In fact, I think they are very capable of being, in a number of cases, nullified.

Now, Sir, the powers for taking statements from these deponents are given to police officers above the rank of assistant superintendent, and I think that, on the

[Mr. Mathu]

face of it, is a very good thing if you raise it above the ordinary ranks, then you have, Sir, the administrative officer dealing with this work, and I would say, Sir, that if this Bill goes through the Second Reading and if it comes to the Committee stage, we will propose amendments which will limit the number of administrative officers who will be empowered to exercise the provisions. We will also propose amendments to limit, and explicitly to limit, the number of persons who may be authorized by the law officer to perform these duties.

Then, Sir, I say that if this Bill reaches the Second—the Committee stage and finally goes through its Third Reading; but I think, Sir, having in mind the very able speech by my hon. friend, Mr. Neep, which in a few words to me suggests that it was a very clear statement to this Council to the effect that my hon. friend, the Member for Law and Order, would be well advised to withdraw and go and think again; that would be, I think, a better way of bringing these differences between some of the Members of this Council to an end. In registering my opposition, I would like to advise my hon. friend, the Member for Law and Order, to be good enough to withdraw this Bill. Therefore, it would not be necessary to put it through the Committee stage.

Mr. Speaker, I beg to oppose.

THE SOLICITOR GENERAL: Mr. Speaker: I had not proposed to intervene in this debate, because I was quite certain that my learned and hon. friend, the Attorney General, would have put before the Council, as indeed he has done, the very strong grounds of justification for the measures which he proposes. I cannot, however, allow to pass unchallenged certain remarks made by my learned and hon. friend, Mr. Neep. (Hear, hear.)

Now, Sir, I, too, am a member of the same profession as Mr. Neep. Unlike the hon. African Member I regard myself as fortunate and privileged to belong to that profession. (Hear, hear.) I yield to no one, Mr. Speaker, Sir, neither to an eminent member of the profession, such as Mr. Neep, nor any other person in my admiration of and devotion to the principles of British justice which have

been passed down to us through the centuries and are our most proud heritage. I believe, with Mr. Neep, profoundly and from a deep conviction that that system is in every way admirable and that within the bounds of human ingenuity it reaches the truth in almost every case.

As a member of my profession, and as an ardent admirer and supporter of the principles of British justice, I cannot view with equanimity conditions in which the whole system of British justice is, by lawless and evilly disposed elements, brought into disrepute and defied. I am too devoted to British justice to sit back quietly and allow that to happen without doing anything about it.

Now, Sir, in his criticisms of this Bill my learned friend, Mr. Neep, referred to the fact that what I would call the substitute for cross-examination is to be carried out by law officers, or persons deputized by a law officer. There are two law officers, the Attorney General and the Solicitor General. His suggestion was that, as I understood it, those officers being concerned with the prosecution of offenders and with the direction of prosecution of offenders were not capable of approaching this particular task objectively and impartially—even adequately. Now, Sir, you well know, and certainly as those Members on this Council who are also Members of my profession or of the junior branch of the legal profession will know, it is the constitutional charge of the law officer, just as much as it is the constitutional charge of the judge, to serve the interests of justice. A prosecutor who does not prosecute in the traditional manner is not a prosecutor such as the British system of justice requires. A prosecutor, contrary to popular misconception, is not like an advocate for the defence, who is out to get a verdict in his favour at all costs, a prosecutor, if he is a traditional and true prosecutor, it is to achieve justice. His function is to present his case to the court and allow the court to decide. If he has information which tends to weaken his case and strengthen the case of the defence, it is his bounden duty to bring that information to the notice of the court. It is then to be regarded as so biased, so prejudiced, as to be unable to discharge the function which this Bill seeks to put upon his

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shoulders? My learned and hon. friend that suggested that it was only human that he would want to promote the prosecution case. Well, Sir, if that is so, British justice does not contemplate human law officers, because it requires them to be objective and to discharge their duties properly and impartially. I cannot, therefore, accept, and I ask the Council to reject this stricture on the law officer in this connection.

Now, the theme of my learned and hon. friend's speech was that this Bill should be limited to *Mau Mau* cases. Now, Sir, there is no magic in the name *Mau Mau*, it might to-morrow be *Jo Jo*, and the limit which my learned and hon. friend asks the Council to impose is already implicit in the provisions of the Bill. As the Attorney General explained to the Council in considerable detail in his speech moving this Second Reading, the intimidation from which we are suffering—and we are all suffering from it at the moment—stems from this proscribed, unlawful society known as *Mau Mau*, but, Sir, intimidation by "A" is no less reprehensible than intimidation by "B". At the moment, intimidation is coming from *Mau Mau* and as this Bill contemplates, it is only when intimidation is established that the provisions of this Bill come into operation at all. If, *abist* onen, to-morrow, next week, next month another evil society should spring up which would adopt the practice of *Mau Mau*, intimidating witnesses, murder, arson and all the other beastliness with which *Mau Mau* is associated, is there any reason why that form of intimidation should not be met, that challenge should not be met, in the same way as the challenge of *Mau Mau*?

My learned and hon. friend complains that in the Schedule to this Bill there is no reference to *Mau Mau*. There is reference to unlawful oaths, as you will see under Part A (D).

Mr. NEEP: Mr. Speaker, if I might, on a point of personal explanation, because the Solicitor General is now purporting to put my argument to the Council. My point is, the Schedule at the moment covers very much more than *Mau Mau*, and I wanted the Attorney General to limit it fairly to what he opened on. That is my case.

THE SOLICITOR GENERAL: I am obliged to my learned friend, that I may be very stupid but I find it a distinction without a difference. (Laughter.)

"Unlawful oaths to commit capital offences contrary to section 61." This is the Penal Code. I shall be grateful, in fact, I will make way again if my learned and hon. friend can give me a single instance in the last few months of a case of an unlawful oath against any person other than *Mau Mau*.

Mr. NEEP: I will gladly take the floor again if my friend gives way. I am not disputing that in the last few months the only offenders against that particular part of the Criminal Code may have been *Mau Mau* ones, but my case is, supposing in the next month or two somebody else who is not *Mau Mau* offends against the Criminal Code, why should not that man have the benefit of British justice. That is my point.

THE SOLICITOR GENERAL: He will, that is the answer, if there is no intimidation. (Applause, hear, hear.) But, if he adopts the *Mau Mau* cloak and wears it, then let him see the consequences—(Hear, hear, applause)—and that applies to all these offences.

"Other unlawful oaths to commit offences." All right, let us just say that *Mau Mau* is the criterion and if A, B, X, Y, or Z behaves like *Mau Mau* let us treat him like *Mau Mau*.

"Compelling another person to take an oath contrary to section 62A." I have not been in this Colony many months but in my limited experience, section 62A has only been invoked in *Mau Mau* cases.

Arson, shall we divide arson into *Mau Mau* arson and non-*Mau Mau* arson? Where there is *Mau Mau* arson, if there is intimidation, shall I say, where there is *Mau Mau* arson or arson of the type of *Mau Mau* arson, since we are getting down to subtle distinctions, right, let this Bill operate. If there is not *Mau Mau* arson but arson of another variety this Bill will not operate anyhow, because there will be no intimidation.

Similarly, "managing or assisting in the management of an unlawful society." There are offences under the Societies Ordinance which is still in Bill form before the Council. These are, as my learned and hon. friend the Attorney

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General pointed out, offences which have been lifted from the Penal Code because the Societies Bill introduces a completely new structure for the control of societies, and it is right and proper that those provisions relating to unlawful societies should appear in the Bill. Hitherto, unlawful societies have been defined in a section of the Penal Code. Henceforth, if the new Bill goes through an unlawful society will be any society which is not registered, exempted or excluded under the provisions of the new Bill. Consequently, these sections have been lifted from the Penal Code and inserted in this Bill.

Again, as my learned and hon. friend, the Attorney General pointed out, if the Societies Bill does not go through, or is referred to a Select Committee, then it will be necessary to amend this part of the Schedule to refer to existing sections of the Penal Code—and subsequently to amend it again if and when the Societies Bill is enacted.

There again, in regard to all these offences in connexion with unlawful societies you have your limitation in fact. You have the limitation that this Bill will only operate when the particular evil which it is designed to combat exists—intimidation.

Well, Sir, those are the points in my learned and hon. friend's speech which I felt bound to challenge. Having done so, Sir, I beg very strongly to support. (Applause.)

MR. OGDEN (African Representative): Mr. Speaker, Sir, I rise to oppose this Bill, and before I can say anything, I had better congratulate the hon. Mr. Neep for his courage in doing what is right and not what is popular.

Sir, I oppose the Bill because its Objects and Reasons state that if it passed into law there will be a considerable departure from criminal procedure and because the Government allowed themselves to be dictated and directed by the settlers, they have.

THE MEMBER FOR EDUCATION AND LABOUR: Will the Member give way, Sir.

THE SPEAKER: If he does not give way, you cannot speak.

THE MEMBER FOR EDUCATION AND LABOUR: On a point of order, Sir, is the

hon. Member in order in suggesting that the Government is being dictated to by body of people he referred to as the "settlers". The Attorney General in introducing the Bill said perfectly plainly that the Government considered these measures are necessary. In fact, the Government has been dictated to by no body, but has formed its own views on the matter. (Applause.)

THE SPEAKER: I cannot call any Member to order because he expresses what he thinks is his opinion. (Hear, hear.) It is a matter of opinion which he is trying to express. If I am going to intervene on an expression of opinion, I should be standing up taking points of order all the time. Any misstatement that is made of that kind, or an opinion which is not agreed to by Council will meet its fate during the course of the debate, and I do not think it is a point of order at all.

THE MEMBER FOR EDUCATION AND LABOUR: I apologise for interrupting the Member.

THE SPEAKER: Not at all.

MR. OGDEN: Sir, I was just explaining that the Government had allowed themselves to be dictated and directed by the settlers.

THE SPEAKER: The hon. Member will remember what I said the other day that for their statements of fact, and it is unwise to launch out into a statement which is apparently a statement of fact if there is nothing to support it. That is all I am warning you.

MR. OGDEN: I feel so, Sir, because this departure from the principle of criminal procedure means a lot. It means that we are cutting across the democratic principle which is the cherished British Government method of ruling.

Sir, the hon. Member for Law and Order suggested that if one is opposed to this Bill, he should propose a suggestion that would be more equitable, and I propose that in detecting criminals, the Criminal Investigation Department should train their detectives so well that they cannot fail in ten cases. Because, I have been told that in several cases of murder in Fort Hall, the murderers could not be traced, and if the Criminal Investigation Department cannot train good detectives, I suggest that we import them from outside this country, because I know that if

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we have the best detectives we shall not fail. Therefore, I do not see the necessity of a Bill like this.

Then the hon. Member said that the statements of unrest in this country were exaggerated, and I had always felt that they were greatly exaggerated. Therefore, if they were exaggerated, it means that we are living under normal conditions in this country. It means that only a few spots are affected, and if a few spots are affected, why try to implement such a Bill. It is everywhere that crimes take place. There have been so many cases in the world, and we have not heard that in such cases trial by affidavit is the rule.

[Sir, I will go on now to say that this Bill will not cure anything as far as crime in this country is concerned. It will cure nothing. It may make it worse. And I say so, because I know what would happen when the accused person has been acquitted and then goes back to his area. He will try by all means to find out who gave false statement against him, and whether he fails to know the person or not, he will always be suspicious and will try one day to find him, and through suspicion he may attack someone else. Now that means that we are going to continue more crimes if this Bill is passed into law.]

There are so many things that can be done to help in reducing crime in this country instead of a Bill like this. If we intend to reduce crime in this country at all, why not amend the Minimum Wage Ordinance. I think that an amendment of such an Ordinance will take us further because the causes of crimes in this country are due to our disregard of paying our labourers poorly. And, because they are poorly paid there is unemployment in the country.

MAJOR KEYSER: Question.

MR. OGDEN: Now consequent to unemployment, what happens? Burglaries and robberies. Now when I say that there is unemployment, I mean that due to low wages, the African labourer finds that he cannot buy his posho. The price of posho to-day is Sh. 52 and the labourers' wage is Sh. 48, and in order to live the labourer must eat posho and must feed his children.

THE SPEAKER: On the Second Reading of a Bill a Member is entitled to discuss

the principles of the Bill. That, of course, may be extended slightly sometimes but as this Bill has one particular subject, namely, the admission of a particular kind of evidence on criminal charges not otherwise admissible, I do not think it is in order to discuss the whole of the sociology of crime and that kind of thing, and I must ask the hon. Member to confine himself to the principles of this Bill.

MR. F. W. ODDE: I am sorry, Sir, to have been ruled out in this because I feel that we must get to the root of the causes of our troubles. As an African Member, I thought this was now an opportunity to make this Council understand the causes of crimes in this country. It is very unfortunate that I have been ruled out; therefore I am not going to say all that I had to say. Now, the hon. Member for Law and Order talked of several cases of criminals who could be traced in different districts, Fort Hall and Nyeri. Now, what I would suggest is that we get the best detectives that we can—from outside this country—and they would help us in dealing with this situation.

Now, going back to the Bill itself, we have been told that there are several safeguards but those safeguards will not help in stopping witnesses giving false statements. It is stated that the safeguards will be so good that people need not be afraid; but I think there will be loopholes, so Sir, I think that this Bill should not go through this Council.

It is unfortunate that we Members, I mean African Members, due to the restriction are not going to give our suggestions. I would have given my suggestions as much as I could and I would have given the reasons why I feel there is more crime in Fort Hall than in other areas but I am sorry, Sir, that I cannot do so because I would go beyond the scope of this Bill. Therefore I beg to oppose.

MR. W. B. HAVELOCK (Kiambu): On a point of order, might I, Sir, speak to that? The hon. Member has just stated that he has not given his reasons why there is more crime in Fort Hall and he has not done so because you have ruled him out of order. I suggest that the Attorney General, when moving made a statement that there is more crime in



[Mr. Havelock.]

Fort Hall than elsewhere and in view of this perhaps you would allow the hon. Member to give his reasons why he thinks there is, Sir.

MR. M. BLUNDELL (Rift Valley): It does seem to me, Mr. Speaker, that if the hon. Member can develop an argument designed to show why Mau Mau is in existence, and from that develop an argument that if we struck across the causes of Mau Mau we would not need the principles which are enunciated in the Bill, the hon. Member would be in order. I rather feel, Mr. Speaker, that was what was in the hon. Member's mind. I would like to draw it to your attention. Perhaps you would be able to guide him.

THE SPEAKER: I am not putting any restrictions on the hon. Member giving reasons about particular things related to the Bill. But the hon. Member appeared to me to be indulging in generalities about crime at large, and about the causes of crime, and things of that kind and, consequently, I called him to order. But if the hon. Member feels that he has some other argument to make, directly pertinent to this Bill, by all means let the hon. Member continue. (Applause.)

MR. F. W. OJIDE: In Fort Hall, I think the cause of bitterness is land hunger, but I am not going to dwell on that. I have not been in Fort Hall myself, but I have heard from the hon. Member for Law and Order, that crime is really bad there. Now, if we can remember—in Fort Hall the Africans have done a great deal of soil conservation and they have given a lead to Africans of other areas. I congratulate them for giving this lead to other Africans in a cause which we all desire.

Now, Sir, soil conservation may be responsible for increasing crime, because I remember in 1945-46 in Trans Nzoia the Government had difficulties in persuading European settlers to accept soil conservation work and I can add to my argument by saying that a friend of mine who was an expert in soil conservation work invited me at Kitale and told me, "Mr. Ojide, I have difficulties in persuading Europeans to accept soil conservation work." This was Mr. Colin

Maier. He was an expert in soil conservation. Yet soil conservation, with all its benefits, was being opposed by the settlers. Now, Sir, at Fort Hall, Africa had accepted the idea of soil conservation.

THE SPEAKER: Will the hon. Member be good enough to explain how what he is saying now is at all relevant? How is it relevant? The whole object, if you like to look behind this proposed measure, is to protect certain classes of witnesses. That is supposed to be its object. Has soil conservation can have any effect as a witness needing protection is rather beyond my understanding at least, added though I have been by the hon. Member for Rift Valley and the hon. Member for Kiamba. (Laughter.)

MR. OJIDE: All right, Sir, I think I had better oppose the Bill and leave it there.

MR. GIKONYO (African Interests): Mr. Speaker, I rise to oppose this Bill. In doing so I must say at the outset that I am feeling very uneasy because no time has been allowed to the African people to give their views about this Bill, which so closely affects them if it becomes law. In the first place I must say that I am very disappointed that the Government knowing very well as they do that they were about to bring measures of this kind, banned the Kenya African Union meetings, Kenya African Union meetings are meetings at which the African population can get information so I feel I am right in saying, Mr. Speaker, that this law is being now enacted by this Council against five and a half million Africans—without knowing what is happening behind them.

As regards the facts that the hon. Member for Law and Order stated about Fort Hall, I have my own views about them, and they are these: We have heard that in every case they are connected with a witness who came before a court to give evidence against another person. My view is this: perhaps that witness might have given false evidence against the man convicted; and perhaps the relatives of the witness who the convicted man got so annoyed with for his evidence who the relatives knew was giving false evidence and went in for his life. That is my version of the story. I do not pretend to be accurate. (Laughter.)

[Mr. Gikonyo]

Secondly, we do know in Fort Hall the district from which I come, is very thickly populated. In the tribunals there we have so many land cases between relatives. Perhaps one member of the family becomes so cunning and perhaps he knows how to go about cases at tribunals. I say this without reflection at all against the elders of tribunals. I think we all know exactly what happens and perhaps that man by a trick happens to get through successfully in the tribunal courts, then owns land by himself, and the members of his family get annoyed and for that reason it is possible that they may go for his life. Those are my two reasons for that—nobody can deny it is possible. Neither am I here to deny that it is possible that it may be done by the Mau Mau.

Now, as regards the Bill itself, it is a Bill where everybody admits that it is a very big departure from the British justice. Now, if this Bill becomes law, the position in my mind is going to be still more serious; more serious because anybody who feels embittered against another man will just go for him, go to the district commissioner's office, or for that matter to the assistant superintendent of police and say, "Mr. A. is a member of the Mau Mau because he knows that he is so well protected that he will not be discovered", and he may induce another man to come with him so as to get corroboration. It is only necessary, according to this Bill, for two affidavits, sworn affidavits, to make a court convict a man. That, I think, is a very dangerous thing and, knowing my people as I do, that is very possible. I am sure this law is going to be very much misused and we are going to get into more difficulties than at present.

Well, the question of people not coming forward to give evidence is not only peculiar to Kenya but happens in many other parts of the world where you find people killed and nobody comes forward. We have much sympathy with that. And nobody will support a person if he does not come forward to give evidence. But if he has true evidence to give. But my sympathy here goes to the innocent person who, by sheer grudge, people conspire against him and get him convicted. I am very much concerned with the penalty which can be imposed under this

Bill if it becomes law. To me it seems that it is only necessary for two people to come forward and swear affidavits against another man and that man, if the magistrate happens to believe their affidavits, is given a sentence. To me that is a very, very serious matter and for I one am not going to support a Motion of that kind, which I know very well will be abused.

The Member for Law and Order did say that there are a lot of safeguards; to me there does not seem to be anything. The accused person is not protected. First of all, the witness's identity is concealed. He will not come forward for cross-examination by the accused person—and I do know that in criminal trials a judge or a magistrate can cross-examine a witness. In this case that does not happen to be provided for. Then, they say, perhaps if they happen to know that the deponent gives false information or affidavit, he will be very severely punished. But, of course, on the face of it it may be said that it is a very good safeguard. If the identity of that person is to be concealed, how does the administrative officer or the assistant superintendent ever check against that statement? In that way I come to the conclusion that the accused person is not protected. There is no way of checking the statement given by that man by the fact that his identity needs to be concealed all through.

Well, Sir, for these reasons I find my self unable to support this Bill. I did think in the first place that perhaps the hon. Members on this side of the Council would not find it suitable to support this measure, because if this measure were directed—and I say so with great respect—to the European community in this country I am sure it would be opposed tooth and nail, and now because it is directed against Africans, nobody cares.

Mr. Speaker, I beg to oppose.

MR. TAMBEO (African Interests): Mr. Speaker, Sir, while opposing this Motion I should like very much to support such a Motion, if I felt it was justified to stop crime as it is now. But from what I have seen, and from what I have heard from people who are qualified in the legal world, I feel that this Motion is not worth the application to this country at this time.



[Mr. Tameno].

One point I should like to make, Sir, and that is the present sort of unrest or, let us say, crime at present that does occur where the members of the Mau Mau or others kill or intimidate other people entirely concerns the Africans and nobody else; and the African, it must be admitted, is also feeling very much concerned in this matter, and I do not think—although we have not had time to try and find out the views of the Africans—the majority of Africans are going to support this Bill when it is passed. My contention is, Sir, that we are dealing with—and the Government has only confined itself to dealing with—the effects, the results, of anything that has produced the crime. They have not in any way tried to get down to the roots and solve the problem from that angle. They have not tried in the least to deal with the cause, and that is why I feel that this Bill does not provide the means to stop crime. I have been informed by the hon. Member for Law and Order that if this Bill is to go forward, then, within a year he thinks that everything will have been solved—

HON. MEMBERS: No!

THE MEMBER FOR LAW AND ORDER: On a point of personal explanation, Mr. Speaker, I never said anything of the sort.

MR. TAMENO: Mr. Speaker, Sir, that statement was not offered here, but during the course of a certain meeting we had. The Member for Law and Order put that statement forward.

THE MEMBER FOR LAW AND ORDER: There must be some misunderstanding. Mr. Speaker, I never said anything such as the hon. Member says that I said.

THE SPEAKER: I take it the hon. Member will accept the hon. Member's explanation and continue with his speech.

MR. TAMENO: Yes, Sir, I feel, Sir, that what we have got to do is to realize that the African himself is so concerned with this crime and this Mau Mau that he is really trying to do his best to stamp it out. That is being overlooked, and the next alternative is to put in laws that really do not go right down to the cause. The Member for Law and Order during his speech said that the police action affects, so far, only the perimeter. My

contention is that so far the police should have got right to the centre of this, as if they have not, that is inefficiency. I feel that every African who has really got the interests of the Africans at heart should not be afraid to come forward and give any information, and if he is not sure of himself then what is necessary is propaganda to make the Africans realize that they have got to do it and they have got to risk their lives and not to check the usual way of justice and way of democracy simply because the most important thing is not to be considered and put into effect.

If I may, Sir, I would like to contradict a few statements which have been made by the hon. Solicitor General which were as follows: he remarked that the assistant superintendent should be recognized as somebody who would really try to do justice to whatever he is supposed to do.

THE SOLICITOR GENERAL: On a point of personal explanation, Mr. Speaker, as you will remember, I said nothing of the kind. In the context which I think the hon. Member was referring to, it was a law officer. I explained in that context that there were two, the Attorney General and myself, the Solicitor General.

MR. TAMENO: I accept that, Sir, that I cannot quite follow this. According to my impression, he did mention this. He did mention the prosecutor and he gave him credit that he would not in any case bring forward a case which he was not satisfied was a genuine case. My contention is, that is not the real answer, and he should have the opportunity of being checked by having witnesses and not affidavits which you cannot check. Now, this law is coming out as a provision to prevent intimidation and it has been remarked that so long as there is intimidation we cannot put out the Mau Mau and other crime. My contention, Sir, is this: there has been intimidation for many years, and such intimidation which has caused us fear and has stopped witnesses from appearing in courts—this law should have been in force many years past, for many centuries, and to say that this Bill is going to provide for action for only twelve months—I am convinced that intimidation is not going to stop within twelve months. Therefore, this Bill is still going to be useful.

[Mr. Tameno]  
Sir, I beg to oppose the Motion.  
(Laughter.)

Friday, 26th September, 1952  
The Council met at thirty minutes past Nine o'clock.

[Mr. Speaker in the Chair.]

#### NOTICE OF MOTION

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, may I give notice that to-morrow I will move the suspension of Standing Orders 10 and 12 to enable us to sit in the afternoon.

#### ADJOURNMENT

Council rose at forty-five minutes past Twelve o'clock.

#### PRAYERS MOTION

#### EXEMPTION FROM OPERATION OF STANDING ORDERS

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that the Bills set out in the Orders of the Day be exempted from the operation of Standing Orders 10 and 12.

The object of this, Sir, is to enable us to sit this afternoon, and has been agreed by Members on the other side and by you, Sir.

I beg to move.

THE MEMBER FOR COMMERCE AND INDUSTRY seconded.

The question was put and carried.

#### The Evidence (Temporary Provisions) Bill

Debate resumed.

MR. AWORI (African Interests): I rise here to oppose the Bill and I associate myself with my colleague on this side. At the same time I congratulate him on the strong stand he has taken in opposing this Bill.

Now, Sir, if you will allow me, I might be able to draw my facts on a wider canvas in order to prove that this Bill was unnecessary. At the same time, there was no need for this emergency session.

Now, Sir, it appears to me that there have been some forces—either within or without this country—outside the country—who have made it possible for the Colonial Secretary to sanction this Bill, and these forces have operated through the Press as much as we know. The Press has exaggerated the facts in great detail.

Now, Sir, before I get to that point, I might say that we African Members on this side have been disappointed in the fact that we did not know anything about these Bills until this week. Now when I look at the Bills they were published on the 30th August, and not till the 22nd of this current month did we get the Bills. At the same time in Executive Council we never had an African

[Mr. Awori] Members when the Bills were being drafted. Now that, I think, is most unfair.

Now, to come to the exaggeration. We who have read the Press—both the local and the overseas—we have been alarmed at the fantastic reports that have gone abroad. One paper put in a headline: "White massacre plot in Kenya". An American magazine said something to that effect also. Now, these reports, being read by the overseas people—by the millions in England—definitely would form a wrong picture of Kenya. They would say, "Well, Kenya is not as it should be," and if, on the other hand, Government sends their Members to the Colonial Secretary after reading all these reports, I will believe that life in Kenya is bad; and for that matter, they were sanctioning these drastic measures.

Now, Sir, it is surprising that one of the Members who went to London to see the Colonial Secretary, when interviewed about the crime and unrest in Kenya, all he said was: "Terrorism! I have never heard of it"—or something to that effect—and that was the Member for African Affairs. Why did he go to ask for strong measures if he denied there is no unrest in Kenya?

Now, Sir, from the Press report we find quite constructive views from other papers like the *Daily Telegraph*. Mrs. Huxley writes an interesting article, and she observed the fact that strong measures or drastic measures should be introduced. Now, she is an expert on colonial affairs, and Government should have read something from her statements.

Now, what has been done was to justify that subversive organizations in this country are putting the clock of Kenya back. What is going to happen if these laws are going to put the clock back in Kenya.

Now, these reports have terrified people. Last week a textile worker from Manchester was planning to come to Kenya, but then, after reading these reports, he preferred to go to Malaya. (Laughter.) (Applause.)

Now, Sir, the former Governor, His Excellency Sir Philip Mitchell himself, last Friday denied the fact that there is

crime and unrest in Kenya, and he went on to say that he was leaving for Kenya with his family next month. Now, if he knew there was so much trouble he would not have come. What about our coming Governor? Some people have told him to come out before his holidays have expired because there is unrest and he, being a man who knows the African territories, and who knows the facts, did not believe in coming sooner because he knew that all these reports were exaggerated. Then why should we not wait for him to come before we enact these laws?

THE SPEAKER: Would the hon. Member mind coming up to an unoccupied seat in the middle of the bench, so that everybody can hear him very much better?

MR. AWORI: Now, Sir, I shall continue to illustrate my points. The Commissioner of Police himself, who is in charge of crime, if he does not mind I shall have to make a quotation from what he said: "There is always a certain amount of secret society active in this part of Africa. We have a special branch to keep watch for it, but the *Mau Mau* is not the great threat so many people make it out to be. We believe the robberies and assaults which take place are the work of ordinary criminal gangs which have no connexion whatever with any secret society".

Now, Sir, that, coming from the mouth—  
—from the lips—of the big boss who is in charge of crime, I find it appalling that we should come here to debate on these drastic measures. Even the Mayor of Nairobi himself denied that there was crime and unrest in this country. Now, why do we come to discuss this Bill? It is just simply because the Member for Law and Order, after coming back from London, and getting reports about ten murders in Fort Hall, he finds that he shall win our sympathy. Now, Sir, that illustration he gathered after returning—after having got a Bill sanctioned—why did not he give us facts before July, when these Bills were drafted? How did he know beforehand that there was going to be trouble?

So now we come to the serious point of it—this intimidation—which is in this clause. Now, I come to wonder, I have been brought up to respect British justice, and I respect British justice, and I think

[Mr. Awori] the laws in this country which have replaced our old laws are quite just; but then suddenly, before even I grow old, I find that we are departing from the system of British justice.

Now, Sir, how are we going to learn the real facts? We fought in the past two wars to defend British justice wherever it is abused. Now here we come to destroy the fundamental parts of British justice. What will people outside think of us if, in a young territory like this, we just come to destroy what has been brought up for us to respect?

Now, the dangers involved if this Bill is passed are these. I have got respect for learned people and yesterday, when the hon. Member, Mr. Neep, outlined the dangers of this Bill, I was really surprised. I wonder if this Council will refuse to listen to what he told us yesterday. I must congratulate him heartily for what he did, for, as we know very little about law, we found that it was a great step to educate us to know that this Bill was really offensive.

Now, Sir, it is very difficult to say now what effects this Bill will have. The Member for Law and Order believes that it will cure crime. On the other hand, we believe that it will not curb, intimidation will continue and, worse still, the innocent will suffer. People who have got grudges against others will come forward and make statements to the higher authorities, after which an innocent man will be penalized. What do we find? A court with a magistrate and the accused. Then, instead of having the witness, we have a piece of paper. It might be a forged paper—after all, we are all human. We can err. It might be a paper which perhaps the person never signed, but it was brought up to get rid of somebody. Are we going to allow that? Is it practised anywhere in England, is it practised anywhere in the United States of America. Perhaps it might be practised in Communist countries, are we going to introduce it here? Perhaps it might have been practised during the Nuremberg trials, but are we in the war?—Have we got any war criminals here? I do not think that is fair.

Now, Sir, we people who represent our own people are really alarmed if this Council, despite our explanations, will go

ahead and pass this Bill. The Government are prepared to pass this Bill whether we like it or not—if this is fair why do we come here to give any views. That is why I do not find anything constructive in the views presented by the Member for Law and Order, or the Attorney General; worse still they made nothing constructive—Solicitor General I meant.

Now, Sir, we must be fair, we must be just, and as we are growing up we must see that fair practice is adopted in this country of justice. Perhaps Government would like us to adopt some of our old laws which, I should say, were quite effective, but for the present century are not human. Take, for instance, the way we used to deal with thieves. If a person was found having stolen something either he had his hands cut off or burned. That is inhuman, and that is exactly what this Bill looks like. If you are to tell us we have to go back a hundred years, we will go back as you choose but I maintain we would not be connected with this. Our community are worried—quite a majority of them—it is for them.

The Member for Law and Order has told us in the Bill that there must be corroboration, there must be two witnesses. That does not matter, there can be a hundred witnesses for all I care, but still the fact remains that it is a law which is going to be abused if it is passed.

Now, Sir, let us not rush this thing. Sir, There is no cause to make us rush this Bill. Of course I agree it is temporary, but still even if it were for a day I would not support it. It can do great harm, and are we going to allow this country to be terrorized. On the other hand, it will be terrorized by the gangsters and by the law so you will have two of them.

Now, Sir, the Member for Law and Order told us that the witnesses are disappearing and nobody is prepared to come forward and give a statement, because he is afraid of intimidation. I will illustrate my point. What about England, what about Guy Burgess and Donald MacLean who disappeared? There were some people who knew where they went. Why did not some people come forward and give evidence.

MAJOR KEYSER: How do you know that?

MR. AWORI: It looks like that. Just yesterday they were seen in the western zone of Berlin. What about Professor Pontecorvo who disappeared. There are some people who know where they are but they are afraid of coming forward. This is happening all over the world. Go to see the movies—you will see these crime pictures. (Laughter.) You will find that people are always afraid to come forward despite the rewards that are given. They will not come forward because they are afraid they are going to be killed.

Civilized countries do not adopt this law because people are afraid of coming forward, afraid of giving evidence. Sir, I do not find anything convincing in what the Government has given us in this Bill. All I know is that we are being taught to depart from the procedure of British Justice. Once this Bill is passed it means that every other law is going to be the same. It means that from now on we are going to depart from the procedure of British Justice, which we respect very much and we do not want any other laws happening in other countries to be introduced here except what is happening in England and in this country. Of course much has been said about *Mau Mau* secret societies but there are secret societies everywhere. Take for instance the societies in Nigeria or the secret societies in Sierra Leone. I have never heard that repressive methods have been used to deal with them. The only proper course is to find out the real causes of these crimes. Why there should be *Mau Mau* in this country. That is what we must find out, but not to go and make a Bill about affidavits with signing and intimidation. All this will lead us nowhere except it is going to endanger the lives of innocent people. Land disputes among Africans are going up day after day, as far as I know; people are going to be revenged because somebody took a case of his to court and he lost the case, he is going to revenge upon another person. He goes forward and gives a statement that this man is a *Mau Mau* person then this poor man will be victimized for nothing.

So it is difficult for us to believe in what Government has told us—that

crime and unrest warrant these drastic measures. My idea is to find out the real causes of crime. It was just yesterday when the Member for Health and Local Government read us a statement about the Royal Commission. What is the Royal Commission going to do when you already find your own methods of dealing with the crime. When you find methods of terrorizing the people. So why not wait for this Royal Commission to come and investigate about land, about the social and economic welfare of the country.

THE SPEAKER: The hon. Member has been already allowed great latitude. He will try to keep away from anticipating matters which will come on later. There will no doubt be a debate on the terms of reference on the Royal Commission or something of that kind at some future date, but for the time being we are limited to the principle of this Bill which according to the long title is to make temporary provision for the admission in evidence of statements. Will the hon. Member kindly keep to the matter in hand.

MR. AWORI: It is only that I was trying to draw my picture on a wider scale, but on the other hand all these things tend to describe or to illustrate why we do not want this Bill passed. That was my main intention, but according to your ruling, Sir, I shall endeavour to stick to the points and the principles involved. But in order to propose this Bill it is necessary for us to find out why it is necessary and what steps should be adopted.

THE SPEAKER: If the hon. Member is again going to extend the scope of this debate, if he will not accept the ruling of the Chair, then I shall have to take the ordinary course of naming the hon. Member. I do not want to do that. I have given the hon. Member the chance of expressing his views generally on a good deal of generalities. The Bill is confined to a particular principle as set out in the long title. The hon. Member must keep to that in future.

MR. AWORI: I agree with the hon. Speaker. I shall, of course, stick to the serious point. That is about intimidation.

As I said before, we do not like this Bill because of that, and the Member for Law and Order has told us that because

[Mr. Awori] of the people not coming forward to give evidence he thinks it is fair that this Bill, if passed, will make it possible for people to have no fear. But my argument is that innocent people are going to suffer because false evidence might be given. The accused cannot cross-examine anybody except a piece of paper, perhaps, which is with a magistrate or a prosecutor. So if we think that is a fair method, we are working according to the British methods of justice, then I have no opposition to this Bill being passed. But as it has been said and the hon. Member for Law and Order himself has told us that we are departing from the usual procedure of dealing with crime. Then, why should we accept this Bill? That is my argument. Why should we accept it just because of a few cases that have come up in various localities? Imagine the effect upon 6,000,000 people in this country. It is not surprising, an illustration of 19 murders—although it has not yet been proved that they were all murdered because of *Mau Mau*. It is easy to generalize and what has happened is that it is being generalized. I am not denying that such a thing happened, but then why should other areas, other people who have not been concerned with this, suffer instead, why should we not have a remedy to cure this instead of having this Bill which is repressive to go through.

Sir, I am not going any further, but I would like us to be fair, to think and see if we cannot find a substitute, then pass this law. But if we can get a substitute, I do not think it is right for us when we are young in this country, when British justice has not been practised for more than 50 to 60 years, we should be the first territory in Africa to depart from the proper procedure.

Sir, I beg to oppose.

MR. SLADE (Aberdeen): Mr. Speaker, our Government has too often earned just criticism for disinclination to face ugly situations and for timidity in dealing with such situations. I am glad to say that that criticism cannot stand today. For the substance of this Bill and the others that accompany it, before this session, and still more for the determined attitude on the part of Government, that

these Bills imply, they have my whole-hearted support. (Hear, hear.)

The hon. Mr. Mathu and the hon. Mr. Awori seemed to suggest that mischievous publicity and exaggerated reports have stampeded Government into this legislation. In view of the fact that our local Press or all newspapers of any significance have been admirable in their restraint, they can only refer to the Press overseas.

Mr. Speaker, I like to believe that we have not yet reached the stage when we are governed by the United Kingdom Press—(Applause)—however much some people might like it to be so.

The hon. Mr. Odeco, on the other hand, finds another cause. He suggests that Government is introducing this legislation because it has been dictated to by the settlers, by whom, presumably, he means the Europeans, whom the European Elected Members represent in this Council. But, Mr. Speaker, I do not think we have yet reached the position when we can dictate to Government, however beneficial that might be. (Laughter.) It does not appear to have occurred to any of these gentlemen that the reason for the introduction of this legislation is simply that Government is determined to perform its proper duty of governing, that it is recognizing a truly dangerous state of affairs and is taking the necessary measures to end that state of affairs as quickly as may be.

I should suggest to the hon. Members that instead of blaming the Press, the settlers and the Government for the introduction of this legislation, they blame the people who have made it necessary. (Hear, hear.) (Applause.)

The unscrupulous agitators who for their own purposes play upon their grievances, real or imagined, of simple people by inciting them to lawlessness and racial hatred.

Mr. Speaker, we have now heard every one of the five hon. African Members on the Unofficial side.

MR. MATHU: A pity we have not got any more!

MR. SLADE: It is a strange and distressing thing that not one of them has uttered a word of condemnation or even criticism of these people who have brought us to this state. (Applause.)

MR. ODELE: I was told not to do so yesterday.

THE SPEAKER: The hon. Member for African Interests, Mr. Odele, is quite out of order in rising and speaking if the person who is addressing the Council has not given way. That is clearly laid down in the Standing Orders, and I hope the hon. Member will read them.

MR. COOKE (Coast): Mr. Speaker, on a point of order, it is according to the courtesy of this Council that the hon. Member who was standing does give way, but I do not think the hon. Member for Aberdare noticed the hon. African Member was on his feet.

THE SPEAKER: The hon. Member for the Coast has risen and spoken to a point of order taken from the Chair without obtaining leave from the Chair. He is also out of order in speaking. (Laughter.)

MR. SLADE: I offered to give way to the hon. Mr. Odele.

MR. SPEAKER: If you intend to give way sit down; if you do not—

The hon. Member has now given way.

MR. OZORN: I have been ruled out; therefore he had better get on.

MR. SPEAKER: The hon. Member's remark was inaudible to me, but I hope you have heard it.

MR. SLADE: Are these hon. Members to whom I referred before really unaware of the malevolence and extent of this organization known as the *Mau Mau*. It has been proved to the satisfaction of all the rest of us, not only by various acts and the sabotage and murder attacks on missions and other items, but by the very best proof possible—conviction in courts of law of men on specific charges of being members of this society with evidence of the nature of that society and the oaths they have taken and with the benefit of doubt given to them. The hon. Mr. Neep spoke in high praise, and rightly in high praise of the traditions of British justice in the United Kingdom. Those traditions are upheld, Mr. Speaker, in this Colony likewise and every conviction by a judge or magistrate in this Colony is a true conviction. Are these hon. Members really blind to the sufferings of their own loyal people for the terrorism and murder of men who stand on the side of

law and order. The hon. Mr. Gikonyo suggests that it is only men who seek to give false evidence that may be suffering from this intimidation. Surely he knows that this intimidation and terrorism is not confined to informers. Surely he knows that anyone who resists taking this unlawful oath, possibly without any intention of giving this evidence, is subject to terrorism likewise. I can tell these hon. Members that leading Africans of integrity in my constituency are not blind to these things. They recognize this organization as an evil thing. They recognize it and have described it as a disgrace to their own people and they claim the right of sharing with us in destroying this evil thing. It is a strange and pathetic thing that hon. Members who claim to represent those people in this Council present such a different, such an unsympathetic, point of view. All races are concerned with this evil, but it is indeed the Africans who suffer most from it, at any rate at the present time. We Europeans have, I think, the means and the determination to protect ourselves; but are we to stand by and see our own headmen murdered, our own employees terrorized, quite apart from the thousands and millions indeed of other Africans for whom we also, along with Government, feel responsibility. Crime of this kind, Mr. Speaker, is not like the ordinary crime with which ordinary laws and ordinary forces can deal. Ordinary crime is perpetrated by the professional criminal working alone and his solitude is his weakness. Political crime of this kind gathers strength from the fact that it is organized and gradually draws to itself social support, and as such it is something which calls for special measures.

I also, Mr. Speaker, am a member of the legal profession and proud of that membership, and my pride has not been decreased, I may say, by the three speeches of the other members of that profession on the other side of the Council that I have heard during the course of this debate. I also as a lawyer am jealous of the great principles of justice and democracy which we have upheld. But as a lawyer I have also learnt that in order to preserve these principles, in order to maintain the freedoms for which they stand, we sometimes have to sacrifice them for a little

(Mr. Slade) time. And on one of the occasions when such sacrifice is necessary is when those freedoms are by a substantial part of society abused. And that unfortunately, Mr. Speaker, is the stage which we have now reached. I disagree entirely with the hon. Mr. Odele when he suggests that the police have been inefficient. On the contrary, I would say that our administrative officers in the field, our police and our Kenya Police Reserve have done magnificent work—(hear, hear)—under very trying conditions and great strain. They cannot do it all by themselves with the laws and powers that they have now. We must give more power to their elbows and that is the purpose of this Bill.

The hon. Mr. Neep has told us, quite rightly, that no such Bill as this has been seen in England in recent times. But I would remind the hon. Member that never since the times when our judicial system in England developed to its full stature have we seen in England witnesses intimidated and murdered.

MR. NEEP: Mr. Speaker, might I on a point of personal explanation point out, though I loathe to interrupt the hon. Member, just say this, that I never said anything of the sort. I never said we have never had a Bill like this in England because nobody present thinks African conditions are similar to English conditions. I only made a broad point about principles of justice.

MR. SLADE: I am very glad that the hon. Member recognizes my point. The conditions are completely different. The fact is we are now faced with a choice of dangers. On the one hand if you pass this Bill into law you must recognize, of course, the danger of unjust convictions. One cannot get away from the fact that there is that danger inherent in this Bill; but what is the alternative? The danger of this organization growing unchecked, and the danger of not innocent people but loyal and positive assistants of law and order not merely being convicted unjustly but of being killed.

I do not think the choice between these two dangers is so very difficult. As for the contents of the Bill itself I would have spoken in answer to the very able speech of the hon. Mr. Neep, only the equally able speech from the hon.

Solicitor General has made the points I would have made, a great deal better than I could have made them, Sir.

I would only add one point with which the hon. Solicitor General did not deal and that is that clause 4 of the Bill does insist on collaboration of these sworn statements, which does mean that no one can be convicted on the sworn statement alone. And that is a measure of protection which lawyers at least will recognize as of immense value.

The hon. Mr. Gikonyo has described this as a law against five and a half million Africans. Mr. Speaker, it is only a law against five and a half million Africans if five and a half million Africans are intent upon murder and intimidation. (Hear, hear.) (Applause.) I hope he did not intend to imply that Mr. Gikonyo says that if, this law was brought against Europeans they would oppose it tooth and nail. Mr. Speaker, if the 40,000 Europeans in this Colony were bent upon arson, murder and intimidation, they would doubtless oppose it, but if only 1,000 of them were so bent, I can assure this Council that the remaining 39,000 would still be very much in favour of the Bill. (Hear, hear.) I would point out to the hon. Member, by making these suggestions he is playing the game of the people with whom we are at war. Their game is to foster racial hatred. Remarks of that kind do the same. It is an easy game. If you want racial hatred you only have to play on it; long enough among your own people and in the end you will get it not only there, but on the other side, but you have not got it yet and I do appeal to all Members of this Council to put away childish things, to feel their responsibilities and to recognize this for what it is, not a war between races, but a war between the lawless and the law-abiding, whatever their race. On behalf of all law-abiding citizens of this Colony, Mr. Speaker, I welcome this Bill.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I would like to start off by answering a few of the points that have been made by hon. Members before I go on to make a few general observations about the Bill.

First of all I would like to endorse the remarks made by the last hon. speaker, when he appealed for the throwing away of childish things and appreciating that

[The Member for African Affairs] this Bill is aimed on behalf of all lawful people against the lawless of all races. It so happens that the unrest which we have now and the murder and unpleasant incidents which are occurring now are happening fortunately in a comparatively small part of this country, and that is an African part of the country inhabited practically entirely by Africans. Therefore it is easy to argue this is racial or to misrepresent this, the force of this Bill, by saying that it is a racial Bill. It is a Bill designed to cope with lawlessness only and has nothing to do with race.

Now, Sir, we have been told that the Government has been forced by a publicity campaign to bring forward this legislation. We were also told that when my hon. friend, the Member for Law and Order and I went to London, apparently, the state of affairs at that time was not bad and it was only when we came back that we found that the state of affairs was such that this legislation must be introduced. The hon. Mr. Awori said that the Attorney General had only referred to the ten murders in Fort Hall and he asked for details of what had happened before the hon. Attorney General and I went to London. Well, here are a few of the things that happened before. And these are merely instances of assaults or otherwise on Government servants and people who were trying to give information about the *Mau Mau* organization.

Now, in January we had ten huts burnt down belonging to the headmen in the Nyeri district. Most of those efforts involved attempted murder because they tried—the assailants tried—to burn the huts down with people inside. Not a very pleasant form of amusement. In February, we had four more huts burnt down, a headman, an ex-chief, a chief's messenger and a location councillor were the owners of these huts. Again, in Fort Hall in February, a headman's hut was burnt down, a chief's office was attacked, a chief's *outpost* and two agricultural instructors were beaten up and one of them died. That was in February. In April we have a chief's office attacked, a chief's messenger seriously beaten, a tax collector attacked. In June we have two police informers that and their bodies found in the river. That was in the Kiambu district. In Nyeri we had two

huts burnt down and an African court clerk attacked. In July a chief's messenger was murdered and his body found in the river, a headman and chief's messenger also assaulted, a headman also in Kiambu was attacked that month and wounded and two huts belonging to African court elders were also burnt down in July. In August we have a headman, again in Fort Hall badly beaten up and his hut burnt and the messenger beaten up. Another hut belonging to another headman burnt down and an attempted murder of inmates was included. An agricultural instructor's hut was also burnt down; he had given evidence in a *Mau Mau* case. Two police informers were murdered, two more in Kiambu. And two or more Crown witnesses were murdered in the Laikipia district. In September, before we went home, the children of an agricultural instructor were abducted, a small child, one of them, was found dead. That happened before anybody went to England to discuss with the Colonial Office and the Secretary of State for the Colonies, the possible legislation we might have to impose.

Although I think we have had this year 23 murders, including two women and three children, 12 attempted murders, four suicides—and I would like to emphasize that, because these wretched people who are terrified of this kind of performance going on around them, give up hope. The only thing they can do is string themselves up to a tree or throw themselves into the river. We have had 24 hut burnings this year and 12 assaults. We had a church desecrated and attacks on missions. That, Sir, is the state of affairs. It is, of course, a localized one. Now, the hon. Mr. Awori has taken me to task, as other people have taken me to task for saying, when I arrived in England, something—I do not know what was reported, but apparently what I was reported to say was I never heard of terrorism. There was not such a thing. I was nobbled immediately I got off the plane by a person who said: "Mr. Davies, how are your terrorists?" Now it is possible, I think, and human nature being what it is, to assume after a good many months of connexion of the words terrorism and the terrorists with Malaya, where people walk about with sten guns where you

[The Member for African Affairs] cannot possibly begin to run a plantation without having your people guarded night and day, that is what we have had handed into us as a state of terrorism, and the word terrorism, I am afraid, has that immediate connexion in my mind. I therefore said that I did not—that we certainly had not terrorists in that sort of sense. Now another background to my reply was the sort of nonsense that has been published—and daily, almost—in the English Press. Now it was necessary for the good of this country to try and debunk some of that because it needs debunking, as I quite agree with Mr. Awori, the situation has been grossly exaggerated. That is not, and I repeat that that is not to say that there is no unrest, or murder or arson or horrors going on in any part of this country, because there is, but it is local. But, of course, it is not all over the country. There are thousands of loyal Africans, Europeans and Asians in this country who want this law to be put into operation, who want peaceful, decent, orderly living. (Applause.)

Well, Sir, it was suggested, as I said, that the Government was forced to this by a publicity campaign. I hotly deny that, we were not forced to do that by a publicity campaign which, I think, started pretty late anyway and which, I think, also hon. Members know, that I personally did my best in this country to put right as soon as it was brought to my notice. A particularly unpleasant article was brought to my notice before actually the paper itself arrived in this country. It was sent here in the form of a Press telegram and I at once tried to have got out and have published a statement in which I endeavoured to put the facts and to show that this kind of unrest was, in fact, a local one.

Now, Mr. Odede had suggested that opposition to the Bill is right but unpopular, and I infer from that that he considers support of the Bill is wrong and popular.

But, Sir, I cannot agree that support for this Bill is wrong. We have got to put things right in this country in the parts of this country that are being ruined by this kind of unrest and murder and violence: things which we all, all races in this country, thoroughly loathe

and detest. We have got to put matters right. And with the present methods of intimidation, the law, as it stands to-day, cannot do so. Law, in fact, has been brought into disrepute. And, Sir, as I have said before, and I would say again, there are many, many Kikuyu particularly—for the Kikuyu are mainly affected by the present state of affairs—but there are many, many loyal, honest, decent Kikuyu who loathe this state of affairs just as much as anybody else, who are doing all they can to stop it, who are taking their lives in their hands to try to stop it, and I, personally, Sir, here should like to pay tribute to those people as well as to police officers, district officers and the chiefs and headmen and other Government officials who are doing their utmost to preserve the forces of law and order.

Now, Sir, we are told that the matter is not urgent. Well, I read out to hon. Members the sort of things that had happened before—I think it was September the 14th or 15th—and the hon. Member for Law and Order has explained what happened since. There has been a crescendo, in fact, of this business and, if it was urgent before the 15th September, it is doubly urgent now.

Ten murders in September, three suicides, I think, as again I would say, I think suicides are particularly evidence of the horror which this kind of unrest and violence creates in the minds of the ordinary African man and woman.

Now, Sir, we have been asked to seek for the causes of crime. It has been suggested they are economic—I do not know, Sir, whether you are going to rule me out of order, but I am going to have a go at this just on the off-chance that you do not, Sir. One suggestion was made that we should wait for a Royal Commission before we do anything else about it. I would only suggest, Sir, that when a Royal Commission comes out here, it is quite essential that law and order has been restored to this country first. (Hear, hear.) I am as keen as anybody to see that the Africans in this country get a fair wind and a fair treatment, as much as anyone else, but I am perfectly certain that the Africans themselves have got to put their home right and restore order to this country and to their own areas before a Royal Commission can do its job properly, and a

[The Member for African Affairs] reasonable atmosphere. We have also feared of economic causes—that is, the causes of this crime are economic causes; land cases and so on. I think we ought to be quite realistic about this. Is it really can we really connect an attack on a tribal policeman—who joins Government and, in a few weeks, his house is burned down, his wife and children killed—with the minimum wage in Nairobi being a shilling a month? I do not think we can.

I would not deny that there are economic causes; but I do not believe they are as close as all that. I believe there is some organized thuggery about, and we have to stop it. (Hear, hear.)

The hon. Mr. Ojede suggested that we ought to train better detectives. We really must speak to the Commissioner of Police about this, as detectives are so poor. But detection of crime anywhere must depend a good deal upon the co-operation of the public. If the public are too terrified to co-operate, it does not matter if you are Mr. Maatlyne—with due respect to detectives, I do not think he could do it.

Mr. Gikonyo suggested that murders were done to avenge false evidence. It is odd that these murders are nearly always connected with Government servants or people attempting to maintain law and order, or with people who are giving away the secrets of *Mau Mau*. It is a very strange coincidence. He also suggested—I think we have had that suggestion from somebody else as well—it was because they were disappointed parties in land cases. Now, there is a long, long range of courts in which land cases are continually being held; they start in one; they go to appeal to another; appeal to a third—a district officer—and it is quite unnecessary for a disappointed party to indulge in murder—quite unnecessary. I do not believe, for one moment, it is the disappointment of a party in a case which has gone before an African tribunal that is the cause of murder.

Now, Sir, I am going to step again pretty near the edge of being out of order—I must reply, Sir, if I may—

THE SPEAKER: If the hon. Member is going to take advantage of the latitude

allowed to the African Members, I think he will be quite out of order in doing so.

THE MEMBER FOR AFRICAN AFFAIRS:

Well, Sir, I would like to cope with one or two remarks made by the hon. Mr. Awori. I can really best sum up my feelings about the hon. Mr. Awori's speech in saying that I am very sorry and upset that he did, I think, bring in the racial atmosphere into this debate so strongly. I would also suggest that if, perhaps, he paid less attention to cinemas—I think it is very dangerous to take your ideas of what really goes on from what you see in the cinema—but most of the opposition which has been voiced against this Bill has assumed that nothing is going to be done in the operation of the Bill to cope with the obvious dangers that the Bill brings. No one will deny that the Bill is capable of abuse; of course it is. My hon. and learned friend Mr. Neep has pointed this out—this opens the door to informers, vendettas—knowing this country as *filth*. *Filth* is so new thing to any administrative officer in this country—(Hear, hear)—or to any assistant superintendent of police, that it is to the grade of officers who are able to take these statements. The sort of thing that will happen, as it has happened practically every administrative officer, is this; an officer is on *safari* somewhere, in a tent; he is just going to bed, when somebody slips in says, "I have something to tell you, old so-and-so bribed somebody else," or "Somebody has stolen some stock," or "Somebody has been poisoned". It is quite a well-known thing. It is not anything new.

MR. COOKE: Why the emergency now?

THE MEMBER FOR AFRICAN AFFAIRS:

The hon. Member opposite has had 25 years' experience of this; he knows perfectly well informers have existed in the past and, no doubt, will exist in the future. With that sort of background, and with their attitude of mind, no administrative officer or assistant superintendent of police is going to be—if I may use the expression—is going to be such a fool as to believe all he is told at once; particularly in such a case when obviously these statements produced in court are going to be regarded with very great care by the judiciary and a lot of natural distaste. I

[The Member for African Affairs] am perfectly certain that these officers, who are responsible people, are not going to go into this thing blindfolded, and without using the ordinary common sense and years of experience they have had in dealing with very similar sorts of situation.

Another point, Sir, which I would like to make with regard to the statement—the very able, lucid and delightful speech, if I may say so, of my hon. and learned friend Mr. Neep, which was that it was beyond the bounds of possibility, I think, for an ordinary human being to cross-examine vividly those supporting your own case. There again, most administrative officers have had, in their time, at once to be prosecutor, defender, judge—very unfortunate, no doubt, but we have not got the conditions here in which there is always able counsel for both sides. Every administrative officer has to retain an unbiased view in his mind to try to get the truth. We have not had the privilege, I regret, of being nurtured in the Inns of Court—I was nurtured in a place where—it has just had its sixtieth anniversary—we were endeavouring to find the truth for its own sake. Most of us administrative officers have been brought up in those circumstances and we shall go on trying to do so. (Laughter.) (Hear, hear.)

Now, Sir, I should just like, before I sit down, to repudiate one or two remarks which have been made, which I found extremely distasteful; they were these. First of all, that these documents are going to be forged. I do not know whether the administrative officer or the assistant superintendent of police is going to forge them. If so, I reject that remark with a great deal of feeling. I also do not care for the remark that rewards are going to be issued. The inference was that they were going to pay people right and left to come and denounce their fellows. That is absolutely out of the question, and horrible, and I entirely and thoroughly deny it. (Applause.)

Now, Sir, I can only appeal to hon. Members of all races, both to hon. Members in this Council, and to the public outside, to agree that law and order must be restored in this country. This Bill is one we do not care for very

much. It is a temporary one, but it is necessitated by the state of affairs which confronts us at the moment and, I do appeal to all law-abiding people and all people who have the real interests of the whole of this country at heart to see that we can go forward in peace and decent order, Sir.

Mr. Speaker, I beg to move.

MR. COOKE: Mr. Speaker, as this debate unfolds, I feel, Sir, exasperated and, indeed, almost resentful of those wicked men of all races in this country, who are few, it is true, but very vocal, who have brought this unhappy state of affairs to this country. Now, Sir, they have done it by their irresponsible speeches and by their unwisdom, and I am not going to labour this point, Sir, at the moment; I will have ample opportunity, I hope, on another day, of doing so, so I am not going to risk being out of order.

Now, I say right away, Sir, that I am prepared to support this Bill—(Applause)—and I am supporting this Bill because of the sombre picture which was painted yesterday by my hon. friend, the Attorney General. Now, I am bound to believe that a man with his sense of responsibility, and with his knowledge of what is going on in this country, must know that it is necessary to bring in these Bills. I am going to do so, with certain reservations which I shall mention later on. My hon. friend laboured the point—perhaps not laboured, but made the point—that he was nurtured in the great traditions of the Inns of Court, and I do not think that anybody nurtured in those traditions as my hon. friend was would take the risk—not I, or anyone else—take the risk of the pricks of his own conscience later on by this substitution of administrative law for the rule of law. If my learned friend is absolutely convinced he is right and gets up here and tells us he is right, well, I am prepared in these circumstances to take his advice. But, with this warning, Sir, that if he proves to be wrong, as I said before, his own conscience will trouble him more than anybody on this side of the Council will trouble him.

Now, there were three or four omissions in my hon. friend's speech, Sir, with which I would like, if I may, to deal.

(Mr. Cooke)

The first was this. I was surprised that if he is really, as I am sure he is, concerned about the position as it exists to-day, why he did not make the speech on 9th July which he made on 25th September, because I have here a statement which emanated from the Commissioner of Police—no doubt with the approval of my hon. friend—and that statement, Sir, I will just read a few words from. The Police Report which was published in the *East African Standard* of about a fortnight ago describes the position as "grossly misrepresented by persons foolishly exaggerating their fears or seeking political capital. These reports are completely untrue". Now, later on, the Police Report says that the position has "never been out of hand" and at the present moment "is well in hand" and the police officers will be permitted very soon to go on leave. Now, what is the change in the position? We have had a long list from my hon. friend, the Member for African Affairs giving the crimes which have been committed. I take it, up to the beginning of July. If the position was so dangerous, as has been mentioned by my hon. friend, why did he, as adviser to the late Governor, Sir Philip Mitchell, not put those facts in front of him? If he did, why was our Government, at that time, so misled as to make statements in England and, indeed, in this Council that the position, in his words, was as good as it ever was and that he was quite satisfied. The responsibility for this state of affairs must, therefore, lie with my hon. friend, the Member for African Affairs.

From his Annual Report of last year, and he is giving me the opportunity of quoting this, I also now quote, Mr. Speaker, the causes of crime in this country—he put it in this way. He said that it would be impossible to connect these terrible events which are taking place in Fort Hall and anywhere else with the cost of living in this country. He, himself, Mr. Speaker, was warned by the District Commissioner of Fort Hall and by the District Commissioner of Nairobi, and I read from his own report, if I may.

The District Commissioner, Fort Hall, says that: "it is this steady lag of wages

behind the costs of the needs that deter the young men from entering steady employment and causes them to prefer to live in whole, or in part, on their wits".

The District Commissioner, Nairobi—and this, Sir, is published in the Report of my hon. friend, published a few months ago with, obviously, his approval. "The steady rise in prices" which he has referred to just now—with the consequent rise in the cost of living index causes considerable hardship to people of all races who are on fixed salaries, although Government granted cost of living allowances, etc., and also tried to increase its statutory minimum wage, there was a growing sense of frustration." That growing sense of frustration was mentioned to my hon. friend by those two very important district commissioners and, Sir, I have made my point now because my hon. friend led me to do so.

And now I am going to turn to another omission which my hon. friend the Attorney General seems to have made.

He suggested that all—or he said that the Secretary of State, Sir, had said that "restrictive measures and police action was not the proper reply," was not the whole reply, to the present unhappy situation. Now, he did not go on to tell us what the other solutions might be. His speech was merely destructive. There was nothing constructive about it, and he might have told us—and I am sure you, Sir, would have allowed him the latitude to do so—what Government intends to do in a positive and constructive manner, to say what Government intends to do with this situation.

It is now five years ago since my hon. friend, Mr. Mathu, in a memorandum, warned the Government that the position was worsening all over the country, and he put his finger on what, at any rate, he considered to be the cause of this growing unrest. Mr. Mathu will bear me out. Now, Sir, that memorandum was kept six months by the then Member for African Affairs before it was handed to the Attorney General.

In 1948, amid jeers and sneers from the other side of the Council, I introduced a Motion and Mr. Mathu another Motion calling the attention of

(Mr. Cooke)

Government to the state of affairs then, and saying it must inevitably lead to serious unrest unless those legitimate grievances of the people were redressed. Those gentlemen opposite, instead of looking so happy and contented to-day, should be wearing sackcloth and ashes! If there is any responsibility attached to anybody in this country, it must be shared by the hon. Members on the other side of the Council;

THE SPEAKER: I must ask the hon. Member kindly to have regard to the long title of the Bill—(Laughter)—and to avoid getting into sociology. There is no doubt, there is no dispute about unrest or anything of that kind, but link unrest with the ordinary sort of thing which the Bill is supposed to be dealing with. It is a long, long step, and I hope we shall not go into that which we have been into in Motions in this Council time and time again.

MR. COOKE: Thank you, Sir, I have just merely been doing what so many speakers have been doing.

THE SPEAKER: I have endeavoured to give everybody a fair chance and I think I have given you one, too. (Laughter.)

MR. COOKE: My hon. friend quoted Edmund Burke in defence of the action he was taking. Well, Sir, I could also quote Edmund Burke, in two other respects. It was Edmund Burke who said: "When peaceful methods fail, force remains, but when force fails nothing remains". And it was also Edmund Burke who said he "did not know the method of drawing an indictment against a whole people".

Now, Sir, with respect to the third omission, which I contend the hon. gentleman has made, he has, and quite rightly, if I may presume to say so, warned the dissident African elements in this country against the action that the minority only are pursuing, but a very important minority in certain respects. But I did not bear any warning from him, Sir; although, the Bill must also apply, to the other non-African communities in this country, who by their unjust action and by their offensive action, at times, have done quite a lot to contribute to the present unrest in this country. I think my hon. friend must make it perfectly clear if he is going to

get my support that if there are any seditious utterances by other races or any seditious matters printed by other races, he will deal with them just as firmly as he proposes to deal with Africans here. And I can assure him, Sir, there is a very hard core of decent European people who will not tolerate any racial discrimination where the law is concerned and I want to make that perfectly clear, and I am sure that my hon. friend will agree with me that it is necessary for the people of this country to know what the position is.

My hon. friend the Member for African Affairs made the most unwise speech I have ever heard in my 15 years in this Council. (Applause.) He has made it a racial speech. It does not matter to me in this respect whether the African Member made a racial speech or not. We Europeans have got to set an example of leadership in this country. It is our bounden duty if the other races want to be racial, we must remain non-racial. This is the example we, Europeans must give to the other people in this country. Although I have known my hon. friend for many years and have a great admiration for him, I think his speech to-day, in the circumstances, was most unwise.

I said there were reservations with regard to my support of this Motion. I have the authority of the Coast Members' Association, with the exception of my hon. friend the Member for Mombasa, who I think does not agree, but the other six members agree that the state of affairs at the Coast does not warrant these extreme measures being applied. Fortunately, the racial position at the Coast is a very happy one and always has been, and we do not want anything done that will upset the present conditions.

Now the Commissioner of Police went down to the Coast the other day and, talking about the Coast in general, he said he was very happy about the situation there. So, I am going to suggest, Sir, that the hon. Member should accept an amendment by which we could schedule the areas to which this Bill may be applied, and if necessary—and God forbid it should be necessary—in the Coast. Then that Bill, the provisions of that Bill could afterwards be applied. Sir, I propose to move an amendment in Committee to that effect.



[Mr. Cooke]

Now, I have been on one or two tribunals of inquiry in Mombasa in past years and I know that the position in Mombasa, if my hon. friend will excuse me for trespassing on his reserves for the moment, is very susceptible to any kind of what they might call injustice or misgovernment, or whatever it might be. And if you introduce into Mombasa—it is my firm belief—anything like the methods that have been introduced into Nairobi, those measures may be necessary or may not be necessary, you will then be running the risk of upsetting this very important Coast town.

Now, with regard to the measures in Nairobi, I only know what I have heard from sources which are very reliable that the people, the Africans especially, are being knocked about by Somali policemen. Now, if that is true—whether it is true I do not know—but to many people say it is true, I have seen with my own eyes big gangs of Africans, some of them well dressed being seized and taken away for interrogation. Well, I do hope that that position will not be allowed to develop on the Coast. If it does, Sir, you will be running the risk—Government will be running the risk, of exasperating a people who are, at present, peaceful and law abiding.

With those words, Sir, I support the Bill.

MR. BLUNDELL: Mr. Speaker, I do not want to be very long because most of the points have been covered by previous speakers. I rise to support the measure before the Council. Sir, hon. Members will remember that in closing the debate which we had in July on Law and Order, I put forward to the hon. Member for Law and Order that I was afraid he was not a man of conviction or of resolution. Sir, in view of the action which has been taken since that day and the measures which are before the Council, I think it is only right and proper that I should say to the hon. Member that I withdraw the words with which I accused him in July. (Applause.)

Secondly, Sir, I would like to make it quite clear, and ask all hon. Members to be in their minds that there has been any intention on behalf of the European community to make political capital out of the unrest which has fallen

upon us in certain areas, and I have been asked, Sir, by the hon. Indian Member on ours the very sincere statement that we have no wish whatsoever to interfere or cut across the legitimate political aspirations of the African people. (Hear, hear.) (Applause.) In rising to support these measures, that is not our intention in any way, and I must ask the hon. African Members to accept my assurance in that regard.

Sir, I do not like the measures which are coming before this Council and, particularly, I do not like this measure. I think it is a most dangerous one and I must record that we have already had considerable opposition to it from a certain section of the European community. I believe that we must ensure all costs that measures of this kind are only short-term. If I thought that the administration of this country had come to such a level that measures of this nature had to be considered on a permanent basis, then I would suggest that that would be a most lamentable day for this Colony. I want, Sir, to make that perfectly clear. In supporting these measures it must be understood I only support them clearly on a short-term basis. That is where I so profoundly disagree with the remarks which the hon. and learned Chairman of Ways and Means put forward. I believe every hon. Member in this Council has got to make up his mind on these lines. Either there is an emergency with which we have got to deal; in which case he has got to swallow the necessity for very unhappy legislation, or there is no emergency. I would not be a party in any way to emasculating these Bills on those grounds. Either the Bills are necessary and we have got to swallow them, or they are not. I listened, Sir, with pleasure to the views which the hon. Member put forward. One must remember that for twenty-nine years he has been skilled in the putting forward of views, but there seemed to me one tremendous omission in the remarks which he made to us. He expressed concern, possibly, for the necks of those who might suffer under this Bill, I, Sir—and I think most of my hon. colleagues on this side of the Council—are more concerned with the necks, which are suffering now because we have not got this Bill. And that, in my opinion, was

[Mr. Blundell]

an omission in his speech, and I also felt, Sir, that his speech was weak in one particular regard, that even if we accept the premises which he put forward, he offered to us no alternative, and that is the point. Whilst we wait and debate—(Hear, hear)—and talk here, we must accept these facts. Decent, honourable citizens are being dangled by ropes from boughs in trees to make them take courses with which they do not agree. In areas contiguous to my own home, equally decent citizens have had their heads chopped off and yet the hon. Member could make the speech he did. Well, Sir, I believe, if he will forgive my saying so, that he is completely out of touch with reality. (Hear, hear.)

Now, Sir, the hon. African Members have not felt that they could support the Bill and I think that hon. Members in this Council must, up to a point, understand the frustrations and suspicions with which they must regard a measure of this sort in fairness to them. Obviously, though I agree with the hon. Member for the Coast and his remarks about the application of this Bill on a non-racial basis, nevertheless, the greater number of people who will be affected will be Africans. And I wanted to say this, that, in my view, the greatest control we have over the abuse of a Bill of this nature is the independence of Members on this side of the Council. If abuse of this Bill does take place, I should like to give this assurance to the hon. Members. If they will consult with us, then we will solidly support them in debate on measures designed to deal with any such abuse, if such should take place.

Now, Sir, much has been said on the long-term measures which are the background to these Bills, and I hope I shall not incur your railing out of order. I think, Sir, we must accept that that is so. We must not blind ourselves to one particular aspect of the matter. Let us accept that long-term measures are necessary. Let us accept some of the strictures which the hon. Member for the Coast made upon the Government's handling of matter, but we cannot get away from one fact. Social and economic problems are wide all over the Colony. They do not only affect the district of Fort Hall. They affect equally, for instance, and in particular an area such as Maragoli,

where we have excessive pressure upon the land. Yet, Sir, we do not find these terrible happenings; we do not find them taking place everywhere. They are taking place in a particular area. I do suggest, while bearing in mind long-term measures are necessary, we should not allow ourselves to be blinded to the fact that, in my view, and as the hon. Member for African Affairs stated, there is an element of thuggery and gangsterism in a certain area which is casting in, shall we say, on the general long-term picture.

Lastly, Sir, I should like to say this. I felt the hon. Member for the Coast, if he will forgive my saying so, has erred slightly in implying he did not need these measures at the Coast because they did not suffer from racialism at the Coast. Now, Sir, throughout the eight or ten weeks before the sitting of this Council a person such as myself has been under considerable political pressure in this matter, and I have always resisted strongly measures of this nature as necessary on a racial basis.

I would like to make this appeal to the African Members. I believe we have got, in assessing and judging the present situation, to eliminate both racialism and the attentiveness of cashing in on political capital, and I would like to make this offer to them. If they feel it would be a contribution to their problems then I am sure that my colleagues and I would be very pleased to have informal talks with them with a view to try and find out what measures of agreement we have in dealing with long-term problems which have been so consistently presented to this Council.

DR. HASSAN (Muslim, East): Mr. Speaker, Sir, I associate myself with the Member for the Coast—what he said in connexion with the application of this Bill, if it is passed in the Council; Sir, in this constituency we have no trouble—no Mau Mau and no political agitation. Everybody is peaceful and happy and though there is no doubt we do have some offences and crimes and thefts and so on in Mombasa in the usual order of the day, it was there before, and it shall always be there. We got very efficient police to deal with this matter thoroughly. No doubt, with the increase of population and quick settlement taking place at the Coast, additional police will be needed.



[Dr. Hassan]

It is regarding this Bill I must say that there is something which needs my observation. This Bill, as it stands, and the debates that have taken place in this Council—I find the existence of a devil in a particular district has been proved beyond any doubt. There is no doubt that this Bill suggests the remedy of not catching that devil by the horns, but to give a pull to his tail. There is no doubt it will have two effects. Either it will annoy that devil and make things worse, or it will quieten him and prevent his devilry.

There is no doubt, Sir, that the police have been given power under this Bill to help and assist them to bring the law-breakers to justice, and this Bill is offering them a gunman to follow behind them to do the shooting for them.

Sir, this Bill further lays down that we have to deal with the subversive activities in that area, and this Bill provides that we should have subversive evidence to deal with them. It is similar to a suggestion which is usually told by the wise man that to catch a thief it is better to create a thief. Sir, I feel that the necessity of this Bill was felt by the Government merely in desperation when they did not feel any other measure to prevent lawlessness. The hon. Mr. Neep brought out a point regarding intimidation, and the hon. Attorney General very ably gave his explanation, but I am sorry that did not satisfy me. Intimidation is to be prevented because, in cases of *Mau Mau*, a deponent is in danger of his life, and in danger of the life of his family and his property, and we have got to see that a person signing an affidavit is to be kept secret and not to be brought out; but, Sir, this clause for the prevention of intimidation applies to offences in a general way—even in offences where the deponent is not going to be in danger of his life or his family is going to be in danger, yet he is going to have a deponent giving an affidavit against him under this Bill.

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I rise because I think the hon. gentleman has completely misunderstood what I said and what the Bill purports to provide—that these affidavits will not be admissible evidence unless intimidation is established. He has just made the state-

ment, as I understand him, that the Bill applies too generally, and that these affidavits can be made even when there is no intimidation. That is quite wrong if I may say so.

DR. HASSAN: Thank you very much for your explanation, Sir.

But what I felt at this point—about this intimidation—is that we wanted to protect the deponent, particularly the people who are bringing evidence and giving information regarding *Mau Mau*. All evidence that has been stated in the Council here proves that this danger is only been—directly or indirectly—connected with cases of *Mau Mau*, but this Bill does not make any exemption at all.

THE SPEAKER: It is now 11.15 a.m., and the Council will suspend business for 15 minutes.

*Council adjourned at fifteen minutes past Eleven o'clock and resumed at thirty minutes past Eleven o'clock a.m.*

DR. HASSAN: I was speaking and giving my observations on this Bill, Sir. There is every protection provided in this Bill to the deponent to protect his life and property, but I find there is nothing in the Bill to protect an innocent person against whom a deponent has given an affidavit. There is nothing provided in this Bill to investigate the integrity of the deponent and to see whether the man is not signing an affidavit for enmity with the defendant or whether the person is not a confirmed liar in his own community. There is no doubt that this Bill which is brought in by the Government in desperation is a sign of weakness of the Government. They have not been able to find any other better method to do away with the trouble which is localized as everybody has said, and in a particular district. The Government is said to have brought this Bill under pressure from others, but it is not a fact. I believe the Government knew that the people concerned were agitating and were desperate and people in contiguous areas were also getting desperate because of unlawful activity from that area spreading on to the settled areas. And I feel that Government could not find anything better than this Bill which they admit is a departure from the usual justice and the law of the colony which is a peaceful part of the British Empire.

[Dr. Hassan]

Now that the Government want to strengthen the hand of the justice by this Bill and experiment temporarily for a year I associate myself with the Member for the Coast and I agree with the proposal; that this Bill should not be applied to the peaceful part of Kenya; that is the eastern constituency of the Coast area.

MR. USHER (Mombasa): Mr. Speaker, I rise merely to intervene shortly to clear up a matter that was referred to by my hon. friend, the Member for the Coast. His suggestion was that I might not be in agreement with his idea of regional application. Now I do agree with his description of the state of affairs at the Coast and if it is possible to have regional application, then I would be willing to support that and will do so when the Committee stage is reached, I have however not heard the contrary arguments.

GROUP-CAPT. BRIGGS (Mount Kenya): My constituency is one of the areas most affected and I rise to support this Bill heartily. Most of what I would like to have said has been said previously and I can contribute nothing further.

I support the Bill.

THE SPEAKER: If no other Member wishes to speak I ask the hon. Member to reply.

THE MEMBER FOR LAW AND ORDER: In replying to this debate I will endeavour to be brief for two reasons. Firstly, because it has been a lengthy debate and you, Mr. Speaker, have exercised your discretion most generously in allowing all hon. Members who wished to speak to deal with subjects which were perhaps not strictly relevant to some aspects of this Bill. The second reason why I think I may properly curtail my reply is because of the admirable speech, if he will allow me to say so, of the hon. Member for African Affairs in which he dealt in detail and at length with most of the points made by speakers opposite up to that point in the debate. (Hear, hear.) But I should say that, Mr. Speaker, at the outset, that although some of the speeches I have listened to, I have found myself in agreement with some of the speeches I have listened to, many of them, particularly those of my hon. friends the African Representative Members, have been disappointing to me.

There was one speech, however, Mr. Speaker, which contained both elements; that is to say, things with which I agreed and things which I found disappointing and contrary to the views which I hold. I refer to the speech made by my hon. and learned friend Mr. Neep. He began his speech by saying that he was worried and one of the things he was worried about was that this Bill, as he interpreted it, would apply if arson were committed in the native reserve and equally if arson were committed in his coffee *shamba*. I should like to make the reason for the distinction clear if I can, because I find from the way in which he has made his point that confusion has already been introduced into the minds of some hon. Members, in particular in the mind of my hon. friend Mr. Hassan, who has spoken just a few moments ago.

It is as if my hon. and learned friend Mr. Neep, having found that arson had been committed on his *shamba*—I am taking his own example—finds it a ground for complaint, that he himself cannot go the next day to the magistrate and say, stepping into the witness-box, "Arson has been committed on my *shamba* contrary to section so-and-so of the Penal Code, and the man who did it is standing in the dock. Now, Sir, I wish to submit myself to the ordeal of cross-examination." Instead of doing that, as he interprets this Ordinance, he would have to stay at home and write out affidavits and submit them through the police to the magistrate for him to adjudicate thereon.

Well, Mr. Speaker, that approach to this Bill shows, in my respectful submission, that the hon. Member neither understands the way the *Mau Mau* movement works, nor has he succeeded in grasping the essential principles of this Bill. No one contends that every case of arson would fall within the provisions of this Bill. There must be, in every case to which this Bill attaches—to which the provisions of this Bill would attach, if it becomes law—two essential ingredients. First of all, it must be established that the offence which is charged is one of those set out in the Schedule, that means an offence concerned with the administering of an unlawful oath or being a member of an unlawful society, or a member of an unlawful society, or committing the crime of arson which is closely con-

[The Member for Law and Order]—  
 pected with *Mau Mau*. The second ingredient which is needed is that the person who is tendering the evidence by affidavit must be suffering from fear and intimidation or threats of reprisals. Unless those two essentials are present, then this Bill does not attach, and consequently my hon. and learned friend's objections to this Bill that it was too wide in scope are misconceived, when one bears in mind that the scope of this Bill is limited — and stringently limited — to the cases where intimidation is established to the satisfaction of the court, which is asked to accept secondary evidence in place of the oral evidence of witnesses. It is a practical measure, as I said when I introduced this Bill, to deal in a practical manner with the situation as it exists to-day, and that situation is, as everyone knows who is acquainted with the facts, intimidation by means of the activities of members of the *Mau Mau*.

But, despite my hon. and learned friend's worries, he did, it seemed to me, treat us to a display of virtuosity which, for my part, I found diverting and entertaining in parts. But it did not escape my notice, Mr. Speaker, and I doubt if it escaped the notice of other hon. Members in this Council, that he put forward not one constructive suggestion from beginning to end. He reached the heights of virtuosity, or, so it seemed to me, in his peroration. For you will recollect, Mr. Speaker, that at that point he deprecated my reference to the fact that the Secretary of State had given assistance and support to these measures, and then went on, and, striking top C, reference to Kenya which brought applause from every Member sitting on the benches opposite, of whatever group they belonged to, whilst we on this side of the Council, "poor but honest" — so I understand from him — civil servants, Mr. Speaker, a *tour de force*, that one fleeting moment at least in this debate he evoked unanimity from every Member sitting on the benches opposite.

MR. BLUNDELL: Well done.

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I should hesitate to believe, even on affidavit evidence, that my hon. and learned friend could be guilty of

playing to the gallery, but it did occur to me that some people might think that he was playing to the stalls. (Hear, hear) (Laughter.)

My hon. and learned friend spoke in happier vein when he extolled the virtues of the British judicial system. He told us in eloquent language of the superb quality of British justice as he has known it for many years past in the United Kingdom. He told us, too, of the immense integrity of the judiciary in the United Kingdom, and, I am glad to say, everywhere in the British Empire. He spoke also of the infallibility almost of the British legal procedure. But he forgot one thing, which, I think, I should remind him of. He spoke in praise of the British legal system, but he forgot to mention that other voices have been raised on behalf of the British legal system, not from the safety and security of the back benches of this Council, but from the witness boxes in magistrates' courts in Fort Hall, in Nyeri and in other parts of this Colony. Their voices, Mr. Speaker, cannot now be heard; they will never more be heard. But I venture to think that the silence of those simple Africans still speaks eloquently, more eloquently indeed, than any words that have fallen from the lips of my hon. and learned friend. (Hear, hear.)

It will, I hope, Mr. Speaker, be convenient if in dealing with the points during the course of this debate, I refer only to the points made in debate since the speech of my hon. friend, the Member for African Affairs. Since he endeavoured to cover all the matters of moment raised up to that point, it was after his speech that my hon. friend, the Member for the Coast, made his speech with many points of which I found myself in the warmest agreement. He said, and rightly said — and the shaft went home — that if this Ordinance were abused, it would prick my conscience. That is why, after consultation with the Solicitor General, I am prepared to say to the Council here and now that the Solicitor General and I will personally supervise every case brought under this Ordinance.

He asked me, too, for an assurance that the law of this land would be administered impartially to all races and all persons, irrespective of position,

[The Member for Law and Order]—  
 creed or of colour. That assurance I gladly give, I have given it informally on more than one occasion to members of various races, and in no circumstances will I compromise with the principle which is so fundamental to the administration of our law and to the office which I hold.

He raised yet a third point about the application of this Ordinance to a limited geographical area and asked if we might exclude his own particular constituency. There are, of course, practical difficulties about that. Once you begin to carve up the Colony for the purposes of exercising jurisdiction you may well find that although a case arises within one particular area, witnesses and those with whom you are concerned in a particular case are just over that boundary in another area. That is the first difficulty that would arise and the other objection is one which I think is valid on the facts which have been furnished to me by other hon. Members in this Council who have intimate knowledge of the Coast and, in particular, by one such hon. Member who lives there. People move about in this Colony very freely, particularly between Nairobi and Mombasa. We know there have been a few cases of Africans seeking to make trouble of *Mau Mau* character in Mombasa and, therefore, it would be undesirable, even if practicable, to limit the operation of this Bill to a particular area, so that it could not be applied if trouble of that kind began to manifest itself at the Coast. Of course, if there is no trouble, which my hon. friend, the Member for the Coast, bases his argument, then the Ordinance will not affect the Coast because there are not the circumstances which will make it necessary to invoke it. I would suggest, therefore, that the hon. Member for the Coast should take a broader view of this legislation and support it.

