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Description of Document LEGISLATIVE COUNCIL DEBATES, VOL. VII.

Covering Dates 14th April, to 16th June, 1939.

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Date of Reproduction 28<sup>th</sup> December, 1965.



COLONY AND PROTECTORATE OF KENYA

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**LEGISLATIVE COUNCIL  
DEBATES**  
OFFICIAL REPORT

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Second Series

Volume VII

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**1939**

14th April to 16th JUNE

1939  
PRINTED BY THE GOVERNMENT PRINTER  
NAIROBI

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## COLONY AND PROTECTORATE OF KENYA

### List of Members of the Legislative Council

#### *President:*

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

#### *Ex Officio Members*

CHIEF SECRETARY, ACTING (HON. W. HARRAGIN, K.C.). (1)  
ATTORNEY GENERAL, ACTING (HON. H. C. WILLAN, M.C.). (2)  
FINANCIAL SECRETARY (HON. C. R. LOCKHART, C.B.E.).  
CHIEF NATIVE COMMISSIONER (HON. E. B. HOSKING, O.B.E.). (3)  
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. A. R. PATERSON, C.M.G.).  
DIRECTOR OF AGRICULTURE (HON. H. B. WATERS).  
DIRECTOR OF EDUCATION (HON. A. T. LACEY, O.B.E.).  
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS (BRIG.-GEN. THE HON. SIR G. D. RHODES, C.B.E., D.S.O.).  
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACHI).  
COMPTROLLER OF CUSTOMS (ACTING) (HON. E. E. LORD). (4)  
COMMISSIONER OF LANDS AND SETTLEMENT (ACTING) (HON. C. G. FANNIN, M.C.).

#### *Nominated Official Members:*

HON. J. D. MCKEAN, O.B.E. (Acting Prov. Commissioner, Coast Province). (5)  
HON. J. C. RAMMELL (Acting Conservator of Forests). (6)  
HON. S. H. FAZAN, C.B.E. (Prov. Commissioner, Nyanza Province).  
HON. T. A. DENNISON (Acting Solicitor General). (7)  
HON. R. DAUBNEY, O.B.E. (Director of Veterinary Services).  
HON. J. G. H. HOPKINS, O.B.E. (Acting Prov. Commissioner, Rift Valley). (8)  
HON. C. TOMKINSON (Acting Prov. Commissioner, Central Province). (9)  
HON. C. T. DAVENPORT (Acting Commissioner of Mines). (10)  
HON. G. P. WILLOUGHBY. (11)

#### *European Elected Members:*

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, Nairobi North.  
HON. S. V. COOKE, Coast.  
THE RT. HON. THE EARL OF ERROLL, Kiambu.  
HON. LADY SIDNEY FARRAR, Nyanza.  
HON. S. G. GHERSIE, Uasin Gishu.  
MAJOR THE HON. E. S. GROGAN, D.S.O., Ukamba.  
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzola.  
LT.-COL. THE HON. F. S. MODERA, D.S.O., M.C., Nairobi South. (12)  
HON. W. G. D. H. NICOL, Mombasa.  
LT.-COL. THE HON. LORD FRANCIS SCOTT, K.C.M.G., D.S.O., Rift Valley.  
HON. E. H. WRIGHT, Aberdare.



LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

*Indian Elected Members:*

HON. ISHER DASS.  
HON. SHAMSUD-DEEN.  
HON. R. KASSIM.  
HON. J. B. PANDYA, (13)  
HON. A. B. PATEL.

*Arab Elected Member:*

CAPT. THE HON. SIK ALI BIN SALIM, K.B.E., C.M.G. (R.N.V.R.).

*Nominated Unofficial Members:*

*Representing the Interests of the African Community—*

DR. THE HON. C. J. WILSON, M.C.  
HON. H. R. MONTGOMERY, C.M.G.

*Representing the Interests of the Arab Community—*

HON. SHEIKH HAMED BIN MOHAMED BIN ISSA.

*Clerk to the Legislative Council:*

Mr. C. M. Devereil (Acting).

*Reporters:*

Mr. A. H. Edwards, Mr. H. Thomas.

- (1) *Vice* Sir Arnigel de V. Wade, C.M.G., O.B.E., retired.
- (2) *Vice* Mr. W. Harragin, acting.
- (3) *Vice* Mr. S. H. La Fontaine, D.S.O., O.B.E., M.C., acting until 30th May, 1939.
- (4) *Vice* Mr. A. W. Northrup, on leave from 24th May, 1939.
- (5) *Vice* Mr. G. H. C. Boulderson, on leave.
- (6) *Vice* Mr. H. M. Gardner, O.B.E., on leave.
- (7) *Vice* Mr. H. C. Willan, acting.
- (8) *Vice* Mr. S. O. V. Hodge, on leave.
- (9) *Vice* Mr. S. H. La Fontaine, Acting Chief Native Commissioner, and on leave from 31st May, 1939.
- (10) *Vice* Mr. H. Izard, on leave.
- (11) *Vice* Mr. G. B. Hebden (Postmaster General), indisposed from 30th May, 1939.
- (12) *Vice* Major A. Dunstan Adams, acting until 30th May, 1939.
- (13) *Vice* Dr. S. D. Karve, acting until 3rd June, 1939.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

14th April, 1939—

Hon. Comptroller of Customs.  
Hon. Elected Member for Nyanza.  
Hon. Elected Member for Trans Nzoia.  
Hon. Elected Member for Aberdare.

17th April, 1939—

Hon. Elected Member for Nyanza.  
Hon. Elected Member for Aberdare.

19th April, 1939—

Hon. Shamsud-Deen.  
Hon. H. R. Montgomery, C.M.G.

20th April, 1939—

Hon. C. Tomkinson.  
Hon. Elected Member for Nyanza.  
Hon. H. R. Montgomery, C.M.G.

21st April, 1939—

Hon. C. Tomkinson.  
Hon. S. H. Fazan, C.B.E.  
Hon. Elected Member for Nyanza.  
Hon. H. R. Montgomery, C.M.G.

14th June, 1939—

Hon. A. B. Patel.  
Hon. Arab Elected Member.  
Hon. Arab Nominated Member.

15th June, 1939—

Hon. A. B. Patel.  
Hon. Arab Elected Member.  
Hon. Arab Nominated Member.

16th June, 1939—

Hon. Director of Education.  
Hon. Elected Member for Mombasa.  
Hon. Elected Member for Aberdare.  
Hon. A. B. Patel.  
Hon. Arab Elected Member.  
Hon. Arab Nominated Member.



COLONY AND PROTECTORATE OF KENYA

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LEGISLATIVE COUNCIL DEBATES

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FIRST SESSION, 1939

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**Friday, 14th April, 1939**

Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Friday, 14th April, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning Council was read.

**ADMINISTRATION OF THE OATH**

The Oath of Allegiance was administered to:—

*Ex Officio Member—*

A. T. Lacey, Esq., O.B.E., Director of Education.

*Temporary Ex Officio Member—*

C. G. Fannin, Esq., M.C., Acting Commissioner of Lands and Settlement.

*Member for Ukamba—*

Major E. S. Grogan, D.S.O.

*Acting Member for Nairobi South—*

Major A. Dunstan Adams, M.C.

*Temporary Nominated Official Members—*

J. D. McKean, Esq., O.B.E., Acting Provincial Commissioner, Coast Province.

J. C. Rammell, Esq., Acting Conservator of Forests.

T. A. Dennison, Esq., Acting Solicitor General.

J. G. H. Hopkins, Esq., O.B.E., Acting Provincial Commissioner, Rift Valley.

C. T. Davenport, Esq., Acting Commissioner of Mines.

**COMMUNICATION FROM THE CHAIR**

His Excellency made the following Communication from the Chair:—

Honourable Members of Council,

When we adjourned shortly before Christmas there seemed signs of improvement in the international situation, giving rise to hope that the world might be able to devote its energy to progress and development instead of to preparations for war. Within the last few weeks this hope has received some rude shocks, though I have no information to give beyond what has appeared in the papers or on the broadcast. But though this is no time to relax any defensive measures, there is no reason to believe that the hopes of improvement have been dispelled.

Beyond this I feel certain that at a time like the present our thoughts and our sympathies must go out wholeheartedly to our Prime Minister, Mr. Chamberlain. No man has striven more earnestly for peace than he. In order to preserve the world, including us and our

[H.E. the Governor]  
families from the horrors of war he has not hesitated to take action that might expose himself to accusations of timidity and of glibble simplicity. In our hearts we know that a simple faith in the basic principles of truth and justice is something far stronger than mere cleverness combined with cunning and that it is bound to triumph in the end. And it does not require much insight to perceive that a Prime Minister must know a great deal more than he can possibly say, and because of this he is often unable to explain his reasons as fully as he would wish were his own reputation the only consideration. On the Prime Minister's shoulders still rests a tremendous burden of responsibility, a burden that at times must have been rendered almost intolerable by a sense of disappointment; and I am sure I am voicing the opinion of the whole country when I express our sympathy that such a strain should have been imposed on him at a time of life when most men seek for rest, our desire to ease his burden in any way, however small, that may be open to us, and our confidence in his ability to maintain the principles for which the British Empire stands.

Since defence must be uppermost in many people's minds to-day, I will very briefly refer to two broader aspects of the subject. The first is that the defence of Kenya is not a self-contained and independent problem but part of the whole question of Imperial defence, and to appreciate it we must look much further than the frontiers of this country. So, it is not enough to take a map of Kenya; it must be a map of the whole of what is known as the Middle East, including the Red Sea and extending to the Mediterranean and possibly even to the Persian Gulf. All this should be regarded as one area of operations.

The second point is this: one cannot conceive of any conditions under which the British Empire would initiate a war, even what is commonly known as a preventive war. As Lord Halifax said recently, "There is no party and no statesman in England who would for one moment contemplate aggressive war"; and

therefore, thinking only of defence, there may be a slight tendency to think of war purely in terms of warding off attacks. Anyone who studies the events of August 1914, especially if he was in France at that time, realises the dangers of a blind offensive; but one cannot win a war merely by sitting behind barbed wire or a balloon barrage, any more than one could win a football match by putting one's whole team into goal. One must combine defensive with offensive action, air raid precautions for instance with bombing attacks. And I would suggest that it would be instructive to draw circles with a radius of perhaps 500 miles or more appropriately about 750 miles, the centres of the circles not on potential enemy air bases but on British bases. If one does this it will help one to realize the tremendous potentialities that now exist owing to the development of the long distance bomber.

I have referred particularly to the air, but I cannot emphasize too strongly that a war is not won merely by the individual action of a navy, army or of an air force; it is a combination of all three that is essential and that also makes the highest calls on the art of generalship. And even that is not enough: one must combine the action of the fighting forces with every other form of national and Imperial activity—finance, economics, propaganda, the power over shipping through insurance and the maintenance of supplies for the people and the fighting forces.

I have no doubt in my own mind that it is the desire of every man to be a part of the combatant services in time of war and to serve at or as near the front as possible; and there would be something very wrong were this desire to slacken. But it must be remembered that wars are won not only by using a rifle in the firing line or serving in a destroyer or piloting an aeroplane, but also by keeping up the supply of food and material, keeping the transportation system going and also the general running of the country; and further, the more mechanized an army the greater the number of men required behind the front line to maintain it.

Now I will turn to a few details as regards Kenya itself. It will be realized that I cannot go into any details of plans or indulge in figures.

[H.E. the Governor]

The whole scheme for reinforcements for this country in time of need has now been worked out in detail, including the movement for these reinforcements.

The rearward services, at any rate so far as Kenya is concerned, are ready to function: and as an instance of the large preparation I will take a little detail on the medical side.

Arrangements have been made for the provision by Kenya of a special Field Ambulance Company, a Motor Ambulance Convoy, a Casualty Clearing Station, a Hospital Train and a Base General Hospital, and the staff and equipment for these units have been worked out in detail.

The medical staff will be supplied largely by drawing upon the Medical Department and partly by utilizing the services of a number of private medical practitioners and others, allocations of individuals to posts have been or are about to be made. In making these arrangements, due regard has been given to the need for ensuring that the civil medical, nursing and public health work, not only in towns but in the settled areas and in the native reserves, can be carried on without undue interference.

As regards equipment, the position is that all the special equipment and stores for these units which could only be obtained from abroad are now in the country, and are available for immediate use. In this connexion I would like to mention the very good work carried out by the N.I.T.D. in making stretchers and special medical boxes for the Field Ambulance, both cheaply and quickly.

Arrangements have also been made with the General Manager, Kenya and Uganda Railways for the supply in Kenya of a train suitably converted for use as a hospital train, and buildings have been earmarked for Casualty Clearing Stations, and for a Base Hospital.

A full statement on the work and objects of the Man Power Committee has recently been published and there is no need to repeat it. But I will first enlarge on one or two aspects.

Firstly, on mobilization approximately half the Kenya Regiment will at once be

absorbed in the battalions of the King's African Rifles in order to bring them up to war establishment in officers, warrant officers and N.C.O.s. Steps must at once be taken to refill the ranks of the Kenya Regiment in order to allow for further expansion, also for casualties.

As has already been stated, it has been decided to form on mobilization a special battalion of the Kenya Defence Force. This will assemble a few days after mobilization for further training. The reason for not calling this up at once is mainly to avoid congestion, especially in the transportation arrangements.

This still leaves a small surplus of fit men under forty over and above those required for maintenance of the essential work of the Colony including Government and Railway employees. This surplus is regarded as a further reserve for emergencies, including those which cannot be foreseen. Apart from casualties there will inevitably be expansion in certain directions as war continues, and as happened in the last war, one cannot always foresee what directions these will be.

Of the men over forty, a number will be required for special work—for instance, Intelligence duties and for A.R.P. and local defence.

If anyone has not been warned for a specific job, then he will continue with his normal work, regarding himself as a reserve to be called up later.

As regards Asian man power, this will have many important functions to carry out, notably A.R.P. work, partly maintaining the normal running of the country, including of course the running of the Railway, and also a great part of their work will be in constructional work, for instance hutted camps for military requirements.

Steps are also being taken to associate Indians and Arabs directly in the defence of Mombasa; legislation for this will be necessary and will be laid before this Council in due course.

The allocation of men under forty to their respective war duties is nearing completion. But I would point out in connexion with the work of the Man Power

[H.E. the Governor]

Committee, as indeed is the case with all defence plans, that constant amendment is necessary in order to keep them up to date. They must always be complete in the sense that action can be taken at any moment, but they must never be regarded as finished because modifications will continually have to be made. These modifications will be necessitated not by any change of policy, but simply in the natural course of development; for instance, the introduction of the Royal Air Force Volunteer Reserve scheme which I am hoping will not be much longer delayed, but I am unable to give any definite information about this at the present time.

Details of the organization and work of the Kenya Women's Emergency Organization have appeared quite recently so I need not refer further to it except to say that the work of allotting war duties has begun.

There are 3,000 women now registered and classified on the books, and the work of allotting war duties has begun as for instance, the requirements of the medical authorities for nurses and V.A.D.s have been met.

It was never anticipated that more than a comparatively small proportion of women would be detailed for work before war starts. The great value of the Organization is to have a reservoir from which requirements that will arise during the course of a war can be filled.

Once more I will pay a tribute to the value of the great amount of voluntary work that is being done on the Man Power Committees and by the Kenya Women's Emergency Organization.

A very satisfactory feature of our defence preparation is the high standard of training that is reached in the battalions of the King's African Rifles.

In the Kenya Regiment a fourth Company has been added. The battalion maintains its spirit of keenness, and the steady progress in efficiency is highly satisfactory.

Much voluntary and very useful work has been carried out by District Commandants and members of the Kenya

Defence Force. In Mombasa District training has been almost continuous, thanks to the keenness and co-operation of all concerned.

In all our preparations close touch and co-operation has been maintained with the other territories. As for instance officers from Uganda and Tanganyika recently came up to see the work of the Man Power Committee and to see what they could learn from it. Uganda is also contributing to the cost of the Kenya Regiment in the same proportion as the division of cost of the King's African Rifles. This is further proof of the community of interests of the two territories and of the fact that our defence problems are really one.

In the event of a war the nature of which would necessitate the introduction of the A.R.P. plans, schools will be closed down in Nairobi and Mombasa but not elsewhere. The Kenya Women's Emergency Organization has just been given the job of finding accommodation for those children whose parents are unable to make arrangements for them themselves either by their absence from the Colony or for some other cause.

No arrangements are being made at present for alternative education for pupils in Government schools. One reason for this is that it is impossible to say now how long schools in Nairobi and Mombasa might have to remain closed, and the problem will probably have to be dealt with in accordance with the development of the course of the war.

Under the A.R.P. plans a few dispensaries and clinics will be taken over by the local authorities concerned, but no nursing homes or non-Government hospitals will be taken over by Government at the commencement of a war; although it may be necessary in due course to ask them to receive casualties.

Both Red Cross and St. John's Ambulance continue to do excellent work in training personnel for A.R.P. work and First Aid. The actual numbers who obtained certificates in 1938 were as follows:—

A.R.P.	294
First Aid	336

[H.E. the Governor]

I may say these figures do not represent the total numbers trained but only of those who have actually obtained their certificates.

As regards equipment generally, indents for equipment have not been fully met but material is beginning now to come through more satisfactorily than when I last spoke on this subject in October.

It will be seen therefore that there is no slackening off in preparation, and there will be no slackening off, though, as I indicated before, one still regrets that the energy and money one would like to devote to progress and development is still largely being diverted to war-like preparations.

Finally, I will emphasise this point: It is essential in way that we shall all work at our highest efficiency rate, therefore every individual must carry out the work for which he is best fitted whether that work be using a light automatic, supervising a sisal estate, repairing a bridge or looking after convalescents.

As honourable members are aware, a final and satisfactory settlement was reached in January last with regard to the \$5 million loan advanced for the original building of the Uganda Railway. I know that the decision was welcomed with great relief by the Colony and Protectorate.

There are three points I want to mention in regard to it. Firstly the result was a good instance of the value of co-operation, in this case between Kenya and Uganda and between the Railway, the Government and many individuals of the non-official community in both territories. Secondly, the value of adequate preparation: there is sometimes a tendency to hasten matters unduly and in a case like this to present a case that has not been fully considered, with the result that it is turned down or referred back. It took several weeks to prepare the two despatches that had to be sent, and the result shows that the time spent in their preparation, and not least in making them concise, was not wasted. And thirdly this: that the most perfect despatch would have been of no avail had it not been for the wholehearted support given to the proposal by the Secretary of

State and officials at the Colonial Office, and it is to them above all that the thanks of the Colony are due.

As honourable members are aware, the Standing Finance Committee have been investigating the question of Income Tax in Kenya and have put in a Report which is or is being, laid on the table. I would remind honourable members that the Standing Finance Committee is a committee appointed by this Council and that it reports to Council on the Estimates. The Governor may also in his discretion refer other matters to it, in which case it reports to the Governor as has now been done. The findings of the Committee can be summarized as follows:—

1. Reviewing the position as a whole, Income Tax cannot be said to have imposed hardships on any section of the community.
  2. There is no reason to believe that the introduction of Income Tax into Kenya has had an adverse effect on the inflow of capital necessary to develop enterprises or prospective enterprises nor that it has led to any increase in interest rates.
  3. The application of the tax to Kenya but not to Uganda and Tanganyika cannot at present be said to have had serious consequences so far as Kenya is concerned, although its introduction into these neighbouring territories would be of advantage from the Kenya standpoint.
  4. There is no evidence of widespread dissatisfaction in Kenya with Income Tax as it exists and no useful purpose would be served by a re-consideration of the question in the immediate future by a specific *ad hoc* committee. But the Standing Finance Committee believe that when the Colony has had more experience of the operation of the tax, it will prove desirable that a further investigation should be made.
- I have accepted the findings. The position regarding the two types of inquiry into Income Tax has, I think, been made clear by statements in the Press, but I wish to refer to it once more.

[H.E. the Governor]

The special committee to which the Standing Finance Committee refers, that is, as I read out, a specific *ad hoc* committee, would be a committee appointed in this Colony by direction of the Governor or the Governor in Council. But apart from this, a question has been raised as to the appointment of a committee referred to in a letter to the Press as one promised at an interview by a previous Secretary of State to give *de novo* consideration to the subject. The actual record of this interview is in the files of the Colonial Office and the relevant paragraph dictated by the Secretary of State reads as follows:—

"I (that is, the Secretary of State) said I was quite prepared to have the working of Income Tax in Kenya examined by an absolutely impartial, outside inquiry after the experiment had been given a fair trial."

I do not know the exact significance attached to the words "*de novo*" by Cicero or other Roman orators, but I think we can say that the words used by the Secretary of State are equivalent to the meaning that would be commonly attached to the words "*de novo*". But the point I want to make is that this Committee (to which reference is made here) is one outside the competence of the Governor of Kenya and entirely within the jurisdiction of the Secretary of State, and is quite different from the one that the Standing Finance Committee was considering.

Finally, in accepting the advice of the Standing Finance Committee I did not pick and choose out of their Report: I accepted the lot, including the reference to further investigation being made into the subject of Income Tax in Kenya. But to avoid any misunderstanding, I would make it clear that at the present moment I do not make any promise whatever as to the date on which this further investigation will be held or to the nature of the inquiry, but simply stick to the words as laid down in the Report.

The Report of the Settlement Committee has been laid on the table. It has been discussed in detail in Executive Council and in general the recommenda-

tions have been accepted and preliminary action is being taken.

It is intended to appoint a special committee to investigate and report on the policy to be followed as regards game. It will have to consider the control of game in stock raising areas as well as its preservation, and the establishment of a Game Park or Parks will come within its purview. The exact terms of reference and the composition of the committee will be announced shortly.

It is also proposed to appoint another committee to advise on problems that arise in regard to destocking throughout the Colony, more particularly as regards co-ordination work. These problems are already being dealt with by Provincial Commissioners, and will be dealt with in the first place by them and their advice will be available to the committee.

Coming to one or two details as regards agriculture: Last October I referred to breeding up at the Scott Agricultural Laboratories of parasites of the mealy bug. Well, more than eighty thousand of these—I presume this is an estimate—have been bred and liberated in coffee districts and maize reserves of the Central Province. Observation of their progress in the field gives promise that the insects will establish themselves in this country.

With regard to the locusts, the campaign against hoppers which started last November has met with a large measure of success and there were very few escapes. The locusts which are now in Kenya have come from hatchings in other territories. There are, unfortunately, flying swarms in Kenya but these have come from hatchings in other territories and as far as can be ascertained from uninhabited pastures of those territories. The success in Kenya has been due to co-operation on all sides, and the more thorough the co-operation, the more thorough the success; the same applies to the problem as a whole. We have got to perfect co-operation between all the East African Territories and, looking wider still, co-operation between the different nations that are concerned with the problem. There may be temporary setbacks but it is all in progress and it is all leading towards the end of the locust menace.

[H.E. the Governor]

Honourable members will recollect that the Government intimated some weeks ago that it would consider compensation where losses had occurred through cattle dying from the effects of poison bait on farms, provided that all the instructions for the use of poison bait had been carried out. A certain number of applications have been received and are being investigated sympathetically, but there is still every reason to believe that provided all the instructions are strictly carried out, poison bait is not a danger to cattle, save in the most exceptional cases.

Turning for a moment to finance, the final figures for revenue and expenditure for the year 1938 are not yet available, but roughly speaking the year's working resulted in a surplus of revenue over expenditure of approximately £80,000, which is an increase of approximately £26,000 over the revised estimate which was presented to this Council last October. This means that at 31st December last, the Colony had a free surplus in cash or at call of approximately £355,000.

Kenya had a notable success in rifle shooting last year, winning the Overseas Postal Match a competition known as the S.R.b. which is a competition for service rifles using aperture sights and slings. There were eighteen other teams from various parts of the Empire. I am sure this Council will join with me in congratulating the winning team and all those who were responsible for their training. It is very appropriate that the Challenge Cup which goes with this competition should have been presented by His Royal Highness the Duke of Gloucester.

Our Chief Secretary, Sir Armigel Wade, has left the Colony on retirement after twenty-seven years devoted to the service of Kenya. Sir Armigel never failed to put his duty before his own interests, and we shall all miss the benefit of his experience, tact and judgment. I would put the chief features of his character as being loyalty and sympathy, and though he never sought popularity, these two characteristics ensured him the warm friendship of very many individuals of all classes and all communities in Kenya. (Applause.) I feel certain that his thoughts from his home in Hampshire still go forth as far

as the Equator and that even in his retirement he will still be working for the benefit of Kenya and of its peoples.

Turning to the business of this session: The main business of a Spring Session of this Council is normally to deal with outstanding legislation. There is no great burden to dispose of.

Two Bills were carried over from the last Session of Council, namely, the Immigration Restriction (Amendment) Bill and the Farmers Assistance (Amendment) Bill. The Select Committees of Council which were appointed to deal with these Bills have completed their deliberations and their reports will be laid during the current Session.

The bulkier of the new Bills is the Mining (Amendment) Bill. The necessity for introducing certain formal amendments as the result of the enactment of the Native Lands Trust Ordinance, 1938, has been taken as an opportunity to include certain provisions which will obviate the renewal of the Mining in Proclaimed Areas Ordinance, 1933, which is due to expire on the 30th June this year, and also to clarify the position relating to the payment of compensation in the case of injury arising out of accidents. I should like to take this opportunity of assuring honourable members that the inclusion of the latter amendment does not preclude the possibility of the introduction, at a later date, of the proposed model Workmen's Compensation Bill.

The Local Government (Municipalities) (Amendment) Bill makes effective a recent decision in Executive Council that seven of the Indian members of the Nairobi Municipal Council should be elected instead of being nominated. Unless this Bill passes into law the election of these members would present some difficulties owing to the fact that the periods for which present members have been nominated do not expire at the same time. Opportunity has been taken to include other amendments which have been suggested by the municipalities.

The Water (Amendment) Bill includes various amendments either of a technical nature or designed to facilitate the administration of the main Ordinance.

[I.E. the Governor]

The last of the Bills which have been circulated to members, namely, the Arms (Traffic with Abyssinia) (Repeal) Bill, and the King's African Rifles (Amendment) Bill, are of a formal nature and are self-explanatory.

Honourable members, in opening this fourth session of this Council I most earnestly trust that with the blessing of Almighty God its deliberations may lead to the promotion of peace, prosperity and welfare of this Colony and Protectorate. (Applause.)

#### MINUTES

The Minutes of the meeting of the 19th December, 1938, were confirmed.

#### PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE HON. ACTING CHIEF SECRETARY (MR. W. HARRAGIN):

Standing Finance Committee Report on Schedule of Additional Provision No. 3 of 1938.

Standing Finance Committee Report on the Incidence of Income Tax and Questions Related thereto.

Report of the Colonial Students Committee.

Settlement Committee Report.

Statement required under section 150 of the Electric Power Ordinance for the year ended 31st December, 1938.

Report of Committee appointed to consider Representations made by interests affected by the proposal to realign the Railway between Gilgil and Nakuru.

BY THE HON. ACTING ATTORNEY GENERAL (MR. H. C. WILLAN):

Select Committee Report on the Farmers Assistance (Amendment) Bill.

Select Committee Report on the Immigration Restriction (Amendment) Bill.

BY THE HON. FINANCIAL SECRETARY (MR. C. R. LOCKHART):

Sessional Paper No. 1, 1939 (Expenditure on Defence Measures).

Schedule of Additional Provision No. 4 of 1938.

Colonial Development Fund, Statement for the Quarter ended 30th September, 1938.

BY THE HON. DIRECTOR OF AGRICULTURE (MR. H. B. WATERS):

Seventeenth Agricultural Census (European Areas).

Annual Report of Department of Agriculture, 1937 (Parts I and II).

BY THE HON. ACTING COMMISSIONER OF LANDS AND SETTLEMENT (MR. C. G. FANNIN):

Return of Land Grants, 1st October to 31st December, 1938.

BY THE HON. POSTMASTER GENERAL (MR. G. B. HEBDEN):

Annual Report on the Kenya, Uganda and Tanganyika Savings Banks, 1937.

#### BILLS

##### FIRST READINGS

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

The Mining (Amendment) Bill.

The Water (Amendment) Bill.

The Arms (Traffic with Abyssinia) (Repeal) Bill.

Notice was given to move the second and subsequent readings of the Bills at a later date.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Monday, the 17th April, 1939.

Monday, 17th April, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 17th April, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The Minutes of the meeting of the 14th April, 1939, were confirmed.

#### ORAL ANSWERS TO QUESTIONS

No. 1—WAR INSURANCE, SHOPS AND WAREHOUSES

MR. NICOL (Mombasa) asked:—

(a) Will Government state whether they have any scheme to provide an insurance cover on goods in shops and warehouses in the Colony and Protectorate against risks arising from war-like operations?

(b) If the answer is in the negative will Government take steps to investigate the desirability of such a scheme in view of the fact that such a scheme has been introduced by the Home Government in the United Kingdom?

MR. LOCKHART: The answer to part (a) of the question is in the negative.

As regards part (b) Government is taking steps to investigate the desirability of introducing such a scheme.

No. 2—NYALI BRIDGE FEES

MR. COOKE (Coast) asked:—

1. Is Government aware of the dissatisfaction caused by the recent increase in the fees for motor car passengers over the Nyali Bridge?

2. What control Government possesses over the Company in the matter of fees?

MR. STRONACH (Director of Public Works):—

1. No complaints have been made to the Government in connexion with the recent increase in the tolls for motor cars passing over the Nyali Bridge.

2. Tolls payable by members of the public for crossing the bridge may not exceed the rates laid down in the agreement between the Company and the Government.

No. 3—KISUMU TELEPHONE HOUSERS

MR. KASIM (Indian Western) asked:—

Will the Hon. the Postmaster General state: When does he expect to extend the telephone working hours at the Kisumu Post Office from 6 to 8 p.m., same facilities as afforded at Eldoret and at Kitale Post Office?

MR. HEBDEN: Arrangements are being made to extend the hours of telephone working at the Kisumu Post Office from 6 p.m. to 8 p.m. on week-days with effect from the 1st May, 1939.

#### SCHEDULE OF ADDITIONAL PROVISION

No. 3 of 1938

MR. HARRAGIN: Your Excellency, I beg to move:—

That the Standing Finance Committee Report on Schedule of Additional Provision, No. 3 of 1938, be adopted.

As hon. members will see by referring to the document in front of them, this amount is £96,468, although more than half can be set off by specific savings, by reimbursements and consequential increased revenue, the net total being reduced to £43,108. Of this £43,000, £27,000 can be allocated at once to what we call Emergency Measures, if necessary, and the rest can be accounted for by such things as £11,000 for roads and bridges, etc.—staff housing comes into that—leaving an amount of about £5,000 which is made up of various small items, not least of these being £1,400 which was necessary for the increase which has been recommended for the rations of prisoners in prisons.

All these items have been carefully examined by the Standing Finance Committee and have been recommended to Your Excellency for acceptance.

MR. WILLAN seconded.

The question was put and carried.

STANDING FINANCE COMMITTEE  
SUBSTITUTE MEMBER

**MR. HARRAGIN:** Your Excellency, I beg to move the second motion standing in my name:—

Be it resolved in accordance with Standing Rule and Order No. 51 of this Council that Major Ewart Scott Grogan, D.S.O., be appointed a Member of the Standing Finance Committee in place of the Right Hon. the Earl of Erroll resigned.

Hon. members are well aware that at the end of last session owing to Major Cavendish-Bentley being away from the Colony for some considerable period, it was necessary for us to appoint a substitute member during his absence. The Right Hon. the Earl of Erroll was appointed in his stead. Since that time the hon. Member representing Nairobi North has found it impossible to resume his duties owing to the number of other duties which he has taken on of late and the Earl of Erroll is in the same position. Under these circumstances it has been recommended to Government and accepted by Government that the hon. Elected Member for Ukamba, Major E. S. Grogan, be appointed in the Right Hon. the Earl of Erroll's place.

**LORD FRANCIS SCOTT** (Rift Valley) seconded.

**MR. SHAMSUD-DEEN** (Indian Central): Your Excellency, on a point of order, may I ask if it will be proper for me to move an amendment at this stage for the inclusion of an Arab representative and an additional Indian Member to the Standing Finance Committee?

**MR. HARRAGIN:** Your Excellency, I am afraid Government will require notice of that motion. The motion before Council now is not that the Standing Finance Committee be reconstituted, but that one member be replaced by another on the existing Committee. But if the hon. member wishes that the Standing Finance Committee be reconstituted then I suggest that it is necessary to give notice of a motion to that effect.

The question was put and carried.

## MAKERERE COLLEGE MOTION

**MR. LOCKART:** Your Excellency, I beg to move—

Be it resolved that this Council approves the expenditure of a sum of £50,000 as a charge against Kenya Loan Funds in respect of a contribution by the Government of Kenya towards the cost of the endowment of the Makerere College, Uganda.

Hon. members will be acquainted with the reconstitution of Makerere College, Uganda, which has resulted from the recommendations of a Commission presided over by the Rt. Hon. Earl de la Warr.

I understand that although this centre of higher education is intended primarily for the African in East Africa the educational facilities of the college are not necessarily restricted to one race. It has been agreed that the college should have independent status, under its own governing bodies. For this purpose an endowment fund of £500,000 has been created which will be made up of £250,000 contributed by Uganda, £100,000 by Tanganyika, £100,000 by His Majesty's Government in the United Kingdom, and £50,000 which this Council is now being asked to vote to be the contribution of Kenya.

The governing bodies of the College, Sir, consist of an assembly of twenty-five members on which Kenya has seven representatives, five of whom are hon. members of this Council; and there is a Council of twelve members on which Kenya has two representatives, while the representative nominated by the East African Governors' Conference happens also to be the hon. the Director of Education for Kenya; there will also be an academic board presided over by the principal of the college.

Substantial as the commitment which this Council is being asked to assume, even from the purely financial point of view, it will not be without its compensations. Everyone who has been concerned in the development of the African races realizes the difficulties of reconciling modern standards in social services, and in agriculture, with the present low economic condition of the people, and it is only by providing highly educated Africans that we can find cheap agencies

[Mr. Lockhart] in medicine, agriculture, education and engineering which will enable the African people to raise their own standards for themselves.

Now, Sir, hon. members may ask why this particular loan proposal has been brought forward in advance of any other loan proposals, and the reason for this is that the sum of £100,000 which has been voted by Parliament as a contribution to this endowment fund of the college—a contribution which I am sure all hon. members will wish to acknowledge with gratitude—has been made conditional on the remaining £400,000 being provided by the East African governments. Uganda has voted its share, Tanganyika has done the same and it now remains for this Council to approve the £50,000 from Kenya in order that the sum of £100,000 may be released by the Imperial Treasury.

I have dealt only with the financial issues. If there are any points in regard to educational policy or other matters in connexion with this college I shall leave these, Sir, for my hon. friend the Director of Education to deal with.

**MR. LACEY** (Director of Education) seconded.

**LORD FRANCIS SCOTT:** Sir, I must say that I was extremely surprised to see this motion on the Order Paper. It does seem to me that it puts the Elected Members in rather a difficult position.

I should like to say at the outset, that the European Elected Members, as a body, are prepared to support the general proposition of the formation of this Makerere College. We believe that it is in the interests of these countries to have a college for the higher education of natives so that they can complete their education in Africa rather than go abroad to Europe or America.

At the same time, Sir, I do consider, personally, that this college has been planned on very extravagant lines in comparison with any other institutions in these territories at the present time. However, we have no control over that. But what I do wish to protest against is that at this time we should be asked to find £50,000 by loan to spend in a neighbouring territory—not even in Kenya—when we

have been obstructed by the authorities in London from getting any of the money which we have been asking for for months and months—even running into years—for the objects which in our opinion are absolutely essential to the development of Kenya.

I object to this motion, standing by itself, as one item of loan expenditure being brought forward by itself, when such things as further moneys for running our schools and hospitals for all races in this country, additional funds for the Land Bank, and not a very large sum to make our roads passable so that we can have tourists and others coming through the country, apart from the convenience of the inhabitants of this country themselves, are shelved or obstructed, or at any rate, the money is not brought forward for them, and yet this one item is brought forward.

The reason of course is very plain and obvious. It is typical of the attitude of the Colonial Office towards its Colonies. Here is an item which will naturally appeal to the critics of the Government in the House of Commons, and therefore, so as the Secretary of State can get a little cheap kudos in the House of Commons, we here are ordered to put this thing through whereas all these other matters which are considerable and essential to the welfare and development of the country, can be left over as long as they like, and we can get nothing done about it.

Having made my protest I should like to make it quite clear that I am not in any way opposing the principle of providing higher education for the African natives. The Elected Members on the whole believe that this is a sound policy. And I do not wish the fact that I have protested against the method by which it has been brought up, to be laid against us or for it to be said that we are opposed to the development of the natives in East Africa.

**MR. COOKE:** Your Excellency, I regret that I must dissociate myself from the remarks made by the noble Lord the hon. Member for the Rift Valley, because I feel that at this moment it would be extremely unfortunate if even a suspicion were to arise that anyone on this side of

[Mr. Cooke]

Council were antagonistic or unsympathetic to the legitimate aspirations of the African.

**LORD FRANCIS SCOTT:** Your Excellency, on a point of explanation, I think I made it quite clear that we are not opposed to the motion but that we were in favour of it.

**MR. COOKE:** The point I wish to make is that the African people at the present moment are very suspicious of everything and I think that there is a general impression that suspicion might be aroused, even though the noble lord has no intention in any way of causing that suspicion. If that suspicion is there, there is also the objection that it may provide ammunition for the vernacular press of this country and agitators to say that we on this side of Council are unsympathetic.

As Your Excellency is aware, about 200 years ago in England similar protests were made against the labouring classes being educated, and the effect was that it was strongly opposed. I think everybody to-day recognizes the necessity of education in England, and it seems to me unfortunate that we should protest at this stage. I also think the Secretary of State may regard our attitude as a little bit petulant and a little bit petty. The European community of this Colony have received, and rightly received, very large subsidies for agriculture...

**LORD FRANCIS SCOTT:** Very small ones.

**MR. COOKE:** Many hundreds of thousands of pounds, compared with which I think this £50,000 is a comparatively small sum, and I think it is most ungracious to make any protest. In any case it is an entirely academic matter. The natives are determined to have education and they cannot be stopped, and anyone who attempts to do so is likely to share the experience of the mythical Mrs. Partington when that good lady, armed only with a mop and pail, attempted to keep back the Atlantic Ocean!

I beg to support the motion.

**MR. GHERSIE (Uasin Gishu):** Your Excellency, I should like to associate myself with the protest lodged by the noble

lord the hon. Member for the Rift Valley. I consider that at this stage the proposed development of Makerere is both extravagant and premature, more particularly if one takes into account the more urgent requirements of this Colony, whether they be European, Asiatic or Native.

I am not in any way opposed to native education but I maintain that at this stage this large sum of money is not justified. As has already been pointed out by the noble lord, repeated requests have been made for financial assistance from the Colonial Office and the only feasible argument that we have heard against it is that most of the finance in England to-day is required for rearmament. Well, when a proposition is put before us like this I am afraid that that argument is not very convincing. And while I am not opposed to the principle of the motion I must associate myself with the Noble Lord's protest.

**MR. SHAMSUD-DEEN:** Your Excellency, it is rather surprising that there should be any opposition to the motion.

The opposition is unfortunately based on a paradoxical argument which is rather amusing. The European Elected Members say they do not oppose it and they want to help it and yet they do not want to provide any money. I think it is the duty of Kenya Colony to give its fullest support, as much as we can, in a practical and financial form.

I do not think that the argument that our own schools fund has been starved while we are giving £50,000 to this school holds any grounds at all. This is one of our schools, and it one of the most sensible institutions that has been thought of in East Africa: it is without any kind of racial bar—that does not exist—and all races, European, Asiatic and Native, will be at liberty to receive an education in that school.

I think that after the explanation of the hon. mover that adequate representation has been given to the representatives of this Colony on this school it should be our duty to do all that we possibly can to encourage the institution. I think it is a step in the right direction and the Indian members of this Council are all going to support this motion.

**COL. KIRKWOOD (Trans Nzoia):** Your Excellency, I would not like this vote to go through without expressing my own opinion on it. I think it is very unfortunate from the point of view of the financial situation that this vote is on the Order Paper of the day. Capital has been made out of the fact at the moment that the European Elected Members are opposed to this. I understand that generally they were in agreement at their meeting. Unfortunately I was not able to attend that meeting.

As I see it, we are not in a position to find £50,000 unless it comes out of loan funds, which means that a loan will have to be raised before this money can be advanced. I am also very critical of the attitude of the Secretary of State in general. This motion is obviously going to go through as a Government measure and it has the sympathy of the Secretary of State. It has my sympathy too, but I would point out that the absolutely essential capital that is required for the education of the natives of this country is not available owing to the present financial conditions.

Our request for money for the main trunk roads which are a disgrace to the Colony has not been forthcoming; our request for additional capital for the Land Bank has not been forthcoming; and everything that we have asked for has been stymied at the other end. From that point of view I think that it is unfortunate that at this time, in our financial position, and the difficulties that I can see appearing ahead, that this item should have been put on the Order Paper of the day.

I would like to say that I am always, and always have been, in sympathy and will support any reasonable recommendations for the advancement of the natives. That has been proved time and time again during the last twelve years that I have represented Trans Nzoia, both from the educational point of view and the hospital point of view, and I cannot remember fighting against anything in this Colony that is in the interests of the natives.

I am saying this now—though I might be misunderstood by the hon. Indian members. I disagree with the hon. Member for the Coast that there will be any

suspicious in the minds of the natives. They have more consideration and more financial assistance and moral assistance in Kenya than they get in any other part of the British Empire. And for these reasons only I regret that this item is on the agenda to-day.

It is futile for me to oppose the motion and I am not going to do so, but I would like to mention one more point and that is that the education of the natives in Kenya would be greatly advanced if we could afford to spend £50,000 on native education in Kenya. But this money is going to be at the expense not only of the European, Asiatic and Goan education of this Colony, but even native education in this Colony is going to suffer by the expenditure of this £50,000.

I would point out that every European school in Kenya to-day is far too small. In my own district if we get an application to take a child into the school we have got to push one out at the top and he has to go somewhere else if he can.

I would like to make it perfectly clear to Your Excellency and to this Council that it is only on financial grounds that I think it is unfortunate that this item is being adopted at the present time.

**MR. ISHER DASS (Indian Central):** Your Excellency, the noble lord representing the Rift Valley has made three points in his speech. The first was that he believes that this has not been a propitious moment for spending the sum of £50,000; secondly he believes—and probably sincerely believes—that when all our social, educational and hospital institutions are starved for the want of money, we have no business to spend £50,000 on an institution in a neighbouring territory; his third objection seems to me to be that because the immigrant races have not had enough money for their institutions therefore the sons of the soil should not have any.

I would be failing in my duty if I did not disassociate myself from any word said by the noble lord. I also resent very much that—for he seems to believe that vocational and industrial education is the only means of education which should be given to the Africans.



**LORD FRANCIS SCOTT:** Sir, I must protest. These words have been put into my mouth. None of these things have I ever given utterance to.

**MR. ISHER DASS:** When the noble lord objects that I am putting words into his mouth I must explain that I am not putting forward the exact words he said but that I am exactly translating what is in his mind.

**LORD FRANCIS SCOTT:** Sir, I must protest. The last person in the whole country or in the world who is capable of translating anything that is in my mind is the hon. Mr. Isher Dass. (Laughter.)

**MR. ISHER DASS:** The noble lord made it absolutely clear and there is no doubt in the minds of the hon. members of this Council that he very strongly supports the principle of the motion but he strongly resents spending £50,000 on principle.

**LORD FRANCIS SCOTT:** I am very sorry to have to interrupt again, but the hon. member is entirely inaccurate. I do not object to the spending of the money. My objection is that it is not fair that this should be the only item to be considered for loan expenditure when there are so many other items which have been contemplated for many months and in connexion with which nothing has been done.

**MR. ISHER DASS:** I am only protesting for the delay that has been caused in pushing forward this institution by the Government. In fact an institution of this sort should have been started eight or ten years ago. And as for hon. members who sincerely believe in the principle but not in spending the money, as far as the Indian members are concerned there is only one thing for them to believe and that is that sympathy without sacrifice and love without respect has no meaning at all.

**DR. WILSON (Native Interests):** Your Excellency, I am sorry that this motion should have brought forward so much discussion and, after the last speech, it is rather difficult to follow any logical line of thought. (Laughter.)

I quite appreciate that the objection by the hon. European Elected Members is to the time that this vote has been introduced and not because of the principle

(hear, hear). So there is little I need say in support of the resolution.

But there are one or two words I would like to get in before my hon. friend the Director of Education replies, because I am perfectly certain that after he has spoken there will be nothing left for anybody else to say.

There has been a lot of talk lately about the need for Government to adopt a definite native policy, whatever that may mean. And as usual when there is any indication of the adoption of a definite policy criticisms begin. I want to make it quite clear that these criticisms have been made outside this Council rather than in it.

To my mind this proposal to recognize Makerere to the extent of a contribution of £50,000 towards the endowment fund is an indication of Government's policy to make use of the educated African in the advancement of the native population of Kenya. It has been perfectly obvious that the advancement of the natives of Kenya will not go very far or be very fast so long as it depends entirely on the handful of European officers working in the reserves. As the hon. the Financial Secretary has stated we must have assistance for the European administrative, agricultural, educational and medical officers. The European officers working in the reserves must make use of the agency of educated Africans and if the Africans are to take any really responsible part in the public services of this country some of them at least must be educated up to the standard proposed to be set at Makerere College.

One of the criticisms levelled against Makerere is that it is going to make or is making the educational system of East Africa top-heavy. One has only got to consider the numbers involved and to say that that proposal is "top-heavy" is rather silly because we are talking at the moment of something in the region of 200 students; and with a five or six years' course of study that means the annual admission will be in the region of forty or fifty students. The population from which these students will be drawn or are being drawn is easily over 12 million—that is taking Kenya, Uganda, Tanganyika and Zanzibar alone, without considering places further afield. I do not think that 200 out

[Dr. Wilson]  
of twelve million is making the system top-heavy and I hope that nobody is going to suggest that from out of that population of twelve million we cannot find forty or fifty Africans who are capable of benefiting from the type of education that is going to be given at Makerere.

Another criticism that is being made is that the higher educational institutions should not be started until there is provision for more elementary and primary education for the natives of Kenya. In other words, any money available for African education should be spent on primary schools rather than on higher education. The simplest answer to that question is that we cannot go very far in providing elementary and primary education without more schoolmasters. For that purpose we have to train African teachers to carry on the education of their fellows and we must have an institution such as Makerere to produce at least a few teachers of a standard higher than those, say, in the Jeanes School. But it is rather out of my province to talk about this at length, because I am perfectly certain that the hon. Director of Education can make this point much more thoroughly than I.

The other criticism, which I am glad to say is not being made in this Council, is that the native African should not be given an opportunity for higher education at all. The answer to that is simply this. If we do not provide here on sound lines an institution where the African can obtain a higher education, he is going to look for it elsewhere; or he is going to try to establish a centre or institution of that sort on his own lines with possibly unfortunate results. And for that reason I think that this proposal has come at the right time and I do not think that there should be any delay in making our contribution to Makerere College.

**MAJOR CAVENDISH-BENTINCK** (Nairobi North): Your Excellency, I think possibly I can put our own position a little more clearly if I ask the hon. mover a question. And that is: as this sum appears as "a charge against Kenya Loan Funds", perhaps, in the course of his reply he will tell us which loan fund he refers to, or whether a specific loan for

this and other purposes is in the process of being raised, or whether this is a sum which in due course is going to come out of some vague loan which may be raised?

My reason for putting it that way is because the only reason why our chairman intervened in this debate was a constitutional reason.

We very carefully considered and prepared schemes, amongst others this one, for which we required money and these schemes were in being as long ago as two years ago. Now here we are, at least one year later—and we know that despatches have been written and a full explanation has been given as to why we wanted the money—and the only thing, as has been said by the noble lord, which we have been more or less ordered to finance has been this particular item. Nobody has ever said that we were against it. All we have said is that constitutionally we consider that this procedure is entirely wrong and typical of Colonial Office control. (Hear, hear.)

Another point—and that is the only other point I wish to make—is this: We have heard it stated by an hon. member that an institution of this sort should have been in being many years ago. Well, actually, of course, Makerere was started somewhere about 1925. I was in Uganda at the time and actually saw Dr. Husey at the Gordon College in Khartoum before he came to East Africa to start this college. It has been going a long time and now a grant of money is required to meet its expansion and so on. That, in itself, is not being opposed in any shape or form by the European Elected Members.

**MR. LACEY:** Your Excellency, I am afraid that I am going to disappoint my hon. friend representing Native Interests who expressed the conviction that after I has spoken there would be nothing else to be said. The question of constitutional procedure I must, of course, leave to my hon. friend the Financial Secretary.

I would like to deal with four main points put forward. The first point put forward was that by the hon. and noble lord—the Member for Rift Valley—who said that while he had no objection to the principle and, indeed, was in full support of the principle, he would have to oppose it because there were other services which required expenditure.

LORD FRANCIS SCOTT: Your Excellency, I am afraid I must intervene on a matter of accuracy. I did not say "oppose".

MR. LACEY: Well, that is a small point, but I must say that I fail to see his argument if it is a question of loan money being available at all, and if it is conceded that the service on which it is being spent is sound in principle. I can see no logic in opposing it.

The next objection raised, not by the noble lord, was the question of extravagance on the part of this country as regards Makerere. Indeed, I think that until the beginning of this year Makerere was very much in the nature of a gift from Uganda.

There have been turned out from Makerere a very small number—those who have gone there from Kenya have totalled twenty-five; those twenty-five have each cost Kenya £15 a year only. There has been no extravagance, nor can there possibly be any extravagance in the future as far as the contribution from this country is concerned.

The contribution of this country of £50,000 will be devoted entirely to the endowment fund and the endowment fund is for one purpose only, that is, for the purpose of reducing the fees of those students who will attend Makerere. It is quite possible that the fees at Makerere will be raised to about £60 a year. If the Government of Kenya has to meet all these fees and if we add to that the interest on the £50,000 which it is proposed that Kenya should contribute to the endowment fund and if we have, as at the present, fifty-five students, the total cost would work out at approximately £90 a year per student. I know of no university or college inside the British Empire at which the cost per head will be so low.

I can assure hon. members in this Council that at the first Makerere council meeting—and there are members of that council who are hon. members of this Council who will back me up—that a great deal of time was devoted to the question of expense and of making certain that there was no extravagance of any sort. Of course it is quite possible for members of the general public to

think so. But no expenditure at all will be borne by Kenya on the buildings and equipment of Makerere College.

I will now turn to another objection that has been raised, namely that the Makerere expenditure is premature. Makerere has not, as we have been informed just now, sprung up in one day. It was started thirteen or fourteen years ago and a great deal of work has been done and it has now reached the stage when it is highly desirable that it should become autonomous. At the same time that could only be secured, obviously, when adequate financial provision was made. The idea of autonomy for an institution of university standing has always appealed to the British who consider that education should be raised above politics, and it is highly desirable, not only for that reason, but in order that this new college shall keep up the standard of British universities throughout the Empire. Thus, then, Makerere should assume an independent status and it can only be independent when it is financially independent. I agree that its independence should be limited at present by an appeal to the Governors of the East African Conference and that, of course, is enacted in the Ordinance. But there must be a preliminary stage when it is actually assuming its independence and that time has come now.

I am afraid I cannot follow the objection made by hon. members to this proposal when they stated that this money could well be spent on the education of Africans in Kenya. Well, of course, that is exactly what is being done. The whole of this money will be spent on the education of Africans in Kenya. We have at present at Makerere some fifty-five students. Of these, twenty-eight are taking the schoolmasters' course, three the agricultural course, ten the medical course, seven the veterinary course and three the engineering course. And I have every confidence that when they finish their courses they will return to Kenya and assist very materially in the education of the Africans here.

I may inform hon. members that in the past twenty-five Kenya students have been turned out from Makerere college. Of these twenty-five, twenty-two are at

[Mr. Lacey]

present employed in Kenya, the great majority of them in educational services in one form or another. Not a single one of them is out of work and only three are employed outside Kenya. I think we may congratulate ourselves not only on that, but on the fact that of the three employed outside of the Colony two are employed in one of the finest educational institutions in South Africa, namely Fort Hare.

MAJOR GROGAN (Ukamba): Your Excellency, I rise to say that I am going to oppose this motion for a variety of reasons, predominantly because I disagree entirely with the so-called educational policy of dealing with the native which has hitherto been pursued in this country—that is the main reason; and on minor and more immediate grounds—monetary grounds—I am going to oppose it.

We know that the amount of money available for general purposes either for Native, Asiatic or European education in this Colony is very limited and, apparently, is likely to be extremely limited for a long time to come. And let us assume that out of the money that is going to be available, a certain proportion is going to be specifically allocated for and placed at their disposal for native purposes, and even allowing that it is not impossible to differentiate the purposes to which it would be put in this country, it seems perfectly ludicrous to me that the sum of £50,000 out of this exiguous amount which we foresee in the future, should be allocated so entirely disproportionately as the one put before us to-day.

Any lingering doubts as to my attitude in this respect are completely dispelled by my hon. friend the Director of Education and also by the point raised—and of which I was unaware—by my hon. friend on my left (Mr. Cooke). If I understand the hon. director correctly from his figures, the sum of £500,000 capital expenditure by way of endowment is to be invested by Uganda for the purpose of educating two hundred students. That works out at a capital cost of £2,500 per head, quite regardless of capitalization of buildings and unspecified recurrent expenditure.

MR. LACEY: Your Excellency, on a point of order, may I say that the hon.

member is mistaken. The £500,000, as I tried to point out, is for an endowment fund to meet recurrent expenditure not capital expenditure. The capital expenditure is being met by the Government of Uganda.

MAJOR GROGAN: I am sorry, I am a little bit deaf and I may have misunderstood the hon. member. Do I understand that the whole of that amount is for an endowment fund?

MR. LACEY: Yes, which is to meet recurrent expenditure. The whole of the capital expenditure of Makerere is being met by Uganda.

MAJOR GROGAN: It is being met independent of the £500,000?

MR. LACEY: Yes.

MAJOR GROGAN: Therefore, the purpose of the £500,000 is to produce a fund for endowment purposes and I take it that the interest which is equivalent presumably in Government stock in the City of London, will produce an amount of £15,000, and this is supposed to be the maintenance cost, quite regardless of anything else?

MR. LACEY: Yes.

MAJOR GROGAN: Well, then, as I understand it now, I will modify my argument with the hon. member's correction. But I certainly was rather startled. But even then, my main complaint remains unaltered, which is that a stupendous and colossal expenditure is being sought for only two hundred natives—two hundred, is that correct?

MR. LACEY: Yes.

MAJOR GROGAN: Well, now, it seems to me characteristic of the procedure adopted in this country in respect of its financial policy and so-called government policy that there is absolutely no sense of proportion in these things.

Now, the late Lord Passfield (laughter), I beg your pardon, I should have said the late Secretary of State, Lord Passfield, who I venture to think is one of the fairest Secretaries of State that we have ever had, in the course of a conversation with me once in respect of these matters, said that we are going to be judged in the future in respect of what we have done for

[Major Grogan] the indigenous population—the African—by one thing more than all others. And that is the condition of health in which we found these people and in which we left them. Now, to my mind, that is a very wise statement and it seems to me that with the sum of £15,000 a year, or a capital sum of £500,000, whichever way we are looking at it, we could achieve a tremendously greater effect in the well-being of the native African than by attempting to educate them. I do not know what exactly "educate" means, because to my mind it means anything anybody likes to suggest to please themselves.

It may mean lifting them out of the rut, and it seems advisable to me to lift the bulk of them out of the rut rather than to lift a few of them out of the rut so far that they did not seem to have any sort of relation with those with whom they were primarily concerned. Our experience in India and various other parts of the world, especially on the West Coast, of taking a few chosen people and differentiating them had been to part them so completely from the rest of the multitude that the latter have not budged the slightest bit. The achievement of such a result I do not think is the most desirable policy to follow.

In fact it is what my hon. friend the noble lord representing the Rift Valley has said in a more polite manner than that employed by myself; nothing but a conspicuous example of typical eyewash. It has been picked out because it is the type of stuff that can be put across a lot of non-critical people in the House of Commons and elsewhere. If we came down to real sense and if we were thinking of the well-being of the natives as a whole, as the Elected Members have been doing, we surely more properly would be thinking how we could apply the best possible conditions with the limited money available at our disposal.

I was startled to hear the hon. Director of Education outline the principle forms of study that the natives of Kenya were being, or had been, educated in, and are following in Kenya. All these forms, such that I heard, if I heard him correctly, could equally well be followed by those

gentlemen to a much better purpose either in the veterinary laboratories here at Kabete or in one of the schools that we have in this country. What I understand to be the real purpose of these things, is to educate the natives up to a point where they can be distributed for the purpose of educating other natives. I think that is the declared purpose of this. Well, it seems an entirely wrong move for this reason, we have at the Coast, although most members of Council are entirely unaware of the fact, an indigenous people of aristocrats in the Arabs whose penchant for controlling the native was well established long before we ever thought of coming here, and who have an aptitude of understanding the natives better than most of us.

I was informed some time ago that Government were going to put up an Arab school at the Coast, and they did. And I visited it on several occasions and I found there a large number of young Arabs being educated there. In the course of my observations I found that there was also there a large number of Kavirondo. I asked the principal: "What are these Kavirondo doing here?" and he said: "Oh, well! They are such jolly fellows and a much more jovial sort of people than the Arabs, so I introduced them here to introduce an atmosphere of joy in the school." (Laughter.) That is perfectly true. And I said: "Surely, we are making a departure from the original purpose of the school, which was to educate the sons of the Arab gentlemen of this country whose functions have been virtually destroyed by the ridiculous way in which was destroyed the original social structure of the Coast, and which purpose was I thought to teach these young fellows to take their various parts in the minor and possibly the major administrative services of the country."

I do not think we need go to Uganda for some fantastic university. We have our own machinery and personnel and I submit, the Arab population who are practised in the function of training the natives are such a body of gentle-folk as can be utilized for this particular purpose of playing their part as the educators of the native people.

[Major Grogan]

I cannot see the argument of my hon. friend the Member for the Coast that we have always got to run round listening to suspicions and that we have got to do something as soon as we suspect suspicion in order to allay suspicion. As soon as suspicion becomes profitable you will find an enormous number of people ready to exploit it to monetary advantage—this is rather characteristic of the world as a whole.

For this reason, predominantly so, and because I think that it is a disproportionate expenditure inspired by no profound and statesmanlike intention of benefiting the natives, that I shall vote against this allocation.

*Council adjourned for the usual interval.*

*On resuming:*

MR. LOCKHART: Your Excellency, I will first reply to the point raised by the noble lord, the Member for the Rift Valley. There is no balance of loan funds from which this charge can be met and it will be included in the Schedule in the next Ordinance which is brought before this Council, and the amount will be included in the next instalment of the Colonial Loan.

I do not propose to attempt to deal in detail with the speech of the hon. and gallant Member for Ukamba. Many of the points raised by him were, in fact, dealt with earlier in the debate when more than one speaker obviously took the view that added expenditure in the interests of the African population should be expenditure on the training of these leaders, and that this expenditure would be more fruitful and economic. On his general attitude, in which he appears in this Council to be in a minority of one, his suggestion for the expenditure of the money is a complete reversal of educational policy in East Africa, and is a proposal which could not be endorsed by this Council.

MAJOR GROGAN: Your Excellency, to what statement is the hon. member referring? He is making a general indictment of my speech.

MR. LOCKHART: I do not quote exactly what the hon. and gallant member said. I did not take a note, but my recollection, which can be confirmed later, was that he completely disagreed with our educational policy; that he disagreed with the creation of the Higher College in Uganda and suggested, if I understood him rightly, that such higher education could be more adequately afforded by the Arab school at the Coast. If that does not involve a complete reversal of policy I do not know what does.

MAJOR GROGAN: That is the very argument put forward by Government about the Arab school at the Coast.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I wanted to find out how the money could be found in the meantime and if there was any assurance that the loan, or any other loan, would be sanctioned, and what percentage we are to pay. We do not know to what we are committing the country.

HIS EXCELLENCY: Will the hon. member continue his reply.

MR. LOCKHART: As far as I was concerned my reply was concluded, but I am quite prepared to resume.

HIS EXCELLENCY: I thought the hon. member had sat down to allow the Member for Ukamba to make his point.

MR. LOCKHART: Your Excellency, I had finished, but I will resume. As the hon. and gallant Member for Nairobi North knows perfectly well, neither I nor anyone else can predict the rate of interest. If I were able to make accurate predictions of that sort I would not be serving on this Council.

The loan to cover the expenditure will be floated; if necessary—I hope it will not be necessary—if it is necessary to make the payment to the endowment fund before loan funds are in hand, then it can be financed temporarily by advances made from Colonial funds. The question, Sir, as to what other loan expenditure is going to be included in the same Schedule I submit does not arise.

MAJOR CAVENDISH-BENTINCK: I said "has been" not "going to be".

**HIS EXCELLENCY:** I suggest that this particular motion has been sufficiently dealt with and that, if necessary, this question can be more fully discussed when the motion by the noble lord, the hon. Member for the Rift Valley, comes forward.

The question was put and carried by thirty-six votes to one, one member not voting.

**Ayes.**—Major Adams, Major Cavendish-Bentick, Messrs. Cooke, Isher Dass, Daubney, Davenport, Dennison, the Earl of Erroll, Messrs. Fannin, Fazan, La Fontaine, Gherisic, Harragin, Hebdlen, Hopkins, Sheikh Hamed bin Issa, Dr. Karve, Mr. Kasim, Col. Kirkwood, Messrs. Lacey, Lockhart, McKean, Montgomery, Nicoll, Northrop, Patel, Dr. Paterson, Mr. Ramwell, Sir Godfrey Rhodes, Lord Francis Scott, Messrs. Shamsud-Deen, Stronach, Tomkinson, Waters, Willan, Dr. Wilson: 36.

**No.**—Major Grogan: 1.

*Did not vote.*—Sir Ali bin Salim.

#### IMMIGRATION RESTRICTION (AMENDMENT) BILL.

##### SELECT COMMITTEE REPORT

**MR. WILLAN:** Your Excellency, I beg to move that the Select Committee's report on the Immigration Restriction (Amendment) Bill be adopted.

As hon. members of this Council are aware, when the second reading of the Bill was taken last December, with two exceptions the honourable members on the other side of Council who spoke during the debate, opposed that provision in the Bill which empowers the Immigration Officer to raise the amount of the deposit from £10 or £50, as the case may be, to a maximum of £500.

The provision was originally attacked by the hon. Mr. Patel, who was very concerned about British Indians immigrating into the Colony, and his opposition was supported by the noble lord, the Member for the Rift Valley, who said, in addition, that this provision would be detrimental to increased settlement in the Colony of the right sort of people.

Well, Sir, on that second reading it was abundantly clear—in fact it was admitted

by every member who spoke—that the question which the Bill attempted to solve was an extremely difficult one. The position was left like this. I do not think I can do better than quote from the Noble Lord's speech at the second reading. After admitting it was an extremely difficult problem, he said:—

“... and while recognizing that this question has got to be handled, I suggest that the proper way to do it is to go right out into the open and amend the Ordinance in some practical way which does give power to keep out altogether undesirable people. How it is to be done I am not prepared to say at this moment. I think we shall have to mobilize the best brains of our legal department to think of some way.”

The best brains of the legal department have been mobilized and I do submit that this report before Council has solved this problem in a very practical way.

I now come to the report itself. As honourable members will see, the result is attained in two paragraphs: paragraph one, which has totally redrafted Clause 2 of the Bill, and paragraph two, which has totally redrafted Clause 3 of the Bill. I propose to deal with paragraph two first.

If hon. members will turn to the top of page two of the report: the difficulty in the way of solving this problem was the Congo Basin Treaty. As hon. members will be aware, it is impossible owing to the Treaty to discriminate by way of nationality, and therefore some other way of discrimination had to be devised so that the provisions of that Treaty would not be offended in any way. The solution put before Council may seem easy now, but it was not so easy devising a solution.

The solution is: we do not discriminate by nationality but we discriminate with regard to those immigrants who can be returned to the country from which they came. With regard to the first class of people, the provisions relating to them are contained in the new section II (1) on page two of the report. With regard to those people who can be returned to the country from which they came or to any other country, the statutory provisions with regard to the deposit are not altered. The deposit remains at £10 or

[Mr. Willan]

at the case may be, or such sum as the Governor in Council may from time to time determine. I think that completely meets the objections raised by the hon. Mr. Patel and the Noble Lord on the second reading of the Bill.

Turning to the second class of people—those who cannot be returned to the country from which they came or to any other country—the Immigration Officer will be empowered to increase the statutory deposit to a maximum of £500. While dealing with that second class of people, to my mind, and I think it must appear so to everyone else, to grant such people conditional permits to enter the Colony is mere fiction. If they are allowed to enter the Colony we cannot return them anywhere. If they are allowed in and become paupers or a public charge, then all we can do is to forfeit the deposit of £500 or enforce the bond. There is no provision in the Select Committee's Report for granting conditional permits to these people.

That, Sir, deals with paragraph two of the Select Committee's Report. Now I come to paragraph one. Paragraph one deals with clause 2 of the Bill and section 5 of the Ordinance. In the Ordinance as it stands at the present time, the Governor is allowed to permit prohibited immigrants to enter the Colony provided such immigrants enter into bonds of good behaviour and subject to any conditions inserted in the bonds.

Provision for bonds in the new section 11 is this: that the sureties to the bonds must be resident in this Colony. There may be cases—we already have in hand enquiries from home and from South Africa—of reputable bodies which would be prepared to give security in some form or other for immigrants coming into the country. Those bodies are not resident in Kenya and therefore would be precluded from signing a bond. So the scope of this provision has been enlarged whereby the Governor may allow prohibited immigrants to enter on such conditions as he may determine. In each particular case His Excellency would consult the Immigration Board when such enquiries are made. The cases I have in mind is that there might be bodies at home which

would be prepared to make deposits in banks in Kenya, whereby immigrants would be allowed to enter the Colony, and if they became paupers or a public charge then these funds or deposits in the banks could be utilized as a set-off against the money Government would be called upon to spend. That is the sole reason for slightly enlarging the scope of section 5.

**MR. SHAMSUD-DEEN** seconded.

**MAJOR GROGAN:** Can I have a copy of this report. I have never seen it and there are no copies on the table.

**LORD FRANCIS SCOTT:** Your Excellency, I am one of those who opposed and therefore I would like to say that the present proposal by the Select Committee entirely meets my points, and I wholeheartedly support the motion before Council.

**DR. WILSON:** Your Excellency, on a point of detail, may I ask if the best legal brains were responsible for the wording of the first line on page 3 of the report? Should not the word “whom” be “who”?

**MR. WILLAN:** I suggest the hon. member moves an amendment.

**DR. WILSON:** Surely that is not necessary? Cannot we take it as a typographical error.

**EARL OF ERROLL (Kiambu):** Your Excellency, I do not claim to have a legal brain, but I do claim that “whom” is right.

**MR. LACEY:** “Who”, I think, is correct.

**MR. WILLAN:** I understand that the report is accepted *in toto*.

**MAJOR GROGAN:** Your Excellency, I gather from what hon. members have said that there ought to be some better brains in the country, because after this difficulty with the Congo Basin Treaty, which I have long foreseen, and which debars Government from differentiating between people on the score of nationality, we should ask for an explanation as to why, that being so, there is a differentiation in 11 (1), at between (a) and (b). Why should any unfortunate creature

[Major Grogan] emanating from Great Britain be differentiated from some gentleman emanating from Arabia or Africa or from any other part, or of any other nationality. The deposit is £10 in respect of a very large proportion of the world, and £50 in respect of most people who we are trying to get as immigrants.

I do not see that it is made quite clear what is to be the period of these bonds. There is another point and that is, if such a bond is enforced what is Government proposing to do with it? Supposing for the sake of argument, a person becomes an undesirable immigrant and we have no conceivable means of getting rid of him, is Government going to put £500 of that person's money into the general exchequer while leaving the gentleman to be dealt with by the Salvation Army or some other such body? Or are they going to put the money into some special project, the purchase of, say, Torr's Hotel, for the sake of argument (laughter) and retain this gentleman at public expense? I may have missed the point but I do think these points require looking into.

MR. WILLAN: Your Excellency, I think you may take it that the two words mentioned on pages 2 and 3 are typographical errors.

The only questions with which I have to deal are those raised by the hon. and gallant Member for Ukamba. In my answer I will endeavour to educate the hon. member by lifting him out of the rut. (Laughter.) With regard to the alleged discrimination in section 11 (1) I made it perfectly clear in my remarks that the Congo Basin Treaty is particularly concerned with discrimination by nationality, and my submission is that no discrimination arises in section 11 (1), whereby the statutory deposit is only £10 by a native of Asia or Africa, and £50 by any other case.

With regard to the period of the bonds, if the hon. member will read the report he will find that the period of the bond under section 11 (1) is that specified by the Immigration Officer, and also in 11 (2). In other words, there is no fixed period for the bond. It might be six months or it might be a year. It is fully covered in the report.

With regard to the £500, it is not going into revenue until the deposit is forfeited or the bond enforced, and that will not be done until the condition of the bond has been broken, which is when the person concerned has become a pauper or a public charge.

The question was then put and carried.

#### FARMERS ASSISTANCE (AMENDMENT) BILL

##### SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the select committee Report on the Farmers Assistance Bill be adopted.

There are nine paragraphs in this Report but I will deal only with paragraphs 1 (a), 1 (b), 1 (d) and 1 (g). The remaining paragraphs in this report deal with purely consequential amendments which I foreshadowed when moving the second reading of this Bill, would be necessary on account of the speed with which this Bill was drafted in order to get it put before Council last December.

Paragraph 1 (a): This amends section 11 (1) on page 3 of the Bill. The sole reason for this amendment is that as section 11 (1) is drafted at present the Board must meet to consider applications. It was felt that in such cases it would be unnecessary for the Board to meet and that they could deal with the applications by correspondence among the members, and therefore, these two words "meet to" have been deleted.

Paragraph 1 (b) of this report deals with section 11 (2) of the Bill which is now re-numbered as sub-section 11 (3). We have dealt in section 11 with what happens when the Board approves of an application but we have forgotten to provide for what happens if the Board thinks that the application should not be granted—and that is the whole reason for this amendment in paragraph 1 (b) of the select committee report.

Paragraph 1 (d), which deals with sub-section 11 (3), now re-numbered as sub-section 11 (4): Well, Sir, in that sub-section it states that the Board, if it is satisfied that the particulars supplied by the applicant can be taken as correct, and if, in the future, the local committee, or rather, the majority of the unsecured

[Mr. Willan]

creditors who appear before the local committee, do not oppose the application, then the Board will inform the applicant that his application will be granted. But, Sir, we have forgotten to provide for the contingency which later on appears in section 18 of the Bill, that if the local committee considers that the application is one which should not be granted and the Board agrees with the recommendation, then the Board is empowered to refuse the application. In other words, this amendment is purely a drafting amendment.

Finally, in paragraph 1 (g) of the report, at the top of page 3: This paragraph 1 (g) recommends the insertion of a new section to be numbered 18 (a) which provides for the Board meeting to consider the recommendation of the local committee and also provides that unless the local committee has voted against the application, in other words, has recommended against the granting of the application, then the Board shall confirm the arrangement and shall grant the applicant's application. I beg to move.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, as this report stands I am afraid that I cannot support it. I have nothing to say against the recommendations contained here, all of which should improve the original Bill. But, Sir, I must protest very strongly on a matter of principle with regard to the ruling on the first page of this report by the chairman of this committee when he ruled out any discussion on the question of compulsory conciliation. I do that for this reason.

In the debate in this Council on the 19th December last I myself raised this question and so did my hon. friend the noble earl representing Kiambu, and one of Government's senior officers, the Financial Secretary said:—

"I should prefer, Sir, and I think it would be wiser, not to debate the arguments for or against compulsory conciliation. I suggest, that as the matter is going to a select committee, the committee can examine the question again and can deal with it in their report."

That was a very definite statement by a responsible officer. The hon. the Acting Attorney General who replied in the debate never questioned that statement of the hon. Financial Secretary and, Sir, we being a simple and unsuspecting people on this side of Council took it for granted that when a senior officer of Government made a statement like that, that was Government's intention. But when we received this report, Sir, we saw that the hon. the Acting Chief Secretary, who was then chairman of this committee, had ruled it out.

I do suggest that it is a most unfortunate state of affairs if unofficial members of this Council cannot accept what is stated by a senior Government official as being a correct statement on behalf of Government. And, as my hon. friend opposite has not said why this has been done I must protest on behalf of this side of Council.

We do not want to delay matters and we do not want to prevent this report going through because it is important. But we do ask Government themselves to give an undertaking that this whole question of agricultural indebtedness—and in connexion with that the question of any compulsory powers to the Conciliation Board—should be referred to the Standing Board of Economic Development for further consideration.

In support of this I am afraid I must take up a little time of this Council to go back over the history of the whole case. I shall be as brief as I can, just bringing out the essential points. It may be remembered that some time ago, in the time of Your Excellency's predecessor, a committee was formed to go into this whole question under the chairmanship of the present Acting Chief Secretary. That committee, Sir, was to act as quickly as possible and put forward an interim report of which the Bill we are now discussing and which these are amendments to, was the result. At the same time the committee pointed out that the bigger question of some real financial assistance to those farmers who were financially embarrassed should be referred to another body which, in fact, was the Standing Board of Economic Development. That Board went into the

[Lord Francis Scott]

question in great detail and eventually produced a well thought out and detailed scheme which was generally known as the "Agricultural Bond Scheme." That scheme was sent home to the Colonial Office for their consideration and, as it happens, I myself spent several hours discussing it with no less than five important officials of the Colonial Office. Then they passed it on to the Treasury and, in due course, some months later, a reply came back worded in somewhat unfortunate terms, turning down the whole scheme.

Now, Sir, the reasons on which that scheme was turned down have, I understand, recently been embodied in a scheme approved by the Colonial Office for the assistance of financially embarrassed producers in Zanzibar. I do suggest that it is not asking very much of Government that they should agree to this proposition that I have put forward—that is, that the whole question should be reconsidered by that Standing Board and that, at the same time, they should once more go into this question of these compulsory powers for the . . .

MR. SHAMSUD-DEEN: Your Excellency, on a point of explanation I have not the slightest recollection of there having been anything said about this on the Board.

LORD FRANCIS SCOTT: I was a member of that Board and was one of those who dealt with that particular bond scheme. I was asking when I was interrupted, that Government should agree to refer this to the Board for further investigation. I am not asking Government to commit themselves to a bond scheme or any other scheme; I am not asking them to commit themselves to the question of compulsory powers for the Conciliation Board. I am merely asking, as we were given to understand that this question would be discussed by the select committee, but was subsequently ruled out, that Government should agree to this procedure which I have proposed.

If Government can do that then we can accept this report as it stands, but if not, then I am afraid that we cannot accept it on the grounds of the points that I tried to make clear at the beginning of my speech.

MR. HARRAGIN: Your Excellency, as the nigger in the woodpile in this matter I feel I ought to put the Noble Lord's mind at rest and tell him that Government are quite prepared to refer this matter to the Standing Board of Economic Development.

Of course, I cannot sit down on that because although I was delighted that the Board should consider the matter I was the person responsible for saying that the select committee considering this particular Bill could not consider this question. I regret that a statement had been made during the course of the debate that it would be considered and I think in that respect the noble lord has good cause for complaint. But I, as chairman of the committee, as being responsible not only to this Council but also to the public in general, fully realized the necessity of the action which I took.

I would ask you to visualize what would have happened, or what might happen on any Bill if the chairman was placed in the same position as myself and did not take similar action! A perfectly harmless Bill, from the point of view of the public, merely clarifying and coordinating an existing Ordinance, is brought before Council. It is, in the ordinary way, advertised and published fourteen days beforehand. It is read through by all the best brains in the country and they can find no fault with it—or only minor faults. This Council then decides that it shall go to a select committee, and then when it gets to the select committee, which, mark you, can report in 24 hours and have it debated and passed, as you well know, a fundamental principle is altered, such as would have occurred if compulsory powers had been inserted in this report.

I personally, as the noble lord has told you, have had a great deal to do with this subject and the last committee that I sat on (not a select committee) violently disagreed among themselves on that particular point. Therefore I knew that it was a most debatable point. Who was right or wrong does not matter now, but at any rate there was a great diversity of opinion as to what was right and what was wrong, and therefore it appeared to me as chairman, that it would be improper to decide this vexed question in a

[Mr. Harragin]

select committee, without giving to the public a chance of expressing their views.

If it is agreed that the insertion of compulsory powers in this Bill would be a fundamental alteration in principle, then I suggest that no chairman of a select committee would be correct in permitting such an amendment.

It is often a very tempting line to take particularly for Government when the amendment is of a controversial nature, but it must be admitted that it would certainly be a breach of the spirit of the Standing Rules and Orders and should be resisted by every chairman of a select committee.

If the hon. member is of the opinion that the Ordinance should be amended in that respect then I suggest that the correct procedure would be to move a motion to that effect. If the motion is approved by Council then an amending Bill with the usual notice will be published and passed through Council in the ordinary way.

I am happy to say that I have Your Excellency's permission to state that the matter will now go to the Standing Board and the whole question will be re-examined.

MR. SHAMSUD-DEEN: Your Excellency, I would like to ask the hon. Council what its feelings would be if, quite apart from the new proposal of the compulsory powers, that fantastic scheme of the bonds had also become a part of that Bill?

I am saying this subject to correction by the noble lord, but I understood him to say that the select committee referred the matter to the Standing Board of Economic Development. To the best of my recollection—that select committee only sat for one or two days—no such suggestion was ever made. I happened to be a member of the Standing Board of Economic Development and had the privilege of putting in a minority report. But it had nothing to do with the select committee appointed by this Council to go into this Bill. I may not have understood the noble lord aright, but no such course of action has ever been adopted where a select committee appointed and sitting as a select committee has ever re-

ferred a matter to another committee whose recommendations take priority.

MR. HARRAGIN: Your Excellency, on a point of explanation I think I can clear the matter up. The noble lord referred to the original Indebtedness Committee which was not a select committee of this Council. While that committee, which was not a select committee, was sitting the Standing Board of Economic Development was also considering this bond scheme. In order that the work should not be duplicated the Indebtedness Committee suggested that the Standing Board of Economic Development should go on with it and they desisted from any further consideration of the matter.

MR. SHAMSUD-DEEN: Your Excellency, on a point of order, does not the whole controversy of the Bond Scheme form a part of the motion before Council?

HIS EXCELLENCY: As far as I am aware there is no mention of the Bond Scheme in this select committee report.

LORD FRANCIS SCOTT: Your Excellency, may I try to explain. I was not suggesting that this report of the Select Committee should be referred to the Standing Board of Economic Development or that the bond scheme should necessarily come into this in any way. What I am asking for is that the whole question of the major issue of this farmers' assistance should be further investigated by that Board and that Board will of course present a report to His Excellency in Council which will take such action as it may think with regard to the report sent in.

MAJOR GROGAN: Your Excellency, there is only one point I want to make. I am entirely in accord with what my hon. friend the noble lord has just said. If we are to have an amending Bill at all we should amend the title of it. It is quite obvious that the title leads to a great many misunderstandings and many . . .

MR. WILLAN: Your Excellency, on a point of order, we are debating the Select Committee Report.

MAJOR GROGAN: I understand that the Bill . . .

**HIS EXCELLENCY:** If the hon. member wishes this to be discussed he must move it as an amendment to the Select Committee's Report.

**MAJOR GROGAN:** Your Excellency, I must apologize for being such a nuisance. But I must pass it on to somebody else. The fact of the matter is that I have only recently come back here and I have been presented with a very sketchy amount of necessary material and the things we are discussing are not available on the table and I have not been able to get a copy of this and I am not quite clear as to what we are discussing. I apologize for having been the nuisance I have.

**LORD FRANCIS SCOTT:** Your Excellency, on a point of order, I do suggest that as the Report of the Select Committee had as its heading a reference to the original Bill, therefore the title can be discussed.

**MR. WILLAN:** Your Excellency, on a point of order, this is merely the title of this report. Of course everyone wants to know what the report is about and if I did not put a heading to the report it would be difficult to know what the Council is considering. My point is that this report consists of nine paragraphs making recommendations on this Bill as stated in each of these paragraphs.

There is not one of these paragraphs which deals with the title of the Ordinance and therefore, if the hon. Member for Ukamba wishes to amend the title of the Ordinance he must propose an amendment that the Select Committee's Report be amended by adding a paragraph 10 which will read in whatever way he likes.

**MAJOR GROGAN:** That is the procedure I am prepared to follow. It is a very small point I wish to raise but it is a very vital one. It is that, instead of being called a "Farmers Assistance Ordinance" it should be called the "Farmers Resistance Ordinance" (laughter), because a great many people seem to believe that various steps have been taken, or should have been taken, to prevent a primary industry from being destroyed by a factor over which we have no control—

the terms of assistance, the honest elementary factor which has everything to do with the case.

What we are really trying to do is to find a remedy for the colossal extortion of other people's property by a factor over which we have no control. All this affects the several channels, legislative and administrative channels, which are trying to resuscitate the primary producer from the extortion that is going on outside. I think a great deal lies in the exact and proper use of the terms among people who are sloppy-minded, and if you use a sloppy term it tends to hide the real meaning of the term and only adds to the sloppiness which appears in the discussion on these matters.

I commend that point very urgently to my hon. Indian friends on my left who only really seem to believe that they are being exploited in order to save our primary industry from destruction.

**HIS EXCELLENCY:** The hon. member does not wish to move an amendment?

**MAJOR GROGAN:** I do not think it is worth while.

**MR. LOCKHART:** Your Excellency, I think it would be a satisfaction to Government to learn that the legitimate and moderately expressed complaint of the noble lord has now been removed. The complaint was not one of bad faith on the part of Government and it arose through my personal ignorance of the correct procedure. I made the suggestion at the time. I thought it was a sensible one—and I still think it is a sensible one—but I now realize that it was an impossible one. And it was for that reason and only that reason, due to my ignorance, that the difficulty has arisen. There is no question of bad faith.

**MR. WILLAN:** Your Excellency, the remarks of the noble lord have been fully dealt with by the hon. the Acting Chief Secretary. With regard to the remarks made by the hon. Member for Ukamba he did not consider that it would be worth while putting a motion before this Council and therefore it is not worth while for me to prolong this reply.

The question was put and carried.

### THIRD READINGS

**MR. WILLAN** moved that the Immigration Restriction (Amendment) Bill and the Farmers Assistance (Amendment) Bill be read a third time and passed.

**MR. DENNISON** seconded.

The question was put and carried.

The two Bills were read a third time and passed.

### RAILWAY REALIGNMENT— UPLANDS-GILGIL

#### MOTION

**SIR GODFREY RHODES** (General Manager, K.U.R. & H.): Your Excellency, I beg to move the motion standing in my name:—

"That this Council hereby approves the expenditure from the Railway and Harbour fund of the sum of £302,000 for the grading and realignment of the Main Line between Uplands and Gilgil and all necessary construction work in connexion therewith, and also undertakes to approve the inclusion in the Schedule of a future Loan Ordinance such sum, not exceeding £240,000, as may be found necessary to charge to Capital expenditure in respect of this work in accordance with the Kenya and Uganda Railway and Harbour approved regulations governing the allocation of expenditure, together with such further sum as may be necessary to cover the relative expenses of issue and discount."

Hon. members will know that when a new railway is built in a new and undeveloped country, it is customary to provide the simplest possible conveniences and to build the railway to the cheapest possible standards. That was done when the Uganda Railway, as it was then called, was built. No sooner was the construction completed than, within a period of two years, we had to begin to improve it by realigning it and altering the gradients where it was found necessary or advisable to do so. That process has been going on ever since. We have concentrated hitherto on the Coast section between Mombasa and Nairobi, where, of course, we have had to deal with the heaviest traffic. We have now completed that section, for the present at any rate, and are now forced to turn our attention

to the next section, between Nairobi and Nakuru, and in that section the first place with which we wish to deal is that section covered by the motion before Council—Uplands to Gilgil. That involves a very heavy bit of new constructional work, just after leaving Uplands, and the total cost, as shown, will amount to £302,000.

That improvement is necessary, not only because we need to have easier gradients to deal with the traffic we are handling, but also to save operating expenses. I can inform Council that although this amount of money may seem to be large, our economic case for the expenditure is a very good one. In making out that case we have allowed 5 per cent interest on the total cost, and in addition we will save in operating costs by the date the work is completed, some time in 1942 probably, the sum of £12,000 or £13,000, which will be made available in the form of rates reductions. Not only is this work necessary in order to move the traffic, but it is economically justified, and a very good financial case has been made out.

It is proposed to finance the project to begin with from available funds, but to include a sum to cover the capital cost in some future loan so that we can repay the loan at some suitable time. When that loan schedule will be submitted to Council I do not know, but it will not be put forward until a suitable financial moment arrives, when we can get money cheaply.

The scheme has been fully approved by the Railway Council, by Your Excellency, as High Commissioner, and has also had the general approval of the Secretary of State.

I beg to move.

**MR. HARRAGIN** seconded.

**MR. KASIM:** Your Excellency, according to the Committee Report on the realignment between Gilgil and Nakuru, compensation . . .

**HIS EXCELLENCY:** The hon. member appears to be under some misunderstanding. This motion deals only with the section between Uplands and Gilgil, and the Report to which the member is referring deals with the realignment of the further section between Gilgil and Nakuru, with which this motion does not deal.



MR. KASIM: My point is that this realignment will seriously affect Indian traders at Escarpment and Kijabe, and probably these trading centres will have to be removed to the nearest station. The Railway should give an assurance that reasonable compensation will be paid to these traders.

MAJOR GROGAN: Your Excellency, I am afraid I am in the position of having to oppose the proposal. If I understand it correctly, it is a proposal to spend £302,000 in realigning and re-grading one section of the Railway, leading to an anticipated saving in operating costs of £12,000 to £13,000. Is that correct?

SIR GODFREY RHODES: After putting 5 per cent interest on the whole capital expenditure.

MAJOR GROGAN: And I understand that this will be available for a reduction in freight rates, which will be the net result to the community of this large expenditure. That means to say that the proposal is rather a risky one, because even the Railway figures do not always turn out exactly as they are expected to. To me, this represents as far as I can understand it, a 4 per cent investment.

It does not seem to me to be wise in a country which is so completely undeveloped to have such heavy expenditure on a glorious railway in such a place, which is completely inaccessible to the bulk of the people of this country. To my mind it is not the proper kind of finance in which the country should invest. There are ten thousand other schemes to which the money could be more profitably devoted, and I could suggest a great many of them to the hon. mover on which the money could be better spent.

Here is one example—a matter which I have been trying to press for a great many years—the supply of an adequate and cheap phosphate for the development of the land of this country. If the Railway really has these large funds at its disposal, why should it not put in part of those funds for the provision of a grinding plant and bring in their phosphate in

bulk as is done in South Africa, at a cost of 17/6 a ton, and make this essential manure available at a total distributed cost of about £2/10s.—that is quite sufficient—all over the country. Anyone who takes an intelligent interest in agriculture in this country must know that a very large proportion of Uganda and Kenya is notoriously deficient in phosphates, and so long as we go on pressing for exports we shall have a corresponding exhaustion of the phosphate reserves of the Colony, leading to the rapid disintegration of the land of the country.

Then there is the enormous deposit of lime at Tororo, and I think that the Railway could be better employed in developing that and providing a supply of cheap lime to a very large area of land which is rapidly becoming decalcified. I throw out these two constructive ideas to the General Manager because they seem to be of much more importance to the country than this perpetual realigning of the Railway which is, as I said before, at many times inaccessible to the community. I suggest that the same amount of money applied to the feeder roads leading to the Railway would save the community an infinitely greater amount, and as the Railway has claimed the right to the monopoly of a very large amount of the traffic of this country, and has succeeded in persuading the community to allow the bridges and roads to sink back to wilderness, it seems only proper that it should extend its methods of transport and facilitate the concentration of production.

This is just another example of what is, in my opinion, a complete lack of any sense of proportion whatever in the so-called policy of Government in this country. Amounts of money available are limited, and they always seem to be allocated to proposals which bear no sort of relation to their importance to the country.

I propose to vote against this allocation of the money.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I do not know whether or not it is possible to be furnished with some greater details. It is a highly technical subject, and one cannot help feeling

[Major Cavendish-Bentinck]

in the existing circumstances that there is a great deal in what the last speaker said. Perhaps the General Manager can tell us more than he has done, for his facts are very bare indeed; merely that over and above the money necessary to meet the interest and sinking fund we shall save £12,000 to £13,000 on haulage costs.

Such savings are not always realized and the money could, perhaps, be far better spent. In the next loan schedule are many things we think more necessary on this side of Council and for which there is no provision.

SIR GODFREY RHODES: Your Excellency, with regard to the question raised by the hon. Mr. Kasim, I would point out that in this case there is no very serious change and that no possible hardship can be felt by any individual situated near the present line. If any individual thinks he has a case, I can only assure the hon. member that it will receive full and sympathetic consideration. At present I cannot see any case at all for compensation.

With regard to the remarks by the hon. and gallant Member for Ukamba, I think perhaps he did not hear my point when I tried to make it clear that our operating savings were calculated after we had met loan charges by allowing interest of 5 per cent on the total expenditure on this project. In other words, our total return will be somewhere in the neighbourhood of 8 to 9 per cent. Of course, it is possible that our figures may be quite wrong and that our estimates are not likely to materialize, but the project was worked out on figures available in 1937. Since then we have had the 1938 figures, which were better still, and we have no reason to think that the history of the last fifteen years or so will stop dead at that point.

I believe our estimates have been based on very conservative figures indeed. On the 1937 figures we would be quite safe, and the 1942 figures, on which I have based my estimate of £12,000 or £13,000, are likely to materialize. Economically it is necessary for us to move traffic without hindrance and if we do not make these changes we will have other troubles on our shoulders—renewing the viaducts and ordering additional engines and arranging for additional train crossings. I suggest this is very wise and necessary expenditure at the present time.

I have no doubt that if any promising cases can be made out and submitted to the proper authority that agreement and approval would be granted to expenditure in other directions. I can only say that it is no part of my business to exploit the phosphate position, or to open up lime mines in Uganda. If those are good proposals, I have no doubt that the money can be forthcoming from other sources.

I do not know whether I have satisfied the hon. and gallant Member for Nairobi North. Our figures are prepared from the 1937 actual figures, and we anticipate a steady growth that will make a better case each year. I think that is all I can say.

The question was put and carried.

HIS EXCELLENCY: Honourable members, due to the fact that the Mining (Amendment) Bill will result in a lengthy speech by the mover, the House will adjourn until 10 a.m. tomorrow.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 18th April, 1939.



Tuesday, 18th April, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 18th April, 1939, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The minutes of the meeting of the 17th April, 1939, were confirmed.

#### BILLS

##### FIRST READINGS

On the motion of Mr. Willan, seconded by Mr. Dennison, the following Bills were read a first time:—

The Local Government (Municipalities) (Amendment) Bill,  
The King's African Rifles (Amendment) Bill.

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

#### QUESTIONS

HIS EXCELLENCY: Any questions?

THE CLERK: No, Sir.

LORD FRANCIS SCOTT: Sir, arising out of that, I should like to draw the attention of Government to the fact that a great many questions have been put in for a long time, and I do not know why there should be such a delay in answering them.

MR. HARRAGIN: Your Excellency, I am informed that the longest time is seven days, and answers will be ready very shortly.

#### THE MINING (AMENDMENT) BILL

##### SECOND READING

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

Taking this Bill clause by clause, clauses 2 and 3 are purely formal and are necessary on account of the enactment of the Native Lands Trust Ordinance, 1938.

Clause 4. The Mining in Proclaimed Areas Ordinance, 1933, will expire on the 30th June of this year. That Ordinance

provides fees for exclusive prospecting licences which are granted in proclaimed areas. These fees are in addition to fees prescribed under the Mining Ordinance, and owing to this Proclaimed Areas Ordinance expiring on the 30th June it has been decided that, as a question of policy, this Government should come into line with the law that is already in force in the neighbouring territories of Uganda and Tanganyika, and that there should be a flat rate for exclusive prospecting licences of Sh. 100 per square mile or part thereof. There is, in clause 4, a proviso to the new sub-section (8) of section 17 that the Governor in his discretion may reduce this fee when the prospecting licence only covers prospecting for non-precious minerals. Also, there is a further proviso that this amendment to the law will not affect existing exclusive prospecting licences.

Now, to come to clause 5, which extends over several pages. That clause includes a re-draft of the present section 86 of the Mining Ordinance dealing with compensation in the case of fatal accidents or accidents which either permanently or temporarily incapacitate employees on the mines. This question of compensation is no new principle; it has been in force amongst the mining community since 1931, and it is not the first time that it has appeared in our Mining Ordinance because the present section 86, which we are now amending, was enacted in 1934.

This redraft does not alter the principle in any way, the principle of awarding compensation. It really only deals with the details. The present section 86 is a very short section and only contains six sub-sections which cover about a page and a half of this Bill. The present law is, I think, not very helpful, because we must remember that all these compensation cases are heard by magistrates. Therefore, it is essential that the law should be clarified in order to help them in assessing the amount of compensation to be awarded in each particular case.

As the law stands at present it is not very clear; it is not very clear for the one reason that we have tried to embody in a very brief and concise section the principles of compensation. Therefore,

[Mr. Willan]

this new section 86 is a longer section than the present one and contains many more details which will be helpful to magistrates in assessing compensation; to employers in understanding their liabilities; and to employees in understanding their rights.

Coming to the details of the new section 86, at the bottom of page 2 of the Bill, first of all we have a definition of "earnings". In the present law there is no definition of either wages or earnings. This new definition of "earnings" includes the wages paid to the employee and the value of any food, fuel or quarters supplied by the employer and so on. The reason for that is that the earnings of the workman may be not only what he receives in cash, but also what he receives in money's worth.

I come now to the three principal definitions which are on page 3 of the Bill—"partial incapacity", "temporary incapacity", and "total incapacity". All these three definitions are new. Under our present law we have phrases like "total or permanent incapacitation", and when a case of either total or permanent incapacitation has appeared before the unfortunate magistrates they have had to contend with these phrases and have often had to supply their own definitions. Therefore these new definitions have been put in for the sake of clarity.

I propose to deal with them along with sub-sections (3), (4), (5) and (6) of the Bill and the schedule at the end of the Bill. These sub-sections (3), (4), (5) and (6) enumerate all the classes of cases in which compensation can be awarded, and also inform us what amount of compensation should be awarded in each particular case.

First of all there is sub-section (3), which deals with compensation in fatal cases. Sub-section (3) (a) (i) reproduces the present law that compensation in fatal cases shall be thirty-six times the monthly earnings of the workman, or £750, whichever is the less. Sub-section (3) (a) (ii) is entirely new. There it is provided that if the workman leaves any dependants then the employer is liable for the reasonable expenses of the burial and medical

expenses. Somebody has to pay these expenses, and it is reasonable that the employer of the employee killed while working on the mine should be responsible for those expenses. There is a limit to the sum for which he is held responsible—£100.

Clause (3) (b) deals with the question of to whom the compensation should be paid. In the case of a non-native it is to be paid to his legal representative for and on behalf of the dependants of the workman. As the present law stands the words "for and on behalf of the dependants of the workman" are non-existent, and there was, to my knowledge, trouble on this point some eighteen months ago when a non-native was killed on a mine. The money was paid over to the legal representative, and of course it then went into the deceased man's estate. The creditors came along and said that as it went into the estate they were entitled to participate in its distribution. Therefore, in order that this money should not be made available for distribution to creditors, we have put in these words "for and on behalf of the dependants of the workman".

Now I come to sub-section (4), compensation in the case of permanent total incapacity. Compensation in this case is on the same scale as in the case of death, that is thirty-six times the monthly earnings of the workman or £750, whichever is the less.

If hon. members will turn back to the definitions on page 3 they will find a definition of "permanent total incapacity" and the definition of total incapacity and of permanent total incapacity means, if they look at the schedule at the end, injuries amounting to 100 per centum or more, according to the scale laid down in that schedule. So there is no difficulty about that.

Coming to sub-section (5), which deals with compensation in the case of permanent partial incapacity, and turning back to page 3, hon. members will find the definition of "permanent partial incapacity" in the proviso of the definition of "permanent partial incapacity". If the injuries are scheduled at less than 100 per centum—that is to say, if the aggregate injuries amount to less than 100 per centum—there is permanent partial incapacity.

[Mr. Willan]

Hon. members will notice that sub-section (5) splits up permanent and partial incapacity into two classes. First of all, in (5) (a) (i), those injuries which are scheduled; and, in (5) (a) (ii), those injuries which are not scheduled. Take, for instance, (5) (a) (i): Supposing a mining employee in his work has an accident and loses an arm taken off from his shoulder—in the schedule this is scaled at 60 per cent. If his wages are £5 a month and if he has received injury which causes permanent total incapacity, then he gets five times thirty-six, which is £180. But in this particular case he gets 60 per cent, and therefore the award is £108. So there is no difficulty about working out the compensation to be awarded when we have to deal with injuries of permanent partial incapacity which are scheduled in the Ordinance.

Now I come to the second paragraph, (5) (a) (ii), injuries which are not scheduled. There it is provided that—

"In the case of an injury not specified in the Schedule to this Ordinance, such percentage of the compensation which would have been payable in the case of permanent total incapacity as is proportionate to the loss of earning capacity permanently caused by the injury."

Take again the case of a man on a mine whose wages are £5 a month. If he is permanently and totally incapacitated then the compensation will again be £180. But supposing the injury is such that he cannot carry on with his normal work—supposing he has a permanently stiff arm and cannot work a machine—he might, for instance, be employed in other ways, such as a watchman, in which case his wages might come down to £3 a month. Therefore he loses £2 a month, and would get two-fifths of £180, which would amount to £72, and that is the amount of compensation. There again, there is no difficulty with regard to injuries which are not specified in the Schedule.

In paragraph (b) of the new sub-section (5) it states:

"Where more injuries than one are caused by the same accident, the amount of compensation payable shall

be aggregated, but not so in any case as to exceed the amount which would have been payable if permanent total incapacity had resulted from the injuries."

that is 100 per cent.

I pass on to new sub-section (6) which deals with compensation in the case of temporary incapacity. Here again, I submit that there is no difficulty. "Temporary incapacity", if hon. members will turn back to the definition on page 3, means temporary inability to do the work the man was employed on at the time of the accident. Here the magistrate makes an award in each particular case, limiting the amount of that award to 50 per cent of the workman's earnings for a period not exceeding twelve months after the date of the incapacity.

Then there is the proviso:

"Providing that the employer may deduct from such periodical payments" (they might be weekly but they must be so long as the workman is unable to go back to work) "such amount as is equivalent to any payment, allowance or benefit which the workman may receive during the incapacity."

For instance, the employer might be making payments to a hospital in return for any treatment the workman may receive, in which case the employer is entitled to deduct an amount equivalent to the payment for that maintenance, but with this further safeguard:

"Such deduction shall not reduce the periodical payments below an amount which will provide the workman and the members of his family dependant on him with ordinary necessary living expenses."

Sub-section (8) is entirely new and it provides that in certain cases, instead of going before a magistrate and arguing the case out before him, the employer and employee can get together and come to an agreement. This sub-section provides that where the employee is non-native then in all cases under sub-sections (4), (5) and (6), that is, where there is permanent total incapacity, permanent partial incapacity or temporary incapacity, an agreement can be come to between the employer and the non-native employee.

[Mr. Willan]

But where the employed is a native then it is only in the case of temporary incapacity that an agreement can be come to. There are three safeguards with regard to this agreement: first, when the agreement has been made the workman himself takes it to the nearest magistrate; secondly, the compensation agreed upon between the employer and employee must not be less than the amount payable under the provisions of this Bill; and thirdly, the agreement shall not be binding against the workman until it has been endorsed by a magistrate and the magistrate has read over the agreement and the employee understands it and approves. So, the workman is fully safeguarded with these three provisions.

I submit, Sir, that this new provision is very necessary when we consider that some of these mines are right out in the blue and that it takes a very long time to get to the nearest magistrate. This will save the employers' and employees' time and probably the time of a number of other employees on the mine who might have been witnesses.

Sub-section (9) again, it is entirely new and it provides that any periodical payment payable under this section, either under agreement between the parties or as assessed by a magistrate, may be reviewed by the magistrate on the application of the employer or the workman. I submit that this is a very necessary part of the Bill because you may have a workman who is injured and you may think that he is merely temporarily incapacitated, but after about a fortnight or three weeks it turns out that he is permanently incapacitated, and, of course, for any such case there ought to be provision for reviewing the award.

There is also the case, on the other side, of a workman who may be temporarily incapacitated but who is receiving weekly or monthly periodical payments. The employer thinks the employee is malingering and gets a medical officer to examine him. If the result is in the favour of the employer he applies to a magistrate for the payments to be stopped. This goes for both sides, and I do think that this is a very necessary part of the Bill.

Then we come to the new sub-section (10) which deals with an appeal from the decisions of the magistrates to the Supreme Court. All we say in the present law is that any person who is dissatisfied may appeal to the magistrate within 30 days of the making of the award. That, I am afraid, does not help the magistrates very much, nor does it help the Supreme Court, nor does it help the parties. So, this sub-section, dealing with appeals, has been elaborated.

First of all, in sub-section (10) (a) there is this provision that the appeal shall lie to the Supreme Court subject to the provisions of the sub-section. In paragraph (b) we restrict the right of appeal. It is thought that there should be no appeal, unless a substantial question of law is involved, where the amount in dispute is less than £25. If it is only a question of fact then it is felt that there should be no right of appeal waived. Paragraph (c) states that there shall be no appeal where the parties have come to an agreement or where they have agreed to abide by the decision of the magistrate. In the latter case the parties should be held to their agreement because they have told the magistrate that they would abide by his decision as final. In paragraph (d) the time limit of 30 days still remains the same except that the proviso is new and provides that the Supreme Court may extend the time. Paragraph (e), at the top of page 8, provides for the Civil Procedure Ordinance and the rules made thereunder applying with regard to these appeal cases.

Sub-section (11) reproduces the present law. Sub-section (12) is entirely new. I must say that in drafting this Bill it came as a little bit of a shock to me to find that in the present law where an award is made there is no compulsion on the part of the employer to honour the award. I must say that no case has come to the notice of government where an employer has refused to pay an award and I think that speaks volumes for the mining employers. But it was felt that it was very necessary, in case any case should arise where an employer refuses to pay, that there should be some legal sanction to make him pay.

[Mr. Willan]

These are all the details of this Bill.

