

# KENYA NATIONAL ARCHIVES

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COLONY AND PROTECTORATE OF KENYA

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# LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

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10th COUNCIL INAUGURATED  
JUNE, 1952

VOLUME LXVI

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1955

~~FOURTH SESSION~~ ~~FOURTH SITTING~~

4th October, 1955, to 6th October, 1955

# List of Members of the Legislative Council

## *President:*

H.E. THE GOVERNOR, SIR EVELYN BARING, G.C.M.G., K.C.V.O.

## *Vice-President and Speaker:*

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G., M.C.

## *Ministers:*

- CHIEF SECRETARY (THE HON. R. G. TURNBULL, C.M.G.)  
MINISTER FOR LEGAL AFFAIRS (THE HON. E. N. GRIFFITH-JONES, Q.C.)  
MINISTER FOR FINANCE AND DEVELOPMENT (THE HON. E. A. VASBY, C.M.G.)  
MINISTER FOR AFRICAN AFFAIRS (THE HON. E. H. WINDLEY, C.M.G.)  
MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (THE HON. M. BLUNDELL, M.B.E.)  
MINISTER FOR INTERNAL SECURITY AND DEFENCE (THE HON. J. W. CUSACK, O.B.E.)  
MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING (THE HON. W. B. HAVELOCK).  
MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. J. J. ADIE).  
MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. D. L. BLUNT, C.M.G.)  
MINISTER FOR COMMERCE AND INDUSTRY (THE HON. A. HOPE-JONES).  
MINISTER FOR WORKS (THE HON. I. E. NATHO).  
MINISTER FOR COMMUNITY DEVELOPMENT (THE HON. B. A. OIANGA).  
EUROPEAN MINISTER WITHOUT PORTFOLIO (THE HON. L. R. MACONOCHE-WELWOOD).  
ASIAN MINISTER WITHOUT PORTFOLIO (THE HON. A. B. PATEL, C.M.G.)  
PARLIAMENTARY SECRETARY TO THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING (THE HON. J. JEREMIAH).  
PARLIAMENTARY SECRETARY TO THE MINISTER FOR COMMERCE AND INDUSTRY (THE HON. C. B. MADAN).  
PARLIAMENTARY SECRETARY TO THE MINISTER FOR WORKS (THE HON. SHERIFF ABDULLA SALDA).

## *Nominated Members:*

- THE HON. M. H. COWIE (Director of the Royal National Parks).  
CAPT. THE HON. C. W. A. G. HAMLEY, O.B.E., R.N. (RETD.).  
THE HON. SHEIKH MBARAK ALI HINAWY, O.B.E.  
THE HON. J. G. H. HOPKINS, O.B.E.  
THE HON. S. D. KARVE, O.B.E., M.B., B.S.  
THE HON. R. H. MILLS-OWENS (Acting Solicitor General).  
THE HON. K. W. S. MACKENZIE (Secretary to the Treasury).  
THE HON. CHIEF JONATHAN NZIOKA.  
THE HON. I. OKWIRRY, M.B.E.  
THE HON. SIR EDOO PIRBHAI, O.B.E.  
THE HON. J. L. RIDDOCH, O.B.E.  
THE HON. G. M. RODDAN (Director of Agriculture).  
THE HON. G. A. TYSON, C.M.G.  
THE HON. W. J. D. WADLEY (Director of Education).

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

*European Elected Members:*

- \*THE HON. M. BLUNDELL, M.B.E. (Rift Valley).
- GROUP CAPTAIN THE HON. L. R. BRIGGS (Mount Kenya).
- THE HON. S. V. COOKE (Coast).
- THE HON. W. E. CROSSKILL (Mau).
- LT.-COL. THE HON. S. G. GIBESIE, O.B.E. (Nairobi North).
- LT.-COL. THE HON. E. S. GROGAN, D.S.O. (Nairobi West).
- THE HON. N. F. HARRIS (Nairobi South).
- \*THE HON. W. B. HAVELOCK (Kilambu).
- THE HON. R. C. J. LETCHER (Trans Nzola).
- \*THE HON. L. R. MACONOCHE-WELWOOD (Uasin Gishu).
- THE HON. SIR CHARLES MARKHAM, Bt. (Ukamba).
- THE HON. MRS. A. R. SHAW (Nyanza).
- THE HON. H. SLADE (Aberdare).
- THE HON. C. G. USHER, M.C. (Mombasa).

*Asian Elected Members:*

- |                                |                               |
|--------------------------------|-------------------------------|
| <i>Central Electoral Area:</i> | <i>East Electoral Area:</i>   |
| *THE HON. C. B. MADAN.         | THE HON. S. G. HASSAN, M.B.E. |
| THE HON. CITANAN SINGH.        |                               |

- |                                |                             |
|--------------------------------|-----------------------------|
| <i>Eastern Electoral Area:</i> | <i>West Electoral Area:</i> |
| *THE HON. A. B. PATEL, C.M.G.  | *THE HON. I. E. NATHOO.     |

*Western Electoral Area:*

THE HON. J. S. PATEL.

*Arab Elected Member:*

THE HON. SHIBIKI MAHFOOD S. MACKAWI.

*Representative Members:*

*African:*

- THE HON. W. W. W. AWORI.
- THE HON. M. OIKONYO.
- THE HON. J. JEREMIAH.
- THE HON. E. W. MATHU.
- \*THE HON. D. A. OHANGA.

*Arab:*

\*THE HON. SHERIFF ABDULLA SALIM.

*Clerk of the Council:*

A. W. FURVIS

*Clerk Assistant:*

H. THOMAS

*Reporters:*

MISS S. I. WESTCOIT.

MISS S. E. FARNDALL.

\* Also included in list of Ministers.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

TENTH COUNCIL

FOURTH SESSION—FOURTH SITTING

Tuesday, 4th October, 1955

Council met at thirty minutes past two o'clock.

[His Excellency the Governor in the Chair]

PRAYERS

INSTALLATION OF NEW SPEAKER

HIS EXCELLENCY THE GOVERNOR: Hon. Members, as you are aware, your late Speaker, Sir William Horne, whom I know you all regarded with great affection, has been obliged to tender his resignation on the grounds of ill-health which has persisted over a long period.

I now declare it to be my pleasure that Major the Honourable F. W. Cavendish-Bentley shall be Vice-President and Speaker of this Council to preside over your deliberations.