MR. COOKE: On a point of explanation, Sir, if you applied this Ordinance to the Coast, you would have to take other steps, as they are taking in Nairobi, which would lead to trouble in Mombasa. It is one of the natural things that would follow the application of this Ordinance at the Coast.

MR. MATHU: Would the hon. Member like to apply it only to the Kikuyu everywhere instead of not applying it to the rest of the Colony including the Coast?

THE MEMBER FOR LAW AND ORDER: Dealing first with my hon. friend's interruption, he says if this Ordinance is applied to the Coast then it will set into train a chain of causation which will create trouble at the Coast. That is rather a curious argument because the whole purpose of this Ordinance is to stop a chain of trouble, and the fact that this Ordinance will give jurisdiction over the Coast would not, of course, mean that cases would be brought unless and until circumstances arose justifying bringing charges.

As for my hon. friend, the Member for African Interests' suggestion that it should apply only to one tribe, I think the answer to that is that just as we cannot discriminate geographically and just as we never wish to discriminate racially in any of our legislation, it would be wrong to limit it to any particular tribe. Furthermore, if I may, in reply to this suggestion, quote from the Member for the Coast's large repertoire of quotations from Edmund Burke: "It would be wrong to draw up an indictment against a whole tribe".

May I make one or two observations about the speeches made by my hon. friends, the African Representatives, in this debate. They all covered very much the same ground and spoke on the same theme. It is unfortunate, I think, that none of them made any references to the victims of intimidation. My hon. friend, Mr. Gikonyo, said he had sympathy for an accused person who might be innocent. It was a pity that he could not spare a word of sympathy too, for those innocent victims, his fellow Africans, about whom I spoke yesterday. I gave instance after instance, chapter and verse where Africans, Kikuyu Africans, living near him, have been dealt with in a brutal and vicious manner. But he could not spare a word of sympathy for them. The only sympathy he expressed was for some hypothetical case of a person accused and convicted who might subsequently be proved to be innocent.

It is, I am sorry to say, a sad thing for me when representatives of the Africans hear of these dreadful things happening

[The Member for Law and Order] to their own people and do not stand up and at least join with me in expressing my regret and sympathy. All that my hon. friend, Mr. Mathu, said was: "Take the Bill away and think again". He did not even express the hope that in the meantime no more of his fellow Africans should suffer in the way that these Africans have suffered during the past few weeks, during the past ten days even. He did not even stop to express that hope. The victims of these outrages would, I should think, be looking to those who purport to be their representatives, and, in particular, to the person who is in this Council the leader of so many of the Africans in this country.

For my part, Mr. Speaker, I find it ironical and strange that I should have to plead the cause of these poor, simple, honest law-abiding peasants whose lives have been taken away from them for committing no other crime than coming forward to give evidence in a British court of law. (Prolonged applause.)

It is said—I find it said—that I have not received any support from my hon. friends, the African Representatives. But at least, Mr. Speaker, I would like it to go on record that so far as I am concerned, as far as every Member of the Government is concerned, this Bill is an honest Bill, an honest attempt to help those Africans who, as events have shown, are unable to help themselves in the situation in which they find themselves. It is my belief, Mr. Speaker, that in due course all thinking Africans will recognize that it is an honest attempt and will give proper credit and praise to the Government for making that attempt in the interests and the welfare of all law-abiding citizens of this Colony. (Prolonged applause.)

The SPEAKER: I will now put the question.

The question was put and carried.

Bill read the Second Time and committed to Committee of the whole Council.

COMMITTEE OF THE WHOLE COUNCIL

Committee of the Whole Council—Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair] The Evidence (Temporary Provisions) Bill

THE CHAIRMAN: May I just remind the Committee that I am proposing to take the amendments on the Order Paper first, the Government amendments, and the others afterwards.

Clause 2

THE MEMBER FOR LAW AND ORDER: I have to move an amendment to sub-clause (2) of clause 2 of the Bill—by deleting the words "or cannot be traced" appearing in sub-paragraph (ii) of paragraph (c) and in sub-paragraph (iii) of paragraph (d).

This amendment has been suggested to me in the course of informal discussion which I have had with other groups. I see the force of the arguments put to me that if there is a risk of *fitna* and we cannot eliminate risk of *fitna* in some cases.

The result if there were a *fitna* might be to make that the deponent would disappear or be difficult to trace. On the whole, if that should happen, it would be desirable that proceedings under this Bill should no longer be pursued. I am prepared to meet the hon. Mr. Mathu who thought these words should be omitted.

The question of the amendment was put and carried.

THE MEMBER FOR LAW AND ORDER: The next amendment is that in sub-paragraph (1) of paragraph (d) of clause 2 (2), there should be inserted after the words "or any person", the words "being a Crown Counsel", or an administrative officer other than the administrative officer to whom such oral statement as aforesaid was made."

I should like, if I may, to suggest an amendment to that amendment—"being a Deputy Public Prosecutor or Crown Counsel". That omission was an oversight when this was drafted because a Deputy Prosecutor has the same status as Crown Counsel and should be included. The reason for this amendment is that in informal discussions on the Bill, it was suggested to me that to ensure that this questioning would be done by someone who had experience of quasi-judicial functions, it would be better to

[The Member for Law and Order] define in the Bill the class of person who could be authorized by me in this respect, rather than leaving it wide open to my discretion. I have not the slightest objection to an amendment on these lines. I suggest this amendment will meet the misgivings which I understand a certain number of Members representing African interests have in regard to this particular matter.

MR. MATHU: There is just a question. I think the hon. Member for Law and Order meets us a long way. We have under that same amendment, that same clause 2, one which will affect a further amendment that my hon. friend has moved—the amendment of "administrative officers". What I am asking you is whether I should do that now or whether non-Government amendments come first.

THE CHAIRMAN: I would prefer Government amendments. If you want to amend those amendments, then you do it afterwards.

The question of the amendment was put and carried.

THE MEMBER FOR LAW AND ORDER: Sir, the next amendment is purely a formal one: that after the words "judge or magistrate" appearing therein, the words "in the form of an affidavit made on oath by such law officer or authorized person". I think that is what one might call purely a drafting amendment, Sir.

The question of the amendment was put and carried.

THE MEMBER FOR LAW AND ORDER: The next amendment is a proposal to add a sub-section to section 8. This amendment is of a technical character because it has been discovered since this Bill was drafted there are provisions in the Criminal Procedure Code which would—at least it is argued that they would—require the charge brought under this Bill to state the name of the deponent. If that were done, it would defeat the whole object of this Bill which is, of course, to conceal the identity of the deponent. If such a sub-clause as this were not inserted, then it might be necessary to state the deponent's name in the charge. As I say, I think it is an arguable point that under the provisions of the Criminal Procedure Code it will be necessary to insert the name of the deponent which, of course,

would defeat the whole object of this procedure. Therefore, it is suggested that this sub-clause (3) should be added to this clause 8.

THE CHAIRMAN: It is proposed that clause 8 of the Bill be amended by the addition of the following new sub-clause.

(3) Where in any charge or information made or laid in any proceedings to which this Ordinance applies it is necessary to refer to a deponent, it shall be sufficient in law if such deponent is described in such charge or information as "a deponent".

MR. BLUNDELL: I do wish to point out that I asked quite clearly whether we were going to take the amendments clause by clause. I understand Mr. Mathu wishes to move an amendment earlier than these clauses. I believe it is quite wrong for Government to take their amendments down to clause 8. Subsequently, if we have agreed to those amendments, we shall be confronted by amendments by Mr. Mathu which may affect our decision upon amendments which have been put in later clauses. Are we not going to move clause 2?

THE CHAIRMAN: Mr. Blundell, it is possible, of course to do it in either way. I made inquiries and the result of my inquiry was the proper and desirable way to do it was to take all the Government clause amendments and then take the rest. If the Committee feel that they would prefer to do it the other way, of course, we will do it the other way because we want to do these things efficiently and to the desire of the Committee.

MR. BLUNDELL: Mr. Chairman, I am not wishing to embarrass you in any way. I wish to make the point that this is a procedure upon which we are embarking for the first time on this Bill. I think it is a little undesirable, I think hon. Members on this side would like to have had an opportunity of discussing it first.

THE CHAIRMAN: I agree with you because in my private Bill working in London I have met exactly the same points. What I suggest is, if the Committee agrees that we proceed now on these lines that we have started on, that before we come to the other Bills, I can perhaps have a word with the

[The Chairman]

Leader of the Council and Mr. Blundell, if we want to do it the other way, we can do it the other way. I am only here to do what the Committee wants.

The question of the amendment was put and carried.

THE CHAIRMAN: Having finished with the Government amendments, I am now proposing to take the next group of amendments, which are in the name of Mr. Mathu. Before we go on, Mr. Mathu, here again I am in the hands of the Committee. The general way of approaching this matter is to take the amendments on the Order Paper before amendments which are not on the Order Paper, but he has certain amendments which are not on the Order Paper which begin with clause 1 and the title to the Bill. Would the Committee prefer, because I think the Committee prefer, because I think this is a matter I can consult the Committee about, that Mr. Mathu first of all moves this amendment to clause 1, or that he keeps strictly to the law and moves first his amendments on the Order Paper. Perhaps I could have some indication what the Committee thinks about that.

MR. BLUNDELL: I have not had an opportunity to consult the Members opposite. The general opinion on this side is we should like to proceed clause by clause through the Bill and bring in the Members' amendments and the Order Paper amendments as we come to them.

THE MEMBER FOR EDUCATION AND LABOUR: We agree to that, Sir, I think.

THE CHAIRMAN: We will begin with your amendments which are not on the Order Paper but which are on the separate slip. I think I ought to say this. The amendment to clause 1—that clause 1 be amended in the following respects. That sub-clause 1 be amended by inserting the word "Kikuyu" after the words "temporary provisions". Now, I have had an opportunity of considering whether that amendment can be allowed. I have been fortified by another opinion, but my view is quite clear, and if we look at Standing Order 102 which provides that any amendment may be made to a clause, provided the same be relevant to the subject-matter of the Bill or pursuant to any instruction, that that amendment is not permissible. And I

say that for this reason. The Bill we are considering is a general Bill in the sense that it applies to all people of all colours, of all races, of all groups, in this Colony, and the amendment, if carried, would limit the Bill to a particular type, in other words a particular person of a particular race in the Colony. Now, in my opinion, that is such a change of the whole basis of the Bill as cannot be said to be relevant to the subject-matter of the Bill and therefore I have to inform you, Mr. Mathu, that my ruling is that that amendment is not in order.

MR. MATHU: I accept it, Sir.

THE CHAIRMAN: Therefore, it follows that your proposed amendment to the title that the word "Kikuyu" be added to the title is equally not in order.

MR. MATHU: I beg to move, Mr. Chairman, that clause 2 be amended in the following respects—that in sub-section (1) after the word "officer" appearing in line 17 insert the words "not below the rank of an officer in charge of a district".

Sir, I did indicate in the debate on the Second Reading of this Bill that we should like to limit the executives who are given powers to operate this law and if my amendment is accepted that purpose will have been achieved.

Therefore, Mr. Chairman, I beg to move.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Chairman, Government will be happy to agree to the alteration of the present words which are "the rank of an assistant superintendent" or to alter the words "administrative officer" to a "district officer". A district officer is not necessarily in charge of a district. That is the point. All district officers are magistrates anywhere by their rank.

THE CHAIRMAN: You would agree to putting in the words "district officer" instead of "administrative officer"?

THE MEMBER FOR AFRICAN AFFAIRS: I would agree to altering the words "administrative officer" to "district officer".

MR. MATHU: If my amendment, Sir, is accepted, it will mean, in effect, that the district commissioners who come into this, district officers who are in charge

[Mr. Mathu]

of districts in the absence of the district commissioners, say, on leave or elsewhere will also come into it. It will rule out all district officers in a district if the district commissioner is in the district. It will also allow deputy provincial commissioners to come into this. It will allow the provincial commissioners to come into it, but the Government amendment would, I think, rule out the deputy provincial commissioners and provincial commissioners under the Interpretation and General Clauses Ordinance. Therefore, I think my amendment gives the Government an even greater area of operation than the one as moved by the hon. Member for African Affairs.

THE MEMBER FOR AFRICAN AFFAIRS: I am not quite sure, Sir, about whether if this interpretation is right, it would rule out the provincial commissioners or deputy provincial commissioners or senior district commissioners. I do not really much mind if it does. The people I do not want to rule out are the district officers who are not in charge of districts. I would explain—in a district like Fort Hall there is a district commissioner and perhaps four district officers, and I think these statements should be able to go to any of those district officers.

MR. MATHU: Mr. Chairman, may I put it this way, Sir, that there are, therefore, two amendments. As I see it, I have my amendment and the Member for African Affairs has his.

THE CHAIRMAN: We do not know yet. Mr. Mathu: My amendment, I think, gives him wider scope, as I have already said, than the one he is moving.

MR. GIKONYO: I would like to support Mr. Mathu's amendment, for one reason. We did agree that this is a big departure from the usual procedure, and the more we eliminate as many officers as possible the better. I feel the matter would be a little bit better for that reason. I feel we must give this power to an officer who is in charge of a district or a provincial commissioner rather than to give the junior officers the responsibility.

LADY SHAW (Ukamba): Mr. Chairman, it is difficult to imagine a district

officer, in charge of a district, could be expected to take full charge of this particular item in regard to districts where there are sub-districts—places like Makueni and places like that all over a reserve where a junior officer is in charge. If we attempt to remove that power from the district officer in charge, the junior officer in charge, we are, in fact, undermining a great deal of the purpose of this Bill.

THE MEMBER FOR AFRICAN AFFAIRS: Could we take this amendment and then I will propose another one.

The question of the amendment was put and negatived.

THE MEMBER FOR AFRICAN AFFAIRS: May I, Sir, propose an amendment. The amendment would be that for the words "administrative officer" appearing in line 17 of section 2, sub-section (1) of the bill, the words "district officer" be inserted.

THE CHAIRMAN: It is proposed that in sub-clause (1) of clause 2, the word "administrative" be deleted and that they shall be replaced by the word "district".

THE MEMBER FOR AFRICAN AFFAIRS: I should like to make it apparent to the Council that a district officer includes a district commissioner. A district commissioner is in fact a district officer, a district officer who is in charge of a district is known as a district commissioner. An administrative officer includes a provincial commissioner, a deputy provincial commissioner, a district officer, a liwali, a mudir and African assistant officer.

THE SOLICITOR GENERAL: The definition, Sir, in the Interpretation and General Clauses Ordinance of "district officer" is as follows—"district officer" means any administrative officer subordinate to a deputy provincial commissioner.

MR. MATHU: Mr. Chairman, I would like to have supported this amendment but my difficulty is that it now gives the powers to people that I did not intend to have it. In other words, it excludes the senior officers in the administration, as I said. The Solicitor General bears me out—I think he does. It would be a great pity, because we want to limit these powers to the senior officers in the police force and in the Administration. If that is not the intention, Sir, I am extremely

[Mr. Mathu]

sorry because my hon. friend, in moving this amendment, has taken the other view. I would oppose it for those reasons.

MR. COOKE: Does he not wish to exclude *liwali* and *midira*? That is the reason for district officer instead of administrative officer. He is limiting it to a certain section.

THE MEMBER FOR AFRICAN AFFAIRS: I am limiting it to people who are district officers. I am limiting it to first, second and third class magistrates, who are district officers.

MR. BLUNDELL: One is a little disturbed if the hon. Member for African Affairs says he thinks he is doing this. If we are to accept this amendment, I think we ought to know what we are doing. Are we, in effect, limiting it to first, second and third class magistrates?

MR. MATHU: Mr. Chairman, I should like to make a further amendment to the amendment moved by my hon. friend if I may. I do not know how to put it but what I would like is to add after the word "officer" in the clause as amended by my hon. friend the Member for African Affairs, to insert the words "holding first and second class rank", if that is the intention of my hon. friend.

THE CHAIRMAN: A form of words, I think, which would be more accurate—I would like you to listen to this very carefully—would be, "Holding first or second class magisterial powers".

THE MEMBER FOR AFRICAN AFFAIRS: I should be very happy, Sir, to accept that.

THE CHAIRMAN: Drop the third class?

THE MEMBER FOR AFRICAN AFFAIRS: I will be happy to meet Mr. Mathu and drop the third class magistrates.

THE MEMBER FOR LAW AND ORDER: In order to avoid consequential amendments, I suggest we say, "For the purposes of this Ordinance 'administrative officer' means any officer holding first or second class magisterial powers". The marginal note would have to be amended accordingly.

THE CHAIRMAN: For the purposes of this Ordinance, an "administrative officer" means an administrative officer holding first and second class powers.

MR. MATHU: I take it, Sir, that what that means is you have the provincial commissioners, deputy provincial commissioners and one rank lower. That is a district officer who is not a district commissioner but holds the powers of a magistrate of second class powers. If that is what it means, Sir, I have lost on one point, but I think we must compromise in these matters, so I accept it.

MR. USHER: Mr. Chairman, there is just one point I wish to make. I should have thought really that the officer to whom it is desirable to administer the law is an officer possessing certain qualifications of responsibility, not a high degree of legal knowledge. I cannot understand, therefore, why the magistrate holding a subordinate court of third class should be excluded.

MR. COOKE: Is not the point, Sir, that a cadet, for instance, might hold the powers of a third class magistrate, but he might not have enough knowledge of this country, understand the mentality, and so on, of the witnesses.

THE MEMBER FOR AFRICAN AFFAIRS: That is exactly the point. An officer has to be here two or three years before he gets second class powers.

THE CHAIRMAN: I will formally put the question that clause 1 shall be amended by the addition of a new sub-clause (4) in these terms:—

"(4) For the purpose of this Ordinance an administrative officer shall be an administrative officer holding first or second class magisterial powers."

The question was put and carried.

THE CHAIRMAN: The amendment to the *skemote* and interpretation, is a consequential one which need not be put.

THE MEMBER FOR LAW AND ORDER: Mr. Chairman, I beg to move that the Committee do report progress and ask leave to sit again.

The question was put and carried.  
Council resumed.

[Mr. Speaker in the Chair.]

### REPORTS

Committee reports progress and asks leave to sit again.

THE SPEAKER: I shall have to sit again now myself. I will point out that

[The Speaker]

The Committee itself could have suspended its business for lunch and then could have resumed at 2.30 pm. and then it could have carried on to completion and then reported the completion of the Bill.

We will stand adjourned now till 2.30 p.m.

### ADJOURNMENT

*Council rose at forty-five minutes past Twelve o'clock and resumed at thirty minutes past Two o'clock.*

Order for Committee read—Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair.]

*The Evidence (Temporary Provisions) Bill—(Contd.)*

MR. MATHU: Mr. Chairman, the third amendment which I want to propose has already been covered by the amendment proposed by the hon. Member for Law and Order, and I do not think I need pursue that further.

THE CHAIRMAN: That is your second amendment. You want to say something about your third amendment.

MR. COOKE: I do not see any member of the legal profession except yourself.

THE CHAIRMAN: I should have thought that we could function without. I hold no brief for the legal profession.

MR. MATHU: Mr. Chairman, as far as my third amendment is concerned, that amendment was intended to do exactly the same thing as my second amendment was.

I think, Sir, I am covered, particularly when the definition of law officers has been appended in the Bill. I will not pursue that one, Sir.

THE CHAIRMAN: Is there any other amendment not on the Order Paper, or perhaps not even in writing?

MR. COOKE: Clause 2. I beg to move at the end of clause 2—"provided that certain areas may be schedule be exempted from the provisions of this clause". What I wanted to propose was instead of clause 2 being applied to the

whole of Kenya there should be schedules that would enable it to be applied if necessary to various areas. I am glad to see my hon. friend is back now, and if you will excuse me of any desire to exalt myself I have been nearly 40 years in this country and I probably know this country as well as my hon. friend. I have also been a magistrate and a police officer, and although in theory it may be all right to imagine that every provincial commissioner and every policeman is an archangel, in fact it does not happen to be so. Therefore, I think if you apply an Ordinance to places like the Coast you may find that the result will be that malicious and malevolent people will suggest, for instance, that *Mau Mau* is rampant in Mombasa, and then all the accompanying factors, such as searches by the police, perfectly respectable Africans held up at street corners and taken away to be gone through—screened.

I understand from a police officer himself that of 100 people that they arrest in Nairobi, 85 per cent, after screening, are released.

THE MEMBER FOR LAW AND ORDER: May I ask how relevant it is to go into details of that sort in this inquiry.

THE CHAIRMAN: I like to give every one plenty of scope.

MR. COOKE: Actually, Sir, I am answering a question asked by some hon. Members this morning. They were assuming that I was assuming that there must be a lot of *Mau Mau* people at Mombasa, or obviously this Ordinance would not apply quite rightly. But once you apply an Ordinance like this, you will find in order to track down any suggestion of *Mau Mau* activity you have all these hold-ups in Mombasa and other towns on the Coast, as in Nairobi, and that will lead, especially in Mombasa, which is very sensitive to anything like this, to explosions, and the result may be that a great many Africans in Mombasa, casual labour, which is vital to our industry at the Port, will leave the Island and not come back; even, indeed, if there is not a strike, which would upset the most important town in the country at the moment. That is my contention. I do know what I am talking

[Mr. Cooke]

about. With regard to the applicability of an Ordinance like this, and being able to schedule particular areas—my legal knowledge does not begin to run anything on the same line as my hon. friend, but being an Irishman—I know that 30 years ago, Sir, when in Ireland they applied very exceptional penalties, they were not applied to England or Scotland, although they were homogeneous units. If it was possible to have done that in the British Isles, it should be possible to schedule certain areas and bring them within the scope of the Ordinance if necessary. I do say it is a very grave matter and that we should give it very careful consideration.

DR. KARVE (— —): Sir, I really cannot follow the arguments put by the hon. Member for the Coast. We have all agreed that this is a Bill very repugnant to us but it has been accepted and having accepted it I cannot see any argument in having it applied to one part of the country and not applied to other parts of the country. (Hear, hear.) It is true that Mombasa is a port and has got its labour there from all over the country and it is quite natural that people from particular societies who have been up-country will be trickling down to Mombasa to get jobs there and it is quite likely, I am not stating this, it is quite law like this, it will be an invitation for them to be exempted from application of the law like this, it will be an invitation for them to go there. (Hear, hear.)

MR. COOKE: The hon. gentleman had every opportunity when I raised this question of principle, this morning of replying to it then, and not now.

DR. KARVE: In any case his argument about people being arrested and screened under this Ordinance is not, I think, logical. This Bill does not allow for people to be arrested and screened; that is done by other powers that are vested with the police, under which they can arrest people and take them for particular screening and arresting or for whatever it is. This Bill is only, as far as I understand it, for taking the evidence and not putting the man in the box for cross-examination. I do not know how the application of this Bill will prevent, if the police authorities do find that there are people belonging to societies in Mombasa,

how it will prevent people being arrested or being screened if this Bill is either applied to Mombasa or not. (Hear, hear)—(Applause). I therefore oppose this amendment.

MR. AWORI: I want to support the hon. Member for the Coast. I think from what we have seen this Bill has been solely put up in the case of the *Mau Mau* cases, and I don't think there is a *Mau Mau* at the Coast. Now, since we could not agree to the amendment of the hon. Mr. Mathu, I think it is quite fair we should provide a schedule where we could provide for certain areas. At the hon. Member for the Coast has said just as much as we have the law about curfew can be applied to any area, but as long as there is no trouble in that particular area we do not have to apply it. Even to the question about permits for roads, it is only going to apply to certain places where it has been arranged they should have them. Therefore, I must put the amendment of the hon. Member for the Coast that a schedule should be provided in which we can be able to exclude certain areas, since we know very well this Bill has been brought about because of intimidation of *Mau Mau*. Then why should we have to have it in the whole area.

I beg to support the hon. Member for the Coast.

THE SOLICITOR GENERAL: Mr. Chairman, I am not quite sure whether the amendment realizes how wholly impracticable it is. Crime detection, witnesses, are not governed by geographical boundaries. Does he suggest that the affidavits statements should not be taken from witnesses in Mombasa, or does he suggest that courts in Mombasa should not accept those affidavits? As I say, this is not a Bill which can logically be restricted to geographical areas, and I am directed to inform you, Sir, that this amendment is not acceptable to the Government.

MR. COOKE: I have no difficulty in replying to my hon. friend. If it is logically restricted to geographical areas, why not apply to Uganda and Tanganyika where *Mau Mau* can quite easily carry on their activities. In fact, much more easily from the practical point of view; I contend there is no difficulty whatsoever.

In Committee

THE SOLICITOR GENERAL: May I just remind the hon. gentleman that this Legislature has no jurisdiction in Tanganyika or Uganda.

MR. COOKE: I was only answering an *ad hominem* point that it was impossible to restrict to areas. My hon. friend with great lawyer skill has now tried to turn the matter to follow a hare instead of the point.

MR. HARRIS (Nairobi South): Mr. Chairman, I oppose this amendment on the same grounds as my hon. friend, Dr. Karve, in that I feel that the Mover of this amendment has used this Bill merely as a peg on which to hang a particular worry that he has got in the back of his mind. I would, Sir, as Member for Nairobi, like to take this opportunity of saying that I deprecate the remarks made by the hon. Member for the Coast in respect of police methods in Nairobi. There has not been, Sir, one word of evidence produced in this Council that the police have acted other than properly in Nairobi and I would, Sir, on behalf of the citizens of Nairobi, pay a tribute to the work that the police have done in the last two months. It may be, Sir, that the hon. Member for the Coast knows more about my constituency—perhaps he lives in it more often than I do. (Laughter.) But, Sir, I feel that we should not have innuendoes without proof. I oppose this amendment.

MR. GIKONYO: I am very surprised by the remarks by the hon. friend the Member for Nairobi South. I happen to represent the constituency which happens to be the suffering class of people. I would like to know how many people he represents have been in Nairobi. I do know the police here, and I say so with sincerity, that they have been acting improperly. There are a lot of complaints from my people, the African people, who are subjected to this improper action.

THE CHAIRMAN: Mr. Gikonyo, we must remember that we are trying to keep a line, and on another occasion we shall possibly be discussing the police in Nairobi, but this little storm has blown up, the police have been mentioned, and I think our proper course now is to drop it and to get to the matter we are really discussing, which is that certain areas should be exempted by schedule from

this Bill. Let us forget the police and keep to the areas.

MR. MATHU: On a point of order, Sir, you gave the other gentleman an opportunity to finish and to sit down. He did deny a statement that can be proved by us as far as Nairobi is concerned. I do feel you are not giving my hon. friend an opportunity to contradict that statement.

THE CHAIRMAN: Mr. Mathu, I try of course to be absolutely fair to everybody; sometimes what I do will appear to be unfair because I have got, at certain times, to drop the gullotine or to draw the line. It is quite true I allowed the Member for Nairobi to get up and state—perhaps I was wrong, but two wrongs do not make a right—and I am quite clear we ought to keep to the point. All I want to do as Chairman when I sit here, with a certain amount of understanding, because we are all human, is to keep to the point and to keep moving. If you will try to keep on with what is right I will try to play my part.

MR. GIKONYO: Mr. Chairman, I am very sorry I did not want to talk about it because I know perhaps I would have another chance later to speak about it. I was dragged into it.

MR. COOKE: To pour oil on troubled waters, I am really more amused than annoyed with the hon. gentleman who has been about five minutes a Member of this Council!

THE CHAIRMAN: Do not let us get off the point.

MR. MATHU: I repeat, these African Members oppose this Bill as a whole, but half a loaf is better than nothing, therefore if this principle which we have opposed vehemently is to operate, we would prefer it if it were operated in a restricted area than if it were extended to the whole Colony. I am sorry, Mr. Chairman, to speak with some feeling, but the reason is this—there are some Members of this Council who do not think that the African has a will, and that the opinion of the African must be respected. I say here we have an appeal. My hon. friend says he has been here forty years. I have been here for forty-five years. Can my opinion be accepted by anyone? My hon. friend the doctor from Mombasa states that people from

[Mr. Mathu] up-country infiltrated into Mombasa. In 1947, Sir, I saved Mombasa from a general strike. None of the Mombasa people managed to do that. What credit have up-country Africans except criminality? I am sorry to speak with feeling, but it is unfair. Can you not give credit where it is due? Here my hon. friend in 1947—did he stop that strike—did any other Members of the Coast Province stop that strike? They did not. We only hear of the responsibility and disappointment. The hon. Member for Law and Order knows nothing else from the African Members but disappointment. Are we children?

Sir, I support this amendment and I feel that this Government and all those who support it would be well advised to accept the amendment moved by my hon. friend, the Member for the Coast. He is a very experienced man in every way and a very fair man, and I want to support this amendment with all my heart because it is for nothing but the good of Kenya, and I do feel it is high time I said a firm statement in this matter, because I must not be afraid whatever befalls me. I am a loyal citizen of Her Majesty in Kenya as anybody else, and in the tolerance you have given me, in making my feelings felt, I do say, Sir, that let us be honest and face this issue without enacting a law out of expediency, and therefore, Sir, I would like to support whomever, Sir, I would like to support the Committee and to say, half a loaf is better than none.

MR. OGDEN: Mr. Chairman, I rise to support the Member for the Coast. I have noticed we are getting on and I think it is time that these Members should co-operate. I support him, Sir, because, when I was in Nyanza a few weeks ago, I felt I was living in paradise. I did not feel there was anything wrong, and why should we use an abused Bill which is going to become an Ordinance, just because there are no Africans here who can say that it should not be brought into force. That is why this Bill is going to pass this Council. As such, where there is not any unrest at all, areas where people are living at peace. It is wrong, and I support strongly the hon. Member for the Coast.

Mr. Chairman, I beg to support

MR. SHIERIFF ABDULLAH SALIM (Representative): Mr. Chairman, in the debate on the Bill before the Council was going on, I did not think fit to interfere to say anything about it. We go to our mandate to the hon. Member for the Coast to put it forward before the Council. I expected, Sir, that matters to be accepted because the Coast represents, Sir, many races.

Now, Sir, I find, when the Bill is introduced into this Committee, it is stated this Bill was only meant for *Mau Mau*. Very well, Sir, if it was meant for *Mau Mau* we all approved of the Bill because we thought this Bill would apply to certain areas where the *Mau Mau* is.

Now, Sir, the Motion has been brought up by the hon. Member for the Coast, the place where the atmosphere is friendly to each other. We have a good *Mau Mau* in Mombasa; we see heard about it; we have only heard it prevailing here and up-country. You have ruled out when the question of police was mentioned, and I wanted to try to drag in that that is the fear that is in the minds of people. We tax and people will be arrested under this Bill and there will be very small excuse. Anybody can go to the police station anywhere else and say, "we fear that my fellow is trying to bring in *Mau Mau* here in Mombasa." Those people are very good people too—they will be dragged into the police station and harassed at the police station. Sir, I beg the Government accepts this Motion.

I would also like to repeat what Mr. Mathu said, that the Government would be ill-advised too if they will not accept this amendment. We accepted the Bill because we thought Government would accept this Motion. If the Government is not going to accept this Motion, it must be taken to record that we will not approve this Bill.

MR. USHER: Mr. Chairman, this morning I indicated that I might be prepared to support this Motion if I could be persuaded of its practicability.

I am now persuaded that it is impracticable, but I must add to that that I am persuaded by the arguments

[Mr. Usher] that have been advanced by the promoters of this amendment that it is now revealed in all its naked absurdity. I hope that I am a law-abiding citizen and I reside at the Coast, and I, for one, do not wish to be deprived of the advantage that this Ordinance, if enacted, would provide for me if I, myself, should be in the unfortunate position of having to give evidence in a case of the kind which is contemplated in the Schedule.

I beg, therefore, to oppose the amendment.

DR. HASSAN: Sir, in the Council I have supported this Bill with the proviso that it should not be made applicable to the Coast.

Sir, I have been in the Coast almost for a quarter of a century and I have seen—I have a great experience of the Africans in that province, and the Africans in the town itself. We have a large number of Africans coming from the district which is branded as a bad district in this country. Although there were talks of *Mau Mau* and every trouble in this up-country area, we have never had anything like *Mau Mau* appearing, or being talked of among the people who went from the *Mau Mau* area into Mombasa. There are a very large number of them. They are living peacefully, following their pursuits of labour and are not in any way affected by what is happening in the areas where this trouble is growing for the last six months or a year. The Coast is situated in Kenya—Mombasa is the gate of Kenya where very important works are being carried on by the labour. Everything relies on labour in Mombasa, and we have no trouble whatsoever. Why we have to introduce a Bill there which may create conditions which are not present there—we have reserves in the Coast area; Nidiga and Giriama, Teita and Wagallas and large old settlements living very peacefully all of them. I do not think they ever thought that there is any such thing as *Mau Mau* in that area. We are very peaceful. I feel that if the people who have gone from the affected area to the Coast have not created any trouble in the past, it may be due to the sea air and they get properly educated. Why do we introduce things and spread the trouble and create more headaches and problems facing the Government. When we find there is a

localized trouble, we have merely a Bill to deal with that area. Surely this Government is not hampered from extending it to Mombasa if something does happen there to-morrow. It has not happened there. Why should we contemplate that it should happen? I strongly support the hon. Member for the Coast in this amendment.

Mr. Chairman, I beg to support.

MR. BLUNDELL: Mr. Chairman, I am opposing the amendment. I understand the desire of the hon. Member for the Coast to protect the fair name of the Coast in matters of this sort. As I have already said, this is an unpalatable Bill and what the Committee has got to make up its mind upon is this. Either the Bill is necessary, or it is not. In my view it is necessary; in my view this amendment would inevitably weaken it. I am opposed very strongly to weakening this Bill. If this Bill is unnecessary, let us throw it out. We have accepted the Bill; it means that a majority of the Committee is convinced of the necessity for the Bill. That being so, it would be an unwise step to accept an amendment in any way which would weaken it.

GROUP-CAPT. BRIGGS: I am opposed to this Motion; I would like to support Mr. Blundell. Apart from the points he has brought forward, it does seem to me that there is little purpose in the Motion at all, because after all, if there is no illegal activity, presumably the law would not be implemented. On the other hand, it does seem to me that the Mover may well do away with some of part of his objective, because it may well be that a section of the community, undesirable, might well go into the areas which they are seeking to protect.

MR. GIKONYO: I propose to support the amendment made by the Member for the Coast. We have been told in this Committee that this measure is being brought by prevailing circumstances. At the moment, as far as I know, the fact is that we know it only concerns the Central Province—for instance, we have heard much about Fort Hall, Nyeri and Kiambu. Why make it apply in a bigger place in which we have no trouble? If this law is going to be applied to meet the present situation, surely the proper place is in these places and not everywhere in Kenya.



Mr. MATHU: I should like to say a little of what my hon. friend does say. The amendment made by my hon. friend, the Member for the Coast, I think, is a very fair one. We have not been told there is any need for applying it in the Masai district, Suk, Turkana or the Northern Frontier District generally, and so on. I can enumerate other districts. I do feel, Mr. Chairman, speaking as a member of the Central Province, and as a Kikuyu, you can see what I do mean—this stigma which has been imposed on the whole Kikuyu community should not be applied to other communities in the Colony, or the African race, and the stigma of this law being introduced should not be extended to non-African communities. I think, Sir, that this tip coming from me, a Kikuyu—it can only come from sincerity and nothing else, and from fairness to other communities.

Therefore, the hon. Member for the Coast has rendered a great service to this country at a critical time to move this amendment to limit the operation of this law. I am not absolving the Kikuyu community from all the sins and evils that have been imposed on it, but I say at least that every cloud has a silver lining. There are members of the Kikuyu community who have been loyal to Government—to the whole country. Indeed, I may go to this extent, if you remove every Kikuyu in industry, in the house, *shamba* boys—in the whole country, to-day—I should like to see it done. I know, Sir, that the situation would be different. I am not suggesting that we are the only people who contribute to it, but we are one of the major factors in upholding the economic structure of this country.

There is no compulsion. I suggest to all employers to dismiss every Kikuyu in the country to-morrow, and see how things will go. I say, as a Kikuyu I am prepared to suffer with the Kikuyu people in this, and therefore to exclude everybody else, and that was the purpose of my amendment this morning, as ruled out of order. I accept it, but I think this should go on record—it comes from my sincere heart, and I am absolutely honest in what I say.

I very much support the views of Mr. Gikonyo in supporting the amendment before the Committee. I think if there

were geographical freedom, it would be for the good of the country.

LT.-COL. GROGAN (Nairobi West): Have we not had recent experiences of the extreme difficulty of confining foot-and-mouth disease to any one area of the country?

LADY SHAW: One listens to a great deal of what is being said. One realizes that there are feelings which are already sore, feelings which may in future be sore. Surely the best way of dealing with this is a country-wide Ordinance, where no distinction is made between tribe, colour or geographical areas. So long as the Ordinance applies to everybody, how can anybody feel they are being misused; if no one is excepted, no one is abused.

MR. COOKE: The hon. Member for Nairobi West suggested an idea to me when he talked about foot-and-mouth disease. There is a Schedule, and if there is an outbreak of foot-and-mouth disease in Kiambu, you do not apply it to the rest of the country.

Now, Mr. Usher approached me when I neither desired nor sought an interview. He told me thus—

MR. USHER: Order!

THE CHAIRMAN: Ought we to have this personal view? I think if everyone said—

MR. TAMENO: Mr. Chairman, I would like to draw attention to the Committee really, if they are speaking honestly, this intimidation which has caused this Bill to be brought forward is due to nothing else but *Mau Mau*, and I want it also to be understood that the oath taken might have a very big effect on this intimidation. It should be remembered that not all the tribes in Kenya can, or are, affected by this oath. The Masai, for example—if they are taking this oath, it means nothing at all to them—and it is, I think, the same with quite a number of tribes which are akin to the Masai. I would not be surprised if the other tribes in the Coast will not be affected in the least by this taking. I think it would be very wise to consider very carefully the amendment made by the hon. Member for the Coast.

Mr. GIKONYO: I do not want to keep on standing, but the point I want to make is this: The hon. and gracious

(Mr. Gikonyo)

the Member for Ukamba, told us that this law is never intended to be racial. I quite agree. In most cases it is not intended to make them racial, but in the application they become racial. I have no need to go far to illustrate that things can be racial. Looking round this place you find Africans standing. There are empty seats—(Applause from Africans in the audience)—Africans are made to stand.

THE CHAIRMAN: Order! We cannot allow this. If there is any applause from behind the bar, we must clear the hall.

MR. GIKONYO: What happens? That is the point I want to make. Here in this country we may have very good intentions which do not work out in application. I am saying this not to make an effect—it does happen. When we say things here, I think we know what we say. We have reason to believe that things can be what they are not intended to be.

MR. CROSSKILL (Mau): While not wanting to continue this discussion, I do feel that by accepting this amendment we should be performing a gross unkindness to peaceful areas of this country by excluding them. I think we would be making a field of revenge in the present peaceful areas for the operation of *Mau Mau*.

MR. HAVELOCK (Kiambu): I move that the question be now put.

THE CHAIRMAN: I am not at the moment disposed to accept that. This does affect the exercise of people's minds.

Mr. MATHU: Referring to the remarks made by the hon. gentleman who has just sat down, I should like to say that it is common knowledge that if you play the game of patting the good ones on the back, they feel happy, and therefore if this law is applied to what the hon. gentleman calls "peaceful areas" it is really unfair to them, because they have done nothing wrong. It would be a gesture to them. They now feel they are not committed to the evils that this law implies. That is the point that most of the Coast Members have brought forward. They feel that the Coast is proving peaceful, and one gentleman did say—and quite rightly—that the sea breeze you see across the Indian Ocean, does

bring some sanity, although I would like the heights we have here to have some sanity, too.

I think it would be a useful thing if the law is not applied to areas not affected so that they can feel encouraged that they are not counted with the evil-doers. The point the hon. gentleman has said I do not agree. We should give good areas encouragement and tell them: "You are not among the evil-doers—you are good chaps and carry on nicely." It will have a very good effect.

MR. COOKE: It will be all to the advantage of the Coast to keep out of the Coast those evil elements known as *Mau Mau* and, in fact, we might carry out the very purpose, on which all my hon. friends are working. If they know that this Ordinance will be applied to them unless *Mau Mau* arises, they will take fully good care that *Mau Mau* does not come to the Coast.

GROUP-CAPT. BRIGGS: No one should require a pat on the back for keeping the law. Surely that should be their duty?

MR. HAVELOCK: You did not accept my Motion so I shall speak on the amendment. I should like to bring the debate back to some of the remarks that the hon. Member made right at the beginning. He said: "Is this practicable or is it not?" When the hon. Member for the Coast moved this amendment he said that he would accept the ruling of the Attorney General as to the actual condition of the country, and the actual laws that have to be brought in to cope with those conditions. The hon. Attorney General presumably—I think he said it on the amendment, and I hope he will say it again, that this amendment is impracticable as far as this Bill is concerned and in fact, if it were passed, this amended Bill would not have the effect which is required to keep the stability of the whole country. He pointed out that people who might give evidence do not stay in one part of the country only, and often go from one district to another. It might be necessary to include powers in this Bill in different parts of the country.

I am not impressed, Sir, with arguments about particular areas free of this or that. I am only concerned about how



[Mr. Havelock]

we can meet it and the best practical way of reaching it. If the hon. Attorney General can affirm that this amendment will "not help the Bill—in fact, will only stultify powers by amendment," then I oppose it. I think what we have to do is to get this country into a proper condition for further consultations and decisions on greater matters, and I think this is one of the measures which will help to do that.

THE MEMBER FOR LAW AND ORDER: I rise to confirm as the hon. Member for Kiambu asked me to do. I have said it once when I was dealing with the suggestion of the hon. Member for the Coast in my reply on the Second Reading. The hon. Solicitor General has reiterated what I then said. This discussion has run on for some considerable time. I think it is really unnecessary for me to repeat what has been said, but for the sake of clarifying a misapprehension in the minds of some Members that, if the Bill is applied to the Coast, it will induce *Mau Mau*, I would put before them this argument for their consideration. I put it forward as a reasonable argument, based upon some experience which has occurred already in dealing with criminals of the character we are referring to and trying to deal with in this legislation.

We know that a great number of criminals who were in Nairobi have left and have gone to Fort Hall. That is the reason why Fort Hall is in such an unsatisfactory state at the present time—or one of the reasons. Now, let us suppose that criminals do move about the area, in fact, very mobile. You cannot confine them to one particular area, any more than you can as the hon. Member for Nairobi West said, confine foot-and-mouth disease to a given area by drawing a line on a map. You can only confine criminals once they are in prison. But that is a different matter. Let us suppose that this Ordinance is applied to a criminal in Fort Hall—what does he do? He begins to move. What would any hon. Member do if he was in that position? He would begin to move. And where would he move? He would move to the area where the laws were less stringent if he had any sense at all. Consequently, if you exclude Mombasa and the Coast, they would become an

asylum for this type of criminal. That is my submission, is a conclusive argument, and so I wish to extend the Bill to the whole Colony in the best interests of the constituency which my hon. friend represents.

MR. COOKE: That is no argument, Mr. Chamberlain once said: "That argument is no argument." That it is very, another infected area. It is not quite so easy to move from one infected area to a sane and healthy area. If they can move from the Coast they can move much more easily across the border; for Kenya to Tanganyika; it is only a few yards from Tanganyika; it is only a few yards from Kenya to Uganda where they can carry on their activities just as easily, indeed more easily, than the Coast. My point is that the Coast having the reputation of being a peaceful part of the country, would reject any *Mau Mau* adherents, if for no other reason than to prevent this Ordinance from being applied.

MR. AWORI: I would ask the hon. Member for Law and Order what the hon. Member for the Coast has said about territory. These laws for territories. How is it going to affect criminal who goes over to Tanganyika? That is what I should like to know.

If a criminal after committing murder or arson runs off to Tanganyika, have you got a law to provide for that?

THE MEMBER FOR LAW AND ORDER: Yes.

MR. SLADE: I move that the question be put.

THE CHAIRMAN: Mr. Slade, I am disposed to accept that Motion. I am therefore going to put it at once.

The question that the Motion be now put was carried.

The question of the amendment to clause 2 was put and on a division negatived by 31 votes to 10 votes. DR. HASSAN, AWORI, COOKE, GIKOYO, Okiwiri, Messrs. Mathu, Ododo, Tameno and Zaifud Deen, 10. NOKS: Mr. Adams, Messrs. Blundell, Blunt, Group-Capt. Briggs, Messrs. Carpenter, Crosskill, Davies, Edye, Griffith-Jones,

Lt.-Col. Grogan, Messrs. Harris, Hartwell, Havelock, Dr. Karve, Major Keyser, Lt.-Col. Marchant, Sir Charles Mortimer, Chief Mukima, Messrs. Padley, Sir Eboob Piribhai, Messrs. Riddhow, Roddan, Mohamed Ali Said, Lado Shaw, Messrs. Slade, Small, Taylor, Usher, Vasey, Wadley, Whyatt, JI. DID NOT VOTE: Mr. Neep, I. ASSENT: Dr. Anderson, Major Cavendish-Bentinck, Messrs. Hope-Jones, Jeremiah, Madan, Sheikh Mahfoud Mackawi, Messrs. Nicol, A. B. Patel, J. S. Patel, Mrs. Shaw, Mr. Chanan Singh, 11. TOTAL: 53.

THE MEMBER FOR LAW AND ORDER: Have you finished taking all the amendments? There are some further amendments to the Schedule which are necessary because it has been agreed informally that the Society Ordinance will go to a Select Committee. That means that the Society Ordinance will not come back to this Council till late October. Consequently it is fair to assume that this present Bill will become Law before the Societies Bill becomes Law. Therefore it is no longer appropriate to refer under para. II of the Schedule to the "Offence against the Societies Ordinance". Instead, I would seek to substitute the words "Penal Code" for the words and figures "Societies Ordinance, 1952" and in the next subparagraph, Sir, it will read for "section 10", "section 70", because that is the corresponding section almost word for word, to section 10 of the Societies Bill.

The next two paragraphs; if you will be good enough to substitute for section 11, (71) (a) and in the next subparagraph for 12, if you would substitute 71 (b).

The question that the words "Societies Ordinance, 1952", should stand part of the Bill was put and negatived.

The question that there be substituted for the words "Societies Ordinance, 1952", the words "Penal Code" was put and carried.

The question that there be substituted for the number 10 in paragraph 1 of Schedule B the No. 70; that there should be substituted for No. 11 in paragraph 2 of Schedule B, 71 (c); and in paragraph 3 of Schedule B there should be substituted No. 71 (b) for No. 12: was put and carried.

MR. MATHU: Might I get that right, Sir, because I did not quite get the amendment when it was originally put by my hon. friend, the Member for Law and Order, and now I find myself in a difficulty because I did not exactly, Sir, catch what the amendments were going to be and so I kept quiet. I did not vote for the three other questions which have been put. Now I find that what I am agreeing to, for each one, is that these additional penalties provided for under the Penal Code will be incorporated in this Bill because the Societies Bill is still to be considered. But, I wish to vote against all that. I do not know whether I would be in order.

THE CHAIRMAN: I quite understand. Perhaps Mr. Whyatt could explain shortly what the effects of these detailed amendments are?

THE MEMBER FOR LAW AND ORDER: I had hoped I had made it clear; the reason for this amendment is not that I wish to introduce any new matter into the Bill, but to substitute for a section in the Societies Bill a section in the Penal Code. The new sections in the Societies Bill are taken almost verbatim from the Penal Code. The reason for lifting these sections from the Penal Code and putting them in the Societies Bill is because when we have a Societies Bill it is preferable that it should apply to all societies, both lawful and unlawful. These sections in the Penal Code deal with unlawful societies. Consequently, we lifted those sections almost word for word from the Penal Code and put them into the Societies Bill. But for reasons I have explained the Societies Bill will not become law concurrently with this Bill. Therefore we must go back for the time being and deal with unlawful societies under the existing law, which is the Penal Code. There is no change in substance.

MR. MATHU: Could I just raise one point? I am clear now what is the intention of the hon. Member, I had hoped that if the views that we had expressed had got substantial support this would have been unnecessary. That was what we had hoped, that the Societies Bill, should go to Select Committee so that we should deal with them together. I am afraid that I shall have to oppose the amendment moved by my honourable friend in toto.

Mr. COOKE: I did not quite catch the amendment.

THE CHAIRMAN: As I understand the Member for Law and Order, those alterations in fact only have the effect of bringing in the same word into the Schedule, and the reason he is doing this is because the Societies Ordinance, 1952, will not be in existence for some time.

The question of the amendment was put and carried.

The question that clause 1 as amended stand part of the Bill was put and carried.

The question that clause 2 of the Bill as amended stand part of the Bill was put and carried.

The question that clause 8 of the Bill as amended stand part of the Bill was put and carried.

The question that the Schedule as amended stand part of the Bill was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR: I beg to move that the Committee do report that the Bill has passed through a Committee of the whole Council with amendment.

The question that the Committee report progress was put and carried.

(Mr. Speaker in the Chair)

#### REPORTS

Mr. NEEF: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Evidence (Temporary Provisions) Bill and to report that the Bill has been approved with amendments to clauses 1, 2, 8 and to the Schedule.

#### THIRD READING

The Evidence (Temporary Provisions) Bill

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I beg to move that the Evidence (Temporary Provisions) Bill be read a Third Time and passed.

THE SOLICITOR GENERAL seconded.  
Mr. MATHU: Mr. Speaker, under Standing Order No. 110 I should like to move an amendment to the effect that this Bill be read a Third Time this day six months.

I do not want to make a speech on it, Sir. The reasons are—we have endeavoured throughout to give to this

Council the reasons, and we do that in six months we shall be able to know—when the air is a bit more friendly—whether we really need a No, and in that time we can have a Third Reading.

Mr. Speaker, I beg to move my amendment.

Mr. AWORI seconded.

THE SPEAKER: It is proposed that the words after the word "now" be *omitted* and that the words "This day six months" be substituted therefor.

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I am afraid there is a possibility whatever of the Government accepting this amendment put forward by the hon. Mr. Mathu. In putting forward this Motion he has wisely, I think, not sought to repeat any of the arguments which he put forward earlier in this debate on the Second Reading of the Bill, and I think I should be wise also if I followed his excellent example in that respect and did not repeat myself or reiterate any of the views which I expressed earlier in this debate.

Therefore, Mr. Speaker, I beg to oppose.

The question that the words proposed to be left out of the Motion stand part of the Motion was put and carried.

The Bill was read a Third Time and passed.

#### BILLS

##### SECOND READING

The Special Districts (Administration) (Amendment) Bill

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I beg to move that the Special Districts (Administration) (Amendment) Bill be read a Second Time.

Now, Sir, I wish to be as brief as I can in moving this, because we have already ranged far and wide over the reasons which lie behind Government bringing this Bill before the Council. I would only like to refer to the fact that there is already a Special Districts Administration Ordinance, Chapter 45 in the 1948 Laws, and to point out that that Ordinance, the provisions of that Ordinance, can be applied by the Governor to certain areas or districts, as he may order, and can also be applied in whole or in part to such areas.

[The Member for African Affairs.]

The main provisions of the Bill which we are now discussing are contained in sections 3, 4, 5, 6 and 7 of the Bill before us.

The reason that we have to bring this Bill before the Council is because of the present violence and unrest that obtain in certain areas in this Colony. It has been suggested that the causes are economic. I would say that in addition to such economic causes as there may have been or as there may not be, another cause is the fact that the Government is quite convinced that a good deal of this unrest and violence is locally organized by elusive, clever, but comparatively well-known persons, at least, well known locally, and those people are either members of the *Mau Mau* or *Dhidi ya Msambwa* or both societies, particularly *Mau Mau*, or they assist in the management thereof, or they attend meetings of these societies on their premises, or they are active supporters of the aims and objects of these societies. Now, Sir, Government has been aware for some time that these people are locally well known. But up till now it was only possible to cope with these people if they broke the laws of sedition or if a case against them can be sustained under the Deportation (Immigrant British Subjects) Ordinance and a restriction order can be obtained against them. Now, Sir, it was certainly my own hope, until quite recently, that this would be possible, but, to be frank, Sir, I do not think it is, and for that reason it is necessary for the Government, if we are going to get back to a proper state of law and order, to produce a Bill before this Council to enable us to take that action.

Now, there is nothing up my sleeve. This is a Bill which asks that powers shall be given to the executive. That is a thing which does not please me. Certainly, it does not please any Members of the legal profession. I doubt if it pleases my hon. friend for the Coast here any more than it pleases me, but it is necessary.

There are, Sir, only, I think, three safeguards to this. The first one, I know, will bring a sardonic smile to the face of my hon. friend opposite from the Coast, as he has already referred to the

fact that provincial commissioners are not angels. Now, Sir, it is extremely easy and rather popular, and is becoming an increasingly frequent habit, to poke fun, if you like, start by poking fun at members of the Administration, officers and police and people in authority. It is very easy to do, and it usually raises a laugh. Personally, Sir, I think there are occasions upon which I think it is cheap, and I do feel, Sir, that in our own provincial commissioners to whom we are proposing to give powers here, we have a body of responsible, honest men of a high sense of integrity. (Hear, hear.)

The first safeguard, then, is the integrity of the provincial commissioners. The second one, Sir—I speak with all respect, is the integrity of His Excellency the Governor. I do not think I need say anything about that.

The third one is an assurance which I will give to this Council now, and that is that no order which a provincial commissioner proposes to make, under section 3—that is, 15 (a) of section 3, now section 15 (3)—no order, whether it is to move a person within a province to another place or within the same province or whether, of course, it is to move such a person to a place without that province and to another one, will be made until it has first come to myself and to my hon. friend, the Member for Law and Order, for the most careful scrutiny. That cannot be put into the Bill, but I give that assurance and that will be an administrative instruction.

Another safeguard there is to this Bill is that it is of a temporary nature and it expires, as you will all see, on the 30th day of September, 1953.

I know, Sir, that this is an unpalatable Bill to many quarters. I know and appreciate and have already said that it asks to put powers into the hands of the executive rather than the judiciary, which is not a very pleasant thing, but I believe very sincerely that it is absolutely necessary and I must ask all hon. Members to support it.

Mr. Speaker, I beg to move.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

Mr. OGDEN: Mr. Speaker, Sir, I am going to oppose the Bill because I feel

[Mr. Odede] that it is giving the provincial commissioners a dictatorial power. When a provincial commissioner is satisfied that a person has been a member of an unlawful society—has allowed such societies to hold a meeting on his land, or on his premises—he can give an order to the person to remove himself and go wherever he is supposed to go. I think, Sir, that is a wrong procedure and, when I called it a dictatorial power, I meant that we are people living in a democratic Colony, because we are under the British Government. If a person is suspected of being a member of an unlawful society, it is better to try him in the court of justice, and, if it is proved that really he has been a member of an unlawful society, then it is right to give an order for him to remove himself from his area. But without doing that, I think that we are going the wrong direction.

Again, Sir, it can be realized that some provincial commissioners might have some ill feelings against an individual and when they suspect that such a person is a member of an unlawful society, they are bound to give orders for such a person to remove himself from an area. I knew a district commissioner who, if he were a provincial commissioner at the time that this Bill had become an Ordinance, he would remove so many people from his area just because he did not agree with them in some cases before. So, I feel that if a person is suspected by the provincial commissioner, the right direction to take is to accuse him and let him be tried in the court of justice.

The other provision, Sir, the Bill gives, is that a person who has been suspected, or who the provincial commissioner is satisfied is a member of an unlawful society, should be removed without an arrest warrant.

That, Sir, I think, is also wrong because sometimes, after giving the order, something unavoidable might happen to the person, and if that something happens, he may not be able to remove himself within the period during which he is supposed to remove himself. Sir, I believe that if we want to take the right direction, we should arrest people with a warrant. Those, Sir, are my main reasons for opposing the Bill.

The other thing, Sir, I would like to add, is that most Members of the Council feel that we oppose these Bills just because we want to oppose them. It is not so. We oppose them because we see that, even if they have become Ordinances, they will not remove the causes of crime. We would like, as much as other Members, to see that there is less crime in the country, but just because we can see that these Bills, once they become Ordinances, will never help. When we want to suggest, say, better methods of dealing with crime, Sir, we go beyond the scope of the Bills and we are ruled out and so we cannot suggest such measures.

But, as I say, I can assure every Member here that we are not opposed to these Bills just because we want to be opposed to them. That should go out of the mind of every Member.

I beg to oppose, Sir.

MR. COOKE: Mr. Speaker, I agree entirely with what my friend, the Member for African Affairs, said, that this was a very distasteful Bill. But one section seems to me to be so grotesquely unjust that I must really draw the attention of the Council to it. Not only unjust, but completely impolitic:—

"15A. (1) Whenever a provincial commissioner is satisfied that any person for the time being within his jurisdiction—

(a) is, or has recently been, a member of an unlawful society;—

—has recently been. So that if a man sees the error of his ways and leaves the unlawful society he will still be liable to arrest.

Now, surely, Sir, that is putting to this man a state of mind that he might as well be hung for a sheep as a lamb. And I am very surprised that my hon. friend, Sir Charles Mortimer, should agree with this, because I was always brought up the impression, having been brought up as a parson's son, that "There was more joy in Heaven over one sinner that repenteth than over 99 just people that need no repentance".

I hope this clause can be amended.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I am quite sure the provincial commissioner will share the views expressed by the hon.

[The Member for Health, Lands and Local Government] Member for the Coast and my own views, and will rejoice with him over the sinner that repents and will not arrest him. (Laughter.)

MR. HAVELOCK: Mr. Speaker, I am perturbed at the hon. Mover at picking out the hon. Member for the Coast and a few other hon. Members as not being suspected of liking this Bill, and leaving myself and other hon. Members out of his remarks. We feel this Bill is extremely distasteful, just as any other hon. Members of this Council, I will not go over the old ground that has been fully aired in this debate, but it is only because of the facts that have been given to this Council that we feel we can support this Bill.

It is a good thing it is only temporary but, of course, one must make the point—it is here, it is said, for a year—one must make the point that all these measures, and this one particularly, must be kept in force until the actual emergency is passed, whether it is a year or six months, or even more, it is a matter of emergency and not a matter of a calendar date we should consider.

The hon. Mr. Odede, Sir, has opposed the Bill and I can quite understand his reasons. One of the main ones, I presume, is that innocent people may be persecuted under this Bill. That is a matter which is possible but I think very unlikely, in view of, as the hon. Mover said, the great regard for truth and basic principles, and, indeed, the experience of the senior administrative officers in this Colony. And, of course, even if innocent persons were actually removed under this Bill, there would not be such a very great element of persecution as there might be under other Bills.

Sir, I have one other point; Mr. Odede did say he did not consider the implementation of this Bill would remove the causes of crime. I quite understand what he means, that they would not be long-term measures that would remove the main causes of crime on long term. On the other hand, I believe at this particular moment, and the very peculiar mood in which some people are in, and the very peculiar and, indeed, malicious actions that certain people are advocating, that the removal of certain persons

will, to a great extent, remove the causes of certain crimes. (Hear, hear.)

There is only one point with which I am a little puzzled on this Bill. I would like the Member for Law and Order to answer if he could. As one reads clause 3, it would seem that the provincial commissioner only has power to remove persons from his area, not to restrict; I think there is a certain amount of confusion in that clause. If one reads after (d), Sir—

"such provincial commissioner may by order in writing require such person forthwith to remove himself from and subsequently refrain from entering any area specified in the order and to reside in such area as may be so specified";

The last words seem to be qualified by the first: "and to reside in such area as may be so specified". Does that, or does that not mean the provincial commissioner can say to a person "You will remain here in your particular district or village", or whatever it may be. I believe that is a power that could be used and should be used in certain cases in which the provincial commissioner may be in some doubt. As I read it, the provincial commissioner can only order a man to remove himself from the area, instead of only restricting him, and I do hope that some provision can be made if my reading is right. Maybe my reading is wrong.

Sir, in view of what I have said I support the Second Reading of this Bill.

MR. GIKONYO: Mr. Speaker, this is, to my mind, a very dangerous piece of legislation. By this legislation we give the provincial commissioner enormous powers. It only needs him to be satisfied that a certain person or persons, have been recently members of one of the proscribed unlawful societies. It gives him powers to act, not in his judicial capacity, but in his administrative capacity.

Here we are departing from the usual procedure. If we want to restrict a person, or a number of persons, the usual thing, and it does happen in this country now without this law, is to try him in a court of law. By doing this, then we are giving the provincial commissioner power to restrict persons without trial. In my mind I feel that it is a very dangerous thing.

[Mr. Gikonyo]

Mr. Speaker, I submit that we are living under British rule and, as such, we are fully entitled to British justice. If this Bill becomes law, we are no longer enjoying the British justice. There are some people who say that the Africans in this country to-day are not ready for British justice. To them I say that they are wrong. We must enjoy British justice.

We are told, Mr. Speaker, that sections 3, 4, 5 and 6 are temporary only for one year. But I submit, Sir, that during that one year anything can happen. Provincial commissioners can be satisfied with-in that period that all the African leaders, for instance, have recently been members of the *Mau Mau* or *Dini ya Mambwa* and they will be restricted to certain areas.

At the same time any restriction order given under this section would expire at the same time as these sections. That is not the case in this Bill. He may give restriction orders lasting for many years. We do not know. We would like to be assured that if this Bill becomes law the orders made under these provisions will expire at the same time as the sections themselves.

The hon. Member for African Affairs did say that the activities which necessitate this Bill are and, if so, I submit that this Bill should be also—he says that these people are known locally and, if they are known, why not prosecute them? There is ample power in the existing law under which they can be restricted. I know it has been done in this country.

He goes on to say further that the provincial commissioners are responsible people. I quite agree. But what about their advisers? Are they also equally responsible people? Are they honest people? Can they be deceived if people say wrong things about others? "Splitting", as we know it. For this reason, Mr. Speaker, I feel that this law is a bad law. There are some safeguards before any law becomes effective, it will have his personal attention and that of the Member for Law and Order, but if things have been wrong from the very beginning, I do not see how they can remedy them on a high level.

Mr. Speaker, I must oppose this Bill, particularly because we are giving

powers to the executive which, in some times should be given to the Judiciary. I beg to oppose, Mr. Speaker.

MR. MATHU: Mr. Speaker, I oppose this Bill—the Second Reading of this Bill—and to say, Sir, I really do not know where we are leading to. In the Bill, Sir, we are giving very wide powers to an individual who represents the Government of the Colony. We are, in doing this, widening a departure from the normal practice in matters of this kind—a practice that the British people have taught us and have defended in many ways, and we also have defended the principles through the last two world wars. We are departing from a very important principle. I ask, Mr. Speaker, whether we know where we are leading to.

To-day, this measure directed against the African community—this measure intended to be used by the head of a geographical area who represents the executive and, as things are, the head at the moment is a European. When this state of emergency is over, Sir—that is definitely the intention of Government in introducing this most pernicious piece of legislation—when we, sitting in this Council to-day, pass away and are buried—when our children and our children's children come to reside here, they will look back in history over the past years and say: "Those bunch of men and women in Kenya in 1952 were out of their senses".

I say this, Sir, because I look on this matter not as a temporary measure—I look at this as a permanent measure in this respect, that in human nature there are spheres that transcend time, and is the creation of a psychological outlook of the population of this land, by giving these powers to an executive the objective will not expire with time. The impressions of the brain of the people of this country will last, and my question, Mr. Speaker, is this: Will those impressions be of a happy, friendly relationship between the communities who have found Kenya to be their home? I say, Sir, that we are here to live together, and nothing will separate the communities in this land.

What legacy, Mr. Speaker, I ask, of giving so extensive powers of almost life and death to an individual—what legacy,

[1] Special Districts (Administration)—

[Mr. Mathu]

Mr. Speaker, do we leave to future generations of Kenya, which I am proud to call my home?

During the debate which has just ended, we have—

THE SPEAKER: I must call you to order. You know very well—you are an old Member here. Mr. Mathu—it is not allowed to keep referring back to past debates. This has been stated. I would call hon. Members' attention to Standing Order No. 84 whereby the tedious repetition of other Members' arguments, after all—and not only that, you seem to me to have misconceived the whole measure before Council. It is not a general one. It only applies to certain districts. You are speaking as if this was universal law.

MR. MATHU: Mr. Speaker, I bow to your ruling and I shall promise you to keep within the provisions of this measure.

There are certain districts, Sir, to which this measure is intended to apply. The provincial commissioner is given powers to issue an order to a person who may be one of the classes enumerated in 15A. My hon. friend the Member for the Coast has pointed out in regard to 15A (1) and I should also like to mention a similar difficulty in regard to 15A (1) (a) where a provincial commissioner can issue an order to a person to remove himself if he has recently managed or assisted in the management of an unlawful society. You find, actually, the repetition of that wording throughout (c) and (d), and I do feel, Sir, that it would be important if this Bill does become law, to limit the number of persons that the provincial commissioner can issue this order to. I would like to say, Sir, that we would prefer, and indeed, we would like to represent that this power should be given to the Judiciary—they should try the individuals concerned and issue an order for their removal or otherwise. We do not think that it is at all fair that the provincial commissioner should exercise these powers. To begin with, the power we give to the provincial commissioner is not judicial, but in the event of a person who has been ordered to remove himself, failing to obey that order, he is arrested by the police without warrant, and steps are taken to find out whether he can be con-

vinced. There are some stages where "judicial" comes into it, and I think it would be more logical if the Judiciary had the thing from the beginning to the end. I agreed earlier on, Sir, that these powers are very extensive and the provincial commissioner has almost power of life and death. The provincial commissioner can not only issue an order to a person living apparently in liberty but to a person living already in prison, and that person in prison, therefore, will have to obey this order and have no opportunity for defending himself. That applies to other persons who would be arrested or issued with the order. There is no opportunity whatever for him to defend himself. I would like, Sir, if I may in the danger of being accused of repeating myself, emphasize that I do ask this Council to see that we are not only negative—we are making here a positive suggestion to show you that we do not wish to be donkey-headed and refuse everything. We have a suggestion—use these powers if you must, but use them with the Judiciary. If you tell us that this is not a positive contribution, then I do not know what is. In other words, we are saying if you must have these powers cannot you have them through the magistrates and further, my hon. friend the Member for African Affairs, who I must congratulate for a very short speech to the point, did say that we have a law in the Statute Book, to-day, the Deportation (British Immigrant Subjects) Ordinance; if we cannot use that, why not? Why should we not use that law? In other words, we are not suggesting that our people are immigrants, we are suggesting that they might be charged against the law here. Try them, find them guilty, put them inside! I hope that will be taken as a reasonable point of view in putting our case for opposing the Second Reading of this Bill. I should like, Sir, before I sit down to say that it is true that these provisions are intended to be applied to certain districts only, and I do say, Sir, that the principles which can be applied in a particular district can be extended to other districts, and therefore I feel, Sir, that this Council would be doing a great fairness to this country and to the rest of the world, if, in the last result, they would agree to an amendment we are going to move in the Committee Stage—that these powers—when

[Mr. Mathu] we are defeated in our opposition to the Second Reading of this Bill, which I know we shall be—that the magistrate shall exercise these powers here and not the provincial commissioner. If we are defeated in that also—and we shall be—I shall be very unhappy about it all, and say we shall be creating a situation that was in Italy in the 16th century, when Machiavelli wrote a very famous work called "The Prince". Machiavelli, in the 16th century believed that the only way of putting things right would be for the government or the prince or whatever name you give to the man in charge of affairs to have an objective and pursue it at all costs. The means will justify the end and I say, Sir, that that was Machiavelli. "The Prince" was the precursor of Mussolini and Hitler and if we are leading to that, Sir, I am sorry—we are doing it all wrong.

If I may express my appreciation of what the British Government are trying to do in this country and what my hon. friend is trying to do through the Administration for my own people—we are not forgetful of that—but I tell him, Sir, when history will be written, whether this will be said of him, as it was said of Machiavelli by an English writer called Macaulay. He said this, "Although Machiavelli schemed for a state of affairs where super-tyrants, irrespective of the human sufferings, would govern the country by subjecting it to their own absolute domination." There was something good which Macaulay found in the scheme. He said: "We are acquainted with few writings which exhibit so rough elevation of sentiment, so pure and warm a zeal for public good, or so just a view of the duties and rights of citizens as those of Machiavelli". Can the future say so of my hon. friend the Member for African Affairs? If that will not go into history, then, Sir, the picture which I have tried to paint, that we are going in the wrong path, will be recorded of the Government of the country to-day.

Mr. Speaker, I beg to oppose the Motion.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Deputy Speaker, I think Members on both sides of the Council would welcome a short break.

Council adjourned at thirty minutes past Four o'clock and resumed at five minutes past Four o'clock.

Mr. TAMENO: Mr. Speaker, Sir, I would like to oppose this Bill because I feel the wisdom of it. It has been proved for that any person found associated with an unlawful society or who lets in encouraging these unlawful societies to be tried in court and the restriction are there. I think what has been passed earlier in the Council—I mean admission of affidavits—is such that it is sufficient to get a person convicted by the provincial commissioner can make use of the powers he has got to get the person out of his area. When I say I do not see the wisdom of this Bill, I mean a person may be asked to remove himself to another area. Consequently he shows that this man is an undesirable person in this area. One cannot take rubbish and put them in somebody's house. It may be very dangerous in taking a person from one place to another place and, in principle, I would like to oppose this Bill.

GROUP-CAPT. BRIGGS: I rise in support of this Bill and, in supporting it, I am influenced by the grave news which has reached me this afternoon concerning outrages which took place on certain European farms in Timau area last night. I do not propose to go into details because I cannot personally vouch for them—I received them over the telephone. I would like to ask Government, with your permission, whether they are prepared to make a statement on the matter.

Mr. AWORKI: While opposing this Bill I associate myself with the views expressed by the hon. Mr. Mathu and go from what I gathered we do not call an emergency session but a *Mau Mau* session. We are opposing for one big reason—that we are giving power to our man. Now of course as the hon. Member for African Affairs told us about the integrity of the provincial commissioner, I cannot contest that—I trust that they have got wisdom and that they will carry out measures in the proper sense but after all, we know everything that is passed here is passed by the Governor. The same will apply to the provincial

Special Districts (Administration)—

[Mr. Aworki] commissioner, and he does not know everyone in his area. He is going to get advice from the district commissioners, the police and individuals. This is going to put us in a dangerous position, because these people are going to come forward and say "So-and-so is a member of the *Mau Mau*". They do not need to prove him a member because he is denied the rights of courts. There are quite a number of people who have been put in prison or sentenced. These people, after they are sentenced, will come out and be victims of this Bill, because after having served a sentence as members of *Mau Mau* or the *Dini Ya Mwanbwa*, the provincial commissioner has got power to say they are undesirable and can send them away to another area. Now, these people have been convicted already, then why double their sentence, particularly if it is much worse when somebody is sent out. I think a prison sentence is better because he knows that for a certain length of time he will be in prison and come out and stay at his home. He might after his sentence, after coming out of prison, become a good man. But how can he prove it since it has been proved already that he is a member of *Mau Mau* or of these subversive organizations.

Now, Sir, I would not like myself or any other person to leave his present area because of the offence that he did and be subjected to these restrictions elsewhere. Think of his family, his property, all that he will have to forget and start life afresh.

Now, he is not going to a good area of his own choice and I think the Bill has got in view that these people will be deported to the Northern Frontier District because they are afraid to be sent from the Central Province will not be man to Nyanza Province since he might go and spread what is called subversive propaganda that side. Now, Sir, is this Bill really necessary? Do we think that the circumstances at present warrant such drastic measures? Already we have got a law restricting people—a law that can convict them in court and send them away to another area. Then why make another law, particularly empowering one man to do justice, if it is justice at all, to a group of people. My submission, Sir, is that already the provincial commissioners have made a complete dossier

of the people whom they would like to remove, and although the hon. Member for African Affairs has told us that it is a temporary law which means that it would expire by 30th September next year, still the effects will be great because, within that one year, an awful lot can happen. Quite a number of people could be deported.

Now, Sir, we all know that this law, as the hon. Member for African Affairs has told us, shall affect only certain districts, but after all, say, if a member of *Mau Mau* is living in the Coast Province—where we know there is no *Mau Mau*—the Provincial Commissioner has got a right of removing him; or if a member of *Dini Ya Mwanbwa* is living in another area where these subversive organizations are not taking place, the provincial commissioner in that particular area has got a right, according to this Bill, to remove him. Now, Sir, how would you say that this law will not be universal for the whole of Kenya? It is universal because it will affect the person wherever he is and is proved to be a member of the subversive organizations. Of course, the hon. Member for African Affairs has explained to us the necessary safeguards, but then, as we have heard in other Bills, Government has got the right of telling that these are safeguards; but we are all human beings, we are bound to err. How can we make sure that these safeguards will really be obeyed or they will be adhered to? I do not think so and I must contest and deplore the fact that we have to debate a Bill which, in the words of the hon. Member for African Affairs, is not palatable. If he himself agrees it is not palatable, why should he bring it up? He knows it is going to affect the innocent. We believe that British justice is going to be adhered to but all the time every Bill for which we come here, we must be told it is not palatable and of course, due to the present circumstances, we must get away a bit from the real law. I think people in other countries are going to wonder what sort of country Kenya is if every time, because of certain occurrences in a few localities, Government must act at once with these emergency measures. No, Sir, we believe that we would like to co-operate with Government, but this is not going to help real co-operation. We, as representatives of our people, we feel we must voice

[Mr. Awori]

their grievances. We must voice the opinions; but my colleagues here and my fellow Africans outside would vouch for all my statements that what I am voicing is what they also voice in these circumstances. We do not want to establish laws in Kenya which are not practised in other countries or which other civilized countries would laugh at and wonder what sort of Government this would be that introduces laws that I think even the animals would abhor.

Now, Sir, this is a very serious Bill and I would like the whole Council to take it seriously, to think of the effects. Let us forget about the crime and unrest. We know there is a certain amount of it, but if it is so dangerous as we are supposed to believe, by the enactment of these Bills here, I think it is most unfair, because of exaggeration, to introduce these measures, and I would agree that hon. Members should think very much of the suffer and the people who are going to lose their homes and families because they happen, at one time, to be members of these secret movements, particularly after they have suffered their sentences. It is most unfair.

Last of all, Sir, before I sit down, I would ask that if this Bill is not withdrawn then the provincial commissioner should not be given such dictatorial powers of moving a person at his will. Sir, I beg to oppose.

**THE SOLICITOR GENERAL:** Mr. Speaker, it appears that there is some misapprehension regarding the effect of clause 4 of the Bill, relating to an order of detention. Now that provision which is to be a new sub-section (1) to section 22 of the principal Ordinance, relates to the making of an order in respect of a person who has been convicted of an offence which involves disobedience of a removal order, and the purpose of this provision is to enable the provincial commissioner to make an order authorizing the arrest and detention of the convicted person during the period within which he may lodge an appeal, and if he does lodge an appeal, and if the determination of the appeal, on the expiry of whichever period is applicable, the person detained is then removed to the area in which he is required to reside

by the removal order which he has obeyed and for which disobedience has been convicted.

**MR. HAVELOCK:** May I ask him to answer the question of clause 3?

**THE SOLICITOR GENERAL:** As I understand the hon. gentleman, he is referring to 15 (a), the powers under sub-section (1)—whether there is power to improve conditions. The powers of a provincial commissioner under sub-section (1) are to order the removal of the person who is the subject of the order, to order him to refrain from re-entering the area from which he is removed and to reside in another area.

**THE SPEAKER:** I will ask the hon. Member to reply.

**THE MEMBER FOR AFRICAN AFFAIRS:** I will endeavour to answer the various points raised by hon. Members. First of all, I would like to repeat again that this is quite frankly a Bill which is to give big powers into the hands of provincial commissioners and not into the hands of the Judiciary. I do not attempt to minimize the unpalatability of that fact.

The hon. Member, Mr. Odede queries the ability of provincial commissioners or district commissioners to avoid taking notice of their personal grievances in this matter. Fortunately, we are all happy that district commissioners are all provincial commissioners! I am quite happy and perfectly certain that the provincial commissioners would not exercise any allow personal grievances to affect their judgment in these matters. On the matter of arrest without a warrant, this has been answered by my hon. friend, the Solicitor General.

I must apologize to the hon. Member for Kiambu for not including him as well as my hon. friend for the Coast, as so likely to oppose the Bill. We have got to a stage where we have got to have the Bill. We tried to cope with the situation under the law as it existed, and my hon. friend for the Coast has accused me in a previous debate of not taking earlier action. We waited as long as we could, necessary and we have had to bring this Bill before the Council.

My friend, the hon. Member, Mr. Gikonyo asked if the restriction order might not go on for a long, long time.

[The Member for African Affairs]

Any order made under this Bill—he will find under section 7—shall have effect until the 30th day of September, 1953, and shall then expire.

Then, Sir, the hon. Member, Mr. Mathu—I am afraid I got confused—I could not understand whether I was a saint, Lord Macaulay, or possibly the Prince? I am some sort of unholy trinity in this matter. Mr. Mathu asked "where is this leading to?" I hope it is leading to a decent, orderly, peaceful Kenya in a short time. Whether, in a hundred years' time, people will point and say this man was Machiavelli or Lord Macaulay—well, we shall all be pushing up the daisies at that time, and it would be a great pity if people then said the wrong thing!

He suggested the powers should be in the hands of the Judiciary. This is quite frankly a Bill designed to put power in the hands of the executives for a brief period and it is not designed to put it in the hands of the Judiciary. He asked that magistrates rather than provincial commissioners should have these powers. Provincial commissioners are already magistrates. Twice I think I heard the Member suggesting that advisers to provincial commissioners were not men of integrity—that there might well be *fitna* or ill will. The provincial commissioners are men of some experience and we hope that they, plus my hon. friend, the Attorney General and myself will be able to sift the chaff but of any advice given when we only want to find the wheat.

The hon. Member for the Aberdeens asked whether Government was prepared to make a statement about an incident he had heard reported which had occurred in his constituency during the last few hours. Government had already received a report and appropriate police action has been taken and Government is not prepared to make a further statement on that.

We have been adjured by the hon. Mr. Awori to forget the crime and unrest. I suggest that if the hon. Mr. Awori's relatives had been dealt with in a similar way as people in the Central Province have been, by thugs, and by thugs acting or urged to act by people who persuaded them, then I think he

would not be able to suggest or be ready to suggest that we forget the crime and unrest and violence that beset this particular part of this country, (Hear, hear.)

This is an unpalatable Bill; it is a temporary Bill. It will, I can assure; the hon. Members, be applied with as much discretion as possible and it will not be applied in cases where the ordinary existing laws of the Colony can be applied. I give that assurance very willingly and I must ask all other hon. Members to support it.

**THE SPEAKER:** If the hon. Member wants to divide he should speak up at the appropriate time. The Motion has been carried and a division would be absolutely unnecessary, judging from the number of "Ayes" that I heard.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read, Mr. Speaker left the Chair.

#### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

#### Clause 3

**MR. MATHU:** Mr. Chairman, I should like to move that in clause 15A, (f) the word "Magistrate" be substituted for the words "provincial commissioner". If I have it wrongly, I will get your permission to make a further amendment. My intention there was that this purpose should be exercised by the Judiciary but if the word "magistrate" means also the provincial commissioner . . . I did not know the magistrate and the provincial commissioner were one and the same person and the same person may refer to the same people.

**THE CHAIRMAN:** Perhaps Mr. Whyatt could help the Committee.

**THE MEMBER FOR LAW AND ORDER:** He holds magisterial powers. He holds first-class magisterial powers. It is a similar point to the one we raised this morning.

**THE CHAIRMAN:** Then, Mr. Mathu, it may follow on that the form of your amendment may well be that you want to insert the word "magistrate" not being a provincial commissioner. If you do that I think that will be what you want.

MR. MATHIU: I want nothing else but a "magistrate" not an officer holding two posts—magisterial and judicial.

THE CHAIRMAN: I am proposing, Mr. Mathiu, that you may get what you want by leaving in the words "provincial commissioner" wherever they occur, and putting in front of them these words "magistrate not being".

MR. COOKE: "Magistrate not being an administrative officer" would meet it, Sir.

MR. MATHIU: That would meet it, Sir.

THE MEMBER FOR AFRICAN AFFAIRS: I think if we say that we shall allow justice of the peace, resident magistrates.

THE CHAIRMAN: If the Committee agrees, what I would like to do is this: to take the words that Mr. Cooke has suggested on the understanding that if you carry your amendment in the final form of words I am sure the law officers would help. May we leave it like that? You will speak, Mr. Mathiu, to the amendment, to the effect which you want. The final form of words will be agreed to by the law officers if you carry your amendment.

MR. MATHIU: I take it, Sir, my amendment would be that in section 15A (1) "the magistrate not being an administrative officer" shall take the place of the words "provincial commissioner". Well, that would meet me, Sir, because my whole intention is this and I do appeal to the Committee to see that this is quite an innocuous amendment, in the sense that you will carry exactly what you want and therefore I do hope the hon. Member, the Member for African Affairs, will accept this one. All I want is that the administrative officers should be removed from exercising these powers and these powers should be entirely done by those who carry out the judicial functions in the Special Districts which we want this law to apply to. I do hope I will get the support of the Committee, Sir, because I think it is quite a moderate request and you will definitely reach the same goal.

THE CHAIRMAN: It is proposed that clause 3 of the Bill be amended in the following respects: That the words in section 15A (1) "provincial commissioner" wherever they occur shall be replaced by the words "magistrate not being an administrative officer".

THE MEMBER FOR AFRICAN AFFAIRS: I am sorry, Sir, the Government could not accept that. I must suggest, Sir, that if there is one, there are at least two Machiavellis in this room.

MR. MATHIU: May we hear what the hon. Member said.

THE MEMBER FOR AFRICAN AFFAIRS: I suggest, Sir, that the Government could not accept Mr. Mathiu's amendment and I also went on to say that if there was one Machiavelli in this Committee, to which I believe he has already compared me, I would suggest that there are two.