Finally, I may say that this Bill has been from the Accident and Assurance Association and the mining community—and, after all, they are the two bodies who will be affected—and they have entirely approved of all the provisions of this Bill. I do not think there will be any objection from the employees because the rates of compensation are raised in their case and because the earnings now include not only wages but the value of the food, fuel and quarters etc. Sir, I beg to move.

MR. DENNISON seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, the honourable mover did not tell us whether or not it was the intention of Government to send this Bill to a select committee.

MR. WILLAN: Your Excellency, that is the intention of Government.

MAJOR CAVENDISH-BENTINCK: I am glad to hear that because there are several provisions I could not agree to unless I had the assurance that the Bill was going to a select committee, which, no doubt, can investigate them.

In paragraph 2 it says "Native Reserve" means land within Native lands, Native leasehold areas, Native Reserves and Native Reserves as defined in the Native Land Trust Ordinance, 1935, and land within the Northern Frontier district and the Turkana district, as defined in section 58G of the Crown Lands Ordinance". That may be convenient, but I have some doubt as to whether all these classes of land can wisely be termed "Native Reserve", as Native Reserve has a very specific meaning.

Then on page 2, clause 4—the amendment to section 17—on such information as I have at the moment, I would oppose that very much. It is sometimes advisable to give special terms to certain groups or companies which we may wish to induce to come to the country and spend money here. Who will say that we know all there is to be known about gold-bearing areas in the country? We may yet find large areas in this country to which we may want to induce people to come to prospect

and so forth. I think it is very unwise to lay down a fee of Sh. 100 per square mile, and I think there should be some provision by which the Governor at his discretion may reduce such fees for prospecting for precious as well as for non-precious metals. I attach a great deal of importance to that.

We now come to the compensation clause. One quite realizes that both mining companies and, to a much greater extent, insurance companies, would welcome a clause of this nature which lays down more precisely the general conditions under which claims can be made. I am a little alarmed, however, when one reads in the objects and reasons that "such provision will prove a useful guide should the proposed Model Workmen's Compensation Bill be introduced at a later date". The commercial community, and, I think, all sections we represent, feel that any form of workmen's compensation act in this country would be very premature, and I have the most grave misgivings when I see a clause such as that put in this Bill. I am well aware, and it is quite right, that provisions for compensation in the mining industry already exist. They were brought in in 1931 and were legally enacted in 1934, and in the latter year it was suggested that we should introduce legislation much on these lines and we purposely did not do so because we felt that conditions were such in this country that we did not want to be tied down quite to the extent to which we are apparently going to be tied down under this Ordinance. I hope that when the select committee does sit, that evidence will be produced to prove whether or not it is really necessary to go to the lengths to which this Bill has gone.

On page 7 we are given an explanation of the provisions of sub-section (10). I have two remarks to make on that. I disagree entirely with (b)—

"Unless some substantial question of law is involved in the appeal, no appeal shall lie, except with the leave of the Supreme Court, if the amount in dispute in the appeal is less than twenty-five pounds."

Some might want to appeal for a comparatively small sum, which might, in fact, have a very great effect on the

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industry as a whole. I would suggest that five pounds should be inserted instead of twenty-five pounds.

As regards (d), which I know exists in the existing Ordinance, that—

"no appeal shall lie after the expiration of thirty days from the date of the award of the magistrate".

I think that period should be extended because in some cases a mining company might want to consult its directors as to whether or not it should institute an appeal, and, as has been pointed out by the hon. mover, some mining companies are situated in districts where communications are not easy. I think it should be at least 60 if not 90 days.

As this Bill is going to select committee, these are the only points I wish to make at the present time.

MR. DAVENPORT (Acting Commissioner of Mines): Your Excellency, I have very little to add to what has been said on the clauses, particularly clause 5, but there are one or two figures I might be able to give with regard to clause 4 which might interest hon. members of Council. Clause 4 is dependent on the expiration of the Mining in Proclaimed Areas Ordinance at the end of June. That was merely a revenue producing Ordinance, and the need for it is now considered not to be so great as it was in view of the fact that the revenue has dropped very considerably in the last three years; because big companies are now becoming their own renters and are taking up leases.

In 1937, the revenue derived amounted to £1,598 and in 1938 it dropped to £279. This year the revenue is expected to amount to only £46 and therefore we considered that with our greater knowledge of the goldfields as they are now, it was no longer necessary to grant exclusive licences over the known goldfields. The Ordinance only applied to the five Kitson areas.

The hon. and gallant Member for Nairobi North mentioned that there must be other goldfields that might need large exclusive licences. That may be so in areas not yet touched by any geological

survey, but it is not so in these areas that have been attended to by the geological service. It is intended that the small worker should have as good a chance as the big capitalised man in these areas. Further, the provision which allows Your Excellency in your discretion to reduce the fee in searching for non-precious metals was particularly put in because it is the policy of Government to encourage the search for non-precious metals.

With regard to section 86, which it is intended to amend, all I need to say is that the Accident Insurance Association of Eastern Africa has been fully consulted on this, and it was, in fact, due to their representations that this clause was put in to be made law. Speaking as a district officer who has had to take cases of compensation in the goldfields, we have often been at a loss sometimes to satisfy the insurance companies in view of the fact that various magistrates took different readings, especially in regard to the word "earnings". Some magistrates would allow for rations being included in the wage and others did not. We suddenly heard that insurance companies were likely to increase the premiums to mining companies in view of the different rulings by various magistrates and I believe that all magistrates will welcome a legal and definite scale laid down by the law, which they have to follow. The provision allowing compensation to be arranged between the parties is an excellent thing, which I hope may be partaken of in those areas where it is difficult to get hold of a magistrate.

There is one more small point and that is the question brought up by the last speaker about the period of appeals being extended to 60 days. The provision, I think, covers that fully. There is provision under sub-section (d) of section 10 so that the Supreme Court may extend the time of appeal, and I think that would be fully used if there was the least doubt that companies could not get in touch with the magistrate owing to the distance from the court or district office.

The other point which the hon. member suggested should be brought up in the select committee, I propose to leave to the select committee.

Your Excellency, I support the motion.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, on a point of explanation, it is quite true that I suggested that the fees as laid down in section 4 will apply to the whole country. The last speaker has just said I was wrong because section 4 applied only to the mining areas. That is not the case! We are now going to repeal the Mining in Proclaimed Areas Ordinance and apply this amendment to the whole country. I think it is very important to clear that up.

**MR. WILLAN:** Your Excellency, with regard to the remarks of the hon. and gallant Member for Nairobi North, and first of all as regards clause 2, apparently he is in some doubt. What that doubt is I do not quite know, but no doubt it can be resolved in select committee. With regard to clause 4, it is a fact that the Mining in Proclaimed Areas Ordinance of 1933 will come to an end on 30th June this year. That does not mean that the Ordinance is being repealed because it is only prolonged up to that time and unless a notice is published in the Gazette it automatically lapses on 30th June. Therefore, in regard to exclusive prospecting licences applied for after that, they will be covered by this provision in the Mining Ordinance. This provision under new sub-section (8) will not affect those exclusive prospecting licences applied for and granted prior to that time, which will be governed by the Mining in Proclaimed Areas Ordinance of 1933.

I come now to the remarks of the gallant member in regard to that paragraph of the objects and reasons which states that "such provision will prove a useful guide should the proposed Model Workmen's Compensation Bill be introduced at a later date. That is merely a statement of fact. It does not say that the Bill is going to be introduced. It says if it is introduced and becomes law. It is merely a statement of fact.

With regard to the hon. and gallant member's remark on sub-section (10), I rather feel that he had misunderstood paragraph (b) in new sub-section (10), because if I understood him aright, he said there ought to be right of appeal even if a small sum is involved because it might affect the mining industry as a whole. Well sir, this paragraph (b) pro-

vides that when some question of law is involved there is always right of appeal, but if the question is purely of fact then unless the Supreme Court gives the right of appeal there is no automatic appeal under a sum of £25.

With regard to his remarks on paragraph (d), it rather comes to me with some surprise that I as a lawyer, should be seeking to shorten the time with regard to litigation, and the hon. and gallant member, a layman, is endeavouring to prolong that time.

The question was put and carried.

#### SELECT COMMITTEE

**MR. WILLAN** moved that the Bill be referred to a select committee consisting of:

Mr. Willan (Chairman),  
Mr. Stronach,  
Mr. Davenport,  
Major Cavendish-Bentinck,  
Mr. Ghersi,  
Mr. Shamsud-Deen.

**MR. DENNISON** seconded.

The question was put and carried.

**MR. WILLAN:** Your Excellency, I would like to inform members of that committee that the committee will meet at 2.15 this afternoon at the Attorney General's office.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, I am extremely sorry, but I shall be quite unable to be present there this afternoon; and there is another point—that is, that none of my questions have yet been answered.

**HIS EXCELLENCY:** No doubt the matter can be arranged during the interval.

#### THE WATER AMENDMENT BILL

##### SECOND READING

**MR. STRONACH:** Your Excellency, I beg to move the second reading of the Water (Amendment) Bill. The amendments proposed are the result of the experience gained by the Water Board since the principle Ordinance was brought into operation, and they have the blessing of the Board. The main objects of the

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amendments is to facilitate procedure and expedite the present methods in dealing with applications. The form of advertisement is simplified and only one insertion in the Press is called for in the place of two, thus lessening the cost to applicants.

It is surprising to note that in an Ordinance of such magnitude and of such a technical nature that so few amendments have become necessary, considering the fact that it has been in operation almost five years, and I think this reflects great credits on the drafters of the Bill.

Turning now to the details of the clauses. Under clause 2, an omission in section 2 of the principle Ordinance is covered by including in an amended definition of "operator" authority to use water by sanction as well as by authority. A number of users will not have need to use water except by sanction, while in other cases it is not possible for the Water Board to issue water rights until the rivers concerned have been surveyed. Under this clause a definition of "sanction holder" is also included.

Clause 3 permits of the Director delegating the powers conferred upon him by the Water Board. As the present Ordinance stands the Director, say in the case of an illicit dam that has to be pulled down by orders of the Water Board, must personally go and pull it down. It is not always convenient for the Director to do that.

Clause 4 is merely an amendment to cover a typographical error.

Clause 5 provides for the use of a simplified form of application for a water right or sanction in which fewer particulars are called for.

Clause 6 permits of the Water Board amending the applications, maps or plans when it is obvious that errors have been made thus saving delay. Actually, on one occasion we received an application for 50 cuses to be taken from a river in which there were only five. It is much more simple for the Water Board to make an alteration of that kind than to send the plans back to the applicant.

Clause 7 provides for a simplified form of advertisement and for a reduction in

the time within which the advertisement is to be published from 50 to 21 days. It also provides for a reduction in the number of times of publication of the advertisement, and for a reduction in the time within which objections must be filed from 60 to 30 days.

Clause 8 provides for the addition of a sub-section to section 88 of the principle Ordinance to permit the application of the provisions contained in certain sections to sanction or sanction holders at the discretion of the Water Board, in respect of private projects, authority to enter land for survey etc., applications, authorizations, capacity of works, certificates of completion and inspections, water for non-riparian lands, limitations of water right, measuring and control devices etc., etc.

Your Excellency, I think my explanations have covered the salient points of the amendments. I beg to move.

**MR. WILLAN** seconded.

**EARL OF ERROLL:** Your Excellency: I feel rather diffident in speaking to the motion because I expect to be called to order before getting very far. I have no objection to the Bill in principle, but I understand that new rules are likely to be introduced as soon as the Bill is passed, and that these rules will definitely affect a number of my constituents.

I would like to ask the hon. director for an assurance on the following point. I understand that one of the rules will be amended as a result of the passing of the Bill. This rule, clause 133, deals with the pollution of water and more especially with the effluent of coffee pulping. All I want to do is to ask the hon. director for an assurance that no sudden action will be taken by the Water Board against planters who might be in the middle of pulping operations, because they will suffer real hardship unless they are given a certain amount of time in which to fall in with the regulations. That is all I want to say.

**MAJOR GROGAN:** Your Excellency, in pursuance of that point would it be possible to have it arranged as in the Resident Labourers Ordinance, that it is

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have all rules that seriously affect principles should be laid on the table of this Council so that people can study them before they become operative? These rule-making powers are very wide indeed and the enunciation of them is left to people who may have peculiar views. I am not suggesting that that applies in the present case, but we have had peculiar people here before and we are liable to have them again.

I think the rule-making power is one which should be strictly limited, and I think the point would be covered if we had an assurance that any rules affecting principles should be laid on the table of this Council before the matter comes up and they become operative.

MR. HARRAGIN: Your Excellency, there are, of course, innumerable examples where in different Ordinances Council has demanded that rules should be laid on the table before coming into operation. It is a matter for consideration whether or not the rules to this particular Ordinance should be laid on the table. When an Ordinance is up for revision it is competent for any member to move that a clause be inserted in that Ordinance which gives rule-making powers. At the moment that power is not to be found in the Ordinance before Council.

MAJOR CAVENDISH-BENTINCK: Your Excellency, it is not very practicable to have all rules laid before they become operative. Rules sometimes have to be made hurriedly. I believe—I can make sure during the interval—that an undertaking was given some time ago that in the future all rules would be laid on the table so that members could have an opportunity of seeing what rules have been made between sessions. That, I understand, Government has not done.

MR. HARRAGIN: Your Excellency, the hon. and gallant member is quite right, this is so in some Ordinances. But I do not think this is one of them.

LORD FRANCIS SCOTT: Your Excellency, I beg to move that the addition suggested by the hon. the Acting Chief Secretary be adopted—that the rules should be laid in this Council.

LADY SIDNEY FARRAR (Nyanza) seconded.

HIS EXCELLENCY: It would help if the amendment was moved to the select committee report. I think the noble lord should suggest that a clause should be added to the Bill that all rules made under the Bill should be laid on the table of Council.

LORD FRANCIS SCOTT: Yes, Sir.

HIS EXCELLENCY: And I suggest that it might be more appropriately done either by the select committee or by amending the select committee report when received here rather than at the present time.

EARL OF ERROLL: Your Excellency, on a point of explanation, is there going to be a select committee on this Bill?

MR. HARRAGIN: If hon. members wish, it will go to a select committee. If not it can be moved when the Bill goes into committee of the whole Council.

LORD FRANCIS SCOTT: Sir, under the circumstances I beg to withdraw what I have proposed and I give notice to move such an amendment in the committee stage.

MR. WILLAN: Your Excellency, I suggest that the committee stage be taken to-morrow. If that is done I will have the draft amendment ready.

MR. STRONACH: Your Excellency, I do not think there is very much to which to reply. I can give the assurance to the noble earl, the Member for Kiambu, that the Water Board has no intention whatever of fishing matters.

With regard to the question of the rules I am not quite sure that I am in order. I would like Council to know that the Coffee Pollution Committee has been sitting since 1935 and that it has been the custom to publish reports in the monthly bulletin of the Coffee Board of Kenya. I think it is arising out of that publication that the noble earl has raised the point. The revised rules were published in the coffee bulletin of December last.

I beg to move that the Water (Amendment) Bill be read a second time.

The question was put and carried.

## ARMS (TRAFFIC WITH ABYSSINIA) (REPEAL) BILL

### SECOND READING

MR. WILLAN: Your Excellency, there is nothing to say except what is contained in the Objects and Reasons, which is that the Arms (Traffic with Abyssinia) Ordinance of 1931 was enacted for the purpose of giving effect in the Colony to a treaty, known as the Abyssinian Arms Traffic Treaty, which was, on the 21st August, 1939, signed on behalf of His Majesty. This Treaty is now regarded as being no longer in force. As the two Ordinances referred to in clause 2 of the Bill were enacted in consequence of that Treaty and since that Treaty is no longer in force, the Secretary of State has requested this Government to repeal the two Ordinances.

MR. DENNISON seconded.

The question was put and carried.

Council adjourned for the usual interval.

### On resuming:

## SCHEDULE OF ADDITIONAL PROVISION NO. 4 OF 1938

MR. LOCKHART: Your Excellency, I beg to move:—

“That Schedule of Additional Provision No. 4 of 1938, be referred to the Standing Finance Committee.”

This Schedule provides for total additional provision amounting to about £70,000. Part is set off by specific savings and revenue, leaving a net additional expenditure of just over £40,000. Actually that additional expenditure was covered by savings or additional revenue. It is not usual to discuss the Schedule at this stage and I beg to move.

MR. HARRAGIN seconded.

The question was put and carried.

## GOVERNMENT'S POLICY

### Motion

LORD FRANCIS SCOTT: Sir, I beg to move the motion standing in my name:—

“That Council, whilst appreciating the information afforded in the Communication from the Chair regarding

Defence and certain other matters, regrets that no due appreciation on the part of Government of the basic economic, financial and fiscal problems confronting the Colony was indicated, nor were adequate references made disclosing Government's Native Policy, the progress of the destocking procedure in the Kamba and other native reserves, or the steps which have been taken to provide finance for those essential developmental requirements which have long since been carefully considered and approved, notably for the Land Bank, for road improvement, for agricultural development and for schools.”

As you will see, this motion is divided into several parts. It starts with an appreciation of the information afforded to us in the Communication from the Chair and, I think, particularly the clear and lucid exposition Your Excellency gave us on the military situation from the general world point of view, and also from the point of view of this Colony. It will be of great interest to the country at large and should, I hope, satisfy people that, with the limited material we have at our disposal here, Government are doing their utmost to make all the preparations possible.

The next point I should like to express my appreciation of is the fact that Your Excellency with your Government have promptly accepted the general principles of the Settlement Committee's Report. That, Sir, is very welcome and I am delighted to know that you are pressing the necessity of action being taken on the Secretary of State. I only trust that Government will not tolerate any obstruction which may be forthcoming from that quarter. I shall say no more about it today, Sir, because it is the subject of a separate debate.

Another point which will give great satisfaction to the country is your announcement that you are appointing a committee immediately to go into the whole question of game preservation, game parks and all kindred matters. The question has been exercising the minds of the people of the country a great deal of recent times and I can only trust that the committee will be formed promptly and also act promptly and get their report out

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without any unnecessary delay so that everybody can know what policy is going to be adopted.

There is one other point in your address, Sir, with which I should like to associate hon. elected members. That is your reference to the departure from the Colony of Sir Armigel Wade. We should like to associate ourselves with your remarks as we realize that by his departure this Colony has lost a very loyal and devoted servant and many of us have lost a great personal friend.

I am not going to take up the time of Council by going over all sorts of other matters of interest to which Your Excellency made reference although there are one or two with which I shall deal in the course of my subsequent remarks. The next part of my motion, however, states that—

"I regret that no due appreciation on the part of Government of the basic economic, financial and fiscal problems confronting the Colony was indicated".

Now, Sir, that is rather a wide subject and I do not propose to deal with it in any great detail. I am aware that you have informed us that at the present moment we are in the satisfactory position of having a free surplus balance amounting to £355,000 at the end of 1938. By that I presume is meant that the total surplus balance on paper will be about £700,000 now, of which £355,000 is free and can be used. Now, that is, I think a very satisfactory result due to the steady progress of this Colony under not very favourable circumstances during recent years. I remember not very long ago when sitting on the Expenditure Advisory Committee that we had to point out that at that moment we had no surplus balance at all in the Colony—and that is only a matter of about six or seven years ago.

You also, Sir, did make reference to one matter of fiscal interest and that is the question of the Report of the Incidence of Income Tax. In dealing with that I think you dealt very fairly and clearly and made it quite clear that, so far as you were concerned, when the demand came forth that a further investigation should be made into the question, that you were

quite prepared to accede to such a demand though you did not commit yourself to any definite time for or any definite form of inquiry.

Another favourable aspect of the Colony's finances is that in the first three months of the year the customs revenue has been more favourable than anticipated, but what I think hon. members would like to hear is more information as to how Government considers world affairs are likely to affect or are affecting or are likely to affect in the near future the economic problems of this Colony. There are such matters as world prices, and the price of money which we know has already shown a tendency to go up. We would like to know the tendencies of trade in the near future because though, in the first quarter of this year, trade seems to have been doing well, I have heard slightly pessimistic views given by some of my friends interested in that form of business. There is also to-day, rising up more and more all over the world, a system of barrier trade between nations. I do hope that we can be given some information as to how Government view these general questions of economics, as to how they are likely to affect this Colony. I will say no more about that now. I have no doubt that other hon. members who have made a bigger study of this question than myself may have something to say later on.

The next part of the resolution deals with Government's native policy. This, Sir, perhaps is almost the most important question facing the country to-day. It has been exercising public thought to a very great extent as is shown by the various discussions in the press. But I cannot say that these discussions, as far as I am concerned, have got me very much further by producing any constructive suggestions.

The attitude of the Elected Members, Sir, is that whilst we are unable to take any share of responsibility for Government's executive actions, we do feel a very deep and real interest in this question and are anxious to help Government and impress our views on Government so that we can see a wise, far-seeing policy adopted and carried out.

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I am sorry to say that at the present time one hears from all over the country instances of ill-discipline and lawlessness and, personally, I believe this is due to the fact that Government's administration has been weak and vacillating. Now, Sir, the result of this is, that as the administration seem incapable of instilling proper discipline and respect for law, the people of the country are now demanding that the police shall be greatly strengthened so that they can protect personnel and property. And, Sir, the demands for increased police will be very hard for Government to resist. A case can be made out and will entail a considerable increase in the expenditure of money. So I do suggest that if Government wishes to save that increased expenditure or anyhow, to keep it down to moderate rates, they must re-instill a proper sense of discipline through a really efficient administration.

Now, it seems to me that the first essential of good government in native affairs is to establish in the mind of the native absolute trust in the inviolability of Government's word. For this purpose it is essential that before embarking on any specific line of policy Government must think out very clearly some long way ahead what they mean to do and what the implications of that particular policy will be, and so they must be prepared for eventualities. Unless this is done Government inevitably will find themselves in difficulties.

If, however, this is done, then Government must be absolutely firm and carry out, regardless of consequences whatever it has set its hand to do, whether it is a promise to the natives of something they want, or whether it is a decision to take action in such a way that the natives themselves may not appreciate but which, in Government's well thought opinion, is essential to their well-being and to the well-being of the Colony as a whole (Hear, hear.) But such action must also be based on justice. And if I may sum up: the main basis for a sound government policy must be justice and firmness and no vacillation.

I suggest that it is because these principles have not been adhered to in the

past that Government has got itself into such a hopeless mess over the question of stockholding.

I was very interested to hear in Your Excellency's address that you were appointing a new committee to assist Government in this matter. I think it would be of great interest to this Council if we could hear what is the personnel of that committee and their terms of reference.

Now, Sir, it has been generally accepted for many years that the native stock must be reduced in quantity and improved in quality to a level such as their land can carry. Everyone agrees that this is essential both for the natives themselves and for the country at large. The excuse in the past given for not taking any action has been that there was no market. That excuse does not exist—or did not exist until quite recently—because that market has been supplied by Messrs. Liebigs. Unfortunately, as the result of Government's ill thought out schemes, it has fallen to the ground and Liebigs have been driven out of the country and the natives have lost their one assured and certain market for their scrub cattle.

Now, Sir, we cannot share the blame for this. You will remember that about 18 months ago several of us discussed this question with Government and warned Government that their proposals were not likely to succeed. In fact we put up an alternative scheme altogether. However, Government decided to pursue their own ideas and so we did what we could to help without any undue criticism. Government's scheme has now failed and they are trying out a new one. Once more we have no wish to hinder or hamper, but we do want to know exactly what is this new scheme and where it is going to lead us.

So far as we know it entails the principle of individual land holdings and that, again, raises the question as to what is Government's policy with regard to land tenure in the native reserves—one of the biggest questions which has to be faced with regard to native policy. Individual land tenure will inevitably lead to landless natives and may make the question of succession more difficult. Sisal fences which are being planted will take up quite

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a lot of land and there are other questions in connection with this which one of my hon. colleagues, I know, has asked of Government—and which I had hoped would have been answered before I spoke to-day—on such questions as water and salt licks. I trust that in his reply my hon. friend the Acting Chief Native Commissioner will be able to give us some information.

Again as regards the policy of destocking: Have Government found out how many cattle, goats and other animals there are on these various native lands? Have they worked out what the natural annual increase is likely to be? And have they come to some conclusion as to what is the maximum amount of stock which these lands can carry without deterioration? I feel, Sir, that Government, now that they are having to mark time over this destocking, should work out their scheme, not only for the Wakamba, but for all parts of the country, in a bold and comprehensive way, looking right ahead; not only looking ahead for a year or so, but have a completely worked out scheme which they can push through without any hesitation or any looking back. When they have got that I trust that they will get rid of the useless scrub stock and then eventually improve the quality of the residue so that the natives whilst having smaller herds may have far better ones and such as can be carried without detriment to the soil on their existing lands. That is all I propose to say on the question of native affairs and I hope very much that my hon. friend opposite will give a full account of Government's policy.

Now, Sir, the last part of my resolution deals with loans and money for various development purposes. I believe that there is some Colonial Office regulation which debars Government from discussing this question freely in Legislative Council. If so, if that is correct, I maintain that it is entirely wrong. Here we are on the Legislative Council of this Colony and we are supposed to have control of finance. Nearly half of this Council are elected by the various races to come here to represent their views! I suggest, Sir, that such a question as loans and money

provided for this Colony is a matter which you, Sir, should have every opportunity of discussing with the members of this Legislative Council (Hear, hear.)

I believe the Colonial Office urges "cautious finance." I think perhaps that they would have been rebuffed if that had lived in the old days of the Bible in the manner of the man who was rebuked for wrapping up his talent in a napkin. They do not seem to believe in spending money so as to get remunerative returns. I should like to point out—if there is any criticism of the credit-worthiness of this Colony—that we have received no grant-in-aid for I believe 26 years; we have never defaulted on any of our loans, interest or sinking fund, even when we have had to pay such high rates of interest as 6 per cent and so on, arranged for us by the Crown Agents in London. We have never defaulted in any way whatever. We have never had to go to the home government to help us out financially. Certainly we had a certain amount of money from the Colonial Development Fund but even in that case if you compare what we have had to that obtained by other colonies, you will find that we might justifiably say that we have not even had our fair share of that.

I claim that we should be entirely free of this Treasury control in London. I can quite realize, supposing we wanted to raise a loan of £10,000,000 or something of that sort, that we have to go to people in London to get their advice as to whether it is a wise thing to do so, or what terms the London markets were prepared to raise the money and so on. That I can admit; but in the ordinary way we should not be subject to this control.

Surely, when we have paid our way in the way we have, when we are gradually building up our surplus balances, when everything in this country is gradually being more developed, surely to goodness we ought to be allowed to decide what are the objects we wish to borrow money for, and what are the objects we consider necessary for the development of this country. It should not be possible for the people in Downing Street to be able to prevent us from doing so. I submit that

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their duties should be confined to advising us as to the best way of raising money, on the state of the market, when it is best to raise it and so on. Certainly they should be able to give us advice which is not available here on such matters, but to say how we are to spend that money—that should be left to the discretion of the people of this country.

If I may say so, Sir, you yourself have had very great positions, in different parts of the Empire—surely to goodness you should be entrusted and should be enabled to decide with the greatest wisdom how the Colony could best spend their money!

It is not as though the investing public in London care what the objects of the loan are to be; they do not care tuppence about that. What they look at is the rate of interest, the time when it is going to mature and the fact that it is guaranteed by the Government of Kenya which has been known never to default on any money raised, unlike some of the foreign countries in which some of our friends in the City of London have been advising their clients to invest their money.

Now, Sir, the total loans of the Colony amount to a little over £17,000,000. Of that, over £13,000,000 are for the Railways and Harbours. Now many hard words are said about the Railways and Harbours in this Colony, and there are many criticisms of various kinds, but no criticism that they are in an insolvent state or anything of that sort, rather that their reserves are unnecessarily large. I cannot think that anyone could suggest that in its present state our railway is not thoroughly sound and is good security for those loans which have been raised on its behalf.

If we put that at one side the actual capital debt of this Colony, as apart from the Railway, is only £4,300,000 and of that, as I understand from this paper ("Colonial Loans, Statement submitted to Legislative Council in April, 1938") there is £250,000 included for the Land Bank which we are not even allowed to draw—though it was approved and passed in 1936. It was voted and yet the Secretary of State in London has sat on that money and is refusing to let us have the use of it!

Actually, if you analyse what is called in this financial document the "Summary of Expenditure on Colonial Development Authorized by Ordinances" you will find that it amounts to £3,768,000, of which £434,000, including that £250,000 for the Land Bank I have just mentioned, has not yet been raised! The analysis of how this money has been spent is: £1,500,000 on public buildings; £200,000 on water supplies; £320,000 on communications; £600,000 on loans to local authorities, for which, actually, though Government is responsible, the local bodies have to pay the interest and the sinking fund, and down below £1,000,000 for the Land and Agricultural Bank, though actually all we have received is £750,000.

Sir, I submit that that commitment of loans of the Colony cannot in any way be described as excessive for a Colony such as we are to-day in our present state of Development. I submit that we are credit-worthy for much more, many millions more, if we wish to raise it, and I do protest very strongly that we should be prevented from having money for such necessary objects as schools, roads, and the Land Bank which I have already referred to. We shall also want money for the Settlement Committee and money for other matters of great importance, such as the completion of the combined hospitals.

Now, Sir, there is one matter to which you referred and to which I should also like to refer. That is the question of the £5,500,000 which has been wiped out. I should like to say, if I may, that this Colony owes you, personally Sir, a very great debt of gratitude (Applause) for the very strong line which you took up on this question. A great debt of thanks is also due to those who helped at that time, both officials and unofficials. I would like, if I may, especially to mention the hon. the Financial Secretary and my hon. colleague on my left, Major Cavendish-Bentinck who, I think you will agree, did help a great deal with a lot of hard work. We are very grateful to you and also to the Secretary of State because if it had not been for his assistance we could not have got it through.



[Lord Francis Scott]

But there is one point in connexion with that which I would like to emphasize. We have been told in the past that this contingent liability of £5,500,000 was very detrimental to the raising of further loans, if that was so, now that it has been wiped off the slate, surely to goodness our credit is that much better than it was before, and this point I should like emphasized in any correspondence with the Secretary of State.

Now, Sir, I did suggest that these developmental questions are of real urgency and that they must be tackled and the money must be provided for them. If we cannot get the money overseas why not try raising it locally in this country? There is a lot of money lying there ready for investment in any form of trust security such as Government bonds or treasury notes or something of that sort guaranteed by this Government. I believe you could find a lot of money to invest in such proposals besides having those large surplus balances of the Railway which have to be invested in some way or other. If that cannot be done and we cannot get the moneys for our roads by loans from England then I suggest that we should take £100,000 over from that free surplus balance of £355,000 which we heard of the other day.

By one way or another I do submit that we have got to get these development purposes achieved and I do trust that Government will take a very strong line and, if necessary, a truculent line, *vis-à-vis* the Colonial Office because I am afraid, Sir, in this country we have become too well disciplined in recent years and it is time that we kicked a little bit harder. I beg to move. (Applause.)

MAJOR CAVENDISH-BENTINCK  
SECOND.

MR. NICOL: Your Excellency, in your address at the opening of this session Your Excellency mentioned that it is this Government's intention that the Indian community should participate in the defence of Mombasa and that announcement will be welcomed heartily by Mombasa. In view of the urgency of this question I should like to ask Government if

they can inform me when the necessary legislation will be presented to Council and passed, and if any steps can be taken to accelerate this?

The noble lord, the hon. mover of this motion, made reference to the economic position of the country to-day and I am afraid that I must confirm, from my own observations, that the Colony and East Africa generally, are passing through a depression which is equal to the economic depression of 1932 and 1933. (Hear, hear.) Now depressions mean that the revenue falls, and every effort must be made to increase the revenue. This can only be done in this country, being a young country, by development, and development in a young country such as this can only be accelerated and achieved by the provision of money, and that can only be done at the present stage by a loan.

At the Budget Session I dealt at length with this aspect of finance and as you are all in possession of Hansard I would merely say that my views have not changed since I spoke on the 7th of December last year. Sir, I should like to emphasize and wholeheartedly to support what the noble lord the hon. Member representing Rift Valley said on this question of loans and the Colonial Office attitude in regard to the question of debating loans. I do hope that due note will be taken of what the noble lord said.

Sir, in the Budget Debate I dealt also at length with the question of providing attractions to tourists. I am very glad indeed that an advance has been made by the appointment of the Game Park Committee. I hope there will be no delay of the committee getting together and I also hope that there will be no delay in implementing any recommendations which that committee may make. A game park alone is not enough, and in view of the great potentialities of this hidden export of "tourism", more must be done to attract tourists and to make conditions here attractive to them.

One of the primary necessities for this is better roads. I should think all the rains of the last few days should have emphasized the necessity of the need for improvement to our roads. In view of the

[Mr. Nicol]

importance of the roads to mechanical transport in general, and military mechanical transport in particular, I suggest for consideration that there is a case for including in the general defence expenditure of East Africa the cost of making up these roads, and that such a cost should be shared by the East African Governments in the same ratio as they at present share military costs.

There is one point, Sir, I should like to make as a member of the Standing Finance Committee, and that is I am very glad to hear that Your Excellency has accepted the report on Income Tax which was submitted by that Committee. I do want to emphasize this particular question as I feel that it would be fatal if there is any attempt to split the country again on this issue and at this stage. (Hear, hear.) And I hope that such an attempt will not be made. Quite frankly, I am convinced that capital has not been scared away and is not being scared away by income tax in this country, and in support of this it may interest you to know of a conversation which I had with a friend of mine yesterday, who is out from home, on this particular question.

He happens to have invested in this Colony a sum of approximately half a million pounds in a local industry, a local industry, which can be of considerable value to Government, providing that Government will assist to a certain extent in achieving control of that industry. This friend of mine is prepared in this particular industry to put in another half a million pounds if necessary. And I asked him: "Now is it a fact that income tax in this Colony deters you in any way from investing money in Kenya?" He replied: "Oh, no! On the contrary, I would much sooner have income tax and know where I am than to have money extracted from me by back-door methods. I realize that there must be taxation and I would sooner know where I am than have all sorts of funny things imposed on me and my industries."

MAJOR GROGAN: What is his name?

MR. NICOL: I will give you his name afterwards.

MAJOR GROGAN: He seems easy game.

MR. NICOL: Your Excellency, that is all I have got to say except that I wholeheartedly support the motion.

MR. ISHER DASS: Your Excellency, at the very outset I must say that I am a bit surprised at what has been said by the hon. mover, the noble lord representing Rift Valley. He expresses his regrets on behalf of his colleagues, the omissions of references to the economic position, the destocking measures taken or the policy in connexion with the native reserves. But to my surprise the whole thing has turned out to be a big motion of censure on the Government by attacking the efficiency of the administrative officers. I hold no brief on behalf of the administrative officers—I think that they are quite competent to defend themselves here—but I must express my views in detail concerning the remarks the hon. mover has made, for what he has said leads me to believe that some people are viewing things in a very short-sighted way.

A few minutes ago, at the beginning of his speech the hon. mover expressed all sorts of appreciations of what Government has done in connexion with land settlement, the measures taken in connexion with the defence of the country and the assistance given to farmers in times of need. Well, as I said yesterday, it is really easy to understand and read clearly the noble lord's mind and to translate his thoughts, but it is very difficult sometimes to see through the dirty and thick windscreen of the car one drives.

If there is any party in this Council which has a real grievance it is the Indian community, because in connexion with the first announcement Your Excellency made in your communication from the chair—about military and defence measures—the Indian community has been totally ignored and our co-operation is thought purely in the capacity of third class citizens such as motor drivers, taxi drivers and all sorts of things like that. The community have offered their services in the front line and they are also willing to join any of the military forces such as the Territorial battalions or the



[Mr. Isher Dass] Defence Force, and that request or offer has always been ignored. But the European community in this connexion have nothing whatever to grumble about.

The hon. mover also congratulated Your Excellency and your Government on accepting the report in connexion with the Settlement Scheme and went on a little further to suggest that he would appreciate any announcement that might be made in connexion with the game reserve.

Before coming to serious criticism concerning some of the omissions he imagined you made in your address he said that the European Elected Members are very anxious to help Government and to press their views on Government. All I have to say about that, and I say it sincerely, is that this is only an attitude of theirs in order to be able to poke their nose into Government's affairs.

I think that hon. members on this side of Council should be less enthusiastic about interfering. They would do well to let Government carry out its own policy. All this interference in the unsolved problems of Government has been the means of putting the people to-day in a very unsettled state and has created very grave suspicions in the minds of the Indian community and other communities.

The hon. mover also suggested, as I have already pointed out, that there is a very serious mistrust in the minds of the natives with regard to Government's intentions and that things are not as they should be. If you seriously and dispassionately consider this question, the natives should have some grievance not so much against the Government as against the European Elected Members and the European community for two reasons. The first is the squatter problem and the consequential removal of these people from certain areas where they have been living for centuries. Secondly, justice and firmness has been advocated to be taken into consideration when the native question is to be dealt with. In this connexion I do not understand what "justice and firmness" mean.

LORD FRANCIS SCOTT: No, you would not understand.

MR. ISHER DASS: But I say this: If it is firmness that has been shown in the past and if this firmness is to be shown in the future, then the advice given by the hon. mover is not a sound and sensible advice to be acted upon.

He also said a lot about the roads of this country not being in a very good condition and some remarks to that effect were also made by the hon. Member for Mombasa. In this connexion again, I would like to say if anybody is to be blamed it is not so much the Government as the European Elected Members. They were the first people to support the hon. the General Manager of the Railway in his plea for a monopoly and against the carriage of goods by motor transport. So, how on earth can you expect the hon. General Manager to have a monopoly on the one hand, and on the other expect decent roads to be built by the hon. the Director of Public Works? The two things are contradictory. Either you can have good roads or you have a monopoly for the railway; and if good roads are going to be useful for tourist traffic then you are taking away something from the hon. the General Manager. The two things though, are contradictory and yet the European Elected Members were loud in their appreciation when a measure effecting that monopoly was introduced here a couple of years ago. You will never have good roads as long as you have Sir Godfrey Rhodes! (Laughter.)

As this motion is worded it infers that any reference to Government's policy either accidental, or for some other reasons best known to Your Excellency and Government, was omitted from the Communication from the Chair. The most surprising thing in this connexion is that the hon. mover and every other member of this Council has been receiving for the last four or five months and previously the returns issued by the Customs Department, showing the customs receipts, the revenue and giving the trade barometer, and the export and import figures; the Inland Revenue Department has placed before us the incidence of income tax and the total revenue received from such sources and the other departments have issued their annual reports.

[Mr. Isher Dass]

For instance the Agricultural Department have given the measure taken in destocking, sisal growing and the conservation of the soil, and that department has also issued different reports in connexion with the measures to combat coffee plant diseases and so on, and Your Excellency also mentioned in your Communication from the Chair that you and your Government have been good enough to release 80,000 parasites at the request of two thousand parasite farmers (Laughter.) Then again, by the introduction of the Kenya Farmers Assistance Bill it has been shown that all these grievances of those hard hit farmers will be dealt with sympathetically.

Educational information has been given by the hon. the Director of Education and nearly four months ago all the necessary information was given to the press in connexion with agricultural development. An important statement has been issued in connexion with the Colonial Development Fund which gives so many figures and the amount spent on each item in connexion with educational schemes, scholarships, military control and all sorts of things.

If all this information that has been provided in different returns and statements and issued out by the different departments themselves is not enough, then what I would like to know is what the hon. mover means by omissions of certain references and what he wants. All these things that he suggests require an explanation have been provided by the Government officials who have applied the taxpayers money during the last twelve months. So, what else is required?

I would suggest with all sincerity that the object of moving this motion is nothing more than an intimidation of you and your Government, and the Secretary of State, Sir, because the hon. mover feels that during the past few years through this method the European Elected Members have succeeded in getting certain concessions out of the Government. And as in the past, you and your Government have totally ignored the rightful claims of the Indian community, and Government

has also thought fit to ignore the Indian Elected Members on all important issues.

It was only four months ago—not a very long period—since we spent hours and hours thinking up ways and means of expenditure and during the budget debate every possible information was supplied to Council. And I hardly think that there was any need to bring this motion unless it was in order to waste the time of Council and a publicity stunt, or to intimidate a Government.

The hon. Member for Mombasa in his eloquent speech just now said that he sincerely believed that in the interests of development of this country the suggestion he made a few months ago was a sound one and he had not changed his mind since and does not see fit to change his views. In that I think he was referring to a loan of £10,000,000. If he does not see fit to change his views on that subject I would inform him that my own opinion has certainly not changed with regard to such loan and further, I see no reason to change it. I would make particular reference to his remarks that the time is not ripe and that there is a depression all round. In view of this I would suggest that my own opinion is right for in a time of depression what chance have we and what assurance have you that you will be able to repay this £10,000,000? It is no use asking people to advance you £10,000,000 on mere words.

Although I have my own views with regard to Government's policy towards the Indian community, I consider that this attitude of the European Elected Members in criticising Government is not doing any good to the country or its people, or the Government officials. In fact it is creating more distress among the people, among the ignorant people, by suggesting that the machinery of Government has hopelessly failed. I beg to oppose the motion.

MR. LA FONTAINE (Acting Chief Native Commissioner): Your Excellency, I realize that I shall be Aunt Sally in this debate and therefore, in spite of my hon. friend Mr. Isher Dass with his appropriate magnanimity, I propose to get up early and give my hon. friends an opportunity of getting all the ammunition

[Mr. La Fontaine] which they wish to throw at me. I should welcome their remarks as I am not one of those bureaucrats who feel that they can dispense either with advice or criticism.

I would like to say that I appreciate the moderation with which the noble lord the hon. Member for the Rift Valley phrased his remarks. I realize that he has not been actuated by a desire to attack Government's native policy but rather because of his real anxiety in the matter.

To turn, Sir, to the question of lawlessness to which he has referred. Government is fully alive to the fact that there is a feeling of anxiety which is shared by a large section of the community and has received widespread expression in the Press. But, I suggest, Sir, that it could not be said with justice that there has been either vacillation or weakness. It is not vacillation to alter the course of a ship that is found to be drifting on to dangerous rocks; it is not weakness to realize a mistake, if a mistake has been made, and to do all that is in one's power to rectify it. To continue a mistake because one is afraid to admit it, is not a wise action but one which should be justly condemned.

I am not out, Sir, to palliate or excuse, nor do I suggest that Government is perfect or infallible. But in regard to the cases of lawlessness to which reference has been made the fact remains that owing to leave secondments, and as a consequence of invalidings, transfers and last but not least, to the reduction consequent upon the Pim Report, the administrative staff has been reduced to an extent which has made it difficult to ensure the close personal contact with the native population which is vital to successful administration.

These difficulties, Sir, are temporary only, and recently decisions have been taken with a view to remedying them. I have stated this in order to show that they are a contributory factor to the incidents to which reference has been made, and in view of the steps that are being contemplated I do not think that they will recur. The Lumbwa unrest which has obtained some comment in the newspapers was the subject of immediate action when it was

first reported, and the institution of a special police levy force has already been effective in calming down the situation in that reserve.

I now turn to the land question which is at the root of many of our troubles. The Land Commission recommended the provision of 21,000 acres of agricultural land for addition in the Kikuyu Reserve. The vast bulk of this area has been found by excision from the Crown forest areas. It is in fact land fit for agriculture though a proportion of it cannot be considered to be equivalent in value to the best coffee land which the Kikuyu were occupying before the land was alienated in the early times. To compensate for this inequality an additional allowance is being made in allocating plots in the new areas. Much of the 21,000 acres has now been occupied and the balance remaining is being reserved for the accommodation of right-holders. In addition the Highlands Board has agreed to the excision from the Crown forests of 745 acres of forest land near Dagoretti, which is surrounded on three sides by the Kikuyu Reserve. Further proposals are now before Government to provide a large area, some 50,000 acres, for the accommodation of returning squatters, and I consider that this settlement, which I hope will be concluded but which is still under consideration, will meet the requirements of the Kikuyu for as long a period as can reasonably be foreseen, in fact, I hope for all time.

I hope the importance, the tremendous importance, of reaching a final settlement on this vexed question will be realized. We have been striving hard for months to find appropriate land and a vast amount of effort has been expended in the search. The proposal which has been put forward means on the one hand a sacrifice of forest area, but on the other hand it means a just settlement, even a generous settlement of the native land grievances. If we have ultimately to face trouble and be compelled to take drastic action for the eviction of recalcitrants we shall be able to do so with clean hands and a clear conscience.

The record of South Africa in handling her native question has not always been above criticism. But what is the recent history of that country? The government

[Mr. La Fontaine] there, realizing the tremendous importance to the future of South Africa of having a contented native population on the land, have expended millions of pounds in purchasing land for such settlement. They have given us a lead which I hope we shall not be slow in following.

In early times we inflicted, I believe quite unintentionally, an injustice on certain Kikuyu people by alienating land for farms on which they had a claim. The Land Commission endeavoured to effect a just settlement of these claims but they left almost untouched the problem presented by the Kikuyu squatter population, estimated at some 100,000 people for which, at that stage, they were unable to recommend any satisfactory solution.

I apologize for being so lengthy on this subject of land but it is one of very great importance. Since the Land Commission Report was published the process of settling landless people on the land has provided indisputable evidence that many of these squatters and relatives of these squatters, are really people whose land was lost in the early days, and the conclusion has been inevitably forced upon Government that some provision for these people, when they return from the farms, is both just and necessary.

As an old-time resident and, if I may say so, a land holder in Kikuyu, I have a whole-hearted belief in the future of white settlement. It is my earnest desire to see it increased. But I say with all emphasis that the idea of white settlement cannot be successfully fulfilled unless side by side with the European settlers there lives a contented African population with full opportunity to expand and with ample land to cultivate. (Applause.)

In saying this I have no doubt that I am voicing the feeling of hon. members on the opposite side of Council. The point on which there may be a difference of opinion is as to what is adequate accommodation. But I feel that the measure given must be on a generous scale even if it involves sacrifice to other interests. I believe that politically it will be many times repaid by an increased loyalty and co-operation of those who are benefited, and economically it will be a source of strength to the country.

We cannot, Sir, afford to take one step which, on account of its doubtful justice is likely to alienate the loyalty or put out of our reach the help of any section of the community during the present emergency and, in this connexion, I have the Kamba people very much in mind.

The noble lord has also regretted the absence of any reference to the procedure in regard to the destocking in the Kamba and other native reserves. In Your Excellency's speech and at the session held in November last Your Excellency stated:

"There is not the slightest change in the determination of Government to reduce the stock in eroded areas of the Colony where reduction is a vital necessity whatever the difficulties which may arise."

I emphasize again that there has been no relaxation of that determination though there has been a slight modification of method in the Kamba Reserve, as I have informed the noble earl the hon. Member for Kiambu in a reply to a question in December last.

It has been decided temporarily to postpone compulsory culling in order to facilitate the completion of the detailed surveys of those areas and with a view to restoring the confidence of the Kamba people in the good intentions of Government, thereby achieving voluntary co-operation both in destocking and reconditioning. One of the chief methods, as the noble lord has mentioned, of achieving this result is to encourage the Kamba to fence their holdings, a process which they have been fitfully carrying out for many years and which they are now doing with enthusiasm under the direction of European officers.

We are dealing with the individual holding and the individual family, and the campaign for fencing has been pursued with tremendous energy and has evoked enthusiasm on the part of the people. I am informed by the District Commissioner that some 200,000 acres, or one fifth of the total land in the reserve has already been fenced with sisal hedges and that the task will be completed in the early part of next year.

The noble lord referred to the fencing of stock routes, and I should like to men-

[Mr. La Fontaine] Council here that this is one very important matter which is being done at the present time. In fact the routes are now being fenced in this manner with sisal hedges.

There has been no repercussion whatever, as was feared by some people, that a landless class would be created, and, in fact, the campaign of fencing has not created a bogey as feared. Land tenure customs have not been affected and the tenant formerly holding land in the area of the individual holder has not, in practice, been dispossessed. Landless people who own cattle will have to make their own arrangements with regard to the accommodation of their cattle but it is clear that a reduction of the cattle of the landless Wakamba will have to be effected. It is intended that when the fencing has been completed the campaign for the reduction of stock will be resumed with vigour and when that occurs there is little doubt that large supplies will be available for disposal.

With regard to the Kamasia areas, hon. members are perhaps aware that a census of the cattle is proceeding at the present time and it is hoped that it will be completed shortly. The cattle in the Kamasia reserve are estimated to be 40,000 and in the Suk section of that reserve another 40,000, making a total of 80,000. Ten per cent of the cattle which are being counted and which are scrub cattle, are being branded with cull brands, and it is proposed, when the census is completed, to arrange for the disposal of the cattle branded with this cull brand so as to effect a 10 per cent reduction in the present year. In fact, culling is already in progress.

With regard to reconditioning the eroded areas in the Kamasia reserve, it is proposed to take a portion in each location, clear it of stock and recondition it, and return the removed stock from the area on to another section of the location which in many cases will also have been seriously eroded. The result of this process must inevitably bring home to the Kamasia people in an indisputable manner, and forcefully, the need for reduction and thereby the effect, the need

for reduction resulting from the congestion which has occurred in that particular area.

Once an area has been reconditioned only the actual quantity of cattle will be allowed there that can be contained in that area without damage to the grazing. It is not proposed to add any land to this reserve as resting areas for cattle removed from the areas which it is proposed to recondition, as this would only tend to accentuate the problem and fail to bring home the lesson which is desired.

With regard to the Samburu area it is proposed to do exactly the same thing, and that area a census is now in progress which has resulted in the counting of some 100,000 cattle. The census is not yet complete and it is estimated that the total number will approximate to something like 150,000.

It is essential for the carrying out of this policy throughout the country to have a strict enforcement of the Resident Native Labourers Ordinance, as there is no doubt that in some areas, at any rate, the overstocking problem has been transferred from the reserve to the farms. That is to say that many of the surplus cattle have been taken from the overstocked areas on to the farms, in order to relieve the congestion in the reserves. In the Machakos reserve, for instance, at the present time I do not think that any reasonable person can say that there is actual overstocking for the reason that the cattle have been removed from the reserve to a large extent and in some cases taken on farms and in others taken elsewhere, probably to the Kitui reserve.

Reference has been made to Liebig's—and I would here state my own personal opinion—I am convinced that Liebig's are a vital necessity to this country and I for one would be tremendously sorry to see them go. But I maintain with all conviction that by the methods we are following there will be before very long an adequate supply of cattle for this firm even though for the present they are unable to re-open. It would be quite impossible to keep Liebig's supplied with cattle if we had to do so by constant raids upon a sullen and revolting population, and any other methods, save those which

[Mr. La Fontaine] are at present being adopted, would ultimately be ineffective. In fact, the long range policy which we are at present pursuing in the Machakos Reserve is, in my view, the only one which can succeed, and the only one which can provide a regular and permanent supply to Liebig's factory.

In the pastoral areas the gradual culling method which I have described, as well as the Kamasia and Samburu are concerned, will be energetically pursued in both these reserves. In the Masai reserve I think compulsion will ultimately be unnecessary because the people of that reserve are so keen on betterment proposals that they are prepared to sell cattle in order to provide the necessary money for this purpose.

From what I have said it will be realized that the policy which is now being pursued is one of gradual and limited culling over several native reserves. When the necessary census has been effected and the other preparatory steps have been completed then I anticipate that there will be a regular and gradual increasing supply for disposal outside, and I hope that the temporary setback to Liebig's factory will not have been in vain. But, Sir, I would emphasize that what we are after now is to convince the native that voluntary culling is the right procedure and I feel sure that in the process of time by the indirect methods that we are pursuing, we shall succeed in persuading him to see our point of view.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 19th April, 1939.

#### Wednesday, 19th April, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 19th April, 1939, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The minutes of the meeting of the 18th April, 1939, were confirmed.

#### PAPERS LAID ON THE TABLE

The following paper was laid on the table:—

By THE HON. THE ACTING CHIEF SECRETARY:

Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1938.

#### ORAL ANSWERS TO QUESTIONS

No. 8—DIVORCE LAW

MR. NICOL asked:—

- (1) Will Government inform Council why there has been so much delay in revising the Divorce Law of the country?
- (2) Is Government aware that the delay is causing hardship to a number of persons?
- (3) Will Government give an assurance that they will introduce an amending Ordinance to bring the Divorce Law of Kenya into line with the Divorce Law of the United Kingdom without further delay?

MR. WILLAN: (1) A comprehensive Bill to amend and consolidate the Divorce Law of the Colony has been drafted and sent by the Attorney General to the Law Societies of Kenya and Mombasa in October, 1938, for their criticisms and suggestions. Up to the present no replies have been received by the Attorney General from either of these two bodies.

(2) The answer is that no cases of hardship have been brought to the notice of Government.

(3) No assurance can be given in the terms of this part of the question, but as soon as replies are received from the two bodies mentioned in the answer to the

[Mr. Willan]

first part of the question Government will take the usual steps to bring the draft Bill before Executive Council for its approval for introduction into Legislative Council.

MR. NICOL: Your Excellency, arising out of that answer, if the Law Societies referred to are so apathetic, it is necessary to hold up the promulgation of this amending Ordinance for all time?

MR. WILLAN: It is not the intention of Government to hold up this Bill for all time, but the provisions of the Bill are such that it is most desirable that the criticisms and suggestions of these two bodies should be in the hands of Government.

NO. 9—CHEMAGEL TOWNSHIP SURVEY

LADY SIDNEY FARRAR asked:—

In view of assurances given in October, 1938, that the survey of Chemagel Township should receive priority, when does Government anticipate completing the survey and opening the area for occupation?

MR. FANNIN: A detailed contour survey of Chemagel Township has been made and a tentative development plan designed showing projected roads and areas to be reserved for business, factory, residential, recreational and other purposes. This development plan has been sent to the District Commissioner for comment and for proposals regarding the siting of certain additional areas which must be reserved for special purposes, and which must be chosen by inspection on the ground. It is anticipated that the development plan will be completed in its final form within two months. As soon as possible after completion of the development plan, a surveyor will be detailed to survey and beacon on the ground any plots required for disposal to applicants.

NO. 10—NAKURU SCHOOL STAFF QUARTERS

LORD ERANCIS SCOTT asked:—

In view of the fact that the staff quarters at Nakuru School have been condemned for some years now by all responsible authorities, will Government give an assurance that the building of new quarters for the staff will be

treated as a matter of urgency, and that funds will be provided for this purpose at the earliest possible time?

MR. LACEY: Government is aware that the old staff quarters at the Nakuru School are not entirely satisfactory and is prepared to consider the provision of funds for new quarters in connexion with the 1940 Estimates.

#### LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Local Government (Municipalities) (Amendment) Bill be read a second time.

This short Bill consists of three clauses only, which are purely formal. With regard to clause 2, as a question of policy Your Excellency in Council has decided that the seven Indian members on the Nairobi Municipal Council should be elected and not nominated. The difficulty there is this: these seven members have been nominated for a period of three years each and these three-year periods do not all expire at the same time. In order that an election can be held it is necessary that all these seven nominated members should vacate their seats at the same time, and this is the object of clause 2.

Clause 3 (a): With regard to this clause difficulties have been found by some municipalities with regard to controlling cattle, and the object of this clause is to give the municipalities more power over the cattle kept within their boundaries.

Clause 3 (b): This clause is necessary because the Mombasa Municipal Board has decided to appoint a bank as trustee to look after the Mombasa Municipal Provident Fund. In law, a trustee is not allowed to make any profit out of a trust unless the law expressly provides for it, and the particular bank nominated as trustee wishes to make the usual profits which a bank makes between itself and its ordinary customers. Clause 3 (b) (i) provides that—

"no trustee is liable to enforce payment of any contribution to such funds", and this provision is a safeguard for the bank. If any contributor finds that he

[Mr. Willan]

does not pay in what he ought to pay the bank is not liable to enforce his contribution. I beg to move.

MR. DENNISON seconded.

DR. KARVE (Eastern): Your Excellency, I congratulate you and Government on bringing in this Bill providing for the election of Indian members in Nairobi, but I regret that powers have not been taken for Mombasa for the same purpose. The decision to have elections for the Mombasa Indian members was taken a long time before a decision for the election of Indian members in Nairobi Municipality, and while we find that arrangements for the election of Indian members in Nairobi is being taken by Government in the matter of Mombasa the arrangements are still being delayed.

I express the hope that the elections in Nairobi will be speeded up as quickly as possible and I also hope that Mombasa will not be neglected, for, as is usually the case, Mombasa and the Coast, being far away from the capital, are likely to be missed over.

MR. LOCKHART: Your Excellency, I can assure the hon. member that there has been no deliberate neglect of Mombasa in this matter. As the hon. member is well aware, the whole question of elected members and nominated members as well in the Mombasa Municipality was inquired into by the Commissioner for Local Government some few months ago, and the final decisions on his recommendations have not yet been taken. When they are taken, if necessary any amendment to the laws will of course be made.

MR. WILLAN: Your Excellency, in view of the remarks of the hon. the Financial Secretary there is no need for me to say anything further during the debate on the second reading of this Bill.

The question was put and carried.

#### KING'S AFRICAN RIFLES (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the King's African Rifles (Amendment) Bill be read a second time.

This is, Sir, another short Bill, with three clauses only. Clause 2 merely alters or changes the descriptions of certain units in the King's African Rifles. It is purely formal, and is being made at the request of the military authorities.

Clause 3: At the present time an African soldier is only granted leave after he has served with the colours and if he is re-engaged for a further term of service. The only object of this clause is to empower the commanding officer to grant leave to an African soldier after service with the colours even though he does not engage for a further period. That brings the procedure into line with the facilities afforded British ranks and Asian clerks.

MR. DENNISON seconded.

The question was put and carried.

#### BILLS

##### IN COMMITTEE

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

The Local Government (Municipalities) (Amendment) Bill,

The King's African Rifles (Amendment) Bill,

The Water (Amendment) Bill,

The Arms (Traffic with Abyssinia) (Repeal) Bill.

MR. DENNISON seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the chair.

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

The King's African Rifles (Amendment) Bill was considered clauses by clause.

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

Clause 9.

LORD FRANCIS SCOTT: Sir, I beg leave to move that after clause 8 of the Bill there should be added the following clause:—

[Lord Francis Scott]

"9. Section 97 of the Principal Ordinance is hereby amended—

(a) by inserting the brackets and figure '(1)' immediately after the figures '97' which appear in line one thereof; and

(b) by adding thereto the following new sub-section:—

"(2) All rules made under this section shall have the same force and effect as if they had been enacted in this Ordinance and shall be laid as soon as conveniently may be before the Legislative Council; and if a resolution is passed within forty days of their being so laid before the Legislative Council praying that any such rule shall be revoked or amended, such rule shall thenceforth be deemed to be revoked or amended, but without prejudice to anything done thereunder."

I am moving this to get the position clear which was raised yesterday with regard to rules being passed over which this Legislative Council had no control. I trust that this wording is all right. It has been prepared for me by the brains of the Legal Department, so I trust that it is correct. I beg to move.

The question was put and carried.

The Arms (Traffic with Abyssinia) (Repeal) Bill was considered clause by clause.

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

The Local Government (Municipalities) (Amendment) Bill,

The King's African Rifles (Amendment) Bill,

The Arms (Traffic with Abyssinia) (Repeal) Bill,

and the following Bill with amendment—

The Water (Amendment) Bill.

MR. DENNISON seconded.

The question was put and carried.

His Excellency vacated the chair.

Council resumed its sitting.

HIS EXCELLENCY reported the following Bills without amendment—

The Local Government (Municipalities) (Amendment) Bill,

The King's African Rifles (Amendment) Bill,

The Arms (Traffic with Abyssinia) (Repeal) Bill,

and the Water (Amendment) Bill with amendment.

#### THIRD READINGS

MR. WILLAN moved that the four Bills reported be read a third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The four Bills were read a third time and passed.

### GOVERNMENT'S POLICY

#### MOTION

The debate was continued.

MR. COOKE: Your Excellency, after the very full and, if I may say so, pungent speech by the hon. member, there does not seem very much for me to say. But I would like to deal with one or two points raised by the hon. the Acting Chief Native Commissioner.

Before doing so, however, I may be permitted to digress for a moment and say how intrigued we were yesterday to hear the speech by the hon. Mr. Isher Dass in which he endeavoured to rebuke the noble lord the hon. Member for the Rift Valley for his attack on the officials of Government. We have a fairly good memory here, and it was only six months ago when Mr. Isher Dass, on behalf of his constituents and the "sons of the soil" made a strong attack himself on Government officials.

The hon. the Acting Chief Native Commissioner denies that there is any vacillation and weakness in Government's policy and he says that it would have been foolish to have gone on with the methods which have been adopted on account of the opposition of the Akamba. I think everybody will agree with that. If I may say so, it is a very courageous attitude to take up in changing methods. But I think the point is that during those months preceding the change of methods there was a great deal of vacillation and a great deal of weakness.

[Mr. Cooke]

It is perfectly true for the hon. Acting Chief Native Commissioner to say that we at any rate in this Council can appreciate that he was not showing any weakness, but it does not appeal to the natives themselves like that. For instance, I have some extracts from Hansard over the last two or three years in which the late Colonial Secretary said:—

"When Liebigs are established we shall have every justification for using compulsion."

And he went on to say—

"The indications are that compulsion will not be necessary."

Which, incidentally, shows how little a grip Government had at that time and what little knowledge they had of these affairs and how things were going on.

The Chief Native Commissioner (Mr. Hosking) in this Council, in rather a belligerent and bombastic speech last August, said:—

"No other country has yet dared to attempt compulsory culling, and we are determined to go through with it."

As a matter of fact, that is not quite correct, because I think the Glen Grey District in South Africa have already done this. He goes on to say:—

"Drastic measures are required, and we are determined to deal drastically with the problem."

Well, Sir, when you threaten natives in that way it does seem to me that it has a very bad effect when you have to climb down, because the next time we wish to bring in important measures affecting the natives they may think we will climb down also.

I was sorry the Acting Chief Native Commissioner did not give us fuller details concerning this present scheme in the Machakos area. It seems to me that Government are indulging in a serious and revolutionary experiment, the most serious in the history of this Colony, because such an experiment is bound to have repercussions of a serious nature on other tribes holding land on customary tenure. It would not be a bit surprised to see the Embu or the Meru people making a rush for land while they can, to say nothing of the possibility of the

fragmentation of these holdings, which is a serious possibility. We have heard nothing about the measures that are to be taken in guarding the claims of absentees from the reserves, such as askaris and workers employed in factories and on estates, or if they will have any opportunity of presenting their claims.

There is also the question of the accessibility of water. It seems to me that thousands of cattle will use the stock routes to water and there will be a great danger of gully erosion. Then there is, the question of sisal hedges and the amount of land they will take up, and the vermin they harbour, such as ticks and other things which are possibly disease carriers. It seems to me that this is most important, and it does seem extraordinary that Government should rush in without further deliberation. I do not know whether this was a brain wave of Mr. Brumage, but it does seem to me a very dangerous experiment to undertake without going deeply into the matter.

The Acting Chief Native Commissioner has said that there is a great deal of enthusiasm over the scheme, but my information is that there is a certain amount of discontent. I may be wrong, of course, but I know two or three Wakamba in Nairobi in touch with the reserve and from their standpoint they do not altogether like the scheme.

The Acting Chief Native Commissioner touched on the question of land and stressed the great importance of it. I think we must all congratulate him on having found a way out, but there is this, Sir, in the Annual Report for 1937 the Chief Native Commissioner writes:—

"The recommendations of the Kenya Land Commission were, by the end of the year, nearly all put into effect."

That is, the transfer of the 21,000 acres to the dispossessed Kikuyu rightholders. Anybody reading that Report would have concluded that the whole matter would have been settled by now. But we now know that those ten *mbaris* evicted from their land used in the Kabeto laboratory's establishment were offered land very much less in value and extent to the land promised. I think I am correct in saying that, and that it was only when the natives protested that the land was

[Mr. Cooke]

found for them elsewhere. It does seem to me a great pity to almost encourage the natives to agitate in order to get what they are legally entitled to obtain, and if they do not agitate the conclusion is that they will only get land where the water is far away and where it is nothing like the same value as the land from which they have been evicted.

I do not think there is very much more that I wish to say except that, as one who has taken a very great interest in the preservation of game matters here for twenty years, it is very gratifying to know that something is being done about game parks in this country. Contrary to what the *East African Standard* said in a leading article to-day, Kenya is far ahead of any other territory in the matter of game laws, and all we want now, for the game has been protected on account of those laws, are some national parks in which the game may be protected in perpetuity.

I beg to support the motion.

**EARL OF ERROLL:** Your Excellency, I would like to support the motion proposed yesterday by the noble lord the hon. Member for the Rift Valley. But in doing so I am afraid that I shall be unable to sugar my lemon quite as effectively as he did.

But first of all I would like to express to Your Excellency the gratitude which I feel, and I know everyone in the country feels, at your announcement about the defence measures for the country. As a member of the Man Power Committee I would like to stress and emphasize one sentence in particular which was used in your address, when you said:—

"If anyone has not been given a specific job then he should continue with his normal work."

I am happy to say that this is one of the most difficult things to instil into the people of Kenya, and one of the most difficult points of many when people come to us to ask what they are to do, but it shows a very fine spirit indeed. I would like to say that just because someone has not yet received any notification as to what he is to do or in what military capacity he will be needed on mobilization, that is the point—in a mili-

tary capacity on mobilization—he is not being neglected, but is being regarded as a necessary reserve for the future. If every available European in this country was used at once, the ordinary business of the country would cease, congestion and confusion would arise, and there would be an inevitable waste of manpower for a later stage.

I, like my hon. friend on my left (Mr. Cooke), also welcome the appointment of a committee to go into the question of game parks and game control. The hon. mover yesterday said that he hoped that this committee would be appointed immediately and that it would act promptly, but I want to go a little further and say quite definitely that I believe that certain things ought to be done immediately. I am in entire agreement that an inquiry should be made into game control, more especially in and near settled areas, but what I am afraid of is that if we are to await the findings of this committee before the establishment, or before there is an agreement to establish game parks, we might find that we are too late, as many other difficulties over land, etc. may arise.

I hope therefore that I may perhaps receive an assurance or, if an assurance is too much, an indication from some hon. member on the other side of Council, that Government will be prepared to gazette forthwith, and prior to the findings of the committee's report, the Nairobi communique as a game park, regardless of the various questions which must still be outstanding and which will have to be settled. And I suggest that this question could be easily settled by the committee of inquiry and could be contained in their terms of reference. What I want to establish is the acceptance by Government of the policy of game parks. One other point is this: I would also like to know what interpretation Government put on the term "game park" or "national game park," as I feel that there is some confusion of thought, in the Colonial Office at any rate, on this point.

I hope the mere establishment of game parks in this country does not necessarily mean the total extermination of game from the rest of the Colony. I agree that there should be, at any rate,

[Earl of Erroll]

some control in the forest areas, but I hope, and I am sure everybody else does too, that there will not be a compulsory extermination of what, after all, is a very great asset to the country.

I am also in accord with other hon. members who welcome the announcement made that the Settlement Committee's Report is to be adopted in principle by Your Excellency. But I am afraid that I am unable to view or acknowledge with the same joy as the hon. Member for Mombasa the announcement that Your Excellency is going to accept the Standing Finance Committee's report on income tax. I can only regret that Your Excellency was unable to accept the only portion of that report which I consider to be the only sensible and intelligent part of the report, namely, the minority report signed by myself. (Laughter.) You pointed out that you, in your capacity of Governor, were unable, and that it was outside your competence, to accept my suggestion that there should be an inter-territorial committee to inquire into the whole question on an East African basis, and I can only hope that this suggestion will penetrate to the gentleman who has that competence.

I am afraid that the lemon is wearing rather short of sugar at the moment. As hon. members realize, this Council has been in being for a period of one year, and I must say that, looking back over that year, it appals me to see how little has been achieved in that period; it shames me to think that such a state of stagnation exists in our internal development! We must remember in this respect that our roads are worse to-day than a year ago; there is no attempt to tackle the question of agricultural indebtedness which, to my mind, is the most vital question this country has to face; there is no money for implementing the Settlement Committee Report; there is no money for the Land Bank or other developmental schemes, in spite of the millions of pounds in the banks, railway and other places which is aching to be used—although the hon. the General Manager of the Railway may not think it. We are merely told that we are not credit-worthy, in spite of the fact that, for the last three years at any rate, our

excess of revenue over expenditure has exceeded that of the United States.

The inevitable answer that we get to all our questions is that the necessary steps are being considered by the Colonial Office; and they consider them for so long that they never come to anything. I consider that this is an insult not only to Your Excellency but to all of us, that when you send dispatches they do not even have the courtesy to acknowledge them. I suggest in future, with all due respect, that you make a rule that unless you receive a reply to any proper dispatch within six weeks or two months that you get on the telephone to the Secretary of State and ask him why you have not had a reply. I believe this modern means of communication would have a very salutary effect on that gentleman, more especially as the telephone is only open between the hours of 3 to 5 p.m. local time, which is lunch time at home.

There is another contributory factor, I think, to this state of stagnation, and that is what is known as "Government by Agreement" or "Gentleman's Agreement". What happens, of course, is that the Colonial Office say, "Oh, well! these settlers in Kenya are not kicking up a row just now, so let's turn to Bermuda or some other place, where things are not quite so quiet."

We on this side of Council have been gentlemen far too long, in this respect at all events, and I think we should take a leaf out of the Colonial Office book. They have given us a most excellent lead and it is time that we behaved unlike gentlemen, and I entirely agree with the noble lord when he says that the time has come when we should kick, and I think we should kick hard and often.

To turn for a moment to what was said by the hon. the Acting Chief Native Commissioner, I would like to say, if I may, that I congratulate him on the manner in which he spoke, although I really did not think there was very much in what he said. He spoke a number of words about indiscipline and de-stocking, and I only trust that he will not suffer acute indigestion during the next few months. I was glad to hear him acknowledge that the land found for the

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squatters and right-holders was on the generous side, and I hope that, in view of this fact, Government will pursue their policy with fairness and energy so as to remove that living sore in Limuru which has upset us all for so long.

There has been mention on several occasions during this debate of indiscipline in the native reserves. I feel that that indiscipline is bound to increase so long as Government does not exert its authority. Government has entirely destroyed the authority of the chiefs, it has destroyed parental authority, and is fast losing any semblance of its own authority, and until it decides to rule I feel that we shall have trouble for some time to come. We have, I submit, a very great duty towards the native peoples of this country and unless we rule with that fairness and justice which the hon. mover mentioned yesterday, I feel we are betraying that great trust and are offering them merely as birds of prey—to scoundrels—as was well illustrated in Mombasa the other day.

In conclusion, I can only compare what goes on in the Colony with the first line of that song, well known to Your Excellency:—

"From a find to a check, from a check to a view, from a view to a kill in the morning."

The "find" is some developmental scheme put up by the elected members for the benefit of the country as a whole; the "check" usually comes from the local or Imperial Government; then, perhaps, with luck, another cast takes us a little further and a committee is appointed on the matter, and after sitting for two years submits a report—that may be the "view". But that report comes too late, and I submit that we never get a "kill", either in the morning or at any other time of the day. (Laughter.)

I think that it is also time that the local Government, with the help of the elected members, should remind the Imperial Government that they have a definite responsibility to this part of the Empire, and it is high time that they started honouring that responsibility.

MR. KASIM: Your Excellency, I would like to associate myself with the

noble lord's remarks in regard to lawlessness among natives. Indian traders in the native reserves have been clamouring for police protection and for arms for self-protection for many years, but Government has overlooked their grievance.

During recent years many habitual criminals have been repatriated from the towns into the native reserves, and these habitual criminals can actually play havoc in the reserves. And there is another thing, the Indians are unprotected and are not allowed to protect themselves. Consequently, as a result there are numerous instances of house-breaking, looting and assault and throwing of stones at the houses occupied by Indian tenants, and in several cases the natives have taken the law into their own hands. The District Officers know all these difficulties, and say that they sympathize with the Indians in their difficulties, but cannot help unless the money is provided for a police force. As a matter of fact, if two *askaris* were to be posted at each of the trading centres all these difficulties would disappear.

The Indian traders in the native reserves were really helpful to Government in the pioneering days, and I do not think they ought to be treated like sucked oranges. I request Your Excellency that Government should inquire into the grievances of the traders in the native reserves and redress them.

MR. PATEL (Eastern): Your Excellency, I had no intention of speaking on this motion until this morning when the noble earl the hon. Member for Kiambu referred to the restriction of the powers of the Colonial Office and the sedition at Mombasa.

Before I refer to these two subjects, however, I must take this opportunity of thanking Your Excellency for making provision for the Indian and Arab communities at the coast in the defence of Mombasa. At the same time I cannot but feel a bit disappointed that Your Excellency has not made similar provision for Indians in other parts of the country.

I am very surprised that the hon. European elected members should have thought fit to bring forward this motion when it has become a well-known fact

[Mr. Patel] that in this country the government regime during Your Excellency's regime has been a regime which has always favoured the European elected members. And I must also say that the other communities do not receive due consideration and their grievances do not receive due consideration while the representations made by the European community are received and obtain consideration unnecessarily large and at the cost of other interests in this country.

Now, to come to the question of the obstruction by the Colonial Office, which was referred to by the noble lord the hon. Member for the Rift Valley yesterday and by the noble earl the hon. Member for Kiambu this morning. I must say, on behalf of the Indian community, that we have no confidence in the interest taken by the European elected members in this Colony in the welfare and well-being of the other communities, and in order that the scales of justice should be held evenly it is necessary that Colonial Office control must be maintained until the government in this country is so formed that all communities will have an effective voice therein. It has always been the policy of the Imperial Government that in these colonies it must retain control so that all the interests in the colony may receive due consideration from them.

The history of this Colony sufficiently reveals that it would be very dangerous to transfer the power from London to Nairobi, because the interests of this country would be not only neglected but badly neglected. Therefore, I submit, that whatever the difficulties are in the exercise of control 5,000 miles away from Nairobi, and I admit that there are difficulties, there are far more advantages than if the control was here.

The other thing, with regard to the question of sedition in Mombasa, I do not want to enter into a discussion in this Council, but I must submit that it is the right of every person in this country to agitate against all the grievances which they may be suffering; it is the right of every citizen, as was done in Mombasa, to put forward all the difficulties with which they have to contend, and agitate

against them. And if agitation for the removal of all these grievances in order to protect themselves is wrong and seditious, then I will admit that there was sedition in Mombasa.

I think it was in 1923 that Sir Valentine Chisol, writing in the London *Times* in reply to the attitude of the settler community in this country towards the demands of the Indian community, stated that if the policy was adopted as advocated by the Kenya settlers then the British Empire will not stand on ethics but for racial civilization; and that is what the hon. European members, or some of the hon. European members on this side of Council mean—they mean to have freedom to practice—when they say that the power of the Colonial Office should be restricted.

MR. LOCKHART: Your Excellency, the noble lord the hon. Member for the Rift Valley, in proposing this resolution, voiced the criticism of the Secretary of State in regard to the legitimate loan proposals of this Colony. The same criticism was voiced in less temperate language and with much less regard for the facts by the noble earl the hon. Member for Klambu.

Now, Sir, there are, of course, no grounds whatever for any such suggestion. The constitutional position, as hon. members know, is that any proposal for the expenditure of public money requires to be voted in this Legislative Council, and, whether hon. members like it or not, the approval of the Secretary of State for the Colonies is also required. In the case of expenditure which involves the issue of a public loan, the approval is also required of the Lords Commissioners of the Treasury, and that applies not only to loans issued by this Colony but by every other colony as well, municipalities in the United Kingdom, and, in fact, any other public loan there.

I cannot agree that the purposes for which the money is required are immaterial either from the point of view of the Treasury approving them or from the point of view of the market at home. It is not the practice, and it has never been the practice, with regard to loan expenditure to bring proposals before Council



[Mr. Lockhart]

or into public discussion until the stage is reached at which a money resolution is required.

The preparation of a new Loan Ordinance, which will include not only the requirements of the Colony but the Railways also, was commenced some considerable time ago. It was commenced in the normal fashion, and those hon. members who advise and participate with Government in the consideration of these matters were consulted and the proposals were considered in the ordinary way. The loan to implement these proposals, or the first instalment of it, was held up. And it was held up by the question of the £5½ millions loan in connexion with the Railways.

It is very easy to brush a thing like that on one side—£5½ millions possibly is not much to a number of hon. members of this Council, but it is in relation to the finances of the Colony. It might have had a very important effect on the liabilities of the Colony and it could not be set apart from them. Although it is true that a portion of the total amount of our loans consists of large sums for which interest and sinking fund are carried by the Railways, who receive the great majority of the loans, it is not true to say that we can disregard that entirely; they do carry a contingent liability.

In addition to the question of the £5½ millions loan, certain proposals were also put forward to finance loan expenditure without necessarily going at present, or for some years to come, to the market. These proposals were turned down in London, not by the Secretary of State for the Colonies, but by expert advice Colony is in a position to controvert or criticize. That having been done, we had to think again and we had to draft certain revised proposals. And we are also waiting for the final proposals from the Railways, which must be embodied in the Ordinance before it is brought before this Council. Those proposals have not been finally considered yet by the Railway Council.

At the present moment the ball is on our side of the net. A dispatch, which I hope will be the final one, has still to

be prepared, and if there has been unreasonable delay, which I do not admit for one moment, it rests not with the Colonial Office but with this Government and myself in particular.

What have been the results of delay? References have been made by the noble earl the hon. Member for Kiambu about the money for the Land Bank. I do not know the source of the hon. member's information, but I happen to be the chairman of the Land Bank, and the operations of the Land Bank are not at the present moment being held up by lack of funds. School buildings are one of the items mentioned. We are at the moment spending £30,000 from Loan Funds on school buildings in Nairobi. A very substantial expenditure is going forward on the Nairobi Group Hospital. With regard to agricultural development and the provision of funds for which there is complaint of delay, and which was also referred to by the noble earl, I would remind hon. members that the report proposing the provision of funds, and on which agricultural development has been based, was only issued a matter of six weeks ago, and no one could possibly suggest that any expenditure in the terms of that report could so far have taken place.

The noble lord who moved the resolution also referred to the possibility of raising money locally as an alternative to borrowing in London. It is quite certain from the financial point of view that it is really immaterial to the finances of the Colony as to how it is done. The point is—what is the burden that will fall on the taxpayer?

Now I agree with one point made by the noble lord. The actual burden which loan expenditure carries is the net liability in respect of the total charges which amount to about £180,000 a year. And that is not, as colonies of this sort go, a large amount in relation to our revenue. But it is a contracted obligation which, added to other similar items, can in practice be an extremely embarrassing item if the revenue falls, and it is one which we must add to very cautiously, particularly at this moment.

Again, I would like to make another point, Sir. When we consider the question

[Mr. Lockhart]

of borrowing money, it is not, and has not been for a good many months, a particularly propitious moment for raising an amount in the City of London or anywhere else for the purpose of adding to our fixed and permanent commitments.

The noble lord asked for some expression of view by Government as to the effect the present state of world affairs has upon the economic position of the Colony. If hon. members and the public at large want any guidance which would really justify them in ordering their own affairs, I do not know that this Government is in a better position to give such guidance than any other authority. The results of the uncertain international outlook do not appear to have had any actual deterrent effect upon the trade turnover or public revenues so far, but it is perfectly obvious—and we have definite evidence—that very shortly it will do so. The international situation, not necessarily but possibly, has already had some effect on the rate of interest. As hon. members no doubt know, the rate of interest on public loans has risen recently and it is only possible to effect a short-term loan of twenty years at round about 3½ per cent, which is considered a fair rate of interest.

The noble lord, in moving the resolution, also inquired or suggested that Your Excellency should have afforded more information in your address. I must say, considering for a moment the terms of the resolution which imply some complaint of a lack of information given, that if Your Excellency's addresses from the chair in the future are going to embrace all conceivable points so far as the policy of Government is concerned, they will assume formidable not to say wearisome proportions.

Another item embodied in the noble lord's speech was a reference to barter trade. It is not at present of very much importance. It amounts to about 2 per cent of the total trade of the Colony, and it is a matter for the traders themselves. If the position is a question of doing barter trade or no trade at all, it is better to have barter trade than nothing. But it is, however, not a serious factor in the present trade position.

That embraces, I think, Sir, all the points that have hitherto been raised under the financial and economic references in this resolution.

*Council adjourned for the usual interval.*

*On resuming:*

MR. GHERSIE: Your Excellency, I would first like to emphasize that realizing, as we do, that the paramount thought in the minds of most people to-day is the difficulties arising—due to the European crisis—how grateful we are to you, Sir, for the information you gave us at the opening of this session on the subject of the Colony's defence measures. But, at the same time, I submit it would be entirely wrong if we allowed the crises in Europe to result in the shelving of the essential and urgent problems which are at present adversely affecting the development of the Colony.

A great deal has been said on the subject of Government's native police, or perhaps lack of it, and I should like to assure you, Sir, that the complaints have been growing of lawlessness and lack of discipline, and that these are not idle chatter, and also that thefts of live stock and produce are rapidly on the increase. I have been urging Government to take active measures to remedy the position. I can give you many instances of native truculence and lawlessness. In one reserve, Europeans driving through that reserve are warned that if they should knock over a goat they must not stop because they are liable to be stoned. That is a most deplorable state of affairs.

Various districts have asked for increased police, but nothing has been done up to the moment.

The hon. the Acting Chief Native Commissioner said he was always ready to listen to reasonable advice, and I propose to offer one or two suggestions. I believe one method of remedy would be the abolition of the system whereby district officers are continually transferred from one station to another. They rarely have an opportunity of becoming conversant with the tribe under their administration because they are always promptly transferred.

I consider that greater power should be vested in these district officers, instead



(Mr. Lockhart) or into public discussion until the stage is reached at which a money resolution is required.

The preparation of a new Loan Ordinance, which will include not only the requirements of the Colony but the Railways also, was commenced some considerable time ago. It was commenced in the normal fashion, and those hon. members who advise and participate with Government in the consideration of these matters were consulted and the proposals were considered in the ordinary way. The loan to implement these proposals, or the first instalment of it, was held up. And it was held up by the question of the £3½ millions loan in connexion with the Railways.

It is very easy to brush a thing like that on one side—£3½ millions possibly is not much to a number of hon. members of this Council, but it is in relation to the finances of the Colony. It might have had a very important effect on the liabilities of the Colony and it could not be set apart from them. Although it is true that a portion of the total amount of our loans consists of large sums for which interest and sinking fund are carried by the Railways, who receive the great majority of the loans, it is not true to say that we can disregard that entirely; they do carry a contingent liability.

In addition to the question of the £3½ millions loan, certain proposals were also put forward to finance loan expenditure without necessarily going at present, or for some years to come, to the market. These proposals were turned down in London, not by the Secretary of State for the Colonies, but by expert advice Colony is in a position to controvert or criticise. That having been done, we had to think again and we had to draft certain revised proposals. And we are also waiting for the final proposals from the Railways, which must be embodied in the Ordinance before it is brought before this Council. Those proposals have not been finally considered yet by the Railway Council.

At the present moment the ball is on our side of the net. A dispatch, which I hope will be the final one, has still to

be prepared, and if there has been unreasonable delay, which I do not admit for one moment, it rests not with the Colonial Office but with this Government and myself in particular.

What have been the results of delay? References have been made by the noble earl the hon. Member for Kiambu about the money for the Land Bank. I do not know the source of the hon. member's information, but I happen to be the chairman of the Land Bank, and the operations of the Land Bank are not at the present moment being held up by lack of funds. School buildings are one of the items mentioned. We are at the moment spending £30,000 from Loan Funds on school buildings in Nairobi. A very substantial expenditure is going forward on the Nairobi Group Hospital. With regard to agricultural development and the provision of funds for which there is complaint of delay, and which was also referred to by the noble earl, I would remind hon. members that the report proposing the provision of funds, and on which agricultural development has been based, was only issued a matter of six weeks ago, and no one could possibly suggest that any expenditure in the terms of that report could so far have taken place.

The noble lord who moved the resolution also referred to the possibility of raising money locally as an alternative to borrowing in London. It is quite certain from the financial point of view that it is really immaterial to the finances of the Colony as to how it is done. The point is—what is the burden that will fall on the taxpayer?

Now I agree with one point made by the noble lord. The actual burden which loan expenditure carries is the net liability in respect of the total charges which amount to about £180,000 a year. And that is not, as colonies of this sort go, a large amount in relation to our revenue. But it is a contracted obligation which, added to other similar items, can in practice be an extremely embarrassing item if the revenue falls, and it is one which we must add to very cautiously, particularly at this moment.

Again, I would like to make another point, Sir. When we consider the question

(Mr. Lockhart) of borrowing money, it is not, and has not been for a good many months, a particularly propitious moment for raising an amount in the City of London or anywhere else for the purpose of adding to our fixed and permanent commitments.

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I consider that greater power should be vested in these district officers, instead

[Mr. Gheris] of their having to refer minor and trivial matters to the Secretariat. The average district officer is a very intelligent fellow, and I consider he should not be placed in that unenviable position whereby he can be made a scapegoat and possibly ruined for the future because of some stupid incident which, if he had been allowed to use his discretion, might never have occurred. I also consider that there should be a more mobile form of police.

Now, Sir, touching on the subject of finance. The day before yesterday we condoned the expenditure of £302,000 for the regrading and realignment of the Uplands-Gilgil section of the railway. I purposely used the word "condoned" because we now know how perfectly useless it is to object to any of the schemes put forward by the General Manager. I contend, however, that there are far more important and urgent requirements in regard to development of the Colony on which money should be expended than realigning of this section of the railway line, and if the necessary finance can be found for the latter project, then I fail to understand why it cannot be found for the more important objects, such as the Land Bank, road improvements, education and agricultural development. I do not propose to reiterate the various arguments that would justify Government asking that money be made available for the Land Bank, roads, education, etc., as all were amply justified during previous debates. It rather looks as though it is all a question of how one states one's case. Repeated requests have been made by this Government for a loan, and a more moderate request than that we borrow what is virtually our own money, namely, that which has been derived by the railway from extortionate tariff rates. I can hardly imagine; but the Colonial Office appear to loan nothing but a deaf ear. If the Colonial Office refuses to understand our difficulties, then I suggest we should adopt the suggestion made by the noble lord the hon. Member for Rift Valley, that we should raise an internal loan.

On the subject of income tax, while not opposed to the principle, I do suggest that it will be defeating its own ends

if it is not applied to the neighbouring British territories.

The hon. Financial Secretary gave us a very able exposition of the procedure for acquiring loans, but I submit he failed to clarify why this delay has taken place. Many months ago this Council endeavoured to point out that then was the time to raise a loan because money was cheap. He has informed us this morning that the rates of interest are on the increase, and I suggest it is up to us now to raise a loan before the rates of interest become any higher.

I do hope that when Government replies to this debate we will be given some assurance as to when we are likely to have the Resident Native Labourers Ordinance introduced, some assurance that the report of the Local Civil Service Committee will be available shortly, and that the question of a loan is really and seriously exercising the mind of Government.

I support the motion.

COL. KIRKWOOD: Your Excellency, I am in support of the motion, but I realize that it will not be accepted by Government. It is a motion which has been put down to show Government certain points that have arisen over a long period. It is to open up the way for a more or less general debate, such as the budget debate, but I propose to confine myself to five points: the Land Bank, roads, education, defence, and native policy.

The Acting Chief Secretary, I gathered, on general principles was justifying the delay in granting money to this country by the Secretary of State, and really shouldered the blame himself.

With regard to the Land Bank, we are all aware that £250,000 was agreed to and has been overdue for a very considerable time. The Financial Secretary did say in the course of his remarks that the Land Bank was not short of money. Now I have definite information from my own area that one applicant to the Land Bank was refused on the ground of insufficient available funds.

MR. LOCKHART: Sir, may I say that since then funds have been made available.

COL. KIRKWOOD: It does not seem to dovetail. I have spoken on it on many occasions, and I have pointed out that if you have a large sum in the bank you reduce the proportion of their overheads. Money is very badly needed in the Land Bank, and until we get it the country is not going to go ahead.

As regards roads, another item of £150,000 I am informed was applied for, and up to now, I understand, has not been sanctioned, although it was put forward well on in last year. It does seem peculiar that these two items have not yet received sanction from the Secretary of State, yet we read that 100 million pounds were remitted by the Imperial Government to Ireland and that a ten million pounds loan was sanctioned for Czechoslovakia. We are all aware that many millions of pounds have been given and are being spent in Palestine. I could go on quoting these items for quite a long time. Has the home Government no policy in respect of these little Crown colonies, and particularly Kenya, in which we have sunk all our own and in which we intend to stop? I have come to the conclusion that the home authority has no sympathy with the people in the Colony. Why, I do not know, and what can be done about it is one of the worries your Excellency has to solve. It is a most unsatisfactory position. I hope that the gentleman's agreement will be honoured in the future as in the past. Something should be done to break the Secretary of State for the Colonies to the fact that this money is urgently required.

With regard to education, again I can state from my own information that every school from Mombasa upwards—Nairobi, Nakuru, Eldoret, Kitale—is insufficient for the purpose for which it was built. They are undersized and some are overcrowded.

These three items are items which justify us in asking for an adequate loan before the rates of interest become higher.

I take this opportunity of drawing Your Excellency's attention and the attention of the Director of Education to the fact that even at Kitale School to-day there is insufficient accommodation for

the staff. An appointment was made very recently and has been declined because there was no room to accommodate the teacher appointed. Yet £50,000 was voted for native education.

I do hope that these points will be remembered and that the Director of Education will tell us (or some other Government speaker will) that they are going to do something.

As regards defence, I am not going into details. Your Excellency has your advisers, and I know everything has been fully considered. But everyone has been asking for information. I think you have given a good deal of information to Council in your address, and have probably covered most of the points. One thing I would like to know, however, is what notice are we going to get of any intended attack from the north? Will that notice be sufficient for us to evacuate our wives and children if we so wish? There are many other questions, and I suggest that the fullest information which can be made available to the public, that is of no value to prospective enemies, will be published in the near future.

As regards native policy, I have mentioned that there is just one phase of that, and that is land tenure. I understand that the delay in destocking in the Kamba Reserve, which everyone realizes is absolutely essential and necessary in the interests of the natives themselves to prevent their reserves from becoming desert, has been extended over a period of years. The question was brought up in the Land Commission report. The chairman of that Commission flew there, and he also motored over a large area. That is about ten years ago now, and it is absolutely essential, and we have been told that it is quite Government's intention, to go on with destocking. I accept the statement of Government, but my mind is very exercised about the method now adopted. If I am correctly informed you are now allocating land and altering the system of land tenure in the Kamba Reserve. I maintain that any alteration in land tenure should only be made by Government after the most careful investigation.

It does seem to me to be most peculiar—

MR. LA FONTAINE: On a point of explanation, I stated definitely yesterday that there was no question of altering the land tenure system in the Kamba Reserve, nor, in fact, had any alteration occurred.

COL. KIRKWOOD: I accept that, but I still cannot understand it. I have been told that the land has been subdivided among the natives and that permission will be given for a certain number of stock only to be carried in that particular area, and that that was the new system of allocating land to stock and stock to land. I do not understand the explanation, although I accept it.

It has also been brought to my notice that in the Suk area some time back—and I was told by Government officials themselves—and that they have insufficient authority—and that is so, I believe, throughout the native reserves—to prevent natives from felling trees, cultivating on steep hillsides and generally destroying valuable land. I think it requires investigating, and I should only be too pleased at any time to give Government officials the details.

As regards the Resident Native Labourers Ordinance, I think everyone in Council will agree its application is long overdue. I understand the question now being considered is that of additional acreage for native reserves. I have had a large number of recommendations sent to me and have been asked to move in Council the implementation of this Ordinance. I hope that this Resident Labourers Ordinance will soon be applied. I have not pestered Government with recommendations, but unless it is applied in the near future I will have to ask for alterations in the Squatters Ordinance. The situation up-country is getting intolerable.

I maintain that the Land Bank, roads and education are three subjects worthy of a loan, which should be applied to these three as well as others. They are the outstanding items in my mind for further expenditure.

LADY SIDNEY FARRAR: Your Excellency, I rise to support the motion before Council from one particular point of view, and that is that in August of

last year, in a debate on the agricultural policy of this country I felt very strongly and expressed that feeling in this Council that it is essential that we should know all that can possibly be told us as to what is being done on certain main issues in this country. And with other elected members I feel very strongly that on certain issues we have not had sufficient information given to us.

As regards these issues, I am afraid that other hon. members on both sides of Council have stolen my thunder. I am not going over those points again. I would like to say that the hon. Member representing Uasin Gishu has particularly stolen my thunder, and I now wish I had got up to speak before he did.

I would like to thank Your Excellency for your full explanation of the defence position. That is the first subject that has been causing a certain amount of nervousness in the country. We felt that there was too much secrecy and too many confidential documents floating round without there being sufficient knowledge for the civilian population in the country as to what they were to do in the event of war. I feel sure that the recent pronouncement made in Your Excellency's speech, combined with the completion, to a certain extent, of the Man Power Committee's work throughout the country, has done much to allay the lack of confidence that there seemed to be.

On the other hand, I think it would be fatal at the present time, just because we feel we are in a state of uncertainty as regards the European situation, that we should lose sight of the normal development of this Colony. I feel very strongly indeed on that. It is essential that we should continue the development of this country without constantly looking at our watches and wondering what time the balloon is going to go up.

I particularly would also like to take the opportunity of saying how very much I resent the implication of one of the hon. Indian members that we have never stood up before to say that we were not satisfied with the policy of Government as regards native administration and the agricultural policy.

[Lady Sidney Farrar]

I would refer the hon. member, if I may, to the debate in August last on the agricultural policy of the Government, in which various members, particularly the hon. Member for the Coast, did voice the anxiety of this Council as regards to where the Administration was heading.

The country as a whole is not satisfied that we are going ahead because of the native unrest from which we are suffering. We have realized for some time past that things are not as they should be, but we did endeavour to restrain ourselves, in spite of the remarks of the hon. Mr. Isher Dass, as we might possibly have embarrassed Government in its deliberations by voicing those anxieties too forcibly, particularly at the time of the Wakamba trouble.

I think hon. members on this side of Council did appreciate very much indeed that the hon. the Acting Chief Native Commissioner should stand up to be shot at early in this debate. (Hear, hear.) We were all greatly interested to hear what he had to say on the question of destocking and land tenure. But, speaking for myself, I feel that he baulked and did not refer to a far more and still more vital issue—the background to the question of destocking and land tenure. That is what is primarily causing this feeling of anxiety in the native population. I am convinced that it is not any genuine lawlessness overtaking them; it is a feeling of lack of confidence and a lack of guidance that is leading to increased lawlessness and lack of discipline among the native tribes at the present time.

Sooner or later this country has got to face that primary issue, and I claim that the hon. members on this side of Council have the right to speak on this subject. We may not have a constitutional right, but we have a moral right, a right as regards our children to come who are the ones who are going to live in this country side by side, we hope, in amity with the native population, as we have done up to date. So it is up to us to see that that amity continues and that the feeling of confidence and trust on their side and the feeling of trusteeship, on ours continues.

Again, speaking entirely for myself and for my constituents, we believe that

there is something wrong with the present methods of native administration. If the position is to be reviewed the obvious method is to put the clock back a bit, and, as the hon. Member for Uasin Gishu said, let us trust our administrators who are put in charge of the native reserves—and give them more chance to make a better show of it than they have been able to do for some time. They are men we have every reason to believe can be trusted, and I think it is very wrong indeed that there should be any question of this. And I do feel that there is a question of this in the way they are constantly being moved from place to place. I feel sure Government can supply good reasons for these changes, such as the matter of leave and so on, and I do agree that administrative officers should not be allowed to dig themselves too deeply in the areas in which they are living. But unless the District Commissioners are given more opportunity of getting to know the natives whom they are administering and are allowed to live with them for a reasonable number of years to learn the language and customs and to learn who are the men they can trust and who are not. They have no right whatsoever to undermine in any way the authority of the chiefs. That will alter the administration of the reserve and reduce the authority of the chiefs and something must be put in its place to ensure normal historical development. So give them administrators whom they know and who they can say are not only the *Bwana Kubwa* but are also the *Baba yangu*.

If possible, put the clock back, and take the hon. Acting Chief Native Commissioner at his word. Give advice, and where the principle employed is not right own up to it and exchange it for a better one, and let the administrators live with the natives, talk with them and work with them, not as master and slave but as fellow farmers.

I would suggest that if it is not possible for administrators to live more in the native reserves and to get to know them better, then we have got to face a change in the political advancement of the natives—and I feel very strongly on this point. We will have to give them some kind of body corporate who can be con-

[Lady Sidney Farrar] suited and who can be told the reasons for the actions that are being taken by Government so that they can return and explain matters fully to their people; something, possibly, on the lines of what is being done in South Africa.

At the present time there is something wrong, because why is it that we settlers in district after district are being appealed to by headmen of the various tribes—I myself am talking about the Lumbwa and the Wandoroho—because they do not know why certain Government action is being taken. They say they have been told why, but they do not understand it. I, personally, have been appealed to by Wandoroho headmen, who said that certain action was being taken as regards moving them from where they are living at present, but they do not fully understand or appreciate the action Government is taking; and they do not wish to go to the *Serkali*, they want to go to some *Mzungu* (white man) who was not a *Serkali*, who could explain to them why certain action was being taken. This has not happened before in my area except during the last two years, and I think there is something wrong.

I regret that I was not present at the debate on Makerere College. But here again I do feel that we are not proceeding on the right lines with regard to native education. I speak as one of the settler community, and recently I also attended a Church Missionary Conference, and it struck me that they felt the same way as I did—that they are not satisfied with the line that was being taken on native education.

This is one of the most basic points in native administration, and some of us are not satisfied that Government is not shelling its responsibilities by handing out that tin to Makerere College, when what is needed is a sound elementary day school education in the native reserves. It is not necessary to have Makerere-trained boys. We need rather men who have had a reasonably more advanced elementary education and who can teach the three "Rs", just as our own people in England, Scotland and Ireland were taught the three "Rs", and they did very well on it. We want a sound elementary education for the native, and

until we have got that I do not think that Makerere College will make up for the gaps in their mental development. It is background that we want, not foreground.

In finance, once again, I am asking that we should be kept informed and constantly informed—and probably the simplest method of doing this is through the medium of this Council—of the financial position, especially where the question of loans is concerned. We heard many months ago that a loan was being applied for. And the country as a whole from that time until now has heard nothing definite as to whether that loan was turned down or whether it was agreed to, and that has caused a great deal of anxiety and dissatisfaction.

We have got to cut our cloth according to the money that is given us to buy that cloth. I will only give one instance of that at the present time. The hon. the Director of Veterinary Services, in a very inspiring speech, told us what he was going to do in the future as regards cleaning up this country as regards disease, so that we could go ahead with stock. That speech caused a great deal of enthusiasm and interest until we began to get down to details. One of the first details to be considered is, I understand, the introduction of a Cattle Cleansing Ordinance and that entails funds for dips and for necessary fencing. But where are these funds coming from? I do not think we have any right at all to ask people who have had to dip deeply already, and who have had to borrow up to the hilt from the Land Bank and other sources, to suggest that they can borrow again. I do not think it will help at all. We cannot do it, and we have no right to suggest it. Therefore, what are Government going to do about it, and can they introduce a Cattle Cleansing Ordinance with any hope of success?

I do want to emphasize once again that unless we are kept constantly in touch as far as possible—not as far as the Colonial Office would like us to be kept informed, but as far as the Government of this country genuinely believes that they can keep us informed—I think there will always be a lack of confidence which will militate against and harm the development of this country.

**MAJOR GROGAN:** Your Excellency, unfortunately I am a diurnal rather than a nocturnal animal and rather reluctant on that account to break in on this governmental siesta. Nor have I been deterred from this intrusion by the soothing lullabies of the hon. the Acting Chief Native Commissioner and the hon. the Financial Secretary.

Yesterday, on the last occasion I spoke, I had the temerity to draw attention to the completely disproportionate spending of Government in the allocation of exiguous funds that may be available in the future, and found myself, curiously enough, in a minority of one in voting against the Makerere allocation of £50,000. In order further to justify that action I have been able to find the exact details and purposes to which these moneys are going to be applied, and I find in an extract from the Uganda Blue Book that the staff of Makerere College, which you will remember is to deal with 200 students, is assessed at: Principal, £1,200 per year; vice-principal, £920 a year; tutors at £840, £810, £780, £810, £810, £720, £630 and £810 per annum; bursar, £520; chief instructor, £660; senior instructor, £600; four instructors at £520, £520, £520 and £444; clerk and storekeeper, £500; headmaster, school, £720. That, all added together, comes to a total of £13,310. Add to that the normal 50 per cent additional which covers any other little items in a thirty months' tour—local leave, ten weeks per year, housing allowance, and passages home for wife and children—the recognized formula is 50 per cent, and that added to the £13,310 comes to approximately £20,000 a year.

It is very obvious that there is every reason in the world why the Colonial Office should give every inducement to us to contribute towards this endowment fund, but our handsome contribution of £50,000 will, however, be swallowed up in salaries alone in two and a half years. And I suggest, Sir, that this is a very good example of that completely disproportionate view in which the problems of this country are considered by the Government here.

I noticed in Your Excellency's speech, in a reference to the matter of the £51 million which was originally contributed

to the building of the railway, the following statement:—

"Thirdly, above all, the most perfect despatch would have been of no avail had it not been for the wholehearted support given to the proposal by the Secretary of State and officials at the Colonial Office, and it is to them above all that the thanks of the Colony are due."

Now, I am all for a certain amount of adulation, but I do think that adulation can be carried too far. After all, let us study the facts. The Colonial Office, presumably, did take over—though I should think it very likely that they forgot to do so—or ought to have taken over from the Foreign Office the records which led to the building of the Uganda Railway. If they had done so, and anyhow if they did not do so they had easy access to all the facts of the case; and they also had access or ought to have had—much more access probably than they liked—from the records appertaining to the railway from the Lords of the Treasury. Incidentally—sometimes we wonder why—the Secretary of State for the Colonies is a member of the Cabinet, and therefore must have been fully *au fait* with all the steps that were being taken, because presumably it must have been with the authority of the Imperial Government, who must have been conversant with what was going on, that these steps were taken. Therefore I say that no thanks are due whatever to the gentlemen in question for having allowed such a preposterous scheme to be preferred against this Colony.

It so happens that a few old-timers, including myself, have survived, and as a result of the accumulation of knowledge about the history of the railway enough material was gathered together to enable Your Excellency to put forward a despatch which blew this preposterous contention to the sky. It became so preposterous that when the facts were laid down they were bound to withdraw their contention.

An interesting conclusion I draw from all this is that the Treasury and people at home, as has often been said on other occasions, merely regard these Colonies as places to be sucked for the benefit of London or any other institution London can produce, with no regard to the wel-

[Major Grogan]

fare of the communities themselves—they merely exist for the advantage predominantly of the City of London, for the relief of unemployment funds and other things in England. And I do not think you can have any better example of that than this: that a country like this, carrying the heaviest burden of loans and the biggest disproportionate Civil Service in the world, should also mulcted of £53 million which was spent in order that the Imperial Government should maintain its pretensions against French and German pretensions.