Major Cavendish-Bentley has been a Member of this Council since 1942, first as a European Elected Member and since 1945 as a Member of the Government. For over 20 years he has served the people of Kenya. In particular, the agriculture and the forestry of this country owe him a very great debt for the hard work to which he has devoted his life during his long term of office. Few men have contributed more to the development of Kenya; indeed he is largely responsible for the remarkable agricultural progress—both European and African—which is an outstanding feature of Kenya to-day. Men of all communities are grateful to him, and I am very glad to have this opportunity of conveying to him, both personally and on behalf of this Council, my sincere thanks for all he has done for Kenya. (Applause.)

(The Chief Secretary and Mr. S. V. Cooke conducted Major Cavendish-Bentley to His Excellency and introduced him.)

(His Excellency the Governor withdrew accompanied by Mr. Speaker.)

Council suspended business at thirty-four minutes past two o'clock and resumed at forty-seven minutes past two o'clock.

[Mr. Speaker in the Chair]

ADMINISTRATION OF OATH

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

- Mr. Jack Jesson Adie.
- Captain Cyril William Archie Gooding Hamley.
- Mr. John Gerald Hemus Hopkins.
- Dr. Shankar Dhondo Karve.
- Mr. Vincent Albert Maddison.
- Sir Charles John Markham, Bart.
- Mr. John Louis Riddoch.

WELCOME TO NEW SPEAKER

THE CHIEF SECRETARY: On behalf of hon. Members on this side of the Council, it gives me great pleasure to extend a warm and very affectionate welcome to you on your assumption of the office of Speaker. (Applause.) It is a matter of profound satisfaction to all of us that one, who for more than 20 years has played a leading part in the development of a sound parliamentary tradition and to whose inspiration we owe our presence in this magnificent building, should now preside over our deliberations and, Sir, it is most gratifying that your long and happy association with this Council

[The Chief Secretary] should continue in such distinguished circumstances. (Applause.)

**MR. HARRIS** (Nairobi South): **MR. SPEAKER**, Sir, I have been asked by Members of all races on this side of the Council to add to the words that the hon. Chief Secretary has just said to you and welcome you in what I might describe as a most popular appointment. We feel, Sir, that it is a fitting step—I will go no further than step—in a very distinguished career that you should now preside over this Council and I have to assure you, Sir, on behalf of all Members on this side that you will receive the maximum support from each one of us. (Applause.)

#### COMMUNICATION FROM THE CHAIR

**THE SPEAKER**: Hon. Members, I rise in accordance with ancient custom to submit myself to the will of the Council and before taking the Chair for the first time as Speaker for the conduct of normal business, to express my respectful and humble acknowledgments to His Excellency and to the Council for the great honour that has been bestowed on me.

I should first thank my two hon. friends who did me the honour of leading me before His Excellency the Governor for his appointment to this high office, my hon. friend, the Chief Secretary, and my hon. friend of very long standing, the Member for the Coast. I must next express my thanks and deep appreciation for what was said about me by His Excellency the Governor, by the hon. the leader of the Council, and by the hon. Member for Nairobi South. From all these I have invariably received such personal kindness that I am able to discount many of the very kind things which they have said about me, but I am grateful to them for saying them and for the manner in which they did so.

Hon. Members, as British people in a British Dependency, members of this Council must, in no small degree, be imbued with the age-long traditions of the foremost debating chamber in the world, that Mother of Parliaments which sits in the Palace of Westminster. In this legislature, as in the case of many overseas Dominions, we Members, men of various races, drink from that fountain-

head of liberty and common sense and learn the ways and customs of Parliament which have evolved over the centuries. It may be that hon. Members who come new to this Council may find our rules a little perplexing and consider our ceremonial and form of speech perhaps old-fashioned at times, but I should like to stress that they have emerged from long tradition and experience and they are, in fact, founded on, and stand for, certain very simple ideas or perhaps I should say ideals. They are designed to secure that the majority of the Council in the long run has its way but that the rights of the minority are rigorously preserved and that our manner of speech in addressing one another remains a development of that courtesy which all men should show to each other when they are cast together to work together for a certain period for a great object and that object being for the good of our country. It has, I know, been said that a Speaker's principal duty is to guard minority parties and the rights of individual members, and that I shall try to do. But there is something even wider than the rights of individual members which we must guard, cherish and develop and that is the character and prestige of this comparatively young House of Assembly and in this regard I trust I shall be no less zealous. I think that, in emulation of the British House of Commons, we shall, as they have over the centuries, contrive to combine the ideas of liberty, loyalty and order and build here an institution which pays little regard to the fluctuations of party fortunes but which will be capable of going on from generation to generation maintaining the essential features of our free institutions. If such be our aims, I am sure that all will agree that it is an honour to serve this Council in any capacity. But to be called to adequately discharge the duties of the occupant of its Chair is a great honour, but also a task which might and should abash the most vain-glorious of men. With these words I promise you all I can promise—loyal and faithful service—and I submit myself to your desire. (Applause.)

#### PAPERS LAID

The following papers were laid on the Table:—  
Colonial Reports, Kenya, 1954.

Report of the East Africa Commissioner, 1954. East Africa Office, London.

East Africa Posts and Telecommunications Administration Annual Report, 1954.

Transfer of Powers (Chief Secretary) (No. 1) Order, 1955.

Transfer of Powers (Chief Secretary) (No. 2) Order, 1955.

East African Railways and Harbours Annual Report, 1954.

East African Tsetse and Trypanosomiasis Research and Reclamation Organization Annual Report, 1954/55.

Department of Immigration Annual Report, 1954.

Report on the working of the Civil Service Commission from 1st January to 30th June, 1955.

East African Statistical Department Annual Report, 1954/55.

Annual Trade Report of Kenya, Uganda and Tanganyika, 1954.

Report on the Kenya, Uganda and Tanganyika Savings Banks, 1954.

Sessional Paper No. 107: Emoluments of His Excellency the Governor and His Honour the Deputy Governor.

(BY THE CHIEF SECRETARY)

Annual Report of the Registrar General's Department, 1954.

Annual Report of the Judicial Department, 1953.

(BY THE MINISTER FOR LEGAL AFFAIRS)

A Summary of the Events leading up to the introduction of the Exchequer System in 1955—and an Outline of the General Principles of the Control of Public Expenditure and Revenue in Kenya.