MR. MATHIU: I am sorry my hon. friend should turn down this very reasonable suggestion and it is a pity that he should do so because he loses nothing in fact, in fact he gains because he gets greater co-operation than he is going to do, whether he is Machiavelli or not, and I am sorry that Government has definitely made up their mind to give not one inch to our request and I think it is almost as if we do not exist. Perhaps they would request us to withdraw from the Council.

The question of the amendment was put and negatived.

MR. COOKE: Mr. Chairman, may I propose in clause 15A (1) (a) that the words "or has recently been" be deleted. As I have said before, it is quite unfair to put a man in prison who has already left the society and has seen the error of his ways.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Chairman, Government will be very happy to accept that amendment.

MR. MATHIU: I wanted to move another amendment.

THE CHAIRMAN: Do you want to speak on this one? The Government has accepted it, you do not want to oppose it?

The question that "or has recently been" shall stand part of the Bill was put and carried.

LADY SHAW: Mr. Chairman, I think that in our amending of this last clause, we have amended under a misapprehension. If it is true that a man has repented of his ways and has changed his mind and become a good boy, well, then I think we are very right. I would like to include another provision in it,

[Lady Shaw]

because I wish to put in the words "or has been known recently to have been a member". It is quite a different thing. You have taken out "or recently has been" I want to insert, after "is", "or has been known recently to have been". That, to my mind, is a completely different thing. The inference from I think, this rather clumsily worded clause that we have amended is that the man has ceased to be a member. To my mind that was not the intention when that clause was written. The intention was that it might not be possible to prove, at this moment, that he was a member, but he was well known to have been a member very recently. I would like to suggest, having omitted the previous words, the words I suggest should be inserted.

THE CHAIRMAN: It is proposed, in section 15A (1) in clause 3, in (a), the following words shall be inserted after the word "is", "or has been known recently to have been".

MR. COOKE: It seems to me to be a distinction without a difference.

THE MEMBER FOR AFRICAN AFFAIRS: I do not think that it is necessary. The Government has agreed to the expunging of these words, "or has recently been", and, if we leave section (d) as it is, as I hope we shall, I should be quite happy to have section (a) as we have now amended it to be. I do not think we want to have "or has been known recently to have been".

LADY SHAW: The last words I heard were that section (d) was going to be amended. If section (d) is left as it is, I do not wish to press my amendment, but if section (d) is going to be amended, I do wish to press my amendment. I shall press it when that does come up.

THE CHAIRMAN: If the Committee agrees, although it is a little irregular, I think it would be better to leave your amendment outstanding for the moment, and to pass on to (h). You are not interested in (h)? Mr. Mathiu wants to deal with (d); let us see what happens, then we can come back.

MR. MATHIU: Mr. Chairman, I want to move the deletion of the words in (d), "or has recently been", for the same arguments that my hon. friend, the

Member for the Coast, used in getting the Committee to agree to the deletion of the similar words in 15A (1) (a), and I do not think I should elaborate on that one. For the same reasons, I think it would be very illogical if we accept the first and do not accept the other one in (d).

THE MEMBER FOR AFRICAN AFFAIRS: No, Sir, the Government could not accept that amendment. We did accept the previous one because it had been pointed out during the debate that it would be hard to apply what amounts to almost a restriction order—an order under this Bill—to a man who has already been convicted of being a member of *Mau Mau*, and after he came out of gaol to put a new order on him under this Bill. That was not the intention of this Bill, and I was perfectly happy to accept the amendment to 15A (1) (a). But 15A (1) (d) is something quite different, and I could not accept that.

MR. MATHIU: Mr. Chairman, I cannot see the difference in this, because in (d), this particular man has not been an active supporter of the aims and objects of such a society. English, Sir, is not my mother tongue and perhaps I do not quite understand, but that is how I read it, that this particular Mr. X has recently been an active supporter of these dreadful things but now, right now, he has given up any active support to it. Why, then, should we move him? He is not doing it at all. Do you move him because he has let it go? I simply cannot see the difference between the arguments advanced by my hon. friend, the Member for the Coast, which got the Committee to agree, and this one. I do not want to repeat myself, because it is abundantly clear, and I would like to press for this amendment, Sir, because, on the same grounds as the Committee agreed to the amendment in 15A (1) (a).

MR. OODEI: I support Mr. Mathiu, Sir, because in (a) it is a member who has been in the active member; but in this one he has only been an active supporter. He will not be a member.

Now, Mr. Mathiu's argument is very logical because in (d) he has been only a supporter and in (a) he has been a member. So I think if Government does not accept that amendment, then we people here will say, that Government



[Mr. Odele] does not want our co-operation at all. And I think that Government does not want our co-operation, because Government sent us these Bills on Tuesday of this week and expected us to know all about them, while the other communities had known everything. Our leader had been away and none of us were meant to know anything about these things. How can we co-operate with Government in these things. It is ridiculous to blame us and say that we do not want to co-operate.

THE CHAIRMAN: Mr. Odele, speak to the point.

MR. ODELE: Mr. Chairman, I speak to the point as make it clear that, indeed, the person has only been an active supporter in (a) but in (a) had been a member; which is much stronger, to be a member or to be a supporter?

MR. EDY (Nominated Member): Mr. Chairman, I do not quite see the last hon. speaker's argument. As I understand it, the member can be quite easily a passive member of the societies and under (a), which Government has agreed to accept the amendment to that, the member has ceased to be a member. That is the point we are trying to make. Whereas, to my mind, an active supporter can be very much more dangerous than a passive member, and someone who has ceased to be a member. I cannot tell how an active supporter of yesterday can be guaranteed not to be an active supporter of to-morrow, I cannot see how this argument is getting anywhere.

MR. COOKE: I suggest (d) is redundant. Anybody would be caught under (a) in any case, because he could not assist in the management of these societies unless he is a member. He is already covered by (a). I suggest (d) is redundant.

MR. JIKONDO: Arising out of the hon. Mr. Edy's remarks, I cannot see how the Government can accept the amendment to (a) and not to (d), because he has also ceased to be an active supporter. What guarantee have we got "A" will not be a member again.

MR. AWORI: I had a different amendment to both (a) and (d).

THE CHAIRMAN: Water is lapping about our ankles. When we have finished we will deal with that one.

LADY SHAW: I would like to propose this amendment for exactly the reasons I gave when I proposed my previous amendment. That is to say it would be almost impossible, probably, to prove a man is an active supporter at this very moment. I have the greatest possible respect for the wiles and intricacies of the law and I believe that if you leave this word "is" in alone you could drive a coach and horses through the whole thing. If a man has been an active supporter recently—after all, recently, does mean within the past few months, not two or three years ago—it means almost certainly he is an active supporter now. Now, one must be permitted to make certain assumptions, and one of the assumptions I should like to make is, if he was an active supporter a short time ago, recently, he is still an active supporter.

I should also like to make another assumption, that this thing will be dealt with fairly. A man who is known to have mended his ways, ceased to be an active supporter a considerable length of time ago, will not be treated in this way. I think that is a fair assumption, and I personally will oppose the amendment.

THE MEMBER FOR LAW AND ORDER: I rise to congratulate the hon. and gracious lady for Ukamba on the lucid explanation which she gave, which entirely accords with the views which I should have liked to have expressed earlier but could not express because so many people wanted to speak. If I rise, it is merely to underline what she has said. Let me put it clearly, so that my hon. friends who have been arguing the point can follow me. Suppose the provincial commissioner is satisfied that Mr. "A" was an active supporter on the 31st of August. That is the information up to date. That information may not, in fact, reach him until the 25th September, that is, to-day. He may not have had further information since the 31st of August. Therefore, he cannot say categorically that Mr. "A" is to-day, on the 25th of September, an active supporter, but he does know, and he is satisfied, that he was an active supporter on the 31st of August, and that is sufficient for the purposes of this Bill.

[The Member for Law and Order]

As the hon. Member pointed out, if you leave it so that he must, at this very moment be an active supporter, it would be a rare case indeed, that the confidential information was right up to date, when you were making your decision. Therefore, this must remain, I quite agree that to leave these words out of paragraph (a) is logical, but it matters not, because this paragraph is sufficiently comprehensive to cover all possibilities.

MR. MATHU: I should like to take from the mouth of my hon. and learned friend, the argument which he has put forward to oppose this amendment. Now, can he tell me, Sir, what the answer to this would be. "A" on the 31st of August was a member of an unlawful society and on the 25th of September the confidential reports would say that he is no longer a member of an unlawful society. The information has not reached him but it is known that he was announced to be a member up to the 25th of September. Now, what guarantee has the Member that this man on the 31st of October will not—I am going a month further ahead—what guarantee has the hon. Member, Sir, that this particular Mr. "A" has not then gone back, and I think that is the very same argument. Because, as far as the active supporting of the unlawful society is concerned, he uses exactly the same argument. If on the 31st of August he was supporting that organization and on the 25th of September he has ceased to support the organization actively, as he was not a member I feel he should know what has to be served on him. That, I think, is the issue.

MR. TAMENO: I am opposed according to what I understand 15A (1) (a). A member is a member as well as a supporter—he is much more dangerous, (d) is only an active supporter.

MR. ONDIE: Mr. Chairman, I do not want to say anything much now but I wonder why even our friends who expressed the views that they want co-operation cannot even co-operate with us in these things.

DR. HASSAN: I feel, Sir, that section 3 has—that it wants to include people who were reported to be a supporter of the Society, but it was not proved: it was

not proved to the authorities so that they could take action against them, because it has been declared unlawful that he was not a member or a supporter of that Society. It has been said that any person suspected of being a supporter of that Society will also stand to be deported although no proof has ever been found against him, Sir, I feel that this Bill, for the Special Districts, if it was aiming at trying to deal with those people who will be committing an offence, by being a supporter of a Society, it ought to serve the purpose of what is expected of this Government under this Bill.

THE CHAIRMAN: If there is nobody else who wants to speak I will put the question.

The question is that in line 32 in clause 3 of the Bill the words "Or has recently been" stand part of the Bill.

The question was put and on a division carried by 32 votes to 9 votes. (AYES: Messrs. Adams, Blundell, Blunt, Group-Captain Briggs, Messrs. Carpenter, Crosskill, Davies, Elye, Griffiths-Jones, Lt.-Col. Grogan, Messrs. Harris, Hartwell, Havelock, Dr. Karve, Major Keyser, Lt.-Col. Marchant, Sir Charles Mortimer, Chief Mukima, Messrs. Okwirry, Pudley, Sir Eboe Piribhai, Messrs. Riddoch, Roddan, Mohamed Ali Said, Lady Shaw, Messrs. Slade, Small, Taylor, Usher, Vasey, Wadley, Whyatt, 32. NOES: Messrs. Awori, Cooke, Gikonyo, Dr. Hassan, Messrs. Mathu, Odele, Sheriff Abdullah, Messrs. Tameno and Zafrud Eben. 9. DID NOT VOTE: Mr. Neep, I. ASSENT: Dr. Anderson, Major Cavendish-Bentley, Messrs. Hope-Jones, Jeremiah, Madan, Sheikh, Mahfood Mwakawi, Messrs. Nicol, A. B. Patel, J. S. Patel, Mrs. Shaw, Mr. Chanan Singh, 11. TOTAL: 53.)

THE CHAIRMAN: Lady Shaw, does that dispose of your amendment?

LADY SHAW: It improves it. I am not entirely satisfied but I will adopt it.

THE CHAIRMAN: Now has anyone else any amendment before we pass from it.

MR. MATHU: I would like to amend 15 (a) (1) (b). "Or has recently managed or has assisted in the management of," be omitted. In other words, the power of the provincial commissioner to serve



[Mr. Mathu] an order will only be restricted to a person who manages or assists in the management of any such Society, and the arguments, Sir, are very similar to those which were advanced by the Member for the Coast on sub-section (a) and accepted by the Committee and have been exactly the same that we have advanced in respect of (a) and have been negated. I would like the Committee this time to consider whether they would be prepared to support us in this amendment.

**THE CHAIRMAN:** It is proposed that in clause 3 on line 26 and in the following lines these words shall be omitted: "or has recently managed or assisted in the management of".

**THE MEMBER FOR AFRICAN AFFAIRS:** Mr. Chairman, Sir, Government is unable to accept the amendment for the argument put forward very lucidly by my friend the hon. Attorney General and by the hon. gracious lady—member for Ukamba.

**MR. AWORI:** Take for instance a person who has recently managed a society which is subversive. He changes his mind, he thinks what he has been doing is wrong and cuts away from that organization, I see no reason why he should come under this clause when his guilty conscience has made him remove himself away from the guilty parties. That is why I support Mr. Mathu about deleting these lines.

**MR. COOKS:** I submit it is redundant—it has already been covered by (a). I personally believe it redundant.

**THE CHAIRMAN:** If nobody else wants to speak I will put the question.

The question was put and carried.

**THE CHAIRMAN:** Is there any other amendment to clause 3.

**MR. MATHU:** If you might assist me I would like to put just a few words. I think this—"such provincial commissioner may by order in writing require such person forthwith to remove himself from and subsequently refrain from entering any area specified in the order and to reside in such area as may be so specified".

After the word "writing" I would like to insert "restrict the movements of or require such persons".

If I may speak to it Sir, I would like to say my intention of moving this amendment is that the provincial commissioner may find that he is not absolutely satisfied that the allegations against a particular person are true. If he is doubtful that, in the way I am suggesting—if my amendment goes through—the provincial commissioner would issue an order to this person, "You belong to this particular area—stay there for so long" according to the provisions of the Bill, and he may not serve an order to this person to remove himself. If he stays put and he appears to be a respectable citizen according to the definition of the provincial commissioner, I think he should be allowed to stay at home.

**THE MEMBER FOR AFRICAN AFFAIRS:** We are prepared to accept that amendment.

**THE SOLICITOR GENERAL:** If the amendment has been accepted the words to be inserted should be "restrict the movement of such person or".

**THE CHAIRMAN:** I think that will improve your amendment.

**MR. MATHU:** I am sure it would, but we are under tremendous pressure.

The amendment was put and carried.

**THE CHAIRMAN:** Does your amendment move on clause 3?

**MR. AWORI:** On clause (1) (a) He "has been proved in a court of law to be" a member of an unlawful society—because I thought that would be more appropriate—there would be no mistake about it if he "has been proved. Then it is obvious, but at present, according to the amendment, anybody—the provincial commissioner can exercise his powers.

**THE CHAIRMAN:** You want in 15A (1) (a) to leave out the word "is" and replace it by "has been proved in a court of law to be".

**THE MEMBER FOR AFRICAN AFFAIRS:** We could not accept that. It vitiate the whole purpose of the Bill. The Bill puts powers into the hands of the Executive. We could not possibly accept this. The provincial commissioner has got to be

[The Member for African Affairs] satisfied—if a man has already been proved to be a member of a lawful society in a court of law, he should be in gaol.

**MR. MATHU:** I think my hon. friend, the Member for African Affairs, missed the point my hon. friend has been trying to make. If this particular man has been in gaol, as my hon. friend has said, and comes out of gaol, it does not mean that he is not a member of an unlawful society, does it? He has finished his term of imprisonment, he comes out as a member of the original society and therefore all we are asking is that the provincial commissioner—that he will be satisfied because he will know—the records of the court are there—that this particular man has been proved by the court to be a member of a society, and I do not think it cuts across what my hon. friend is intending. I support my hon. friend Mr. Awori.

**THE MEMBER FOR AFRICAN AFFAIRS:** I am sorry, Sir, I do not understand the hon. Member's point. Previously in debate, the hon. Mr. Awori had complained if a man in gaol already had been sentenced for being a member of an unlawful society, it was unfair to invoke this Bill afterwards and restrict his movements. That is exactly what Mr. Mathu is asking should be done. I just do not understand—I do not think it fair.

**THE CHAIRMAN:** I will put the question that the word "is" stand part of the Bill.

The amendment was put and negated.

**MR. MATHU:** Would we be in order in moving that the Committee adjourn now.

**THE CHAIRMAN:** You would not be, I am afraid. We want to finish the Committee stage to-night—we hope it will not be unduly long.

Is there any other amendment to clause 3.

**MR. AWORI:** The amendment I have put has been denied so I will not waste any time. (Hear, hear.)

The question that clause 3 stand part of the Bill was put and carried.

#### Clause 4

**THE CHAIRMAN:** You had an amendment on the paper for 4. The mechanics of the amendment are the same as (1) (a) in clause 3.

**MR. MATHU:** I had a slight one. That is the one I have withdrawn but I want to move in line 39, omit the words after "detention", "or if he is already in prison or in a detention camp". In other words I am moving that the words in lines 39, 40 and 41 be omitted—the words between "detention" in 39 and "camp" in 41—those should be omitted.

**THE CHAIRMAN:** It is proposed that in line 39 of clause 4 beginning after the words "detention" in that line, the following words shall be left out "or if he is already in prison or in a detention camp, for the detention in prison or in a detention camp".

**MR. MATHU:** If I may speak to it, the intention of my amendment is that a person who is already in prison or already in a detention camp should not be served with an order by the provincial commissioner, but that particular person, if he gains his liberty from prison or detention camp and it becomes known, and, in fact, the provincial commissioner is satisfied that this man is connected with these unlawful societies, then he will serve an order on him, not while he is in gaol or detention camp, but when he has gained his freedom. I feel that that is a very important point, Mr. Chairman, because it may be that some person has gone to gaol not because he was tried by the court and proved to be a member of an unlawful society, he may have gone for some other offence—we give him another form of imprisonment for which he has not been tried. The original one—he has been tried, but this one is only from the provincial commissioner to give him further punishment in prison. I hope I make myself clear.

**THE MEMBER FOR AFRICAN AFFAIRS:** As far as I can make out, this order only applied to a person who has been convicted of an offence under section 15 (a). Section 15 is: "Where, after an inquiry, the district commissioner is satisfied that any person within a district or area under his jurisdiction is conducting himself so as to be dangerous to peace and good order and soon he is given an order in writing to reside in such places as specified in the order and failure to comply with that order is an offence. That is 15. 15 (a), which we are now dealing with if he has been given an order by a provincial-commissioner to

[The Member for African Affairs] more, he has 14 days in which to move. If he fails to do so, he is convicted of failing to do so. It is only when he fails to obey those orders that the provincial commissioner is then able to say, right, you have been convicted of failing to obey this order, and now, therefore, I am giving an order that upon that expiry of it, or upon the determination of this appeal, the officer in charge shall take you to the place. That seems to me to be the meaning of this Ordinance.

MR. MATHIU: I am sorry I did not quite catch the argument of my hon. friend. I am not happy on 15 (a). If a person contravenes the provisions in 15 (a) 1 or 15 (a), he will be arrested because he must be arrested under subsection (3) of clause 3 (c). He will be arrested because his offence will be cognizable to the police. I am not worrying about that chap. I am worrying about the chap who is already in prison for some other offence. Are you going to serve a notice to him, an order to the man in prison, that he should remove himself? What do you do? You serve it to the Prison Authorities and you tell them to take this man, and you tell them escorted by a policeman to somewhere. I am saying the man in prison should first of all regain his liberty and the provincial commissioner can then get him if he wishes. That is the effect of my amendment.

MR. ENYE: Far be it from me to attempt to teach the legal lights of this Committee. As I see it, a man may make the additional order for the arrest and detention if that person is already in gaol for banging somebody else on the nose, and subsequently it was discovered that he was a member of an unlawful society and the provincial commissioner wishes to have him dealt with, he is already in gaol for another offence. It is suggested that he ought to be allowed to go free in order that someone may catch him again in order to be able to serve him another order? Surely it is to enable the provincial commissioner to serve that order while that man is in gaol. It seems to me perfectly sensible and fair that that should be done.

MR. HAVLOCK: May we have a ruling from the Member of Law and Order on this?

THE MEMBER FOR LAW AND ORDER: I will endeavour to explain this point as clearly as I can, and I always like to be frank with this Committee. I will say that perhaps this drafting is not as lucid as it usually is, but it does effect the purpose which it sets out to achieve. If I may first explain what the object of this sub-section, and the whole of this section 22 is, before dealing with the particular words, perhaps that will help my hon. friend, Mr. Mathiu. First of all, a provincial commissioner makes an order because he is satisfied that Mr. "A" is an active supporter, let us say, of an unlawful society. That order means that Mr. "A" must then remove himself within 14 days. Supposing he does not remove himself within 14 days; then he is prosecuted and, under section 22, subsection (1), which you will see is on the left-hand side of the page. We will assume he is convicted of that offence within 14 days. Very well, he is convicted and two things may happen to him. The magistrate may sentence him to imprisonment or possibly may send him to a detention camp or he may merely fine him. Let us take that case first. The magistrate fines him Sh. 100 for not obeying this order. He has to pay the Sh. 100, but he still must obey the order, and in order to make him obey that order the provincial commissioner then serves upon him a second order and that is the one we are talking about in sub-section (3), and that second order is equivalent to a warrant because he can, and will be on that, arrested and detained. It will then be the statutory obligation of the person in charge of the prison in which he is detained to remove him under police escort to the place to which he has not already removed himself, despite the fact that he was ordered to do so. Up to that point I hope it is quite clear.

Now, we come to the other position where, having disobeyed the first order, he has been sentenced and sent to prison. He may be sent to prison for just a nominal period—seven days, let us say. Well, now, at the end of the seven days, unless a second order is served on him under subsection (3), he walks out and he is at liberty, just as the first man was, whom I spoke of, who had only been fined. Therefore, an order

[The Member for Law and Order]

is served on him just as it was on the first man, to hold him until his appeal is disposed of. Assuming his appeal is unsuccessful, then he is taken by the person in charge of the prison to the place to which he has to remove himself in 14 days. There is really no catch in it whatsoever and that is the effect of the language in this sub-section.

MR. MATHIU: Mr. Chairman, I thought there was a third alternative and that is the one that is worrying me and that I understand clearly what my hon. friend has explained and I am not going to quarrel with it. What I am quarrelling with is that my amendment aims at a third alternative which I see here. May I briefly say what I read into this. You have, when this becomes law to-morrow, the day after the provincial commissioner will know that a Mr. "X", in gaol now—he has not disobeyed the order issued to him under section (3). Under section 15A, he is in gaol, he is serving another sentence, you see. Now, what I am asking is, has the provincial commissioner the power now to issue an order that that man in prison—(he may be serving, shall I say), for argument's sake, four years' imprisonment for fishing in a wrong river. (Laughter.) Well, now, if the provincial commissioner before the end of the four years—again, this offence of fishing in this place—is going to give him an order to remove himself from prison, it would be wrong. My opinion would be, let the fellow finish his four years' imprisonment and then start with the other thing.

THE MEMBER FOR LAW AND ORDER: The short answer to the last question—and I agree it is different from the point that I have already dealt with—is that sub-section (3) would have no application whatsoever to these circumstances, which he has just outlined, because the sub-section deals only with the second order that is served when there has been disobedience to the first order; and the first order is the one that has been made under clause 3.

MR. MATHIU: If that is the case, I beg leave of you, Sir, and of the Committee to withdraw my amendment. (Applause.)

THE MEMBER FOR AFRICAN AFFAIRS: I beg to move, Sir, that the Committee reports progress.

The question that the Committee reports progress was put and carried. Council resumed.

[Mr. Speaker in the Chair]

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Special Districts (Administration) (Amendment) Bill and I report that the Bill with amendments to clause 3 has been passed.

MR. MATHIU: I just want to ask your advice as to what I should do in case this Bill is to be read a Third Time. I should like to have your guidance on whether I should quote Standing Order 110 now or at that time.

THE SPEAKER: If you have got some point of order to raise, raise the point of order.

MR. MATHIU: It is this, Sir, that after the consideration of the report of the Committee, Sir, I wanted to raise the question as to whether it is after that time that I should invoke Standing Order 110 or not.

THE SPEAKER: You have to wait until the Third Reading is moved. The Bill is now for consideration before the Committee on the Report stage. I will ask for the Third Reading to be moved.

## BILLS.

### THIRD READING

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I beg to move that the Special Districts (Administration) (Amendment) Bill be read a Third Time and passed.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

MR. MATHIU: Mr. Speaker, I beg to move the amendment—that all the words after "now" be omitted and these other words be substituted: "read a Third Time this day six months".

MR. AWORI seconded.

THE SPEAKER: It is quite out of order to second in the middle of the Mover's speech. He should allow the Mover to complete his speech first.

MR. MATHIU: Mr. Speaker, I am not going to make a long speech on this except to draw the attention of the

[Mr. Mathu] Council to the fact that we feel very strongly that we could wait for another six months before this Bill becomes law, and before that time I do think that we shall find that it will not be necessary to read it for the Third Time because most of the things which it refers to will already have been remedied by other measures which we have already in our Statute Book.

MR. AWORI: Mr. Speaker, I beg to second the hon. Mr. Mathu for the same reasons, I think if we could be patient in the next six months we would be able to say whether to enact this Bill or not.

THE SPEAKER: It is proposed to leave out the word "now" and to substitute the words "this day six months".

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, the Government could not possibly accept that amendment. This Bill we regard as urgent. We may even have waited too long to bring it to this Council. We could not possibly agree to put it off for yet another three or six months. I oppose the amendment. (Applause.)

The question that the words proposed to be left out stand part of the Motion was put and on a count by the Speaker was carried by thirty-six votes to five.

The Bill was read a Third Time and passed.

### ADJOURNMENT

Council rose at six-thirty p.m.

Saturday, 27th September, 1952

The Council met at thirty minutes past Nine o'clock.

[Mr. Speaker, in the Chair]

### PRAYERS

### NOTICE OF MOTIONS

MR. COOKE: Mr. Speaker, in accordance with a Resolution passed, Sir, at the Coast about a month ago, I propose, Sir, to move the following Motion later on this session:—

"That this Council urgently requests the Government to appoint a small committee consisting of a Government representative as Chairman, with four members to be nominated by the Housewives' Association, the Chambers of Commerce for Eastern Africa, The Kenya National Farmers' Union and the Unofficial Members' Organization respectively, to inquire into the cost of living problem as it affects all races, with special reference to—

- the cost of locally produced foodstuffs;
  - public transport;
  - housing;
  - any other matter the committee may think appertains to the cost of living problem;
- and to report thereon before the end of 1952."

### MOTION

#### VARYING TIME OR DAY OF SITTING

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, with your permission I should like to move under Standing Order 25, entitled "Varying Time or Day of Sitting to the Following Times", that the Council shall meet at 2.30 p.m. on Tuesday, 30th September, and business shall be interrupted at 6.30 p.m.

The object of that is to enable us to sit on Tuesday. Unfortunately it will not be possible for us to sit this afternoon, because the Chamber is already booked for other purposes.

The question was put and carried.

### BILLS

#### SECOND READING

#### The Police (Amendment) Bill

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I beg to move that the Police (Amendment) Bill be now read a Second Time.

This Bill, Sir, is, I believe, of a less controversial nature than the two with which the Council have already dealt. That is only a personal opinion—not a promise! It is a permanent measure and not a temporary measure. The main purpose of the Bill is to effect a number of amendments designed to facilitate the maintenance of law and order, and the prevention and detection of crime. At the same time, the opportunity has been taken to include a number of minor or formal amendments.

Clause 2 of the Bill is a clause effecting one of those minor formal amendments. It is a matter purely of terminology, and relates to a new system of recording complaints and charges which is in the process of being introduced by the Criminal Investigation Department.

Clause 3 is similarly a purely formal amendment which arises by reason of the accession of Her Majesty, and effects certain verbal alterations to the declaration taken by police officers on entering the Force, substituting references to Her Majesty for references to His late Majesty, King George VI.

Clause 4 gives power to the Commissioner of Police to impose restrictions on the use of roads.

Now, the Commissioner of Police already has powers under section 64 of the principal Ordinance to impose curfews in respect of certain areas. It is not, however, always necessary or desirable to impose restrictions over all parts of an area. For the purpose of law and order and the detection or prevention of crime it is frequently necessary and desirable that restrictions to be imposed should relate only to roads. The curfew powers under section 64 are not sufficiently flexible for this purpose. They relate to circumstances in which there is an apprehension of riots, unlawful assemblies, breaches of the peace and the like, and it is difficult to relate those circumstances to roads or specified parts of roads. There is, however, a feature of

the incidence of crime in the Colony which is that gangs of thugs are known to use the roads for nocturnal crime—to proceed to and from the scene of their activities. They are known, for instance, to leave Nairobi to travel out to the reserves, and then to return to Nairobi after perpetrating their crimes.

Under this provision the restrictions to be imposed will be imposed by order of the Commissioner of Police, and they can relate only to the hours between six o'clock in the evening and six o'clock in the morning. Provision would be made for the issue of permits of exemption, but it is obvious that some inconvenience to the general public is inevitable. That inconvenience will, I am sure, be accepted in a proper spirit, because these restrictions, if imposed when they are imposed, will be imposed in the interests of the public who are the sufferers from nocturnal crime, as, indeed, from all crime.

The Council will be aware, Sir, that recently certain restrictions have been imposed on certain roads at night. Those restrictions are, in effect, a stop-gap. They were made by way of rule under the Traffic Ordinance, the rule-making powers under which are general in terms, and designed primarily for the purpose of the regulation of traffic for the sake of maintaining order on the roads. It is felt, however, that these particular powers, which are much more precise and comprehensive, and flexible, than those contained in the Traffic Ordinance, and which relate specifically to the purpose for which the powers are needed, should properly appear in the Police Ordinance, where other powers of the police of a similar nature already appear. These powers will enable distinctions to be drawn between different times at night; between different roads; different classes of persons and vehicles; and they can be imposed in respect of all roads in a specified area.

As I say, some inconvenience to law-abiding citizens is inevitable, as it is from any system of restriction, passes, checkpoints and the like; but I can only say that as little interference with law-abiding citizens proceeding on their lawful occasions will be caused as possible.

Clause 5 of the Bill is a minor amendment designed to remove ambiguity as to whether the police have powers of arrest

[The Solicitor General]

without warrant in respect of persons participating in unlawful assemblies under the Police Ordinance. There is, as the Council will doubtless be aware, a section of the Penal Code which defines an unlawful assembly for the purpose of that Code. That is section 76, and the following section 77, makes it an offence in effect to participate in an unlawful assembly so defined. Now, the police have already powers of arrest without warrant in respect of those unlawful assemblies by reason of the provisions of the Criminal Procedure Code.

The Police Ordinance, at section 32, provides in effect that certain assemblies held without licence where a licence is required—or a permit—to hold them, are unlawful assemblies, and participation in them is an offence. It is not certain whether, in respect of those assemblies, the police already possess powers of arrest without warrant. It is, however, quite clear that they must have powers of arrest without warrant, because, of course, unlawful assemblies are commonly held in circumstances which, if discovered by the police, give them no opportunity to obtain a warrant or a summons.

Clause 6 of the Bill effects—or rather re-enacts—section 34 of the principal Ordinance in a modified form. The differences from the existing text relate to inclusion, in the powers of the police to take fingerprints of persons in lawful custody or under police supervision, the power to take palm-prints and footprints. I am informed that modern criminology attaches great importance to palm-prints and footprints in the detection of crime—particularly palm-prints, which apparently now are regarded as of equal importance to fingerprints. I suppose an amendment of this nature can be regarded as a measure of progress. I imagine that the limits of progress in this anatomical sense must be very nearly reached. (Laughter.)

Clause 7 of the bill, Sir, effects an amendment which results from a judgment of the Supreme Court in 1951. It related to a case in which a police officer had seized a number of books, and had been offered a large bribe to return them. It was held that, as the law was silent as to the duty of a police

officer seizing property in those circumstances, it was no part of his official duty to retain them, and therefore it was no offence of official corruption to try to bribe him to return them. It was a technicality, but it resulted in the acquittal of the accused persons. It is accordingly proposed to place the police officer in those circumstances under a specific and express duty to report his seizure to a court and to bring before the court the property seized for the court to make an order as to its disposal.

Section 36 of the principal Ordinance is proposed for amendment by clause 8 of the Bill, and the effect of the first amendment, in sub-clause (a) of clause 8, is to remove certain existing geographical limits which are placed on the powers of the investigating police officer investigating an offence to obtain statements from potential witnesses—persons having information that may be of assistance. At the moment the limit is such that a police officer can only operate within the limits of the police station to which he is attached. Well, commonly, of course, Criminal Investigation Department officers are not attached specifically to any police station, and yet they have the charge for the most part of investigating crime—certainly serious crime. Accordingly the geographical limitations are removed.

The amendment proposed by sub-clause (b) of clause 8 of the Bill relates to the duty of a person being examined—having a statement taken from him—by an investigating police officer—to speak the truth. A similar obligation is imposed by the Indian Criminal Procedure Code in such circumstances, which, as the Council will remember, was in force by application in this Colony until the enactment of the present Criminal Procedure Code now in force. There is a saving by way of proviso to the existing section, and that saving is not affected by this amendment, which provides that no person is to be placed under an obligation to incriminate himself. It is—as I think the Council will appreciate—most desirable that some sanction of the law should be applied to this minor form of perjury.

That, Sir, is an outline of the purposes and objects of this Bill. As I said in my opening, I believe that it is comparatively

[The Solicitor General]

not-controversial. I accordingly commend it to the Council.

Mr. Speaker, Sir, I beg to move.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

MR. MATHIU rose—

THE SPEAKER: I do not know whether I should apologize to you or you should apologize to me, Mr. Mathiu. If you were intending to speak you should rise, not wait until I have started to put the question.

MR. MATHIU: I was waiting to hear the words of the seconding of the Motion. That is why I delayed it.

THE SPEAKER: The hon. Member opposite rose and seconded the Motion. I was putting the question.

MR. MATHIU: I have various remarks to make on these amendments, and to begin with I will deal with the principles as the Solicitor General has done in section 4, which provide for the prohibition and restriction of traffic.

I think, Sir, the hon. Member did not convince me in trying to establish the necessity of the amendment to the Traffic Ordinance in order to transfer those powers to the police order. He did say, Sir, that at the moment there have been restrictions of traffic, but under the rules, under the Traffic Ordinance, apart from saying, Sir, that he thinks the present amendment would be more flexible and comprehensive, I do not think he has shown that the rules under the Traffic Ordinance do not achieve the same results. I want to make that point, Sir.

The second point he made, Sir, the reason for amending the Traffic Ordinance, is that it is intended to prevent and detect crime. I entirely agree with him that nocturnal crime should be prevented and should be detected because it does certainly exist, but I do not agree with the way he tackled it, because he gave it a racial character in his explanation. He said that nocturnal crime—that where there is nocturnal crime—people take the opportunity of leaving the towns—I think he mentioned Nairobi—at night, go to the reserves and then come back, also at night, into Nairobi. Now, travelling to the reserves and

travelling to Nairobi does apply to Africans because they are the people with reserves, and he did not say anything to indicate that there are nocturnal crimes elsewhere except in the reserves. I am sure the hon. Member for Commerce and Industry, who is interrupting, will have the opportunity to attack if he wants to speak. I do want to emphasize that fact because I do want to know whether he wants to put it to one community or to all because there are other areas where trucks and cars can go, not only in African reserves. My hon. friend knows that. Why does he not emphasize all the aspects of the problem. In fact, these motor vehicles which do not go to the reserves do greater harm than those which do. Loot is of greater magnitude than that which goes to the reserves. You have no great warehouses where the loot can be stored. I would like my hon. friend to be clear on that point. I think it is very important.

The other point, arising out of that, is the quotation of these words "the public". It seemed to me that "the public" is other than those that leave Nairobi and go to the reserves. "The public" meaning with me, as I heard it, seems to refer to those people who do not go to Nairobi from the reserves. That is my interpretation of it. It is very interesting, because it does show what the psychology of my hon. friend is in the matter.

In referring to the exemption clause where the Commissioner is empowered to make an order to exempt a certain motor vehicle—or certain classes of motor vehicles, or a certain class of persons, I would like to say, Sir, that the inconvenience caused to quite a number of legitimate people who have not obtained a pass from the Commissioner, because they did not know a pass was necessary—they would be travelling to, various places; they would be arrested without a warrant—I feel it would cause a terrific hardship. Surely we must admit that there are periods of emergency in the life of families. If it happens, on a particular night, as it happened with me only the other day, a maternity case away from hospital in the reserve, and people have to take this patient to the nearest maternity hospital and they have not got this pass, now what happens? I do feel that if people operating are not very reasonable, and we have reasons to

[Mr. Mathu] believe that some are unreasonable, you can see what great hardship can be caused on occasions such as this.

I should like to make two further points on this particular section 4, and the first is that the police can make this law operate extremely smoothly if they administer this particular section like human beings. I would say here and now, that people will feel very little inconvenience, but my experience is, Sir, entirely different—unless there has been a change of heart in police officers in charge of traffic. I do not want to go on giving examples here. I have had nasty experiences with traffic police, and my friend sitting next to me, and my own people have had unnecessary hardship—unnecessary persecution—by asking for licences, pulling fellows out, throwing goods out of the vehicle, anywhere, everywhere, and really behaving very brutally. All I am saying is that, if this thing is to continue, I would pray that police officers in charge of this matter, do change their hearts. If a fellow is eventually going to be convicted, why first of all beat him, tell him what language to speak? If you speak to a police officer in English he will tell you, in Swahili, not to speak in English to him. The Swahili he speaks cannot be understood. It is very ridiculous. I would like my hon. friend, the Member for Law and Order, to see into this. Either we make Swahili the official language here and everybody speaks it very well—as Sheriff Abdulla Salim does—or we speak English.

**THE SPEAKER:** The hon. Member's argument that the police sometimes behave badly in his own opinion, is not relevant to the principles of the particular amendment.

**MR. MATHU:** The second amendment I want to refer to is the amendment to section 32 of the Police Ordinance. Under that section we are required to give power of arresting, without warrant, any persons who would be—who would attend an unlawful assembly. Now, Mr. Speaker, I would like to say that I am going to oppose the amendment and, in the Committee stage I do hope to move an amendment—and indeed I shall move an amendment—in regard to traffic control on which I have just finished commenting. I do feel that section 32 of

the Police Ordinance which we are endeavouring to amend now, is specially adequate to meet the situation. And in fact the African people whom we asked say that this section should not be applied to them, because even to get a licence for a meeting under 32 is such a great bother and so restricting that if you then go and say you are going to arrest people, particularly when sometimes we do not think that the police do act in a way that is very human, it only asks people too much.

In fact all the meetings of Africans have been banned and that has been done without invoking section 32. I do hope that one of my colleagues on this side will give an example of how he tried his best to get a meeting in Kakamega recently and the conditions laid down for him to get that meeting licensed were not very pleasant. I feel that the Penal Code, section 76 of the Penal Code is absolutely sufficient as well as section 77, which make unlawful assemblies punishable—under those sections and I do not think it is necessary to make further amendment.

Before I go on to my comments on the second section I should like to say that all that the African people would like is that they should get greater freedom to hold their meetings so that it will not be necessary to hold unlawful meetings with a view to avoiding the law. I think this thing encourages them to that. They would like—like Milton did say once—"Give me the liberty to know, to utter and to argue clearly according to conscience above all liberties".

Now the second amendment, Sir, the next amendment is in regard to the taking of measurements, photographs, fingerprints, casts thereof, palm-prints, fingerprints and any other prints. Sir, I do think that there are some points here which I think are very difficult to accept.

The first is that these officers are given the power to take these records before charging the person. The person is not a criminal yet. He has been apprehended for some reason or another, genuinely or ungenerously, and here he gives his whole body, as it were, to go on record. When you have the footprints and palms and the fingerprints you have got the major limbs of the man on record. What you have left sitting or

[Mr. Mathu] lying on the paper—you have the whole body on record. I think if this is what my hon. friend the Member who moved this Motion calls progress—yes, it starts from the body and goes on—that is the meaning I attach to this Motion. I shall in the Committee stage move an amendment to restore the position as it is today. I do not want the progress required by my hon. friend the Member who has moved this Motion.

It is provided that these records will be destroyed if the person is not charged. But there again we have a possibility of abuse. If they wanted to keep these records there is nothing to show that they would not take duplicates and store these away and just give the person only certain copies. There is nothing—and I do feel, Sir, that the damage will already have been done. You will have created in the mind of the person whose footprints and palm-prints and all the rest of it you wanted, the feeling he is a criminal. If you feel that he is not a criminal, why do all these things? I say it is most undesirable. I am not objecting to these things being done within certain limits to persons under police supervision, because there have already been in gaol—they are criminals. But a person, perhaps, with no criminal record at all, to have these records done I say it is unfair; and I for one would, as I say, oppose that and suggest some amendments.

Now, as far as the other provision in regard to amendment to section 35 is concerned, I should like to say that I do not object to the police having these powers, and the point I think made by my hon. friend that members of the Criminal Investigation Department are not necessarily attached to any police station, is a very good point. I do not think I can argue against that one. But I do hope that it will perhaps restrict those activities to the members of the Criminal Investigation Department, but not to leave the door wide open for all police officers to roam about as they please.

The point I have an objection to, Sir, supposing that under section 35 (1), the section we want to amend, all that the police officer requires to have is "reasonable grounds for believing that anything necessary for the purpose of such

investigation may be found in any place". Now I agree with you, Sir, that it depends on what meaning you give to the words "reasonable grounds for believing". If "reasonable grounds for believing" are founded on a very shaky foundation and the police officer enters somebody's house, searches and seizes, takes possession of, the things in that place, and later it is discovered that there was nothing which was connected with the crime suspected of that particular person or particular dwelling, the damage will have been done. Is there any redress as far as this particular owner of the property is concerned? He has been searched—in other words, already people round about will think this man is a criminal, while he has committed no crime. I know two cases of very respectable Africans in Nakuru where this was done, and I had to write to the Commissioner of Police and find out. Of course there is no provision that there will be any warning to the police officers that they should satisfy themselves absolutely completely that there is something in that particular place that they discover and then of course I will have no complaint. But I do not think that sufficient scrutiny is taken to make sure that they do not search and take later find that is not what they want. I think they should think twice before they rush to go and disturb the peace of a particular home or a particular area in search of these things.

I say I welcome this amendment of depositing the things found with a magistrate's court. With this proviso, that those things deposited should be the things the police officers want and connect them with the crime. That is the thing.

Now, finally, Sir, this clause regarding the police officer summoning a person to supply information. I refer to the amendment of section 36 of the Police Ordinance, 1948, where it is provided that any police officer making an investigation into any offence may, in writing, require the attendance before himself, of any person, within the limits of any police station to which he is attached, or of any adjoining police station, who he has reason to believe, has any knowledge which will assist such investigation. Here again, "has any knowledge"—"has reason to believe"—are

[Mr. Mathu] the key words with me. There again I do not think it is the principle I object to, because I think police officers should get assistance from people in these things. (Hear, hear.) I think it is quite a fair provision, but my difficulty comes in when the informer, having obeyed the request of the police officer to come to him, and to tell him, to answer all his questions and tell him everything, then the police officer has the power to say: "now you are not answering my questions truthfully—you have committed an offence." Now that I think, if my reading into it is correct, is a bit dangerous because it will discourage people to come forward and present their evidence. Then the police officer already knows the whole story if he can say: "now you are not telling the truth". In other words I do feel that that provision amending the answering of the questions truly would defeat its end, and I should perhaps like my hon. friend the Mover of the Motion to see what can be done about it.

Sir, it is difficult when you have a composite amendment such as this in the Bill, whether you oppose the whole Bill or you accept it, or you do it in part. Because in parts I am in agreement, in certain parts I am not in agreement. If the Motion is that the whole be read a Second Time I am in a difficulty. I do not want to say I oppose the whole Bill because I like some parts of it. On the other hand I cannot support the Second Reading of the whole Bill because I do not like certain parts of it.

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I find some crumbs of comfort in the hon. African Member's speech. He has apparently expressed agreement with more than one point emanating from this side of the Council. I am tempted to comment "Eureka".

As regards the hon. gentleman's reference to discrimination, I must ask him to approach these matters in their proper perspective. He imputes motives of racial discrimination where none lie. (Hear, hear.) The law, and crime itself, do not depend upon a man's race. I have made a reference to a form of crime which is, at present, current, and if the perpetrators of that form of crime are of a particular race, then it is purely for-

tuitous and does not imply any discrimination on grounds of race to a perfectly general provision of the law. (Hear, hear.)

I have already dealt in my opening with the inconvenience that may be caused to the public. I use the words "the public" in the widest and most general sense. I deprecate any suggestion that in that term there is any racial discrimination.

Of the other points made by the hon. gentleman, I would refer to that relating to the taking of prints of various parts of the anatomy for the purpose of the detection of crime. The hon. gentleman mentioned a starting point which I did not mention, and which, I think, is probably unprintable.

The purpose of taking these prints before the person is charged, I feel, is perfectly obvious. The purpose of taking prints is to detect crime. If you arrest a person on suspicion of having committed a crime, and you keep criminal records which are only traceable through prints, then it must be obvious to the hon. gentleman that you must take the arrested person's prints in order to trace his criminal record, if he has one.

The provision for destruction of records if a person is not charged, or if he is acquitted, or discharged, is an adequate and, indeed, the only safeguard that is necessary.

Finally, the hon. gentleman suggested that by placing persons giving information to the police under an obligation to speak the truth, we would be discouraging persons from giving information to the police. Sir, the purpose of investigation—the purpose of the application of the law—is to seek the truth and apply it, and if persons are not prepared to give true information if they have to give information, then we do not want them to give information at all.

MR. MATHU: On a point of personal explanation, Mr. Speaker, arising out of the last remarks of my hon. friend, the Solicitor General, the point I wanted to make was—an informer is absolutely sincere that he is speaking nothing but the truth, and I wanted to know whether he is protected. That is exactly what I wanted to know. I purposely did make that point clear.

THE SOLICITOR GENERAL: He is protected by reason of the fact that before any penalty is visited upon him, it has got to be proved, that he is not speaking the truth, in a court of law.

The question was put and carried.

Bill read a Second Time and committed to a Committee of the whole Council.

### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair.]

### The Police (Amendment) Bill

#### Clause 4

THE CHAIRMAN: Mr. Mathu, did you say on the Second Reading that you had some amendments to clause 4?

MR. MATHU: Yes, Sir. I wanted to move the deletion of two words only, "or uses", wherever they occur in that clause. The first one comes in line 23, Sir. What I would like is the passengers in the vehicle. I do not consider will be committing the offence. The driver should be responsible and he should not go at night without a permit, but I think the passengers should be exempted from arrest without a warrant. That is my intention, because they are just in the car.

THE CHAIRMAN: It is proposed that in clause 4 of the Bill, line 23, the words "or uses" shall be omitted, is that the effect of your amendment, Mr. Mathu?

LADY SHAW: Might I ask the hon. Mr. Mathu if his intention there would be the owner of the vehicle, if he happened to be the passenger—supposing the owner had, for instance, an African driver with the owner as a passenger, would he not be responsible and the African driver be responsible?

MR. MATHU: Well, my point is that I think in this case, you see, the person has not got a permit. If he has not got a permit, then I think the driver should be responsible.

LADY SHAW: I could not agree that a man driving under the order, and in the presence of his employer, is respon-

sible and the employer not responsible. Also in the case of a person who owns a vehicle and authorizes another person to drive it illegally.

MR. GIKONYO: If I did not know whether the taxi driver had permits or not, why should I be penalized, being a passenger. If I hired a taxi from Nairobi to Kiambu, for instance.

MAJOR KEYSER: If a passenger is going to travel in a car which he knows to be using a road illegally, then I think he should be liable to conviction, and before he goes out in a car after dark he should find out whether the car is being legally driven or not.

MR. MATHU: It is all very well to say that people should find out first—it is not always possible. I know ignorance is no excuse for committing an offence, but I think it will affect quite innocent persons. If my amendment is not carried by the Committee, I will move a further amendment on the same point.

THE SOLICITOR GENERAL: I do not think this amendment can be accepted because it would vitiate, to a large extent, the whole purpose of the restriction which would be imposed under this new section. There is provision under sub-section 2 (b) for the issue of permits exempting certain classes of persons, and classes of vehicles, and we think that cuts out, as I have already remarked, the maximum possible inconvenience to innocent persons. But to delete the words "or use" would vitiate to a very considerable extent the purpose for which these restrictions have been imposed. The criminal whom we are mainly out to catch is not necessarily going to be driving a vehicle.

The question of the amendment was put and negatived.

MR. MATHU: Mr. Chairman, I beg to move that after the word "use", the word "knowingly" be inserted.

I think, Mr. Chairman, this will be very reasonable provision and it would not be the first time that the word "knowingly" appears in the law—not the first time. I think my hon. friend the Solicitor General, would find himself in a position to accept the amendment. I hope my hon. friend from Trans Nzoia will, because I took that word from his mouth.

Mr. COOKE: If the meaning is not implicit in the clause, I would like to second that.

Mr. GIKOVO: I would like to support that. If it is agreed that a person using a vehicle unknowingly will not be penalized, I think we want to avoid innocent people being penalized.

The SOLICITOR GENERAL: I am not quite sure that I understand this amendment. The context reads that "the Commissioner may by order prohibit or restrict the driving or use of motor vehicles". Now, as I understand the suggestion, it is that the words should be "by order prohibit or restrict the driving or use of motor vehicles knowingly". I am not quite sure how a person can use a motor vehicle unknowingly.

Mr. MATHU: The point is not so much protecting the owner of the vehicle. I want to protect a passenger who may use an owner's vehicle without knowing that this vehicle was being driven illegally on an illegal road.

The MEMBER FOR LAW AND ORDER: I think I see what my hon. friend had in mind. No one would wish to see anyone convicted unless he was aware that he was committing an offence. If my hon. friend would skip a few intervening clauses, if you will allow it, Sir, and look at sub-clause 4, it might be more convenient if the amendment were inserted there: "Any person who knowingly drives or uses, or causes or permits to be driven or used, any motor vehicle in contravention of the terms or conditions of any order made under this section shall be guilty of an offence and liable on conviction . . ."

The prosecution must show that the person who is charged with using the vehicle in contravention of the ordinance has guilty knowledge.

The CHAIRMAN: I suggest, Mr. Mathu, that if this will satisfy you, you abandon the amendment you proposed and accept this amendment to go in the form Mr. Wharft suggested, in sub-clause 4.

Mr. MATHU: If my hon. friend would use the word "knowingly" more generously in sub-section (4)—"any person who knowingly drives or knowingly

permits to be driven or used . . . I think that is exactly what he had in mind.

The MEMBER FOR LAW AND ORDER: I doubt very much whether it is necessary to insert this word at all because the prosecution must establish guilty knowledge before the court would convict. But to remove any possible doubt one could insert the word "knowingly". There are some cases where a person can be convicted without guilty knowledge, but not very many. Certainly the court would not normally convict a person unless it was satisfied that the prosecution had established guilty knowledge. There would be no difficulty whatsoever in establishing guilty knowledge against the driver. He could not be ignorant of the fact that he could not possess a permit for driving on the roads at night. But it is possible that a passenger being driven in a vehicle would not know that everything was not in order. I am quite prepared to accept an amendment stated in the terms mentioned by Mr. Mathu.

The CHAIRMAN: I thought you were prepared to accept "knowingly" in front of "uses", but not in front of "drive".

The MEMBER FOR LAW AND ORDER: The court might say if you put it in front of the other word that it means you do not have to prove guilty knowledge in cases where it does not appear. That is the interpretation and construction which may arise when it comes before the court. Since no one has objected to the principle that the court must prove guilty knowledge, I have no objection if the amendment sets out clearly that principle.

The CHAIRMAN: Would you be prepared to accept "knowingly" in front of "drives"—"knowingly drives or uses"?

Mr. BLUNDELL: Mr. Chairman, before I, personally, can support this amendment, I would like to ask the Member for Law and Order two things. By inserting the word "knowingly" in the form suggested, are we not putting a premium on ignorance—are we not encouraging a man not to make himself cognizant of the law in order to establish that he did not know what he was doing? Secondly, if a motor vehicle, with a bus of persons of evil intent inside it—if you

(Mr. Blundell): have to establish whether they are knowing or unknowing in the vehicle, they have only got to sit back in the car and say that they have no knowledge of the situation, and you are largely defeating this measure. Are we not emasculating what is designed to achieve a purpose. This Council, by a large majority, has accepted the implications of these measures, that is to say, they are emergency measures designed to strengthen law and order on occasions such as these. What is the good of accepting these measures if every attempt is made to weaken the legislation. I would like to be assured by the hon. Member for Law and Order that after the lawyers have got hold of this amendment, the whole purpose of this clause would not be completely emasculated.

MAJOR KEYSER: The law, at present, does not accept any ignorance of the law as an excuse. The hon. Member for Law and Order by his acceptance of the word "knowingly" is cutting straight across that, and all other laws must be susceptible to this. For that reason, Sir, I oppose this amendment very strongly.

The MEMBER FOR LAW AND ORDER: I think there is some misunderstanding. My hon. friend, Major Keyser said everyone must know the law. If the order were made requiring all passengers in a taxi proceeding along a certain road, to obtain a permit, then it would be no excuse for a passenger to come before a court and say "I did not read the law, I did not know that that law was published". But if in certain circumstances it could be said that one of the passengers was under the impression that the permit had been given to someone on his behalf, and he thought he had been authorized to travel in the taxi, but he had no intention of contravening the law, the prosecution would have failed to prove guilty knowledge. In the majority of cases, it would be sufficient to require a driver to obtain a permit before proceeding along a road. If he is stopped by the police and he does not have a permit, then that would be sufficient to establish a prima facie case. The distinction between the driver and the passenger is not really a distinction, in principle, at all. The regulation will be promulgated by the Commissioner of

Police—for certain classes of vehicles, particularly for taxis, so as to provide that passengers as well as drivers will be required to obtain permits, but for other classes of vehicles, such as lorries, perhaps, there will be no requirement that a passenger or a loader should obtain a permit. In those circumstances, there will be no question of a passenger or a loader contravening the law because he did not have a permit. The only requirement would be that the driver should have a permit.

There may even be cases where buses would be allowed to proceed along roads at certain times and the only requirement would be that the driver should have a permit. It would not be necessary for every passenger in that vehicle to have a permit because that might become impossible administratively to handle. If there was any danger, in consequence, of criminals moving about the country without proper check the proper proceeding would probably be to stop the buses moving altogether, not issue permits to individual passengers. It would be hard for a passenger to be convicted of an offence of using a bus without a permit if it were not being brought home to him that he knew he was committing a breach of the law. That is the ordinary principle of law. You must establish guilty knowledge of the fact that the law has been contravened. Normally, to establish a prima facie case you have to show that the law has been promulgated and that it has not been complied with.

Mr. BLUNDELL: I would like to ask the hon. Member for Law and Order whether he will answer the question I posed him. Does this amendment weaken this clause or not?

The MEMBER FOR LAW AND ORDER: I do not think so. I think the clause, as it stands, would be interpreted by the courts as meaning that persons cannot be convicted under this provision unless the prosecution establishes what is known as guilty mind—that is to say unless the prosecution shows guilty intention to commit a breach of the law.

Mr. BLUNDELL: Just as the hon. Member for Law and Order has in his ranks Mr. Neep who does not always agree with him, so do we have Mr. Slade who does not always agree with him either.



[Mr. Blundell] If the amendment is not going to weaken the clause, what is the object of having it?

THE MEMBER FOR LAW AND ORDER: To remove doubt.

MR. BLUNDELL: Is it necessary to draft legislation to remove doubt? Is it not possible to assess legislation, to know what it means as it stands?

MR. MATHU: Two points, Sir, I want to make in reply to what the hon. Member for Rift Valley is saying. This word, as I said in my first amendment, appears already in a number of our laws. I cannot quote now, but I do know I have read them many times. There is no new principle in inserting that word, no new principle.

The point about these measures being emergency measures we must leave them as they are—I do not think it quite right. The provision in section 4 is to make a permanent amendment. As I indicated, I am going to make a further amendment to whether these measures cannot be made temporary provisions. The hon. Member, Mr. Blundell pointed out that emergency does not arise because we are amending this to go into the permanent legislation.

MR. SLADE: The hon. Attorney General has stated the principal of practice in law very clearly and I agree entirely with his statement. I do think those principles and that practice afford adequate protection for the accused. The danger of inserting the word "knowingly" is that instead of removing doubt, "Here is something that must have a special meaning to it because it has been specially inserted. Therefore, I have to give some special meaning to this "knowingly"—does it mean that a man has got to know the law, or what does it mean?" If the principle and the practice are adequate protection, I do suggest, Sir, that it is safer to leave this section to be covered by applying the principles and practice, instead of adding an amendment which while not adding anything, does create confusion.

THE MEMBER FOR LAW AND ORDER: My hon. friend agrees that "knowingly" would at least be implied in the sense

that prosecution would have to prove guilty knowledge.

MR. SLADE: Yes.

MR. BLUNDELL: It is the stressing of the word "knowingly" to which my hon. friend wishes to draw attention. The moment you start stressing the word you will cause the judge to ask why the word is in the clause.

MR. MATHU: I am grateful to my hon. friend, the Member for Law and Order, in accepting this amendment. As I have nothing further to add, I hope it will be put to the vote and see what the result is.

MR. ODEDE: People who are not expert in these things are giving again this suggestion. I have always thought that these are suggested to Government by the Elected Members and now, when Government wants to amend something which they think is right, I can see quite well that the Elected Members do not like that, because they were their proposals. I say the Bills were your proposals.

MAJOR KLYSER: Mr. Chairman, is the hon. Member in order?

MR. ODEDE: If the Government agree to amend the Bills, or a Bill like this why refuse to amend it? It is only the European Elected Members who are refusing. I think that all of us here agree that such amendments can be done. Why should they refuse?

MR. BLUNDELL: Would the hon. Member give way? I asked the hon. Member for Law and Order before I made my mind up on this amendment—I asked him whether, in his view, it would weaken the legislation before us. That is the sole reason for which we are putting forward our arguments.

THE MEMBER FOR LAW AND ORDER: I am sorry there appears to be disagreement about this matter, because really we are dealing with a technical point we are not in disagreement in principle. My hon. friend, the Member for Aberdare, has agreed in principle; and it is therefore, just a question of the technical wording. I am glad to see my hon. friend, the Member for Aberdare, nod in assent to my observations on this point. It is true, as he said, that if you insert an extra word, the courts might

[The Member for Law and Order] on a matter of construction, attach a meaning different from what we had intended. A question of construction, as I was told many years ago, is usually a matter of first impression, and it is possible that the hon. Member for Aberdare's first impression may be the same as the courts.

The point with which my hon. friend, Mr. Mathu, is concerned is with the word "uses". I think it would meet the fear of the hon. Member for the Aberdare if the word "knowingly" were put before the word "uses" and left "drive" where it is; certainly, so far as "drive" is concerned, there can be no question of a person who was driving without a permit not having guilty knowledge. I hope my hon. friend, the Member for Aberdare, will feel that this will not raise any serious complications.

THE CHAIRMAN: May I just say that I am in a bit of a difficulty, because I am at the moment, I hope, considering on behalf of the Committee the amendment proposed by Mr. Mathu. What I think we ought to do in order to clear that away is to decide on it, and then if any further amendment is going to be proposed deal with that. We cannot deal with two at the same time. Therefore, if the Committee agrees, and if nobody else wants to debate Mr. Mathu's amendment—I understand there is a lot of opposition to my left. I am not trying to blanket on that. But if everybody has finished on Mr. Mathu's amendment, I think our proper course would be to put that question and vote on it.

MR. BLUNDELL: Before you put the amendment to the vote, Mr. Chairman, I should just like to say that we shall oppose the original amendment, but we will accept the view put forward by the Member for Law and Order, with just this one remark. It only shows how difficult it is when an ordinary man falls into the intricacies of the law.

MR. COOKE: "Knowingly" was probably implicit in this; why my hon. friend, Mr. Humphrey Slade, did not support that, I do not know.

I am going to support "knowingly" now.

THE SOLICITOR GENERAL: I was going to suggest, Sir, merely that if Mr.

Mathu accepts the subsequent amendment, the first one might be withdrawn.

MR. BLUNDELL: I thought Mr. Mathu would like to know we would accept the amendment put forward by the Member for Law and Order. In that event, I have no doubt Mr. Mathu would feel inclined to withdraw his amendment.

MR. MATHU: My amendment to clause 4 is by putting a comma after "who" and putting the word "knowingly" in and putting a comma after that. That is my amendment.

THE CHAIRMAN: I have your amendment, and I am going to put it, subject to one thing. It has been suggested by Mr. Blundell, and I gather has been approved by the hon. Member sitting on my right, that you might want to consider withdrawing that amendment in order to accept an agreed amendment, namely, that the word "knowingly" should appear before the word "used" about two words further on.

MR. MATHU: May I put a point there. My first amendment was supported by the Member for Law and Order. The first one. In fact, the commas were provided by my hon. friend the Solicitor General. Up to that point we all agreed on that until my hon. friends on the right started speaking, and the hon. Member for Rift Valley put the question to my hon. friend here—although yesterday he did say in the previous debate, he accused the hon. Member for Law and Order of irresolution—

MR. BLUNDELL: Is it in order to raise matters which arose in another debate?

THE CHAIRMAN: Please stop ploughing that. I do not think it is in order.

MR. MATHU: My hon. friend has already agreed to my original amendment, supported by the Solicitor General, who provided me with the commas. If Government is going to be vacillating like that, because my hon. friends on the right here show some indication of opposition, I do not know where we are. Unless my hon. friends on the right support something, the Government vacillates. I would like to press for my amendment.

LADY SHAW: I want to ask a question, Sir: Does the fact that Government provides the commas mean that it accepts the Motion? I would be interested to

[Lady Shaw] know, because they have helped me sometimes to word amendments which they have not accepted—I feel I have been down down.

THE MEMBER FOR LAW AND ORDER: May I remind Mr. Mathu that he raised his point with regard to the word "use". Our discussion has been to try and find a way to give appropriate effect to what he asked for. Drafting in open Committee is not an easy thing to do. I think it is rather unfair to say that I have accepted his amendment, when really it was just discussion to and fro, and I had said I would welcome assistance from my hon. friend, a lawyer, on the other side, on the point of working out what was the proper form of words to give effect to the point which he raised. I think he ought to admit that the point which he raised was on the word "uses".

The question of the amendment was put and negatived.

MR. MATHU: Mr. Chairman, I would like to suggest a further amendment, that the word "knowingly" be inserted between the words "or" and "uses".

THE CHAIRMAN: Also before the word "used" in the second line.

MAJOR KEYSER: My only comment on that, Sir, is that a man who uses a car and does not know that he is using it must be drunk or unconscious.

MR. HAVELLOCK: I think the whole thing has been complete waste of the Committee's time and I can see no use at all to this word "knowingly" going in any part of any paragraph.

Personally, I will oppose the amendment.

The question of the amendment was put and carried.

MR. MATHU: I have a final amendment to this. At the end of that section 4, add another sub-section (6) to read as follows: "This section shall continue in operation for the period of one year after the coming into operation thereof and shall then expire".

The intention of this amendment is to make this provision temporary and, as my hon. friend the Mover on the Second Reading said, there is provision already

in the Ordinance. I do not think it is necessary.

I beg to move the amendment in that reason.

THE SOLICITOR GENERAL: Mr. Chairman, Sir, this amendment is not acceptable to Government. It is only an enabling section, it provides powers which can be invoked if and when circumstances necessitate. In that respect it is a perfectly proper and desirable measure to add to the permanent statute book.

MR. GIKONYO: Mr. Chairman, I should like to support Mr. Mathu's amendment, because everybody knows that this is depriving the public of their liberty of movement, and it has been rendered necessary by the prevailing circumstances. We hope that the time will come when everything is all right and normal, I do not think it is a good thing to put this in the Statute Book for ever.

THE SOLICITOR GENERAL: In those circumstances, any order which has been made will be revoked.

MR. ODEDE: I support my colleague, Sir, because this provision is one of the provisions for emergency, and after the country has gone back to normal there is no point in keeping such a thing which will always trouble the innocent people.

The question of the amendment was put and negatived.

The question that clause 4 as amended stand part of the Bill was put and carried.

#### Clause 5

MR. MATHU: I beg to move, Sir, that clause 5 be deleted. In my opinion the inclusion of extended powers in order to arrest persons without warrant who are attending unlawful meetings is not fully justified. If it would be known who were the conveners and organizers and speakers, and so on, and they could be arrested with a warrant later on.

I beg to move my amendment.

THE SOLICITOR GENERAL: Mr. Chairman, Sir, this amendment is not acceptable to Government. I have already given the reasons and the justification for this clause, and to reiterate that would be a waste of time.

MR. GIKONYO: Mr. Chairman, I think this clause should not stand, because, according to unlawful societies, if a man goes to apply for a permit and he does not get one, or perhaps he calls a meeting without a permit, and then in the middle of the meeting the police officers come and arrest the organizers or the leaders or the speakers. I think perhaps they may annoy the audience so much, and the result would be more disastrous. I think to do justice to the audience it is better to ask for a warrant of arrest rather than to arrest on the spot, because the result may be very dangerous.

MR. HAVELLOCK: Mr. Chairman, I think a comment is called for on the last speaker's contention. Surely it is a matter of very grave principle. We in this Council must make laws for the benefit and good of the people, and must not consider whether they may lead to a certain amount of difficulty in imposition. If the law is right, it must be made. I believe the contention put forward by the hon. Speaker shows an extremely irresponsible attitude towards law-making.

MR. MATHU: I do not want to use strong words like "irresponsible" used by the previous speaker, but he, if he has been, Sir, sufficiently long in Kenya, he would know that it is very easy for the other communities to have licences for their meetings, and even, sometimes, they have meetings without them. It is not so easy for the African communities to do so. I appreciate that he has had no experience of that; that is why he labels my hon. friend here as irresponsible. I would like to protest against using such a word. My hon. friend here is a very responsible person.

MR. HARRIS: Mr. Chairman, Sir, I would just like to make it clear that section 32 of the Police Ordinance does not act racially. I have had two meetings refused licences in the last six months. (Laughter.)

MR. ODEDE: I can see a difficulty in the law, Sir, because a meeting might be held by people who are innocent—just because they are talking of their economic progress, and there may be one or two undesirable people, and the police suspect that the meeting is unlawful and then arrest these people who are discussing matters of their progress, it

would be wrong. So I think that the amendment is quite equitable.

Council adjourned at fifteen minutes past eleven o'clock a.m. and resumed at thirty minutes past eleven o'clock.

MAJOR KEYSER: Mr. Chairman, when we adjourned, the hon. Mr. Odede had just stated, in support of the amendment before the Committee, that the police might suspect that a meeting was illegal. I submit, Sir, that the police know when a meeting is illegal or not when they interfere. He went on to say something about these people might be meeting to discuss economic or social affairs. Equally, Sir, he might suppose that those people were meeting to conspire to break the law.

The hon. Mr. Gikonyo, Sir, seemed to think that the law, if it is going to be introduced to the country, is going to create annoyance to somebody. I can think of very few laws that do not create annoyance. It is not very difficult to imagine the extreme annoyance of a thief when he is caught.

Mr. Mathu objected to Mr. Havelock's description of the remarks of the hon. Mr. Gikonyo as irresponsible. My submission is that they were either irresponsible or extremely stupid.

MR. MATHU: Mr. Chairman, I do not want to take up the hon. Member for Trans Nzoia because, if we go on like this we will not end. So I will leave it and go on to the amendment, Sir.

THE CHAIRMAN: May I remind hon. Members that we are not so sensitive that we cannot stand a certain amount of give and take. But there comes a point when it is not very pleasant to have too much of it. I would like hon. Members to use their own discretion and say that, at a certain point, that is enough.

MR. MATHU: I would like to say, under section 32, an assembly consists of three or more persons, Sir, and if the police would like to arrest this to three or four, or ten persons, you see, to call a meeting illegal so they will arrest them, you can see how far down the scale this can go.

MR. BLUNDELL: Mr. Chairman, it does seem to me that in judging this legislation we must not judge it from the angle that the police are immediately

[Mr. Blundell]

going to use it in the wrong manner and abuse it. Surely, the object of this legislation is to deal with those who are abusing the law, or so conducting themselves that they cause disorder and impropriety, and matters of that sort. It is completely erroneous to imagine if three or four people are gathered together for peaceful purposes, immediately police will invoke the clauses in this law. It is my belief we need this legislation. In my own area we did have, some time ago, meetings which, undoubtedly, caused a considerable amount of racial hatred. Now, I believe we cannot tolerate that in this country. It is impossible. I believe this law is designed to deal with the man who ferments and brings up matters which do not contribute generally to the peace and good order of the Colony. I believe that it has got to be interpreted completely broadly, and completely non-racially. Whatever a man's race, if he goes out and turns out denigrating, suspicion and hatred of other people, he is not contributing to the benefit of this Colony. I would like to make it quite clear, in so far as this law is concerned, we are perfectly content and, indeed, welcome that it should be used on the broadest possible basis.

MR. ODINI: Sir, I think that if we can arrest at all, we should arrest by warrant. In that case, I would say that the amendment should be made so that it would be arresting the persons by warrant, and it will be known who are the persons to be arrested. But to arrest people collectively, without a warrant, I think is not right, Sir.

MR. TAMBO: Mr. Chairman, I think we have understood the purpose for having this amendment is really—I do not think it has been really understood by hon. Members. The point is this, although we talk of this clause being applied non-racially, but we understand, and we have said that it actually does affect a particular race, and in a particular manner. The way a policeman approaches a European is quite a different way from that which he approaches an African, and when we suggest such an amendment it is a safeguard for we are trying to find, a safeguard for the Africans.

The question was put and carried.

### Clause 6

THE SOLICITOR GENERAL: Mr. Chairman, I beg to move that clause 6 of the Bill be amended by deleting the words "justice of the peace" wherever they appear in sub-section (1) of the section to be substituted for section 34 of the principal Ordinance.

Sir, those words appear in the first line of the sub-section and in line 49, if my copy is the same. Those are the only two places where they appear.

THE CHAIRMAN: No, they appear, Mr. Griffith Jones, on line 3 on page 3.

THE SOLICITOR GENERAL: I have a different copy. Two places altogether.

Sir, the purpose of this amendment is to delete these words because, at present, these powers of taking fingerprints do not fall to be exercised by justices of the peace. They have appeared in this section for many years and they were reproduced because that part of the existing section which it was not intended to amend was merely reproduced in the new section. They are inapplicable in modern circumstances, that is why I move the amendment.

The question of the amendment was put and carried.

THE CHAIRMAN: Mr. Mathu, it seems to me, looking at your amendment to clause 6 on yesterday's Order Paper, that that disposes probably of the first two and a half lines of your amendment, but it still leaves the rest of your amendment. Will you please, if you wish, formally move that.

MR. MATHU: Mr. Chairman, I move the first one which is on the Order Paper, and I have another one later.

The one on the Order Paper is, I beg to move, that the word "Assistant" in line 41 be deleted and the word "Chief" substituted therefor.

The intention, Sir, of this amendment is that persons whom I would like to exercise this power of taking measurements, photographs and footprints, and palm-prints, and so on, should be persons on the high levels in the police service, and that is why I would like, as far as this section is concerned, for this officer to be over the rank of chief

[Mr. Mathu] inspector, and I hope that the Committee would consider my amendment favourably.

THE SOLICITOR GENERAL: Mr. Chairman, Sir, I am not prepared to accept this amendment. Once the powers are conferred, the exercise of them is very largely mechanical and this insistence on high ranks only taking on all the functions of the police is impossible. They are very heavily burdened as it is. If these functions cannot be discharged by assistant inspectors, then they have no right to be assistant inspectors.

MR. GIKONYO: Mr. Chairman, I cannot see the objection to this because all that is required is for him to be present to see that these fingerprints are taken and in the event of the person not being charged, to see that they are destroyed. That is the point; we do not want the record of a man who is not guilty of any offence to be kept. All that is necessary is for him to come and satisfy himself that things are being done in a right and proper manner.

MR. HAVELOCK: I would like to ask the hon. Member opposite, are there a number of police stations in the Colony where a chief inspector is not available or difficult to get? In which case, I would assume, it would rather take away from the value of this Bill.

THE SOLICITOR GENERAL: That is so, Sir. There are a number of police stations where the senior officer is below the rank of chief inspector.

MAJOR KEYSER: In view of Mr. Gikonyo's objection to this clause on the grounds that he would like to see chief inspectors destroying these prints, the proviso to this clause, that is, "shall forthwith be destroyed or handed over to such person"—well, I would like to ask the hon. Member whose is the choice whether they are destroyed or handed over to such person? Does the person involved have the choice, because that would get over the objection?

THE SOLICITOR GENERAL: It is the person involved who exercises that option.

MR. HAVELOCK: Mr. Chairman, one more point. Does the hon. Member who moved the amendment wish to make any further amendment to the next line, "or any police officer in charge of a police

station"? If he retains those words, I do not see any great objection to the amendment.

THE CHAIRMAN: Does any other Member wish to speak to this amendment?

MR. MATHU: I would like to say that my hon. friend and the Member for Kiambu has pointed out a very important point. If my amendment is accepted, any rank you like to perform this work would be able to perform it, because it goes on to say "any other", which is correct—so why should my hon. friend object to it. All I want is that the man responsible, wherever possible, should be a chief inspector. I did not know that other ranks could do this.

THE SOLICITOR GENERAL: If that is the case, Mr. Chairman, I can see no purpose in the amendment and I shall oppose it for that reason.

THE CHAIRMAN: I will put the amendment. The question is that in clause 6, at line 42, the word "Assistant" shall stand part of the clause.

The question was put and carried.

THE CHAIRMAN: Mr. Slade, you have two amendments.

MR. SLADE: Mr. Chairman, there are two amendments which really go together. The amendment is to the proviso to sub-section (1), on page 3, line 11. I want to propose that after the word "offence", there be inserted the words "punishable by imprisonment". And in the next line, line 12, after the word "convicted", insert the words "of an offence so punishable".

The purpose of the proviso as it stands is purely to relieve innocent people of having their fingerprints kept as a permanent record by the police. It provides that if they are not charged, or acquitted, and not previously convicted, they may get the records back or have them destroyed. If that is the principle of this proviso, I would go one step further and relieve all people only convicted of minor offences punishable by a fine, because if a man is convicted of such a small offence, it is not really reasonable that there should be a record of his fingerprints kept. My proposal, Mr. Chairman, is that only if a man is convicted of an offence punishable by imprisonment, if it is the kind of offence punishable by imprisonment, only in that case should fingerprints be

[Mr. Slade]

kept. That is intended to apply to all races.

THE CHAIRMAN: Now, unless it is decided that there shall be a debate—does the Solicitor General accept them?

THE SOLICITOR GENERAL: Yes.

MR. BLUNDELL: Before the question is put, I want to ask the hon. Member for Law and Order whether or not he is prepared to add an addendum or further amendment—something to the effect that after the word "offence" there be inserted the words "punishable by imprisonment or a fine exceeding Sh. 2,000".

THE CHAIRMAN: If you do not object, Mr. Blundell, we will take Mr. Slade's amendments first.

The question of the amendments was put and carried.

MR. BLUNDELL: Mr. Chairman, I do not wish to propose any further amendment.

THE CHAIRMAN: Mr. Mathu, I believe you have some amendments to clause 6 not handed in.

MR. MATHU: The words appearing in line 45, Sir, page 2. I propose that the words "footprints and casts thereof, palm-prints" be deleted.

I was going to say, Sir, that my point in suggesting this is that fingerprints have proved infallible in criminal investigation all over the world and I cannot see any necessity for including palm-prints, and feet, on top of that, and so I suggest that my hon. friend the Solicitor General can achieve what he wants to achieve by using fingerprints.

THE SOLICITOR GENERAL: As I explained earlier, the whole purpose of the amendment to be effected by this clause is to extend the recording of marks of identification. This is an aid to prevention and detection of crime, as I have already said. It is an aid detested by advances in modern criminology. As such, I absolutely fail to understand what objections my hon. friend has.

MR. MATHU: Could the hon. Member inform me how footprints would assist him in the detection of crime by persons who, every day of their lives, wear shoes. That is the first question, because in that case, it should not be footprints but shoe-prints. How is he going to tackle that? The second point is how is he going to

tackle this other point when you have persons who wear gloves when they want to commit a crime. How will a palm-print in the whole of Heaven assist him if they do that.

THE SOLICITOR GENERAL: I really think this is superfluous. I do not think any explanation could assist.

MR. AWORI: Whilst appreciating the views of my hon. friend here, I feel, on the other hand that perhaps if the person is not found guilty, and their records have to be destroyed, it will be a waste of stationery to take palm-prints and footprints. I think the public will suffer if we have to use all that stationery.

MR. BLUNDELL: Is not the wording here exactly as it is in the Ordinance from which it is taken?

THE SOLICITOR GENERAL: Yes, except for the reference to footprints and palm-prints.

MR. GIKONYU: I would like to know whether the police have found it difficult to detect crime because they have not got footprints or palm-prints. They have been using fingerprints all the years through—I would like to know whether there is any definite difficulty which renders this necessary.

THE SOLICITOR GENERAL: I am not able to answer that; I have not made any inquiries. I would have thought it perfectly obvious that a person can leave fingerprints on an article, or palm-prints, if it is a larger article.

MAJOR KEYSER: Sir, you can have a case of burglary where a window has been broken and the burglar has entered. It might be quite impossible to find any fingerprints; but, in the flower bed, underneath the window, there might be two perfect footprints. There is one very good reason why we should have footprints and palm-prints.

My hon. friend, the Solicitor General, said this is a new step in criminology, but it is one which has been known to detectors of crime in the Sudan and used there for very many years. I remember a particular case of burglary such as I am describing where a Sudanese said: "Produce every man here and let him step on the grass", and he pointed a man out and said: "That is the guilty party". But the police would not accept it because it was not allowed in law. That is

[Major Keyser]

why we should accept this. It will assist in the detection of crime.

The question of the amendment was put and negatived.

The question that clause 6, as amended, stand part of the Bill was put and carried.

Clause 7

THE SOLICITOR GENERAL: In paragraph (a) of clause 7, I move that the proviso quoted in that paragraph be amended by inserting the word, "forthwith" between the words "shall" and "carry".

THE CHAIRMAN: I count that as a narrowing word. I propose to put it formally unless the Committee wishes to debate it.

The question that clause 7, as amended, stand part of the Bill was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR: Sir, I beg to move the Committee report for consideration of the Bill.

Committee resumed.

[Mr. Speaker in the Chair]

## REPORTS

MR. NEEP: I beg to report that the Committee of the whole Council has considered the Police (Amendment) Bill and reports the Bill with amendments to clauses 4, 6 and 7.

THE SPEAKER: The Bill is before Council for consideration of Report. If no Member wishes to say anything on that stage, if somebody will move the Third Reading . . .

## BILLS

### THIRD READING

#### The Police (Amendment) Bill

THE SOLICITOR GENERAL: Mr. Speaker, I beg to move that the Police (Amendment) Bill be now read a Third Time.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

The question was put and carried.

The Bill was read a Third Time and passed.

Order No. 6

THE MEMBER FOR EDUCATION AND LABOUR: We would prefer, Sir, to leave items 6, 7 and 8 and go on to item 9, the Societies Bill.

THE SPEAKER: It may be passed over.

I understand that before we proceed with Order No. 9, the hon. Member for Finance wishes to make a statement.

## MINISTERIAL STATEMENT

THE MEMBER FOR FINANCE: Mr. Speaker, on behalf of Government I wish to make the following statement:—

Council will be aware that certain people have suffered severe financial loss as a result of gangs of thugs whose actions have been inspired by subversive organizations.

Government wishes it to be known that it is giving immediate consideration to ex gratia payments of compensation in such cases where, after investigation, such payment can be justified.

## BILLS

### SECOND READING

#### The Societies Bill

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I beg to move that the Societies Bill be now read a second time. The object of this Bill, Sir, is to give the Government power to regulate and control the formation and operation of societies, especially those which collect money without properly accounting for it and those also whose activities are prejudicial to peace, order and good government in this State. That is to say, those societies which are subversive in character.

It is a piece of permanent legislation, Mr. Speaker, but it is a piece of legislation which in my humble submission is long overdue and is much needed in this Colony in its present state of development, and its enactment at the present time has become a matter of urgency in view of the conditions which now prevail.

It is a curious anomaly that although no one may undertake the formation of a limited company or a trade union or a co-operative society without subjecting himself to some extent to legal control, anyone at all, even a person with the blakest of criminal records, may form a society without any control whatsoever, and indeed, without Government being made aware of the existence of such a society.

[The Member for Law and Order]

The result is, as one might expect, that there are in this Colony a considerable number of societies of a political or social-political character about which the Executive has no official information at all, and consequently, is unable to exercise that degree of control which in some instances is necessary and essential in the interests of a gullible public which needs to be protected from the rapacity of unscrupulous office holders. Many of the societies are unobjectionable when first formed. Their objects are perfectly proper and the office holders are honourable, respectable people. But as time goes on, and it has happened not infrequently, a small clique of unscrupulous people have secured control of key positions in these societies, and the result is, if I may be permitted to use a modern slang expression, the society becomes "a racket". If, in cases of this kind, there had been some control from earlier stages, it might have been possible to check irregularities and prevent the irregular tendencies from developing too far, because control would mean that there would be regular supervision and regular checks by means of returns to the Registrar of Societies.

At the present time, the Government does not know and has no means of knowing, unless a particular society comes to the notice of the Director of Internal Security, anything at all about the constitution or operation of numerous mushroom societies which have sprung up and continue to spring up all over the Colony.

I would like for example to know something of the constitution of the society known as the Kikuyu Mercy Union. I would like to know, not only about the constitution, but about the operations of this Mercy Union. One wonders, for example, whether output has fallen off recently? Or whether it is merely stockpiling? Then there are such societies such as the Wanga Educated Men's Association, the Rift Valley Squatters Association, the Society of Civil Liberties, the Isak Association, the Sudanese Association, the African Miscellaneous Bureau, the Wataka Young Boys Union, and numerous others. These societies may be perfectly

respectable societies and well run societies. If they are then they run nothing to lose and much to gain if they secure the status of registration under this Bill. Some of the societies are certainly not well run. Recently, a case came to notice where out of five office bearers, one of them was an ex-Government clerk who had been dismissed for embezzling public funds, another was being sought by the police on a charge of administering a *Mau Mau* oath, the third had actually been convicted of *Mau Mau* offences and was serving a long term of imprisonment and two others were associates of a person charged with sedition.