I do not wish to join in any thanks to the Secretary of State or the officials of the Colonial Office. Personally, I think it is very fortunate that two or three of us should have survived and that these ridiculous pretensions were defeated.

Another matter which has to a certain extent involved me personally is the question of Your Excellency's references to income tax. As I understand them, Sir, I think I interpret them as an endorsement of my attitude in the whole matter in my selection of particular terms when I wrote to the Press some time ago. As I was including a reference to Your Excellency, I naturally, following the ordinary course of procedure, referred the term "*de novo*" to you, and you agreed that I could include it in that letter—though I am not quite sure now whether that is the letter referred to or whether it was with reference to the correspondence of the Colonial Office recently. Anyhow, the term "*de novo*" was used and became the recognized term for the occasion.

Well, this letter, or some letter which included this term "*de novo*", appears to have been referred by the Kenya Secretariat to the Colonial Office for confirmation or refutation, as the case may be. And the Secretariat, with their usual love of frustration, drew a sharp distinction between an impartial consideration of this issue and a *de novo* consideration. That, I think Your Excellency wished to convey, was rather a subtle distinction, and had no substance. And I absolve everyone present, Sir, in all probability it was a deliberate attempt on their part to confuse the issue.

Well, now, thinking it over—I admit I was a bit hurt at the time, because it

was a perfectly correct interpretation by myself of my interview with the Secretary of State—I am not quite sure that the Secretariat are not right; I am not quite sure that the term "*de novo*" was not the wrong term. Because, after all, what the Secretary of State promised was:—

"I said that I was quite prepared to have the working of income tax in Kenya examined by an absolutely impartial outside inquiry."

And as there has never been an absolutely impartial outside inquiry, the more appropriate term to use would have been "*ab initio*" instead of "*de novo*".

But it has gone further than that. I am naturally loath to lay any particular stress on anything that was said at that interview which, after all, was a private conversation, for the Secretary of State treated me with the utmost courtesy as a result of a letter of introduction from Your Excellency, and gave me a long interview and talked very freely about the general issue. So I am not going to elaborate on that conversation, except to say one thing. I am going to state that he did inform me at that time that he had persuaded His Excellency the Governor of Uganda to apply income tax to Uganda. That was confirmed to me by a very high authority in Uganda, and there is no question whatever that instructions had been given to Uganda to apply income tax. Whether or not that was also done in Tanganyika, I do not know, but I believe it was. But there is also no question about it that as a result of my interview with the Secretary of State and various arguments that were introduced at that time, these instructions to Uganda and possibly to Tanganyika were withdrawn, and therefore the issue does remain an open issue.

I think we are all agreed, even the gentlemen on this side of Council who submitted to pressure unsupported by logical and reasoned arguments, that this lamentable form of exploitation, if it is going to be applied to one of the territories, should be applied equally to all. The point I want to make now in this particular matter is that this has not had any proper consideration.

One cannot pretend that the Standing Finance Committee was really a qualified body to go into such an important

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matter because most of the members could not be said to have independent views. And, further, having been to give evidence before them I came to the conclusion that they knew very little about the subject, and I also found that they had acted very improperly and unconstitutionally. In order to prevent them from making fools of themselves in the legal sense they had added to their number the Attorney General, and also no less a person than the man who was the first beneficiary of the tax—the Commissioner of Income Tax himself. I was in a quandary because, not knowing the Commissioner of Income Tax, and not having met him when I went in to the meeting, seeing this gentleman there—for he came in unseen and unknown to me—I came to the conclusion that he was some veterinary officer deputizing for the Director of Veterinary Services. It was only during these discussions (I might say it was only half-way through the seance—for it can only be described as such) that it suddenly dawned upon me the dignified position of the gentleman!

It was a very improper and highly unconstitutional procedure that a Committee of this Council should have been reinforced by this gentleman to enable these other gentlemen to come to an opinion. And most of the questions were put to me by him. In addition to that, to add insult to injury, when it came to the question of getting a record of what was said, a draft was given to me which bore no relation to anything I had said. But it did, in fact, show a considerable amount of skill on the part of someone behind the scenes, because every single one of the many vital and foremost arguments against this extortion had been skilfully excised, whether by accident or design I do not know. But I did notice pencil marks on the side of the document which could be traced to the hon. the Chief Secretary at the time.

The greatest amount of suspicion attaches to this particular issue, both in respect of the manner by which it was introduced and the provisions on which the necessity is based. I am not going back over all this, as I have already taken various opportunities to put on permanent record a number of very, very ques-

tionable points that arose during the elaboration of this tax. But there is one I should like to mention, that was not properly put on record, and that is the fact that the amount this tax is producing was grossly under-estimated. So grossly was it under-estimated that one can only come to one of two alternative conclusions. One is that the people—the responsible parties—were so completely ignorant of the business and revenue of general commercial happenings of this country that they honestly did not know what on earth they were talking about; or, secondly, they deliberately under-estimated in order to lead the public down the garden path.

But the essential point is this: We have had this definite assurance, now confirmed in writing from the Secretary of State, that this matter of income tax and its suitability to the circumstances of this country—and that must include the other countries—shall at some time or other receive an impartial or outside inquiry.

In the meantime, sums are being extorted from this country under the heading of income tax, and are being spent on recurrent expenditure. I submit that if logical and reasoned arguments do at last prevail, and if at long last Government does intend to act honestly on this particular subject, the least they can do is not to prejudice the inquiry in advance by spending the money, but allocate to surplus balances any sums derived from that tax. If that is done the people will have their suspicions allayed and they will be prepared to wait until you, Sir, in your good time, think that this matter has been sufficiently tested and doubtless will take the necessary steps to ask the Secretary of State to appoint a proper body to inquire into the issue. I do beg you to take some active steps on these lines so that these suspicions of *mala fide* should persist no longer.

To come to wider matters, much has already been said by my hon. colleagues, and therefore I do not propose to go into them in any great detail. But I was interested—and that does not often happen—in the exhortation of the hon. Mr. Isher Dass, and for this reason: In the course of his eloquent address I think, if I correctly interpret him, he said that you, Sir, were rejoicing in the fact that

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one of the great achievements of Government was that 80,000 parasites have been liberated on to 2,000 parasitic farmers. Is that correct?

MR. ISHER DASS: It is correct.

MAJOR GROGAN: That is very interesting, for this reason. It shows that a great many of our Indian friends, in common with the bulk of the members of Government, are totally unacquainted with the basic factors leading to our present discontent. I am going to ask my hon. friend Mr. Isher Dass if he will come with me some day into my coffee *shamba* and have a good look and see what has been happening there, because, it is in a large sense symbolic of what is going on in this country. Mr. Isher Dass, I know in common with others of his kind—and I am trying to interpret the working of his mind—undoubtedly believes that the 2,000 farmers plus the 80,000 parasites are in fact parasitic on him as host.

This is such an extraordinary distortion of the facts that I am sure that some day he will come along and have a look at my coffee plantation. There he will see symbolized much of what is happening in this country: he will see the struggle of the coffee trees (they, in fact, represent the farmers in this economic system); then he will find some unfortunate parts of these coffee trees—or farmers—heavily infested with an enormous and unattractive growth of mealy bug; they, of course, represent the small trader and the gentleman who goes round, wherever he can find a niche to attach himself, so as to suck away at the plant (the farmer). If the hon. member watches he will find that many of these trees are becoming rapidly exhausted owing to the rapidity of this suction. If he is an entomologist he will find then, if he creeps surreptitiously up to the tree, a number of very, very intelligent gentlemen who in the whole of this ecological happening are skillfully extorting their little share of the sucrose matter from a prominent portion of the anatomy of the said mealy bug. Doubtless they contribute certain services, but I know nothing about that. And following up this analogy he will, in time, realize that there is the Civil Service. These are the gentlemen who agree

to protect the bug from other little flying things in exchange for the extraction of a reasonable amount of sucrose matter for their own delectation!

But there is a new trouble alarming my hon. friend on the left (Mr. Isher Dass), and that is the invasion of a new factor, estimated at £0,000. I am not going to pursue the analogy any further except to say that I visualize that factor and have come to the conclusion that that factor is the rising generation of native, taught to trade on his own and to play his ordinary part in the general industrial efforts of this country, hitherto played by our Indian friends—and perhaps that is the reason for his alarm.

Let us delve a little further into the matter—back some considerable time, or at least as far as we can, for, if I may venture to do so, I do suggest that the senior officials are all new boys who have had no part in the framing of the economic policy and are naturally unacquainted with the history of this country, and so it must be very difficult for them to diagnose the diseases from which we are suffering. But if we go back we will find at the root of all these troubles—and I insist on this, because they are of some matter—we will find that the basis of our troubles is the enormous distortion brought about in the internal adjustments of this country, first of all by the failure of the Colonial Office to control the original money unit (the rupee), and secondly the failure of the Colonial Office to restrain the changes in the real value of our local money and the violent deflationary policy initiated. It does not matter how you wriggle and squirm and strive, until you have dealt with this you will never get this fundamental trouble out of the picture.

I am going to ask the hon. the Acting Chief Secretary, if he gets up to speak in this debate, to tell us how many times on the agenda of Executive Council has there ever been included any item considering the proper ratio of the Kenya pound to the London pound. My hon. friend over there (Mr. Harragin) laughs, and I forgive him for laughing, because there is much joyous pleasure in innocence. It is a subject on which the hon. gentleman himself has said—and he will not deny it—in the presence of Your

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Excellency's predecessor and my hon. friend the noble lord, that these are subjects on which he knew nothing at all, and that is nothing to his discredit because it is out of his sphere of activity. But do let me suggest to him that on the agenda of every chancellery of the world, except the miserable tuppenny-ha'penny States of the Empire, you will find the ratio which the local monetary unit should bear to the major monetary units of the outside world. That is a fact.

If some of the gentlemen who are here would read the McMillan Committee Report they would probably find some sort of reference to this monetary question. Perhaps, however, they will merely look and laugh and regard this as rather excusable drivel, the senile wanderings and meanderings of an obsolete old gentleman who merely displays his ignorance of what is going on in the world, and this is unforgivable.

I think these vital and fundamental factors have been allowed to slip past because when this country was facing a real crisis and something had to be done unfortunately the goldfields at Kakamega were discovered, and the issue was again shelved; and the dramatic rise in the price of pyrethrum has temporarily solved the problems of such a large number of the smaller settlers that again Government has been able to dodge the main issue; and it looks very much as if this European crisis, which we are now passing through, is again being used as an excuse for doing exactly nothing at all in respect of what is required for the proper good and development of this country.

Here is a peculiar paradox. I have lived under every Governor, including the Commissioner preceding these Governors, and never during all that long experience do I remember a time—and I trust Your Excellency will excuse me for being personal—when the person of the Governor has been held in more profound respect and affection than at present. Nor do I remember a period when the leading personnel of Government was regarded with more confidence or was in fact a stronger team. I say that quite advisedly, for I believe that during the last two or three years the remaining elements of hostility and antagonism

have been permanently eradicated, and there is on the other side of Council a new appreciation of the position of this country from our point of view and a new desire to co-operate as an integral part of the country rather than as a lot of alien mercenaries. That attitude, I believe, has completely gone and very largely as a result of Your Excellency's personal influence there is a new atmosphere of development in the country which is a source of great comfort to us and ought to lead very easily to the successful handling of this country.

But—and this is the paradox—never in my experience do I remember a time when there was more general unrest among the native population of this country and a more deep-seated distrust by them of Government. Nor do I ever remember a period when the European element of the country was displaying such dismay, amounting to despair. And the general feeling is that there is no Government as such.

How can we explain such a paradox. It can only derive from one of two things (and here I would take my hat off to the hon. the Acting Chief Native Commissioner for the gallant defence he put up with regard to the native question): Either there is no direction—and that can only be due to the fact that the gentlemen responsible for the direction and who have had the necessary experience have not added to themselves a sufficient number of people similarly experienced; or, that there has been some breakdown in the machinery of the Secretariat which prevents things coming into focus, or alternatively it is blocked at every turn at the Colonial Office.

The Colonial Office is in all probability the most discredited institution in the British Empire. You see, all over the place, insurrections, riots, rebellions and outbreaks of all sorts and kinds all over the Colonial Empire, with hardly one exception, except perhaps in this part and one or two others where they come under the restraining influence of the old school tie. In such places as Jamaica and Trinidad and so on, all over the Colonial Empire there has been rioting verging on rebellion, and it has been so universal and so widespread that even the public at home have sat up and taken

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notice of it. The result is that a number of commissions have been sent all over the place to inquire into the causes and to see what remedies can be adopted.

And that applies equally here, for I have given you the basis of the trouble. All these parts of the Empire, and India, have been denied deliberately by England the relief that all other countries have found in readjustments to their monetary unit to meet outside influences. It is very curious but it is not a mere chance happening, this basis of this discontent. And as I tried to point out, you cannot do any good by merely dancing about on the fringe; something drastic has got to be done.

The issue has again been forced upon our notice by the hon. Member for Mombasa, that we are on the edge of another very serious economic conflict. You have only got to watch the commodity price level, and if you do you will see that there has been a dramatic fall in that during the last few months; quite sufficiently dramatic to set the whole world aflame. Yet we treat it just as we would treat a mushroom coming up, as if it were of no particular concern of anybody at all. Yet it is obviously the basis and the foundation of the whole thing.

If, in fact, the block is in the Colonial Office, there is a remedy. Other parts of the world have found them in rioting and knocking a few policemen down and in making a general nuisance of themselves, and I think one governor got scared because he thought he was going to be shot; that remedy is the one generally adopted in the Colonial Empire. But there is an alternative—and that is to rely on the Governor. We cannot go to London and throw bricks at the Colonial Office. Anyway, it would not have any effect if we did, for it would not wake them up. We are entirely at the mercy of Your Excellency.

I have seen the comings and goings of innumerable governors in my time, and the various methods they have adopted. They can sit down in despair and do nothing, in which case we sit down in despair and wait another five years—and we have waited five times; or they can use initiative. I have known governors

that have done that and have gone against the official doctrine. The alternative to this is to threaten that unless steps that are deemed to be necessary are taken, then—and you are in a very strong position in this matter—you can tell them to find somebody else who will sit down and do nothing.

MAJOR CAVENDISH-BENTINCK: When I formally seconded this motion I asked if I might be allowed to intervene in the debate chiefly because I wanted to stress, after hon. members opposite had heard various members on this side of the House, why this motion was introduced. It was introduced for two purposes: as an absolute indictment of the methods of the Colonial Office, and secondly of the methods of this Government, in that however much they wanted they were not allowed to do things. I think those indictments are amply justified.

The motion has two parts to it. Both have been fairly adequately dealt with. The motion first deals with the economic side, and as far as this is concerned we have had no information at all from the chair (apart from the ordinary receipts and expenditure), especially on all these subjects alluded to by various members here, and which would have been of very great interest to all of us. For some years past we have received very little information on roads, schools, consolidation of industry, internal equilibrium, agriculture, secondary industries, and so forth. I would like to say straight away how I agree with the last speaker in our sympathy for the heads of departments of Government, who are our colleagues on the opposite side of the House, and I can only congratulate the hon. Financial Secretary on his ability to be so convincing with his tongue so obviously in his cheek. I suppose he feels that he is paid to defend the Colonial Office system, and he got up and did so comparatively effectively. He explained the constitutional position in which we are placed and used the £3 million loan for an excuse for the Colonial Office not being able to get more done. He said that the existence of a prior £3 million of contingent liability was a deterrent, and stated he could not—I think I am right here—agree that the purposes for which

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the money was required were material. Finally, he more or less took the blame on himself.

The fact remains, Sir, that this country has now reached the stage when we have a legislature which is more than a council or advisory body. It has the right of passing laws and has considerable rights as regards finance. More than half of us are elected by the people of this country, who have spent their lives trying to develop the country, and it is fantastic, almost unbelievable, that the plans made and efforts attempted by Government on our behalf cannot be disclosed or discussed in this Council; if that is part of the Colonial Office system it merely shows what a complete pantomime the Colonial Office system is! It has been alleged that the control of these countries must remain in London. Well, Sir, that is not what we feel. Possibly there must be some sort of supervision, but if every small item of expenditure has to be referred to London it is merely going to cause a breakdown, not only of conditions as they are to-day, but also a breakdown in good relationships. That is all I have to say on that.

The other part of this motion deals with native policy among other things. This morning the Chief Native Commissioner made a statement as regards native customs, especially as regards land tenure, and he said that these customs were not being interfered with. That statement was accepted by the hon. Member for Trans Nzoia, but I must place on record that it is not accepted by me. I challenge it absolutely, and I believe that Government is making the greatest mistake to-day, that any Government of Kenya has made in the past on a fundamental issue, and if it is not altered we are going to find ourselves in the midst of frightful trouble in the course of the next two or three years. The hon. member stated he did not resent advice or criticism, and I must say that his speech was in complete contrast to a fairly recent speech by his predecessor. We know he has been placed in an extremely difficult position, but I should not be carrying out my duty if I did not attack him on the deliberately new native land policy being adopted by Government at the present time.

The excuse given is that there are no fears that a landless class of native is being created. Then in the very next sentence he went on to say that landless people with cattle will have to make their own arrangements until arrangements can be made for them. It has never been the custom in the past to have what we Europeans understand as individual rights of ownership of land in native reserves, and if you are going in for a policy of that kind there is only one way to do it, and that is to have a proper survey made and to go into everyone's claim and let everybody's piece of land be demarcated. That is obviously an impossibility, and if you did, you should not do away with tribal control or allow all kinds of unrestricted transactions between natives with regard to land. This is taking place to-day, in a different form I admit, but if allowed to continue in a few years there will be the most hopeless confusion it is possible to visualize. Under the old native custom they realized the limitation of their rights and there has been very little discontent.

Another statement he made was that there has been no vacillation or weakness as regards native policy. No vacillation! I admit that if you make a mistake you have to revise it. There has been continual vacillation over the past years, and I remember when a question was suggested by certain natives that they should like to mark out what they considered were their rights of occupation, Government quite clearly and definitely informed administrative officers of that time that that was not Government's policy. Now they have gone completely back on that. Only last November we were told in a communication from the chair that destocking was a step to the solution of the main problem, that—

"When destocking was started in Machakos it was decided to hold a limited number of auction sales, and from the result of these to decide on the next steps. A number of auctions were duly held. At a *baraza* at Machakos on the 25th August I informed the Akamba that I had agreed to make a change in the procedure, though not in the policy—namely, that the sale of cattle should not be by auction over a period but



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by the owners themselves at certain markets on certain days, and I added, 'It must, however, be clear that if insufficient cattle are sold under this method, Government will have no alternative but to resort to other measures.' But I wish to make it quite clear that the policy of Government has not been changed in any way."

Well, Sir, I hope it has not, but all I can say is that sufficient cattle were not forthcoming. No other measures have been resorted to as regards the production of cattle, and a very dangerous and new measure has been resorted to in regard to native land tenure. Half the reserve is now going to be covered with sisal, and if you go down there now you will hardly find any cattle at all because they have been driven away, and the natives themselves are firmly convinced that that is the end of the policy of Government.

There was another statement on land tenure which was not quite correct, and because there is not time this morning to discuss it at length, I would only wish to register my disapproval again. I think I can register it on my own behalf as well as on behalf of a lot of experienced Government servants who, if allowed to speak, would agree, and as well as on behalf of members on this side of the House. That is that you are going to embark on something which you will bitterly regret before two or three years are past.

Another statement made was that regarding the injustices which it is suggested were committed against certain of the Kikuyu; injustices unwittingly committed on certain sections of the Kikuyu population. I really cannot let it go past unchallenged. There was never any injustice committed on any members of the Kikuyu population in my opinion, or in the opinion of many people who have been here a great many years. Actually, if there was any injustice it is on the Dorobo, who were in those days in that part of the world, and from whom the Kikuyu only bought hunting rights, and no one thinks of them. I admit that, owing to gross mismanagement, a certain number of people have been allowed to claim rights they never really had, and I admit that we have now to do some-

thing to put the matter right. We will do our utmost to help the Chief Native Commissioner in his very difficult task, but we cannot admit to injustices that have never been there in any shape or form.

I have only two further remarks to make, and one is slightly connected with native policy. It was something said by the hon. Mr. Kasim, who made certain allegations as to the form of lawlessness which he alleges exists in the native reserves. I was very pleased to note one thing, that he completely changed the form of allegation he made this morning from the form he made publicly not long ago, because I think, if he was properly reported on that occasion, he was most unfair, and I hope I will be excused when I say that it was an extraordinary statement from anyone calling himself a responsible public man.

A great deal has been said to-day about Government by agreement. Now it is quite untrue, as far as I and most are concerned, that there is any such thing.

I would, however, like to support the hon. and gallant Member for Ukamba in his appreciation of the situation as it is to-day as between ourselves and members of your Government. If we did not know that every effort was being made by you and the members of your Government to get things done, we should see that there was no government by agreement or any co-operation in this Council or outside. But we do know it, and the difficulty is that your Government, which is also the Government of this country, apparently is not allowed to explain to us, the representatives of the people, exactly what you are doing, or when you hope to get answers, and so on. As was mentioned by the hon. Financial Secretary this morning, the Colonial Office pattern of constitutional practice is that you only know about loans after they have been agreed to. I suggest that that is entirely wrong. We have the right to know what Government's policy is, and what steps it is taking to carry out that policy, and if we have not that right all I can say is that it is a waste of time coming here at all.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, the 20th April, 1939.

Thursday, 20th April, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 20th April, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The Minutes of the meeting of the 19th April, 1939, were confirmed.

#### PAPER LAID ON THE TABLE

The following paper was laid on the table:—

By MR. WILLAN:

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

#### ORAL ANSWERS TO QUESTIONS No. 5—BANKRUPTCIES

MR. NICOL asked:—

Will Government inform Council as to the exact position of outstanding bankruptcies, stating:—

(a) The number of cases throughout the Colony under consideration, as at 31st March, 1939?

(b) The number of cases still outstanding originating in the years 1935, 1936, 1937 and 1938?

(c) What action is being taken to bring these cases to finality?

(d) Will Government assure Council that they will utilize to the full the Bankruptcy Contingency Fund for the purpose for which it was created; and

(e) What was the balance standing to the credit of the Bankruptcy Contingency Fund as at 31st March, 1939?

MR. WILLAN: (a) Approximately 500. This includes all cases throughout the Colony since the introduction of the Bankruptcy Ordinance, 1930, less those cases in which the debtors have obtained their discharge, died or submitted a Scheme of Composition or Arrangement which has been approved by the Court. The figure given is as accurate as possible as in some cases the Official Receiver may not have received notification of death or that the debtor has left the Colony.

(b) Approximately 200. The same remarks as (a) apply.

(c) Where possible, instalments are being collected from bankrupts until they have paid Sh. 20 in the £1, obtained their discharge or died. Instalments are still being collected in respect of some bankruptcies of the year 1930. The Official Receiver has in many cases been granted his Release as Trustee by the Court, but the file may always be re-opened if further assets are discovered.

(d) The answer is in the affirmative.

(e) 31 per cent Inscribed War Loan £4,938/7/8 (nominal value), Cash Sh. 8,155/16.

#### No. 13—TRAIN JOURNEYS—COAST TO KISUMU

MR. KASIM asked:—

(a) Is the Hon. General Manager of the K.U.R. & H. aware that passenger train journey from Coast to Kisumu takes about 50 hours a distance of about 380 miles whereas a passenger train from Coast to Kampala a distance of about 800 miles takes only 48 hours?

According to the existing train time table passengers have to stop at least 14 hours at Nairobi and at Nakuru which entails great hardship to the travellers.

(b) Will the hon. the General Manager consider immediate through train connexion of the Coast passenger train which reaches Nakuru on Monday evening instead of waiting 14 hours?

SIR GODFREY RHODES: (a) Is in the affirmative.

(b) The proposal to provide better passenger facilities between Nairobi and Kisumu has frequently been considered, but has been rejected, as the number of passengers who would use this service does not justify the considerable extra expense involved.

#### No. 15—RAILWAY SANITATION FACILITIES

MR. KASIM asked:—

Will the hon. the General Manager of the K.U.R. & H. state when he proposes to improve the sanitation facilities for Asian passengers at Nairobi and Nakuru stations?



**SIR GODFREY RHODES:** The provision of water borne sanitation for all passengers at Nakuru is now in hand.

At Nairobi, it is proposed to construct new accommodation in 1940, when according to information received from the Municipality, it is expected that the necessary main sewerage will be available.

#### GOVERNMENT'S POLICY

##### MOTION

The debate was continued.

**MR. LACEY:** During the course of yesterday's debate certain observations were made and questions asked by hon. members on the other side of Council relating to schools and Government's educational policy, or Government's lack of policy. Some of these statements I could not follow for they were extremely bewildering and followed each other in such rapid succession that I could not take down notes rapidly enough. I did, indeed, hope that I might have an opportunity of replying to them immediately but, like the Governors, the minutes came and went, and therefore I have had to wait and delay my reply until now.

The hon. and gallant Member for Trans Nzoia, who was the first to bring up the question of education, made a statement to the effect that every school from Mombasa to Kitale was insufficient. I understand that the hon. member takes a keen interest in his local school, and I would like to say that Government is well aware of the great value it derives from the services of members of school committees. I regret, however, that his interest should have led him into making such a sweeping statement for which there is no justification. I gather he considers the local school at Kitale inefficient because there is no housing accommodation for a fourth member on the teaching staff. I would like to assure him that even without the fourth member this staff is quite adequate, and that there is no Education Department in the Empire which would consider as essential any addition to that staff. I would like to add for the information of hon. members and the public generally that the Government schools for Europeans in this country, both on the score of numbers of teachers per class or per pupil and on the score of their professional qualifications, are as high, if not higher than any schools in Africa or, in-

deed, inside the Empire. A suggestion was made in the debate that it was a scandalous thing that a teacher should be in charge of forty children in a Government school. There are only two classes in Government schools for Europeans in Kenya with more than 40 children to a teacher, and normally there is a pupil teacher to assist in each. It is a common thing for there to be classes of over 40 children in schools in England, Southern Rhodesia and elsewhere.

I was disappointed that the only criticism made on European education was criticism based on such flimsy grounds. I do not pretend that the system of education for Europeans in this country is perfect, for, although I have been here only a short time I have seen certain deficiencies. Owing to a large increase in the number of children of school age there has been this year, for the first time for many years, congestion in primary and secondary departments. Government realises, also, that there is room for progress along the lines of developing further modern and technical classes or departments of school. Experiments in this connexion being conducted now in Southern Rhodesia are being closely watched.

I would state, however, that the educational system of this country is a very fine one, and this is due to two reasons: the whole-hearted support from individual members of school committees, municipalities and other official and unofficial bodies, and also to the realization by Government that it is essential for the progress of this country that there should be a very sound education available for all the members of that community which must for many years to come bear the responsibility of leadership.

I will turn now to some of the remarks made by the hon. and gallant Member for Ukamba. When he came up to the question of Makerere, rather like a conjuror producing a rabbit from a hat, he quoted what he stated, I think, to be some figures from the Uganda Blue Book for 1938 which dealt with the staffing expenditure at Makerere. If those are the figures he quoted then all the remarks made by the hon. member dealing with extravagance at Makerere were not pertinent to this motion.

**MAJOR GROGAN:** Your Excellency, I did not suggest that it was extravagant, I merely observed that the figures given in the Blue Book indicated that the cost was enormous and that the salaries will absorb our contribution to the endowment fund in two and a half years. My figures were handed to me by my hon. friend on my right.

**MR. LACEY:** I am sorry if my memory has failed me, but I shall be very interested to see Hansard. I still consider that these are not pertinent to the motion, which deals with the policy of the Government of Kenya on education.

**MAJOR GROGAN:** Again, I was not referring to the policy of education I was referring to the totally inappropriate and disproportionate allocation of money which did not at the moment exist.

**HIS EXCELLENCY:** No doubt the matter will be cleared up in the finish. I would ask that the hon. the Director of Education may be allowed to proceed.

**MR. LACEY:** I understand that no contributions were made by this Government to Makerere last year, and therefore the £50,000 voted to the college must relate to the year 1939 and not 1938.

**LORD FRANCIS SCOTT:** Sir, can the hon. Director tell us whether he disputes the figures given by the hon. Member for Ukamba?

**MR. LACEY:** Your Excellency, I do not dispute them as regards relating to 1938, but I do not see how they can be relevant to the present state of affairs, because at the end of the year 1938 the old college ceased to exist. It became an entirely new institution on 1st January, 1939, and thus it is only since then that the question of the policy pursued at Makerere can have anything to do with this Government.

I would point out that he suggested that with a college with such a large scale of expenditure, obviously the £50,000 from Kenya was wanted badly, and would probably be expended in two and a half years. I should like to stress the point made by the hon. Financial Secretary, that the £50,000 voted by this Council is towards the endowment fund.

I think hon. members, and the public also, should be aware that there is some difference between financing graduate and

financing elementary and primary education. You cannot get teachers to teach graduate standards at the same salaries as you can get teachers for teaching primary and elementary classes. Actually, of course, the scales of salary quoted are almost the same as those in force for senior officers in secondary schools, European and African—in this country.

I would suggest that if we are to have a college in East Africa, it must be a college of a proper standard. There must be one standard throughout the Empire; if we are to have a college in East Africa it must be a college which can take its place among its sisters in the Empire. The appointment of the headmaster of one of our most famous public schools to the post of Principal of Makerere is an extremely happy one, and it is an earnest of the intention to keep Makerere up to the standard which exists throughout the Empire.

I will pass now, Sir, to the questions raised by the hon. and gracious Member for Nyanza. One related to Makerere, and I will, therefore, deal with it first. I agree with the suggestion that it is not necessary to send to Makerere students who will be employed in elementary or primary schools. We have done it in the past because we had no full secondary course in Kenya. Steps have been recently taken, and additional courses added to the secondary schools, and in future no students will be sent to Makerere for secondary school work but only for post-secondary and graduate work. I would point out that if we have to train teachers for primary schools we have to have someone to train them, and in exactly the same way, if we expand our other social services there must be Africans of high professional qualifications.

I think it is quite probable that hon. members may not be aware that throughout East and Central Africa on the average of 100 African children born 60 die before reaching the age of five years, and of the remainder an enormous percentage are permanently incapacitated, both physically and mentally, by the incidence of preventable diseases. This tragedy and ghastly waste can only be terminated by a very great expansion of medical services, both preventative and curative, and by the employment of African personnel.

(Mr. Lacey)

Education in other directions is also of importance. The proper use of the land is of vital importance, and this problem can only be got over if the mass of Africans is adequately trained. These are purely economic factors pointing at the necessity of higher education and they were mentioned previously by the hon. Financial Secretary.

I would stress this point. If you are going to train anyone you must have people who know how to train them and that is the purpose for which we want Makerere.

I will turn now to the last point: a question was asked yesterday by the hon. Member for Nyanza, and has been asked in the papers in various discussions and debates, as to whether Government is justified in handing over sums of money and responsibility for African education to voluntary bodies. The gist of the question is whether Government is justified in making grants to mission schools. I would point out that Government has not, is not and will not attempt to hand over any of its responsibilities and that Government has a perfect right to inspect any school and has the right, which it has exercised, of closing schools which it considers inefficient. There is no question of Government handing over responsibility of education, whether European, Asian, Arab or African. It is when the question of the suitability of missions for dealing with African education is raised that the queries arise.

It may be noted that it has not been suggested that the mission schools should be debarred from doing evangelical work. I do not pretend to be an expert in history, but I do consider myself an amateur in the subject of social anthropology, and it is a fact that in most civilizations education systems have sprung from religious institutions. The great majority of schools in England, for example, are religious institutions and still maintain their character. Nor is it a matter for surprise, for the ideals of our civilization, and those ideas which form public opinion, are indeed ideals of Christianity, which is the basis of European civilization; it is only natural, therefore, that our education system should have that religious origin.

We have come out here to a country in which ideologies and religion are entirely different from our own. Christianity, however, is not the only factor which has defribalized the African—commerce and even our ideas of justice have contributed. All those sanctions and customs which formed public opinion before we came have disappeared, or are fast disappearing, and something must be put in to take their place. You cannot cultivate immediately a healthy, native African public opinion based on ideals which it does not understand, and I maintain that hon. members and others, who are afraid of any signs of restlessness, disobedience or disorder, and who would desire that adequate steps should be taken to counteract them, should realize that nothing can strengthen the hand of Government in this respect more effectively than its policy of co-operating in African education with the Missions.

I believe there is an idea at the back of some people's minds, that mission schools are not as efficient as Government schools. I can assure them that, in making grants, Government determines how the money is to be spent, and demands a high standard of efficiency. I have made a number of inquiries in several directions in this country, and have found no evidence of any sort that indicates that the ordinary discipline is absent from the mission schools in this country. I agree that it is absolutely essential, and vital that the right of conscience should be preserved, and that there are circumstances in which it is necessary to open Government schools. When they are opened attention is paid to religious instruction. For it is recognized by Government that education must be based on firm religious foundations.

MR. FAZAN (Provincial Commissioner, Nyanza): Your Excellency, I did not intend to speak in this debate but my reason for doing so is because of certain statements and opinions that have been expressed regarding what Government is doing in the matter of native land tenure. These opinions gave me the impression that they are somewhat at odds with one another, and perhaps have confused rather than clarified what Government is actually doing or intends doing.

(Mr. Fazan):

The hon. the Acting Chief Native Commissioner began with a clear statement of what Government is now proposing and has initiated in the Kamba Reserve. He stated that the further reduction of cattle in that reserve would be undertaken anyhow now on an individual basis; that the land would be rationed in certain places to the amount of cattle which it might carry. That, it is perfectly true, is not the measure of land tenure, but it has its repercussions for the inference is that the native will be putting his cattle on a piece of land which will be of a private character and that is perhaps further indicated by his statement with regard to the sisal hedges and other means of enclosure. He stated that this programme, primarily introduced for the reduction of cattle, would not result in a problem of landless natives, and he satisfied himself on that point.

He was followed by the hon. Member for the Coast who expressed the opinion that we were in effect introducing a new system of land tenure based on individual tenure and that we were hurrying the position on unduly. He was followed by other speakers, the hon. Member for Trans Nzoia among them, who stated as the hon. mover of the motion has already stated, that they viewed with grave concern the possibility that private land tenure in native reserves might be introduced before the natives were ready for it, and that it was a highly dangerous thing and wanted closely watching.

At this stage the hon. the Acting Chief Native Commissioner intervened and stated that Government had no intention of altering the system of native land tenure.

Lastly, Sir, if I remember, the hon. Member for Nairobi North stated that whatever might be intended undoubtedly this would have the effect of introducing private land tenure in the native reserves and he was prepared to believe that this would in the end introduce a grave problem. That is, I think, a summary as to how far the debate has proceeded.

Clearly, there are three points requiring a reply: Are we hurrying unduly the natives; are we subverting their system; are we accelerating the problem of the landless native?

Perhaps, to a certain extent, these three points can be taken together. All those who have investigated land tenure among native tribes have been surprised—perhaps this is rather a sweeping generalization, but it is true—that in the course of carrying out their investigations, they have found that native land tenure is in fact a great deal more private than they supposed, not only here but perhaps even more so in South Africa.

The first records about private land rights date from about 1898, and were from various authorities such as Judge Cator of Zanzibar and John Boyes of King of Kikuyu fame, and also the then head of the Church of Scotland Mission. All, roughly speaking in the same year, wrote various opinions on that point. Justice Cator referred to the *Githaka* system and John Boyes also dealt with it, though perhaps he somewhat improperly understood it, while the head of the Church of Scotland Mission wrote to a friend in Scotland saying that they were having no difficulty in securing land because in fact the land in Kikuyu was privately owned and could be bought from the owners.

MR. COOKE: Your Excellency, on a point of information, will the hon. member distinguish between the *Githaka* system north of the Chania and south of the Chania?

MR. FAZAN: Possibly, at some other time and in some other place.

In 1915 the then District Commissioner at Kiambu, now Sir Geoffrey Northcote, did certainly advocate taking certain steps towards the initiation of private land tenure as opposed to the *Githaka* system, and definitely advocated the destruction of that system and the substitution of another form of land tenure. In 1919, I may be slightly wrong as to the date, but not far wrong, the then Acting Chief Native Commissioner, Col. Watkins, made an inquiry and he, again, recommended that the *Githaka* system was not a system which should be developed, but that it should be substituted by another system.

We can now skip ten years and come to 1929. In that year a committee was appointed to go into the whole question and they did not agree with these opinions. They said, in fact, that whatever

(Mr. Fazan) to be done must be based on whatever existed. They said we must regulate and control, modify and direct, advise and guide, but not subvert and super-impose.

It happened that in 1930 I went to South Africa with my expenses paid, with this report in my pocket, with a view to reporting to Government whether anything that was being done there would be a guide to us as to what methods, if any, should be introduced here. My report was made to Government, and is mostly found in the printed evidence of the Land Commission Report. All I said there, in brief, was that there could be no question, so far as South Africa (who had experimented with such things as individual land tenure to a considerable extent) was concerned, they had adopted methods which this Government could not very easily follow.

The general recommendations of my report were that we must build up from the existing system by a process of modification and adaptation; things which we should tackle first should be subdivision and fragmentation, which have already been mentioned, and get these definitely under control. Then there was the problem of the security of tenants. So here we have the three points. And then there is another point (which was not covered in my report), namely the question of soil erosion. This was taken up by Government and their unofficial advisers in a very strong form and received much prominence in the Land Commission Report. They took these four main points—subdivision, fragmentation, tenantry and fencing. And their summary in the Report was of this character: They said that land tenure has, in fact ever since the Europeans came, been getting more and more private in character, and the question now before Government was whether to encourage it in its present form or stop it. And they came exactly to the same conclusion as the Government officers had come to previously, namely, that we must base our system on the native system and proceed by progressive modification towards a civilized form of tenure. If we conduct our development otherwise than through the medium of the native land system what

would happen would be intense opposition and all sorts of complications would result.

In their recommendations they said that they were very much impressed by the opinions of certain witnesses who said that if nothing was done about this question of land tenure a whole heap of trouble would result. I forget their actual words, but they were in effect: "We are still more impressed by the disaster which will occur if no steps are taken."

Under the old Ordinance there was no power for making rules. Government did not, in fact, make rules, but under the new Ordinance there is provision and it may be necessary to do so. I hope we do, in order that we may be able to take action on questions which have now been considered for a great many years. In addition, whatever we do must not be subversive to the present system; but should, and I am sure the hon. the Acting Chief Native Commissioner will support me, be a modification of the present native system. I would like to make that point just a shade more definite. Partitioning is not a new thing. In 1916 there were a great many fenced private holdings in the Machakos district. I do not mean individual holdings, but those of family groups and holdings of that character, and there was a system called *Kisere*, which was a little hard to explain but was a system of holding grazing land. The District Commissioner of that time, for some reason that I am not aware of, had those fences broken down. If to-day there has been a reversal of policy we cannot be too much blamed, for that was 23 years ago. In Kikuyu it has always been the custom to paddock land in this way: You cannot entirely fence off the land, but may fence three sides of it, so that it might be as much of a nuisance as possible for other people to use your paddock.

A further point is the question of land hunger. The hon. the Acting Chief Native Commissioner did not state, as I understood him, that we had no landless natives, but that there are not so many of them as to have emerged to the forefront of the particular problem under discussion, namely the destocking problem. But I do not think anybody is going to deny that if the squatters are returned

(Mr. Fazan) to their reserves, the increase in the population will be such as to produce a landless native problem. The point is what are we going to do if the population does increase. If the inhabitants are going to live on the land as a commonage they may well ruin it by excessive cattle. Then again, you might divide up all the land between all the people, in which case you will have the number of microscopic areas increasing, and there again they will surely ruin the land.

In any country, whether it is in Europe or elsewhere, we find that half the population, even in such countries as Belgium and Denmark, cannot expect to own land or even be employed as tenants, but must live by subsidiary industries. It is obvious that before we can deal with this surplus population we have got to obtain derivative industries. I do not think this debate should end to-day with the impression that Government does not realize that sooner or later the problem of the landless native will arise in this country. But it would be no less embarrassing if we did not do what we are doing to-day towards the improvement of land tenure in the reserves. We are doing our best in a small way and as well as we can to redistribute the people and develop derivative industries so that landless natives may find employment in those industries.

I am sure most hon. members on the official side of Council will agree with me when I say that I have written and spoken on this subject far too often, far too long, and far too dully. (No, no!)

Coming to the remarks made by the hon. Member for Nyanza in referring to native unrest, and taking her particular point about the loss of authority of the chiefs. I would say that she is making a very wide generalization in suggesting that the chiefs have not the power and authority they once had. Well, I am not going to quarrel with that generalization, but I will say that she has touched on a problem which is certainly worrying. It is a fact that when we came here the chiefs were supported by various imaginary magical and hereditary rights which, in one way or another, were suited to the native system which they administered, and these naturally carried a great deal of weight until they inevitably broke down.

The substitution of law and ordinance in the place of tribal sanctions as the basis of a chief's authority is a process requiring time and patience. This country has made enormous progress in a very short time, and the chiefs do try their best to cope with the situation, and if it is a fact that in some areas their authority has weakened considerably, it is due to the fact that the District Commissioners have not the supporting staff they ought to have. There are times of course, in an emergency, when they have an enormous amount of work put on them and their staff, and the District Commissioner put in charge of such a district finds himself and his staff unable to cope with the situation as efficiently as they would like and get adequate and sufficient support from a very well meaning but insufficiently capable set of chiefs. That is the position at the moment in such a district as Kericho.

But if you turn to the more forward parts of the Province, there are more hopeful aspects. I may say, and I know some of these chiefs and I have known their fathers, that there is not the slightest question but that some of them have adjusted themselves to the new position and are doing extremely good work, and if one wants to be cheered up then he ought to see them in their reserves. One chief, with rather more than 50,000 natives, is doing extremely well.

I cannot accept the position that the influence of the chiefs is a bad one, and I think we are winning through to a good position.

I speak at all events for the District Commissioners who are closely in touch with the situation that, as a whole, the attitude of the native to-day is very much better than it was two and a half years ago. I will not go further back than that. But it does not mean, nor for one moment, that we do not continue to get the question of unruly natives arising. There are some, and perhaps there is a large number, but I think that what has happened is that when the native is working and earning higher wages and is getting far better food, especially in the mines, he begins to feel very self-confident indeed and is rather apt to get in a difficult frame of mind and rather out of hand. They do these things; I admit that.

[Mr. Fazan]

I will now deal with the point raised by the hon. Member for Uasin Gishu about stones having been thrown at passing cars. What he said surprised me very much, and I had not the vaguest idea that anything like that was going on. As far as my experience is concerned, I have seen nothing of that sort myself, but I fully accept his assurances, and I have already written to the mining community. There is a federation formed and they have passed a resolution calling my attention to some native unrest, and I have already asked for details concerning it, and I understand from the hon. member that the details are waiting for me when I get back.

There is another question to which I want to refer and that is a very grave thing altogether—the terrible murder the hon. Mr. Kasim referred to. All I can say is that the police acted as quickly as possible and the Administration too and every single endeavour is being made to catch the man. Unfortunately the man who was murdered was doing a most imprudent thing in sitting by the door of his duka, where he was normally engaged in selling cigarettes, and counting out a large consignment of cash which had just been given to him to help him to buy cotton. Somebody or other, seeing a spear in the corner, and seizing his opportunity, killed the Indian, and we have been searching very hard to find out who the culprit is. Of course, suspicion is one thing and proof another. I am not going to say anything more about that.

We are not unsympathetic to the requests for more tribal police and more supervision. It is a question of course, of cash, and in this particular case even if we had guards at every trading centre it would not have helped in this particular case, because the crime was committed at an isolated cotton buying store of which there will always be an increasing number as the reserve develops. Moreover, it is quite out of the question that the police can be there all the time. We shall, of course, welcome any comment or information that will help and lead to the conviction of the offender. I can only express my great sympathy with the whole of the Indian community in the matter but the police are doing their best.

DR. KARVE: Your Excellency, a great deal has been said in the course of the debate about lawlessness among natives. I think that the lawlessness has been exaggerated. Statements have been made, particularly by the noble lord the hon. Member for the Rift Valley, that this lawlessness is on the increase. I am not really ready to call it lawlessness; I would rather term it discontent, as was done by the hon. Member for Nyanza. But such discontent, in my mind, is quite natural and inevitable particularly when we think that the native community is getting more educated and naturally feels a growing ambition. When this ambition is not satisfied discontent to a certain extent is bound to follow, and I further suggest that most, or at least many of the causes for such discontent are the creation of the unofficial European members by continuously pressing for advantages for the European settler community in this country. Whether it is possible to avoid these causes or not I do not know, but many of these causes are the creation of their own.

This squatter problem. These poor devils were asked to come and settle on the European farms by those very farmers then simply because they wanted cheap labour, and now, when they think they can get labour in other ways, they want to have them driven off and want Government to help them. What do you expect other than discontent when you are driving them and their belongings away? It may be said that legally the owners of these farms have a right, but there are other questions, and this sort of thing naturally increases the difficulties that are experienced by Government in dealing with native problems. They have got to find means to satisfy the natives and try to have more contentment among them. In fact I think that the continuous pressure that has been brought by the unofficial Europeans on Government has been responsible for a good deal, a great deal, of this discontent among the natives. I will go further and say that this continuous brow-beating method in order to make Government adopt a policy to their own advantage has been given the sweet name of "government by agreement," which was referred to by the noble earl, the Member for Kiambu, and which he

[Dr. Karve]

now wants to refute because he is not satisfied with the amount that Government is able to do with agreement, so now he wants the unofficial European community to act not as gentlemen, but as children, as naughty children who cannot get what they want.

In fact I, on behalf of the Indian community, will be very glad indeed when this gentleman's agreement is broken and agreement with Government, or government by agreement, comes to an end because then we hope we will get some of our rights looked into.

Referring to the subject mentioned by the hon. Member for Ukamba, I can give him a guarantee from my community that it would be quite willing to graciously get out and make room for the natives, but it will be he, and his likes who will raise a howl when circumstances arise and they have to make room for pressure from below.

A great deal has also been said about the control which has been exercised by the Secretary of State. I must state we say "Thank God that is so, because we don't know where we should have been if that control had not been there".

The noble lord, Member for Rift Valley mentioned that the Secretary of State had not sanctioned the loan. We say again "Thank God he did not sanction it," because if every loan brought up by this side of the House was sanctioned, this country would have ended its career as many of the settlers, in the bankruptcy court.

Referring to the attack made on land policy and tenure, I admit that there may be difficulties in introducing a system of individual land tenure. But it is inevitable that individual land tenure has to come and that a start has to be made sometime—the sooner the better. Formerly the tribes moved to the next little bit of land, but now that most of the land has been taken from them the result is that they will have to keep the same land. It is certain that our native production will go down unless some form of individual tenure is introduced.

In fact I think that the bringing of this motion before this Council and debating it at such length has been quite unnecessary. In the Budget debate full opportunity is given for members to

attack the policy of Government and its departments, and full opportunity was taken of doing that. To bring this up again after two or three months and debate it all over again is a pure waste of time of this Council.

Council adjourned for the usual interval.

On resuming:

DR. WILSON: Your Excellency, this debate seems to have ranged over any and every subject according to the fancy of each successive speaker. But Government's native policy has been so much to the front in most of the speeches that, much as I regret prolonging this debate, even for a few minutes, I feel that it is up to me to add one or two remarks.

I am not sure whether the chief complaint has been that Government has no policy or that it has a wrong native policy. Actually, it seems to me that criticism has been chiefly levelled not so much at policy in the abstract but at the way in which the present policy is being applied by the administrative officers in the native reserves, with this exception, that the hon. and gallant Member for Nairobi North yesterday was very emphatic in his denunciation of what he called a change in policy with regard to land tenure.

I was extremely interested and glad to hear the speech this morning explaining the position, history and condition of Government's policy as regards land tenure. As I understand the position in the Ukamba Reserve what is happening now is that demarcation is being allowed and encouraged by boundaries defining areas of private ownership which are already recognised as being areas of private ownership. Of course, one realizes that this policy of Government of recognising or encouraging private ownership of land has very serious implications. But I am sure that Government is fully alive to the possible consequences and will do its best—and I am sure administrative officers will have been told to do their best—to control this process.

There is one thing to be said in criticising Government's native policy. That is, that it cannot be a static policy. The native population is changing so rapidly that the policy must be adapted from time to time to meet the changing situation.

[Dr. Wilson]

One other criticism of what has been said occurs to me and that is that on the one hand it is insisted that Government must see to it that every administrative officer shall carry out that policy; yet on the other hand we have it said that administrative officers should be given much more individual authority: I think it is very difficult to reconcile these two arguments.

I take it, Sir, that the reason at the moment for encouraging this recognition of private ownership in the Kamba Reserve is because it seems, and it must seem to everybody, a very reasonable and effective way of dealing with the extremely difficult problem of over-stocking and soil erosion.

Now the question of destocking in the Kamba Reserve has been mentioned again and again in the course of this debate, and I think we all agree that there is much to regret in what has happened in the Machakos District. I think we would agree that active and forcible measures were taken without sufficiently enlisting the goodwill of the natives. Though it is rather an anomaly to call it "goodwill" when we are approaching a man with the idea of taking away a large proportion of his capital for it is extremely difficult for him to surrender it with any goodwill. But, if it was a mistake, it was a mistake in which other people besides Government officers were concerned, because I remember a debate in Council in which demands were made for "drastic destocking."

But I am not quite sure whether the complaint is now that there should never have been any attempt at drastic destocking or whether the argument is that both drastic destocking and the present policy of appeasement are equally wrong.

There is only one other point I wish to mention, and that is this question of lawlessness and indiscipline amongst the native of the Colony at the moment, and whether it is increasing. I was very pleased to hear from those who ought to know that at least in some part of the country conditions are not as bad now as they were a year or two ago. I think we must put down one of the causes of this lawlessness to the lack of touch between

the administrative officers and the people they have to govern. Now, that point was mentioned by the hon. Member for Nyanza yesterday, and she stressed what I think is a very important point: that is, the grave disadvantage of frequently changing senior officers in the districts. I know of the difficulties of retaining a man in any one district for long, but I am perfectly certain that the loss of a man the natives are just beginning to respect and to know is bound to have a serious effect on the feeling amongst the natives; it is certainly extremely disappointing to hear that natives have to go to others than their own administrative officers to have Government measures explained to them.

The hon. the Acting Chief Native Commissioner admitted that there was this lack of touch at the moment and he ascribed it chiefly to the shortage of staff. He said that that was only a temporary shortage. I only wish that I could agree with that. I am afraid that I am bound to believe that there is now and will still be a serious shortage of administrative officers in our native reserves.

**HIS EXCELLENCY:** Hon. members, before calling on the next speaker I would just like to confirm the procedure we shall follow. We shall sit this afternoon. I will give out the time at the adjournment. And we will start tomorrow morning again at the usual hour, 10 o'clock, in order to enable the clerks to get their work done, and if necessary, we shall sit in the afternoon again.

**MR. WRIGHT (Aberdare):** Your Excellency, my participation in this debate cannot for a moment be justified, more particularly in view of what you, Sir, have just said. But that will not at least debar me from talking for two or three minutes because I am interested in a subject which devolves itself around your communication from the Chair which I did not have the good fortune to hear.

My hon. friend the speaker who has just sat down, has made some reference to a Government policy which has been the general theme of excellent speeches on both sides of Council during the last three days, and I have come to the conclusion quite definitely not only that the

[Mr. Wright]

policy is bad, but I am beginning to question if there is a Government in the accepted terms of the word.

I do not mean this in any way offensively. I am thinking out what it must be like myself if I had the misfortune to be a Civil Servant on the other side of the Council, because their position is rather the same as that of the permanent official at home: their job is not to formulate a policy but to carry out a policy formulated for them. And I have every sympathy with the hon. members on the other side of Council. If there come along any matters of great moment to this country and they have no definite policy to lay down before us it is not their fault.

That brings me back to my old attack which is one against the system—that is, the Colonial Office system—because in the Civil Service if they were allowed to govern, if their policy was not dictated to them, and if they were people who, instead of looking upon their career in Kenya as a passing one in the ladder of progress from one Colony in fifty, then they would be able to identify themselves more closely with us. And that brings me to the point of the higher officials in this country. They ought to speak and be allowed to talk according to the dictates of their own conscience and to work along with us for the common good of Kenya.

There is, Sir, I submit, no policy. Whether it is a matter of the reserves, destocking, roads, or the game policy of the country—there is no definition of policy anywhere. And year after year we go on hoping for something better but never achieving anything or not at all very much.

I must be approaching the termination of my three minutes which was the threat I made in inflicting myself upon hon. members; and I know that a distinguished member of Government is going to reply before the noble lord the hon. Member for Rift Valley sums up this debate. But there is one point on which I would like some information. I have heard references to free surplus funds involving funds amounting to £350,000. I am not aware of all the frozen assets that exist—although I know of some of them—for I

am not a very keen student of Government finance. But I have a feeling, and I have heard it said, that there is a very definite liability to Zanzibar in a sum amounting to £200,000. I have seen, in my short spell in this Council no reference to it and heard no reference about it and I would like to know if that moral obligation is at least envisaged in the figures of that free surplus sum stated to be £350,000. I am very concerned about that because it involves a great principle and, at the same time, while happy to incur the assistance of the landed aristocracy of the Coast littoral, we are concerned about this obligation. The date, I understand, was about 1908, but the duration of the loan I am not aware of. I shall be most grateful if, on behalf of that great race, the Arab race, Government can give an assurance that that loan, in the region of about £200,000, has not been overlooked.

**MR. HARRAGIN:** Your Excellency, I rise if only for the reason of assuring the hon. Indian member, Mr. Isher Dass, that Government is in no way intimidated, and therefore relieve his anxiety with regard to the moving of this motion. If I may also relieve at once the mind of the hon. speaker who spoke last, I can assure him that the amount he referred to has not been overlooked and is not included in the £350,000 which he has alluded to.

Referring to the speech of the noble lord the hon. Member for Rift Valley, if I may say so, his chief complaint was that we were suffering from Crown Colony Government. Well, of course we are suffering from that, if it can be said that "suffering" is the right word. At any rate, we are a Crown Colony and as he well knows, for it has often been quoted from a famous historian, this means Government by the Crown through one of His Majesty's principal Secretaries of State who is responsible to Parliament.

If hon. members will consider the importance of the fact that His Majesty considers it necessary to send his representative in the shape of His Excellency the Governor to represent him here, they will realize what a perfectly impossible situation would arise if His Excellency, who represents the King, who in turn is represented in Parliament by the Secretary of State for the Colonies, did not work hand

[Mr. Harragin] in glove together in all matters with regard to Crown Colony Government. Therefore, although it is perhaps a little irritating to hon. members on the other side of Council, I may tell them this at once, that practically every subject that has been raised, whether it is agriculture, the land bank, schools (which includes of course all forms of education) and roads—all these matters—have been considered in detail by His Excellency with his advisers and we are at present in negotiation with the Secretary of State with regard to the possibility of improving the position which we all wish to see improved so much. I say that to allay any feeling which there seems to be in this Council that matters are allowed to slide and that nothing is ever happening. It may take a month, it may take a year, but I can assure you that the question is a very live one and it is being pressed forward with all the energy that this Government has at its disposal.

I do think that the references to the Secretary of State have been a little ungrateful. It is easy to abuse the man at the helm five thousand miles away and I do think hon. members sometimes forget how much in fact he does do for us. I was a little surprised at the easy manner in which hon. members dismissed the fact that we had just escaped having to pay £5 million. It matters not to me which particular member had something or had not something to do with the non-payment of this amount, but the fact remains that this matter was considered in England, as you all know, and our principal advocate was the Secretary of State for the Colonies and as a result of that advocacy the outcome has been entirely in our favour. And to seize this opportunity that to state that he is unsympathetic as I have heard certain hon. members here affirm, is definitely unjust and ill-timed.

I would have purposely avoided mentioning such things but the fact is we have out of the Colonial Development Fund managed to extract from the taxpayer the amount of £350,000, some on loan and some on a free grant. And having said that I would also point out that that of course again has been done through the advocacy of the Secretary of

State and the various Secretaries of State who have been responsible. And I think it is extremely ungrateful for any member to get up and say that the Secretary of State is not doing his best on our behalf.

So much for the constitutional position. There is nothing new in what I have said—I know perfectly well—and the only answer that I can give to hon. members on the other side of Council is that so long as we have a Crown Colony Government so long this procedure will have to go on.

Turning to matters legal, a great deal has been said about the lawlessness that exists in the Colony to-day. It has been stated by several hon. members, not only European elected members but also by hon. members representing the Indian community. And I will say at once that Government accepts to a limited extent that statement because it must be a statement of fact as it is echoed from all parts of Council. But I will only say on behalf of this side of Council that really we have had no real evidence of such lawlessness.

Now, take for example the destocking of the Kamba Reserve which we have been discussing. I am not going to bore Council any longer with any details about that except to say this: although it has been referred to as a signal failure in fact if you go to the Kamba Reserve to-day you will find that it is destocked. I am not going to be so stupid as to say that Government is satisfied with the manner in which it has been destocked. We are perfectly aware that cattle may have been driven to some other area and that there is overstocking in some other spot instead of in the Kamba Reserve. But if you wish to take the Kamba alone the fact is that as a consequence of Government's policy, whatever "policy" means, at the moment the Kamba Reserve is destocked. Further, it would give me great pleasure to take any hon. member of the other side of Council down with me to show what enormous progress has been made to re-suscitate the earth down there during the past year.

It is easy to jeer at what has been happening—it is the simplest thing in the world. But it is a fact that, as far as the Kamba are concerned, the result at the

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moment is that it is now not overstocked, and the land is being reconditioned rapidly. I am only speaking for the moment for I do not know what the future will bring; it may well be that when the cattle do come back, if they come back, still further measures may have to be taken.

Well, to continue on the question of lawlessness. As the hon. the Provincial Commissioner representing Kisumu said, there was one unfortunate incident, which is deeply regretted by Government and everybody else, of the murder of an Indian in a reserve. But as it has been pointed out it is an isolated case and such a calamity might happen to the member of any race or tribe who happened to be sitting with a large sum of money at his door. It is unfortunate and Government is doing its best to bring the criminal to justice.

I think we ought to look further for other instances of lawlessness to justify a statement that there is general unrest and it is only fair to mention to one which I know caused a great deal of feeling in the district where it occurred. The facts are as follows: In a certain mine there was a collapse of earth and two natives were buried or half-buried. The manager of that mine was making every endeavour with his gang to extricate these unfortunate people. He had got one man out when a crowd of women who unfortunately appeared to have been to a *tembo* drink, came on to the scene. Not understanding in the least what had happened they seized stones and stoned the manager so that the rescue party had to cease work. Well, now, the buried native when he was got out was in fact dead and we are not in a position to know whether he would have died or not if the rescue party had been allowed to proceed with its work.

A great deal was made of that incident. It was, I agree, a very unfortunate incident, but it was one that might have happened anywhere in the world where a lot of drunken people, suffering from hysteria, did an extremely stupid thing, and you cannot urge that against Government as a proof of general lawlessness all over the Colony.

Then again, if we refer to reported cases—take the native tribunals—they are perfectly normal in number. If we refer to cases that go before the Supreme Court and other courts, there is no evidence to-day that there is any increase worth talking about. There may be one per cent or two per cent, but there is not a serious increase in the percentage; two per cent is not a serious increase in the amount of crime in the Colony.

I know of course the answer that may be given to that at once: "Yes, if you choose to give the number of cases of course you will not find an increase. The fact is that you never manage to arrest the criminals and there is no case." Well, let us go further and make inquiries of the police as to the number of serious crimes there are that remain undetected. The fact is that there are not a great many. In fact, I am surprised that in a country like this there are so few serious crimes at the moment going undetected.

But do not think that by all that I have said on this subject that I am attempting to dismiss off-hand all I have heard in Council during the last two or three days. There must be—or you gentlemen would not have mentioned it—some undercurrent of unrest. But I hope you realize what you are doing in making this serious complaint. You are delivering me bound in chains to two heads of departments when they come before the Standing Finance Committee and claim a large increase in their particular staffs. They must have the support of the members on the other side of Council and it will be extremely difficult for the Government to rebut their claims for further staff. I have no doubt that the result of this debate will be that in the near future there will be an increase not only in the Police but also in the Administrative staff.

And I may tell you, that as far as the Administrative staff is concerned, as hon. members who happen to be on the Finance Committee know, we are starting right away by filling up the vacancies which have occurred since the beginning of the year and in doing so we are making every effort if possible to fill them with local candidates.

I think there was one other point made by the noble lord, the hon. mover, when



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he was rather taking us to task over the destocking scheme in the Kamba. He said that the elected members, I think he was speaking only on behalf of the elected members, but let us say the un-officials generally, had suggested another scheme.

It is true that the chairman of a certain body and various other interested people have discussed the question with Government and have suggested various schemes. One is that there should be a pooling scheme of the cattle in the country.

Well, it may interest hon. members to know, that with regard to the Destocking Committee, when it comes into existence, and I hope it will be in existence within the next week or ten days, one of its first considerations will be to consider a scheme backed up by an Ordinance which is rather a long and complicated Ordinance, to deal with this pooling scheme. And Government will be advised whether it is a practical scheme or not. But it must be realized that this committee is only an advisory committee and will in fact only consider those matters which are referred to it from time to time by His Excellency. As one hon. member in Council has stated already, the people who will in fact have to carry out the scheme are the Provincial Commissioners and the District Commissioners, and it must be realized that you have got to rely on the men on the spot. So that all that the Committee can do at this end is to advise His Excellency who will in turn instruct those particular officers.

The last point I would like to make on this question is that it is impossible, I am informed, to evolve one policy for destocking the whole of Kenya. Each different reserve is a different problem. Therefore, all this cry about Government's policy is really nothing but clap-trap, because in fact, Government will have to have possibly half a dozen different policies.

Turning from that point, Sir, the noble lord asked for assurances from Government as to their plans for the future and a statement as to what was being done. I think I can say almost in his own words if I wrote him down correctly that Government is as anxious to raise money for developmental purposes as the hon.

mover and is making every effort to achieve that object.

So much, Sir, for the speech of the hon. mover. I hope I have not omitted to answer any question he has asked of me. I am reminded that he did ask one other question. It was whether I can give the names and the terms of reference of the Game Committee.

**LORD FRANCIS SCOTT:** It was the other committee, the Destocking Committee, I was really asking about.

**MR. HARRAGIN:** There are two committees, the Destocking Committee and the Game Committee. With regard to the Destocking Committee—there is no secret about—the personnel has not yet been fixed finally because it has been referred to the body which originally asked for its appointment, to suggest names, as one or two of the people whose names have been suggested have gone away, and we are awaiting replies from them before the committee is formally noticed in the Gazette.

With regard to the Game Committee, someone else certainly asked about that. I may state at once that the terms of reference, which are subject to formal approval by the Executive Council, have been drafted by His Excellency in conjunction with the Game Warden. Of the personnel, some of them have been asked and advice has been asked as to whether certain other appointments can be made temporarily as the persons recommended to serve will be away for a short period. But I can assure the hon. mover that both these committees will be in being in the very near future.

The next speaker, I think, was the hon. Member for Mombasa. He asked a very pertinent question to begin with when he asked when will an Indian Company in Mombasa be formally raised. As it was quite rightly suggested, it will be raised as soon as the necessary legislation can be passed by this Council. It has only very recently been decided to raise this company and the legislation will be put through as soon as the hon. the Attorney General can get it ready for Council and I hope that it will be passed in the not very distant future. I hope that there will be nothing to prevent the preliminary

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steps from being taken so that the moment it is passed the company will become a going concern.

The hon. member made one or two startling and interesting statements. He told us that in his opinion the depression was as bad now as it was in 1931 or 1932. Well, it is naturally an opinion and as it is only an opinion I can say nothing more about it except that I am happy to be able to tell the hon. members on the other side of Council that the trade returns do not justify that opinion at the moment. Whether they will or not in the near future I cannot say. The trade returns are not quite as pessimistic as that and in fact one can say without being optimistic that if only the European situation would clear up, Kenya could look forward to an extremely good year.

The next suggestion of his, and one that naturally appealed to me very much was with regard to roads. He suggested that as there was some difficulty about getting money for the roads immediately, might not we build roads and call them strategic roads—as they would be—and ask the other East African Governments to help us financially in their construction. That, of course, is a delightful idea, presupposing that the other three Governments would fall in with the suggestion. But there is a snag in that one or two of the other Governments might return a Roland for an Oliver and start building roads in their own country and ask us to pay for them! So, I do not think that perhaps it would be wise to embark on such a scheme at the moment.

His next statement which was more surprising than anything was that he was exactly of the same opinion to-day as he had been four or five months ago. Well, I am extremely glad to hear it. But if I may surprise him—for I presume that he is making reference to a £10,000,000 loan—I can only say that few hon. members have altered their opinion of that suggestion during the last four months.

I am extremely glad to hear that he has a friend who has invested half a million pounds in Kenya and contemplates another half million in spite of the financial situation here. I only hope that he will be induced to remain here and not go to the neighbouring territories.

I do not think that there are many other points I have to reply to. The noble earl the hon. Member for Klamu made one or two very slashing statements. Amongst other things, he asked whether Government would be prepared at this juncture to gazette Nairobi commonage as a game park. As presumably the question of parks will be one of the first which the new Game Committee will consider, naturally the answer is in the negative.

He referred also to such things as stagnation and of no attempts being made to develop the Colony. Well, of course, on this question of the development of the Colony, if one can judge by the exports, which I suggest must be some criterion of progress, during the last four years, they have been doubled. If that is not a sign of progress I do not know what is. And it is extremely gratifying to realize that at the moment all our staple products are doing well with the exception of one, sisal, which is still, so to speak, down the drain. I am happy to see, however, that every effort is being made to put it on its feet again. I understand that meetings are being held by the sisal owners and there is a new policy being evolved which they hope will meet world conditions. But whether this will be so or not I am not in a position to say.

The noble earl then made reference to the fact that the Secretary of State never acknowledges a dispatch. I do not honestly know what the noble earl is referring to, but I can assure him that if, after a certain time, a dispatch has not been answered we send a reminder requesting its immediate answer. In point of fact, at the present moment I am not aware of any dispatch that has been with the Secretary of State for over, let us say, two or three months which remains unanswered. The fact that there is not a solution to the problem raised in the dispatch is, of course, quite a different question, and not one you can always blame the Colonial Office for. They do not, as has been suggested, merely shelve these difficulties, put them in a pigeon hole and do nothing about them.

The next point I will deal with is clearly a misunderstanding by the hon. Indian member, Dr. Karve. He suggested that

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one of the reasons why there was discontent—and there may be some forms of discontent—was because the squatters were being driven off farms. Well, there is not a word of substance in that. At the present moment I am not aware of any squatters who, as the result of any legislation enacted have been driven off a single farm. The hon. member may be referring to the new Squatters Ordinance which I hope will be brought into force very soon. It is not yet in force but as the principles are the same as they have been for many, many years, there should be no special grounds for discontent among the squatters in the future.

I do not see how the hon. member can say that squatters are being driven off the farms and then in the next breath mention that the squatters are the principal labour of the settlers. It must be common sense surely that if the squatter is to be the principal labourer of the farmer it would be up to the farmer to keep the squatter on the land. All that is going to happen we think as a result of this new Ordinance is to be the introduction of what is called "local option." Squatters will not be allowed to have an innumerable number of goats and cattle which will destroy the farms but they will be permitted sufficient for their needs. The hon. member can be assured that as long as the labour problem is as it is today in Kenya he need have no fear that there will not be many squatters on the farms, and happy squatters, for it is only by having happy squatters that you will be able to have a full labour force and if you have not a full labour force you cannot farm.

The hon. member made reference to what he called continuous pressure by the European members on Government which had caused discontent. That is an extremely easy thing to say and I would have been very grateful if only he would indicate to me what he means by this continual pressure. How does this pressure on Government come about? And what has caused the idea? Is it the suggestion that the European members have been entirely responsible for the destocking measures in the Kamba? Naturally Government had the intelligence to realize that this was a very

necessary thing and had to be done but surely the hon. member is not going to suggest that the European elected members were responsible for Government's destocking programme and are therefore responsible for the dissatisfaction arising therefrom! I do deprecate very much this habit of throwing off a loose sentence like that. It means nothing; you cannot bring a single example that cannot be refuted. That sort of statement goes out to the Press and to the people who are ignorant in the country and who may be so stupid to imagine that this pressure really exists whereas it is an entire myth in the mind of the hon. member.

I should like to answer one point of the hon. Member for the Aberdares. I was surprised at one statement when he said that he thought high officials of Government should meet the unofficials and speak freely their mind to them. Well, I do not know which high officials the hon. member is referring to, but, speaking for myself, I can assure him that I would be delighted to meet him at any time in any place and speak with him on any subject and tell him what I thought of it and him (laughter).

That, hon. members, I think accounts for every subject that has been mentioned in this debate. There is one thing though. His Excellency has just reminded me that I have said nothing about the Local Civil Service Committee. I am extremely grateful to His Excellency. It is not the fault of the secretary that the committee has not reported yet. We are a very difficult committee in that we are all extremely busy people, but despite all that and despite the visits various members have had to make all over Africa, certainly all over Kenya. The report is in draft and I hope that the final meeting will take place on Tuesday next week.

I am now coming to the amusing and mischievous speech of the hon. Member for Ukamba. I had hoped that as a result of his sojourn in the wilderness when he was hawking his political treasures from the coast to the capital without success and then finding a happy resting home amongst the simple and honest Ukamba, he would have learnt that vulgar abuse either of races or of classes or of indi-

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viduals would take him but a very, very short distance in the affairs of life.

I was particularly interested when he seized this opportunity to have another slash at the Civil Service because I remember not very long ago when he was courting the district known as Nairobi South he was bitterly offended because someone, presumably among us, was spreading a gross calumny that he had said something derogatory of the Civil Service with regard to *slafu*. I was assured by the hon. member that there was not a word of truth in it and that he had been misrepresented merely to do him harm in the constituency. Well, I do not know whether that was so or not, I was not here when it happened, but it will be extremely interesting to hear the hon. member explain away his simile of the mealybug if ever he courts that district again.

MAJOR GROGAN: Your Excellency, my explanation was not in the least offensive; it was never intended to be nor was it implied.

MR. HARRAGIN: I am sure that there may be many explanations. But nonetheless, it was very interesting to me. Not only did he insult the Indian race, though perhaps they brought it on themselves for, if the hon. Mr. Isher Dass will forgive me, he rather asked for it earlier on in the debate, but he also insulted the Civil Service. And how the Civil Service asked for it I do not know; perhaps we will hear in due course. But I am grateful to the hon. member if he can give me something that I can hang on to as an excuse for the remarks he made.

He suggested either that it would be correct for me, or that he knew that I would, I do not quite remember which, to dismiss his remarks as the senile meanderings of a silly old man. I cannot express my feelings better and I will leave the matter there.

Now, if I may, I will turn for a moment to the specific subjects dealt with by the hon. member. They are equally interesting. He started off with a dissertation about Makerere. He has been complimented by the hon. the Director of Education by being answered. I personally would merely have said that as the Makerere debate was finished two days

ago the hon. member's speech with regard to that was more than twenty-four hours out of date. We turn now to some complaint, equally irrelevant about the way the hon. member was treated by the committee that was considering income tax. Apparently they disguised the Commissioner of Income Tax as a veterinary officer in order to get the hon. member to come and give evidence and then they proceeded to allow that wicked Commissioner of Income Tax to ask the hon. member some extremely awkward questions. I was there and I can say that my heart bled for the hon. member. Whether it was right or not I am not going into, but I am not at all surprised that the unfortunate clerk was called to book two or three days later when the hon. member took serious exception to seeing in black and white what in fact he had actually said. Again, with regard to the injustice of this, I can understand the hon. member's feelings just as I understand the feelings of other witnesses being cross-examined to their great disadvantage by an expert before the gentlemen sitting on the jury.

We then come to three most interesting statements made by the hon. member. You will remember during the debate that various people had been complimented for the part they had taken in getting rid of that £5½ million loan.—The Secretary of State, the Governor, the Financial Secretary, Major Cavendish Bentinck and various others. I heard to my surprise that this was all wrong, that none of these gentlemen had very much to do with it, and that our thanks were entirely due to the hon. member and perhaps one or two other ancients whose names are not mentioned, but who apparently by some means or other managed to get rid of that loan.

His next statement was that Uganda has to thank the hon. member that they too have not got Income Tax! Thirdly, and I am really not sure that this is not the most ludicrous he finished up by saying—and I think he was speaking to me particularly at that moment—that he had intimate knowledge of the various documents that one would find on a certain day on the chancellor's table in every single country in the world, except the tuppenny ha'penny ones! Well, Sir, it is



[Mr. Harragin] difficult to know whether the hon. member is attempting to pull our legs when he tells us these things. If that is so I am prepared to laugh with him whether he calls it a smile or a snarl. But if the hon. member really believes these fantastic dreams then I can assure you he will believe anything, and if he will believe anything it is not a case for lawyers to answer but some other profession (laughter).

For obvious reasons, Sir, it is impossible for Government to accept the motion as it stands, and I hope that I have satisfied the hon. mover that it would have been impossible to put certain things into Your Excellency's speech as things stand at the present moment.

**LORD FRANCIS SCOTT:** Sir, I shall not take up very much time in replying to this debate because hon. members have mostly answered each other.

To take the first point, the hon. Mr. Isher Dass again tried to interpret what was in my mind and quite frankly, I cannot reciprocate, because I never have the slightest idea of what is in his mind. But he did suggest that he could not think of any reason why this motion was moved in Council unless it was that I wished to intimidate you, Sir, or work some publicity stunt for myself. I perhaps know you better than my hon. friend and I am not such a fool as to think that I can intimidate you either in Council or anywhere else. As regards publicity—I have many faults but up to date I have been usually accused perhaps of not doing sufficient publicity. The hon. Indian members, not only Mr. Isher Dass but his colleagues also, seem quite incapable of understanding the proper functions of the Legislative Council and particularly of the members of this Council.

It is not only our duty to pass the necessary Bills put up by Government, it is our duty to give an opportunity for this Council to discuss matters which are of great interest and of moment to the people of the country in which they take a deep interest. And it is our duty to move resolutions to enable these subjects to be discussed, not only that we on this side of Council shall have the opportunity of stating our views, our fears and our wishes, but that also, the hon.

members on the other side, who have to waste a great deal of their lives sitting in this Council not being allowed to speak, should have the opportunity of putting forward their views also.

This debate has taken a long time but it has not been altogether wasted for it has brought out a very great deal of useful information, and I believe it has served a very useful purpose. One or two of the hon. Indian members have criticised the length of time it has taken. I suggest that if they wished to have shortened it they should have remained in their seats instead of getting up and saying nothing which contributed to the value of the debate.

There is one thing which the hon. Indian member Mr. Isher Dass said which I must challenge. That was that I had made an attack on the Civil Service—and he constituted himself as their champion! Well, I do not think that anybody who listened to my speech could say that I made any sort of an attack on any single individual in the country. If I did, Sir, I am very sorry because I did not intend it. What I did say was that the trouble in this country was due a great deal to weakness of policy and vacillation. Now, Sir, I do not consider that that was an attack on any single individual. I believe we have in this country an extremely efficient lot of administrative officers, but I do submit, Sir, that if these officers are to carry out their duties to the best of their ability they must not only know exactly what Government's policy is which they are to carry out, but they must know that when they do carry it out they are going to be supported up to the hilt by those in senior positions above them.

That, Sir, will be agreed to by everybody. And I think the one reason apart from all others why there is this difficulty about having a firm policy is this—the constant change of personnel amongst those holding senior positions in this Colony. If you think of it, during the last 18 months there have been four changes in the position of Chief Secretary; three different gentlemen have been holding the position of Chief Native Commissioner; and at the present moment we have three out of the four Provincial Commissioners acting for others on leave. All these

[Lord Francis Scott] changes mean that other officers further down have to move up to take the place of others, and the result is these officers do not get the slightest chance of staying at their proper jobs and knowing the people we think they should. This is one of the chief reasons why there is this weakness in the administration of the country.

Coming now to the speech of the Acting Chief Native Commissioner, I think we all welcomed the very frank way in which he spoke and the clear statement he made. But I do not think that I have ever yet had a real answer to my question as to what was the definite policy of Government with regard to destocking. We were told a great deal else and with regard to the land question I was glad to hear him say that he believed they were going to be in a position of having a settlement for all time, and that it would be a final settlement. I only trust that he is correct. I also believe he is quite justified in saying, as he did, that it would be a just and even generous settlement.

I must associate myself with the remarks made by my hon. colleague on my left (Major Cavendish-Bentline) with regard to what he called "injustice to right-holders". Eight years ago it fell to my lot to have to give evidence before the General Committees of the House of Parliament in London on behalf of Kenya, and before doing so I tried to fortify myself with as much information as I could, and I did try to go into the question of the Kikuyu as thoroughly as possible.

I think the facts, really, putting it shortly, are these. The Kikuyu bought the hunting rights from the Wandorobo. In those days I think the idea of actually owning the land was foreign to their ideas; that has grown up in more recent times. Later on, when settlement began in this country, a certain amount of land was taken from some of these Kikuyu and given out for settlement. At that time wherever it was freehold land so given, all the natives were supposed to have been removed from it and given compensation. Subsequently, natives were found to have come back on some of this land, and I do not think there was any definite proof as to whether they were removed and given

compensation originally and came back afterwards, or whether they had been overlooked, because the records seem to be somewhat indefinite. That has given rise after years have passed by to a very large increase in the number of these natives who claim certain rights on this land. Now, it is proposed to give them other land in lieu and compensation and that is all part of the law (The Native Lands Trust Ordinance) which was recently passed in this Council. So I believe that what was said by my hon. friend opposite is true and that in dealing with these natives they are being given a just and generous settlement and, as a result, I do trust that this will be finished with during this year and that this question will be done away with finally and altogether.

With regard to the new procedure in the Kamba Reserve, we were told that it has gone on extremely well and that already one-fifth has been fenced and that this has taken six months. By a simple sum in arithmetic it will therefore take 2½ years to fence in the whole of the reserve! So, are we to wait 2½ years before we can go on with any further destocking? I quite agree with the hon. the Acting Chief Secretary that for the moment there is no over-stocking in the Kamba Reserve because the excess cattle have been moved out to some other land right away as far as Embu and other parts of the country adjacent. In fact, the problem still remains and that country has to be re-conditioned and also in 2½ years we shall have the natural increase of that stock and so the problem will be greater than it is to-day.

I do not propose to go into any detail on this question of land tenure for we have had a very interesting exposition on that subject. But there are two points I should like to make. I think I am correct in saying—we have the authority of Lord Hailey—that whilst this individual holding of land may be inevitable, we should not encourage it. It may be that we cannot stop it, but Lord Hailey, who is accepted as an authority, has warned us not to encourage it. The other point is, I think I am correct in saying that the hon. the Provincial Commissioner for Nyanza talked of "ownership of land" when I think the real word is "user".

MR. FAZAN: Your Excellency, may I correct myself and say "rightholder".

LORD FRANCIS SCOTT: That is all I wish to say on that subject.

My hon. friend the Member for Mombasa again spoke of the importance of encouraging tourists and therefore, the necessity of encouraging the construction of better roads. I should like to make this Council realize that our policy over roads has had this effect, I am not trying to make a joke, but that great African, Cecil Rhodes' ambition was to have an all-red route from Cape to Cairo. We have got that, but owing to the infamous state of the roads in the Colonies and Mandated Territories controlled by the British Government we are forcing tourists to leave British territory to go over Belgian territory when they should keep on British territory all through, from north to south. And that, Sir, is a great indictment of the policy of the British Government at home. Surely to goodness, if Belgium and Italy are able to have splendid roads in their territories, Great Britain, with all its wealth, should not be content that our main trunk roads should still remain earth roads hadly cut up as soon as we get any rain!

The hon. the Financial Secretary tried to put up a case for the Secretary of State and the Colonial Office with regard to loans. He even went so far as to take the blame on himself. Well, Sir, I know enough of what has gone on to know that he had no reason to do that at all. He also stated that this was the constitutional procedure, and the hon. the Acting Chief Secretary said that as long as we were under Crown Colony government we have got to put up with this procedure. Well, I suggest that whatever may be done in other Crown Colonies and in the municipalities in England—I think they were quoted—this Colony has advanced to a position that we should get some form of constitutional advance and that that advance should take the form of less interference with control over finances, which does not raise any racial question of other similar matters. I submit that we should have an advance in that way and should not be content to sit down under this Crown Colony system of government even if it is the constitutional procedure.

Actually, we were told by the hon. the Acting Chief Secretary that the Governor must work hand in glove with the Colonial Office as this is the only possible way under this system, and that it would be very anomalous for the King's representative to disagree with the King's Secretary of State. Now, I must disagree with that. Many years ago I was serving in India and the Under-secretary of State at the India Office, Mr. Edwin Montagu, made a speech in which he described the Viceroy of India as the Secretary of State's agent, and that raised a furore in India as you can very well imagine. And I suggest that our Governor in this Colony is also not an agent of the Secretary of State in the Colonial Office. He is the Governor of this Colony and the representative of His Majesty the King. Further, Sir, take Southern Rhodesia—they have self-government though they do not count as a Dominion; and they have a constitution very similar to ours—there is His Majesty the King at the top, and then the Secretary of State for the Dominions, they have their Governor, unofficials with a Prime Minister, and they have their officials such as we have, very many of whom are recruited from Great Britain in the same way as ours. We have not reached the same stage as Southern Rhodesia but we are the Colony which is nearest to them in that way.

To come back to the hon. the Financial Secretary—he said that negotiations with regard to developmental proposals were started some time ago and consideration was given to them but it took time and at home they were turned down on expert advice. Now, Sir, that is exactly what we are complaining of: We know these negotiations were started a year ago; we know that consideration of them took time; and we know that they were turned down on expert advice, but I submit that they were turned down wrongly on that expert advice. But we also know that some months ago we could have raised a loan at 3½ per cent but now we cannot. At the moment it will have to be 3½ per cent and by the time we get any loan it will probably be over 4 per cent—and that is why we are complaining about these methods.

[Lord Francis Scott]

I was glad to hear him say that the Land Bank now was not held up for lack of funds. A short time ago, I understand, it was. If people try to make out that the Land Bank is not a sound institution I protest. It has paid its way and has been able to build up a small reserve, and all the commitment it has to Government is the sinking fund which of course is money not expended but invested. And recently Government ruled that there should be a rebate of 1 per cent on the interest paid by borrowers from the bank under certain conditions. That would not be done by the cautious body of gentlemen who control the Land Bank if they were not satisfied that it was in a very sound position!

My noble friend the representative for Kiambu with regard to the question of investing local funds mentioned: "in spite of the reluctance of the hon. the General Manager". I think I can say that the hon. General Manager has not the least reluctance to invest railway funds in any good security provided by Government. He is only too willing to and I should like to thank him.

EARL OF ERROLL: Your Excellency, on a point of information, I did not say any such thing. I merely mentioned the importance of being able to use the money in the railways.

LORD FRANCIS SCOTT: I have got it written down.

The next point I wish to come to is the point raised by my hon. and gallant friend the Member for Ukamba with regard to Makerere. A good deal has been said about this and I think the hon. the Director of Education ascribed words to the hon. member which I never heard him give utterance to. As I understand it, he was dealing with the question of the financial position and the disproportionate amount of money given there in spite of other matters which required financial support, and especially he referred to the staff list which for the year 1938 accounted for £13,300. This, plus hidden emoluments, would come to nearly £20,000, and so our contribution would

be eaten up in 2½ years. Now, I understand that the figures refer to the old Makerere College! Well, as the new Makerere is vastly larger than the old Makerere, frightened as I was by the old Makerere I am still more so to-day. For, as far as I can see, if the staff cost that amount of money, the £90 as given by the hon. the Director of Education two days ago as the cost of one pupil per annum will be vastly exceeded.

The hon. Dr. Kirve, for whom I have always had a very great respect since we served together on the Liquor Licensing Board when he was a strong advocate of free drinking throughout the 24 hours of the day (laughter), though I must say that I was disappointed in him to-day, seemed to think it necessary to drag in the racial question. It really had nothing whatever to do with the motion before Council and was quite unnecessary. I was going to correct him on the question of what he described as "squatters" by which, I suppose, is meant "resident native labourers." Of course, Sir, as has been pointed out, there is no question of their being driven away. With the increase in pyrethrum there is an enormous demand for an increased number of squatters. The hon. member also took me to task when he said that if every loan suggested in this Council was to be approved without any check from the Colonial Office it would be very disastrous. I certainly did not suggest that. What I did suggest were loans which had been approved and supported by His Excellency the Governor on the advice of Executive Council—they are the loans to which I was referring.

With regard to the small matter of the Zanzibar debt I am not sure that the answer given by the hon. the Acting Chief Secretary quite made the position clear. I believe I am correct in saying that the £200,000 is shown every year in our Estimates of Expenditure by the fact that we are paying £6,000, that is, at the rate of three per cent?

MR. LOCKHART: Yes, three per cent.

LORD FRANCIS SCOTT: There is no question of it being forgotten.

[Lord Francis Scott]

The hon. the Acting Chief Secretary talked about lawlessness and tried to make out that it was very small and he quoted two instances. I think everybody knows that there have been innumerable thefts of cattle, especially by the Lumbwa, all over the country. That I would describe as an instance of lawlessness and I think if he asks some of his Provincial Commissioners they could give other instances of lawlessness and indiscipline which were not referred to in this Council. At the present moment the fact is that there is lawlessness and the reason why there has not been an increase in the number of cases before the courts is, as has been suggested, because the criminals have not been caught. I do not know quite where the division comes between serious and other crimes. Further, he stated that there probably will have to be an increase in the estimates for the police and even the Administration. Undoubtedly, I think, there will have to be increases in the police establishment in this country—there have been demands for it all over the country—and I do not think Government can resist this.

We have not made a special point of this increase in the debate because we believe that the better way is to deal directly with the Government and Police Department so that some concrete scheme or plan can be adopted. It is almost inevitable that this will be necessary and I do suggest that the need for that is the result of what I have previously described as weak administration.

With regard to the hon. the Acting Chief Secretary's attack on my hon. and gallant friend the Member for Ukamba, I am not going to intervene in that in any way because, although he may be a "doddering old fool"—is that what he said?

MAJOR GROGAN: "A senile and silly old man."

LORD FRANCIS SCOTT: I know that there is still sufficient vitality in him to protect himself.

The motion was put and negatived.

Council adjourned until 2 p.m.

On resuming:

### SETTLEMENT COMMITTEE'S REPORT

MOTION

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move the motion standing in my name:—

In view of the announcement made in the Communication from the Chair, that the recommendations of the Settlement Committee, which was appointed in accordance with the decision taken by Legislative Council on 11th August, 1937, have been accepted in principle, Council resolves that every effort be made to implement these recommendations with the least possible delay.

In view of Your Excellency's reference to the Report of the Settlement Committee in the Communication from the Chair, it may be asked why European Elected Members considered it necessary to introduce this motion at all. Our objects are, in fact, five-fold, and I would like to begin by explaining the five reasons which prompted our action.

In the first place, we felt we should again stress the importance which the whole European population attaches to this question of "increased white settlement". Looking ahead, we regard the problem of increasing the European population at an early date as being the most vital problem which faces the country to-day. This was stressed in the debate which led to the appointment of the Settlement Committee, and we felt we must reiterate in unmistakable terms that our opinions in this regard have not changed in any shape or form.

Secondly, we wanted to crystallize the recent acceptance in general terms of the recommendations of the Settlement Committee's Report by Government. In other words, we wanted to place on record in Council the fact that Government is henceforth definitely committed to a vigorous policy of encouraging white settlement in every possible way, so that we can relegate the half-hearted and, on some occasions, possibly openly obstructive policy, or attitude, which has been manifest in the past, to ancient history.

Thirdly, we wanted to try and ensure that there will be the least possible delay

[Major Cavendish-Bentinck] in bringing into being the proposed settlement schemes. These will require finance, and we felt that no time should be lost in applying or taking the necessary steps to apply for finance. I am hoping that Government's reply to this motion can be coupled with a definite assurance to the effect that something has been done in this regard.

Fourthly, we are also hoping that in the meantime, by means of this motion, we shall be able to obtain Government's agreement to the allocation of some modest sum of money to enable us to establish forthwith the preliminary organization which is essential to the schemes. To this I will refer again in a few minutes.

Lastly, we wanted to provide an opportunity for Members of Council to criticize this report and to offer suggestions. Now, it so happens that I am the only person in Council who sat on the Settlement Committee throughout its deliberations. I will try to reply to any questions raised in the debate, or to criticisms in regard to the recommendations, and, of course, we shall all welcome further suggestions. These, Your Excellency, were the five reasons which prompted us to put forward this motion, and now that Government has been enlightened as to our motives, I sincerely trust that they will find themselves in a position to accept this motion without reserve and without hesitation.

The Report itself is a very full one, and fairly precise explanations are furnished with regard to the conclusions reached and the recommendations which have been made. In the event of any member not having read the Report, he can find a summary of our recommendations clearly tabulated on pages 4, 5, 6 and 7. I therefore feel that I should be merely wasting the time of Council by embarking on a wearisome exposition, because members can read in black and white these recommendations much more clearly than I can express them.

This is obviously an occasion on which one should have very little to say in proposing the motion, but I may have more to say in reply to the debate. I only propose to refer to two specific matters now.

My first reference will be to paragraphs 130 and 131 of the Report itself. These deal with Crown Land grants and we say that:

"if our scheme for Government-assisted purchase of private land is accepted, we consider that the ordinary terms for the alienation of Crown land as regards the period allowed for the payment of stand premium should be amended and brought into conformity with those proposals."

As members are aware our proposals are that subject to certain conditions, persons can apply for assistance, financial assistance, for the purchase of privately held land, the money to be repaid over a specific period of years, and we felt, naturally, that if that applies to privately held land it should equally apply to unalienated land. There will be difficulties under the present provisions of the Crown Lands Ordinance which may require amending.

We go on to say that:

"evidence was submitted to the effect that the existing revisable rent conditions of the Crown Lands Ordinance are inimical to settlement and act as a serious deterrent to the provision of capital for land development. In view of his official position the Chairman was unable to express an opinion on this matter. With this exception the Committee was unanimously convinced that the evidence was justified. Some members of the Committee favour the freeholding of land; others consider that the objection would be met by adopting a system of perpetual leases with peppercorn, or at any rate, non-revisable rentals. We make no recommendation on the subject, however, as we understand that Government has undertaken to appoint a committee to inquire into these subjects. As long ago as 1922 the Land Tenure Commission recommended the freeholding of land titles: in 1932 an assurance was given by Government that an inquiry would take place and that assurance has been renewed on subsequent occasions."

Now, Sir, on 9th August, 1937, I asked a question in this Council with reference to a reply given by Government in 1936

[Major Cavendish-Bentinck] to a question by the hon. Member for Nairobi South as to when Government intended to appoint the Committee to consider and report on the conversion of leasehold to freehold titles in respect of land held in townships and elsewhere. I asked how much longer the Land Department would be fully occupied with work in connexion with the Land Commission Report. The answer was to the effect that the Land Department was still very heavily engaged with work in connexion with the Land Commission Report.

The fact remains that the question has been raised repeatedly for something like seventeen years, and I hope in the course of the debate that we will have an assurance from Government that the promised committee will at last be appointed, within the next few months, because I, and all the European Elected Members, consider that this is a subject which urgently needs investigating.

That is my first point. My second reference is to paragraphs 181 and 182 of the Report, and this is in connexion with the arrangements which are to be made in London as regards settlement and settlement schemes. In the Report we recom-

"That it is essential for the extension of settlement that a full-time Settlement Officer be maintained in England. He should have a practical knowledge of farming, know the country as a whole, have had recent Kenya experience, be able to discuss farming with farmers and place before prospective settlers a true and attractive picture of what Kenya has to offer."

It was suggested that someone of the kind would succeed Colonel Knaggs, who, as we all know, for the past four or five years, has been Kenya agent in London.

At this stage I think I should like, and I am sure that many others who have had experience of his work, would agree, to pay some tribute to the work of Colonel Knaggs for us in London (applause). He has been much criticized, but he had a very difficult task, with perhaps not much help, and he certainly had to contend with difficult conditions. Having done so, I would like to inform Council that hon.

members on this side and members of the Kenya Advisory Committee have rather changed their views in regard to this appointment. I particularly wish to stress that because an announcement was made in the Press a short time ago which was, perhaps, unintentionally a little misleading.

It will be within knowledge of members that an advertisement appeared asking for applications from persons holding the qualifications laid out, with the idea that someone would be appointed as settlement agent, settlement officer, Kenya agent or any title one would like to give him, in London. As a result a very large number of applications was received and it was the duty of the Committee to go into these applications—which we did. We came to the conclusion that if we were going to start these various settlement schemes properly, so that they would have a chance of being successful, that the ground work alone would be sufficient to fully occupy such a person as we have discussed just now.

We also had evidence of the very large amount of ordinary routine and other work which has, at present, to be done by the Kenya agent, and I think we unanimously came to the conclusion that it would be impossible for one man to fill both positions. The intention was, therefore, more especially in view of the extra work, and very considerable amount of work which has been occasioned by the European situation as regards the refugee problem, that it was highly desirable to try and keep in the office the Kenya agent, who had had much experience of this side of the work. We therefore felt that we should, if it were possible, try to persuade Colonel Knaggs, who, I know, was not very anxious to continue his present duties, to give us the benefit of his experience for a further period in view of the European situation. Therefore, we asked Colonel Knaggs whether he would, and I understand that he has agreed to carry on for a further period.

It was not our idea that we should not, in addition, appoint as and when the Report was accepted, a settlement officer to fulfil the duties laid down in this Report, and we visualized appointing such

[Major Cavendish-Bentinck] a person to work and collaborate with Colonel Knaggs in London, who should start the preliminary work necessary for the inauguration of these schemes. We consider it very necessary to have such a person and our proposal is if money was forthcoming for the settlement schemes, that funds should be made available for salary, travelling allowances and so on out of such sums as were allocated for the scheme.

As I said in sponsoring the motion, there were five reasons which prompted our making these recommendations. The fourth reason was the hope that we might get an assurance that some finance would be made available so that we could begin all this preparatory work this year. I would like to ask whether, if we can induce Government to agree to this, it would be necessary to pass some similar motion in this Council as was passed on the occasion when the subject of Makerere came up the other day, so that a small sum could be advanced from some future loan. If that is the case, members on this side of Council would be prepared to move such a motion, or to add the necessary proviso to this motion by way of an amendment.

These, Sir, are the only two subjects to which I am going to make specific reference. As I say, there are innumerable recommendations, and if there is any question that I can help in answering—I have no doubt that Government will answer most of them—I will be only too pleased to do so.

Lastly, Sir, I would like to finish on perhaps a different note. I would like to express the hope that this, which after all is a serious debate on what we consider a fundamentally important developmental problem, will not be allowed to deteriorate into a vitriptic racial diatribe. To urge this I would like to close by repeating the appeal for reason and moderation which I made at the end of my speech in this Council when I moved that the Settlement Committee, whose report we are to-day discussing, should be appointed. It will be found in the 1937 Hansard, I think in Volume II, and I said at that time:

"For some unknown reason the hon. members who represent Indian interests

chiefly picked on the hon. Member for the Coast as a target for their broadside. I cannot understand why, as it so happened that the Hon. Member for the Coast yesterday made a particular point which I want to stress now, that in the development of this country everybody, every race, has its part to play.

Actually, and I am perfectly frank, I moved this motion entirely from my own point of view, from the European standpoint, because I think it would be for the good of the Indian community, for the good of the native community and for the good of the country as a whole, to vastly strengthen European settlement in that part of the country which we have been building up as a reserve for that particular purpose.

But I have never said that there is not room also for Indian settlement because there is. The only trouble is that the opportunities given have not been taken advantage of. If they want assistance, if they want an inquiry, I shall be the first to let them have it and shall do my best to assist them.

I think it is the greatest pity in the world, when one brings up a thing from a particular point of view, that other races should have to jump on it and oppose it, and I do not believe that does any good to anybody.

The fact remains, whether it is politic or not to say so, that in my opinion the development of this country still primarily rests on European endeavour. It may be a bigoted point of view, but it is mine, and I think that on the whole, Europeans in this country have given more than a fair deal to other races. If we are going to advance, we must advance with the European leading, but all three races hand in hand, and there is no question of racialism whatever in this particular motion."

I made these remarks in 1937 and I submit they are equally applicable to the circumstances of to-day.

Your Excellency, I beg to move.

MR. NICOL: Your Excellency, I welcome the opportunity of seconding the motion proposed by my hon. and gallant

[Mr. Nicol]

friend the Member for Nairobi North. I welcome it because we in Mombasa realize that one of the most important lines of development in this Colony is settlement; another reason is because in November last I criticized the delay in the production of the Report. I have no hesitation in saying now that the document produced is one for which it has been well worth waiting, and I hope that the gentlemen responsible for this document will not mistake my remarks as being patronizing when I say that the Colony should be very grateful to them for the time and energy spent in its production.

Like all development schemes this scheme needs money, and I am sure we are all very grateful for the information accorded us this morning by the hon. the Acting Chief Secretary. If I heard him correctly, he indicated that Government was actively investigating methods for raising a loan, and I can only hope that it will be a big one. I sincerely trust that no delay will occur in implementing the recommendations of this Report since Your Excellency has accepted it in principle.

I do not propose to go into details but I want to say this: that while advocating assistance to all new settlers I express the hope that those old settlers who have borne the burden and the heat of the day in the past will not be forgotten.

MR. GHERSIE: Your Excellency, I consider that the members of the Settlement Committee are to be complimented on this Report. It is very comprehensive and discloses that a great deal of thought has been given to practically every aspect of farming in the Colony and I consider it to be a valuable document to potential new settlers. In the past we have bitterly complained in this Council at the long delay in the production of the Report and I think that perhaps now the Settlement Committee can be justified in rebuking us for not having the necessary finance available for implementing their recommendations.

I do not propose to take up a great deal of the valuable time of Council, but I feel there are one or two criticisms I must

make. The first one is with regard to page 2, paragraph 14, which states:

"Educational facilities are now such that anxiety on this account may be banished. A note on this subject by the hon. the Acting Director of Education appears as Appendix V."

I do not propose to read Appendix V as I am sure hon. members present are perfectly conversant with the contents of it. But I do suggest that it may read very well to those intending settlers who have private means with which to send their children to private schools though it would be most misleading to these settlers who will look to Government schools to accommodate their children. There is insufficient accommodation for the European children of those resident in the Colony at the moment, and were it not for the fact that of the 2,000 European children at present receiving education in the Colony at the moment 900 of whom are accommodated by private schools, the position would be infinitely worse.

My second point is the Group Settlement Scheme on page 67, and with your permission, Sir, I would like to read the following extract:

"One of the problems which must be faced is the existence in the Colony of a large and increasing number of Kenya-born people, born on the land, whose natural bent is towards farming but who are at present landless. These must form a valuable adjunct in the development of the Colony, in that they must know how best to deal with local conditions and the type of land which their fathers farmed before them and we feel that everything possible to assist these people should be done. Many possess a few farming implements and cattle, farming experience of varying quantity and quality, but little or no capital, and the problem created by their presence, if further neglected, will become increasingly difficult of solution. If we refrained from indicating the lines upon which we think partial solution of the problem can be found we should consider that we had failed in our duty."

Up to that point it is excellent, but reading on we find:

[Mr. Ghersie]

"We are greatly indebted to Colonel R. B. Turner, the Commissioner for the Union of South Africa, for a very full and careful investigation made by him with a view to discovering the extent of the problem. This shows that in order to meet the demands of these people provision would have to be made for at least a hundred, some with families. We cannot close our eyes to the fact that in addition to these landless adults there are several hundred children who may be seeking land in a few years time. We would, however, take the opportunity of repudiating the view which we find to be commonly held that it is the obligation of the Government to provide land for all who want it. We consider that in general the proper way to begin a farming career for those who wish to be on the land and cannot afford to purchase, and develop land of their own is in the employ of those who can. In Schedule 5 of Section V, dealing with farm management will be found an estimate of the position of the employee."

Now, Sir, this document comprises approximately 130 pages. But we have less than one page devoted to Kenya residents or Kenya born. And I submit, Sir, that this is a pathetic attempt to sidetrack the issue. In the first place, how many farms are there requiring farm managers and were there a great number do you honestly think for one moment that they would be able to absorb more than half of these people. Here we have people born and bred on the land and to quote the Settlement Committee's actual words:

"These must form a valuable adjunct in the development of the Colony, in that they must know how best to deal with local conditions and the type of land which their fathers farmed before them."

Sir, I ask Government to make provision for these people before it is too late. Provision should be made to acquire Crown land and thus avoid the problem which is bound to arise in the future if these people become landless. What is important is that they will not require financing on the extravagant scale set out

in this Report and they will become an asset and not a liability to this Colony.

If we turn to page 77 you will appreciate my contention that the Settlement Committee has not given sufficient thought to this problem. This deals with Agricultural Education and it sets out a:

"Rough Estimate of Preliminary Expenditure Required to start a Farm Training School of 2,000 Acres on Lines Proposed in Memorandum. Based on making a start with 15 pupils from Overseas and 5 from Kenya."

I ask, Sir, why this suggested allocation? Why not 15 from Kenya and 5 from overseas?

To conclude, Sir, I submit that we must put our own house in order before, or at any rate simultaneously with, the introduction of this scheme, and in that connection I would like Government to bear in mind three particular points:—

1. The provision of ample facilities for Kenya-born people for settlement on the land;
2. The financial rehabilitation of settlers at present heavily burdened with debts to Government; and
3. The provision of financial support to those farmers who have lost their crops through locusts and so enable them to continue farming.

I am unaware if Government is satisfied with the measure of co-operation extended to them by the Uganda Government during the recent locust campaign, but in that connexion I would like to suggest for Government's consideration an investigation of the position with regard to an international control board, and the introduction of a 'locust policy' between the territories of Kenya, Uganda, Tanganyika and the Sudan.

I support the motion.

DR. WILSON: Your Excellency, I find it very difficult to know how to approach the subject of this motion, because this Report of the Settlement Committee has never previously been considered or discussed by this Council, yet we are now asked to "implement its recommendations with the least possible delay". I am rather encouraged in speaking by what the hon.

[Dr. Wilson]

mover said, when he asked for criticism. I hope that any criticism that I may offer will not be considered "vitriolic diatribe"—it certainly will not be "racial".

Speaking in the interests of the natives, I have one or two points to which I wish to refer. I am sorry I happened to be away from the country when the 1937 debate occurred. In my opinion this Report is most controversial: in fact the word I should use is "provocative". It contains innumerable statements which immediately challenge question and criticism. How can we then agree that it must be put in no effect at once? Your Excellency said the Report had been approved by Government "in principle"; we want to know how far that approval in principle extends to the detail of the Report, because it is just one mass of detail.