The Land and Agricultural Bank in Kenya Annual Report, 1954.

Sugar Price Equalization Account. Statement of Income and Expenditure for the year ending 31st December, 1954.

The Pensions (Amendment) (No. 2) Regulations, 1955.

Annual Report of the Inland Revenue Department, 1954.

(BY THE MINISTER FOR FINANCE AND DEVELOPMENT)

Department of Agriculture Annual Report, 1953, Part II.

(BY THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES on behalf of the Minister for Agriculture, Animal Husbandry and Water Resources)

Prisons (Amendment) Rules, 1955.

Sessional Paper No. 99 of 1955: Report on the Manpower Policy in the Emergency.

Kenya Police Annual Report, 1954.

(BY THE MINISTER FOR INTERNAL SECURITY AND DEFENCE)

Education Department Annual Report, 1954.

Royal Technical College of East Africa Annual Report and Accounts for 1954.

Land Acquisition (Mombasa Oil Refinery) Ordinance, 1953 (No. 35 of 1953). Statement in accordance with section 8.

Report of the Controller and Auditor General on Accounts of the Crown Estates Development Fund for period ending 31st December, 1954.

Resident Labourers (Appeals) Rules, 1955.

Department of Lands Annual Report, 1954.

Survey of Kenya Administration Report, 1954.

(BY THE MINISTER FOR EDUCATION, LABOUR AND LANDS)

Review of Kenya Fisheries, 1954.

(BY THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES)

Report on the Administration of the East Africa Airways Corporation, 1954.

Industrial Management Corporation (Inc.) Balance Sheet and Accounts, 14th February, 1955.

Mines and Geological Department Annual Report, 1954.

Weights and Measures Department Annual Report, 1954.

Report of the Committee to examine the need for Economic Assistance for Primary and Secondary Industries, excluding Agriculture, in the Colony.

(BY THE CHIEF SECRETARY on behalf of the Minister for Commerce and Industry)

Road Authority Annual Report, 1953/54.

(BY THE MINISTER FOR WORKS)

Annual Report of the Department of Community Development and Rehabilitation, 1954.

(BY THE MINISTER FOR COMMUNITY DEVELOPMENT)

#### ORAL NOTICES OF MOTION

CALL FOR INQUIRY INTO REMOVAL OF SENIOR SUPERINTENDENT SWAYNE FROM CERTAIN OFFICES

MR. SLADE (Aberdare): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

That this Council calls for an inquiry into the reasons why Senior Superintendent Desmond David Claud Swayne of the Kenya Police was, on the 31st December, 1954, removed from his post and acting rank of Assistant Commissioner in charge of Assistant Commissioner in charge of Nyanza Province to become Second-in-Command of Coast Province in his substantive rank; and why he was subsequently required to retire from the service.

TRANSFER OF POWERS (CHIEF SECRETARY) ORDERS

THE CHIEF SECRETARY: Mr. Speaker, Sir, I beg to give notice of the following two Motions:—

BE IT RESOLVED that the Orders cited as the Transfer of Powers (Chief Secretary) (No. 1) Order, 1955, and the Transfer of Powers (Chief Secretary) (No. 2) Order, 1955, respectively, be approved.

EMOLUMENTS OF H.E. THE GOVERNOR AND OF H.H. THE DEPUTY GOVERNOR

THE CHIEF SECRETARY:—

BE IT RESOLVED that this Council doth approve the proposals made in Sessional Paper No. 107 of 23rd September, 1955.

#### PENSIONS (AMENDMENT) (NO. 2) REGULATIONS, 1955

MR. MACKENZIE (Nominated Member): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

WHEREAS, in exercise of the powers conferred by section 3 of the Pensions Ordinance, 1950, the Governor in Council of Ministers, with the sanction of the Secretary of State, has made the Pensions (Amendment) (No. 2) Regulations, 1955:

AND WHEREAS by regulation 1 of the said Regulations it is provided that the said Regulations shall be deemed to have come into operation on the 1st day of January, 1955:

AND WHEREAS by the proviso to subsection (3) of section 3 of the said Ordinance it is provided that no regulations made under the said section shall have retrospective effect unless the same have received the prior approval of the Legislative Council signified by resolution:

BE IT RESOLVED that this Council approves the aforesaid Regulations.

#### CROWN ESTATES DEVELOPMENT FUND — EXTENSION OF USE FOR INDUSTRIAL DEVELOPMENT

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: Mr. Speaker, Sir, I beg to give notice of the following Motion:—

WHEREAS by a Resolution dated 3rd December, 1952, it was resolved that a Crown Estates Development Fund be established to facilitate the alienation of Crown land for commercial, business and residential purposes:

BE IT RESOLVED—

(a) THAT the objects of the Fund shall in addition include the alienation of Crown land for industrial development and purposes ancillary thereto;

(b) THAT there shall be paid into the Fund all moneys from time to time voted by the Legislative Council for the purpose and all sums from time to time received from the grantees of land in respect of industrial development undertaken with moneys from the Fund;

[The Minister for Education, Labour and Lands]

(c) THAT any moneys voted for industrial development shall be kept separate from those provided for residential, business and commercial development;

(d) THAT the statement of the financial position of the Fund which is to be laid on the Table of Legislative Council annually in accordance with the previous resolution of Council shall show separately the expenditure of sums voted for industrial development.

#### ORAL ANSWERS TO QUESTIONS

QUESTION No. 107

MR. USHER (Mombasa) asked the Chief Secretary to state whether it is a fact that the Government is loath to allow visiting delegations to see anyone who might cause embarrassment.

THE CHIEF SECRETARY: No, Sir.

MR. USHER: Arising out of that reply, Sir, would the hon. Chief Secretary say whether any application has been made by a political society to meet such a delegation and whether such application has been refused?

THE CHIEF SECRETARY: It is not easy to answer such a conjectural question, but I certainly have no recollection of any such application being made and of it being refused.

QUESTION No. 111

MR. COOKE (Coast) asked the Chief Secretary whether the Government is satisfied that the frequent official visits of Ministers to Great Britain and abroad are always in the interests of economy and efficiency.

THE CHIEF SECRETARY: Yes, Sir, the Government is satisfied that the official visits of Ministers to Great Britain and overseas are in the best interests of the country.