In my submission there is clearly a case for some measure of control to be exercised over these societies before they have grown to such a number and developed in such a way that it will be impossible effectively to bring them under supervision. Similar legislation has existed in other Colonial territories—I have known such legislation and, indeed, have helped to work such legislation, in the Colony of Hong Kong. It exists also in Singapore, Sarawak, in the Federation of Malay and also in North Borneo. It does not exist in any East African territory but, in Kenya the growth of these societies is proceeding at such a rapid pace that there is need, in my submission, to regulate them and control them by machinery such as this Bill will set up. Hon. Members will see how it is proposed to exercise that control if they will be good enough to look at the Bill. Now, clause 3 sets up a Registrar of Societies—and establishes that office. Now, it is proposed that the holder of that office should be the Registrar General, who is a lawyer, because many of the functions which the Registrar of Societies will have to perform are of a quasi-judicial character, and therefore it is desirable that the person discharging those duties should have some legal training.

Clause 5.—The Registrar of Societies shall, with certain exceptions, register or exempt from registration societies that have to make application to and, having decided whether they are to be registered or exempted, he issues to them a certificate first, as a certificate of incorporation is issued when a limited company is

[The Member for Law and Order]

formed. He must, of course, refuse registration if the society has been proscribed or if it appears to him that it is likely to be used for unlawful purposes, or in a manner incompatible with peace and good order. Likewise, after registration or exemption, he can cancel or rescind registration or exemption for the same reason. In all cases there is a right of appeal from this executive officer to the highest Executive Body in the land, namely, the Governor in Council.

Clause 7 is a clause to which I would invite attention. That clause demonstrates the practical advantages which could accrue, not only to Government, but to the public, and particularly to members of societies, if and when the provisions of that clause are put into operation, because it is that clause which empowers the Registrar to call for information. He can call for a copy of the constitution and rules; he can also call for lists of their office bearers and members; he can ask for a complete return of the meetings they have held and of the places where they have held the meetings, and lastly, and in some respects, according to my appreciation of the situation, most important of all, he can call for accounts and returns from the office-bearers of the society.

Now, the following clause, clause 8, is really consequential upon 7, because that merely sets out who the people are who shall be responsible for furnishing the information which the Registrar is entitled to call for. The clauses which follow in the Bill, from 9 to 15, do not call for any comment. They are lifted almost verbatim from the Penal Code. That is to say, they form part of our law as it exists to-day, but it was thought convenient that those clauses in the Penal Code which deal with unlawful societies in this context should be transferred to the Societies Bill so that we have one comprehensive measure dealing with all societies, whether they be lawful or unlawful, instead of having to find our law regarding societies scattered about in different parts of the Colony's Ordinances.

There are two further clauses following those which I have referred to which are important, because they give a very wide power to the Executive and constitute a new addition to the law. Those

are clauses 16 and 17, which give powers of search to police officers. Certain hon. Members may feel that these powers of search are very wide if they are to be exercised without a search warrant, and I would be glad to consider any suggestion which hon. Members may have for introducing safeguards to ensure that those powers vested in the police could not be misused. Perhaps it would be convenient at this point for me to say that those suggestions might best be put forward in a Select Committee. This Bill is a very lengthy Bill. It deals with many new aspects of the law relating to Societies, and I think probably it would be the wish of this Council that it should be considered in greater detail than could be done in a Committee of this Council by referring it to a Select Committee. An additional reason for doing so is that this Bill is going to form part of the permanent laws of the Colony. For that reason, Mr. Speaker, I think it unnecessary for me to deal in further detail with the main clauses of the Bill, but hon. Members may wish to know something about the cost of administering this Bill. I have made inquiries about that from the Registrar General, who will be responsible for administering it, and in his view there will be no great additional expense involved after the first few months, when the rush of fresh new applications has been dealt with. After that it will be more a matter of routine to deal with new applications as and when they arrive. It seems unlikely that it will require any addition to the officer's staff of his department and it should be possible to deal with all the applications and the general administration of this Ordinance by recruiting two extra clerks. If that is so, then the total cost including the additional cost of stationery and disbursements of that kind ought not to exceed a thousand pounds per year, and against that, of course, there will be the fees which will be payable by those who make application for registration. The amount of the fee has not been determined because that is a matter which has to be set out under the Rules when they are made under this Ordinance, but it is thought that it would be appropriate that the same sort of fee should be charged for applications of this kind as when, for example, applications are made for registration by trader

[The Member for Law and Order] unions. On that basis, the fee would be Sh. 20 for each application. That is open for discussion, but it is the sort of figure that Government has in mind. If fees were charged on that modest scale, then the set-off would be quite considerable and, indeed, the result might be no additional net expenditure to the Colony at all.

So, Mr. Speaker, I think I need not add anything further at this stage except to say that I put the Bill forward as embodying a principle that it is necessary now to regulate and control the formation and operation of societies in the public interest, and particularly in the interests of the members of those societies, many of whom, as this Council knows only too well are illiterate and unable, in consequence, to look after their own interests. Abuses have undoubtedly crept in and they will spread and grow if they are not checked. This Bill is the proper machinery by which such a check may be imposed. I invite, therefore, all Members who wish to see those abuses checked and, if possible eradicated, to give their support to the Second Reading of this Bill. (Applause.)

**THE SPEECHES GENERAL:** Mr. Speaker, I beg to second and reserve my right to speak later.

**THE SPEAKER:** It is proposed that the Societies Bill be now read a Second Time. As it is just on half past twelve, which is the time for the interruption of business, this debate will now stand adjourned until 2.30 p.m. on Tuesday.

Before hon. Members rise, I have certain statements to make to them. Hon. Members will observe that our debate becomes more interesting to the public, and certain arrangements about the Public Gallery accommodation have to be made. Accordingly I have made the following arrangements for members of the public who are desirous of attending the debates of this Council.

Firstly, it must be noted that there is no inalienable right to attend, and consequently strangers can always be ordered to withdraw and, if necessary, the Public Gallery can be closed.

Secondly, it must be noted that the accommodation is somewhat limited. Hitherto the whole of the space beyond the Bar of the Chamber proper has been

treated as the Public Gallery, and the space behind the Chair, to the left of the Chair, has been called the Distinguished Strangers Gallery, and the space on the right of the Chair has been the Press Gallery. It has now been found necessary in view of the 24-hour Hansard, and in view of the increasing number of Press representatives, to take over this District Distinguished Strangers Gallery on this side in order to give further accommodation to the Hansard and Press. Accordingly, I am now taking over the first row of seats in the present Public Gallery to be the Distinguished Strangers Gallery, we will call it that for convenience, the Private Gallery, something like the Dominion Gallery in the House of Commons. Now, admittance will be by ticket to be issued to Members of the Legislative Council only on application to me personally. These tickets will entitle holders to the seat for the day, if they choose to remain there. The rest of the seating accommodation will be the Public Gallery. Admittance thereto will be by ticket to be obtained from Mr. Borrett, the Assistant Clerk to Council, at Room 33 in Memorial Hall between the hours of five and six p.m. on any day, for use on the following day. The number of tickets will be limited to the number of seats available, and the holder of such ticket will be entitled to enter the Public Gallery before Prayers. Persons without Public Gallery tickets will not be admitted until after Prayers. That is the usual House of Commons practice, to some extent. The tickets for the Public Gallery will not reserve seats if the holder leaves the seat vacant; after Prayers any person already admitted may occupy it. The amount of standing room will also be limited, and only a certain number will be admitted to stand because it is most inconvenient to have a large crowd packed there together, and it raises the temperature of the whole building. (Laughter.) These arrangements, of course, will not apply on the day of the opening of a Session. On that day the Public Gallery will be closed.

Council will now stand adjourned until two-thirty p.m. on Tuesday next.

#### ADJOURNMENT

Council rose at thirty minutes past Twelve o'clock p.m.

Tuesday, 30th September, 1952.

The Council met at thirty minutes past Two o'clock.

[Mr. Speaker in the Chair]

#### PRAYERS

#### MOTION

WELCOME TO H.E. THE GOVERNOR.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that this Council extends to Sir Evelyn Baring a very cordial welcome on his assumption of the office of Governor of Kenya, and assures him of loyal support and co-operation.

Mr. Speaker, it is my duty and privilege to move this resolution in the unavoidable absence of the Chief Secretary. Sir Evelyn comes to Kenya with a distinguished record of public service, and an unusual variety of experience—first in India, then in the City of London and finally in Africa. His term of office will be a period of great importance to Kenya, for during it two steps are to be taken which will, I believe, profoundly affect our future. As Sir Charles Morrison recently announced in this Council, a Royal Commission will shortly be set up to examine the economic and varying problems of East Africa. In accordance with what has come to be called the Griffiths Agreement, a consultative body containing representatives of all communities and of the Government, is to be set up to consider our constitutional arrangements and their possible development. Both these bodies, I think we can safely assume, will present reports during the present Governor's period of office. The subsequent consideration of those reports, and action in the field which they cover, will, I think, call for all His Excellency's wide experience and wisdom, and for our tolerant co-operation.

The Council will, I am sure, wish also to extend a very hearty welcome to Lady Mary Baring and her daughter, and to express the hope that they will enjoy all health and happiness during their stay in Kenya. Sir, since I became a Member of this Council in, I think 1948, I have never before felt certain what reception a Motion I put forward would receive from the other side of the Council, but on this occasion I am confident it will be heartily supported by all Members. (Applause.)

Sir, I beg to move.

MR. BLUNDELL: I beg to second the Motion which has been put by the hon. Member for Education and Labour. We consider we are, indeed, fortunate to have appointed as our Governor and Commander-in-Chief a man who has already had such a distinguished career. The European community will wish me to say that he will have the full support of that community in the maintenance and carrying out of good government in this country of ours; and, further, we especially welcome the views which His Excellency presented at the Swearing-in Ceremony this morning, especially in regard to the great task which lies before us in Kenya of creating a design by which the problems of Africa itself may be solved.

We, Sir, on this side of the Council have not had the privilege of meeting His Excellency. It is therefore all the more pleasant for us to be able to take this opportunity of extending to him, Lady Mary Baring and his family our best wishes for a happy and successful life amongst us in the Colony.

DR. HASSAN: Mr. Speaker, Sir, I rise to support this Motion, and I would like to offer a hearty welcome on behalf of the Muslims that I represent, and also on behalf of Indians that are absent to-day. Mr. Speaker, Sir, I—it is a matter of the greatest pleasure to us that His Excellency, the Governor, who was sworn in to-day, not only had the experience of the East, but had great experience of the life in Africa. I feel we did not have a very bright picture in Kenya to present to him, but with his experience and his ability, we expect that he will be able to put things right for the benefit and welfare of Kenya, and I, on behalf of the Muslims and the Asians, offer my loyal support and help during His Excellency's term of office in this country. (Applause.)

MR. MATHU: Mr. Speaker, in supporting the Motion which has been moved by my hon. friend, the Member for Education and Labour, I would like to say that if anything has pleased me during this special session, it is that the Council has been sitting during the arrival of His Excellency, our Governor, and that we shall have the opportunity of welcoming him here loyally and cordially and, in spite of what other

[Mr. Mathu] people may say, he will find in Kenya very happy co-operation from all the communities here, and I should like to associate myself, with my colleagues, to the Motion which has been so well moved by my hon. friend, the Member for Education and Labour.

SUEKHI M. S. MACKAWI (Arab Constituents): Mr. Speaker, on behalf of the Arab Community, I associate myself with the Motion put by the hon. Member for Education and Labour on the arrival of His Excellency, Sir Evelyn Baring, to this Colony.

The question was put and carried.

THE SPEAKER: The Motion was carried without dissent, and I shall endeavour to have this conveyed to His Excellency in due course.

## BILLS

## SECOND READING

## The Societies Bill—(Contd.)

MR. OJINDE: Sir, I rise to oppose the Motion on the Bill, but before I do so, I would like to make this Council understand that the African Members abhor the criminal actions which have taken place at Timau and Nanyuki and we would support the Government in every possible way in dealing with the people concerned. (Hear, hear.) I must say, Sir, that we African Members here will represent all the 5,000,000 Africans who are law-abiding, but we are not going to represent those rogues who take actions which are not for the benefit of the country. (Hear, hear.) I am sure, Sir, that this action will never take the African anywhere. It would be better for the Africans to adopt, in fighting this case, a non-violent system so that when the white man hit his left cheek he turns him his right cheek.

Sir, that is all I have to say about these present incidences in these two places.

Now, then in opposing this Bill, Sir, I do so because I believe that the Bill is going to interfere with the freedom and liberty of human beings in organizing their societies in the way they like, and when I say "human beings," excuse me to say, that I mean Africans. And when referring to Africans, I do not mean I am racially minded, but because

this Bill puts me in a position that I have to use the word "African" most of the time, Sir.

Now, it is intended to destroy the initiative of political organizations as that African political consciousness may not succeed. I feel, Sir, that I must oppose the Bill. It is even intended to destroy the initiative of the young fellows who like to organize themselves so that one day they become good leaders of the country. And so, I am afraid, I must oppose it on those grounds. The reasons why I refer to Africans so much is because if this Bill becomes law, I know that the African political union, the Kenya African Union, will be gone. I say so, Sir, because, at this moment, we cannot have meetings of the Kenya African Union, and the Bill has not become law. What about once it becomes law? I believe that at that time the Kenya African Union will go. And to compare the Kenya African Union, itself, with the Electors' Union—I find that the speeches which come from the Members of the Electors' Union are even worse than those which come from the Members of the Kenya African Union. I feel so, Sir, and I am going to explain.

Last year, when Africans were asking for more Members to this Council, the members of the Electors' Union were arguing that African membership should not be increased in this Council. If this was done, they must have parity, they said; and unless they were given that parity, they must have partition of Kenya. These are the people who say they can lead the communities of this country to the right goal. They were determined to partition Kenya if Africans were to have their right share.

The other instance—recently, about two weeks ago, there was a meeting of the Electors' Union in this hall.

Now, in that meeting, many resolutions were passed which were not to the benefit of the racial co-operation and I must say that, someone called Moustey urged the Elected Members to remove the leader of the African community from the Executive Council. He urged them to remove him, and if Government could not accept such, they had better walk out. There are Europeans teaching us how to walk out; we do not know,

[Mr. Odede]

and in these particular sittings we should have walked out—what else can we do when everything we put to Government and our colleagues the Elected Members is not accepted. Sir, after giving those two instances, I say that our co-operation in this Council will not get on well unless we try to become moderate in our thoughts. (Hear, hear.)

The Bill itself, taking it clause by clause, or section by section—I find that section 3 renders public officers immune from being sued by innocent people whose property they might have destroyed, or spoiled during the period of their investigation or inspection; and as such I feel that the Bill has a great defect because how much can we trust a public officer. Now, an officer might have a grudge against someone and then go to his house, try to inspect and destroy his property, because he knows he cannot be sued. That is a point I would like to be considered, although I am going to ask Government to accept the withdrawing of this Bill, because I think it is really no good; it will not help anything and it is going to cause a lot of trouble.

Now then, Sir, section 5 gives the Registrar power of refusing a local society, wherever he considers, or suspects, that the local society is affiliated to a political organization abroad. What is the use of that, Sir, I think that is wrong. I think that it is brought in because it is known that we African community seek rescue from abroad—from organizations abroad—because we are not being granted our rights. So, because we are seeking rescue from abroad, this has been brought in to stop us from doing so. Sir, I think that clause has so many defects, some of them I am just going to mention. The other thing is that when the Registrar is satisfied that an organization or a society is undesirable, he will refuse giving licence to such an organization. How can the Registrar know that a society is going to be undesirable before the society had done its work for some time? It means he will just presume this is going to be undesirable so he had better not register it. I would therefore ask that let an African be the Registrar so that he can look at both sides because I think we Africans can tolerate and see both sides better than our so-called leaders.

The other thing, Sir, is that when the Registrar feels that a registered or exempted society does not follow its constitution, its licence will be cancelled. When he feels that such a society is acting in a way that it may interfere with the good order and welfare of the country, he will cancel the licence of such an organization. An awkward thing with it is the phrase "when he is satisfied"—when he is satisfied in these instances may mean when he suspects, because he has no committee to tell him that this organization or this society has been working in that way so it is probably going to be a subversive organization. He just suspects, and then cancels the licence. I feel, Sir, that under that section the Registrar is given such powers as will make other communities suffer a great deal. Now then, section 7 indicates that every society whenever they are ordered by the Registrar should furnish him with their constitution and rules, the number of meetings that they have had in a six months period, the accounts and the returns of the society, but what has the Registrar to do with a private society? If we live under democracy, why should the Registrar interfere and get into every bit of the work, which I would say, does not concern him, because a society is formed—say by a group who are thinking that it will improve their cause, and as such I do not see why the Registrar should interfere in every detail of their activities. For example, I would be glad to know how many times Government had interfered with the accounts of the Electors' Union, whereas every time there is interference with and allegations that the leader of the Kenya African Union will smuggle the money belonging to the organization. Now, I do not think that, when this Bill becomes law, the accounts of the Electors' Union will be affected. The Kenya African Union will be greatly affected.

Let me pause and go on to section 8. Under sections 7 and 8 the fine that would be imposed on an office-bearer or a member of a society who does not comply with an order of the Registrar is so colossal that it would destroy some people. If we consider the economic development of the Colony and if we consider the African economy, and we try to enact laws which will affect the



[Mr. Odele]

I think we are not justified, we are not doing the right thing for the country. The fine is supposed to be Sh. 2,000. That is unjust—because something might have happened to the office-bearers, therefore it is not right to fine him £2,000. (Cries of "shillings".)

MR. ODELE: Shillings, that is right, shillings, thank you very much.

I say that this man might have been delayed by something and so the Registrar will consider that he did not comply with the order and he will be fined this colossal sum. That is unfair, Sir.

Then, sections 10, 11 and 12 give fines which can be imposed on an office-bearer, on members of unlawful societies. I agree that if the office-bearer of an unlawful society is really convicted, if it is really an unlawful society, I do not mind, Sir, but I can see a difference that in most cases these people will be convicted and fined so much just because they are suspected.

The other day the hon. Member for Law and Order was referring to African societies which he does not know about, and referred to the African Miscellaneous Bureau as a Society which may be considered unlawful.

THE MEMBER FOR LAW AND ORDER: I said I might indeed be reputable, but we did not know a lot about it. I was just correcting a misapprehension in my hon. friend Mr. Odele's speech. He said the other day when I referred to the African Miscellaneous Bureau I indicated that in my view that Society was unlawful and I rose to correct that misapprehension. I have a very clear recollection of what I said. I said I had a list of certain societies about which the Government had very little official information, that some of them might be reputable and proper societies and that such societies had nothing whatever to fear from a system of registration being introduced, such as it is proposed in this Bill. I certainly had no intention of conveying to my hon. friend that Government thought that that particular Society was an unlawful Society.

MR. ODELE: I accept that explanation, Sir, but I was referring to cases where fines can be imposed on innocent people.

The other Society he mentioned was the Kikuyu Mercy Union. That Society—I do not know much about it—but I was given to understand it was organized, to help parents or relatives of dead people in burying the body or in carrying the body from one place to another. That is why it is called the Kikuyu Mercy Union. That is how it was put to me but I cannot say much about it. Some of my hon. colleagues will probably say more about it.

There are several societies mentioned by the hon. Member for Law and Order.

Now, Sir, section 14 states that it may be presumed that a person, because he is found in possession of a book, a list of names, or articles which might belong to unlawful societies, such a person can be accused and, as I see it, he may be convicted and fined, while he is not so concerned. So there is also a big fault here too.

Now then, sections 16 and 17 give the police and administrative officers power of entering into any building, and force themselves when they feel it is necessary to do so, force themselves to get in, and when they meet a gathering of people they can arrest them, they can order their arrest to be done while the Government really do not know what the discussion might be about. It may be that one of them, or, say, two of the people in the group are suspects of unlawful societies, but if the whole group is going to be arrested there will be an increase in crime. Some of them will feel that as we are only innocent people why should we be included in this, and then will start fighting with the police, and we shall be increasing crime by so doing.

I think arrest in such cases should be by arrest warrant to the people concerned.

Now, Sir, I would like to say a few things about the Kenya African Union and the *Mau Mau*, because I feel that this particular Bill is intended really to destroy the Kenya African Union. That is my conviction.

I would say that the Kenya African Union is entirely a different organization from *Mau Mau*—if *Mau Mau* is an organization at all, it is an entirely different organization. I say so, Sir, because the Kenya African Union has membership embracing the whole of this

[Mr. Odele]

country, whereas *Mau Mau*—as I have referred to it—as an organization has very localized membership—if there are members of the organization at all. And, as such, I cannot see how we can relate the Kenya African Union with the *Mau Mau*. On the 24th August I remember at a meeting at Kiambu the President and the leaders of the Kikuyu denounced *Mau Mau*. The President did it and said that: "Let us chase that animal and destroy it if we can get him". Now, we know that he would not do that if he were a member of the *Mau Mau*. He did not do that because he wanted to please the Government, but because it was his conviction that *Mau Mau* is not a good organization.

I was asked last month several times by Government officials what *Mau Mau* is. I could not say anything, because I did not know it. I just said that the difference between it and the Kenya African Union is that I am a member of the Kenya African Union, but I am not a member of the *Mau Mau*. So that was the explanation. I did offer. But this is where I think the snag might be. It may be that a member of the *Mau Mau* becomes a member of the Kenya African Union and, as such, the Government convict him as a member of the *Mau Mau*; and, knowing that he is a member of the Kenya African Union, they will say that the Kenya African Union is sponsoring the *Mau Mau*. That might happen, but that does not mean that the Kenya African Union supports this *Mau Mau*. Not at all, because a person can be a member of several organizations. So that might happen. So I appeal to Government to look at the Kenya African Union just as much as they look at the *Electors' Union*.

The name *Mau Mau*, I have been told, might have been formed from *Mau Escarpment*, and so the name is doubled, and we get *Mau Mau*. Some people say that it might have been an African name known as *Muma*, and so the letters are changed somehow to fit into *Mau Mau*, but I think that is just a guess—just as it is a guess that the *Mau Escarpment* is the name given to this organization. *Muma* is a word that means oath-taking in the African language—say, a translation from African to English. We know oath-taking as *Muma*, and the Kikuyu know

oath-taking as *Muma*, and so we cannot say that it is *Mau Mau*, just as much as we cannot say that *Mau Escarpment* is the right name for the *Mau Mau*.

So, Sir, I appeal to Government not to relate this organization to the Kenya African Union. That is the important statement or fact I wanted to make about the difference between *Mau Mau* and the Kenya African Union.

Now, then, Sir, the other day when I was talking here and saying that these Bills were probably brought here by my hon. Members on the right, or they asked the Government to do it, I was about to be thrown out of the hall by the hon. Member for Education and Labour. Can I prove that this very Bill we are discussing now is an indication of the other speeches we had here last July? Quoting just a small paragraph—a small paragraph about the speech by the hon. Member for Aberdare—now it reads like this:

"This is another serious aspect, rather different from that which I have mentioned so far. That is the importance of controlling public meetings where things are said that are liable to disrupt society."

Now, that bit shows that Government had done exactly what the Member wanted, and if Government can accept a request from my colleagues, the Elected Members, why not accept our request, too?

MR. HAVELOCK: We have—many times.

MR. ODELE: I think that is where the Government is doing a great injustice to the African community. I know that so many requests that we have put before the Government have never been considered. I need not mention them, but when my hon. friends, the Elected Members, ask anything it is done the next day.

MR. HAVELOCK: I wish it were!

MR. ODELE: Sir, I would therefore, in this sitting of the Council, ask the hon. Members on my right-hand side to remove from the Opposition side and go to the Official side, so that we live here can form the Opposition party, because so far in this Council they have not contributed at all as Members on the Opposition side. It means that anything we

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are discussing here has been, as I said, given to Government. That is what they wanted. That is why they are satisfied. We, here, are not satisfied; because we can see some defects—we can see so many faults in the Bill. So, as I say, it would have been fair if my friends moved to the opposite side, and we make the Opposition party.

Now, the other thing I would like to mention, Sir—this Bill is going to affect the African community greatly, and I have been told—and I have even tried to find out from several people, and found that a Bill like this has never been implemented or passed into law in any part of Africa—even in South Africa, under Malan's government. It means, therefore, that we are cutting across democratic principles in Kenya—we are giving a lead in cutting across democratic principles of the British Government, of which we are proud, and which we, as subjects, would like to enjoy.

I would say, Sir, that if we five are beaten in this Bill, I would ask the Government to make it very temporary, because it would interfere with the liberty of the people; but I appeal to Government that it should be withdrawn. It would not serve any good purpose as far as I can see.

Sir, I beg to oppose the Bill.

MR. HAVLOCK: On a point of order, Mr. Speaker, would you give the Council your advice as to whether we should, on the Second Reading, comment clause by clause in a Bill?

THE SPEAKER: I appreciate what the hon. Member for Kiambu is driving at. (Laughter.) It is most tedious, to say the least of it, to have listened to the hon. Member for African Interests, who has just spoken, going through, as he says, clause by clause when, in reality, he is objecting to the Bill *in toto*; and, if the hon. Member does object to the Bill as a whole, he should move that it be read this day six months in the ordinary way. Then we know where we are, and what you will eventually decide the Council upon, and we will then know exactly; but when you first of all say you are opposing, and then afterwards you start trying to deal with each clause, or the principle of each clause, it is almost im-

possible not to get into the details of the clause, and the hon. Member must know, if he reads the Standing Orders, that the details of the clause are reserved purely for Committee.

I hope the hon. Member understands what I am saying about it, and realizes how patient the Council has been with him; and I hope that he will not offend again, because, on the last Bill that we discussed in this Council only two days ago, the hon. Member did the same thing. I rose several times during the course of his speech, but this time I have let him go absolutely to the end, and still he does not realize what the proper objects of a debate on the Second Reading are; and he must learn them quickly, because, if not, I shall have to ask him next time it happens like this to discontinue his speech and, if he fails to do so, then of course I shall have to take further action.

I hope the hon. Member thoroughly understands the position.

MR. OUIDE: Thank you, Sir.

MR. BLUNDELL: Mr. Speaker, I rise to support the Bill which is before the Council and, Sir, I should like to record, arising out of the speech made by the hon. Member who has just finished, that I should be extremely sorry to think that because we hon. Members sat on this side of the Council—we automatically had to oppose every measure which hon. Members opposite put forward. (Applause.)

Under our constitution as it is to-day, such would be a negation of Government, as we see it in this Colony, and again, Sir, I should like to record one other thing. I found that the hon. Member on my left seemed to have a grudge against me, or against my hon. colleagues here, because we were sitting on this side of the Council, in this particular instance, and supporting the Bill before us. I would like to give him an assurance, Sir, that we should be only too happy to take the places of hon. Members opposite at any time that he will agree to such a course. (Laughter.)

Mr. Speaker, in judging this Bill, I think we have to take into consideration two elements in the picture. The first is the matter of urgency, of which this Bill is one in a composite picture presented to

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us with several other Bills; and the second is the long-term picture which the Bill will present for us.

We, Sir, are happy that the Bill should go to Select Committee, if the hon. Member for Law and Order so wishes, on condition that there is not too long a delay in the reporting thereto, because we think that this Bill will assist us in a small degree in dealing with the present situation in the Colony.

Now, Sir, I would like to record this, and I hope the hon. Member on my left—the African Member, Mr. Oude—will not object to my saying it. I believe it is quite useless to get up in this Council to make a statement and deplore happenings which have taken place recently—for instance, at Timau—and, in the next breath, go on to oppose any measure which is designed to prevent a repetition of happenings of that sort. (Hear, hear.) (Applause.)

Not only that—that is a viewpoint which has been consistently presented to this Council over the last few days—for several Bills, I will not, Sir, get myself near to a point of order by referring to previous debates. All I wish to record is that we must have some consistency in these matters. It is absolutely illogical with one mouth to deplore a situation and, with the other mouth, to use every endeavour to prevent any measure passing through this Council designed to put the position into better order. (Hear, hear.)

Now, Sir, in my view we need this Bill, as I have said, not only to help us with the present emergency, but also on a long-term basis, and I think we need it on a longish-term basis to protect a great many decent citizens. I wish to emphasize that—I wish to underline it, because the hon. Member has implied in his speech that our attitude to the Bill is governed by political considerations. That is not so and, on behalf of my colleagues, I must deny it. If people who should know better are not prepared to come forward and support measures of this sort designed to protect decent citizens, that is all the more reason why we should do so. It would be complete negation, in my view, of our responsibility, not to do so.

In this Bill, as I read it, there is no need whatsoever for any society which, if it is properly conducted and has proper aims and objects, wishes to present a perfectly legitimate viewpoint, to have any fear whatsoever; but societies which are designed solely to disrupt the Government or to swindle decent citizens should take notice of this Bill, and it is quite proper we should have a measure which causes them to take note. We have got here in this Colony, and we shall have for many years to come, a tremendous width of cultures. There is no doubt about it whatsoever that some of our decent honest citizens, who have not been so lucky as we have in education and matters of that sort, are having their hard-earned savings taken off them by persons who are peddling the country and pretending to be from societies designed to benefit them. I believe it is our responsibility to see that that does not happen.

The hon. Member, Sir, made a tremendous play about the Kenya African Union and the Electors' Union. I think it might be as well for hon. Members opposite to know exactly what I believe are our sentiments in this regard. I do not believe that either the Kenya African Union or the Electors' Union has any need whatsoever to fear this Bill if they conduct themselves properly and if when the terms of clause 3 of the Bill clearly lay down the type of offence in which the Bill will be used; as follows: "Where it appears to him" (the Registrar) "that such local society is likely to be used for unlawful purposes or for any purpose prejudicial to or incompatible with peace, welfare or good order in the Colony".

Now, Sir, I would like to record that my support of this Bill is not connected in any way whatsoever with the Kenya African Union. That is entirely a matter for the officials of that Union and not my business, here, Sir, and hon. Members must accept my assurance. If that Union is conducted properly, with proper accounts and proper balance sheets, etc., then it will be completely outside the terms of this Bill, and similarly, I would like to make that assurance to the Electors' Union. I am not supporting this Bill in order that either the Kenya African Union or the Electors' Union

[Mr. Blundell] may be dealt with under it. I would suggest, Sir, that if it were necessary to deal with either of these societies, they could have been dealt with by the simple provision of proscribing them as unlawful societies, and I believe that sufficient answer to the allegation which the hon. Member has made.

Now, Sir, I believe it is important that we should start to guide our societies so that they conduct themselves properly, so that their accounts are presented properly; so that members may know where and how their moneys are placed; so that we should start educating people in what are the proper functions of a political society. Now, Sir, all that, whether we like it or not, is part of trusteeship. If we do not accept that, where are we going to go? In my opinion, we can only sink into a large degree of chaos.

There is one particular matter to which I wish to draw the hon. Member for Law and Order's attention; it is this. I cannot remember whether he raised it when introducing the Bill on the Second Reading, at any rate, my colleagues and I, Sir, would feel inclined to suggest to him that in clause 17, as a matter of principle, that the operations of the officer conducting searches should not be arbitrary, but should be controlled to such a degree as would be given by a search warrant. I would like to raise that point because it does give a certain amount of control in that particular clause in the Bill, which allows arbitrary search of a society's buildings, accounts and books.

Sir, I have two points to end. I do apologize to the Council for introducing rather a note of levity but it seems to me that all hon. Members will be entitled to give a definition of the origin of *Mao Afaw*. I am informed by the hon. Member for the Coast that the hon. Member for a suggestion made by the present President of the Chinese Republic whose name is Mao. (Laughter.) I have that, on good authority from the hon. Member for the Coast and I have no doubt that, if called upon to do so, he will develop the theme.

In supporting the Bill, I wish to draw the attention of hon. Members opposite to one thing most important, not only in this Bill but in the previous Bills which we have debated and in the Bills coming

before us. It is no good our passing these Bills unless (a) hon. Members opposite use them; and (b) hon. Members opposite have the staff requisite for using them. In other words, Sir, I do hope that the support of this Bill is not going to mean that the Bill immediately becomes a dead letter because: (a) hon. Members opposite do not use it; and (b) they have not built up the staff to see that it is carried out.

Mr. Speaker, I beg to support.

MR. TAIEMO: Mr. Speaker, I rise to oppose this Motion. I do so from the point of view of what I have seen or what I have heard from the person who explained the purpose of this Bill. From what he said, I fail to see the reason why the Bill should come forward, apart from the following points.

The first point was that there have been many societies that have been started and Government has no information whatsoever of these societies. That seems to me one of the reasons which the hon. Member for Law and Order gave for wishing this Bill to go forward.

The second point was the introduction of this Bill so as to deal with the unscrupulous leaders who wish to change ordinary societies into a racket. I fail to see, Sir, the reason why Government should have more information on any society. I feel that if Government—advised by that I mean the Officials—really wished to know something about societies, they could do so and nobody could stop them from knowing. Now, if there had been any hindrance or objection to let an Official know about a society, there are laws which can so far deal with such a society, and the only implication I can get from this is that Government has not been sufficiently interested in the sort of societies, the people they look after, and the forms of them, and because the Government has been, may I say, rather lazy and have not gone and found out about this, they wish to put in a Bill where they can have these things brought to them in their offices. I maintain, Sir, as far as Africans are concerned—I am talking as an African—the formation of societies is an indication—there are many, as the hon. Member for Law has said, the formation of these societies is an indication of

[Mr. Taiemo] progress as far as the African is concerned. They have come to realize that they have to go into one thing or another in order to get themselves interested, to get themselves in to co-operate, to run whatever business or whatever interest they are aiming at and to put this Bill into effect, I feel, that it is just like telling the Africans—I am talking of Africans, because I know more about Africans—that their sort of efforts; they are having their efforts in the wrong way, and I still repeat that there are means by which Government can check and control any society that may run unlawfully.

We have, in Kenya, several societies and if I am not mistaken the purpose of bringing this Bill forward has been due to a certain unrest in certain quarters of the way in which the Africans are beginning to have an interest in public affairs. It has never been known before for Africans to have a political meeting or such meetings with an audience of more than 30,000, but recently this has happened, and I think this has caused a certain amount of disturbance in certain quarters. I think that it is the purpose for having introduced this Bill.

On the other hand, we have got other societies, political societies, which, in Kenya, are indulging in politics and, if I may say so the African political bodies are in direct contradiction with the European politics in this country. But that should be allowed in a democratic country like this and no party should feel that another party is going the wrong way, because their policies and ideas are in contradiction with theirs.

With your permission, Sir, I would like to quote some statements by Sir E. D. Simon, which are a kind of definition of truth. It goes: "Perhaps the most fundamental difference between the democrat and the dictator lies in their respective attitudes to public discussion of political matters. In a dictatorship the common man is expected to accept the 'truth' on the guidance of his leader, who claims to know it by natural wisdom or by intuition. Criticism or discussion of the dictator's 'truth' is the greatest crime a man can commit. In democracy the truth must be sought for by the methods of science, by full and free discussion, by the 'drugery of hard thinking'. Under a dictatorship, criticism leads to the con-

centration camp; under a democracy constructive criticism is the greatest service a citizen can render". And if we, in this Council, or outside cannot tolerate any criticism that any citizen of this country can put forward, I feel that we are trying to put ourselves in a position to feel that we are leaders who know the truth and the common man has got to accept the truth.

Mr. Speaker, referring, not quite in detail, but I think it is relevant to my opposing the Bill, to a few of the clauses in this Bill—

THE SPEAKER: Before the hon. Member starts dealing with the clauses, I would ask him to recollect what was said from the Chair only a few minutes ago.

MR. TAIEMO: I will bear that in mind, Sir.

THE SPEAKER: The hon. Member will realize that there is ample time in Committee to deal with every detail of the Bill. The principle only now.

MR. TAIEMO: I said, much earlier, that Africans have just started to form societies and this is an indication of progress. Now, it is provided somewhere within the Bill that every local society, not being a registered society, or exempted society, shall be deemed to be an unlawful society. Now, what I want to get is this, When we pass this law, there are many Africans who are illiterate and they wish to form societies, and when they wish to form societies, not knowing the contents or implications of this Bill, they are going to find it difficult to remain within the law; not that they do not want to do so, but they have not got the means to know. And, on the other hand, they may have subscriptions and these subscriptions; although they may know how much they have got, they may not have a person able to put them in writing for the Registrar to see, and, when you go and tell them that unless you have got this, you cannot go on as such a society, is just nipping the African progress in the bud, when they are just starting. The laws that are there already provide for any society, which is conducting itself in any manner to be detrimental to the good peace of the country, to be dealt with. Accordingly, I fail to see why it is necessary to bring in this Bill, and the hon. Member for Rift Valley did mention this same fact, that

[Mr. Tameno] there is a law provided for any unlawful societies. He went on to say, if we do not put such a law into effect, where are we, in Kenya, going to lead to, I would answer him very shortly, we are going to lead to the same place that any other country—democratic country—has been led to without such a law as this? (Hear, hear—from the African Members.)

Mr. Speaker, I wish to oppose this Bill on such grounds, not that I am not interested in the Africans having good, well run societies, but I see in it a way, a kind of discouragement of the Bill for the African, for which purpose this Bill has been put forward. I cannot see anything else. It is a way of discouraging the African from indulging themselves in things and affairs that they should have a right to do in any democratic country.

Mr. Speaker, I beg to oppose.

Mr. GIKENSI: Mr. Speaker, I rise to oppose this Bill because it seems as if by the time we adjourn, this Session, all the freedoms we in this country have for long enjoyed. This Bill seeks to bring to an end the freedom of assembly. It provides that all societies, existing or otherwise, must be registered. The Bill goes further to give such enormous powers to the Registrar to refuse to register any societies where he considers the society will be used for unlawful purposes. That, to me, is a very ambiguous statement. There is nothing to prevent him, and I think that all the existing societies—African societies—are being used for unlawful purposes. My reason in saying so is this.

At the moment, the Africans are blamed for the present situation that is in the country, and it may be that this law is brought about to stop all the African societies. There is nothing to prevent that from happening. In moving the Second Reading of the Bill, the Member for Law and Order did mention that members, by being asked to register their societies, have nothing to lose and, on the contrary, they had everything to gain. To me, that does not sound as being correct. I consider that they have a lot to lose. They have, first of all, to lose the freedom of running and managing their

societies in the manner they wish. Secondly, he did say that the Government has no means of knowing what any particular society is doing, unless for matter is for the Director of Internal Security. I do not mind, if any society is conducting itself in a way that Government thinks is unlawful, the Director of Internal Security interfering. They are that power already—why ask any society to be registered? I am so convinced, and nobody will get me out of it when I say that this Bill is brought about to suppress the African society, I am convinced that is why, if not, why use the present laws? The Government have the means, why not, if they think the society is not conducting itself in the interest of the public, they have the power to do so, but by bringing in this, it brings me to think it is there to suppress African societies. If so, it is a very serious state of affairs. I cannot see the wisdom of Government entering into these arguments against societies. It is not until recently that Africans started forming themselves into societies and things. Why come now and try to stamp it out?

Mr. Speaker, the hon. Member for Law and Order did say that such laws do exist in the Far East. The mere fact that these laws do exist in the Far East has no reason why we must accept them here. We have nothing good to copy from the East—everything good from the West. (Hear, hear—African Members.) Will the hon. Member tell us which way we are going?

—Mr. Speaker, I feel on the whole I must oppose this Bill—the principle involved is a very bad one; I, for one, will not be a party to it.

I beg to oppose.

Mr. AWORI: Mr. Speaker, I rise to oppose this Bill for various reasons I am going to give. Presently, Sir, I am going to show that this situation does not need such drastic measures as we are taking in this Bill. What we are being told by the Member for Law and Order—without someone reading inside of the Bill—I doubt that anybody will accept that it is necessary to register societies, but the principles involved—when we think about it we find they are going to do more harm than good.

[Mr. Awori]

First of all, Sir, I do not think we have been given a good picture of any successful country that has adopted such measures. Presently—we have got so many things to register; we have to register motor-cars, ourselves almost, now we have to register our organizations and, in the end, what will we have to register? We have been told, Sir, because of the present crime and unrest it is important that we regulate—for at least we know about this—organizations that are flourishing and perhaps bringing ill will in the country. The hon. Member for Law and Order gave us an example of societies of which he would like to know what they are. He was quite right, and perhaps, I for one might tell him what one society is. I am its proprietor, and it is registered under a business name. He might be satisfied with what that society is, I will not say about other societies—I do not know very much.

In accepting this Bill, Government will be making a blunder. They will be violating human rights. Because the principles involved in this Bill are going to affect the African masses enormously.

As you said, Mr. Speaker, we are not going to discuss here the clauses in this Bill, as Government, if it accepts, might take this Bill to the Committee—with our opposition. I am not going to go into detail but I will have to mention, Sir, the reasons, and quite a number of them that are in this Bill, which make it unpalatable to us as representatives of our people.

One main reason, about which I am very much perturbed, Sir, is that, if we accept this Bill, if Government passes this Bill, then it means that our societies or our organizations in this country have to remain local. It means that a political association in this country should not affiliate itself with any organization outside Kenya. We are here to learn in this country, we have to be taught, not only here but abroad. That is why our boys or people in this country usually go to university abroad to study. I do not think Government, in the end, will bring a Bill to stop us from going to study abroad, and that is what I see in this Bill because, if our associations should not be affiliated with any organization abroad, I think it most unfair. And the proposer of this Motion had in view the

fact that African organizations get quite a lot of material from abroad. That is quite true but, Sir, I can assure hon. Members that the affiliation is not of the wrong type. So far I do not know of any African organization here that is affiliated to the Russian Government or the State of Russia or China where there is Communism. So far our organizations here are affiliated to organizations in England and who are legal organizations which are well recognized by Government and other people. Therefore, there should have been no fear to stop us from having any contact abroad. As I said, Sir, we would like to learn, and learn from the right sources, but by passing this Bill we are going to be cut off, and the whole fear is that our organizations should not give any publicity of what is happening in this country, which is not right.

Now, Sir, by the present laws we do not have freedom of assembly and freedom of speech. I think the laws we have got now should be appropriate enough to be required in this case of societies, instead of bringing up this Bill. Take, for instance, Sir, if there was a party in my house or somebody else's, and perhaps there was a person belonging to an unlawful society in that house, it might be a peaceful party in which no literature or subversive stuff is being discussed, but the police, under this Bill, are given power to come and arrest everybody in that house because they have suspected that the meeting is being conducted unlawfully.

Now, Sir, I feel that the powers we are giving both to the police and to the Registrar in this Bill, are too wide and are going to make our people suffer if they are implemented. Sir, it is mentioned that the Registrar, in his discretion, would be able to refuse to license a society. Now, I think there would be no justice if we gave the Registrar the sole power of deciding whether that society would be lawful or unlawful. If it is provided, Sir, that when a society has to be registered, the views, objects and aims will have to be set out in the Bill, that is one way in which the Registrar is going to refuse, because most of the political organizations that would come forward to be registered would have views and objects perhaps contrary to what the Registrar would require. Now,

[Mr. Awori] The Registrar would refuse to register such a society.

Sir, I intend to say a few things about laws. Although they have to go to Committee I feel that as a whole this Bill has been brought about—brought to this Council because of the present crime and unrest in the country. I do not think that so far any society which is recognized in this country has been found to be practising subversive methods. All over the country, whenever Africans meet—at present they do not meet—whenever we meet, Government has ordered them to so act, and to keep minutes of the meeting, and I thought that was quite good enough, and they have been sticking to it.

Now, Sir, Government thinks that those methods, or the orders that have been in force, are not good enough.

I feel, Sir, that once we have passed this Bill, it is going to be very difficult for Africans to meet, because already the present laws in the country are making it very difficult. About ten days ago, Sir, I called a meeting of my constituents. It was so difficult to meet, I called it under a very legitimate body and the District Commissioner had sanctioned it. But then the restrictions I was given as the convener of the meeting made it so difficult for us to meet. The permit that I got for the meeting had so many conditions that I nearly decided to cancel having the meeting altogether.

For instance, Sir, the District Commissioner had agreed we would meet in the open air because there was not any suitable place where thousands of people would come. Now, at the very last moment—in the permit I was told that we were to meet in an enclosure, in a hall, and of course as the District Commissioner himself knew, we did not have a hall of that nature in the place—we were going to meet at Kakamega. Although we asked for the African District Council hall, which is big, we were refused and the hall we were told to meet in—the conditions were that they must comply with the laws regulating cinema. At the same time we were given a time limit to meet for three hours only, between 10 a.m. and 1 p.m.

Now, Sir, I feel that all those conditions, of which I am not going to say in detail, make it impossible for the Africans to meet. Now, if you add upon it this Bill of registering societies, it is going to make it very difficult, and in the end what we are going to find is that so many subversive organizations are going to start in the country, organizations of people who will not care to go and register. There will be underground organizations, so that in the end we shall find that this Bill, instead of doing good to the country will have done more harm.

Sir, I oppose this Bill. (Applause.)

MR. MATHU: Mr. Speaker, I have very few points I would like to make.

The first is that, under this Bill, as it has been stated by previous speakers, the powers given to the Registrar and the administrative officers and the police are too wide and I would like, in the event of this Bill becoming law, that some restriction, some check should be made to these officers, and I suggest, Sir, that the applications of these societies should be discussed by an advisory committee under the chairmanship of the Registrar, so that the Registrar will be advised by a committee whether to accept, whether to refuse, or whether to cancel an application, or a licence. Now, I feel that it is a very important thing, Sir, and, if this Bill goes to a Select Committee, as I hope it will, I think it is a point that I should like very much to press for.

— It is, I think, unfair, Sir, for the Government to expect us to accept powers given to these administrative officers without any check whatsoever. It is true, in the event of a Registrar deciding to rescind a licence of an exempted society, he will have to have the Governor's approval, and it is also true that an organization refused a licence can also have an appeal to the Governor in Council. I grant that. But I do not think that those are sufficient safeguards. I would suggest that that point be considered.

Now, the second point I want to make, Sir, is that under the present arrangements, talking about the African community now, the African district councils ask that any formation of these organizations should be brought before the African district councils and, in

[Mr. Mathu] fact, they do not function unless they are so registered by the African district council. And, I think, my hon. friend, the Member for African Affairs, would bear me out on that one. There are many cases which I can quote where that happens. I think, for the present, that is sufficient for the Government and they do not need to take out further powers.

The third point, Sir, I would like to make, is the point that these societies would be required to give certain information to the Registrar, like the constitution and the rules and meetings and the places where they are held, names of the office bearers, and members, the accounts and so on, and I should like to say that it would be very helpful to the African community if my hon. friend, the Member for Law and Order, would tell us the language he would expect the Africans to use in framing up this constitution, and the form, because if it will be insisted, as I assume, of course the Registrar will definitely be a European and there will be organizations to be formed by people who do not know the English language, whereas they will have a group of experts to translate these constitutions in the office of the Registrar, so that the Registrar should understand what these clauses in the constitution mean. Because if he expects the constitution to be framed in the English language, I would like to mention, Sir, that the man you want to safeguard under the law here, you will do nothing of the kind, because you will have professionals whose job it will be to collect members, to form organizations, to frame constitutions for them, and to collect as much money as they would like. And I would therefore ask my hon. friend to tell me what he thinks about it.

My final point, Sir, that I want to make, is that under the rule-making powers even a registered society has to be so restricted that it does not look as if it is lawful at all. The Governor in Council is empowered to regulate and to restrict the changes of the place of business or place of meetings of registered societies or of exempted societies, and the regulation and the restriction seem to me to indicate that if they are promulgated, such a society would be so restricted that it will feel that it is not free at all, nor at all.

In the hope that this Bill should be taken to a Select Committee, I do hope that those points, and the points raised by previous Members, would be taken into consideration.

MR. SLANE: Mr. Speaker, it is a marked and somewhat depressing feature of this debate that my hon. African friends insist on regarding this Bill, as all other Bills before this Session, as aimed against the African, and nothing that has been said on either side of the Council so far appears to have disabused their minds of that at all.

It may be that they do not wish their minds to be disabused. If that be so, Mr. Speaker, is a waste of breath. But there is one point I would ask them to consider quite impartially with regard to this Bill. That is that, as they have said themselves, that they are most concerned for the illiterate African. Now they are rightly concerned. Mr. Speaker, for the illiterate African because he is the vast majority and he is the man who most needs protection. How does he need protection? Not by a law which enables him to hold meetings or join societies—he can do that now—and this law will not prevent him as long as it is a decent society, but the illiterate African is the least competent judge of what is a decent society, and more important than that perhaps, Mr. Speaker, it is the illiterate Africans' money, property, that you must keep in mind.

Now, we are all very fond of our property and I am quite sure the illiterate African is with us on that, and the more illiterate he is probably the less property he has to spare.

Now, almost every society we know of organized by any race involves payment of money, sometimes quite large sums.

Literate people when they subscribe to societies are in a position to judge the activities of the societies, afterwards to watch those societies and see whether they adhere to the objects for which the money was subscribed. They are in a position to demand accounts, to see whether those accounts are in accord with the alleged objects, whether the money has been properly spent. But not

[Mr. Slade] so the illiterate African. And he is the man who will be most protected by this Bill.

There is one other aspect, Mr. Speaker, one of the objections raised as a matter of principle to this Bill by the hon. Mr. Odede and the hon. Mr. Awori was that it contemplates strict control, and possibly refusal to register in many cases, local societies which are branches of affiliated, or connected with, organizations or groups of a political nature established outside the Colony. The reason for objecting to that, that the hon. Mr. Odede gave, was that Africans being frustrated here seek rescue from abroad. Mr. Speaker, so long as the leaders of any community think that their hope lies in political interference from abroad, are prepared to seek rescue from abroad, there is little hope for the healthy development of this Colony. (Applause.) We have only to read a few pages of history to realize that political interference from abroad is one of the worst poisons that the body politic can absorb. It enters the blood stream, devitalizes that body, and eventually leads to its death and corruption. And it comes less well than from anyone, when a Member of this Council urges the need for such political interference as a ground for opposing this Bill.

Mr. Speaker, we must stand and work together in our own constitution, seeking the good together of our own country, and relying upon the strength, sanity and goodwill of our own people alone. (Applause.)

MR. COOKE: I rise merely to say that I personally would give my support to my hon. friend Mr. Mathu's suggestion of a committee to help the Registrar.

Sir, the Registrar is a very busy man and it would be very difficult for him to give proper thought and time to a matter such as this, and I am sure it would give much more confidence not only to the Africans of this country, but to every race in this country, for, if I may, Sir, quote the old aphorism: not only should justice be done, but it should be seen that justice is being done.

I support the Motion with the reservation that the hon. gentleman on the

other side should adopt Mr. Mathu's suggestion.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I do not wish to take to the time of the Council at any great length, but I would like to make one or two remarks in answer to some of the points that have been made this afternoon.

The first point I want to make, Sir, is that the reason for this Bill is simply that societies as they now exist uncontrolled have been abused. Some of them have been made the cover for a racket, some of them have gone in for rackets trotted on a very big scale. There is nothing in this Bill, as my hon. friend the Member for the Rift Valley has said, which will make it impossible or even difficult, for a decent society to be registered, to keep its books in a proper manner, and to carry on with its proper work—nothing whatever to make that impossible or difficult.

Now, Sir, the hon. Member, Mr. Odede, seems to have three particular troubles. First of all he thinks that every Government official suffers from a grievance and a personal one. Secondly, he seems to think that every law in this country is racially applied, and thirdly, he seems to think that everybody who offends against any rule or law in this country, whether it is with *mens rea* or not, is bound to be imprisoned or sentenced and given the maximum. I do not think really we need worry very much about these three particular troubles of the hon. Mr. Odede. We feel sorry for him, but really he can get those sort of troubles out of his mind.

It has also been suggested that this Bill is designed to put the Kenya African Union out of court—that is not so. This Bill, if the Kenya African Union gets itself straight, because at the moment it is anything but straight, and is working under this Ordinance, there is nothing whatever to prevent it continuing. More, I would like to make it plain and clear that the Government organization that a sound African political organization is absolutely essential in this country. (Hear, hear.) Other Members of this Council have them and certainly Africans should do so too. But if any society, Sir, is merely a method of stirring up race hatred we have got to do something about it.

[The Member for African Affairs]

There also have been remarks, Sir, made this afternoon in this Council about the relation between the Kenya African Union and that apparently nebulous society called *Mau Mau*, which may have something to do with another, or may not—which may have something to do with a society known as *Gikuyu na Mumbi*, or may not. Anyhow, whatever it is, we all know what its activities are.

Well, now, Sir, I understand that part of the oath given to *Mau Mau* is allegiance to the Kenya African Union, which may be very embarrassing to the Kenya African Union, but the sooner they put that right the better. (Applause.)

Now, Sir, the hon. Mr. Mathu made a reference to societies registering with African district councils. I am afraid I have not got his point, and I will willingly give way, if he would like to explain it further, because I do not know about that.

MR. MATHU: Mr. Speaker, I was referring to the fact that a number of African district councils that I know do not require in promoters of associations or an organization that they should register with African district councils, and the constitution is discussed by the appropriate committee of the African district council before permission is given by that particular African district council for that particular society to function; my point being that that should be enough to bring the society's constitution and the rest of it to the knowledge of the Government.

THE MEMBER FOR AFRICAN AFFAIRS: I am very happy to hear that. I did not know that happened. But what happens to a society which spreads beyond the jurisdiction of one African district council into, say, the jurisdiction of the whole country, as the Kenya African Union does. Has every district council to approve within its own boundaries? That might be a bit difficult, I think.

The hon. Member asked in what languages the returns were to be made to the Registrar, and I think in section 7 the information to be furnished by societies to the Registrar—I suggest, Sir, that those might be in English and in Kiswahili, but before the hon. Mr. Mathu shows his pleasure at that, I

would like to refer to the hon. Mr. Mathu's efforts in other similar Bills, when he very badly wanted to insist that we stuck to English. However, in this particular matter we will keep them both.

Mr. Speaker, I beg to support.

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, this Bill has been debated at considerable length by hon. Members opposite and, in view of the fact that I indicated when I introduced the Bill that I was prepared, if it was the wish of the Council that it should go to a Select Committee, it becomes unnecessary for me to deal in great detail with the various points that might otherwise have to be disposed of at this stage. You also have indicated, Mr. Speaker, that you deprecate too many references to individual clauses on a Second Reading of the Bill, but I understand you to agree, Sir, that if a particular clause should embody a principle, then, of course, it would be appropriate to discuss and debate that clause, even at this stage, notwithstanding that the Bill will be going to a Select Committee. Therefore, perhaps I might be permitted at this point to refer to a question which was raised by two Members opposite concerning clause 17, where wide powers of search are given to the Members, may not be opposed to the powers as such. They ask that appropriate safeguards should be introduced into the Bill to ensure that these powers should not be misused. That is a matter which can be discussed and worked out in detail at the Select Committee; but for my part I am quite happy to say now that I would be very willing to consider any suggestions of that kind in the Select Committee, provided, of course, they do not go so far as to stultify the purpose of that clause, which is to enable the police to act quickly and swiftly when they have reasonable grounds to suppose that a society is being used, or a meeting is being held, for unlawful purposes.

Other clauses were mentioned by my hon. friend, Mr. Odede, and, without going into them in detail, perhaps I might at least remind him that five of the clauses to which he took strong exception, as I understood it, already exist in the Penal Code, and they are really only being transferred from the Penal Code to this Bill because it is more convenient

[The Member for Law and Order] from the point of view of administering societies that all provisions of the law which deal with societies, both lawful and unlawful, should be embodied in the same Bill. But I would remind him that some of the matters he is objecting to now, and as to in which he foresees great abuse and discrimination, already exist in our law, and if he has not observed any abuses so far, if he has not observed misuse so far, then I think he may take it as a good omen that there will be no abuse in the future, since the substance of the law remains the same, and the authorities administering the law likewise remain the same.

I say this with a view to giving some assurance to Mr. Odede, because I do not doubt that many of the thoughts and views he expressed were sincerely felt. Therefore I have given this explanation with the idea of giving some assurance that this law will not be administered in a discriminatory manner.

I think, Mr. Speaker, I can best assist the Council in coming to a decision as to how to vote on this Bill in the Second Reading by dealing in general terms with one or two points which have been discussed, and which appear to me to show that in the minds of some Members at least, there is some confusion of thought. For example, my hon. friend, Mr. Awori referred to the clause in the Bill which states that a local society may be refused registration if it is affiliated to a society abroad. He went on to say that he thought that it was an objectionable clause because it would restrict the activities of local societies here which wish to have contacts with members from overseas. The hon. Member for the Aberdares took him up on that, because he thought it was wrong for a local society to seek help from an overseas society to seek help to pursue the argument put forward by the hon. Member for the Aberdares, but I would like to point out to the hon. Mr. Awori that the power of the Registrar to refuse registration of a local society because it is affiliated to a society abroad is not a mandatory power. He may refuse in other circumstances show that it is desirable that he should do so. It is not compulsory that he should refuse registration. I take it, for example, my hon. friend, Mr. Awori, would agree without question, that if there were a

local society here which was affiliated to a communist society abroad; that in itself would be sufficient grounds for refusing registration—he nods, assent, I am glad to see that.

MR. SLADE: On a point of explanation, it was a reference to rescue from abroad to which I objected. Certainly not affiliation with societies abroad in all circumstances.

THE MEMBER FOR LAW AND ORDER: I apologize to my hon. friend, I said I did not wish—

MR. AWORI: I did not say about rescue, I said about association. I never mentioned rescue myself. I never mentioned about rescue from abroad.

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I think in the two interventions by the hon. Member for Aberdares and the hon. Member, Mr. Awori, underline the wisdom of what I said a moment ago, when I said I did not wish to pursue the argument which had been put forward by the hon. Member for the Aberdares.

I only wish, again, to reassure the hon. Member, Mr. Awori, who has some misgivings on this matter by pointing out to him that there may be circumstances in which it would be perfectly proper for the Registrar to refuse to register a local society although that local society, as such, was a perfectly proper society, if it were affiliated to a subversive society abroad, and I gave an example of that, a communistic organization. He agrees that it would be perfectly proper in those circumstances to refuse registration. So that that particular clause in the Bill is not objectionable in principle. All that is necessary is that it should be administered and applied in a reasonable and proper manner, and I can assure the hon. Member that the Government will do that.

Now, the next point of confusion which seems to me to have crept into the debate is that the banning of meetings of political societies is in any way affected by the clauses of this Bill. It is abundantly clear, if anyone reads through this Bill that it has no reference whatsoever to political meetings that may be held by anyone who chooses to call them.

If the hon. Member will be good enough to look at the Police Ordinance,

[The Member for Law and Order]

there they will find all the provisions in the law relating to the control of public meetings. If a meeting is banned, it is under the provisions of section 30 of the Police Ordinance and it is as a result of the appropriate authorities applying or invoking the provisions of that Ordinance that some public meetings have been banned recently. On the ground, and solely on the ground, that if they were allowed to be held, it might have led to disorder or breaches of the peace. Now, that is all under the existing law, and this Bill, neither seeks directly, or by implication, to alter the existing law and, although you, Sir, again, in the exercise of your discretion allowed discussion on that point and I do not wish it to be thought, by implication, that I question the exercise of your discretion—I would respectfully submit it was in no way relevant to the principle involved in this Bill.

Yet another point of misapprehension which certainly arises out of a consideration of the clauses in this Bill as regards the powers that will exist if this power becomes law, to cancel the registration of societies and thus make them unlawful. Some hon. Members—not all, it is true—but some hon. Members appear to think that this Bill would place in jeopardy certain societies which now are allowed to function under the law. They appear to reach that conclusion because they read into this Bill wider powers to proscribe a society—or the same thing in different words—to cancel the registration of a society that exists at the present time.

THE SPEAKER: It is now half past four and business will be suspended until a quarter to five.

#### ADJOURNMENT

• Council adjourned at thirty minutes past Four o'clock and resumed at forty-five minutes past Four o'clock.

THE MEMBER FOR LAW AND ORDER: When the Council suspended business I was dealing with the points which have been raised by certain hon. Members opposite regarding the machinery which exists under the existing law for proscribing societies, and the machinery which will exist, if this Bill is substituted, for the existing laws on that subject, and I was pointing out that under the

existing law, that is under the Penal Code, the Governor in Council has the right to proscribe any society which, in the opinion of the Governor in Council, is dangerous to good order. There is no appeal from such a decision, nor is there any right to ask that the Governor in Council should consult with anyone, nor that the Governor in Council should inform the society of his decision to proscribe it, nor indeed to take any preliminary steps before proscribing because the law states without any qualification of any kind that the Governor in Council may proscribe any society which he thinks dangerous to good order.

Now, under the machinery of this Bill for the cancellation of registration which is the equivalent of proscription, there is a more detailed machinery which I suggest gives more opportunity for an aggrieved person to make his complaint to the executive officer who is taking action under the Bill.

First of all, it is to be noted that if the Registrar is intending to cancel a registration he must notify his intention to the society concerned and give it an opportunity to submit reasons why registration should not be cancelled. Now that is an additional safeguard against arbitrary exercise of these powers which does not exist under the present law. If the Registrar decides after listening to the reasons submitted by the society, that nevertheless its registration shall be cancelled there is still the right of appeal by that society to the Governor in Council. So that the new Bill, far from being more arbitrary and stringent, is as regards the proscription of societies more lenient towards them than the present provisions of the Penal Code. My hon. friend Mr. Mathu and the hon. Member for the Coast asked that it should be made more lenient but because they suggested that the Registrar should not exercise his powers except after consultation with a committee.

MR. COOKE: On a point of explanation, Sir, it would not make it more lenient, it would make it more reasonable, more sensible. There is no question of lenient.

THE MEMBER FOR LAW AND ORDER: It would be less stringent. If the Bill were less stringent I should have thought



[The Member for Law and Order]

it correct to say it was more lenient. At all events the hon. Member for the Coast asked that the Registrar, the Executive Officer charged with the responsibility of administering this Ordinance, should be compelled to consult with a committee, and though he did not specify the composition of the committee, I take it that the committee would comprise people who were not members of the Executive. Now that introduces an entirely new principle because as the Bill stands, it is the Executive, first in the person of the Registrar, and then the Governor in Council as the highest Executive Body in the land, who finalizes the exercise of the Registrar's powers if they are challenged by any aggrieved society. To introduce into such a system as that, a committee consisting of people outside the Executive and therefore not having responsibility to anyone in particular—

MR. COOKE: It is only an advisory committee.

THE MEMBER FOR LAW AND ORDER:

My hon. friend did not say advisory. If my hon. friend Mr. Mathu meant advisory I accept that correction. But even an advisory committee of that kind, although I agree it would not be so restrictive of the exercise of powers by the Executive as a committee such as I was envisaging would be—nevertheless, a committee of that kind would seriously hamper the working of this Ordinance in a case where the Registrar was bound to proceed upon evidence of a secret and confidential nature. Now that, unpleasant though it may be, is necessary when dealing with subversive societies. Everyone realizes that that is so and particularly when you are dealing with societies which have adopted, as a part of their practice and custom, as a part of their secret oath, in those circumstances it must be left to the Executive to decide upon the best information they can obtain, whether or not they should exercise the power of cancellation and which would compel the Executive in those circumstances to disclose confidential and secret information would in certain instances nullify the effect of this Bill. Therefore, because it is introducing a new principle, I regret I cannot hold out any hope that Government

would accept such an amendment during the Select Committee stage. It is a question for this Council to decide here and now whether they will entrust the Executive with these powers which I recognize are very wide powers, but if the Legislature is prepared to entrust them with those powers then they do so because they realize that the Executive will use them reasonably and properly and for the good of the community as a whole.

Lastly, Mr. Speaker, may I just reiterate what I said, in introducing this Bill, about the basic principles of this Bill. It is a Bill designed to introduce a system where no system exists. I have lists of hundreds and hundreds of societies, African, Asian and European. The hon. Mr. Mathu may have thought I said that the Government had no information about many of these societies. What in fact I said was that we had no official information about many of them. But a good deal of the unofficial information is obtained from various sources about these societies, and it may be that the Government takes an adverse view of a society which it would not take if it were supplied with all the information that should be supplied to it. Amongst these hundreds of societies there are some certainly that ought to be brought under control, not because they are at the moment unlawful but because there is a danger of their becoming so, or at least of their being operated in a way that is detrimental to the best interests of their members.

It is, I think, true to say that in certain states of society where there is little development, there is probably no need for a law of this kind to be introduced. To introduce a system of registration where there is a highly-developed state of society is probably unnecessary because all the members are sufficiently educated, sufficiently well able to look after themselves, to control the operations of their society bearers and of those whom they elect to look after their affairs. It is highly improbable that the members of any association in a highly-developed community would be unable to examine, critically, the accounts of their association, and if that is so there is no need for Government to step in and introduce a system of regulation and

[The Member for Law and Order]

control. But there is an intermediate stage in the development of a community, and it is one which, in my humble opinion, has been reached in this country, where a great many associations and societies are found. I have said that I have lists of several hundreds and I have no doubt there are many more, which are not on my lists, and there are many that are growing up week by week. Sometimes they last only for a short time; or the vogue changes and then they become defunct and disappear. But in all this case in which there are numerous societies of mushroom growth and others of more permanent growth, there is nothing which is systematized so as to enable Government to exercise any control over them or to regulate them. It is because this community is in this intermediate stage between an undeveloped community which does not have need of many societies and a highly-developed community where the societies and their members are well able to look after themselves, that it seems to me there is a need at the present time to introduce a law which will ensure there is a proper system of registration and a proper system of control of societies. This Bill is, in a sentence, an attempt to bring some order out of what is at the moment, chaos. As one hon. Member on the Benches opposite has said, and said very truly, no reputable society has anything whatever to fear from the operation of this Bill if it becomes law. On the other hand, I repeat that if it does become law, then the reputable societies will have much to gain from the fact that they will have acquired a status, not only in the eyes of Government, but also in the eyes of the public, of being a reputable society inasmuch as it is known that they have obtained registration and have complied with all the provisions of the law that are set out in this Bill.

Therefore, I suggest that those who have request for the welfare and orderly development of this community and the societies that are growing up in it should be in favour of this Bill because it will mean that the good societies will flourish and the bad societies will either wither away or their registration will be cancelled. That, I imagine, would be a good development which will be welcomed by all Members in this Council, and even, I

think, by those hon. Members who have opposed this Bill. It is because I believe this Bill will lead to such an orderly development in the growth of societies in this country, and put an end to the present chaos and confusion, that I ask this Council to vote for the Second Reading of this Bill.

The question was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, may I now move the reference of this Bill to a Select Committee under Standing Order 97 (b).

The question that the Bill be referred to a Select Committee was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I have the names of the Select Committee here. If we could dispose of that, it would enable them to get on with the work.

I move the following Select Committee be appointed in this Bill:—

The hon. Member for Law and Order, *Chairman*.

The hon. Member for African Affairs.

The hon. Mr. Humphrey Slade.

The hon. Lady Shaw.

The hon. Dr. Hassan.

The hon. Sheikh Abdullah.

The hon. Mr. Odede.

The hon. Mr. Mathu.

The question was put and carried.

### BILLS

#### SECOND READING

*The Printing Presses (Temporary Provisions) Bill*

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I beg to move that the Printing Presses (Temporary Provisions) Bill be read the Second Time.

MR. SPEAKER: Would the hon. Member be sure to use the word "now" in the Motion.

THE MEMBER FOR AFRICAN AFFAIRS: "Be now read a Second Time." I beg your pardon, Mr. Speaker.

Mr. Speaker, it seems a far cry from Caxton of Kent in the 15th Century and his simple machines to the whirling wheels of Standard Street and the humble "Gestetners" to be found in our back offices to-day.

[The Member for African Affairs]

But I do think, Sir, there are two points that ought to be made at the beginning of this debate, which seem to me of some significance about Mr. Catton. Mr. Catton set up his press at the side of the "Red Pill" by the Almonry, Westminster. That seems to me to be a significant situation for the first press. It shows how close politics are to the Press.

MR. HAVELOCK: Beyond the pale!

THE MEMBER FOR AFRICAN AFFAIRS: Secondly, Sir, his first publication was "an indulgence"; that seems to have created an unfortunate precedent to the people who have carried on with his admirable trade.

Now it seems to me that writers, who take advantage of the obvious benefits and advantage to themselves and to their people of methods of duplication, have abused the liberty which has been afforded to them by these methods and have abused the freedom of the Press, which we speak so much about, Sir. They have abused it, Sir, consciously to stir up sectional hatred or, unconsciously, to create conditions which are completely detrimental to harmony and law and order. This is not confined to one race. There are letters to papers, news sheets, etc., all of which are inclined to contain that sort of material which is quite inimical to law and order and racial harmony in this country. It is a young country, an individualistic country. It is a self-conscious control, it is divided by races. It is our job to build it into a single country. It is difficult enough to do that in normal times, but it is much more difficult when the political temperature goes up. It has, everybody knows, risen very strongly lately, thanks perhaps to world movements of thought and also to violent actions within our borders, and also, perhaps to economic causes, as well as political and social disturbances. Now these quite definitely been aggravated by writers, by extremists on both sides, by people who seek for white domination or black domination, by people who make a task of building a united Kenya, a Government of Kenya in which all races shall take their part, practically impossible. On the African side, Sir, we have had an abrupt and a very signifi-

cant rise in the number of newspapers. There are, as far as I can make out, 10 or 35 African newspapers in this country not all registered, so I say, as far as I can make out, Of those some 11 or 12 have been started within the last six or seven months. That shows the tendency to go into print, and unfortunately, the use of print they fit into it extremely diverse and most of those papers are new ones—and there are a good many. I am afraid, of the old ones—which exacerbate racial disaffection and dislike. Some even go out of their way apparently, to try to foster, I think, hatred.

Now, Sir, Government wants to see a decent African vernacular Press. I was said that before in this Council, I say again. We are doing all we can to foster it. But we cannot possibly agree to its present state of tension being further aggravated by these irresponsible, mischievous and sometimes evil publications in the Press, in pamphlets, or any other creation of "the printer's office. Or object, Sir, is to restore law and order and to create an atmosphere in which we can get ahead in this country with something which is worth building. Or intention is only to try to create this atmosphere. The Bill, therefore, which is before us now, is designed only to run for one year.

Now, Sir, dealing with the Bill in some little detail, the methods to be employed by the Bill to bring about that control and that atmosphere are these: Everybody, Sir, who has a printing press as defined has got to have it registered and licensed. That you will find under section 5. Now, the printing press is defined by section 2—there is a long definition which I will not read out, but I have noticed that the hon. Member for Kiambu has tabled an amendment to this section, and I will say here and now that the Government would accept that. If I may be allowed, I would like to discuss this Bill, assuming that this amendment has been accepted. At any rate, the Government would accept it. That is, the words "or any typewriter" to that particular definition. Because if we start discussing what would happen if we started licensing typewriters, I think we would be here for a very long time. Government does not want to try to start licensing typewriters.

21 Printing Presses (Temporary—

30TH SEPTEMBER, 1952

—Provisions) Bill No 22

[The Member for African Affairs]

"A book" and a newspaper" are as defined by the Book and Newspaper Registration Ordinance. You will find that definition in the third paragraph of the Objects and Reasons of the Bill.

Now, Sir, under section 3 of the Ordinance the Member can exempt or exclude a specified document or printing press or the keeping or use of any printing press by any specified person, and that, I think, would be the answer to a good many objections that might be raised to this Bill, as documents of a very large number of kinds, no doubt, could be sited in this Council as documents which we might want to exclude or which it might be harmful or unwise, or unjust to try to control, and I think the answer lies there, Sir, in section 3, that there are powers of the Member to exclude and exempt.

The Registrar provided for in this Bill will be, in fact, the Registrar of the Book and Newspaper Registration Ordinance as he at present exists. Now, he can refuse or he can cancel applications for a licence or printing presses which are already licensed.

Now, under section 5 (3) you will find that the Registrar shall, after consulting the Member, refuse to issue a licence where it appears to him that the applicant is likely to keep or use a printing press for unlawful purposes, or for the printing of any document prejudicial to, or incompatible with, peace or good order in the Colony or he is satisfied that the application does not comply with the provisions of this Ordinance or any rules made thereunder. As this Bill is to run for only one year, the provision under section 5 (4)—Every licence granted under this section shall expire on the 31st day of December of the year in which it is granted—seems to be superfluous. A printing press which has been licensed, can be cancelled under section 6 of the Ordinance. The Registrar may, after consulting the Member, cancel any licence where it appears to him that the licensee has kept or used, or is likely to keep or use, a printing press for unlawful purposes, or for the printing of any document prejudicial to, or incompatible with, peace or good order in the Colony.

I would call attention to the Members to the effect that there is an appeal

against either the cancellation of a licence or refusal of a licence. The appeal lies within 21 days to the Governor in Council.

Section 10, Sir, provides that every document printed or published within the Colony shall have printed legibly in the English language on its first or last printed leaf the name and address of its printer and publisher and the name of the place in which it is printed or published. It is rather strange that under the present law, as it stands, under the Book and Newspaper Registration Ordinance, books have to carry such details, but not newspapers. Under this Ordinance, both books and newspapers will have to carry the name and address of the printer and publisher, and the name and address of the place in which it is printed or published.

Section 11 provides that the printer must keep a copy of every document in prints for six months, and must write or print on it, either the residence, or the name or postal address of the person by whom he is employed to print it. He has to produce that to a magistrate, if required to do so.

Prosecutions under this Ordinance, Sir, must have the previous sanction, in writing, of the Attorney General.

Under sections 15 and 16, there are powers given to administrative officers, or police officers not below the rank of assistant inspector, to search where offences under the Ordinance are deemed likely to have occurred.

Now, Sir, I know that this again is unpalatable. Everybody will try, no doubt, to talk about the freedom of the Press. I think the only excuse for the Bill is that this freedom of the Press has been abused and we have got to try again to put that straight, in order that we can start, not afresh, but perhaps start to build up the sort of future we want to see for this country.

MR. SPEAKER, I beg to move. (Applause.)

THE MEMBER FOR EDUCATION AND LABOUR SECTORED.

MR. BLUNDELL: Mr. Speaker, I rise to support the Motion before the Council. It will inevitably, Mr. Speaker, meet with a great deal of criticism, not only in some quarters in this country, but especially overseas. I should not be surprised if

[Mr. Blundell]—the gentlemen of the Press have not been sharpening their pencils for several days before this debate. Sir, my reasons for supporting are these: that I believe it is vitally necessary to reduce, as the hon. Member said, to reduce the temperature at the moment in the country. This Bill will help us in doing that. I do not think we need to appeal very much to the imagination of the Council to show how many incidents that have been happening lately might easily, if wrongly presented, get us into very grave trouble in so far as disorder is concerned in the Colony. But of course another reason why I feel that I can support the Bill fully is that it is for one year, and I would like to put some suggestions forward to the hon. Member as to the way in which he should act immediately, apart altogether from achieving the objects which it sets out to achieve. I do not believe that we shall ever control the ideas revolving in men's minds by constantly driving them away underground. It is obvious we have got to create the conditions in which they can come up and flourish openly. The first thing I would suggest in his reply in asking us to accept this Bill, is that he outlines to us what the hon. Members opposite have in their minds in regard to the creation of a sound public opinion. Now, I believe, Sir, that means the setting up of a very considerable public relations office whose function it will be to put out to those people, who are not so fortunate in having easy contact with every shade of opinion in the world through the Press from overseas—or the Press—in this country, moderate sound opinion upon, and indeed the motives behind, the movements and actions of Government itself. If that is done, and if the atmosphere in which Government moves and its intention are clearly put out to people, I believe we shall begin to build a moderate opinion which will create something against which the extremist will tilt in vain.

The second point is this: I should like to hear from the hon. Member for Law and Order how he intends to educate the Press over a long period. Now some gentlemen of the Press may be rather irritated that one considers they need educating, but very often in a young country editors do need education. I

believe the hon. Member should be more active in two regards; first, in drawing the attention constantly through the police, or such means as he likes, of editors who are getting very close to sedition, because unless we teach young editors or people who are just embarking upon Press enterprises the meanings and ideas behind the law of sedition, it is difficult to show them the basis upon which they should proceed. I believe the hon. Members opposite, not us, have been lax in the past in that regard. Also I believe, Sir, that wherever a newspaper gets on to the line of sedition, it must be dealt with. In that way we should create the conditions which would again lead the opinion of the Press on the right lines.

Lastly, Sir, I believe in all this matter of general policy, behind this Bill, there is one thing in which all Members of this Council and all responsible members of the public can enormously assist. Extremism when present, especially in a country such as this of great racial differences, is always dangerous; but extremism, again in a country such as this, is negative. There can be no solution on the lines of extreme extremism and therefore the arguments are very easily dealt with by the moderate, and I believe it is the duty of everybody in this country to present the moderate point of view forcibly and clearly in order to defeat extremism. If we allow extremism full sway it will get out of control and the only way to deal with it is to be quite fearless in getting up and putting the opposite point of view. I believe in this regard that the hon. African Members, if they will forgive me for mentioning it, can be of very great assistance. It is not an easy thing to do; it needs a great deal of moral courage, when extremists are running wild, to get up and put the opposite point of view because the extremist view is very easy and attractive, but nevertheless I believe they, more than anybody else, have the opportunity of giving the people that moderate view which is so necessary in order to create a sound basis for the Press in this country so that legislation of this nature will not be necessary. I hope I speak for all European Members when I say we shall support this Bill on a temporary basis in order to create a proper opinion so that the Bill is ultimately unnecessary,

[Mr. Blundell] and Lusty, Sir, to assist the strengthening of that moderate opinion which is so essential and which if once created will mean that those who produce the stuff which this Bill is designed to control will not have any grounds upon which they can flourish.

Mr. Speaker, I beg to support.

Mr. AWORI: Mr. Speaker, I oppose this Bill and I will give my reasons for doing so.

If I were in England, Sir, I do not think I would oppose this Bill because the Press there and the people running the newspapers are people well versed in the field, but in this, a young country, I think that this Bill has been brought about due to the inaccuracies found in the African papers. Sir, as a person who has been handling the African papers some time ago, although fortunately I served my time without having any seditious matter—

Mr. BLUNDELL: Fortunately?

Mr. AWORI: Fortunately, I think we are studying the Press in a bad way. What we are now going to do is to breed Government controlled papers. By the end of 1951 there were thirteen Government controlled newspapers in Kenya. We want the Africans to be fed on the Government stuff only and not see the other side of the question.

We have all known what Government controlled papers are. We find Government controlled papers in Russia; we find Government controlled papers in Egypt until the last coup, but we do not want to create that sort of thing in Kenya. I have been reading quite a number of these district news sheets, as they are called, and there is practically nothing in them to educate the people.

As the hon. Member for African Affairs started to tell us about the Caxton press, and I think if I read my history correctly, it is almost the same thing as has happened in this country, because they complained about such things in the country and they were right in doing so. It was against the law. Personally, I would not support any paper that tried to create racial hatred in this country and if someone came to my office and I gave him all my newspapers he would find that I had always been avoiding

that. I would support Government if Government was prepared to bring measures that would make the African papers as good as any other papers in the world.

What is happening in West Africa, if I can remember rightly, some six or eight years ago they were in the same field but then Government did not stand up and create Bills that were so drastic as this. What they did was to educate the African editors. They sent them abroad to England, to Fleet Street, to be trained on the home papers to know journalism as it should be known, to know what sedition is. I don't think (I can speak on behalf of African editors in this country) there is a single one of them who can describe what a seditious matter is. All we are told is that seditious matter is any stuff that will bring disharmony to this country, but then it is so difficult to avoid unless these people are going to be told what is sedition and what is not sedition. I do not think the laws, or a Bill, that the Government would like us to support now will be able to improve the Press in this country.

The existing law has already been quite good enough to serve the purpose without creating another Bill. What we are going to find now, and what I find interesting in this Bill is the hon. Member for African Affairs has told us that it is temporary. Now the fact that it is temporary is very important because within the next twelve months what is going to happen is that African papers are all going to be wiped out. Previously the Bill concerning the printing presses gave Government powers of confiscation of printing presses printing seditious matter. Now, after that law has been passed sometime ago African papers, which had been depending on printing presses, had to resort to duplicators because non-African printers were not prepared to print African papers in case the papers were used for sedition, and they would be implicated. Now, what the Africans did was to buy duplicators. The previous law did not concern duplicators or typewriters. Fortunately, the Member for African Affairs has told us that it would not refer to typewriters. It went as far as having handwriting. I think in the Committee stage of this Bill such a thing should be deleted. I do not understand what the Member for African

[Mr. Awori]

Affairs said about specified presses and documents. So far there is no evidence to support the fact that a section of the Press in Kenya has been printing seditious news. I would attribute that to the overseas Press, because it is the overseas Press which during the last few weeks has spread false propaganda about Kenya, and I would have advised my friend the hon. Member for African Affairs to write to Members of Parliament to see if they could enact a law to control the British Press that has been spreading such subversive propaganda. Because the propaganda we have read in the overseas Press certainly could be accounted as seditious or libel. But so far nothing has been done—

THE SPEAKER: Order! Order! I do not like interrupting hon. Members, as I have said before. I realize that a number of Members—a new Member in this Council—have great difficulty in perhaps understanding rules of ordinary debate, but will the hon. Member be good enough to explain how all this argument about the Press outside this country is at all relevant to the principles of this Bill, which deals with the Press in this country. It is taking up the time of the Council, public time, which costs the taxpayer a good deal of money, if we make speeches, which have no relevance to the Motion before the Council. Perhaps hon. Members will understand and adhere strictly to the principles of the Bill.

MR. AWORI: Sir, I would like to know from the hon. Member for African Affairs how many papers so far this year have been charged with sedition, because if we had such facts we would be able to understand what the Press in Kenya, or certain sections of it, has been responsible for subversive propaganda in this country. As far as I am aware, I do not think that there has been more than one case this year. I do not feel that such a solitary case could warrant such drastic measures as those brought before us here. Of course it has been said that a certain section of the Press has helped to propagate ill propaganda in the country. So far what I know about the African Press is that it is poorly edited and the journalistic standard is very low. I would not blame

African editors for that, because they are working on raw ground and they have no idea how the Press should be put. Because they feel they have something to express for their public, they feel they should start a newspaper in the country, but then, not knowing well the law of sedition and the interpretation about sedition, they find themselves going farther from the field and not doing what should be done. Therefore, Sir, instead of enacting such a Bill I would have thought it wise for Government to bring in the Budget Session a Motion that so many thousand pounds would be utilized for educating African editors to the modern principles involved in journalism. I think that would help to create a sound Press in this country.