The principle of the Report, I suppose, can be said to be contained in paragraph 8. There are four statements there which the Committee says "in our opinion are beyond question", but which I think contain very questionable matters.

The first section, (a), says:

"That the evidence and experience available indicate that the climate of the Kenya Highlands and the steadily improving conditions prevailing in the Colony are such that settlers can be invited with complete confidence to make their homes here."

I do not know whether the word "settler" was purposely used instead of "farmer"; or whether the words "make their homes" are purposely used instead of the words "make their living". To say that European farmers can be invited with complete confidence to make a living here—that, I think, would be most questionable.

Paragraph (b) says:

"That it is of vital importance to the further progress of the Colony that the number of farmers be increased and that the land be more effectively occupied and development intensified, and that Government expenditure on such an objective is justified."

Here, again, the word "farmers" must mean European farmers. "Vital" to my

mind, means a matter of life or death. It may here have a wider meaning; but I should say it is questionable that the life or death of the Colony depends on an increased number of European farmers.

We can take paragraph (c) as approved. Paragraph (d) says:

"That so long as labour is properly organized, housed, fed and paid reasonably, we do not anticipate any labour shortage."

I do not want to be too meticulous in criticizing the wording; I suppose it is intended to read: "properly organized; and housed, fed and paid reasonably." I do not know what the expression "properly organized" means; it has rather a sinister sound. "Housed, fed and paid reasonably" may mean anything. Apparently the Committee did not attach much importance to that proviso, because nowhere in the Report do we find provision for reasonable housing, feeding or payment of native labour.

If we go on to the body of the Report, there are recommendations which everyone would probably accept, for instance, the question of developing and improving the water supplies: that is to say, provided the proposals for the development of water supplies in the Kenya Highlands, or rather the settled areas, are not to be at the expense of those being carried out, or proposed, in the Native Reserves; that is to say so long as the improvement and development is to be carried out throughout the Colony as a whole. Obviously, the need for Government assistance in improving and developing water supplies in Native Reserves is greater than on European farms.

But there are many other recommendations which are controversial in the extreme, and it is the impossibility of taking these recommendations and discussing them in detail that makes it so difficult for me to know how to take part in the debate on this motion. Personally, a study of this Report leaves me completely unimpressed—some of the experts may probably tell me I am no judge at all and am not in a position to criticize the Report—but I would remind members of Council that I have watched European farming in East Africa and watched it closely, for twenty-eight years, and I

[Dr. Wilson]

maintain that I have some grounds for expressing an opinion on European farming.

There is one point arising out of the Report which I must refer to again: the question of native labour. Three kinds of labour might be possible for new farmers. It might be contract labour, not a suitable sort of labour for farming. Casual labour might serve in the immediate neighbourhood of the Native Reserves. But resident, or squatter, labour is probably the most satisfactory form of labour for farming; the resident farm labourer with a wife and family and his own home on the farm. We know perfectly well the difficulties and disadvantages of squatter labour at the present time. They are so well known that there is really no object in my mentioning them.

Now if these proposals go through, that is to say, the provision of a quarter of a million pounds, I suppose we may suppose that might mean the settlement of about 200 farmers. What would be the position as regards labour? We can take it—I have every reason to believe it is correct—that the average European farmer requires at least twenty-five adult Africans to help him to make a living. Suppose we say there would be needed about twenty resident labourers for each new farmer, twenty of these adult African squatter labourers. That means we are expecting four thousand new squatter families.

Now, Sir, I maintain that the resident native labourer in Kenya at the moment is the most backward of all our races. His children are growing up without education, generally speaking, and he himself is removed almost entirely from tribal and Government control. I submit we cannot agree to a proposal to increase the number of the squatter families by 4,000 unless some provision is made for improving the conditions in which they and their families are living.

Lastly, a point which I think requires most careful consideration by Government, is the risk that this scheme may land us with a number of new farmers with insufficient financial reserves to carry them over a bad year, or a series of bad years. If bad times come again, as of course they must, is there not a chance

that we shall find a further demand for financial assistance from Government? And that demand or claim will be made with greater force than ever for the reason that the new farmers will be able to say that they came to the country on a Government approved scheme. I shall probably be called a miserable Jeremiah for predicting such unpleasant things, and so I should like to support my opinion by quoting Lord Hailey's "African Survey", Chapter 20, Part 2, the European Economy—Section (c) Southern and Eastern Africa as a Group—on page 1395. Lord Hailey says:

"But the accumulating weight of evidence would seem to inspire doubts as to whether European agriculture will do more, even in good times, than make possible a very modest living as a return for hard work and the incurring of grave risks of loss of invested capital, and whether in bad times it must not prove a recurrent charge upon the revenue of the Governments. Even in more normal times the support given to farming constitutes a burden directly or indirectly upon the incomes of those concerned in mining or other enterprises."

Now, Sir, in Kenya we have practically no industrial concerns with the exception of gold mining, and even that is excused any direct contribution to revenue. If this country is so entirely dependent on agriculture, how can agriculture itself be subsidized?

In conclusion, I mention as a possibility that one of the reasons for this urge for closer settlement is a matter of Imperial politics. Well, I submit that if that is the case, then the Imperial Government should take financial responsibility for the initiation and successful continuance of this scheme.

MR. HARRAGIN: Your Excellency, as hon. members are probably aware, in view of what was said in Your Excellency's address most certainly Government can accept this motion (applause).

I will now turn to a series of details in the form of questions that have been asked by various speakers, principally by the hon. and gallant Member representing Nairobi North. He asked whether a



[Mr. Harragin]

certain amount of money could be voted in advance by an amendment to the motion. Actually that is not constitutional as he well knows. When an amount of money is voted by Government it has to go through a certain process, beginning with the Standing Finance Committee and so on until it reaches this Council. But I can assure him that it will be put down for the next meeting of the Standing Finance Committee for consideration in any event.

The second question I was asked with regard to this committee of inquiry into freeholding which certainly seems to have taken a very long time to come into existence. But I can assure the hon. and gallant member that it is Government's intention to appoint this committee. Whether Government will be able to accept the findings as a result of that investigation remains for the future. I will give no undertaking but certainly the committee will sit. How soon that will be will be a matter for discussions between the Unofficials and ourselves. Speaking entirely from the Government point of view I would say that the person who knows most about it on the Government side is the Commissioner of Lands who, however, happens to be away at the moment. Also, incidentally, he is also chairman of the committee whose report we are now considering. Personally, I would have liked to wait until he returns but if, however, it is the feeling of hon. members that we should get on with it willy-nilly and right away, I have no doubt that we shall be able to meet them in that respect.

I entirely agree with the hon. and gallant member that amendments to the Ordinance will be necessary, but I am not sure that it will not mean, particularly as a result of this Committee's Report, that a committee will have to be appointed to consider amendments to the Crown Lands Ordinance.

I was also asked for an assurance that something had been done about this Settlement Report. Well, I can give that assurance for the Report has been considered by His Excellency in Council with his advisers and a dispatch has been sent home supporting the Report in principle.

I entirely agree with the Hon. Dr. Wilson that many details, when we go into it, may prove slightly faulty or erroneous. He is perfectly right when he says: "If you want to know what the principle means turn to paragraph 8." That is the correct paragraph but I find no difficulty in understanding it as the learned doctor seems to have. It just means exactly what it is meant to mean and I do not think anybody else has any difficulty in knowing what is meant even if it is not perfectly expressed.

I would like to associate Government with the remarks of the hon. and gallant Member for Nairobi North with regard to the work of the Kenya Agent. He has had an extremely trying time. Whenever you start a new job it is always most difficult and I must reiterate that Government associates itself with all that has been said by the hon. member on that account.

The hon. Doctor Wilson made reference to some difficulty about squatters. Frankly I do not know what he means. If the suggestion is that squatters are not properly looked after, well then, certainly, it is the duty of the Labour Department to get busy and see that they are properly looked after. I admit at once, if you accept the Settlement Report *in toto*, it will probably mean, if everything goes well, that in the course of time there will be 500 new farms which, roughly speaking, will mean a labour force of 10,000 men. That being so, I agree that possibly and probably the most suitable form of labour will be the resident native labour or squatter labour as it is usually called. And I will say this that I think it will be extremely lucky for this country if we find a home for the overflow from the reserves and are able to find occupations for 10,000 souls as squatter labourers on European farms. It will be extremely useful in solving the difficulty mentioned in this Council from time to time of the landless native of the future. It is true that in the Report no provision is made for the feeding and housing of these labourers, but I think you will agree that it is a very small item. When you are going into large sums and realize the free material provided on the spot, the amount of maize or posho supplied by the farmer, the item is really infinitesimal compared

[Mr. Harragin] . . . to the amount that has to be paid out in other directions during the course of a year. I do think this is a small criticism.

Reference was made to the number of bad years that might occur, resulting in the unfortunate farmer not being able to make a living. In all these calculations I think the Committee make allowance for two bad years in five. In this I do suggest that they have made a liberal allowance and if we are going to have more than two bad years in five then certainly Dr. Wilson is right in saying that we should not try farming at all. He went on to ask, since the country was so dependent on agriculture, though he was delighted to see gold going up, how can we raise money to subsidize agriculture. Well, we have been doing that for some time and I see no difficulty about the matter, and if there is any I suggest that it is a theoretical difficulty, because you can raise money and have the interest paid by the new farmers coming into the country.

I think those are all the points raised so far.

It is a strange position for Government to find itself in, but for once it has not a single Government member of the Committee present to stand up for his own report and we are grateful that we have so able an exponent as the hon. and gallant mover.

**COLONEL KIRKWOOD:** Your Excellency, naturally I support the motion before Council, and I feel very grateful for its acceptance by Government, so consequently I shall not weary hon. members for more than a few minutes.

I am quite prepared to admit that the Report when read will be criticized by people from different angles. But I have not yet read any report that was perfect and satisfied everybody. Nevertheless, on the whole I think this is an excellent report and I think that is all we ought to worry about at the moment.

I was at a loss to understand why Dr. Wilson the hon. Member representing Native Interests, was querying whether white settlement by white farmers can be carried out successfully in Kenya. I am afraid that the long number of years that he has been in this Colony must have

been very ill-spent if he could not have ascertained before now that it is possible and very probable that with farming experience any colonist coming here will make good here where he might quite likely fail elsewhere. The fertility of the soil in Kenya and the climatic conditions take a great deal of beating, and I have often heard it said that the mistakes the inexperienced farmers make God has put right and that is true to a certain extent; certainly it is true of the first two—fertility and climate.

He quoted Lord Hailey—I am not aware that Lord Hailey is an expert on farming—as to whether it can be made payable or not or whether the conditions provided in Kenya are better than elsewhere. Even Dr. Wilson, with his long experience, has failed to realize the fundamental conditions of farming in this Colony. He also picks up the statement by Lord Hailey that in good years farming may be made to pay, but that in two bad years it has got to be subsidized. It is my opinion that Lord Hailey was thinking of what had to be done in other parts of the world, more especially in England where all farming adventures are subsidized, for to-day, to take one instance, sugar costs the English Government £4,000,000 a year.

I am not going to lecture or give a discussion in detail on these matters, but I would like to say that he has failed to realize that he himself, in those good years, was subsidized by this Colony. He was paid a very good salary as an official doctor of this Colony and now, also he is being subsidized by a very good pension—and good luck to him, for nobody begrudges it him. I only wish the farmers could find such a good square deal. I have every sympathy, Your Excellency, with the motion and the principles underlying it.

Many years ago, in Sir Edward Grigg's time, a scheme was thoroughly investigated, maps were drawn up and the land detailed in sizes of anything from 200 to 700 acres. There is still approximately 12,000 acres, all within six miles of Kitale unalienated by Government. Now this is holding up the township and holding up the development of the district. If people cannot make farming pay within a few miles of such amenities as the railway,

[Col. Kirkwood]

the amenities afforded by schools and hospitals and other amenities that are found even in the thickest populated part of England, well, I think there must be something wrong with the farmers.

I, myself, would like to see genuine farmers encouraged to come to the Colony, farmers like they have in England, and if we cannot get them from England then we ought to try and get them from the Colonies, or South Africa, Canada, Australia or New Zealand, men who will work in their younger days and who will keep on working, like myself, in their old age.

I am not advocating that we should look for people with fat banking accounts to come out. You cannot make farming pay if you must have polo ponies and motor cars and two-storied houses furnished with glorified electric installations and wonderful orchards. That is all very nice if you can afford it, but the man Government is looking forward to getting out here and to subsidize if necessary, is the one who will be a great asset to the country, and one with a working knowledge of farming behind him.

In connexion with the scheme I referred to there is a file in the Secretariat. You will get a lot of information from that. Look up the leaseholds in New Zealand which not only provide for leasehold to freehold but provide for finance by the Land Bank for certain permanent improvements made by the settler and so on.

Time is getting short. I think we should have an extra session this afternoon and I would like to suggest that we have another session this evening. I would suggest that the Acting Chief Secretary might take the chair to-night.

I give this resolution my blessing, and thank Government very much for accepting the Report in principle.

MR. WRIGHT: Your Excellency, I would like to express my gratitude at Government's ready acceptance, but would like to deal with one issue, the assurance given by the Acting Chief Secretary. He referred to the committee of inquiry promised for a long time. I would just remind Council that as long ago as 1922 a committee decided that freeholding should be granted or

sanctioned in certain areas in Kenya. Ten years later another committee sat. First an assurance was given that there would be a new inquiry into the matter, but now, seven years later than that we are again assured that the committee of inquiry will be appointed, presumably this year, but that, owing to the absence of the Commissioner for Lands and Settlement, it will presumably have to wait for six months. I deprecate that intensely for the reason that a good many of us have knowledge that this particular issue is a vital deterrent to settlement in Kenya. Trust funds are very difficult to come by for lands in Kenya and a great many of us have personal experience of trustees at home saying "we cannot invest money in a country which has such archaic titles and the rentals on which are subject to such revision."

In 1922 a committee definitely recommended freeholding in certain cases. I have tried to get a copy of that report, but I do not think it is available at the Secretariat. I would urge that notwithstanding the absence of the expert on the subject, whose opinions, incidentally, I value very much, it would be well for Government to go into the matter of appointing the committee forthwith and devise a scheme as laid down by the Land Tenure Committee in 1922. Freeholding is an essential thing for Kenya.

LORD FRANCIS SCOTT: I should just like to say a few words in support of the motion before Council.

My hon. friend Dr. Wilson seems to think that this is an unusual way of dealing with the Settlement Committee Report, but I submit that this is the usual way. The Report is laid on the table of this Council, and then, either by Government or someone else, it is usually moved that the report be adopted. That is what is being done, and I do not think that there is anything unusual about that. To go further, I think he is unnecessarily worried about this question of resident native labourers. I do not quite know why. To begin with, there are not many farms on which there is no education. And then, to my mind, the question of the increase in squatters for these new settlers is not nearly so serious a matter as the question of new resident labourers for the enormously increased number of

[Lord Francis Scott]—this is becoming quite a serious matter.

My own impression is that the settlers are trying to go in much more for mixed farming, which does not, as a rule, entail so much resident labour, and in my experience I think the squatters are very well looked after, for they do very well for themselves, and besides getting wages they can grow crops for themselves; I really do not know why he is so anxious about them.

He seems to fear that there is a doubt of the likelihood of the scheme being successful. That, of course, is a question entirely of faith—whether one has faith in this country as a farming country and whether one has faith in one's own fellow countrymen or not. My own belief is that this country is a good agricultural country if you get the proper type of farmer.

As the hon. Member for Trans Nzoia has just said: If you get a man from the farming stock and one who is accustomed to farming, he would be able to avoid many of the mistakes that some of us made who started here as amateurs. I am quite certain myself that if you get people here not hampered by having to spend all their capital at once and having to obtain big borrowings from the bank—and the whole object of this scheme is to avoid that—I am quite sure that if you get the right type of farmer here, he will make good and be a real asset to the country and to everybody in the country.

From my own experience in England recently, I believe that if one could put forward a scheme on these lines, there are large numbers of farmers' sons in Great Britain—that is, England, Scotland and Wales, I am not speaking of Ireland—who would be only too ready to come out here. The difficulty in the past has been the lack of sufficient capital.

I also submit that to a proper farmer, who has got farming in his blood and has been brought up as a farmer's son and who possesses the farming instinct, only quite a small capital is needed to come out here. Many of us know farmers in

this country who started with nothing at all and have done very well, while there are those who started with large sums of money and have perhaps lost it all. I do submit that if we have faith in this country and in our fellow countrymen this settlement scheme is a very sound one.

I am delighted that Government has already accepted it and I trust that the money will be forthcoming so that the whole scheme may go forward in the very near future. I support the motion.

MAJOR CAVENDISH-BENTINCK: I would like to express our thanks to Government for accepting the motion. Most of the points have been replied to except perhaps one or two. The first speaker, the hon. Member for Mombasa, expressed the hope that those who have borne the brunt and burden should not be forgotten, and that it is also the hope that was expressed by the hon. Member for the Plateau. I would draw attention to the second part of paragraph 11 in which we say that "it does not come within the scope of our terms of reference to make any recommendations as to further measures for consolidating the present position of existing farmers, but as we are recommending financial assistance for newcomers we trust that the appropriate authorities will do all that is possible to assist the established agriculturalists, who are indeed the pioneers who have rendered new settlement possible."

Again, on page 61, we deal in this connexion with a scheme for Government aid in the purchase of private land. In paragraph 123:

"We consider that annual outgoings of 7 per cent or over are uneconomical for farming loans with commodity prices at normal levels, though we would emphasize that unduly high capital costs for land and so forth can have an even more disastrous effect than high interest charges."

The difficulties of existing farmers, though possibly inadequately dealt with, have not been overlooked, and even in this session it has been announced that there is going to be a reduction in the rate of interest charged by the Land Bank. I do not say we have gone far



[Major Cavendish-Bentick] enough, but I would draw attention to the fact that the report had not overlooked the problem.

The second speaker also took exception to a statement made in regard to education. It may be that there are certain grounds for his allegations, but these questions are relative, and from such evidence as we could obtain, and from such knowledge as members of the committee had—first-hand knowledge in many cases—we felt that the educational facilities in the Colony compared very favourably with any other comparable colony. I think that is true. Actually, at the moment, there is a shortage in accommodation, more especially as regards secondary education at the Prince of Wales School and Government Girls Secondary School, but I hope this is going to be put right, and that is one of the subjects discussed in the motion which finished to-day.

The honourable member also suggests that we have only devoted half a page to Kenya-born people and that we are attempting to solve the problem. We devoted a little more in printed page space, but I can assure him that we devoted in addition a very large amount of time and trouble in investigating this particular matter. If he looks at paragraph 120 he will find that our general scheme for Government-aided purchase of private land states that:

"The benefits of the scheme should be available for all who possess the necessary qualifications whether newcomers or existing residents."

We dealt with the existing type of farmer in that part of the Report which he read out. Now that particular class of resident is one with whom it is not easy to deal, and strictly it did not come within our terms of reference. We tried to produce recommendations which would be fair, but in the absence of land and money we felt it would be wiser to leave it where we did. People who have read the Report will probably agree. But I must add I feel I should stress what we said:

"That because a person is born in the country it does not follow necessarily he is entitled to land."

The honourable member also drew attention to the scheme for an agricultural school, farm or college, and mentioned that under our plans it was suggested that fifteen pupils could be drawn from England and five from Kenya. Actually, on page 91 he will find I personally disagreed with that recommendation and pointed out, exactly as he did, that these figures should be reversed. But in any event these figures merely give the rough cost of the proposed agricultural college or farm and were only inserted for the purposes of discussion.

Now, Sir, we have the remarks and real criticism made by the hon. Dr. Wilson. In some regards they have been dealt with already but I must reply to one or two.

He started by criticizing the four premises which we accepted at the beginning of our Report. Now, when dealing with a report of this kind, suggesting that closer settlement is required and should be encouraged in a comparatively new country, I think one must begin somewhere. We had two or three days' discussion actually as to what could be accepted in the light of experience and what it would not be justifiable to accept. The problem was examined in great detail and I may say that we discussed the subject for quite a long time and eventually we felt justified in accepting these four premises.

He also said that we carefully avoided the words "making a living" and put in the words "making a home". Well, I can assure him that that was not deliberately done. Our idea was that if a man is making a home it naturally follows that he has got to keep it up and I believe and still believe, that he has got a better chance of making a living out of farming in Kenya than in many other parts of the world. That is borne out by many visitors who have come here from other colonies and other parts of the world.

The hon. member then said that he could not quite agree. I think he intimated that at any rate, that it was of "vital" importance that we should have an increase in the number of farmers. We said that the word "vital" means a matter of life or death and was rather a strong word. Well that word was deliberately inserted

[Major Cavendish-Bentick] because most people, and I think everybody on this side of Council, representing European constituencies, believe that actually, at the present moment it is of vital importance to the further progress of the Colony that settlement should be increased if we hope to go ahead. If we are to go ahead surely we have got to be very much more go-ahead as regards the numbers of people to be attracted here.

He also took some exception I think to the word "organize" where it referred to labour. Now, on the labour question we took a good deal of evidence and we had a good many arguments amongst ourselves with regard to it, and eventually we came to this unanimous conclusion. I am quite sure that there is nothing at all sinister in the word "organize". What we meant by that is this: There are people who are possibly lazy and ignorant and incapable of organizing anything, and such probably have a great deal of labour that does nothing at all, or, if it does, it does the wrong thing at the wrong time, and it is against such as these that my criticism is directed so that they can get their men to do the right thing at the right time and not duplicate and overlap. Under these circumstances there should be no difficulty about labour. This is the only sense in which the word "organize" is used.

His other point was about water supplies. He suggested that there was a far greater expenditure required in the native reserves than in the Highlands. Well, I do not quite know why he should say that. At the same time I will tell hon. members what we did say because it might palliate his fear. All we said was:

"Every additional permanent water supply is not only an asset to the individual concerned but to the Colony as a whole."

And I think nobody can disagree with that particular aspect as nowadays water is often piped from the Highlands to the native reserves, and all we added was:

"We can see no reason why application should not be made for financial assistance from the Colonial Development Fund, which fund has already made contributions towards the cost of supplying water in native lands."

We are not taking anything away from the native lands; we are merely asking for a moderate expenditure for similar facilities if they have already obtained them.

The labour question has been answered and I do not think I need say anything more about that.

He then referred to Lord Hailey saying that he was afraid that this scheme might land us with a number of farmers with insufficient means to tide them over bad times and that they would then demand money from Government and probably claim that they are entitled to assistance as they had come out under a Government-protected scheme. We tried to put it as conservatively as we possibly could, and the hon. the Acting Chief Secretary asked whether we had made provision in our schedules for two bad years out of five. Actually it was not quite as much as that, but we did make a pretty ample provision and it is laid down in paragraph 85 which states:

"Considerable reserves of cash are provided in case one season during the first two or three is bad and the yield of crops is low, or to keep the farmer going should abnormally low prices prevail during the early years before he is established on a sound and comprehensive stock and crop basis. It would be most unwise not to have such reserves available."

These schedules, after all, are only a guide and as the noble lord the hon. Member for Rift Valley said, we have got to have some faith in our new country. It seems extraordinary to me that in a new country of this kind you should not want to attract people and that you should have to keep everybody alien out. It seems a most extraordinary idea to me. Surely everybody who is going to be of real worth should be encouraged. But apart from that I maintain that we have been extremely conservative in our recommendations in this regard.

There is one more thing I should like to mention before I sit down. Previous speakers have said that if this country is dependent on agriculture why should agriculture be dependent on subsidies. I think my hon. friend the Member for

[Major Cavendish-Bentinck]

Ukamba is probably more competent to answer that question than I am. But the fact remains that for many years past, nobody can deny it, there has been considerable dislocation in that regard!

The question was put and carried.

#### LIEBIG'S

##### MOTION

MAJOR GROGAN: Your Excellency, I have the honour to move the following motion standing in my name:—

"That Council deplores Government's cavalier treatment of Messrs. Liebig's, Limited, and its probable reactions on the London Money Market."

Council may be surprised at my selection of the particular adjective "cavalier". But it is rather an important issue that is being raised in this motion and I took very considerable trouble in selecting what I believe is exactly the proper epithet for this occasion, tempered with a sense of consideration for the people responsible. "Cavalier" means "supercilious, haughty, disdainful, curt, brusque," and, for the benefit of the learned gentleman on the other side of Council, it embodies a sharp distinction between the court party, debonaire gentlemen, as contrasted with the round-headed parliamentarian-minded party. The term I should have used, of course, was "Casuistic". But I was rather afraid that I might hurt some people's feelings, especially those of my hon. and learned friend the Acting Chief Secretary, so, I restrained myself.

Quite recently, a few minutes ago, we had occasion to contend that Government had been inoperative in a basic sense—not in the sense of the relative importance of adjectives or in fact of anything else—a kind of punch and Judy show, the strings of which are pulled by Government officials in the Colonial Office, and we had a reply from the hon. the Acting Chief Secretary in accordance with the usual method pursued by and well known to lawyers of passing on the other side and avoiding the issue, and I congratulate him on the consistency of his methods and the considerable improvement in his technique. But now I am going to contend something quite different.

I am going to contend with a series of documents—I am afraid it is going to be very tedious, but they do in fact constitute, unless there is some answer forthcoming which has not been disclosed anywhere, what to all intents and purposes amount to a contract—that action has been committed by Government which in the market place, clubs, racecourses, bazaars and other places where the ordinary citizen moves, as distinct from secretariats, can only be described by the word "dishonest". And I sincerely trust that whoever is going to reply will take that contention very seriously and will adduce the necessary evidence to refute what is not actually a charge but a deduction.

I am bound to go back over a little bit of the history. I am going to be as short as I possibly can, but it is very important that all the facts of this case should be on permanent record because, as far as I can see, the only function of this Council is to establish reliable data for historical research a long time afterwards.

In 1922 Dr. Gunther and Mr. Holt came out to Kenya to investigate the possibility of establishing a meat industry in this country on behalf of Liebig's. Even in that time they found unprepossessing conditions and went their way rejoicing to another land because Government was not very helpful. There is a reference to that if you jump from 1922 for a moment to 1936 when in November of that year the Colonial Secretary of that time referred to it in Legislative Council as follows:—

"And, incidentally, during the interval, I was told of an account of what happened at the previous visit of Liebig's..."

and incidentally, during this interval today I slipped out to have a quick one, I beg your pardon, Sir, and in conversation some of the members on this side told me what actually did pass during that interval. The Colonial Secretary went on:—

"Well, there is a different version of that. I am given to understand that they came out here and had a look, and found in those days that the natives would not sell their cattle under some

[Major Grogan]

perfectly exorbitant price; £5 or £10 had been mentioned to me, so they found they could not possibly buy stuff at reasonable prices unless Government exercised compulsion. This Government certainly would not, certainly not with the Masai. In those days compulsion might have involved all sorts of things, like patrols of the K.A.R. which would be far more expensive. Anyhow, Government was not prepared to exercise compulsion on the natives to sell stock, and so Liebig's went home. The situation is now very different."

We then move on to the more salubrious period between 1922 and 1926. Somebody woke up in 1926 and produced Ordinance No. III of 1926 to make provision for the control and improvement of Crop Production and Live Stock and Marketing thereof. The relative extract of that—a very short one—was in clause 4:—

"The Governor in Council may from time to time make rules which shall be applicable to such area or areas as may be named therein for the following purposes:—

And among those purposes are these:—

"(h) for defining or limiting the number kind, ages, and sexes of the live stock to be carried on any area;"

"(j) for the disposal of surplus and undesirable live stock."

That was the next phase but there was some slumber between 1926 and 1929 when Sir Daniel Hall conducted his inquiry. The relative extract from Sir Daniel Hall's inquiry is as follows:—

"The Commission agrees that compulsory action, for which the Government has already taken powers, must be exercised to reduce the number of live stock in the Kamba Reserve. Indeed, a reduction down to one-third of the present number is necessary if the tribe is to be preserved.

Before such action can be taken one preliminary step is essential: A meat factory must be established, preferably at some point on the Railway, with water facilities, to take over the stock to be culled...

"The Mkamba considers, as the native witness stated, that all cattle are of equal worth and, if he has to rate them as money, he is disposed to regard even the worst starveling as worth the kind of price he knows is being given for working oxen or beef cattle.

Meantime, the Commission desires to impress the Government with the urgency of the meat factory."

Thereafter, with the exception of an occasional interjection on the part of a late member of this Council, the late Member for Kiambu, and once especially in 1934 when he urged the importance of this matter, with those exceptions there was to all intents and purposes complete peace for a good long period until 1936. That was a period of nearly seven years during which no practical notice was taken of these drastic warnings. But in 1936 there was a re-awakening of the dead in the appointment of the Meat and Live Stock Inquiry Committee. Very many discussions took place on that committee and it was suggested that Government should take steps to find out exactly what was being done in South Africa and, on the recommendation or suggestion of this Committee, while it was sitting, the hon. the Director of Veterinary Services was sent by air to investigate the procedure being conducted in Southern Rhodesia. He went to Messrs. Liebig's establishment at West Nicholson, and as the result of that, after a discussion with the gentlemen in charge there, a letter was sent by Mr. Brinton, the manager of Messrs. Liebig's there, to his directors in London. This letter is rather interesting and it is important because it shows the inducements that were put out at the time. In the first instance there is an extract from that letter, which runs as follows:—

"It is rather peculiar that while the question of a second factory is under consideration we should be visited by the Chief Veterinary Research Officer for Kenya, Mr. Daubney"

I want especially to draw attention to this fact because these people had no idea at that time of coming to Kenya; they were considering a proposition of putting in an additional factory down in

[Major Grogan]:—  
Rhodesia. Continuing, the extract goes on:—

"Mr. Daubney is the Secretary of a Commission which is sitting in Nairobi to consider the marketing of meat. He was sent down on a flying visit to investigate the Buluwayo Cold Storage and our factory.

He states that the Kenya Government will welcome any proposal for the erection of a factory in Kenya Colony. He says that nothing could be expected in the way of subsidies; but that every other possible inducement would be offered, including that of pressure upon the natives to sell. He asserts that there is no longer the reluctance to dispose of cattle that there was some years ago, and considers that we could draw from 50,000 to 75,000 head per annum for our purpose at prices ranging from 3/9 per 100 lb, liveweight for old cows to 5s. 3 up to 5s. 6/6 for fat oxen. He says there are from 4½ to 5 million head of cattle in the country, all of which except about 280,000 are native owned. The only cattle going out of the country at present is a very irregular stream of a few hundred head monthly for the Italians. There are, of course, no freezing or chilling facilities in the Colony."

As a result of that interview Mr. McKenzie a director and Mr. Brinton, the General Manager of the factory at West Nicholson, Rhodesia, came on a visit to Kenya to satisfy themselves on the invitation of this Government and on the inspiration of this Government, as to whether or not there was a satisfactory opening for them here. And after having a look—see they wrote to the Meat and Live Stock Inquiry Committee on July 30th, still in 1936, a letter in which the relative extract is as follows:—

"With regard to the availability of supplies, I realize that some difficulty is likely to be experienced in inducing the native to sell cattle up to the required numbers, but I gather from discussions with the Chief Native Commissioner, the Provincial Commissioners concerned and the Acting Deputy Director (Animal Industry) that the price range quoted above

represents in their opinion a very fair value for native cattle. Indeed I have several times heard the opinion expressed that at these prices there should be no difficulty in obtaining the minimum of 30,000 head per annum. At the same time I feel that it would greatly assist my Directors in reaching a decision as to the comparative merits of building a factory in Kenya or of building a second factory in Southern Rhodesia, were they to receive an assurance . . ."

and I want to lay particular emphasis on that word "assurance", Sir,

"that your Government believes that the numbers of cattle are available for purchase and that Government will do all in its power to ensure that the requisite numbers are forthcoming. I am informed that there are in existence rules for the culling of cattle in certain areas which might be applied were a suitable market available, and further, that the Veterinary Department, in collaboration with the Administration, is laying down grazing quotas in certain native areas."

The next move to that was a letter from the Colonial Secretary, dated the 8th August, still in 1936, in reply to this particular proposition that had been put up and the relative parts—the reference was C.VET.2/10/7/7—were in paragraphs 2 and 3:—

2. . . . As you have been informed by officers of Government with whom you discussed the matter during your recent visit, the Government would be willing to co-operate with a view to securing the successful operation of a factory in Kenya on the lines indicated in your letter.

3. There is in Government's view no reason to anticipate that the minimum annual supply of 30,000 head of cattle, which the factory would require, would not be obtainable at the prices mentioned in paragraph 5 of your letter, nor should it be necessary, for the purpose of securing this supply, to consider the application of compulsory measures such as culling rules. Supplies of cattle would be facilitated by the proposals which are contemplated for

[Major Grogan]:—  
in the enforcement of rotational grazing of pastures and the limitation of numbers in certain areas, e.g. Samburu."

And, following very shortly on that the Colonial Secretary, in Legislative Council, stated in the course of a debate on the matter (Hansard, 1936, page 762):—

"When Liebigs are established we shall have every justification for using compulsion."

Now, Government, at that time, was very anxious to get this under way because they wanted to start this policy going—it had been urged for a very long time—and they were so anxious that they dispatched I think no less a person than my hon. and learned friend opposite by air to see the Governor who was then down at Mombasa.

Anyhow, the next stage in the proceedings—all this correspondence is a bit involved but I want to get it in chronological order so as to be exact—is the letter which Mr. Brinton, the manager, wrote to his Directors in London on the negotiations that were going on. After reporting the anxiety of this Government at that time to get this business done he said:—

"I cannot do better at this stage than enclose a copy of a communication addressed to the Meat and Live Stock Inquiry Committee on whose behalf Mr. Daubney visited Rhodesia."

—that is the letter I have just quoted—

"I have not yet received a reply to this; but the Chairman, who is the Attorney General (and the most important man in the Colony after the Governor and the Colonial Secretary)"

—I hope he won't blush, if he is capable of it—

"is personally flying down to present it to the Governor who is at present resident in Mombasa. A reply should, therefore, follow me very closely by air mail.

Everybody has been most helpful—both on the Administrative side and amongst the sellers, and there is obviously a very keen desire that we should commence operations here."

Now, that was all very satisfactory. But in the course of certain further discussions this company wanted certain assurances. Well, now, for reasons not necessary to describe here—because they are obvious to everybody—it was not politic to include these assurances in a definite legal form in the actual contract and so, therefore, these gentlemen—being gentlemen—wrote to the Government and asked that these certain assurances should be given either on behalf of Government or included in the contract they were to get. And Mr. Brinton in his letter of the 26th October, 1936, said:—

"Three points have arisen which I have agreed with Mr. Daubney cannot well form part of the formal agreement."

The first of these is:—

"The assurance of co-operation mentioned in paragraph 2 of your C.VET.2/10/7/7 of the 8th of August, 1936. I should be grateful if you would confirm this assurance to my directors in your covering letter enclosing the agreement."

The other two points were not a matter of great importance. But this one was answered by the Colonial Secretary in his letter on the 13th November, 1936, the relevant extract from which is in paragraph 3:—

"As regards the three points mentioned in the last paragraph of your letter, I have first to confirm that Government will be willing to co-operate with the Company in doing all that it reasonably can to secure the successful operation of the factory."

And thereafter, a formal agreement was signed and so on and so forth. Everything went on nicely and they proceeded to build the factory.

The next stage in the history was in 1938 when the factory was completed and opened on March 13th when Your Excellency was present and made a speech of welcome, in the course of which you stated:—

"It gives me great pleasure to open the Liebigs factory of Kenya because I regard it as a step forward in the economic development of Kenya and I am certain it is going to prove of

[Major Grogan]

permanent benefit, primarily to the native reserves, but also, I think, to the whole of Kenya.

I can say from personal experience over the last few months that Liebig's are giving a square deal to the natives in the reserves of Kenya. I might say they are not merely being square but they are being generous in the prices they are offering for the natives' cattle, and I do hope that people will realize that."

Then, things began to happen rather rapidly. Destocking began and when quite obviously the policy was failing, or the administration of the policy was failing, people began to get alarmed and the Nairobi Chamber of Commerce among others, realizing that the thing was going to breakdown, approached Government at a meeting, I understand, and obtained from the Colonial Secretary a letter. At that time everybody was getting the wind up for it was quite obvious that things were going badly there, and in reply to some resolutions put up by the Chamber of Commerce, the following letter was sent to the Nairobi Chamber of Commerce from the Chief Secretary. It read as follows:—

"Sir, I have the honour to acknowledge with thanks your letter of the 22nd June, forwarding a resolution adopted at the monthly general meeting of your Chamber held on the 17th June, on the subject of the Meat Product Factory.

2. I would observe that the statement to the effect that Liebig's organization was established as a result of assurance by Government of adequate supplies is inaccurate, for while Government cordially welcomed the enterprise of Messrs. Liebig's, particularly as providing an outlet for surplus stock and thereby facilitating the application of such compulsory measures as might be necessary, and while Government promised all practicable co-operation, it did not give any such assurance as that quoted. It is true, however, that Government did express the opinion in August, 1936, that there was no reason to anticipate that the minimum annual supply of 30,000 head required

for the factory would not be forthcoming.

3. Government's purpose is to remedy the evils of overstocking and to improve pasture management, and in carrying out this policy fully recognises, as it has always recognised, the importance to the community generally of a market capable of absorbing surplus cattle. The successful achievement of this purpose is, however, made easier if it is generally appreciated that it is based on the merits of the case and not on any undertaking given to a particular company or organization. I have the honour to be, Sir, Your obedient servant, A. de V. Wade, Chief Secretary."

and the general comment at the time was that it was a normal "ewading" of the issue.

In connexion with that same thing the record of the Chamber of Commerce is as follows:—

"The Secretary read a letter dated 8/7/38 from the Kenya Chief Secretary" (that is the letter I have just referred to) "which has been published in the local Press earlier in the week.

Mr. Lawrie said that the motion he had put forward at the last meeting was one of principle and not for Liebig's specifically. As a result of the resolution which was passed, Government had taken immediate action and a high official had been deputed to interview the Management Committee and explain matters in detail. The Management Committee had decided that the letter be published in the Press forthwith and General Meeting advised that the Management Committee have heard the explanations of the Secretariat that Government were determined to accelerate their policy of destocking and which it was anticipated would result in Messrs. Liebig's requirements being fulfilled."

On the 4th August, shortly after 2,000 uninvited gentlemen from Ukamba had come into Nairobi and had camped with a complete disregard and contempt of the municipal and other regulations, and had been addressed by the dignitaries of Government, the matter was referred to

[Major Grogan]

the Secretary of State as to what the next step was going to be. And the Secretary of State, cabled out, as I understand:—

"Present policy must continue in the interests of the tribe."

On 5th August, in Legislative Council, you yourself, Sir, in your address and in reviewing the situation said:—

"The destocking action coincided with the opening of the Liebig factory because it affords an outlet for which Government had been waiting . . . and through it destocking has become practicable."

In actual fact this unfortunate concern had invested £120,000 in the country, had worked 147 days out of a potential 354, at a monthly cost of over £1,000 of which £661 was wages and cash disbursements—and then they had to close down. One would have imagined that that would have excited compassion and at least a courteous consideration on the part of the people to whom they were referring their difficulties. But the thing drifted on hopelessly until 1939 when, on 10th March Liebig's wrote a letter to the Chief Secretary which read as follows:—

"The following is a cable we have received from our Directors in London:—

"Referring to your letter dated 23rd February we agree your proposals regarding staff transfers and retrenchment at Athi. Please instruct Mr. Brinton to put matters into operation in accordance with your recommendations. Our decision is based on the assumption that no real improvement in cattle position can be foreseen as probable during the next six months."

We are advising you of this in view of the importance of the decision, and we shall be very much obliged if you will confirm, as we have been led to believe, the fact that no appreciable cattle supplies will be available during the next six months. We should like this confirmation in view of the fact, a point which we wish to emphasize strongly, that once the decision made in this cable is put into operation, it

will be impossible for us to take any cattle for some considerable time as we shall have no staff available to operate the factory."

The Chief Secretary replied on 11th March—an extraordinarily prompt reply, for I notice that it was on the next day—and the letter said:—

"With reference to your letter of the 10th March concerning the cessation of operations at your factory at Athi River, I am directed to confirm that, so far as can be foreseen, no appreciable cattle supplies, such as would satisfy your requirements, will be available during the next six months."

Now, Sir, my submission is, that this is a perfectly clear case of a complete obligation on the part of Government to Messrs. Liebig's, an obligation compounded of legally defined covenants and supplementary assurances which must be read in conjunction with the defined covenants. It is perfectly obvious that Liebig's were incited to come here, it was not a question of "please let me come"; they were incited to come here and they were welcomed in every possible way, and then, eventually, for some reason or other which I am not going into, Government completely altered its policy.

And the point is this: Government having altered its policy, the least it might have done, in common decency and in order to maintain social conventions expected in an administrative machine dealing with third parties, and maintain its credit and the credit of the country and its self-respect in the financial circles of the world, the least it might have done was to have gone to Liebig's and said:—"Look here, we are very sorry, we asked you to come here, we have been considering this policy for the last ten or fifteen years (or whatever time it was) and now we find when we come to give effect to it, after you have spent eighteen months putting up a factory, we find that the whole concern has completely broken down. It must have put you to a very considerable loss and it is our responsibility entirely. What do you want by way of compensation, or, in what way can we satisfy you?"

[Major Grogan]

In spite of this unfortunate position Messrs. Liebigs who are a very big institution with a very high standing in the City of London and with a great many personal contacts with important people in the City, would probably have said:—"Well, we are very sorry we came from a colony, a self-governing colony, that manages its affairs on business lines and knows what its policy is from day to day and when it starts on a policy gives effect to it, and so on and so on. We never suspected of course that this was not a colony but a Barnum's show, but anyhow, we had access to the past history of the country and should have realized that there were in Kenya a lot of silly mutts being run by the Colonial Office. It is our fault for not finding that out earlier. It is all right, we are very sorry of course, but still, we are most happy to get out of it and we don't want anything at all."

That would have been a dignified end to the situation. But when you get a man standing up, representing the Government, stating and definitely putting in writing that these assurances constitute no obligation whatever—though contained in a letter admittedly supplemental to the actual contract—I think it is a remarkable achievement even for the Chief Secretary of this Colony.

There is no question about it; it is a matter of general knowledge among the interests in the City of London that the ordinary financial elements in the City regard with the utmost suspicion any sort of business undertaking that involves a contract with the Colonial Office or its agents. That is well known. And there have been in the past—for example Duff Development Company and the Crown Agents—not one, but many examples closely related to this kind of thing which have had the effect of rousing the whole City of London up in arms. The simple fact does remain that contracts with the Colonial Office are regarded with great suspicion in the City of London, and with every possible justification.

I have again and again to provoke from Government a challenge to prove my case, I myself have been subjected not only by this Government but by the

Colonial Office supporting it, to action which is quite unbelievable and I have produced documents supporting my case, but I cannot get a response.

Therefore, it is particularly important that everything should be done that care should be taken to protect the good name of this Colony of ours and I do submit that if this resolution should be passed—I do not see any reason in the world why it should not—I submit that some steps should be taken to restore decency by offering compensation that would be some indication of remorse. I beg to move.

MR. WRIGHT seconded.

MR. DAUBNEY (Director of Veterinary Services): Your Excellency, having heard the indictment put forward by the hon. and gallant Member for Ukamba, I feel he has not complained so much of what has actually happened or of the events that have occurred, but of the manner in which the relations have changed, shall we say, between Government and the company from the time when the negotiations were first in progress to the culmination set out in that last letter.

I do not think that I am very qualified to speak on that particular aspect of the dealings with Liebigs but I can offer some explanation for the difficulties in which Government found itself at a certain stage in these negotiations; the difficulties which have led eventually, I do not say to the abandonment of Government's programme, but to its postponement for further preparatory work, to give time for its position to be revised, and to obtain the advice of the committee to which reference has been made.

In the first place it is true that when I visited Southern Rhodesia with the object of seeing just what was happening in that Colony in respect of the marketing and export of cattle, I was not in any way commissioned by the Meat and Live Stock Inquiry Committee to invite Messrs. Liebigs to come to Kenya, and I think after inspecting Liebigs' factory in the small hours of the morning, I spent a matter of forty minutes talking to the general manager and a director of the

[Mr. Daubney]

company. I think possibly that the account of that interview—I won't say possibly, I will agree—that was given in the first letter that was I think read out by the hon. mover of the motion is correct. But I will say that that was merely a discussion and I think on my return to the Meat and Live Stock Inquiry Committee I stated that the directors seemed interested in the possibilities afforded by Kenya.

The next thing that happened was that we received a telegram addressed to me asking if it would be convenient for two of the company's directors to visit the country. They came and saw everything that we were able to show them in connexion with the problem; they went to the pastoral reserves and elsewhere; they discussed prices with administrative officers and questioned the natives as to the prices they were asking for their cattle; and we put some cattle on the scales for the purpose of comparing the market price with what they would be able to pay for such cattle if they opened a factory.

I think it was rather on the basis of that investigation, coupled with Government's intention to put into effect some scheme of stock limitation, and my own desire to see some scheme for compensation to the natives for their culled cattle made possible at the earliest opportunity that Government gave those assurances—the assurances that it believed that the company would not find any great difficulty in obtaining 30,000 head of cattle at the prices they offered.

Now, what happened during the next twelve months? The price of cattle rose very considerably all over East Africa, Kenya, Uganda and Tanganyika. We had had a succession of good seasons, if you remember 1936 was a very good season from the grazers' point of view, and in 1937 prices had risen appreciably and the natives were very reluctant to sell. They had had a very good calving year in 1936 and they all seemed at once to have adopted the attitude that conditions were favourable and they all wished to build up their herds to the peak which would

enable them to carry over a dry period. And I think, Sir, everyone noticed and realized that the prices were moving against Liebigs' factory.

At the same time, too, the European community in this Colony were also successful, at least the beef-breeding community, were successful in raising the price of European beef stock and that would affect and indeed did affect the market price of native cattle in this country. And when Liebigs' eventually came to start their operations prices had gone up approximately to twice the amount that they were able to pay. These, Sir, I think are the main factors that contributed towards the breakdown.

I do not know what the attitude of Government is going to be towards this motion—I can guess possibly—but I should like to say that I personally am convinced that there is no senior officer in Government at the present moment who does not believe that the future of this country is wrapped up in this question and that it is of vital importance that we should retain this possible outlet for surplus native stock. In spite of all that has been said on the subject I am quite sure we shall never be able to train the natives to slaughter and eat all their surplus cattle; they cannot consume that amount, and we need a market for native stock which will enable those native areas which are bound to be dependent on ranching to progress. There is only one avenue of progress left open to us and I am quite sure Your Excellency and the senior officers of Government appreciate that particular need, and I feel that Government will not let Liebigs' go out of the country and so lose the chance that has been offered to us.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Friday the 21st April.

Friday, 21st April, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, 21st April, 1939, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The minutes of the meeting of the 20th April, 1939, were confirmed.

#### ORAL ANSWERS TO QUESTIONS

No. 14—LUNATIC ASYLUMS

MAJOR CAVENDISH-BENTINCK asked:—

(a) Is it a fact that the mentally afflicted in the Colony are still subject to the provisions of the Indian Lunatic Asylums Act of 1858?

(b) If the reply to (a) is in the affirmative, does not Government consider that in view of the progress which has been made in medical science since the middle of the last century a more up-to-date Ordinance is long overdue?

(c) If the reply to (b) is also in the affirmative, can Government not inform me when the amending legislation which, in reply to a previous question tabled under my name on 9th August, 1937, Government suggested introducing early in 1938, is likely to materialize?

DR. PATERSON: (a) The answer is in the affirmative.

(b) The answer is in the affirmative.

(c) The medical part of the work entailed has now been practically completed, but it is proposed to await the return of a law officer at present on leave who has had, as a member of the Board of Visitors to Mathari, considerable experience of the working of the present system, before proceeding to the final draft of a Bill, which it is hoped to introduce at the Budget Session.

LORD FRANCIS SCOTT: Your Excellency, arising out of that answer, can we be informed when this officer is likely to return from leave?

MR. WILLAN: Yes, Sir, about July or August next.

#### MINING (AMENDMENT) BILL

##### SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Select Committee Report on the Mining (Amendment) Bill be adopted.

This Select Committee Report is very short and consists of four paragraphs only.

The reason for the amendment set out in paragraph 1 is to cover the new term of "Native Areas" which has been included in the Ordinance, and "Native Areas" is defined as—

"land within native lands, native reserves, temporary native reserves and native leasehold areas as defined in the Native Lands Trust Ordinance, 1938."

The reason for the adoption of the new term is to avoid confusion which might have arisen if we had kept the present term, for the term "Native Reserve" has a very special meaning both in the Native Lands Trust Ordinance, 1938, and the Crown Lands (Amendment) Ordinance, 1938. Hon. members will notice that in the new definition there is no reference to the Northern Frontier and Turkana Districts. The reason for that is that the land is Crown land and there is sufficient control over that land in the Outlying Districts Ordinance.

Paragraph 2 is consequential on the adoption of the term "Native Areas" instead of the present term "Native Reserve".

Paragraph 3 deals with an amendment in accordance with the suggestion made by the hon. and gallant Member for Nairobi North during the debate on the second reading. Now the Bill as amended, if this Report is adopted, will give Your Excellency the power to reduce the statutory fee of Sh. 100 for exclusive prospecting licences in the case of both precious and non-precious metals.

Paragraph 4 refers to sub-section (10) (b) of section 86. The provision at present is—

"Unless some substantial question of law is involved in the appeal, no appeal shall lie . . ."

The Select Committee thought that the word "substantial" was rather vague and

[Mr. Willan] therefore recommend its deletion so that on a question of law an appeal will lie as of right.

I beg to move.

MR. DENNISON seconded.

The question was put and carried.

##### THIRD READING

MR. WILLAN moved that the Mining (Amendment) Bill be read a third time and passed.

MR. DENNISON seconded.

The question was put and carried.

The Mining (Amendment) Bill was read a third time and passed.

#### SCHEDULE OF ADDITIONAL PROVISION NO. 4 OF 1938

##### STANDING FINANCE COMMITTEE REPORT

MR. HARRAGIN: Your Excellency, I beg to move the motion standing in my name:—

"That the Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1938 be adopted."

This Schedule covers the period from October to December of last year, and, as explained by the hon. the Financial Secretary when introducing the motion of reference, the net additional expenditure is £41,065. This is more than covered by savings over the whole year.

To refer to a few of the details, the principal amounts are: Roads and Buildings, £13,000-odd; the amount for Locusts is £6,000; Pensions and Gratuities contain £6,000, although in fact only £1,000 has proved to be necessary; and there is the amount of £4,500 for respirators for the K.A.R. The balance of approximately £11,000 is made up of various items such as £1,000 on account of the increased cost of education, boarding equipment and stores; £2,000 on account of telecommunication extensions and improvements; and £1,400-odd for prisoners' and detainees' food.

All these items have been examined item by item by the Standing Finance Committee and have been recommended to Your Excellency for approval.

MR. LOCKHART seconded.

The question was put and carried.

#### LIEBIG'S

##### MOTION

The debate was resumed.

MR. COOKE: Your Excellency, I did not intend to intervene in this debate, but, listening yesterday to the brilliant exposition given by the hon. and gallant mover of the motion, I felt that it was a pity that a humble individual like myself had not been consulted by Messrs. Liebig's, because I can claim to possess an unrivalled experience of the subtleties of the Secretariat. (Laughter.) And perhaps I might have been able to inform them that in those gloomy portals there dwell gentlemen at that period who were: postmasters in the art of evasion and to whom perhaps the term might be applied, if I may use the language of the late lamented Timothy Healy, "One can hardly believe even the opposite of what they say."

I have no doubt that the best brains on the other side will find some legal reason for saying that there was no contract, but I think every decent person outside and inside this Council would feel that there was a moral obligation which I contend should be accepted.

It is one of the mysteries of life to me that senior colonial officials, who in their everyday life and in their private lives are men of high character and high principle, without compunction, to quote this case, in their loyalty to Government do things which they would hardly say or do in their private transactions.

I think, Sir, that the high official who was largely responsible for this muddle and, indeed, was responsible for a good many other muddles, and who has, unfortunately or fortunately, now left this country, with all due respect I think and suggest that it might be possible in some way to take his pension, or a portion of it—for it is a very high pension—and pay it as a subsidy to Messrs. Liebig's!

MR. HARRAGIN: Your Excellency, this probably is the most difficult motion that one can have to deal with for the simple reason that, whatever are the rights or wrongs of the particular point that we are arguing, at least we are one in our sympathy for the particular company we are discussing to-day and what



[Mr. Harragin] has happened to them. But not only should sympathy be extended to them; I suggest that it should also be extended to the Administration, who have also been unfortunate in not being able to destock that particular area in the manner they originally intended.

With regard to the motion, I entirely agree with the hon. mover that perhaps the word "cavalier" was happily chosen, because, of course, it could be made to mean almost anything. The moment I received a copy of this motion I hastily searched in the largest dictionary I could find in order to see exactly what the word meant. The first meaning of the word is "gallant"—and I hardly think that was what "cavalier" was intended to mean on this occasion. The second meaning was "off-hand in manner" and the third meaning was "haughty". Well, I presume that it was either the second or third meaning which was intended on this occasion.

I do think that it is a little unfortunate that the word "cavalier" should have been used, because in fact, if the hon. mover would ask the particular officials of Messrs. Liebigs who are here, I am sure he will hear from them that from first to last every Government official has endeavoured to help them in their troubles and difficulties. And their troubles, incidentally, were very closely mixed up with our troubles, for we were working to a great extent hand-in-glove with them.

I was a little further surprised that this motion should be brought in view of the last letter, the last letter of any importance that was written to the Secretariat on this subject—I would like to pay a tribute to the hon. mover in that he has read all the relevant correspondence that has passed with regard to this matter—and it arose, as he pointed out, from a cable which the local firm received from their agents at home, and which read:—

"Referring to your letter dated 23rd February we agree your proposals regarding staff transfers and retrenchment at Athi. Please instruct Mr. K. Brinton to put matters into operation in accordance with your recommendations. Our decision is based on the

assumption that no real improvement in cattle position can be foreseen as probable during the next six months."

Having received that telegram, which they reprinted for us, they went on with the following letter:—

"We are advising you of this in view of the importance of the decision, and we shall be very much obliged if you will confirm, as we have been led to believe, the fact that no appreciable cattle supplies will be available during the next six months. We should like this confirmation in view of the fact, a point which we wish to emphasize strongly, that once the decision made in this cable is put into operation, it will be impossible for us to take any cattle for some considerable time, as we shall have no staff available to operate the factory."

That was the first paragraph, and that was followed by two other paragraphs, one asking something with regard to a member of the staff and another paragraph dealing with certain surplus cattle they had on hand and which they wished Government to help dispose of. And the letter finished up with an earnest request that an early reply should be sent.

Well, naturally, on receiving that, I suggest that the Secretariat on this occasion, as mentioned by the hon. mover, acted with great promptitude and the reply to a part of the letter was sent the next day by return. And when you consider this reply, which I understood from the hon. mover was considered to be curt and unsympathetic—

**MAJOR GROGAN: Dishonest!**

**MR. HARRAGIN:** You must realize the position. It was not a question that Liebigs did not know what was happening. They knew every single thing that was happening in that reserve, what was being done and what was not being done by Government. They were told and knew the facts, and it was simply in order that they could get on with their closing down that they wished a reply immediately. It was not only the view of the manager here but it was also the view of the Government that owing to the new destocking measures (or whatever you like to call it) which were being

[Mr. Harragin] introduced in that area, it was unlikely that within the next six months they would be able to receive sufficient cattle. So, immediately, and in order that they might get on with their business—though I think they knew the answer before it came, because they had been in constant communication with Government—this short letter, which was only a polite, formal statement, was sent. It was obviously meant to be telegraphed home to their principals that for the next six months a regular supply of cattle would not be available. And when you appreciate the tone in which that letter was written and that of subsequent letters—and we have had many from this particular firm—there was not the slightest tension between the Secretariat and the company we were working hand-in-glove with as far as possible.

I wonder if people realize the amount Government did do in order to encourage this company here. I admit frankly and at once that we were delighted to see them. We think they are a necessity in many ways to the country, and we have every hope and confidence that they will be able to reopen and do well in the future. There is a small temporary setback, as the hon. mover read out from a letter which was sent to the Chamber of Commerce, and which does in fact represent Government's attitude in the matter, and it would be only a waste of time to read that letter to you again.

But to refer back for a moment to what Government have in fact done for the company, I should just like to point out a few of the details of the agreement to which was attached considerable significance: There was a lease of approximately 10,000 acres of Crown land in the vicinity of Athi River at a nominal rental of Sh. 20 per annum; a lease for a further 10,000 acres, which is situated in the Masai Reserve, was to be granted at an annual rental of 5 cents per acre per annum; then, if the lease of the land in the Masai Reserve was not renewed, Government would endeavour to find equivalent land in the neighbourhood of the factory; there was a further lease of a farm for 99 years near the Athi River at a nominal rental of Sh. 20 per annum; Government agreed to provide free of

charge veterinary services; there was an undertaking that Government would take no steps to prevent cattle coming from adjoining territories; there would be no customs duty on any plant or material required in connexion with the slaughtering of cattle; and that if at any time Government paid a subsidy to any other similar enterprise Liebigs would be treated in a similar manner.

So I think it can well be agreed that Government has done in that way all that it could to assist this company which they thought would be a necessity, or at any rate a great help in the big problem of destocking in this country.

You all know the history of destocking; you all know that every effort to destock the Ukamba was made, and, in fact, I think it is true to say that of the 14,000 cattle which Liebigs managed to acquire at least 13,000 were due to the direct efforts of Government in that area and the Masai. So I suggest that it is most unjust and unfair to pretend that Government has treated them in this "cavalier" manner, nor do I for a moment believe that the directors in England think so, because I have in front of me a copy of the *East African Standard* of the 15th February, in which there appeared a report of the Directors' meeting. The particular reference to Kenya is as follows:—

"As regards Kenya, our factory was inaugurated in the early months of the year, and after few small adjustments to the plant soon got into its full stride.

"The year's operations were not so complete or extensive as we could have wished, due to the supplies of cattle proving irregular and disappointing, but new ventures of this nature always have their teething troubles to contend with, and we anticipate that the current year will witness a considerable improvement of the organization for making cattle available in larger and more regular numbers." (Laughter.)

"Nothing has transpired since materially to change the basic factors on which a decision was taken to proceed with the establishment of the factory; the Government are still faced with the serious and pressing problem of soil conservation, which owes its

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origin to the depasturage and erosion caused by heavy and continuous overstocking, and we have erected a factory which provides them with the marketing facilities for the disposal of the surplus cattle of which they were in need in order to carry out their declared policy of dealing with the overstocking of the Native Reserves.

"Having regard to the assurances received at the time our agreement was being negotiated, we are confident that the full co-operation and support of the Kenya Government can be relied upon towards the organization of a programme which, while enabling them effectively to prosecute their policy, will at the same time avail of the marketing facilities provided by our factory."

Well, that was the considered opinion of the Managing Director in February of this year, and I suggest that nothing has happened since then to alter it. All that has happened is I think that this letter, which perhaps was shorter than it might have been had it been written for the purpose of dealing with all the points raised in their letter, was sent which really only confirmed what they already knew so that they could get on with their business with the greatest expedition. I do not think that there is anything more that I can say that will help in this matter.

It is true, as was told hon. members yesterday by my hon. friend the Director of Veterinary Services, that the price of cattle has gone up. But that is a matter over which Government has no control. No doubt, in due course, it will go down again; that is just the chance of the game. But to suggest that Government has not done all that it could to assist the firm is merely childish. Government has done all they can and certainly will continue to do all it can. It desires to keep this company as a going concern as much as it ever did, and the only good that can come out of this discussion is—and one of the primary reasons I believe that has been put forward by one or two people—is that the destocking in the Ukamba at any rate at one time was unsuccessful because we were so closely associated with Liebigs' that the natives

thought that the company was associated with the Government departments and that they were putting their cattle in a Government factory and that the whole thing was merely a Government rump, so closely were we working with them. After the hon. mover's speech, I think that if the Wakamba were able to read and understand it they would be pleased to know that Government are not one with Liebigs'.

In conclusion, I would say that Government deeply regrets that this company has had to close down, but at the end of six months we hope that they will be able to resume operations, and I will say that they can rely on the same co-operation that they have always had from Government.

MR. WRIGHT: Your Excellency, the story unfolded—and it is a sad story—by the hon. mover needs no amplification from me. I am disappointed, however, that Government in its Administration officers has not gone very fully into this question, and should find such a fatuous excuse to put up as that adduced by the last speaker before he sat down and touched on by the hon. the Director of Veterinary Services yesterday, namely, the prices as being the factor which had created this very grave difficulty under which Liebigs' have to suffer to-day.

The issue of prices is a tolerably vital one, but the assumption from that remark is that these prices quoted by Liebigs' are not fair prices. Actually, Liebigs' gave prices that compare very favourably with the regulation prices which are classed as fair export rates, and which I have analysed very closely. But the matter of price is the last consideration as far as the destocking programme is concerned. Liebigs' are not taking over cattle from prime stock herds which can command high prices. They are taking over culls, and are creating the only possible market for culls, a factor Government recognized so keenly before Liebigs' came to the country that they were prepared themselves to put up a fertilizer factory, which they recognized themselves from the start must be a losing concern, and the price they offered in the first instance to the Kamazia at that time was Sh. 6 per head. Comparing that price with regard to those offered

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by Liebigs', I think we can say that the latter's are eminently fair and reasonable.

I was particularly interested in the reference by the hon. the Acting Chief Secretary to the suspicious in the minds of the natives that Liebigs' was practically identical with the *Serkali*, and that that in itself would create suspicion and a certain amount of hostility. It is quite clear, however, in all the correspondence that has been read, that Government regarded Liebigs' as an answer from heaven to a very fervent prayer whereby, at long last, they could carry out a destocking policy advocated since the days of Sir Daniel Hall.

If, indeed, Government had realized that the partnership was real, it might have been better for both parties. It is very difficult to blame anybody, but in all good faith the firm had entered into a tacit partnership with Government, believing that a measure of compulsion would be applied. Of such extraordinary expediency is the application of the word that I see no reason why it should be avoided. You even see it in the Carter Commission Report and in the Sir Daniel Hall Commission Report, and representatives of Government in this Council themselves have repeatedly stated that compulsion was necessary. Let me only refer to what the late Colonial Secretary said in 1936 and which was read out by the hon. mover yesterday:—

"When Liebigs' are established we shall have every justification for using compulsion."

Later, the hon. the Chief Native Commissioner confirmed the use of that word. What is wrong with compulsion, anyhow? In this particular case I have cited—and I am referring to the recommendation of the Colonial Secretary then—I am reminded of that quotation, "The tongue has sworn but the mind is not on oath." And that, I fear, is at the bottom of a good deal of the trouble. It was easy to give assurances and enter into pledges mutually beneficial, but because of activities overseas and awkward questions here and there, that "policy", which two days ago or yesterday was called a policy of vacillation and weakness, is eminently displayed in all these activities of Government.

I am sorry for the representatives of Government. I know they have a difficult job, especially when the control comes from the Colonial Office. But when Government give an assurance that there will be compulsion, which is the only remedy and which was recommended by Sir Daniel Hall and confirmed since by every other Commission, agricultural and so on, and they know that there will be no benefit to the natives unless overstocking is compulsorily stopped, cannot they take a stronger line of action than they do to-day? Is it because they fear questions from overseas? Or what is the trouble? Because there is something radically wrong somewhere.

We know that in the preliminary stages of this partnership, before any legal agreement, there was a moral and mutual undertaking. The conditions were investigated, the intention was clear and the capacity of the firm was known, and the advisability of it to Government and the whole country was clearly set forth. Now the company has faithfully done its best to fill its part of the bill, but I do charge Government with having failed lamentably to do theirs. They have, indeed, not a year later, failed the company so badly that they have had to shut up shop. And now they are adopting coercive measures in one of the reserves alone instead of treating all the reserves the same and simultaneously, thus creating in the minds of one tribe a feeling that they are being unfairly treated and that the other tribes are getting away with it. And finally, they are putting up a proposition for destocking by fencing which, on the evidence given by the hon. the Acting Chief Native Commissioner, will take two and a half years to complete. As the noble lord the Member for Rift Valley said—

MR. LA FONTAINE: Your Excellency, on a point of explanation, what I did say was that the fencing process was expected to last until the beginning of next year.

MR. WRIGHT: I am very glad to have this assurance from my hon. friend. I made a rapid calculation when he said that they had done 20,000 acres in, I think, a period of five months since the programme had been inflated, and that



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represents one-fifth—actually it is not; possibly it is one-eighth—and on a simple computation at that rate the sisal fencing scheme will be completed in 42 months.

I am, however, glad to have an assurance from the hon. member that it will be done so quickly. All the same, I think the period envisaged is far too long to ask Messrs. Liebig's to wait. It is not reasonable that Liebig's should receive any letter of repudiation and have to shut up shop for six months. My only marvel is that they do not shut up altogether; although to do that would be fatal and a lasting tragedy for Kenya, if after many attempts over many years to get a firm to come here it has to do that because of the pusillanimity and vacillation of the policy of weakness of Government to apply compulsion. There is a moral obligation if there is no legal one.

Your Excellency, Sir, in your own speech at the opening of the factory, read by the hon. mover yesterday, properly paid a tribute to that firm. And I would like to call attention to the fact that Liebig's have dealt fairly and even generously with the natives. When there were those stupid auction sales, which were compulsory auction sales and had no real meaning, and Liebig's were able to buy below their stated price, they sent a bonus back to be paid to the natives who had supplied the stock. That is their attitude, and it is, as you described it, Sir, "a square deal." I could only wish that Government in reply and in their turn would undertake to give Liebig's a square deal and ensure that the supply of cattle shall be consistently maintained.

**LORD FRANCIS SCOTT:** Sir, I only wish to intervene in the debate for one purpose, and that is I should very much welcome if some officer on Government side could give any indication as to the time limit at the end of which they consider that it will be a reasonable proposition for Liebig's once more to open their factory and restart their business.

We have been told that the scheme for this fencing in the Kamba Reserve will be completed early next year. We have

been told of schemes for destocking in other areas, the Samburu, Kitui, and other places, and I should like, before the hon. mover replies, Government to give some indication of the time limit when this company can seriously consider re-starting operations?

**MAJOR GROGAN:** What a show! Your Excellency, may I move the adjournment of Council in order that we may try to find somebody who knows somebody who knows something about it?

**HIS EXCELLENCY:** I do not think that is necessary at all.

**MR. LA FONTAINE:** Your Excellency, in view of the many factors involved, I regret that it is not possible to give any assurance as to the date when it is hoped that Liebig's can be reopened or when cattle will be available.

**MAJOR GROGAN:** On a point of information, that is not what the hon. member said yesterday or the day before.

**HIS EXCELLENCY:** I do not think the hon. member has spoken to this motion before.

**COL. KIRKWOOD:** Your Excellency, I am rising to bring one point out that has not been mentioned. I think everybody realizes the difficulties that Government have had and still have, but we have also to realize the difficulties Liebig's are suffering from and will suffer from. We have been told that the fencing scheme will be completed somewhere about the end of this year or the beginning of next, but what has that got to do with the destocking in the Kamba Reserve?

We have been assured by Government speakers that the Kamba Reserve has already been destocked; that can only mean that there is a tremendous amount of illicit moving of stock taking place from the Kamba elsewhere. Could we be informed where this cattle has gone, and what other reserves have received them, and are those reserves consequently overstocked? Have any prosecutions taken place as a result of this illicit movement? Seeing that an assurance has been given, and personally I accept it, that destocking has automatically taken place in the Kamba Reserve, and that Liebig's are not going to receive any cows from that

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[Col. Kirkwood] reserve, I think that is a point which should be cleared up.

**HIS EXCELLENCY:** I think that the only person who can answer that is the hon. the Acting Chief Native Commissioner, and he has already spoken.

**MR. LOCKHART:** Your Excellency, on a point of order, does this arise under this motion?

**HIS EXCELLENCY:** It might be construed as coming under this motion.

I am afraid I cannot call upon any member of Government to answer these numerous questions, as the hon. the Acting Chief Native Commissioner has already spoken.

**COL. KIRKWOOD:** Your Excellency, may I suggest that there are plenty of Government officials and administrative officers who can answer these questions as far as I am concerned.

**MR. HARRAGIN:** Your Excellency, on a point of order, surely if these are genuine questions and the hon. member wishes them answered, he should ask them at question time. The person replying for Government has already spoken. I would be prepared to answer, not necessarily to the satisfaction of the hon. member, any or all of them, but I cannot now as I have already spoken.

**MAJOR GROGAN:** Your Excellency, on a point of order, the answer I had given me by the hon. and learned Acting Chief Secretary, in quoting a letter from his predecessor, is that in which he gave an assurance that there would be the amount of stock available in six months, and the date of that letter is 11th March.

**MR. HARRAGIN:** No.

**MAJOR GROGAN:** Your Excellency, I am afraid my reply may be a little bit long.

With reference to the statement made by the hon. the Director of Veterinary Services when he joined in this debate that there is nothing to be said, I would like to say that everybody appreciates the great services he has rendered to this country by his participation in these negotiations in his capacity of an honest broker—and I lay great stress on that. As, apparently, he is one of the few

honest people who have participated in these happenings, his position is a very difficult one, for he has, in fact, really nothing to say which has any bearing on the matter. He merely referred to the question of price.

Now, of course, the price factor does not arise, and I want to make it quite clear that the purpose of this motion was not to raise a debate on native policy. True, we have had a number of hon. members saying what we on this side of Council think about native policy, or rather, the absence of it, but the purpose of this motion was to draw attention to the dishonest practices of Government in their negotiations with third parties in financial matters. This motion was deliberately framed in order to focus attention on that very important issue, which issue has been materially obscured by the introduction of all sorts of irrelevant matters—though these have thrown still further light on the hopeless position in which Government finds itself in respect of native policy and its other operative functions.

I am not going to deal with the intervention of the hon. the Acting Chief Native Commissioner because he is in a very awkward position: After a very large amount of delay in trying to find somebody on the Government side who was in a position to give important information on this subject, he got up and said Government was not in a position to give any assurances at all, whereas, actually, he quite definitely said a day or two ago that the necessary number of cattle would be forthcoming, if I understood him correctly, within six months. But that does not matter very much, because a greater authority than he has accepted responsibility for that statement, my hon. friend the present Acting Chief Secretary's predecessor, in a letter which I have quoted, stated quite distinctly:—

"With reference to your letter of the 10th March, concerning the cessation of operations at your factory at Athi River, I am directed to confirm that, so far as can be foreseen, no appreciable cattle supplies, such as would satisfy your requirements, will be available during the next six months."

And that was dated the 10th March. We have already gone on some considerable

[Major Grogan] distance since then, and the only interpretation that could be made of that by any business firm was that the necessary cattle would be made available at the end of six months.

OFFICIAL MEMBERS: No, no.

MR. LOCKHART: It means what it says.

MAJOR GROGAN: That is my contention, for I am talking of the common and garden affairs of business men. I am not talking of the ways of the Secretariat; I am talking of the interpretation that would be put on that by the ordinary honest business man, and according to my reading of the letter to the Chief Secretary on 10th March they say that:

"We propose to cover ourselves as much as this lamentable position permits, and we propose to send the whole of our staff down to Rhodesia, for this will be cheaper in the interim, since your letter says that stock will not be available under six months."

I know the Secretariat will find fifty different interpretations, but in the correspondence that I had the privilege of seeing that is the only interpretation that an honest business man would make of it.

The very essence of the preferment of the complaint by this motion is that the Secretary of State's methods differ so profoundly from those to be found in ordinary circles, in clubs, on racetracks and in the streets and market-places. And in this the hon. Financial Secretary endorses my contention that this means what it says and it can only have one meaning according to the people in the market-places—unless their meaning is entirely different from his.

That covers the question of the Acting Chief Native Commissioner.

We now turn to that so-called reply of Government to this letter. I was very interested in and not at all surprised at the wide variation of pugilistic methods of the Acting Chief Secretary, from the offensive to the evasive, according to whether his opponent was still in the ring. (Laughter.) And as his opponent is still in the ring his pugilistic methods consist not only of the evasive—one can-

not even describe them as that—but at times of completely skipping under the ropes and disappearing into the street. (Laughter.)

The simple reason is that he never made the slightest attempt of any kind or description to face the issue raised in this debate. Every single thing that he referred to had nothing whatever to do with it, except one, the disgraceful letter of the former Chief Secretary repudiating any obligation under the supplementary assurances given to this contract, and to say—which is a funny thing—that it was rather short and perhaps a little bit cavalier, and so on.

I should like to explain once again to the hon. gentleman that I used the term "cavalier" purely out of deference to the feelings of the hon. gentlemen on the other side of Council, and I did explain in my opening speech that what I meant really was "casuistic"—which means "equivocal, sophistical, false reasoning or trading in regard to duties, obligations or morals". It is characteristic of the method employed by the Colonial Office that this charge—for it is in fact a charge, as I have pointed out—of dishonesty is evaded completely. He never made the slightest attempt of any sort or description to meet the real issue involved in this motion.

It is no good saying that a lot of other covenants were involved in this contract; I know that perfectly well. But it is not relevant to the issue, and I made no reference to them. It is perfectly true that Messrs. Liebig's were endowed with 10,000 acres of those wide open spaces on the Athi Plain that have been waiting for an occupant for forty years. But of what value is that to them if there is no stock for them to deal with and their unfortunate employees have nothing else to do but to wander about and admire the scenery of the Athi Plain?

All this is irrelevant to the issue to say that they should think themselves extremely lucky because during the long intervals when, owing to their proper function being incapable of performance, their employees who are costing £60 a month can wander about gazing at the beauties of the Plain. This is a characteristic example of the method of Government in evading the proper issue.

[Major Grogan]

It was alleged that this breakdown has been caused as a result of the rise in price, over which Government had no control. Now, Government had every control over that price, for the following reason: There are estimated to be something like between four and five million head of cattle in this country, and out of that only a quarter of a million are in European holding, and of course the vast bulk of that cattle are in the pastoral areas of this country. And the complaint is that every one of these pastoral areas is to-day overstocked, and that is proved by the terrific mortality that has taken place when there is any seasonal alteration in conditions. It is recognized that you can take 10 per cent of that stock as surplus which must be disposed of. If we take the lowest figure at all, four million, which I understand would not be questioned by anybody, then it is quite obvious that the problem in this country is to deal with 400,000 head of cattle per annum.

Now let us assume for the sake of argument that 200,000 of these can be eaten locally, or can be properly absorbed by parties whose areas of land are not overstocked; that still leaves a residuum of 200,000. If Government's policy, which has been germinating for years and years and years, and which should be a universal and general policy not only applicable to the wretched Ukamba, had been applied easily and pushed into gear without friction, we should have found in the markets of the country 400,000 head of cattle, of which 200,000 could be absorbed locally and the balance exported. And had that policy been properly applied I see no reason in the wide wide world why that cattle should not have been converted into a merchantable article; and had those operations been applied equitably how could there possibly have been any rise in the price of cattle? Therefore, the suggestion of my hon. and learned friend that Government had no control over the price of cattle has only derived any sort of vestige of veracity from the fact that Government has no control whatsoever over its own policy.

The matter of six months I just want to touch upon. We now find that there

have not been any guarantees given at all! It is my belief, and I believe it is the belief of hon. gentlemen on the other side, that this virtual assurance is just as fatuous an assurance as the one originally given to induce these unfortunate people to come here. I do not believe for one moment from all I know of what is going on in the country—I am not referring to the attempts that are being made by individual administrators, but as regards the general policy and the complete change of method adopted—I do not believe for one moment that the necessary amount of cattle justifying Messrs. Liebig's resuming their proper function will be available within six months. It is entirely wrong that these gentlemen should not be informed openly that this is another occasion on which they are being led down the garden path; that you have lost all control of your policy. It is only fair to tell them to pack up and wait two years, or whatever the time may be, until this Government has in fact become a government and has achieved some measure of control over the people they are supposed to govern. That would be a fair and square dealing, and they could make their plans accordingly.

Tacked on to the end of this motion of mine is a reference to the London money market. It is particularly essential that everything possible should be done to restore the confidence of the City of London. To be truthful, quite frankly I threw out a very deliberate challenge and I said that I was in a position to show quite conclusively that both the Colonial Office and the local Government, in its dealings with third parties and in its business relations with third parties, has been and very often still is, and obviously so in this case, entirely dishonest. And it is most important that that reproach should be removed.

I threw out the challenge and I hoped that my pugilistic hon. friend would have been able to take up that challenge, but he has run away.

OFFICIAL MEMBERS: No.

MAJOR GROGAN: Or would he like me to give some further examples to show how necessary it is to retrieve the honour of this Colony?

**HIS EXCELLENCY:** The hon. member should enter questions another time; he is supposed to be making his speech now.

**MAJOR GROGAN:** This is my reply. I threw out that challenge and hoped that it would be taken up, in the hope that I would be able to confirm by particular instance the general contention I put forward that the procedure of this Government has been and still is dishonourable in the ordinary business sense of the word.

I have nothing more to say since my challenge has not been taken up, except that I do sincerely hope that in view of the changes that have taken place in the personnel of Government, and in view of the anxieties with which we are faced to-day, that Your Excellency, in whom we all have complete confidence and who we believe resents these discreditable practices just as acutely as we do, will take this opportunity of cleansing this Augean stable and introduce a new era in Secretariat practice which will lead to confidence, trust and respect for the Administration.

I do also sincerely trust that this motion may be met in some way or other with some indication of remorse, and that some sort of an attempt will be made to come to a reasonable business arrangement with Messrs. Liebig's, which you can easily do by a mere recognition of the disgraceful way in which Government has treated them hitherto.

The question was put and negatived by 22 votes to 11, two members not voting.

**Ayes.**—Major Adams, Major Cavendish-Bentley, Mr. S. V. Cooke, the Earl of Erroll, Mr. Ghesie, Major Grogan, Col. Kirkwood, Mr. Nicol, Sir Ali bin Salim, Lord Francis Scott, Mr. Wright.

**Noes.**—Messrs. Isher Dass, Daubney, Davenport, Dennison, Fannin, La Fontaine, Harragin, Hebdon, Hopkins, Dr. Karve, Messrs. Kasim, Lacey, Lockhart, McKean, Northrop, Patel, Dr. Paterson, Mr. Rammell, Sir Godfrey Rhodes, Messrs. Stronach, Waters, Willan.

**Did not vote.**—Sheikh Hamed bin Issa, Dr. Wilson.

Council adjourned for the usual interval.

### On resuming:

## KENYA (HIGHLANDS) ORDER IN COUNCIL, 1939

### MOTION

**MR. PATEL:** Your Excellency, I beg to move the motion standing in my name:—

"That this Council deplores the promulgation of the Kenya (Highlands) Order in Council, 1939, which—

(a) contravenes the solemn pledges and assurances given by the Imperial Government and its responsible ministers from time to time for the last fifty years;

(b) debars His Majesty's non-European subjects from acquiring land in the Highlands of Kenya;

(c) gives to persons of European descent who are not British subjects, and who owe no allegiance to the British Crown, preferential treatment over His Majesty's subjects of non-European descent;

and requests the immediate repeal of the said Order in Council."

I may at the outset state that the feelings of the Indian community of this country have been so deeply stirred by this Kenya Highlands Order in Council of 1939 that it is very difficult to describe them and convey them without speaking frankly and clearly. I may state that no event in the last fifteen years in this country has so much stirred the feelings of the Indians as this Order in Council, and I should be failing in my duty if I did not convey in full these feelings to the local Government and the Government in Great Britain.

I know it is very difficult for European members in this Council to appreciate the feelings of the Indian community unless they are prepared to exercise a little imagination and also show a sympathetic heart. I know this question has been discussed very often in this Council and perhaps I shall be repeating many of the arguments already advanced, but it is necessary to state our case very clearly, if only for the purpose of record, and I crave the indulgence of Council if I am unduly lengthy.

[Mr. Patel]

This question, Your Excellency, though it looks a local question only, is one which affects very largely the status of Indians in the British Empire. It is one of the most important questions from our point of view because the Imperial Government in Britain from early days, from the days of the British connexion with India, have given assurances that Indians shall have equality of treatment in any part of the British Empire. The Indian community can very well understand and sympathize very often with the attitude shown and inability to interfere expressed by the Imperial Government in respect of the status of Indians in the self-governing Dominions, such as South Africa, but we could never understand the Imperial Government taking this attitude in Crown Colonies directly under its control.

Your Excellency, it is the firm belief of the Indian community that the Imperial Government has broken the pledges and assurances given to the Indian community and made in respect of their status in the British Empire, particularly in that part of the Empire which is controlled directly by the Colonial Office. I think in the first place I will review shortly those assurances and pledges.

It is a well-known fact that in 1858 the late Queen Victoria, whose memory is always treasured with great reverence by the Indians, in her declaration made solemn pledges that Indians were to be treated as equals in any part of the British Empire, and those pledges were renewed time after time by successive sovereigns of Britain. Apart from that, coming to the particular question of Indian settlement in the Colonies, I may point out the declaration made in 1875 by Lord Salisbury, the then Secretary of State for India. In 1875 Lord Salisbury emphasized the obligations of the Imperial Government to accord Indian subjects of Her Majesty equality of treatment in the clearest terms, when he declared to the Colonial Office that Indian settlers must be—

"in all respects free men, with privileges in no whit inferior to those of any other class of Her Majesty's subjects resident in the Colonies."

That was a statement made by one of the responsible ministers of the Imperial Government in 1875, and up to the close of the nineteenth century it is a well-known fact that Indians were invited to come and settle in this part of Africa, and it was never announced nor stated, and the Indians were not given to understand, that they would not have equal treatment in Eastern Africa with any class of Her Majesty's subjects. In fact, anyone reviewing the history of settlement up to the close of the last century will find that the intention was for giving equal treatment to Indians in this country and to give them equal rights in respect of acquiring land, mining and other things.

When the Royal Charter was granted by the late Queen Victoria to the Imperial British East Africa Company, from whom the Crown took over Kenya, it was stipulated that there shall be no differential treatment of subjects of any power as to trade and settlement.

Coming to the twentieth century. In the early part, Mr. Frederick Jackson, the then Deputy Commissioner of the Protectorate of East Africa, wrote to the Indian Association on the 28th February, 1902, stating:—

"You are in error in supposing that the Government has any intention in drawing a distinction between Europeans and Indians as far as rights of mining, settling and acquiring lands are concerned."

That is what was said in 1902, when the Indian community was feeling anxious about their treatment in this country.

The first time discrimination against Indians was publicly announced was in 1903 by Lord Elgin, and, if I may, I will quote what he intended to do from the Kenya White Paper of 1923:—

"Lord Elgin confirmed his decision in 1908, stating that, while it was not consonant with the views of His Majesty's Government to impose any legal restrictions upon any section of the community, grants in the upland area should not, as a matter of administrative convenience, be made to Asiatics."

Now, Sir, whatever interpretation can be given to the letter or legal interpretation can be laid on that from the point

[Mr. Patel] of view of the European community, I claim, and the Indian community has always claimed, that that was a pledge only applicable to initial grants and was never to be applied to transfers to which, later on, it was stated to apply. Moreover, at that time, it was very clearly stated that those grants should not be made to Asiatics in the Uplands, which were then understood to comprise hardly 10,000 square miles.

It would be very interesting to note a statement made at the same time, when this pledge was given, by Mr. Churchill, who was then Under-Secretary of State for the Colonies. In the first place, Mr. Churchill, after his visit to East Africa, stated in regard to the entry of Indians to this country—these are his words:—

"The Government welcomed their entry into the country,"

and it was hoped by the Colonial Office "that equatorial Africa might offer a compensating field for the colonizing enterprises of our fellow-subjects in India"

to ease the Transvaal difficulty. That is what was understood to be the meaning by one of the responsible ministers of His Majesty's Government in 1908 when the Indians were invited here so that they might have a compensating field for colonizing and to ease the situation in the Transvaal.

He also referred to pressure which had been brought to bear against the Indians. He stated in one of his books, *My African Journey*:—

"How stands the case of the British Indian? His rights as a human being, his rights as a British subject, are equally engaged. It was the Sikh soldier who bore an honourable part in the conquest and pacification of these East African countries. It is the Indian trader who, penetrating and maintaining himself in all sorts of places to which no white man could go, or in which no white man could earn a living, has more than anyone else developed the early beginnings of trade, and opened up the first slender means of communication.

"Is it possible for any Government with a scrap of respect for honest

dealings between man and man, to embark upon a policy of deliberately squeezing out the native of India from regions in which he has established himself under every security of good faith. Most of all, we ask, is such a policy possible to the Government which bears sway over three hundred millions of our Indian Empire?"

He expressed this view in 1908 because the local settler community had been trying, I may say, to squeeze out Indians from parts where they had established themselves under the express invitation of the Government.

The next event—I shall not go into all the small events—of importance is in 1915 when the Crown Lands Ordinance was passed and the Governor was given the power of veto over transfers of land between members of different races, and here I wish only to quote the words of Lord Hailey, where he states—

"that veto was designed to prevent the sale of lands to the Indians," and I claim, Your Excellency, that that was deliberately done.

On page 747 of *An African Survey*, Lord Hailey states that:—

"The Colonial Office gave way to pressure, and in 1915 agreed to increase the period of lease to 999 years and to restrict the control of the Governor over transfers to those between members of different races, a measure designed to prevent the sale of land to Indians."

That was the next step taken in making discrimination against Indians.

Lord Elgin made an announcement intended, I claim with all confidence, to restrict that only to initial grants. In 1915, under pressure from the settler community, the Colonial Office gave way and allowed provision to be placed on the statute book whereby the Governor could veto the transfer of lands to Indians.

Now the next important event to which I wish to refer is what is popularly known as the Congo Basin Treaty. I was surprised when the Acting Attorney General made a statement, in replying to the hon. and gallant Member for Ukamba, that he considered that the

[Mr. Patel] Treaty applied only to members of white nationality. I did not get his actual words but what is reported in the *East African Standard* is this:—

"Replying to the debate, Mr. Willan said that the only points raised were by Major Grogan, and he would endeavour to educate the member by lifting him out of the rut. With regard to the alleged discrimination, he contended that the Congo Basin Treaty was concerned with discrimination between people of white nationality, and therefore there could not be discrimination in the way indicated by Major Grogan."

That was in reply to a question of discrimination in the amounts of bonds between immigrants coming from Asia and those coming from Europe. If I remember rightly, that discrimination was referred to in one of the debates in this Council, when it was stated that there was no discrimination, and that what was intended was that the amount of the bond should be such as was considered necessary to return any immigrant to his own country, and it was thought by the Immigration Department and advisers of Government when that law was passed that to return an Indian to his own country it would be necessary to have about £10, while for a European it would be necessary to have roughly £50. So the principle was applied equally to both classes and, of course, it was thought that that would be the expenses of returning prospective immigrants if it was found necessary to return them and no discrimination was made when the different amounts were laid down for the purpose of bonds.

To this day that treaty is known as the Congo Basin Treaty, and technically is called the Convention which was signed on the 10th September, 1919, and I have a copy which I have typed from a printed copy in the Secretariat.

There, India is a party to that treaty. The British Empire apparently invited the representatives of all the Dominions and also the representative of India to be parties to this treaty, and Lord Sinha, acting as the representative of India, is a party to this treaty.

I want particularly to refer to Articles 3 and 4 of the treaty. In Article 3 it states:—

"In the territories specified in Article 1" (and the whole of Kenya is included in them) "and placed under the authority of one of the Signatory Powers, the nationals of those Powers, or of States, Members of the League of Nations, which may adhere to the present Convention shall, subject only to the limitations necessary for the maintenance of public security and order, enjoy without distinction the same treatment and the same rights as the nationals of the Power exercising authority in the territory, with regard to the protection of their persons and effects, with regard to the acquisition and transmission of their movable and real property, and with regard to the exercise of their professions."

Article 4 reads:—

"Each State reserves the right to dispose freely of its property and to grant concessions for the development of the natural resources of the territory, but no regulations on these matters shall admit of any differential treatment between the nationals of the Signatory Powers and of States, Members of the League of Nations, which may adhere to the present Convention."

MAJOR GROGAN: Is this the Congo Basin Treaty?

MR. PATEL: Yes, and India is a party to this Treaty and further, India is also a State member of the League of Nations in its own independent capacity.

MAJOR GROGAN: I should like to be quite clear as to whether this is really the Congo Basin Treaty and not a treaty under the League of Nations.

MR. PATEL: This is the Convention of 1919, and that is known popularly now as the Congo Basin Treaty.

HIS EXCELLENCY: Perhaps to make it quite clear—I am not quite clear myself on the point, although I do not want to interrupt the hon. member, as to whether it is not some amendment made to the Congo Basin Treaty—could the hon. member read out the title of the document he is quoting.

LORD FRANCIS SCOTT: There was no League of Nations at that time.

MR. PATEL: The title is "Treaty Series, 1919"—I have only a typewritten copy of it—and it goes on: "Convention Revising the General Act of Berlin, February 26, 1885, and the General Act and Declaration of Brussels, July 2, 1890."

MAJOR GROGAN: Signed at Saint Germain-en-Laye in 1919?

MR. PATEL: Yes.

I submit and claim, Your Excellency, that under this Treaty, to which India is a party and as India is also a Member of the League of Nations, it was clearly intended that no discrimination should be made against Indians in this country after 1919. And I hope that the best legal brains in this Colony and perhaps the Empire will be mobilized to refute my claim if I am wrong.

I also claim that these two Articles—3 and 4—require that there should be no different treatment with regard to the acquisition of land, and that also it does not apply, as it seems popularly to be believed, only in regard to trade. And therefore that is why I stated that I was surprised when the hon. the Acting Attorney General stated in this Council that that could be only applied to members of white nationalities.

The next important event in my own opinion in regard to the status of Indians in the Colonies was the Imperial Conference of 1921, where the Imperial Conference passed a resolution, not accepted only by South Africa, although all the other Dominions and the British Government voted in favour of it, and that resolution stated amongst other things:—

"that in the interests of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians (lawfully domiciled in some other parts of the Empire) to citizenship should be recognized."

It was due to the influence of the Imperial Government that this resolution was passed, and it was then understood in India by everybody that at least the Imperial Government would put into

force that resolution as far as that part of the Empire was concerned directly under the control of the Imperial Government. And even a child can understand that you cannot recognize full citizenship unless full equality is also given with regard to settlement, the acquiring of lands and other matters concerned.

The next important point in my opinion was the issue of the White Paper in 1923 after the bitter controversy going on between the European community and in the Indian community in London. The Rt. Hon. Shrinivasa Shastri, the leader of the Indian deputation on behalf of the Government of India then in London, who is a well-known statesman in the British Empire, wrote a letter to *The Times* on the 2nd June, 1923, in which he alleged and in fact made a definite assertion that no pledge was given that European settlers should have exclusive occupation of the Highlands in perpetuity. But that challenge was never taken up.

But it is very interesting, Your Excellency, that in that White Paper itself, in a review of the several events which led up to the issuing of this White Paper, it is stated, on page 16 of that White Paper:—

"To deal with the case of transfer it was necessary to retain, in a modified form, the Governor's power of veto, and this matter was very fully considered by Mr. Harcourt" (the late Viscount Harcourt) "who was Secretary of State at the time. He refused to agree to a veto on transfers between Europeans and Asiatics involving a definite racial discrimination."

So at least there was a Secretary of State who refused to exercise veto, as it involved racial discrimination. And to the great dismay of the Indian community in this country and to the great disappointment of the whole of India, His Majesty's Government, after reviewing all the circumstances which led to the issuing of the White Paper, stated:—

"After reviewing the history of this question and taking into consideration the facts that during the last fifteen years European British subjects have been encouraged to develop the High-

[Mr. Patel] lands and that during that period settlers have taken up land in the Highlands on this undertaking, His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers."

And it should be observed that those who were invited to come here were British European citizens, and not all Europeans. For the first time, His Majesty's Government then laid down that, with regard to initial grants as well as transfers, the existing practice must be continued.

Then, in 1932, we had the Carter Land Commission coming to this country, and a very surprising statement was made by His Majesty's Government in the terms of reference; that was that the Commission had to inquire into and make investigations in regard to land that had been already alienated and to define the Highlands in which persons of European descent were to have a privileged position. Well, that is where I claim that His Majesty's Government had gone a step further. By 1933 they wanted not only to continue the existing practice of issuing initial grants and transfers but they also wanted an inquiry to find out the boundaries of land where Europeans were to have a privileged position! And the Commission went out of its way and beyond its terms of reference to advise even the enactment of an Order in Council to reserve the Highlands for Europeans! The Commission was not satisfied with the continuance of the existing practice but they wanted legal discrimination against the Indians in this country.

Now, before the passing of this Order in Council, there are certain very important pronouncements which were made by important ministers of His Majesty's Government, and I would like to refer to these pronouncements, because I am going to point out to this Council that the Order in Council has gone even beyond the statements made between 1934 and 1939. The first pronouncement is extracted from Hansard, 1938, Vol. V, Column 348, which was

North as being an extract from a statement, made in the House of Commons by Mr. Ormsby-Gore:—

"It is not intended that the Order in Council defining the boundaries of the Highlands area shall include any provision involving legal or administrative discrimination on the basis of race or nationality in connexion with the occupation of land in that area. The issue of the Order will therefore not affect the policy which has been followed since 1906, as set out in Command Paper 1922 of 1923."

That again, I submit, Your Excellency, is very clear as to what the intention is as expressed by that pronouncement. It was that only the existing practice would be embodied in the Order in Council, and I shall show, though the interested parties might disagree with me, that that Order in Council has gone much beyond those pronouncements.

The next statement, which was made by the Secretary of State for the Colonies, was on the 9th June, 1936. In the course of this he said:—

"What is contemplated arising out of the recommendation of the (Morris Carter) Commission is the issue of the two Orders in Council. There are, of course, other things arising out of those recommendations, but points which have been raised are chiefly concerned with these Orders in Council. One of them is to define native reserves and the other is to define the boundaries of those parts of the Highlands which are to be set aside for non-native occupation.

"I want to make it clear that there is to be nothing in either Order imposing any legal disabilities against Indians or against any person on grounds of race, or colour or creed, or anything else. Equally, I want to make it clear that existing administrative practice which was first laid down by Lord Elgin, is to be continued. I wish that to be understood clearly both in India and elsewhere. The existing administrative practice of Kenya Government which has been followed since 1908 will continue. In the area demarcated as the European area, not by law, not by anything in the Order

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in Council but as a matter of administration, the practice will continue in the future as in the past. There will be no legal bar."

And again, on the 9th February, 1938, the same assurance was given by the Secretary of State for the Colonies in the House of Commons.

These pronouncements, I claim, ensure that the Imperial Government intended that the existing practice would be embodied in the Order in Council and that there would be given no further encouragement and no further expansion and no further rights to the European section of the population of this country.

The next important event was, of course, the Crown Lands (Amendment) Ordinance of 1938 and the issue of the Order in Council in 1939. And I desire to point out to Your Excellency that the Order in Council is a definite breach of the assurances and pledges given by His Majesty's Government to the Indian community and is also a breach of the 1919 Convention to which India was a partner. Now, for anybody to argue that this Order in Council was only embodying what was called "the existing administrative practice" is, in my submission, entirely false. I admit I do not quite understand the intentions of the Order in Council clearly, and I do not intend to take up the time of Council by reading the whole of the Order in Council, but I should certainly like to refer to two things: I should like to refer to Section 4 and Section 5; one deals with the establishment of the Highlands Board, and the other lays down the powers of that Highlands Board.

As a result of those two sections it will be clear to anyone who knows a little about politics that, after the passing of that Order in Council, Your Excellency or, as a matter of fact, the Imperial Government, has no right to acquire any land, even for public purposes in this area unless the Highlands Board agrees or gives its consent to it. And the Highlands Board consists of the majority of the Elected European Members, who are unlikely to give their consent unless they are pleased to do so. And whatever may be said or argued by the interested parties, I submit that the Imperial

Government and the local Government have given power to the Highlands Board, as far as this thing is concerned. Section 5 is very funnyly worded, so that it is the function of the Board and not the local Government to have the final word, which Government is supposed to hold the scales of justice evenly. Section 5 says:—

"It shall be the function of the Board—

(a) to protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;

(b) to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;

(c) to advise the Governor in all matters relating to the disposition of land within the Highlands."

That makes it perfectly clear that it is not the continuation of the existing administrative practice but it is the abdication of power by the local Government and the Imperial Government in favour of the Highlands Board, and even transferring to the Board the final voice as regards exercise of veto to transfers of land.

Now, Your Excellency, I may not be taken perhaps seriously, but I challenge any impartial tribunal in the British Empire, consisting even of European members from London with judicial experience, to give its verdict, and I submit with all confidence that this is not a continuation of the existing practice. It is an expansion of the existing practice; if one may call it so. And, further, when I say that I desire to draw the attention of Council to two or three things: By devious methods an attempt has been going on during the last fifteen years to extend the existing practice. It has been

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extended even in regard to the appointment of Indians to District Councils—I am sorry to have to bring this question into the debate, but I want to make my point quite clear—attempts have been continuously made to extend the existing practice in all spheres where it was never intended that it should apply.

It was the Feetham Commission that recommended that Indians should be appointed to district councils, and this Government, by passing the Local Government (District Councils) Ordinance, included provision that Indians should be appointed on district councils. But why weren't they ever appointed? Because the European Elected Members ran it down and because of their privileged position in the Highlands did not want Indians on the district councils. And that, I submit, is an extension of this practice from time to time and it has been extended all through. It is very clear that the Indians were so far allowed to keep their shops on Highland farms, but now for the first time there are Europeans there in the Highlands who argue that these shops should not be allowed because of the White Highlands. The right which Indians have so far enjoyed of having shops on farms will be denied them, and the giving of a licence or the renewal of a licence for these shops will be in the hands of the district council, which consists only of interested parties. That is clearly not the existing practice.

So with regard to trade and industry as well as in the matter of the appointment of members to the district councils, this existing practice of initial grants and transfers has been extended, and, in my submission, it has been extended against all the promises given and all the assurances made by the Imperial Government.

I honestly believe that the pledges and assurances given to the Indian community have been broken and, therefore, it is rather difficult for me to speak with restraint, for I must honestly express the feelings of the Indian community, and if I do not frankly and honestly do so I shall not be considered true to my community and I shall not be fit to represent them on this Council if I were to keep back anything that I intend to say.

I clearly state, though I may be considered wrong by the interested parties, and I accuse, with all confidence and with a sense of responsibility, the Imperial Government, with the consent or by the persuasion of the local Government under pressure of the local European community, of having broken all its pledges and assurances that it has given to the Indian community from time to time, and also of having committed a breach of the treaty which is embodied in the Convention of 1919.

Perhaps these breaches of pledges and assurances, are, in keeping with the twentieth century, for it is clearly the tendency in the world to-day to impose one's will by sheer force of power, right or wrong, on those who cannot resist it. And I will state very clearly and unequivocally that although the Indian community may have to submit to this policy we will never accept it. We reserve the right to carry on an agitation for a reversal of that policy by all the necessary and available, but peaceful, means at our disposal and, in doing so, we shall seek co-operation from all directions, though interested parties may be pleased to call us "seditionists".

I will say once more that we will not accept this policy though we may have to submit to it, because, unfortunately for the Indian community, there is not one voice in the world which will be raised in our favour even when we are right. The Government of India, which is supposed to advocate our cause, has always acted as the agent of the British Government in Britain, and when the time came to act, even in a just case, it has acted impotently. Therefore we have no remedy at present to obtain justice.

It is very surprising to me that whenever any injustice is done to the Jewish community in any part of the world, the consciences of two great democracies, Britain and America, are immediately disturbed, but when it comes to the case of injustice to poor Indians no consciences in the world are disturbed.

If I might summarize shortly the effects of this Order in Council, there are five net results of the Kenya (Highlands) Order in Council, 1939. The first of these—I am repeating the same thing again



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and again to make my point very clear—is the breach of pledges and assurances to Indians. Secondly, it has resulted in a breach of the Convention of 1919, to which India is a party. Thirdly, even a sweeper or a criminal from Europe can have a better status in this area of 16,000 square miles than I, a member of this Council, whatever moral, material or intellectual standard I may attain. Fourthly, even a German or Italian will have preference to me, a member of this Council, who might be called upon to play his part in the defence of this country in case of need. He will have better right than I have in these 16,000 square miles.

Even more (I have been quoting my own example in order to draw the attention of Council to this matter), here is Sir Ali bin Salim, always considered the grand old man of the Coast, who has rendered to the British Government in this country service unequalled by any other person in this country, and who has always been held in high esteem by every citizen. Even he cannot buy land in these Kenya Highlands comprising 16,000 square miles, yet any Italian, German, or criminal can do it.

Well, Sir, even the most fanatical defender of this policy will have to admit that there is something wrong somewhere, though he may not understand or like to say how it could be remedied.

Finally, I should like to submit one thing, and that is that the whole question, however it may be advocated by interested parties, is not solved or based upon justice and equality and the principles proclaimed by the British Empire, time after time, to us subjects of the British Empire. I say it is based on the grounds of expediency, dictated by greed, self-interest and racial pride, but it could never be defended on the grounds of justice or truth.

Your Excellency, I should like to quote from the words of a well-known person at home, whom I mentioned two days back. Sir Valentine Chirol, writing in *The Times* on 5th August, 1921, said that if it was argued that Indians should not be given equality of status in this part of the Empire, it would mean that—

“the measure of the rights enjoyed by the subjects of the Crown is to be determined by the colour of their skin, and the civilization for which the British Empire stands is not an ethical but a purely racial civilization.”

I will not take up the time of the House any more. I move the motion with full faith in slow but sure justice of a Power that is higher than human agency, and in full faith that what history has settled to-day, history will unsettle another day.

MR. ISHER DASS seconded.

LORD FRANCIS SCOTT: Your Excellency, I do ask hon. members to consider the wording of the resolution, because I submit it is entirely out of order from beginning to end because it contains complete mis-statements of fact. I did not wish to interrupt the hon. member because I knew he had been waiting some days to get this off his chest, but I suggest for the first forty minutes of his speech he was out of order because it was not until 12-10 that he made any reference to the Kenya Highlands Order in Council, which, in fact, is the only subject of this debate.

Let us take the motion as it stands and also look at the Kenya Highlands Order in Council, 1939. Section (a) of the motion states that the Order—

“contravenes the solemn pledges and assurances given by the Imperial Government and its responsible ministers from time to time for the last fifty years.”

Actually, the Order in Council as it stands, defines the boundaries of the Highlands and makes provision for the formation of a Highlands Board and gives the duties it has to carry out. It does nothing else at all and I suggest there is nothing there about a solemn pledge or assurance given by responsible members of the Imperial Government that the boundaries of the Highlands will never be demarcated or such an institution as a Highlands Board set up.