#### BILLS

FIRST READING

Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill—(The Minister for Education, Labour and Lands)—Order for First Reading read—

Read the First Time—Ordered to be read the Second Time to-morrow.

Asiatic Widows' and Orphans' Pension (Amendment) Bill—(The Minister for Finance and Development)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Special Tax (Temporary Provisions) (Amendment) Bill—(The Minister for African Affairs)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

African Christian Marriage and Divorce (Amendment) Bill—(The Minister for Legal Affairs)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Workmen's Compensation (Amendment) Bill—(The Minister for Education, Labour and Lands)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Emergency Pensions Bill—(The Asian Minister without Portfolio)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Medical Practitioners and Dentists (Amendment) (No. 2) Bill—(The Minister for Local Government, Health and Housing)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Civil Service Commission (Amendment) Bill—(The Chief Secretary)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

Pensions Increase (Amendment) Bill—(The Minister for Finance and Development)—Order for First Reading read—Read the First Time—Ordered to be read the Second Time to-morrow.

#### ADJOURNMENT

THE SPEAKER: Hon. Members that concludes the business on the Order Paper. Council will stand adjourned until 2.30 p.m. to-morrow, Wednesday, 5th October, 1955.

Council rose at sixteen minutes past Three o'clock.

**Wednesday, 5th October, 1955**

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

(Mr. Speaker in the Chair)

**PRAYERS**

**PAPERS LAID**

The following Papers were laid on the Table:—

The Transfer of Powers (Minister for Agriculture, Animal Husbandry and Water Resources) (No. 1) Order, 1955.

The Transfer of Powers (Minister for Agriculture, Animal Husbandry and Water Resources) (No. 2) Order, 1955.

(BY THE CHIEF SECRETARY for the Minister for Agriculture, Animal Husbandry and Water Resources)

**ORAL ANSWERS TO QUESTIONS**

**QUESTION No. 108**

MR. HARRIS (Nairobi South) asked the Minister for Education Labour and Lands to state whether the Lessee of the Crown plot planned for an hotel on the corner of Government Road and Lugard Avenue, Nairobi, has fulfilled the building covenant inscribed in the lease and, if not, what action is being taken to re-advertise the plot and forfeit to the Crown the present lessee's deposit?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: The lease of this plot contains a condition that an hotel shall be completed within three years of the commencement of the grant, that is to say, by 31st August, 1955. That condition has not been fulfilled.

The land does not automatically revert to the Crown and become available for re-allocation; the procedure is by way of action in the Supreme Court for forfeiture, unless, of course, the grantee voluntarily surrenders his title. In accordance with the law the grantee has been given notice that Government proposes to institute proceedings for forfeiture. The question of redisposal of the land depends on the outcome of those proceedings.

MR. HARRIS: Mr. Speaker, arising out of that reply, I do not think the

Minister has quite covered the point about the forfeiture of the present lessee's deposit, if any.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: I assume, Sir, that by deposit is meant the stand premium; if the lease is ordered to be forfeited, the stand premium is forfeited automatically.

**QUESTION No. 110**

LT.-COL. GHERSIE (Nairobi North) asked the Minister for Finance and Development: With regard to the statement made on 27th April last by the Minister for Finance and Development on the subject of the Gill Report, will the Minister please state when this Council may expect the publication of this report?

THE MINISTER FOR FINANCE AND DEVELOPMENT: The Gill Report and the Government White Paper on this report will be laid on the Table of the Legislative Council early in the new session.

LT.-COL. GHERSIE: Mr. Speaker, arising out of that reply, I would like to ask two questions. The first one, in view of the Minister's statement on 27th April last and the delay that has taken place since then, would he not agree that the statement he made on 27th April is rather misleading?

That is question number one, and, secondly, may we have an assurance that the report itself, in full, will be published? (Hear, hear.)

THE MINISTER FOR FINANCE AND DEVELOPMENT: Mr. Speaker, I am afraid I cannot agree with the first part, No, Sir, I have here I think the words I used: "The report had to receive long and careful examination by my advisers on income tax. There was also the factor to be taken into account that, at present, our financial position was likely to preclude concessions of value. The report, together with the Government White Paper on it, will be published within the next few weeks, so that there will be ample time to consider and debate the matter before the next Budget should, at that time, our financial position have so improved as to make the consideration of concessions possible."

Sir, I consider its publication early in the new session will render that ample time available to hon. Members opposite.

[The Minister for Finance and Development]

The second part, Sir, is that, at all times, I have indicated that the report will be published in full.

LT.-COL. GHERSIE: Mr. Speaker, Sir, arising out of that reply, would not the Minister agree that a few weeks is three weeks or four weeks, whereas the period that has elapsed now is something in the nature of five months, therefore I consider that we have been misled?

THE MINISTER FOR FINANCE AND DEVELOPMENT: I think with regret, Sir, I cannot agree with the hon. Member. In the first place I have been on holiday, as he is aware, since then. In the second place I have been in London and the talks that I had in London are cognisant in so far as this report is concerned.

MR. MATHU (African Representative): Would the Minister say exactly what he means by early in the new session? Is it days, weeks or months?

THE MINISTER FOR FINANCE AND DEVELOPMENT: Sir, early in the new session, is, early in the new session! (Laughter.)

MR. HARRIS: Arising out of the Minister's reply, Sir, can we take it that he has no intention of introducing any interim Budget before next April?

THE MINISTER FOR FINANCE AND DEVELOPMENT: The hon. Member, Sir, must, like other people in parliaments have done from 'time to time' wait and see. (Laughter.)

MR. HARRIS: Arising out of that reply, Sir, can we have an assurance that if there is any intention of an interim Budget, this report will be published long before in order to give the rather un-intelligent Members on this side an opportunity of studying it?

THE MINISTER FOR FINANCE AND DEVELOPMENT: Mr. Speaker, the hon. Member for Nairobi South underestimates the intelligence of his colleagues. The report, Sir, would undoubtedly be published before an interim Budget.

**BILLS—SECOND READING**

THE LAND ACQUISITION (MOMBASA OIL REFINERY) (AMENDMENT) BILL.

Order for Second Reading read.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: (Applause.) Mr. Speaker, Sir, I beg to move that the Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill be now read a Second Time.