I agree with what the Member for Rift Valley said about the Public Relations Office, which would help African papers. That office, without having a sound editor, I do not think would serve the purpose. I would support this idea if Government was also prepared to educate the editors involved in these African newspapers, so that they could note what to avoid. They would avoid publishing matter which would not help this country. The hon. Member for Rift Valley told us that this Bill would reduce the temperature in the country, but so far I do not think that if he came across one of these ill-edited African papers he would find anything to show or prove that such papers have been responsible for the crime-wave or unrest happening in the country. All I know is that quite a number of those decent ones are trying to explain to their public their views. The Bill would not help us take us anywhere—and if Government thought anyone of these papers was creating ill feeling, they would use the present law and sue them for sedition or libel, or whatever it is. He told us about the importance of this Bill being that it will only last for a year, but I think that, during that one year, it will have done more harm because, instead of creating a sound vernacular Press in the country it will have killed all the African editors from the field of journalism. Then, in the end, we will have no real editors in the country's papers who will voice the feelings of the people. In fact, we shall have Government-owned papers only, showing the policy of the

[Mr. Awori]

I do not think, Sir, that it is what we want to have in Kenya, and in particular, I feel that the Government can learn more from criticisms that are in the Press than if we have papers that will only say: "We have got a good Government in this country—everything that the Government brings about is good". I think the Government will not be able to improve the present standard of life for the assistance of the country. Therefore, Sir, I would ask my hon. friend, the Member for African Affairs, to withdraw this Bill and, instead, to have, as an alternative, the present Bill as we are having. And, in the meantime, educate the people involved and see that the ones who have not had education in journalism should not undertake such a big step as editing a paper.

So the first step Government will have done would be to help young papers coming up, instead of cutting them right away. My hon. friend, the Member for African Affairs, has told us that the power of the Registrar is not so bad as we think—one would have the power to appeal to the Governor in Council. I think the appropriate course would be for the appellant to send his case to the court of justice instead of referring it to the Governor in Council. Let's be misunderstood, Sir, let me make it clear that I am not challenging the integrity of the people who sit in the Governor in Council, by opposing the fact that the appellant should send his case to the Governor in Council. All I think is, that all over the world it is the proper procedure to send the case to the court where it will be decided in a just manner.

There is one part of the Bill that I detect, and that one involves, or at least it tries to prove a person guilty before he is tried, in the fact that a person owning a printing press or a cyclostyling machine will be taken as having it for ill use if he has not had it registered. Now I think that is going too far. There are quite a number of people who may not know anything about this law and they may be keeping the press for a good purpose. But if we take it that these people are guilty before trying them, that would be going too far in judging these people. That particular section perturbs me and I think my hon. friend, the Member for African Affairs, will be able

to see what he can do about it instead of proving owners of printing presses guilty before it has been proved in court.

Sir, before I sit down I must make it clear to the Council that it is not our intention to oppose every measure that Government brings. (Laughter.) But then, if we think that the Bill, or the Motion, will not help the conditions prevailing in the country, it is our responsibility to oppose particularly in this Bill where we find that we have got in the Statute Book a law affecting the printing presses and therefore it is not necessary for Government to bring this Motion here for us to debate—and should the Bill go through the Committee stage I think the Member for African Affairs will help us by removing such a section, which is most unpalatable.

Sir, I beg to oppose.

DR. KARVE: Mr. Speaker, Sir, I rise, not to oppose this Motion, but to express my views about it in certain respects. In my opinion this Bill is unnecessary, futile and vexatious. It is unnecessary because the Government, at present, have got all the information they want about the presses in this country and the newspapers that are published, except such as are underground. This is a small country and all the presses that are capable of producing a newspaper are registered under the Registration of Businesses Ordinance—and so are, or should be, known to the Government. Only such presses like cyclostyled machines or underground presses that may be producing small sheets of seditious or other natures, will be unregistered under the present law.

Under the circumstances, asking all these presses to re-register again and asking for a licence, is, in my opinion, unnecessary. The Government also knows of all the newspapers that are being printed lawfully and legally.

The hon. Member told us that there were 13 new newspapers started within the last six or nine months. But I think it is a matter to be proud of, of the progress of this country. There is more education amongst our people, and they are getting fonder of reading newspapers; so, as long as those newspapers are publishing information that is good and necessary for those that read them—there should be as little interference with them

[Dr. Karve] as possible, because interference will only drive them underground. I quite agree about the clause, that says that the name of the printer, the paper and the editor must be published with every document or newspaper. It is, I think, carried out by most of the newspapers to-day even though the law may not have that clause in the present law. That part of this clause is perfectly necessary, and to our good, but to make a law by which a registrar will be able to cancel the registration of a press, simply because, in his opinion, a particular article that appeared in it was not conducive to the good order of society, is, I think, going too far. It rather smells of a police state. The present law of sedition of this country and the present Registration of Newspapers law has been modelled on that of the Indian law, and that law is very strict. Under that law, in a newspaper that will produce ill will amongst races, different races, different communities that are living within, or about, this country, are punishable with very severe punishments, and Government can, under the present law, take steps to stop that kind of thing and they have, in many instances to my knowledge, taken that procedure of even going so far as to ban newspapers coming from outside. They can take similar measures to do it here but, as I said before, Government has at present, got all the information that they want, and this extra information is not to be of very great use to them, except for the powers of cancellation, which powers, if used, will create a great deal of ill will and injustice, and, in fact, drive the good Press, which we have at present, or even the fair Press that we have at present, into a very ugly, underground Press, and that is what my feelings are about this clause. I agree with my predecessor who said that the appeal against the powers of the Registrar should lie with the courts of justice instead of with the Governor in Council. I have the greatest regard for the integrity of the Governor in Council, but the Registrar, in the first instance, has to act with the consent of the Member for Law and Order, who naturally is adviser to His Excellency the Governor in Executive Council, so that it practically amounts to sitting in judgment on the advice that he himself has given, which is

contrary to all the principles of British justice.

Mr. MATHU: Sir, a few points are opposing this Bill. The first is that I feel that the Registrar, the administrative officer and the police officers above the rank of assistant inspector, are given, again, very unnecessary, very drastic powers, and I do feel, Sir, that if you must have this law there should be an advisory committee to sit with the Registrar on the details of such applications. Such a committee should be composed of some members who are not members of the Executive, so that, at any rate, you give this Registrar some democratic check in this matter. I feel that very strongly, Sir, and if my hon. friend, the Member for African Affairs, would, for me, accept a suggestion, that is one I can give him with my full goodwill.

The powers given to the administrative officer and the police officers, as I have mentioned, of searching premises which might be suspected of housing these presses, day and night without any warning at all, to the people, can very well be misused. I think I can assure you of that. I do feel, Sir, there should be some restriction at least in disturbing some otherwise peaceful and legitimate people.

The second point I would like to make is in regard to the provision here of the keeping and use of printing presses by Government and semi-Government organizations. The Government has its own newspapers, or district sheets, or whatever you like to call them, and they should, if they like, go into competition with private enterprise in this field of printing presses business. I do feel it would be most unwise to impose the law from one side only, that is from Government institutions, or institutions, that they would like to see functioning. I do feel, Sir, that it will not achieve the end you want. We agreed we should have a community in Kenya where we do not get people arousing the feelings of others and using the material of one society against the other. I would like to make it definitely clear that I agree with the hon. Member that we must not encourage any racial hatred or ill-feeling between communities. I suggest most sincerely, that this is not the way of doing it. This is the negative way of

[Mr. Mathu] doing it. My feeling is that we shall be defeating our own ends.

Sir, it has already been said, I do not want to repeat, that we have, at present, a law which has very strict penalties in regard to the publishing or importing or exporting of seditious material. In fact, in this session we are going to increase those penalties to some astronomical figure. If we want still more power, I do not know exactly where we are leading to.

I agree, Sir, with my hon. friend, the Member for Rift Valley, we must have the community expressing their opinion, and that opinion should be moderate, factual and to the point. I entirely agree with him, but I have already alluded to the fact that I do not believe a Government controlled Press is the answer. I say there were other ways we can use to educate the Press, or that section of it which requires education, and it is my considered opinion that this is not the way to do it, by introducing this law.

I do feel, Sir, also that the definition of the printing press has gone right down too far, because in one of the provisions handed over, or lithography is also covered, and I do think that some people, say a cultural society, who have not got any business to do, who only duplicate material in order to circulate to their members, that they should be protected somehow. In my view unless I am told under the exceptional clause what sort of document, I think that innocent, legitimate people who may be keeping presses as defined here will be harassed if not already in a very unhappy atmosphere.

I should like to support the point raised by my hon. friend, Mr. Awori, that in the event of there being an advisory committee to work with the Registrar of printing presses, then the idea of appeal being with the courts should, at any rate, receive some very respectable consideration, because I do feel that these people should have recourse to justice in the normal and usual way.

Now, Sir, one final word. It is all very well to say that, within the next 12 months, this law will be used impartially and non-racially, and all will have a square deal. In theory, I entirely agree, but I do think that those sections of the

community which are not advanced as other sections of the community will suffer more. And the very fact that the Government has asked the hon. Member for African Affairs to move it does suggest that they intend that they should operate among the African printing presses, because it could have no other meaning if this law operates other than that.

I would like to say, we have debated before about the Press Officer. Then my hon. friend had said there had been improvement in the African Press. If that is not the reason he has found it necessary to introduce this law, I may say, what other motive is there, if there has been an improvement in the African Press through the Press Officer, and why then should it be necessary. I do feel, Sir, that this is not the time to pass this law.

If another time it may be necessary, yes, but perhaps this is not the time, because once you shut up the mouths of the people in every direction, they will blow up. If the Press is controlled, the societies are controlled, everything is controlled, where does that lead us to. The thing will take the shape my hon. friend, the Member for Rift Valley, is deprecating: opinion will go underground. Where else can a man's expression find its way if all these things are controlled.

Mr. Speaker, I oppose the Second Reading of this Bill.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I rise to support the Motion before the Council; not because I like the Bill, but because I feel that in present circumstances, as a temporary measure, it is necessary for the well-being of this Colony and Protectorate.

I have a good deal of sympathy with the views that have been expressed, in a very reasonable manner, by the previous speakers, but I feel that they have not appreciated the full significance of what is intended by this Bill, and how its operation will help to improve the existing situation.

I yield to no one, Sir, in my respect for freedom of speech and freedom of expression in the Press, a state whose rulers attempt to control the thoughts of their people and to control the reasonable expression of thoughts, whether by voice or pen, is heading for

[The Member for Health, Lands and Local Government] dislates. Freedom of thought is an inalienable right of every human being. Freedom of expression in a reasoned manner and in a moderate language of those thoughts is a precious right that we should sacrifice at our own peril.

Now, Sir, in this Colony, freedom of thought, freedom of expression, have been carefully protected. The Press has been allowed a tremendous amount of latitude. Some of us think that both the European, Asian and African Press have, on occasion, been allowed far too much latitude. (Hear, hear.) And this measure is an effort to control the situation and to educate editors and readers alike on their obligations.

It is, as my hon. friend Mr. Mathu has said, a rather negative approach to the problem, and it certainly is not the final or complete answer. No negative action can be the complete answer. As was said at the beginning of this series of debates, the Government recognizes that negative action is not enough and that there must be positive action by the Government and by the people as a whole to remove the causes of any bitterness, ill will, or lack of confidence, that may exist. But that is another matter and I know that I shall not be allowed to tread very far along that path, so I will not attempt it.

Now, a suggestion has been made that by this somewhat repressive legislation which we are enacting now, we can compare Kenya to a police state. Well, now, Sir, I think that is a completely ridiculous comparison and one that does not bear the slightest examination. (Applause.) If we think of our privileged position in Kenya as compared with what we know of some other countries, our position will be manifest as being one of freedom and liberty of thought and liberty of action to a degree little experienced in many other countries of the world.

Now, Sir, I would repudiate at once and would strongly oppose anything that would limit or restrict the freedom of the Press to express itself in a reasoned manner. The last thing we want in this Colony is a controlled Press. We do want our African vernacular Press to be raised to a higher level. We

want our African editors to be educated and to realize that they are handling a very powerful machine, and one the significance of which they sometimes fail to appreciate and I trust that measure will be taken, as they have to some extent been taken in the past, to educate these young men, some of them with little background of general education, who take upon themselves the responsibility of editing our vernacular Press. I have met several of those editors and I have been impressed by the earnestness of most of them and their desire to do right and to put the right things in their paper, and express them in the right way, if only they knew how. But they have had too little guidance in the past. I would ask my hon. friend, Mr. Awari, to co-operate in this matter. He has been, or is, an editor, he knows the snags and the pitfalls; he is educated, and he can help his brother editors by guiding them in the right way. They would take it from him much better than they would from any Government organization, because if that method were used they would think that some attempt was being made to suborn the Press and to make it a Government controlled institution.

Now, Sir, I go further and say that whilst we must uphold the freedom of the Press, when we get men who abuse that freedom, and use their power and authority, and use their privileged position as editors to express feelings in such a way that they are calculated to stir up communal strife, hatred, mistrust, and bitterness, and even to encourage violence against life and property, then I say that the State has a duty to interfere, and to interfere in a drastic manner, and to put those people and the presses they control, beyond the reach of doing further harm. The State has a duty to see that law-abiding citizens may go about their lawful occasions without fear, and in peace and contentment.

In the noble prayer with which we open our sessions each day, we express our conviction of the reason why we are here, and we ask the guidance and help of the Almighty in our sacred task "for the welfare of society and the just government of men".

[The Member for Health, Lands and Local Government]

Now, Sir, I do ask all hon. Members to remember those words and to think of what they are doing and saying, not only in this Council Chamber, but outside, "for the welfare of society". Are all our actions, all our words, whether by voice or pen, for the welfare of society? Let us examine our own consciences, and let us vote on this measure, recognizing that whilst it does interfere, to some extent, with the liberty of the subject, no right-thinking and right-acting people need have the slightest fear of it. Let us exercise our thoughts upon that, and vote for this measure, try to amend it in Committee, if we think there are points in it that are unnecessarily harsh and could be improved upon, but do let us support the measure as tending towards the object for which we are here: "the welfare of society and the just government of men".

I beg to support. (Applause.)

Mr. CROSSKILL: Mr. Speaker, I rise to support the Motion.

When the hon. Dr. Karve was speaking I had a great deal of sympathy with what he said. I also had sympathy with the hon. Mr. Mathu, but while they were speaking, I felt they were looking at this Bill through spectacles which showed them the negative side of the picture. Now, the photographic negative is generally a rather depressing thing, but the positive print can be attractive, and I think that this Bill is capable of a happier interpretation than that which they placed upon it.

This Bill is of necessity a cold-blooded document. It must be negative. It would be quite impossible in the framework of a Bill to inform editors of everything that they could do, and, therefore, this Bill must, as I have said, of necessity be couched in negative terms. But I think we must look upon it, if we can, in a positive way. I believe it is our duty in the present time to guide the Press in this growing country, just as it is necessary in preparatory schools to see that the preparatory schoolboys do not write *impolitely* on the blackboard because it is contrary to the good order and discipline of the school. I believe it is our duty, in a similar fashion, to guide the Press in Kenya at the present time.

This Bill does not deny, in any way, freedom of the Press so long as it is constructive and not seditious. Therefore, I believe it to be a good Bill. I believe we must do everything in our power to create an atmosphere in which there can be racial co-operation.

Mr. Speaker, I beg to support. (Applause.)

Mr. COOKE: Mr. Speaker, Sir Charles Mortimer, in his eloquent and impressive speech, rightly drew attention to the necessity for restraint in our public utterances and public writings to-day. Now I agree with practically everything he said, though I do not think he put sufficient emphasis on the fact that those wicked men whom he spoke about belong to every race in this country. Now, Sir, I would like to make it perfectly plain that in supporting this Bill I am supporting it in the confidence that my hon. friend the Member for Law and Order will rigorously enforce the law against non-Africans who lay about day and week after week, in the public Press, write something that at times is very like seditious articles.

Now, Sir, they not only write seditious articles, but very often in the captions they convey something which, to ignorant people, is quite apart from the script of the writing below that caption. (Hear, hear.)

Now I am going to mention one article that appeared in our daily paper, and I do not mind whose susceptibilities I offend in bringing this to the attention of the Council, because it does, Sir, emphasize the importance of restraint by all races in this country. About a fortnight ago a caption of this daily paper, which referred to the spreading of diseases through germ-bombing and made an assertion in its caption—I cannot remember the exact words at the moment—that conveyed the fact that an impartial person had investigated the dropping of these microbes and to on, in Korea, and that an impartial committee had found that this was true. But when, Sir, you read the text you found that this committee, far from being impartial, was an entirely partial committee which had, on its own accord, gone to China under no auspices or any respectable auspices whatsoever. Now, Sir, I think people like that—I am sure it was

[Mr. Cooke]

a mistake—though it is constantly recurring—should also, if they cannot be proceeded against, should certainly be seriously warned.

Now my hon. friend, Mr. Mathu rather took from my lips what I was also going to say, I thought, Sir, it was a queer thing that the hon. Member for Native Affairs should have moved the Motion like this, because I trust the Government, the other side of the Council, consider this a non-racial measure. We have heard far too much about the iniquities of the African Press, and far too little from the hon. Member about the iniquities of the non-African Press. Now, Sir, my hon. friend Sir Charles Mortimer is far more honest than I am, and I am going to tell the Council that he and I and one or two others did make a positive approach to the African vernacular editors, and about two years ago we were responsible for summoning together, or calling together, not only the vernacular editors but the editors of the English and Indian Press, and we found—and I also found, as my friend, Sir Charles Mortimer, found—that the African vernacular editors were very anxious indeed to learn something about good and proper editing, and time after time they assured us that they were prepared to co-operate with Government in taking a reasonable tone in their Press. Now I think possibly those meetings did some good in improving the tone of the vernacular Press. They are not, of course, newspapers at all, Sir, they are just broadsheets; they don't contain any news and the editors are very often—with the friend, Mr. Awori, who used to be an editor—very illiterate.

Now, Sir, there is another point, I happen to have written a good many leading articles in the Kenya Press over the last 10 or 15 years, and I hope I shall continue to do so, but I found that the hon. gentlemen on the other side of the Council are very thin-skinned and it is very easy for an editor to get under their skins, and I, Sir, four years ago in the *Kenya Weekly News* wrote an article which I called "The Menace of Lawlessness," and I drew attention to the inevitability of the state of affairs with which we are contending to-day. Now, after a few years what is the result? The

then Attorney General on the other side of the Council, endeavoured to convince me in this Council and outside the Council he uttered to me something very like a threat. Now some of us are not susceptible to threats, I, Sir, certainly am not, but I do say this, Sir, that I hope my hon. friend will see that if any measures are taken that words are properly studied and not torn from their context as is so often the case.

Now, I have here a quotation from that very famous trial in which Lord Eskine, defended by Mr. Tom Paine in England, 200 years ago. He said "Gentlemen, I admit with the Attorney General, that in every case where a court has to estimate the quality of a writing, the mind and the intention of the writer must be taken into account—the *bona or mala fides* as lawyers expressed it, must be examined, for a writing may undoubtedly proceed from a motive and be directed to a purpose, not to be deciphered by the mere construction of the thing written". So I hope, Sir, by any consideration by the law officers of the prosecution of any editor, that attention will be given to the intention of the article and not to some stray sentences scattered throughout. The hon. gentleman, I hope, in his speech will give the assurance I asked for it is not *maeno tu* that we want here. Promises are no good without performances. We look for results from the hon. gentlemen and I hope, Sir, we do not look in vain.

Sir, I beg to support: (Applause.)

MR. OODEE: Mr. Speaker, I rise to oppose the Bill. It is unfortunate that we have to oppose most of these Bills; it is just because we do not agree with the measures which they provide.

We do not think that they will cure the troubles from which the country is suffering, if the country is suffering at all, Sir. (HON. MEMBERS: Shame!)

One most important reason why I have to oppose it, although it has been said that there is still freedom of speech if the Bill is to be passed into law, is that I believe that once there is control of the Press there is control of speech. There is no doubt about that.

The other main reason why I oppose the Bill is because I consider the printing press and the Press itself as a very important industry, an industry that can

[Mr. Oodee]

help us living a good life, because if the licence for a big press is cancelled it means that we are going to put out of work so many people. Now that alone and these people who are put out of work would bring the country into trouble. It may be that after they have been put out of work, we have nothing to do, they then may become burglars and robbers and so on.

Now it means that, if we interfere with the Press in the way we are trying to do, we may do that sort of thing. I know of a very good printing press now at Kiambu where several African youths are employed, and if it is found that there is just something wrong, the licence for such a printing press might be cancelled and we shall put several people out of work, and that means that we are inviting crime into the country because the more people we have out of work the worse it becomes.

Leaving that, Sir, it has been said that this Bill, if it is passed into law, it will only be temporary; it will be, therefore, for one year. There are some provisions in the Bill that make it difficult for me to agree with that idea, Sir. The provision states that every licence granted under this section shall expire on the 31st day of December of each year in which it is granted; that, Sir, makes me believe that this Bill, if it is passed into law, is going to continue year after year and I can assure the hon.—

THE MEMBER FOR AFRICAN AFFAIRS: On a point of explanation I did refer to that provision in the law in my opening speech, and I said that that section appeared to be superfluous because the Bill was only designed to last for one year.

MR. OODEE: That is all right, Sir. Thank you, I may agree with that, but still there is something more important than that. We—

THE SPEAKER: Order, Order! It is now half past six. In accordance with the Resolution moved on Saturday it is time to interrupt business. The debate, I take it, will be continued to-morrow.

#### ADJOURNMENT

Council rose at thirty minutes past Six o'clock p.m.

Wednesday, 1st October, 1952

The Council met at thirty minutes past Nine o'clock.

[Mr. Speaker in the Chair]

#### PRAYERS

#### MOTION

#### EXEMPTION FROM OPERATION OF STANDING ORDERS

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, with your permission I should like to substitute the following Motion for that on the Order Paper.

I beg to move under Standing Order 25 that the Council sit to-day and on Thursday from 9.30 to 12.45, and from 2.30 to 6.30 p.m.

Sir, that was after consultation with you and Mr. Blundell on behalf of the other side. I have not included Friday because I hope we shall have finished all the business on the Order Paper by Thursday.

THE SPEAKER: We hope so!

THE MEMBER FOR LAW AND ORDER seconded.

The question was put and carried.

#### Ministerial Statements

THE MEMBER FOR FINANCE: Mr. Speaker, with your permission, I make the following statement:—

The Government proposes to appoint a committee "to receive requests for ex gratia payments to compensate individuals in cases where they have suffered severe financial loss directly attributable to subversive activities, to consider those requests on an *ad hoc* basis and to make recommendations to Government on the amount to be paid in each case". The committee should not take into account any loss resulting from failure to insure property against risks that may be regarded as normally insurable.

It is proposed that the committee shall consist of—

The hon. E. J. C. Neep, Q.C.,  
Chairman;

The hon. Solicitor General;

The hon. Secretary to the Treasury;  
Lt-Col. the hon. W. S. Marchant,  
C.M.G., O.B.E.;

The hon. G. Maitland Edge;

The hon. E. W. Mathu; and  
Group-Capt. the hon. L. R. Briggs.



## [The Member for Finance]

This action has been taken to meet the need that has arisen to deal with some cases immediately. The committee will be kept in being whilst Government gives further consideration to the matter.

The farmers concerned are also being notified that, in cases where they need financial assistance, rehabilitation fund loans will be granted as an interim measure.

GROUP-CAPT. BRIGGS: Mr. Speaker, arising out of that statement, there are one or two points I should like to raise.

First of all—the possibility of future damage. I suggest for your consideration that the possibility of some form of insurance should be considered—possibly under Government auspices—because we do not know what the future may hold in regard to claims of this nature.

There is one other point—in view of the probability of severe consequential loss to farmers who have been affected, I should like to appeal to the farming community in the country as a whole to do everything they can to help those farmers who have had their herds seriously damaged—in some cases declined—to rebuild their herds.

There is one last point, Sir, I would ask that compensation should be paid as quickly as possible.

MR. MATHU: Mr. Speaker, I welcome the statement made by my hon. friend, the Member for Finance, and I have a few observations I should like to make.

First, it is that it appears to me that as far as the African community are concerned, there are two factors which will perhaps rule them out of any compensations. The first is that most of the losses from African communities have been lives—people who have been murdered. Will that committee have the power to go into such cases, so that blood money can be paid by the Government?

The second point regarding insurance—that Africans do not normally ensure either their herds or their crops, because these things have not yet been taken by them seriously, because they do not understand. I do like to mention that I hope the committee will see their way to not restricting their ex gratia payments

to only those who have insured, because Africans would be ruled out of that automatically.

The final point is that I do hope my hon. friend, the Member for African Affairs, through his administration, would get the necessary facts from the administration, and that there will be sufficient publicity so that Africans who have suffered losses will come forward to report, so that their matters can go to the committee. Unless that is done we will miss quite a lot of genuine cases which we would like to look into.

THE SPEAKER: I hope Members will understand that this is not a debate. This is only a matter for Members on the opposite side who ask for clarification. If you want to debate you can always get a debate after 6.30 p.m. Otherwise we are interrupting the normal business of the day too much.

DR. HASSAN: I would like to ask the hon. Member for Finance whether this committee will have powers to go through the losses of the shops which have been reported to have been looted by the gangs. Gangs of people have been raiding the shops and looting them—whether this committee will have also powers to determine their losses.

I do not like to object to the Government giving the names of the committee, but I feel that should have been a member of the Asians on this committee.

THE MEMBER FOR FINANCE: If I may deal with the point raised by the hon. Dr. Hassan, the committee was appointed with speed and we were unable to get all the Asian members, and therefore the matter of an Asian representative is merely waiting until Asian Members are available as a body.

The second point I must make perfectly clear on behalf of the Government is that this committee and this consideration of ex gratia payments has nothing to do with normal crime.

With regard to Group-Captain Briggs' request that this should be considered on an insurance basis, I have already had conversations with representatives of leading insurance groups in the Colony, and have put forward suggestions which might be acceptable to them; which if acceptable to them, should form a reasonable insurance basis

## [The Member for Finance]

for the future with Government intervention in order to keep the premium at a low rate.

With regard to Mr. Mathu, Sir, the committee would be entitled to consider any claim where any financial loss, through the loss of the wage-earner is attributable to subversive activities. With regard to the loss of such things as African huts and property, I think the hon. Member would agree that these are not normally insurable and, therefore, not being normally insurable, they are not excluded from the consideration of the committee by the statement of the conditions which we have made.

I hope, Sir, that will satisfy the Council.

## BILLS

## SECOND READING

## Printing Presses (Temporary Provisions) Bill—(Contd.)

MR. ODEDE: Mr. Speaker, when the Council adjourned yesterday I was dealing with the reasons why I thought the Press Bill was not intended to be temporary. One of the reasons was cleared up by the hon. Member for African Affairs, but the other one, Sir, was concerned with the idea which was brought before us by the hon. Member for the Rift Valley. The Member for Rift Valley said that the reason why it was necessary to implement measures provided in the Bill was because at this time the country—the political temperature of the country—is very strong. From that, Sir, I thought that if the political temperature of the country is very high at this moment, it means that we will never make this Bill temporary, because I can foresee that in the next few years—

MAJOR KEYSER: On a point of order, Sir, the Bill definitely states in the clause that it will last for one year. Is the hon. Member in order in contesting that section, there being no suggestion of amendment to it?

THE SPEAKER: The hon. Member does not contest the section, but he is contesting that it is no good passing a Bill for one year because he believes that it is such that a remedy will be required for many years to come. Maybe he is right. I do not know.

MR. ODEDE: I can see that in the next few years we shall have more political struggles than what we are having now. Therefore, what the Member for the Rift Valley said—that we implement this Bill just because of the present situation—I think is not right. From that, Sir, I think that probably it is Government diplomacy introducing this Bill as temporary, because they know that in the next few years they may say: "Yes, because the situation is still very grave, this Ordinance should be extended to cover the coming years". That might happen, until one day it may be debated in this Council that the Ordinance becomes permanent. That is one of my main fears, and the reason why I think that the Bill is not intended to be temporary—

THE SPEAKER: I do not think that the hon. Member is in order in imputing the motive—the intention of other hon. Members in the Council. The condition of the country, as he put it, is a proper argument; but it is not a proper, nor is it a relevant argument, and is contrary to all good usage in parliament, to attribute improper motives to your opponent.

MR. ODEDE: Yesterday the hon. Member for African Affairs mentioned that there were 35 or 36 African newspapers, and that, out of that 36, 16 had probably crumpled up in the last six months.

THE MEMBER FOR AFRICAN AFFAIRS: I said 11 or 12—not 16.

MR. ODEDE: All right—I accept that. That 12 had crumpled up in the last six months. That made him fear that there is probably something wrong, but I do not think that that is so. I think that it is an indication of progress—an indication that the African people are now realizing the value of teaching their people through the Press. The ordinary labourers in this country cannot read English papers, and therefore the vernacular paper would help them quite a good deal, because it would make them understand the affairs of the country. When I was in Great Britain I saw the ordinary worker reading the paper—the speeches made by their leaders during the economic crisis, who told them: "We must work hard so as to stimulate progress and development in the country".

[Mr. Odede]

Now it means that labourers would learn and work hard in the fields which their leaders ask them to, to increase their economic output. Therefore, Sir, I think to try to discourage African newspapers by introducing such a Bill can only make the position we are trying to deal with worse. The hon. Mr. Awori mentioned something which I thought was very good. If we want to stop seditious matters in the Press, we should try to educate the African editors so that they know what seditious matters are. I quite agree that that is done—if Government does that—then we are getting on very well. I consider, Sir, that by introducing this Bill, and passing it, it would mean we will put several citizens of this country who are making their living from the Press, out of their work—and several others who are their employees. If we do that, what it means is we are going to increase more crime. So I would not like to see the Bill passing through the Council.

Now, Sir, just before I conclude, I would like to say that I have been feeling very strongly about this Bill and the Societies Bill. They remind me of something that Government intends in the next few years, and that is the Government intends to tie the hands of the African fighters in the political field behind their backs, and close up their lips so that they do not struggle for their political rights, while the other communities are left to hit Africans to the ground, and so, Sir, these two Bills, and particularly the one I am dealing with, I would like not to pass through the Council.

Sir, I beg to oppose.

**THE MEMBER FOR LAW AND ORDER:**  
I think I can perhaps usefully interpose in this debate, if I attempt to clarify to some extent the difference between the law of sedition to-day and the law as it will exist after this Bill is passed by the Council. The law of sedition, of course, present form throughout 12 months, if this Bill, if it is enacted, is the law, and that period in exactly the same form as it is to-day. This present Bill, therefore, deals with something quite different from the law of sedition as it is set out in the

Penal Code, and the difference in the way it deals with matters of near seditious character I can explain to Council at a later stage in my speech, but at this point I would like to make a few observations about the law of sedition as it has been applied, and will be applied in the future.

As every lawyer knows, the law of sedition presents very great difficulties, not only in interpretation but particularly in its application to any given set of facts. It is not every statement which offends racial susceptibility, for example, which would justify bringing proceedings for sedition against the person who made it. This is a matter upon which lawyers and laymen frequently disagree very strongly, because it often seems to a layman in particular, that with a statement, which is objectionable from his point of view, it is a very short step from that position to being able to establish to the satisfaction of the court that the person making the statement has stirred up ill-feeling and hostility as between the different sections of the community; but one has to remember that when a statement, which is admittedly objectionable in some degree, is taken before the court, then it is analysed paragraph by paragraph, sentence by sentence, word by word, and even sometimes, syllable by syllable, by the court and the advocate appearing on behalf of the defendant. No one can object to that process of meticulous examination when criminal charges are preferred before a court, but in the course of such analysis it is not infrequent—that the words to which exception has been taken may bear more than one meaning, either by innuendo or by reference to the context in which they were spoken. I do not say they must bear a different meaning, but the possibility that they may, sometimes emerges during the course of analysis. That, after all, is not surprising because one realizes how different it is to express oneself with such precision even when trying to do so in statutory language, where words can have one meaning and one meaning only; time and time again it appears that, despite the most careful efforts of a legal draftsman, the court differs as to the meaning of those words. If, in other words, a statute may have more than one meaning, it is much more likely that a statement, made sometimes

[The Member for Law and Order]

and not with any great regard to precision, may on examination, be shown to have the possibility of more than one meaning. When that position is established, immediately there arises the question of whether any doubt of what the intentions of the defendant were; as anyone knows, it is a fundamental principle of our law that if there is any doubt, the benefit of that doubt is to be given to the defendant. I mention all these matters only to illustrate the difficulties of the prosecution in sedition cases unless the language complained of is very extravagant language which does not permit any argument of the kind I have been indicating, or is of such a nature that it can be established beyond reasonable doubt that it may be inciting people.

Now, that difficulty in prosecuting for sedition is by no means peculiar to this country. It exists in every country, anywhere I have ever heard of, where prosecutions for sedition are brought. It is common knowledge among lawyers that the law of sedition is one that is difficult to apply. Nevertheless, it is applied where there is a reasonable prospect that the court will find the defendant guilty of the charge preferred against him, but not unless the prosecution is satisfied of that; because then, of course, law would result, because then, of course, a prosecution because it would give currency, and very wide currency, to statements of an objectionable character if not of a seditious character which they would not otherwise obtain.

Now, my hon. friend the Member for the Coast made reference to Erskine's submission in a famous case of sedition when Tom Payne was prosecuted for the publishing of "The Rights of Man". He told me to bear in mind those submissions which that very great man and brilliant advocate made in that case, that is to the effect that one must have regard to the intention of the person who is uttering the seditious libel. My hon. friend, might, I think, have mentioned that in that case the submissions of the advocate for the defence, Mr. Erskine, did not succeed—indeed I think I am right in saying that the Attorney General who prosecuted was not called upon to reply to them, but I am far from suggesting that Erskine did not play a very

great part indeed in moulding the English common law as regards seditious, and by his submission in many famous cases he succeeded in getting amendments to the Statute Law which comprises the law of sedition as it exists to-day in England. Perhaps, since my hon. friend indulged in reminiscences of that kind concerning Erskine's case, I might remind him of an even more famous case of his in which he appeared for the defendant who was being prosecuted for publishing a libel—"A Dialogue Between a Gentleman and a Farmer". (Laughter.) History does not relate whether the libel was that a gentleman could not be a farmer or a farmer could not be a gentleman, but certainly that was the beginning of a long series of cases in which Erskine played such a brilliant part and as a result of these submissions, the law as it exists in England to-day may be attributed in great part. For myself I may say I delight when I hear a Member of this Council refer to some of the great men of the past, Sir, to our forebears who have by their efforts and by their struggles established those traditions which are passed down to us to-day and one of those great traditions, and certainly Erskine was one of the great exponents of it, was that the English law should be administered impartially, irrespective of race, or colour or creed—(hear, hear)—and we would be unworthy indeed of these great men if we departed even by a hair's breadth from such a great principle as that. (Hear, hear.)

In the course of the speech made by the hon. Member for Rift Valley and also the speech made by the hon. Mr. Awori, reference was made to the desirability of the Government doing something towards the education of African editors in the law of sedition. They pointed out, very rightly, that many of these African editors have not had the advantage of education, or the experience which would enable them to know just where the line is to be drawn as regards seditious when editing and publishing their newspapers. With that view I entirely agree but perhaps the hon. Members were not aware, and this Council, I take it, is not aware of the fact that something of that kind has already been done. The initiative for it came from the editor of the East African Standard who

[The Member for Law and Order] approached me and asked if I could make available one of my officers to give a lecture—no, that is too grandiose a term—if he would give a talk on the law of sedition; he would gather together for that purpose the African editors and on more than one occasion within the last few months an officer from my department has gone to meetings of African editors convened by the editor of the *East African Standard* and has explained to them in detail the law of sedition. The response from the African editors has been most encouraging, they have shown great interest and have asked for more. The difficulty, of course, is that work of that kind and instruction of that kind is given by officers of my department after their normal working hours, and while they are all very willing to do that, in practice there are very few hours left after working hours are finished. The officers in my department work extremely long hours, and at all events they are hours that would bear comparison with those of any person, I do not care who he is or what he is, in the Colony at the present time. I mention that, not because it is an excuse, but because it is a limitation of what we can do to assist in that way. But such assistance as trained legal officers can give to African editors as to their rights in publication of matters so as not to contravene the laws of the Press, we will gladly give.

As I say, we are encouraged to go on doing so by the very warm response, and appreciation and gratitude which has been shown by those African editors, and, although all this extra work is voluntary, I may say there is appreciation from the African editors in itself sufficient reward for the efforts which my officers have put forward in that direction.

Now, Sir, if I may just say a few words about the scope and the object of this Bill. It is not, as I have explained, intended to be a substitute for the law of sedition, because the law of sedition is already there and will be applied irrespective of race to anyone who contravenes that law. The object of this Bill, as a temporary Bill, and will only last twelve months, as is provided in the first clause of the Bill, is somewhat different. If I may express it in a sentence, it is to deal with near seditious

statements. The expression "near seditious statements" needs some explanation and clarification. Everyone knows that news and views can be put forward in a manner which will place emphasis, under emphasis, on race. They can be put forward in a manner which stirs up gradually a feeling of racial animosity, and that applies equally whether the racial animosity is stirred up by Europeans against Africans, by Africans against Europeans, or as between Asians and the other two communities. A statement may be made to-day which begins to stir up racial animosity of that kind which statement, taken by itself, is not of such extravagant a nature as would justify prosecution for sedition. A similar statement may be made to-morrow and the day after, and so it may continue, with the result that the cumulative effect of all those statements is such that one may say with absolute truth that the loss of that paper is anti-racial, it is creating racial animosity and ill-feeling between the communities in this country. It is not possible to pin-point always a particular passage or a particular phrase which one can say leads to that result. It is not, as a rule, one outrageous and extravagant statement which entitles one to say that the tone of a newspaper is anti-racial; there were such extravagant statements that in itself might justify a prosecution for sedition, but it is the gradual and cumulative effect of racial bias which gives the paper that insidious and most dangerous influence upon the communities. At what point the cumulative effect of these "anti-racial" statements can be said to justify the view that it has exceeded reasonable bounds, again, it is not always possible to say with precision, just as the old illustration of the philosopher who could not answer the question how many stones made a heap, but there comes a point where you can say quite definitely, "that paper is deliberately, day after day, week after week, attempting to infuse into the minds of its readers a racial antagonism and disharmony".

Now, that policy and tone in the newspapers is had at any time, but at the present time, Mr. Speaker, in my humble submission, it is quite intolerable; and I say that because the present time, and the next 12 months in particular, is a very critical period indeed because during that period the three

[The Member for Law and Order] says must sit round a table, must discuss together how they can move forward towards a tripartite Government and, if there is one influence more than any other that can prevent their moving forward harmoniously and in agreement more than any other, it is the power that can be used insidiously and cleverly by unscrupulous editors who wish to create racial disharmony. But, what I emphasize—as I must for the purpose of this speech—the bad influence that the Press may exercise on public opinion, I think we should not forget also that the Press can have a very great influence for good. If the Press, whether it be the European Press, the Asian Press or the African Press, would pass a self-denying Ordinance, so to speak, whereby they forbore to present their news and views from purely racial angles, that in itself would be a great step forward. But if, in addition to all that, the Press would begin to emphasize the good qualities in all the races, because Europeans have good qualities, the Asians have good qualities, and the Africans have good qualities, and the various tribes in the Africans have good qualities, if the Press would emphasize those, then I believe they would build up in the respective races and in the tribes a true pride in their race, and true pride in one's race is in itself a noble thing, because it also attracts the admiration and respect of other races and communities; if the Press could create an atmosphere of that kind during the forthcoming 12 months, then I think they would have done very much towards establishing those favourable conditions which are essential to the success of all those whose efforts will, during that period, be directed towards reaching agreement and harmony in this land of Kenya. (Applause.)

Mr. USHER: Mr. Speaker, may I intervene briefly to make one or two points.

Yesterday, my hon. friend the Member for the Coast made an important point in regard to the distortion of news in the Press, and I do hope that it will be generally agreed that the education, which many Members have asked for, of editors who are not very experienced should direct attention to fairness.

Now, if I may give another example of what seems to me to be a little unfortunate, it is this. In a well-known British newspaper, there was an account of a debate which had taken place in this Council—I say an account of a debate, but it was not actually, it cited portions of the interesting speech by the hon. Mr. Neep which, whether in agreement or not, we were all very glad to hear. It did not, however, present the counter-arguments, but it did give occasion for a leader of a very strong nature which was, on the whole, condemnatory of the 'measure' which we have recently passed. I think that, Sir, is a pity and I hope that that kind of education and fairness will take a prominent place.

Now, Sir, there is, I think, a feeling among hon. Members on the left that they are being rather hardly done by, but I would remind them of one thing. I cannot for myself vouch for the truth of it, but it has been stated in the Press and not denied, I think, that in a neighbouring territory, Tanganyika, to start a newspaper, you have to put down £1,000 portion money. That is a provision which we do not have here, and I think perhaps we should be thankful for it.

Now, Sir, may I make one remark of a general nature. This is a Bill which involves a certain curtailment of liberty. We hear much in this debate, and in other debates on the emergency legislation, about rights, human rights, about human obligations. We, Sir, in this Council, have the right to represent the case which we feel, in our consciences, we should represent, but we have also, Sir, an obligation not to waste the time of the Council and of the country. You, Sir, yesterday, were good enough to point out that these very long debates are costing the country a great deal of money. I think, Sir, you will also agree that it prevents high officers from carrying out their functions as they, themselves, would wish to carry them out. Therefore, Sir, I do appeal to hon. Members not to prolong these debates unduly. Let them also, Sir, perhaps consider when they speak of liberty that liberty is a thing which has been earned; liberty begins in the home by family discipline, and by the kind of education which

[Mr. Uther]

brings a man to a state where he can make a proper economic contribution to his country.

They speak of freedom—freedom for what? Sir, I do feel that when these debates are published outside, it may be felt that certain Members have been pleading for freedom to perpetrate, shall I call them, sub-bastial atrocities. What we want, Sir, is freedom, freedom for an honest citizen to walk unmolested and without fear. (Hear, hear.)

Lastly, Sir, I do hope that hon. Members will not unduly prolong these debates. (Applause.)

**THE MEMBER FOR AFRICAN AFFAIRS:** Mr. Speaker, I will endeavour not to prolong the debate too long.

Many of the points raised by hon. Members on the opposite side have been answered by my friend the hon. Member for Law and Order. I would agree, of course, that this is a negative Bill, but I think that it is quite essential that it is brought in to give us a breathing space to stop the present rot. I think that it is all I would say on the suggestion that this is merely negative.

It has been asked why it should fall to me, as Member for African Affairs, to bring this Bill before the Council. My reply to that is that it is of no particular significance, but it so happens that the Chief Native Commissioner has to deal with the Information Services of the country, and particularly with the African Press, and therefore, this Bill was put into my hands because I have those connections with, at least, the African Press. That has no particular significance as regards this Bill which, of course, has got to deal with all the Press, whether African, Asian or European. I think I should make quite clear—my hon. friend for the Coast said I had not made it sufficiently clear yesterday, I hope I am making it sufficiently clear now.

There were three points which were raised by the hon. Dr. Kárvé. He said the Bill was unnecessary; he said the Bill was futile, and something else he said about the Bill.

**THE MEMBER FOR LAW AND ORDER:** Vexatious.

**THE MEMBER FOR AFRICAN AFFAIRS:** Thank you.

Well, Sir, I believe this Bill is necessary. We have got this cumulative effect of poison being injected into the body politic by these kind of papers, time after time, and that in itself has made this Bill necessary.

The hon. Mr. Mathu said some months ago I said there was an improvement in the African Press. There is an improvement in part of the African Press, and a number of editors have been in contact touch, first with the Press Officer, who existed a few months ago, and who, as you know, did a lot to try and get hold of the African editors, give them advice and technical assistance, and that is going on with other parties who are trying to lead these Africans and show them how they can improve their Press, how they can get on. But, I would say here that although a number of them are very co-operative and ready to take advice, quite a few of them are not.

There have been 12 new papers, as the hon. Mr. Odede referred to them. We have been told that that is a good sign and I would gladly say that is a good sign, provided the papers were reasonable ones. But those 12 papers are amongst others that already existed, particularly the papers that try to put in this poison and I cannot agree that because we have 12 new papers, that in itself is a good thing. Twelve good new papers would be a thundering good thing; but 12 bad new papers, I suggest, is anything but a good thing.

We have been told, Sir, that this Bill is a vexatious one. It would be vexatious to printers, perhaps, who have to take more trouble to see that what they print is not subversive or near seditious, but I think the present situation demands that vexation to that extent.

We have also been told that the Bill is futile. Now, the hon. Mr. Awori said that when legislation was recently introduced into this Council to deal with printers who printed seditious material to make it possible for their printing presses to be collected, that a number of African editors had, therefore, to go and get their stuff printed on "Gestetners"—on duplicators. Surely, Sir, if they wanted to go on publishing this near seditious, subversive stuff, and they had to do it on duplicators, it is perfectly obvious that

[The Member for African Affairs]

Government have got to take some steps to control duplicators, and that is what this Bill is trying to do.

The hon. Mr. Awori said there was no evidence to show that these papers led this cumulative unpleasant and unhappy effect. Well, Sir, I have got pages here—I do not propose to read it, because to read evidence of unpleasant matters in this Council is merely to give further currency—anybody can get these papers and read them, and I do not think there is any doubt whatever really in anybody's mind that this does exist.

The hon. Mr. Mathu suggested there should be an advisory committee to the Registrar to advise him as to what printing presses should be licensed; what printing presses should be refused a licence, and what printing presses' licences should be cancelled. The first point about that is that the Registrar is a lawyer. We know that, and I think we can thoroughly put our faith in the unbiased opinion of lawyers. The second point is that this Bill is a temporary one, however many times hon. Members on the other side of the Council say it is not. It is a temporary Bill—that is that. I do not think in those circumstances there is any point in setting up an advisory committee.

On the other hand, the hon. Mr. Mathu said he thought the powers of each, under sections 15 and 16, were too great and we will propose an amendment to those sections to the effect that a search warrant must be applied for and obtained before that search can take place.

Now, Sir, the hon. Mr. Odede made a number of bitter remarks, and I think I must say this, Sir, if the hon. Mr. Odede's remarks can be summed up again in one thing he said—"if this country is suffering at all, if there is any trouble in this country". Well, now, Sir, we have been talking about this for, I do not know, three or four days, and surely everybody knows, and accepts, that there are parts of this country where there is real trouble; where people are being murdered; where animals are being maimed and cut about, and surely we all know by now there is trouble in the country. (Applause.)

Mr. ODEDE: What I meant was that the whole country is not affected and that only local areas—a few local areas—are affected.

**THE MEMBER FOR AFRICAN AFFAIRS:** I am very glad to hear the hon. Member insists that at least part of the country is affected. I think it is the duty of the Government to see that the rest of the body politic is not affected. (Hear, hear.) (Applause.)

Now, Sir, finally I would like to try to answer points made by the hon. Member for Rift Valley and others about positive action that is being taken, and we hope more positive action will be taken to try to improve the Press. First of all, Sir, we are looking for a public relations officer, as I think the hon. Member knows, in London. I hope we shall get one soon. We have got a temporary arrangement going on in London at the moment whereby a journalist is trying to assist us with the British Press over the misrepresentations, and so on, which unfortunately are being printed in the British Press, and that affects, again, all races in this country. I know that the misrepresentations in the British Press have caused hon. African Members a good deal of heartburning, just as much as they have caused hon. European Members and Members of the Government.

Government-controlled newspapers, of course, really are no reply to this kind of thing. They can fill up a gap, and there is a tremendous gap, because Africans are afraid to read, and for that reason, in fact, district news sheets were started—I may say that I, personally, started the very first one in about 1947 or so; we have now got, I think, 16. Those were designed to fill a gap, and although the hon. Mr. Awori says there is nothing interesting in them, there is a lot of local news and they are, in fact, read avidly locally. Mr. Awori is an editor himself, and he knows well that local news in Africa, as in Europe, is really very much more interesting to people with local interests than world news and news of U.N.E.S.C.O. or U.N.O., or you know!

There are, though, two papers, one of which has nothing whatever to do with Government, and one of which has

[The Member for African Affairs] something to do with Government. The first is *Baraza*, which has an enormous circulation, I believe the biggest circulation of any African paper in Africa. That is doing valuable work and is certainly showing other African editors how to get on with their job and how to put the stuff across. (Hear, hear.) The other paper recently started, called *Tazania*, has also a very big circulation; in fact, surprisingly big, considering it is a comparatively expensive paper. Editors, as I say—the hon. Member for Law and Order said that he was sending officers down to talk to editors on matters of law. The substantive editor of the *East African Standard* has had discussions regularly with these editors. As I said, the Press Officer had discussions with them regularly. I have had one or two, and other members of the public are now in touch with African editors and are trying to give them advice, and that we shall continue to do. The first African editor was sent home to the United Kingdom this year, on a British Council visit we sent eight or ten other Africans, and we included in that group one of the African editors, at least to give him some little run-around, if only for six weeks as a start. That, I think, is all moving in the right direction. Of course, however big our Government papers' circulation becomes, you cannot really deny that the "Yellow Press" always has a good public, wherever it is, whether in Africa, whether in Europe—unfortunately. But in West Africa I know a good deal has been done by starting what I believe is called *The Times of West Africa*, I am open to correction on that particular title, but I believe that is it, which has had a great effect. I hope we might be able to get something of that kind going here.

One other point, Sir. The hon. Member for Rift Valley said that the opposite point of view should be put. Of course it should be put, and it is continually being put by members of the administration, by *Barazas* of all kinds, constantly, by chiefs, and so on, and I would ask all Members of this Council on both sides of the Council to use as much influence as they can by pen or by word of mouth in combating the kind of false propaganda that is being put across in the country.

Well, Sir, I think I have dealt with most of the points, and I would only appeal once again to the hon. Member. This is a necessary Bill, it is a temporary Bill; it is not very palatable, but I think we ought to swallow it.

Mr. Speaker, I beg to move.

The question was put and carried.

#### COMMITTEE OF THE WHOLE COUNCIL

##### The Printing Presses (Temporary Provisions) Bill

[Mr. Neep in the Chair]

THE CHAIRMAN: Order, order!

#### Clause 2

MR. MATHU: Mr. Chairman, I have an amendment—that under clause 2, subsection (1), we delete the words "lithography, cyclostyling" appearing in line 37 and wherever else they occur in the Bill.

Mr. Chairman, I am not moving this amendment in order to prolong the debate, but we feel that they are extremely necessary. If other people like to prolong the debate, African Members would be the last to do so because they have to earn a living, in addition to doing public work. They feel better out of this Council to earn a living rather than prolong the debate.

We do feel, Sir, that it is necessary to move this amendment so that we show this Committee and the Council that we attach tremendous importance to these measures, and cannot just dismiss them because we are afraid of prolonging the debate. "Lithography and cyclostyling" is the definition of printing presses—we feel that legitimate people, who do not intend to publish any material for any other reason than for legitimate purposes, have not been protected. I raised this point in debate, and I do not think any of the Government Members tried to give me an assurance on that one, and I do feel, Sir, that we ought to protect the legitimate people, and therefore I am excluding these two as definitions of the printing press.

THE CHAIRMAN: I propose to test the feeling of the Committee by taking, first of all, the words you are complaining about where they first occur. You ask

[The Chairman]

and in line 37 the words "lithography" and "cyclostyling" shall be deleted.

THE MEMBER FOR AFRICAN AFFAIRS: I am afraid the Government could not accept that. I have just a few moments ago tried to explain why it is necessary to control lithography and cyclostyling. It is just as much open to objection as any other form of reproduction. I did also, in opening the debate on the Bill, refer to section 3, and I can assure hon. Members that section 3 will be quite reasonably applied if there are such items as we were talking of the other day—such items as the minutes of the Horticultural Society—those kinds of documents will be excluded without any difficulty.

MR. GIKONYO: I should like to support Mr. Mathu's amendment because we have been told in this Council that African editors are catching up very well with instructions and advice they receive from the Member for Law and Order, and if they are coming up and taking an interest in editing, I feel it a great pity we should come in their way and stop their printing.

We do know, for reasons advanced in this debate, that African editors have resorted to cyclostyling as the only means of printing their newspapers, and I am sure one of the intentions is to get rid of these African papers. It would be a very great pity in my opinion, and therefore I would like to see the definition exclude "lithography and cyclostyling".

MR. HAVLOCK: I quite appreciate the difficulties and annoyances that might be caused, both to African editors and to others, in including these words, Sir, but, having listened to the debate on printing presses we must make up our minds to one thing. There are going to be people who are going to find it awkward and irksome, but I have seen papers in cyclostyle and lithography which have been described very well by my hon. friend, the Member for African Affairs, in the Second Reading, and, indeed, I can visualize their effect on the public as being very bad at this particular time. I say this with a certain amount of sympathy because I have moved an amendment which I hope will be taken next. I shall try to make this not quite as irksome.

I beg to oppose the amendment.

MR. CROSSKILL: I am forced to the conclusion that the African Members have misread the title. The Bill does not intend to prevent people from printing their papers—only to regulate them.

MR. MATHU: May I say, Sir, that, replying to the hon. Member for Mau, we very well understand. We know that regulations can almost be interpreted to mean prevent. We understand exactly the implications of this law.

The question of the amendment was put and negatived.

MR. HAVLOCK: I beg to move that clause 2, sub-section (1), of the Bill be amended in respect of line 41, and that, after the word "authority" the words "or any typewriter" be added at the end of the definition of printing press. This means that typewriters will be excluded or exempted from the provision on registration, as I do feel that there might be a certain amount of danger in cyclostyling, but very little danger of subversive documents being typed out on typewriters during the early hours of the morning that will cause any particular harm to the spirit of the public.

I think, Sir, that the hon. Member for African Affairs has already indicated that Government will accept this.

MR. GIKONYO: I rise to oppose that amendment because, if it were meant to be absolutely watertight, I cannot see why we should not exclude "cyclostyle" and then exclude "typewriter". The typewriter is just as capable of producing as many copies of sheets of paper as the cyclostyle. If you want to be absolutely watertight then you must exclude "cyclostyle".

THE MEMBER FOR AFRICAN AFFAIRS: I am afraid I cannot agree with the last speaker. Surely the typewriter aims to type—I am no typist, but I understand that if you hit it very hard you might get 12 copies, but on a cyclostyle you can get 100 copies. It is a matter of degree. Government would be perfectly willing to accept the amendment, but it would be unpracticable and undesirable to try to attempt to control typewriters.

MR. MATHU: Mr. Chairman, my hon. friend says that a typewriter can take about 12 copies—yes, 12 copies at a go—but 12 copies can be multiplied to 1,000. If you have 12 machines and 12

[Mr. Mathu] typists, 12 times 12 makes 144 straight away. You can do that for a week if you want to have a weekly sheet. You can do that without any difficulty, but my hon. friend says it is impossible—

**THE MEMBER FOR AFRICAN AFFAIRS:** I can only suggest that 12 typists sitting for 12 days at 12 typewriters would be uneconomical.

The question of the amendment was put and carried.

**MR. MATHU:** I have a very small one, it is only dealing with the word "writing" in sub-section (2) of clause 2. I beg to move formally that the word appearing in line 3, "writing", should be deleted.

My point there is if a typewriter cannot produce 100 copies I do not see how a chap can write 1,000 copies.

**THE MEMBER FOR AFRICAN AFFAIRS:** Government will be very happy to accept that.

The amendment was put and carried.

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

**MR. HAVLOCK:** I would like to make a comment on clause 3.

I would like Government to give an assurance that as far as organizations that are neither commercial, which are already governed, or political, could be or would be exempted under this clause as regards registration of every machine. I mean, organizations mentioned by Mr. Mathu, such as agricultural societies, horticultural societies, the St. George Society, all the rest of these more social and technical organizations, which I think should be removed from the onus of having to register every piece of equipment in their own shop.

**THE MEMBER FOR AFRICAN AFFAIRS:** I cannot give any general assurance that any particular type of organization would be generally excluded. I can only give an assurance that operation of this section will be as reasonably applied as it can be. That is as far as I can go.

Clause 5

**THE MEMBER FOR LAW AND ORDER:** Mr. Chairman, I beg to move the following amendment to clause 5. To omit the word "such" appearing in line 31. It is really only a draft amendment.

The amendment was put and carried.

Clause 5, line 40

**MR. MATHU:** Mr. Chairman, I beg to move that the words "one month" appearing in line 40 of clause 5, sub-clause 1, be deleted and substituted by the words "three months" therefore. My amendment is that it will give those people who have printing presses a longer period in which they would be licensed or their licence is refused. I think one month too short a period—I am certain that should be extended to three months, so that they can put their house in order and then apply for its licence under the law.

**LADY SHAW:** Mr. Chairman, I cannot support this, I am afraid. This Bill is only supposed to run for a year. If we knock three months off it we might as well make it a 15 months' Bill straight off. It appears to me to allow people who are already acting to the detriment of the public generally to continue their activities for two more months than we need is a little unwise if not foolish.

I beg to oppose.

**MR. GIKONYO:** Mr. Chairman, I would like to support the amendment. These days movements are restricted. It is not very easy to get news. A man might have a cyclostyling machine in the extreme corner of Kenya and it may take some time before news reaches him. I think three months not unreasonable.

**MAJOR KEYSER:** Mr. Chairman, I know our postal services are not all they should be. Surely there are no restrictions on the post—surely a man can apply by post within a month. I cannot see any hardship in having to do so.

**THE MEMBER FOR AFRICAN AFFAIRS:** Mr. Chairman, Government could not accept this amendment. All that as owner of a printing press has to do is to write in and ask for a licence—I think he can do that easily within one month. He does not have to have the licence back within one month but just apply for it within a month. All he has to do is to see that he does not print subversive or seditious matter. If we did prolong it, as the hon. and gracious lady Member for Ukamba has said, you

[The Member for African Affairs] might as well carry on the Bill for 15 months. The position is urgent now—we want to stop it now.

**MR. MATHU:** Mr. Chairman, there is one point that has virtue in my amendment, there is one point that I think should be made, and that is: looking at it from a Government angle Government will have further opportunity of bringing to people what the provisions of this Bill are, so that they know for certain when the law starts operating where they stand.

Further, I think Government has an opportunity in the three months of bringing home with greater force to African editors the truth and so they would have an opportunity of learning the facts as regards seditious matter and so on.

My hon. friend did say they are arranging for a public relations officer and they have a temporary arrangement with a journalist in England. This material should be given to these African editors in the meantime.

I think even by the time we appoint all these registrars and their offices and everything it will be about three, four or five weeks so that a fellow committing an offence under the law—the set-up will not be complete. Unless the Government has already got the set-up because it knew that this law, whether we opposed it or not, was going to be pushed through.

The question that the words "one month" stand part of the Bill was put and carried.

The question of the amendment was put and negatived.

**THE MEMBER FOR LAW AND ORDER:** Sub-clause 5 (4) reads as follows:

"Every licence granted under this section shall expire on the 31st day of December of the year in which it is granted". But in view of the fact that this Bill is now so drafted that it will last only for 12 months, it is thought better that licences granted should expire when the Ordinance itself expires.

Therefore I move in substitution for sub-clause 4 the following clause: "Every licence granted under this section shall expire on the expiry of this Ordinance".

The amendment to sub-clause 5 (4) was put and carried.

The question of clause 5 as amended was put and carried.

Clause 6

**MR. MATHU:** I am suggesting a new sub-section—sub-section 3: "The Registrar shall exercise the powers conferred upon him through an advisory committee as may be prescribed".

My contention there, Sir, is that, as I have said in previous debates, that the Registrar should have some check, and when applications come to him he will call a meeting of this advisory committee to discuss those applications and then they make their decisions.

Mr. Chairman, I might here say this will not create a new principle at all. There is already such a committee advising Government in matters of issuing licences and this will fall in line with those developments. In particular I might mention that during the war the Traders Licensing Ordinance was operated through a licensing committee for provinces or districts, and this is exactly what I am suggesting. It may be said that 12 months is not sufficient time to call meetings, but there again I do not think if the committee is properly selected it need delay matters. You can get members of a committee in Nairobi, where the Registrar is residing, and therefore you can have meetings held as quickly as you can.

I suggest, Mr. Chairman, this is a very positive recommendation I am making. It will not, I really think, hinder the operation of the law, and I am surprised to hear that some people would not like to support such a recommendation.

Mr. Chairman, I beg to move my amendment.

**THE MEMBER FOR AFRICAN AFFAIRS:** Again I am sorry to say Government cannot accept that amendment. There are, I would humbly suggest, too many committees. Already we are all much too busy on this side of the Council as it is. The points made before in debate by my hon. friend in favour of a committee are met by the fact that the Registrar himself is a lawyer; that the Member for Law and Order, with whom he is to consult, is also a lawyer, and you can leave it quite safely in the hands of the

[The Member for African Affairs] lawyer to be unbiased. Furthermore there is appeal to the Governor in Council. I think that is sufficient to meet the hon. Mr. Mathu's suggestion.

Dr. HASSAN: I am surprised that the Member for African Affairs is not agreeing to the advisory body to the Registrar. Even His Excellency the Governor has to have the advice of this Council before deciding anything. This is merely an advisory body of responsible people, if not all responsible people, some people responsible, and responsible should be selected from this Council to advise the Registrar. It is a question of making a decision to license people, exemption, and so on. I am positive three, or four or five brains will be better to decide an issue than to rely on the power of one man.

Mr. GIKONYO: I wonder if Government is ever going to agree to anything if they object to this.

I support this because I think the people will feel a great relief to hear that the matter will be discussed in a committee where they think better consideration will be given rather than to give an application to one individual who may refuse to grant a licence at his own will.

Mr. MATHU: A further point is that if the provisions of this Bill are vigorously operated those particular sections of the Press which are worrying the Government and the people will have gone into cold storage in a very short time—in fact the committee will have very little work because they will have gone out of existence within the first four weeks.

If they do give the people an opportunity to be heard through a committee, rest of the one I am suggesting, for the going into freeze within a very short time—if Government refuses, I think it is most unfair, most unreasonable, to refuse to accept a democratic approach to any of these measures. It hurts me terribly to be the one to defend the British system of justice when I am not a Britisher. It is all wrong when the British Government says we are here to inculcate British principles—

Mr. USHER: I wonder perhaps if the hon. Member opposite could give us any idea of the number of applications expected, how many hundreds or

thousands or millions. My point, if I might make it, is that I anticipate that there will be such a large number of applications that it would not be practicable to have a committee to meet to cover them.

THE MEMBER FOR AFRICAN AFFAIRS: The hon. Member has taken the words out of my mouth.

Mr. HARRIS: Surely the point is covered that Mr. Mathu made, in clause 7 of this Bill, where the whole basis of democracy as it works in Africa is incorporated in that Bill in the final appeal to His Excellency the Governor in Council advised by the hon. Member himself.

Mr. MATHU: I was not thinking that we have a different type of democracy functioning in Africa than the one everywhere else. I was dealing with British democracy. I feel that it is essential there should be an advisory committee even before the matter goes to high authority.

Mr. CROSSKILL: Earlier on the hon. Mr. Mathu was making comparisons about the war-time advisory committee to the Traders Licensing Ordinance. I was not sure whether he said "traders" or "traitors". But any further emasculating of this Bill, which is a temporary one, would make it a "traitors' Bill".

Mr. MATHU: I have not come across a Traitors Ordinance in Kenya, but I know there is a Traders Licensing Ordinance.

The question that there should be a new sub-section, sub-section 3, to clause 6, was put and negatived.

Clause 7

Mr. MATHU: I suggest that the words "Governor in Council" in line 12 and in line 14 be omitted, and the words "Supreme Court" in both cases be substituted.

Our intention there, Sir, is that in the event of the Registrar exercising his very great totalitarian and drastic powers given him under this law, those aggrieved should have recourse to the court of law in the country instead of appealing to the highest Executive in the land, and I do not think there is a new principle here, but I do think justice is likely to be done to these people if this matter went to the court. If there are tedious cross-examinations by lawyers, and the rest of it in a court, I feel that will be better that way to see that justice is done.

[Mr. Mathu] can to give executive power from the bottom to the top to finalize these matters, when people will have no opportunity of defending their case in a court of law.

Here again, I do this because I believe we have in the British judicial system a record that we can all be proud of. I do not think that this Council would feel anything else but that if they leave this matter in the hands of the judicial authority in the country, what fear can they have, Mr. Chairman? And if there is no fear I do hope that my amendment will be accepted, that the words "Supreme Court" be substituted for "Governor in Council".

Mr. SLADE: Much as I sympathize with the hon. Mr. Mathu's desire to have the Supreme Court in the background as the last resort, I am afraid I must oppose this Motion because it does imply that the Supreme Court is to be asked to be the final arbiter on what is essentially a matter of policy, when the Member for Law and Order and the Registrar refuse or cancel a licence they are doing it on political grounds. If you are to have appeal to the Judge in the Supreme Court you are putting upon that Judge a difficult task entirely outside his jurisdiction, not of deciding a matter of law, but a matter of policy, which is for the Government to decide.

Possibly the hon. Mr. Mathu does not appreciate that with this as it stands there is still a law with the Supreme Court in the background in that even people given the widest executive powers, if there is anything at all judicial in their nature, if they abuse them they can be called upon by the Supreme Court who judge it by their actions by the writ of *mandamus* and the writ of *certiorari*.

Mr. MATHU: I am sorry to rise again—one final point before you put this to the vote, if no other Member wants to contribute to this rather frustrating debate. It is this, Mr. Chairman. My hon. friend the Member for Aberdare talked about policy and I am glad he said about that because I would have thought we are now laying down policy to affect one particular section of the community. We are already laying down the Constitution in advance by talking about temporary measures. We have seen evidence

of that—I can quote the HANSARD going back for five years—of Members saying that the laws applying in England where people are civilized should not be operated in Kenya where people are not advanced—these are laws intended for people not highly advanced, therefore to be used when the constitutional set-up comes up. I think I must make my warning—the suspicions we have had throughout, suspicions that throughout are coming to me more clearly than ever before.

THE MEMBER FOR AFRICAN AFFAIRS:

The last speaker, the hon. Mr. Mathu, seems to forget that in parts of this country there are people lying dead, houses burnt, animals killed and that that is the sort of situation we are here to discuss and try to put right. This, Sir, is a Bill designed for a short period to try to give us breathing space to try to get things right so that we can deal with constitutional issues in a reasonable atmosphere and not the kind of atmosphere my hon. friend has tried to create in this Council in the last five minutes. (Hear, hear.)

We cannot accept this—I have said so in other Bills. These Bills are designed to put power into the hands of the Executive, for a short time and not into the hands of the Judiciary and that is because freedom has been abused—we have got to get back to the state of affairs where freedom can be followed by all without fear.

Mr. BLUNDELL: Mr. Chairman, I hope that you will accept that I may go beyond the bounds of the Bill. The hon. Mr. Mathu has made imputations that possibly some of these measures are designed to restrict freedom of decision over the Constitution. I would like to take this opportunity of saying this, Sir.

The origin of the consultative body was a suggestion which came from the unofficial European Members, and with suitable amendments by Mr. Griffiths was accepted by us. I would like to give the hon. Member an assurance that we do not intend in any way to depart from the original intention, which was frankly and perfectly fairly to discuss the difficult, intricate problem of a constitutional approach. And here I would like to ask the hon. Member to accept that none of this legislation—we will not agree that



[Mr. Blundell] any of this legislation will fetter the African in that respect, Sir.

MR. AWORI: Sir, I support the amendment which my hon. friend, Mr. Mathu, made about substituting "Supreme Court" for "Governor in Council". I think that as the hon. Member for Law and Order is in this affair with the Registrar in Governor in Council, I an impartial person should have been brought in to decide in the event of the Registrar refusing to license printing presses. For that matter I think it most fair that we should agree that the Judiciary should operate instead of the Governor in Council.

Committee adjourned at fifteen minutes past Eleven o'clock and resumed at thirty minutes past Eleven o'clock.

THE CHAIRMAN: Order! Order! Does any other Member wish to address the Committee?

MAJOR KEYSER: Mr. Chairman, we are discussing an amendment to section 7, are we not? Sir, the hon. Mr. Mathu worked himself up to a great state of indignation because he seemed to imply that the Ordinance is going to affect Africans only. I should like to point out, Sir, that it is going to affect far more Europeans than it is Africans, and I should also like to point out that these great inconveniences, purely and simply owing to action that has been taken in the last few years by certain Africans, I would like to remind him of that, and I hope he will keep it in mind in the rest of our debates.

Sir, normally, I am opposed to appeals going to the Governor in Council instead of to the Supreme Court, My only reason for supporting section 7 here, is that it does seem to me, Sir, that an appeal to the Supreme Court would be merely to decide on whether the Registrar, if he really did appear to the Registrar, if the applicant is likely to keep or use a printing press for unlawful purposes. I do not think it would be of any use in appealing to the Supreme Court, with all the unnecessary delays in cases coming up to the Supreme Court. On that point only, I believe the decision will be far quicker in an appeal to the Governor in Council and is of not such great

importance to-day in this particular matter.

THE SOLICITOR GENERAL: The decision would certainly be obtained very much more cheaply.

THE CHAIRMAN: I will put the question. The question is that in clause 7, line 12, the words "Governor in Council" shall stand part of the clause.

The question was put and carried.

#### Clause 15

THE CHAIRMAN: Now on clause 15 there are some Government amendments and an amendment by Mr. Mathu. I will take the Government amendments first and then Mr. Mathu can see if there are any further amendments to the Government amendments.

THE MEMBER FOR LAW AND ORDER: Perhaps I ought to take clause 15 first.

I suggest, Sir, an amendment, the effect of which is to require anyone who proposes to make a search to obtain a search warrant first. It is similar to the one we conceded in the Societies Bill:—

"15. Whenever it is represented on oath or affidavit to a Judge or Magistrate that in fact or according to reasonable suspicion any printing press is being kept for use or used in any place without a licence or is being kept for use or used by a licensee in any place not specified in his licence, such Judge or Magistrate may by warrant (called a search warrant) authorize any administrative officer or any police officer not below the rank of assistant inspector to enter, if necessary using force for that purpose, into any place in which it is so represented that a printing press is being kept for use or used as aforesaid and to search such place and seize any printing press and all the types and other articles thereto belonging, and all documents, found therein."

THE CHAIRMAN: I do not know if the Committee wishes to debate this.

MR. HARRIS: Mr. Chairman, I wish to oppose this amendment. For the last week, opinion has been given all over the Council that the other Bills and

[Mr. Harris] legislation that have been given this week are necessary, distasteful as some of them may have been in normal times. Having accepted the principle that these measures are necessary, I think we want to see that they are effective, and effective with the least administrative interference with the normal services of the country.

Many amendments have been proposed, Sir, which have had the object of either whittling down these Bills or making them impossible of administration by putting so many safeguards in the way that they become difficult or impossible to administer. This particular amendment, Sir, I feel falls into that category. I can foresee cases where it is essential for a police officer, in order to get the evidence which may be necessary, to act on his own initiative without giving prior warning and the waste of time necessary in getting a warrant.

On those grounds, I oppose this amendment.

MR. MATHU: Mr. Chairman, I oppose this amendment, because as I read it, Sir, it does, to put it on a very low level, annoy the African Members, because most of the time of this Committee has been wasted, if you call it wasted, Sir, in debating the principles of taking an oath and an affidavit to a judge in order that certain things should be done by the police or by the administrative officer. Here, now, you want the affidavit to be done, and the men who are going to search are not, in the future, according to this law, going to lodge an appeal to any judge or magistrate. If you want to be logical, give the judge some authority on this, but give the person also an opportunity to appear before another judge. Make it judicial.

That is, I think, one major reason why I oppose this amendment.

GOUD-CAPT. BRIGGS: Mr. Chairman, I oppose this amendment. In my view it is merely going to complicate the Ordinance and make it ineffective.

MR. HAVELOCK: Mr. Chairman, I would be glad to hear from Government, to know exactly how this will be worked administratively, and will it make the Bill less effective in their view?

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Chairman, I do not think it will make the Bill less effective, and for that reason, I have agreed, in fact, that this amendment should be produced and put before the Committee. It was an effort to meet the hon. Mr. Mathu's objections earlier in the debate that these powers were too brusque, too violent and so on, and we would, at least, have a search warrant. We were surprised to appear to have a search warrant—I do not think that is going to make the sections ineffective. I am a little surprised, when one attempts to meet a point merely to be told that it does not help in any way.

MAJOR KEYSER: I oppose this Motion because it does seem to me, Sir, that the police should have a right to search to see if the press is licensed or not. Surely, Sir, as far as most licences are concerned in the country—arms licences, everything else—the police can investigate the matter to see whether the particular thing that ought to be licensed is licensed, without having to get a search warrant. This is the only case which I know in which the police would have to procure a search warrant before they can investigate the matter as to whether there is a licence for a particular thing that ought to have a licence.

THE MEMBER FOR LAW AND ORDER: May I intervene to say I would not agree to a proposed amendment on these lines if I thought it would affect the principles of the Bill or the efficient applications of the principles of this Bill. The hon. Member for Trans Nzoia suggested that this would be the only case of its kind where the police had to get a search warrant before they could find out whether a licence had been taken out by the person under the law. The purpose of this search warrant is to enable the police to go into private premises to find out whether there is a printing press which they have not heard of, which is not licensed. To get a search warrant to go into private premises is common practice.

A search warrant is taken out by the police very expeditiously and executed immediately afterwards in complete secrecy, and without any handicap or trouble whatsoever. I have no misgivings myself. I would like to assure the hon. Member for Nairobi South that I am satisfied that this provision, although it may be a check on an over-zealous

[The Member for Law and Order] policeman, who cannot be relied upon to exercise a sound judgment in all circumstances, nevertheless will not hamper or hinder the proper administration of the provisions of this Bill. It is really only bringing it into line with what is common form and common practice. The police, as soon as they have reasonable suspicion, can take out a warrant at any time of the day or night, without any delay whatsoever, in complete secrecy, and with that they can enter a private premises and ascertain whether their suspicions are well founded. There is nothing novel or new in it, indeed it is in accordance with the usual practice in matters of this kind.

MR. HAVLOCK: That is just the whole point. The hon. Member said it is in accordance with common practice. These Bills are not in accordance with common practice. We have been assured by Members on the other side that there are certain things going on which must be stopped for the benefit of all people. The hon. Member has said that the police can get a search warrant almost at any time of the day or night. Is that absolutely right, Sir? That is, I am sure, the doubt of Members on this side of the Committee. Is it true that a policeman without any particular delay, during which time the evidence which he wishes to find, might be removed without any particular delay, can get a search warrant and get on to find what he wants? I am not particularly satisfied with the answer given by the hon. Member.

THE MEMBER FOR LAW AND ORDER: I said it is common form and common practice to get a search warrant to search premises. I can say that we have had no difficulty so far ever in getting search warrants as speedily as are required for warrants. They are required for purposes similar to this, requiring just as much urgency in particular cases, as in this minister this law efficiently and I would not put it forward if I thought it was going to handicap the police unnecessarily or, indeed, at all. But if one can administer the Bill efficiently and, at the same time, provide adequate safeguards against misuse of the powers, then one should try to do both. I am satisfied that this amendment will achieve both.

MR. HARRIS: Sir, I am almost satisfied with what the hon. Member for Law and Order said, Sir, but would he assure me that he is as satisfied with the Bill, if it is amended in this way, as he would have been had the hon. Member for African Affairs not made his somewhat abortive attempt to meet the needs of the hon. Mr. Mathu?

THE MEMBER FOR LAW AND ORDER: I am perfectly satisfied that this is adequate.

MR. CROSSKILL: In opposing this amendment, I should like to point out to the hon. Member for Law and Order that for the purposes of this Ordinance, a printing press might be a cyclostyle machine. A cyclostyle machine is comparatively small and very mobile. I could foresee a policeman, in his duty, could see in operation a cyclostyle machine which he had reason to believe was being used to the detriment of good order, but by the time he would have obtained such a warrant from the magistrate, that printing press would have been moved. I would, therefore, suggest, for the reason I have given, that the amendment is unsuitable.

MAJOR KEYSER: Would the hon. Member answer that particular point? Supposing the police officer sees a cyclostyle being used and he has reason to believe there is no licence for it. Can he seize the cyclostyle or does he have to get a search warrant first?

THE MEMBER FOR LAW AND ORDER: If the police officer is going into private premises, he will have to get a search warrant first. If he is in the premises and has already been admitted, then he does not have to get a search warrant. He does not need a search warrant for premises into which he has already been admitted. But there is always the possibility, if one gets information about illicit printing presses, that before one gets the warrant it has been moved. One cannot exclude the possibility, it does occur. In practice, if the police have good information, then the extra time involved for going to get a search warrant to search those premises would not, I think, affect the success of their venture. So far as I am aware, it has not ever handicapped the police, hitherto under other Ordinances in which they have to enter private premises, the fact that they have first to obtain a search

[The Member for Law and Order] warrant. As I said, I think one can to some extent safeguard the privacy of people without hamstringing this Ordinance, if one introduces this provision about having a search warrant.

MR. MATHU: I just want to say that if the amendment in this clause was only the inclusion of powers to take out a search warrant, in view of my own amendments which I have tabled, we should be very happy to support this; because if this eventually will have any virtue, the virtue of this provision will be that a search warrant will be taken out. I would like to support that particular point of view moved by the hon. Member for Law and Order. Whether our amendment will be eventually carried or not, I would very much like to see the provision, that the search warrant will be issued, maintained in the clause. That would be the one point that we would feel, at any rate, relieved that something is being done in the way that we have been trying to suggest that it should be done.

In that way, I support the Government on that particular point. (Applause.)

The question that clause 15 stand part of the Bill was put and negatived.

The question that a new clause 15 be inserted in the Bill was put and carried.

#### Clause 16

THE MEMBER FOR LAW AND ORDER: Mr. Chairman, I beg to move that clause 16 of the Bill and the marginal note thereto be deleted and the following clause and marginal note substituted therefor:—

#### Search warrants when requirements of Ordinance not being complied with

16. Whenever it is represented on oath or affidavit to a judge or magistrate that in fact or according to reasonable suspicion any of the provisions of this Ordinance are not being complied with by a person who is the holder of a licence in force at the time, such judge or magistrate may by warrant (called a search warrant) authorize any administrative officer or any police officer not below the rank of assistant inspector to enter if necessary using force for that purpose, into any place in which it is so repre-

sented that any printing press is being kept or used by such person and to seize any documents which have been printed in contravention of the provisions of this Ordinance.

In clause 16 exactly the same point is involved, it merely applies in 16, entering into private premises where there is reasonable suspicion that the holder of a licence does not comply with the provisions of his licence. The other clause dealt with where the police were entering, where they had reasonable suspicion there was a printing press without any licence at all. The principle is exactly the same.

MR. HARRIS: Mr. Chairman, I do not want to repeat my arguments—

THE CHAIRMAN: I was not going to put the question unless the Committee wishes to debate.

MR. HAVLOCK: The only point is that the hon. Member wants to oppose, if it going to be on the same grounds as last time.

The question was put.

MR. HARRIS: Mr. Chairman, the arguments are precisely the ones I used in the last, except in this case you have a position where a man definitely has a licence and he is contravening the spirit, if not the letter, of this Ordinance, if it is enacted. In that case it might easily be that he has, say 5,000 handbills of a seditious, or semi-seditious nature. By the time a search warrant has been obtained, by the time he has presented it to the owner of the premises, and assured the owner of the premises that he, in fact, has a search warrant, it would be the easiest thing in the world for those 5,000 handbills of a seditious nature to be out of the back door. It is not a matter of establishing that there is a printing press without a licence. I think what I said previously is even stronger in this case than it was in the last one.

The question that clause 16 stand part of the Bill was put and negatived.

The question that a new clause 16 be inserted in the Bill was put and carried.

MR. HAVLOCK: On a point of order, to save the time of the Committee, would it be possible to put the question according to the Order Paper which has been circulated?

THE CHAIRMAN: I would like to do that but, strictly speaking, it would not be right. I have got my own views about this rather antiquated procedure we have to work with. I think it could be improved by certain common sense.

MR. HAVELOCK: It has been done before.

THE CHAIRMAN: Then perhaps we ought to do it. There is a difficulty; we should do it in the 17th century way, which perhaps is not quite the best way. (Laughter.)

Mr. Mathu: It seems to me your amendments on the Order Paper are now disposed of, are they not?

MR. MATHU: Two have been disposed of and the other two, as I think you did say, Sir, that when the Government amendments are carried, then I could say whether I could make further amendments to the Government amendments. There are two left which I wanted to deal with—15 and 16. They appear in both.

I beg to move that the words "administrative officer or any", appearing in line ten of clause 15 of the original Bill—the same words appear in the duplicated copy—should be deleted.

My point there is that the powers we are giving in these clauses to the Government officers should be confined to the police officers above the rank of assistant inspector. In other words, I am removing the administrative officers out of this altogether. I think it would be in the interests of the Government not to involve administrative officers who hold executive positions in the districts, to come into this because it will really put them in a very awkward picture, and they are already finding it very difficult and it would make their position, as representatives of the Government in those districts, worse. That is the intention in my moving this. Confine your powers to police authorities only.

MR. COOKE: I should like to support that, Sir, because I think it is very undesirable to bring the administrative officer, who may later be sitting in a managerial capacity, to put him in an executive capacity in this matter. It is really putting him as a judge in his own cause in many cases.

LADY SHAW: Let us take a vast reserve, like Machakos Reserve. You have to limit all activities to these two wretched men, they may need a magic carpet to make it even possible. One must regard this thing as a practical measure, one has got to apply it in a practical way. If you cut the Administration out of it and only use police officers, the thing will never work; it cannot work.