I suggest that (a) is a complete mis-statement of fact.

Part (b) states—

“debars His Majesty's non-European subjects from acquiring land in the Highlands of Kenya.”

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Now, Sir, if you read that Order in Council you will find no mention anywhere in any place of any European or non-European in any way whatever, except that it does refer to the European elected members—the only wording in which any racial differentiation figures in the Order at all. I suggest that (b) also is entirely incorrect.

(c) states—

“gives to persons of European descent who are not British subjects and who owe no allegiance to the British Crown, preferential treatment over His Majesty's subjects of non-European descent.”

Similarly, with regard to that there is no mention in any way whatsoever, and this Order in Council does not in any way effect the issue, and, therefore, I submit the whole resolution is completely out of order.

MR. WILLAN: Your Excellency, first of all I want to congratulate the hon. mover on the speech he has made. But I must confess that I think he will find it difficult to reconcile his eloquent remarks with his ability as a lawyer to apply to any particular question sound reasoning and pure logic, because, if I understand the hon. mover correctly, one of his main arguments is this: That the provisions of the Kenya Highlands Order in Council, 1939, offends against the provisions of the Convention of 1919, a Convention which is more popularly known as The Congo Basin Treaty.

The hon. member is well aware that the Order in Council is a resolution which is promulgated by His Majesty in Council with the advice of the Privy Council. Now, if one examines the enacting clause of this particular Order in Council, it reads as follows:—

“Now, therefore, His Majesty, in pursuance of the powers vested in Him by the British Settlements Act, 1887, and all other powers enabling Him in that behalf, is pleased, by and with the advice of His Privy Council, to order, and it is hereby ordered”

and then follow the provisions of what His Majesty in Council does order.

My object in referring to that part of the Order in Council is this—that if we refer to any of our Ordinances passed

by this Council we have an enacting clause which is as follows:—

“Enacted by the Governor of the Colony of Kenya with the advice and consent of the Legislative Council thereof as follows”

and the particular reason for referring to the enacting clause in the Order in Council (and in our Ordinances) is that it gives us a clue, and the only clue by which we can construe this document—the Kenya Highlands Order in Council, 1939. That clue is this: that this document is a legal document equivalent to an Ordinance or Act or Statute, whatever you like to call it. Therefore, the only method of construction that can be applied in construing this document is a legal method.

Now, the hon. mover has in fact said that this document contains provision with regard to the making of restrictions. I deny that.

As I view the term “construction” it has two meanings, and two only. In construing an Ordinance or any document you like, you consider first of all what is the ordinary meaning of the words, and secondly, what is the effect which is to be given to the words. These are the only two principles upon which one must proceed. Now, there are three cardinal rules of construction with regard to Ordinances or Statutes. There is first the principle that the intention is expressed in the words used themselves; secondly, the more important principle, that if the words in the Statute are clear and unambiguous then there is no need to do more than expound these words in their ordinary and natural sense; then there is thirdly, the principle that if the words are clear and unambiguous you cannot import extraneous matter in construing the document.

Now, in applying these three cardinal principles to this particular document to which the hon. mover has referred, we first of all come to Article 3 of the Order in Council. This Article merely defines the limits of the Highlands of Kenya, and it states in sub-article (1) of that article:—

“The Highlands of Kenya shall consist of the areas of land the boundaries of which are set out in the seventh Schedule to the Crown Lands Ordinance.”



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It goes no further than that. Article 4 tells us that:—

"There shall be established in the Colony of Kenya a Board which shall be known as the Highlands Board," and sub-article (2) merely lays down the personnel of the Board.

Article 5 lays down the functions of the Board and the first paragraph (a) reads:—

"to protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;"

paragraph (b) of Article 5 states:—

"to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;"

and paragraph (c) states:—

"to advise the Governor in all matters relating to the disposition of land within the Highlands."

Now, Your Excellency, I do submit that in the legal interpretation of this document there is not one word which can be construed as either meaning "distinction" or "discrimination." And I note with interest that although the hon. mover has attacked this document he has made no reference to the other Order in Council entitled "The Kenya Native Areas Order in Council, 1939". If the hon. mover will compare the provisions of both these Orders in Council he will find that Articles 3, 4 and 5 of the Kenya Highlands Order in Council, 1939, are almost equivalent to Articles 4, 5, 6 and 7 of the Kenya Native Areas Order in Council, 1939.

I therefore cannot find that in the particular Order in Council under discussion there is any mention of distinction or discrimination, and I think the hon. member would have been more correct if he had used the word "regulation."

MR. NICOL: Your Excellency, I hold the opinion that this matter is really now beyond the sphere of the parochial

politics of Kenya, and is one of East African and Empire importance, when at no time has it been so necessary as now for the maintenance of solidarity in the Empire. I would like to congratulate the hon. mover on the moderation of his speech. This subject has been a very bitter question and one which is most unfortunate in my opinion. I recall at the last session, at the time we were discussing the legislation in regard to the Order in Council, that it was fully explained that the words "European" or "British" could not be included in the legislation, and Government stated quite distinctly that the administrative practice of the last thirty years would not be altered, and I suggest that that administrative practice would appear to have been to debar Indians out of hand from the Highlands.

Indian members stated at that time on behalf of the Indian community that they did not object to the land being reserved for British Europeans. I ask you is it logical or fair that a British subject, because he is an Indian, should be debarred from enjoying privileges in a British colony which are accorded to foreigners, and ex-enemies at that.

From inquiries I have made, I am satisfied that among a large number of Europeans in Kenya there is a feeling that there should be some modification in the attitude to the Indian question and some adjustment of administrative practice. Unfortunately, in this country, like pretty well everywhere else, the Indian race has been judged by the outbreaks and behaviour of extremists both here and elsewhere. There are to my knowledge a great number of highly reputable and responsible Indians in Kenya to-day, and such object to the tactics of agitators as much as we do. Talking about agitators, I must refer to a meeting held at Mombasa just recently because although I have no objection to meetings being conducted in an orderly manner or to people expressing their views freely, at this particular meeting I cannot register in too strong terms my disapproval of the tactics that were used. At that meeting in Mombasa on the particular subject we are debating here to-day, a Kamba was imported and put up to speak. Who supported him or introduced him, I do not know and do not

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[Mr. Nicol] wish to, but that has done a great deal to alienate the public feeling in this country. This Kamba was deliberately injected into the meeting by someone wishing to cause trouble, and in my opinion any such attempt to foster disaffection among the natives in the reserves is nothing short of disloyalty amounting almost to sedition. I trust that before the debate is closed, we shall hear that Government is not going to tolerate such tactics. There is much to be said for dictators when dealing with people who are stirring up disloyalty, and I hope Government is not going to stand any nonsense.

Coming back to the administrative practice as it exists to-day. I try to be fair in these matters and I consider the Indian has some case to be considered sympathetically, and I think that now is the opportunity for those who like fair play to set an example of statesmanship which will reflect the high traditions of Kenya and the British Empire.

I have said all I have to say. I hope the motion will be withdrawn, but if it is not I shall refrain from voting.

**HIS EXCELLENCY:** If any hon. member expects Government to reply I must ask that hon. member to speak before I ask the hon. Acting Chief Secretary to rise, otherwise if any question is raised there is the probability of it not being answered.

**MAJOR GROGAN:** Your Excellency, I do not propose to say very much on this particular issue. I do want to say, however, that I have a very profound feeling of sympathy for a great many of the points put by our Indian colleague here. The speech of the hon. mover was a moving speech and it is quite evident to anybody listening to it that that gentleman is actuated by a real sense of grievance.

But I am going to suggest that he has had his leg pulled and that there is no grievance behind this thing whatsoever. It is one of those questions which it is extremely difficult to argue to a finish especially among a remote audience which is not conversant with the dominant factors of the country. Any argument that is principally a spurious and doubt-

ful argument is difficult to reply to but it is especially so when the audience is not conversant with the general situation. I would suggest to the hon. mover that in the initiation of this policy and the perpetuation of this policy there is nothing whatsoever derogatory to India or the Indians as such.

The simple fact remains that this country—as India is still—has to be administered very largely on a communal principle otherwise it would be truly an impossible situation. The Indians themselves should be the first to realize that as they are a people of complex origin in the national and racial sense. They have availed themselves of a most highly elaborate system of differentiation, sometimes called the caste system, as has ever been heard of in the whole world, and one particular Indian who feels so acutely a racial difference would when another Indian of a lower caste happened to gaze on his food throw it out of the window for the dogs to eat. And where you get profound differences such as exist between the European races and the various Asiatic races some sort of segregation should be necessary for the purposes of facile administration. That does not connote antagonism or inferiority.

I do not feel aggrieved because I cannot acquire a plot of land in the native reserves and if I went to Kashmir and found that I was not allowed to obtain a particular piece of land in that place I should not be upset. Probably there are good reasons for avoiding the possibility of these, what shall I say, frictions and grievances, which arise from contact between people who have entirely different methods of living, entirely different religions and an entirely different outlook on life. It seems to me, looking at it that way, impossible for our Indian friends to complain.

Some years ago—I regret to see that our colleague the hon. Shams-ud-Deen is not here because he was a colleague of mine on the Bowring Committee when this issue arose and he can confirm what I say—the proposal was put forward for a Soldier Settlement Scheme. At that particular time the question of the reservation of European land was on the tapis but was in abeyance and no decision had

[Lord Francis Scott]

It goes no further than that. Article 4 tells us that:—

"There shall be established in the Colony of Kenya a Board which shall be known as the Highlands Board," and sub-article (2) merely lays down the personnel of the Board.

Article 5 lays down the functions of the Board and the first paragraph (a) reads:—

"to protect the interests of the inhabitants of the Highlands in the land situate in the Highlands and in particular to make representations to the Governor when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands;"

paragraph (b) of Article 5 states:—

"to give or withhold its consent in all matters in which its consent is required by any Ordinance for the time being in force in the Colony;"

and paragraph (c) states:—

"to advise the Governor in all matters relating to the disposition of land within the Highlands."

Now, Your Excellency, I do submit that in the legal interpretation of this document there is not one word which can be construed as either meaning "distinction" or "discrimination." And I note with interest that although the hon. mover has attacked this document he has made no reference to the other Order in Council entitled "The Kenya Native Areas Order in Council, 1939". If the hon. mover will compare the provisions of both these Orders in Council he will find that Articles 3, 4 and 5 of the Kenya Highlands Order in Council, 1939, are almost equivalent to Articles 4, 5, 6 and 7 of the Kenya Native Areas Order in Council, 1939.

I therefore cannot find that in the particular Order in Council under discussion there is any mention of distinction or discrimination, and I think the hon. member would have been more correct if he had used the word "regulation."

MR. NICOL: Your Excellency, I hold the opinion that this matter is really now beyond the sphere of the parochial

politics of Kenya, and is one of East African and Empire importance, when at no time has it been so necessary as now for the maintenance of solidarity in the Empire. I would like to congratulate the hon. mover on the moderation of his speech. This subject has been a very bitter question and one which is most unfortunate in my opinion. I recall at the last session, at the time we were discussing the legislation in regard to the Order in Council, that it was fully explained that the words "European" or "British" could not be included in the legislation, and Government stated quite distinctly that the administrative practice of the last thirty years would not be altered, and I suggest that that administrative practice would appear to have been to debar Indians out of hand from the Highlands.

Indian members stated at that time on behalf of the Indian community that they did not object to the land being reserved for British Europeans. I ask you is it logical or fair that a British subject, because he is an Indian, should be debarred from enjoying privileges in a British colony which are accorded to foreigners, and ex-enemies at that.

From inquiries I have made, I am satisfied that among a large number of Europeans in Kenya there is a feeling that there should be some modification in the attitude to the Indian question and some adjustment of administrative practice. Unfortunately, in this country, like pretty well everywhere else, the Indian race has been judged by the outbursts and behaviour of extremists both here and elsewhere. There are to my knowledge a great number of highly reputable and responsible Indians in Kenya to-day, and such object to the tactics of agitators as much as we do. Talking about agitators, I must refer to a meeting held at Mombasa just recently because although I have no objection to meetings being conducted in an orderly manner or to people expressing their views freely, at this particular meeting I cannot register in too strong terms my disapproval of the tactics that were used. At that meeting in Mombasa on the particular subject we are debating here to-day, a Kamba was imported and put up to speak. Who supported him or introduced him, I do not know and do not

[Mr. Nicol]

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[Major Grogan]

been given and instructions had been given to this Council that no further steps should be taken until a decision had been come to by the Home Parliament. My hon. friend, Mr. Shamsud-Deen, who was a reasonable member of that committee said: "I am going to be in an impossible position if I agree to this Soldier Settlement Scheme because I shall have the whole of the bazaar on my back". But he did not attack it beyond putting up a suggestion that a substantial area of land should be reserved exclusively for Indians.

Now that was put up before the committee, approved by the committee and submitted to Government as policy. Government accepted it as policy and Government applied it as policy and following upon that a very large area of land—and incidentally the best land in the country because it is now mine and I know all about it (laughter)—was specifically reserved exclusively for Indian Settlement. But because it was some considerable distance away and was alleged, and was in fact, infested with lion, no Indian took any interest in it, and no Indian applied for a lease of land. In course of time in the succeeding generation the whole policy was completely forgotten because no Indian in fact wanted the land and the whole thing died out. Eventually through a number of channels it passed from other hands into mine. But it is still open and there are no reservations there and nothing to prevent Indians from coming and if there are any gentlemen who know of anyone who wants a plot of land and are prepared to pay for it I shall be only too pleased to welcome them.

I do really suggest that this is a matter that has been deliberately used not as a real legitimate grievance but for purely subversive purposes. It is a first class cause, because it is so difficult to argue correctly, for a deliberately subversive propagandising agitator to take hold of. And I compliment the gentlemen—not the hon. mover because he it not actuated in that way—who have seized upon this opportunity to present this case because of its difficulties and have used it purely for subversive purposes in order to create ill-feeling among all sections of the com-

munity just at the very particular moment when there is a need for complete collaboration with us in all necessary steps against gangsters outside.

**HIS EXCELLENCY:** In accordance with the statement I made yesterday Council will adjourn until 2.15 p.m. this afternoon.

*Council adjourned till 2.15 p.m.*

*On resuming:*

**MR. ISHER DASS:** Your Excellency, it will be possibly of interest to hon. members of this Council, both this side and on the opposing side, to know that we Indian members definitely agreed yesterday that my hon. colleague, Mr. Patel, should move the motion and that it should be formally seconded by myself. If Government expressed its attitude in its reply then the hon. mover would have a chance to reply to that and the matter would have just remained there, because he, and all the Indian members here sincerely believe that there is nothing which has been said now which has not been said before in this Council from time to time. All the arguments, all the reasons and all the expressions that have been advanced to-day are repetitions of what has been said before and it would serve no useful purpose to go over them all again or for all of us to take part in this debate as it would be a waste of the time of Council. But we do want to place on record our deep feelings against the promulgation of this Order in Council on the 1st March, 1939.

We have maintained our course of action faithfully but unfortunately this morning, the noble lord the hon. Member for the Rift Valley intervened and thought fit to urge that our arguments were a distortion of the facts as contained in the original motion.

The motion states clearly that:—

"This Council deplores the promulgation of the Kenya Highlands Order in Council, 1939, which:

- (a) contravenes the solemn pledges and assurances given by the Imperial Government and its responsible Ministers from time to time for the last fifty years;

[Mr. Isher Dass]

(b) debars His Majesty's non-European subjects from acquiring land in the Highlands of Kenya;

(c) gives to persons of European descent who are not British subjects and who owe no allegiance to the British Crown, preferential treatment over His Majesty's subjects of non-European descent; and requests the immediate repeal of the said Order in Council."

But the noble lord, the hon. Member for the Rift Valley, instead of listening very, very carefully to all the arguments advanced by my hon. and learned colleague, put forward the suggestion that there was never to be demarcation of the Highlands to be reserved for Europeans or that there would be a Highlands Board appointed.

If the question of the reservation of the Highlands had not arisen then there would have been no necessity for the promulgation of the Order in Council; there would have been no necessity for the appointment of the Highlands Board, and there would never have been the necessity for the passing of those two Ordinances in 1938. This he evidently ignored and suggested that these were brought about by different reasons. The facts are that for the last fifty years assurances have been given by the Government and the responsible Ministers of State in England that there shall be no racial discrimination in regard to Indian subjects or non-European subjects of His Majesty's Government. Now that was really the point and there was no necessity for him to go out of his way to distort these facts—and that is one reason which has compelled me to intervene in this debate.

As I have already said we thought that when the motion had been moved and seconded, on behalf of Government the two learned members, I am referring to the hon. the Acting Attorney General and the hon. the Acting Chief Secretary, would have mobilized all their legal forces to advocate the case of Government as they usually do and that the matter would have rested there, but there has been this undue intervention of the noble lord the hon. Member for the Rift Valley who has taken on himself to dis-

tort the facts and so easily ignore the promulgation of this Order in Council this year and the two Ordinances last year becoming operative. In the Order in Council you will see clearly defined the definition of the Highlands and the Highlands Board and all that, and also—and this is the point—that all the members of the Highlands Board are to be European people by descent. That is very clearly mentioned there.

Therefore, I maintain that clause (b) of the motion is relevant and quite in order because it debars His Majesty's non-European subjects from acquiring land in the Highlands of Kenya for by virtue of the promulgation of that Order in Council only members of European descent can acquire land, you cannot shut your eyes to that fact.

Further, in spite of the legal reasons that have been brought forward you cannot deny that Asiatics cannot acquire land within those boundaries. All this is quite clear in the Kenya Highlands Order in Council. And as members of the community of European descent who are not British subjects also have the right to acquire land then paragraph (c) becomes relevant because, it naturally gives preferential treatment to persons who are actually not British subjects and who owe no allegiance to the British Crown.

I was surprised, but I am always used to this sort of thing, when the hon. and gallant Member for Ukamba made his case, that he would have no objection if he went to Kashmir or any other part of India and was told that he could not acquire land there. He also based as his argument the theory that it was absolutely essential for the people of this country to be divided into water-tight compartments, probably owing to the fact that each race or section of the community in India had a different standard of living and different religions to follow.

**MAJOR GROGAN:** Your Excellency, needless to say this is a complete distortion of anything that I ever said.

**MR. ISHER DASS:** He also went on to say that there were many caste systems in India which make it very, very difficult for one section of the community to reside closely with the others.

[Mr. Isher Dass]

Now, as there has been a repetition of the argument of the caste system, unfortunate as it may be, I must dwell on it for a moment. It appears that the hon. member deliberately tries to ignore the fact that though in India there is this unfortunate system based on religion, it is also a fact that in his own country that system similarly applies based on economic and social distinction among the classes. It seems that to him that it appears to apply in one country is unfortunate but it does not appear to be so unfortunate when applied to another, where you have the labour and middle classes, the landlords and above all the aristocracy. If society is divided into different classes and can see well to live together happily in England and other parts of the world then I see no justification for his argument that because Indians follow different religions, they cannot live happy as neighbours together with European members of the community in Kenya. His argument is a very flimsy one and it hardly needs me to refute it.

The hon. Member for Mombasa was very much to the fore with his sympathy and his pleas that this is a time for adjustment. His only grievance and only grouse was that though the principle of the motion was sound he did not approve of the methods in bringing it forward and stated that they were anything but desirable. As I have indicated before such a method would not have been adopted if the hon. member, who is known for his reasonableness and moderate mind (laughter) had not approved of this Order in Council and had not voted for the passing of the two Ordinances last year.

Apparently he does not appreciate in any way the difference between His Majesty's non-European subjects when it comes to the question of European and non-European immigration. The word non-European includes all races—Africans, Japanese, Chinese and Indians—while the word European includes Germans, Italians and French.

Therefore, I maintain that in a similar manner when it comes to the question of non-Europeans you cannot draw the line between Africans, Indians and Asiatics and not only this argument but this very

fact of the promulgation of this Order in Council raises one of the widest issues in the world for it goes beyond domestic politics into the international world and raises one of the most vital and biggest issues, that once and for all there is nothing common between the white and the black races. And if this is the issue I cannot blame the non-European subjects of His Majesty joining together in agitating against this diabolical Order.

MR. NICOL: Your Excellency, this is entirely irrelevant.

MR. ISHER DASS: If he finds us justified in having that meeting and disapproving of the Order in Council, whether we are travelling by road, rail, sea or air, I do not see that it makes any material difference whether a speaker is imported or not. And I can assure him and warn him that the effect of this patronising treatment of the natives and talking of them as mere children with no common sense is creating the gravest distrust and discontent in the minds of the Africans. In this connexion it would be well to quote a petition that has been submitted to the Secretary of State through the Government, expressing their views in connexion with the Order in Council and the Highlands Board appointed now in accordance with the instructions laid down in that Order in Council.

It may be argued that this petition has only been submitted by one section of the community as the result of the interference of agitators. But it is not signed by one or two agitators, it is signed by the representatives of the Kikuyu tribe in Nairobi and Kiambu and other tribes in Kenya—and it cannot be viewed lightly—on behalf of the Africans. And now, for your information, I will read a few paragraphs as to what they think of the Order in Council and the promises and pledges given by Government.

This memorandum submitted consists of very lengthy pages, but I can assure Council that I will only read the relevant portions. The first paragraph . . .

LORD FRANCIS SCOTT: Your Excellency, what is this out of? May I ask what the hon. member is reading from and what it is about?

MR. ISHER DASS: I am reading this to show what is the actual opinion of the Africans in this country in connexion with the promulgation of the Order in Council. It is a memorandum submitted by the members of the Kikuyu Central Association and the Kavirondo Taxpayers Welfare Association in Kenya.

LORD FRANCIS SCOTT: Has it ever been published?

MR. ISHER DASS: It has been submitted to the Secretary of State for the Colonies through the Local Government. It is the opinion . . .

LORD FRANCIS SCOTT: Sir, isn't it a fact that you cannot read from a document that has not been made public?

MR. ISHER DASS: It has been submitted to the Government and therefore is a public document.

MAJOR GROGAN: Am I to understand that there are three-quarters of a million signatures?

MR. ISHER DASS: If the hon. and gallant member will only have a little patience he will see that it is the opinion of the natives. How many times have I to repeat this?

EARL OF ERROLL: Your Excellency, on a point of order, could we take the memorandum as read?

HIS EXCELLENCY: The hon. member has the right to read extracts from it.

LORD FRANCIS SCOTT: Sir, on a point of order, is it not in accordance with the House of Commons practice that any document which a member desires to read has to be laid on the table of the House or be a properly published document?

MR. WILLAN: Your Excellency, the answer is in the negative. If that had been so, of course, it would have ruled out most of the hon. and gallant Member for Ukamba's speech on the last motion before this Council.

MR. ISHER DASS: I quite appreciate the difficulty that some members find in listening to this. If I may I will now proceed. The first paragraph I wish to quote states:—

"It must be stated that in view of the incidents in the past, not much trust can be placed upon solemn pledges and sacred undertakings on the part of the British Government. The principle of the declared trusteeship of the natives is a mockery.

Even the Indians in Kenya were solemnly assured on more than one occasion that they would never be deprived of their rights of access to the Highlands, but they have also been let down.

In the present case, the Native Lands Ordinance has been well drafted to guard against difficulties such as those which arose in the case of the Kavirondo Reserves. This Ordinance makes ample provision for the grant of mining leases and deprivation for other purposes, though it must be admitted that it makes provision for compensation and also for land to be given in exchange.

The Ordinance is contrary to the best interests of the African community of this country and is, therefore, strongly protested against.

The Ordinance was passed as the British Government thought that finality should be reached as far as the African lands are concerned. It is clear that this finality is only to be considered from the point of view of the Government and not the Africans who are directly affected by the Ordinance. The Africans can never agree to be content with what is allotted to them under the Ordinance while the best land in Kenya is given away to the White Settlers. They can never agree to the reservation of the so-called 'Highlands' for Europeans while they are themselves relegated to the poorer land in the country. He was a British statesman who once said that 'There should not be in the eyes of the law any distinction or disqualification whatever, founded upon mere distinction of colour, origin or creed, but the protection of the law in word and substance shall be extended impartially to all alike.' The people of this country, however, know otherwise.

The reservation of the Highlands for Europeans provides with yet another example of the doubtful value of

[Mr. Isher Dass]

British pledges which are not worth the paper they are written upon as far as their execution is concerned. The Kenya Africans fought loyally for the British Crown during the Great War and lost thousands of men only to discover that the very enemies who tried to trample down upon Britain during the war, can purchase land legally in the country while the rightful owners are excluded by force under legal colour from possessing it. But this is not all. In accordance with the provisions of a section of the Ordinance, no exchanges even can take place with land situate in the Highlands except with the consent of the Highlands Board. The Africans are well aware that such consent will never be forthcoming unless it is in the interest of the Europeans to do so.

To prove that the Government does not care whether the Africans are adequately protected or not, it is stated that there are twenty-two of Local Native Councils in the country not one of whom was consulted before the Ordinance was drafted. In the Nyanza Province alone, there are five Local Native Councils established for the benefit and interests of the tribes concerned, but no consultation whatever was held with any of these Councils. Moreover, when the Carter Land Commission's Report was published, no proper translations of it were ever supplied to any of the Councils in Kenya for them to study the same and explain matters to the native population whose interest they represent and whose mouthpiece they are.

The Africans strongly object to the statement that only part of the land of Kenya belongs to them by historic right. This is brazen-faced. All land was the property of the Africans and if any part of it has been lost, it is because the same has been taken away without the consent of the owners.

Land if regarded like a mother and the Africans have never considered themselves free to abandon it. Immense importance is attached to the integrity of tribal boundaries, and it is fantastic to believe they could have ever agreed to part with their lands, more so when

it would be against the fundamental article of the African tribal faith."

Now this is exactly what has happened in connexion with the two Ordinances and the promulgation of the Highlands Order in Council.

Then there was the suggestion by the hon. Member for Mombasa that there was one man imported from Machakos to Mombasa. But that does not hold water, in connexion with agitation. Perhaps he was, though I am not quite sure, but he was looking towards me when he mentioned the word agitator, and I am not quite sure that he does not mean that he thinks that I was the agitator.

MR. NICOL: Your Excellency, I did not look towards the hon. member or anybody else.

HIS EXCELLENCY: I think the hon. Member for Mombasa was carrying out the correct procedure and looking towards the chair when he was speaking, and that is the correct method of addressing Council.

MR. ISHER DASS: I would like to point out that this was the only method by which all the people of the different races who are directly affected by the promulgation of this Order in Council, 1939, and by the employment of this legislation which has culminated in these two Ordinances, could air their grievances. If they did not combine in this manner to express their resentment against this Order in Council I do not suppose for a moment that any one of them would have had a chance to complain.

It may also be pointed out that, however distasteful it may be, this is the only method and probably the only constitutional method by which any member of any section of the community in Kenya has a right to express his views and his resentment whatever it might be.

When we were agreed among ourselves that the hon. mover should move the motion and after the reply of Government that the matter should be left there we knew perfectly well (at least, speaking for myself, for I sincerely believe this) that there is no place for the brown and black races in the Empire, and I have always maintained that it is not of their own choice or of necessity but purely on sufferance.

[Mr. Isher Dass]

In supporting this motion my only object is to give support to a man who sincerely believes in constitutional agitation. But I am sure he will find himself after six months, or a year, or maybe after two years, that constitutional agitations, petitions, memorials and resolutions and meetings do not cut any ice with the people who have no time for those who believe in constitutional agitation, then stronger measures will have to be taken. The policy of "live and let live" in some other parts of the world can be and is applied, but not so in Kenya, and it has been proved up to the hilt, Sir, that so long as the Indian community and my hon. colleagues on this side of Council believe that agitation by constitutional methods appeal to Government they will never succeed.

Sir, they are apparently living in a fool's paradise (hear, hear). It is not "bear, hear," although that may be a very inspiring phrase for some people, for there will come a time when they will think twice before they act and when they will realize that constitutional agitation is not the method and they will prefer some better method in which they will be successful in obtaining a successful reversal of this policy.

Enough has been said, I think, and as I have already informed Council I am entirely in agreement with the motion and I will leave the hon. mover to reply to any other questions which may have been raised and which I have not dealt with in my speech. I am perfectly sure he is able to answer them himself.

MAJOR CAVENDISH-BENTINCK: Your Excellency, in opposing the motion I feel that perhaps at this stage in the debate it is necessary for somebody from this side of Council to intervene in order, perhaps, to remind hon. members that at least one can say that there are two sides to this question.

In point of fact everything that has been done has been done in accordance with the undertakings given and the promises made.

I would like to say that I quite understand that the hon. mover feels very strongly about this, but I am a little astonished that a man of his intelligence

should pick on this particular subject to air what he feels to be—and deeply feels to be—a grievance of the Indian people, because I should have thought that there were other questions that he might have raised and substantiated more easily.

I would like first, to deal with the hon. mover's speech. He began, I suppose with the object of establishing the fact that certain pledges had been given many, many years ago, by referring to some utterances of Lord Salisbury made in 1875 and 1878. I am afraid I have not these references with me but I believe that if he looks them up he will find that they were made with reference to quite another part of the world and were in general terms, and, I think, he rather removed them from their context. At any rate, be that as it may, the fact remains that at the period of 1875 there was very little going on in this part of the world, and certainly nothing whatever was being done here in Kenya apart from the coast, so that the late Lord Salisbury could not possibly have been alluding to Kenya or the Kenya Highlands.

He then referred to a dispatch and pronouncement made by Lord Elgin when he was Secretary of State for the Colonies. A great deal of his argument was based, I think, on the supposition that a statement made by Lord Elgin was really a statement which only referred to initial grants of land and was never intended to refer to subsequent transfers of land. At any rate, he read out quite early on in his speech what I think was a quotation from Lord Milner's dispatch of 1920. I am going to read this out again more fully, because I submit that the hon. mover only read a portion and left out quite a good bit:—

"The Earl of Elgin, when Secretary of State for the Colonies, informed the Governor that it was not consistent with the views of His Majesty's Government to impose legal restrictions on any particular section of the community in regard to the acquisition of land, but that as a matter of administrative convenience grants of land in the upland area of the Protectorate should not be made to Indians. The ground for this decision was that the area of agricultural land in the Protectorate suitable

[Major Cavendish-Bentinck]

for European settlement is limited. This decision, which applies only to agricultural land, has been re-affirmed by Secretaries of State subsequently; and I do not feel that I should be justified in reversing it. It is clear that if the limited area, on which alone European settlers can live, were thrown open to the competition of Asiatics, who are physically fit to settle in other areas from which Europeans are by nature excluded, there would be, taking the Protectorate as a whole, a virtual discrimination in favour of Asiatic as against European settlement. I cannot regard the Indian claim on this point as just or reasonable."

That perhaps, which is a full quotation, knocks the bottom out of my hon. friend's argument.

I will deal with the matter of initial grants and subsequent transfers in a minute.

The hon. mover, further back, quoted Mr. Winston Churchill, and as he took the opportunity of quoting Mr. Winston Churchill, I propose to do the same thing and quote Mr. Winston Churchill when he was actually Secretary of State for the Colonies, at the time when there was an Imperial Conference at which the very resolution quoted by the hon. mover this morning and to which one Dominion, namely the Union of South Africa, took exception, was moved. And what Mr. Winston Churchill stated at that period when he was Secretary of State and at the East African Dinner in 1921, was:—

"We consider we are pledged by the undertaking given in the past to reserve the Highlands of Kenya exclusively for the European settlers, and we do not intend to depart from that pledge."

Now, this goes a long time back. I am not trying to pick a quarrel with the hon. mover. I am merely trying to give our side of the case.

Then the hon. mover quoted Lord Hailey—he jumped a good many years—to show that the 1915 Crown Lands Ordinance was in fact the result of pressure from the European community. Now it is quite true I believe—I have not got it here—that Lord Hailey did allude to the fact that under pressure this par-

ticular Ordinance was changed. But the pressure had nothing whatever to do with racial discrimination. The pressure was entirely based on dissatisfaction which existed in regard to length of leases and conditions of land alienation. What it was felt was that in that particular part of the 1902 Ordinance there were so many difficulties and so many restrictions with regard to term of lease, to titles and the possibility of acquiring land and the possibility of transferring land that, in the interests of people coming out here and in the interests of business generally, it was necessary to change the legislation that existed up to that moment—and that was why pressure was brought to bear. That, you will find, is borne out both in Lord Milner's dispatch and in the White Paper, and in Lord Hailey's book.

The hon. mover then went on to refer, and I must say he made out a very good case, to which he calls the "Congo Basin Treaties". The Congo Basin Treaties are a series of enactments and arrangements over a period of years from 1885 onwards concluding with the General Act and Declaration of Brussels in 1890. At Saint-Germain-en-Laye there was some form of treaty made to which the hon. mover made considerable references. During the luncheon interval I went upstairs to see whether I could get a copy and I have. It is quite true that under this document the previous General Act of Berlin and the General Act and Declaration of Brussels were abrogated and this new document took their place. But, first and foremost, we must bear in mind that these Acts were designed merely to maintain between the respective nationals of those States which were members of the League of Nations, complete commercial equality in the territories under their authority.

In referring to the General Act of Berlin the hon. mover made a specific reference to Article 4 of the Saint-Germain-en-Laye Treaty in which it states:—

"Each State reserves the right to dispose freely of its property and to grant concessions for the development of the natural resources of the territory, but no regulations on these matters shall admit of any differential treatment between the nationals of the Signatory

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powers and of States, members of the League of Nations, which may adhere to the present Convention."

It is rather interesting that if you read the Order in Council carefully you will find that actually, as was pointed out by the hon. the Acting Attorney General this morning, I think, we have been at great pains not only not to depart from this in letter but I think I will be able to substantiate that it has not been broken in spirit. Each State reserves the right to dispose freely of its property—that is the English translation of the document written originally in French, and if you read it in French it is still clearer what is meant:—

"Chaque Etat conserve le droit de disposer librement de ses biens et d'accorder des concessions".

That is the French wording and a literal translation of this is:—

"Each State reserves the right to maintain liberty of action in the disposal of its property and the granting of concessions".

and it goes on—for the development of resources of the territory, but that regulations on these matters shall not admit of differential treatment between the nationals of these States. And that has been carried out in effect. In Kenya we reserve the right of liberty of action as regards certain internal arrangements, but as regards the international legal position differentiation has been avoided as far as possible.

He then referred to this Conference which took place in 1921 and he went back from the Congo Basin Treaties to 1921 and jumped from 1921 to the 1923 White Paper. I must say that, in doing that, he skipped quite a lot of the intervening history and, at the risk of being a little bit tedious, I think it only fair, from my point of view, just to recollect what that intervening history was.

—It is quite easy to find it for the whole of it can be found actually in a Special Supplement to the *Official Gazette* which was published out here in 1923, No. 899 of Volume XXV. The history of this story, which has been repeated many times in this Council is this:—

Up to the end of last century nothing happened in this part of the world very much. There were Indian merchants established on the coast and they had done a certain amount of opening up of trade with Uganda. But very little went on up to that date. Quite truly, it was partly the question of ownership of land in the Highlands which first brought the interests of the Indians and Europeans to a certain extent into conflict. There were very few European settlers until about 1897 when a few began to arrive, and the encouragement of immigration in this country, as a matter of policy, can be said to date from 1902. In that year there was a steady increase in the number of European settlers arriving and the policy of the reservation of the Highlands for 1908. At that time unofficial members of Legislative Council were all European and all nominated, and the experiment of adding an Indian nominated member was tried in 1909. That experiment proved a failure and the gentleman in question was not re-nominated when his term came to an end, which fact caused a certain amount of dissension. And amongst other remedies a gentleman called Sir William Simpson was invited to come from India to give advice as to the best way of dealing with these racial difficulties. He went a long way and advocated a system of complete racial segregation, both in the residential and the commercial areas of the large towns. His views were accepted but when the time came for applying them after the war, of course, quite naturally, as can now be understood, this was a very sore point that did not help to improve the relationship between the Europeans and Indians.

In 1918 we had the Report of a Local Economic Committee inquiring into post-war development, and they suggested that as there were a large number of Indians in this country, the question of the control of immigration should be carefully considered. That also did not help very much. Then there was the dispute over proposals as to the formation of the elected Legislative Council, and generally relationships were not very happy until 1921.

In 1921 the whole question did come up as was explained this morning, during the time when Mr. Winston Churchill was



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Secretary of State, and I have already read out what he said at the East African dinner at the time of the Imperial Conference, and you know what Lord Elgin said in 1908. And from that it can be seen that quite definitely the policy of the Imperial Government from 1908 had not altered up to 1921.

Then we come to a document called the Wood-Winterton Report which was the outcome, as the hon. mover said, of the resolution of the Imperial Conference in 1921, to which our people were unable to agree. So, an inter-departmental committee was appointed consisting of the Parliamentary Under-Secretary of State for the Colonies, the Parliamentary Under-Secretary of State for India and representatives of the two offices, and they published this report which I have mentioned and which, no doubt you will remember, was absolutely unacceptable to both sides; to the European community because for one thing they suggested a common roll, which we could never agree to and never will. I mention that because even the Wood-Winterton Report, which was the result of the resolution quoted this morning, said:—

"The Colonial Office could not contemplate any change in the existing law and practice having regard to the past policy and commitments"

And that refers to the Highlands. So the Wood-Winterton Report did not suggest any alteration.

Then, as you know, representatives of both sides went to England from here (and I believe the noble lord the hon. Member for Rift Valley was one of them) and as a result of that we get the "1923 White Paper". This again lays down the policy of His Majesty's Government in regard to this question. And I think I can say this, that from 1902 to 1923, when a policy had definitely been laid down, there had been no change whatever in His Majesty's Imperial Government's policy in this regard.

From 1923 to 1934 things went along fairly and comparatively smoothly, and in 1934 we come to the Carter Commission. Now, it had always been a matter of administrative practice with regard to this land holding in the Highlands, but

we did not know quite where the Highlands were. Attempts had been made to lay down various boundaries for this particular area and none had proved completely acceptable. So, the Secretary of State took the opportunity afforded by this Commission (which was primarily for dealing with native land questions) to ask them also to lay down the boundaries of a suitable area of land which, principally for health reasons, could be set aside for white settlers. And that is why the term of reference was put in to which my hon. friend the mover of the motion referred this morning and objected to so strongly. Well, they made their report and I would like to quote what was singled out in the White Paper in the House of Commons when that Report was accepted. It is quite clear:—

"The Commission have defined the boundaries of the European Highlands and His Majesty's Government propose to accept their recommendations in regard to this."

Then it goes on:—

"The Commission recommend that the boundaries of the reserves and of the Class C lands (native leasehold areas), and of the Highlands, should be declared by Order in Council."

That brings us from 1902 to 1935. Since then we have, I think with good reason, suggested that we would like to see, both in our own interests and everybody else's, this Order in Council introduced. And from time to time there have been motions in this Council asking that that should be done. There was one motion I think tabled in my name and to which Government acceded and accepted and, in due course, quite recently, we have had this Order in Council.

I think I have probably kept Council almost too long, but I think I have clearly proved that there is another side to this particular question.

The hon. mover—I have only one or two things more to refer to—said that as an instance of the inequality of the treatment that was accorded to the people he represents, Indians are no longer allowed, or every attempt is going to be made to prevent them, from having shops on farms and shops in the Highlands. Particularly I mention this, because

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down in Mombasa the other day, I had a talk with several Indian and also European friends who assured me that there was a whole number of unfortunate tradesmen who were being turned out of the Highlands and turned out of their shops. Well, of course, I said: "Can you quote me a single accredited instance?" "Oh, yes," was the reply, "It will take a little bit of looking up of course, but we will send them to you." Well, I have not had a single one yet!

Really, this is a complete misrepresentation and a dangerous—I was almost going to say a "dishonest"—misrepresentation. The Bill referring to shops on farms, which came in the other day, had nothing to do with racial questions at all.

What has happened in the past? Townships and trading centres have been proclaimed throughout the Highlands and all over the country and these are places where people are allowed to put up shops and stores and are allowed to trade. But in addition to that, for the convenience of certain employers and labour where communications were bad and in distant places, it was occasionally allowed that a man should have a shop on his farm for the convenience of his own natives and not for the purpose of general trading. And really, more than anything else, it was at the request of the Indian trading community themselves that this question was brought up because they found that about three miles outside townships shops were being set up which cut into legitimate trade. And that has nothing to do whatever with the racial question. The whole thing has been introduced for the proper control of trading centres and to prevent people competing unfairly and unduly by shops on farms.

Then the hon. mover compared the treatment people are receiving in this country with the treatment which people are receiving in certain countries in Europe and he said that whilst little attention was paid to the ill-treatment of Indians here, when anything happened to Jews the conscience of England and America was awakened. That I think is going a little bit too far. I have not yet heard of or seen any concentration camps in this country or of people being

knocked on the head and killed in Kenya. Sir, it is a pity that responsible people such as he should make a careless statement of that kind!

There is one other set of remarks dealing with this subject to which I wish to refer and those are the remarks made by my hon. colleague the Member for Mombasa. He urged that in the interests of the solidarity of the Empire these provisions should be in some way altered; I think his suggestion possibly was that the present administrative practice should be altered. Now, I think I know what he has at the back of his mind. I think he really agrees that there is a very good case to be made out and an answerable case for the reservation of a comparatively small area of White Highlands for European settlement, but he feels that it is a little unfair to allow into that area at the present time Europeans of possibly enemy nationality, and that alone perhaps is what is really offending the susceptibilities of the Indian people.

Well, there may be a great deal to be said for that, but still, that is not really the case at all. I have discussed this very question wondering whether it really was all that our Indian friends felt about it, and I can assure this Council that they want a very great deal more. The truth is that they would not be satisfied with merely a reservation for "British" Europeans.

I was just going to sit down when I remembered that there is another thing which has been referred to: It was also alleged by some speaker that under this Order in Council, no doubt a Government speaker will deal with this point, that it will be impossible for Your Excellency to set aside or acquire land for public purposes. Well, of course, there again, it is an entire misstatement of fact. All that the Highlands Board is empowered to do—it is laid down perfectly clearly—is that they have got to protect the interests of the inhabitants of the Highlands as far as they can by—

"making representations to the Government when in the opinion of the Board anything in relation to the administration, management, development or control of the land in the Highlands is not in the best interests of the inhabitants of the Highlands."



[Major Cavendish-Bentinck] No Government is going to pass an Ordinance or permit an Order in Council which is going to prohibit them from undertaking, if it is necessary, any public works which should be done. And I do not think it can possibly be contended that Your Excellency's powers are going to be interfered with by this Order in Council.

With regard to the last speaker, the hon. Mr. Isher Dass—I had some difficulty in following what he said and it was quite impossible to hear all that he said with regard to the extracts he made from some document—but I will say this: I think hon. members of this Council should, and I hope do, remember that after all they have assumed certain responsibilities in dealing with the affairs of this Colony. It is all very well for those who have certain theories and ideals, possibly quite genuinely, to talk about the alleged rights of the people! But we have a certain responsibility in regard to the races that are backward, and I think that if things are going wrong in the administration or we consider these backward races have a grievance, as members of this Council we have the opportunity of putting these forward in the proper way here, and every opportunity of stating a case, because you, Sir, will always receive any member of this Council who wishes to make representations to you. And I think Government should take a very serious view indeed when people go into the reserves and arrogate unto themselves positions which they have no right whatever to fulfil. And I would give Mr. Isher Dass a warning that when he does that he is not really doing any good to the people of this country or to himself, and what is more, I think he is doing something which is not at all honourable and can in no way be excused. What we should always recollect is that as members of this Council there are certain things one does and certain things one does not do, and I consider that he has recently done things one should not do.

I oppose the motion.

MR. KASIM: Your Excellency, I support the motion before Council. The Indian community feel and strongly

believe that in the promulgation of the Kenya Order in Council there is a direct insult to the 400 million Indian subjects of His Majesty the King Emperor.

Enemies of the British Empire, as long as their skin is white, are allowed to acquire land in the Kenya Highlands, whereas such privileges are denied to the members of the same family on racial grounds and this is to be deplored. Indians cannot tolerate such an open insult, and one really fails to understand why the Government has departed from the existing administrative practice and has promulgated this Order in Council all of a sudden. For the last forty years no land has been given to the Indians.

We Indian Elected Members are voicing the feeling of 400 million Indians, here and in India, and we will not rest until the Colonial Office revises its policy.

DR. KARVE: Your Excellency, I support the motion.

There is one thing that has been suggested by the hon. the Acting Attorney General and that is that this Order in Council does not definitely and legally provide for any Board, or does not, at any rate, discriminate among the different races or peoples. Well, I think everyone will admit that it is quite possible for the best brains in the Empire to get round anything they like; even though they do not put it on paper that there should be any legal discrimination. As he said almost immediately after, or I understood him to say, in interpreting the wording of the law in England you had to interpret the effect that it was going to produce and it is the effect that we are worrying about. If, in fact, that Order in Council is debarring us from buying land then we say that the Order in Council is discriminatory; whether the word discriminatory is used or not does not matter to the ordinary layman.

It has been explained that no indignity has been offered to the Indians in their not being able to buy land in the Highlands and that no indignity should be felt by them on that account. And the hon. and gallant Member for Ukamba said that he would not mind if he were not allowed to buy land in Kashmir and

[Dr. Karve] that he would not mind if he were not allowed to buy land anywhere else. But the position of the Indians in this Colony is different to his. They have been called here and invited here and if they had not been brought here there would have been no railway. When they were first brought here they were offered and given land and some took land even in the so-called European Highlands and there are some pieces still left of those gifts. But now, after having called the Indians here and inviting them to come they are being told now to get out.

Canada and Australia and other places do not admit Indians any more, and India, though reluctantly, have accepted that fact. But to those who have been taken there they do not say that they are not going to have what they got in the past. The present position of the Indians cannot be compared with the position of which the hon. and gallant Member for Ukamba speaks about, when he said that he would not mind if he could not get land in Kashmir. But if he had been invited there by the Maharaja to take land and was afterwards told that henceforth he would not be allowed to do so he would have just cause for complaint.

I do not know why this Order in Council was brought in at this particular juncture unless it was, as I mentioned yesterday, that it had been solely due to the continuous pressure of the European official members on Government. This continuous pressure has been responsible for the sole change in the policy of Government from allowing land to be given freely to all races to saying that it should only be permitted in the case of initial grants, and then that transfers should not be vetoed and now finally bringing in the veto on transfers.

The reason why this Order in Council has been brought into force as explained to us by the hon. and gallant member for Nairobi North was that it was the result of a motion in 1937 asking for a definition of the Highlands. If the Order in Council was only required to approve a definition of the Highlands why was not the definition of the Highlands that has been recog-

nized since 1908, or whenever it was that it allowed the transfer of land to Indians, good enough? Where is the necessity of the Order in Council being brought in now in the manner it has. As I say, the answer, as far as I see it is that it is designed to go further than the existing practice and to my mind it seems that the European members are trying to cheat us.

Why have they created this new Highlands Board and have delegated the powers of His Excellency the Governor to the Board? The reason is obvious. The European elected members want their policy to go further and further because they fear that at some future date His Excellency in Council might see fit in one or two cases to allow land to be transferred to Indians and they want to stop that clamour. So it was that they wanted a Highlands Board on which there was a European elected members' majority.

Personally, I think the present time is an unpropitious time for such an Order in Council to be brought in. In administrative practice their land was for all practical purposes reserved and this only curdles their policy a little further and I think Government should recognize that this is a very good example of the continuous pressure that is being exerted on it by the European elected members.

Talking about the Convention of Congo Basin Treaty, I do not know what would be the effect or what would happen if an Indian gentleman, who is a full French citizen, comes here and buys a piece of land. I do not know, but if the case was taken up by the French Government under this treaty, I think ten to one that he will have to be given this land. If at that time the Highlands Board—what I mean to show is that there is not only discrimination between people of European descent, but also that discrimination has been made even among Asians and Asians and not only between Europeans and Asians. One distinction is just as bad as another.

As a matter of fact I have information—I do not know whether it is true because I have been unable to confirm it, and naturally I would like the hon. Acting Commissioner of Lands to confirm it—

(Dr. Karve)

that in one case a Goan gentleman has been allotted land in the Highlands on the grounds that he is a Portuguese subject. I may be wrong but I feel the information may be true.

There has been a lot of criticism made on the meeting held lately in Mombasa, where a Kamba gentleman was asked to speak, and members on this side of the House have been very angry, and have said it was a wrong thing for Indians to get sympathy from the Arab and native populations of this country. But I shall have to remind them that when in 1922 the controversy between Europeans and Indians was at its height, they seem to have forgotten that many of the Europeans here did exactly the same thing and tried to influence the natives at that time. It is quite a natural thing for people with some kind of grievance to go with them and try to protest. That meeting at Mombasa was a most peaceful meeting and there were no signs of any disloyalty, and simply because a Kamba came to speak there I do not see why members on this side of the House should be so touchy.

One more thing and that is that the Europeans of this country will be surprised if I tell them that in the debate in the Central Legislative Assembly in India, a motion was unanimously accepted and carried by Government. Even the European members present there, elected by Europeans in India, they even saw the justice and right of the action, and voted for this motion simply because their sense of justice was clear and their interests would not be affected or suffer. I would go so far as to say that if the interests of the local Europeans did not come in, they would accept justice and righteousness too.

MR. HARRAGIN: Your Excellency, I can promise you, Sir, and hon. members of Council that I am going to be extremely short, for the simple reason that I can add nothing to this debate that has not already been said by some member on one side or the other.

So far as Government's answer to the debate is concerned, you have heard the

hon. the Acting Attorney General this morning. It interested me very much to see how far one could wander when a perfectly straight issue is being considered. The motion before this Council alleges that this Order in Council does certain things. The legal representative of Government has explained carefully that it does nothing of the sort, and my only question to the hon. mover is this: Does he think he is in a worse position to-day than, say, two years ago, before the Order in Council came into force?

There is not one single word in that Order in Council which deals with class or race. All that the Order in Council does perfectly clearly is to set out the boundaries of the Highlands which no one knew before—it had to be settled once and for all sometime—and, secondly, to appoint an advisory board—and may I emphasize this—to advise His Excellency the Governor. There are certain powers in regard to the boundaries of the Highlands which are incorporated in another Ordinance but they have nothing to do with this Order in Council.

I honestly believe that the motion has been brought because people imagine that a great deal more has happened than in fact has happened. To prove this you had only to listen to the last speaker and the other Indian speakers who imagine, for instance, that Government cannot acquire a bit of land in the Highlands if it wants to. Well, of course, there is no substance in that whatsoever.

It would have been more interesting to me if the hon. mover had been moving something in regard to the Native Order in Council, where, definitely something is set aside in the shape of certain land which in future will be vested in a Board which is not the Government and is known as the Native Lands Trust Board. There might have been some argument on that point though, of course, it can be justified on entirely different grounds.

The last speaker asked various questions and made certain statements such as that he believed that His Excellency's powers had been delegated to the Highlands Board. We are discussing this Order in Council and I hope the hon. mover in

[Mr. Harragin]

his reply will point out the particular clause which takes away from His Excellency any powers he has at the moment and delegates them to the Highlands Board.

A point was made in regard to Indian shopkeepers. What that has to do with this Order in Council I do not really know. That refers to an entirely different Ordinance and it has already been explained by the hon. and gallant Member for Nairobi North exactly why that was brought in and I am not going to tire hon. members by repeating the argument.

The next point made by the hon. Dr. Karve was why has this Order in Council been brought in at this particular time to insult the Indian community? And the answer is extremely simple: Naturally no one would dream of insulting them at a time like this. The reason why it was brought in was that no one dreamed that any one word in it would insult the Indian community unless they wanted to be insulted. The whole point is that it alters in no way the administrative practice which has been going on for the last twenty to twenty-five years; it provides merely for the setting up of a Highlands Board to advise His Excellency in those matters with regard to the Highlands in which he requires information, and why it should be insulting to lay down the boundaries of the Highlands which nobody knew with certainty before, is really more than I can understand.

Again, the hon. member suggests that the best legal brains were mobilized in order to get round some difficulty. The best legal brains—I am not referring to those here because they have nothing to do with it—the best legal brains in London were mobilized in order that nothing illegal or unjust should be put into that Order in Council, and that is why the Order in Council as it stands to-day is really unable to be attacked unless you impart into it words which do not exist.

The hon. mover might have attacked the 1915 Crown Lands Ordinance because there—and then only by implication—is the suggestion that under certain circum-

stances there might be differentiation between the races. Why at this particular time should the Order in Council be denounced when it has been debated numerous times in this Council? It was brought up when the Carter Commission Report was adopted here, and later, when the new type of legislation was going to be brought in Government laid a paper on the table of Council telling hon. members what was going to be in the Order in Council.

The same arguments have been repeated again and again, and I am not going to worry Council any further by refusing them, except to say that there is no substance whatever in suggesting that the Order in Council has altered the legal position in any way as compared with, let us say, the position a year ago.

MR. PATEL: Your Excellency, I am not going to take up the time of Council very much in my reply but I would like to make observations on certain matters.

Almost all the hon. member on the Un-official European side and the two learned members on the Official side have stated that the existing practice has not been changed and that nothing has been done which should lead the Indian members to think that there has been any change in the existing practice. But, if I may quote the words of my hon. colleague, Mr. Shamsud-Deen, used in an article published by him recently, I would say that if there is no other difference between the past practice and the practice to be followed after the Order in Council to-day there is that difference as between a mistress and a wife—and that is my opinion.

The hon. the Acting Attorney General replied, I must say very cleverly, with regard to the wording and the intention of the Order in Council. I may say that in public matters it is a growing practice in the world to-day, and it is very easy, to mislead people by putting wrong interpretations to particular phrases; for instance we have an international phrase the "Non-Intervention Committee" when really, there was intervention every day—everybody knew that that was a phrase invented for misleading people.

[Mr. Patel]

In the same way the legal brains on the official side have quibbled about words and say that there is no extension of the administrative practice or that there has been no change made in the existing administrative practice in the country brought about by the Order in Council.

The hon. Member for Mombasa, who is not now present in Council, alluded to the meeting at Mombasa and made certain remarks showing disapproval of the procedure at the meeting. I would like to make this quite clear that I was responsible for calling that meeting. Personally, I do not see that there was anything unfair done in that meeting which could upset any hon. member of this Council about the procedure or conduct of that meeting. And while I must say that, I do not agree with my hon. colleague, Mr. Isher Dass, when he inferred that the meeting was convened for the purpose of uniting together the non-Europeans for any unconstitutional procedure. I must make this quite clear because I was the organiser of that meeting and the purpose of that meeting was to marshal the forces which would be in sympathy with our cause in this country, whether they were European, Indian, Arab, African or of any other race.

I maintain that it is the right of any citizen in this country, if he thinks that the Government has adopted a wrong policy or that a certain policy is being pursued which is not in the best interests of the country, to organize and marshal all the sympathies and forces he can by all available but peaceful means in order that any legislation (if it is not what we consider the right legislation) can be amended. It has been done in Britain and it has been done in every other democratic country and I think it will be a mistake if any hon. member thinks that in this country, because the Indians have no backing from outside, they can be frightened by saying that serious exception will be taken to any such agitation.

I submit, here and now, Your Excellency, that the Indians have this right to carry on an agitation to get the sympathy of all sections of the population in this territory, and they will do so.

The hon. Member for Ukamba, while commenting on a point raised by me this morning, stated that the caste system in India amounted to segregation and racial discrimination. May I inform the hon. member that to-day there is not a single Indian leader of any importance in India who maintains that that system is in the interests of the country, and if, to-day the responsible Indians are unable to attack that system I am afraid it is because India is not allowed the right to progress in the direction she ought to by outside interference.

I may also inform the hon. member that to-day there is not a sensible Indian who does not think that the caste system has a great deal to do with the unfortunate position in which India has been placed, and if the hon. member desires to import that disease into this country he may please himself.

The hon. and gallant Member for Nairobi North I must say put his case clearly and fairly, and I cannot complain about his point of view. But I think everyone with a fair mind and who seriously thinks about this question will be of the same opinion as I on this issue. At the same time I must say that there are certain matters raised in the debate with which I cannot agree. The hon. and gallant member referred to a statement of the Colonial Office that the past practice would not be changed. But it should be remembered that at the same time, the India Office stated very clearly that they did not accept that position, and would re-open the whole question on a suitable occasion—that has been stated many times.

He also referred to a statement of Mr. Winston Churchill when the latter was Secretary of State for the Colonies in 1921, that he was then not prepared to change the existing administrative practice in the policy laid down in 1908. But that was thirteen years after his previous statement when he was a responsible Minister of His Majesty's Government. It is true that Professor Simpson and Lord Milner had very unwisely recommended policies detrimental to the Indian community and had given support to the reservation of Kenya Highlands for Europeans. But it was a very wise step

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that the Imperial Government did not see their way to accept their recommendations which, I must say, were the most stupid recommendations one has ever come across.

The hon. and gallant member rebuked in a friendly manner the Indian members for having taken this matter so seriously and not applying their minds to financial and other subjects affecting the Indian community. Well, it is very difficult for a European member to understand what are the feelings of Indians on this issue and how serious they are in opposing the policy laid down.

He also referred to the Convention of 1919 and stated that it had not been broken in letter or spirit and he particularly referred to Article 4 of that Convention. When I submitted my case this morning I read Articles 3 and 4 together and jointly put together they make it very clear that any member or any State which is a member of the League of Nations and any State which is a party to that Convention cannot be discriminated against and no differential treatment can be made against it. Looking at it in that light, in every way the moral obligation has been evaded completely, if I may use the words of the speaker of the previous motion.

Reference was also made about shops in rural areas. I did not say this morning anything intended to show that the shops in rural areas had anything to do directly with this motion. What I did say was this: that an attempt was continuously being made to extend what is called the administrative practice in a direction that it was never intended in 1908 or 1923. That was my argument. But to say that the district councils are not given powers over shops on farms is a dangerous misrepresentation of the facts. If you say that the intentions were not to put an end to Indian enterprise in trade on farms—and remember for whatever the purposes for which they were invited to go on farms, they were asked to open shops, and they did not go without invitation—why do you now want to give powers to the District Councils, which consist only of European members, to stop these trade enterprises for any

reasons the District Councils may think fit? This is clearly a breach of that administrative practice for at that time the administrative practice was never intended to be applied in that way.

I am not going to take up any more time of Council because I know that although some of the hon. members might perhaps in their hearts consider that really a wrong thing has been done, they are not going to acknowledge it publicly, and I do not think any European member is going to vote with me because I may take a long time of the Council.

But one thing I must say, and that is this: the hon. and gallant Member for Nairobi North said that they had a responsibility for the backward races, and that Government must take a serious view of any interference by other people. I must say that whatever the value of that promise by the Imperial Government with regard to the manner in which that trust was to be discharged by the association of immigrant communities, it was never stated that such association was only to be taken of the European community. We Indians take that promise at its face value and we maintain that we have as much right in this country as any European in the discharge of that trust, and will take steps expedient and necessary in the best interests of this country. We have every right to advise even the African population as regards their best interests.

—The question was put and negatived.

#### ADJOURNMENT

Council adjourned until 10 a.m. on Monday, 29th May, 1939.

(Subsequently adjournment was extended to Monday, 10 a.m., 5th June.)

Monday, 5th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 5th June, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### ADMINISTRATION OF OATH

The Oath was administered to:—

Temporary *Ex Officio* Member—

E. E. Lord, Esq., Acting Comptroller of Customs.

Temporary Nominated Official Member—

G. P. Willoughby, Esq.

#### THE THETIS DISASTER

**HIS EXCELLENCY:** Hon. members, during the last forty-eight hours our thoughts have turned away from Kenya and its problems to Birkenhead and the disaster that has occurred to H.M. Submarine *Thetis*, involving the loss of nearly 100 lives. I am sure I am voicing the wishes not only of this Council but of the whole Colony when I express our heartfelt sympathy both for the relatives of those who met with this sudden tragedy and with the Royal Navy in the terrible accident that has overtaken one of their latest vessels and in the loss of so many of their comrades, and in token of that sympathy I would ask hon. members to remain standing in silence for a short space.

(Council stood in silence for a few moments.)

#### COMMUNICATION FROM THE CHAIR

**HIS EXCELLENCY** then delivered the following communication from the chair:—

As this is merely a continuation of a Session I do not intend to make any lengthy or formal address, but there are certain matters affecting defence on which I propose to give information. I have on previous occasions explained the organization of preparing the country

for defence, the assistance essential to the Defence Committee and, working under it, the Man Power and Supply Committees. There is close co-ordination in the matter of defence with other territories concerned. Should hostilities unfortunately break out, a G.O.C. will of course take up the command of all forces in the field, his authority extending beyond the confines of Kenya. The Defence Committee will automatically be reduced in size by the absence of the Naval, Military and Air Force members, who will be fully occupied with the execution of the defence scheme. That is a perfectly logical step, merely a simple transition from peace to war, because the work of the Defence Committee will no longer be concerned with preparations, but mainly with supplying the wants of the forces in the field and correlating those requirements to the essential needs of the rest of the Colony. Close liaison will be very necessary between the G.O.C. and this and the Governments of the other territories concerned, and arrangements have been made to ensure this in Kenya. Executive and Legislative Council will continue; the Defence Committee cannot absorb the statutory duties of Executive Council, nor is it desirable that it should do so. For one reason, I want to keep the Defence Committee to some extent flexible so if it is necessary to increase their numbers it will be simple to do so.

I have referred before to the work of the Man Power Committee, and a communique published in the Press on the 17th February summarized its activities. Sub-committees have been appointed in all up-country districts containing an appreciable European population. District Commissioners are chairmen and District Commandants of the Kenya Defence Force are *ex officio* members. The presence of the Kenya Defence Force Commandant ensures that there is the closest co-operation between the civil and military organizations in the districts. Similar sub-committees, again with the District Commissioners as chairmen, have been appointed in areas containing a large Asian population.

Allocations of individuals to those war duties which would begin immediately

[H.E. the Governor]

in the event of an emergency is approaching completion, and all those earmarked for such duties have already been informed. I wish to stress once again that in the absence of instructions or notification people would, if an emergency occurred, remain at their peace-time occupations. This does not mean that their services would not be required at all, but rather that they are in reserve. Such reserve is essential, partly to replace men who may be ill or absent, and partly to form new units which will be required as and when equipment becomes available.

In making allocations, constant regard is given to the total man power available in any district, in order that the number remaining in the district may be adequate for local requirements. Generally speaking, only one-quarter or one-third of the European man power would be called up on mobilization for service which would entail leaving the district. As an example, in one area containing a total European man power, of all ages that is, of approximately 550, 150 men would be withdrawn on mobilization; of the remainder 200 would be holding "key" posts or be allocated to duties such as local guards and group farm management. The remaining 200, which again includes men of all ages, would remain at their normal peace-time occupations, forming thus a reserve to draw upon if the need arises. I hope that in the near future a member of the Central Man Power Committee will have time to visit all districts in the Colony which have not already been visited and settle personally any outstanding questions.

The women of Kenya are taking their full share in defence preparations. For instance, through the agency of the Kenya Women's Emergency Organization, all requirements of the Man Power Committee for women to replace men in certain occupations have been filled, and many others have been registered to fill war-time posts; the Women's Transport Service, better known to most of us as the "Fanyis", have arranged, among other things, for twelve of their members to be trained as telegraphists in order to make good a war-time shortage. It may also be of interest to note that, after

filling all the requirements of the medical service, there are still 144 fully trained nurses on the books of the K.W.E.O.

Not even the most completely socialist state can guarantee full equality of sacrifice in time of war; for instance, no pension can really compensate for loss of sight. But every effort should be and is being made to ensure that, as far as is humanly possible, these inequalities are levelled out and that men are not handicapped in the future because they leave their homes or occupations to perform national service. A great deal can be and is being done by Government, but it cannot do all, and sections of the public have their part to play.

The rates of pay and separation allowances for men on duty with the Kenya Regiment and Kenya Defence Force would, under existing regulations, be those of a British infantry regiment on active service in Kenya, but I am endeavouring to secure approval of a higher scale of pay and allowances which I regard as more suited to the conditions of Kenya. As regards the rank and file of the East African Army Service Corps, their pay will be similar to those of the present Supply and Transport Corps of the King's African Rifles.

With regard to casualties: Gratuities and pensions on death or disablement as a result of active service are provided for in the Ordinances under which the Kenya Regiment and the Kenya Defence Force are constituted. In the case of individuals who are wounded or sick as a result of active service, their pay will continue until they are discharged either to pension or as fit men. Wound pensions and gratuities or pensions to dependants in the case of death will be assessed in conformity with the scales in force in England, and I have asked that an officer with experience of pensions may be sent out from England at the commencement of the war.

It must be realized that however carefully rules may be drawn up there will always be certain hard cases which cannot be covered by official regulations; for instance, the time that invariably elapses between a man being killed and a grant being made to his widow. In order to cover cases of this nature I propose, in the event of war, to initiate a

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special fund formed by voluntary subscription, a fund that can be administered rather on the basis of sympathy than of rule. This fund affords the means whereby each one of us can help towards securing equality of financial sacrifice. Another way in which rules and regulations to ensure equality of sacrifice can be reinforced lies in this request that I make to employers, namely that they should keep the posts open for all those of their employees who are called up for service. That is a matter difficult to cover by any form of legislation, but the equity of it is so obvious that I am confident it will be done.

The method of running farms in time of war is, I think, sufficiently well known to make it unnecessary for me to refer to it in any detail. The remuneration of farm managers must vary with the local conditions, and the amount of work and travelling entailed, and I do not think it practicable to lay down one universal scale. The remuneration therefore would be adjusted by the local man power sub-committees, and in case of difficulty or dispute reference would be made to the Board of the Land Bank, who would adjudicate and decide. It is Government policy that, so far as possible, the disposal of crops and the provision of finance for wages and ordinary production expenses in the case of farms from which the owners are absent on active service, should be carried out through the normal channels and by means of local arrangements. In cases where such arrangements cannot be made and where they break down, the Land Bank will be authorized to make such cash advances as are necessary for the conduct of normal farming operations and subsequently to recover such advances from the crop proceeds. The system would be a recommendation from the group farm manager through the local man power sub-committees to the Board of the Land Bank, which would then decide and take the necessary action. It is possible that it will be found necessary to expand that Board.

Steps will be taken at the commencement of a war to stop any attempt at profiteering in foodstuffs and in essential

articles, which essential articles include such things as ordinary textiles and ordinary medicines.

It is considered unlikely that anyone would attempt to foreclose on mortgages of farms or other property during a war, but in order to safeguard the interests of those on service, regulations have been prepared to prevent foreclosure during a war and for a certain period after its conclusion. These regulations will also apply to the case of a hire-purchase agreement on a house.

With regard to the protection of individuals left on farms, there is of course certain action that can be taken privately; for instance, two or more families joining up, or companions going out, and I may add that the Kenya Women's Emergency Organization has a list of several women available for the work of companions. But, as I have already said, when deciding on the number of men to be taken from the different districts, consideration was given to the minimum number who ought to remain, and in some cases, where this number appeared to be too few, subsequent adjustments have been or are being made. Further, should hostilities appear imminent, steps are going to be taken to call up ex-police to the number of about 200, and preliminary action has already been taken to facilitate this. A proportion of these extra police will be available for work as mobile patrols in the settled areas.

As was announced recently in London, a scheme is in operation under which marine war risks are re-insured by His Majesty's Government in respect of all cargoes, both import and export, to or from the United Kingdom, with the object of course of preventing any serious rise in insurance rates. This of course applies to cargoes between Kenya and the United Kingdom. The question of extending this scheme to cover all cargoes shipped to or from the Colonies, whatever the destination, is under consideration.

With regard to loss or injury which may arise as the result of any enemy bombardment from the air or from the sea, His Majesty's Government in the United Kingdom has laid down the broad principle that such loss is not to be

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treated as merely the concern of those who directly suffer it, but must be regarded as falling upon the community as a whole and consequently as constituting a proper subject of compensation from public funds. According to a statement made in the House of Commons last January, the general lines on which His Majesty's Government in the United Kingdom intends to act are as follows:

"In the case of individuals engaged on war work or civilians wholly or mainly dependent for their livelihood upon their employment or occupation, compensation will be given for serious disablement or to dependent widows or children of persons killed, the scale being calculated by reference to the standard rate of compensation and the conditions applicable to private soldiers.

"It is intended to assess the degree of damage to private property after the war is over, and to grant compensation on the highest scale compatible with the circumstances of the country at that time.

"It is proposed, in the event of war, to institute a Government scheme of insurance at a premium to be fixed to cover all goods which, in the opinion of the Government, are essential to the life of the community in war. That is in order that there should be no interruption of normal trade."

These, as I have said, are the broad principles which have been laid down for the United Kingdom, and it is expected that a Bill to give effect to a scheme on these lines will be introduced in the House of Commons at an early date. The Government of Kenya is considering the adoption of the same principles, and when the United Kingdom legislation is available it will be studied and the introduction of some corresponding Ordinance considered here. But in any case, I can say now that compensation will be given in the case of disablement or death to those who are carrying out work under A.R.P.

I realize that there are other questions. Some of these are in process of solution and there are others which one must recognize cannot be fully dealt with in

advance, but if those who are in doubt will write to or see one of the senior officers in Government, they will be told what the position is.

But there are questions and problems in the process of solution to which it is difficult to give an official answer, at any rate, at the present time. If I may take an instance of this—I am rather taking Council into my confidence—I might refer to the scheme for the further training of "A" licence pilots in the training of pilots for actual war service. I happen to know that permission has now been given by the Air Ministry, who are organizing a scheme, for the work to go ahead. I have had nothing official, but I have heard unofficially and I have got some details about it, but I cannot make any official pronouncement on the subject. I only give that private information to show that the work is going on, and I at any rate hope that it will not be delayed much longer.

As another instance of these questions in the process of solution, I would like to refer to that of shipping. We must anticipate a shortage of tonnage for export. Certain of our produce will be required for purposes of Imperial defence, and this must automatically have priority. The allotment of the remaining tonnage available will have to be carried out by a Board or Committee which must include representatives of the producing interests of Kenya and Uganda, as well as members with knowledge of shipping and loading problems. This is comparatively simple, but it is possible, however, that this Committee will have to deal with certain other questions, on which I received a memorandum from England only about three weeks ago. This is a problem that I am going to discuss with the Commander-in-Chief, East Indies Squadron, whom I meet in a fortnight's time. The result of that discussion may affect the composition of the Committee, and until that meeting takes place it will be unwise to decide on the members of the Committee.

There will be no slacking off in the preparations for defence. At the same time, there are definite signs of an improvement in the international situation. One of these indications is the financial

(H.E. the Governor) barometer, and one might point to the reduction in the insurance rates for shipping and also to the recovery in the price of British Government stocks. This improvement is due in no small measure to the progress that has been made in Imperial Defence, of which Kenya is taking its full share, and above all to the introduction, as you all know, of a form of universal service in the United Kingdom; universal service for the training of all young men between the ages of 20 and 21. All of these steps have proved to the world that we are determined to maintain our heritage, both material and spiritual.

We have therefore cause for looking forward to some relaxation of the tension of the last few months, and consequently to a certain degree of increase in the energy that can be devoted to the problems of progress and development. And there is justification for believing that the principles of truth, justice and freedom are slowly but surely regaining the upper hand and are leading to the restoration of peace and mutual trust between the peoples of the world. (Applause.)

#### MINUTES

The minutes of the meeting of the 21st April, 1939, were confirmed.

#### PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

By THE HON. THE ACTING CHIEF SECRETARY:

Printing and Stationery Department Annual Report, 1938.

By THE HON. THE FINANCIAL SECRETARY:  
Schedule of Additional Provision No. 1 of 1939.

Report of the Board of the Land and Agricultural Bank of Kenya, 1938.

By THE HON. THE DIRECTOR OF AGRICULTURE:

Report on a Visit to Kenya, by Dr. I. B. Pole-Evans, C.M.G.

By THE HON. THE GENERAL MANAGER, K.U.R. & H.:

Report on the Administration of the Kenya and Uganda Railways and Harbours for 1938.

By THE HON. THE ACTING COMPTROLLER OF CUSTOMS:

Annual Trade Report of Kenya and Uganda, 1938.

By THE HON. THE ACTING COMMISSIONER OF LANDS AND SETTLEMENT:

Return of Land Grants, January-March, 1939.

By THE HON. THE ACTING COMMISSIONER OF MINES:

Oil Regulations, 1939.

#### BILLS

##### FIRST READINGS

On the motion of Mr. Willan, seconded by Mr. Dennison, the following Bills were read a first time:—

The Electric Power (Amendment) Bill,  
The Local Government (District Councils) (Amendment) Bill,

The Official Secrets Bill,

The Resident Labourers (Amendment) Bill,

The Local Government (Rating) (Amendment) Bill,

The Employment of Servants (Amendment) Bill,

The Kenya Indian and Arab (Territorial Company) Bill,

The Employment of Women, Young Persons and Children (Amendment) Bill,

The Police (Amendment) Bill,

The Kenya Regiment (Territorial Force) (Amendment) Bill,

The Sial Industry Bill,

The Trade Disputes (Arbitration and Inquiry) Bill.

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

#### ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 6th June, 1939.

#### Tuesday, 6th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 6th June, 1939, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The Minutes of the meeting of the 5th June, were confirmed.

#### ORAL ANSWERS TO QUESTIONS.

No. 11—NAKURU NATIVE HOSPITAL.

LORD FRANCIS SCOTT asked:—

(a) Is Government aware that the Native Hospital at Nakuru is quite inadequate to deal with the numbers of sick natives who require treatment there?

(b) As there is no other Native Hospital within 70 miles of Nakuru, will Government treat the necessity of enlarging the Nakuru Native Hospital as a matter of extreme urgency and provide funds therefor?

MR. LOCKHART: (a) Government is aware that there is an acute shortage of accommodation in the Nakuru Native Hospital;

(b) Proposals to increase accommodation at the Nakuru Native Hospital have been considered from time to time and the question of providing funds in the current financial year has now been referred to the Standing Finance Committee.

No. 16—LORD HAILEY AND EROSION

MR. COOKE asked:—

With reference to the Government's written reply to my question No. 7/1939, will they explain the discrepancy in their statement that only "slight erosion occurred" with the considered statements by Lord Hailey on pages 1095 and 1096 of his survey that "In the low-lying parts of the Reserve, east of Embu, over-stocking with goats, and more recently cotton cultivation have caused such severe damage that parts of the Emberre district are now only fit to be abandoned" and "In Kitui cotton

cultivation has recently been introduced and sheet-erosion has already reached the visible stage in cotton plots"?

MR. WATERS: The discrepancy is accounted for by the fact that Lord Hailey did not visit these areas. In the footnote on page 1056 he states that this chapter of his report was largely drafted by Mrs. Huxley. Mrs. Huxley has not visited the areas; her impressions were presumably obtained from reading Mr. C. Maher's reports on "Soil Erosion and Land Utilization." In respect of Emberre these impressions were wholly misleading as to the true situation. In Kitui sheet erosion was undoubtedly occurring at the time of Mr. Maher's visit in both cotton and food plots, but this has been corrected almost completely.

Should the hon. member desire to visit the areas to judge the matter for himself, I shall be pleased to arrange for an Agricultural Officer to accompany him during his tour.

No. 17—DEPORTATION OF SAMUEL MWINDI

MR. ISHER DASS asked:—

With regard to the statement appearing in the *East African Standard* of the 14th December, 1938, to the effect that a Petition had been made, praying for the release of Mr. Samuel Mwindi, who had been deported to Lamu on the 4th October, 1938, in connexion with de-stocking in the Ukamba Reserve, will Government be pleased to state whether:—

(a) Such Petition has been received by the Government and whether it has been forwarded to the Secretary of State for the Colonies;

(b) If the reply to the above is in the affirmative, will Government lay on the table of the Council, for information of hon. members, a copy of any observations they have made on the said Petition;

(c) Will Government state what steps it intends to take in respect of the return of Mr. Samuel Mwindi to the Ukamba Reserve.

2. Is Government aware that Mr. Samuel Mwindi has left behind him a



(Mr. Isher Dass)

family and children who are without any means of subsistence and, if so, will it inform the Council what steps it has taken to provide for the maintenance of the dependants of the deportee.

MR. HOSKING: 1. (a) As stated by the Secretary of State for the Colonies in the House of Commons on the 30th November, 1938, a petition was received by him. The Secretary of State duly referred the petition to the Governor for his observations before the Secretary of State gave his directions regarding the reply which His Excellency should convey from the Secretary of State to the petitioner.

(b) The answer is in the negative.

(c) Government is not at present prepared to permit Samuel Mwindi's return to the Ukamba Reserve.

2. Inquiries have revealed that Samuel Mwindi's family has ample means of subsistence and it is not the intention of Government to provide for their maintenance.

No. 21—INDIAN A.R.P. WARDENS

MR. ISHER DASS asked:—

With regard to the appointment of six Indian gentlemen as Wardens for Nairobi under the A.R.P. Scheme will Government state—

(a) the qualifications of these gentlemen and the method by which their appointments have been made?

(b) whether these gentlemen have any military experience and whether they have attended A.R.P. classes and obtained certificates of competency?

(c) whether most of them have been appointed on their own request or because they belong to a particular Indian religious sect?

(d) If the answer to (c) be in the affirmative, is it the policy of the Government to appoint members to public bodies on a religious basis?

MR. HARRAGIN: (a) The selection of Air Raid Wardens under the Nairobi A.R.P. Scheme has been made in accord-

ance with the principles regarding qualifications and method of appointment laid down for the United Kingdom in Home Office A.R.P. Booklet No. 8, entitled "The Duties of Air Raid Wardens".

The first paragraph of that booklet reads as follows:—

"The Air Raid Warden is chosen as a responsible and reliable member of the public who will undertake to advise and help his fellow citizens, in the sector to which he is allotted, in all the risks and calamities which might follow from air attack; and will form a link between them and the authorities for reporting air raid damage and calling aid when required."

(b) The answer to the first part is in the negative. As regards the second part all Air Raid Wardens are attending classes and will undergo an examination, at the conclusion of the course, for a certificate of competency.

(c) The answer is in the negative.

(d) The question does not arise.

No. 24—WORKMENS' COMPENSATION BILL

MR. ISHER DASS asked:—

In view of the assurances given in the past, will Government be pleased to state whether the Workmen's Compensation Bill is likely to be introduced in this Council?

MR. HARRAGIN: Government is not aware of the assurances to which the question makes reference, but for the information of the hon. member I can state that the question of the introduction of a Workmen's Compensation Bill is still under consideration. The views of other Dependencies are being obtained and a decision will be made when their replies have been received.

No. 25—INDIAN SCHOOL, KITALE

MR. ISHER DASS asked:—

In view of the great sacrifices made by the Indian community of Kitale in running in that locality an Indian School which has made steady progress with 92 children on its roll, and in view of the repeated and unsuccessful requests of that community for the taking over by Government of the school, will

(Mr. Isher Dass)

Government make necessary provision in the 1940 Estimates so that the school in question may be taken over and run as a Government School?

MR. LACEY: The question of the provision of funds for taking over the Indian School at Kitale will be considered in connexion with the preparation of the 1940 Estimates.

No. 26—NAIROBI INDIAN GIRLS' SCHOOL

MR. ISHER DASS asked:—

Will Government state whether provision is being made for the construction next year of a permanent building for the Nairobi Indian Girls School.

If the answer be in the negative, will Government take immediate steps to construct additional temporary building of wood and iron notwithstanding the objections, if any, of the Nairobi Municipal Council to such course, following the precedent in the case of the temporary building recently erected for the Land Office?

MR. LACEY: It is not possible to indicate when funds will be available for the construction of a permanent building for the Nairobi Indian Girls School.

The possibility of constructing an additional temporary classroom is under discussion.

#### SCHEDULE OF ADDITIONAL PROVISION No. 1 of 1939

MOTION

MR. LOCKHART: Your Excellency, I beg to move—

"That Schedule of Additional Provision No. 1 of 1939 be referred to the Standing Finance Committee."

Hon. members will note that the total additional provision involved is £54,464, and if the savings and the sums recoverable by way of reimbursements and increased revenue are deducted the net expenditure amounts to a sum of £25,977. I might add that in the gross expenditure a sum of £20,000 is due to defence measures.

MR. WILLAN seconded.

The question was put and carried.

#### AGRICULTURAL ADVANCES RECOVERY OF £12,451 WAIVED

MOTION

MR. LOCKHART: Your Excellency, I beg to move—

"That this Council approves of recovery being waived in respect of a sum of £12,541-12-38 advanced under the provisions of the Agricultural Advances Ordinance, 1930."

Sir, this total represents sums which the Board of the Land Bank have advanced under this scheme and have found it necessary to recommend being written off as now being irrecoverable. It seems unnecessary in full debate to go into the details. The sums are for various reasons irrecoverable in each case and I shall be happy to give any hon. member the details if he desires them.

MR. WILLAN seconded.

The question was put and carried.

#### GRATUITY TO EX-R.S.M. HASSAN ALIJABU

MOTION

MR. LOCKHART: Your Excellency, I beg to move—

"That this Council approves the payment of an *ex gratia* gratuity of £22-10-00 to Regimental Sergeant Major Hassan Alijabu, late Northern Brigade, The King's African Rifles, who was discharged on the 31st January, 1939."

The position is this: This soldier had completed 18 years' service on the 20th September, 1932, when he left the service with the rank of Sergeant and he received a gratuity of £22-10-00 on discharge. On the 1st February, 1933,—that is, with a gap from September, 1932, to February, 1933—he was re-enlisted as a special case; the regiment, in fact, desired to get him back. He continued in the service until 1939 and he rose through the rank of Company Sergeant Major to that of Regimental Sergeant Major. Now, as he had left the service and had received a gratuity, under the regulations he was not entitled to any further gratuity, that is the gratuity of a Regimental Sergeant Major which is £45, but it was considered that under the circumstances of his re-enlistment and the fact that the break in his



[Mr. Lockhart]

service was a matter of less than five months, it would be extremely unfair to deprive this Regimental Sergeant Major of his full gratuity to which he was otherwise entitled for his service in the K.A.R. As, however, the regulation is clear upon this point it is necessary to obtain the approval of Council in order to make this additional payment.

MR. WILLAN seconded.

The question was put and carried.

**KENYA INDIAN AND ARAB  
(TERRITORIAL COMPANY) BILL**  
SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Kenya Indian and Arab (Territorial Company) Bill. This Bill is designed to increase the military forces in the Colony by raising a unit in the district of Mombasa. That unit will be composed of British subjects and British protected persons of the Indian and Arab races.

I am sure I am voicing the opinion of every hon. member of this Council when I say that we wish this Company when it is raised every possible success.

The functions of this company will be to repel external aggression, to aid the civil authority in the protection of life and property and to prevent or suppress internal disorder in the Colony.

Turning to the details of the Bill: Clause 3, sub-clause (1) makes provision for you, Sir, by notice in the Gazette, to establish this company, and it is to be known as the Kenya Indian and Arab Territorial Company. In sub-clause (3) of the same clause the supreme command of this company is vested in you, Sir, and the command is under the Commander of the Northern Brigade of the K.A.R. and Local Forces.

Passing on to Clause 4, this deals with the membership of the company both as regards officers and men, and in sub-clause (2) it is provided that every member of the unit of non-commissioned rank shall be a British subject or a British protected person of Indian or Arab race or origin. Coming back to sub-clause (1) there is a drafting error there. It is my mistake. That sub-clause does not carry out the intention of the Government. The

intention of Government is that every British subject of European, Indian or Arab race or origin or British protected person of Indian or Arab race or origin shall have the opportunity of becoming an officer in this Company. So, in Select Committee I shall move that sub-clause (1) of Clause 4 be amended to carry out properly the intention and policy of Government.

Clause 5 provides that every officer and every member of this company shall be liable to be called out for active service and to undergo such peace training as may be prescribed from time to time.

In clause 6 every member shall be enrolled in the first instance for four years and then, at the end of such period, on application and at the discretion of the commanding officer that term of four years can be increased to two further periods, the first of four years and then another period of two years, making a total possible period of service in this company of ten years.

Sub-clause (1) of Clause 7 empowers the Governor to call out the company or any part thereof on active service in any part of this Colony. In sub-clause (2) the Provincial Commissioner of the Coast Province is empowered, in the case of sudden danger in that Province, to call out the company or any part of it to suppress that danger.

Clause 8 provides that the officers and men of this company cannot obtain their discharge from this company when they are engaged on active service.

Clause 11 provides for you Sir, to cancel the commission of any officer at any time with this proviso; that the officer must first of all be acquainted with the complaint or charge made against him and must have had an opportunity of rebutting that complaint or charge.

Clause 12 provides for the retirement of officers. They can be retired from the active list and may, with Your Excellency's approval retain their rank and also retain their uniform and wear it on retirement.

Clauses 13, 14, 15, and 16 I do not think need any explanation at all.

Now I pass on to Part IV of the Bill. Clause 17 provides that the provisions of the Army Act relating to discipline are

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applicable to officers and members of the company. They apply to the officers and the permanent staff of the company at all times and, with regard to the other members, when they are on active service or are called out for active service, during peace training and when engaged in any military exercises such as drill or musketry. But no officer or member can be punished twice for any breach of discipline. If they are punished under the provisions of this Bill then they cannot be punished for the same offence under the Army Act, and vice versa.

Clauses 19 to 25 I think are self-explanatory and I do not propose to deal with them at all.

In Clause 26 there is provision for you, Sir, to appoint the permanent staff. It is in your discretion and I presume that Your Excellency will consult your military authorities as to what is the proper permanent staff to be appointed for this company.

Clause 27 provides for pensions and gratuities, and compensation in case of disablement. Sub-clause (2) provides for the granting of pensions to the widow or family of any officer or member who is killed in action. In sub-clause (3) of the same clause this Council has the same powers with regard to pensions and gratuities, etc., in this Bill as it has under the Kenya Regiment and the Kenya Defence Force Ordinances.

The final clause, Clause 28 deals with the Regulations and I need not go into that. In conclusion I might say that it is Government's intention that this Bill should go to Select Committee.

MR. DENNISON seconded.

MR. SHAMSUD-DEEN: Your Excellency, might I congratulate Government on this somewhat belated measure which, in my opinion, should have been introduced at least five months ago. But there is one thing I should like to say and that is I fail to understand what on earth is the reason for this Bill not being applicable to the whole of the Colony. The Bill, in special circumstances does refer to Mombasa but I would be very glad to see the select committee when considering it, make it applicable to the whole of the Colony.

Your Excellency, we have mentioned in this Council times without number, that the Indian community, who have adopted this land as their home country, are very anxious indeed to offer their services for the defence of the Colony. These, however, have been rejected and they have been treated with what appears to be contempt. Now, I think this is an appropriate time when Government ought to take these offers seriously into consideration and not reject them and thus insult a loyal section of the community.

I know, Your Excellency, that certain measures are being taken by the Manpower Committee but they have not the powers of law, and I should be very happy indeed to have incorporated in this Bill provisions providing for the whole of the Colony and have the force of law behind them. While conscription has been introduced in England and has been introduced for a very long time in Europe we here in this Colony have offered our services again and again voluntarily and they have been refused.

We have been taunted with very nasty remarks in this Council ever since the end of the last war that the Indians had not offered their services for the defence of this country. At present in the Indian community there is quite a large number of able-bodied Indian youths in this country who can be very useful in times of emergency and are quite ready and anxious to offer their services. If Government refuses to accept their services I think the Government themselves will be to blame in case there is any trouble.

I can realize how the powers in Central Europe would welcome any such suggestion coming from their population of the offer of service and how readily that would be accepted.

I can see no reason at all why this offer should be rejected in view of the record of the Indian community. There is no reason to suspect or doubt their loyalty and I do hope that this Bill may be made applicable to the whole of the Colony.

MR. NICOL: Your Excellency, I welcome this Bill wholeheartedly and I should like to associate myself and the people of Mombasa with the remarks of

[Mr. Nicol] the hon. and learned mover when he wishes this unit every success. But, in welcoming this Bill I have been asked to make one point and that is this: Some years ago it was realized that for various cogent reasons it was impracticable to have a unit of the Kenya Regiment in Mombasa, and the Kenya Defence Force is therefore operative, and I would like to say that the K.D.F. unit in Mombasa is a very fine one. But I have been asked to urge, in view of this Bill which we are now discussing, whether it would not be out of place if some steps could be taken to place the Mombasa Kenya Defence Force on a territorial force basis while still retaining the K.D.F. In no way do I decrie the Kenya Defence Force either at Mombasa or elsewhere; I realize to the full the good work that they do. But I do suggest that the young men of Mombasa and the older ones should have the opportunity of being a unit of volunteers or at least being put on a militia basis. I suggest that it can be done in view of the fact that Mombasa is a Protectorate. I support the Bill.

MR. COOKE: Your Excellency, in welcoming this rather long deferred measure I would like to make one or two points. Would it be possible to include a clause to prevent the victimization of employees joining the company because it does seem to me that a safeguard is necessary. I think it occurs in the Kenya Defence Force Ordinance. There is just one other point, could we learn whether Government employees are permitted to join the Company, whether Indians or Arabs?

I beg to support the Bill.

MR. MONTGOMERY: Your Excellency, I have only one point to raise in connexion with this Bill and that is to ask whether the Indians and Arabs will be mixed together in this Company? I spoke to various people the other day in Mombasa about it, and both Europeans and Arabs were somewhat doubtful as to the wisdom of having Indians and Arabs in the same company even though they may be two different platoons. The feeling I gathered was that it would be better to separate them for there is a great difficulty with regard to religion, and the Hindus

having to mess together with Mohammedans in the field might give rise to great difficulty. I would like to ask the hon. mover if that point could be considered in select committee.

COL. MODERA: Your Excellency, I would like to invite the hon. and learned mover in his reply to define to us more precisely what is a British protected person.

MR. WILLAN: Your Excellency, in regard to the remarks of the hon. Mr. Shamsud-Deen that this Bill does not apply to the whole Colony, I would first of all say this: that any raising of a military force costs a lot of money. It is Government's policy at the present time to raise this unit at Mombasa because so far as can be foreseen at present this will suffice to meet all present needs.

With regard to the remarks of the hon. Member for Mombasa, I am afraid there is nothing I can do in this Bill to meet the request made by the hon. member, because that is a matter governed by either the Kenya Defence Force or the Kenya Regiment Ordinances. Certainly Government will bear in mind the remarks made by the hon. member.

In regard to the remarks of the hon. Member for the Coast. His first point about employees is a point which, I think, can be considered in select committee, and with regard to Government employees, there is nothing in this Bill to forbid a Government servant from joining the company.

With regard to the remarks made by the hon. Mr. Montgomery about the wisdom of having Indians and Arabs in the same Company even though they are in different platoons, well I do not think there is much in that, and I feel perfectly certain that the Indians and Arabs will get on all right. A few years ago I served with the local volunteer forces in Malaya. That force had in it Chinese, Malaysians and Indians and all three nationalities got on well together, and I do not see why Indians and Arabs should not get on well together.

Lastly, the hon. and gallant Member for Nairobi South asked that I should define more precisely what is a British protected person. I do not propose to define it more precisely, but to explain it. For

[Mr. Willan] instance, natives of Uganda, a Protectorate, and natives of the Federated Malay States, a Protectorate, are British protected persons, not British subjects. Inhabitants of a Protectorate sheltered and protected by the British Government are British protected persons, and so with the Protectorate at the Coast. They are also British protected persons. I hope that explanation will suffice.

MAJOR GROGAN: What if they are not born there?

MR. WILLAN: What does the hon. and gallant member want me to answer?

MAJOR GROGAN: What of the Goans who are not born in East Africa?

MR. WILLAN: If my hon. friend is referring to the Goans born in Goa, Goa is a Portuguese state. Goans born in the Colony are British subjects, but a Goan who has come from Goa to live in the Colony is not British but a protected person though his children, if born here, are British.

No, I am sorry, I have made a mistake. A Goan coming from Goa to live in this Colony is not a British protected person.

The question was put and carried.

#### KENYA REGIMENT (T.F.) (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Kenya Regiment (Territorial Force) (Amendment) Bill.

With the concurrence of this Government the Government of Uganda has decided to form one or more platoons of the Kenya Regiment, according to the number of volunteers, and actually Uganda has passed legislation at the recent session of their Legislative Council. They have passed their Bill to form these units and this Bill is really complementary to the Uganda legislation, and is for the purpose of making the necessary changes in our legislation on account of the new Uganda legislation.

Clause 2 of the Bill amends several definitions in our Ordinance, and I need not go into the reasons because they are purely formal.

Clause 3 provides for transfers of officers or members from Uganda to Kenya. Officers or members of the Uganda units, if they are transferred to Kenya and take up residence in a military district in Kenya, will automatically become officers or members of the Kenya Regiment in the unit in that particular district, and similar provision exists in the Uganda legislation regarding transfers of officers or men from Kenya to Uganda.

Finally, Clause 4 amends the Principal Ordinance by adding a new section which states that any officer or member of a unit of the Regiment or the Reserve established under the Uganda Ordinance shall, while on active service outside Uganda, or while undergoing peace training in Kenya, be deemed to be an officer or member under our Ordinance.

Officers and members of the units raised in Uganda will do their training in Kenya, and the reason is that the Regiment should train together as a whole. In case of active service, when officers or members of the Uganda units are called up for active service, and actually go on active service outside the confines of Uganda, then the supreme command of the Regiment will vest in the Governor of Kenya and not in the Governor of Uganda.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Your Excellency, I would like to rise to support the motion, which I welcome. I think it is an excellent thing that Uganda wishes to join with us in the Kenya Regiment. Apart from the military advantages, I feel the fact that some of the Uganda men will come down here and train with Kenya men will have a very beneficial effect in many ways in understanding each other's points of view.

The question was put and carried.

#### POLICE (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move the second reading of the Police (Amendment) Bill. This Bill has three objects. First of all the appointment of special police officers which is contained in Clause 5; secondly to enable regulations to be made giving gratuities to African sub-inspectors and assistant sub-inspectors; and thirdly to rectify an

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oversight in the Principal Ordinance by adding a penalty clause to sub-section (11) of section 29 of the Principal Ordinance.

I will deal with the three objects as I have read them out. First of all Clause 5. As the law stands at present the appointment of special police officers is vested in magistrates and justices of the peace. Magistrates and justices of the peace may, on the application of a superior police officer, when it appears that any unlawful assembly or riot or disturbance of the peace is reasonably to be apprehended, appoint special police officers.

It is felt that this power of magistrates and justices of the peace should be transferred to the Commissioner of Police because first of all he can act more swiftly and secondly because these special police officers automatically become members of the Police force and are directly under the Commissioner of Police. It is felt that he is the proper person to appoint special police officers or to say whether they should be appointed.

Actually, his powers are rather wider than the powers given to the magistrates and justices of the peace. Under sub-section (1) he may, at any time, if it appears to him to be expedient in the interests of public order and safety so to do, appoint fit and proper persons to act as special police officers.

That is the object of Clause 5 of this Bill.

Clause 4 amends sub-section (3) of section 56 of the Principal Ordinance. In the Police Gratuity Regulations, 1935, a gratuity of £30 after 21 years continuous and good service is granted to a first grade sergeant, an African sub-inspector or assistant sub-inspector. This figure of £30 is the maximum gratuity payable under section 56 (3) of the Principal Ordinance, and the Commissioner of Police, while agreeing that a gratuity of £30 is appropriate for a first grade sergeant after 21 years of service, regards it inadequate for an African sub-inspector or assistant sub-inspector. It is the policy of Government to encourage the African to become sub-inspectors or assistant sub-inspectors and a fairly high standard of Police knowledge and also a knowledge of the English language are

the qualifications for these posts. So to encourage Africans to qualify for such posts it is considered desirable that there should be power to increase the gratuity of £30 in respect of these two grades of officers. That is the sole object of Clause 4.

Going back to Clause 3 of the Bill, in 1934, by the Police Amendment Ordinance of that year a new section 29 was added to the Principal Ordinance and under sub-section (11) of that section it is provided that in Police investigations the person being interrogated should give his true name and address and answer truly all questions relating to any case put to him by a police officer, other than questions the answers to which would have a tendency to expose him to a criminal charge, or to a penalty or forfeiture. Although that new section was enacted there was no penalty clause for a person who did not give his true name and address or did not answer truly the questions put to him. Clause 3 of this Bill provides for the amendment of the existing law by adding the penalty clause.

Sir, I beg to move.

MR. DENNISON seconded.

The question was put and carried.

#### LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, the next Bill I...

LORD FRANCIS SCOTT: Your Excellency, on a point of order, may I draw the hon. and learned member's attention to the fact that the select committee on the Kenya Indian and Arab (Territorial Company) Bill has not been appointed.

MR. WILLAN: I am going to do that just before the interval. The next Bill on the agenda is the Electric Power (Amendment) Bill and I suggest that as there is a little time yet I might go on with the Local Government (Rating) (Amendment) Bill and possibly the Local Government (District Councils) (Amendment) Bill, and then move the appointment of the Select Committee before the interval.

Your Excellency, I beg to move the second reading of the Local Government (Rating) (Amendment) Bill. There are

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only two clauses in the Bill, and the reason for it is this:

Under section 5 of the Principal Ordinance every valuation roll after the first one must show the value of the improvements. As hon. members will see from paragraph 1 of the Objects and Reasons, Nakuru District Council is preparing a new valuation roll but does not intend to impose a rate on improvements. As the law stands at present it cannot do that so the law is being amended to empower the Commissioner of Local Government to exempt improved values from being included in the valuation roll not only in respect of the first valuation but in respect of subsequent valuations as well.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Your Excellency, I suggest that there is a mistake in this Bill when it refers to Nakuru District Council because they have no valuation roll, is it Nakuru Municipal Council?

MR. WILLAN: The Objects and Reasons are not part of the Bill so it does not matter, it is of course a mistake.

LORD FRANCIS SCOTT: The hon. mover referred to Nakuru District Council in his speech.

MR. WILLAN: Again I apologise for the mistake.

MAJOR GROGAN: Your Excellency, perhaps the hon. mover can explain to us how he distinguishes the valuation of improvements from "unimproved value" because there is no such thing possible as "unimproved value." It is a hallucination elaborated by Henry George and is really an extension of the Marxian fallacy. If the hon. mover can explain how he can distinguish between unimproved value and improvements I shall be very glad to hear him.

MR. LOCKHART: Your Excellency, it has not come to my notice as the Commissioner for Local Government that the valuers had any difficulty in making a distinction between these two terms to which the hon. and gallant member refers.

HIS EXCELLENCY: Does the hon. mover wish to reply?

MR. WILLAN: No, Sir.

The question was put and carried.

#### LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Local Government (District Councils) (Amendment) Bill be read a second time.

In 1938 the Local Government (District Councils) Ordinance and the Local Government (Municipalities) Ordinance provided for the appointment of one standing committee for all local government. Well, Sir, in theory that seems to be all right but, as often happens, practice does not follow theory and Government has had to reconsider the matter and has come to the conclusion that there are real practical difficulties in the way of having one standing committee only. So Government has thought that before these practical difficulties do arise, it would be better to amend the law in order to provide for two standing committees, one with regard to the municipalities and the other with regard to rural areas.

There is also another amendment to present law, hon. members will notice that in the new section 119 (1) in Clause 3 of the Bill, the Commissioner for Local Government is now chairman of that standing committee. The hon. the Chief Secretary was chairman but the opportunity has now been taken to relieve him of one at least of the many burdens of this already overworked Government official.

MR. DENNISON seconded.

MR. PATEL: Your Excellency, in the Objects and Reasons of this amending Bill it has stated:—

"By amending Ordinances passed last year the standing committees established under the Local Government (Municipalities) Ordinance and the Local Government (District Councils) Ordinance were combined and provision was made for the constitution of a single standing committee for Local Government. Experience has shown that it is not practicable to have one committee for both local government in municipalities and in rural areas and it is desired that each of these committees should be distinct and separate."

[Mr. Patel]

As far as I know no committee has been appointed after that date, and I know nothing of the experience acquired by Government since the last amending Ordinance was passed unless it was an imaginary experience which was referred to in the Objects and Reasons.

In my submission it would be more useful to have one standing committee for Local Government throughout the territory and particularly as an Indian representative I would prefer it for these reasons. Because the European members would say that this committee should be separate and distinct as no Indian members need be appointed on that committee because, they would argue, that such an appointment would be putting the cart before the horse. There is only one Province in which we have any Indian representation on a District Council and that is in Nyanza, and for that reason alone I feel that it is incumbent on me to oppose this Bill because I am quite certain that if there is one Local Government committee for the whole territory then the Indians would have representation on that committee, representing Local Government of the whole country, as they have already representation on the municipal boards of the country.

I submit, Your Excellency, that there has been no experience acquired as yet which should lead Government to bring forward this amending Bill.

The second reason is that there should be Indian representation on the Standing Committee for Local Government throughout the territory.

MR. WILLAN: Your Excellency, the hon. Mr. Patel has referred to that part of the Objects and Reasons which begins—

"Experience has shown that it is not practicable to have one committee for both local government in municipalities and in rural areas."

I think, if I may say so, there is nothing inaccurate in that statement even if neither of these two committees has been appointed or met.

What I really meant by that was this: that the real and practical effect of appointing this one committee has been

considered and as problems will arise with regard to rural areas different from those which will arise in municipal areas it is considered inadvisable that one standing committee should have power to deal with problems which are widely different. So, it was with this intention that this Bill was brought forward: Firstly, as I said, in order to relieve the overworked Chief Secretary of one of his burdens; and secondly, for providing for two standing committees, one for municipalities and the other for districts.

The question was put and carried.

#### SELECT COMMITTEE

MR. WILLAN: Your Excellency, I beg to move that the Kenya Indian and Arab (Territorial Company) Bill be referred to a select committee consisting of the following members:—

Mr. Willan (Chairman).  
Mr. Lacey.  
Mr. McKean.  
Major Cavendish-Bentinck.  
Lt.-Colonel Kirkwood.  
Mr. Nicol.  
Mr. Patel.  
Mr. Shamsud-Deen.  
Sir Ali bin Salim.  
Sheikh Hamed bin Issa.

MR. DENNISON seconded.

The question was put and carried.

Council adjourned for the usual interval.

#### On resuming:

#### ELECTRIC POWER (AMENDMENT) BILL

##### SECOND READING

MR. WILLOUGHBY: Your Excellency, I beg to move the second reading of the Electric Power (Amendment) Bill.

This is rather a formidable document but a great deal of it consists of relatively minor amendments with which I need not deal. The main clauses of the Bill are: clause 2, section 2, dealing with definitions; clause 13, section 19 dealing with the security of tenure of the licensee; clauses 14 to 20, which deal with the rights of individual consumers to obtain power from licensing authorities at reasonable rates; clause 31, section 45 which deals with the question of financial

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control of the companies, or licensees' profits; clause 52, section 134 which deals with the question of expropriation; and the new clause 59 dealing with the proposal for consolidating the law about electric light and power.

After speaking about these amending clauses I propose to go back to the beginning of the Bill and go through a number of other clauses which need some brief comment.