As hon. Members are aware, the object of the principal Ordinance was to enable the Crown to acquire certain land in the Coast Province and to lease it to the Anglo Saxon Petroleum Company for the purpose of erecting an oil refinery. The land concerned is known as scheduled land, and the First Schedule to the Ordinance contains a list of land vested in the Crown when the Ordinance came into force on the 1st of December, 1954.

Under section 8 of the Ordinance, the Governor may, at any time within ten years of the coming into force of the Ordinance, declare any other land in Mombasa district or Kwale district to be scheduled land for the purpose of the Ordinance. Under the proviso to sub-section 3 of the same section, where such land is not unalienated Crown land, the declaration of it as scheduled land must be laid before the Legislative Council) to quote the Ordinance, "on the first day of the meeting thereof next after the date of the making of the declaration".

The result is, Sir, that, if a meeting of the Council is in progress at the time when it is desired to declare certain land to be scheduled land, it is not possible to lay the declaration before the Council until the next meeting. There could, therefore, be substantial delay in acquiring the land and this could easily cause very considerable inconvenience.

There is also further scope for delay in the Ordinance as it now stands. When a declaration has been laid before Council at the moment, it can either be rejected by Resolution, or modified by Resolution. If it is modified by Resolution, then it comes into effect on the date when the modifications are approved. If, however, the declaration is not rejected or not modified, it comes into effect on the day following the conclusion of the meeting. In other words, there is no provision in the present Ordinance for a positive Resolution to approve the declaration as it stands

[The Minister for Education, Labour and Lands] without modification, and the declaration has to wait until the day after the meeting has concluded before it can come into force.

Now, Sir, the delays which I have mentioned also arise in respect of orders made by the Governor under section 9 regarding the vesting in the company of easements and rights in respect of land other than scheduled land. The present Bill seeks to eliminate these delays. It provides that the draft of every declaration under section 8 and of every order under section 9, shall be laid before the Legislative Council and approved by positive Resolution of the Council, and, that if the draft is approved, it shall have effect on the date when the Governor signs the declaration, after it has been through the Legislative Council. This procedure has the advantage of increasing rather than decreasing the control of the Legislative Council since it ensures that every declaration is the subject of a positive Resolution by Council.

In view of the very considerable benefits which this Colony stands to gain from the erection of an oil refinery, it is of course highly desirable that we should do everything possible to assist the project. This Bill, Sir, will assist the project by speeding up the processes of acquiring the land which may be required for the oil refinery.

Sir, I beg to move. (Applause.)

THE MINISTER FOR LEGAL AFFAIRS  
continued.

Question proposed.

LT.-COL. GHERSIE: Mr Speaker, Sir, this Bill is specifically for the setting aside of land for an oil refinery at Mombasa. Presumably the oil company will be given some definite period in which to indicate whether or not they, in fact, intend to construct a refinery? I am only asking this question, Sir, because it might become necessary for Government, in the absence of some undertaking, to allocate that land for a further purpose and I wonder if, under the conditions of this Ordinance, whether they would, in fact, be enabled to do so.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: There is provision, Sir, in the lease agreement that if, within five years, the company do not wish to proceed with the project, then they shall surrender the land to the Crown.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

THE ASIATIC WIDOWS' AND ORPHANS' PENSION (AMENDMENT) BILL

Order for Second Reading read.

MR. MACKENZIE: Mr. Speaker, Sir, I beg to move that the Asiatic Widows' and Orphans' Pension Bill be read a Second Time.

The purpose of this Bill, Sir, as printed, is to bring the Asiatic Widows' and Orphans' Ordinance into line with the existing position as regards the Asian Officers' Family Pensions Ordinance, and the European Widows' and Orphans' Ordinance.

At the present time, any officer who was a member of the Asiatic Widows' and Orphans' Pensions Fund and who is re-engaged, either permanently or temporarily, and who has beneficiaries, is required to make contributions to the fund on his combined salary and pension from the date of his re-engagement to the date of the termination of his appointment. In so far as members of either of the other two funds are concerned, it is only necessary to make contributions on salary, except in the case of the Asian Officers' Family Pensions Fund where, if the contributions of the officer on his pension were greater than those on his salary, he is given the option to continue to make contributions on the pension only, but in neither of these other two cases is it necessary for an officer to make contributions on both pension and salary. This, Sir, is considered to be entirely inequitable, particularly as the benefits payable under the Asiatic Widows' and Orphans' Pensions Fund are in the form of a fixed pension of £30 a year, so that in spite of the fact that a man is paying on both pension and salary, he cannot get anything more out of it.

[Mr. Mackenzie]

The Bill, as printed, will have the effect of rectifying this anomaly. There is, though, Sir, a further point which has been brought to notice since the Bill was actually printed, and that is, Sir, that whereas in both the European Widows' and Orphans' Pensions Ordinance and the Asian Officers' Family Pensions Ordinance, there is an age limit beyond which no officer has to make contributions at all. In the Ordinance under consideration at the moment, there is no age limit so that a re-employed officer can have to go on paying for ever, unless, of course, he retires. It is considered that this, too, is quite inequitable and, in order to rectify the position, it is proposed at the Committee stage to move an amendment which will impose an age limit similar to the one which exists in the case of the Asian Officers' Family Pensions Fund.

I should say, Sir, that the provisions of this Bill, if they become law, will, in so far as the restriction of contributions to salary only instead of salary plus pension is concerned, result in the refund of contributions in certain cases, because it will be noticed that the Bill, if passed, comes into force with effect from 1948, so that there will be refunds. The refunds will be made from the fund, Sir, but since the Government guarantees the grant of all pensions, it is just possible that there may be a charge on public funds, but it is considered that this would be negligible.

The proposed amendment regarding the age limit could also result in some very small additional expenditure, but here, again, it is not thought that it could be in any way significant.

Sir, I beg to move. (Applause.)

MR. HARRIS: On a point of order, Mr. Speaker, is it in order for notice to be given on the Second Reading of a Bill which introduces, as I understand it, a new principle into the main Ordinance so that, in fact, we have not really received proper notice? I understand from the Secretary to the Treasury that this may mean a charge on public funds, and I am wondering whether it is in order to introduce this new matter on a Second Reading.

THE MINISTER FOR FINANCE AND DEVELOPMENT: On a point of order, Sir,

I believe that this has been done before. The procedure is that there is debate on the new clause in the Committee stage. I should say, a debate on the principle.