MR. COOKE: If Lady Shaw holds that view, and if the view is a correct one, I would much prefer to increase the number of police officers, even if we have got to pay for it, rather than bring the Administration into this particular position. Those are the views I have held for many years, especially when I was in the Administration myself. I think it is the greatest possible mistake to confuse the position of administrative officer, who is there in an administrative capacity as a perfectly unbiased person—I think it is a great mistake to put him in executive responsibility because confidence is lost in him in consequence.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Chairman, I have great sympathy with the remarks made by the hon. Member for the Coast. This is a critical matter, it will only last for a year. It will take a long time to get the police— to have enough of them—to cover the ground, and as the hon. and gracious lady for Ukamba has said, we simply have not got enough officers—police officers—to cope with the situation.

MR. COOKE: That is no excuse for doing the wrong thing.

THE MEMBER FOR AFRICAN AFFAIRS: We must allow the administrative officers to do this work.

MR. MATHU: Mr. Chairman, I feel that my hon. friend could achieve the same end if, as my hon. friend the Member for the Coast has said, if you did not have sufficient police officers—and the recent increase, I know the Standing Finance Committee always is ready to sanction more, at any rate I would support more in order to save this situation.

The first point is this. Another very important problem is that the tendency is to concentrate these powers to the representatives of one community only, and when you have Africans in the districts they have no executive responsibility at all. Surely you should trust them,

MR. MATHU: [The hon. Mr. Mathu] give them some of these responsibilities, and employ more so as to relieve the European administrative officers for the more important jobs. You would do that, you concentrate the whole power, everything to an administrative officer, he has so time to think about other affairs in the district at all. In other words, there is a standstill in the district because the administrative officer—he is a magistrate, he is a policeman, he is everything under the sun. How can you expect the districts to be developed? There is a limit, I think, to this selfishness of the controlling power in the hands of one community altogether. Can you not extend the powers to Africans, in particular in this regard, to other communities.

LADY SHAW: I would like to point out that this question of increasing the police force for the purpose that is mentioned, in this Bill is for a year. We do not want to have to produce a police force, presumably in order to put into effect powers which are only granted for a year.

MR. USHER: Sir, a small point has been made, I think by the hon. Member for the Coast, that an administrative officer would apply for a search warrant and then might be in the position of trying the case. I do not think that would occur at all. He might issue a search warrant and then try the case, which is an entirely different matter, because any court would do that, but the real point is he would have to apply for a search warrant to another court, and that is the court which would try the case.

MR. HAVELOCK: I presume "Administrative Officer" in this context—the interpretation is under the General Interpretation Ordinance, which I also understand includes a number of African administrative officers, Liwalis and Madira, which again I suggest is an answer to the hon. Mr. Mathu to show that in leaving the administrative officers, a certain amount of executive responsibility is being handed to people of a different race from European.

The other point is this, Sir, I would like to ask if there is any particular objection to reducing the police rank in this particular clause to allow for lower ranks than assistant inspector to have this power. Is there any objection to that? This again would be in line with what

the hon. Mr. Mathu has asked for. If there is any objection I would like to hear it.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Chairman, there are both African assistant administrative officers and African assistant inspectors of police. They are, in fact, already covered.

MR. MATHU: Could my hon. friend, the Member for African Affairs, say that I am wrong in saying this, that it is not the intention of Government to give any of the few African administrative officers there are in the field these powers, that they would not trust them, unless these powers are exercised by the Europeans. Would I be wrong that that is not the case?

THE MEMBER FOR AFRICAN AFFAIRS: I entirely disagree with the hon. Member. There is no earthly reason why the African assistant administrative officer should not exercise these powers; none at all—or an African assistant inspector of police.

The question that in clause 15 the words "administrative officer or any" should stand part of the clause was put and carried.

MR. MATHU: I beg to move the deletion of the words "if necessary using force for that purpose" in clause 15.

Now, Sir, I think we are going too far if we can, even after the judge or magistrate has issued such a warrant to these officers, give further powers to these officers to use force specifically, whether there is provocation or not. I think, Sir, we are asking for trouble. Surely it is not necessary to include that. It is always understood that if in the course of the duties of a policeman there is any provocation or someone stands in his way of the police officer in executing his duty, there is always, I think, in the provisions of the law that whoever hinders such an officer is guilty of an offence. But if we now give him the power that he can use force, if it is necessary, specifically, to put that in the law, where shall we end, Mr. Chairman? I suggest it is not necessary to include those words specifically. Leave it for the other Bills, for other laws to effect what you want, because I could see then fights occurring everywhere. And therefore, of

[Mr. Mathu] course, if it happens to be my own community who are the victims, I know, in most cases, they will always lose, and I suggest it would be safer to leave these words out. You have everything you want. You do not want to add insult to injury, Sir. These clauses are already pernicious. Why add trouble on them? And, therefore, I suggest that it will be for the interests of police officers, of the administrative officers, and for the country as a whole, that these words should be deleted.

MR. GIKONYO: Mr. Chairman, we have known the police to be very fond of using force, where necessary or where not necessary, and he is going to legalize—

MR. HARRIS: On a point of order, Sir, is it correct in this Council to make a suggestion like that without proof?

THE CHAIRMAN: I think the hon. Member is perfectly all right at the moment.

MR. GIKONYO: I think I have got enough proof to give, if it is necessary.

I reiterate, the police are very fond of using force. If you are going to legalize that in this manner, I can see great danger coming about, as it is in most cases my people who become victimized by this force. I feel that it is very necessary that these words should go out of the clause.

THE MEMBER FOR LAW AND ORDER: Mr. Chairman, I am sorry, I could not possibly accept an amendment of this kind. These words which appear in this clause, and to which my hon. friend, Mr. Mathu and Mr. Gikonyo, are objecting, are common form. Obviously, if a police officer goes to a house with a search warrant, knocks at the door, propping inside, as he is fully authorized to do, and the occupier of the house slams the door in his face, what is he to do? Turn round and walk away when he is exercising his lawful powers? It would reduce the authority of the law to an absurdity. Clearly, if that should happen, he says, "Here is my lawful authority, I have got it after swearing an affidavit before a magistrate. If you are going to oppose the arm of the law, I will show you the arm of the law is a good deal stronger than yours" (Hear, hear.) (Applause.)

MR. BLUNDELL: We hope so. (Laughter.)

The question that the words "if necessary using force for that purpose" read part of the clause was put and carried clause 15.

THE CHAIRMAN: That deals with

MR. MATHU: It does deal with clause 15, but similar words occur in clause 11.

In clause 16 I have two similar amendments. I do not think I should move them formally, except to say that the Committee will, of course, agree that they should not go forward, and to say it is not necessary for my hon. friend the Member for Law and Order to emphasize that the law of the land has greater force than the individual. We know that very well. It was not necessary to say that because we did not intend to show that the law should not have full force in the country. It was not necessary, but this clause could have the same thing without these words.

THE CHAIRMAN: Mr. Mathu, you may not make any more of a speech if you are not going to move any more amendments.

MR. MATHU: I have sat down, Sir. (Laughter.)

Clause 19

THE MEMBER FOR LAW AND ORDER: This is a consequential amendment in clause 19, in paragraph (b) of sub-clause (1) of that clause, where it is proposed that the words "annual or" in line 45 be omitted, because in view of the amendment that I moved earlier on in relation to clause 5, there will be no question of annual licences, it will be one licence for the whole period of this Ordinance.

The question that the words "annual or" stand part of the Bill was put and negatived.

The question that clause 19, as amended, stand part of the Bill was put and carried.

THE MEMBER FOR AFRICAN AFFAIRS: I beg to move that the Committee report progress.

The question was put and carried.

24 Third Reading

Council resumed.

[Mr. Speaker in the Chair]

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that the Committee of the whole Council has considered the Printing Presses (Temporary Provisions) Bill and to report that the Bill has been approved with amendments to clauses 2, 5, 15, 16 and 19.

## BILLS

### THIRD READING

The Printing Presses (Temporary Provisions) Bill

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I beg to move that the Printing Presses (Temporary Provisions) Bill be read a Third Time and passed now.

THE MEMBER FOR LAW AND ORDER seconded.

MR. AWORI: Mr. Speaker, I beg to move that this Bill be read this day six months.

Now, Sir, I will not make any lengthy statement about this. I just feel we have not had any convincing conclusions from that debate, that this Bill is necessary. I think if we were to hold on for the next six months my hon. friend, the Member for African Affairs, would find that the atmosphere would have calmed down, and this will be all right, and we shall not have any necessity for having this Bill. For that reason, Mr. Speaker, I move my amendment.

MR. GIKONYO: Mr. Speaker, I would like to second that, because, as Mr. Awori said, in six months' time we will perhaps be in a better position to judge whether conditions have changed or not. I beg to second.

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, the Government could not accept that amendment. We have discussed at great length, I think, the necessity for this Bill, and the Government is quite convinced that this Bill is necessary, and is necessary now.

I beg to oppose.

The question that the word "now" stand part of the Motion was put and carried.

The Bill was read a Third Time and passed.

1ST OCTOBER, 1952

Evidence (Amendment) Bill 236

## BILLS

### SECOND READING

The Evidence (Amendment) Bill

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I beg to move that the Evidence (Amendment) Bill be now read a Second Time.

This Bill, Sir, is designed to effect two amendments to the Indian Evidence Act, 1872, in its application to the Colony. It is a permanent measure.

The amendments which it contains relate to the admissibility of confessions made by persons accused of offences.

The first amendment concerns section 25 of the Indian Act, which provides that no confession made to a police officer shall be accepted as against a person accused of an offence.

Now, this very severe restriction in the law of evidence as it exists in this country was imposed by the Indian Act 80 years ago, in 1872. Even then, it was taken from an earlier Indian Act of 1861, and it related to the conditions in India at that time. Its purpose, as will be apparent, was to avoid the possibility—then considered presumably to be considerable—that the police force, being what it then was, might extort confessions by coercion and other improper means. The Act was applied to this country in 1897, and with it this particular restriction.

Now, Sir, Kenya has travelled a long road since 1897, and a longer road from the conditions which might have been compared to those obtaining in India in 1860 and 1870. Its police force has developed and progressed. It is accordingly proposed to modify this restriction to the extent of rendering admissible confessions recorded by responsible police officers, or by administrative officers, acting as they do in the more remote areas of the Colony in the capacity of police officers. Even then, the restriction will be considerably more severe than is the case under the English law, from which it is wholly omitted.

It is important to understand, I think, that this amendment in no way impairs the fundamental and essential safeguard of the law, that no confession is admissible evidence unless it is first shown to have been made voluntarily and without any threat, promise or inducement.

## [The Solicitor General]

That regard will apply to confessions rendered admissible as a result of this amendment, as it does to all other forms of confession.

I do not think it is necessary for me to illustrate in great detail the reasons for this amendment, because I think it will be clear to the Council that confessions, voluntary and obviously genuine, can be made to police officers. Certain authorities, psychological and others, recognize, as a result of experience, that on arrest, and immediately after arrest, a man is tempted to surrender to the despair of the moment, realizing that fate has caught up with him, and he purchases some ease of mind by making a clean breast of his misdeeds.

Now, that honest and spontaneous frame of mind tends to be replaced by a more obdurate sense of danger and self-protection, as he spends his time in the remand prison in company with others, commonly referred to as old lags, and the like.

Now, this is a departure from a principle of the law which has applied in this country for some time, but it is, I suggest, subject to adequate safeguards, and in modern conditions, and with the police force which we have, and of which, I believe, we are justifiably proud, it is, I suggest, quite wrong to assume and to base the law on the assumption that no police officer of whatever rank, is to be trusted to record a confession without resorting to coercion. It is on that form of assumption that the existing law was based.

In the neighbouring Protectorate of Uganda, this particular restriction was modified as long ago as 1935. In the Uganda law, confessions made to police officers of or above the rank of assistant inspector have in that intervening period been admissible in evidence. We depute, in the first instance, a more modest principle, but I point, to the Uganda precedent, because no fearful results have apparently followed from the Uganda amendment of 1935, and I for one, and I think the Council will be with me, would not be prepared to concede that the Kenya Police Force, and the officers thereof, were any less deserving of confidence in this respect than the Uganda Police Force.

I suggest therefore, that this amendment is fully justified.

There is one small point regarding it which has been represented in formal discussions, by sections of both sides of the Council, that a start might be made with the rank of assistant superintendent or above. An amendment to that effect will be moved in the Committee stage.

The second amendment in the Bill follows logically upon the first. It affects section 26 of the Indian Act, which provides that no confession made by any person whilst he is in the custody of the police officer, unless it be made in the immediate presence of a magistrate, shall be approved against such a person.

This restriction is altogether omitted from the Uganda law as it is from the English law. Now, we propose in the Bill, instance, merely to modify it, not to delete it altogether, to allow confessions to be made in evidence if made by a person in custody to an administrative officer, or a police officer of or above the rank of assistant superintendent of police, the similar amendment having been tabled in this respect as in relation to the first amendment which I have mentioned.

Again, the usual necessary safeguards of the law relating to the establishment of the voluntary nature of a confession remains. It does not remove from the accused person any protection which the law affords to any other form of confession. And again, it is the confidence we are prepared to place in our police force.

This Bill, Sir, seeks to promote the interests of justice by removing one of the shackles which bind her in the belief that she will thereby be enabled the better to achieve her dual purpose, the punishment of the guilty concurrently with the vindication of the innocent.

Mr. Speaker, I beg to move.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

Mr. USHER: Mr. Speaker, Sir, there is one small point upon which perhaps the Council would like an assurance. That is this. Will the procedural safeguard applicable to confessions made to magistrates, at present, apply after the law comes into force. I refer particularly to the certificate that is required

The Evidence (Amendment) Bill—  
(Contd.)

(Mr. Usher) by a magistrate taking such a confession in regard to the fact that no persuasion, and so on, were used.

Mr. MATHIU: I do not like these amendments, Sir, for reasons that I have given in earlier debates.

As far as section 25 of the principal Act is concerned, I am glad to hear that my hon. friend would give these powers to the police officers of the assistant superintendent rank and above, but I should like him also to consider specifically putting in the law what exactly he means by "a rank equivalent." Now, if there is another rank equivalent to the assistant superintendent of police, I for one would feel happier if we put it in the law, instead of leaving it by reference to some other law. The Bill as it is too short. It might make it slightly longer and clearer.

As far as the sub-section of that clause 2 is concerned, I am unhappy again in extending these powers to administrative officers because I would certainly feel happier if administrative officers act as administrative officers and not as policemen, for reasons, again, which are well known to this committee.

Now, my objection to section 3, Sir, is that the magistrate is a disinterested party and I feel we should not amend section 26 of the principal Act because, in any case, the person will be in police custody and it is not altogether impossible to get a magistrate very nearby to record the confessions of this person who is in lawful custody. I feel, Sir, that is very necessary.

My final point, Sir, if the Government presses that the administrative officer should take part in the administration of this law, I would therefore suggest in the Committee stage that those administrative officers should be of the rank, or above the rank, of those officers who are in charge of districts. In other words, not every administrative officer should have powers under this Bill.

THE SPEAKER: It is nearly a quarter to one and the Council will now suspend business until the hour of two to-day this afternoon.

## ADJOURNMENT

Council rose at forty-five minutes past Twelve o'clock p.m. and resumed at thirty minutes past Two o'clock p.m.

Mr. AWORI: It is a pity that almost every Bill that comes before the Council, the hon. Member that brings it forward tells us that it is unpalatable or that it is a departure from the procedure of British justice as we know it. Now, Sir, there is not very much in this Bill but while opposing it I have a few grounds. I do not see any reason whatsoever that should compel Government to change the procedure of recording confessions or evidence given to the police by the accused during the time he is in custody. Now, Sir, it would be applicable if every one of us was illiterate or even if we could read or write but my fear is that it is going to affect the illiterate people who do not know how to read or write. If one has been arrested and is in police custody he makes a confession to the police officer who takes down his statement, after which he reads the statement to the accused and perhaps he signs it with his thumb-print. I do not know if the police use any other language in taking down statements. It is easy to see that the person speaking in the vernacular or Swahili may say one thing and it would be interpreted as another. Now this person comes to court and, because of statements made, the evidence will be used against him. It makes it awkward, as it is quite easy that he might deny some of the statements that he uttered before the police officer. Now, Sir, if I were to give a statement of that kind I would not deny it; I would be able to read it out. The police officer has taken the statement, but now if I am illiterate, I do not read or write, I make a confession, it is taken down by the police officer; it is read to me. The statement is taken down in English as far as I know and interpreted to the accused. It seems to me, Sir, we are proving the accused guilty already when he is in the police office or police station, so I do not see why this man should be brought before a court if already his confession will prove him guilty or the court will not allow him to refute the statements he has made.

I think, Sir, that there was no reason why Government agreed to adopt this measure of amending the present law as it exists.

[Mr. Awori]

It is giving too much power to the person responsible for the arrest and denying the rights of the person accused, and particularly in this country where over 90 per cent of the people are illiterate. It is going to affect them a great deal. On the other hand, Sir, I do not intend to accuse the police officer of dishonesty or otherwise, but I am afraid that it is quite practicable and easy for the police to use third degree measures, by which the accused can be made to make a statement under pressure. I am not going to prove here, Sir, that that system is practised, but it is easy for it to be practised in this country and since we are in a British country and we have here British justice, I think by agreeing to the present law that comes before the Council we are departing from the proper system and instead we are adopting measures and systems adopted in Communist countries. I think I could prove that it is only mainly in Communist countries where accused are brought before court and confessions are recorded as statements made by the accused while he is in a good state of mind and should not deny such statements. So if we adopt this Bill we are departing, as we have said over and over again, from the proper procedure and we are making sure that Kenya becomes one of these police states where rights of the individual are not protected. Sir, we have been told about the safeguard to be taken, by the hon. Member the Solicitor General, Of course I do not challenge his beliefs, I know it is easy to make mistakes particularly now when we are dealing with crime and unrest. It is quite easy for the police to go beyond and get these people to sign the statements of confession which would convict them in a court because of what they have said. Therefore, Sir, I think the proper procedure would be for us to withdraw this Bill and continue with the present Bill it stands and set an example to other countries that Kenya is not going to adopt measures used in non-Western countries.

Sir, I beg to oppose.

Mr. GIKONYO: I must oppose this Bill, firstly because it is a Bill which has made its departure from the usual practice of administering British justice.

THE SOLICITOR GENERAL: One point of personal explanation: I never said it was a departure from British justice. I said it was a departure from the practice in this country and the restrictions were restrictions which do not appear in English law at all.

Mr. MATHU: All the same it is admitted that it is a departure from the principle of law as practised here. Secondly, I feel it is a bit unfortunate that an accused person who makes a statement of confession before a police officer is liable to be convicted on the face of that confession. We all know that police officers, whatever rank they may be, are interested parties in prosecutions and to permit a man who may make a statement to the police to be bound by that statement, is a very wrong thing. A confession can be extracted by threats, promises or otherwise. Many a time we have had many people who have made statements to the police and when they appear in a court of justice they deny that they ever made such a statement. If this becomes law it will not be possible for them to deny whatever statements they made either by promises, threats or otherwise. I feel sure, Sir, that this is going to act very unjustly on the part of accused persons. Here we can see that an accused person has no protection. It does not matter whatever safeguards we say he may have, once he has made a confession by itself is sufficient to convict him. That is a very unfair measure to bring into practice at the moment. Many of our African people do not know law. They do not know what they should do under such circumstances. Whatever happens to them they confess to as police in most cases. They may do so through fear.

I must oppose this as it is.

Mr. HARRIS: I am astounded at the opposition to this measure and the fine it has taken. We have continually heard that we have been departing from the principle of British justice and that it is an argument that every Member in this Council will appreciate, but when those same people, the same hon. Members who have criticized other measures of those grounds, criticize this one, when in fact, it is bringing procedure in this country far more into line with the procedure of British law and justice in Great

[Mr. Harris]

Britain. I am at a loss to understand the basis of their opposition.

I beg to support.

The SPEAKER: I will ask hon. Member to reply.

The SOLICITOR GENERAL: Mr. Speaker, Sir, the hon. Member for Mombasa said if the usual procedure and safeguards would be allowed in regard to confessions to police officers. As to that I would remark that the formal procedure of confession before a magistrate is not removed by this amendment. It remains and where suitable that procedure will be adopted, but so far as confessions to a police officer are concerned the circumstances will very often not permit of such formalities to be carried out. Certification, etc., on the document or the confession itself. Many of these confessions may be made in the course of a casual remark made on arrest or shortly afterwards. The person arrested seeing he came up says "I did it" or words to that effect. The ordinary certificated procedure would not therefore be applicable in those circumstances. The hon. African Member asked about the reference to equivalent rank in the Bill. That is very simply explained. It is a reference to rank held in the Kenya Police Reserve which are equivalent to ranks quoted in the text of the Bill. The equivalent ranks are set up in legislation relating to the Kenya Police Reserve and there is no ambiguity about it and no necessity to set those ranks out *in extenso* in this Bill. My hon. friend Mr. Awori expressed a number of fears which are largely illusory and both he and the hon. would not be able to retract that statement that if this amendment was carried through the accused person who had made a confession to a police officer would not be able to retrace that statement. I do not know on what basis they made that statement but retractions of this kind of confession will be open to the accused person no less than any other kind of confession. The suggestion that this amendment leads Kenya towards the status of the police state has I think been dealt with by my hon. friend for Nairobi South. My hon. friend Mr. Gikonyo suggests that confessions can be extracted by third degree if you have unreliable and untrustworthy police. I have ex-

plained that the extensions which this Bill contemplates are confined to senior ranks of police who are responsible and who are, in my submission, entirely deserving of that much confidence. (Hear, hear.)

Mr. MATHU: I did not like to interrupt the hon. Member when answering my question about rank equivalents, but I should like to ask on a point of explanation whether it is a fact that the rank equivalent to that of an assistant superintendent of police in the Reserve is only one rank, and no more.

The SOLICITOR GENERAL: Mr. Speaker, if I understand the hon. gentleman correctly, I think the answer to his question is that for each rank in the regular police there is a corresponding rank in the Kenya Police Reserve.

Mr. MATHU: Mr. Speaker, my question is, how many ranks have you in the Police Reserve which are equivalent to the assistant superintendent in the ordinary force, and above in rank.

The SOLICITOR GENERAL: I have not got a list of the Kenya Police Reserve ranks with me at the moment, but speaking from memory I think a district commandant corresponds with an assistant superintendent. I think I am right in saying that an assistant district commandant corresponds to a chief inspector. That is from my recollection and of course the higher ranks are based in a similar manner.

The question was put and carried.

Mr. SPEAKER left the Chair.

#### COUNCIL IN COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

#### The Evidence (Amendment) Bill

##### Clause 2

The SOLICITOR GENERAL: Mr. Chairman, I beg to move that clause 2 be amended by substituting for the words "chief inspector" the words "assistant superintendent".

As I explained earlier, this amendment is moved in deference to opinions expressed on both sides of the Council.

The question of the amendment was put and carried.

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

## Clause 3

The SOLICITOR GENERAL: Mr. Chairman, I beg to move a similar amendment, that the words "assistant superintendent" be substituted for "chief inspector".

The question of the amendment was put and carried.

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

MR. MATIU: It is only one, Sir.

I beg to move that in clause 2 (b), line 11, after the words "administrative officer", the words "not below the rank of an officer in charge of a district" be inserted.

My intention is, Sir, as I indicated in the debate in the Second Reading, that officers not in charge of a district should not exercise these powers. They should be limited to the officers who are given charge of a district. In other words, officers of the rank of district commissioners.

THE MEMBER FOR AFRICAN AFFAIRS: We did debate this in a previous Bill. We came to the conclusion that, if we added to "administrative officer", "holding all first or second class magisterial powers", we would please almost everybody. We added the words "holding first or second class magisterial powers".

MR. MATIU: Well, Sir, I think it is a distinction without a difference. All European district officers hold first or second class powers—magisterial powers. I hear they do not—I am glad to hear it. I suggest, Sir, if my amendment is disposed of, my hon. friend would move that.

THE CHAIRMAN: He suggested that you might dispose of yours and let him—

MR. MATIU: I think he should explain to me that what I say is wrong. The third class magisterial powers may be . . . (Inaudible.)

THE MEMBER FOR AFRICAN AFFAIRS: The most junior administrative officers do not hold second class magisterial powers. They have to take law examinations, they very seldom hold second class magisterial powers until they have been here at least two years. The junior administrative officer, when he comes to the country, holds third class powers, not second class powers. He has to be here,

pass examinations, and be found fit by the Chief Justice to hold second class powers, before he is granted them. The is why I suggest we limit this to first and second class powers only.

MR. MATIU: I will accept his amendment in place of mine.

MR. USHER: Sir, has not a cadet for a year at Oxford or Cambridge to learn about these things, and so does he know enough about this to be trusted?

The question that in clause 2, section (b), after the words "administrative officer", the words "holding first or second class magisterial powers" be added, was put and carried.

The question that clause 2, as amended do stand part of the Bill was put and carried.

MR. MATIU: There is a similar amendment in line 16. After the words "administrative officer" we will have to insert a similar word in line 16.

THE CHAIRMAN: To come in after "officer" following "administrative"?

MR. MATIU: Then I think it will be all right after that.

THE MEMBER FOR AFRICAN AFFAIRS: Yes, I agree to that.

The question that clause 3, as amended, stand part of the Bill was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR moved that the Committee report progress.

Council resumed.

(Mr. Speaker in the Chair)

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Evidence (Amendment) Ordinance, and that they report the Bill as approved, with amendments to clauses 2 and 3.

## BILLS

## THIRD READING

The Evidence (Amendment) Bill  
THE SOLICITOR GENERAL: Mr. Speaker, I beg to move that the Evidence (Amendment) Bill be now read a Third Time and passed now.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried.

The Bill was read a Third Time and passed.

## BILLS

## SECOND READING

## Penal Code (Amendment) Bill

THE SOLICITOR GENERAL: Mr. Speaker, Sir, this is a comparatively short Bill, which I trust will prove non-controversial. Its purpose is two-fold—to provide first an additional sanction for enforcement of the law against receivers of stolen property and persons committing allied offences, and the second purpose of the Bill is to increase certain monetary penalties under the Penal Code.

As to the first amendment, as effected by clause 2 of the Bill, the proposal is to give the court powers when it convicts a person of the offence of receiving or of an allied offence, such as the disposing of or the possession of stolen property, and the like—to give the court power to disqualify the person so convicted from carrying on, or being employed in, a trade of a character similar to that in the course of which the offence was committed.

The clause is modelled on section 16, sub-section (3), of the United Kingdom Bills and Services Price Control, Act, 1941, which, of course, was directed against blackmarketing. It is unfortunately a fact—and is well known to hon. Members—that thieving is prevalent and, of course, thieves depend very largely on receivers—fences, as they are called—who are the parasites of this particular form of crime. If one strikes at the receiver, one is striking a blow against the thief.

There is provision in the Traders Licensing Ordinance for a somewhat similar procedure, whereby a licence is cancelled and a trader disqualified on the conviction of certain offences, including receiving and the like, but the scope of that particular Ordinance is very limited. It only applies to a number of trades—commercial travellers, hawkers—and if we really do strike an effective blow against this form of crime, then the powers which are discretionary must be on a wider basis.

The second amendment, effected by clause 3, relates to the offences under the sections of the Penal Code quoted in the first column of the Schedule, the second column showing the present maximum fines which can be awarded to those offences, and the third column showing the new maximum level of such fines which the Bill proposes to adopt.

The purpose of the amendment is to increase the deterrent effect of these penalties, and I might say that that list in the Schedule contains all the sections of the Penal Code which can impose a maximum on a fine, except for two, where the fine was imposed by a 1951 amendment, and therefore has been assessed in relation to the current value of money.

Those are the only two amendments which the Bill contains, Mr. Speaker. They are, I suggest, both desirable and both non-controversial—but, again, I make no promise on that latter score!

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

MR. USHER: A short question, Sir, if I may. Is the hon. Member satisfied that there is a sufficient body of case law under the Statute he cited to ensure that the rather nebulous words, "the same or similar character", are easy of interpretation?

MR. AVORI: Mr. Speaker, so far, since we started this session, the impression that perhaps has been gathered by some of the hon. Members here is that we came here to oppose, and to prove that we only opposed measures that we know are not appropriate, I am supporting Government on this Bill. (Applause.)

I cannot voice for views that my colleagues here will give us, as far as I know, I think they will assist me. (Laughter.) This Bill, so far as the hon. Member the Solicitor General has told us, is brought to try and curtail the evil actions perpetrated by thieves and receivers, and of course it is our aim to support such a view, because we do not like crime to continue in this country. Particularly it is the receivers who should suffer if this Bill is passed because, without the receivers, there would not be so much crime of burglary and stealing going on in the country, and therefore I am not going to take



[Mr. Awori]

much time but support Government for bringing this Bill, and I would wish that after it has been passed it should be effective because, if it is not effective, then there will not be any use in bringing it before the Council.

Sir, I support the Bill. (Applause.)

DR. HASSAN: Mr. Speaker, Sir, I just wanted to know the words, as the hon. Member for Mombasa said just now, that a person will be debarred from carrying on any trade or business, or any branch of such trade or business, or the same or similar character—does it mean if a person is carrying on a business of piece goods, that he can open a business shop, or does it mean that if a person is selling a variety of goods, and he leaves it, he can take up a restaurant or hotel business? I would like the hon. Solicitor General to clarify this point.

MR. SLADE: Mr. Speaker, on a point of order, I should suggest questions like that are matters for discussion in Committee? I would mention I am going to move an amendment to cover that point.

THE SPEAKER: I think when a Bill is introduced of this character that Members can ask, in the course of their speeches on the Second Reading, for clarification of some point as to how far the Bill goes, and so forth. No doubt there will be amendments in Committee, but I do not think they are out of order in addressing the Council upon such a point.

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I find some difficulty in replying to my hon. friend, the Member for Mombasa. My knowledge of the case law in England does not extend to being able to answer his question impromptu as to whether or not there is a vast volume of case law on this particular, rather obscure, provision of an English Statute unaware, until recently, I was wholly unaware, but I have no doubt that the words in the section to which the hon. Member referred, "the business of the same or similar character", will have been construed by the courts in England applying this section, and that the courts in this country will be able to derive such assistance therefrom as they may need.

As regards my hon. friend Dr. Hassan's query, again it is a dangerous thing to attempt to construe the provision of law on a pure hypothesis, particularly when that function is really the function of the Judiciary; but I personally—and I would express a purely personal opinion—would find it very difficult to regard hardware business as being of the same or similar character as the piece goods business.

The question was put and carried.

### COMMITTEE OF THE WHOLE COUNCIL

Order of Committee read—Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

#### The Penal Code (Amendment) Bill Clause 2

MR. SLADE: Mr. Chairman, I wish to move an amendment of clause 2. Proposed section 30A, sub-section (1), lines 16, 17 and 18—the proposal is, that the words "any such trade or business or any branch of any such trade or business of the same or similar character" be deleted, and the following words be substituted therefor, that is to say: "any trade or business involving the purchase goods or of such class or classes of goods as may be specified in that Order".

My reason for this Motion, Sir, has already been anticipated by the hon. Member for Mombasa and the hon. Dr. Hassan.

There is another reason which I might mention first. That is, when you use expressions like "trade or business of the same or similar character" you are placing an improper burden upon the unfortunate court that has to construe that expression. Many times in the past judges in England and here have complained of the words like that which require them, really, to make the law. The words "appears to the court to be reasonable", the words "what appears to the court to be similar" is making trouble for the judge, in avoidance of the duty which the Legislature should perform.

That is a matter of principle, Mr. Chairman, but apart from that I do think

[Mr. Slade]

that any restriction to the same or similar character—whatever is the precise intention—will maintain to a great extent the mischief which this is designed to eliminate. After all, the purpose of this Ordinance, as I take it, is to prevent receivers in proper cases from having the opportunity of receiving stolen goods again for a limited period. I know the Memorandum of Objects and Reasons says it is considered desirable to limit the opportunities afforded to persons engaged in trade and other business to commit these offences whilst so engaged, but surely, Mr. Chairman, what we really want is to eliminate those opportunities. (hear, hear.) (Applause.) As the hon. Dr. Hassan has pointed out, if you keep this phrasing, even with the widest possible interpretation given by the courts, you will find that a man convicted of receiving stolen goods in the business of ironmongery can be precluded from that business after serving his prison sentence, but cannot be prevented from starting up again immediately as a druggist, where there is just as much opportunity of receiving stolen goods.

Well, then, if the Committee accepts that principle, Sir, it is a question of what words to substitute for it. There I think there comes a difficulty because though you want to prevent the receiver from having the opportunity of receiving stolen goods again for a limited period, you do not want to prevent him from having any possibility of earning his livelihood and becoming an honest man again. I have tried to devise a phrase which I believe will leave sufficient scope for the criminal to become honest, without giving him any opportunity of receiving stolen goods, and so that is why I have said "any trade or business involving purchase within the Colony for resale" because, Sir, it is that kind of business that gives the opportunity for receiving. Any business where goods are bought in this Colony for resale, gives an opportunity for receiving stolen goods. A business which is concerned with importing goods only does not give that opportunity. A business which is concerned with the buying of goods in this Colony for its own purposes as opposed to resale does not give that opportunity. So there is the limitation, and it does mean that a man convicted of receiving

stolen goods, even if an order of this kind is made against him, will still be free to seek employment in a great variety of business or trade, for instance, in almost any business office, in almost every branch of Government—(Laughter)—and so on. But, Sir, in case I have been considered too harsh in this matter, in case a judge might wish to be more gentle, I have added further words to give the judge in his discretion that opportunity, because, as the hon. Solicitor General said, the powers which are admittedly discretionary must be on a wider basis, but they are discretionary and the widest discretion should be given to the judge, that is quite a different thing from burdening the judge with problems of interpretation; so I have added the words "or of such class or classes of goods as may be specified in that order".

THE SOLICITOR GENERAL: Mr. Chairman, the Government finds it difficult to accept this amendment, for the reason that the provision which is incorporated in this Bill is already more severe than that in the United Kingdom Act from which it was adopted. In the United Kingdom Act which, as I have said, was passed in 1947, that is to say, a wartime measure and directed against black marketers which, as I think the Council would agree, was a particularly heinous offence in wartime, these powers were only exercised by the courts on the third or subsequent conviction on the same person for the offence. Consequently, it is thought that we should be slow to make the provisions which we incorporate in our law even more severe than it is at present, it already being more severe in that respect than the special wartime measure in the United Kingdom. I realize, as my hon. friend from the Aberdare has said, that the courts, both in this country and in England, have from time to time criticized legislatures for imposing on them difficulties of interpretation. I am not sure, however, that these words will in fact cause such very great difficulty. As I say, they have doubtless been interpreted by the courts in England, and the authorities there would be of assistance to the courts here, and of course, as my hon. and learned friend will agree the courts are constantly having to apply and interpret what is known to the lawyers and

[The Solicitor General]

the judge as the generous rule, whereby they have to decide whether any particular words are to be related, or the matter to which they refer is to be related to a category which is described by other words.

For those reasons, therefore, Mr. Chairman, this amendment will not be supported by Government.

HON. MEMBER: Shame!

MR. HARRIS: Mr. Chairman, I am very difficult in interfering in an argument between two lawyers on the meaning of words, but if the decision of the courts is going to be similar to the ruling of the hon. Solicitor General in answer to my friend the hon. Dr. Hassan, I could bring evidence of a great number of chambers of commerce to show that in fact hardware and cotton piece goods are the same or similar trades in that, in the chambers of commerce, they group trades according to their affinities, and you will find that in the majority of chambers of commerce those two callings are both called retail trades and that is where, Sir, I feel that the hon. Member for Aberdare's amendment does at least clear up that point. The hon. Solicitor General did say that he was not inclined to accept this amendment, Sir, I wonder if the pressure of the Chamber of Commerce might make him change his mind? (Applause.)

THE SOLICITOR GENERAL: It has been said before, I think by my hon. friend from the Coast, that he was not subject to threats or pressure. Even the Chamber of Commerce do not cause me to modify my views. (Laughter.)

MR. USSLER: Mr. Chairman, I am wondering whether the Government, if it has sympathy with the principle enunciated by my hon. friend the Member for Aberdare, would consider adjourning this debate until to-morrow and think a little more about it?

MR. BLUNDELL: Mr. Chairman, I should like to press hon. Members opposite to accept the amendment, if it has sympathy with the principle enunciated by my hon. friend the Member for Aberdare, would consider adjourning this debate until to-morrow and think a little more about it?

enacted in the United Kingdom. Surely, the basis upon which we should measure the severity of the penalty must be largely with the degree of incidence of the particular offence. Now, I think every hon. Member on this side will support me when I say that we are seriously concerned at the abuses which the receivers have brought into our system. Here is a measure designed to help the hon. gentlemen opposite in really making the law effective. Yet, the hon. and learned Member's reply makes me feel that much of Government's regard in this matter is rather on the lines which the hon. Member for the Coast so often puts up, *narrano tut!* (Laughter.)

MR. MATHU: Mr. Chairman, I would like to support the point raised by my hon. friend, the Solicitor General, in this matter, because surely, if the legal draftsmen have drafted laws which are clear and tight, they have done so this time; and although we have moved amendments before, I think this clause here is very clear and I should like to support the Government's view in this matter.

I should like to make a further point, and that is that the proposal has been made that the debate should be adjourned overnight. What has happened to the emergency—are we not in a hurry to get these through because of the emergency? Why should we adjourn it? That is a proposition I should not like to accept. We are sitting the whole day, and to adjourn it just for a small amendment, for that reason, is wrong. I think we should get on with it and finish the business. We are busy people. (Laughter.)

MR. COOKE: I am rather in a difficult position, because when I discussed this amendment, briefly, with the law officers, I agreed it might be vindictive to deprive a man of his livelihood, but I think the hon. Member for the Aberdare has got over that one. It may be a change of mind on my part, but I am prepared to accept the hon. gentleman's amendment.

MR. HAVELOCK: Mr. Chairman, just one appeal to the very intelligent hon. Members opposite. I am sure the appeal will not fall on barren ground. Surely, as the Member for the Aberdare has recommended his amendment to give the judge discretion, how can there be any objection to the amendment. Surely, it

[Mr. Havelock]

amendment as it stands. I am sure that a very much more clear than the present the Solicitor General, himself, has a certain amount of sympathy and a number of hon. gentlemen opposite have a certain amount of sympathy, I do hope they give it thorough consideration. Surely, if the hon. Member for the Coast can change his mind on this one, Government can too. (Laughter.)

MR. GIKONYO: I oppose this amendment.

It does not matter whether goods are imported or bought in this country, the fact remains, that they have got to sell through a receiver, they have no power to deal with the goods, they do not know what to do with them. Therefore, I feel that this amendment should be refused.

MR. CROSSKILL: Mr. Chairman, the Solicitor General has told us he is unwilling to accept the amendment on the grounds that the penalties would be more severe than in the United Kingdom. This last week, however, we have authorized many penalties more severe than they are in the United Kingdom because of conditions obtaining here, and, Sir, I do not consider that his argument is valid. He has said, Sir, that there is difficulty in interpreting the ruling in this Bill. A solution has been put forward by this amendment and I urge him to accept it for this reason. Were it to be submitted to the United Kingdom, where they could assist in giving a ruling and interpretation, it would lengthen the proceedings very considerably. Furthermore, I can assure him that these are not threats from this side of this Council but persuasion based on logic.

I support the amendment, Sir.

MR. SLADE: Mr. Chairman, it would be very attractive to indulge in legal argument with the Solicitor General that the *single genus* rule has any bearing on this point at all, but we will do that some other time. I do deprecate the temptation to rely on the drafting of English statutes as a basis for our drafting here, because it was apparent in England, if not here, that the art of drafting has declined in England during recent years, and there are examples in almost every Bill of the most appalling drafting. We must get away from that

and see if we can draft better than they do in London. I also deprecate, and I would warn Government against the habit of calling on English precedents as justification when it suits them, because I do not mind prophesying that within two or three sessions from now, you will find Government quite unprepared to accept copies of legislation in England because it does not suit them. It is no argument at all, unless Government is always prepared to copy all legislation we find in England. (Hear, hear) So the question here is this, is it sensible, is it clear, is it too severe? It is suggested that it is too severe, but the question really, Sir, is do we mean business or not by this amendment? If we do, this legislation unamended will not effect it. If you do not want to stop the receiver, why have the Legislation? If you want to stop him, you must go as far as the amendment goes.

THE CHAIRMAN: The question is that in clause 2, line 17, the words "any such trade or business or any branch of any such trade or business of the same or similar character" stand part of the Bill.

The question was put and on a division carried by 28 votes to 13 votes. (AYES: Messrs. Adams, Awori, Blunt, Carpenter, Davies, Gikonyo, Griffith-Jones, Hartwell, Dr. Hassan, Mr. Hope-Jones, Dr. Karve, Sheikh Mahfood, Lt.-Col. Marchant, Mr. Mathu, Sir Charles Mortimer, Chief Mukima, Messrs. Odhiambo, Okwiry, Padley, Sir Eboob Pirbhai, Messrs. Riddoch, Roddan, Mohamed Ali Said, Messrs. Tameno, Taylor, Vasey, Wadley, Whyatt, 28. NOES: Mr. Blundell, Group-Capt. Briggs, Messrs. Cooke, Crosskill, Lt.-Col. Grogan, Messrs. Harris, Havelock, Major Keyser, Sheriff Abdullah, Lady Shaw, Messrs. Slade, Small, Usher, Lt. DID NOT VOTE: Mr. Neep, J. ASSERTY: Dr. Anderson, Major Cavendish-Bentley, Messrs. Edye, Jeremiah, Madan, Nicol, A. B. Patel, J. S. Patel, Mrs. Shaw, Messrs. Chanan Singh, Zafrud Deen, 11. TOTAL: 53.)

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Chairman, I beg to move that the Committee do report consideration of the Bill.

The question was put and carried.

Council resumed.

(Mr. Speaker in the Chair.)

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that the Committee of the whole Council has considered the Penal Code (Amendment) Bill and reports the Bill without amendment.

## BILLS

## THIRD READING

*The Penal Code (Amendment) Bill*

THE SOLICITOR GENERAL: Mr. Speaker, I beg to move that the Penal Code (Amendment) Bill be now read a Third Time.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried.

The Bill was read a Third Time and passed.

## BILLS

## SECOND READING

*The Trespass (Amendment) Bill*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the *Trespass (Amendment) Bill* be now read a Second Time.

I trust, Sir, I shall not be trailing my coat or tempting Providence unduly when I express the hope and belief that I will have the unique distinction of moving the Second Reading of the only Bill that will pass during this session without comment, or without adverse comment.

The *Trespass Ordinance* which it is proposed to amend was enacted in 1924, and many changes have taken place in the meantime. That Ordinance provides penalties for certain offences. One is: "without reasonable excuse entering upon cultivated or enclosed land without the consent of the owner or occupier". Another offence is: "to enter a building or enclosed yard during the night without the consent of the occupier". Another is: "to break down fences or hedges". The penalties prescribed in the Ordinance for the offences I have described are a maximum fine of Sh. 50, or, in default, one month's imprisonment.

Now, Sir, the object of penalties in any Ordinance is two-fold. One is to act as a punishment, the second to act as a deterrent. It is now apparent that the

penalties under this Ordinance were neither purpose. The offence of trespass has increased during recent years and particularly during recent months, and it is necessary to do something about it; to make the penalties somewhat stronger to serve their two-fold purpose.

There is another point too, Sir, I have no means of stating accurately what is the relative value of money in 1924 and 1952, but I think I shall not be contradicted if I say that Sh. 1 to-day is not worth nearly as much as it was in 1924 and so it is proposed to obey the classic injunction in coming a little nearer to making "the punishment fit the crime". The simple Bill before us raises the penalty from Sh. 50 to Sh. 250, or, in default, raises the imprisonment of one month to three months.

I beg to move.

THE SOLICITOR GENERAL seconded.

## COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

## IN THE COMMITTEE

(Mr. E. J. C. Neep, Q.C., in the Chair)

*The Trespass (Amendment) Bill*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: I beg to move that the Committee reports consideration of the Bill.

The question was put and carried. Council resumed.

(Mr. Speaker in the Chair.)

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the *Trespass (Amendment) Bill* and reports the Bill without amendment.

## BILLS

## THIRD READING

*The Trespass (Amendment) Bill*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the *Trespass (Amendment) Bill* be now read a Third Time.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Bill was read a Third Time and passed.

## BILLS

## SECOND READING

*The Criminal Procedure Code (Amendment) Bill*

THE MEMBER FOR LAW AND ORDER: Mr. Speaker, I beg to move that the *Criminal Procedure Code (Amendment) Bill* be now read a Second Time. This is the last of the nine Bills that we have been considering in this sitting of the Council. I hope that we may finish on the same unanimous note as was expressed with the last Bill before us. The purpose of this Bill—its main purpose—is to enable a resident magistrate to exercise the same powers as district officers are now exercising in Special Districts. District officers, at the moment, are the only magistrates who may exercise those special powers, because the Ordinance is so worded that it must be "an officer who is in charge of a special district", who is appointed under section 15 of that Ordinance.

Now, in practice, Sir, it has been found that the district officer is so immersed in other duties of an administrative kind that he has frequently not been able to deal with cases with the despatch they ought to have been dealt with. In addition, there have been cases where the circumstances of a particular case have been such that it would have been desirable if the magistrate trying it had had special knowledge of procedure and of the laws of evidence. That is an additional reason why the exercise of wide powers such as these, equivalent to powers exercised by a Supreme Court Judge should, wherever possible, be exercised by a person having some legal training and that is why it is proposed, in this Bill, that in addition to district officers, a resident magistrate also shall be empowered to exercise those powers.

There is another amendment proposed in this Bill which is of a technical character. It really does not concern the emergency, but it is desirable that we should avail ourselves of this opportunity when we are amending the *Criminal Procedure Code* to make these amendments as well. I refer to the last clause which will empower an appellant who is aggrieved by the decision of the Supreme Court, to take the case higher to the

Court of Appeal. It is really remedying a mistake in drafting, the kind of thing which the hon. Member for the Aberdares recently deplored, but mistakes in drafting do sometimes occur, particularly if the draftsman is working under very great pressure. That is the reason why we are putting the amendment forward under clause 3.

There is one further amendment, Sir, which I ask the Council to include in this Bill now. It was only circulated today, I regret to say, and here again it is a consequential amendment on an already approved amendment to the Penal Code. The Council has approved an increase in the maximum monetary penalty in order to bring into line maximum penalties with what would be commensurate to the deterrent value of the financial penalty when first imposed. That is why, in the long Schedule, we see that the maxima of fines have been increased. Now the corollary to that, Mr. Speaker, is that the magistrates who try those cases should, likewise, have the limit of their jurisdiction raised, and the purpose of this amendment is to raise their jurisdiction by a factor which would take into account the fluctuation in the value of money just as was done in the case of the increase of penalties set out in the Schedule to the amendment to the Penal Code. I hope that sufficiently explains the purpose of this Bill, and that it will receive the assent of Council.

THE SOLICITOR GENERAL seconded.

MR. MATHU: It would not have been necessary for me to stand up and take up more time of this Council had it not been for this paper introduced just today amending other sections of the *Criminal Procedure Code*, which we were not aware of. Sections 7, 8 and 9 are being proposed as amendments to the original Bill, and in protest to that I am now going to oppose the Second Reading of this.

MR. BUNDELL: I would like to ask the hon. and learned Member for Law and Order whether the powers which are now being granted to magistrates under this Ordinance are greater than similar magistrates would have in the United Kingdom, and whether, if the answer is in the affirmative, the hon. Member would give reasons.

MR. HAVELOCK: I would like to support the hon. Member, Mr. Mathu, I quite realize that it is probably a very urgent measure to step up the ceiling for magistrates, but I feel, at least, that hon. Members of this Council should have had the requisite sections to which these amendments refer before them, so that they can see for what crimes, etc., this ceiling has been raised. I realize that there is pressure on Council, and on Council's staff and in the hon. Member's office, but as a matter of principle, I hope he will not do this again.

THE MEMBER FOR LAW AND ORDER: I do apologize for the short notice in this matter. I agree it would have been helpful if I had set out the clauses in the Criminal Procedure Ordinance, to which these are amendments. I will endeavour to avoid similar oversights in future. As to the inquiry made by the hon. Member for Rift Valley, there are no comparable circumstances in the United Kingdom to those with which we are dealing to-day.

MR. DUNDRELL: Would you not agree that it applies to lawyers? (Laughter.)

THE MEMBER FOR LAW AND ORDER: There is a rule, Mr. Speaker, that we must not refer back on previous debates.

As for the hon. Mr. Mathu, it is nothing more than a logical corollary to what he has agreed. He has agreed that the penalty for a particular offence shall be increased because of the fluctuating value of money; and whereas, previously, magistrates could try that offence, surely it is right that the same magistrate should try them.

MR. MATHU: I wanted longer notice of the amendment.

THE MEMBER FOR LAW AND ORDER: I have already apologized. If the principle is not objectionable, I hope you will accept my apology and vote for it.

The question was put and carried.

COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE  
[Mr. E. J. C. Neep, Q.C., in the Chair]  
*The Criminal Procedure Code (Amendment) Bill*

New Clauses read a First Time.

THE CHAIRMAN: Would the Committee like to take all these new clauses together, or one by one—I think we might take them all together.

*New Clauses*

THE MEMBER FOR LAW AND ORDER: I beg to move that the following new clauses be inserted after clause 1 of the Bill and clauses 2 and 3 be renumbered 5 and 6 respectively:—

"2. Section 7 of the principal Ordinance is amended by substituting for the words 'three thousand shillings' appearing in paragraph (b) thereof the words 'ten thousand shillings'.

3. Section 8 of the principal Ordinance is amended by substituting for the words 'one thousand five hundred shillings' appearing in paragraph (b) thereof the words 'five thousand shillings'.

4. Section 9 of the principal Ordinance is amended by substituting for the words 'five hundred shillings' appearing in paragraph (b) thereof the words 'one thousand five hundred shillings'."

MR. ODEDE: Mr. Chairman, while we are supporting the Bill, I feel that we are not prepared to support the amendment for increasing the fines. The reason is that in this country there are some people whose economic background is very low, and it is likely that they may be affected, and if they are affected they will suffer a great deal if such fines are imposed upon them. We should not try to feel that the value of money has dropped while the ordinary workers of our country are suffering because their pay has not been raised accordingly. And so, Sir, I oppose this amendment.

The question was put and carried.

THE MEMBER FOR EDUCATION AND LABOUR: I beg to move that the Committee report consideration of the Bill.

Council resumed.

[Mr. Speaker in the Chair]

REPORTS

MR. NEEP: Mr. Speaker, I beg to report that the Committee of the Council considered the Criminal Procedure Code (Amendment) Bill and reports the Bill with the addition of three new clauses.

BILLS

THIRD READING

*The Criminal Procedure Code (Amendment) Bill*

THE MEMBER FOR LAW AND ORDER: I beg to move that the Criminal Procedure Code (Amendment) Bill be read a Third time and passed now.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried.

The Bill was read a Third Time and passed.

COMMITTEE OF SUPPLY

Committee of Supply—Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]  
Consideration of the Supplementary Estimates No. 5 of 1952.

THE MEMBER FOR FINANCE: Mr. Chairman, in accordance with Standing Order No. 128, I beg to notify the recognition and consent of His Excellency the Governor for the introduction of these Supplementary Estimates has been obtained.

THE CHAIRMAN: Before the Committee considers the Supplementary Estimates No. 5 of 1952, I want, if I may, to say this. By arrangement with both sides of the Committee, an attempt has been made to simplify, if possible, the procedure we are going to follow on these occasions. To that end, each item of expenditure has been given a serial number and there has been provided a memorandum relating to most of the items which are of any size, which is attached to the back of the detailed Estimates. The proposal is that the Clerk shall read slowly the serial numbers, one by one, and that thereupon any Mem-

ber, it is hoped, will wish to do one of two things, either to ask the appropriate Member for details of a particular item, which we hope will be given quickly and attractively, and if not—(Laughter)—and if not, that in the alternative any Member who wishes to move the reduction of an item will do so at once. In that way we hope to save time and keep things marching.

No. 1.—Head 2—2 (3), item 1 (1), three African Assistant Administrative Officers (£190; £190; £210 by £10 to £240 by £12 to £300 by £15 to £405)—£144.

MR. HAVELOCK: Would the hon. attractive Member for African Affairs tell me if he believes he will be able to fill these posts he is asking for here?

THE MEMBER FOR AFRICAN AFFAIRS: I hope to do so before the end of the year, Sir.

MR. MATHU: Mr. Chairman, I should like to ask another question, Sir, from the hon. Member for African Affairs; whether he thinks that the scale of salary attached to this is so attractive to give him the suitable men?

THE MEMBER FOR AFRICAN AFFAIRS: The scale is the present scale. I have not thought of trying to bring into this Committee an additional scale at this time of year. I think we shall get those men.

No. 20.—Head 2—3, sub-head (1), *African Information Services: General*—Item 11, Films and Film Strips—£120.

MR. MATHU: Might I ask one question, Sir, on No. 20, whether my hon. friend would be so good as to tell us whether these films and film strips which would be in fact used here, would have a local background or whether they come from abroad. That would not help us immediately to give a positive and constructive attitude to the people who are going to see these things. I am referring now to the whole sum of £1,391.

THE MEMBER FOR AFRICAN AFFAIRS: We do use a certain amount of film strips from overseas, but we make all we can here. We also do the same for films. We make films here, but we do use a few also from overseas. The answer to the question is that practically all this expenditure will be on locally produced, locally made films and film strips.

No. 21.—Head 4—2, sub-head (50), Loans from Revenue: Non-recurrent: New item, Civil Servants' Building Scheme—£30,000.

MR. HARRIS: Sir, may I ask the appropriate Member whether this means now that the total capital available for this scheme is in fact £198,498.

THE SECRETARY TO THE TREASURY: Yes, Sir.

MR. MATHU: I have a question on that one, whether my hon. friend will be able to give us a little background, because I do not quite understand this. It is a new item, and it has certainly to do with the Civil Service buildings, but can we have a few details to appreciate the background.

THE SECRETARY TO THE TREASURY: There is, Sir, a note in the attached memorandum. It is a new item because it has not previously appeared in the Estimates. The previous expenditure has been made by Schedule of Additional Provision, but it is a scheme which has been in existence since 1947.

MR. BLUNDELL: Would the hon. Member give us the interest rate?

THE SECRETARY TO THE TREASURY: The interest rate now is four and three-quarters per cent.

MR. MATHU: Would you give us the security required, and whether that security could not be given by all civil servants who need assistance from this scheme.

THE SECRETARY TO THE TREASURY: The loans, Sir, are made up to seventy-five per cent of the value of the property, and of course, the Government takes a first mortgage over any house built. It is felt that that is adequate security.

No. 22.—Head 4—8, sub-head (1). Subventions: Accountants General: Item 4, £900.

MR. CROSSKILL: Could the hon. Member give us particulars of the ancient monuments to be preserved, Sir? (Laughter.)

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Chairman, I am dealing with this on behalf of the Member for Agriculture. To be quite honest, I do not know what the ancient monuments are. (Laughter.) It is the case, however, that

in previous years a sum of £900 has been provided for the national parks to preserve ancient monuments and sites of archaeological interest within the national parks. On this particular occasion through a misunderstanding, that can be provided, it was hoped earlier in the year that the national parks would be able to manage on the amount of the subvention they were given. They are report that that is not possible, and they require this sum of £900 to do what they have been doing in the previous year. I think it is generally recognized, Sir, that these archaeological sites in the national parks are interesting from the scientific point of view, and do attract tourists to the parks, and therefore to Kenya. It is therefore, worth spending money for that purpose.

MR. COOKE: May I, as trustee of the national parks, say that this is probably the money to be applied to the preservation of Fort Jesus in Mombasa, which is in a bad state of repair.

MR. HARRIS: I hope, Sir, we could have an undertaking that in future years the necessary administrative action will be taken in order to ensure that Estimates of this nature will come forward at the right time.

No. 23.—Head 4—8, sub-head (50), Non-recurrent: New item, Contribution to Inter-African Soils Information Bureau—£650.

MR. BLUNDELL: I have two questions I would like to ask. First of all, would the hon. Member give us an explanation of what is this Inter-African Soils Bureau. Secondly, whether it was arranged freely between the territories here, or whether it was one of those nebulous "arrangements" made by the Colonial Office and subsequently referred to Kenya for their agreement.

THE MEMBER FOR EDUCATION AND LABOUR: I will do my best to explain this in the absence of the Member for Agriculture. In the year 1948 an international conference took place, as a result of which a proposal was made by a number of Governments, including the Government, that this Bureau should be set up in Paris.

MR. BLUNDELL: Always in Paris!

THE MEMBER FOR EDUCATION AND LABOUR: At that time this Government

(The Member for Education and Labour) said that it favoured the idea, but could not commit itself to any expenditure on the matter until it had obtained the approval of the Legislature. In due course the Bureau was set up and we were asked to make our contribution to it, which, at that time, I think was £600 a year. Now, Sir, I am being quite frank about this, the matter was taken to the Standing Finance Committee certainly on one occasion, it may be on two occasions. The Member for Agriculture did not then succeed in satisfying the Committee that this expenditure was justified by the practical value of the Bureau and its activities to Kenya.

Since that decision was taken by the Standing Finance Committee, or that recommendation was made by the Standing Finance Committee, two things have happened. In the first place, the Bureau has issued its first bulletin, and secondly, its scope has been somewhat enlarged to include water conservation and the issue of bibliographies from time to time which draw the attention of the departments of Governments interested in this matter to literature which is likely to be of interest and value to them. I am not going to pretend that at this moment the services of this Bureau are indispensable; of that we could not get along without them; but I do suggest, and I know this is very wrongly the view of the Member for Agriculture, that this sort of thing—this international co-operation in things of this kind—is a thing which ought to be supported.

I do suggest that it is worth the small sum of £650 to keep this Bureau going. That is our contribution to the thing. I suggest it is very supporting.

MR. MATHU: I shall oppose this provision because, as my hon. friend, the Member for Education—

THE CHAIRMAN: If you oppose it, do you wish to propose that it should be deleted?

MR. MATHU: That is what I was going to do, Sir.

I beg to move that item 23 be deleted. Shall I carry on?

I say that because, as I say, the Member for Education has given the correct background, because this has come to the Standing Finance Committee more than

once and, I think, I have been one of the very strong opposers of it. Now, £650 is not a small amount, Sir, when only brochures are distributed in the libraries of Governments in Africa, and sometimes not read, about soils. They may be the soils of Versailles in Paris in France, and I would rather have this money spent locally here. There is a lot we can do; if we provided a borehole away in the Masai country for this amount of money we would be doing a positive service to our own community. Or, if we in a tsetse-infested area, cleared the bush and paid this amount of £650, we would be doing a direct service to our community instead of spending £650 which, in my view, would be absolutely useless. As far as I am concerned, it is money absolutely wasted, and I move that this money be deleted.

THE DIRECTOR OF AGRICULTURE: Mr. Chairman, the function of this Bureau is to co-ordinate information on the very problems which Mr. Mathu has just mentioned; on soil conservation and on water conservation. It is an international Bureau serving all. I think the colonial powers in Africa, and it has been one of our biggest gaps that we, the British, have not known what the French were doing and the French had not known what the Belgians or the Portuguese were doing. That really is the purpose of this Bureau—to co-ordinate information, techniques and so on—and to disseminate information to the contributing parties. For that reason, I think it will be a service towards the problem which Mr. Mathu has mentioned. (Applause.)

MR. BLUNDELL: Mr. Chairman, I am supporting the Motion that the item be deleted. I believe the real reason behind the item is that the Colonial Office agreed to this, and they have been trying for three years now to save their faces by referring it to us for further agreement, that is really the reason. It keeps coming forward. We have turned it down. We could get two burarsies a year with this money for our young people for higher education, and if we want this bibliography, cannot we arrange by some method to buy some list of the publications, rather than contribute the £650 a year.

MR. COOKE: I should like to support Mr. Mathu as well. We must, by this time, have all the information necessary.

[Mr. Cooke]

What we want is to get on with the job of soil conservation.

**GROUP-CAPT. BIGGIS:** I support Mr. Mathu, Mr. Chairman. I think £650 is a very high library subscription.

**MR. BLUNDELL:** Popular boy of the picture! (Laughter.)

**MR. ODEDE:** I am sorry, Sir, I am differing from the Members on this side of the Council. (Cries of "Hurray".) I think the Members on this side are not scientifically minded. That is why they are opposing something which is very important in this country we have got the Northern Frontier, and if we can get research workers, who can prove to us that we can do something on the soil of the Northern Frontier, we shall go a long way. So I differ with the hon. Members on this side. (Applause.)

**MR. MATHU:** Mr. Chairman, in replying to my hon. friend, I would like to say that in the Northern Frontier we do not want any research experts from Paris. What is lacking in the Northern Frontier? It is water, we give it, the water; it is more manure, fertilizers, that it what is needed there. We know that we do not want any research into it. There are things we want to do.

**MR. BLUNDELL:** In Paris, do not forget! (Laughter.)

**MR. ODEDE:** Can I say, we have got marginal lands between the Northern Frontier, with the good soils we have on the Kenya Highlands, and in some areas. Now, those marginal lands, if we can get people who can tell us what we can grow on them, it will be a step forward.

**MR. HAYLOCK:** Mr. Chairman, the only possible attraction I can see in this is that it is situated in Paris, and may give the hon. Members an excuse to go to Paris. I would like to ask who does subscribe to this. A vague reference was made to the Portuguese and the Belgians, but who are supposed to support this peculiar Information Bureau? What is that Kenya, as usual, is being asked to bear more than its share. I do agree entirely with the remarks passed by the hon. Mr. Mathu, and the Members for the Coast and Rift Valley, practical

stuff is what we want. Let us apply this money in a better and more practical way.

**THE MEMBER FOR EDUCATION AND LABOUR:** Mr. Chairman, I must say I am extremely disappointed at the attitude which Members—opposite have taken on this matter. To begin with, it is all very fine to say that £650 a year is a large library subscription, but it is not as though this bulletin will be available in any event. The £650 is a contribution towards the cost of the Bureau which is producing the information, library subscription at all. It is not a true that the Colonial Office have asked us to contribute on more than one occasion. As stated quite frankly, the Standing Finance Committee was asked to reconsider this matter and pay out contributions towards the Bureau. I, to the present the Colonial Office have found our contributions themselves, from other sources, but they are not able to do so any longer.

With regard to the question asked by the hon. Member for Kiambu, I cannot tell him at the moment the amount of the contributions made by the various Governments; but I do know that all other Governments, British, French and Belgian Governments in Africa, are making a contribution towards this Bureau. We are the only people who are not doing so. I do suggest, Sir, that the information which is provided by this Bureau is worth what I still maintain is a comparatively small amount of money.

**MR. BLUNU:** Mr. Chairman, I know little or nothing about this particular Bureau, except what I have heard this afternoon. But during the term that I have held office in this country, I have had a good deal to do with a similar bureau, the Imperial Bureaux, of which there are seven or eight, which worked on somewhat similar lines. The information from these bureaux was very many times worth the subscriptions that we paid for them. Whether this Bureau has reached the stage when they can give us any useful information, I do not know. I am sure that if it is properly run, it will be able to produce information that will be worth far more than £650 given to us.

**MR. SLADE:** I do not want to repeat at whole of yesterday's debate on the Societies Bill, but all I suggest is, we cannot possibly support this Bill unless it until it is registered under the Societies Bill.

**MR. MATHU:** Mr. Chairman, might I say that if they were to apply for an application and if I were the Registrar locally here, I would refuse the application in that it would be connected with an organization outside the country! (Laughter.)

The question that No. 23 amounting to £650, be deleted, was put, not on a division negatived by 23 to 19. (AVES.) Messrs. Awori, Blundell, Group-Captain Briggs, Messrs. Cooke, Gouskil, Gikonyo, Lt.-Col. Grogan, Mr. Harris, Dr. Hassan, Mr. Havelock, Major Keyser, Sheikh Mahfoud, Mr. Mathu, Sheriff Abdullah, Lady Shaw, Messrs. Slade, Small, Tameno, Usher, Lt. Nees; Mr. Adams, Dr. Anderson, Messrs. Blunt, Carpenter, Davies, Griffith-Jones, Hartwell, Hope-Jones, Dr. Karve, Lt.-Col. Marchant, Sir Charles Mortimer, Chief Mukima, Messrs. Odede, Okwiry Padley, Sir Eboo Piribhai, Messrs. Riddoch, Roddan, Mohamed Ali Said, Messrs. Taylor, Vasey, Wadley, Whyatt, 23. Dn Nor Vore; Mr. Neep, 1. ANSWER: Major Cavendish-Bentick, Messrs. Edey, Jeremiah, Madan, Nicol, A. B. Patel, J. P. Patel, Mr. Shaw, Messrs. Chaman Singh, Zafrud Deen, 10. TOTAL: 53.)

No. 24—Head 6—4, item 2, Survey Department: Travelling Expenses, £2,000.

**MR. SLADE:** Mr. Chairman, I wonder if we can have a little more elaboration of the explanation of this rather large sum £2,000 extra cost, of work undertaken by the Survey Field Department. Does that mean the Survey Department is working harder than anticipated or that it has found more work to do and has had to travel further, or simply that someone made a miscalculation at the time of the original estimate? If it is simply a miscalculation I would like to say that the Member for Nairobi South said about the question of care in these matters, especially where such a large figure is concerned.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** I am able to give,

what I think is a very adequate explanation of this fairly large figure. It is not an oversight on the part of the Department. It does not represent greater work than was expected, but it does represent the work that was actually contemplated when the Draft Estimates for 1952 were submitted. The Director of Surveys estimated the amount that would be required and put in a figure of £11,000. As the same time he put forward a proposal for the employment of a departmental European foreman mechanic to do all the mechanical work required for the vehicles of the Department. In discussion with the Treasury, he agreed that if that item were left in the Estimates as printed, he could and would agree to the Estimate for travelling allowances being reduced from £11,000 to £9,000. As he estimated that the saving by employing a departmental officer to do the work would be such that the £2,000 reduction would be justified. In the event, Sir, this Council voted out the item for the foreman mechanic, but did not replace the £2,000. So the Department lost both ways. And now, Sir, if this £2,000 is not voted, it will mean that for the remainder of the year a number of survey officers will be sitting on their haunches in Nairobi instead of getting about their work in the field. I do ask for support for the restoration of the £2,000 that ought never to have been cut out.

**MR. HAYLOCK:** Mr. Chairman, it would seem that £2,000 is required to be spent, or has been spent, on repairs to motor vehicles, in that case.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** On repairs and maintenance and general travelling expenses. It is not all repairs to motor vehicles.

**MR. BLUNDELL:** It must have been; if the hon. Member's arguments are correct, Sir, it must have all been maintenance and repairs. There is no extra travelling arising from the man being eliminated.

**MAJOR KEYSER:** The hon. Member is putting a little bit of a strain on our memories, but my recollection of the debate and the reasons why that mechanic was turned down was because we decided that the large sum of money given to the Public Works Department mechanical

[Major Keyser] repair workshops could also deal with the Survey Department vehicles. Perhaps, Sir, the hon. Member could explain why the Public Works Department is not able to deal with the vehicles.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** I can explain quite well, and the Director of the Public Works Department will support me. The Survey Department vehicles rove over a very large extent of the country, often very difficult country. Repairs to vehicles of the Department often have to be much more expensive than repairs to vehicles which can keep on reasonably good roads, of which there are some in the country—(Laughter)—and consequently maintenance of Survey Department vehicles is a very expensive matter.

Now, Sir, by the employment of a departmental mechanic who can take his field equipment and go to the spot and repair the vehicles on the spot—a good deal of saving can be produced. The Public Works Department have no organization for doing that kind of job. They require that the vehicle shall be brought in to departmental headquarters and there be repaired. That means additional expense—it means time wasted, the vehicles off the road, and consequently officers unable to get about their work because they have no vehicle in which to do it. And that is why a considerable saving could be effected if such an appointment were in the Estimates. The short fact is, Sir, that a good deal of travelling expense is incurred by this method of having to repair vehicles. £2,000 is merely a replacement, as I have explained, of the sum that was cut out of the Draft Estimates and the sum which the Director estimated to be required for the work of the Department. It is a fact that the work laid down by the Survey Priority Committee, which meets every six months, for the next three months will necessitate the expenditure of this sum, and it just is not there.

**MR. SLADE:** I would like to ask—I do not want to propose the deletion of this item, but it does show a very unsatisfactory state of affairs—was this Council warned at the time it resolved to delete the departmental mechanic, that it would cost another £2,000 in another direction?

Was this—was any of this—argued at the time of that debate? If not, it is a very unsatisfactory state of affairs.

**MAJOR KEYSER:** I understand, Sir, from the hon. Member that £2,000 men be incurred because we did not agree with-ber telling us, Sir, that the Survey vehicles could have been repaired for £450 anywhere in the bush from Lamu to the Trans Mara, for the whole 12 months!

**THE MEMBER FOR LANDS, HEALTH AND LOCAL GOVERNMENT:** No, Sir, the amount for the salary of the foreman-mechanic was £650 plus various incidental expenses. There was also additional cost incurred in his travelling to and from vehicles that he had to repair, and that amounts to a larger sum.

The Department gave warning to the Treasury after the Estimates had been passed that Supplementary Estimates were bound to be necessitated during the year, and that forecast has come true. The sum of £2,000 is the amount which is now required.

**LADY SHAW:** It does strike me a most remarkable thing, the Government has estimated so closely. I have never known it to happen before. They thought they needed £2,000 and now they come back and say they do need £2,000. I think probably, it is the most exact figure that has ever been estimated! (Laughter.)

**THE MEMBER FOR LANDS, HEALTH AND LOCAL GOVERNMENT:** Mr. Chairman, the hon. Member should be congratulating the Department on its efficient estimating, rather than criticizing.

**LADY SHAW:** I do not think I was criticizing. I was remarking.

**MR. COOKE:** Mr. Padley seems very reticent. Could he not come to the aid of the embarrassed Member?

**No. 25—Part D—Development and Re-constitution Authority. Head 15—2. Public Works Non-Recurrent: Other Buildings: New Labour Department—Extension to the Registration Office. £100.**

**MAJOR KEYSER:** Anything to do with the "in and out"?

**MR. PADLEY:** It is "in and out". (Laughter.)

The question that the sum of £49,827 is granted to the Governor on account, is or towards defraying the charges of its Supplementary Estimates of Expenditure, 1952, No. 5 of 1952, was put and carried.

Council resumed.

[Mr. Speaker in the Chair]

## REPORTS

**MR. NEEP:** I beg to report that the following Resolution has been passed through the Committee of Supply, that the sum of £49,827 be granted to the Governor on account, for or towards defraying the charges of Supplementary Estimates of Expenditure, 1952, No. 5 of 1952.

**THE MEMBER FOR FINANCE:** I beg to move, Sir, that the Resolution that has just been read by the Clerk be adopted.

The question that the Council agrees with the Committee in the said Resolution was put and carried.

## ADJOURNMENT

**THE SPEAKER:** That concludes the business on the Order Paper, and Council will stand adjourned until Wednesday morning, at 10 o'clock, on 15th October.

Council rose at forty minutes past Four o'clock p.m.

## WRITTEN ANSWER TO QUESTION

QUESTION No. 25

**GROUP-CAPT. L. R. BRIGGS:** Is Government aware of the extent of the loss of trade to the Colony, both direct and indirect, resulting from their failure to keep abreast of developments in the adjoining territory of Uganda and of the requirements of modern aircraft?

In view of the urgency of the matter will Government state what is the present position in regard to the projected new airport at Embakani and what steps have been taken to raise the finance required?

**REPLY:** The Government does not consider that the operation of the Comet air service through Entebbe has, to any appreciable extent, involved a loss of trade to this Colony as the passenger traffic is almost entirely transit traffic through Entebbe. It does, however, agree that providing the necessary finance can be made available, it is desirable to replace Eastleigh by a more suitable airport.

The preliminary report of the Consulting Engineers concerning the possible construction of an airport at Embakani has been considered both by H.M. Government in the United Kingdom and the Kenya Government. At the present time the Member for Finance and the Member for Commerce and Industry are in London for discussions with the appropriate authorities concerning the proposals for this aerodrome and the provision of the necessary finance.



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First Session—Third Sitting

Volume I

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### Explanation of Abbreviations

Bills: Read First, Second or Third time—1R, 2R, 3R;  
In Committee—IC; Referred to Select Committee—  
SC; Select Committee Report—SCR; Recommended to  
Council=Re.Cl.; Withdrawn=Wdn.

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COLONY AND PROTECTORATE OF KENYA

# LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

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COUNCIL INAUGURATED  
JUNE, 1952

VOLUME LI

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1952

FIRST SESSION — FOURTH SITTING  
15th October, 1952, to 21st October, 1952

# List of Members of the Legislative Council

## *President:*

HIS EXCELLENCY THE GOVERNOR

## *Vice-President and Speaker:*

HON. W. K. HORNE

## *Ex Officio Members:*

- CHIEF SECRETARY AND MEMBER FOR DEVELOPMENT (HON. H. S. POTTER, C.M.G.).  
ATTORNEY GENERAL AND MEMBER FOR LAW AND ORDER (HON. J. WHYATT, Q.C.).  
FINANCIAL SECRETARY AND MEMBER FOR FINANCE (HON. E. A. VASEY, C.M.G.).  
CHIEF NATIVE COMMISSIONER AND MEMBER FOR AFRICAN AFFAIRS (HON. E. R. ST. A. DAVIES, M.B.E.).  
MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G., M.C.).  
DEPUTY CHIEF SECRETARY AND MEMBER FOR EDUCATION AND LABOUR (HON. C. H. HARTWELL).  
MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT (HON. SIR CHARLES MORTIMER, C.B.E.).  
MEMBER FOR COMMERCE AND INDUSTRY (HON. A. HOPE-JONES).

## *Nominated Members:*

- DR. THE HON. T. F. ANDERSON, O.B.E. (Director of Medical Services).  
HON. D. L. BLUNT, C.M.G.  
HON. F. W. CARPENTER, (Labour Commissioner).  
HON. M. H. COWIE.  
HON. E. N. GRIFFITH-JONES (Solicitor General).  
DR. THE HON. S. D. KARVE, O.B.E.  
HON. G. M. EDYE.  
COL. THE HON. W. S. MARCHANT, C.M.G., O.B.E.  
HON. CHIEF U. MUKIMA.  
HON. E. J. C. NEEP, Q.C.  
HON. I. OKWIRRY, M.B.E.  
HON. W. PADLEY, O.B.E. (Secretary to the Treasury).  
HON. SIR EBOO PIRIMAI, O.B.E.  
HON. J. L. RIDDOCH, O.B.E.  
HON. G. M. RODDAN (Director of Agriculture).  
HON. SHEIKH MOHAMED ALI SAID.  
HON. R. W. TAYLOR, C.M.G. (Director of Public Works).  
HON. W. J. D. WADLEY (Director of Education).

## *European Elected Members:*

- HON. M. BLUNDELL, Rift Valley.  
GROUP-CAPT. THE HON. L. R. BRIGGS, Mount Kenya.  
HON. S. V. COOKE, Coast.  
HON. W. E. CROSSKILL, Mau.  
LT.-COL. THE HON. S. G. GHERSIE, O.B.E., Nairobi North.  
COL. THE HON. E. S. GROGAN, D.S.O., Nairobi West.  
HON. N. F. HARRIS, Nairobi South.  
HON. W. B. HAVELOCK, Kiambu.  
MAJOR THE HON. A. G. KEYSER, D.S.O., Trans Nzoia.  
HON. L. R. MACONOCHE-WELWOOD, Uasin Gishu.  
HON. LADY SHAW, Ukamba.  
HON. MRS. A. R. SHAW, Nyanza.  
HON. H. SLADE, Aberdare.  
HON. C. G. USHER, M.C., Mombasa.

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

Asian Elected Members:

Non-Muslim:

Muslim:

Central Area:

HON. CHANAN SUGIL  
HON. C. B. MADAN.

East:

DR. THE HON. S. G. HASSAN.

Eastern Area:

HON. A. D. PATEL. C.M.G.

West:

HON. I. E. NATHOO.

Western Area:

HON. J. S. PATEL.

Arab Elected Member:

HON. S. MACKAWI.

Representative Members:

African:

HON. W. W. W. AWORI.  
HON. M. GIKONYO.  
HON. J. JEREMIAH.  
HON. E. W. MATHIU.  
HON. F. W. ODEDE.  
HON. J. M. O. TAMENO.

Arab:

HON. SHERIFF ABDULLAH SALIM.

Acting Clerk to Council:

G. J. ELLERTON.

Assistant Clerk to Council:

E. V. BORRETT.

Reporters:

Miss E. Fraser.  
Mrs. P. D. Hubbard.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION—FOURTH SITTING

Wednesday, 15th October, 1952

The Council met at Ten o'clock.

[Mr. Speaker in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

THE SPEAKER: I will make the Communication from the Chair at a later age.

PETITIONS AND MEMORIALS

A Petition to proceed with the British Standard Portland Cement Company, Limited (Bamburi Factory) Bill was read, in accordance with Standing Order No. 77, by the Clerk.

Mr. Speaker put the question that the petitioners be allowed to proceed with the Bill, which was carried *nemine contra-*  
*voce*.

PAPERS LAID

The following papers were laid on the Table:—

Reports of the Commissioner for Transport, East Africa High Commission and the General Manager on the Administration of the East African Railways and Harbours for the year ended 31st December, 1951.

Report by the Acting Director of Audit, East Africa High Commission, on the Accounts of the East African Railways and Harbours for the year 1951.

East African Posts and Telegraphs Department Annual Report, 1950, together with the Report of the Director of Audit, Kenya, on the Appropriation and Operating Accounts for the year, 1950.

Report on the Administration of the East African Airways Corporation for the year ended 31st December, 1951.

Lake Victoria Fisheries Service Annual Report, 1951.

East African Veterinary Research Organization Annual Report, 1951.

East African Income Tax Department Annual Report, 1951.

Development and Reconstruction Authority Quarterly Report for the period 1st April to 30th June, 1952.

(BY THE MEMBER FOR DEVELOPMENT)

The Police Department Annual Report, 1951.

The Prisons Department Annual Report, 1951.

The Department of Immigration Annual Report, 1951.

The Judicial Department Annual Report, 1951.

The Registrar General's Department Annual Report, 1951.

(BY THE MEMBER FOR LAW AND ORDER)

Schedules of Additional Provision—Nos. 10 and 11 of 1949, Nos. 7, 8, 9 and 10 of 1950, Nos. 5, 6, 7 and 8 of 1951 and Nos. 1, 2, 3 and 4 of 1952.

(BY THE MEMBER FOR FINANCE)

Report of the Select Committee on the Native Authority (Amendment) Bill.  
(BY THE MEMBER FOR AFRICAN AFFAIRS)

The Department of Agriculture Annual Report, 1950, Volume II. Accounts, Seed Cleaning Plant, Nakuru.

The Royal National Parks of Kenya Report, 1951.

(BY THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES)

The Apprenticeship Rules, 1952.

The Labour Department Annual Report, 1951.

(BY THE MEMBER FOR EDUCATION AND LABOUR)

Survey Department Annual Report, 1951.

Survey Regulations, 1952.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: With your permission, Mr. Speaker, I should like to give a few words of explanation about this particular document. I am departing from the usual practice of providing a copy of these regulations for every Member of the Council; the reason being, that the price of the document is Sh. 25, and it costs no less to produce. The contents of the volume are, I submit, of very little interest to hon. Members individually, so I am laying one copy only on the Table; two copies are being placed in the Members' Common Room so that any hon. Member who so wishes may have access to it, if any hon. Member would like a copy for his retention, if he will apply to me I will arrange that he will receive one.

The Land Registration Court (Fees) (Amendment) Rules, 1952.

The Crown Lands (Fees) (Amendment) Rules, 1952.

(BY THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT)

The exchange of notes between the Governments of the United Kingdom and the United States of America regarding the economic co-operation which the Government of Kenya has agreed may be held to extend to Kenya and which has been

extended to this Colony with effect from the 8th January, 1952.

Annual Trade Report of Kenya, Uganda and Tanganyika for the year ended the 31st December, 1951.

Notes on Commerce and Industry in Kenya.

Weights and Measures Rules, 1952.

(BY THE MEMBER FOR COMMERCE AND INDUSTRY)

#### ORAL ANSWERS TO QUESTIONS QUESTION No. 26

MR. HAVELOCK:

What progress has been made in training police officers to conduct prosecutions efficiently in the lower courts in accordance with the technical requirements of the law?

THE MEMBER FOR LAW AND ORDER: In March, 1951, a special prosecutions branch was established, consisting of—

European—

One assistant superintendent of police.

One chief inspector.  
Seven inspectors.

Asian—

Three inspectors.  
One constable.

African—

One inspector.  
Two assistant inspectors.  
One sergeant.  
Three corporals.  
Twenty-four constables.

It is proposed to increase this by one European chief inspector, one African sergeant, three African corporals and one African constable. Members of this branch are stationed where most needed in the Colony, and are available for work outside their own stations if required. The branch is in charge of the Assistant Commissioner, Crime. All members of it are specially trained in prosecution work, but it is intended to re-enlist for this work a number of experienced retired officers, who will replace younger officers with less specialist experience.

In addition, all newly-enlisted European officers receive special training in prosecution in the United Kingdom and

the Member for Law and Order] being their three months' recruits serve at the Police Training School in Kenya.

MR. COOKE (Coast): Arising out of that can the hon. gentleman explain the unreasonable delay that has taken place? As long ago as 1948 a promise was given that these prosecutors would be trained.

THE MEMBER FOR LAW AND ORDER: In fact, I can easily explain that. It was so lack of funds available for this specific purpose which held up the report.

LOY SHAW (Ukamba): May I ask, arising out of that reply, whether those cases were ever requested from this Council—whether they were ever asked for?

THE MEMBER FOR LAW AND ORDER: The hon. and gracious lady's memory is larger than mine. The question dated 1948, when I was not in this Council.