The clause which is perhaps the most important is clause 31; it will be found on page 16 of the Bill. This clause amends section 45 of the principal Ordinance and has as its purpose the stiffening of the control over the finances of the company. This is most important from the Government point of view for coupled with this intention of stiffening up the control, the principle licensee has suggested and urged very strongly that it is necessary to grant him greater security of tenure by repealing the proviso to section 19 (a). And because of the objections that have been made in connexion with this section as published in the Bill, I propose to deal at some length with section 19 of the Principal Ordinance, the amendment to which is found at clause 13 of the Bill.

Under section 19 (a) of the Principal Ordinance there is no security of tenure for a licensee because powers are given to the local authorities to take over any undertaking or apply to take over any undertaking at any time during the first 4½ years of the term of a licence. Section 19 (a) of the Principal Ordinance follows word for word the English law with a very small exception, but that exception is a very significant exception. It is the few opening words of section 19 (a). In the English law the reading is "Within six months after." That has been changed in our law to read "At least six months preceding." As I have said, it is a significant change for it gives the local authorities certain powers during the period when they are least likely to be able to use them, and when they should not be permitted to do so, and it denies them those rights at a later date when they might reasonably expect them. At the same time, it denies the licensee any security of tenure and as a consequence of that development is hampered.

I propose to show, and I hope I will be able to convince hon. members, that this is a mistake that has got to be put right.

In the early days of the electrical industry a period of twenty-one years was considered to be a fairly long period by the public, and accordingly this period of twenty-one years was offered to intending suppliers as a sufficient period for their security. This brief period, brief having regard to the usual revenue history of electrical undertakings, was soon found to be inadequate to foster the growth of the industry which has, perhaps, since then, more than any other, added to the amenities and comforts of modern life.

It took only six years to convince people in Great Britain that this period of twenty-one years was most inadequate and that it should be altered to forty-two years. Subsequent to that the period was extended in many cases to a longer period and the general tendency throughout the British Empire has been to make this period longer. At the same time, the virtual nationalization of the industry has become the goal of public desire for two reasons. The first is the intimate way the industry penetrates to every corner of the countryside; and the second is because it has been found that only by pooling the smaller units can real economy be obtained. In this general unification there was a period during which it was considered desirable and convenient to allow parochial bodies such as municipalities the task of distributing electric power within their own borders, but even this parochialism has gradually given way before the tendency to amalgamate smaller units into larger ones.

I emphasise these points to show how essential it is for the adequate development of the industry that there should be security for the licensees, and continuity of policy.

In the Principal Ordinance, I am now dealing with it when it was on the stocks about 20 years ago, it was the expressed intention of Government that there should be security of tenure. This was to be obtained by following the example of Great Britain whereby security of tenure was to be permitted during the early years of low revenue, and that was to be followed by periods of growth which was

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made possible not only to the consumer but equally by the enterprise of the licensee. I wish to emphasise this initial period of low revenue because the granting of the licence does impose a considerable responsibility upon a licensee for the outlay of large sums of money which cannot be adequately serviced by the revenue which that initial network and generating plant can earn in the initial stages.

As an illustration of that perhaps I can give an example, namely Nakuru and Eldoret, both of which have been going now for some years and are still on a losing basis. Therefore, it is quite just that the first losing period should be followed by a period of growing revenues to redress the balance.

I have already said that it was Government's intention at the time the Principal Ordinance was being dealt with to provide for security of tenure and that was placed on record by two people whom I propose to quote. The first of these was Mr. (later Sir) Jacob Barth, who was at the time the Attorney General. And in writing up on the Objects and Reasons of the Bill he made the following statement:—

"Expansive comment on the objects of and reason for this Bill is rendered unnecessary by the fact that these are identical with the objects of the measures now engaging the attention of British electrical power authorities in conjunction with the Electric Power Committee of the Board of Trade and the principles advanced for their attainment and also with the principle of greater centralization and co-ordination in the generation and supply of electrical energy."

It may be suggested that this is in far too general terms for the detailed support of any one particular section and for that reason I must make my second quotation which is taken from Mr. McBlain, the Government Electrical Engineer, who prepared a report approved by the Governor of this Colony for publication in the local press in order to deal with certain public misconceptions which were known to exist with regard to the scope and effect of the Bill. He dealt specifically with

section 19 (a) and after indicating the differences which existed between the conditions in England, the law of which was being followed, and the conditions out there, he went on to say:—

"It is found to be possible, and just to both parties, to shorten the period which must elapse, if no agreement is made to the contrary, before the local authority has a statutory right to acquire the licensee's works within its area. The Ordinance lays down the terms and conditions on which this purchase is to be made. In England the local authority's statutory right matures in 42 years. Here we have made it 25 years."

It may even be suggested that these views were only the views of Mr. McBlain and not the views of the Legislative Council when they finally passed the Ordinance in 1919. But this suggestion must fall away before the table of contents, for it was the practice in those days to publish it as part of the Ordinance, and in that table of contents, according to the Gazette of the time, there was the following phrase dealing with distributing licences:—

"No. 19. Local Authority may acquire works after 25 years and after every subsequent period of 5 years."

About 18 months after the passing of the Ordinance it was shown that the smaller periods were inadequate, the 25 years was increased to 42 and the 5-year review periods were increased to 7, the reason for this being that it was found that the shorter periods did not, in fact, do that justice to all parties which was Government's expressed aim.

Now we are in a position to summarize the Ordinance. The English law definitely made provision for acquisition after certain periods and not before these periods. The Government of this territory expressed its intention to follow the same course and the 1919 Ordinance confirmed that this expressed intention was, in fact, adopted.

It will, therefore, be seen how fantastic it is to suggest that the Kenya Legislative Council acting with a foresight transcending the rest of the Empire passed a law which purported to make provision for the granting of licences for given periods

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and at the same time deliberately included section 19 (a) which gave to local authorities the right of immediate expropriation. I say such a claim is fantastic and I repeat that there can be no doubt that it was the intention of the Legislative Council of Kenya to give security of tenure.

For some considerable time after the passing of the 1919 Ordinance, it was generally assumed that the law did give effect to the expressed intention of the legislature and even so recently as subsequent to the publication of the present Bill responsible persons have maintained that it does give that intended security.

In actual fact that section 19 (a) gives no security whatever to the licensee and therefore it is a matter which should be corrected. I use that word "corrected" advisedly for it is important; it is more true to say "corrected" than to say "amended" because a mistake was made.

It has been suggested that the municipalities have certain rights but I reaffirm that these so-called rights are based entirely on a mistake. And I submit, and I am sure all right thinking persons in these municipalities will agree with me, that it is not within the standard of morals for public government of this country to claim as a right that which is based on a mistake. And it is the purpose of this Bill to put the matter right.

So much for section 19 (a) of the Ordinance which is the main issue of contention in this Bill.

There are other points to be dealt with but these are relatively less important. There is the proviso to this section 19 which will be found on page 16 of the Bill. This is inserted to make it perfectly clear that when a licence is renewed the 42 years dates from the beginning of the licence and not from the date of the renewal.

Paragraph (c) of sub-section (1) of section 19 has been designed to incorporate a large number of sub-sections of the original section with a view to clarifying the procedure which is to be adopted at the time of acquiring a licence, but there is no alteration materially. Throughout the whole Bill it is specifically laid down that under no circumstances shall

the consumers be prejudiced by any change.

On page 18, at the bottom of the page, there is a further new provision intended to avoid the prejudicing of consumers by any piecemeal development which might be undertaken at or about the time of a pending transfer. Arrangements have been made there to make it incumbent for local authorities to grant an undertaker the necessary finance for the immediate development of his undertaking at a time when they themselves may take it over within a year or two. This, in part, meets the wish of the Nairobi Council that they should have some sort of control over the finances of a company.

Then paragraph (g), on page 20 of the Bill, deals with the last point in connexion with section 19, the actual reference is on page 22 where a new proviso has been added to deal with a class of case not previously visualized—that of an undertaking which has several distributing licences served from one generating station. That is a condition not visualized before but it is one for which provision is now being made.

Coming to clause 31, on page 46, the most important sub-section in the existing section is section 45 (6) and it purports to control the financial profits of a company. The basis is one of dividends on share capital and provision is made that 10 per cent cumulative may be paid on the share capital of any concern or undertaking. There is, however, a provision in addition to the cumulative provision which permits the licensee to pay even more than 10 per cent, which is the statutory figure, because whenever he reduces the rates for electric light or power below the maximum specified in the licence he is permitted to pay an additional  $\frac{1}{4}$  per cent dividend for every  $\frac{1}{4}$  per cent whereby this average yield per unit sold falls below the permitted maximum.

There are four objections to the existing provision. The first is that of the cumulative nature of the dividend; the second is the present basis of dividends on capital; the third is the fact that the excess dividends are associated with the price of supply; and the fourth is that there is no control over reserves.

[Mr. Willoughby]

This Bill is designed to remedy these. It removes the cumulative provision, and departs from the dividend basis for reasons which I shall mention in a moment and prepares a hypothetical calculation in order to assess the excess revenue. The reason why it is necessary to depart from the dividend basis is that where the company or licensee has a large number of undertakings it is extremely difficult to associate any part of their share capital with any one individual undertaking and that, in the past, has given rise to considerable difficulties in any effort at control. The new basis is the actual capital that is earning revenue and the allowance that is to be permitted to be kept by the licensee is 12½ per cent of that capital. Now, the difference between this 12½ per cent and the 10 per cent under the old law is that whereas that 10 per cent is on the share capital after the licensee has provided unlimited reserves, reserves uncontrolled in any way, the new figure of 12½ per cent has to provide the dividends which the company wishes to pay and, moreover, from that 12 per cent must be taken such reserves as the company wishes to provide for. In addition to this 12½ per cent there are deducted from gross revenue in this hypothetical calculation firstly the working expenses of the company; secondly allowances on an approved scale for depreciation, a provision which every company has to make where it has wasting assets; and lastly a further allowance for obsolescence which may only be included in the hypothetical calculation if it has actually been made by the company in their books and even then has to be approved for the purpose of this calculation by the Governor or Council.

After these four things have been deducted from the gross revenue, any remainder is classified as excess profit and that is divided into six parts. One part goes back to the company in order to ensure some incentive for keeping down the working expenses, and the remaining five-sixths go back again to the consumer either in the form of direct rebates or reduction in tariffs, according to a plan which must receive the approval of the Governor in Council. So we see by clause

31 of the Bill that section 45 has been redrafted so that it becomes an effective instrument of governmental control of a public utility.

Now, turning to clause 52 on page 66 of the Bill, it has as its purpose the amending of section 134 which in turn deals with the question of purchase price at the time there is a transfer of a licence from the initial licensee to another body.

I should like to revert to section 45 for one moment. There is an allowance for depreciation there in the hypothetical calculation and that depreciation is quite different from the actual depreciation which the company makes in its books. In actual practice it is probable that these two figures will conform very closely the one to the other, but it is really the permitted allowance which is important because it is carried forward into the working of section 134 as amended by clause 52. In that clause the use of these depreciation allowances permits the valuation of plant at the time of transfer to be computed on a much sounder basis than that provided for in the present law. The question of purchase price is referred to arbitration which is at present rather indefinite owing to the lack of instructions to the arbitrator. The new clause arranges that the purchase price of the assets of the undertaking shall be the original cost with deductions of these allowances which have been made for depreciation under the earlier clause to which I have referred. This means that there will be an equitable valuation instead of one which cannot be assessed beforehand.

Clause 59, on page 70 of the Bill, has for its purpose the authorizing of the law officers of the Colony to consolidate the law with regard to electric power. The principle of consolidation is not a new one; it is quite a regular thing for colonial authorities to revise their laws from time to time, and the last general revision in Kenya took place about 14 years ago. So, it appears very desirable that authority should be given by this Ordinance for the consolidation of the law of electric power because of the fact that there have been a large number of amendments and this Bill adds to that number to such an extent that it is now almost impossible

[Mr. Willoughby]

to use the law without severe strain and the many people who are not lawyers and who have to use it daily can hardly do so with intelligence and accuracy.

Clause 2 of the Bill deals with the definitions. In a technical Bill of this kind definitions have an extremely important place in the correct interpretation of the intention of the law. It might at first blush be considered a little alarming to find that the whole of the section on definitions had been replaced. But there is no reason for this alarm because there has been no change in the intention of the Ordinance by this complete revision. It was originally proposed to amend only a few definitions which had been found to be specifically important in connexion with the revision of rules now in progress, but it soon became evident that there were so many amendments that in the interests of clarity it would be better to replace the whole section, and of the original 56 definitions only 16 remain unchanged.

Five dealing with pressure have been amalgamated into one comprehensive definition and one, namely "point of delivery of supply" has been carried by clause 11 of the Bill into section 15 of the Ordinance where it is solely needed; and six have been deleted. Six entirely new ones have been added and the remainder have been slightly modernized. I should like to refer to some of the more important of these changes.

The first is "apparatus". In the old law it was found that the word "appliances" made the precise wording of the rules difficult so this has been remodelled.

The next is "danger". It is a peculiar thing that in the original Ordinance this only dealt with life and there was no reference to property, in it. So this has been rectified.

"Distributing main" and "electric supply line" as they read in the initial definitions excluded such lines as might be under construction and so, by adding the words "or intended to be used" these are catered for. And in the "electric supply lines" there was another fault in that the definition automatically included telephone and telegraph lines and these have been expressly excluded now.

Then under "generating station" the definition was very wide and included such things as switch stations and substations. As the matter stood the result was rather a ridiculous situation for the licensee, in that it was necessary to seek approval of the Governor in Council before he could put down a small switch pillar upon the pavement in any street. These smaller stations are now covered under separate definitions.

Another new definition, on page 4, is "meter". There was no definition of a meter and there has been some ambiguity in consequence as to the meaning of sections 91 to 100 of the Principal Ordinance. The definition now introduced is the one which was inserted in the local rules in 1935, with slight modifications on the Uganda definition, in order to bring us into line with the British standard specifications, and for the purpose partly of applying to the Ordinance and partly for rule-making purposes.

"Public lamp": this new definition has been put in in place of "public purpose". The main reason why the definition was amended was because "public purpose" is too wide and with one of "public lamp" all the needs of the case are adequately met. Consequently the definition of "public purposes" and the associated one of "private purposes" have been deleted.

The definition of "railway" in conjunction with the hon. the General Manager of the Railway this has been slightly modified. It has the effect of eliminating from the definition of "railway" temporary cocopan tracks in such places as plantations which were included in the original definition, and as a result of which, it was incumbent on licensees to provide expensive protection over temporary structures, which were removed from time to time, if they were to comply with the law.

"Streets": this definition has been slightly modified. The previous definition was too wide and a more precise one replaces it following the Indian and the Federated Malay States definitions.

"Sub-stations" I have already referred to.

"Supply terminals" takes the place of "consumers' terminals" because the latter term is too restricted in its use by bringing



[Mr. Willoughby] in the phrase "belonging" to the consumer.

On page 7 of the Bill there are three new definitions to which I would like to refer. Two of them deal with "telegraph" and "telegraph lines". References to these throughout the Ordinance are somewhat vague and in the Requirements of the Postmaster General of the Union of South Africa there is laid down precisely what is meant and so we have incorporated those definitions in the Bill.

With regard to "works" it has been necessary to change the definition in order to make it clear that not only licensees' works but private consumers' installations should be included. At the same time the last few words of the definition which read as follows—"or to carry into effect the objects of a licence or prior licence," have been deleted for it is quite obvious that such items as bicycles, typewriters and offices should not come within the scope of the definition as it is not the real intention of the Ordinance to include them.

One group of clauses dealing with rights of consumers I should like to mention. They are clauses 14 to 21. Clause 14 appears on page 23 of the Bill. The present law with regard to the rights of would-be consumers is based upon the needs of a relatively densely populated country like Great Britain, and this is not strictly applicable to the conditions which exist in Kenya. Clauses 15 and 16 are of lesser importance and need not be dealt with. Clause 17 deals with the laying down of distributing mains, clause 18 deals with guarantees which have to be given by people requisitioning mains, clause 19 deals with the rights of municipalities and clause 20 deals with the question of service lines and I will refer to them in a little more detail.

The change made in clause 14 which deals with section 21 is the elimination of sub-section 1 which has been found in practice not to secure the purpose for which it was inserted. This purpose can be secured now as a result of the re-modelling of clause 18 (section 25) of the Bill.

Turning to clause 17 of page 26 I come to the main point with regard to the rights

of would-be consumers. Under the present law if a consumer wishes to have a distributing main laid down in the street of any town it is necessary to secure five other persons to join him in making the requisition that the licensee should undertake the work. That is the English provision and it is relatively easy in England to requisition for certain electric supply lines and it is equally desirable in places, where underground construction is almost universal and where with such methods of construction costs are so much higher, that there should be some restriction with regard to the number of applications before the licensee undertakes the work. But this is not suitable for Kenya and in consequence it is being amended so that in future any individual will be able to lodge a requisition for a distributing main.

It might be suggested that this individual right might penalise other consumers or projects because of the expense to which the company would be put, but under section 25 (clause 18) provision is made following the New Zealand model for guarantees by the consumer to an extent which is sufficiently remunerative to the licensee. By this means the economic factor is maintained.

Then, at the end of clause 20, dealing with section 27, a further right is given to consumers. Where the consumer's premises are more than 50 yards from any existing supply line, under the present law he has no right to secure connexion at all. Now, that figure of 50 has been increased to 200 yards, and so, greater rights are secured for the would-be consumer.

There are a number of other clauses to which one could refer but these are the main ones of the Bill and I think this will suffice for the second reading. It will be necessary in select committee to make a number of amendments, partly due to printing errors and partly for other reasons, but there is no need for me to speak on these now. I beg to move.

MR. DENNISON seconded.

MR. NICOL: Your Excellency, the main complaint from Mombasa in regard to this amending Ordinance is that Mombasa Municipality were not consulted in any way at all.

[Mr. Nicol]

The first official intimation that they had of any contemplated change was when the Bill was published. I am quite ready to admit that there was no statutory obligation on the part of Government to consult this local authority, but since Nairobi Municipality were consulted, particularly as regards to this bargaining with the Electric Light Company for the renewal of their licence, I suggest that Mombasa also had a claim to be consulted, particularly as it was through them that in 1934 the proviso in section 19 was inserted.

Now it has been argued that the new section 19 is introduced to right a wrong. I am the first person to agree that for a venture of the nature of disseminating electrical energy those undertaking such a project would require and expect to have some security of tenure. I personally would not invest in such an undertaking without such security. But the other day I was astonished to learn at a certain meeting held in Mombasa that in 1919 when this Bill, or rather the original Bill, the Electric Power Ordinance, came before Legislative Council, the Colonial Secretary at the time himself moved an amendment which was perpetuated in 1934 by the insertion of the proviso which it is now the intention to delete.

With your permission, Sir, I should like first of all to read from section 19 of the original Ordinance. It starts:—

"At least six months preceding the expiration of a period of 42 years."

Now I will read from a verbatim report of the meeting I have just referred to which was held recently in Mombasa. The speaker who I am going to quote from this report is no less a person than the previous hon. Member for Mombasa, my predecessor who was a member of this Council when the 1934 amending Bill was brought in, and his name, Sir, is Mr. Bemister.

"This is the extract from the verbatim report of the public meeting held under the auspices of the Mombasa Association held in the Regal Theatre, Mombasa, on Friday, the 26th May, 1939, for the purpose of passing a resolution regarding the proposed amendment to the Electric Power Ordinance. The extract of Mr.

Bemister's speech which I am going to read is:—

"To make this clear, I would take you back to 1919, when Legislative Council was held in the Law Courts at Mombasa and I had the honour of having one of the members staying with me. The words as written in the original draft were 'within six months'. You will see, therefore, that the licence was definite until within six months preceding the new contract. Sir Charles Bowring, Chief Secretary at the time, got up and moved an amendment. The words he wanted altered were 'within' to 'at least', and in explanation of this amendment, he said that if the word 'within' was left there it would mean that Mombasa has the electric light monopoly tied round its neck for 42 years. This will show you that the intention of every man in that assembly was to enable Mombasa to have a chance of taking the electric light over if they had a municipality or if they had a body capable of handling it."

Now, Sir, the Municipal Board in Mombasa held a meeting in their Board Room on Thursday the 25th May, and I have here some notes which were taken at that time.

Dr. Karve, who is a member of the Board and who was, until recently an hon. member of this Council made the following statement—I cannot quote him verbatim but I will read the notes on what he said:—

"The 'objects and reasons' for the amendment of 1934 stated that the amendment to section 19 was designed to correct an obvious error in the framing of the Ordinance. He" (that is, Dr. Karve) "disagreed with the contention that clause 19 of the 1919 Ordinance was drafted in that form in error: he could not conceive such an important part of the Ordinance being misread by the legal profession and Government law officers. He contended that the clause was so worded in order not to create a monopoly."

When the Principal Ordinance came up for amendment in 1934 again no notice was given to Mombasa of the intention that there was going to be any change made in the law governing licences. So



[Mr. Nicol]

much concerned was Mombasa that it sent a telegram of protest to Government and in consequence when the amending Bill came back from select committee the proviso which it is now the intention to delete was inserted. I submit that that shows it was the intention to perpetrate the policy of 1919. And I suggest that one of the reasons for such a perpetuation was to enable Government to have a bargaining counter up their sleeve.

Now I am very sure that Government have used that "bargaining counter" in that they have said: "You give us this control that we want in section 45 and we will give you the security that you have been trying to get since 1919."

Now apparently no Minutes or record of Legislative Council held in Mombasa were kept in 1919. As I have been informed a search was made but any record of the meeting to which Mr. Bemister refers is not traceable in Government records. But Mombasa feel that they have a case and that they have a first claim to be a party to any bargain that may be struck with the licensee company. And the Mombasa Municipality, at their meeting on the 25th May passed unanimously the following resolution:—

"That the Board re-affirm its previous formal objection lodged in 1934 to any amendment to section 19 of the Electric Power Ordinance."

I understand that a representative of the Mombasa Municipality is being given the opportunity to give evidence before the select committee and I will leave him to deal further with the matter there. Nevertheless, a point does emerge, and that is this: the Municipality of Mombasa came into being on the insistence of Government; it was not at the request of the people. It was forced on us. That being the case, and Government having made Mombasa a municipal local authority, I do suggest that Government should on all such matters as the one under discussion, consult that local authority and the other local authorities as well, in order to obtain their views and their wishes. So much, Sir, for certain points of principle.

Now, I will deal with one or two points of detail which I suggest might be con-

sidered by the select committee. On page 16, after having abolished the proviso which was put in in 1934, a new proviso has been inserted and was referred to by the hon. mover. He said that this proviso was to make the intention of the clause perfectly clear. Well, Sir, two different lawyers in Mombasa have given two different interpretations of what it means. Does it mean that a licence can be renewed for 42 years in one fell swoop or for 42 years maximum, with breaks for a possible change in each of the seven years? I would like to suggest that that proviso should be very carefully examined so that there is no question at all as to what the intention is.

There is one other point, this affects page 23. I would like to ask that section 21, sub-section (1) be altered so as to conform to the agreement between the licensing company in Mombasa and the municipality which makes it clear that the cost of the distributing mains shall be borne by the company. Therefore, I suggest that the words "at its expense" or some similar words be inserted after the word "erect" in line six of sub-section (1) and line 4 of sub-section (2)—that will come either at the end of line 4 or at the beginning of line 5.

That is all I have to say on this Bill.

MR. PANDYA: Your Excellency, the hon. mover and the hon. Member for Mombasa to a certain extent, made a big point that the necessity of this amending Ordinance is in order to give security of tenure to the Electric Light Company. I think, certainly, that every reasonable man, not only in this Council but throughout the country, would agree that in an undertaking of this nature a certain security of tenure and a reasonable security of tenure is necessary. But I do not find in the speech of the hon. mover a word of sympathy as to what happened to the consumers in the past and how he proposes to safeguard their interests in the future. He did mention that clause 31 deals with section 45, about the controlling of the company's finances, but I shall deal with that later.

We are here faced with the issue of the intention of Government to provide security of tenure to the company, but I

[Mr. Pandya]

should like to emphasize that any undertaking whatever nature it is, whether it is an electric power company or any other business concern, could not exist or prosper without the goodwill of the consumers, of their supporters or their customers, whichever way you look at it. I say that here because I am satisfied, and I challenge anybody to disprove it, that that goodwill has not been acquired by that company in this country.

What was the result in 1934? And what happened recently in this Council, about a year ago? Why did the Municipal authority of Nairobi object to the period of the licence? Why did Mombasa object so strongly? That is the key to the situation! Why has nobody, in this Council brought this up and why to-day are we having this Bill? It is quite a simple answer. The situation is that the consumers or customers of this company have not been treated fairly. That is the key to the opposition to-day.

Let us examine it a little further. It has been said by the hon. mover that Government is now bringing forward this amendment to section 19, or clause 13 of this Bill, purely for moral reasons. After 25 years Government's moral conscience has been awakened! The hon. Member for Mombasa says that in 1934 Government did not agree, or were not moral enough to agree and they kept this clause as it was in order to bargain with the company. Now, which of these two reasons is the correct one? Is morality the basis of this amending Bill or is the bargaining suggestion correct in regard to this Ordinance? If the latter view is correct as I think it is or should be, then my hon. friend the Member for Mombasa I think has failed in his duty in not laying stress on the point that it would be perfectly right and absolutely honest and moral for us to say that we have got, rightly or wrongly, at present, provision in this Bill which entitles the local authority to acquire this undertaking by giving six months' notice and we should like to keep it.

While it is reasonable to assume that the local authority would not be anxious to take advantage of the opportunity offered by this provision if it is possible

for them to get what they want, that provision would be a safeguard against the misuse of powers by the company and why should it not be kept up the sleeve for future bargaining? If the hon. mover maintains his view that Government made a mistake in the beginning, in the 1919 Ordinance, and allowed this "at least six months" or so to remain in the Bill, and we know that that mistake has been exploited by Government to get certain advantages, why should not the same mistake be further exploited for the same reason?

It should be realized that in their demands the Mombasa Municipal Council has been asking for the protection they have got under the present law. If it is assured that the intentions in 1919 were to give them a 42 years' monopoly—I think as far back as 1934 these intentions were never made clear and it appears that Government at that time further inadvertently overlooked their intentions of 1919—what has happened between 1934 and 1939 for them to change their front? I should like to know the reasons why after these five years it is now thought proper that the present provision in the original Ordinance should now be done away with.

The hon. mover made a point that in the objects and reasons in the 1919 Bill the intention was made clear. We know from the debate earlier to-day the fallacy of depending on the objects and reasons of a Bill in connexion with the District Councils Bill where "experience" was found to have been no experience at all. That is only a point which does not affect the position, but here Government is trying to correct a "mistake" and at the same time gets something out of it. We are quite honest about it in Mombasa. We say very frankly that we have got this clause and we are not going to give up the advantage of that clause.

It is quite clear that one should have a *quid pro quo*, but the conditions which are suggested in section 31 do not provide reasonable settlement. To a certain extent perhaps legally, it gives opportunities for scrutinising the books of the company. But the accounts are so complicated that it is very difficult to make anything out of them. So, Mombasa Municipal

[Mr. Pandya]

Authority are not satisfied with these empty phrases, empty because for whatever else is given they take away their previous privilege of acquiring the undertaking.

I associate myself with the hon. Member for Mombasa when he complained against the policy of Government in not consulting Mombasa when they proposed to bring in this amendment. I think it is only fair to say that one of the principal towns in this country, and a municipal authority, deserves more consideration than has been given it.

Now, Sir, I should like to comment on the quotation which the hon. Member for Mombasa made of the speech of Mr. Bemister about what happened in 1919. There is nothing to prove it from the records of the debates of this Council which were not kept at that time and I understand there was no Hansard then. But if Mr. Bemister is correct it gives the picture an entirely different view. However that may be, it is reasonable to assume that in a Bill like this the Attorney General, with the legal ability that he is supposed to have, could not have allowed a clause of this nature in the Bill without there being good reason for it. And if that is correct the Municipal Authority of Mombasa are perfectly right in opposing this amendment and demanding, as far as they are concerned, that they should be allowed to have the privilege of acquiring this concern as provided under the old Ordinance.

Now, Sir, in this Bill, various concerns of electrical undertakings are treated separately and, naturally it follows that Mombasa and Nairobi are also separate. Therefore, if Nairobi is so fond now of the Electric Light Company and if Nairobi agrees with the principal laid down in this amending Bill, I think Government could quite easily put in a provision to make an exception in the case of Mombasa. When you have got two companies with their accounts kept separately and of which the conditions are separate, there is no reason why, if Mombasa is really desirous of being treated separately, it should not be done. I hope this will be seriously considered.

With regard to the proviso we have heard about on page 16, I frankly admit that I cannot make head or tail of it. The hon. Member for Mombasa mentioned that two lawyers gave two different interpretations, but I challenge anyone to find out actually what it means. Whatever happens I think the select committee should make the meaning absolutely clear so that there is no misunderstanding in the future.

There is one section, sub-clause (c) on page 17, to which I would like to draw attention. In my opinion this provision in sub-clause (c) allows the company to have much more power than they should have in regard to bargaining when the time comes for it, and it makes it almost impossible for the local authority to buy out that concern. I think something should be done to improve this.

When I was speaking on the question as to why Mombasa was objecting to this amendment I wanted to bring to the notice of this Council that the Electric Light Company, so far as my experience and knowledge of it goes, has stuck to the letter of the law and not the spirit, demanding everything the law allowed it to, for instance in such things as the meter rent of Sh. 1/50 cents per month and even in other small things the company have always taken full advantage under the law. Even where the charges for light have been 30 cents they have charged meter rent of Sh. 1/50 cents per month! Of course it is not under consideration that the meter rent should be taken off, but I wish to point out how, to my mind, in this particular way the company has been taking advantage of everything they are entitled to, and the municipal authority are denied the advantage they have under the present law on the ground that the Company should have security of tenure. I contend that the security of tenure must be reasonable and must be on both sides equally just and fair, but if this monopoly is going to be inflicted on the consumers then I think it is an injustice, and it is unfair.

I think there is a case for keeping the provision as it is to-day, I think it would be perfectly fair and just to have another clause added, namely that if and when the local authority wishes to take over this

[Mr. Pandya]

concern that there should be compensation if it should do so before a certain period. I think that if you do that in a business-like manner (I entirely agree that there should be some compensation, but at the same time there should be some safeguard) and if you provide that clause which gives that compensation, I do not think that any fair-minded person could complain that the security of tenure is not there. After all, the people who supply the money and also the consumers should have the right to claim justice and fairness.

I should like to appeal to Government to see the other side, and see the feelings of the other side and why these feelings are so strong on this issue, and not try, by a majority or by any other means, to force on them this amendment.

I should like to inform Council with regard to the meeting that was referred to by the hon. Member for Mombasa that at that meeting most responsible citizens of all races, European, Indian and Arabs, were there, and they felt very strongly on this. They have now formed a committee so that if Government is not going to deal fairly with this question they have something at their back. It would be unfortunate if they had to take further steps and I think it is right that Government at this stage should understand the feelings of these people and try to do justice on both sides, namely the Electric Light Company as well as the consumers.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, a great deal has been said about the intention of clause 19 of the Principal Ordinance. I would only like to say that as one who has been intimately connected with these various discussions on electricity legislation, that I am quite certain that the intention of clause 19 was that which was described to us by the hon. mover.

In this proposed amending Ordinance, which I am rising to support, we certainly have proposals which tighten control all over the country. But there is one thing in which I should like to see still further control exercised if it is at all possible, and that is in regard to the latitude to be afforded to electric supply companies to

work in conjunction with other companies related to themselves in one way or another. In spite of the proposals contained in sections 45 and 134 I was wondering whether we could not have still more control over their administration, and over the costs which are entered in their books, of plant, of all installation, and more, especially, perhaps, of concessions. It is not unknown for a concession to be acquired in the name of some individual or party, and sold subsequently to the company, for a considerable sum of money. It is also possible to give out contracts to subsidiary firm engaged in manufacture and to pay a very high price for the work, and, therefore, I would ask the select committee to go into that especially, when it discusses this Bill.

The next point I should like to raise is that of the possibility in the future not only of municipal or local authorities acquiring these undertakings but of the State acquiring them. In this Bill there is no provision whatever for acquisition by an Electricity Commission or for State control at the end of the period for which the licence is granted. Personally, I should rather like to see put in some provision whereby these undertakings can be acquired by the State as well as by a local authority. There might have been some reason for not putting that in and if there is I should like to hear the reason for it.

The only other point I wish to mention is that I do hope Government will do what it can to induce the neighbouring territories to introduce identical legislation for we only have one operating company in East Africa. Indeed, that is one of the reasons why a special attempt has been made to meet this company's demands. It is a very reputable company and one with considerable resources for the development of electrical undertakings throughout the three territories, but it does seem rather ridiculous that we should happen to be having three different Electric Power Ordinances. Even in the administration of the Ordinances in the different territories we have different authorities; I believe I am right in saying that the Postmaster General is the authority in Kenya and Tanganyika and the Public Works is the authority in

[Major Cavendish-Bentinck]

Uganda. I do hope that as far as possible this Government will do all it can to get uniformly in this sort of legislation.

MR. WILLAN: Your Excellency, the only reasons for my intervention in this debate are firstly on account of an objection raised to section 19 (a) by the hon. Member for Mombasa and the hon. Mr. Pandya, and secondly with regard to this statement made by Mr. Bemister at a recent public meeting held at Mombasa. The part of the statement to which I particularly wish to refer read as follows:—

"To make this clear, I would take you back to 1919 when the Legislative Council was held in the Law Courts at Mombasa and I had the honour of having one of the members staying with me. The words as written in the original draft were 'within six months'. You will see, therefore, that the licence was definite until within six months preceding the new contract. Sir Charles Bowring, Chief Secretary at the time, got up and moved an amendment. The words he wanted altered were 'within' to 'at least', and in explanation of his amendment, he said that if the word 'within' was left there it would mean that Mombasa has the electric light monopoly tied round its neck for 42 years."

Well, Sir, Mr. Bemister may have records of the Legislative Council being held in the Law Courts at Mombasa to consider this Bill, and also records of the amendment which he alleges was moved by Sir Charles Bowring, the Colonial Secretary at the time, but they are records which are not available to me. I have taken the trouble to go through the Official Records from the time the Bill was published in the Gazette on the 16th May, 1917, until the Bill was finally promulgated as an Ordinance in April, 1919, and I can find no record of Legislative Council, in considering this Bill, ever being held at Mombasa.

Nor can I find the words attributed, the amendment attributed, to Sir Charles Bowring mentioned at all in the Official Records. I think this is a serious matter, and therefore, I propose to go into it in some detail because it may have had an

effect on the minds of certain people in Mombasa.

Now, Sir, in the Gazette of the 16th May, 1917, the Electric Power Bill of that year was published and on page 8 of that Gazette, clause 19 (a) begins as follows: "At least six months preceding." These are the opening five words, so hon. members will see that the Bill, as published in the Gazette, the Bill which was to be presented to Legislative Council, had already the words in it in clause 19 (a)—"At least six months preceding." Now I pass on to the Official Minutes of the proceedings of the Legislative Council of East Africa, 1917. The first reading of the Bill was taken on the 22nd May, 1917, and it was taken, according to the Official Records, at Nairobi. Later on there was the second reading and the appointment of a special committee as it was called then—not a "Select Committee." The second reading and the appointment of that special committee was taken on the 25th May, 1917, again at Nairobi!

Well, Sir, that special committee was appointed on the 25th May. And the next time we trace any mention of this Bill is in the Official Minutes of the proceedings of Legislative Council in 1918, on the 12th March, 1918. Then, the Attorney General presented the report of that special committee to Legislative Council, again in Nairobi!

I have been very carefully through the report of that select committee as set forth in these Official Minutes and I cannot find anywhere in this report mention of clause 19 (a).

Then we pass on to the Minutes of Legislative Council, held on the 19th March, 1918, where Council resolved itself into Committee of the whole Council to consider the whole Bill, again at Nairobi! And on the next day, 20th March, again in Nairobi the Attorney General moved that the Committee report progress and that Council resume in view of the fact that it was proposed to leave the Bill in Committee until it had been referred to the Secretary of State. That Bill was referred to the Secretary of State and the next time we hear of that Bill in Legislative Council was in 1919.

At a meeting of Legislative Council, again held at Nairobi, on the 11th April.

[Mr. Willan]

1919, we find that the Electric Power Bill came before Council again. Council resolved itself into committee to reconsider the Bill and in committee amendments were made to certain sections—and section 19 (a) was not referred to in the Official Minutes. Then, Sir, on the 12th April, that is the next day, 1919, again at Nairobi, the Electric Power Bill was read a third time and passed.

Then, finally, that Bill emerges as an Ordinance in 1920, in the Official Gazette of the 21st April, 1920, and we find, on referring now to section 19 (a) that the first five words read as follows: "At least six months preceding." There we have the whole sequence of events.

I went through the first and second readings, the special committee's report, when it was referred to the Secretary of State, re-committed to the whole Council again, passed the third reading—and those words came out in the Ordinance as they were printed in the Bill. But then, of course, this is only the Official Record. (Laughter.)

Now the reason why I have gone through this most carefully is because the matter has been specifically raised by the hon. Member for Mombasa, and therefore, I thought it incumbent on me to go through that Official Record.

The only other point I wish to deal with is this question relating to section 19 (a) of "a mistake". Now, there is no doubt whatever, that that Bill in 1919, as drafted, neither expressed the intention of Government to give security of tenure to the company, nor did it meet the wishes of that particular company. That it was a mistake we have further evidence provided in Hansard, Volume II, 1934, when we turn to the debate in 1934 on the amending Bill, on page 298 of that volume. I am now quoting Mr. Fitzgerald, who moved the second reading of that Bill and in the course of that debate he said as follows:—

"Clause 3" (that deals with section 19) "Clause 3, Sir, is the important clause in the Bill. As the law stands a licensee who obtains a licence for fifty years or five years, or whatever the period may be, is subject to the disadvantage that any local authority can

at any time, except within six months before the expiry of the licence, make an application to the Governor in Council to revoke the licence and ask to have a licence issued to itself. The law as it stands at present in this Colony is very unusual and exceptional in that respect. The usual arrangement is that a licence is issued for a period and, subject to a fairly long initial run, a local authority cannot make an application to the Governor in Council for a transfer of that licence to them."

And that is the important part. It goes on:—

"The relevant section, as included in the present law, was taken from the English legislation and for some reason unknown confusion appears to have arisen with regard to this period of six months."

Turning over to the next page but one the noble lord the hon. Member for Rift Valley, in the same debate, stated as follows:—

"At the same time, Sir, when we come to section 3, which amends section 19 of the Principal Ordinance, it does seem very strange how the original wording of section 19; subsection (a) came into being because it seems to be completely contradictory. You give a company a monopoly for a long period of years and at the same time you say that the Municipal Council can at any time apply to the Governor in Council for the rescinding of that monopoly for the purpose of distributing power themselves. How that came about I do not know."

Then, going back to the Official Gazette of 1920 where this Ordinance was originally promulgated, we find in the contents at the beginning of that Ordinance:—

"Section 19. Local authority may acquire works after 25 years and after every subsequent period of 5 years."

Well, Sir, if that is not ample evidence to show that a mistake was made, I do not know what is.

The hon. Member for Mombasa and the hon. Mr. Pandya both admitted that this company should have some security of tenure. Now, supposing that in 1919 we had not enacted this Ordinance, but

[Mr. Willan]

instead the company had been given a contract by Government and Government had been asked in the contract to give security of tenure for 42 or 25 years. Supposing Government had agreed—and I submit that Government did agree in 1919 to give that company security of tenure—if that agreement had taken the form of a contract instead of being an Ordinance what would have happened? The contract would not have borne out the real intentions of the parties and the company would have been entitled to go to court and apply for a rectification of that contract in order to give effect to the real intention of the two parties and the court, in its equitable jurisdiction, would undoubtedly have acceded to the request of the company.

Now, because we have promulgated an Ordinance whereby we have not given the company security of tenure they cannot go to court in order to rectify the Ordinance and the only body that can rectify that Ordinance in which the mistake appears is this Council. And when one hears that a *quid pro quo* is asked for by Mombasa in order to rectify a mistake, I answer that there is no *quid pro quo*. Why should there be? The mistake was made and it is our duty to rectify that mistake. Why should there be a *quid pro quo* for a mistake?

So, I do submit that this Government or a public authority should not stand on a mistake which was made in 1919 and even though it is now 20 years afterwards it is not too late to rectify that mistake.

#### ADJOURNMENT

Council adjourned till 10 a.m. Wednesday, 7th June, 1939.

#### Wednesday, 7th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 7th June, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### COMMUNICATION FROM THE CHAIR

**HIS EXCELLENCY:** I wish to inform hon. members that, in view of the fact that the official celebration of His Majesty's Birthday will be held tomorrow, Council will sit this afternoon, if necessary, in order to complete the second readings of the Bills.

#### MINUTES

The Minutes of the meeting of the 6th June, 1939, were confirmed.

#### ORAL ANSWERS TO QUESTIONS

**NO. 6—CHEPALUNGU FOREST CHARCOAL.**  
**LADY SIDNEY FARRAR asked:—**

(a) In view of the sale of some thousands of bags of charcoal in the last few months from the Chepalungu Forest area, will Government give details as to the carrying out of the assurances given in reply to a question on 18th August, 1938, particularly as regards forbidding any extension of cultivation in the area until a survey can be completed which will show exactly what areas can be cultivated without detriment to the preservation of the forest and grazing land?

(b) What steps are being taken by Government to prevent the occupation by members of the Lumbwa tribe of the area of the Chepalungu Forest alienated only for the use of the Tinderet Wanderobo?

**MR. HOSKING:** (a) The alleged burning of charcoal in the Chepalungu Forest has recently been investigated by an Agricultural Officer who was unable to find any evidence of such an industry.

Some 4,000 bags of charcoal are exported annually from the Kericho District and these are obtained almost entirely from a red thorn. The export is about

[Mr. Hosking]

half from farms in European ownership and the remainder from the Solik and Buret divisions of the reserve.

Administrative orders have been issued to regulate and limit the cultivation and use of the area known as Chepalungu but owing to shortage of staff it has not yet been possible to survey an area which may be set apart as a Native Reserve Forest Reserve.

(b) It is not correct to state that any area of the Chepalungu Forest was alienated for the exclusive use of the Tinderet Dorobo. The hon. member is referred to section 980 of the Kenya Land Commission Report.

**NO. 27—KENYA POLICE VACANCIES.**

**MR. ISHER DASS asked:—**

Will Government be pleased to state the number of vacancies caused in the Kenya Police under the Head "Indian Sub-Inspectors" through deaths, retirements and resignations during 1936, 1937 and 1938, and until April, 1939, and the action taken to fill up these vacancies by promotion and/or recruitment?

**MR. HARRAGIN:** The number of vacancies in all grades of Sub-Inspectors in the Police Department which occurred during the period from 1st January, 1936, until April, 1939, through deaths, retirements and resignations amounted to four.

Of that number one post has been abolished, one filled by the promotion of a serving African Police Subordinate Officer and two posts remain unfilled at this date.

**NO. 31—CROP PRODUCTION AND LIVE STOCK (BARINGO DISTRICT) RULES.**  
1939

**MR. COOKE asked:—**

Will the Government cancel the Crop Production and Live Stock (Baringo District) Rules, 1939, which put an unfair responsibility on the District Commissioner concerned, and which in section 4 (b) seem to legalize a barbarous custom?

Will Government say whether these Rules were considered and approved by the Baringo Local Native Council before being promulgated?

**MR. HOSKING:** Government does not propose to take steps for the cancellation of the Crop Production and Live Stock (Baringo District) Rules, 1939, and it is not considered that they put an unfair responsibility on the District Commissioner concerned.

It is presumed that the hon. member's reference to legalization of a barbarous custom relates to bleeding for food which is mentioned in Rule 3 (4) (b). The bleeding of bullocks for food is a wide-spread and long established custom among pastoral tribes, which will disappear gradually as a result of education and propaganda but which cannot effectively be destroyed by legislation. The object of the relevant provision in these Rules is not to legalize the custom but to avoid legal interference with the custom.

The principles of the Rules were considered and approved by the Baringo Local Native Council which itself recommended to Government the promulgation of Rules to give effect to these principles. At a subsequent meeting the draft Rules were read over and explained to the Baringo Local Native Council which recorded no objection.

**MR. COOKE:** Your Excellency, arising out of that, does not the hon. Chief Native Commissioner consider that to state this barbarous custom in writing is giving an incentive to the natives to carry on such a custom?

**MR. HOSKING:** We cannot close our eyes to facts.

#### ELECTRIC POWER (AMENDMENT) BILL

##### SECOND READING

The debate was resumed.

**LORD FRANCIS SCOTT:** Sir, I rise to support the Bill before Council for the second reading and I support it on the broadest of lines.

It is quite essential that we should have a much better supply of electric power than we have at present. That, Sir, can only be done by the completion of the proposed scheme known as the Maragua-Tana Scheme and that scheme can only be carried out by some big company who can provide the necessary finance to do so. If that company is to raise their

[Lord Francis Scott]

finance in the City of London for this purpose, it is essential that they should be able to put before the investors, that they have proper security of tenure and for that reason I support the amendment to section 19, just as I supported it in this Council in 1934.

I have here the Hansard of that debate in 1934 and what is rather interesting, in view of the statements which were made yesterday by my hon. friend the Member for Mombasa, is that in fact only four members of Council spoke in that debate at all. They were the Postmaster General who moved the motion, I followed, Sir, then the hon. Mr. Pandya spoke, and the only other speaker was Mr. Symons, who at that time was the acting Member for Uasin Gishu. And so, though Mr. Hemister was then the member for Mombasa, if he had this close recollection of what happened in 1919, it is very remarkable that he did not give this Council the benefit of his knowledge at that time.

If I may, I would just like to turn to the remarks made at that time by the hon. Mr. Pandya. He pointed out:—

"No local authority would go to the extent of making an application to the Governor in Council."

I do not know whether he was correctly reported in that, because it does not seem quite right! And he went on:—

"But in the case where such an application has been made the Electric Power Company would naturally get the fullest opportunity to present their case. I cannot think that the Governor in Council, unless they see a very strong case made out would go to the extent of revoking a licence. I consider, Sir, that the fears of the Electric Power Company are purely imaginary."

If these fears were purely imaginary and there was no danger that the local authority would ever wish to take over the powers for distributing electricity, I cannot see why the people of Mombasa should feel that such a tremendous privilege has been taken away from them. It does not seem to me to be quite consistent. But, of course, the fact is that at that time, and quite probably to-day, there is a desire to keep the clause in so as to use it as a bargaining point.

I have before me here a statement from the representatives of this company which claims that since that time a number of reductions have been made. The statement reads as follows:—

"These reductions have since been given in Mombasa and amount since that date (1934) to—

- a reduction in the street lighting charges of 55 per cent;
- a reduction in the ordinary lighting charges of 10 per cent;
- a reduction in the running charge on the two-part domestic tariff of 55 per cent;
- a reduction in the charges to ordinary power users of 20 per cent;
- and a reduction in the charges to hotels, clubs and theatres of 50 per cent.

These figures indicate that the Company has done more than meet the objections of the Mombasa Municipality in 1934 and further reductions on a similar scale can be anticipated once security of tenure is assured."

I do feel that from the practical point of view Mombasa are not going to suffer by this change and if they approach the company in due course, any reasonable claims they have would be met.

Now, Sir, apart from that particular section I think we must all agree that this Bill does improve the position of the general public in this country very much. We have got better control and there are better terms for the consumers and I think for these things alone this Council should support the Bill, even though there may be points which will have to be considered still further in select committee, such as one or two points brought up by my hon. friend on my left (Major Cavendish-Bentinck). But, on general grounds, for the good of this country at large, I consider that this Bill should go through and I trust this Council will pass it accordingly.

**EARL OF ERROLL:** Your Excellency, I am entirely in agreement with the last speaker in supporting this Bill on broad lines, but there is just one thing I should like to comment upon and that is an important point.

[Earl of Erroll]

It has been noticeable that during this debate only the interests of the townspeople, such as those of Nairobi or Mombasa, have been considered. That is quite inevitable and I think quite right, but there are other interests also which should be considered, namely those of the primary producers in the country. The hon. mover yesterday, in his opening speech, said that in most countries this "amenity", which is the word I think he used, has penetrated to nearly every corner of those countries. This has not as yet happened in Kenya, although admittedly it has penetrated to certain primary producing districts (I would mention Limuru and Kiambu districts as instances). It is likely, however, that the electric lines will penetrate to other primary producing districts in the future, for it is conceivable that electricity may play an ever increasing and important part in the normal farming operations of the primary producer, so, I think, one should consider their interests also.

At the moment there is a genuine feeling in the Kiambu District, for instance, that the development of electricity on plantations is deterred by the very high cost of installations. The figure quoted to me was £140 per mile. I cannot vouch for that but my informant said that the company had only to put up a number of shenji posts and some electric wire. I do not, of course, think that that is so, as I regard the work of the company to be of the very highest order, but it does seem to me, nevertheless, an excessive charge, and it makes it very difficult for primary producers to take advantage in their coffee factories of the use of electricity and in securing this amenity which they can use a great deal for their pulpers.

I do hope that the select committee will consider this aspect and also see whether it cannot be possible to control to a certain extent, anyhow, the cost of the installations in districts which are not in the confines of the municipalities.

**MR. KASIM:** Your Excellency, in this Bill there is no discriminatory power given to the Government for forcing the Electric Light Company to instal electrical energy in any area Government may consider it to be necessary, and no adequate

provision has been made to protect the consumers from the existing charges for these charges are far too high compared with those of other parts of the world.

I oppose on principle the giving of this monopoly to the company for such a long period as I consider that it encroaches upon the civic rights of the community.

In my opinion, no adequate time has been given to the public to study this Bill, for it embraces the whole of the Colony and therefore Government must not rush it through. I think it should be postponed until the next session of this Council.

**MAJOR GROGAN:** Your Excellency, I only wish to say, in supporting the general principles of this Bill that, in the course of this debate, especially in the speech of the hon. mover, I noticed with considerable delight the introduction of a new principle in Government methods, namely that Government, in this particular instance, in the performance of contractual obligations, is actuated by the spirit rather than the letter of the contract. In other words, they are concerned with the intention of the parties rather than of endeavouring to take advantage of any verbal inexactitude due to the improper drafting of documents as has been the usual practice of Government hitherto.

I trust that the hon. and learned Acting Attorney General will succeed in permanently establishing this proper principle in his department, and that my hon. and learned friend the Acting Chief Secretary, when he returns to his proper sphere, will do so decked in sackcloth with his head sprinkled with ashes, in the proper spirit of repentance at having adopted exactly the opposite principle in his attempted defence of Government on the Liebig's indictment.

**COL. KIRKWOOD:** Your Excellency, I am in support of the general principles of this Bill, but there are three points I should like to mention.

The first one has already been spoken of by the hon. and gallant Member for Nairobi North, and it is in reference to that amount of 12½ per cent which the company are allowed to pay. It is possible for subsidiary companies to be formed by licensees and that these may be largely

[Col. Kirkwood]

increased so I suggest that the select committee should consider further the method of the control of profits and incorporate something with regard to this particular point in this Bill.

The next point is that this Bill has been put before us, I consider, at rather short notice. I do know that the local authorities in Kenya meet under exceptional circumstances, and I suggest that the report of the select committee should not be tabled until Government is satisfied that all the local authorities have had an opportunity of appearing before this select committee.

My third and last point is with reference to clause 59 on page 70, in which it is stated:—

"The Attorney General may consolidate into one edition the Principal Ordinance and all Ordinances (including this Ordinance) amending the same and in preparing such consolidated edition shall have powers to renumber and rearrange the order and/or sequence of any sections and make any amendments necessary consequential to such renumbering and rearrangement."

I suggest that this new principle should also be applied to the labour laws of the Colony, and I hope that in view of the precedent created in this Bill this will be carried out on these lines.

**MR. LOCKHART:** Your Excellency, the hon. Member for Mombasa stated in his speech yesterday that the main complaint of the Municipal Council and public of Mombasa was that they had not been consulted before the publication of this Bill.

I must say, quite frankly, that I think there is a good deal to be said for that point of view, but there is also something to be said on the other side. We have the procedure of publishing these Bills in the Gazette fourteen days before they are introduced into Council, and that is in order that any districts affected may have the opportunity of representing their case. Mombasa has availed itself of that opportunity, and it is also, I understand, to be represented in evidence which is to be given before the select committee on the Bill.

In connexion with this complaint, however, there is one point which I must clear up. It is suggested that Nairobi was consulted and Mombasa was not. The reason why Nairobi Municipality was brought into the negotiations was in connexion with the renewal of distributing licences affecting Nairobi, and the reduction in rates which was agreed to by the company was in connexion with the renewal of these licences. The reductions were endorsed on the licences, and although the contents of this amending Bill were discussed at the same time, primarily the question was that of the renewal of these licences.

It is part of my duties as Commissioner for Local Government to keep in touch with local bodies as to what is going on at headquarters, and why I regret that the Mombasa Municipality were not approached before the Bill was published is because I think that if they had been there would have been no difficulty in making it clear to them that Mombasa has in fact got a fair deal out of this Bill; and I do not think that there will be any difficulty in doing so when they appear before the select committee.

Mombasa does get additional protection in this Bill under the amended section 45. One of the considerations in dealing with this question, as I am sure everyone agrees, is the advantage to the Colony as a whole in having a company equipped with adequate financial and technical resources in order to develop electric power throughout Kenya. The company has commenced undertakings in places where they must obviously run at a loss for some time, and although we have no power, as the hon. Mr. Kasim pointed out, to force the company to do so, we have some influence with the company and we are in fact negotiating with them now with regard to the installation of electric power in Kisumu.

If these developments take place in small townships in the Colony (they may, of course, eventually become big ones), it is obvious that the company must be given the opportunity of making some reasonable profit from the undertakings which are established in flourishing places, of which Mombasa is one. That point was kept very prominently in mind in the course of negotiations, and section 45

[Mr. Lockhart]

does give protection to the consumers being served by profitable undertakings against undue exploitation. Such protection is completely lacking in the present Ordinance with the possible exception, suggested by the hon. Mr. Pandya, that the six months' acquisition clause might be used in order to put pressure on the company. I think he overrates the possibility of that, and I do think that the substitution of the present section 45 is very much more straightforward and is likely to be very much more effective. Further, I do not think anyone can contend that the six months' acquisition right was ever intended to exist.

Section 134 (1) of the Ordinance, which lays down the condition of acquisition, has been still further tightened up, and the condition now is this: that the company receives the actual expenditure on their installation less all provision for depreciation or obsolescence which might have been made under section 45. No one is going to suggest that the company is going to start and operate a plant at a loss, as it must do to begin with, and that the moment it is put on a revenue-earning basis someone can step in, under this six months' notice clause, and acquire it on those terms—that is, the refund to the company of what it has spent less depreciation! Indeed, the hon. Mr. Pandya himself recognizes that that was not a reasonable proposal, and suggests the retention of the six months' acquisition clause subject to a provision for compensation. That would have been a possible course to pursue, but if that basis were agreed upon and that had been done it is reasonable to suppose that there is something else in the Bill which would not have been there.

The hon. Mr. Pandya says that the consumers in Mombasa are not treated fairly by the company. I am not here to defend the East African Power and Lighting Company and I cannot say if this is true or not. But I do know that very considerable reductions have been made by the company, and I may say also that the Government have had assurances from the company, which arose in the course of the discussions, that further reductions are under consideration and will be made in the near future. And I may also say

that I do not think the hon. member's instance was a particularly happy one of someone having to pay a meter rent of presumably Sh. 1/50 in addition to a charge for electric light of 30 cents. I really do not think any company can be expected to install a meter for anything less if the power consumed is only 30 cents per month; there would be no justification in putting in a meter at all unless there is to be some return from these very low rate consumers.

With regard to the point raised by the hon. and gallant Member for Nairobi North, and which was also referred to by the hon. and gallant Member for Trans Nzoia, that there should be some control of linked companies, section 45 has in fact been very carefully drawn up to assess the profits on the actual capital invested in each undertaking; and from that point of view the question of subsidiary or linked companies cannot arise. The only time when it can is if the capital expenditure is inflated, in which case I suppose the shareholders of the company themselves would have something to say about it. But the question of the introduction of protection on that point can be considered by the select committee.

**MR. SHAMSUD-DEEN:** Your Excellency, I only wish to say that I am rather impressed by the arguments advanced by the last speaker as to the period of six months being too short for allowing other bodies to acquire the interests of the company. Surely, if that argument is sound the period of 25 years is decidedly too long a period to provide for a monopoly. I shall be very glad to see the period reduced to, say, 10 years.

As regards the matter of the meter charge of Sh. 1/50, I think that represents an investment on the installation of meters themselves. I do not think that the cost of these meters is such that there should be a perpetual charge of Sh. 1/50 on the consumers for the running of the meter. The average current consumed by the Indian community, I am talking now of Nairobi, amounts to Sh. 10/15 per month, so that means that there is 10 per cent added to that charge merely on account of the small meters installed. This, I contend, is one of the responsibilities of the company to instal meters and they ought to do that.



(Mr. Shamsud-Deen)

I would like to stress again that I think a monopoly of 25 years is too long. The company has many other safeguards, and I think it is unfair to the consumers that they should have so long a period. I think it ought to be reduced to 10 years, 25 or 42 years is far too long.

MR. WILLOUGHBY: Your Excellency, if the masses of Mombasa had not been misled by quotations from musty records, the mythical nature of which has been so admirably manifested by my hon. and learned friend the Acting Attorney General, or by this mis-interpretation of the proviso to section 19, it seems that there would have been little for me to reply to. And I am sure that if only these sea-mists of misconception can be dispersed this measure will receive from Council the support it merits.

The hon. Member for Mombasa and the hon. Mr. Pandya raised the question as to why Mombasa was not consulted when Nairobi was. The hon. the Financial Secretary stated some of the reasons why that was not done, and I might add that the views of the Mombasa Municipal Council with regard to section 19 were known by their attitude during 1934 and, therefore, there was no slight in our not ascertaining what these views were. Apart from the repeal of that proviso, the Bill is almost entirely in the favour of the local authorities and the consumers, and from that point of view also, there was no need to do other than to take the normal steps with regard to consultation which is the reason for publishing the Bills before their introduction into Council.

The hon. Member for Mombasa also made one more point, and asked that clause 14 of the Bill might be clarified by the insertion of the words "at licensees' expense". This point I have already noted for consideration in select committee and I think there should be no difficulty, if the select committee decide so, for something of that kind being done.

The hon. Mr. Pandya inquired, with regard to section 19, as to whether the amendment proposed was a moral or a bargaining one. I thought I had made it fairly clear that it was not a bargaining one, for there is no reason to bargain. The only bargaining that has been done with

the company has been in respect of the renewal of licences and not in respect of the law. Incidentally, the amendment to the law which has the effect of stiffening up the control of the finances of the company has been extended to all the undertakings which the licensee has, and that is the only result of the bargaining in connexion with the renewal of the Nairobi licences. So here we have a concrete case of the coast benefiting from the action taken.

A second point in connexion with this same section 19 was that its proviso was not clear. I am sorry if that is the case, but I thought the intention was perfectly clear, namely that normally, if the licence is renewed it shall be subject to a challenge every seven years after 42 years dating from the original granting of the licence. If that intention is not adequately expressed in the proviso and if the select committee can produce the words which will make the intention more clear, there again, I am certain that the requisite change will be made.

Another point made was that I had made a debating point in talking of the Objects and Reasons of the initial Bill. I might say that the hon. member has equally indulged in debating tactics by fixing on the least important of my three arguments and ignoring the remainder. I need not repeat the intermediate ones of these because all references are insignificant before the expressed intention of the Legislative Council at the time which is embodied in the Ordinance itself. As it appears to my mind quite sufficiently clear I will quote from the actual Ordinance passed in 1919:—

"No. 19. Local authority may acquire works after 25 years and after every subsequent period of 5 years."

I explained that only 18 months after the passing of the 1919 Ordinance it was found necessary to increase this period of 25 years to 42 years and from 5 to 7 and I think this is a sufficient answer to the question raised by the hon. Mr. Shamsud-Deen in which he stated that the period of 25 years was too long. There can be no case for reducing it.

Continuing with the remarks of the hon. Mr. Pandya I come to his comment on clause 31 of the Bill which he considers

(Mr. Willoughby)

to be mere verbiage. I shall be wholeheartedly prepared to agree with him when the hon. member can produce a system of accounting whereby revenue can be shown on the expenditure side. Until that occurs and can be done with the approval of qualified audit the clause will continue to give adequate financial control.

The next point he made was that Government had entirely ignored the question of rates for the consumers or the authorities. In my remarks when moving the second reading of this Bill I mentioned clauses 17, 18 and 20, all of which have this very purpose in view—that is the protection and amelioration of the conditions for the consumers, and I would now direct the hon. member's attention to a large number of other clauses, 26, 27, 29, 33, 34, 36, 37 and 56 all of which have the same purpose, that is, the protection of the consumers, which is the one and sole aim of Government in all this business.

There is one point which I frankly cannot understand. The same hon. member said that the Bill does make the acquisition by local authorities more difficult than at present. I cannot see that it does so in any way whatever. In fact it has been made very clear that it is more easy for local authorities to take over.

I did intend to refer to the reduction in the costs at Mombasa provided by the company but most of the figures I may say almost entirely all of them, have been given by the noble lord the hon. Member for the Rift Valley except that he omitted the one of the 40 per cent reduction for water heating; and perhaps I may emphasize what he did not emphasize, namely that the charge with regard to the direct payment by the municipality is the one in which the reduction is the biggest of all.

The hon. Mr. Pandya made proposals, to which the hon. Financial Secretary referred, that there should be compensation at the time of purchase. I disagree entirely with that view. The whole trend of modern legislation is that there should be no compensation for prospective purchase and I think it is a very unwise thing to

There is one more point I should like to deal with before leaving the hon. member's remarks. He referred to the desirability of the select committee incorporating in section 19 (a) a clause exempting the Municipality of Mombasa from its provisions. In this respect the natural corollary of any suggestion of that kind would be that Mombasa must be debarred from reaping any of the benefits accruing from this Bill. The legislation should be uniform and I regret that this proposal is a course which cannot be very well adopted by Government.

Turning to the remarks made by the hon. and gallant Member for Nairobi North, there are two points with which I should like to deal. The first is the suggestion that provision should be made in the Bill for State acquisition. I agree entirely with the hon. and gallant member with regard to State control, but this is a major issue and I do think that a change of this kind is one that should be advertised very fully and for a very long period before any action is taken on it. Incidentally, there is no need for that to be incorporated in this particular Bill because no effect could be given to it until 1964 in view of the current licences not expiring until then. So, the matter can still be borne in mind. That, of course, must ultimately be the goal to which Government must work.

With regard to the question of the unification of the law in East Africa, I may inform hon. members of Council that the three electrical engineers of the three territories are collaborating very fully in order to obtain entirely uniform rules. It is a little bit difficult in view of the diversity of the law, but this Bill, incidentally, has been designed to assist Kenya to come into line with certain provisions obtaining in the other territories and there is, I may say, a general tendency towards unification and I have no doubt that as soon as it becomes practicable it will be achieved.

The noble earl the Member for Kiambu made one point to which I would like to refer: it is the question of the cost of installations and he suggested that some reductions might be made in order to facilitate the more extensive use of electricity by primary producers, quoting some rate or figure which had come to his



[Mr. Willoughby] knowledge and which he regarded as unreasonable. In this connexion I would like to refer him to clauses 17 and 18 which have been introduced in order to avoid capital charges being paid by would-be consumers and instead, providing for a sufficient guarantee to be given that the cost of electricity consumed would be sufficient to service the outlay on an economic basis. As far as the coffee planters are concerned it is most unfortunate, from many points of view, that their need for electric power is not greater. At the moment the cost is something in the neighbourhood of £3 or £4 a year for working a small factory and the revenue derived from an installation in the house is £25. Unfortunately coffee planters have relatively large areas so that costs of providing them with electric power mains is rather high, and it is almost inevitable that these conditions should continue to exist.

The question was put and carried.

#### SELECT COMMITTEE

MR. WILLAN moved that the Bill be referred to a select committee consisting of:—

Mr. Willan (Chairman),  
Mr. Lockhart,  
Mr. Willoughby,  
Col. Modera,  
Mr. Cooke,  
Mr. Gheraisle,  
Mr. Pandya,  
Mr. Shamsud-Deen.

MR. DENNISON seconded.

The question was put and carried.

#### TRADE DISPUTES (ARBITRATION AND INQUIRY) BILL

##### SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Trade Disputes (Arbitration and Inquiry) Bill be read a second time.

Great Britain provides an outstanding example of a system of settling disputes in trade by the good will of both parties, on the one hand the employers, and on the other the employees, by their own voluntary efforts. I think that it stands

to the credit of this Colony that there have been very few industrial disputes, and those few that there have been, have been settled comparatively quickly by the goodwill of both parties.

At the same time, difficulties are bound to arise between employers and employees that their joint efforts will fail to bring about a settlement and in which Government assistance may be necessary in effecting a solution.

In England, Government assistance is rendered by the Ministry of Labour and that department has statutory powers under the Conciliation Act of 1896, and the Industrial Courts Act of 1919. Now this Bill is an endeavour by Government to give Government statutory powers of trying to bring about a settlement in trade disputes when the parties themselves have failed to do so.

I wish to state now, and to emphasize this, that this Bill contains no coercive provisions. It is merely for the purpose of creating machinery which, when the goodwill of the employers and the employees has failed to bring about a settlement in their disputes, will enable them to come to Government and say, "We want your assistance in order to help us to come to a settlement which is satisfactory to both parties."

Having stated these general provisions I now come to the details. The first clause to which I wish to refer is sub-clause (2) of clause 2 which reads as follows:—

"This Ordinance shall not apply to persons in the naval, military or air services of the Crown, or to the Police Force, but otherwise shall apply to workmen employed by or under the Crown in the same manner as if they were employed by or under a private person."

So it will be seen that the only persons exempted from the provisions of this Bill are the members of the naval, military and air forces of the Crown and the members of the Police Force.

The two main provisions in this Bill are contained in clauses 3 and 8.

Clause 3 provides for the setting up of arbitration tribunals and clause 8 provides for the setting up of boards of inquiry.

[Mr. Willan]

In order that hon. members should understand the principles underlying this Bill it is absolutely essential that they should appreciate the vital differences between these two bodies—an arbitration tribunal on the one hand and a board of inquiry on the other. An arbitration tribunal is a body which is set up to try and effect a conciliation in any particular trade dispute, and under clause 3 of the Bill the Governor is empowered to appoint an arbitration tribunal. But there are two restrictions on the powers of the Governor to make that appointment. The first one is contained in clause 3, sub-clause 2 of the Bill:—

"Where a trade dispute exists or is apprehended, the Governor may, subject as hereinafter provided, if he thinks fit and if both parties consent, refer the matter for settlement to an Arbitration Tribunal."

So the first restriction is this, that both the employers and the employees in any particular trade dispute must consent before the Governor can appoint an arbitration tribunal to settle a particular dispute.

The second restriction of the Governor's powers is contained in sub-clause (3) of the same clause 3:—

"If there are existing in any trade or industry any arrangements for settlement by conciliation or arbitration of disputes in such trade or industry, or any branch thereof, made in pursuance of an agreement between organizations of employers and organizations of workmen representatives respectively of substantial proportions of the employers and workmen engaged in that trade or dispute, the Governor shall not..."

and I would like hon. members to note these words following—

"unless with the consent of both parties to the dispute, and unless and until there has been a failure to obtain a settlement by means of those arrangements, refer the matter for settlement."

In other words, the second restriction is this: if there is already existing machinery in that particular trade for the settlement of any trade dispute between employers and employees, then the Governor cannot appoint an arbitration

tribunal unless both parties consent and admit that cannot settle it by means of their own machinery.

Going back to paragraphs (a), (b) and (c) of sub-clause (2) of the same clause, there it provides that an arbitration tribunal may consist, first of all, of a sole arbitrator appointed by the Governor; secondly an arbitrator appointed by the Governor assisted by an equal number of assessors nominated by the employer and the employees, that is to say, if the employer nominates two assessors, then the employees can also nominate two assessors, so that there should be an equal number for each party; and thirdly, paragraph (c) which states:—

"one or more arbitrators nominated by or on behalf of the employers concerned and an equal number of arbitrators nominated by or on behalf of the workmen concerned, and an independent chairman, all of whom shall be appointed by the Governor."

Provided that where all the members of the Tribunal are unable to agree as to their award, the matter shall be decided by the chairman as sole arbitrator."

This Bill does not lay down any elaborate provision as to how the arbitration tribunal shall proceed. But if hon. members will turn to clause 13 they will find there provision for making rules. The Governor in Council is empowered to make rules regulating the procedure to be followed by an arbitration tribunal or a board of inquiry. In my opinion, and I would stress that this is only my opinion and does not in any way bind Government, I hope that if and when this measure becomes law, elaborate rules will not be drawn up. I think it would be a mistake if we were to try and lay down any hard and fast procedure. For any hard and fast procedure, for instance, a settlement might be arrived at by the very simple process of discussion between the two parties concerned. On the other hand, another dispute would only be settled by an arbitration tribunal going into evidence, detailed evidence, from a number of witnesses. So I do think it would be very difficult indeed and very unwise to try to lay down strict rules when this Bill becomes law.

Hon. members will notice in this same clause that if no rules have been made

[Mr. Willan]

then the tribunal or board of inquiry, as the case may be, has power to conduct its own procedure.

I do not think it is necessary to go into details with regard to clauses 4, 5, 6 and 7. These clauses deal with such matters as the filling of vacancies on the arbitration tribunal and also the publication of the award of the tribunal. I might mention that the award of the tribunal cannot be enforced in a court. If hon. members will turn to sub-clause (4) of clause 3 they will see stated there that:—

"The Arbitration Ordinance shall not apply to any proceedings of an Arbitration Tribunal under this Ordinance or to any award issued by it."

and of course, the only way to enforce an award is by the pressure of public opinion, because the public will then know what the award is.

Now I come to clause 8 which deals with boards of inquiry and as I said a few moments ago, it is absolutely necessary to understand in what way a board of inquiry differs from an arbitration tribunal.

In these two bodies there are two main points of difference. A board of inquiry can be appointed by the Governor independent of the wish or will of the employer or employee and the function of this board of inquiry is not to bring about a conciliation by settlement with regard to any industrial dispute, but its intention is to inquire into the causes and circumstances relating to that dispute. Of course, a board of inquiry is really primarily, a means of informing this Council and to inform the members of the public as to the causes and circumstances of any particular trade dispute, and a board of inquiry would not be appointed except as a very last resort; if the two parties themselves have failed to come to a settlement, if the arbitration tribunal has sat and published its award and still no settlement has been arrived at then, as a last resort the Governor could and probably would appoint a board of inquiry to find out the causes and circumstances relating to that particular dispute.

Passing on to clause 9 hon. members will see there that the board of inquiry

may make an interim report or may make a minority report and the Governor:—

"may cause to be published from time to time, in such manner as he thinks fit, any information obtained or conclusions arrived at by the Board as the result or in the course of the inquiry."

For instance, the Governor might decide that a report should be published and laid on the table of this Council.

The only other two clauses to which I should like to refer are clauses 11 and 12.

In clause 11 the interested parties to a dispute may appear before the arbitration tribunal or board of inquiry by advocate, but only if the tribunal or board so decides. This is entirely at the discretion of the tribunal or board.

Lastly in clause 12, the sitting of the arbitration tribunal or board may be public or may be held in private and the Press may be excluded from these sittings or they may be permitted to attend. A further restriction on the Press is contained in sub-clause (2) of clause 12 where the Press, first of all, are only entitled to publish a fair and accurate report of the proceedings. They cannot publish any comment on the proceedings until the award or order in a particular case has been published.

I beg to move.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, in view of the fact that this Bill which has been introduced involves quite a new principle, that there is no urgency in bringing it into effect, and that hon. members on this side of Council have had applications from various members of the public that they should have more time to consider this Bill—and especially, Sir, as we have only just now heard the explanation of the effects of the Bill from the hon. mover—I move that the debate be adjourned *sine die*.

MR. NICOL seconded.

MR. HARRAGIN: Sir, I have authority to say that, for the reasons given by the noble lord the Member for Rift Valley, Government has no objection to the consideration of this Bill

[Mr. Harragin] being adjourned; but it must be understood that "*sine die*" will mean "the next session" of this Council.

LORD FRANCIS SCOTT: Yes.

The question that the debate on the Trade Disputes (Arbitration and Inquiry) Bill be adjourned *sine die* was put and carried.

Council adjourned for the usual interval.

On resuming:

### SISAL INDUSTRY BILL

#### SECOND READING

MR. WATERS: Your Excellency, I beg to move the second reading of the Bill to amend and consolidate the law relating to the sisal industry. This Bill takes the place of the Sisal Industry Ordinance of 1934, which it repeals. It deals with the domestic matters of Kenya sisal growers, having originated from that excellent organization, the Kenya Sisal Growers' Association.

The first ten clauses of the Bill are substantially the same as in the previous Ordinance, with a few exceptions, to which I will now refer. By clause 2 the Sisal Committee established under the 1934 Ordinance will become the Kenya Sisal Board, so as to conform with Tanganyika, in which territory the corresponding body is known as the Tanganyika Sisal Board. The impression that the Kenya Sisal Industry Committee is an entirely different body from that of the Tanganyika Sisal Board will thus be avoided.

In the definition of sisal fibre in clause 2, sisal rope and cord are made liable to a levy on export, but in the provisions of clause 3 sisal rope and cord can be exempted from the levy by order of the Governor with the advice of the Board. Consequently, it would be possible to assist the export of sisal rope and cord by waiving the levy if such a course were considered desirable in the interests of the industry, or to impose the levy if considered desirable.

In clause 8 the membership of the Committee, or Board as it is now called, is increased by one member. By this change the Kenya Sisal Growers' Asso-

ciation will be enabled to nominate four members instead of the present three. This increase is not unreasonable in view of the Association's claim that it has increased its membership and hopes soon to embrace all the sisal growers in Kenya and in view of the expanding responsibilities of the Board, especially in regard to research. In Tanganyika, the Sisal Board consists of twelve members, of whom nine are unofficial persons nominated by the Tanganyika Sisal Growers' Association. With its new constitution, the Kenya Sisal Board will consist of six members.

A proviso in clause 8, sub-section (1), enables present members of the Sisal Industry Committee to continue their services on the new Board.

I now come to the new clauses, which are to be found under Part VI on page five. Clause 11 gives the Governor in Council power to make rules for the registration of all sisal plantations and the registration and compulsory use of plantation marks. The use of the word "compulsory" does not in any way indicate any coercion on the part of Government. This is the sisal industry's Bill, and it contains what the industry itself desires in order to strengthen its organization, particularly in regard to marketing. Government is anxious to assist the industry in any reasonable way to achieve such a desirable object.

In sub-clause (c) of clause 11 the Governor in Council is given power to make rules under which a complete set of statistics would be submitted by prescribed persons. These statistics include the areas under sisal, the stocks of sisal fibre, the actual production of sisal fibre, and so on. These statistics are essential as a basis for orderly marketing of sisal as if the interests of the producers and the needs of the consumers are to be catered for satisfactorily.

Under sub-clauses (d) and (e) the conditions in respect of grading and exporting may be prescribed, and it will be possible, and it is the intention of the industry, to collaborate with the Tanganyika growers in this respect. The necessity for standard grading and for means to trace wrongly graded sisal fibre to its source are obvious.

[Mr. Waters]

Clause 12 provides for the appointment of a registration officer to keep the register of sisal plantations and marks, and clause 13 provides for the inspection of the plantations by the registration officer for the purpose of checking the returns.

Clause 14 provides that all the returns from estates shall be kept secret and confidential. This is clearly essential, but there should be no need in the case of some of the figures to keep these secret, in the case of the bulk figures which will be used by the marketing association. In the select committee to which this Bill will be referred, I am going to move an amendment to cover this point.

In conclusion, I would state that Part VI of this Bill will enable sisal growers in Kenya to act in full co-operation with those in Tanganyika Territory. The wording of this part follows closely the wording of the similar part in the Sisal Industry Ordinance enacted in Tanganyika Territory in November last year. In my view the efforts of the growers and Associations in both territories to work together in this way are worthy of the highest praise and should receive the support of this Council by the passing of this Bill.

MR. DENNISON seconded.

The question was put and carried.

#### SELECT COMMITTEE

MR. WILLAN: Your Excellency, I beg to move that the Sisal Industry Bill be referred to a select committee of this Council consisting of the following members:—

Mr. Waters (Chairman),  
Mr. Rammell,  
Mr. Dennison,  
Major Grogan,  
Lady Sidney Farrar,  
Mr. Kasim.

MR. DENNISON seconded.

The question was put and carried.

MR. WATERS: Might I give notice, Sir, that the select committee will meet at my office at 10 a.m. on Monday next, 12th June. I hope the time will be suitable.

## EMPLOYMENT OF SERVANTS (AMENDMENT) BILL

### SECOND READING

MR. WILLAN: Your Excellency, I beg to move that the Employment of Servants (Amendment) Bill be read a second time.

This Bill has been drafted with a view to giving legal sanction to the recommendations put forward in the recent report of the Employment of Servants Committee appointed by Your Excellency last year. I will go straight on to the details of the Bill clause by clause.

Clause 4, new section 27 of the Bill on page two, provides that juveniles should not be employed on long, written terms of contract. Contracts are now confined to verbal contracts for the performance of a daily task or for the performance of thirty days' work within a period of forty-two days. This was recommended by the Committee because long, written terms of contract involve juveniles being absent from their homes for long periods.

The next recommendation of the Committee is that no juveniles should be recruited by a professional recruiter, and this recommendation is contained in new section 28.

The next recommendation of the Committee that juveniles should not be subject to the penal provisions of the Principal Ordinance is contained in new section 29. Actually, on this point the Committee found that there was no evidence that employers had utilized the penal sanctions against juveniles, and this merely carries out existing practice.

New section 30 in clause 4 reproduces the present law and there is no need for me to say anything more about that.

New sections 30 A and B, also in clause 4, are the main new provisions of this Bill, and they implement the following recommendations of the Committee: That the minimum age at which a juvenile should enter into written contracts should be raised from 10 to 12 years. Secondly, that no juvenile should be employed without the parent's or guardian's permission being recorded before the district officer or the local headman. Thirdly, and perhaps the most impor-

[Mr. Willan]

tant, that there should be some system of identification of juveniles.

New section 30A, sub-sections (1), (2) and (3), provides for the issue of identity certificates to juveniles, and new sub-section (2) states that these certificates shall be in triplicate signed by the district officer, and shall contain the following particulars:—

- (a) a statement that the permission of the parent or guardian of such juvenile has been obtained;
- (b) the name and finger prints of such juvenile and particulars of the tribe to which he belongs; and
- (c) the serial number of such certificate.

In their report the Committee did not go so far as to recommend that there should be finger-print identification in the certificates, but at the same time they stated that if that was adopted it would be 100 per cent efficient, and Government decided as a question of policy to bring in this question of finger-print identification.

Now, Sir, I pass on to new sub-section (5) (a) and (b) of new section 30A in clause 4 of the Bill, which provides that the permission of the parent or guardian can be recorded before the district officer or local headman, and the reason for including the latter is that the parent or guardian of any juvenile might live a long distance from the district office. So for their convenience, in order to do away with the necessity for travelling a long way, the provision for recording permission before the local headman was put in.

New section 30A, at the bottom of page three of the Bill, provides that district officers can endorse an identity certificate to the effect that the juvenile named therein may only be employed in a particular area and/or for a limited period of time specified in the certificate. In new sub-section (2) of the same section it provides that the original of every identity certificate shall be handed by the district officer to the juvenile concerned; that the district officer shall retain one copy, and that the third shall be forwarded by the district officer to the Chief Registrar of Natives.

In new section 30C of the Bill, also in clause 4, every employer of juveniles shall furnish to the Chief Registrar of Natives certain labour returns of the juveniles. In the select committee stage of the Bill I propose to move that the word "tenth" shall be altered to "seventh" so as to correspond with the date of labour returns under the Native Registration Ordinance.

New section 30E, on the top of page five and bottom of page four, is contained in the Principal Ordinance.

Clause 7 of the Bill, which is at the top of page six, provides for the issue of temporary certificates to juveniles already in employment, and these temporary certificates will be valid for a period of six months from the date the Bill becomes law.

Finally, we come to clause 5 of the Bill, which has nothing at all to do with the Committee's report but is designed to stop up a loophole in the present law. Under section 73 of the present law the wages of a servant have priority with regard to other claims when the employer's assets have been attached under an order of court. But, as hon. members are well aware, a servant may be recruited in Nairobi and sent 200 miles up-country to employment and under the present law he is not entitled to priority of repatriation expenses when the employer's assets are seized under an order of court. Clause 5 brings repatriation expenses into the same category as wages as regards priority and thereby relieves the public funds of a certain amount of liability. In two recent cases, owing to default by employers, public money has been expended to the extent of Sh. 12,000 which had to be paid in repatriation expenses. I beg to move.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, I have only one point to which I wish to draw the attention of Council, and that is on page 3, sub-section (4) of 30A. This is not a new amendment put in this Bill, but it was passed apparently a few years ago, and says:—

"Nothing in this section shall apply to any juvenile who is employed by the day only and who returns each night to the place of residence of his parent or guardian."

[Lord Francis Scott]

That is all right, but these words I hope will be deleted:

—“and who is accompanied throughout the duration of such employment by an adult relative.”

Of course, this is a perfectly ridiculous provision and quite impracticable and cannot be carried out. So I hope that in select committee these words will be deleted.

MR. COOKE: Your Excellency, as one of the members of the Committee inquiring into the employment of juveniles, I would like to take this opportunity of saying a few words about the matter. I suppose, judging from the controversy which was raging at home, one of the most controversial subjects was the age of the juveniles. I think I can say that that problem had probably exercised the minds of the members of the Committee as much as any other, but we felt that we must balance our own feelings with regard to the care of juveniles with the legitimate demands of a growing country like this. And therefore we recommended that the age should be 12 years as a minimum.

I suppose at the start most of us felt that if prosperity in the reserves was such that medical facilities and educational facilities were available, most of us would have voted for 14 years of age, but we were all practical men and have had practical experience in the reserves, and we did feel that the conditions, certainly on the majority of the estates, were a good deal better than what might be described as “almost slum conditions” prevailing in certain reserves. Therefore we recommended that the age minimum should be 12, for certainly on good estates the children are educated and receive medical facilities and proper nourishment.

I know that recently the enterprising Municipal Council of Nairobi has recommended 14 years, but actually that does not apply to rural areas, where conditions are quite different from what they are in urban areas.

We have here a Bill making recommendations, and in it there are certain forms which must be filled up. These forms no doubt may seem to be vexatious to some people, but, having gone

into the matter very thoroughly, we felt that they were necessary.

There is one point I would like to stress: the Committee does recommend an increase in the number of inspectors, and unless that increase takes place I do not personally think that adequate inspection of the various areas can be made. Certainly section 30 would become an absolute dead letter unless there is a sufficient number of inspectors.

There are just two points I would like to criticize in the Bill. One is that concerning finger prints. The Committee did not recommend a complete finger-print system because we feared that it might be vexatious and difficult to carry out. Personally, I think that if the provisions of this Bill are properly carried out there will be no need for finger-print identification at all, and it will only arouse suspicion, if my hon. and gallant friend the Member for Ukamba will permit me to use that word, and that possibly what we are bringing in will be regarded in the light of the Registration of Servants Ordinance and there might be some conflict of opinion amongst the natives of the reserves.

The other point I wish to make, and it was one which was stressed by the missionary member of the Committee, is that there should be a comprehensive Ordinance and that this Ordinance should be included with the Employment of Women, Young Persons and Children Ordinance. I think, possibly, that if that can be brought about it would be a great help, because a great many of the employers have got to read through each Ordinance in order to get to the laws governing the employment of juveniles.

A really important point I wish to bring to the notice of the hon. the Chief Native Commissioner is that before this Bill becomes law there should be adequate propaganda carried out in the reserves, because there is a danger, and a very real danger, that it may be employed for subversive propaganda purposes—that we are forcing these children out to work. If I may suggest possibly there are various agents which might be employed before this Bill actually becomes law for propaganda of the right kind. I think that is all I wish to say. I support the Bill.

MR. WILLAN: Your Excellency, the remarks made by the noble lord the hon. Member for Rift Valley with regard to section 30, sub-clause (4), will be considered in select committee, and so also will the remarks of the hon. Member for the Coast with regard to the necessity for having finger-print identification.

The question was put and carried.

#### SELECT COMMITTEE

MR. WILLAN moved that the Employment of Servants (Amendment) Bill be referred to a select committee consisting of—

Mr. Willan (Chairman),  
Mr. Hosking,  
Mr. Fanning,  
Lord Francis Scott,  
Col. Kirkwood,  
Mr. Montgomery,  
Mr. Isher Dass.

MR. DENNISON seconded.

The question was put and carried.

#### EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT) BILL

MR. WILLAN: Your Excellency, I beg to move the second reading of the Employment of Women, Young Persons and Children (Amendment) Bill.

This Bill implements a further recommendation of the Juvenile Committee, and is designed to raise the age of the employment of children in industrial undertakings from 12 to 14 years.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Your Excellency, does clause 2 of this amending Bill achieve what the hon. mover has suggested? As it reads it says:—

“Sub-section (1) of section 4 of the Principal Ordinance is hereby amended by deleting from the first line thereof the words ‘under the age of twelve.’”

There is nothing about the substitution of the age of 14.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I would like to make a point which I have frequently made in

this Council before: We have the Employment of Servants Ordinance, the Employment of Women, Young Persons and Children Ordinance, and the Resident Labourers Ordinance, and there is never anything done to consolidate the law with regard to employe and employer. Is it not possible to provide for everything with regard to employer and employe in one Ordinance?

MR. WILLAN: Your Excellency, with regard to the matter raised by the noble lord the hon. Member for the Rift Valley, the drafting is correct. If the noble lord will turn to section 2 of the Principal Ordinance he will find:—  
“A ‘child’ means a person under the age of 14 years.”

LORD FRANCIS SCOTT: That is different from the definition by the Employment of Juveniles Committee.

MR. WILLAN: I beg to differ from the noble lord's opinion. The sub-section now reads:—

“No child shall be employed in any industrial undertaking.”

I think that answers the noble lord's question.

With regard to the matter raised by the hon. and gallant Member for Nairobi North, who complains that nothing is ever done in regard to consolidating the labour Ordinances, well, Sir, the Attorney General's Department cannot work miracles. There are 177 pages of work drafted before this Council, and I submit that the Attorney General's office cannot do the impossible.

The question was put and carried.

#### SELECT COMMITTEE

MR. WILLAN moved that the Bill be referred to a select committee consisting of—

Mr. Willan (Chairman),  
Mr. Hosking,  
Mr. Fanning,  
Lord Francis Scott,  
Col. Kirkwood,  
Mr. Montgomery,  
Mr. Isher Dass.

MR. DENNISON seconded.

The question was put and carried.

## RESIDENT LABOURERS (AMENDMENT) BILL

## SECOND READING

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

The object of this Bill is to give effect to certain suggestions that have been made by the Secretary of State and have been communicated to this Government.

Clause 2 provides for the new definition "native area," and this has got away from the term "native reserve," which has a somewhat restricted meaning, in the new Native Lands Trust Ordinance, 1938.

Passing on to clause 3, which is rather a long clause, paragraph (a) on page 2 of the Bill deals with section 5, sub-section (2), paragraph (e) of the Principal Ordinance, which states that a contract shall provide—

"for the female members of the family who are willing and able to work to serve the occupier if he offers suitable work at a reasonable rate of wages."

It is Government's policy not to restrict the right of these women to enter into a contract of labour wherever they wish, and as the law stands at present it is at least open to argument that they are restricted to working for a particular employer if he desires their services. So clause 3, paragraph (a), repeals section 5, sub-section (2) (e) of the Principal Ordinance. The fact that this is repealed need not, I think, cause any inconvenience, because I think it is quite probable and in fact is generally the case that the members of the family will work where the head of the family is working.

With regard to paragraph (b) of clause 3, as the law stands at present a contract between a resident labourer and an occupier is entered into by both parties and the male members of the resident labourer's family endorse the schedule at the end of the contract saying that they are willing to abide by the terms of the contract. But there is no provision in the present law for the male members of the family terminating the contract

independently of the resident labourer himself. So paragraph (b) of clause 5 achieves that object.

In paragraph (e) of the same clause the law, as it stands at present, in the event of the contract being terminated, gives power for the resident labourer and his family to remove the crops they have cultivated. But there is no provision as to what happens to the crops in the event of the death of the resident labourer himself, and so, by paragraph (e) of this clause, provision is made for that and also for the payment of the resident labourer's wages, which are due, to his family.

Paragraph (d) of the same clause alters the law in this respect: at the present time a copy of the contract is supplied to the resident labourer himself, but copies are not supplied to the male members of the family who are also parties to the contract; since they are parties to the contract it is considered desirable that they should have copies, and this paragraph carries that out.

In paragraph (e) of the same clause, under the present law, the magistrate has very wide powers of removing a native or his family from any farm or railway line; in fact, the only restriction is that he shall only order that removal "for good and sufficient reason". This, it is felt, is giving too much power to the magistrate, and so his powers of removal have been restricted so that he can only make an order when he thinks that thereby he will be preventing a breach of the peace.

I now come to page 4 of the Bill, paragraph (f) of the same clause. Under the law as it stands at present, on the change of occupancy of a farm the contract shall be deemed to be assigned to the new occupier irrespective of whether the resident labourer consents to work for the new occupier. This, it is felt, reduces the resident labourer and his family to a condition which might be termed "serfdom". And so paragraph (f) amends the present law and provides that a resident labourer and his family need only serve the new occupier if they consent to do so.

Clause 4 of the present Bill, on page 5, is consequential on clause 2.

(Mr. Willan)

I now come to clause 5 of the Bill. Under section 4 of the present law it is an offence for a native or Somali to reside or remain on a farm except in certain circumstances. Under section 7 of the present law an occupier may not permit a native or Somali to reside on a farm or railway land in contravention of the provisions of the Ordinance, and the two words "or remain" have been included in order to bring the section into line with section 4.

Clause 6 corrects a drafting error.

I now come to clause 7. The Principal Ordinance as it stands at present puts the onus of removing a native or Somali from undeveloped farms on the occupier himself. There is in this a possibility that difficulties might arise if a native or Somali refuses to go off an undeveloped farm when ordered to do so by the occupier, and so the powers of the occupier have been transferred to a magistrate, and the removal can now be undertaken under the authority of the law.

Dealing with clause 8 on page 7, if a native or Somali remains on a farm in contravention of the provisions of this Ordinance provision is made that it is the magistrate and not the occupier who is responsible for removing him.

The powers under the new section 18a in clause 8, and the new section 18 in clause 7, and also the powers under paragraph (e) of clause 3 of the Bill, are all subject to the new section 18a in clause 8; that is, before the removal takes place the occupier or the native or Somali concerned shall have the opportunity of showing cause why that removal shall not take place.

Clause 10 corrects a drafting error. Under section 4 of the present law a native may be allowed to remain on a farm after terminating a contract if he gets a permit allowing him to do so, but even then he is committing an offence, and therefore this clause 10 corrects that drafting error.

Clause 11 also corrects a drafting error by substituting the word "area" for the word "district".

I beg to move.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Your Excellency, with reference to this amending Bill, I should like to ask for an assurance from Government that at long last, if this Bill is passed in this Council, we shall get this Native Resident Labourers Ordinance brought into practical effect. I know it has been held up for two reasons. One was that you had to be satisfied that there was land available for any dispossessed squatters to be removed to. An agreement between Government and the Highlands Board with regard to the exchange of land has gone to you for approval; and with these amendments which have been proposed here, I trust that all the other requirements are being met and that we shall at long last have this Ordinance brought on to the Statute Book.

With regard to the details, I have only one comment to make at the present time, as other details I can discuss in select committee, and that is on page three, the last paragraph, where it says:

"A magistrate may, in order to prevent a breach of the peace, order a native or Somali to remove himself, together with his family and stock, if any, from any farm or railway land

Before, the magistrate could order a removal for "any good and sufficient reason". Well, Sir, this amendment seems to me to show great distrust of the powers of judgment of a magistrate, but seems to place considerable faith in his powers of prophecy. As to how he can know there is going to be a breach of the peace I do not quite know, or know what it means.

EARL OF ERROLL: Your Excellency, I was glad to hear the mover say that the alteration of part (e) of sub-section (2) of section 5 of the original Bill does not preclude female members of the family working for the occupier, because the general impression among a great number of farmers in this country is that that is the intention of the Bill.

I gather that female members of the family are under no contract to work, but they are allowed to if they are willing to do so, and I think that point should be made quite clear, otherwise people are going to get the wrong impression.

[Earl of Erroll].

The only other point is that referred to on page three, sub-section (4). The mover said that it was desirable that everyone should have a copy of the contract, but that looks to me merely as another accumulation of "bumph".

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, as I had a certain amount to do with the drafting of the original Ordinance, I should like to stress what the noble lord the hon. Member for the Rift Valley said with regard to sub-section (7) on the bottom of page three. I think this might constitute a very considerable change of procedure, and if we are to have this very considerable change I do hope the select committee will see that the full powers of the landowner and landlord are preserved, and will, I hope, perhaps be able to have access to the records of the original select committee to see why that section was deleted.

The same thing also slightly applies to section or rather clause 8, when the new section 18a has been introduced. I am a little nervous about this innovation also, but I will leave that to the select committee with the same warning. I do hope they will not relax the authority of the man whose farm it is, after all, on which the squatter is living.

**MR. HARRAGIN:** Your Excellency, there is just one point which I would like to clear up, and that is this: the point raised by the noble lord the Member for Rift Valley. He has quite rightly pointed out that although we passed this Principal Ordinance some considerable time ago it has not yet been brought into force. Then he set out quite fairly two reasons why that had not been done, the first being that Your Excellency had to be satisfied that there was sufficient land for these resident labourers to go back to in the event of there being an exodus from the farms. The noble lord also made reference to what took place in the last week or two at the meeting of the Highlands Board.

I am extremely pleased to be able to state that the negotiations with the Highlands Board have been highly successful, and we have come to what I hope will be the solution to the land problem at the

moment. The only reason that I cannot say definitely when the Principal Ordinance will be brought into force, so far as that proviso is concerned, is that at the moment the Local Council in the Masai is dealing with an alternative bit of land which we have suggested that they should have in lieu of a piece, the apex, of a farm which we were acquiring for these returned squatters.

I have every reason to believe that the Masai will accept this piece of land, because the elders have visited the new area and, subject to confirmation by the Local Council, we believe that the area, which is being given them contiguous to their boundaries and at present known as forest reserve, will be suitable and they will accept it.

I hope that in the next two or three weeks, Your Excellency, we will be able to say that the land problem has been settled. I can also say that the passing of this particular Bill will assist the Secretary of State over any qualms he may have with regard to the original Bill for, as was indicated by the hon. mover, a great many of the amendments which hon. members have before them are being made at the suggestion of the Secretary of State.

Personally, I do not think hon. members need be worried about the taking away of magistrates' powers by substituting the words "to prevent a breach of the peace" for the words "for good and sufficient reason". As one who has been a magistrate in the past, I can assure you that magistrates would have felt extreme diffidence in acting under the law as it is at the moment, namely that of "good and sufficient reason".

In spite of what the hon. member says, a "breach of the peace" does convey something very definite to a magistrate's mind, and that being so I think it is a just and wise amendment, because you could never expect two magistrates to think exactly the same about "good and sufficient reason," whereas every magistrate would think along the same lines as to whether a breach of the peace is likely to occur.

The point made by the noble earl the Member for Kiambu is really not as serious as he thinks. In my opinion the

[Mr. Harragin] alteration of the law as proposed in this Bill will in fact make no difference whatever to either employer or employee. As the hon. mover of the motion said, it was unsuitable as it stood in the existing law, and my own view, for what it is worth, is that this amendment will make very little difference and female members of a squatter's family will be able to work for the occupier if they want to, in exactly the same way as they are doing at the moment, and I think his constituents may rest assured that female labour will continue as usual.

**LADY SIDNEY FARRAR:** Your Excellency, in view of the urgency of the introduction of this Ordinance and the need for some finality in achieving simplicity, I would like to ask the hon. mover whether he can inform hon. members, when this Bill is to be put into force, if it will be necessary for new contracts to be taken out or whether the old contracts still stand that have already been made?

Might I also ask that Government will put into force the provision found in clause 7 of the new Ordinance, section 18 (1), with relation to the removal of natives and Somalis from undeveloped farms. At the present time the numbers of uncontrolled and undisciplined natives on undeveloped farms are a very serious menace to the community in various parts of the country, and I urge Government definitely to take action now to remove the natives, which they have the power to do under the new Ordinance.

**MR. WILLAN:** On the point raised by the hon. Member for Nyanza with regard to present contracts, if the hon. member turns to section 34 in the Principal Ordinance she will find that it is there provided that—

"It shall be the duty of every occupier in any district or district to which this Ordinance is applied, and who at the date of the application of the Ordinance to such district or area is a party to any contract made under the provisions of the Resident Labourers Ordinance, 1925, within one month after such date to give six months' notice of the termination of such contract:

"Provided that such notice shall not be necessary if any such contract will expire by effluxion of time or by notice before the expiration of the said period of six months."

The question was put and carried.

#### SELECT COMMITTEE

**MR. WILLAN** moved that the Bill be referred to a select committee consisting of—

Mr. Willan (Chairman),  
Mr. Hosking,  
Mr. Fannin,  
Lord Francis Scott,  
Col. Kirkwood,  
Mr. Montgomery,  
Mr. Isher Dass.

**MR. DENNISON** seconded.

The question was put and carried.

#### OFFICIAL SECRETS BILL

##### SECOND READING

**MR. WILLAN:** Your Excellency, I beg to move the second reading of the Official Secrets Bill.

The present Official Secrets Ordinance was enacted in 1912, one year after the United Kingdom Official Secrets Act, which was passed in 1911. The English law was amended in 1920, and for some reason which I have been unable to discover, this Colony did not want an amending Bill, and so the position is that the official law relating to official secrets is, I am afraid, nineteen years out of date. The object of this Bill is to bring the law into line with that in England and also of that of our neighbours in Tanganyika and Uganda.

This is an amending and consolidating Ordinance, and I think I can confine my remarks to the new provisions of this Bill. These new provisions are contained in clauses 4 (3), 4 (4), 6, 7, 8, 9 and 10.

To turn to clauses 4 (3) and 4 (4), on page four of the Bill, these two sub-clauses are of great importance, because they extend the provisions of clauses 1 and 2 which deal with spies to persons who are, or have been, in communication with spies whether here or abroad—for such persons are frequently as dangerous as spies themselves.



(Mr. Willan)

In connexion with sub-clause (4) of clause 4 of the Bill, I bring to the notice of hon. members of this Council the definition of a "foreign agent" which is contained in paragraph (b) of that sub-clause in going on to clause 6 of the Bill. By this clause it is an offence for a person to gain admission to a prohibited place, and if hon. members will turn to clause 3 of the Bill they will find a very comprehensive definition of a prohibited place.

This clause 6 in sub-clause (1) provides that it is an offence if a person for the purpose of gaining admission to a prohibited place, (a) misuses any official uniform; (b) makes a false statement; (c) tampers with any official document; (d) impersonates an official; or (e) misuses any official die, seal or stamp.

In sub-clause (2) of the same clause it is also an offence if a person in the first place retains, for purposes prejudicial to the safety and interests of the Colony, any official document or wrongfully retains an official document, and secondly allows any other person to have possession of any official document issued for his use alone, or communicates any secret official code word or pass word.

Clause 7, on page eight, makes it an offence to obstruct or interfere with police officers and members of His Majesty's forces who are engaged in duty in the vicinity of a prohibited place.

Clause 8 of the Bill extends the powers already possessed by His Excellency for the production of telegrams.

Clause 9 of the Bill is an important clause, for it deals with what is commonly known as accommodation addresses. For instance, it requires the registration of persons carrying on business for reward for receiving letters and telegrams for delivery to others. It will be observed that in sub-clause (1) of clause 9 such persons are required to—

"send to the Commissioner of Police for registration by him, notice of the fact together with the address or addresses where the business is carried on, and the Commissioner of Police shall keep a register of the names and addresses of such persons, and shall,

if required by any person who sends such a notice, furnish him on payment of a fee of two shillings with a certificate of registration, and every person so registered shall from time to time furnish to the Commissioner of Police notice of any change of address or new address at which the business is carried on, and such other information as may be necessary for maintaining the correctness of the particulars entered in the register."

Sub-clause (2) of the same clause provides that each of these persons who carries on such a business must keep certain particulars which are enumerated in paragraphs (a) to (e) of that sub-clause.

The real effect of this clause purposes not only to be a check on spies but also to help in detecting crime in general.

The final clause, clause 10, provides that every member of the public is under a duty to give information of any offence or suspected offence committed against the provisions of this Ordinance, and is required to attend at such reasonable time and place as may be specified for the purpose of furnishing such information to the authorities.

MR. DENNISON seconded.

MR. COOKE: Your Excellency, it is quite a small point, but as far as clause 8 goes, is not the production of telegrams provided for under the Criminal Procedure Code?

MR. WILLAN: Your Excellency, with regard to the remarks of the hon. Member for the Coast, I am not aware of any provisions in the Criminal Procedure Code which require the production of telegrams.

The question was put and carried.

#### ADJOURNMENT

Council adjourned until 10 a.m. on Wednesday, the 14th June, 1939.

Wednesday, 14th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 14th June, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### THE *THETIS* DISASTER

HIS EXCELLENCY: Hon. members will remember that last Monday week I made reference to the loss of H.M. Submarine *Thetis* and Council stood for a short space in silence as a tribute to the loss of so many lives and of sympathy with the Admiralty and relatives of the crew. I sent a telegram to the Secretary of State merely recording what had happened, suggesting that he might like to pass it on to the Admiralty. This morning I received the following from the Secretary of State:—

"Your telegram H.M.S. *Thetis* has been communicated to the Lords Commissioners of the Admiralty who asked me to convey to you and the Legislative Council an expression of their deep appreciation of the sympathy contained therein."

#### MINUTES

The minutes of the meeting of the 7th June, 1939, were confirmed.

#### PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

By MR. WILLAN:

The Select Committee Report on the Electric Power (Amendment) Bill.

The Select Committee Report on the Kenya Indian and Arab (Territorial) Company Bill.

The Select Committee Report on the Employment of Servants (Amendment) Bill.

The Select Committee Report on the Employment of Women, Young Persons and Children (Amendment) Bill.

The Select Committee Report on the Resident Labourers (Amendment) Bill.

By MR. WATERS:

The Select Committee Report on the Sisal Industry Bill.