Question proposed.

MR. CHANAN SINGH (Contra-Electoral Area): Mr. Speaker, Sir, I support the Second Reading of this Bill. The Bill, especially the amendment which has been indicated on the Order Paper to-day, improves the condition of reappointed officers in this particular matter very considerably.

I feel, however, Sir, that Government might have been a little more generous in this matter and might have dispensed with contributions from reappointed officers altogether. The reasons which prompt me to make this suggestion are these. I believe round about 1950, an option was given to officers to accept the new Widows' and Orphans' Pensions Fund. No such option was extended to reappointed officers.

Then, Sir, there is the fact that the rate of contribution to the old Pensions Fund, which the present Bill affects, was 5 per cent. The contributions which are being made to the new fund are 41 per cent. There is also the additional fact that the benefits payable under the new fund are higher than those payable under the fund affected by this Bill. In view of these facts, I should have thought the Government might have dispensed with contributions from reappointed officers altogether. In any case, I do want the Government to give consideration to allowing these officers to opt to the new fund if possible.

LT.-COL. GHERSIE: Mr. Speaker, Sir, just one point I wish to raise. I see from the Memorandum, Sir, that this is to take effect as from 3rd September, 1948, and I realize, Sir, from the Memorandum of Objects and Reasons, that it states, "It is possible eventually an additional charge on public funds will be created. It is not possible at this stage to estimate the amount of such additional charge which, however, is not expected to be large in any event". Could not the hon. Mover, Sir, give us some indication what the additional charge on public funds will in fact be?



**THE SPEAKER:** No other hon. Member rising to speak, I will call on the hon. Mover to reply.

**MR. MACKENZIE:** Mr. Speaker, Sir, I will deal first with the point that was raised by the first speaker from the other side and that is the question whether it would not have been possible to free all persons concerned from any further payments under this fund. The question has been gone into at considerable length, and on three occasions in the past officers have actually been given the option to transfer to the Asian Officers' Family Pensions Fund. The first occasion was in 1942 when that fund was originally introduced. The second occasion was in 1945 and, on that occasion, it was said that the option would be irrevocable, and, then again, in 1950 after the Holmes Commission had reported, a further opportunity was given to officers to change, although that opportunity was restricted in the particular circumstances to those who had opted for the new terms of service, since all the others were actually covered by the two previous opportunities that had been given.

The amendment which is before the Council, will help pensioners who retired after the Holmes Committee's recommendations had been accepted, if they did not have the option at the time when the Holmes Commission Report was adopted because, for example, they were not in the service at that time. But if we were to give the option to them now, that would have the effect, I am advised, of reopening the case of every pensioner whose salary has not been revised and it might involve a very considerable amount of work.

As regards the question of relieving them altogether, I do not think that could be accepted as the fund does rely to a certain extent—well, it relies entirely—on the contributions for its solvency and even the concession that is being given at the moment, may result in some additional charge on public funds.

That leads me, Sir, to the other question as to what the charge on public funds is likely to be, and the answer to that is that it depends to a very great extent on how long officers who are contributing at the moment to this fund will continue to make contributions; but,

much more important, it depends on the length of life of the beneficiaries and I am afraid that without a very considerable amount of actuarial assistance, it would be quite impossible for me to make a guess at what the outcome would be.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

**THE SPECIAL TAX (TEMPORARY PROVISIONS) (AMENDMENT) BILL**  
Order for Second Reading read.

**THE MINISTER FOR AFRICAN AFFAIRS:** Mr. Speaker, Sir, I beg to move that the Special Tax (Temporary Provisions) (Amendment) Bill be now read a Second Time.

The object of this Bill, Sir, is simply to extend the provisions of the Ordinance imposing this special tax for another year. I think it is right and proper that a special tax of this nature should come up for reconsideration by this Council annually.

I have little else to add to the Memorandum of Objects and Reasons, Sir, as the proposal to increase the rate of Sh. 3 was fairly fully ventilated at the time of discussion on the Budget, Sir. I would merely add that I would anticipate that as things are going at the moment, there will be a higher rate of exemption during the coming year, Sir.

I beg to move.

**THE MINISTER FOR FINANCE AND DEVELOPMENT** seconded.

*Question proposed.*

**MR. MATHU:** Mr. Speaker, Sir, I will support the Second Reading of this Bill, but I would like to make a few observations on the speech made by my hon. friend the Mover. I think, Sir, the increase of the Sh. 3 on the rate of tax is not objected to and that it has been anticipated that there was not going to be opposition. I do not think I shall discuss the increase of the tax from Sh. 22 to Sh. 25 for 1956.

He also said, Sir, that he thinks, as things go, there will be increased exemptions to pay this tax. That again, Sir, I think is a good point for him to make. But my observations, Sir, are on a differ-

[Mr. Mathu] ent line in the form of a question to my hon. friend, the Mover, and the question is this, Sir, whether, in order to increase the ability to pay, which I, personally, would support, rather than exemptions, he will give opportunities to people concerned to earn money to pay this tax, because that, Sir, is the thing that is causing a lot of uneasiness among the Kikuyu, Embu and Meru people who are concerned with this tax. I am a supporter that they should pay. On the other hand, I do think it is very unreasonable for us, the Council and the Government, to deny these people opportunities of earning money in order to pay their tax to public revenue. That is the point, Sir, I would like to impress on my hon. friend to make it public, here and now, what he intends to do, to give this opportunity for these people to earn. As you know, Sir, in these troubled areas, they get people out to work without any payment at all. They cannot move to go and earn money in employment in European settled areas, in Nairobi, in towns and other places and, in fact, they are closed in and are expected to pay it! The question of exemption, Sir, is not, in my view, the answer. The answer is, that in order that they should pay their tax in full and, therefore, increase their ability to pay, they should be given increasing opportunity to earn money legitimately in order to pay this tax. I do not think that that is the situation to-day and I would like my hon. friend to be very clear on this one because it has exercised my mind, it is exercising the minds of these communities throughout the country. Now, I will tell you why, Sir, I am afraid of this is because I do not want the Government and this legislature to be accused of being like Shakespeare's *Shylock*, the Jew, and Bassanio in *The Merchant of Venice*.