MR. COOKE: Mr. Speaker, seeing that a long ago as 1947 these officers were recruited, and then the hon. Member said that the training could not take place because there were not enough personnel. There seems to have been a very much larger delay than was justifiable.

MR. BUNDELL (Rift Valley): Arising out of the hon. Member's answer, would the hon. Member advise us when application from the Treasury was first made for the funds?

THE MEMBER FOR LAW AND ORDER: I must have notice of that question; I cannot say at the moment when it was first mentioned.

#### QUESTION No. 27

MR. HAVELOCK:

Will the hon. Member for Law and Order state:—

(a) The number of offences reported to the police in 1951?

(b) The number of charges brought to court?

THE MEMBER FOR LAW AND ORDER: During 1951, 9,581 major offences and 64,581 minor offences were reported to the police, of these 4,369 major offences and 64,581 minor offences were brought to court.

MR. HAVELOCK (Kiambu): Arising out of that answer, can the hon. Member give me any indication as to how these figures compared with other African territories, especially as regards major offences?

THE MEMBER FOR LAW AND ORDER: I have not got corresponding statistics for other African territories, but it may be of interest to the hon. Member to know that the percentage of cases brought to court in Kenya compares very favourably with the percentage of cases brought to court in the Metropolitan area in the City of London. In the latter, only 21 per cent of the cases were brought to court; as the hon. Member will see, it is nearly 50 per cent of the cases which are brought to court in this Colony.

#### QUESTION No. 28

MR. HAVELOCK:

Will the hon. Member for Law and Order state:—

(a) The number of persons committed to prison on remand in 1951?

(b) The number who were subsequently brought to trial?

THE MEMBER FOR LAW AND ORDER: During 1951, 25,171 prisoners were admitted on remand and in addition, 1,099 prisoners were brought forward from the previous year, 25,356 were brought to trial during the year and there were 863 prisoners remaining on remand at the end of the year. Four died and 47 escaped.

#### QUESTION No. 29

MR. HAVELOCK:

Will the hon. Member for Law and Order state:—

(a) The number of persons who were convicted and sentenced in 1951?

(b) The number who were acquitted and discharged, both in the lower courts and on appeal?

THE MEMBER FOR LAW AND ORDER: During 1951, 64,261 persons were convicted and sentenced; and in lower courts 9,956 were discharged and 2,645 acquitted. 160 appeals were allowed, 95 convictions were quashed on revision or confirmation.

MR. HAVELOCK: Arising out of that answer, can the hon. Member tell me if he considers it is due to the technicalities of the law or the inexperience of the police that so many people were acquitted or sentences quashed?

THE MEMBER FOR LAW AND ORDER: Without looking at the particular cases which were acquitted—I think we are wrong to assume that they were wrongly acquitted. There is no reason to assume that the person was wrongly acquitted unless something has gone wrong with the technicality of the law. The assumption is that they were rightly acquitted.

MR. BLUNDELL: Arising out of the question, would the hon. Member be able to give me the numbers in which sentences awarded in the lower courts were revised to a lower scale on confirmation? Could we have those figures, Mr. Speaker—perhaps they are in the volumes before him?

THE SPEAKER: It is hardly a supplementary to this question.

MR. BLUNDELL: It does say "the number of persons who were convicted and sentenced." I do suggest, arising out of the sentence, my question is a proper supplementary.

THE SPEAKER: The whole tone of these questions seems to me more a case of asking for a return than for asking for some matter which is capable of a comparatively simple answer by the method of Parliamentary question and answer.

#### ORAL NOTICE OF MOTION

MR. HARRIS (Nairobi South): Mr. Speaker, I beg to give notice of the following Motion:—

That this Council recommends that the Inter-territorial Liaison Committee appointed under paragraph 25 of the Padley Report on Cost of Living Allowances dated 21st February, 1952, be empowered to make recommendations to the Territorial Legislatures as to the actions which each of the territories should take to keep living costs and the indices on which cost of living allowances are based to a minimum.

THE MEMBER FOR COMMERCE AND INDUSTRY: I wish to give notice of Motion as follows:—

WHEREAS under the provisions of section 28: (1) (a) of the East Africa (High Commission) Orders in Council, 1947 and 1951, the High Commission may with the advice and consent of the Central Legislative Assembly make laws in respect of the matters specified in the Third Schedule to the said Orders in Council; and

WHEREAS under the provisions of section 45 of the said Order in Council the High Commission may with the approval, signified by resolution, of the Legislative Councils of the Territories, and with the consent of a Secretary of State, add to the list of subjects set out in the Third Schedule to the said Orders in Council; and

WHEREAS the High Commission is of the opinion that the subject of "Merchant Shipping" should be added to the said list of subjects;

NOW THEREFORE, be it resolved that this Council approves amendment of the Third Schedule to the East Africa (High Commission) Orders in Council, 1947 and 1951, by the addition thereto of a new item (16) as follows:—

"16. Merchant Shipping."

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to give notice of the following Motion:—

BE IT RESOLVED that the Customs Duties on Foodstuffs (Provisional Exemption) Ordinance, 1946, shall remain in force until the 31st day of December, 1953.

#### TRIBUTE TO LATE CHIEF WARUHIU

THE MEMBER FOR AFRICAN AFFAIRS: Mr. Speaker, I would beg your leave and the leave of the Council to take this first opportunity the Government has had publicly to pay a tribute to the memory of a very great gentleman who gave his life last week in the service of this Colony and of his fellow men.

Senior Chief Waruhiu had been a loyal and outstanding servant of the Government and of his people for thirty years. He numbered, among his friends, people of all races, young and old, amongst them many of the Members of this Council. He worked continuously for order and good Government, for the advancement of his people and for

#### Suspension of Standing Orders

the Member for African Affairs a better understanding between the differing communities of the Colony.

He had a quiet dignity, and a tremendous influence for good amongst all with whom he came in contact. To see him take his seat at a *baraza*, with all ceremonially standing at his approach, was to experience not easily to be forgotten. Chief Waruhiu was an inspired leader of men; all he touched was inspired by his death—his own people, Africans throughout this Colony and all communities. His was a living example of the precept: "In quietness and confidence shall be your strength." I have no doubt that this Council and the Colony together mourn his loss and would offer me deep sympathy to all his relatives. (Applause.)

#### MOTION

##### SUSPENSION OF STANDING ORDERS

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, I beg to move—That under Standing Order No. 168, Standing Orders Nos. 91 and 94 be suspended to the extent necessary to enable the Traffic (Amendment) Bill to be read a First Time this day.

THE MEMBER FOR LAW AND ORDER seconded.

The question was put and carried.

#### BILLS

##### FIRST READING

*The Exchange Control (Amendment) Bill*—(The Member for Finance)—Order for First Reading read—Read the First Time.

*The European Civil Service Provisional Fund (Amendment) Bill*—(The Secretary to the Treasury)—Order for First Reading read—Read the First Time.

*The Asian Civil Service Provisional Fund (Amendment) Bill*—(The Secretary to the Treasury)—Order for First Reading read—Read the First Time.

*The Public Holidays (Amendment) Bill*—(The Member for Education and Labour)—Order for First Reading read—Read the First Time.

*The Municipalities and Townships Private Streets (Amendment) Bill*—(The Member for Health, Lands and Local Government)—Order for First Reading read—Read the First Time.

*The Higher Education Loans Fund Bill*—(The Member for Education and Labour)—Order for First Reading read—Read the First Time.

*The Traffic (Amendment) Bill*—(The Member for Agriculture and Natural Resources)—Order for First Reading read—Read the First Time.

#### ADJOURNMENT

THE SPEAKER: That completes the business on the Order Paper and Council will now stand adjourned until the hour of 9.30 a.m. to-morrow.

Council rose at thirty-five minutes past Ten o'clock.



Thursday, 16th October, 1952

The Council met at half-past Nine o'clock.

(Mr. Speaker in the Chair).

#### PRAYERS

#### COMMUNICATION FROM THE CHAIR

THE SPEAKER: Hon. Members will remember, of course, that during the last meeting they passed a Resolution of welcome which I conveyed, in due course, to His Excellency the Governor, and His Excellency writes the letter which I communicate to you. He says:—

"I am extremely grateful to the Members of Legislative Council for the welcome they have extended to me on my assumption of office, and for the very kind terms in which this has been expressed.

It is with the greatest of interest that I have learned of the continued progress of the Kenya Legislature along the road of parliamentary procedure, and I know that the great heritage of customs and traditions bequeathed to the Legislative Council by the Mother of Parliaments is safely vested in your hands.

It is indeed good to you to have sent this Resolution to me and I trust that my relations with all Members of the Council will always be most frank and cordial.

Yours sincerely,  
E. DARLING."

(Applause.)

"I also have received a letter:—

"Dear Mr. Horne,

Thank you very much for your letter of sympathy of my father's death, and for the kind remarks that you passed in Legislative Council. I am very grateful to you.

PAMELA SCOTT."

(Applause.)

#### ORAL NOTICES OF MOTION

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to give notice that I shall move at a later stage the following Motion—

BE IT RESOLVED that, in accordance with the principles already accepted by this Council, the proposed hospital project to be built in the Parklands area of Nairobi by the Islamic community shall qualify for a £ 10 contribution from the general revenues of the Colony in respect of approved capital expenditure.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to give notice of the following Motion:—

"WHEREAS—

(1) Under the provisions of paragraph (a) of sub-section (1) of section 28 of the East Africa (High Commission) Orders in Council, 1947, and 1951, the High Commission may, with the advice and consent of the Central Legislative Assembly, make laws in respect of the matters specified in the Third Schedule to the said Orders in Council:

(2) Under the provisions of section 45 of the aforesaid Orders in Council the High Commission may, with the approval, signified by resolution, of the Legislative Councils of the territories and with the consent of a Secretary of State, add to the list of subjects set out in the aforementioned Third Schedule:

(3) It is considered desirable that the High Commission should be empowered to make laws, in accordance with the provisions of the said section 28 (1) (a) in respect of the Royal Technical College of East Africa, a body established by Charter dated the 7th day of September, 1951, under the hand and seal of Sir Philip Euen Mitchell, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, upon whom has been conferred the Decoration of the Military Cross:

NOW THEREFORE BE IT RESOLVED that this Council approved the addition to the list of subjects set out in the Third Schedule to the East Africa (High Commission) Orders in Council, 1947, and 1951, of the following—

16. The Royal Technical College of East Africa."

#### MOTION

AMENDMENT OF A COMMITTEE—COST OF LIVING PROBLEM

MR. COOKE: Mr. Speaker, I beg to give notice of the following Motion:—

"That this Council urgently requests the Government to appoint a small committee, consisting of a Government representative as chairman, with four members to be nominated by the Housewives' Association, the Chambers of Commerce for Eastern Africa, the Kenya National Farmers' Union and the Unofficial Members' Organization respectively, to inquire into the cost of living problem as it affects all races, with special reference to—

- (a) the cost of locally produced foodstuffs;
- (b) public and private transport;
- (c) housing;
- (d) any other matter the committee may think appertains to the cost of living problem;

and to report thereon before the end of 1952."

So, I am going to be very brief in bringing this Motion, because there would be nothing gained by presenting detailed arguments which have so often been presented in this Council. It would get us no further, because we are all agreed, I think, that there is a dangerous rate of inflation in this country, but whether we can tackle that inflation or whether we cannot is a matter upon which we may hold legitimate difference of opinion.

I am going to pose two simple questions. One is this: Is it necessary to his day practical or positive action on the cost of living problem over and above that which has been taken to-day? And number two: What should be the nature of that action?

Now, Sir, we have heard a lot recently about the crime position in this country, and people who should be in the position to know have imputed—or placed—the cause of this crime—many of them at any rate—have imputed the causes to the high cost of living in this country. Now, I quoted the other day, when I was speaking to the point of my hon. friend, the Chief Native Commissioner, I

quoted two extracts from his annual report. One of those was from the District Commissioner, Fort Hall, and the other from the District Commissioner, Nairobi, in which they drew emphatic attention, Sir, to the position in those two territories—in those two parts which the Administration runs—and they said, Sir, that a lot of crime—certainly the petty crime at any rate—was due to the high prices prevailing, and they drew emphatic attention to this point.

Now, Sir, no less a person than the Commissioner of Police in his report, which was circulated yesterday, also draws attention to this matter, and he says that the crime position is worsened by the high cost of living in this country, and this very morning we had from the African Members a statement that the stomachs of the people are so empty—especially of the poorer classes—that they are driven to crime and to petty theft, and the committee specially appointed in Mombasa the other day, with an ex-provincial commissioner as chairman, also found that one of the primary factors contributing to the crime position in Mombasa—where, I am glad to say, it is not so bad as it is in other parts of the country—is due to the high cost of living.

And so we have, Sir, from many sources—and many authoritative sources—this opinion expressed, that the cost of living has that effect on the morals of the people in this country. It is for that reason, Sir, I think Government should take serious notice of this position; and they may say that they have done all they possibly can do. Well, that, Sir, must remain a matter of opinion, but I noticed even in America, which is the home of even in America, which has just inflation, President Truman has just appointed a very high level committee to go into the question of cost of living and into the question of the United States of America: inflation in the United States of America; so that, even when that country is taking up the matter so seriously, it is certainly true that we should also give serious attention to it.

Now, apart altogether from those effects on the morals of people, we have had mass meetings in Nairobi and Mombasa—the Mombasa meeting was attended by well over a thousand people and they strongly expressed the view that a committee should be appointed to go into this question of rising prices.

[Mr. Cooke]

Now, **Leid** I was not going to keep this Council long, nor am I, but I will now deal with my second point, that is, what should be the nature of this action we should take? Now, we are always hearing sneering comments about committees, and really they accomplish nothing, and they talk a lot and they take a long time to report, and then their recommendations are stale before they have been presented to the people; but we feel, Sir, that what is necessary is to have representatives—men and women—on a committee which would be able to keep their fingers on the pulse of the cost of living problems of this country, and first of all to investigate those problems by taking evidence and by issuing a report. The report, I suggest, Sir, should be issued before the end of this year. Now, the reason I put emphasis on the time factor is this. When a committee was appointed in 1949—or 1950—it took over two years to report, and at the end of that time, of course, most of the committee members had resigned, new members had been put on the committee and, although it brought distinction in the nature of my hon. friend, the Member for Finance, who was chairman, it did not seem to cut much ice with the gentlemen on the other side of the Council; but possibly now my hon. friend, in this high position he holds, will be able to see the error of his ways and help us in this small request that we are making.

Now, Sir, I have divided the Motion into four parts, as it were. I have asked that an inquiry should be made into the cost of locally produced foodstuffs—that is, of course, specially foodstuffs grown in Kenya Colony. Now, number two—into public transport, which bears a very big part in the cost of living of people who live in towns. Number three—housing, and number four—any other matter which the committee may think appertains to the problem.

Now, I should like to see personally this committee nominated by representative organizations in this country, so that we could get on the committee people who are really interested. I know there is an amendment coming on later to suggest that the committee should be composed of Members of this Council. While my seconds all are inclined to accept that amendment, with perhaps slight re-

adjustments, I would point out the danger of confining it only to Members of this Council, because the people are already—most of them—grossly over-worked. (Hear, hear.) Certainly my hon. friends on the other side of the Council are: it will be a point as to whether they will be able to devote sufficient time to this very urgent problem: but, as I said, we are prepared to listen to the reasons given when the amendment is proposed, and to give the amendment every consideration.

Sir, there is no need for me to go into any details, so I formally propose the Motion.

MR. SHERIFF ABDULLAH SALIM (Arab Representative): I beg to second the Motion and reserve my right to speak later.

MR. USHER (Mombasa): Mr. Speaker, Sir, I hope I shall emulate the hon. Mover of this Motion, both in moderation and in brevity. (Hear, hear.)

There are certain differences of opinion between us in these matters and, as he has indicated, I shall be moving an amendment.

The business of this Council has been punctuated at almost regular intervals over the last few years by debates on the cost of living, either overtly from Motions upon the cost of living or most particularly, of course, upon the cost of living allowances that are paid. The character of those debates has perhaps tended to exacerbate the controversy that exists on certain matters. The consumer has concentrated, I think, perhaps rather upon one aspect of the cost of living problem to the exclusion of others of equal, if not greater, importance. The producer has perhaps caused some irritation to people who are hard up by assuring them how very cheap it is to live in Kenya, and what a sacrifice he is making to enable them to enjoy such a cheap rate of living. (Laughter.)

MR. BLUNDELL: Hear, hear.

MR. USHER: The Government, of course, has maintained its Olympian attitude of impeccability, and has said how deeply it is concerned with the sufferings of those who suffer. Those words were very welcome when they came, but I felt them to be, though sweet and clear, "like the horns of Eiland, faintly blowing"—very faintly. (Laughter.)

[Mr. Usher]

Now, Sir, may I turn to the amendment which I propose to the Motion? I will read. The amendment is to omit all words after "and" and to substitute the following: "a committee consisting of not more than three official members and three unofficial members, with an independent chairman, to investigate and take evidence from all sections of the community on the cost of the means of production of locally produced foodstuffs, locally manufactured and imported clothing, household necessities, building materials and transport vehicles and spares, in so far as they are within the control of the Government of the Colony, and to make recommendations for reducing the end price to consumers, having special regard to the efficiency of production and distribution of these commodities".

Sir, it is not very easy to understand immediately an amendment of this nature; I will try fairly and briefly, to put the points of difference between the Motion and the amendment.

First of all, there is the composition of the committee. I heard with interest what the hon. Mover said, and I agreed with some of it, but there is a feeling among some Members on this side of the Council that this committee is more like a round table conference than a committee which is to judge. I am putting the point that the institutions which he suggested should be represented are the institutions which really should be giving evidence. Now, there is another point about the constitution of the committee. I think the hon. Mover has not understood that it was not intended this should be a Select Committee. Some of us thought of a Select Committee at one time, but that thought was abandoned. There is no intention that the committee should be composed of Members of this Council. They need not, of course, necessarily be excluded.

Now, Sir, the second point of difference is in regard to production costs. A great deal has been said about the cost to the producer of the implements and instruments and plant, and so on, which enable him to produce his crops or his beasts. We feel, Sir, that the most profitable inquiry could be made into the cost of those things.

The third point is that my hon. friend, the Member for the Coast has included

a general review of the housing and transportation position. I feel, Sir, that such a review would not be altogether profitable, because you have such a diversity of conditions throughout the Colony and Protectorate in these matters. Therefore, I thought it better that we should press for an examination of the cost of building materials and of private transportation. Therefore, we have used the words "vehicles and their spares". The other public transport and housing problems must, of course, continue. They are, most suitably, I may suggest, reviewed and planned for by the local authorities.

The last point of difference appears to be the date of reporting.

Of course, to limit the time would be most desirable, but I do not myself think we should give a date; I do not think the committee would be able to accomplish its task in the time suggested by the hon. Mover. It would have to take into consideration certain reports, some of them laid, some of them not yet available, and in regard to those not yet available—I refer particularly, of course, to the Jbbetson Report and may I, Sir, take this opportunity of inquiring why the publication of this report has been so long delayed? It is of the deepest interest to this country. (Hear, hear.)

Now, Sir, I think I need say very little more, the position so far as concerns many of the consumers has deteriorated since this subject was last debated. Although I am quite aware that theoretically, if the Government has accepted a policy of inflation, theoretically, wages and salaries should be allowed to chase prices. In point of fact they do not. They do not, and there is distress.

Sir, I beg to move my amendment.

MR. HARRIS: Sir, I beg to second the amendment, and in doing so, would merely emphasize the remarks made by the hon. Mover.

THE MEMBER FOR FINANCE: Mr. Speaker, if I may suggest, to clarify a point, Government would like to be perfectly certain what the Mover of the amendment means by make recommendations, make recommendations to whom, to Government or to this Council. It is not quite clear in the amendment.

Mr. UZIZIA: To the Government, Sir, I am not sure whether those words ought to be inserted.

I thought they were implied.

Mr. HARRIS: I would like to emphasize what the Mover of this amendment has said. It is a favourite remark of the economist nowadays, particularly the Kenya economist, to say that we have imported inflation, and therefore, there is little we can do about it. We have, of course, imported a certain amount of inflation, Sir, but like most imports I feel that other things begin to happen as soon as the imported article arrives in this country. I believe there are a great many small things which we can do to stem the cost of living at the present time, which in aggregate would make a considerable difference to the ordinary person living in the towns.

We have reached the serious position where during the last three months, until other matters preoccupied us where we were getting to a state where everybody was blaming everybody else for the rising cost of living, but no one ever blamed himself. The position arose where the townsmen were blaming the agriculturalists and agriculturalists replied with charges of profiteering of tractors, petrol, oil and other items that they use, and even, Sir, in some cases, one group of agriculturalists who were growing stock, were blaming other groups of agriculturalists who were growing grain. The word profiteering was even being bandied about in those circumstances.

Now, in a small way, on the question of tractors, action has been taken. With your permission I would just quote two things that have happened on tractors which may be a line of inquiry which this committee, if set up, might take with other items. It has been found, Sir, by discussion between farmers and the tractor importers, and implement manufacturers and importers, that one of the reasons why tractors are higher than need be, is because the trade importers have found it impossible, without the support of the farming community to get regular, standardized terms for credit. The result has been, Sir, that even the cash price of a tractor has been increased in order to take care of irregular credits.

Now, Sir, as we have several agriculturalists in the Council, I would like to

explain very briefly if a man says he wants to pay for a tractor over two years, he gets a form of hire purchase and pays the required amount of interest. But if, Sir, he says he is going to pay on the 10th of next month, he gets what is called a cash price. The seller, in fact, is adding a little bit on because his experience is that the 10th of next month means the 10th of some month—perhaps 24 months hence. With the support of farming community to regularize credit for agriculture implements, I have it on good authority, it may be possible to reduce the price of tractors.

Another small thing, Sir, which has been shown is that a complete recosting of tractor spares, between what they call fast-moving spares and slow-moving spares, will effect saving in cost of production to the agriculturalist.

Now, Sir, I am sorry to have bored this Council with those two examples. But I feel if, on the small item of tractors, savings can be made, when we consider all the items covered by this amendment, the saving might be very considerable in the aggregate.

Finally, Sir, I believe that the committee suggested in this amendment is probably the best way of achieving the end which we want to achieve. The hon. Mover did not mention particularly the final words of this amendment, which called for a particular stress to be laid on the efficiency of the production and distribution. I think, Sir, if one thing came out of the original cost of living inquiry which set in 1948, it was that there was scope for a reduction in costs, providing efficiency was ensured. (Hear, hear.)

Lastly, Sir, it is my belief that even if the savings effected, or recommendations for savings, effected by this committee are very small, I believe the good that an impartial committee could do in this country to allay the suspicion and bad feelings that are growing up between certain sections in the community—in that alone I think this committee would be justified.

Therefore, I beg to second the amendment.

Mr. COOKE: To expedite this debate, I and my seconder are prepared to withdraw the original Motion and to accept the amendment provided. There can be

[Mr. Cooke] an amendment moved to this amendment when it becomes a substantive Motion, as I presume there will be.

The SPEAKER: The matter has reached the stage in which this is open to debate and we could not very well—if you were to rise as you are entitled to, and put an amendment and say what you are prepared to do and can get leave of Council to do so, well and good.

Mr. PATEL (Eastern Area): I rise to support the amendment moved by the hon. Member for Mombasa. In fact, I am in entire agreement with the necessity of a committee of this nature for the purpose of making inquiries because it reflects the general opinion of all sections of the population in this country, but I have a small amendment to move to the amendment to this effect—that the word "three" before the "official members" should be substituted by "two", and the word "three" before the "unofficial members" should be substituted by "four". That means, Mr. Speaker, that a committee will consist of two official members and four unofficial members with an independent chairman.

Mr. Speaker, I beg to move this amendment because it is more in keeping with the constitution of this Legislative Council. The unofficial members should be more in number than the official members. Secondly, Mr. Speaker, on a committee like this, it is necessary that all sections of this Council should be fully represented and it will make it easier to form a committee if we have four unofficial members—who form part of the committee that will be appointed.

For these reasons, Mr. Speaker, I beg to move my amendment.

Mr. BLUNDELL: Mr. Speaker, may I rise on a point of explanation. I understand from something the hon. Member for Mombasa said, it was not his intention to draw the committee from members of this Council. I think the hon. Mr. Patel seems to think that is going to be done.

Mr. PATEL: Mr. Speaker, whether the Members of this Council are appointed on this committee or not, even then my argument stands good.

The MEMBER FOR FINANCE: Mr. Speaker, rising on a point of order, Sir,

surely the amendment that is before us now says "three official members".

The SPEAKER: It has not yet been seconded.

Mr. NATHOO (West): They were speaking in between; otherwise it is my intention to second the amendment to the amendment, reserving the right to speak at a later stage.

The MEMBER FOR FINANCE: Mr. Speaker, speaking to the amendment to the amendment, on behalf of the Government, if the original Motion with the original amendment are carried by the Council, the Government would, of course, have no objection to the amendment moved by the hon. Member Mr. Patel. We could not, of course, quite agree with some of the arguments he has put forward, because the proportions of this Council are, of course, by no means two to four. The proportion of four to three would be far more in line with the proportions of this Council. We do, Sir, of course, realize that one of the difficulties which faces hon. Members on the opposite side is that every race should be represented on this committee. Furthermore, strange as it may seem to some hon. Members opposite, the Government does not recognize any difference between their side of the Council and our side of the Council in any attempt to do anything that will alleviate this problem. It may be, Sir, that we differ from our point of view as to what can be done. That is because, Sir, we have a general responsibility to all sections of the community and responsibility for good government and the economic and financial development of this Colony.

Mr. COOKE: Have we not?

The MEMBER FOR FINANCE: That is, Sir, why we recognize that there is no difference. Strange as it may seem to the hon. Member for the Coast, who has just interjected, "Have we not?" it is the recognition that they too have this responsibility that makes Government accept this amendment to the amendment if the original amendment is accepted. (Laughter.)

The SPEAKER: The substantive Motion—not more than three official members and three unofficial members—is proposed to leave out "three" and put in "two"; and to leave out the second "three" and put in "four".

The question that the words proposed to be left out stand part of the question was put and negatived.

The question that the word "four" be inserted in the fourth line and the word "two" in the second line was put and carried.

**THE MEMBER FOR FINANCE:** May I ask for a clarification, because there does seem to be some confusion in the minds of some hon. Members opposite. Does the description "official members and unofficial members" in the amendment mean Members of the Council or members of the committee? I think that must to some extent—

**MR. UJIRI (Mombasa):** Members of the committee, Sir.

**THE SECRETARY TO THE TREASURY:** Could I ask, on a point of explanation, if that is the case, could I ask what the significance of the word "independent" as applied to the Chairman is? Surely, he must be either one or the other.

**MR. COOKE:** He might be a retired Government official and in that case be both.

**MR. GIKOMBO (African Representative):** Mr. Speaker, I rise to support the Motion as amended. My reason in doing so, Sir, is that it is very well known that the section of the community which is most hard hit by the cost of living is the African community and, although the public does not hear much about Africans complaining, it does not mean that Africans are contented with their lot. I do know that Africans in this Colony are living under very hard conditions as a result of the high rise of prices. I do feel, Sir, that when this committee is appointed, it should go into all aspects of life, particularly as it affects the Africans. We have been told in this Council that 65 per cent of the crimes in this Colony is perpetrated in Nairobi and that alone is an indication to show that Africans, particularly in Nairobi, are living under very hard conditions. Mr. Speaker, I want to add that when this committee is appointed, African representatives should be included in the committee.

I beg to support. (Applause.)

**MR. COOKE (African Representative):** Mr. Speaker, I rise to support the Motion because I feel that if the cost of living is

inquired into and certain changes are made, we shall have employed some of the positive methods which will deal with the unrest and with the difficulties that do not allow us to rest nowadays.

I maintain, Sir, that there is unemployment in the country. I support my belief by an example. A month ago, when the Commissioner of Police asked for recruitment into the police force, so many Africans in the vicinity of Nairobi and in Nairobi itself went for recruitment. They were about 500—out of that only 70 were taken.

Again, another example is the findings of a committee in Mombasa recently. That committee found that there were about 400 unemployed Africans in Mombasa. Those workless people are not working just because there is no work in the country, but just because the wages that are paid them cannot maintain their living. Therefore, Sir, I support the Motion.

At the same time, taking the years—the "nineteen thirties"—during that time the price of foodstuffs were very low. Taking some few things which I know of—the price of maize at that time was Sh. 6 to Sh. 8 per bag, and the price of meat was about 25 cents a pound. To-day, the price of maize is about six to eight times what it was, particularly if I take the proportion—the price of *posho* during those years was Sh. 6. Now it is Sh. 52. The price of meat to-day is about Sh. 1 or more than that in African areas leaving what happens in towns. So, Sir, I feel that something radical should be done because the wages of the workers have not risen accordingly. Therefore, I suggest that the wages of the workers should be doubled. I am not unreasonable in suggesting that, because Government would also be unreasonable if that is so, because they have raised up the prices of essential foodstuffs six times, whereas the wages of the labourers have not been raised accordingly.

Taking again the "nineteen thirties", we find that in places like Nairobi there was no public transport like we have to-day, and therefore the African worker did not need to go into the buses, whereas to-day, the African worker needs it quite a lot, because after work, when he is tired, and seeing a bus passing near him while he is walking, he is tempted to try to get into it.

Mr. Odede]

Our towns, such as Nairobi, are growing to such an extent that the African workers live very far from the centres where they work. During the "nineteen thirties" the population of Nairobi was still concentrated in one centre, so it was not difficult for the workers to get to where they wanted or to get to their homes.

So, looking at all these conditions, it is really important that something should be done to alleviate all the difficulties.

Sir, I beg to support.

**THE LABOUR COMMISSIONER:** Mr. Speaker, I would like to make one or two points and refer particularly to the remarks made by my hon. friend Mr. Gikonyo on the matter of wages in relation to crime.

Now, Sir, I do not think he is being altogether fair. In my view, those who work rarely indulge in crime. I do not think there is any evidence to-day that those Africans, or those persons, on the minimum wage particularly, are indulging in crime.

**MR. COOKE:** What about the clerks?

**THE LABOUR COMMISSIONER:** It is my contention, Sir, that it is not so much the man on the minimum wage who is indulging in petty thieving and that sort of thing, it is the person who is out of work, and very often he is out of work because he will not work. It is not because there are low wages, necessarily, that persons go out and steal in order to augment what they consider to be a low wage.

**MR. ODEDE:** On a point of explanation, Sir, I think it is true that it is due to low wages, to a certain extent, that there is crime; the reason is that people find that they cannot work for the low wages, and they leave the work to stay idle; and as such, they can easily be involved in robbery and burglary.

**THE LABOUR COMMISSIONER:** While admitting a certain truth in what the hon. Member says, I still maintain there is no evidence that they leave permanent employment because they find that permanent employment pays them so little and that the dividends paid by crime are better. I think we have a type of person in this Colony, in urban areas

particularly, who prefers not to work regularly, even for a low wage, and prefers to indulge in thieving and that sort of thing.

My hon. friend, Mr. Odede, said that the case of 500 persons applying for a post in the police department is an indication of the widespread nature of unemployment in the Colony. There is no evidence that those persons were not employed somewhere else at the time. He will contend that they were employed at such a low rate of wages that they found the police work more attractive. I also contend that there is no African in this Colony who is doing a good job of work, who, if he wishes to go to his employer for extra pay, does not, in fact, often get it. Our experience is that where the worker is working satisfactorily and working well, his demands are met, and are met very readily. I think, in my view, that the unrest which we have to-day is largely among those persons who have not whole-time employment.

I do not know whether there are any other points I have missed which Mr. Gikonyo or Mr. Odede made. There is one more thing I should like to stress, that is in regard to the minimum wage in this Colony. The minimum wage has kept pace with the rise of all commodities. In the past six years, I think I am right in saying, the minimum wage has doubled over this period. It may be quoted that the price of *posho* has risen five or six times, but that has been taken into consideration. In many other parts of the country, particularly in agricultural areas, the question of rise in prices of foodstuffs does not affect the situation because, in nearly every case, food is supplied. And as regards clothing, again the Minimum Wage Legislation takes care of the increase in prices of clothing. And, of course, the same thing can be said of houses, so that I do not think it is fair to say that Government has not taken into consideration the rises of prices in commodities in the past few years where the African worker is concerned.

Sir, I beg to oppose.

**MR. SLADE (Aberdare):** Mr. Speaker, I rise to support this Motion, and in doing so, I only wish to emphasize one point. The hon. Member for Nairobi South, has mentioned, quite rightly, the mischief of what he termed, "irregular

[Mr. Slade] credit" will regard to the cost of tractors and spares. This mischief, Sir, is of much wider extent. It is, I believe, one of the major factors in the cost of living in respect of almost all ordinary requirements of consumers. Throughout this Colony there is a tendency for people to expect protracted credit for practically everything they buy, and an even worse tendency of taking protracted credit when they have led the vendor to believe that payment would be made in a short time.

Now, the evil that arises from that is not only that it drives to frustration, sometimes even to ruin, some of our valuable small shopkeepers, garage proprietors, transport contractors and others who cannot carry credit because they have not got enough capital, but it does, as the hon. Member for Nairobi South said, necessitate higher prices in order to allow for interest on capital which is borrowed, and even worse than that, it leads those who are buying into a habit of living beyond their means; because, people who live on credit are people who do not count the cost of what they are buying until they find themselves in deep water, and when they find themselves in deep water, too often, instead of blaming themselves for having lived on credit for so long, they blame the cost of what they have been buying, which, had they been counting the cost and their incomes, they would never have bought at all.

I do not want to labour this point, Mr. Speaker, but it is an unfortunate thing—an extraordinary thing—how many people, perfectly honest and responsible in other ways, except, of course, cheating customs duty or public utility services—(Laughter)—are completely blind as to the dishonesty of protracted delay in payment of their debts; of pretending that they will pay soon, when they have no intention, or no capacity, to do so. It seems to me that the terms of reference of the proposed committee will cover that aspect in the broad phrase of "end cost to consumers", and if they are going to do so, for that purpose alone the appointment of the committee will be well worth while, if they can devise some method of bringing light into this corner of blindness.

THE SPEAKER: As there appears to be no objection to the amendment as far as I can gather, I propose to put the question, and get the Motion into substantive form in order that anyone who wants may speak to it.

It is proposed to leave out all the words after "appoint".

The question that the words proposed to be left out stand part of the Motion was put and negatived.

The question that the words proposed to be inserted in the Motion: "A committee consisting of not more than two official members and four unofficial members with an independent chairman to investigate and take evidence from all sections of the community on the costs of the means of production of locally produced foodstuffs, locally manufactured and imported clothing, household necessities, building materials and transport vehicles and spares in so far as they are within the control of the Government of the Colony, and to make recommendations to the Government for reducing the end price to consumers, having special regard to the efficiency of production and distribution of these commodities" was put and carried.

The Motion is now before Council for debate.

THE SECRETARY TO THE TREASURY: Mr. Speaker, at this stage I do not rise to oppose the Motion, but, on the other hand, I do not say at the moment I can support it. I would like, however, Sir, to try and elucidate from the hon. Member and from hon. Members opposite, who have spoken, what their objective really is.

I think, Sir, more than one hon. Member has referred to previous speeches as being commendably brief; brief indeed they were, Sir, some of them so brief that I, for one, found some difficulty in trying to understand what hon. Members expected this committee to do.

Now, I could not help, Sir, getting the impression, perhaps wrongly, that some speakers regard this as a local problem. It is not, of course, I also, Sir, got the impression, it may be wrongly, that the Government has done, or is doing, very little to try to control the rise in the cost of living. I would submit, Sir, that the Government also has a finger which, in my opinion, is kept well on the pulse.

[The Secretary to the Treasury]

We are, Sir, talking, I think about some suggested method of reducing the cost of living. Generally, Sir, the rise in the cost of living is due to rises in the prices of food; of clothing; of transport, in which I include petrol, and of housing. Now, food and clothing may be divided generally and broadly into two classes, that food or clothing which is imported, and that which is locally produced. Now, what control have we got on the prices of these commodities? With regard to imported food or clothing or any imported article, for that matter, we have no control over the landed cost; if we do not want the goods at the price offered, then we do not get them. All we can do is to see that, as far as goods which are essential and in short supply are concerned, that retail and wholesale margins are kept within reasonable bounds. Now, Sir, we have, in order to try and achieve this, a price controller with a price control department. I saw a look of horror—

MR. COOKE: Same old story.

MR. USHER: Sir, I rise merely on a point of order, to inquire who has the right of reply in this debate, because somebody may have to be taking notes.

THE SPEAKER: There is no right of reply on an amendment, the question of the amendment has been put. What we have now, is the Motion, as amended; it has been re-proposed. Presumably you can all speak again to it when the opportunity arises.

MR. USHER: You will, of course, appreciate the fact that the hon. Member who is now speaking is asking questions, and somebody ought to answer them. (Laughter.)

THE SPEAKER: I will assure the hon. Member that, if he wishes, he can have an opportunity.

MR. COOKE: May I ask if I will have an opportunity. I do not quite know how it stands at the moment. The hon. gentleman on the opposite side is making a lot of misstatements.

THE SPEAKER: You will.

THE SECRETARY TO THE TREASURY: May I continue, Sir?

THE SPEAKER: Certainly. You gave way, I did not stop you. (Laughter.)

THE SECRETARY TO THE TREASURY: I must try and correct my misstatements. I noticed a look of horror on the face of one hon. Member opposite when I said the price controller and his department. I think he said "same old story". I was going on to say that the price controller is advised by an advisory committee, which consists of representatives of trade and commerce; there is a representative of the East African Women's League on the committee; there is a representative of the Civil Servants' Association; and the advisory committee is invariably consulted on any matters other than ordinary routine price control matters. If the advisory committee are not in support of the price controller, he is administratively bound to refer the matter to the Member to whom he is responsible—that is, the Member for Finance. There is, Sir, unofficial representation and consultation at the very level it ought to be.

With regard to locally produced foodstuffs, I get the impression from the Motion which is now before us that we are considering merely the cost of the means of production of locally produced foodstuffs, which I take to cover the cost of imported articles with which I have already dealt, or with wages. Is this committee going to deal with wage responsibilities, because, of course, that is a factor which enters largely into the cost of the means of the production of locally produced foodstuffs?

—Apart from these matters, Sir, there are one or two other ways of reducing the cost of living. We have had so many debates on this matter in this Council that I can hardly remember a time or a session when we have not had one. There is, of course, the question of subsidies. I did refer to this matter at some length during the previous debates.

THE SPEAKER: I would point out to the hon. Members that the Motion proposed is the setting up of a committee to investigate and take evidence, and so forth, on costs. There is no recommendation here for them to inquire into subsidies—no direct invitation for them, so far as I can understand these terms of reference. If you are going to introduce into the debate the question of subsidies, then, of course, you will extend the scope of this debate tremendously.

**THE MEMBER FOR FINANCE:** Mr. Speaker, on a point of order, the terms the committee are being given are so extremely wide—indeed, surely the words “and to make recommendations for reducing the end price to consumers” have left the committee with unlimited scope. Were, Sir, it confined—

**THE SPEAKER:** It is to make recommendations on the basis of evidence obtained as to costs, with great respect, “to take evidence on the cost of the various articles, and then to make recommendations for reducing the end price”.

**THE MEMBER FOR FINANCE:** As long, Sir, as the Mover of the amendment is prepared to say that it is what is intended, then we shall be only too glad, Sir, to have the reference ruled out of order by yourself.

**THE SPEAKER:** Then we could go on amending this Motion until Members thoroughly understand what it is about. (Laughter.) But as I read it, I still maintain if you have to take evidence upon costs, that must limit your recommendations.

**MR. COOKE:** Mr. Speaker, I suggest, Sir, the question before the Council is as to whether a committee should be established or not—that is the question. (Cries of “No!”) Our point of view, Sir—I am not making a speech—is this—(Laughter)—what is amusing about it? Our point of view is this: that Government is doing work so badly we need a committee to do it. That is the whole point—we are trying to make on this side of the Council.

**THE SPEAKER:** Does the hon. Member intend by what was his Motion that the question of subsidies of food prices should be considered by this committee?

**MR. COOKE:** Well, I personally thought they should consider everything relative to prices of foodstuffs, personally. I do not know what the Member moving the amendment means.

**THE SPEAKER:** You had better move another amendment. As I see it, you have not covered that point. That is why I interrupted the hon. Secretary to the Treasury. Please continue.

**THE SECRETARY TO THE TREASURY:** Thank you for your ruling, I thought—I personally was rather vague as to the intentions behind the Motion, and the

intentions of what the proposed committee should do; that is why I mentioned this point.

**THE SPEAKER:** Please do not keep reading into it something that is not there.

**THE SECRETARY TO THE TREASURY:** Well, Sir, if that is the case, I have little more to say. The committee under the terms of the Motion would seem to be empowered to deal, as far as I can understand it, only with wholesale and retail margins of imported goods and possibly with wages policies. If that is so, Sir, I submit that from the evidence I have had so far, that although I do not think it can do any harm, it is not really very necessary.

**MR. AWORI:** Mr. Speaker, I beg to support the present Motion as amended.

At first, when the Motion came up, I did not like the way it had been worded. From the first, when the hon. Mover was specifying the members of the committee, I thought the African Members were not concerned, or they had not been taken into account the membership of the committee. However, as the amendment has been accepted, I support it. I think we all agree, Sir, that everybody in this country is hard hit, due to the high cost of living. However, the African in particular is the worst hit, because of the low wage he is earning.

Now, Sir, I might reply to what the hon. Labour Commissioner said about the minimum wages. He made a statement that the wages have been proportionate to the present cost of living. I do not think that is right, because I feel that an ordinary African labourer who earns, say—

**THE SPEAKER:** I do not understand how Members can continue now to debate questions about wages at large and in general on a Motion of this character, which is proposing the appointment of a committee with certain limited terms of reference. Certainly, wages enter into costs, but the sociological aspect of high wages or low wages in general do not affect this Motion.

**MR. AWORI:** Thank you, Mr. Speaker. I might reply to what the hon. Secretary to the Treasury told us to the effect that Government is not able to control such goods. Now, I feel, on the other hand

(Mr. Awori) particularly with regard to the commodities that are required by the African, I would help a great deal if, say, *Lawsonia*, or clothing that the African uses daily, could be imported from countries like Japan, where the price is cheaper. I think Government would be doing a lot to decrease the cost of living in that way. It is not difficult, as a Member of Government, to put it down. I feel it is high time this committee was brought up and the Mover has got our congratulations for having brought up this Motion, because we feel it will be able to help to alleviate at least the sufferings of most of the people.

Now, Sir, one thing I am afraid that perhaps if we establish this committee it might take six months, or a year, before we have the report, after which, by the time they give their report there will be great changes in the country—the cost of living might have gone up and perhaps it might be difficult to implement those recommendations. I think it would be a good thing if, after setting up the committee and its terms, it will go into action according to what the Member for the Coast has said in his Motion, and we will have recommendations by the end of the year.

Sir, I beg to support.

**THE MEMBER FOR FINANCE:** Mr. Speaker, let me first of all, say, on behalf of the Government, that with a certain amount of uneasy feeling, for we are, I must admit, not convinced that this committee will be able to make any practical advance of any major value—the Government is, nevertheless, prepared to accept this amendment. It is, however, Sir, strange to hear, for instance, the hon. Mr. Awori speaking about the effect of allowing low cost goods from Japan to come into this country in preference to importing from the United Kingdom. I do not know whether the hon. gentleman realizes that the currency stability of this East African territory rests entirely on the stability of sterling. (Hear, hear.) If indeed we, and the Commonwealth as a whole, were to open our gates to those goods from those countries where sterling is at a disadvantage it would not be very long before such a wave of inflation would hit this country that it would not be a

question of being unable to purchase goods at a little less price, it would, as anybody who has been through the horrors of inflation knows, be a question of inability to purchase goods at all. I think, Sir, that it is known to most hon. Members, but I feel that if the hon. Member is not aware of it—he must have his attention drawn to it.

From my own point of view, Sir, this debate comes at a very awkward time. In a week from now, Sir—

**MR. HAVELOCK:** That is the idea. (Laughter.)

**THE MEMBER FOR FINANCE:**—The Government will be presenting its Budget, and I do not propose, with all due respect, to be drawn into anticipation of a Budget speech. So, Sir, I would like to quote instead some very interesting and some very sound remarks on the points that have been raised by hon. Members opposite with regard to inflationary tendency.

The hon. Member for the Coast referred to inflation. Well, Sir, inflation—and I am quoting now from remarks made at the Association of Chambers of Commerce meeting at Kampala—inflation, which the hon. gentleman tended rather to brush aside, is in East Africa as indeed all over Africa, because of the great amount of development that is taking place in almost every one of the fields that are mentioned in this Resolution. In almost every one there is private capital being expended, there is public capital being expended, and the resources of the country in those particular fields have not kept pace with the rate of expansion of development. The Minister for Economic Affairs in South Africa, not so very long ago, Sir, said that inflation of this type is indeed a concomitant of development. I think that whatever this committee does, Sir, in dealing with these various points, it must be recognized that it cannot, unless this Council wishes, set the clock back on development. It is interesting to note, for instance, that whereas in this cost of living matter, foodstuffs in particular, which are referred to here in this wording—it is interesting to note that in the same group in Great Britain, since January—I am speaking from memory, but I think my figures are accurate—foodstuffs in Great Britain have gone up

[The Member for Finance] seven per cent in that same period, and that, despite the maintenance of a high level of subsidization. This committee, Sir, cannot deal with these matters in isolation.

We have again, in the terms of this committee's reference, the question of the cost of distribution. I am sure that hon. Members will be interested to know that the East African Co-operative Trading Society, which has gone into liquidation, that the directors of that firm placed one thing mainly as the cause of their failure to continue in business—the fact that 80 per cent of their turnover was in bread-and-butter lines, on which the price controller had not allowed them a sufficient margin of profit to keep in business.

Now, Sir, we have taken a non-profit making enterprise—something of which I speak from personal experience—the directors, with the exception of the one managing director, were unpaid, so that overheads there were kept at a comparatively low level. Yet they have had to go out of business, out of trade, because, on 80 per cent of the goods in which they traded, they could not make a profit. Now, Sir, that is not peculiar to them. As the Member for Finance and responsible for price control, I have investigated a large number of balance sheets in these very groups which this committee is dealing with, and I can assure the hon. Members opposite that, be they European or Asian grocers, there is a large number of grocery businesses in this country which are losing money and which are up for sale—which are up for sale—not at a price including goodwill, but at a price which is merely the value of stock and the lease of the premises.

Sir, I do not wish to prolong this debate, but I must refute the suggestion that has been made that Government does nothing about this and Government is incompetent. The Government is perfectly clear on the type of policy which could reduce inflation to-morrow. It would be a standstill on wages—and when I mention wages, I would remind my hon. friend, the Member for the Coast, that when he referred to what the hon. African Members said in the paper this morning about the cost of living,

they did not stress the cost of living, their plea was for a higher standard of wages—an entirely different matter, Sir. We could reduce our capital expenditure on development, we can tie it right down to the resources of the country; the local resources and no other resources. We can increase our taxation as a deflationary measure; we can restrict immigration with all its effects on expenditure in this country; we can ration people. All these are normal measures for dealing with inflation and could be brought into any one of these industries which are outlined in this recommendation at any time. But, I must warn the hon. Members opposite, and I know well enough that the hon. Member for Kiambu and the hon. Member, Mr. Nathoo, who had the pleasure of serving with me for two years on the Cost of Living Committee, I know that they will agree with me when I say that these measures could not be adopted, because in a developing country, you cannot adopt them.

One final word, Sir, this is personal. The hon. Member for the Coast has spoken and quite a number of Members have spoken, from time to time, about the length of time the Cost of Living Commission took to report. Sir, that committee held very many meetings and took, literally, shoals of evidence. It is doubtful if it could have done its work any quicker than it did, if it was to render a just and honest report, but right at the very moment when the committee had practically concluded its considerations, and I as chairman had sat down to write the draft report; I received a little note—I was down in Mombasa at the time—which said that devaluation had occurred. The report, Sir, was torn up and we had, indeed as far as I was concerned as chairman, to start all over again, because by one stroke of the pen the entire situation had altered and the matter had passed still further out of the control of the Government and the people of this territory. Nevertheless, Sir, in spite of everything I have said, believing that the hon. Members opposite are only too anxious to see this matter solved, as we are only too willing to see any evidence or any brain brought to bear upon it, if it can find a solution in anything that lies within the power of this Government to achieve, the Government will accept the amendment. (Applause.)

THE SPEAKER: I will ask the hon. Member to reply.

MR. COOKE: I am not going to be long but the longer I am a Member of the Council, the more I am impressed with the fact that the sooner this side of the Council takes over the government of this country the better. (Applause.) Time after time we bring up these Motions and we are met with complete deflection from the other side of the Council, both from the hon. Mr. Padley and the hon. Member for Finance. They try to overwhelm us by this economic jargon with which we are fully acquainted on this side of the Council.

Now, Sir, we do not say we can suggest a panacea for inflation—no one on this side of the Council has ever taken up that point of view. All we say is that we should, and could do better than we are doing, to regulate the prices in this country. That is not saying a man might have an object in view and because he cannot accomplish that absolute object he might be content with something less.

Now the hon. Mr. Padley said he did not know what the Motion suggested. Well, I suggest, Sir, he did not read the amendment, because it quite fully stated what the objects of this committee would be and also he has omitted primary foodstuffs when he summed up and that is going to be one of the matters that will be investigated by this committee in the Motion.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I would like some interpretation of that, Sir, because that is not as I read the terms of this Motion.

MR. COOKE: It was—in the final draft it was given to me.

THE MEMBER FOR FINANCE: On a point of order, Sir, I think the hon. Member for the Coast has not thoroughly understood the amendment. The amendment says—"on the cost of the means of production of locally produced foodstuffs", which I think is an entirely different matter.

THE SPEAKER: It is now Eleven o'clock—(Laughter)—I do not know why that should cause laughter, and we will suspend business for a quarter of an hour.

Council adjourned at Eleven o'clock a.m. and resumed at fifteen minutes past Eleven o'clock a.m.

MR. COOKE: Mr. Speaker, I do not want to labour this point I have just been making. It is highly controversial. I must say my reading of this, when you talk about the costs of means of production of locally produced foodstuffs, then you must bring in land, labour, capital, everything else. I leave it at that.

Now that Government has somewhat ungraciously accepted the Motion, they cannot go back on it.

THE MEMBER FOR FINANCE: On a point of order, Government accepted this on that interpretation and I would like to know from the Mover of that amendment whether, in fact, the interpretation as put forward now by the hon. Mover of the original Motion and not the Mover of the amendment that we have been dealing with, is acceptable.

MR. COOKE: No, the hon. gentleman will not catch me out that way. He is the repository of wisdom on the other side of Council; his interpretation must necessarily be the right one. I am a very humble Member of this side of Council. The hon. Member, with all the argument which he possesses and all the brilliant ability which is his, put that interpretation, and we must accept it. I would never dispute it with him.

MR. BLUNDELL: Mr. Speaker, I would like to ask the hon. Member to give way because I think the point which is under dispute is a most important one. Speaking for a great majority on this side of Council, I could not allow the dispute to proceed unless it is cleared up. Certainly I, personally, would not support this Motion if the interpretation of the Motion is such as put forward by the hon. Member for the Coast. I would have great support from this side, Sir.

THE SPEAKER: I have not yet followed what the hon. Member for the Coast's interpretation is.

MR. COOKE: I am too humble to put any interpretation on it.

THE SPEAKER: I placed an interpretation on it some time ago in the course of the hon. Member for Finance's speech, saying the Motion is limited to a committee to take evidence on costs, and I said that did not include the power to make recommendations to subsidize, and I wanted to see if any other amendment was to be moved to enlarge what I



[The Speaker]

thought was the scope of the Motion, before calling on the hon. Member to reply. He is replying now on the debate generally, I take it.

MR. COOKE: The hon. Member for Finance is so clever, no doubt his interpretation is the right one. It does not necessarily mean that I should accept it.

Now, Sir, I was very surprised to hear the Commissioner for Labour—he has just come in, actually—I am surprised to hear the Commissioner for Labour saying there is no evidence of crime amongst the employed persons. I think that is what he said. Surely there is very great evidence of crime amongst the clerk type. There has been a tremendous number of embezzlements and stealing of money amongst Government clerks, local native council clerks, and African clerks employed by commercial houses. That is only a small point. Perhaps it missed my hon. friend's survey of the matter.

Sir, I have nothing further to say except to thank Government for accepting the Motion. I think they might have done it a bit more graciously because it is a matter which we feel very strongly on this side of Council. However, I am grateful to my hon. friend for having accepted it.

The question was put and carried.

### MOTION

#### INTER-TERRITORIAL LIAISON COMMITTEE— COST OF LIVING ALLOWANCES

MR. HARRIS: Mr. Speaker, Sir, in moving what was the Motion in my name on the Order Paper, as there seems to be some doubt as to the interpretation of the English language in this Council this morning, with your permission, I would like to re-word that Motion to read as follows: "That Government should approach the Governments of Uganda and Tanganyika Territory to agree that the interterritorial liaison committee appointed under paragraph 25 of the Padley Report on Cost of Living Allowances, dated the 21st February, 1952, be empowered to make recommendations to the three Governments to achieve co-operation over cost of living allowances and the indices on which they are based in each of the territories."

I think, Sir, that is a clarification of the Motion, and in speaking to it, Sir, I think it is probably necessary to tell hon. Members exactly what has happened as a result of paragraph 25 of the Padley Report on Cost of Living Allowances.

The recommendation, Sir, was that there should be closer interterritorial liaison on this matter and some six weeks ago, a committee was hastily called and has had two sittings. That committee consists of an Official and an Unofficial Member of the Legislatures of the three territories, together with representatives of the self-contained services of the High Commission, with the Administrator of the High Commission in the Chair.

Now, so far, Sir, that committee has rather acted merely as one which translates an agreed formula which was accepted under the Padley Committee Report to the varying cost of living indices. At a meeting, six weeks ago, the committee were informed by the General Manager of East African Railways and Harbours that events in Mombasa had created a position where it was thought necessary that certain cost of living allowances should be increased. During discussion on that matter, Sir, it was evident that there was very little co-operation between the territories up to that date, and the General Manager stated, among other things, that an increase in wages in Mombasa might easily affect wages throughout the railway system. That view was reinforced by the view of the Postmaster General, who said that an increase in wages in any of the territories might very easily have the effect of increasing wages throughout the whole of the system of Posts and Telecommunications.

Now, Sir, at that same meeting, it was noted by the Kenya Government representative that the basis of the trouble in Mombasa, or one of the bases, of the trouble in Mombasa was an increase in the cost of living index on the 1st August, 1952, which affected employers in Mombasa, which again was having repercussions on the railway staff. The General Manager then made a point that that might easily affect wages in Uganda. The Uganda representative said that for completely different reasons they might find it necessary to increase wages in Uganda from the 1st October. It then became apparent that Tanganyika on a

[Mr. Harris]

was completely different line were also considering increasing African wages unrelated to the increases that had already taken place in Kenya.

Now, Sir, if the General Manager's argument is correct: an increase in Kenya automatically affects wages in Tanganyika and Uganda, it is fair to assume that the reverse is also true and unless there is co-ordination, it would be possible to have an increase throughout the territories at different times of the year, because each of the territories, individually, have chosen different times of the year to increase their minimum wages and have got statistics to bring their indices up to date.

That committee, Sir, at the present moment is merely there, as I have said, to translate the alteration in indices into actual wages. I feel, Sir, that the committee should be empowered to go far deeper into the matter, and the deliberations of the committee have already gone further but they have no power to go any further with any conclusions to which they may have come to.

For that reason, I beg to move in accordance with the Motion which I read earlier.

MR. USHER: Mr. Speaker, I beg to second, reserving my right to speak later.

THE MEMBER FOR FINANCE: I was endeavouring to see whether any other Member on the opposite side had anything to say. Sir, Government accepts the Motion as now before the Council: I think, Sir, that is all I need say.

MR. AWORI: I beg to oppose the Motion. I do not intend to say very much about it, but I feel so far Kenya is trying too much to interfere into the affairs of other territories. Tanganyika have only two forms of Civil Services, European and non-European Civil Services. In Kenya we have three types—European, Asian and African. I think this Motion will not be very favourable to the Africans in the other territories. It will mean that you would have a kind of mixed form of salary throughout the territories. I believe the Tanganyika Government usually pays more to the Africans.

THE MEMBER FOR FINANCE: Before the hon. Member goes further into this, I

would like, on one point, to correct him. Surely the hon. Member is well aware that in 1948, the time of the Home Salary Commission Report, this Government adopted not European, African and Asian scales but A, B and C scales. I think the hon. Members should make themselves responsible for accuracy in any statements they make in this Council.

MR. AWORI: I thank the hon. Member for his correction. I still oppose the Motion on that ground, because I feel it would not serve any good purpose if we address the various Governments. On the other hand, we do not know what the Unofficial Members on the Councils of Tanganyika or Uganda will say. Perhaps it would have been better, during the Unofficial Members' meetings of the territories' Councils, if we had their views before we report this matter to them.

Sir, I beg to oppose.

THE SECRETARY TO THE TREASURY: Mr. Speaker, I think the Member for African Interests, who spoke just now, is under a certain misapprehension in this matter. The Motion makes no reference whatever to salaries, it refers to interterritorial co-operation with regard to the award of cost of living allowance. The matter is entirely different, I would like to make that clear, Sir.

MR. HARRIS: Mr. Speaker, Sir, the hon. Secretary to the Treasury has already replied.

The question was put and carried.

### MOTION

#### CUSTOMS DUTIES ON FOODSTUFFS (PROVISIONAL EXEMPTION) ORDINANCE, 1946—(Continuation of)

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move—

BE IT RESOLVED that the Customs Duties on Foodstuffs (Provisional Exemption) Ordinance, 1946, shall remain in force until the 31st day of December, 1952.

Sir, this is a formal Motion which it has been my duty to move for the last four years. This Ordinance is one which expires annually unless it is renewed by a Resolution of this Council.

I beg to move.

THE MEMBER FOR FINANCE seconded. The question was put and carried.

## MOTION

## ADDITION OF THIRD SCHEDULE OF EAST AFRICA (HIGH COMMISSION) ORDERS IN COUNCIL 1947 AND 1951

THE MEMBER FOR COMMERCE AND INDUSTRY: Mr. Speaker, I beg to move:—

WHEREAS under the provisions of section 28 (1) (a) of the East Africa (High Commission) Orders in Council, 1947 and 1951, the High Commission may, with the advice and consent of the Central Legislative Assembly, make laws in respect of matters specified in the Third Schedule to the said Orders in Council; and

WHEREAS under the provisions of section 45 of the said Orders in Council the High Commission may, with the approval, signified by resolution, of the Legislative Councils of the territories, and with the consent of a Secretary of State, add to the list of subjects set out in the Third Schedule of the said Orders in Council; and

WHEREAS the High Commission is of the opinion that the subject of "Merchant Shipping" should be added to the said list of subjects;

NOW, THEREFORE, be it resolved that this Council approves amendment of the Third Schedule to the East Africa (High Commission) Orders in Council, 1947 and 1951, by the addition thereto of a new item (16) as follows:—  
"16. Merchant Shipping."

The matter under consideration is a Motion that merchant shipping should be added to the Schedule of matters dealt with by the High Commission under the Orders in Council of 1947 and 1951. This matter, Sir, was first raised at the second meeting of the High Commission on the 21st and 22nd of September, 1948, when it was submitted to the three Governments that existing legislation in the three territories, dealing with shipping, ocean-going shipping, should come under the High Commission for the following reasons.

There were certain differences in the registration requirements in the ports of Tanganyika and in those of Kenya. It was further submitted as relevant that inland water transport already came within the purview of the High Commission.

Again, it was further argued that, as already the existing Ordinances, in the case of Kenya, No. 221 of 1930, were, in fact, administered by the officers of the High Commission in the persons of the port managers at Dar es Salaam, Tanga and Mombasa, and it was felt that, as the growth of ocean transport continued, and the number of vessels registered in the East African ports increased, there should be a proper and suitable legal basis for the activities being carried out, and the anomalies arising out of slight differences in legislation should be removed.

The views put forward by the Commission for Transport were accepted by the High Commission. They were commended to the various Governments and Resolutions, similar to that standing in my name, have already been passed by the Legislative Councils of Uganda and of Tanganyika.

MR. BILNDELL: That is no reason.

THE MEMBER FOR COMMERCE AND INDUSTRY: I merely mentioned that, Sir, as a fact which I thought might be of interest. I was not advancing it as an argument. My arguments are the ones I have already advanced and the ones I propose to continue to advance, which are based upon the fact that this anomalous situation where Ordinances of slightly different import are administered already, and have been ever since the Railways Administration became responsible for the harbours in Eastern Africa, are administered by officers of the High Commission.

I do not feel it necessary to advance further arguments on this point; if any hon. Members wish to raise any points, I will do my best to answer them.

I beg to move.

THE MEMBER FOR FINANCE seconded.

The question was put and carried.

## ADJOURNMENT

THE SPEAKER: That completes the business on the Order Paper, and as there is nothing else to do Council will stand adjourned until to-morrow morning at 9.30 a.m.

Council rose at forty-five minutes past Twelve o'clock p.m.

Friday, 17th October, 1952

The Council met at forty minutes past five o'clock.

[Mr. Speaker in the Chair]

## PRAYERS

## PAPERS LAID

The following papers were laid on the Table:—

Supplementary Estimates of Expenditure, 1952 (No. 6 of 1952).

(BY THE MEMBER FOR FINANCE)

The report of the Select Committee on the Societies Bill.

(BY THE SOLICITOR GENERAL)

## REPORT OF BILL

THE MEMBER FOR AFRICAN AFFAIRS: I beg to report the Native Authorities (Amendment) Bill from Select Committee, with amendments.

## CONSIDERATION OF BILL

Mr. Speaker, I beg to move that the Native Authorities (Amendment) Bill be taken into consideration forthwith.

THE MEMBER FOR FINANCE seconded.

THE SPEAKER: You are reporting.

THE MEMBER FOR AFRICAN AFFAIRS: I am proposing that this report be taken into consideration under Standing Order No. 107.

The question was put and carried.

THE MEMBER FOR AFRICAN AFFAIRS: May I ask am I to move the Third Reading now, Sir?

THE SPEAKER: If there are no amendments—I must wait a moment to see.

## BILLS

## THIRD READING

The Native Authorities (Amendment) Bill

THE MEMBER FOR AFRICAN AFFAIRS: I beg to move that the Native Authorities (Amendment) Bill be now read a Third Time.

THE MEMBER FOR FINANCE seconded.

The question was put and carried, and the Bill was read a Third Time and passed accordingly.

## REPORT OF BILL

THE SOLICITOR GENERAL: I beg on behalf of the Member for Law and Order to report the Societies (Amendment) Bill from Select Committee, with amendments.

## CONSIDERATION OF BILL

THE SOLICITOR GENERAL: Mr. Speaker, I beg to move that the report on the Societies Bill be taken into consideration forthwith.

THE MEMBER FOR FINANCE seconded.

The question was put and carried.

## BILLS

## THIRD READING

The Societies Bill

THE SOLICITOR GENERAL: Mr. Speaker, Sir, I beg to move the Societies Bill be now read a Third Time.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

LADY SHAW: Mr. Speaker, there are a number of amendments as recommended by the Select Committee which, Sir, are of importance—some of them are of importance and others of less importance, and I think the hon. Solicitor General has details which should probably be taken.

MR. MATHIU: Mr. Speaker, I did not quite catch what my hon. friend, the gracious lady for Ukamba, said, but if I repeat her perhaps I will be excused. My point is that this report has just been laid now, and I think that hon. Members would have liked to look at the amendments proposed before the Third Reading at any rate, and I would suggest, Sir, the Third Reading be deferred until the Council meets on Tuesday.

THE SPEAKER: Will you then move that the debate on the Third Reading be adjourned?

MR. MATHIU: Mr. Speaker, I beg to move that the debate on the Third Reading of the Bill entitled "A Societies Bill" be adjourned.

MR. ODEDE seconded.

MR. HAVELOCK: Mr. Speaker, I have every sympathy with what has been moved, Sir, by the hon. Mr. Mathiu. As far as the European Members are concerned, we have been in consultation

[Mr. Havelock]

with our Members on the Select Committee, and we are satisfied with the recommendations which have been made by the Select Committee. Therefore we have no objection to taking it now.

THE MEMBER FOR FINANCE: Mr. Speaker, whilst of course the Government—if the hon. African Members feel deeply on this—will accept, of course, their adjournment—the adjournment of the debate, I think I am right in saying, Sir, that this report was a unanimous report—that all sections of the Council were represented on this Committee, and their report was unanimous. I do not know whether that makes any difference to the viewpoint of the hon. Members. I trust they will find it possible, in view of that, to reconsider and let us get the matter out of the way now. If, however, they feel very deeply on it, I can assure them that the Government will offer no opposition to this debate being adjourned till Tuesday next.

MR. GIKOVOY: Mr. Speaker, our Members have had no time to report to us. We have had no time to consult each other. Therefore I beg to support that the debate on the Third Reading be deferred until Tuesday.

MR. A. B. PATEL: Mr. Speaker, I personally agreed to the taking of the report and the Third Reading of the Bill, provided there was no controversy, because it was not on the Order Paper of to-day. In view of the fact that the African Members decided it should be adjourned, I am inclined to support that Motion for the adjournment, Sir.

The question that the debate be adjourned was put and carried.

THE SPEAKER: What day will you take the Third Reading of the debate?

THE MEMBER FOR FINANCE: I would suggest next Tuesday morning.

THE SPEAKER: It will be taken next Tuesday morning.

## BILLS

### SECOND READING

#### *The Exchange Control (Amendment) Bill*

THE MEMBER FOR FINANCE: I beg to move that the Exchange Control (Amendment) Bill be read a Second Time.

I do not propose, Sir, to delay the Council very long so far as the Second

Reading is concerned. The principle of exchange control, with all its necessary restrictions and inconveniences, has been accepted as part of the defence of sterling. The amending Bill now in front of us, Sir, does amendments in detail, which have proved to be necessary in view of the working of exchange control. I feel, Sir, that these are amendments in detail—that therefore it is wiser that I should answer any questions which hon. Members may have at the proper stage, which would be the Committee stage.

There is only one, I think, major principle involved, and that is the one which deals with the enabling of a court to impose on a body corporate a penalty unlimited in amount. That, I think, Sir, is a right and proper amendment because, whilst an individual may have his penalty limited, a rich corporation and a poor corporation should, I think, be dealt with according to the discretion of the court. It has been accepted before in other measures.

Sir, I beg to move.

THE SECRETARY TO THE TREASURY seconded.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

## COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read, Mr. Speaker left the Chair.

## IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]  
*The Exchange Control (Amendment) Bill*

THE MEMBER FOR FINANCE: Mr. Chairman, I beg to move that we report consideration to the Council of the Exchange Control (Amendment) Bill.

The question was put and carried.

Council resumed.

[Mr. Speaker in the Chair]

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Exchange Control (Amendment) Bill, and reports the Bill without amendment.

## BILLS

### THIRD READING

#### *The Exchange Control (Amendment) Bill*

THE MEMBER FOR FINANCE: Mr. Speaker, I beg to move that the Exchange Control (Amendment) Bill be now read a Third Time.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried, and the Bill read a Third Time and passed accordingly.

## BILLS

### SECOND READING

#### *The European Civil Service Provident Fund (Amendment) Bill*

THE SECRETARY TO THE TREASURY: Mr. Speaker I beg to move that the European Civil Service Provident Fund (Amendment) Bill be read a Second Time.

The object of this Bill and of a Bill which follows on the Order Paper this morning is to enable us to pay the sum of £352,000 into the general revenues of the Colony. (Applause.) A laudable object, if I may say so, Sir. I think the Memorandum of Objects and Reasons is perfectly clear. The Bill is quite a simple and formal one and I beg to move that it be read a Second Time.

MR. NEEP seconded.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

## COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read, Mr. Speaker left the Chair.

## IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]  
*The European Civil Service Provident Fund (Amendment) Bill*

THE MEMBER FOR FINANCE: I beg to move, Sir, that the Committee report consideration of the European Civil Service Provident Fund (Amendment) Bill.

The question was put and carried.

Council resumed.

[Mr. Speaker in the Chair]

## REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the European Civil Service Provident Fund (Amendment) Bill and reports the Bill without amendment.

## BILLS

### THIRD READING

#### *The European Civil Service Provident Fund (Amendment) Bill*

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move that the European Civil Service Provident Fund (Amendment) Bill be now read a Third Time.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried, and the Bill read a Third Time and passed accordingly.

## BILLS

### SECOND READING

#### *The Asian Civil Service Provident Fund (Amendment) Bill*

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move that the Asian Civil Service Provident Fund (Amendment) Bill be read a Second Time.

This Bill is exactly parallel with the provisions in regard to the European Civil Service Provident Fund (Amendment) Bill and needs no further explanation.

THE MEMBER FOR FINANCE seconded.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

## COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read.

Mr. Speaker left the Chair.

## IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]  
*The Asian Civil Service Provident Fund (Amendment) Bill*

THE MEMBER FOR FINANCE: Mr. Chairman, I beg to move that the Committee report consideration of the Asian Civil

[The Member for Finance] Service Provident Fund (Amendment) Bill.

The question was put and carried. Council resumed.

[Mr. Speaker in the Chair]

### REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Asian Civil Service Provident Fund (Amendment) Bill, and reports the Bill without amendment.

### BILLS

#### THIRD READING

*The Asian Civil Service Provident Fund (Amendment) Bill*

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move that the Asian Civil Service Provident Fund (Amendment) Bill be now read a Third Time.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

The question was put and carried and the Bill was read a Third Time and passed accordingly.

### BILLS

#### SECOND READING

*The Public Holidays (Amendment) Bill*

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that the Public Holidays (Amendment) Bill be read a second time.

This is a very short Bill, Sir, and the only section which I think requires any explanation is section 3 which seeks to insert a new section 3 in the existing Ordinance. The object is to make it possible to declare a public holiday in parts of the territory, which is not possible at the present time. The reason for the amendment is obvious. It is easy to imagine circumstances in which it is convenient to have a public holiday in Nairobi and not in Mombasa. The reason for this holiday might not exist in that place.

The other clauses of the Bill are formal, most of them drafting amendments and they are, I think, sufficiently explained in the Memorandum of Objects and Reasons.

Sir, I beg to move.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried. Ordered to be read a Second Time and committed to a Committee of the whole Council.

### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read, Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

*The Public Holidays (Amendment) Bill*

THE MEMBER FOR EDUCATION AND LABOUR: I beg to move that the Committee reports—consideration of the Bill. Council resumed.

[Mr. Speaker in the Chair]

### REPORTS

MR. NEEP: I beg to report that the Committee of the whole Council has considered the Public Holidays (Amendment) Bill and reports the Bill without amendment.

### BILLS

#### THIRD READING

*The Public Holidays (Amendment) Bill*

THE MEMBER FOR EDUCATION AND LABOUR: I beg to move that the Public Holidays (Amendment) Bill be now read a Third Time.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried and the Bill was read a Third Time and passed accordingly.

### BILLS

#### SECOND READING

*The Municipalities and Townships (Private Streets) (Amendment) Bill*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the Municipalities and Townships (Private Streets) (Amendment) Bill be now read a Second Time.

About 18 months ago, Sir, the principal Ordinance, which it is now sought to amend, was passed by this Council and

[The Member for Health, Lands and Local Government]

that Ordinance replaced the Townships Private Streets Ordinance that had been on the Statute Book for some 25 years. In the working of the Ordinance certain defects have been revealed which it is now sought to remedy, particularly with reference to the development of Government estates. The main object of the Ordinance, as it now stands on the Statute Book, is to provide that private streets, when they have been constructed and maintained to a standard required by the local authority, shall be taken over by the local authority and future maintenance shall be the responsibility of the local authority and the obligation of the ratepayers to provide the finance. It should be pointed out that the Ordinance applies only to private streets and not to public streets. The Bill before Council consists almost entirely of revised definitions with one or two consequential amendments. In a Bill of this kind it is important to be clear on my definitions, and you will notice that the definition of "private streets" is now put into the Bill, with the somewhat obvious description that a private street is an street that is not a public street. (Laughter.) It becomes then of importance to define what we mean by a public street, and without attempting to elucidate the definitions here, which are somewhat difficult to understand, particularly on a First Reading, the upshot of it all is that any street in a municipality or township that has not hitherto been made up to the requirements of the local authority, whether local authority funds have been spent on it or not, shall be a private street for the future. That means that the responsibility for bringing that road up to the required standard shall be the responsibility of the people who will benefit by it, and the cost shall not fall upon either the ratepayers in general or the taxpayers of the Colony in general. That, I think, is a fair proposition that can generally be accepted.

Now, difficulty has arisen in the development of Government estates, in that it is the usual practice of the Government when opening up a new area, either for residential or commercial purposes, to construct the road in the first instance to a light standard and to

call upon the purchasers of plots to pay their proportionate share of the cost of that construction. But, as the Ordinance was originally drafted, it meant that if at some future date the standard of that road was improved; there was no means of Government passing that cost to the people who would benefit, and the taxpayer in general would have to bear the burden. Now that is unfair. It seems quite inequitable that Government plot-holders should escape a liability that falls on all other plot-holders merely by reason of a defective definition, and so it is proposed to amend the definitions to make that quite clear.

Clause 3 is consequential and it requires a local authority to take over a road that has been made up to the local authority's specifications when that work has been accomplished, and it does not leave it now, under the new Bill, to the initiative of the plot-holders to demand that it shall be so taken over before the local authority makes a declaration. The local authority will now be required to make a declaration and, if they have in the past failed to do so, a road that has come up to their standards shall be deemed to be a public street. This will put the plot-holders entirely at ease since they have paid their share of the cost and a road has been made up. There is no doubt whatever that the local authority then must, whether it likes it or not, accept responsibility for further maintenance.

Mr. Speaker, I beg to move.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

The question was put and carried.

Ordered to be read a second time and committed to a Committee of the whole Council.

### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read, Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C. in the Chair]

*The Municipalities and Townships (Private Streets) (Amendment) Bill*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I

[The Member for Health, Lands and Local Government] beg to move that the Committee reports consideration of the Bill.

Council resumed.

[Mr. Speaker in the Chair]

### REPORTS

MR. NEEP: Mr. Speaker, I beg to report that the Committee of the whole Council has considered the Municipalities and Townships (Private Streets) (Amendment) Bill and reports the Bill without amendment.

### BILLS

#### THIRD READING

*The Municipalities and Townships (Private Streets) (Amendment) Bill.*

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the Municipalities and Townships (Private Streets) (Amendment) Bill be read a Third Time.

THE MEMBER FOR EDUCATION AND LABOUR seconded.

The Bill was read a Third Time and passed accordingly.

### BILLS

#### SECOND READING

*The Higher Education Loans Fund Bill*

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that the Higher Education Loans Fund Bill be read a Second Time.

The history of this Bill goes back to May, 1950, when the hon. Member for Rift Valley introduced a Motion into this Council in the following terms: "In the firm belief that it is necessary to provide better facilities for higher education for the youth of Kenya, this Council makes the following recommendation to Government that the sum of £100,000 be set aside as a self-reimbursing fund from which parents can borrow against security for the provision of fees and maintenance for their children when undergoing higher education where such facilities are available, from the year 1950 onwards".

This Motion was accepted by the Council, and as a result of it the Member for Finance appointed a small committee, the function of which was to

make proposals for the constitution and operation of the proposed fund. Mr. Blundell, the Member for Rift Valley, was chairman of that committee. As a result of the recommendation of the committee the Government agreed to make annual payments free of interest into the fund from the general revenues of the Colony. A board of management was appointed to administer the fund, consisting of representatives of all the main races, and applications for loans were, in due course, called for. Since 1950 the management board has been operating with a great deal of success, and a number of loans—I will give particulars of them later on—have been made. The Member for Rift Valley is chairman of the management board, and the hon. Member for Ukamba, the hon. Mr. Mathur, the hon. Mr. Nathoo and the Director of Education are members of the board, so that there are a number of people in this Council who have much more detailed knowledge of this matter than I have.

Nevertheless, I think it will be of interest to all Members of the Council, if I give, very shortly, some particulars of what the management board has been able to do so far. The total number of applications for loans which have been received in the last two years is 89, and of these a total of 51 have been approved; 35 loans have actually been made. The total sum paid out in loans now amounts to £6,200; the rate of interest charged was originally 3 per cent—the rate of interest charged to the person who gets the money was originally 3 per cent. It is now 4½ per cent, the reason being that the Government itself has to pay more for the money it borrows. The types of security accepted in the case of loans which have been made are personal guarantees and bonds 23; mortgages on property 9; insurance policies 3.

Now, experience during the last two years has shown that this arrangement certainly fulfils a very useful purpose and it enables a number of parents who would otherwise be unable to afford higher education for their children to do so. The fund is, of course, of particular value to people who have land or other capital assets, but have not enough ready cash.

The management board itself advised that it is desirable to give a legal and

[The Member for Education and Labour] secretary basis to the board and the functions which it performs and that is the object of this Bill. The Bill has of course been drafted in close collaboration with the management board. They have seen the draft and have agreed it.

Now, Sir, before I sit down, I would like to congratulate the Member for Rift Valley—unfortunately, he is not here—in bringing this thing to this stage. I was acquainted with it from the beginning, because I happened to be acting as Member for Education when he first conceived the idea and brought it to the notice of Government, and it is certainly very largely due to his imagination and drive that this arrangement has been brought into existence. (Applause.)

Sir, I beg to move.

MR. HAVELOCK: Mr. Speaker, I think it is right and proper that a Member from this side of the Council should second this Bill. In doing so, I would apologize for the Member for Rift Valley—who, of course, should be doing it—who is not able to be here to-day.

I am very happy to hear the compliments being paid to him by the hon. Member for Education and Labour, and I know that hon. Members on this side of the Council will also agree entirely with what the hon. Member has said in that connexion.

It is gratifying, Sir, that something is recognized from the other benches—that hon. Members on this side of the Council have sometimes a constructive approach and initiate constructive suggestions.

The other point—there is only one point I would like to raise on it. The Memorandum of Objects and Reasons of this Bill states that the fund, we hope, will reach the sum of at least £100,000 by time. I hope that time will not be too short. I myself am not usually one to ask for extra expenditure, but I really believe that this particular type of expenditure is an economy in itself. Of course, the moral aspect of putting the obligation for higher education on the parent, in spite of the fact that he is being helped with a sort of hire-purchase system on it, is I think, also, something that is very credit worthy, a principle which we should recognize and en-

courage, which is inherent in this particular Bill.

Sir, I know that the board have been working very hard at this and have had a great deal of success. I hope, though, that there may be a little more publicity now for this fund. There was quite a spurge of publicity—if I may use that word—when it was first started, but a number of people now in the country are in ignorance of the help that can be afforded to them in this scheme, and I hope Government will take steps to have another spurge of publicity so that we can have other people coming forward to take advantage of this scheme.

Mr. Speaker, I beg to second.

The question was put and carried.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

*The Higher Education Loans Fund Bill*  
Clause 12

MR. RIDGWAY: There is a point in connexion with clause 12 which I think should be dealt with. As you will see from clause 6 (1) (d) the fund can consist not only of sums of money voted for the purpose by Legislative Council but also by any gifts of money made to the Fund by any person.

Well, it is conceivable as time goes on, and if this particular Bill proves satisfactory that the amounts contributed by private persons may, in the aggregate, exceed the contribution made by Government, in which case, it would be quite wrong for the Member for Finance to require the board to pay any excess over £100,000 into the general revenue of the Colony.

Therefore, I suggest that an amendment on the following lines, or an addition, be made to clause 12: "Provided that, the total payment so made to the general revenue of the Colony shall not exceed the aggregate of such sums of

(Mr. Riddoch): money as may have been voted from time to time to the credit of the fund by Legislative Council".

MR. HAVELOCK: I agree entirely in principle with the hon. Mr. Riddoch. There is one point on that, of course, the interest on that particular money should also be included. Would it be easier and tidier to make a proviso to clause 12 covering any sums of money under 6 (1) (d) as regards the operation of that clause? Perhaps more legal brains could phrase that?

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Chairman, the Government has not had any previous notice of this proposed amendment, and would not be willing to accept it, because there may be difficulties about it—like that to which the Member for Kiambu has already drawn attention—which will only become apparent when the amendment is examined in detail in collaboration with the law officers. What we will propose for the moment, Sir, is this; we will give an assurance that we intend to accept the spirit of this amendment. There is no intention whatever of crediting to revenue money which has been paid into the fund by private persons under 6 (1) (d). When we have had an opportunity of examining this proposed amendment in detail, we will bring forward an amendment to the Bill. It frequently happens that experience shows that amendments to a Bill are necessary, after it has been in operation for some time. I suggest that would be the most satisfactory way of dealing with this, otherwise if we introduce this amendment, there may be something which we shall overlook.

MR. RIDDOCH: I will accept that and withdraw my amendment.

THE CHAIRMAN: If you look at line 3, clause 12, the operative word is "may" require the Board". There is obviously a discretion on the part of the Member for Finance.

MR. HAVELOCK: We cannot trust him, Sir!

THE MEMBER FOR FINANCE: They may not trust us, Mr. Chairman, but they at any rate mistrust themselves.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Chairman, I beg to move that the Committee report consideration of the Bill.

The question was put and carried.  
Council resumed.

(Mr. Speaker in the Chair)

### REPORTS

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Higher Education Loans Fund Bill and reports the Bill without amendment.

### BILLS

#### THIRD READING

#### *The Higher Education Loans Fund Bill*

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move that the Higher Education Loans Fund Bill be now read a Third Time.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

The question was put and carried and the Bill read a Third Time and passed accordingly.

### BILLS

#### SECOND READING

#### *The Traffic (Amendment) Bill*

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, I beg to move the Second Reading of the Traffic (Amendment) Bill.

As hon. Members are aware, this is a very short Bill consisting of only three clauses, which is introduced to implement an undertaking I gave on behalf of Government that the annual licence fee in respect of tractors would be reduced with effect from the 1st January, 1952.