By SIR GODFREY RHODES:

The Report on the Audit of Accounts, K.U.R. & H. Branch Office, 1938.

#### ORAL ANSWERS TO QUESTIONS

No. 22—LOCAL CIVIL SERVICE APPOINTMENTS

MR. ISHER DASS asked:—

1. Will Government be pleased to state—

(a) the number of local born and locally educated European and Asian youths appointed to the Local Civil Service during 1936, 1937, 1938 and 1939?

(b) the numbers of *not* local born nor locally educated Europeans and Asians appointed to the same service during the same period?

(c) the reason for the appointment to the Local Civil Service of persons not local born nor locally educated if such appointments have been made during the years above mentioned?

(d) whether the appointments referred to in (b) do not constitute an infringement of the declared policy of Government and whether they do not cause uneasiness among the settled European and Asian population of the Colony?

2. Will Government give an assurance that henceforth only local born and locally educated youths will be engaged in the European and Asian Local Civil Services?

MR. HARRAGIN: The numbers of locally born and locally educated European and Asian youths appointed to the Local Civil Services during 1936, 1937, 1938, and 1939 are as follows:—

	1936	1937	1938	1939
1. (a) Europeans	13	32	22	22
Asians	19	30	41	24
(b) Europeans	21	35	35	14
Asians	15	18	38	6



[Mr. Harragin]

Certain appointments in category (b) were made to the combined Posts and Telegraphs Department for service in Tanganyika and Uganda. The figures in this connexion are:—

	1936	1937	1938	1939
<b>Europeans—</b>				
For Kenya	—	10	3	—
For Tanganyika	1	7	—	2
For Uganda	—	4	—	—
	1	21	3	2

**Asians—**

	1936	1937	1938	1939
For Kenya	9	3	10	2
For Tanganyika	—	7	16	1
For Uganda	1	1	4	—
	10	11	30	3

(c) The appointments of persons not born and educated locally were necessary in view of the technical qualifications and/or previous experience which the posts demanded and which were not possessed by candidates born and/or educated locally.

(d) It is the policy of Government in making appointments to vacancies to give preference to candidates born and educated in the Colony provided no sacrifice of efficiency is involved. In view of this and of the reply to (c), the appointments in question do not constitute an infringement of the policy of Government.

2. Candidates born and educated locally will continue to receive preferential consideration for posts for which they are suitable, but for the reasons stated above no assurance on the lines requested can be given.

#### No. 28—KISUMU ELECTRIC LIGHT

MR. KASIM asked:—

What is the result of the Government negotiations with the Electric Light Company to instal electric plants for the Kisumu Township?

MR. WILLOUGHBY: The East African Power and Lighting Company, Limited, have stated their willingness to give favourable consideration to the es-

tablishment of an undertaking for the general supply, under licence, of electricity in Kisumu Township, if Government and the Railways and Harbour Administration will give them an assurance that supplies of electricity will be taken for Government and Railway buildings.

An assurance, which it is understood will be considered by the Company as adequate, has been conveyed to them and it is expected that the Company will apply for licences in the near future.

#### No. 29—£150,000 ROAD PROGRAMME

MR. COOKE asked:—

Will the Government state what steps are being taken to carry out the £150,000 road programme recommended last year by the sub-committee of the Road Board?

If it is impracticable to raise the sum required outside this Colony, will Government consider the raising of an interloan for the purpose?

MR. LOCKHART: The financial implications of the loan programme recommended by the sub-committee of the Central Roads and Traffic Board are still under consideration. The latter part of the question does not, therefore, arise.

#### No. 32—LAND AND WATER PRESERVATION BILL

MR. GHERSIE asked:—

When is it the intention of Government to introduce the "Bill to Provide for the Preservation of the Land and Water Resources of the Colony and for Matters Incidental thereto"?

MR. HARRAGIN: The Bill which was circulated to interested local bodies was considered in the light of criticisms offered, and as a result it has been decided that the Acting Attorney General shall draft a new Bill for consideration before publication with a view to introduction into the Legislative Council.

#### No. 33—ABYSSINIAN REFUGEES CAMP

MR. WRIGHT asked:—

1. Is it Government's intention to move the Isiolo Camp containing Abyssinian refugees elsewhere?

[Mr. Wright]

2. If the answer be in the affirmative, is it the purpose of Government to establish the said Camp within the area defined by Order in Council as the Highlands reserved for European settlement?

3. If the answer to (2) be in the affirmative, will Government give an assurance that such proposals will be subject to the veto of the Highlands Board?

MR. HARRAGIN: 1. Government is considering the possibility of moving the Abyssinian Refugees Camp from Isolo, but no definite decision has yet been reached.

2. The answer to the second part of the question does not therefore arise.

3. In the event of Government deciding to move the Camp to a site in the Highlands, the Highlands Board will be given an opportunity of making representations before any move takes place.

#### No. 34—DAIRY INDUSTRY BILL

LORD FRANCIS SCOTT asked:—

Will Government state what is the present position of the Dairy Industry Bill?

MR. WATERS: The matter has been the subject of examination by the Standing Board of Economic Development, whose report has now been prepared for signature by members and submission to Government.

LORD FRANCIS SCOTT: Your Excellency, arising out of that is it not a fact that this was decided by the Board at least six weeks ago and if so could we be told why there has been this inordinate delay?

MR. LOCKHART: Because we have been waiting for minority reports from two members of the Board which, I believe I am correct in saying, were not received until the day before yesterday.

LORD FRANCIS SCOTT: I think when there are minority reports to be given Government should see that they receive them promptly so that valuable reports should not be held up.

MR. LOCKHART: I must express my deep regret if any delay has occurred.

#### No. 35—SALARY OF INCOME TAX COMMISSIONER

MAJOR GROGAN asked:—

1. What are the total estimated emoluments of the Commissioner for Income Tax with detailed particulars of the same?

2. What were the comparable emoluments of the present incumbent in his previous employment?

MR. LOCKHART: The terms on which the present Commissioner for Income Tax was appointed were:—

1. (a) Salary, £1,350.

(b) Free quarters or an allowance to a maximum of £150 per annum in lieu.

(c) Free first class passage and £40 family passage allowance once each way in each tour.

(d) Free medical attention for himself, but not for his family.

2. No particulars have been received by Government.

#### No. 38—TRANS NZOIA VETERINARY OFFICER AND STOCK INSPECTOR

COL. KIRKWOOD asked:—

(a) Will Government please state when it proposes appointing a Veterinary Officer to the Trans Nzoi District?

(b) Will Government please state when it proposes appointing a Stock Inspector to the Trans Nzoi District?

MR. DAUBNEY: (a) It is proposed to consider in connexion with the Colony's Draft Estimates for 1940 an additional post of Veterinary Officer, with a view to his being stationed in the Trans Nzoi District if the appointment is approved.

(b) A Stock Inspector has already been detailed to re-open the Kitale Veterinary Station. At the moment he is assisting in emergency rinderpest inoculations in the Elgeyo District, but as soon as these inoculations are finished and quarters can be arranged he will proceed to Kitale for district duties.

## No. 39—NATURALIZATION

MAJOR CAVENDISI-BENTINCK asked:—

Have any steps been taken by this Government to induce the Imperial Government to take cognisance of the urgent necessity for introducing alterations to the laws and regulations in regard to naturalization as a British subject in protectorates and mandated territories?

MR. HARRAGIN: The answer is in the affirmative. The question is at present under consideration by His Majesty's Government in the United Kingdom.

## No. 41—LOCAL CIVIL SERVICE COMMITTEE

MR. GHERSIE asked:—

(a) When was the committee of inquiry into the terms and conditions of the Local Civil Service promised by His Excellency early last year appointed, when did it proceed to hear evidence, and when was the taking of evidence concluded?

(b) Has the committee yet presented its report?

(c) If not, what is delaying its presentation?

(d) Can Government now say by when the report will be presented and made available to members of Council?

MR. HARRAGIN: (a) The committee of inquiry was appointed on the 7th May, 1938. They concluded taking evidence on the 25th November, 1938. Some delay was caused as various bodies wished to submit written memoranda.

(b) The answer is in the negative.

(c) Government is informed that the report is in the process of being printed.

(d) Government hopes to be able to lay the report on the table at the next session of this Council.

## No. 44—GRASS AND BUSH FIRES

MAJOR GROGAN asked:—

Whether reinforcing legislation can be introduced to protect the Colony from the menace of grass and bush fires, and especially for the appointment of Fire Wardens with appropriate powers and fire-patrols?

MR. HARRAGIN: It is the intention of Government to introduce into the Legislative Council at the next session a Bill to Amend the Careless Use of Fires Prevention Ordinance (Chapter 76 of the Revised Edition of the Laws of Kenya), with the object of reinforcing present legislation. The question of the appointment of Firewardens will be considered in connexion with the Bill.

## BILLS

## FIRST READING

On the motion of Mr. Willan the following Bill was read a first time:—

The Coffee Industry (Amendment) Bill.

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

## In Committee

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

Kenya Regiment (Territorial Force) Bill.

Police (Amendment) Bill.

Local Government (Rating) (Amendment) Bill.

Local Government (District Councils) (Amendment) Bill.

Official Secrets Bill.

MR. DENNISON seconded.

The question was put and carried.

Council went into Committee.

His Excellency moved into the chair.

The Kenya Regiment (Territorial Force) Bill was considered clause by clause.

## Clause 1.

MR. WILLAN moved that in line 2 of clause 1 the word and symbols "(Amendment)" be inserted before the word "Ordinance".

The question was put and carried.

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

## Clause 3.

MR. WILLAN moved that the word "under" be deleted in line 5 and that the following words "by virtue of" be inserted

[Mr. Willan]

between the word "Regiment" and the word "the" in the same line; that at the end of line 8 immediately after the word "member" two commas and the following words ", as the case may be," be inserted.

The question was put and carried.

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

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

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

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

The Official Secrets Bill was considered clause by clause.

## Clause 4.

MR. WILLAN moved that in paragraph (c) of sub-clause (1), line 6, the word "the" be deleted and substituted by the word "an"; that in sub-clause (2), line 14, a comma be added after the word "authority"; that in sub-clause (3), line 4, the word "evidenced" be deleted and substituted by the word "evidence".

The question was put and carried.

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

## Clause 14.

MR. WILLAN moved that the word "of" be deleted in line 12 of sub-clause (1) and substituted by the words "or on".

The question was put and carried.

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

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

The Police (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill.

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

And the following Bills with amendment:—

The Kenya Regiment (Territorial Force) (Amendment) Bill.

The Official Secrets Bill.

The question was put and carried.

His Excellency vacated the chair.

Council resumed its sitting.

His Excellency reported the following Bills without amendment:—

The Police (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill.

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

And the following Bills with amendment:—

The Kenya Regiment (Territorial Force) (Amendment) Bill.

The Official Secrets Bill.

## THIRD READINGS

MR. WILLAN moved that the five above-named Bills be read a third time and passed.

MR. DENNISON seconded.

The five Bills were each read a third time and passed.

LOAN ACCOUNT—EXPENDITURE  
OF £3,079

## MOTION

MR. LOCKHART: Your Excellency, I beg to move:—

Be it resolved that this Council hereby approves the expenditure of a sum of £3,079 upon the purposes specified in the Schedule hereto as a charge against Loan Account and further approves provision being made therefor by a reallocation of the following amount from the sums unallocated:—

Public Buildings, Other Buildings,  
Unallocated, £3,079.

## Schedule:—

Public Buildings, Educational Buildings, European: Nairobi (Boys Boarding: European Primary School), £3,079.

This motion is merely to give formal approval to a transfer in the Loan Schedule in order to cover expenditure which has already been approved by Council.

MR. WILLAN seconded.

The question was put and carried.

**LOANS  
MOTION**

**MAJOR CAVENDISH-BENTINCK:**

Your Excellency, I beg to move the motion standing in my name:

"In view of the absence of any further information regarding the provision of finance for essential developmental purposes, this Council is of the opinion that steps should be taken to provide some portion of the finance which is urgently required by the organization of local credit and monetary resources and/or by raising a loan locally independently of the Crown Agents and the Treasury in London."

Sir, I cannot believe that the incentives which have prompted hon. members on this side of Council to bring forward this motion require much justification; nor should its terms require much amplification.

Some six or seven weeks ago, during the course of this same session, my hon. friend the noble lord the hon. Member for the Rift Valley, sponsored a motion on our behalf regarding the Communication from the Chair, and in that expressed our disappointment that no adequate references were made to basic economic problems which faced the country and to the fact that no references were made to the steps which were being taken to provide finance for essential and urgent developmental requirements.

Now, Sir, to-day we still lack that information and we therefore contend that if Government is in fact the Government of Kenya, and not what some unkind people call or describe as a sub-committee of the Colonial Office guild, then its duty is obvious. This motion merely supports the line of action which we feel certain Government is considering by affirming that any Government which takes its duties seriously, and which realizes that the development of the country for which it is responsible is being retarded, if not jeopardized, by external obstruction, must itself take the initiative and devise measures to remedy the situation.

Now, Sir, it may be suggested that a delay of six or seven weeks scarcely justifies the impatience which is being

displayed on this side of Council. For that reason I should like to clarify the position.

This country, during past years, has had to limp through a period of acute world depression, and during the course of that painful experience, we had to curtail expenditure drastically and we had to refrain from commitments of every kind. Young countries, however, are endowed with vitality and a certain amount of elasticity, and on the whole, we managed to pull through this period better than some people expected we would. But during that time many requirements became evident, and many demands were made for all kinds of developmental purposes, and even for maintenance expenditure, and practically all the demands had to be turned down.

Now, Sir, that state of affairs, however, could not go on for ever, and some two years ago or more, a careful survey was made of these demands, and those which it was unanimously agreed were absolutely essential and should not be put off were sifted from those which could be classified as being "eminently desirable".

At that time, eighteen months or more ago, it was realized that, owing to clouds on the international horizon and owing to other factors, we were again faced with the prospect of a difficult period, and we realized that the moment was possibly not opportune for floating a big loan, or for incurring heavy interest and sinking fund liabilities at any rate until further investigation had been made and agreement reached, both as to the precise amount required and the exact purposes on which loan moneys would be expended.

Also, Sir, at that time, there were further complicatory factors which had to be considered, such as a claim which had been made in respect of a £54 million grant for early Railway construction, and certain details in regard to the redemption of the first of our high interest loans in 1941.

For these reasons, all further consideration of the schedules of required expenditure on projects which we considered as being "eminently desirable" was temporarily postponed, but the list of urgent requirements was again very

[Major Cavendish-Bentinck] absolutely combed through, and only absolutely essential items were scheduled in regard to financial provision for which we all agreed no further delay was permissible. Our allocations were combed to the absolute minimum, and a carefully thought-out scheme was evolved whereby the necessary finance could be temporarily provided without involving the country in disproportionate recurrent interest or sinking fund charges. We added, however, that should this scheme not meet with approval, Government should be empowered to raise the sum required through the normal channels and with the least possible delay.

Now among the items which were scheduled and on which some further expenditure was considered essential were the Land and Agricultural Bank, maintenance of roads and improvements, educational requirements, one or two hospitals for which a special case had been made out, agricultural development and settlement, as well as the provision of money for a few urgently required buildings, and, I believe, a few Municipal projects which had been approved.

Now, Sir, I would emphasize that these inquiries were undertaken some time ago, during the latter part of 1937, and since then nothing has been done, and to-day we are in June, 1939! I should like to say something about the necessity for the provision of funds for one or two of the projects I have named.

Let us take the Land and Agricultural Bank first. I do not think it can be disputed that on the whole the Land Bank is efficiently administered, and has done more to assist agrarian consolidation and agricultural development in a comparatively short space of time than has almost any other institution. The capital originally authorized and raised in 1931 was, I believe, £240,000. In June, 1933, a further £260,000 was made available. In 1936 it was obvious that more money was required and a further £500,000 was applied for, of which £250,000 was actually raised, but out of that amount £100,000 was earmarked for the Farmers Conciliation Board which only left £150,000 for the Land Bank proper.

Some eighteen months ago it became evident not only that the further £250,000

which, I understand, had been more or less authorized, would be required, but that in the interests of the Colony, provision of yet further capital for the Land Bank, whose balance sheet was entirely satisfactory from every point of view, would be needed. Application, I understand was made for this money, but as far as we know, no reply has yet been received—a delay of over eighteen months.

I hope during the course of this debate we shall be told exactly what the position is, because it is possible that quite recently, as a result of tremendous pressure and mountains of correspondence, we may have received some authorization to raise further moneys for the Land Bank. I can only express the hope that this is the case, because I believe that for some considerable time we have been in danger of having to suspend all further Land Bank activities. Actually, I am certain that it has only been due to careful handling on the part of the Land Bank Board that far greater difficulties were not experienced during last year. As things are, I believe that by the end of this month there will be no money left in the till unless something has been done and we get further funds for the Land Bank. I have no doubt we will be told what the position is.

I would, Sir, stress that the Land Bank and its activities, viewed from any business aspect are absolutely sound. It is run as a business concern, and pays its way. Its activities are absolutely essential to the development of this country and therefore, why should we not be allowed to enlarge its activities as and when necessary?

Now, Sir, I would like to turn from the Land Bank to the road position. For years past, members on this side of Council have strongly urged the necessity for better roads and we have thought that better roads would help in the development of the country. I think everyone must admit that reasonable communications are essential to any country and I also think that everybody admits that our roads are a by-word almost in every country. In 1937, I think, a Committee was appointed with a great flourish of trumpets to draw up plans that were supposed to be within

[Major Cavendish-Bentinck] the financial capacity of the country; plans to remedy the road position to some extent. That Committee reported at least eighteen months, if not two years, ago, and recommended that a sum of £250,000 should be made available, and as a result of very careful investigations, they produced in detail a programme of road expenditure to that amount to cover a period of five years.

Government, in view of the financial situation, was reluctantly obliged to confine that scheme to a maximum expenditure of £150,000, at least that is what I understood the position was, and asked the Committee to readjust their programme to within this reduced figure. That, Sir, was done, but the gentlemen who sat on that Committee might just as well not have wasted their time because here we are, more than eighteen months later, no further forward.

In that connexion I can only express amazement at the answer given to my hon. friend, the Member for the Coast, this morning when we were told that this project was still under consideration. As far as I understood, the project had been accepted months or years ago, and I hope we will find out exactly where we stand there.

MR. LOCKHART: Your Excellency, the answer was that the financial implications were still under consideration and not the project itself.

MAJOR CAVENDISH-BENTINCK: Well, perhaps, that clears up Government's intention though it merely strengthens my case.

I would again stress that the question of the improvement of our roads is a very important one. We talk about tourists and encouraging tourist traffic, about inter-territorial communications, about the relief of certain areas which are some distance from the Railway, and about settlement, but owing to the difficulties of considering financial implications we have to wait for months and months before anything is done.

Let us now turn to education. I am sure everyone will agree that education is one of the most vital questions which affect this country. I personally believe that the future prosperity of Kenya

depends probably as much on the provision of adequate educational facilities as on any other one factor. We must provide for the young people born in this country and we must provide, Sir, educational facilities competitive with those offered elsewhere if we are going to attract settlers.

What is the position to-day? I would like to start first at the top and deal with secondary education in the first place, and although I shall confine my remarks to European education, possibly faults can be found with the education of other communities also.

In Kenya, we have a Government secondary school for boys and one for girls. Both these schools are full. It was always intended that the Prince of Wales School should be a central institution for East Africa as a whole, and one of which we should all be very proud. I will say at once that I believe, and I am sure, that this ambition will in due course be realized. But what is the position to-day? The Prince of Wales School was originally designed for eighty boarders, but since 1937, 105 or more boys have had to be boarded there—which is some 40 per cent in excess of the original plan.

This, Sir, has only been possible by readjustments in the layout of beds and various other arrangements made by the headmaster with the acquiescence of the School Committee, which naturally preferred this solution to the only other alternative of excluding a large number of boys from entering the School. I would add, however, Sir, that I believe the arrangements as regards sleeping, bathing, lavatory accommodation and so on as a whole are regarded by the School Committee as insufficient. In any event, it has only been possible even to accommodate this extra number by renting a neighbouring building as a hostel, a very unsatisfactory arrangement in some ways because it is subject to three months' notice on either side. I know I may be told in reply that to-day there are seven beds vacant in the School at the moment, but I will hastily answer that these are not genuinely vacant in that there was no alternative but to keep them free for the moment in order to have a few beds ready for the extra boys who will be starting at the beginning of the school

[Major Cavendish-Bentinck] year. They could have been filled easily several times over, for it is quite possible to do so.

Furthermore, so short are we of accommodation that we have now been constrained to place artificial barriers in the way of boys entering the secondary school. Up to 1937, the standard laid down was that it was necessary for a boy to obtain 43 per cent of marks in the entrance examination to enable him to qualify to get into the Prince of Wales School. In 1938, owing to the numbers of applications in excess of the accommodation, this percentage was raised to 55 per cent with the result that while in 1937, forty-eight boys passed and were accepted, in 1938, out of fifty-nine boys who obtained the 43 per cent qualification which would have enabled them to enter the School in 1937, only thirty-three obtained the 55 per cent and the remaining twenty-six had to be turned away.

Now it has also become necessary owing to shortage of accommodation and our inability to get funds to discontinue the alternative course to that of School Certificate. Another very undesirable feature indeed is that we have had to refuse to take any further boys from Uganda and Tanganyika—seven applications received last year had to be refused—and I look on this as a catastrophe from every point of view.

What the position this year will be it is difficult to visualize, but in September next there will be at least twenty-one boys who will have attained the age to enter the Prince of Wales School, and, incidentally, this position is making that School top-heavy, that is to say, there is a disproportionate number of boys in the upper part of the School, as, owing to circumstances, insufficient numbers of younger boys can be admitted.

Early in 1938 the School Committee realized the problem and expressed grave concern in regard to the position, and Sir Armiel Wade, late Colonial Secretary, who knew of the plans for raising money for these very urgent purposes, informed the School Committee that a new boarding block would shortly be commenced and would be completed by April, 1939. Nobody can blame Sir Armiel Wade for making this assurance.

He made it, or at any rate he gave this hope, because naturally he thought, as we all thought, that we would be allowed to get money for essential requirements. We did not expect to be obstructed. But here we are in the middle of June, 1939, and as yet there is not one sign whatever of any work being begun on that new wing.

The same difficulties are occurring in regard to primary schools. Nairobi schools are full; Kitale, Eldoret and Nakuru are, I believe, over-full and we shall soon reach the same stage in the primary schools that we have reached in the secondary schools. In other words, all attempts to provide on a modest scale the finance necessary for the provision of vitally essential educational facilities for our own children are deliberately obstructed and rendered inoperative, while at the same time we are expected to produce without making any protest, a large sum of money for the provision of a ridiculously premature and high-falutin university standard of education for natives in a neighbouring territory! You can hardly wonder that there is impatience on this side of Council. The position is absurd, and I ask Government: Are they really prepared to sit still and allow the education position to get worse, and do nothing, simply because the Colonial Office tells them to keep quiet? Sir, I cannot believe that that is Government's view.

We now turn to "agricultural development" and "settlement". Agricultural development is dependent on our finding a solution to the problems of agrarian consolidation and increased settlement in this country. We have to remember that we are a new country, and that we are now only beginning to reap the benefits of experience, much of which has only been obtained at great cost. Furthermore, pioneers not only have had to pay for their experience, but they have had to face adverse monetary factors, world depression, lack of communications, absence of organized marketing facilities, unknown diseases and other incredible difficulties. The newcomer, to-day, has a thousand per cent easier path, a vast number of these difficulties having now been overcome.

For years past, Sir, scarcely a session has gone by but hon. members on this

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side of Council have pressed for what I term "measures of agrarian reconstruction and consolidation". I will at once admit that as a result a good deal has been done by means of agricultural cereal advances, the Land Bank, the Farmers' Assistance and Mortgageors' Relief Bills, and by the Farmers' Conciliation Board. But, Sir, more remains to be done if we are to put our house in order.

I maintain that there is urgent necessity for the creation of some fund, or by organization of local credit and monetary resources, to assist individual farmers in those special areas which have had peculiar difficulties with which to contend. Many parts of this country are comparatively prosperous, but in others the tide has not yet turned and in these the difficulty lies in the factor that many are heavily indebted to the Land Bank alone. The areas to which I refer were at one time prosperous, but in many cases reliance was placed on one crop only. Borrowing facilities were, perhaps, too easily afforded in the light of those prosperous times, and then, through no fault of the local people, disease attacked the particular crop on which they relied, and thus planted-up land, which at one time represented ample security, and on which considerable sums had been borrowed for further development, receded in value in catastrophic proportions.

The Land Bank itself probably remains covered, but it can lend no more, and the farmer realizes that he has to change over to other crops and must adopt other methods of farming, but cannot raise another penny to do so. Some of that land is first-class agricultural land, but owing to indebtedness the occupier finds himself in a hopeless position, completely immobilized, and knows he is going under. Surely we cannot stand by and see good land going back and experienced men going under? In many cases we could enforce subdivisions, which would render more land available for interlarding in such areas an element of fresh settlement, and at the same time reduce the existing holder's indebtedness, probably giving him the margin whereby he could start afresh.

Personally, I do not think it is impossible to devise ways and means whereby, without any loss to Government, persons so situated could be relieved of interest charges during the years while they are re-orienting their farming activities, even though they would have to pay slightly higher rates of interest over a longer period. I have a scheme, which, at any rate for what it is worth, I propose to submit to the Standing Board of Economic Development and the Land Bank authorities. But in the meantime, I cannot but stress that for eighteen months we have asked for money for such purposes and we are no further forward to-day—and these people cannot go on very much longer.

We then turn to settlement. This country will never go ahead without increased European population. We consider at any rate that this is vital to further progress. For years we have been at work devising settlement and publicity schemes, and these have now reached fruition, and definite settlement schemes have been carefully thought out and drawn up, competitive to facilities offered by other parts of the world. But naturally these require finance and now, are we going to be held up until our plans are obsolete by the obstruction of a few gentlemen in Downing Street?

I would appeal to Your Excellency and to your Government, by pointing out that the year which roll by, wasted by this deliberate policy of obstruction, cannot be replaced. Not only does the existing state of affairs break the hearts of those who are attempting to build up something worth while in this part of Africa, but eventually, this kind of handling of the Colonial Empire is going to lead to its disintegration.

I am going to beg hon. members on the other side of Council to remember that although in some cases they may be apt to regard themselves as servants of the Colonial Office, so long as they are here they are paid by and are the servants of this country, and it is this country's interests that should dominate in their minds. If and when it becomes necessary in the interests of those committed to your charge, you hon. members on the other side of Council, if you are the Government of this country, you have a moral

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obligation not to confine yourselves to protests, but to strike back at, and if necessary to smash the antiquated bureaucratic machine that is strangling the development of this country.

The truth of the matter is that out here we have outgrown this type of Colonial Office control. In the rudimentary stages of a new territory no doubt there may be something to be said for direct control from England, but after a certain stage has been reached, such control should automatically become more elastic. The man on the spot should be trusted, and the people who have made their homes in the country, and who in many cases have more experience than the permanent official, should be given at least a greater control of their affairs.

In Kenya, Sir, we maintain that stage has been reached, and if we are not given a more effective voice and increased powers in regard to our own affairs, well, we shall take them sooner or later. Co-operation with Government will have to cease, as we cannot indefinitely remain passive and see the years roll by and one's life work frustrated.

I do not believe that hon. members of Government who have had experience of the co-operation of hon. members on this side of Council, would suggest that we are totally incompetent or totally irresponsible. We are alive to what is reasonable, and what is unreasonable as regards expenditure, and I believe, Sir, you will find that we are quite ready to shoulder responsibility, and, when necessary, to face criticism. Furthermore, Kenya has never failed to meet its commitments, and I can see no reason why it should be expected to fail to meet its obligations in the future. It is a country with enormous possibilities if it is only given a chance to develop. Sir, it has not been given a fair chance in the last two years.

In conclusion I would add this. In spite of the fact that I have been attacking Government, I realize, and am in a position to know, that the present Government under Your Excellency has done all possible, short of kicking over the traces, to remedy the present state of affairs. It has done far more than any previous Government that I have known,

and far more than the general public realizes. I make this tribute, Sir, without reserve, as I think the public should appreciate the efforts that have been made.

At the same time, unfortunately, Governments are apt to be judged by results and not by intentions and I consider that if we are not to be allowed to make normal provision for absolutely essential requirements through normal channels, the time has come when we must be prepared to kick over the traces, and it becomes the duty of Government not to hinder but to help us to disturb the complacency of those sonnambullists in Whitehall. For that reason, Sir, if only as a demonstration which may usefully serve to support representations which I know Your Excellency's Government have made, I would ask Your Excellency to allow a free vote on this motion, as, if a motion such as this were passed in the legislature of a country which has reached this stage, it might serve as a timely warning, as the writing on the wall, which many centuries ago warned another crumbling, but still obstructive and top-heavy institution, that its days were numbered, as it had been weighed in the balance and found wanting.

Sir, we maintain in this respect the Colonial Office has been weighed in the balance and found sadly wanting.

I beg to move.

*Council adjourned for the usual interval.*

*On resuming:*

LADY SIDNEY FARRAR: Your Excellency, I beg to second the motion moved by the hon. and gallant Member for Nairobi North. As an elected member of this Council—and I know I can speak for the people I represent—I can wholeheartedly endorse the remarks of the hon. and gallant mover when he spoke of our appreciation of the fact that the present Government under Your Excellency has done everything possible, short of breaking the leading reins of the Colonial Office, to meet the urgent needs of this Colony.

I think equally that Government must agree that we also have loyally co-operated in a "government by agreement" and they must agree that we have

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refrained from criticism as far as possible in endeavouring to obtain unanimity on Select Committees, frequently by giving way to a very considerable extent in our own opinions, and by refraining on several occasions from action which we understand might embarrass Government.

I am satisfied that Government has reciprocated this attitude and I feel sure that the country as a whole appreciates this fact but, nevertheless, the fact remains that we have shown very great patience in the face of unconscionable delays caused at every turn by referring the smallest matter back for Colonial Office views or rather I should like to say for Colonial Office pigeon-holing.

I think that there is no doubt at all also that we have shown very considerable patience in the face of the fact of the absence of any further information with regard to the provision of finance for essential developmental purposes.

The policy of appeasement and agreement is invaluable when it puts an end to serious friction, but it is harmful when it fails and sinks into a *laissez faire* policy, and there is a growing impression in the Colony at the present time that there are signs of this degeneration. Consequently there are also signs in the Colony as a whole of growing uneasiness and lack of confidence. I think that if this feeling is analysed it will be found to arise from the fact that the work and reports and recommendations of 75 per cent of the committees and commissions appointed to go into the problems facing the country in the last two years have been nullified by a total lack of funds to carry out the recommendations.

In everyday life the landlord of an estate is regarded as a blackguard on the one hand and a fool on the other if he lets his house and property fall into such a state of disrepair that the tenants so bleed his land that it becomes impossible for him to obtain more satisfactory tenants. Even if the Colonial Office and Treasury show this criminal foolishness, their agents on the spot, our Kenya Government, are failing in their duty to them and to the land they are administering if they do not take drastic steps of acting

on their own initiative at times to protect the interests of this either too busy or too supine—certainly obstinate—landlord rather than that all progress on his land should cease and the value of his property dwindle to half of what it should be.

We have heard the hon. mover enumerate some of the pressing needs for which a loan is required and has been required for some considerable period of time, and we know that only a small proportion of what we really believe to be the needs of the Colony are represented in the items that make up the total which was asked for. Those responsible for making up this total undoubtedly have pared them down to the bone. Personally, I should like to say that I think that in many instances they have shaved the bone itself in their endeavours to ensure that the indebtedness of the Colony should not become such that we might have to default in any way whatsoever on our obligations. Of course the appalling burden of pensions must be met but that a loan should be raised for developing or even safeguarding the valuable assets that we have in this Colony and the resources that are also here, or even to protect the taxpayer, who has to pay the money to find these pensions, is apparently unthinkable!

We have large areas of land in this Colony acknowledged by experts to be as fertile as any in the world and at the present time they are going back to bush for the lack of money to assist those pioneer families who have put everything they possess, whether it is a few hundred pounds or whether it is in the nature of thousands of pounds, into the experimental farms of early days, so that their children and not only their children but those of other races, white, black or brown, might profit from their mistakes and be able to produce yet further primary products towards the self-sufficiency of the material amenities in this Colony.

There is an acknowledged need for increased settlement to develop and consolidate this link of Empire, and there is an important settlement scheme at the present time, but there is no money available to implement it; and we see a growing source of wealth in the tourist

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traffic, which could be of very great value in assisting revenue at the present time, passing us by. The tourist looks askance at the roads on which he has to travel and the commercial man, exploring new fields for investment, thinks of them as nothing more than farm-road tracks to be avoided at any cost. And as a result of that now a great part of that traffic is going through the Belgian Congo rather than face the roads or rather the farm tracks of Kenya.

Even the programme we have had laid before us of £150,000—laid before us eighteen months ago—does not really even begin to meet the case, apart from the very urgent need of first-class roads for defence purposes. I do not think any number of mistakes will make up for the deficiency of this primary necessity in modern warfare in East Africa—the need of arterial roads able to bear the weight of present-day military traffic which would be employed in case of any form of warfare, as we have seen employed in the Abyssinian campaign.

Turning to another of the urgent needs of finance in this country we have always been given to understand that Great Britain takes a lead in social services. Far from having the material funds available for keeping up this standard in our own country, we are not even permitted the equivalent of a small municipal loan to ensure our children receiving the education that is accorded the child of every working man in England. If such a state of affairs existed in any locality in Great Britain at the present time it would be a headline scandal in the *Daily Mail*.

At the present time the educational position in Kenya is simply this: that any child who is at all backward or slow at the age of fourteen years is debarred from all further education in this country. We have valuable schemes about alternative secondary education, farm schools and all the rest of it, but they are so much waste of time for there is no money to carry out the recommendations. It is true a certain sum, but it is only a fragmentary part, can be obtained for the schemes and works for which loans are required by squeezing it from other services or by managing to squeeze another drop out of the tax-

payer, but, and I feel strongly on this subject, it is the public feeling that this is a very harmful course to pursue in the long run.

Last year, in the debate on the Motion with regard to agriculture we pressed for a constructive policy of steady development. That motion was carried by this Council. In the debate on the Estimates last November we found an urgent need for a progressive road policy. Your Excellency assured us in your speech last session that developmental schemes were taking a primary part in the deliberations of Executive Council but still we do not hear of funds being available to put into effect all these policies or schemes, or the results of such deliberations.

Already it is rather late for funds for which we have asked to save the situation, particularly in certain distressed areas of the farming community. Many farmers during the period of waiting for it to come have gone to all intents and purposes utterly bankrupt; the farmers who have worked for years and who have put their hearts as well as their money into their work, and who have not left their farms for many years, hanging on to the very last moment because they understood that their representatives were fighting for them and that something was going to be done for them. These farmers, particularly within the last twelve months have had to give up and leave their land. It is not a question of raising a loan within the next ten years and that then we shall be all right. It is a question of within the next ten months.

We have been told from the Colonial Office that we are not credit-worthy for the raising of these loans. But they do not tell us why. We are advised against the dangers of over-capitalization. How much capital has been sunk by Government in this Colony over and above the capital necessary to pay for the present pensions? I can find no trace whatsoever and we have never been permitted to discover for ourselves whether this so-called lack of credit-worthiness is a myth or not. I will quote one instance: A few years ago there was a very pressing need, actually acknowledged by all parties and communities, for a new building for the girls' secondary school in Nairobi.



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and at that time Government had no loan funds available. The position was urgent but a few inquiries from the banks and other sources disclosed that a very surprisingly large amount of money was available for investment, given reasonable security. At the present time a Government-floated loan in this Colony would produce the amount we need at a reasonable rate of interest with no difficulty at all.

Even if after careful investigation—I do not know whether this investigation will be made, but doubtless it will—it is definitely found to be unwise to borrow from the source which is the natural one to think of, from the funds of the K.U.R. and H., this Colony can make application for loan funds now which it will not be able to do say in a few years' time.

We have in you, Sir, a Governor and one of His Majesty's most responsible administrative officers who in England would never be expected to submit to permanent officials pigeon-holing your decisions, forgetting them and probably not even answering them. Associated with you, Sir, have been appointed as heads of departments, the hon. Financial Secretary and the hon. Acting Chief Secretary, who are men with long records of valuable service, and you have associated with them in Executive Council the responsible heads of the settler community who are very vividly aware of the financial implications of the Colony as a whole. And we submit, we who represent the people and the interests of the Colony, that you should make strong representations to the Home Government of the harmful effects of these delays, with particular reference to the urgency of raising a loan for carrying out urgent measures of internal development and social services with the alternative of raising a loan locally, independently of the Crown Agents.

**LORD FRANCIS SCOTT:** Sir, in rising to support the motion, I do not propose to go over all the ground which has been so ably covered by my hon. colleagues. I only want to touch on one or two points.

To take one point which was mentioned by the hon. mover with regard to the funds available for the Land and

Agricultural Bank, I should like to ask, when he speaks, if the hon. the Financial Secretary will explain how it is that as long ago as 1936, in the Schedule of Colonial Loans, there was already the sum of a million pounds for the Land Bank in that document, and why, if that was in that document three years ago, we are not able to draw the money from that account.

We all know that, when it comes to getting money from our bureaucratic friends in England, they will probably agree to finance being found for such completely unremunerative propositions as buildings. That is their way. But as soon as you suggest that you should raise a sum of money for the purpose of development and things that may bring some return, then they will find every objection to letting us have money for these purposes.

We have here some of the urgent needs which are required, and in this connexion it does seem that if we cannot get the money in London we should take every possible step to try and raise that money locally. I should like to ask the hon. Financial Secretary whether he has made inquiries as to the sources of possible money for developmental purposes? The Railway, I know, are always ready to invest their money in the Colony in preference to sending it outside, provided that they can get a reasonable return on it. They do not want to extract the last penny or get excessive interest.

I believe that when the last Kenya loan was floated a certain amount was allotted to this country and I believe that there was no difficulty in that amount being subscribed. I do suggest that there is quite a lot of money in this Colony to-day which would welcome the opportunity of being invested in some funds which bore the signature of the Government and were therefore guaranteed as safe trust funds.

On this question of money we were told recently that the price of money was likely to go up because of the large loans which would be necessary in England for rearmament. I wonder whether our hon. friend opposite has read two letters in *The Times* early in May on this subject by Professor Keynes, in which he put up a very strong plea that Govern-

[Lord Francis Scott]

ment should not float these loans at a high rate of interest at all. He said that it was wrong that investors should be encouraged to profiteer from such loans when sacrifices were being made by other classes of people, and went so far as to say that such loans should carry interest not higher than 2½ per cent. Professor Keynes carries a certain amount of weight and has proved himself to be right in the past, and if his views do weigh at home they might have a material effect on the raising of a loan for such purposes as we want.

The main gravamen of our charge is this obstruction by this system which exists in Downing Street, and I maintain that we are well justified in that position which we have taken up, and in support of that I would like to quote to this Council an extract from a book by that great statesman and experienced administrator, the late Lord Milner, published in 1923 *Questions of the Hour*. There is one chapter on "Our Undeveloped Estate," and in that chapter he says as follows:—

"The effect of this want of driving power to obtain the means necessary for development is shown by the contrast between the Dependent Empire and the Dominions. As long as the latter, still controlled from Downing Street, were at the mercy of the British Treasury, their progress too was very slow. But no sooner did they obtain complete powers of self-government than they launched out on a new policy, and spent all the money they could in creating fresh wealth for themselves. Prudent financiers at home shook their heads over the 'profligate expenditure' of these young communities, and there were many predictions of their coming bankruptcy. They saw with their own eyes, they realized as men at a distance could not, the opportunities which their soil, their water power and their mines afforded, and had boundless confidence in their own future." (Applause.)

Sir, that was written by a gentleman who had been a Secretary of State for the Colonies and who knew what he was talking about. I suggest that these words, written by that great statesman, represent exactly the point of view which we are trying to impress on Government to-day.

Before sitting down I should like to say that the hon. Member for Mombasa asked me to associate him with the motion as it has been put.

**MR. LOCKHART:** Your Excellency, I have to say at once that Government cannot accept this motion, and in doing so I would remind hon. members of Council of its terms, which are:—

"This Council is of the opinion that steps should be taken to provide some portion of the finance which is urgently required by organization of local credit, and monetary resources and/or by raising a loan locally independently of the Crown Agents and the Treasury in London."

I propose in replying, Sir, to speak to the motion in its present terms, and if in doing so that means that some of the points raised by hon. members will necessarily go unanswered I can only express my regret.

The first point dealt with by the hon. and gallant mover was the financial position in regard to the Land and Agricultural Bank. Now, Sir, this question was referred to earlier in this session this year, and seven weeks ago I stated that the normal operations of the bank were not at present held up by lack of funds. I have here a copy of the latest fortnightly financial statement of the bank, which was considered by the Board the day before yesterday, and I will quote some figures from it.

—On the 31st May the Bank had a balance at its bankers of £17,892. During the month of June the Bank will receive from various sources £10,090, and there remains undrawn of the capital available to the Bank £15,000, which is to-day in the Treasury. The Board, therefore, has available the sum of £42,982. The loans which have been approved and not yet issued amount to £27,160; the commitments for other purposes, including the sum of £14,000 being this half-year's interest due to the Government, amounting to £14,516. That means that over and above all present commitments in sight there is a balance available of £1,300.

But, Sir, it will necessarily take some time before the sanctioned advances of £27,000 can be issued, and the position at the moment is that there remains



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£15,000 which the Board have not found it necessary to draw upon and do not expect to find it necessary to draw upon probably until sometime in July or August. So it cannot, at the moment, be said that the normal operations of the Bank have been held up through lack of funds.

It is true that if the Board has to rely for future advances on repayments from already issued loans which amount to a fairly substantial sum—in the first five months we received about £15,000 available for re-lending—the scale of the Bank's operations will have to be slowed down as compared with those of recent years.

With regard to loans, as was said this morning in answer to a question, the financial implications of a loan expenditure programme are still under consideration and as I endeavoured to make clear when this same subject was debated not long ago, these financial implications do involve considerable and quite difficult economic factors. One must also remember both in regard to roads and schools and many other desirable objects of expenditure that if loan capital is spent on non-productive works the eventual cost to the community is approximately double the value of the buildings and so forth provided. For that reason, Sir, expenditure under any loan scheme does require very careful consideration in relation to the financial position and prospects of the Colony as well as in relation to the state of the money market and the facilities for raising a loan at the time. It is hardly necessary for me to remind hon. members of this Council that in neither respect are conditions normal at the moment.

The hon. and gallant Member for Nairobi North referred also to finance for agricultural development and referred to the conditions in certain agricultural areas where capital has been invested in a particular form of production which unfortunately had proved a failure and he indicated that he had a scheme to deal with that. Well, as this scheme was presumably evolved during the hon. and gallant member's recent visit to the areas in question, which took place I think not more than a fortnight ago, I hope we

shall not be accused of delay with regard to that.

There is one point to which the hon. and gallant member referred in connexion with this scheme about which I would like to say something. I think I may say that Government has also drawn up a scheme of its own to deal with the same question and, in the course of drawing up that scheme, it arrived definitely at the conclusion that it would be a mistake to scrap one form of agricultural production and substitute another if the second is going to carry its capital charges and also bear the capital charges on the money already lost. When the hon. and gallant member says that he has a scheme which can be put into force and achieve a useful result without any loss to Government I shall be extremely interested to see what it is.

The hon. mover and also the hon. Member for Nyanza referred also to finance for the settlement scheme and complained of the delay with regard to a statement of policy in that respect. As I explained not long ago, that report has not been in the hands of Government for very long. It took no little time to produce and I think we can fairly ask for some reasonable length of time in which to consider it.

The hon. mover registered a very eloquent plea that the public servants of this Colony should have a regard to the interests of the Colony which employs them and to that alone. Well, I am not concerned with dealing with the question as to whether there is any dereliction of duty on our part in these matters, but I should like to deal with the implications of that plea. I should like to say that in my experience of these financial matters I have never seen the slightest reason to suppose that the decisions taken by the Secretary of State for the Colonies on financial issues, with regard to loan expenditure or any other sort of expenditure, have been dictated by any consideration whatever other than what he regards as being in the best interests of this Colony or any other Colony for which he is responsible, and he has every available skilled and experienced

MAJOR GROGAN: *Wapi*

MR. LOCKHART: It is all very well for us to sit or stand here and take the view that we understand these complicated financial issues better than they can be understood in London. I did, earlier in the session, express the view that there was no hon. member of this Council who was in a position to controvert the advice which we have obtained in London on the question of loan issues and I may say, Sir, that from that generalization I did not exclude even the hon. and gallant Member for Ukamba. (Laughter.)

Continuing on the subject matter of this motion, it contains in its middle sentence the proposal that this Council should offer the opinion that steps should be taken to provide some portion of the finance which is urgently required by the organization of local credit and monetary resources. I trust that in his reply the hon. mover will take the opportunity, of which he failed to avail himself in moving the resolution, of explaining what this means and how that organization is to be effected!

The motion goes on by offering the alternative of raising a loan locally independently of the Crown Agents and of the Treasury in London.

This matter is governed by the General Loan and Inscribed Stock Ordinance which provides only for a loan to be issued by the Crown Agents. But I admit at once that it does provide that loans may be raised locally if an Ordinance for that purpose is enacted. I am unable to see any advantage that can be gained by enacting an Ordinance to raise local loans when loans can be raised by the Crown Agents under the General Loan and Inscribed Stock Ordinance. Such loans have the not inconsiderable advantage of obtaining Stock Exchange quotations and of becoming trustee securities under the Colonial Stock Acts; they can be transferred as inscribed stocks and this can be done through the Crown Agents' Transfer Office in the City. I can see no reason and no necessity for giving up these advantages.

As has been said by the noble lord the Member for Rift Valley, arrangements not only can be made but have been made for the issue of Kenya stock in this Colony. In 1930, £50,000 was made available for a 4½ per cent loan and applica-

tions were received amounting to £2,700. In 1936 a successful loan issue was made on a local prospectus in Nairobi by the Treasury for £200,000, and that method of raising money can be adopted again.

I have the greatest difficulty in believing, Sir, that funds could be raised on better terms or that the credit of the Colony can be improved by adopting the attitude that we know more about these things than is known by the Secretary of State and his advisers in London and that we do not propose in future to be actuated by his advice or influenced by his decisions. As far as the latter is concerned, as I have already explained, constitutionally it is necessary, as this Colony stands, to obtain the Secretary of State's approval for loan expenditure.

The noble lord the Member for Rift Valley, in connexion with the Land Bank, referred to the position under the Loan Ordinance. It is true that there is an unissued balance of £250,000 under the 1936 Loan Ordinance. It can be issued but as the noble lord is aware, that Ordinance gives merely legislative approval for the issue of the loan and it does not necessarily mean that the loan can be floated by this Government at any time.

I think in considering the question of loan issues we must remember that the source of any funds made available has no influence on the wisdom or otherwise of the expenditure. The main point at issue is whether in incurring these loan commitments they are for non-productive works or not. Whether the funds are raised in the Colony or in London does not affect the issue at all.

The noble lord quoted a letter by Professor Keynes in *The Times*. I have seen that letter but I must point out that the terms of a loan do not depend on the Professor's view on the rate of interest but on the terms on which investors are prepared to invest their money and that is their business. The last colonial loan I know of was at 3½ per cent at 98, and was what is vulgarly known as a "flop."

One must have sympathy with a great deal if not all of what the hon. Member for Nyanza said. Government recognises that cases can be made out for expenditure on education and the development of roads, though I think the hon. member is mistaken in supposing that the con-

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dilation of the roads in Kenya will in fact make any difference to the amount of traffic which will go through the Belgian Congo. The whole question is one of what commitments it is wise to assume and while that issue may take, as it has taken, a long while to consider, I am quite satisfied myself that the time will eventually prove to have been well and wisely spent and that a satisfactory decision will be reached.

**COL. KIRKWOOD:** Your Excellency, I rise in the first place to support the motion and endorse everything that has been said by the hon. mover and the hon. Member for Nyanza. But prior to proceeding I should like permission to move an amendment and that is that the words "with the permission of the Secretary of State" be substituted for the words "independently of the Crown Agents" so that the motion concludes: "and/or by raising a loan locally with the permission of the Secretary of State and the Treasury in London."

Before sitting down I would like a ruling as to whether, having made that amendment, I am debarred from speaking unless I speak now?

**HIS EXCELLENCY:** As the hon. member moving the amendment you are speaking to the original motion, so anything you want to say about the amendment or the original motion must be said now.

**COL. KIRKWOOD:** Thank you, Sir. I will leave the principal motion which I endorse heartily, except that there is one item that has been mentioned and which I would like elucidated.

Speaking in this Council earlier in this session I stated that the schools at Kisumu and Kitale were in fact overcrowded, and the hon. the Director of Education doubted my statement and wondered where I got my information from. That was in the first part of his speech and he finished up by saying that there had occurred difficulties in finding places for boarders in primary schools! Now this he agreed with after denying my statement in the first part of his speech, but I am not going to quibble over that.

I have also raised the question of the teacher at Kitale school. Well, nothing has done Your Excellency, but it is

illuminating that that school which was built for forty boarders now accommodates sixty by using accommodation in that building that was not intended for boarders when the building was constructed. It has now twenty boarders in excess of what it is supposed to have. I consider that the school should have a chance.

I have also raised the question of another teacher at Kitale. This was budgeted for and put in the budget. There are four teachers at the moment but the difficulty is that one teacher is primarily engaged in teaching the kindergarten children who number 23, and the school committee is very dissatisfied with these arrangements and are asking for a qualified teacher. I think I am right in saying that two mistresses were offered the appointment and turned it down on account of the lack of accommodation there because they cannot live at the school. Quite recently, I am also informed that another teacher, fully qualified, was offered the post at £17/10 and declined it, but was prepared to accept the post at £20. That was refused and there we have a question of whether that teacher should be appointed or not because of a matter of £2/10 per month and when an offer was made at £10 per month under what was provided for in the budget on that vote!

It is an astounding position, for not only has the recreation room been turned into a dormitory, which means that on wet days there is no shelter inside, but there is the isolation ward which was built some time back now accommodating a mistress. The medical officer made a very strong comment on this and suggested that the isolation ward should be kept for the purpose for which it was built. There is only one staff quarters and that is the headmaster's quarters which has quite reasonable accommodation for the purpose for which it was intended—it has one bedroom, a bathroom and a dining room—but that building was recently condemned as unfit for human habitation by the medical officer in the district; and that is the position. We cannot get a teacher and the hon. Director of Education cannot see his way clear to pay even £20 a month for one. The situation is becoming very, very serious now and the question is whether the school

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committee is going to continue to function or not. I submit, Your Excellency, and I am quite sure everybody will agree, that this is a most unsatisfactory position.

Another point I wish to make is that the education of that school is insufficient. The pupils at the top cannot get entrance into Kabete and I am told that the majority of these should be retained in the school for a longer period. That is an astounding way of trying to get over the difficulty. It means that if boys and girls are to be kept in standard 6 there will be no entrance for the younger children. We have already a waiting list and unless we can pass the children out at the top we cannot bring them into the lower forms.

Generally, I submit, Your Excellency, that the situation in this Colony, not only with regard to Europeans but others as well, is at the moment most unsatisfactory. Money is urgently wanted not only for local matters and I am trying to suggest a solution but it is so absurd and so ridiculous that one should have to speak in this Colony on such a subject when it is only a matter of £2/10 to Government. Kabete school has been mentioned by the hon. mover. It is the one school that we do look to. It is fed by the primary schools but there is no means of getting children into that school now because it is overcrowded. An extension was promised and that extension has not been started. The point is that money is urgently required for this additional building and additional accommodation. And if that money is not going to be raised and is not forthcoming then education is coming to a standstill in this Colony. This is a most serious situation and I hope Your Excellency will reconsider the matter and not prevent the school I have mentioned getting a teacher particularly since one has already been budgeted for and can be supplied at a much lower rate than estimated for in that budget.

**MAJOR GROGAN:** Your Excellency, I did not intend to intervene in this debate because, generally speaking, these abstract debates . . .

**HIS EXCELLENCY:** May I ask, as at present an amendment has been moved and not seconded, if the hon. member intends seconding?

**MAJOR GROGAN:** No, Sir.

**EARL OF ERROLL:** Your Excellency, I beg to second.

**HIS EXCELLENCY:** The question before Council is that the amendment moved by the hon. and gallant Member for Trans Nzoia be approved.

**LORD FRANCIS SCOTT:** Sir, if I may speak to the amendment I should like to move a further amendment and that is that the last line of this motion in the Order of the day be deleted, that is from the word "independently" to the end.

**COL. KIRKWOOD:** Your Excellency, in order to save the time of Council I beg leave to withdraw my amendment in favour of that of the noble lord, the Member for Rift Valley.

**HIS EXCELLENCY:** With the permission of Council the amendment moved by the hon. and gallant Member for Trans Nzoia is withdrawn and Council will now consider the further amendment by the noble lord the Member for Rift Valley.

**MR. NICOL:** Your Excellency, I beg to second.

**HIS EXCELLENCY:** The question before Council is:—

"That the words 'independently of the Crown Agents and the Treasury in London' be deleted from the motion."

**MAJOR CAVENDISH-BENTINCK:** With your permission, Sir, and that of the hon. second of my motion, I am prepared to accept that amendment.

**MR. HARRAGIN:** Your Excellency, speaking to this amendment which is now before Council, I am sure that the noble lord the hon. Member for Rift Valley realizes that this is a distinction without a difference in the consideration of the original motion, because, in point of fact, whether we stop at the word "locally" or not, everyone in this Council is well aware that we cannot raise a loan independently of the Crown Agents or of the Secretary of State or of the Treasury in London. It would be extremely simple, if without having to go home and ask permission, we could raise a loan and do exactly what we want to do on our own and, instead of raising it on the Stock Exchange at home raise it locally. Whether or not in the future this should be made possible—

[Mr. Harragin] that such a loan should be capable of being raised here—is of course another question. But as things stand at the moment everyone in this Council will realize that Government is unable to accept the motion even as amended.

**HIS EXCELLENCY:** We are still debating the amendment.

**MAJOR GROGAN:** Your Excellency, I understand that to all intents and purposes it is the substantive motion because the amendment has been accepted by the original mover and seconder.

**LORD FRANCIS SCOTT:** Sir, on a point of order, is there any reason why Government should not agree to the hon. mover having his motion amended? It does not commit Government to accepting the motion.

**HIS EXCELLENCY:** It will simplify the procedure simply to debate the original motion with the omission of the last line which I understand has been accepted by the hon. mover. The debate can now continue on the motion with the omission of the last line.

**MAJOR GROGAN:** Your Excellency, while I was out of order I stated that I did not intend to take any part in this debate because all these abstract motions are really very largely a waste of time, and I should never have done so had it not been for the provocation of my hon. friend the Financial Secretary. So, therefore, he must be held responsible for my intervention.

In the course of peripatetic references to myself, the Colonial Office, the Crown Agents and various other matters dealing with the control of this country, I understand him to say—and I noticed a twinkle in his eye—that he classed me in terms of intelligence with the financial advisers of the Colonial Office. (Hon. members: No!) If that is so and my interpretation is correct then I say that it is such a gross insult (laughter) that I feel bound to rise to my feet.

I am only concerned with the relationship of this loan question to the matter of settlement and I do not propose to go outside that except in so far as the provocation of my hon. friend forces me to justify my contention concerning this gross insult.

I believe, Sir, that settlement in this country, persuasive settlement, which is the fashion of the moment, is quite unnecessary if you have not interrupted materially the ordinary process of evolutionary settlement, because settlement is an evolutionary process, and if it proceeds without check there is no question of any need for any special measures to induce its elaboration where you have a prosperous lot of settlers and farmers and industries, for people will hear about them and come along in the ordinary way.

The real trouble, as I understand it about this question of raising money, is that the powers that be, the Colonial Office, and those highly intelligent advisers of theirs have a disbelief in white settlement as such—and that is I believe the view held in the very highest quarters. I understand that even so great an authority as Sir Frank Stockdale has come, more or less, to the conclusion that with white settlement in this country there is something fundamentally wrong. It is alleged by some people that it is all due to the bad land. Other people allege that it is due to bad farming and bad farmers. But in actual fact, it is due entirely to bad government. I do not mean the officers in charge here, but the substantive government in London which—and we have had it affirmed here to-day—has the real controlling interest of this country so that nothing, not even the raising of a half-a-crown in the bank, can be incurred without special permission from the highly learned gentlemen in London, one of whom I had the privilege of meeting some time ago. He was supposed to be a major exponent of financial wisdom and a very important official in the Colonial Office and he treated me to a two hours' dissertation on tiger shooting! That was all I got from him.

In order to make good the contention that the apparent failure of settlement in this country is not due to bad land, bad general conditions or bad farming, but to the Government, I am compelled—I am sorry to have to inflict this on hon. members, but the responsibility lies with my hon. friend opposite—to go back into the history, the monetary history of this country. I understand that quite a large number of hon. gentlemen on the other

[Major Grogan] side, and even on this side, side of Council, and even on this side, perhaps, are entirely ignorant of the monetary history of this country. Without a comprehensive knowledge of the major factors of this history it is utterly impossible to come to an intelligent conclusion as to the nature of the problems with which we are faced to-day.

The original currency of this country was the East African currency, the major unit of which was the Indian rupee. There were local notes, a local half-rupee and cents. Since the closing of the Mints and the fall in the price of silver the Indian rupee was, in fact, a token coin retained as 1/15th of the pound sterling which at that time was the English sovereign, by two expedients. One was by the closing of the Mints which prevented the free coining of silver—that prevented the value of the rupee falling; while the value of the rupee was prevented from rising by an Order in Council which gave two alternatives either by tendering 15 rupees or one pound sterling in satisfaction of a debt expressed as 15 rupees. This is a very vital point, but, unfortunately, in this Order in Council the alternative tender was not expressed as "one pound sterling" but was expressed as "one sovereign".

As a result of the war, or rather, the inflationary monetary practice rendered necessary by the war, it happened that the metallic content of the rupee rose in value above 1/15th of the pound sterling. The rupee rose very rapidly and that was due entirely to the failure on the part of the gentlemen responsible for the Government of India, and incidentally the gentlemen responsible for the government of other countries which used the Indian rupee, who never altered the law by the simple expedient of substituting the term "one pound sterling" for the term "sovereign" in this Order in Council. If that had been done in India it would have saved a terrible catastrophe and if it had been done here we should have been saved an even more terrible catastrophe, because, in India where the first attempt was made by the Imperial Government for effecting a revision of the monetary policy after the war, as a result of the recommendations of the Babington-Smith Committee, the Government attempted to fix the rupee at Sh. 2, gold.

This was a perfectly ridiculous policy because it tied the Indian rupee to the American dollar which was not exactly good imperial policy. Quite obviously, the only effect was that it doubled civil servants salaries in India and created complete chaos and ruin among the agrarian elements and manufacturing elements in India. And, naturally, the folly of it was so tremendous that it broke down and within six weeks the Government of India lost 36 millions sterling redeeming the fictitious value of the rupee. But they did manage to hold it eventually at Sh. 1/6d which involved everybody in India in an increase of 12 per cent in their monetary liabilities and led, I believe, to the ruin of the Raj and the ascendancy of Mr. Gandhi in consequence.

There was a good deal of discussion here at the time and a great deal of alarm, and the then Governor of the country, General Northey, wrote, in conjunction with myself, a long dispatch to the Colonial Office. He did it quite properly because he was authorized by the Secretary of State to confer with me on this particular issue. In this long dispatch he pointed out exactly what the results of the failure to refix the rupee to its proper relation to sterling, namely 1/15th of a pound, would be. In the course of that dispatch and a lot of subsequent correspondence that went on, it was pointed out that the Government of these territories in so far as they were represented by the Currency Board, and as being the biggest individual group of debtors, would be involved in the loss of something in the vicinity of 3 million sterling. After a very long attack we succeeded in extracting, by questions in this Council some time ago, some information on this and it was admitted that the actual loss was something over 2 million pounds. That was the direct result of the efforts of the geniuses who controlled our affairs, despite the efforts of the ordinary vulgar people, supported by the Governor of the day. Despite the earnest advice and considered opinion, arguments and representations of the people of this Colony these geniuses persisted in this folly.

And, as another indication of how brightly and brilliantly they reviewed these matters, I was sent home by agree-

[Major Grogan] ment to argue the question on behalf of General Northey in London. I was invited by Mr. Amery, who was then the Under Secretary of State for the Colonies, to attend a discussion, or baraza, whatever you like to call it, in the Colonial Office on this particular matter. Well, I was rather nervous and I turned up as early as possible to make sure that I should be there. I was ushered into a very large room. There was nobody there, but while I was gazing out of the window, a rather small and uninspiring little gentleman came in and looked me up and down and said: "Good morning, what the devil is all this about!" I suppose he regarded me as harmless since I was reasonably dressed and looking probably bored, and made the mistake of thinking that I was in the Civil Service.

I only refer to that little detail to show the casual way in which the great geniuses considered these matters. This particular gentleman who came in and said "What the devil is all this about" was no less a person than Sir Otto Neimeyer, who eventually became the chief adviser to the Bank of England and was sent all over the world by the Bank of England to advise the Dominions as to how to ruin themselves by the establishment of central banks and the introduction of that good old time honoured system of the City of London. Fortunately there Dominions, after a tussle at first, recovered and refused to accept any of the recommendations which would have resulted now in their being ruined.

As I said, the loss to this country on the part of Government was something in the vicinity of 3 millions sterling, and so nobody could imagine what consequently the loss must have been to the primary producing community of Kenya. As a little example of the awful complications that arose from the muddle and mess-up of the monetary policy at that particular time I had an arrangement with Sir All bin Salim and his revered father, whereby I became the lessee of an area of land known as Mbaraki. It so happened that that land belonged partly to Sir Ali and partly to his revered father. All these negotiations took place expressed in terms of sterling. Therefore the agreement to lease this land was also

expressed in terms of sterling. The negotiations were carried out at the same period and the letters constituting the agreement were all expressed in terms of sterling providing for the payment of £5 per acre.

When it came to the question of drawing up the leases these two Arab gentlemen had two different solicitors, one of whom expressed the agreement in terms of sterling in accordance with the covering letters and the other expressed the value in terms of rupees. The result is that for part of this land ever since—and Government is now the lessee—the lessee has got to pay £7/10 per acre for ever, whereas on the other part the land is still priced at £5 per acre. Here is a good example of the frightful confusion and distortion of practice that arose from the muddle on this monetary policy.

It is very difficult for any hon. member not having gone through that period to realize on what a colossal scale these mistakes were made and what a deterrent effect they are still having on the people out here at the present time, one of which is that it has added fifty per cent to all internal money obligations in the country current at the time of the fixation. It could do nothing else! If a man borrows Sh. 1/4d and later is told that that Sh. 1/4d is in fact Sh. 2 that does increase his obligations by 50 per cent, and it does not matter how much the hon. Financial Secretary wags his head at me, he cannot alter the implications of arithmetic.

That was the beginning of the great distortion, because during the whole period from 1920 up to the present time, there has been a great fall in price levels amounting to over 66 per cent, which has in fact trebled the external obligations of this country. People say: "How can that have been helped? It was just an Act of God!" The answer to that is a very simple one. It was helped by more intelligent countries, to wit, France. France is a great creditor nation and a great Empire and if we take the 1914 commodity price level in sterling and the franc at 100, in 1919 the franc price level rose to 600 and the English price level rose to 300. In France to-day it is 675 and the English is 96, which means that the external obligations of sterling primary producing countries since that time have been

[Major Grogan] multiplied by three, whereas the French dependencies have had their burdens reduced. That is all due entirely to the highly intelligent gentlemen we have been talking about.

People ignore these basic factors and the main problem of settlement to-day is the eradication, so far as they still remain, of the effects of these unfortunate happenings. Then comes the question of revenue and the proper utilization of credit.

We always find that this class of Government—Colonial Governments—are obsessed with an *idée fixe*. They never think in terms of new money, alien or external. A colony—a small young country—passes through what one might call the foetal stage when it depends for its nourishment on the umbilical cord while the mother still harbours it. But when the country emerges and becomes an independent and self-sufficient community it is, in a sense, no longer dependent on any outside source. And that is the condition of this Colony to-day. An entirely new position arises and there is no reason in the world why this country should not be independent and free—as this country is free—to accept assistance in terms of loans.

There is no reason in the world why a self-sufficient country should not look for money and credit where it can find it. And it seems to be entirely forgotten by the people who talk on behalf of this Government that there is another financial method, namely the method of conversion—I am talking of consolidation from the existing standpoint and that is in the problem of new settlement—conversion in a country which has a large amount of funds available for remedying the position we have to-day. There are all kinds of machinery for the purpose, treasury bills, treasury bonds, guarantees and all kinds of methods, and I do really honestly submit—and I submit with all the intensity I can—that this talk about new settlement is largely a waste of time and academic until we reorganize the settlement which is here and we shall never do that effectively until we take advantage of the resources the country has already got and recognize the fundamental principle that this is no question of dealing in *forma pauperis*, but a

question of the restitution of rights. As soon as we get this in our minds that this is not an appeal for charity but really an appeal for some form of relief from the awful distortion which has been imposed in the past on the people here, we shall never get the remedies we require.

As I say, with the constitution of a proper Conciliation Board and a definite recognition of this right (not as a claim for charity) and the utilization of this country's capacity to issue treasury bills, treasury bonds, and to guarantee so as to reduce rates of interests and extend terms of time, I am convinced that the enormous over-burden of agrarian indebtedness could be tucked up and put away and forgotten. It is understood of course...

MR. ISHER DASS: Your Excellency, I move that this Council now adjourn until 9 p.m. when it can then listen to the extremely profound and enjoyable oratory of the hon. member... (Laughter.)

HIS EXCELLENCY: I do not think that motion is in order at all.

MAJOR GROGAN: Of course, under the conditions we are discussing, if Government took over the securities of these guarantees there would be no difficulty in readjusting the financial foundations of the country so far as the agrarian interests are concerned. It is only a matter of two or three millions and if they took over the necessary securities represented, it would be quite absurd to suggest that any serious risk would be involved in view of the assured development during a 22 or 25-year period.

We have always got to remember that the Imperial Government on every possible occasion definitely repudiates any responsibility whatever for our Colonial Loans. They say that these loans rest entirely on our own security and must not, or should not, be construed as carrying any sort of Imperial security whatsoever. That being so, why not use our own credit and put this matter to the test and do so before the inevitable rise in interest-takes place and the rise in price which will certainly come.

#### ADJOURNMENT

Council adjourned until 9 a.m. Thursday, 15th June, 1959.

Thursday, 15th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 9 a.m. on Thursday, 15th June, 1939. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B. C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The Minutes of the 14th June were confirmed.

#### ORAL ANSWERS TO QUESTIONS

No. 36—MAGADI SODA CO. AND INCOME TAX

MAJOR GROGAN asked:—

(1) What was the amount of the debenture issue of the Magadi Soda Company, Limited, during the period of the incidence of Income Tax to date?

(2) What is the rate of interest on this issue?

(3) What amount of interest has been paid during the said period?

(4) Has Kenya Income Tax been collected on such interest as has been paid?

(5) If the answer to (4) above is in the negative, on what grounds has such Income Tax not been collected?

MR. LOCKHART: As regards questions (1), (2) and (3) the answers, which could be obtained by any member of the public from the Registrar of Companies, are as follows:—

(1) £275,000.

(2) 4 per centum per annum.

(3) £43,549.

In regard to question 4 the Income Tax Authorities are precluded by virtue of section 4 (1) of the Income Tax Ordinance from disclosing the information sought.

No. (5) does not, therefore, arise.

#### LOCAL LOANS

##### NOTION

The debate was resumed

HIS EXCELLENCY: The debate will continue on the motion moved by the hon. and gallant Member for Nairobi North.

I want to make the position clear as regards the position reached in the course of the debate. The motion was moved and seconded and then an amendment was moved by the hon. and gallant Member for Trans Nzoia. To that amendment a secondary amendment was moved by the noble lord the Member for Rift Valley and then the original amendment was withdrawn. The question has not yet been put to the amendment moved by the noble lord and therefore the position is that we are still debating what I may call a secondary amendment, that is, the amendment:—

"That the words 'independently of the Crown Agents and the Treasury in London' be deleted from the motion."

However, the fact that we are debating that particular amendment will not debar anyone who speaks on that amendment from speaking to the motion as a whole, but when this stage of the debate is finished the question to be put to Council is whether the amendment as moved by the noble lord is or is not approved.

MR. PANDYA: Your Excellency, may I ask if the question of the amendment is being put first and then we will continue the debate or if we are going to continue the debate on the original motion now.

HIS EXCELLENCY: The debate taking place is actually on the amendment, that is:—

"That the words 'independently of the Crown Agents and the Treasury in London' be deleted from the motion."

Anyone who wishes to speak to that amendment would not be called to order if in the course of any speech on that amendment he speaks on the general terms of the motion because it is really one and the same thing.

LORD FRANCIS SCOTT: Sir, on a point of explanation, when this amendment has been put to the vote then the debate returns to the main motion with or without the amendment is that correct?

HIS EXCELLENCY: That is correct.

If no hon. member wishes to speak to this amendment I will put the question.

[His Excellency]

The question of the amendment was put and negatived by 24 votes to 12.

Aye.—Major Cavendish-Bentley, Mr. Cooke, Earl of Erroll, Lady Sidney Farrar, Mr. Gherrie, Major Grogan, Col. Kirkwood, Col. Modera, Mr. Montgomery, Mr. Nicol, Lord Francis Scott, and Dr. Wilson: 12.

Noes.—Messrs. Isher Dass, Daubney, Davenport, Dennison, Fannin, Fazan, Harragin, Hopkins, Hosking, Kasim, Lacey, Lockhart, McKean, Lord, Pandya, Dr. Paterson, Mr. Rammell, Sir Godfrey Rhodes, Messrs. Shamsud-Deen, Stronach, Tomkinson, Waters, Willan and Willoughby: 24.

MR. SHAMSUD-DEEN: Your Excellency, on a point of explanation I wish to make it quite clear that in voting against this amendment it does not necessarily mean that we are in favour of the resolution as it stands.

HIS EXCELLENCY: The debate will continue on the motion as originally worded.

MR. PANDYA: Your Excellency, the motion before Council has been debated so many times and discussed so often in detail that there was nothing new in that which we heard yesterday or which we can discuss here to-day. But as the motion is before Council I would like to take this opportunity of mentioning the grounds for our opposition to it.

In the first place the hon. mover has said that the truth of the matter is that "We out here have out-grown this type of Colonial Office control and that if we are not given a free voice and indeed powers with regard to our own affairs we shall take them sooner or later"—that is the principle involved in this motion though it mentions the raising of a loan locally. We Indian Members have consistently opposed that the control of the Colonial Office should be taken away in favour of our hon. friends in this country. I will not go into details, but I think it is quite sufficient to say—and I think it would be absolutely fair and frank to confess—that we have no confidence in the ability, in the statesmanship, or in the fairness and justice with which our hon. friends would deal with important

questions, political and economic, affecting various communities in this country.

That is one of the grounds on which I think it is not possible for us to agree to this motion. One may say that we are being obstructive. Perhaps that is so. But there are reasons for this; there is one instance that comes to my mind and which happened quite recently. It was in connexion with education when we asked for certain grants-in-aid for Indian schools. These were very strongly opposed by the European members of this Council. We feel keenly that if we do not get justice even on these small questions, when it comes to big issues there is very little chance of our getting anything. Therefore, we feel there must be somebody who independently should deal with these questions as to whether we should have these facilities or not.

Coming to the main issue of the motion, the loans which are required and are supposed to be required for essential developmental purposes, when I read the motion I thought we were discussing development, essential development which, in the business sense, should be a paying proposition. But when the hon. mover started discussing it further, I found that it involved social services such as the education and medical services and so on. Therefore I should like to divide my remarks to deal with these two issues. One, the agricultural and industrial development of the country and the financial requirements for that purpose; and two, the social services.

Now, in fact, I think in dealing with agricultural and industrial development I should take away industrial development from this because I do not think that it is contended that industrial development in this country could not be financed in an ordinary businesslike manner. Therefore, I think it would be proper for me to confine my remarks to what is intended in this motion with regard to agricultural development.

I do not think that we disagree with the principle that agricultural development is necessary for the advancement of the country. But where we do join issue with our hon. friends is that it should be on sound financial lines and basis. I do not think one can complain about the facilities and support that has been given to

[Mr. Pandya] the agricultural community in this country. I may say this: that if we go outside this country and see what is happening in other agricultural countries I think we can compliment ourselves and be proud of the facilities which the Government of this country have extended to agricultural development here.

We have, in the first instance, the protective duties for agricultural produce. We have finance in the shape of the Land Bank, cheap railway rates and all the reasonable facilities that can be expected for agricultural development. I suppose the grouse is that we have not got enough!

The point is, at what stage can we feel that we have sufficiently developed the agricultural industry, for this must be the contention of anyone who wishes to develop or invest finance in this country that he should get something more than what he invested in it. If that contention is right then I think we should, in this country, see whether agricultural development so far has become a paying proposition. And if it has become a paying proposition with the financial resources which people have been able to obtain so far, there is no reason why further financial assistance should not be available from the same sources. The point could also be raised as to whether further development with such financial resources is not going to be uneconomic in its purpose! And that is where we disagree with the main issue of this motion.

For instance, if everything was right with the agricultural development of this country, the first thing necessary would be to reduce the protective duties and not call upon the consumers to contribute any further towards the maintenance of the industry of agriculture. One instance is quite enough to demonstrate that: Take the question of wheat—we are growing wheat in this country at a loss, and have been for some years, and yet, due to the protective duty, wheat in Kenya is sold at an exorbitant price. If development was justified that position could hardly be a reasonable one. Then, we have instances in which demands are made for the dairy industry, and in supporting the exports of butter and milk the consumers are expected to pay.

All this support is rendered by the community to the agricultural industry and it appears that the more we develop the agricultural industry in this country the more the demands are being made for supporting it. As far as we are concerned it proves that there must be something wrong where such continuous demands are being made not only on State finance but also on the consumer.

The hon. Member for Nyanza made a point that large areas of land are going to bush in the absence of financial facilities, and a lot of farmers had to go bankrupt. But if these financial facilities were available they would save these farmers from bankruptcy and, further, the land could be developed. That proves our contention that the land in the Highlands cannot be developed by the Europeans and if that is so why not throw it open to other races?

We have also in this country the question of the European farming population. And if that population has not increased with all the facilities for development and with all the advantages of the schemes for them in this country, I think one should agree that we cannot succeed in getting a sufficiently large number of people for farming.

I think it has not been appreciated by the people in this country that there are reasons why it is not possible for us to succeed in getting the right type of farmers. I would not like to go into details with regard to that, but the present position sufficiently proves my contention that there is something wrong with the whole position as regards the policy of the reservation of the Highlands.

Coming to my second point, whether any loan would be justified for furthering the social services, there is one point we ought to remember. That is that while the social services are very necessary they should be developed according to our capacity to pay. We have got to pay the interest on the loans for one thing. I think I can also say that the Indian community are in the greatest need of further facilities in regard to education and medical aid. But I find that the hon. member also mentioned certain details in which he considered further development of social services for Europeans

[Mr. Pandya] were vitally necessary, particularly in regard to education!

While I agree with the principle that further facilities are necessary for all communities in this country, I think one should remember that these loans are not given free and that at a certain stage the taxpayers have got to pay for them. We should, therefore, allow this proposition to be very carefully discussed at the time of the budget when one could see definitely whether there was any possibility of financing schemes of this nature. I do not consider that the motion is a proper motion to-day when these schemes could be properly discussed at a later date.

There was one point which the hon. and gallant Member for Ukamba made. He is right, I suppose, about the experience we had in India and here with regard to the financial policy of a previous government, but I think, in order to be fair to everybody, one should say that if we agree that the financial muddle was created by the Government in this country or at home, I think, so far as this country was concerned, the Unofficial European Members had a lot to do with it. I think that it is only fair that they should shoulder their share of the responsibility. Of course it is human, it is very human, for all of us to claim wisdom—I am one of those who do it. But what the Unofficial Europeans generally do is to blame Government when things go wrong and never give them any praise when things go right. They do not appreciate that Government does do something for them, and in this particular instance I do not think it would be fair to blame the Government here entirely for the financial muddle we had in this country.

Lastly, one can talk of these facilities quite easily when there is no responsibility attached to them. But the taxpayers have to shoulder the responsibility of the payment of the interest and not only that, even when we go wrong in regard to certain schemes such as those of agricultural advances and so on, we have got to shoulder the responsibility of wiping out the debts. And, in view of those reasons I think it would not be right to support this motion. In fact, on these grounds we are opposing it.

DR. WILSON: Your Excellency, I only wish to explain that I shall be unable to support this motion. I think I have rather been jockeyed into this position by the action of Government in refusing the amendment. Had the amendment been passed the motion would have been quite reasonable. As it is, and from what I have gathered during the course of the debate, it seems to me that the motion proposes the raising of money rather in opposition to the control of the Home Government and against the control of the Colonial Office. In that case, unless the hon. member in his reply explains the matter in my o.h.er light, I shall be in the position of having to vote against the motion because I do not consider that Colonial Office control should be removed from the loan commitments of this Colony.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I do not think my reply need take up much of the time of Council. In point of fact there is very little to reply to.

I should just like to explain, in answer to the last speaker, that the main object of sponsoring this motion is, as I originally said, to try and voice the resentment which is being felt all over the country against what we consider too meticulous Colonial Office interference in our internal financial affairs. We feel that we are entitled to more independence and more say in respect of domestic matters, and as the hon. Mr. Pandya said we do intend sooner or later to try and obtain increased responsibility.

But of course I thoroughly realized when I sponsored this motion that the last line, where some reference is made to independence of control by the Crown Agents and Treasury, that that line would appear to certain hon. members of this Council as being very revolutionary, in fact perhaps almost blasphemous, and I did not really expect them to accept it.

I quite realize, Sir, the difficulties that were pointed out, the legal difficulties, by the hon. the Financial Secretary. I know we are subject to the General Loan and Stock Ordinance or whatever that Ordinance is called. I know the advantages of getting money through the Crown Agents and I realize that if we suddenly start



[Major Cavendish-Bentick]  
 doing things out here without their knowledge we might compromise measures that are being taken in London at the present time to raise money for us. But in spite of these considerations I believe that sooner or later we have got to make a real stand on this issue. For that reason we put forward the motion in its original form to start with and it was because of my realization of these difficulties that I accepted the amendment because I understood it to mean simply that if there was inordinate delay in getting those things done in England, at least the Government out here would take the initiative and try to draw up a plan locally and if necessary send it home for approval. I thought that at least that might be agreed to and I must say I was very amazed indeed after having accepted that amendment to find that, in a rather complicated process of taking the vote on it, Government expressed their preference for doing things independently of the Secretary of State. I do not quite understand this new procedure; no doubt it is correct. But I would have accepted the amendment and I see no reason why Government should not have accepted it also.

Having said that I would just like to refer shortly to what the hon. the Financial Secretary said, as he was the only member of Government who spoke during the debate. He did his best, after pointing out obvious legal difficulties of the last line of the motion, to defend the Secretary of State's attitude by saying that the Secretary of State always makes his decision in accordance with what he thinks are the best interests of the Colony concerned and that he has the very best advice possible. We have no reason to suggest that this is not the intention of the Secretary of State and I think, on many occasions, we have had Secretaries of State who have been very well disposed towards us, and I believe that this is the case at the present time. But Secretaries of State have to conform to the policy laid down by the Cabinet. Again, Secretaries of State do not always have very much local knowledge and I think that if there is the slightest degree, shall we say, of competition or rivalry as between Imperial, or what is considered in

England as Imperial advantages and the advantages of this Colony, we know which win.

Furthermore, the Secretary of State is largely dependent on his official advisers. And I know from experience that if you go to the Colonial Office and you see the gentleman who is responsible for the East African section, he is always very pleasant and willing that you should say something to him, but before even you shut the door he says: "Now, remember, anything that I say cannot be taken as official. I am only the servant of the Secretary of State and I can do nothing." Then, when you go to see the Secretary of State he rings a bell and the same gentleman appears and the Secretary of State refers you to him. It is a game of battledore and shuttlecock. You get nothing done and you get no answer and that is what we are up against the whole time. I know that we have been told that the Secretary of State "knows more about these things than we do", I think those were the hon. member's words. But I think we do know a good deal about our own part of the world where we have made our homes and I think we should be given a greater measure of control or responsibility, at any rate.

With regard to the various points which I raised in support of the motion, various shortcomings in various directions whether in regard to social services, or agricultural development, we had very few answers, if any. My hon. friend opposite started by defending the position of the Land Bank. But the sum total of his defence was that there was £15,000 which has not yet been drawn, but which I suppose has been allocated by the Treasury, and at the end of this month we shall have available £1,300 after meeting commitments.

In admitting that there were some commitments he, immediately afterwards, in referring to the position of the Land Bank, used a very euphemistic phrase. I said that the operations were likely to be "held up" altogether; he said that they were likely to be "slowed down". He did not entirely deny the fact that we urgently needed further capital for the Land Bank.

My remarks about schools, which were very definite and, I think, very carefully

[Major Cavendish-Bentick]  
 set out, received no reply at all, except that we were told that schools and roads were non-productive works, which may or may not be true. But I hope to heaven that we are not going to look on schools as non-productive! He also explained that conditions were not normal. I sincerely trust that because Mr. Hilder or other statesmen have peculiar views on international relationships that it does not mean that all unfortunate children over the age of fourteen are not going to get any education, because that, I think, would be disastrous.

He mentioned, Sir, a Government scheme for helping a certain class of farmer and he pointed out that if these persons could be started off on new lines, although Government was quite prepared to help them in connexion with this, the new experiment, even if successful, could not be expected to bear not only the new capital expenditure involved but also the full capital which had been invested and lost on the activities which have gone wrong. I entirely agree with that. I am very pleased indeed that this economic truism is acknowledged. I appreciated that the hon. Financial Secretary did admit that this was the case and I am very glad indeed that he has brought it out into the open, and, if for no other reason, that alone has justified this debate.

He also asked me in making my reply to say what I meant by the "organization of local credit and monetary resources". Well, the hon. member has a great many qualifications and he certainly has never been accused of being dull in perception or slow of understanding, so I really do not know why he should have asked that question. The sort of thing I had in mind is the type of scheme which appears in the Settlement Committee's Report, on page 79; that is, the method of financing the purchasing of land by farmers. I think one might suggest that the Zanzibar Government has lately had something to do with the "organization of local credit and monetary resources". These are types of the schemes to which I was referring.

He then complained that it was not quite fair to suggest that there was undue delay as regards the provision of finance

for settlement when the Settlement Committee's Report was only recently published. I hope I did not give that impression for I was very careful to try to avoid giving it. I merely said that naturally these measures drawn up would require finance and then I said: "Are we going to be held up until the plans are obsolete by obstruction in Downing Street?" I did not wish to infer—and I want to make this perfectly clear—that there has been any delay as regards this Government.

I am extremely sorry that Government did not see fit to tell us six weeks ago, or even to-day, what measures it proposes to adopt in order to try and get some of these things done. It does seem odd that when one has made a definite statement and inditement as regards, at any rate, European education, one should not have had the courtesy of any sort of explanation as to how Government is going to meet the situation. But there it is.

I do not think there is anything else I wish to allude to except casually to the fact that the hon. Mr. Pandya has made the usual allegations against us. I do so in order to refute the rather strong economic fallacy that the more you increase the agricultural industry the more the demands are that are made on the rest of the community. If the rest of the community does not live on agriculture in some form or other I really do not know what it does live on.

Also, I would like to say, as I tried to point out in sponsoring the motion, that we do not blame this Government entirely. On the contrary, we think the Government here has done a tremendous lot to try and get things done for us, but what we do blame is the obstructionist policy under which this Government has to work.

The motion was put and negatived.

#### DR. POLE-EVANS REPORT MOTION

LORD FRANCIS SCOTT: Sir, I beg to move the motion standing in my name:—

"This Council expresses its deep appreciation of the very able Report by Dr. Pole-Evans, and trusts that Government will take such steps as are



[Lord Francis Scott] possible to remedy the state of affairs disclosed in that Report, before it is too late."

I submit that this resolution is one which cannot be opposed by any hon. member of this Council. I believe that even the hon. Indian members will be unable to drag in the racial question on this issue. The reason I have moved this is because it so often happens that we get these valuable reports and then nothing happens about them and the object of this motion is to fix the attention of this Council because I personally believe that it deals with one of the most important questions affecting the country at the present time.

The first part of the motion expresses our appreciation of the Report of Dr. Pole-Evans. I am quite aware that in that report he does criticize certain departments of Government and perhaps these departments cannot relish such criticism, but as a matter of fact we are all better for criticism because either we have a complete answer to such criticism or it may draw our attention to some defects and enable us to put them right. So I do feel that even those members representing the departments criticized in this report must join with everyone else in their appreciation of that report.

When it comes to the second part of the motion, I worded this in such a way that it does not commit Government to accept the report absolutely and *in toto*, but I do trust that they will do what I have stated here, that is "take such steps as are possible to remedy the state of affairs disclosed".

I think everyone must agree that the state of affairs disclosed in this report is a very grave one and that it is essential that steps should be taken with the least possible delay to put that state of affairs right.

This Government very wisely invited Dr. Pole-Evans to come up here in December, 1937, and he actually arrived here at the end of 1938. He then went round the country and saw everything for himself and, as he said in his report, he started off with a perfectly open mind and on what he actually saw he made his report. Now, the main theme of that

report is that it should lead to a clear understanding and a better use being made of Kenya's most valuable asset, the natural vegetation. The whole gist of his report is that we have mismanaged it and that steps should now be taken to reverse that position and put matters right, before they have gone any further.

I am going to refer to certain statements in this report so as to emphasize these facts and if you will turn to page 3, section 14, you will see that in talking of what has happened he says this:—

"The desert country has been occupied and still is inhabited, by roving tribes with flocks and herds who have taxed the strength of the vegetation to its limit and who have trampled the soil to such an extent that serious general erosion, both by wind and water, is taking place throughout its length and breadth."

He then goes on:

"The semi-arid grassland has become the fixed abode of the great native tribes—the Masai, the Kamba, the Suk, the Kamasia, the Njemps, the Samburu, the Meru and the Embu. The continuous pressure wrought by their grazing animals, on what was once a rich and palatable pasture land, has now almost completely destroyed the original cover and given rise to unpalatable herbs, water-robbing, thorn thickets, serious erosion and famine."

These are pretty serious statements by a gentleman who is an expert in this particular line and who is recognized as a great authority in other parts of the world.

I will now turn to what he says about the Kamba Reserve because the Kamba Reserve has been very much in our mind recently and there has been a good deal of discussion as to what should be done, and this is what he says:—

"The reserve as shown to me was a most distressing sight. It was a shambles—the result of land mismanagement and misuse. Most of the top-soil has gone and the sub-soil was rapidly following suit.

The underlying cause of this serious state of affairs in the Machakos is the continuous and ever-increasing pressure wrought by man, beast, and termite on

[Lord Francis Scott]

The destruction and removal of the grass cover has resulted in soil exhaustion, soil desiccation and soil erosion. Nothing but the complete restoration of the grass cover can bring about a permanent improvement in the situation.

I came to the conclusion that the present methods are not sufficient to cope with the appalling situation which has been allowed to proceed so far. The only method, in my opinion, which will bring about a speedy and effective remedy, is to take the reserve section by section, remove man and beast, remove as much thorn bush as possible, tackle the termites and allow the land and vegetation a complete rest.

The attempts made to recondition some of the badly eroded sites by stagger trenching and by the establishment of plots of exotic plants were neither impressive nor designed to strike at the root of the trouble and were futile."

He goes on in the next section to that, Sir, saying that he appreciates the work done by the soil erosion engineer who was fully appreciative of the part grass should play in the effective recovery of the reserve. He then goes on to say:—

"The goat population has reached such proportions that their combined browsing and tramping are working ever-increasing injury to an already weakened and over-taxed land. In desert and semi-arid country, such as pertains in much of the Machakos Reserve, the goat is the most destructive of all animals . . . a drastic reduction in the number of goats should be one of the first considerations."

and following that he says:—

"I am more convinced that ever that it will be futile and only lead to a disaster of the greatest magnitude, so far as Kenya is concerned, if this problem of the Kamba Reserve is not tackled immediately on far more comprehensive lines than has been done in the past."

These are very plain-spoken criticisms and I should like to know whether Government accept these statements as correct, and if they do, what steps they

are taking to put that right, because, as I understand it, the present procedure that is taking place in that reserve does not comply with the recommendations in this report.

The next two paragraphs are a direct criticism of the Department of Agriculture, and these are his words:—

"Reviewing the past I find that the Department of Agriculture must be held largely responsible for encouraging the Wakamba to break their land for cash crops and to adopt intensive methods of agriculture, when their country was largely unsuited to such a procedure. Little or no attention has been given in the past to the country's main and surest standby—the natural grass cover."

I have no doubt that in the course of the debate my hon. friend the Director of Agriculture will reply to these criticisms.

And now, Sir, still dealing with that reserve, Dr. Pole-Evans states on page 11:—

"What is required more than anything in the native reserves is knowledge and guidance with regard to the recovery, management, use and preservation of the valuable grass cover which existed there."

I recommend, therefore, that steps be taken immediately to set aside for complete rest and reconditioning one of the most badly eroded parts of the reserve, the area to consist of not less than 50,000 acres. Within this area a pasture research station should be established as soon as possible, and the officer in charge of the station should have a free hand to lay down and conduct experiments wherever he thought necessary within the area. These, in course of time, would resolve themselves into large-scale practical experiments and striking demonstrations which could not fail to impress even the most sceptical regarding the value and potential possibilities of the grass cover."

He says in the next paragraph that there is common agreement with regard to:—

"(a) the necessity for the reduction of stock;

[Lord Francis Scott]

- (b) that goats are the worst offenders so far as erosion is concerned;  
(c) that blocks of badly eroded country will have to be closed completely to enable the natural vegetation to return."

He then says:—

"I may say at once that my own views are in accord with those expressed above but I cannot refrain from commenting on the fact that all these recommendations completely overlook the supreme importance and necessity of restoring the natural grass cover."

That, Sir, is the theme going all through this report.

In paragraph 59 he says:—

"No State department has in the past shown any inclination to attach any real importance to the study, management, and preservation of the grass-land in Kenya. The result of this neglect is to be seen throughout Kenya, but more especially in the native reserves in the arid and semi-arid areas."

and then, in the next paragraph he criticizes the re-afforestation policy and I hope, Sir, we shall have the benefit of the views of the Acting Conservator of Forests in the course of this debate. This is what he says:—

"I attach very little value to any schemes of re-afforestation in these areas. The only practical value that can possibly accrue from afforestation is in the provision of timber for fuel purposes. It is both common knowledge and experience the world over that in semi-arid regions the planting of trees has done little or nothing to stop erosion or to improve the soil, where planted, for further agricultural operations. They have little or no effect on climate and their usefulness as wind-breaks has been disappointing. They dry out the soil more effectively than any other type of vegetation and make heavier demands on soil moisture than other plants. Steps which are being taken by the Forest Department to remove grass from the steep hill slopes at considerable expense in order to

plant trees are, in my opinion, a very mistaken policy."

I trust, Sir, that we may have comments on that statement.

With regard to the Yatta Plain he gives a warning there that unless steps are taken at once to recondition the state of that plateau there may be trouble there as well. With regard to the Kikuyu Reserve he gives credit for some good work having been done there but he goes on to draw attention to one great danger and that is with regard to the swamps. He looks on these swamps as "the most priceless and precious asset in the Kikuyu Reserve"; and considers that the present method of treatment simply means their early annihilation, and he suggests that the fault lies with the Agricultural Department who have encouraged the use of them for agriculture rather than for pasture.

When he comes to the Kamasia Reserve he has some very severe comments to make there:—

"The reserve as shown to me displayed in their worst form all the symptoms and after-effects to be seen throughout Africa in thorn country that has been subjected to unremitting pressure by man and beast. The grass cover had gone, thorn bush was increasing everywhere, much of the top-soil had disappeared, gullies were eating deeper and deeper into the land and termites were completing the picture of desert conditions."

Both on hill and on plain the primary cause of this increasing desolation is the removal and destruction of the grass cover by the grazing animal. From what I saw I concluded that goats and termites must be held largely responsible for completing the final stages of the awful desert now there. Not until the grass cover is permanently restored can any amelioration of existing conditions be brought about."

He then says:—

"The attempts made by the Reconditioning Officer in this reserve to restore the grass cover merit special mention"

and draws attention to the fact of the extraordinary recuperative powers where

[Lord Francis Scott]

the land has been given a chance of having its grass covering restored.

With regard to the forestry side he says:—

"I have already expressed my views re wattle plantations and again I would urge caution in this regard. If wattle plantations are required chiefly for the purpose of adding fertility to worn-out land then I have no hesitation in saying that fertility can be restored to such soil much more effectively and in a more practical manner by means of a grass crop which will have the added advantage of being more effective also in preventing erosion."

I shall be very grateful if we can be given some information because opinions seem to vary very much as to whether wattle plantations are beneficial or otherwise to the soil.

With regard to that reserve he makes the following recommendations:—

- (a) Make an aerial survey of the reserve;
- (b) Combine this with a botanical survey from the ground;
- (c) Select a suitable section representative of the reserve as a whole, of approximately 30,000 acres, remove all natives and stock from it, and establish a pasture research station on it.

The primary and sole functions of the research station should be: To work out a permanent farming system based on the natural vegetation of the area and the capacity of the land. This would include a detailed study of the grass cover, ways and means of protecting it, propagating it, and putting it to the best possible use."

And these, Sir, are his general recommendations on page 23:—

- (a) Make an aerial survey of each reserve and map it;
- (b) Select that portion of each which is to be reconditioned first;
- (c) Remove stock entirely and natives as far as possible;
- (d) Establish a pastoral research station in the evacuated area;
- (e) Carry out the necessary vegetation and ground surveys;

(f) Proceed with reconditioning work and the establishment of grass nurseries."

He then stresses:—

"the point that a complete rest from grazing must be given over a period of years to those parts which have been so badly handled in the past, and this I must again insist upon."

He does not in his official recommendations make any allowance for the expense of an aerial survey which of course must cost a good deal of money and I should like to know whether, if such an aerial survey of these reserves is made, it would be also used for a general survey of the country for geographical purposes, and perhaps the hon. the Acting Commissioner for Lands and Settlement, as an expert surveyor, might be able to give us some information on that point.

Dr. Pole-Evans goes on to give details as to how he recommends these pastoral stations should be established and he recommends that we should apply for £120,000 from the Colonial Development Fund for this purpose, and that is to include also a Director of Pastoral Research. There is one thing he emphasizes in more than one place and that is the remarkable recuperative powers of the land, when it is given protection, and it is interesting to note that experiments made on two grasses taken from this country down to South Africa have produced most amazingly good results.

To sum up, what I want to know and what I want to urge is what is Government going to do to carry out the policy recommended in this report? Are they prepared to undertake an aerial survey or not? Are they prepared to strengthen the pastoral side of the Department of Agriculture, are they prepared to establish these research stations?

Personally I do not feel competent to comment on the aerial survey but I do feel that this question is of such outstanding importance to the country that it is well worth while the money being spent on it and I consider that it is definitely a project for which funds from the Colonial Development Fund should be rightly spent. I feel that it is of far greater importance and that money could be better

[Lord Francis Scott] spent on this than on any other purposes. And with regard to these research stations I consider that they should be on their own and not mixed up with any other sort of agricultural stations; that they should be given a fair trial and have time to show results and I believe that if the areas at present badly eroded can be preserved and it can be shown that it is possible to recondition them, and that they can have a really good grass covering by means of a rest, and if these administrative places could be made available for the natives to see, it might have an enormous effect on the natives in educating them as to the necessity for these various methods which we are trying to take in order to prevent the country from being destroyed.

All the methods which have been taken to combat erosion must have the final objective of having the good grazing of this country, which is natural to the country, restored and restored in such a way that the pastures will be able to carry herds of good cattle. It is not our objective merely to reduce the number of cattle, we want to increase the carrying capacity of the land so that larger herds can be carried on it.

But there is no question but that drastic steps have got to be taken at the present time so that we can start building up a sound foundation. Half measures and timid measures will never achieve that and I do urge Government to tackle this problem right away with a whole-hearted determination to achieve results.

There is one other point which emerges from this report. In the past it has been rather a popular idea to criticize the small proportion of our land which is under agricultural development, or, in other words, by what people mean when they say "under the plough". If you study this report I think you will realize that we have got too big a proportion of our country under the plough and that the main line of our agricultural development should be much more on the pastoral and animal side than on the agricultural side and I hope people will realize that and take that to heart.

I think I have covered the main points of the report and, as I said before, this

motion is not a contentious one and I trust that it will be unanimously accepted by Council.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, it gives me great pleasure to second this motion and particularly to voice my appreciation of the work done by Dr. Pole-Evans when he came up here. I had the privilege of meeting Dr. Pole-Evans in the Union and he took tremendous pains to take me round and at a later stage, also other people from the Colony, to show us all the reconditioning and experimental work that is being done under his direction there. He is a great personal friend of General Smuts who in a conversation at that time told me: "I believe that you in East Africa have the herbarium of Africa at your door."

He came up here and as was ably demonstrated by the noble lord the hon. Member for Rift Valley he has produced what we believe to be a very valuable report.

I have very little to add to what has been said except that I believe we shall hear later on and the tendency will be to suggest that Dr. Pole-Evans has hopelessly exaggerated the position and has made demands which are of course quite beyond the possibilities of this country being able to provide.

Well, all experts and all technical people naturally are inclined to think that their particular line is the most important, but I really believe that in this case Dr. Pole-Evans' line of country is one of the most important things we have to deal with. As regards exaggeration I had a letter from Dr. Pole-Evans not long ago in which he said:—

"I heard to-day that my report on my visit to Kenya has now been published, and I have gathered the impression that I am credited with painting the picture blacker than it really is. I want to tell you that I have not exaggerated the position. The position is even more serious in the native reserves than my report makes out." He went on to say:—

"Over-grazed land in semi-arid countries frequently has marvellous recuperative powers, but land which has

[Major Cavendish-Bentinck]

been broken to the plough and cropped to exhaustion never recovers in man's lifetime. This is the really serious thing about your reserves."

As regards recuperative powers he went on:—

"I also want to tell you that I can now say that we made in Kenya and Uganda a wonderful collection of most remarkable grasses for combating erosion. You probably have the finest grasses for this purpose at your very doors. The grasses that I brought back with me and have established at Pretoria are the most remarkable that I have ever collected, and that probably ever have been collected.

I refer more especially to your Star grasses and Finger grasses. When I tell you that individual plants of some of your giant Star-grasses, after being planted out, have at the end of five and a half months covered over eight thousand square feet of ground, I am sure you will find it hard to believe, and people overseas will, I know, think I am romancing, but we have the proof of it on our station at Pretoria. Two days ago I sent down to my Minister at Cape Town single shoots of these giant Star grasses, each measuring over fifty feet in length, so that he could show them to his colleagues in the Cabinet."

I may add that I have seen the way they plant them, and they plant a little tiny shoot on what looks like murrum and if the grass can survive that it must be fairly remarkable.

In that connexion I would like to press for what the noble lord the hon. Member for Rift Valley suggested as necessary; that is, that some sort, not necessarily expensive, of grass experimental stations or nurseries be established in this country, because I am not quite satisfied that those responsible for reconditioning eroded areas really are sufficiently interested in what particular type of grass they are trying to introduce in each particular area. I think they leave it rather to chance, hoping that something will happen and that any grass planted, so long as it will grow, will assist in reconditioning the area. I beg to second.

**DR. WILSON:** Your Excellency, I rise to support this motion.

I must confess that I was rather tempted to suggest an amendment to the wording of the first line of the motion but in view of what has been said about Dr. Pole-Evans' enthusiasm and interest in this country it would be rather ungenerous if not discourteous to suggest that the wording should be altered so as not to read "deep appreciation" and "very able" in reference to the Report, but to express the idea that this Council has arrived at its own appreciation of the real value of the Report.

Though I do think that the Report is marred by its unsound statements and rash recommendations, but considering that the author had only just over a month for his observations throughout the length and breadth of the Colony one cannot be surprised at such defects.

The Report is valuable because it calls attention—and very loudly—to the need for definite action by Government in the native reserves. It comes as another forcible reminder that the agricultural and pastoral development in the reserves cannot be just allowed to take its own way; a reminder that perhaps there has been a tendency to encourage that development along a wrong line and a reminder that it is above all things necessary to try to discover the right lines along which development should take place, and then that every effort should be made to compel development along those right lines.

The weakness of the Report to my mind is in its extreme specialized outlook. It is concerned first and last and all the time with grass; it reminds me of the saying which is sometimes impolitely applied to my own profession:—"Choose your specialist and you choose your disease." Now, Dr. Pole-Evans has decided our disease for us, and he has prescribed a drastic course of treatment rather regardless of other considerations.

The ultra-specialist attitude that he has adopted is shown very clearly in paragraph 188, which was one of the paragraphs kindly not read by the hon. mover:—

[Dr. Wilson]

"I have made no odious distinctions in comparing what is done for agriculture, for animal diseases, for human diseases and for forestry with what is meted out to grass and pasture, but I submit that a new outlook with regard to grass and pasture is vitally necessary and for the information of administrators and the general public I cannot stress too strongly the fact that agricultural officers are by training no more qualified to look after grass research than are veterinarians to look after human ills or foresters to look after agriculture."

That last little piece rather makes me smile, but I can quite imagine that it makes some other people pretty mad. I have always held, throughout a fairly long official life, and since, that specialists and experts should be distrusted—at least to this extent: that one should examine their statements and recommendations very carefully and critically, in the light of more general knowledge and common sense. Only after that is it safe to accept their advice, adapting their special recommendations to the general conditions and requirements.

Now Kenya has been blessed (or cursed) by a great number of visiting experts, and Dr. Pole-Evans is the last, or most recent, of this long line of experts to show us the only way of salvation. But it is not every one of these visitors who has adopted such a narrow outlook as our most recent visitor; and a year or two ago we had a visit from a forestry expert, and this is what he said:—

"A point which took foremost place in my mind during previous tours of West Africa and impressed itself again with equal force during the recent tour of East Africa, is the indispensability to adequate colonial development of a scheme of land planning that comprehends all the factors concerned. The complete map, not section, requires to be studied. Detached sectional inquiries are often misleading and followed by mistaken action. The opening up of communications, land settlement, forestry, water and soil conservation, agriculture, cultivation of economic crops, veterinary services, anti-tsetse

work, all touch at some point or another and each must be planned with full knowledge of their inter-relations."