Here we are making a bond in the way of an Ordinance for 1956 and the Jew, in this case the Government, is going to demand before 31st December, 1956, a pound of flesh in the form of the tax. The question is this, Antonio is not there so who is going to lend the Sh. 25 to pay because the cargo is delayed because the ship cannot come in to shore in time, and that is just the point here. Now the cargo is being waited for and the cargo, in my opinion, which is going

to come in order to pay *Shylock*, the Jew, the pound of flesh, is the opportunity for earning a decent and legitimate livelihood by these people. The question is who is our Bassanio, Sir, and who is Portia to give the judgment. (Applause.)

**THE SPEAKER:** No other Member wishing to speak I will call on the hon. Mover to reply.

**THE MINISTER FOR AFRICAN AFFAIRS:** Mr. Speaker, I do not propose to bandy Shakespeare with my hon. friend, but I would like to make the point that hon. Members, in reading the local Press, will have seen, particularly during the last six months, recurrent accounts of large sums of money being produced as a result of the work of confession teams, money that is being held on behalf of the *Mau Mau* coffers and it is precisely these coffers, Sir, and the sources from which they come, that we wish to tax. The opportunities of earning money that the hon. Member mentions, might indeed raise wide issues if one is to take it as far as considering the re-employment of Kikuyu outside their own areas. This, Sir, I do not think it would be appropriate to touch on here although the Government is well aware of the difficulty in which a large number of impecunious repatriates were placed with regard to their earning capacity to get food and money for taxation and this, I think, has been largely met by the very large sums of money that are being spent on relief-gangs in the Kikuyu districts every month. It is also, I think, true to say now, Sir, that with improving conditions in the Kikuyu districts, the state of their agriculture, their cash crops and the money that they gain from this source, has improved and I would expect also a considerable improvement during the coming year.

I did mention that I expected that there would be a higher rate of exemption with an improving situation and I think, as I say, Sir, that will be true and this tax will, in its penal implications, be more and more directly aimed at the remains of the *Mau Mau* passive wing supporters in the reserves, Sir.

I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

**THE AFRICAN CHRISTIAN MARRIAGE AND DIVORCE (AMENDMENT) BILL**  
Order for Second Reading read.

**THE MINISTER FOR LEGAL AFFAIRS:**  
Mr. Speaker, Sir, I beg to move that the African Christian Marriage and Divorce (Amendment) Bill be now read a Second Time.

This Bill, Sir, contains amendments which have been discussed and agreed with both the Roman and Anglican Churches and with, and by, the Administration.

The amendments, which it will effect to the principal Ordinance, really cover four matters.

The first is that the present requirement of the Ordinance, that places of worship be licensed for the performances of marriages under this Ordinance, is to be cancelled and, secondly, there will be introduced in lieu a requirement that ministers be licensed to celebrate marriages under the principal Ordinance. Thirdly, an amendment whereby conversion marriages can be contracted before licensed ministers as well as before civil registrars, a conversion marriage being a marriage under the Ordinance, that is to say, a monogamist marriage by persons who are already married under native customary law. Finally, the fourth point, which the Bill covers, is the position of registrars which has hitherto been the subject of some ambiguity.

As to the first point, Sir, hitherto the place of worship has had to be licensed. In practice, that means that only permanent places of worship, places of worship built of permanent materials, are commonly licensed. In the reserves there are, of course, a number of churches of very temporary materials—temporary buildings—and it should be possible, and would be convenient for Africans if marriages under this Ordinance could be performed in such places. On the other hand, the churches wish to see some form of check, some form of control, maintained over marriages under this Ordinance and they consider that this could best be done by licensing ministers of religion.

The third point, Sir, is the question of conversion marriages. As I say, it will

provide that they may be performed, not only by ministers of religion, but by registrars and, in this connexion, the churches have asked that there be reserved a liberty of conscience to decline to perform such a marriage. If a minister of religion were to decline to perform such a marriage, it would be open to the parties to have the marriage performed by a registrar. The reason why the churches seek to make this reservation is that, whereas they would be only too pleased to perform a conversion ceremony for two African persons who had been married under native law and custom before being converted to Christianity, they wish to reserve the liberty to decline where the parties, although professing Christians, have elected, without performing or going through a Christian marriage ceremony, to live together under native law and custom. As I say, where the position arises that a minister declines to perform a conversion ceremony, in those circumstances it would still be open to the parties to have it performed by a registrar.

The fourth point, Sir, is regarding the position of registrars; some ambiguity has arisen in the past as to whether those who are registrars for the purpose of the Marriage Ordinance, to which the principal Ordinance which we are now seeking to amend is very closely related, those registrars are registrars for the purpose of the principal Ordinance. The Bill before the Council resolves that ambiguity by stating expressly that they are.

Mr. Speaker, I beg to move.

**THE CHIEF SECRETARY** seconded.

*Question proposed.*

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

**THE WORKMEN'S COMPENSATION (AMENDMENT) BILL**

Order for Second Reading read.

**THE MINISTER FOR EDUCATION, LABOUR AND LANDS:** Mr. Speaker, Sir, I beg to move that the Workmen's Compensation (Amendment) Bill be now read a Second Time.

[The Minister for Education, Labour and Lands]

First of all I would like to give a very brief account of the Workmen's Compensation Ordinance. This Ordinance provides for the payment of compensation to workmen who suffer injuries in the course of their employment.

It came into force on 1st October, 1949, and it applies to all employment. It applies to manual workers generally—though there are certain exceptions—and to non-manual workers who earn up to Sh. 10,000, that is £500, a year.

The Ordinance is virtually identical in all three East African territories. There is, of course, considerable convenience in having interterritorial uniformity since industrial and commercial concerns and insurance companies operate in all three territories.

This Bill seeks to introduce a number of amendments which practical experience of the working of the Ordinance has proved to be desirable. The question of amending the Ordinance was discussed originally by the East African Labour Commissioners in 1950, as the result of which an interterritorial standing committee was set up to examine the working of the Ordinance. That committee recommended certain amendments, which were accepted by the three Labour Commissioners and their respective Governments. They were also accepted by the Labour Advisory Board in Kenya. This Bill amends the Ordinance accordingly. Tanganyika have already passed their amending Ordinance (it came into force on 1st September, 1955), and Uganda have published their amending Bill.