The reason for the delay in introducing this Bill lies in the fact that it had been the intention of Government to introduce a comprehensive traffic amending Bill to deal with a number of questions which had arisen in connexion with the Traffic Ordinance. However, as this comprehensive Bill was not ready, although it was expected to be ready last session, I am introducing this short Bill to deal with this particular matter. The average annual licence fee for wheel tractors was approximately Sh. 200, and this Bill will

(The Member for Agriculture and Natural Resources) have the effect of reducing that to Sh. 40 per tractor on a Special "F" licence which will permit the tractor to be used on public roads by farmers solely for agricultural purposes, including the haulage of their own implements, produce, supplies and so on, between the farm and railhead, on the understanding, of course, that the concession only applies to tractors with rubber tyres and not to tractors with metal tyres, wheels or tracks.

I do not think there is anything I need add to that explanation, except to draw attention to clause 3 which provides a retroactive effect to the purpose of this Ordinance.

I beg to move, Sir.

THE DIRECTOR OF AGRICULTURE seconded.

MR. USHER: Mr. Speaker, Sir, I do not intend to oppose the Second Reading of this Bill.

HON. MEMBERS: Good!

MR. USHER: I know that the delay which has occurred in bringing forward the comprehensive Bill does not lie at the door of the hon. Member, but there are important matters, many of which have been agreed, and agreed for a long time, which are becoming more and more urgent, and I shall be glad if some hon. Member on the other side would give an assurance that a comprehensive amending Bill will be introduced very shortly.

THE SOLICITOR GENERAL: Mr. Speaker, Sir, the comprehensive Bill to which the hon. Member has just referred is already in draft, it has taken a great deal of consideration and consultation, and it is hoped it will be published very shortly. (Applause.)

MR. HAVELOCK: Mr. Speaker, there is one point of principle I would like to raise on this Bill, anyway, for record. I have no objection, Sir, to the smaller licence fees for agricultural tractors, but I would say that under our present system whereby the Road Authority and Road Fund derive its revenue from vehicle licences that if any particular type of vehicle is going to have any particular type of subsidy, then it is not the

responsibility of the Road Fund to pay, it is the responsibility of Central Revenue. That is a principle I would like to record now, and will record probably in the future, as well, on other items. But it is a very important one, Sir, and it applies very strictly to this Bill. Actually, the amount of the money concerned in this particular one is not very considerable, but the principle is still there. If any sort of subsidy is going to be made, it should be from Central Revenue and not the Road Fund.

THE MEMBER FOR FINANCE: Mr. Speaker, of course I had not intended to intervene in this debate at all, Sir. But naturally, if the hon. Member for Kiambu insists on casting his line into the water, he must expect to catch a trout or a pike, according to the view that he takes of the fish that he is now landing.

Sir, the Government cannot, of course, accept the principle now enunciated by the hon. Member for Kiambu. It would place beyond the control—not of the Government, but almost the control of this Legislative Council, certain areas of policy and revenue. I do not propose, Sir, to enter into a long argument. I am perfectly sure that hon. Member for Kiambu will come back to this charge again and again, and I have no doubt we shall have many discussions in future. I will merely say that the Government is not prepared to accept the policy enunciated by the hon. Member for Kiambu.

MR. A. B. PATEL: There is one point on which I would like to know—to have some information from the Mover of the Bill, that is, that if the Bill is passed, what will be the total cost per annum and the revenue derived in future from the same source?

THE SPEAKER: When I heard just now the word "principle" I was reminded that this may be regarded as a tax matter, and I have not heard yet from the hon. Member for Agriculture and Natural Resources that the Motion was brought in with the consent of the Governor, and I would also call the hon. Member's attention to Standing Order No. 130 for renewing or replacing any charge upon the people. It should be referred to a

[The Speaker]

Committee of the whole Council before any Resolution or vote of the Council do pause thereon.

It seems to me, having the question of principle raised and everything else brought into the matter, we might consider whether we are going on correctly or incorrectly.

**THE MEMBER FOR FINANCE:** Yes, Sir, I would say, Sir, that, in my opinion, this is indeed a financial Bill and should, Sir, I think, be dealt with under the procedure that you have suggested. I thought, however, Sir, that we had discussed this through the usual channels, and I thought that we had agreed that the Bills would go forward in this shape at this stage. That was the understanding I had, Sir, and that is why we did not go into Committee of the whole Council, though I did raise it with the Clerk at the time, Sir.

**THE SPEAKER:** The Bill is an amendment of a very long standing law passed under the older system, and possibly on this occasion; if we do not regard this as a precedent, but look upon it as something that has intervened *ex improviso*, we might let it go this time, especially as everybody wants to get away for the week-end. (Laughter.) However, I am entirely in the hands of the Council.

**MR. MACSOCIHE-WELWOOD** (Usain Gishu): Mr. Speaker, there is one point I should like to make on this, which I think rather clarifies the issue. In some people's minds there is an idea that this is a special concession for agricultural reasons, but there is another reason why it is brought in. When tractors were originally licensed on the basis of weight, in the same way as lorries, rubber tyres had not come in, and therefore haulage was not generally permitted on the roads by tractors. The point is that an agricultural tractor used for haulage is used very intermittently compared to a vehicle of similar weight, such as a lorry. When this is looked upon as a concession to the agricultural industry I do not think that is quite correct. It is, in fact, to right an anomalous position. Where a vehicle is very rarely used on the roads except for special purposes at certain seasons of the year, it is only right it should pay a lower tax, as it does in the United Kingdom.

**MR. HAVELOCK:** On the point of order you raised, Sir, I would like to say that hon. Members on this side have no objection to taking the Bill in this form, although individually, if it went into Committee, I would have another chance to speak.

**THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:** I wish to notify that I have the Governor's consent for introducing this Bill.

One point was raised by an hon. Member opposite asking what loss to revenue would be occasioned. I would ask him to allow me to verify this figure afterwards, but I am almost certain the loss to revenue is £2,400. I will give a corroboration to the Member in writing to make quite sure I am correct. I think that is the only point.

The question was put and carried.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council. Order for Committee read. Mr. Speaker left the Chair.

#### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

*The Traffic (Amendment) Bill*

**THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:** Mr. Speaker, I beg to move that the Committee reports consideration of the Traffic (Amendment) Bill.

The question was put and carried. Council resumed.

[Mr. Speaker in the Chair]

#### REPORTS

**MR. NEEP:** Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Traffic (Amendment) Bill and reports the Bill without amendment.

#### BILLS

##### THIRD READING

*The Traffic (Amendment) Bill*

**THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:** Mr. Speaker, I

**THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:** I beg to move that the Traffic (Amendment) Bill be now read a Third Time and passed.

**THE DIRECTOR OF AGRICULTURE** seconded.

The question was put and carried and do Bill read a Third Time and passed accordingly.

#### BILLS

##### SECOND READING

*The Compulsory Labour Regulation (Repeal) Bill*

**THE MEMBER FOR EDUCATION AND LABOUR:** Mr. Speaker, I beg to move that the Compulsory Labour Regulation (Repeal) Bill be read a Second Time.

Sir, as explained in the statement of Objects and Reasons, this Ordinance is no longer necessary because the provisions of it which are still required, have been incorporated in the Native Authority Ordinance and the African District Councils Ordinance, which have recently been passed or amended.

Sir, I beg to move.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT** seconded.

The question was put and carried.

Ordered to be read a Second Time and committed to a Committee of the whole Council.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

#### IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

*The Compulsory Labour Regulation (Repeal) Bill*

**THE MEMBER FOR EDUCATION AND LABOUR:** Mr. Chairman, I beg to move that the Committee report consideration of this Bill.

The question was put and carried. Council resumed.

[Mr. Speaker in the Chair]

#### REPORTS.

**MR. NEEP:** Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Compulsory Labour Regulation (Repeal) Bill and reports the Bill without amendment.

#### BILLS

##### THIRD READING

*The Compulsory Labour Regulation (Repeal) Bill*

**THE MEMBER FOR EDUCATION AND LABOUR:** Mr. Speaker, I beg to move that the Compulsory Labour Regulation (Repeal) Bill be now read a Third Time.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT** seconded.

The question was put and carried and the Bill read a Third Time and passed accordingly.

#### ADJOURNMENT

**THE SPEAKER:** That completes the business on the Order Paper and the Council will now stand adjourned until 10 a.m. on Tuesday, 21st October.

*Council rose at forty-five minutes past Ten o'clock a.m.*



**Tuesday, 21st October, 1952**

The Council met at five minutes past Ten o'clock.

(Mr. Speaker in the Chair.)

**PRAYERS**

**PAPERS LAID**

The following paper was laid on the Table:—

The Report of the Forest Department for the years 1948, 1949 and 1950.

(BY THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES)

**ORAL NOTICE OF MOTIONS**

**THE MEMBER FOR FINANCE:** Mr. Speaker, I beg to give notice of the following Motion:—

WHEREAS the Kenya Meat Commission has arranged to borrow a sum not exceeding £500,000 from the Standard Bank Finance and Development Corporation, Limited, repayable with interest at 3½ per cent per annum, in annual instalments subject to a maximum repayment of principal of £25,000 in any one year, for the purpose of constructing a Meat Factory and ancillary buildings at Athi River; and

WHEREAS the Government has guaranteed the loan; and

WHEREAS it is considered desirable that the Government should finance this capital contribution:

NOW, THEREFORE, BE IT RESOLVED that the Government shall pay in each year to the Kenya Meat Commission the amount of principal repaid in that year by the Commission to the Standard Bank Finance and Development Corporation, Ltd., subject to a maximum payment in any one year of £25,000 and subject to the Kenya Meat Commission paying interest at the rate of 3½ per cent per annum to the Government on all sums so paid by the Government to the Commission, such sums not to exceed in the aggregate £500,000 and the repayment of such sums to the Government by the Commission with interest as aforesaid to be secured by a debenture charging with such repayment all and sundry the assets of the Commission

from time to time during the period of the said debenture:

AND WHEREAS a sum of £107,000 which the Government had advanced to the Meat Marketing Board—was transferred to the Kenya Meat Commission in accordance with the provisions of section 23 of the Kenya Meat Commission Ordinance, 1950 (No. 13 of 1950):

BE IT RESOLVED that the said advance and the repayment thereof to the Government by the Commission with interest at the rate of 3½ per cent per annum be included in and secured by the aforesaid debenture.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** Mr. Speaker, I beg to give notice of the following Motion:—

WHEREAS—

(a) the Housing Ordinance (Cap. 142) provides for the establishment of a Housing Fund from which advances or grants may be made to local authorities and for the execution of housing schemes; and

(b) the Governor in Council has established a Housing Fund in accordance with the provisions of section 4 of the Housing Ordinance; and

(c) the sum of £300,000 was loaned or hypothecated for lending to local authorities for approved housing schemes from the Colony's revenues in 1949:

BE IT RESOLVED, THEREFORE—

(a) that the sum of £30,354 being the net total of repayments of principal and interest received from local authorities in respect of housing loans granted to them by Government up to the 31st December, 1951, and credited to the general revenues of the Colony, be paid into the Housing Fund; and

(b) that repayments of principal and interest after the 31st December, 1951, on loans made from the £300,000 provided in 1949 and from the Housing Fund now established, be credited to that fund and not to the general revenues of the Colony.

**THE SECRETARY TO THE TREASURY:** Mr. Speaker, I beg to give notice of the following Motion:—

BE IT RESOLVED that, as from the 1st day of August, 1952, on salaries of £10 and above, the cost of living allowance for civil servants shall be 30 per cent, with a maximum of £300.

**LEAVE TO SUSPEND STANDING ORDERS**

**THE MEMBER FOR DEVELOPMENT:** Mr. Speaker, under Standing Order No. 32, I beg that Council will give leave for the Motions standing at Orders of the Day Nos. 10, 11 and 12 to be moved to-day.

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT** seconded.

**THE SPEAKER:** Is it the wish of Council that these Motions be taken this day? There is no dissent—they will come on this morning.

**ORAL ANSWERS TO QUESTIONS**

**QUESTION No. 33**

**MR. USHER:**

Will Government please state why compensation has not yet been paid to owners of land acquired for a native village scheme at Changamwe and in respect of which the collector has completed his awards in December, 1951?

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** The provision of funds to pay the compensation required by the collector's award is the subject of a Supplementary Estimate, the consideration of which is on the Order Paper for to-day. A specific answer to the hon. Member's question will be made during the debate on that item.

**QUESTION No. 36**

**MR. AWORI:**

Arising out of the £200,000 allocated to the Development and Reconstruction Authority from the Nyanza Province Cotton Sales Proceeds Fund, will Government state how much has been allotted to:—

- (a) Central Nyanza District?
- (b) North Nyanza District?

**THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:** Although moneys from this fund are in so far as is possible spent to the benefit of the districts and peoples from which they are derived, the preliminary allocation of funds from this source will be made not to districts but to main heads of expenditure, such as "Water Supplies" and "Roads". It is therefore not possible at this stage to say how much will be allotted to each district.

**QUESTION No. 38**

**MR. AWORI:**

Is Government aware that urban Africans are dissatisfied with the system of appointing civil servants on municipal boards and will Government state what action they have taken to meet this dissatisfaction?

**THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT:** Government is not aware that urban Africans are dissatisfied with the system of appointing Government-nominated Africans to municipal boards.

It is the normal practice for African advisory councils to be consulted by the district commissioner concerned before names of candidates for nomination, who are not necessarily civil servants, are submitted by him through the provincial commissioner to the Member for Local Government.

**MINISTERIAL STATEMENT**

**THE MEMBER FOR DEVELOPMENT:** Mr. Speaker, I beg leave to make the following statement:—

Last night a State of Emergency was declared throughout the Colony and Protectorate of Kenya by the signing of a Proclamation by His Excellency the Governor under the powers conferred upon him by the Emergency Powers Order in Council of 1939. Emergency Regulations have been made, and this action has enabled the police during last night to detain a number of those persons believed to have been mainly responsible for causing disorder and lawlessness in the Colony during recent months. (Applause.)

The situation is under control, and the public of all communities should continue their normal activities.

[The Member for Development]

His Excellency the Governor has broadcast a statement on the Forces Programme this morning, and this will be repeated on the Cable and Wireless Programme at 1.30 p.m. this afternoon and following the News Programme at 7.15 p.m. and 9.15 p.m. this evening. His Excellency has also issued to the Press a summary of his broadcast. (Applause.)

### BILLS

#### THIRD READING—(Contd.)

##### The Societies Bill

Adjourned, debate will continue.

**THE SOLICITOR GENERAL:** Mr. Speaker, Sir, may I have your directions as to whether I should move the Third Reading again?

**THE SPEAKER:** No. The Motion, I think, was proposed from the Chair. Perhaps the Clerk will say there is no need. It is simply for the debate to continue. It was adjourned.

**MR. AWORI (African Representative):** Mr. Speaker, I am not going to speak very much. However, the contention of the African Members regarding this Bill is that it be made temporary. We feel that it should not be permanent. We feel that, in due course, things will be normal and there will not be any necessity for making this Bill permanent. For that matter we would request the Council to make it temporary for one year; then after a year, if the Council feels that the situation warrants making this Bill permanent, we shall accept it being brought into Council and being debated and we shall be willing to agree that it should be put on the Statute Book. Otherwise, we feel that this Bill should be made temporary for a year and see what the results will be.

Mr. Speaker, I beg to oppose the Third Reading of the Bill.

**MR. OORDE:** Mr. Speaker, as a Member of the Select Committee which considered the amendment of the Bill, I would like, with your permission, to say a few things.

The first thing, Sir, was that during our meeting we African Members suggested that the Bill should be made temporary if it becomes law.

Four Members of the Committee voted for the suggestion and three Members voted against. The Chairman then used his power of having two votes, both casting an original vote, and then our suggestion was defeated. I think, Sir, in a Select Committee, the Chairman should be impartial so that the Members of the Committee should agree on what they consider is right. That is one of the things that has made this Bill not be temporary as we suggested.

Now, the other thing is that I feel —

**THE SPEAKER:** Before we come to the other thing, may we have a clear understanding that this is a debate as to whether the Bill should be read a Third Time. The hon. Member will recall, on Friday it was moved that the Bill be considered forthwith. It was considered on the report, and that was the time for any Member to rise and move any further amendment which he wished to make. The Bill cannot be amended at the Third Reading, unless it is re-committed to a Committee of the whole Council, and I do not think you would be able to carry that, so I do not advise you to try it. It is simply taking up the time unnecessarily, to discuss matters now, on the Third Reading which should have been discussed, if it was necessary at all to discuss them, on the Report stage by moving the further amendment which you desire, namely, to make the Bill temporary. We have gone past that now. I keep trying to say this is a Third Reading to debate—the question is, either the Bill or not the Bill. (Hear, hear.)

**MR. OODEDE:** Thank you very much, Sir.

I would say that I do not mind the Bill passing, but as far as I can see, we shall always struggle that the Bill be repealed, because of the following reasons.

First of all, because I feel that it interferes with freedom of societies organization. The other reason is, because I feel that it is intended to restrict permanently the African political consciousness.

The third reason, Sir, why I feel that one day it should be repealed, is because I feel that it will stop African political organization from having connexion with political bodies outside the country, while, the African community would like

**Mr. Oodede]**  
to get experience from organizations outside the country.

The fourth is because I feel that the African politicians will be cautious when the law not to air their views, and fifthly I believe that the Bill is peculiar to Kenya, because it is not found in other parts of Africa and when we are in a democratic country, I feel that we should not have such a peculiarity. So, Sir, although I quite agree that it will pass through this Council, I still would make it clear that we, African Members, will always ask that it be repealed when the country comes back into good order.

**MR. GIKONYO:** Mr. Speaker, we did oppose this Bill as a whole during the Second Reading and we did give our reasons. We very much feel that when this Bill becomes law, it will have a very great effect on African societies. It is a very well-known fact that the Africans are not as advanced as other sections of the community in this Colony. Europeans perhaps are better off, as well as Indians in the way the law requires; but the Africans today, and perhaps for some time to come, will need a lot of guidance and, knowing that very well, we feel that when this law comes it will very much interfere with the running of the societies and as we know they are not educated to be able to comply with the law. Alternatives will be that most of their societies will not be registered. For these reasons, Sir, Mr. Speaker, we very much feel that this should be made temporary for one year.

If after one year we feel that there is still need to prolong its existence we can do so. The Government will be at liberty to do so. They can bring a Motion in this Council and, I think it will be found possible to support all the circumstances that may prevail at the time.

For these reasons, Mr. Speaker, we do feel that it will do a great deal to relieve the Africans and society if it is made temporary. We have opposed it; we know we are going to fail. Therefore, the alternative we can suggest before this Council is that it may be temporary. We have been told that these are temporary for the emergency state of the country. Now, if we pass this through during this time, I think it is going to be a definite hardship for the Africans to be able to

organize themselves and run their societies the way they wish.

Mr. Speaker, I beg to oppose the Third Reading.

**MR. TAMENO (African Representative):** Mr. Speaker, I opposed this Motion right from the beginning of this Bill and I still oppose it. Having studied the amended Bill, I still do not see any good in putting this Bill into effect. I have told before that the action of such a law is going to interfere a great deal with the Africans' liberty of forming their societies in any way they like. It is provided somewhere in the Bill that there must be officers and books, and registers of names and everything. Now, you will find that some Africans who are illiterate will want to form societies. How can they manage to form societies if these provisions are essential?

Secondly, I find that in the first clause of this Bill it says that this Ordinance will apply to areas or such areas as may be declared from time to time; that, as it stands, shows that it would be very proper to make it temporary, and whenever, in a particular area, there is no necessity for putting the law into effect, I feel that there will be no reason at all to make it a permanent law.

Mr. Speaker, I beg to oppose the Third Reading of the Bill.

**THE SOLICITOR GENERAL:** Mr. Speaker, Sir, the question whether or not this Bill will be a permanent measure or a temporary one has already been argued *ad nauseam* in various stages of the Bill and, I am given to understand, in the Select Committee. The Bill itself is not of a nature which renders it susceptible of temporary application because it requires the setting up of an organization, and it contains provision for controlling societies and their operation. Those provisions are designedly of a permanent nature.

In so far as my hon. African friends have suggested that it will operate oppressively on Africans, I beg very strongly to advise on Africans. They have made the disagree with them. They have made the point that Africans require education in these matters. What better form of education than that contemplated by this Bill? Where the Africans do not comply with the provisions of this Bill, it will be brought home to them that the societies which they are seeking to form are not

[The Solicitor General] the type of societies which, as my friends have said, an educated community would wish to foster.

It is, of course, open to the hon. African Members, as it is to any Member of the Council, to initiate steps with a view to repeal in due course, if they so wish. Moreover, I can assure the hon. gentlemen that the Ordinance will be reviewed from time to time, in the light of experience, and any necessary amendments or changes of policy implemented.

Mr. Speaker, Sir, the Government cannot possibly accede to the suggestion that this Bill be made a temporary one. Indeed, the stage is past now when in accordance with the Standing Orders of this Council, it can be made to operate for a limited period only.

In these circumstances, Mr. Speaker, I reiterate the Motion which I made on Friday.

The question was put and carried and the Bill was read a Third Time and passed accordingly.

#### MOTION

ADDITION TO THE THIRD SCHEDULE—EAST AFRICA (HIGH COMMISSION) ORDERS IN COUNCIL.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, I beg to move—

#### WHEREAS—

- (1) under the provisions of paragraph (a) of sub-section (1) of section 28 of the East Africa (High Commission) Orders in Council, 1947 and 1951, the High Commission may, with the advice and consent of the Central Legislative Assembly, make laws in respect of the matters specified in the Third Schedule;
- (2) under the provisions of section 45 of the aforesaid Orders in Council the High Commission may, with the approval, signified by Resolution, of the Legislative Councils of the territories, and with the consent of a Secretary of State, add to the list of subjects set out in the aforementioned Third Schedule;
- (3) It is considered desirable that the High Commission should be empowered to make laws, in accordance with the provisions of the

said section 28 (1) (a) in respect of the Royal Technical College of East Africa, a body established by Charter dated the 7th day of September, 1951, under the hand and seal of Sir Philip Euen Mitchell, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, upon whom has been conferred the Decoration of the Military Cross;

NOW, THEREFORE, be it resolved that this Council approves the addition to the list of subjects set out in the Third Schedule to the East Africa (High Commission) Orders in Council, 1947 and 1951, of the following:—

“17. The Royal Technical College of East Africa.”

The object of this Motion, Sir, is to enable the Central Assembly to legislate regarding the Royal Technical College of East Africa. From the very outset, it was intended that this institution should be an interterritorial one and on that understanding contributions towards the capital cost were obtained from the Colonial Development and Welfare Fund and from the Governments of Uganda and Tanganyika. I think it will be generally agreed that in the case of an interterritorial institution of this sort, it should be regulated by a High Commission Act, as in the case of Makerere.

I had intended, in moving this Motion, to give some account of the arrangements which have been made so far for the Technical College, but, as hon. Members know, there is a large amount of business on the Order Paper which we are anxious to complete to-day. Everybody, including myself, has a good deal of work to attend to outside the Council. I, therefore, propose, Sir, to put the text of the speech I was going to make in the Committee room upstairs, so that any Member who is interested in it will be able to read it. (Laughter.)

Before I sit down, I must make a reference to the chairman and members of the governing council of this college. The minutes of the council reach me regularly and it is perfectly plain from them that the council does an enormous amount of detailed planning work to bring the institution into existence, and devotes an enormous amount of time and

[The Member for Education and Labour] are to it. I think, Sir, that this council and everybody in Kenya and East Africa should be grateful to those people for the very valuable work which they are doing. Sir, I beg to move.

THE MEMBER FOR FINANCE seconded.

MR. HAVELOCK: Mr. Speaker, first of all, I would like to deprecate the rather peculiar departure from custom that the hon. Mover has made in tabling in the Committee room his proposed speech. We all realize he is busy, and other hon. Members; I suppose he would like our proposed criticisms tabled up there as well.

There is only one matter I would like to discuss on this particular Motion. I am not particularly happy about it. I hope the Central Assembly and the High Commission will study the present Charter, which I know is a temporary measure merely to set up the Technical College—they will study it very closely and, indeed, pattern their regulations and Ordinance on the present Charter, which I believe is a very good one. (Hear, hear.)

As it happens, Kenya has made a greater contribution to the Royal Technical College than any of the other territories, and although we have it—we will have the Technical College physically in Kenya—I do feel that, as we did, and the Ex-Governor, Sir Philip Mitchell, I think took the first steps to get this Technical College established, I believe it should be recognized by the other territories that Kenya should have a special position in the governing body of this College.

We have always said here, Sir, that technical education is a most vital necessity for all races in this country. I have had occasion to inquire into the availability and capabilities of local youths in technical matters, as regards employment in commercial concerns, especially in Nairobi, and the news that I have had has been extremely disappointing. At the moment the standard of technology—if that is the right word to use—technology, as regards our local youths, both European, Asian and African, is very, very much wanting. Therefore, this College is something I believe which is going to be one of the most important things for the future of this country. I

would, therefore, like to reiterate again, Sir, that Government and representatives of this Council on the Central Assembly should see to it that Kenya has a very large say indeed in the government and administration of this Royal Technical College.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Speaker, regarding the points made by the hon. Member for Kiambu, I will, of course, see that his views are brought to the notice of the governing council of the College, which will be responsible for preparing the first draft of the Bill, which will ultimately go to the Central Assembly. I am sure the hon. Member will agree that up to the present, I have co-operated with him as far as I possibly can in bringing him together with the chairman of the governing council, in order that he may make his views known to the Council.

Now, Sir, with regard to the procedure which I have adopted in this case, it seems to me a common-sense way of saving time; but, of course, any Member who does not like it is not bound to read what I shall put in the Committee room. (Laughter.)

The question was put and carried.

#### MOTION

£ FOR £ GRANT

THE MEMBER FOR FINANCE: In accordance with Standing Order No. 128, I beg to notify the recognition and consent of the Governor to the introduction of this Resolution.

THE SPEAKER: If this is a money Resolution, I will automatically leave the Chair.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of the whole Council—Order for Committee read. Mr. Speaker left the Chair.

#### IN THE COMMITTEE

[Mr. E. J. C. Neep, O.C., in the Chair]

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I beg to move—

BE IT RESOLVED that, in accordance with the principles already accepted by this Council, the proposed hospital project to be built in the Parklands

(The Member for Health, Lands and Local Government)

Area of Nairobi by the Ismailia community shall qualify for a £ for £ contribution from the general revenues of the Colony in respect of approved capital expenditure.

Now, Sir, the principles to which reference is made in the Motion were adopted by the Legislative Council some time ago, and are no doubt familiar to hon. Members, but, to refresh memories, I will briefly repeat them.

MR. HAVLOCK: Put them upstairs!

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: First of all, there must be established, to the satisfaction of the Government and the Council, that need exists for the particular hospital project. Secondly, there must be established that the community concerned has the ability and the willingness to maintain the hospital once it has been established. Thirdly, and perhaps most important, it must be established, to the satisfaction of the Council, that finance in the general revenue of the Colony is available for providing the funds desired.

Now, Sir, since those principles were adopted by the Council, two voluntary hospital associations have been incorporated—the Kenya European Hospital Association, and the Mombasa European Hospital Association. Grants have been approved by the Council to the Pandya Memorial Clinic, the Kenya European Hospital Association and the Nakuru War Memorial Hospital.

I have now much pleasure in intimating to hon. Members that still another community has expressed its willingness to accept the moral and financial obligations of the inauguration of a large hospital scheme.

The Ismailia community, that very worthy body of people, have agreed to organise and maintain their own hospital on a six-acre plot in Parklands. (Applause.)

I would like to take this opportunity, Sir, of paying a tribute to the enterprise, initiative and public spirit of that community, under the inspiring leadership of His Highness the Aga Khan.

The total cost of the hospital is not yet precisely known. It will probably be between £200,000 and £250,000. The

community, however, wishes to make a start in the preparation of plans with the full confidence that it will have the support of this Committee, when the final figures are known, and it comes forward with an application for a £ for £ grant. It is for that reason that I am proposing this Motion to-day well in advance of the requirement for funds, in order that the community may be assured of the willing and co-operative attitude of hon. Members when the time comes.

Now, Sir, I take this opportunity of commending to the Asian community the desirability of now proceeding further with hospital plans for the whole Asian community.

The European community has taken very far-reaching strides towards a sound hospital service. It established the European Hospital Fund, and then changed that over to the European Hospital Insurance Fund, and that is working smoothly to the great benefit of thousands of the European community in this land who contribute to the Fund.

I commend to the Asian community the thought that the time is now ripe for an advance on their part. It will be with the recollection of some Members at any rate, that a committee was appointed in 1945 to examine the whole question of Asian hospital services. The committee had very protracted sittings, and did not report until January, 1948, and when the report was produced it was a rather negative one, but did contain some positive elements.

The substance of its recommendations were, first, that before any system of hospital insurance for the Indian community can be introduced, the first essential is to provide additional accommodation to raise the number of beds for Asians in public hospitals in the Colony.

Secondly, that when reasonable progress with such a programme of hospital improvement and construction has been made by the Government, the Asian community should accept responsibility for the introduction of a scheme, and finance and administer all Asian hospitals in the Colony on the lines of the European Hospital Services Scheme.

A great advance has been made since that date in the provision of hospital accommodation for the Asian members

(The Member for Health, Lands and Local Government)

of the community, and I feel that an adequate provision has now been made for the further step to be contemplated and for the Asian community as a whole to undertake a scheme whereby the rich can help the poor, and the whole community can be benefited in the provision of sound and cheap hospital services.

I beg to move, Sir, the Resolution that I have just read. (Applause.)

The question was put and carried.

THE MEMBER FOR FINANCE: I beg to move that the Committee do report to Council consideration of the Resolution.

The question was put and carried.

Council resumed.

[Mr. Speaker in the Chair]

#### REPORT OF COMMITTEE OF SUPPLY

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered and approved the Resolution set out in Order No. 8 on the Order Paper.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the Resolution just read be approved.

THE SPEAKER: I thought we had got into the better form—that the Council doth agree with the Committee in the said Resolution.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: I beg your pardon. I propose the Motion in your words.

The question was put and carried.

THE MEMBER FOR FINANCE: Mr. Speaker, in accordance with Standing Order No. 128, I beg to notify the recommendations and consent of the Governor for the introduction of these Supplementary Estimates.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of Supply—Order for Committee read. Mr. Speaker left the Chair.

#### COMMITTEE OF SUPPLY

[Mr. E. J. C. Neep, Q.C., in the Chair]

MR. NEEP: It has been suggested that we adjourn now before we begin speak-

ing. I propose we adjourn now for a quarter of an hour.

Council adjourned at Eleven o'clock and resumed at twenty minutes past Eleven o'clock.

THE CHAIRMAN: Order, order! The Committee will now consider the Supplementary Estimates of Expenditure No. 6 of 1952.

(Items 1, 2, 3 and 4 called by the Clerk)

THE CHAIRMAN: Now, the next group of questions appear to me to be in one group. I will ask the Clerk to read them rather quickly, it being understood that if anyone wants to cut in at this stage, they will, of course, do so.

#### Item 17—Kenya/Ethiopia Boundary Commission

MR. HAVLOCK: Mr. Chairman, I would like to ask a question if I may, Sir, of the hon. Member responsible for the Kenya/Ethiopia Boundary Commission. When is this Boundary Commission going to complete its work? We have had very large expenditures for the last two or three years, as I remember it, on this particular project, and also a considerable number of Supplementary Estimates. We were told about two years ago, I think, that the cost would be a certain figure and it was very considerably underestimated. We keep on paying more and more. I would like to know what the situation is at the moment.

THE MEMBER FOR EDUCATION AND LABOUR: Mr. Chairman, it seems to be my lot to answer for somebody else, and not to have all the information which is asked for on the other side. I am afraid I cannot say, I do not think anybody can say, exactly when this work will be finished. It depends on factors which cannot precisely be foreseen. All I can say is that I will make inquiries from Colonel Clifford, who is Kenya's principal representative on the Commission, and see whether it is possible to get an estimate of the time it is likely to take to complete the job.

With regard to this particular Supplementary Estimate, it was agreed by the Standing Finance Committee in 1950 that provision for the cost of this Boundary Commission should be met as and when required, because it is very difficult to foresee exactly what expenditure will be needed.

[The Member for Education and Labour]

I have got details for the make-up of this sum of £6,600 and there is no doubt that it is necessary to enable the Commission to get on with its work.

THE CHAIRMAN: Would it be possible to give, quite shortly, the detail?

THE MEMBER FOR EDUCATION AND LABOUR: It is made up as follows: Uniforms £45; Motor Transport Spares £1,350; Transport and Travelling £3,000; Air Charter £1,480 and Rations £520.

I have got some notes, Sir, on these particular items; perhaps it is not necessary to give any further details.

THE CHAIRMAN: I think you should, if the notes are relevant.

THE MEMBER FOR EDUCATION AND LABOUR: They are rather long, Sir.

THE CHAIRMAN: Can we just have the gist?

THE MEMBER FOR EDUCATION AND LABOUR: Uniforms is due to a rise in the cost of uniforms since the original estimate was made.

Motor transport spares owing to the very rough use to which the motor transport is put—

THE CHAIRMAN: I think it is all right.

SHEIKH MOHAMED ALI SAID: Mr. Chairman, I am not altogether very happy about this question of compulsory acquisition of private land at Changamwe. I say so because I understand that there is, in the same area, a total of 195 acres of Crown land which is unused and unoccupied, and which, I understand, is equally suitable for this type of housing scheme. I am referring to Plot No. 745/R, Plot No. 500 of Section 6 and also the Crown lands known as the old wireless station at Changamwe. I see no reason why land should be taken away from private individuals when unused and unoccupied Crown land can be found.

The landowners concerned did, some time back, put up a strong protest against this type of Government action and now they have asked me to repeat their protest in the strongest terms against the measures proposed to be taken. If for any reason, Sir, Government must acquire the private land in question,

then, I submit, Sir, that monetary compensation would not and could not be a substitute for the land, because the majority of these unfortunate landowners, who are Arabs and Africans, depend on their *shambas* for a living and once we dispossess them of their land, it means, Sir, that you have deprived them of the means of earning their livelihood.

They would prefer, however, in the event of the land being taken away, to be given the Crown land, which I have already mentioned, in exchange for their land. Those who want monetary compensation, Sir, I submit, should also be given a choice.

MR. USHER: Sir, I do not know whether it is at all possible, at this stage, to retire from acquisition if the compensation has not been paid. I believe that it is possible, but I hope that there will not be a retirement from acquisition, because it would very much embarrass the plans that have already been made.

But the point which I wish to make now is that which I sought an answer in a question asked earlier this morning. The acquisition awards were completed during December, and it is, now, of course, about ten months that the owners of the land have been kept waiting. Now, this is not the first time this sort of thing has happened. Sterilization of land, for instance, for a military cantonment, which never, in point of fact, was constructed, embarrassed owners very much a short time ago and owners in the same area.

I do doubt, Sir, that arrangements should be made for finance to be immediately available in such cases.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I share the views of the hon. Member for Mombasa that it is deplorable that the people concerned have been kept waiting so long for the compensation that is their due. The circumstances are unfortunate and appear to have been unavoidable.

It was decided by the Government, when the collector put in his report some months ago, that it was necessary to refer the provision of funds to the Planning Committee. Unfortunately, however, just at that juncture, a proposal came forward for the reorganization of the Planning

[The Member for Health, Lands and Local Government]

Committee to make it a sub-committee of the Executive Council. As there was only a short time to go before the dissolution of the Legislative Council, and the consequent revision of the personnel of the Executive Council, no meeting of the Planning Committee was then held and it was postponed until the new Planning Committee had been established. It is only a short time ago that the new Planning Committee held its first meeting and approved of the reference of this particular item of expenditure to this Committee.

I think it is very unfortunate when it is necessary to take this kind of step in advance of the provision of finance and when the people concerned have to wait a long time to get their money. I can assure hon. Members, however, that if this item is approved, as I hope it will be, the earliest possible steps will be taken for the award to be announced and for the money to be paid over to the people concerned.

Now, Sir, the reference to the protest of the hon. Arab Member about the use of the Land Acquisition Act in this particular case and the desirability of using other land for the purpose, I would say that that suggestion has been, in the past, very carefully examined. The other land, I believe I am right in saying, was, for the most part, outside the municipal boundaries. We are planning for a scheme that is to be worked by the Mombasa Municipal Board. The land we are proposing to acquire is suitable and we believe that a minimum of inconvenience and disturbance of genuine development will result from this acquisition.

At this stage, I cannot accept, on behalf of Government, the suggestion that we should withdraw from the acquisition proceedings. They must take their course.

Now, Sir, it has been stated by the hon. Member, and is stated in the petition to which he referred, that the majority, indeed, practically all, the people concerned are Arabs and Africans and that they will be very seriously inconvenienced, to say the least of it, if they are disturbed. I would like, Sir, to refute some of those suggestions.

I have before me a report from a leading Arab authority in Mombasa who

went into this question very carefully, who examined the petition and dissected its statements and looked at the names of the petitioners.

Now, Sir, I would like to read what he said: "There is at least one Portuguese among the signatories. The majority are Indians and not of Arab descent, as stated. The majority acquired their holdings by purchase and not by inheritance, as stated in the petition, and it is doubtful if the land has at all been in family possession for the length of time claimed. In regard to the rest, the majority do not even live on the land and do not carry out any cultivation. Every one of them will only be too glad to sell at the enhanced prices prevailing. All the Indian signatories to the petition have purchased their holdings comparatively recently, with the exception of possibly one or two individuals. There can be no possibility of any one of them taking any trouble to develop the land. Most of them do not live on the land at all. Of the eleven so-called Arab signatories to the petition, only about four can be said to be living on the land. The rest, as well as the sixteen other signatories, Indian and Goan, live on the island".

Now, Sir, I think that refutes the suggestion that any serious hardship will be caused to the owners of this land by their dispossession.

Under the provisions of the Indian Land Acquisition Act, they are not only allowed the fair market value of the land as assessed by the collector, but 15 per cent more as compensation for disturbance, and that, I think, is adequate provision. If they wish to buy other land, they are at liberty to do so in the open market. This land is very urgently needed for a desperately urgent African housing scheme to house Africans living on the island who are in very congested areas and who are, at present, for the most part, protected year by year under the Erection of Tenants Ordinance, which cannot be prolonged indefinitely. (Applause.)

DR. HASSAN (Muslim, East): I am sorry, Sir, I did not speak before the Member replied to that demand from the Arab Member for the Coast. What I feel is that, granted there are Indians and Goans who are not living on the land that their case may not receive any further

(Dr. Hassan)—but may I know, Sir, if the Government will give some favourable consideration to those Arabs whose only means of livelihood is their *shamba*, which they are living on.

If it is desperately needed for the African housing, I quite admit that Government must be assisted, but the desperate need of those few Arabs who are living in the area is also one of the things that Government must seriously and favourably consider. They should not be told: "You get out of this place and go into the open market yourself to buy." I think it is also one of the measures Government must feel under an obligation about—to give them land in place of that which has been acquired, and help them and assist them to have an area where they can go and build their houses and make a small *shamba* and live there. That, I believe, should be done in the case of those Arabs that are living there.

MR. COOKE: Mr. Chairman, I was not in at the start of this, but I would like to support what Dr. Hassan has said. I think one of my biggest indictments of the gentlemen on the other side of the Committee is, on the whole, the mean way they have treated, from the very start of the occupation of this country, the Arabs, who in many ways were, and for several hundred years have been in possession of land at the coast, and have been the loyalist of the loyal to the British Raj.

It is so often the way that those people who wave a big stick get what they want, but the people who are decent and law-abiding and so on, are just pushed aside. The Arabs have lost an awful lot of land at the coast in one way or another, probably due to their own fault in that they have been imprudent. They have got to be protected against this improvidence of theirs, because they are the people, I think, who must, in my opinion at any rate, be preserved on the coast. I would suggest that any scheme that Government has must be tied to some scheme giving these Arabs alternative land for the land that is taken away from them. It is no good giving money compensation. Land costs may, and is indeed rising very rapidly at the coast. If they can find some means, and I believe there is a lot of

Crown land available, or, at least, a certain amount in the vicinity of Changamwe, that land should be offered to the Arabs as a fair exchange. It may not be acre for acre, it might be one and a half acres, but it should be gone into and offered to them, so that they can continue to farm at the coast, as they have, indeed, farmed for centuries past.

THE MEMBER FOR FINANCE: I must protest against the words just used by the hon. Member for the Coast—(Hear, hear)—who, in fact, said that if people in this country wave a big stick, they get what they want. I should have thought, Sir, that the statement made by the Chief Secretary this morning would have shown that if people in this country intended to use a big stick, a big stick would be used in return.

MR. COOKE: You have been a long time in using it.

THE MEMBER FOR FINANCE: It may be, Sir, that we have been patient.

THE CHAIRMAN: Do not turn this into a debate.

THE MEMBER FOR FINANCE: I must protest, Sir. The words are very undesirable, too undesirable to pass unchallenged at this particular moment.

MR. COOKE: On a point of explanation, the hon. gentleman, Sir, really, to rebuke me like that—he who has only been two minutes in this country! In explanation, I do not mean in any way to bring up a controversial question which has nothing whatever to do with it.

THE CHAIRMAN: Perhaps you used rather a stronger form of words than you—

MR. COOKE: I will use a great deal stronger form of words to my hon. friend before long, Sir!

MR. BLUNDELL: Mr. Chairman, I wish to support the Motion before the Committee. I believe we must acquire the land because the problem of African housing has got to be dealt with, and has got to be dealt with very rapidly.

So far as the money aspect is concerned, I think there is much, Sir, in the point of view which the hon. Arab Member on the other side of the Committee has put forward and has been supported here. I would like to suggest

(Mr. Blundell) that in approving the grant of the money, the hon. Member opposite, in charge of the item, should give us an assurance that he will examine that particular aspect of the matter and we should like, I think, to lay a report upon it.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I strongly deprecate the suggestion that the two things should be tied together irrevocably. We must go ahead with the acquisition proceedings and the award of financial compensation as originally planned.

I am quite prepared to consider sympathetically any application from the people who were genuinely in occupation of the land and who were doing reasonably good development, and who are going to be penalized by the acquisition proceedings.

I was not aware, without notice, of the availability of the Crown land which has been mentioned, and I am not quite sure that it is available. Indeed, I have serious doubts, but I will undertake, Sir, to examine the suggestions that have been made, to view them sympathetically and to report back to Council on the action that has been taken thereon. (Hear, hear.)

MAJOR KEYSER: Sir, may I ask the hon. Member whether it is the intention to recover the whole of the cost of the acquisition from the purchasers? The last paragraph states: "Part of the cost of acquisition will be recovered from these purchasers, and a further part from the Municipal Board". It does not state whether the two parts equal the whole.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: I had already noticed the little discrepancy and examined it myself. The two parts in the initial stage will not equal the whole, but by the time the whole plan is completed by the Municipal Board, the two parts will equal the whole.

There will be provision under the scheme for tenant purchase—for sales to Africans to build their own houses with assistance from funds provided by the Municipal Board. There will also be provision for the sale of land to employers to erect housing for their staffs, and all these schemes together will bring back the funds that are now being expended.

The initial two parts of the scheme will be carried out straightaway, but the recovery of the whole of the sum will have to wait for the third part of the scheme to be developed.

MR. COOKE: Mr. Chairman, I do not think my hon. friend, the Member for Health, Lands and Local Government, has really put the full case in front of the Committee. The fact of the matter is, of course, there have been a lot of absentee Indian and Arab landlords but that is very largely due to the manumission of the slaves about 50 to 60 years ago, when, rightly or wrongly, they were deprived of free labour. That drew a lot of the landowners to work in Mombasa, and although they were not living on their lands, they were, like a number of Europeans and a number of Indians, absentee landlords. But, nevertheless, they used to go out on Sunday for picnics and things so they do really have a great regard and love of that particular land. The fact that they are not there should not really affect the situation. Those people are the people I am pleading for, that they should be given a fair deal now that there is going to be this compulsory acquisition that we cannot resist. Instead of paying them in money, they should be given alternative land close by, if possible Crown land, and it should be done by agreement rather than by force.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I must emphasize again that cash compensation will be proceeded with and I cannot agree to bringing the extraneous matter of exchange of land into the acquisition proceedings. I have said that I will examine the situation to see if land can be made available for sale to these people, on which they can use the funds that they receive from the collector for the acquisition.

I have much more sympathy with the Africans who are living under dreadful conditions in terribly congested areas than I have with people who use their land for Sunday picnics. (Hear, hear.)

Now, Crown land is extremely scarce in and around Mombasa. I very much doubt if the land that has been referred to is available. I have promised I will sympathetically review the whole situation from that angle, but I must insist

[The Member for Health, Lands and Local Government] that we do not mix it up with cash compensation for this acquisition.

MR. COOKER: The hon. Member may say he has got sympathy with the Africans; it is possible to have sympathy with both sides, is it not?

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Indeed, yes.

COLONEL GROGAN: Will the hon. Member tell us when these valuations of the land in question were made?

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Just about a year ago, Sir.

COLONEL GROGAN: Has any consideration been taken for the fall in the value of money since? (Laughter.)

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: I expect the award, when it is made, which will be within a few days, will be on the lines of the valuation to which I have just referred that was made about a year ago. 15 per cent is added to the valuation as extra compensation and that should allow a sufficient cushion for any depreciation in values or appreciation in values which has taken place in the meantime.

HON. MEMBERS: Oh!

MAJOR KEYSER: Did not the hon. Member say that the 15 per cent was for disturbance? What is the connexion between disturbance and inflation?

MR. BLUNDELL: It is a principle we cannot accept, Sir.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: I will ask the collector, before he makes his award, to review the situation in the light of what the hon. Members have said. (Laughter.)

The question that the Committee approve Supplementary Estimate No. 6 of 1952, in a total of £118,264 was put and carried.

THE MEMBER FOR FINANCE: I beg to move that the Committee report consideration of the Supplementary Estimates, No. 6 of 1952.

The question was put and carried.  
Council resumed.

(Mr. Speaker in the Chair)

## REPORT OF COMMITTEE OF SUPPLY

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has considered Supplementary Estimate of Expenditure, No. 6 of 1952, and has approved that Estimate in the sum of £118,264.

THE MEMBER FOR FINANCE: Mr. Speaker, I beg to move that the Council do agree with the said Resolution.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

That the sum of £118,264 be granted to the Governor on account, for or towards defraying the charges for Supplementary Estimates of Expenditure (No. 6 of 1952).

Resolution agreed to.

THE MEMBER FOR FINANCE: I beg to give notice, under Standing Order No. 129, that the permission of the Governor has been received for the introduction of this Resolution.

## COMMITTEE OF SUPPLY

Committee of Supply—Order for Committee read. Mr. Speaker left the Chair.

## IN THE COMMITTEE

[Mr. E. J. C. Neep, Q.C., in the Chair]

### ESTABLISHMENT OF A HOUSING FUND

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I beg to move—

WHEREAS—

(a) the Housing Ordinance (Cap. 142) provides for the establishment of a Housing Fund from which advances or grants may be made to local authorities and for the execution of housing schemes; and

(b) the Governor in Council has established a Housing Fund in accordance with the provisions of section 4 of the Housing Ordinance; and

(c) the sum of £300,000 was loaned or hypothecated for lending to local authorities for approved housing schemes from the Colony's revenues in 1949:

[The Member for Health, Lands and Local Government]

BE IT RESOLVED THEREFORE—

(a) that the sum of £30,354 being the net total of repayments of principal and interest received from local authorities in respect of housing loans granted to them by Government up to the 31st December, 1951, and credited to the general revenues of the Colony, be paid into the Housing Fund; and

(b) that repayments of principal and interest after the 31st December, 1951, on loans made from the £300,000 provided in 1949 and from the Housing Fund now established, be credited to that fund and not to the general revenues of the Colony.

Well, Sir, I think the Motion will be pretty clear to hon. Members as to the intention. It needs no emphasis of mine to make hon. Members fully aware of the tremendous urgency of taking the most active steps to remedy in our urban areas the intense shortage of African housing. It is proposed to reorganize the housing machinery, to re-establish the Housing Board, operating under the Housing Ordinance, to revise its provisions in order to expand its services. At present its loans are confined to local authorities. Before long, an amending Bill will be brought before the Legislative Council to enable the Housing Board to advance loans to employers and to individuals to build houses for African accommodation.

Now, it was always intended that this Housing Fund should be a revolving fund. The necessary steps were not, however, taken at the right time. It is now desired to pay into the Housing Fund the money that it is agreed should have gone in from the repayment of principal and the payment of interest over the previous years, and to provide for future payments of principal and interest to go into the fund so that it will be replenished from time to time and funds will be available for local authorities and others. Further funds will, of course, be necessary, but those will be the subject of further reference to this Committee.

At present all that is required is to authorize the transfer from the revenues of the Colony to the Housing Fund of

the moneys already paid and to provide that future payments under these Heads go straight into the Housing Fund.

I beg to move.

Mrs. SHAW (NYANDA): Mr. Chairman, I beg to give this Motion on housing my full support, because the housing of Africans in the urban areas of this Colony has been, up to date, a disgrace to any civilized Colony. Many respectable Africans, for lack of accommodation, are forced into habits of vagrancy when they visit our towns and come under the influence of people, many hundreds of people, who believe that crime does pay.

There is only one point, Mr. Chairman, that I wish to underline in speaking in support of this Motion, and that is that, although in many cases employers of labour in our urban areas have shown the most reprehensible lack of responsibility for the housing and welfare of, particularly, their African staffs, that is not always the case; and some firms have been perfectly willing to put up sums of money to build accommodation and housing for their African staffs and have been unable to do so because of the chaos in the Land Office, and the fact that they could not get surveyed plots for the purpose.

Now, in substantiating this statement, I wish to say that I have it on good authority that Unga Limited, as one of the large employers in this town, has offered the sum of £25,000 for African housing, but they have been unable, up to date, to procure land because of lack of surveyed plots. I merely wish to underline this and ask the Government if they will look into the matter and, if firms are trying to do what they should do, and look after their Africans, that Government will expedite the issue of surveyed plots for the purpose of building staff housing. (Applause.)

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I welcome the support of the hon. Member, whose remarks I must say, whilst welcome, do not appear to be particularly relevant to the Motion before the Committee.

However, I would assure the hon. Member, and other Members that very active steps are being taken by the Municipal Council of Nairobi and the Government to render all possible facilities for employers to build housing



[The Member for Health, Lands and Local Government] for their African staffs. I have no personal knowledge of this proposal of Messrs. Unga Limited, but I will certainly go into the matter and see if anything can be done that is not, at the moment, being done.

MR. CROSSKILL: Mr. Chairman, there is one point on which I am not quite clear with regard to this Motion. That is whether one rate of interest is paid on the £300,000 loan fund, and another rate of interest is then credited to the loan. Would the hon. Member elucidate that point?

THE SECRETARY TO THE TREASURY: As I understood the question, I think the hon. Member was asking whether, in fact, the Government was receiving interest from the moneys lent to the fund. Is that correct?

MR. CROSSKILL: That is correct.

THE SECRETARY TO THE TREASURY: The Government is not receiving interest; the money is to be invested in the fund interest free by the Government.

MR. CROSSKILL: I beg to query whether that is a proper business method. If, for instance, one has a loan from the Land Bank on one's farm, if one were to request the Land Bank that the interest due to them were to be retained by the farm, I think they would, very naturally, refuse. I think they would say one must establish one's claim to a further sum of capital. I think that would be a more proper way of dealing with the matter. The interests accruing should go to general revenue and further sums required should be voted as capital.

THE MEMBER FOR FINANCE: I think, Sir, the hon. Member is making a slight mistake. The principle of a revolving fund, which is the principle inherent in this, has been accepted by this Committee many times. If I might give a quite recent example, Sir, the Higher Education Loans Fund is a typical example of where Government, in order to hurry forward a certain policy and assist, gives a capital grant to a fund and allows the interest, which is charged by that fund to the borrowers, to increase and swell the amount of money available for that particular purpose. That is all that is, indeed, inherent in the principle of the revolving fund which is what this is.

MR. COOKE: Then the £300,000 is no longer a loan, it is a gift really.

THE MEMBER FOR FINANCE: The hon. Member for the Coast is quite right. That is the point.

The question was put and carried.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Chairman, I beg to move that the Committee report consideration to the Council of the Motion now before us.

The question was put and carried.  
Council resumed.

[Mr. Speaker in the Chair]

#### REPORT OF COMMITTEE OF SUPPLY

MR. NEEP: Mr. Speaker, I beg to report that a Committee of the whole Council has resolved in accordance with the Resolution set out under Heads (a) and (b) in Order No. 11 of the Order Paper.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move that the Council doth agree with the Motion just read.

THE MEMBER FOR FINANCE seconded.

#### HOUSING FUND

(a) That the sum of £30,354 being the net total of repayments of principal and interest received from local authorities in respect of housing loans granted to them by Government up to the 31st December, 1951, and credited to the general revenues of the Colony be paid into the Housing Fund; and

(b) that repayments of principal and interest after the 31st December, 1951, on loans made from the £300,000 provided in 1949 and from the Housing Fund now established, be credited to that Fund and not to the general revenues of the Colony.

Resolution agreed to.

#### MOTION

##### COST OF LIVING ALLOWANCE FOR CIVIL SERVANTS

THE MEMBER FOR FINANCE: Under Standing Order No. 128, I beg to notify that the Governor has given his recognition and consent to the introduction of this Motion.

[The Member for Finance] Might I ask you, Sir, whether it would be possible for us to stay in Committee to deal with 12 and 10, or would you prefer we come out into Council on each order.

THE SPEAKER: Which one are you voting now?

THE MEMBER FOR FINANCE: 12, Sir.

THE SPEAKER: Still 10 to be done.

THE MEMBER FOR FINANCE: Yes, Sir, which is also a financial Resolution.

THE SPEAKER: It will no doubt save time to take both of them, although strictly, of course, they should be taken separately. But if the Council are agreeable to going to Committee on the two of them together, as it will save time, I would raise no objection. Take the two then.

#### COMMITTEE OF THE WHOLE COUNCIL

Committee of Supply—Order for Committee read, Mr. Speaker left the Chair.

#### COMMITTEE OF SUPPLY

[Mr. E. J. C. Neep, Q.C., in the Chair]

#### MOTIONS

THE SECRETARY TO THE TREASURY: Mr. Chairman, I beg to move—

BE IT RESOLVED, that as from the 1st August, 1952, on salaries of £210 and above, the cost of living allowance for civil servants be 30 per cent, with a maximum of £300.

Sir, the Select Committee on Cost of Living Allowances which reported last February recommended that allowances should be paid on the following basis:—

For salaries of £210 and under, an allowance of 45 per cent on the first £70 of salary, and 15 per cent on the next £140.

On salaries of £210 and over, 25 per cent of salary with a ceiling of £250 which would apply to salaries of £1,000 per annum and above.

The recommendations of the Select Committee were accepted by the Legislature. At the time they were made the African retail price index stood at 46.7 per cent above its level in 1947, which

has been taken for the purpose of assessing cost of living allowances as the base, and the wage adjustment index which applies to salaries of £210 and above then stood at 29.7 per cent above the 1947 level. Early in August of this year the Director of Statistics estimated that by the end of that month the African retail price index would have reached 316 points, that is approximately 60 per cent above its level in 1947, and that the wage adjustment index which was applied to salaries of £210 and above would have reached 226 points, that is, some 37 per cent above its level in 1947. In view of these increases, consideration was given by the Government to the submission of recommendations for further adjustments of the allowances. Action by the Government in this matter was, however, precipitated by the announcement by the Mombasa Coast Employers' Association that they intended, as from the 1st August, to increase the wages of all African labour by an amount of Sh. 6/50 per month. This amount of Sh. 6/50 represented two increases in the minimum wage; one increase of Sh. 4 in June and another of Sh. 2/50 as from the 1st August. In view of this announcement, and its obvious effect as far as employees of the Railway were concerned, an *ad hoc* interterritorial meeting was called, at which representatives of the High Commission were present, and the Kenya Government decided to approach the Standing Finance Committee with a proposal that the cost of living allowance on salaries of £70 and under should be increased to 55 per cent, with a consequential adjustment on the next £140 of salary to 10 per cent, leaving the allowance on salaries of £210 and above at 25 per cent. The Legislative Council was not sitting at that time. It was for that reason that the matter was referred to the Standing Finance Committee. The Committee, by a majority, accepted the recommendation that the proposals be approved and Government accepted the recommendation of the Standing Finance Committee. The allowances were put into effect as from the 1st of August, 1952. At the same time it was announced that further consideration would be given to revision of all allowances in the light of information available to the Government. This further consideration has now been given and the

[The Secretary to the Treasury] matter has been discussed at some length at two meetings of the *ad hoc* interterritorial committee which was set up as a result of a recommendation of the Select Committee in its February report.

Sir, it will be remembered that I said earlier that at the time of the August discussions, the Director of Statistics estimated that the African retail price index which is the one which applies to salaries of round about £36 per annum, would have reached 316 points; that is, some 60 per cent above the level in 1947, by the end of the month. That was the estimate given almost three to four weeks earlier than the end of the month. He also estimated that the wage adjustment index would have reached 37 per cent above its level in 1947 by the end of August.

As far as the latter index is concerned, that is the one which is used for salaries of £210 per annum and over, the Director's estimate was correct. With regard to the African retail price index, however, the actual figure as at the 31st August, was 311, that is, 57 per cent above its level in 1947. In these circumstances, the Government is of the opinion that the adjustment already made on salaries of £70 and under, that is 45 per cent to 55 per cent should stand, but that on salaries of £210 and above, the present allowance of 25 per cent should be increased to 30 per cent with a "ceiling", as is described, of £300, which, of course, would be reached at a salary of £1,000. It will be noted, Sir, of course, that these allowances do not fully compensate the civil servant for the rise in the cost of living. On salaries of £210 and above, what might be called the element of sacrifice is some 7 per cent, and the sacrifice is greater on salaries of over £1,000, because of the imposition of a "ceiling". On salaries of £70 and under, the award almost fully compensates the civil servants for the rise in the cost of living. The recommendations are, in fact, in line with the principles approved by the Legislature when debating the Select Committee Report last February. I should tell the Committee that if this Resolution is accepted, in view of the increase on salaries of £210 from 25 per cent to 30 per cent, there will be a consequential amendment on what might be called the "second slice" of income of £140, of those whose salaries are under £210. This is a

little bit complicated and I can perhaps make this clearer by saying that the allowance on the first £70 is 55 per cent, that represents in cash £38/10/-. In order that the allowance should be 30 per cent on a salary of £210, the allowance on the next £140 will have to be increased to 17½ per cent. In cash, this represents £24/10/-, and the two sums added together equal £63, which is 30 per cent on £210. (Hear, hear.)

Hon. Members will, of course, be interested in the cost of these proposals. It is estimated that in a full year the cost of the measures introduced as a result of the recommendations of the Standing Finance Committee last August, will be £110,000, and the cost of the proposals which are now before the Committee would require a further sum in a full year of approximately £220,000 per annum.

I beg to move.

MR. MACOSOCHE-WELWOOD: Mr. Chairman, there is one point I wish to raise, and I have raised it before on this particular discussion on cost of living allowances and that is the matter of "ceilings". I should like to ask the hon. Member who has just spoken to give this Committee information on what it would cost if the ceiling were removed. I am aware that the Civil Service is not paid on merit, it is paid on salary scales—(Laughter)—which is the primary cause, incidentally, for the necessity of this rather complicated calculation of cost of living allowances, rather than giving a man increases as you would in civil employ, according to his merit. It seems to me that we are getting into a very serious position by the continual bringing together of the lower-paid group to the higher-paid group. It is bound, in the end to lead to dissatisfaction in the higher ranks of the Civil Service. It appears to me to be entirely unjust that it should be done this way. I have heard it suggested that the revision of the higher group on a different scheme to cost of living allowances may be brought in by Government. If such a plan is in view, I should like to ask if this Committee could be told about it. (Hear, hear.)

THE SECRETARY TO THE TREASURY: I have not got the accurate figure worked out of what the extra cost would be if there was no ceiling, because the proposal

[The Secretary to the Treasury] is that there should be a ceiling. I will give as a rough guess, perhaps £20,000. That is the extra cost. I can only repeat what was said in the Select Committee Report, that this question of a "ceiling" is a matter of propriety rather than of logic. It is felt that the "ceiling" of £300 which is reached at £1,000 is appropriate in the circumstances.

MR. MACOSOCHE-WELWOOD: If indeed the sum involved is £20,000 to rectify what in fact I view as an injustice, surely we should not boggle over the question of £20,000 when we are dealing with a sum of £220,000 in a full year.

MR. COOKE: It is neither right nor wrong that they should not get this full amount. I thought it was based on the fact that the people of the higher-paid half can save on luxuries and people on lower pay have got necessities on which they must pay money, expend their salary. People on higher salaries can do a little bit of luxury cutting down. I thought that is what it is based on. If it is based on costing more money, I could not agree more; it is ridiculous not to pay this extra sum.

MR. USHER: I beg to move that the Resolution be amended by the omission of all words after "30 per cent."

MR. BLUNDELL: On a point of order, I think the hon. Member will have to add something further: "That Council recommend the deletion of the last five words", then the hon. Member opposite will be able to accept it.

THE MEMBER FOR FINANCE: I must regretfully point out that any amendment must comply with Standing Order No. 128.

LADY SHAW: On the same point of order, so long as this side of the Council recommend but do not move an amendment, they are perfectly in order.

THE CHAIRMAN: That is in order.

MR. USHER: "That this Council recommends that the words after '30 per cent' be omitted."

THE MEMBER FOR FINANCE: Mr. Chairman, I come back regretfully to my point of order. If this Resolution reads, "That this Council recommends,

that is not authority for this Council or for the Treasury to authorize the expenditure of this money.

THE CHAIRMAN: Perhaps, I can deal with that. I should construe that as meaning that this Committee had not approved of the Resolution, but had sent the ball back in this form—that it made a recommendation. It might be quite true that the recommendation could not be given legal or statutory effect, but it would remain as a recommendation of the feeling of this Committee. I would be disposed to let that go forward.

THE MEMBER FOR FINANCE: It means rejection, as far as the Government is concerned, of this Resolution.

THE CHAIRMAN: Clearly.

MR. NATHOO: Mr. Chairman, may I speak on the Motion or the amendment?

THE CHAIRMAN: The amendment.

MR. NATHOO: If it means that the real Motion is rejected and the whole thing goes, I would be very reluctant to vote for it and start the whole proceedings again. I would like to say that in the Select Committee—I was one of the members—and some of the Unofficials pressed very strongly to have this removed, but we met an element of opposition from the Secretary to the Treasury and the Member for Labour, who was a member of the Select Committee. They told us again and again, whilst they agreed there was no logic in keeping on the ceiling—I do not know what sense of propriety they were talking about—but the sense of propriety forced them to insist on the ceiling being kept, and thus for the sake of compact, and thus for the sake of compromise we agreed that the report would go out as a unanimous recommendation, go out as a unanimous recommendation, but I and we agreed to the plea put forward strongly support for Usain Glah. by the hon. Member for that attitude, we are likely to, perhaps not visibly, create a great deal of dissatisfaction.

MR. BLUNDELL: I want to just speak on a point of order, Sir. I think the point of view of the hon. Member for Finance and the hon. Mr. Nathoo would be met if we put in front of the word "recommends" the word "but". Then the Resolution up to that point would stand and after the word "but" and subsequent

[Mr. Blundell] words would be the only recommendation that would meet the point of the hon. Member.

THE CHAIRMAN: Will you be satisfied? That would mean that the Resolution would stand with an addenda. Mr. Vasey would that satisfy you in this way, that if you take this Resolution you would then have this expression of opinion tacked on to it, which might or might not influence you in the future.

THE MEMBER FOR FINANCE: That would meet us. The Government must, of course, still adhere to its opinion as expressed in the Resolution. That would meet us.

If I may now speak to the amendment, Sir, the recommendation is one, Sir, that has been given consideration by Government on several occasions and time and again we have come back to the conclusion that the margin of sacrifice or manoeuvrability in the higher ranks is there. I do recognize the point of view put forward by hon. Members opposite, and I think it is correct to say that Government has recognized the danger of what the hon. Member for Uasin Gishu has referred to as "concerning-ing". That would be recognized, Sir, but also we have, of course, as a result of requests of this Committee of this Council had a territorial Committee established. We have reached a measure of agreement, we have attempted to achieve a measure of uniformity. That we reflect as far as we possibly can in the Resolution before us. I would suggest the best thing to do would be for the hon. Member to accept the Motion that has been put forward by my hon. friend, the Secretary to the Treasury, with the assurance that Government will in any case weigh up the suggestions that have been put forward and discuss them with the other Governments concerned.

The hon. Member for Uasin Gishu asked a question as to whether there was any plan to pay higher salaries to higher ranking civil servants. The answer is that as far as I am concerned I have no knowledge of any such plan having been put forward inside the Government.

COLONEL GROGAN: Would the hon. Member for Finance tell us whether income tax is payable on these cost of living allowances?

MR. BLUNDELL: Yes, it all comes back again.

COLONEL GROGAN: Would it not be much more intelligent and certainly more equitable to reduce the income tax payable by these people? After all, there is another section of the community apart from the Civil Service; the position would look less like a benevolent distribution of other people's money among a goose-club and distribute the money among the community who find the resources to meet the demand. (Laughter.) (Hear, hear.)

THE MEMBER FOR FINANCE: The answer to that is already well known to the hon. gentleman. The answer is you can either make a special exception of the cost of living allowances and put the civil servants in a class where cost of living allowances should not pay income tax or you can, as the hon. gentleman has suggested, reduce income tax throughout. The answer, of course, is to be found in the Budget speech to be delivered on 29th November, where the hon. Member will have full freedom to express his opinion on the level of income tax he desires.

MR. HAVELOCK: The hon. Member said November, is it something new?

THE MEMBER FOR FINANCE: October, sorry.

MR. HAVELOCK: I would be very disappointed if this amendment were to be withdrawn. In spite of the eloquence of the Member for Finance, I support it entirely myself, and I should like to see it on record rather than an assurance across the floor. It is only a recommendation.

The question of the amendment was put and cut a division negatived by 26 votes to 16 votes. (AVES: Mr. Blundell, Group-Capt. Briggs, Messrs. Cooke, Crosskill, Lt-Col. Ghensie, Lt-Col. Grogan, Mr. Havelock, Major Keyter, Messrs. Maconochie-Welwood, Nathoo, Sir Eboo Piribhai, Lady Shaw, Mrs. Shaw, Messrs. Chanan Singh, Slade and Usher. 16 NOES: Dr. Anderson, Messrs. Awori, Blunt, Major Cavendish-Bentick, Messrs. Carpenter, Cowie, Edyer, Gikonyo, Griffith-Jones, Hartwell, Dr. Hassan, Mr. Hope-Jones, Dr. Karve, Sheikh Mahfood, Lt-Col. Marchant, Sir Charles Mortimer, Messrs. Okwiry,

Pelley, A. B. Patel, J. S. Patel, Roddan, Mohamad Ali Said, Messrs. Tameo, Taylor, Vasey and Wadley, 26. DID NOT VOTE: Messrs. Harris and Neep, 2. ABSENT: Messrs. Davies, Jeremiah, Madin, Madhu, Mukima, Odede, Potter, Rukicho, Sheriff Abdullah and Whyatt. (A TOTAL: 54.)

The question of the Motion was put and carried.

Resolution agreed to.

#### KENYA MEAT COMMISSION LOANS

THE MEMBER FOR FINANCE: Mr. Chairman, I beg to move that—

WHEREAS the Kenya Meat Commission has arranged to borrow a sum not exceeding £500,000 from the Standard Bank Finance and Development Corporation, Limited, repayable with interest at 3½ per cent per annum, in annual instalments subject to a maximum repayment of principal of £25,000 in any one year, for the purpose of constructing a Meat Factory and ancillary buildings at Athi River; and

WHEREAS the Government has guaranteed the loan; and

WHEREAS it is considered desirable that the Government should finance this capital contribution;

NOW, THEREFORE, BE IT RESOLVED that the Government shall pay in each year to the Kenya Meat Commission the amount of principal repaid in that year by the Commission to the Standard Bank Finance and Development Corporation, Ltd., subject to a maximum payment in any one year of £25,000 and subject to the Kenya Meat Commission paying interest at the rate of 3½ per cent per annum to the Government on all sums so paid by the Government to the Commission, such sums not to exceed in the aggregate £500,000 and the repayment of such sums to the Government by the Commission with interest as aforesaid to be secured by a debenture charging with such repayment all and sundry the assets of the Commission from time to time during the period of the said debenture:

AND WHEREAS a sum of £107,000 which the Government had advanced to the Meat Marketing Board was

transferred to the Kenya Meat Commission in accordance with the provisions of section 23 of the Kenya Meat Commission Ordinance, 1950 (No. 13 of 1950):

BE IT RESOLVED that the said advance, and the repayment thereof to the Government by the Commission with interest at the rate of 3½ per cent per annum, be included in and secured by the aforesaid debenture.

Sir, the Kenya Meat Commission was established in 1950, and under the provisions of the Ordinance by which it was established Government guaranteed a loan of £500,000 which was to be provided by the Standard Bank Finance and Development Corporation, with an interest rate of 3½ per cent. The terms of the loan were that the loan should be repaid by annual instalments of £25,000 plus an annual amount of interest of £17,500, which would be a total of £42,500 per annum. The arrangement made was accepted at the time by the Kenya Meat Commission and Government, as being the immediate and practical way of providing funds required to enable Athi River Factory to be built and equipped with as little delay as possible. The result of this acceptance is that the factory will be in operation very early next year and all orders for the construction plant and machinery were placed at the prices prevailing in 1951, when prices were much lower. The result of the action has therefore been that a considerable sum of money has been saved. In 1951 the Commission submitted its report for the first nine months of its operation. It became apparent that the Commission, operating on a basis of selling meat wholesale at the same price that is paid to the producer, could not be expected to provide capital required to finance this particular asset within the twenty-year period, and in addition pay interest on borrowed money, income tax on the annual instalment of the loan, and provide a reasonable return to producers. It would have meant, had that been done, that the producers of one generation would, under those arrangements, provided all the capital for an asset which has got a much longer life than 20 years.

(The Commission decided, after considerable consideration and consultation with Government, subject to the approval

[The Member for Finance]

of the Legislature, that the Government should reimburse the Commission the annual amount of repayment of the loan made to the Commission by the Bank, and would convert the lot into a debenture carrying interest at 31 per cent.

Now, Sir, the second part of the Motion arises from the fact that when, under the Defence Regulations, the Meat Marketing Board replaced the Livestock Control, Government made a non-interest-bearing loan of £107,000 to provide liquid capital for the Meat Marketing Board and to enable the payment to be made for certain assets which were to be taken over by the Board from the Livestock Control. Under the provisions of section 3 of the Kenya Meat Commission Ordinance the debt was transferred to the Commission. It is proposed that this sum should be included in and secured by the same debenture and that the Commission should pay interest at 31 per cent on this loan as from the date of bringing into force the Kenya Meat Commission Ordinance.

I think the Committee will agree, Sir, I am dealing only with the financial aspect, that the financial arrangement could be regarded as a very satisfactory one inasmuch as the factory has been built cheaply, it will be in operation at an early date and a 31 per cent rate of interest has been obtained which could be regarded as very favourable when compared with the present-day levels.

I beg to move.

MR. HARRIS: Mr. Chairman, as the Committee knows, I have always been a fairly consistent critic of the Kenya Meat Commission, but after a recent debate I became reconciled, or almost reconciled, to its existence.

Now, Sir, three years ago, when I started criticizing the Commission—then the bill was in draft form—I was laughed at because I said that I believed that under certain circumstances the Kenya Meat Commission could be used as a very easy way of beginning the process of the nationalization of agriculture. I was told at that time, Sir, and I have been told since, that the Kenya Meat Commission is an organization run by the producers for the producers. Well, Sir, if that is so, by this measure they

now seem to me to be selling their birth-right in a very effective manner. It is quite obvious, Sir, that by the process envisaged in this Motion that the Government is going to gain an increasing financial interest in the Commission, and its assets, and the greater the Governmental interest in the assets of the Commission, so are the greater the chances of bureaucratic interference with the industry, which I should have thought was the last thing wanted by the producer.

Now, Sir, I did say that I had become almost reconciled to the existence of the Kenya Meat Commission. I do not propose, Sir, to oppose this Motion, providing one of the hon. Members responsible on the other side would give an undertaking, Sir, that there is no intention, by introducing this measure with its element of subsidization by the taxpayer to the tune of some £8,000 a year freedom from income tax, of departing from the initial expressed intention of the Meat Commission to become eventually either an organization financed by the trade itself, that is, the cattle-producing trade, or alternatively financed by normal commercial methods rather than by Governmental finance.

MR. COOKE: Mr. Chairman, as Government finance is so involved, I should like this question to be answered. There are persistent rumours, Sir, so persistent that there must be something in it, that fewer and fewer farmers are sending their steers now to the Meat Commission and they are really going into butchers' shops.

THE CHAIRMAN: Are we not getting a long way from the subject-matter?

MR. COOKE: I asked you that first, Sir. I asked you if I was permitted to make a general comment—

THE CHAIRMAN: I do not think you really are permitted to go as far away as that.

MR. COOKE: As Government money is involved in this matter, in that way I thought I got your implicit admission to go ahead. Can we be assured that the steers do all go through the Meat Commission instead of being sold to the smaller butchers' shops, and that it becomes therefore an economic success in the end if all the meat does go through it.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Sir, two points have been made. The hon. Member for Nairobi South talked about nationalization of agriculture, and suggested that he was rather afraid that the Meat Marketing Commission were selling their birthright by agreeing to this proposal. Well, Sir, I can give an assurance that, as I hope the hon. Member is aware, the last thing I want is nationalization of agriculture, and would point out that under section 2 of the Ordinance it is provided that, subject to the approval of the Governor in Council, on such terms and conditions as the Governor in Council may impose, the Commission may sell, transfer or make over the property and undertaking of the Commission to any public company or to any corporation or any society formed under the Commission or the Co-operative Societies Ordinance, 1945. I would remind the hon. Member that this section, which still forms part of the Act, was specifically included in the Bill so as to leave the way open in due course to change the status of the Commission into some form of producer co-operative, which is, I think, the ultimate objection the Commissioners have in view. At the same time, while not losing sight of the future, I think the Commissioners do bear some responsibility to the present producers who are supplying meat to this Commission.

In short, Sir, at the present time under the arrangements which we are working under now, the annual money that has to be found by the Commission is, first of all, repayment of the £25,000 per annum. They have got to find first of all that £25,000 each year; secondly, income tax on that £25,000 at Sh. 4 in the £, which means a further £5,000 and thirdly interest at 31 per cent on £50,000 when the whole amount of that loan is taken up, a total of £47,500. Whereas, under the proposed procedure, all they would have to find is 31 per cent interest on the £50,000, that is £17,500, which means that the present producers will make a saving in the money they have to find of about £30,000. This does not imply that they will not be allowed to invest in this undertaking by taking up debentures in due course and by turning the thing into a farmers co-operative. I think, Sir, that

the present arrangement that is proposed by my hon. friend, the Member for Finance, is so obviously in the interests of the Commission and of to-day's producers that it can hardly be refuted, it should therefore go through. Thus on the point made by my hon. friend, the Member for Nairobi South, I can give him a most definite undertaking that it is not in my mind at all to nationalize farming or this undertaking.

Lastly, Sir, the hon. Member for the Coast has suggested that fewer and fewer cattle are going to the Commission. I can give the hon. Member an assurance that that is not the case, and I will be very happy to give him some figures which I think will refute that statement.

MR. BLUNDELL: Mr. Chairman, there are just two financial points to which I wish to refer. I support the Motion, but there are two matters which I do not like. The first is that in effect, by agreeing to this Motion we are establishing a priority as against other items in the Development Plan, because we are taking money from current revenue clearly which might be available to be transferred across to the Development and Reconstruction Authority funds in the Budget under the Development and Reconstruction Authority Vote, or alternatively to be placed in the Surplus Balance and subsequently used for development. That is the first point I do not entirely like; I do not think it should be a precedent.

The second point is we are, in effect, establishing for capital development a charge upon the revenue yearly. That charge upon the revenue itself, I would again say a matter I do not like. I would have in many ways have preferred the money to move across in the capital funds, in which case the charge upon the revenue would only spring from the service charges.

Those are two points at least which the Committee should be well aware of when they support the Motion.

THE CHAIRMAN: We are forgetting the clock for a moment, like the French Parliament when they are introducing the Budget!

THE MEMBER FOR FINANCE: In view of the two points raised by the hon.

[The Member for Finance] Member for Rift Valley, which are, of course, very cogent points, if I may take the latter point first, where I must disagree with him is that the payment from this amount from annual revenue is indeed a loan from revenue, not a commitment of capital. It is secured by a debenture and therefore the capital has not entirely vanished on the project.

MR. BLUNDELL: I would accept that, but nevertheless the amount is a charge upon the annual revenue for 20 years. Therefore, you might have to meet it with an increase in taxation.

THE MEMBER FOR FINANCE: That, Sir is correct, that it is a charge upon the revenue. Nevertheless, it is a loan and not a capital grant, used for capital development, and I think it is in the interests of all the parties concerned that that should be borne in mind. The question of development priority, Sir, the fact remains that the factory is built. Therefore, Sir, whatever the feelings and whatever the desires of the people with regard to the priority in projects, the project is in being. But what has happened indeed is that by this arrangement, instead of having to provide £500,000 in one lump sum from the Surplus Balances or the available revenue of the Colony, we have been able to borrow it and so spread the burden over a long period of time. I am sure the hon. Member for Rift Valley would agree with me when I say I should be extremely happy if I could see a lot of other development projects financed on the same easy basis.

MR. HARRIS: The hon. Member for Finance's last argument is that it was always the intention to finance this factory from Government funds.

THE MEMBER FOR FINANCE: On a point of explanation, Sir, if the hon. Member listened to what I said, I did not say that it was "always the intention to finance", I said that "in the way it has been financed".

DR. HASSAN: May I ask the hon. Member for Finance how he arrives at the rate of interest of 3½ per cent? Is it the usual interest in the country, or is it the rate of interest on which the Government can borrow and have loans from outside?

THE MEMBER FOR FINANCE: I am sorry, Sir, I thought that I had made that clear in my opening remarks. This is a loan from the Standard Bank Finance and Development Corporation, not from Government funds, and the Colony is extremely fortunate that the arrangement was made at that time, because had the arrangements to be made to-day, or had the money to come from Government funds, it would be extremely unlikely that such a low rate of interest would be available.

MR. SLADE: Mr. Chairman, while fully agreeing with the hon. Member for Agriculture that the whole of this capital expenditure should not have to be carried by the producers of the next 20 years, it does seem to me the producers have got to start carrying it, if ever they are going to acquire it. As I see the arrangements now, Government is going to finance it all and the producers are not going to start putting any capital into it. I would like to be assured that now or in the very near future, the Meat Commission will establish a sinking fund—not necessarily anything like £25,000 a year—which would come out of what otherwise might have gone to the producer. In return for that, the producers shall get something of the nature of preference shares, so that by degrees they are paying for the undertaking and reducing the amount that is coming from Government.

MR. HAVELOCK: Before the hon. Member answers, Sir, may I ask one more question. Could he make it quite clear if the Meat Commission will have to pay income tax on the moneys to be paid in interest?

THE MEMBER FOR FINANCE: No, Sir, it will not have to pay income tax on the moneys to be paid in interest, because that is the same as in any business, it is a normal business charge.

Now, Sir, dealing with the point raised by the hon. Mr. Slade, I thought, Sir, both my friend, the hon. Member for Agriculture, and myself had made it clear that this Resolution allows flexibility. I would suggest that the suggestion made by the hon. Member could be conveyed to the Kenya Meat Commission, but that the flexibility allowed under this arrangement is the best that we can do without tying them down in the beginning years

[The Member for Finance] of their operation to any provision of taking funds or anything else.

The question was put and carried.

THE MEMBER FOR FINANCE: Mr. Chairman, I beg to move that the Committee do report consideration of the said Resolution.

The question was put and carried.

Council resumed.

[Mr. Speaker in the Chair]

#### REPORTS OF COMMITTEE OF SUPPLY

MR. NEEP: Mr. Speaker, I beg to report that the Committee of Supply has approved the Resolutions set out in Orders Nos. 10 and 12 of the Order Paper.

THE MEMBER FOR FINANCE: Mr. Speaker, I beg to move that the Council doth agree with the Committee in the said Resolutions.

THE MEMBER FOR HEALTH, LANDS AND LOCAL GOVERNMENT seconded.

#### COST OF LIVING ALLOWANCES FOR CIVIL SERVANTS

That, as from the 1st day of August, 1952, on salaries of £210 and above, the cost of living allowance for civil servants shall be 30 per cent, with a maximum of £300.

Resolution agreed to.

#### KENYA MEAT COMMISSION LOANS

That the Government shall pay in each year to the Kenya Meat Commission the amount of principal repaid in that year by the Commission to the Standard Bank Finance and Development Corporation, Ltd., subject to a maximum payment in any one year of £25,000 and subject to the Kenya Meat Commission paying interest at the rate of 3½ per cent annum to the Government on all sums so paid by the Government to the Commission, such sums not to exceed in the aggregate £500,000 and the repayment of such sums to the Government by the Commission with interest as aforesaid to be secured by a debenture charging with such repayment all and sundry the assets of the Commission from time to time during the period of the said debenture; and that the advance of £107,000 and the repayment thereof to the Government by the Commission with interest at the rate of 3½ per cent per annum be included in and secured by the aforesaid debenture.

Resolution agreed to.

#### ADJOURNMENT

THE SPEAKER: That concludes the business on the Order Paper, hon. Members. Council will stand adjourned *sine die*.

Council rose at fifty-five minutes past Twelve o'clock p.m.

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First Session—Fourth Sitting

Volume LI

15th October, 1952, to 21st October, 1952

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