Now that is the broader and bigger view and surely, it is the only sound and practical way of approaching the problem of agricultural development. I use the word "agricultural" and mean it to include "pastoral", in spite of Dr. Pole-Evans, because I consider that it is absurd to try to make a distinction between agricultural and pastoral policy.

Recently quite a good deal of attention has been given to the inclusion of animal husbandry in the functions of the Agricultural Department rather than regarding it as a veterinary subject. This is an indication of the wider view of agriculture. But in this Report it seems to me that we have specialism run mad. One almost gathers the impression that the author thinks that the whole duty of man is to make Kenya a land fit for cows to graze in! I know the cow is a very valuable animal, but, for myself, I think the cultivation of economic food crops is more important in the economy of our native reserves.

The Report has already been quoted very extensively as regards its general recommendations. Taking them as general recommendations of course they are very sound. To take them one by one as set out on page 23: "Aerial survey"—I think this is one of the most important things we require in Kenya, and we require an aerial survey of the croded areas in particular; to "Remove stock entirely and natives as far as possible"—yes, with the reservation that some at least of the natives must be allowed to remain to help in the reclamation of their own land; "Carry out the necessary vegetation and ground surveys"; "Proceed with reconditioning work and the establishment of grass nurseries"—yes; and lastly, "Tackle pastoral problems at the station"—well that, I am afraid, I do not understand.

However, when we get to the suggestions as to how these recommendations are to be carried out things get more difficult. In paragraph 133, the Report states:—

"Goats and sheep are the worst offenders in semi-arid and arid parts

[Dr. Wilson]  
and they must be tackled and dealt with first."

I am glad that that is approved by some hon. members of this Council. It is undoubtedly a question which must be tackled and dealt with first, but when we get to paragraph 135 we find the suggestion of the compulsory handing over of all goats and sheep to the administration and:—

"in place of them supplying the owners with ration cards over a period of five years: the establishment of food depots in the locations, just as dispensaries are now established, where the natives can be supplied with their rations; allow no remission of taxes but rather make the natives seek work outside the reserves or within the reserves on the work of reclamation." That pronouncement is so impossible that one is almost tempted to wonder whether serious consideration ought to be given to the other recommendations in the Report.

Anyhow, I do not think it is likely that we shall be able to get £24,000 a year for these three proposed pastoral stations, and, personally I think we could find better use for at least £20,000 out of that £24,000.

We know that this visit of Dr. Pole-Evans was the result of a visit of three officers sent by this Government to South Africa to study agricultural and pastoral conditions there, with special reference to soil conservation. Now, in the report of that visit we read that the Department of Agriculture in the Union of South Africa "in view of the rapid and devastating spread of soil erosion in South Africa" has taken certain steps but that—and this is the point I want to emphasize—

"The most important and striking work being done by the Department is not in the field, but in research, and particularly in research on grassland management and pasture grasses under Dr. Pole-Evans. Fourteen research officers are engaged on this latter work at thirteen stations throughout the Union . . . but it is still too early for them to make any considerable practical contribution to the measures being adopted in the field.

For some years the Department has been working on a National Reclamation Scheme for a portion of the Drakensberg watershed . . . and it has not yet been possible to show any real progress beyond the preparation of a vegetational survey. The work of carrying out such a survey in detail is immense, and the more information is obtained the more complex the problem becomes."

Now, I only quote that to show that even if we get hold of this £24,000 a year it does not seem likely that the actual practical work on pasture reclamation and soil conservation is going to be immediately helped or hastened.

This motion very wisely suggests that Government "take such steps as are possible to remedy the state of affairs before it is too late". That is to say, we are now asking for immediate and practical measures in the field as a result of the publication of this Report. That is why I am supporting this motion, though in doing so I am not committing myself in any way to approving the whole of this Report.

By all means let us have these three pastoral research stations and a Director of Pastoral Research if it is in any way practicable, but that is a long-range policy. I do not wish it to be thought that I am belittling the importance of scientific research. I know perfectly well how essential it is that any attempt to restore the balance of nature, once it has been upset, should be based on sound scientific knowledge of the facts. But something has got to be done at once and we must apply the knowledge we have to the problems we know.

Our objective is the welfare and the increased prosperity of the African who is living on the land. We must help him, not in spite of himself, that gets us nowhere; he has got to be persuaded to co-operate with those who are trying to help him and to help himself. We have the machinery for carrying out this objective in the Native Administration of Government, but, Sir, I am sorry to say that it does not seem to be working very well.

I suggest that there are two faults hindering the effective work of that

[Dr. Wilson]

Administrative machine. One is perhaps in the control: every department of Government is concerned in the running of this machine, and it should be a working rule that the responsible heads of departments are fully consulted and are taking a full share of responsibility in the running of the machine. Another fault may be at the point where the Administration comes into contact with the native. At the present time the wishes, and the intentions and the orders of Government are not being conveyed to the African tribes in such a manner that these intentions and orders can be carried out without friction.

With all respect, Your Excellency, I submit that the machinery of our native administration should be overhauled and if necessary altered and adjusted. I consider that to be one of the first steps that should be taken in order, in the words of this motion, "to remedy the state of affairs disclosed in this Report, before it is too late."

MR. ISHER DASS: Your Excellency, it was only a week ago, when the hon. mover gave notice of this motion that some African should stand outside the Council Chamber and offer the hon. member a parrot to buy! Though it is a strange coincidence, the reason is obvious, because whatever has been said before, has been repeated by the hon. mover; not even taking into consideration the debate and the speeches and arguments advanced by the hon. Director of Agriculture and the hon. Acting Chief Native Commissioner then. I am sure I see no reason to support this motion.

Any expert or any specialist who happens to be invited to this country and stays in the country for a period of one month and travels up by car or air 4,000 miles to study the country seems to have the last word so far as advice is concerned. But I consider that some of these experts and specialists are suffering from some kind of complex, in fact an inferiority complex, because they base their opinions only on the facts about which they do not understand a word.

I will only support this contention of mine by reading paragraph 30 on page 6. Here, the Report says:—

"Reviewing the past I find the Department of Agriculture must be held largely responsible for encouraging the Wakamba to break their land for cash crops and to adopt intensive methods of agriculture, when their country was largely unsuited to such a procedure."

It was only six weeks ago, not six months ago, that hon. members on this side of Council and particularly the noble lord the Member for Rift Valley stood up and argued with Government that immediate action should be taken so as to encourage these natives to take up agriculture and also that the land should be made fit for cash crops.

LORD FRANCIS SCOTT: Sir, I never said anything of the sort.

MR. ISHER DASS: He was discussing the policy of destocking and the noble lord probably has forgotten. Anyway, it is an absolutely contradictory paragraph. Assurances were given by the hon. Director of Agriculture only six weeks ago that these measures were being adopted in connexion with soil conservation in the different reserves. Not only that, the hon. Acting Chief Native Commissioner, also speaking six weeks ago, exactly said that he did not believe Government was prepared to take hard and drastic measures at the moment and that they had got to go slow for the time being; they felt that these measures were absolutely necessary for the conservation of the soil and they also felt that these measures should be taken with the co-operation and good understanding and mutual consent of the people for whose benefit they are now being adopted.

As I have said, this expert opinion is quite contradictory to what was said here by the hon. members on this side and the hon. members on the other side of Council, and here we are just six weeks later and the hon. mover states that timid measures will not be of any benefit and that hard and drastic measures must be taken!

[Mr. Isher Dass]

I entirely agree with the statement made by the hon. Acting Chief Native Commissioner six weeks ago and in fact for that reason alone I consider that this Report is not a sound one to be adopted by Government. And, if for no other reason, I oppose the motion.

LORD FRANCIS SCOTT: Hear, hear!

MR. ISHER DASS: The tragedy of the whole thing, unfortunately, is that the hon. mover does not say a single word about the 87 per cent of land in possession of European farmers which has been undeveloped for the last thirty-five years during their occupation. I wonder whether, if any expert could be called in by Government to give advice concerning that 87 per cent proportion of agricultural land when kept for that long period without being developed, he would say that it is a very good proposition or sound policy or whether he would not say that Government should not take it back from these people and use it in some other direction! Not a word has been said about these things; all we have heard has dealt only with the question of the native reserves.

I must say that I cannot entirely agree with the Report or the recommendations of Dr. Pole-Evans however I might appreciate the work he has put in. He has expressed his debt of gratitude to Government and stated that it had been a very pleasant work. In addition he goes a little further with suggestions on page 23, in the paragraph under General Recommendations, paragraph 130 (c) and paragraphs 132 and 138.

I would like to know the opinions of the hon. Director of Agriculture and the hon. Chief Native Commissioner with regard to these. They know perfectly well the position with regard to 130 (c):—

"Remove the stock entirely and natives as far as possible."  
The Report goes on to say in paragraph 132:—

"I have stressed the point that a complete rest from grazing must be given over a period of years to those parts which have been so badly handled in the past, and this I must again insist upon."

Whatever measure Government may see fit to take to remedy these defects there are two or three things which I must bring to the notice of the hon. Chief Native Commissioner and the other departments concerned. Not only that, but I warn hon. members or anyone else going against such a definite policy as was expressed six weeks ago and suggesting other measures.

Government must take immediate action to bring home to the natives the recommendations of this Report and that can only be done by two or three methods. They can hold barazas in the native reserves or bring the natives together or they can deal with the matter through newspapers, by means of the publication of certain articles, or, Sir, by co-operation with the Native Councils or the different institutions.

Government must bring home to the natives the implications of this Report before any drastic action is taken and get the natives' confidence and seek their co-operation. I would not be surprised, if these steps are not taken and if Government hurries to take some action, that it resulted in some unpleasant consequences.

There is one more thing I wish to say and that is that it is a pity that the hon. mover—I do not know why but for some reason—did not emphasize what paragraph 95 on page 18 says. He probably thought that there was no reason for pressing this as a sound principle because it states:—

"Mr. Maher's recommendations for the hill country are briefly: maintain forest and bush on the hill tops mainly for climatic reasons, eliminate goats gradually and replace them by cows, protect all cultivated land by contour banks, and appoint an Assistant Agricultural Officer and an Indian Assistant Forester, the former to give advice re crops, etc., the latter to protect the forest reserves and assist in the establishment of wattle plantations."

I do not know whether any one is going to oppose that.

As far as the Indians are concerned in this country there is not a word said about them or the land in their possession or





[Col. Kirkwood]

of this Council who is clear minded realizes that there are also great difficulties and the great snag of course is finance, but what I do wish to ask is that Government will come to some decision that it will be possible to implement the whole of this Report and get on with it. It will require a new department and it will require a great deal of financing but Government, for instance, can take the question of the goats and come to a decision and devise ways and means of getting rid of every goat in this Colony. Until they do that Government is lacking in its responsibility to the native and to the country in general. Presumably they are of the opinion that goats should be got rid of, when do Government propose to start doing something?

I am not going to worry Council but I take it that it is quite possible that this Report will go the same way as the Agricultural Commission Report and probably go back to the same pigeon hole! If that is the action Government is going to take then all I will say is that Government is lacking in its responsibility to the native and to the Colony in general. And it is for Government to make its decision and having made that decision see that the results are achieved.

Also in that last paragraph I quoted there is reference to the removal of stock from one area to another. I would like the hon. the Director of Agriculture when he replies to tell us the position in the Kamba Reserve to-day. What is the number of stock that has been removed from that reserve say in less than a year, about eight months? My information is that at least 100,000 head of stock has been taken from the Kamba Reserve and gone elsewhere—that is quite obvious—but where have they gone and to what area have they gone to destroy everything, having destroyed or partially destroyed their own area? Were they moved by permit? Have any prosecutions resulted as a result of the illicit movement of cattle?

With these few words I will close, expressing the urgent wish that Government will here and now, this very morning, tell us some practical measures, even if only in relation to one particular paragraph of this Report, what action they

are going to take and when they are going to take it.

MR. COOKE: Your Excellency, I only wish to rise to associate myself with the hon. the Chief Native Commissioner in his plea that certain farms should be temporarily set aside to solve this problem of cattle.

MR. WATERS: Your Excellency, referring first of all to the first part of this motion, I wish to inform Council that this Department is still maintaining close contact with Dr. Pole-Evans, who has very kindly helped us and has given us promises of help by sending us some of the grasses which he finds to be best. I saw those photographs of the *Giant Cynodon* grass and his letter about them, and the matter has been considered by the department and the officers concerned, and we are alive to the work that Dr. Pole-Evans is carrying on down in Pretoria.

Referring first to that particular grass, the *Giant Cynodon*, we have in this country one strain of that type of grass and it has been tested in various places, including the Coast, and it has been grown on a considerable scale on the Athi Plains. We are not yet certain as to how valuable this grass will be over a long period of years, as it always promises well for the first year or two and then it is liable to deteriorate.

Referring to the speech made by the noble lord the hon. Member for Rift Valley, his first few remarks to which I wish to refer are those in connexion with the Kamba Reserve. The policy in the Kamba Reserve, as I understand it, is that it is an agricultural policy and it is an attempt to introduce farming, real farming; in place of soil mining which has been going on in the past, and uncontrolled grazing. By farming I mean a system of agriculture under which the land, while producing the maximum economic return, continues to improve in fertility. In Machakos this can best be done by using farmyard manure, and it is a matter of interest to know that, while work has been going on under which the boundaries of the farms have been planted with sisal, we have secured records of 3,000 natives who have manured at least a part of their arable land, and

[Mr. Waters]

that is a very great progress. There are also 61 natives doing mixed farming on compact holdings under the supervision of agricultural officers.

There are one or two principles that should be adhered to. One is that the area of arable land should not be greater than that adequately manured, and the object of the agricultural officers is to persuade the native to reduce his arable area and try to get higher yields and greater production than he got from the larger area. Another principle is that the cattle *bona* should be near to the arable land. In some cases in the past a native has had a small piece of arable land on the hillside and his cattle have been far away on the plains. The result has been that the fertility of the land on the hillside is being used up. It is much better to cultivate and manure poor land than to mine good soil.

By the adoption of this method the agricultural officers are finding that the Wakamba are keen to fall in with our suggestions and recommendations. A number of natives have been persuaded to cultivate on flat land who had previously been cultivating on steep slopes, and well over 7,000 acres of arable land have been protected by the planting of live wash-stops. That is in addition to the 480 acres of terracing which was done some months ago by tractor and *ngombi*. In addition, nearly a hundred *shambar* have been demarcated back from gullies and river banks.

Coming to the position as regards grass in that reserve, a very large number of natives are prepared to plant grass and over 1,000 acres of bare land has been prepared for grass planting. But there is a difficulty here, as hon. members know, because of the drought and the results may not be as good as were expected. But I mention this because hon. members have said that we are allowing them to plant any kind of grass they like. The grass they are planting and the seed are from specially selected grasses and they are grasses which we know are good grasses. It is quite possible that there may be better ones, and a costly research station would find out for us whether there are any better grasses. But in my own view it would be a long-range line of

research. I must say that the grasses that we are now planting out are good grasses and grasses we know and we certainly do not plant any kind of grass seed haphazard.

Having given that very brief description of the methods that the Agricultural Department consider are the best to adopt in the Kamba Reserve and the methods which we are at the moment following, it is necessary to consider in the light of this Report what is the best method of securing the reconditioning and control of stock in such a reserve as the Kamba Reserve. In some countries the organization for such a project is contained within a soil conservation department, and that is the policy which has been adopted in the United States and so on. The policy that Dr. Pole-Evans recommends is to have a pastoral research organization which presumably would control the reconditioning of the ground. But in my view, at present from our experiments in this Colony, I consider that the method we are now following, under which the Administration are responsible, with the help and under the direction of the Agricultural Department, is the best method of organizing reconditioning.

In addition to such organization one naturally needs expert advice on several matters and one thing on which one needs advice is, of course, as to the best method of planting for pasture, and the best types of grass to plant, and that is where I think this Report has been extremely valuable in that it has indicated that we should extend our services in that direction.

I would not admit for one moment that the Agricultural Department has done nothing for pastoral research. In my view it has done a great deal. One agricultural officer has been seconded for that particular work for the past eight years, and as a result of that work and, such as the Njoro station and at Kitale, we do know quite a lot about the different kinds of grasses in this country. We have concentrated rather more on the arable grasses, than on grasses for the arid regions or on the pastoral grasses, and I think to start like this was justified. There is considerable evidence that the best way to improve the grass is really



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to plant it, and that you actually gain more by planting grass than by trying to improve the natural grass.

You will notice that at the end of this Report there is a map showing the vegetational areas, and just before Dr. Pole-Evans came here the grassland research officer of this country had produced such another map and it will shortly be published. It is in much greater detail than that of Dr. Pole-Evans' map, which of course was only prepared as a result of a short trip.

The noble lord the hon. Member for Rift Valley referred to sections 30 and 31 of the Report, where it says that the Agricultural Department has been largely responsible for encouraging the Wakamba to break their land for cash crops. There is no evidence given as to why Dr. Pole-Evans should have thought that. Actually there has been a great increase in the population, and it is true that we have encouraged the growing in a small area of cotton, but I can find no evidence that this particular trouble should be laid at the door of the Agricultural Department.

MR. COOKE: Your Excellency, on a point of order, was not another officer, Mr. Maher, responsible for making the statement concerning cash crops and soil erosion.

MR. WATERS: I should like to confirm whether that is so or not. I know there has been a popular cry that the department has encouraged seed production, but I do not think that it is borne out by the facts.

The hon. member also referred to the Yatta Plains. There again the grassland officer has done a considerable amount of work and there a large-scale trial is in progress which I think is very promising. Dr. Pole-Evans says that we must not be encouraged too much by the improvement that we see at the moment, but I think probably that if he were to come here again in three or four years' time he will probably agree with me and say that, as a result of the work of the grassland research officer in this department, the grasslands there would have shown a great improvement.

The hon. member then mentioned the question of swamps in the Kikuyu Reserve. These swamps were drained by free labour largely because of famine. They were papyrus swamps, and I doubt very much whether the natives there would have been prepared to help at all in any way if they thought they were going down to grass. It is true that the policy of the department is that the land should be put to its best use, and I think we shall be able to persuade these natives to plant some of their land down to grass and they will rotate it with their crops in the ordinary way as on a mixed farm. I do not think that we need worry that these swamps will go down the drain. They are on a slope of which the gradient is 1 in 1,000, and I think it is very doubtful if they will blow away. We know that the swamps in some countries have become desiccated and are being blown away, but I doubt very much if that will happen to the Kikuyu area swamps.

I was asked whether wattle is beneficial to the soil. Of course, if a wattle plantation is badly managed and not thinned properly you will get erosion if there is a considerable slope; you will see that any day on the road to Limuru from Nairobi. But if it is properly thinned and you have got a vegetal covering underneath then the soil will not erode and it will actually improve in fertility. Tests have been made by the senior agricultural chemist of the Agricultural Department and in the particular cases in which he made tests it was shown that the fertility of the land had improved.

I have already dealt with the suggestion that too much of our land is under the plough, and I think that in the case of the Kamba Reserve that that probably is so and the reason for that is because of low fertility, but I see no reason why the actual yield per acre should not be trebled or even quadrupled in many cases in yield.

The hon. and gallant Member for Nairobi North mentioned that Kenya probably—and I think Dr. Pole-Evans also said it—has the finest grasses in the world. I think that is probably so, and I am very glad that Dr. Pole-Evans has come to that conclusion because on coming to Kenya I think everybody is amazed at the recuperative qualities of

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the soil and the extraordinary way in which dead grass appears to revive. I have already stated that the kinds of grasses we are planting in the reserves are special ones, and I can give the names at any time to the hon. and gallant member.

The hon. Dr. Wilson commented on the narrow outlook of the Report. With regard to this I would say at once that the officers of my department and myself have regarded this Report as being one on which to build rather than one which we should criticize, and at the moment I am in consultation with the hon. the Director of Veterinary Services and we are preparing a joint report on this giving definite proposals which we hope Government will adopt. It is not possible for me to say exactly what are the definite proposals we shall make because although we have discussed the matter considerably we have not yet come to a final decision.

It is also true that if we have pastoral research stations they would not be able to contribute for a number of years to the present position. If we wish to recondition the reserves straight away then we must use the grasses we have and in my opinion we know quite enough about the grasses to avoid making any serious mistakes.

With regard to the comments made on the administrative machine, so far as the Agricultural Department is concerned I wish to take my full share in these matters in the reserves and I think in the case of the Kamba Reserve, at any rate; the department has taken its full share in helping to formulate a policy and in directing it.

The hon. Mr. Isher Dass mentioned that the Report does not take into consideration the 87 per cent of the European farms which are undeveloped, well, of course, that is not an exact statement of the position because the actual facts are that there is 13 per cent (assuming that it is 13 per cent) of arable land in the Colony, while to say that the remaining 87 per cent is undeveloped is wrong, for a very large proportion of it is pastoral land. In criticizing this Report of Dr. Pole-Evans it must be remembered that

he was only asked to report on soil erosion and the regeneration of grasslands, and if he did not make much reference to the subject of arable grasses and the regeneration of arable land then I think one must excuse him.

I cannot agree, Your Excellency, with the hon. Member for Trans Nzoia who says that the department has done nothing with regard to grasses. We are prepared to give advice to any farmer wishing to receive advice as to what is likely to be the best grass in his particular area. Naturally we do not know everything about it and we are endeavouring to expand our pasture work in different areas of the Colony. Dealing with the subject of mechanical reconditioning in the reserves, of course this was discontinued some months ago when we started the new policy of demarcation, and the tractor is now being used for making dams.

I think I have dealt with all the specific points that have been raised with regard to my department and the work of the Agricultural Officers. In conclusion I should like to say that in my view the line on which we should proceed is to consider the establishment of pastoral research stations in the different vegetational fields of the Colony. The proposals I have already made are proposals in that direction but they are still under consideration. The Report recommends very large research stations which in addition to grass research will also undertake reconditioning. But in my view these particular pastoral research stations should be confined rather to research in the same way as the soil conservation services should be very largely confined to research on soil conservation. There is one other point I should like to mention and that is we shall definitely need, if we are going to undertake this grassland work in the near future, chemical assistance to find out not only what the grasses contain but whether they are useful as regards nutrition, digestibility and so on.

LADY SIDNEY FARRAR: Your Excellency, I rise to disassociate myself entirely with the suggestion made by the hon. Member for the Coast as regards making use of any undeveloped land in

[Lady Sidney Farrar]

the Highlands for carrying out the reconditioning process as outlined in Dr. Pole-Evans' Report. Already we have a picture given in paragraph 22 of the shambles resulting from land mismanagement and misuse. We are endeavouring to foster closer settlement schemes on the undeveloped land in this Colony and how this can be done if we are going to offer the new settlers land already over-run and misused by the natives' own ideas of primitive agriculture, the squatters, sheep and goats, I cannot see at all. I merely want to quote paragraph 134 in support of this:—

"Few courses are open to the Administration to deal with the problem. There are no easy paths of escape from this unpleasant situation and no short cuts to success. The problem is not being tackled if the natives with their flocks and herds are merely moved from one area of destruction and desolation to create further devastation in another locality: it is merely being shelved."

MR. DAUBNEY: Your Excellency, may I say at once that I welcome this motion as evidence of interest in what I regard as an extremely valuable Report. The Report, as my hon. friend the Director of Agriculture has pointed out, is necessarily the report of a specialist. The terms of reference to that specialist were restricted, and that accounts for the specialized nature of the Report of which the hon. Dr. Wilson complains.

References have been made to the effect that there has been over-statement of the case in the Report, and we have heard something of Dr. Pole-Evans' defence against that charge. Well, I admit, I too feel that in parts there is over-statement in the Report. I do not think I can agree with the hon. Dr. Wilson's explanation as to why there is this over-statement: that over-statement is one of the attributes of the specialist or scientific worker. In fact, I take the reverse view. I would say that over-statement is repugnant generally to the scientific worker, and since the distinguished research worker here concerned does indulge in over-statement I can only regard this as still further

evidence of the extreme seriousness with which he regarded the position in this Colony.

There is not a great deal new in the Report. But the Report does confirm many of the conclusions that have been reached by people whose work brings them into contact with these problems or whose interest has run in that sphere. And it lends the weight of an authoritative name to the conclusions not only put forward by previous commissions, but which are borne out in the recent report of the Meat and Live Stock Inquiry Committee and which you will find stated and re-stated in various debates on the policy of this Department and of the Agricultural Department in recent sessions of this Council.

In the first place the Report gives us the appreciation of an expert on the grasslands of this territory as they affect the agricultural economy of the country. Dr. Pole-Evans' review of the grasslands of this country is really summarized in paragraph 160 of the Report in which he states that the lands of this country can be divided into:—

- (a) An area for extensive ranching practice;
- (b) An area suitable for intensive systems of pasturage and dairying.
- (c) A crop production area for the fattening of stock."

Now that division of functions has a very familiar ring about it. I think it is a definition of the functions of the land which has been recognized for some considerable time and one on which the policy, at any rate of my department, has been broadly based for some time past.

I should like to go back to paragraph 143 in which the author of this Report states:—

"The arid grasslands of the country occupy nearly three-quarters of the Colony."

That, too, is a fact of which we must not lose sight. I was once reminded of a remark made by Sir Frank Stockdale on his last visit to the Colony. Almost as soon as he arrived here by train from Uganda he said: "Well, you know that this is a brown country, a stock country,

[Mr. Daubney]  
and I hope you all realize that it is in that direction that your development must go."

Leaving the section which deals with the assets of the Colony in the shape of its grasslands, the next aspect dealt with by Dr. Pole-Evans is the damage that is done to these grasslands by misuse in the past. And here I would point out, in defence of the policy and of the actions of Government and of the actions of the Agricultural Department that it is not by any means an unusual feature that in the pioneering stage of developing a young country one goes in largely for monocultural systems of cultivation. That I think, normally, is the first phase in the agricultural development of a new country. Added to that, a few years ago we had the financial crisis and as a result of the economic pressure during those years much more land was brought under the plough for the purpose of producing cash crops. Well now, that again is a thing that has happened in many countries. It happens periodically in the best farmed country in the world—Great Britain. In times of national economic crises land is brought under the plough which normally never sees the plough and once the crisis is past it returns to its proper function. So, I think there is something to be said in defence of the policy which has been pursued when one considers matters in that light.

The third aspect of the Report consists of the recommendations made by Dr. Pole-Evans to deal with the immediate emergency. Here, again, I think we must remind ourselves that this is a specialist's report and the reporter is not concerned with how the measures are to be put into effect when they deal with his particular subject. He recommends that we should rest these damaged lands. Well, we are able to rest a certain portion of them, possibly not quite as large a proportion as may have been recommended in certain cases, and there is no doubt that the need for resting pastoral lands to enable them to recuperate naturally has been appreciated in this Colony.

He tells us that we should dispose of the goats and sheep, and if necessary, take the goats and sheep from their owners, and issue ration cards, set up

food depots in the reserves, and so on. And then he very summarily states that the cattle could be dealt with similarly. Well again, I think for some years we have realized the need of taking emergency measures to deal with the grossly overstocked and badly eroded areas by removing the stock from these areas. We have proposed to send scrub stock to meat factories, fertilizer factories or something of the kind, and to rehabilitate such lands: That is a problem which has exercised the brains of this country for a great many years.

The hon. Member for Trans Nzoia has referred in this connexion to the Report of the Agricultural Commission which was made ten years ago. As an example of the lengths to which human ingenuity has gone in attempting to devise a solution to this difficult problem of persuading or compelling the natives to sell certain stock, I would remind hon. members of the proposals made in that Report, that we should issue a new currency which would be a token currency bearing, shall we say, the head of a bullock on one side for one denomination, with another denomination bearing the head of a goat and so on. I remember that that proposal was raised again about twelve months ago when we were considering this matter, and I was explaining it to a visitor from another territory. I told him that the idea of circulating this currency in the reserves was that it would be used for stock transactions and for the arranging of the purchase of brides. The prospective bridegroom would discuss the price to be paid and then, when this was agreed upon, would hand over the necessary number of cattle and goats in the form of this currency. The visitor then listened carefully and then said: "And I suppose the father then hands him a photograph of the bride!" (Laughter.)

I do not know whether there is a lesson in that for the hon. Member for Ukamba or not, but it is an extremely difficult problem to solve and I do not think that that particular suggestion is going to take us very far. It is a problem with which a committee is dealing at the present moment, at least so far as the cattle are concerned, and there is an equally difficult problem in connexion with goats.

[Mr. Daubney]

These are Dr. Pole-Evans main points for dealing with what we might term the state of "emergency" that has been created, and which renders it necessary that this land should be rested and that we should get rid of a certain number of scrub stock. I do not think there is any specific mention in this Report of the fundamental cause of this condition and that I think is a very important matter.

As far as the degeneration of grasslands can be attributed to overstocking—and again I would remind hon. members that it is not entirely a matter of overstocking—the fundamental difficulty and the fundamental cause is the particular system of managing live stock or rather, of not managing live stock, which is practised by the African native. If we are to maintain our pastoral lands in a serviceable condition and as an asset to the country as a whole, we have got to effect a complete change in the outlook of the native towards his stock. We have got to turn him into a commercial rancher of live stock in the pastoral areas; and a dairyman or mixed farmer in the agricultural areas; and although there does not appear to be any recognition of the fact in the Report, our failure to do this is the fundamental cause of the whole trouble, and the present position would never have arisen but for the attitude of the African towards his stock. It is to the correction of that attitude that we must apply every possible effort; that is a matter for education, for research and for combined action by the Administration and the Agricultural and Veterinary Departments.

One last point with which I wish to deal—I think this is a purely arbitrary division—may be termed the fourth part of this Report. It deals with how we must set about finding out what measures to employ in our efforts to rehabilitate the devastated areas and maintain our grasslands in their best condition on a rising scale in the future. For this purpose Dr. Pole-Evans recommends the establishment of certain research stations in the areas of different vegetational type, and perhaps he goes rather a long way in asking that there should be set up an independent department of grassland

research. What I feel he had in mind was that grassland research should receive such reasonable degree of autonomy as would enable it to carry out its functions to the best advantage.

He makes certain statements about the ordinary agricultural officer being no more fitted to take charge of grassland research than the veterinary officer to treat human ills. Although I think the ordinary agricultural officer is undoubtedly well equipped to apply the results of grassland research to the country as a whole, I am wholeheartedly in agreement with him if he means that the ordinary agricultural officer is not qualified to undertake grassland research. Like every other branch of research, grassland research requires a certain technique which is only acquired by contact with other research workers and by experience in research institutions. It requires an extensive knowledge of the literature on the subject and it requires a particular type of enthusiasm if the worker is to carry out long-range research, and it is essentially long-range research that we need on these grassland problems in Kenya to-day.

As the hon. the Director of Agriculture pointed out we know enough about grassland at the present moment to enable us to tackle the immediate problems in the reserves; that is, to carry out our rehabilitation work in connexion with reconditioning, but for the future we wish to know which are our best species and how best we can manage them. All these are things which will eventually establish our policy with regard to grasslands.

It has been suggested that the Agricultural Department has done nothing for grasslands in the last twenty years and, indeed, the Department is rather strongly criticized in that respect in this Report. Well, while the Department might have done more for grassland research, had it the funds at its disposal, I would point out that the work of the agricultural officer in charge of grasslands research has been quite extensive during the comparatively brief period that he has been occupied on that particular work and the results of that work, which have been published in reputable scientific journals,

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have taught us quite a lot about the management of grasslands in this country.

I would refer hon. members to the work on the high altitude areas, the management of the Kikuyu grass pastures, and on the natural plant succession which obtains in these high altitude areas; I would refer you to the work on Rhodes Grass and the sowing of the species in pastures in conjunction with legumes, which is applicable to a very large area of this country; I would also point out that the *Giant Cynodon* work was started by that officer in 1934, and that material for the planting of *Giant Cynodon* was issued to various agricultural experimental stations and to such places as the Coast and the Athi Plains two or three years ago, as the hon. the Director of Agriculture said. And there are two other important species which have been propagated and tested and which have been issued—*Cenchrus Ciliaris* and *Amphilophis Pertusa*. In fact something has been done for practically every area, from the Highlands of the Kikuyu grass country to the low levels at the Coast. So I do not think it is quite fair to say that nothing at all has been done for the grasslands.

I would finish by saying once again that we must look to the future; we must support these proposals for strengthening the research side of pastoral work and we must give it that reasonable measure of autonomy which it will need if it is to have any chance of success.

MR. FANNIN: Your Excellency, I want to deal as briefly as I can with the question of an aerial survey raised by the hon. mover.

The making of a map entails first of all a survey on the ground, within the area to be mapped, of a series of points properly marked with beacons. You may then take photographs of the whole area. The photographs must then be taken to the drawing office and the office work of reducing the photographs to the form of an accurate map is a complicated process. One of the chief difficulties in using the photographs is the process of identification; you must be able to identify on the photographs the points previously

fixed on the ground by survey, otherwise your work is of no value.

In Kenya our trouble is that we have not got an ideal framework of triangulation. We are better off than many colonies, but in the areas where soil reconditioning is most needed there is very little framework indeed and what there is was surveyed so long ago that a great deal of it has been lost due to the removal of the beacons by natives or by other means. So that, to undertake an aerial survey of Kenya would I think be a mistake until we have first established some means of improving the ground framework and triangulation on which nothing has been done since the Topographical Section of the Survey Department was abolished some years ago. And so, it is essential that we should, before we do any systematic air survey, re-establish our triangulation and framework.

It is possible, and may be essential, to photograph limited areas for special local purposes to be used qualitatively. Anyone who has used air photographs knows how useful they are if they overlap and connect up properly, but they are practically valueless as maps unless you can identify known points on them. In Kenya, therefore, the only possible thing to do is to re-establish the existing framework and to extend it.

That brings me to the question of cost. The Survey Division of my Department has spent eighteen months going very carefully into this matter and has consulted the Director of Trigonometrical and Topographical Survey in South Africa who has had a great deal to do with aerial surveys, the taking of air photographs and so on. We have been considering a programme covering an area of 50,000 square miles. The total area of Kenya is 225,000 square miles and you might say that the Highlands cover about 15,000 square miles. Working on an economical basis this area of 50,000 square miles would involve a ten-year programme and would cost about £150,000. Acceleration of the programme would be possible with a large air survey organization but with present financial resources one would not be able properly to survey 50,000 square miles in less than ten years. The most important factor is

[Mr. Fannin] the ground organization—the Topographical Survey Section—firstly, for establishing the triangulation and framework, and secondly, for making maps from the air photographs of which there must be many thousands all overlapping each other considerably to ensure continuity. This ground organization would mean a recurrent cost of between £5,000 and £10,000 a year. Such recurrent expenditure could not be undertaken lightly; and I must emphasize that the Kenya Government would have, to begin with, to provide this recurrent amount of between £5,000 and £10,000 a year for a Topographical Section of the Survey Department if they were to start any extended programme of air survey.

The unit cost is necessarily high for a limited programme but it can be considerably reduced if the area of mapping is extended. Triangulation and topographical survey is international in its scope, and in Africa its programme should be extended from the Cape to Cairo and from Dakar to Mombasa—but that is looking rather a long way ahead.

**HIS EXCELLENCY:** May I remind the hon. Acting Commissioner that we are discussing aerial surveys only in so far as they apply to Dr. Pole-Evans' Report. I do not think it is necessary to go into a long discussion on the general theory of aerial survey.

**MR. FANNIN:** I was just coming to that, Sir. So far as the taking of the air photographs is concerned the photographic costs could be considerably reduced by extending the area of photography, and my point is that if uses can be found in the adjoining territories as well as in Kenya for aerial photography, a co-ordination of this work would reduce the unit costs. And that is, I believe, a question which is coming up for consideration at a future Governors' Conference.

**MAJOR GROGAN:** Your Excellency, I only wish to say that I do hope that any reaction there may be on Government's part from the inspiration of Dr. Pole-Evans' Report, especially in respect of his suggestion of an aerial survey (of

which I have independent confirmation that the cost will be in the vicinity of £5,000 a square mile), will take the form of letting the grass grow under our feet! (Laughter.)

**MR. RAMMELL** (Acting Conservator of Forests): Your Excellency, there are several paragraphs in this Report which refer to the question of forests and the first one I would like to draw attention to is paragraph 14 (c) in which Dr. Pole-Evans has divided the country into four vegetational zones and in which the fourth vegetational zone is described as:—

"Forest vegetation occurs in the highland country. It is really a misnomer to describe it as 'forest vegetation' because true forest occupies only a small portion. Forest covers only the deeper soils and localities where permanent underground water is available for tree growth. Grassland clothes the shallower and drier soils. European settlement is established on the fringe of this forest country. It is generally said that much of the natural forest has been interfered with and destroyed but I saw little evidence that this was so and I consider that the former extent of forest has been much exaggerated."

That, Sir, I think is rather a sweeping statement and I think it is fairly widely known that a tremendous amount of forest has been destroyed in this country.

Another paragraph I would like to draw attention to is paragraph 156 in which he says:—

"Kenya's future prosperity lies in the fuller development and greater use of this perennial evergreen pasture, and the day is not far distant when Kenya will be compelled to follow New Zealand's example and convert what is at present forest reserve of very doubtful value to the State into the finest natural pastures of the Empire."

He then says afterwards, a little further on, in connexion with the destruction of this forest land:—

"I trust however that this will be carried out on scientific lines."

The interpretation which I read in this paragraph is that Dr. Pole-Evans is apparently hostile to the maintenance of

[Mr. Rammell] forests in Kenya. He says nothing in his general recommendations on the subject but the inference is, as it appears to me, that he suggests that the forests of this country, which amount to 5,000 square miles, should be converted into grass. The forest vegetation of course in Kenya mainly covers our mountain areas and the sources of our rivers and I do believe that the hon. members of this Council and the members of the public in general would feel rather strongly if any attempt were made, as a result of these suggestions to interfere with our present forest reserves.

So far as paragraph 60 is concerned Dr. Pole-Evans states with regard to forestry efforts—and presumably he is referring to the Machakos Reserve, which is a reserve in which this Department has carried out some planting:—

"Steps which are being taken to remove grass from the steep hill slopes at considerable expense in order to plant trees are, in my opinion, a very mistaken policy."

It seems to me that in planning the countryside you have got to take a comprehensive view and I do feel that wood and timber does play a very important part in all agricultural activities, house building, fencing and all the hundred and one purposes for which timber is required on a farm.

The afforestation policy of Government in the native reserves I must say has not advanced far as yet, because of the difficulty of acquiring land to start with and also of getting the money for carrying out our programme in an extensive form. It is the aim of that policy to select for afforesting those hillsides which cannot permanently carry cultivation or pasturage. I use the word "permanently" advisedly because on some of these hillsides, after ten or fifteen years of cultivation or pasturage, probably less, erosion must set in and the land will be ruined. If the hillsides are afforested and covered by high timber forests rather than wattle and gums they will remain a permanent asset of the native reserves—and that is the policy on which the Department has been trying to work.

**MR. HARRAGIN:** Your Excellency, as hon. members probably realize from the speeches they have heard, Government is sincerely appreciative of the Report. It is a very able report which we have been considering to-day and we consider it to be a most useful contribution to help us solve one of the major problems of this country.

I do not know how many hon. members realize that we are even more indebted to the author of this Report, Dr. Pole-Evans, in that he came here free of charge; it cost this Government nothing and he came here because he was interested in the subject and he gave his services entirely free. (Applause.)

Government is also extremely grateful to him because he has supplied us with very valuable evidence on which we hope to base further claims on the Colonial Development Fund. But it must be realized that in considering this Report that it is the report of an expert. We are going to implement, as far as is possible and practicable, all the suggestions and recommendations that he has put forward, but before we do that, not unnaturally, we have to refer this Report to other experts who are interested in correlated subjects and as a result of their criticisms Government trusts that it will be able to evolve for itself a balanced solution of the problem.

It may well be asked what is Government going to do about it; is it going to pigeon-hole it like so many other reports—for some people believe that there is a likelihood of that happening? What we have done is to refer it to a small committee who are making recommendations which we hope to receive in the next two or three weeks in Executive Council. It will then be considered in Executive Council and a decision will be arrived at as to exactly how far we can go in implementing this Report and what applications we shall be making to the Colonial Development Fund, because everyone must realize that to a great extent what we do depends on finance. Quite apart from this Report it is interesting to know that so many people not only in this Council but outside it have referred to the Report as something entirely new and

[Mr. Rammell] something which this country never realized before! Of course, that is not so. As we have heard to-day from the hon. the Director of Veterinary Services, we have had innumerable reports dealing more or less with the same subject, perhaps not so exclusively as regards to grass as this particular Report does. There is the Report of the Meat and Live Stock Inquiry Committee, Sir Frank Stockdale's and various other reports which have dealt to some extent with this same problem, and Government has been doing something in the matter.

Now, let us take as an example, on page 23, the general recommendations that have been made. The first is with regard to an aerial survey. Well, as you have heard, this is an extremely expensive matter though it would be extremely useful. Government is well aware of this problem and in fact a report has been put in to Your Excellency and the matter is to be considered at the Governors' Conference next week. What the result will be we do not know. Nevertheless there is a full report on the subject and active consideration is being taken of it. That is recommendation No. 1.

The second is contained in 130 (b): "Select that portion of each reserve which is to be reconditioned first." Well, that, in certain reserves, has already been done.

The third is: "Remove stock entirely and natives as far as possible." You know that efforts in that direction have been made and are being made and the question of stock at the moment is being considered by a special committee.

Coming to 130 (f): "Proceed with reconditioning work and the establishment of grass nurseries." That, as far as means permit, as you know, is being done on every reserve.

So that out of seven recommendations we find that considerable progress is being made with regard to four of them. So, I think it is entirely unjust and untrue to suggest that Government has stood by for the last ten or twelve years doing nothing at all. If, as a result of this Report, we are able to get more money out of the Colonial Development Fund, and I can assure you that I have no doubt that

every effort will be made to obtain it, then, of course, we will be able to go much further into this matter.

The hon. Mr. Isher Dass is unable to accept the motion because he is afraid some drastic action is about to be taken. With regard to this I would refer him to the terms of the motion. It is perfectly innocuous and it merely says:—

"This Council expresses its deep appreciation of the very able Report by Dr. Pole-Evans". Surely he does not disagree so far! The motion then continues:—

"and trusts that Government will take such steps as are possible to remedy the state of affairs disclosed in that Report, before it is too late."

And really because he imagines that in taking such steps as are possible to remedy this state of affairs we will have to take drastic steps seems to be stretching the point a little far.

On behalf of Government I can say with your approval, Sir, that Government is quite prepared to accept this very reasonable and proper motion. (Applause.)

**LORD FRANCIS SCOTT:** Sir, I feel that there is very little for me to reply to in this debate.

The first point, however, was made by the hon. Dr. Wilson when he emphasized particularly that this was a specialist's report and rather criticized Dr. Pole-Evans for not taking a broader view. But it has already been pointed out by the hon. the Director of Veterinary Services that what Dr. Pole-Evans was asked to do was to deal with soil erosion and the regeneration of grasses. He did not deal with the general question of agricultural development in the country though, as he is the Chief of the Division of Plant Industry of the Department of Agriculture and Forestry in South Africa, I presume he is well qualified to give advice on such subjects.

With regard to the remarks made by the hon. Mr. Isher Dass he obviously did not understand what we were debating and so I do not think there is anything to be said in reply to him.

[Lord Francis Scott]

Coming to the remarks of the hon. the Chief Native Commissioner, I must say his speech filled me with great surprise and considerable disappointment. The first part of his speech had nothing to do with the motion before us. And as he is the chief executive officer of Government, who is responsible for those large areas with which this Report chiefly deals, I was amazed that he could give no opinions on the Report or make any suggestions whatever. I am afraid that his lack of having said anything does give a certain amount of support to the criticism made previously by the hon. Dr. Wilson.

With regard to his statement of coming to the Elected Members with his hat in his hand I do not recollect the occasion. All I do know, Sir, is that the question of handing over some of these unoccupied farms for the Wakamba natives was referred to some of your chief official advisers and they unanimously turned it down as being a very unsound policy. That, Sir, I know is the view of many experienced officers who have had to deal with this matter in the Colony, of course I appreciate that the hon. the Chief Native Commissioner has been away for nine months enjoying a well-earned holiday at Government's expense and perhaps is not quite in touch with what is happening.

I do agree and I feel very strongly with the point of view expressed by the noble lady the hon. Member for Nyanza that it is a thoroughly unsound policy to encourage people to destroy their land by giving them further land similarly to destroy. And an interesting point with regard to this question of the Kamba land is that other land is available but the

officer in charge cannot find any natives who wish to move there. I think that deals with that point.

We have had interesting statements from the hon. the Director of Agriculture and the hon. Director of Veterinary Services, both of whom are sensible people and welcome this Report and mean to take advantage of it in furthering the duties of their departments. From what we heard from the hon. the Acting Commissioner of Lands and Settlement it seems to me that an aerial survey sounds a very doubtful proposition but we have heard from the hon. the Acting Chief Secretary that it will be further investigated.

I was interested to hear the very clearly expressed speech by the hon. the Acting Conservator of Forests and in my opinion what we heard from him sounded a very sound and sensible point of view.

I welcome the action of Government in accepting this motion. I would have been very surprised if they did not, and I hope that this debate has achieved the result which I desired, which was that it should give prominence to this Report and that this Report should not be put away in that pigeon-hole to which the hon. the Acting Chief Secretary referred, and that action will be taken as far as possible to get this state of affairs remedied. I do personally feel that these are essential services for which we should get something from the Colonial Development Fund. It is obviously a matter of colonial development and one of urgent necessity and a matter vitally affecting the native peoples of this country.

The question was put and carried.

#### ADJOURNMENT

Council adjourned until 9 a.m. on Friday, 16th June, 1939.

Friday, 16th June, 1939

Council assembled at the Memorial Hall, Nairobi, at 9 a.m. on Friday, 16th June, 1939, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened Council with prayer.

## MINUTES

The Minutes of the meeting of 15th June, 1939, were confirmed.

## ORAL ANSWERS TO QUESTIONS

No. 18—EUROPEAN AND ASIAN EMPLOYEES, K.U.R. & H.

MR. ISHER DASS asked:—

Will the hon. General Manager supply the following information:—

(a) The number of Asian and European clerical and non-clerical employees of the K.U.R. & H. separately for each race.

(b) The numbers of the above employees, separately for each race, who have been at the top of their respective grades for 10, 8, 6, 4 and 2 years without promotion.

(c) The number of vacancies—

(i) created in special grade for Asian and European employees during 1936, 1937 and 1938, separately for each race; and

(ii) caused by death, retirement or resignation of Asian and European special grade officers, separately for each race.

(d) How many of the above vacancies have been filled in respect of each race?

(e) If all the above vacancies have not been filled, will he fill them now that the financial position of the Railways and Harbours is satisfactory?

SIR GODFREY RHODES: (a) Number of Asian and European clerical and non-clerical employees of this Administration, separately for each race (not including daily paid staff):—

	Clerical		Non-clerical	
Asian	864	478		
European	162	348		

(b) Numbers of above employees, separately for each race, who have been at the maximum of their respective grades for 10, 8, 6, 4 and 2 years, without promotion:—

	10 yrs.	8 yrs.	6 yrs.	4 yrs.	2 yrs.
Asian	10	8	6	4	2
European	10	8	6	4	2

(c) (i) Number of new posts created in senior and special grades for Asian and European employees, during 1936, 1937 and 1938:—

	1936	1937	1938
Asian	2	9	
European	1	1	11

(c) (ii) Number of vacancies caused by deaths, resignations and retirements of Asian and European senior and special grade officers, separately for each race:—

	1936	1937	1938
Deaths—			
Asian	1	1	—
European	—	—	—
Resignations—			
Asian	—	—	—
European	—	—	—
Retirements—			
Asian	—	—	—
European	2	—	—

(d) Number of vacancies under (c) (i) and (ii) which have been filled:—

	1936	1937	1938
Asian	3	1	—
European	—	—	—

(e) Number of vacancies under (c) (i) and (ii) which have not been filled and reasons therefor:—

One post (European)—Post abolished.
One post (Asian)—Personal to holder.

MR. ISHER DASS: Your Excellency, arising out of that I do not consider that (c) has been answered. Will the hon. General Manager make any arrangements for the promotion of people who have been at the top of their grade for at least 8 years?

SIR GODFREY RHODES: That question has already been answered in this Council when dealing with the Estimates of the Kenya and Uganda Railway Administration.

Posts are not created for the benefit of employing people in the country but for the work that has to be done and it is not possible to increase the number of posts when there is no work for them to do.

## No. 23—LOCAL GOVERNMENT (MUNICIPALITIES) STANDING COMMITTEE

MR. ISHER DASS asked:—

Will Government be pleased to state:—

(a) Whether it has appointed a Standing Committee under the Local Government (Municipalities) Ordinance?

(b) If the answer is in the affirmative, whether any Indian has been appointed on it?

(c) If the answer to (b) be in the negative will Government now appoint an Indian or Indians on such Committee?

MR. LOCKHART: (a) No additional persons have been appointed to the Standing Committee for Local Government established under section 99 of the Local Government (Municipalities) Ordinance, as amended by the Amendment Ordinance of 1938.

(b) Does not therefore arise.

(c) When the Local Government (District Councils) (Amendment) Ordinance has received assent, the question of appointing an Indian to be a member of the Standing Committee for Local Government in Municipalities will be considered.

## No. 37—KITALE SCHOOL

COL. KIRKWOOD asked:—

1. Is Government aware that the staff quarters at the Kitale School are quite inadequate?

2. Is Government aware that one mistress and several pupils are quartered in the Isolation Ward?

3. Is Government aware that the Medical Officer for Health has ordered that the Isolation Ward be reserved for the purpose for which it was built?

4. What action Government intend taking as regards staff quarters at the Kitale Government School?

5. Is Government aware that two appointments on the Kitale School staff have been refused as there are or were no quarters at the school?

MR. HARRAGIN: 1. Government is aware that the staff quarters at the Kitale European Primary School are inadequate.

2. and 3. The answer is in the affirmative.

4. The matter will be considered in connexion with the Colony's 1940 Estimates.

5. No staff appointments at the Kitale School were refused solely because of lack of quarters.

## No. 42—IMMIGRATION

COL. MODERA asked:—

How many non-British subjects entered the Colony during the months November, 1938, to May, 1939, inclusive?

Will Government give figures of the incidence of the immigration of foreigners month by month during the period in question?

MR. HARRAGIN: The answer to the first part of the question in respect of European non-British subjects and Americans is:—

	Inwards	Outwards	Excess
	1,314	736	578

The answer to the second part of the question is:—

	Inwards	Outwards	Excess
November, 1938	160	67	93
December, 1938	234	66	168
January, 1939	163	88	75
February, 1939	231	100	131
March, 1939	221	174	47
April, 1939	135	118	17
May, 1939	170	123	47



**COL. MODERA:** Your Excellency, arising out of the first part of the question will the hon. member state how many of these people entering in excess were stateless?

**MR. HARRAGIN:** I would ask for notice of that question.

**No. 43—CEREALS AND PULSES**

**LORD FRANCIS SCOTT,** in the name of Major Grogan, asked:—

In view of inadequate rainfall and the locust menace, what steps are being taken to control the movement of cereals and pulses from the native areas bordering on the Thika, Makuyu and Mitubiri plantation areas?

**MR. WATERS:** The Department of Agriculture has been keeping a close watch on the situation and is satisfied that no justification exists at present for restricting movements of any foodstuffs from the native areas mentioned in the question.

**No. 46—OLD AGE PENSIONS FOR EX-SERVICE MEN**

**LADY SIDNEY FARRAR** asked:—

Will Government consider the possibility of bringing in some form of Old Age Pension for ex-Service men in this Colony, in view of the fact that at the present time the number of these men who, from age and other disabilities, can no longer obtain employment, is on the increase, and Government can take no action other than repatriation as Distressed British Subjects?

**MR. LOCKHART:** The question of the hon. Elected Member for Nyanza is based on a misconception. There is Government machinery for the assistance of indigent persons and this assistance is not limited to repatriation.

Small grants are made by Government in co-operation with charitable organizations to establish residents of the Colony who through age or infirmity, or for any other cause, are genuinely in need of assistance; and Government is satisfied as the result of recent inquiries in the course of which District Councils were consulted that circumstances do not

justify the adoption at present of exceptional methods outside the existing Government machinery.

**No. 47—RIFT VALLEY JUDGE APPOINTMENT**

**MR. GHERSIE** asked:—

In view of the appointment of an additional Judge to the Supreme Court of Kenya, will Government state whether they are prepared to consider stationing a Judge in the Rift Valley Province (preferably Eldoret, which is the most central township for Nakuru, Kitale and Kisumu)?

**MR. HARRAGIN:** Postings of Judges is a matter for the Chief Justice and it is not the Chief Justice's present intention to post a Judge away from Nairobi. The appointment of an additional Judge will enable circuits to be more frequent than is at present possible.

**DOMESTIC SERVANTS' REGISTRATION COMMITTEE**

**LORD FRANCIS SCOTT:** Sir, there has been one question which I know of which has been put in by the hon. Member for Uasin Gishu with regard to the state of affairs in the Domestic Servants Ordinance that has not been answered yet. As this question is exercising much anxiety amongst the ladies of Kenya in the Colony will Government give a written reply as soon as possible?

**MR. HARRAGIN:** A written answer will be given almost immediately.

**COFFEE INDUSTRY (AMENDMENT) BILL**

**SECOND READING**

**MR. WATERS:** Your Excellency, I beg to move the second reading of the Coffee Industry (Amendment) Bill.

Under the Principal Ordinance, the Coffee Board may subject to the provisions of the Ordinance, make by-laws, governing the election of delegates to the Coffee Conference which is held annually. The Board now wishes to amend these by-laws or Rules in order to provide that any persons who are duly authorized by the owners of plantations shall take part in such elections. To

[Mr. Waters] enable this to be done it is necessary to amend the definition of "coffee planter" which at present includes any person who owns, manages or occupies any plantation.

In clause 2 the new definition of a "coffee planter" in section 2 is:—

"coffee planter" means the owner, managing director or partner of any coffee plantation in respect of which a licence has been issued under the provisions of section 9 of this Ordinance and includes the individual representative of any such owner duly authorized in writing in that behalf by the said owner."

Clause 3 is consequential.

If this Bill is now passed at this session it will be used, or rather the new provisions will be used, for the coming elections at the Coffee Conference which will be held in the Autumn of this year. I beg to move.

**MR. DENNISON** seconded.

The question was put and carried.

*In Committee*

**MR. WILLAN** moved that Council resolve itself into Committee of the whole Council to consider the Bill clause by clause.

**MR. DENNISON** seconded.

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

His Excellency moved into the chair.

The Bill was considered clause by clause.

**MR. WILLAN** moved that the Bill be reported to Council without amendment.

The question was put and carried.

His Excellency vacated the chair.

**ELECTRIC POWER (AMENDMENT) BILL**

**SELECT COMMITTEE REPORT**

**MR. WILLAN:** Your Excellency, I beg to move that the Select Committee Report on the Electric Power (Amendment) Bill be adopted.

As hon. members will have seen as a result of a perusal of this Report the

committee recommends no change in principle to the Bill and the Report is devoted entirely to questions of detail.

Now, Sir, the select committee have had the advantage of hearing three witnesses who appeared before them. All the witnesses came from Mombasa. The first was a representative of the Mombasa Municipal Board and the two other witnesses were Mr. Bemister and Mr. Granville Roberts. All of these gentlemen gave evidence before this committee.

The evidence of these three witnesses was devoted almost entirely to clause 13 of the Bill and in particular to section 19 (a) of that clause. All these witnesses attempted to prove, very ably if I may say so, that the intention of Government in 1919 was that section 19 (a) of the Principal Ordinance should not give any security of tenure to any licensee. Well, the committee spent a long time in listening to the evidence of these three witnesses and, in addition, devoted a considerable time and careful thought in considering their evidence. And, speaking for myself, after having heard all that evidence and after having gone through documents and records—and I might say these records were quite considerable—and having also carefully examined the section itself, I am convinced beyond all reasonable doubt that when that section 19 (a) was drafted in 1919 a mistake was made.

There are members on the select committee who take the same view as I do and there are other members on that committee who consider that it is immaterial now whether a mistake was made in 1919 or not, and who think that the Bill should be taken as a whole to see whether it is fair both to the licensee on the one hand and the consumer on the other, and they have come to the conclusion that it is fair to both parties. As hon. members will see there is a minority report by two members of the committee who think that section 19 (a) should still stand as drafted in 1919 with respect to licences granted before 1934, or, alternatively that section 19 (a) of the Principal Ordinance should still stand with regard to Mombasa licences.

I have dealt fully with that question because it is an important question and



[Mr. Willan]  
I think this Council should know and the public should know that Mombasa was adequately represented before that select committee and that the select committee did go very carefully into the whole merits of this question.

Before coming to the details of the Report there are two other major matters with which I wish to deal.

The first is the question of State acquisition which was raised by the hon. and gallant Member for Nairobi North during the second reading of the Bill. The select committee considered that question also. It is a question which involves a new principle and one which must be considered very carefully by the many parties concerned; first of all by Government; secondly by the public; thirdly by any licensee and in particular the East African Power and Electric Light Company; and fourthly, probably the most important, the local authorities, because if the State is allowed to acquire the undertaking of any licensee then of course it would cut right across the rights already given to the local authorities in the Principal Ordinance. And in this Bill, the select committee, after considering all these factors unanimously came to the conclusion that at this late stage it was not possible for them to express any opinion on the matter.

The only other major issue raised at the second reading of the Bill, also by the hon. and gallant Member for Nairobi North, was the question of purchase price of plant and materials through linked companies. The select committee, whilst appreciating the very able arguments put forward by the hon. member at the second reading of this Bill, feel that section 45 (1) (d), which appears on page 46 of this Bill, gives complete control in that it safeguards the possibility of capital inflation through subsidiary companies because the profit calculation only takes into account capital expenditure in each separate undertaking.

As regards capital inflation through buying commissions and consulting and management fees, the committee was, admittedly a little disturbed but decided against incorporating any such provision in this Bill for three reasons. And these reasons are as follows: such provision

would be equivalent to expressing a lack of confidence in the company, and such an expression, of course, is entirely unjustified; secondly, there is no such provision in legislation in England at the present time, though the company has expressed its willingness, if and when, such legislation is enacted at home, to have legislation of the same kind here; and thirdly, the committee felt that adequate safeguards already existed both in this Bill and in the Principal Ordinance.

Now, if hon. members will turn to page 43, clause 29 (a) they will find that the auditor appointed by the Governor in Council can:—

"at any time investigate and report to the Governor in Council upon any such particular matters or things relating to or arising out of the accounts of the licensee"

and, in addition, by section 43 (4) of the Principal Ordinance such report must be appended to the annual statement of accounts of the company and the copies are available to any member of the public who wishes to purchase them.

That disposes of the major matters. Now I will turn to the details contained in the Report.

The first I wish to deal with is paragraph 1 (e) on page 2 of the Report. This deals with the definition of "factory" which is contained on page 3 of the Bill. The definition of "factory" has now been amended to make it quite clear that there shall be control of wiring in factories in which electrical energy is used for lighting only as well as those in which electrically driven machinery is utilized.

Paragraphs 2 (a) and (b) deal with clause 4 (1) (a) of the Bill which is on page 10. As this clause is drafted at present it might be taken to authorize the generation or transmission of electrical energy by any licensee whereas only bulk supply and local generating licences authorize generation and only bulk supply and distributing licences authorize transmission.

Paragraphs 5 (a) and (b) of the Report on page 3 make amendments to section 21 (1) and 21 (2) on page 23 of the Bill. In each of these sub-sections the words "subject to any agreement to the contrary

[Mr. Willan]  
at his own expense" have been inserted. These words make it clear that unless there is an agreement to the contrary the licensee himself must lay down distributing mains at his own expense and I think it possible that the only occasion when there will be an agreement to the contrary is when the consumer prefers to pay the licensee a capital sum equivalent to the cost of laying down distributing mains without any resulting guarantee to take a minimum supply.

The next paragraph to which I would refer is paragraph 8 on page 4 of the Report which deals with clause 28 of the Bill on page 43. As section 42 is drafted at present a licensee must send a copy of his annual accounts to the Governor and also keep copies to be available for sale to the public. It is rather absurd that he should only keep copies of his accounts for sale "if the Governor in Council so directs" so these words have been deleted and a further amendment provides that the charge for these accounts shall in future be Sh. 1 instead of Sh. 2.

Paragraph 9 of the Report, still on page 4, amends clause 31 on page 45 of the Bill. Hon. members will notice that in paragraph (a) of sub-section (1), section 45, the word "borrowed" has been inserted. This has been done with the intention of making the law clear that the interest on debentures or other loans raised may be paid out of capital during the initial period of construction. But after that the interest will come out of the 12½ per cent as provided for in section 45 (1) (d) of the Bill.

Paragraph 10 of the Report, still on page 4, deals with clause 32 which is to be found on page 48 of the Bill. This clause has been amended to repeal the whole of section 49 of the Principal Ordinance dealing with the system of supply. It is considered advisable that this should be incorporated in the Rules as in Tanganyika and Uganda and to achieve unified legislation as suggested by the hon. and gallant Member for Nairobi North at the second reading.

Paragraphs 12 and 13 of the Report on page 5 deal with clauses 34 and 35, on pages 53 and 54 of the Bill. These clauses deal with the question of the methods of charging and the maximum

price to be fixed, and power is given to the Governor in Council in both cases to limit methods and prices to particular classes of consumers or to particular localities, as in section 68 (3) at the top of page 54 of the Bill and 68a (2) on the same page. As drafted at present the Governor in Council before imposing such limitations must obtain the consent of the licensee. The committee felt that the discretion of the Governor in Council should not be fettered and they have therefore recommended that these words "with the consent of" should be deleted and substituted by "after consultation with". After this is approved the Governor in Council need only consult the licensee and there is no question of obtaining the licensee's consent.

Paragraph 16 of the Report, still on page 5 deals with clause 47 of the Bill on page 61. The amendment now is that sub-sections (2), (3) and (4) of section 109 be repealed. These amendments are consequential on the amendment in paragraph 10 which repeals section 49.

Paragraph 18 (c) of the Report on page 6 deals with Clause 52 of the Bill on pages 66 and 67. This is a very necessary amendment because in drafting this Bill I omitted to include a very important proviso from the Principal Ordinance and so this amendment proposes that that proviso shall be included. It is very necessary that it should be included because it provides that Crown land on which works stand shall be transferred to the purchaser at the original price paid for the Crown land.

The final paragraph—19—of the Report, on page 6 deals with the insertion of a new clause on page 67 of the Bill after clause 53. This new clause ensures that all water works for the generation of electricity are subject to the Water Ordinance. And the proviso on page 7 of the Report is necessary to make it clear that there is no conflict with this Ordinance and the Water Ordinance in respect of the purchase of water works when a licence has been granted under the Principal Ordinance. In such cases this Ordinance would over-ride the Water Ordinance.

The last paragraph deals with matters of detail.

I beg to move.

MR. DENNISON seconded.

MR. STRONACH: Your Excellency, I beg to move that the Select Committee's Report be amended by inserting immediately after the word "water" which occurs in the fifth line of sub-section (2) contained in sub-paragraph (c) of paragraph 19 the words "from any body of water".

These words were omitted by a typing error from the Report and are necessary to make it clear that this sub-section deals only with water diverted, abstracted, obstructed or used from any body of water as defined in the Water Ordinance.

SIR GODFREY RHODES seconded.

The question of the amendment was put and carried.

MR. COOKE: Your Excellency, in the unavoidable absence of the hon. Member for Mombasa may I take this opportunity of expressing the appreciation of the Mombasa Municipal Board for the facilities which were given to produce witnesses and for the fair and dispassionate hearing these witnesses obtained. The hon. Member for Mombasa also asked me to say that if he were present to-day he would feel bound to support the recommendations contained in the Minority Report.

MR. PANDYA: Your Excellency, with regard to the Minority Report I hope it is now realized, in the support that has been given it by the hon. Member for Mombasa, that this is not a question on which Mombasa is satisfied.

The hon. mover referred to the witnesses who came from Mombasa and who gave their evidence before the committee. These witnesses went into the matter at very great length and brought forward details of evidence which they had collected from newspapers published in 1919, and the hon. mover, as chairman of the committee and other members replied, and gave particulars from their point of view of the intention of Government about this Bill in 1919.

In spite of all this evidence which was advanced by the chairman of the select committee and other hon. members, myself and the hon. Mr. Shamsud-Deen were not convinced and I can say too, that the people who came from Mombasa

to give evidence were also not convinced about the contention. Therefore, in spite of the evidence and principles advanced by Government I can say to-day that Mombasa unanimously feels that if the present Bill is passed in the form which it stands before Council then a great injustice will have been done to Mombasa.

There was one point brought before the witnesses who came from Mombasa upon which I want to comment; it was also submitted for the consideration of the representative of the Mombasa Municipal Board as well as the other gentlemen who represented the Mombasa Association. That question was whether Mombasa would like to be excluded from the benefits of section 31 of the Ordinance? While it was not possible for the representative of Mombasa Municipality to reply immediately without submitting it to the Board for consideration, the representatives of Mombasa Association were quite clear and definite in saying that they preferred not to have these advantages which they supposed they would have under this Bill in preference to whatever rights they have under that section 19 to-day.

In view of this definite statement made by responsible people from Mombasa, as far as I am concerned I am quite convinced in my own mind, as I said at the time of the debate on the second reading, that these advantages, or rather so-called advantages, are illusory. After the 12½ per cent profit has been made by the company the balance, if any, would go for a reduction of rates to consumers. The chances of benefit from that, if any, are not very much. And even if there were chances I think the local authority should be entitled to have that option to acquire, if they felt justified in doing so, whether these advantages are there or otherwise.

There is one other point made by the witnesses from Mombasa and which was not referred to by the hon. mover, and it is very important because they say that even if there was any intention on the part of the Government to give security of tenure it was against the competition of other companies and not against the municipal authorities. That point was not brought out at the time of the second reading, and that is a very important point.

[Mr. Pandya]

I am not going to go into the details of that evidence because the hon. mover has already referred to what was said in select committee. But I can say this much, that I am quite satisfied that there is a strong case and I think it would be wrong and unjust if this Council inflicted on the Mombasa Municipality the present Bill and did not allow them to have the opportunity which they had under the 1919 Bill. In 1934 the same question came up and because of this argument and the points advanced by Mombasa the proviso was inserted which has been now deleted. I do not think there are any circumstances to justify the change and there is no reason why this proviso should not be inserted in the present Bill.

Consistent with the Minority Report I had intended to move an amendment which I have circulated, but finding a good deal of opposition from Government and other hon. members I do not think any useful purpose would be served by my moving it. But I can say this, we all expected, and Mombasa particularly, that Government would be sympathetic to, or what we might call "indulgent" towards, the interests of the public and consumers, but what we do find is that they are much more interested in supporting the contentions of the company. I am sure that Government, in this case, would be very wise indeed if they were to go into this question again and give us time to insert a proviso—it need not be recommended just now, but allow Mombasa Municipal Authority to have further time to discuss it and in about three or six months then let it come up to Government—so that they can again decide that Mombasa may have the option they had of acquiring the undertaking if they so desired.

MR. GHERSIE: Your Excellency, speaking as one of those appointed to the select committee which took evidence, I would like to assure every hon. member of this Council that every aspect of the amending clauses were very fully considered and the only criticism we received was from the Mombasa Municipal Board. As has already been stated that evidence, or those arguments, were not entirely convincing and the impression I formed was that they were not considering the

amending Bill as a whole, but were more concerned with what one might term the "doubtful right", which they claimed existed, and maintaining it as provided for under section 19 (a) of the Principal Ordinance.

We have heard different reasons for the inclusion of that clause and I submit that from the commonsense point of view and on grounds of equity it would be wrong to leave that clause in the Bill as it reads at present. We have heard that the licence was originally for 50 years, and was later reduced to 25 years, and subsequently altered back to 42 years, and I submit that it would be inconsistent if we were to agree that a licence could be annulled by a local authority giving six months notice of its intention to acquire the licence six months after the licensee company had taken it.

There was a doubt in my mind and that was with regard to the attitude of Government in 1934; why did they condone or confirm that extraordinary clause? I am satisfied, however, that in 1934 there was no material or comprehensive alteration in the amendments passed at that date or anything that materially affected the existing licences. But the position is entirely different to-day. The proposed amendments will have very far reaching effects and are, as a whole, in the interests of the consumer; they make provision for a considerable measure of control over the licensee and provide considerable protection to the consumers themselves, and that is particularly emphasized in clause 45.

I feel that if Mombasa appreciate the compensating clauses that do exist in this amending Bill they have no cause for worry.

Finally I cannot imagine the licensee company or any other company accepting these numerous amendments to the Bill and at the same time agreeing to the retention of section 19 (a) of the Principal Ordinance.

MR. SHAMSUD-DEEN: Your Excellency, I would have much preferred to speak after the members in charge of the Bill on the Government side had spoken, so giving me an opportunity of answering certain points that might have been made. Up to this moment I remain absolutely

[Mr. Shamsud-Deen]

unconvinced as to the theoretical and illusory control that is alleged to have been given to Government by reason of this Bill.

I will only mention one small fact, taking this Bill as a whole. I say that from the very beginning if Government can give proof of the power of their control and the company is willing to do that, the first and initial thing they should do is to relieve the general public of the atrocious extortion of Sh. 1/50 meter charges per month which amounts to a tax of £1 per year. During the course of investigation it came out from the manager of the company that the cost of these meters was only Sh. 25 and they do not allow the consumers to purchase that meter for Sh. 25. As a matter of fact they ought to be prepared to allow the consumers to purchase their meters for about half the price. Neither will they remit the charge and that means to say that a consumer must go on paying what is an arbitrary tax of about Sh. 18 a year. That, I contend explodes the whole theory of this so-called control of Government provided by this Ordinance.

A good deal has been said as regards security of tenure being necessary for the company as is done in England. I submit that it is entirely wrong to compare the companies in England with this company. This company I think has been in existence now for just over 30 years and in the commencement its status was that of a few people getting together without any assured finances in the form of an adventurous enterprise. It was welcomed by all concerned as well as Government but Government was not assured of its financial stability and bona fides until 1917.

It was alleged that it was a mistake when in the framing of this Ordinance in 1919 we said that the local authorities should have the right of taking over the company by giving six months notice preceding 25 years and some hon. members were inclined to interpret that as giving powers to the local authorities to give six months notice at any time. I submit that the Government has been consistent from the beginning; they have told the company: "All right, go ahead, start your operations and we will do all

we can to help you." By 1917 there was no licence at all, no guarantee but there was no competition against them and they were quite content to go on.

MR. WILLAN: Your Excellency, on a point of explanation is the hon. member referring to this East African Power and Lighting Company prior to 1917.

MR. SHAMSUD-DEEN: Yes, Sir.

Now that the company has proved that it can extend its activities it is only fair that it should be given reasonable security of tenure, but that does not mean to say that we should overlook the rights and privileges of the consumers as represented by the local authorities. I submit that 42 years is too long a time to be given to any company, especially in the case of Mombasa which requires special consideration. As far as Nairobi is concerned we are informed that the matter was represented to the Nairobi Municipal Council and they eventually acquiesced. But no such opportunity was given to the people of Mombasa. I submit that we are now dealing with a matter that affects both the rich and poor of the whole Colony, especially in a town like Mombasa. It would be dealing in a very arbitrary manner to inflict this upon Mombasa very much against the unanimous desire, as described by the hon. Mr. Pandya, and against their will and it is only reasonable that they should be given a further exemption from the operation of this Bill by giving them reasonable time to put their case before the select committee or Government. As has already been mentioned by the hon. Mr. Pandya when the gentleman representing the Mombasa Municipal Board was before the select committee he was asked: "What would you prefer, to continue to reserve to Mombasa powers to acquire the electric light company concerned or would you like to have the present control given by this present Ordinance?" He replied that he was not in a position to answer that question for the obvious reason that it had not been thrashed out and he had no opportunity of going to Mombasa to put the matter before them.

It has also been said that in advanced countries like England and in London the local authorities were not in a position or prepared to take over the electric light concerns. I have made inquiries about

[Mr. Shamsud-Deen]

to this and my information, subject to correction, is that there are many counties in England which have acquired and were distributors of the current themselves. And it has also been said that it would be very difficult for any government or local government to run the show independent of the companies. My information is, again subject to correction, that the Zanzibar Government which is a part of East Africa, is running the electric light themselves and that they are supplying the consumers with electric light at the rate of 60 cents a unit. In this place it was until recently Sh. 1 and then it was reduced to 85 cents and now it is 75 cents a unit. If Zanzibar can run the whole show, the small island that it is, I see no reason why the public in this Colony should not have the same facilities of buying their electric light.

It has been stated that a concession was made to the Mombasa Municipal Board as far as street lighting was concerned by reducing the charges 33 per cent on condition that the light in Mombasa instead of remaining alight from 6 o'clock till midnight remained alight all night. When asked if the result was a net saving, the answer was "no". Another concession was offered to people who had heaters and cookers. But I am concerned with the poor population who have neither heaters nor cookers or other appliances of a similar nature and who are only concerned with the lighting facilities. I submit that you are really forcing these people to submit to certain charges which are in the form of a tax, and as a result of that there is a movement afoot already in that there is a movement afoot already in Nairobi as well as in Mombasa to persuade people not to use electric power for lighting purposes and to go back to the old methods of kerosene oil with ultra modern lamps. I think in the interests of Government themselves they should not allow the impression to persist that they are carrying this measure by the force of majority.

MR. COOKE: Your Excellency, is the hon. member in order discussing the principles of the Bill at this stage?

LORD FRANCIS SCOTT: Hear, hear.

HIS EXCELLENCY: I do not think the hon. member has got out of order yet.

MR. SHAMSUD-DEEN: If the hon. members are getting irritable I do not think I will add anything more to what I have already said (laughter) and I will only conclude by saying that it is a matter of regret that this Bill should be passed as it stands. I think Government ought not to go too fast.

MR. WILLAN: Your Excellency, first of all I will deal with the points raised by the hon. Mr. Shamsud-Deen. His first question was that of meter rents. Well, Sir, it is true that the cost of a meter is about Sh. 25 and it is also true that the company is considering this question of meter rents with regard to Mombasa as well as Nairobi; Eldoret, I cannot say. But it is also true to say that the company will never allow private consumers to own their meters because it is essential that the company should have control over these meters with regard to inspection, etc.

The hon. member also said that it was entirely wrong to compare the security of tenure of companies in a colony with those in England. I cannot follow that argument because security of tenure is linked up with the question of capital sunk in the undertaking and whether you sink it here or in England I cannot see any difference between the two situations.

He made a statement that this company had no security of tenure in 1917 and in reply to my question he said he was referring to the East African Power and Lighting Company. I am afraid the hon. member is wrong in his point because the East African Power and Lighting Company was not incorporated until the 6th January, 1922. What happened was that the Mombasa Electric Lighting and Power Company was granted the right to supply electricity for seven years under an agreement, and that agreement was dated the 8th August, 1910. That was an entirely different company from the East African Power and Lighting Company.

Turning now to the remarks of the hon. Mr. Pandya, he also raised the point that the question which the witnesses tried to establish before the select committee was that section 19 (a) gives security from competition. Well, Sir, I cannot agree with that opinion. I think if the hon. member had read the Ordinance—mind you, I do not blame him for not reading it because

[Mr. Willan]

it is a very long one and is very dull—but in section 7 of the Ordinance the question of competition is raised and in the marginal note to that section it is stated:—

"Not to restrict power of Governor in Council to grant additional licence in any area."  
and the last nine lines of that section read as follows:—

"nothing contained in this Ordinance shall be deemed or construed to hinder or restrict the powers of the Governor in Council to grant, if the necessity arises, and having due regard to the said purpose and intention as expressed in this section, any other licences under this Ordinance in respect of the area (if any) or any part of the area (if any) named or defined in any such licence or prior licence."

MR. SHAMSUD-DEEN: Your Excellency, on a point of order, this was not before the committee or hon. members of Council.

MR. PANDYA: Your Excellency, that was not brought before the witnesses in select committee.

MR. WILLAN: No, it was not. It is an entirely new point to me, and since the select committee of this Council sat I made it my business to go through the Ordinance to see if there was any force in this question of competition and I found the answer in section 7. There the Governor in Council can grant another licence in the area which is served by the present licence. And my point is that section 19 (a) could not possibly relate to freedom from competition.

Going back to the only other point made by the hon. member, and possibly the most important point, that is about the intention of section 19 (a) I am afraid the hon. member is wrong. If that section is construed as it is drafted, it means this: that if a licensee is granted a distributing licence say for 60 years, and according to section 18 (3):—

"A distributing licence may be for limited"

any period whether limited or unthen this section 19 (a) reads as follows: The first 4½ years no security; then for six months afterwards he gets six months security; from 42 years to 48½ years, no

security; from 48½ to 49, six months security; from 49 years to 55½ years, no security; and from 55½ years he gets another six months security. So that in this 56 years he gets security for 18 months only.

The question was put and carried.

#### KENYA INDIAN AND ARAB (TERRITORIAL) COMPANY BILL

##### SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, it was pointed out to me by the noble earl the Member for Kiambu that the brackets had got in the wrong place in the title of this Bill and paragraph 1 of the Report is an amendment for re-bracketing the title. Instead of reading: "(Territorial Company)" it should read "(Territorial) Company".

Paragraph 2 of the Report includes the definition of a "British protected person" as requested, by the hon. and gallant Member for Nairobi South at the second reading.

Paragraph 3 amends clause 4 of the Bill. In fact clause 4 has been entirely re-drafted. Sub-clause (1) of clause 4 now provides that:—

"Every officer shall be a British subject of European, Indian or Arab race or origin or a British protected person of Indian or Arab race or origin . . ."

In other words, British protected persons of Indian or Arab race or origin are now qualified to become officers. Sub-clause (2) of clause 4 in that paragraph is also new and provides that:—

"The Governor may prescribe such tests as he may think fit which candidates for appointments to commissions and for promotion shall pass."

Then, Sir, in paragraph 4 of the Report on page 2 we come to sub-clause (2) of clause 7 which entitles, or rather, gives authority to the Provincial Commissioner for the Coast to call out the company for the defence of the Province in times of emergency. As the clause is drafted at present he is only entitled to call out the members of the Company, and the members of the Company do not include the officers, so the effect of the amendment is that he may call out the officers as well as the men.

MR. DENNISON seconded.

MR. PANDYA: Your Excellency, in regard to the Minority Report submitted by three members of the select committee—as none of them are present this morning I should like to raise the point made at the second reading of the Bill in regard to its application to the whole country—I should like to ask the hon. member to give the reasons why Government should not consider that such an amendment should not be made, particularly since the hon. members who signed the Minority Report wish to point out that—

"If, for any reasons, it is considered impracticable to apply the Ordinance to the whole country all at once, provision can be inserted therein giving powers to His Excellency the Governor to apply it to such district or districts from time to time."

In view of this provision I would like to know why it is undesirable or unnecessary to apply this to the whole Colony.

MR. WILLAN: Your Excellency, hon. members will see that this Minority Report is signed by the hon. Mr. Shamsud-Deen, the hon. Mr. A. B. Patel, and the hon. Sheikh Ahmed bin Mohamed, of whom two live in Mombasa and have not come up to Council. The hon. Mr. Shamsud-Deen, who was here this morning, left Council about five minutes ago. They knew perfectly well that this select committee report was coming before Council and they also knew perfectly well that they had signed the minority report, and if an hon. member has signed a minority report one expects him to remain in Council and speak on it.

The reasons why this Bill is only applicable to Mombasa were stated at the second reading, namely that it is a question of money and the question of staff. We must cut our coat according to our cloth. Also, another reason is that Mombasa is really the only place in this Colony where it is possible to raise an Indian and Arab force. So far as I am aware, there are few Arabs outside the district of Mombasa, and therefore I do not think it is really possible to raise a proper Indian and Arab force outside that district.

The question was put and carried.

#### EMPLOYMENT OF SERVANTS (AMENDMENT) BILL

##### SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Select Committee Report on the Employment of Servants (Amendment) Bill be adopted.

This is a very short report and consists of two paragraphs only. The first deals with clause 4 and in sub-paragraph (a) of paragraph 1 of that report, dealing with sub-section (4) of new section 30A, which is on page 3 of the Bill, we recommend:

"by deleting the words 'and who is accompanied throughout the duration of such employment by an adult relative' which occur in lines seven and eight of sub-section (4) of new section 30A."

No reason can be discovered at present why these words can well be retained, and therefore the select committee unanimously recommended that they should be deleted. But, of course, if it is found subsequently that they offend against any principle or convention unknown to us at present then, Sir, Government will have to reconsider the position.

Sub-paragraph (b) of paragraph 1 of the report deals with the words "by such parent or guardian" in sub-section (5) (a) of new section 30A. As that sub-section is drafted at present it reads that a parent or guardian must give their consent in writing, and that they themselves must actually do the writing. That, of course, is impossible for over 90 per cent of them and therefore these words are deleted.

In sub-paragraph (c) of paragraph 1 of the report sub-section (5) of the new section 30A has been entirely re-drafted. Sub-section (5) appears on page 4 of the Bill. Now it is provided that a juvenile who has lost his certificate or whose certificate has been destroyed or mutilated through no fault of his own should obtain through no fault of his own should obtain a new one without charge. It is also provided that when known that any person or employer has willfully destroyed a certificate belonging to a juvenile, then such person shall be liable to pay for the duplicate certificate.

In sub-paragraph (d) of paragraph 1 on page 2 of the report, section 30C of the Bill is amended by substituting the word "seventh" for the word "tenth" so

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that juvenile returns will have to be sent in on the seventh day of the month instead of the tenth, thereby bringing the law into conformity with the Native Registration law.

Paragraph (c) and paragraph 2 of the report delete the words "Arabs, Baluchis born in Africa, Comoro Islanders, Malagasies, Somalis or", so that only natives shall be supplied with identity certificates.

MR. DENNISON seconded.

MR. WILLAN: Your Excellency, may I make a statement. Hon. members will see that the name of the hon. Mr. Isher Dass has been omitted from those attached at the end of the select committee report. When the select committee met, the hon. Mr. Isher Dass was ill, but since then he has seen the report on this Bill and those of the two following Bills, and I have his authority to say that he entirely agrees with the reports and I believe he has signed the originals.

The question was put and carried.

#### EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT) BILL

##### SELECT COMMITTEE REPORT

MR. WILLAN: Your Excellency, I beg to move that the Report of the Select Committee on the Women, Young Persons and Children (Amendment) Bill be adopted. As hon. members will see, the select committee recommended no amendment to this Bill.

MR. DENNISON seconded.

The question was put and carried.

#### RESIDENT LABOURERS (AMENDMENT) BILL

MR. WILLAN: Your Excellency, I beg to move that the Select Committee Report on the Resident Labourers (Amendment) Bill be adopted.

Here again, this was a very short report and in fact recommends one important amendment only, that is to paragraph (a) to sub-section (10) which appears on page 4 of the Bill.

That sub-section deals with what happens to a resident labourer and the male members of his family when the farm is transferred by an occupier. Under the present law of course the resident

labourer and the male members of the family must work for the new occupier subject, of course, to giving three months notice to terminate their contract. Well, we discovered in select committee that only the male members of the family were entitled to say that they would not work for the new occupier and that the law did not cover the resident labourer himself. The amendment suggested in this Report will give the resident labourer the right to say whether he will work for the new occupier or not.

One further matter refers to sub-section (4) on page 3 of the Bill, that is, supplying the resident labourer and each male member of the family with a copy of the contract, and I have been asked by the noble lord the Member for Rift Valley to make a statement making it quite clear that these copies of the contract are not subject to the stamp duty.

MR. DENNISON seconded.

LORD FRANCIS SCOTT: Sir, I should like to make it quite clear that, on behalf of the hon. and gallant Member for Trans Nzoia and myself, we did not press some of the points which we raised during the second reading of this Bill because we consider that it is of the greatest importance to get this Resident Labourers Ordinance into operation as soon as possible and therefore we are prepared to accept it as it is so that the Bill need not go once more to be discussed by the Secretary of State.

The question was put and carried.

#### SISAL INDUSTRY BILL

##### SELECT COMMITTEE REPORT

MR. WATERS: Your Excellency, I beg to move that the Select Committee Report on the Sisal Industry Bill be adopted.

After considerable discussion the select committee came to the conclusion that the intention of the first three lines of clause 11 (a) of the Bill, in which the word "compulsory" occurs several times, was to ensure that no sisal fibre should be exported except from a registered plantation, and that such fibre should be marked with the registered plantation's mark. We considered, therefore, that such provisions, which are clearly necessary for

[Mr. Waters] organized and regularized marketing, should be inserted in the body of the Bill as a special clause rather than remain in the rule-making clause. In this connexion I should mention that this proposal received the support of Mr. W. C. Hunter, the chairman of the Kenya Sisal Growers Association, who, on the invitation of the committee kindly attended at some inconvenience to himself, in order to give us the benefit of his wide knowledge of the sisal industry. His support was later endorsed by the committee of the Sisal Growers Association.

In these circumstances the select committee have recommended a new clause 12 under which no sisal fibre may be exported other than the fibre from a registered plantation and marked with the registered plantation's mark. As a result of this several consequential amendments were found to be necessary.

In the first place, on the first page of the Report, there is a new clause 11 which provides that the sisal growers must register their plantations and their marks. This is obviously a necessary preliminary. Also in clause 12 there is a proviso to exempt sisal fibre in transit through the Colony.

On the next page, clause 12 (2) ensures that the new measures will automatically come into force when the rest of the Bill is brought into effect, at a time convenient to the growers after they have registered their marks.

Paragraph 3 (c) amends the present clause 11 (c) (iii) by omitting the word "classified" which crept into the Bill in error.

A new rule-making clause (d) has also been added to this clause which is now to be re-numbered as 13, under which the general statistics derived from the periodical returns of individuals which, under the old clause 14 must be kept secret, may be used for the benefit of the industry.

Finally a general penalty clause has been added. Without this clause any person could fail to register his plantation or mark, or break the rules with impunity.

MR. DENNISON seconded.

The question was put and carried.

#### BILLS

##### THIRD READINGS

The hon. the Acting Attorney General moved that the following Bills be read a third time and passed:—

The Coffee Industry (Amendment) Bill.

The Electric Power (Amendment) Bill.

The Kenya Indian and Arab (Territorial) Company Bill.

The Employment of Servants (Amendment) Bill.

The Employment of Women, Young Persons and Children (Amendment) Bill.

The Resident Labourers (Amendment) Bill.

The Sisal Industry Bill.

The hon. T. A. Dennison seconded. The question was put and carried. The seven Bills were read a third time and passed.

#### ADJOURNMENT

Council adjourned *sine die*.

#### Written Answers to Questions No. 4—KISUMU MAILS

BY LADY SIDNEY FARRAR:

(a) Will Government state whether the contract for the transport of mails to Kisii has been given out for a five-year period instead of the more usual one-year period?

(b) If a five-year contract has been entered into, will Government make arrangements that the present contractors shall give a six-day service, as offered by other contractors, instead of the present three days a week, in view of the urgent representations made by all sections of the community interested in the Kisumu-Kisii-Lolgorien area?

Reply:

(a) The answer is in the affirmative. (b) In view of the amount of mail matter carried over this route, it is considered that the public are receiving reasonable facilities, and it is regretted that arrangements cannot now be made that give a six-day service. I would add that no representations regarding increased facilities have reached my Department or the Provincial Commissioner, Nyanza.

No. 7—CASH CROPS AND EROSION  
BY MR. COOKE:

Is it the policy of the Government to encourage Africans to grow cash crops, such as cotton, in places where those crops are likely to cause erosion?

If the answer is in the negative, will the Government say what steps have been taken to prevent further erosion in those parts of the Embu and Kitui districts mentioned by Lord Hailey on pages 1095 and 1096 of his Survey as places where serious erosion has already taken place owing to cotton cultivation?

Reply:

It is the policy of Government to encourage Africans to grow cash crops, such as cotton, subject to the production of their food requirements, wherever these crops are suitable and the natives have no other production capable of meeting their cash requirements. It is not the policy of Government to encourage such cash crops without the essential measures for protecting the soil against erosion. In the Embu and Kitui districts there is a maximum of 2,000 acres under cotton (out of several hundred thousand acres of land), in very small fields, not exceeding one-quarter to one-half of an acre, for the most part widely scattered.

At the initiation of the cotton growing in these areas slight erosion occurred, but not generally. Anti-erosion measures are employed by the natives, under the tuition and supervision of the Agricultural Department, in all fields where erosion is likely to take place without these protective measures.

No. 12—MACHAKOS ENCLOSURES  
BY MR. COOKE:

With reference to the enclosures taking place in the Machakos district, will Government state—

(i) The approximate number of holdings so far enclosed?

(ii) What is their average size?

(iii) Is the tenure of these holdings individual or group?

(iv) Will the new "owners" have the right of free disposal to (a) members of the Kamba tribe, (b) members of an outside tribe?

(v) Are full facilities given to absentees such as askaris and personal servants to put in their claim to holdings?

(vi) Have arrangements been made for access to water and salt licks for the stock so enclosed?

(vii) And, if so, will not the "owners" of the land riparian to such water and salt licks suffer much damage from the trappings of the cattle using the route?

Reply:

(i) 4,745.

(ii) 45 acres.

(iii) The tenure is individual or family according to the circumstances of each case.

(iv) The term "new owners" is not understood. What is being done is to demarcate and fence existing holdings, and the owners of these holdings will, as they have had in the past, have the right of free disposal to members of the Kamba tribe but not to members of an outside tribe.

(v) Absentees are at liberty to apply through their relations for the demarcation and fencing of their holdings. No compulsion has been exercised, and no complaints have been received from or on behalf of absentees. Holdings are fenced only in the presence and with the assistance of the elders of the *utul*, or parish, and this ensures the accurate demarcation of the correct boundaries.

(vi) The answer to this part of the question is in the affirmative.

(vii) Routes of access to water and salt licks are demarcated with sisal, and stock must keep to these routes. No complaints have been received from owners of land riparian to water and salt licks as they are better off now that routes have been demarcated than they were before, when cattle were permitted to trample all over the surrounding land.

No. 19—WHEAT PRICES

BY MR. ISHER DASS:

Will the hon. the Director of Agriculture state if he is aware of the fact that—

(a) The prices per bag paid to the European wheat grower by the K.F.A.

[Mr. Isher Dass]  
under the Sale of Wheat Ordinance, 1930, are Sh. 18 and Sh. 19?

(b) The prices per bag paid to the native wheat growers are between Sh. 12 and Sh. 13?

(c) The price of local wheat, whether European or native grown, sold to the mills by the K.F.A. is Sh. 20 per bag?

(d) The difference of Sh. 6 and Sh. 7 against the native wheat grower constitutes an unfair advantage to the European wheat grower at the cost of the farmer.

(e) If the reply to the above is in the affirmative, will Government exempt the natives from the operation of the respective Ordinance under clause 16 so as to enable them to obtain the higher price from Indian millers in their own interests and the interests of the consuming public?

Reply:

The reply is in the negative.  
(a) The prices per bag paid to the European growers for the 1937-38 pool were as follows:—

Grade 1	Sh. 18/37
Grade 3	Sh. 17/87
Grade 4	Sh. 17/37
Grade 5	Sh. 16/87
Grade 6	Sh. 16/37
Grade 7	Sh. 13/37
Grades 8 and 9	Sh. 12/37
Grades 10 and 11	Sh. 11/37
Grades 12 to 14	Sh. 10/37

These prices were *f.o.r.* grower's station. The 1938-1939 pool is not yet closed.

(b) The prices per bag paid to the native wheat growers in the Central Province in 1937-1938 and 1938-1939 have varied with point of delivery, being based on Sh. 14/50 at rail station for all grades, but a special price has been instituted this year for Machakos of Sh. 17 per bag because of—

(i) superior bushel weight;

(ii) delivery in larger quantities; and

(iii) proximity to the Nairobi mills.

The price for native wheat delivered at the mills has been from Sh. 18/37 per bag downwards, depending on grade. In

Nyanza wheat is grown in negligible quantity by natives.

The above prices will be maintained for native wheat in the 1938-1939 season, while it is anticipated that the pool prices to European growers will be lower than in 1938-39.

Native wheat, unlike European, cannot be purchased on grade and sold at the mills; for grading is done at the mills and natives must receive cash on delivery. Therefore it is necessary to pay one price for all grades suitable for milling.

It may be assumed that natives receive a slightly lower overall price than Europeans; this would be due to the necessity of the Agency to employ a sub-agent to purchase native wheat for cash at a commission and clearing charge of Sh. 1 per bag (Sh. 2 in Machakos, to cover transport to Mombasa as well). On the other hand, natives have an advantage in being able to dispose of wheat immediately, and this is usually offered in small quantities, whereas Europeans are only able to deliver one-twelfth of their crop each month, the remainder having to be stored, with attendant deterioration due to weevil attack and other causes.

Indian mills cannot be allowed to purchase native wheat without the same restrictions as other mills, since this would give them an unfair advantage over the latter. Native wheat is of the white variety almost entirely, and the percentage of white wheat in the whole of the Colony's production has steadily declined to its present figure of approximately 20 per cent. A blend of white wheat is essential for producing a good white loaf, and the proportion of such wheat rationed to other millers if the whole of the native production went to the Indian mills would be considerably below what they would be entitled to receive. Indian millers are able to offer native producers a higher price than the Agent's price both on this account as well as because of a lower commission charge and lower costs of flour and its manufacture in inferior mills, but this is not an adequate reason for differential treatment as between native and European grown wheat. Indian millers



could no doubt offer a higher price for a proportion of the European-grown wheat, but it could only be a small proportion. They cannot ask for preferential treatment for a small proportion of the Colony's crop, whether it be native or European grown.

(c) The prices paid by the mills for wheat in 1937-1938 were as follows, whether European or native grown:—

First grade ..	Sh. 20/00
Third grade ..	Sh. 19/50
Fourth grade ..	Sh. 19/00
Fifth grade ..	Sh. 18/50
Sixth grade ..	Sh. 18/00
Seventh grade ..	Sh. 15/00
Eighth grade ..	Sh. 14/00
Ninth grade ..	Sh. 13/50
Tenth grade ..	Sh. 13/00
Eleventh grade ..	Sh. 12/75
Twelfth grade ..	Sh. 12/00
Thirteenth grade ..	Sh. 11/75
Fourteenth grade ..	Sh. 11/50

The mills receive a rebate on this price for wheat used for flour and atta consigned to various markets, as follows:—

	Per bag.	Sh. cts.
Mambasa .. .. .	.. 4	50
Ships' stores .. ..	.. 11	00
Dar es Salaam and Tanga	3	25
Kilwa and Lindi .. ..	.. 5	25
Tabora .. .. .	.. 3	00
Shinyanga .. .. .	.. 2	00
Moshi and Arusha .. ..	.. 2	50
Mwanza .. .. .	.. 0	50
Kigoma, Kasenyi and Albert Nile Ports .. .. .	.. 6	00

(d) The statement is at variance with the facts.

(e) As the reply is not in the affirmative, this part of the question does not arise.

#### NO. 20—WHEAT INQUIRY

BY MR. ISHER DASS:

Will Government be pleased to appoint an inquiry committee of persons representing native and European wheat growers and consumers of wheat to go into the working of the Kenya Farmers' Association in its relation to the Wheat Industry?

Reply:

The reply is in the negative.

An inquiry of this kind was conducted in a thorough manner by the Agricultural Economist and the Wheat Advisory Board two years ago. Government was satisfied, as the result of this inquiry, that the Agency was working equitably in the interests of wheat growers, without injustice to consumers, and has no reason to believe that the operations of the Agency have varied in any way since that time. The results of the inquiry mentioned were communicated fully to the hon. Mr. Shamsud-Deen.

#### NO. 40—SALE OF WHEAT

BY MR. GHERSIE:

(a) Whether Government is aware of the practically complete stoppage of the sale of wheat in the Usain Gishu district and of the consequent hardship to farmers and tradespeople in that area?

(b) Whether this imposed holding of their crops by farmers is part of Government's arrangements for a food reserve in case of emergency?

(c) If the answer to the second part of the question is in the affirmative, whether Government will recognize the equity of making payment to farmers for produce that they are storing on behalf of the community?

(d) If the answer to the second part of the question is in the negative, what explanation does Government offer of the inability of the wheat farmers to dispose of their crop, and what steps, if any, is Government taking to deal with the situation? More specifically, will Government favourably consider sponsoring arrangements with the wheat marketing organization or the banks for an advance to be made to farmers on wheat in store, to be repaid as and when the wheat is sold?

Reply:

(a) The following information has been obtained from the Agents under the Sale of Wheat Ordinance:—

The deliveries to the mills from the whole Usain Gishu Plateau during the last three months, as well as the allocations for June, which have already been

made, are stated below (the figure for June will be increased by further allocations):—

	1938.	1939.
	Bags.	Bags.
March ..	8,324	8,373
April ..	6,847	5,490
May ..	7,820	9,189
	22,991	23,052
June ..	8,208	5,494
	(already allocated)	

The rate at which wheat has been taken by the mills from the 1st September last has been 14,689 bags per month. The average for the year ended 31st October, 1938, was 15,571 bags.

Local wheat available for milling, from the 1st September, 1937, to the 31st August, 1938, was 180,446 bags.

The wheat available for milling from 1938-1939 crop is 237,221 bags, or a 31 per cent increase.

The amount of wheat available in the Colony as at the 1st June, 1939, was 145,839 bags.

The percentage of deliveries from the 1938-1939 crop, that is this season's crop, have been:—

	Per cent.
Nakuru area .. .. .	.. 39
Molo area .. .. .	.. 31
Londiani area .. .. .	.. 33
Gilgil area .. .. .	.. 35
Eldoret area .. .. .	.. 43
Kiitale area .. .. .	.. 45

Messrs. Unga Limited, Nairobi, the largest mill in the country, was closed down during March and April for six weeks. This means that the deliveries of wheat from the Nakuru, Molo, Londiani, and Gilgil areas have been slightly lower than would have been the case had the mill remained open continuously, and more wheat would also have been drawn from the Eldoret district had the mill not been closed down.

Another factor is that the bad cotton season in Uganda has been reflected in lower sales of flour and atta there during the last three months; additionally, owing to the low price overseas a larger quantity of flour and atta has been imported into the Colony during the last six months than was the case for the similar period last year.

These are all factors which result in smaller deliveries than otherwise would be the case. However, the deliveries of wheat in the Eldoret area have been higher than last year's.

The crop this year is 31 per cent above the crop for last year; therefore the amount remaining on the farms is greater than was the case last year. The 145,839 bags remaining in the Colony on the 1st June is, at the present rate of delivery, practically ten months' supply of wheat. There is therefore a larger quantity of wheat in the Colony at the present time than is required for East African consumption.

The Wheat Advisory Board are well acquainted with this fact, but at their last meeting determined to take no action for the disposal of this surplus wheat until the position was clarified regarding the locust situation. It would be detrimental to the interests of the Colony and of the wheat growers themselves if this surplus wheat were taken from the farmer to-day and sold at a low figure for feeding within the Colony or if it were exported, and the Board were later obliged to import wheat to make up a deficiency.

(b) The above information answers this part of the question.

(c) Government would not consider such a request a fair one; in all wheat-growing countries the consumption of the harvest has to be spread over the whole year, and consequently storage has to be effected until the wheat goes into consumption.

(d) The answer to (a) deals with the first part of this paragraph. Government is unable to take any steps to deal with the situation. Every wheat-grower in the Colony is aware that he is able to obtain an advance of Sh. 9 per bag from the Agency on wheat held in store.

#### NO. 45—LOCUSTS

BY MAJOR CAVENDISH-BENTINCK:

(a) Can Government give more detailed information with regard to the present locust position and likely developments?

(b) Will Government state the policy it intends to adopt as regards further



[Major Cavendish-Bentinck]

locust destruction campaigns, in view of the seriousness and widespread nature of the present locust infestation?

(c) Is Government considering the inauguration of any form of locust insurance scheme?

*Reply:*

(a) In the vast infested areas in North Laikipia, on the Leroghi Plateau and Samburu generally and from Isiolo to Garbatulla the infestation of hoppers has been reported to be at least as widespread and intense as previous reports have indicated.

In the area of Naivasha-Nakuru-Solai the latest information shows that the infestation of hoppers is now greater than has been anticipated. In the Trans Nzoiia-Uasin Gishu area there has been no change in the situation, with the exception that the infestation in Elgeyo and Kamasia is tending to overflow with increasing intensity towards the west into the wheat and cattle areas.

Two campaigns are being conducted on a fairly large scale—Trans Nzoiia-Uasin Gishu and Naivasha-Nakuru-Solai areas. They were commenced about 8th May. Control measures instituted consisted of organized baiting and spraying of hoppers by employed staff under the supervision of locust control officers. The whole cost of this work was originally estimated at £5,000, but in view of the threatened hopper infestation from Elgeyo and of the recent large hatchings in the Nakuru district it now appears that for destruction to be effective the total cost would be much more.

As an effective campaign in the Laikipia and North Nyeri areas would have cost at least £30,000 and probably much more, the Government decided that no elaborate campaign should be pursued in the Laikipia-Samburu-Mukogodo area but that poison bait should be made available at Nanyuki and Rumuruti for the use of farmers in the alienated area, so that under certain circumstances they could take steps to protect their crops and grazing from approaching hoppers.

To turn to likely developments, the hoppers in the vast infested area north of Rumuruti, Isiolo and Meru are expected to turn into fliers in about a

month's time. Normally, they would be expected to remain somewhere in the same vicinity, but owing to the drought they may be expected to travel south in search of food, but it is possible that they may travel south-eastwards to the coast or even to the north. It is not possible to give an accurate forecast of the direction in which the fliers are likely to go, but on the whole the most likely direction is towards the south and south-west.

Reports from the Sudan show heavy infestations there and in Western Abyssinia. In general, the area covered by infestations of this locust (namely, the African Migratory locust) appears to be extending, and consequently there are some grounds for the belief that this Colony will receive further infestations from neighbouring territories.

(b) The policy is to continue the locust destruction campaigns in the inhabited areas up to a maximum expenditure of £3,000 per mensem, but not to embark on expensive campaigns in uninhabited and relatively inaccessible areas. This policy is being kept under constant review by Government in the light of the latest information available.

(c) The answer is in the affirmative.

**NO. 49—DOMESTIC SERVANTS REGISTRATION: COMMITTEE ON**

**BY MR. GHERSIE:**

Will Government state the date on which the Committee to report on the Domestic Servants Registration system last met, the result of its findings, if any, and when it is proposed that the Committee should hold its next meeting?

*Reply:*

The last meeting of the Committee appointed to consider the working of the Registration of Domestic Servants Ordinance took place on the 1st October, 1938.

The Committee reported on the 14th October, 1938, but the report has been referred back to the Committee by Government for further consideration on one or two points.

The Committee will re-assemble as early as possible, but it is considered important that it should wait until a full attendance of members can be arranged.

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14th April, to 16th June, 1939.

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