There is, Sir, a full explanation of the ideas behind the Bill in the Memorandum of Objects and Reasons, and I propose to deal in this speech with only the more important ones.

First of all, Sir, clause 2 contains two major amendments. The first, clause 2 (a), concerns the scope of the Ordinance's application. As I have already said, the Ordinance applies at present to manual workers whatever their earnings; as regards non-manual workers it applies to those who earn up to Sh. 10,000 or £500 a year. In view of the general increase in earnings which has taken

place since the Ordinance came into force £500 is considered too low a figure, and clause 2 seeks to bring within the scope of the Ordinance non-manual workers earning up to £840 a year. That is Sh. 16,800.

The second important amendment, clause 2 (c), seeks to remove the obligation for all compensation cases arising out of the death of a workman to be referred to the courts. It is considered that when an employer is willing to pay compensation and there is no dispute as to the amount then the law should include provision for an agreement to be concluded without recourse to the courts. The clause will enable the employer to agree, in writing, the compensation with the dead man's dependants or legal representatives—in the same way as he can at present in the case of an injured workman under section 16. Such agreement will be entirely voluntary as between the two parties, and the matter may still be referred to the court if there is any question of dispute. Furthermore, all such agreements require the Labour Commissioner's approval.

The next clause, Sir, clause 5 (a). Under section 5 an employer is not liable to pay compensation in respect of an injury unless the workman is incapacitated from earning full wages for five consecutive days.

The proposed amendment reduces the qualifying period for compensation from five to three days—in conformity with the United Kingdom legislation, and it is on the United Kingdom legislation that this Ordinance is based.

Clause 6 (a). The maximum death benefit is raised from Sh. 14,000—(£700)—to Sh. 24,000—that is £1,200. This is a proportionate increase to the earnings qualification proposed in clause 2.

Clause 6 (b). At present when compensation for temporary incapacity has already been paid in respect of an injury which results in death, the amount so paid is deducted from the compensation payable on death. Cases have occurred in which a workman has died after a very considerable period of temporary incapacity with the result that his dependants have only received a very small sum in compensation for his death.

[The Minister for Education, Labour and Lands]

The proposed amendment will mean that compensation payable on death will be in addition to any compensation which has been paid in respect of temporary incapacity.

Under clauses 7 and 8, Sir, the maximum benefit for permanent incapacity is raised from Sh. 20,000—that is £1,000—to Sh. 34,000—that is £1,700—this increase is proportionate to the increase in the earnings qualification proposed in clause 2.

The increase has been agreed inter-territorially and with the insurance companies, without any increase in premium; though naturally the insurance companies have reserved their right to modify their premia in the light of practical experience of these new benefits.

Before leaving the question of increased benefits I would like to mention just one point. The maximum benefits which were originally proposed were slightly lower or considerably lower than those at present proposed for death and permanent total incapacity. At the instance of the Kenya Government the maxima were raised to the figures proposed in the Bill so as to be more in proportion to the increased scope of the Ordinance proposed by clause 2. The original figures proposed have been included in Tanganyika's Ordinance; they will be raised by an amending Ordinance when we have published our Bill here and when Uganda have published theirs also.

Under clause 9 (b), as things now stand if a workman's incapacity arising from injury lasts less than four weeks, no compensation is payable in respect of the first three days. This provision, Sir, is quite likely to cause hardship and it is proposed to drop it. The workman will be entitled, under the amended law, to compensation for the full period of his incapacity.

Clause 10. At present compensation is calculated on the workman's average earnings over the previous 12 months. Well, Sir, experience has shown that it is extremely difficult to assess what his earnings have been over the past 12 months, particularly when he has moved around from employer to employer, and in several cases the law has operated

harshly where the workman's earnings have increased during the previous 12 months. It is proposed, therefore, that compensation should be calculated on the actual remuneration of the employee at the date of his injury. This is the practice in other countries.

Clause 11. At present, proceedings for compensation are barred if a claim for compensation is not made within six months of the accident. Cases have arisen in which it has taken more than six months to trace the dependants of a deceased workman, and as the Ordinance stands at present, the dependants in such cases are barred from claiming compensation.

The proposed amendment, Sir, will remove this six months' time limit in the case of workmen earning less than a certain amount which is to be prescribed. It does impose, however, a time limit of three years from the date of the accident—after which no claim for compensation can be entertained.

Clause 12. An employer is obliged to report accidents to workmen to the appropriate authorities. Failure to report renders him liable to a fine of up to £50; but, by virtue of section 216 of the Criminal Procedure Code, no proceedings can be taken against him unless a charge or complaint is laid within 12 months. A number of cases have occurred in which the employer has failed to notify an accident, and more than 12 months have elapsed before the accident has come to the notice of the Labour Department. In such cases, under the law as it now stands, it has not been possible to prosecute the employer for his failure to report the accident. The proposed amendment will make it possible to do so.

Clause 15. Under section 26 the Governor in Council can by order require any employer or class of employers to keep themselves insured in respect of any liability which they may incur under the Ordinance. The proposed amendment allows the exemption of individual employers from compulsory insurance applied to a class of employers, provided the employer undertakes by surety to the satisfaction of the Minister for Labour that he will discharge any liability which he may incur under the Ordinance.

[The Minister for Education, Labour and Lands]

Clause 20. At present the employer has to pay the medical expenses of a workman arising out of an injury even though the injury may not qualify the workman for compensation. The proposed amendment makes this liability for medical expenses contingent on the injury being one which would entitle the workman to compensation.

The amendment also renders an employer liable for transport expenses up to £50 incurred in transferring a workman who has been injured to and from a place where treatment is available. This has become necessary because the medical specialists in the country tend to be centralized in Nairobi. Cases have arisen where an injured workman has had to be flown to Nairobi to undergo an operation, and the employer has declined to pay the transport charges because he was not legally liable for such charges. The result has been that the workman has had to meet the charges for transport out of the compensation payable to him.

Clause 24. In view of the increasing number of African women workers, clause 24 includes a husband among the dependants specified in the First Schedule who can claim compensation.

Clause 25. After consultation between the Medical Departments of the three East African territories, it is proposed to add to the Third Schedule certain occupational diseases which may be encountered in the industries developing in this Colony.

This Bill, Sir, is the culmination of exhaustive and protracted discussions, and in concluding this speech I would like to emphasize what I said earlier on, namely, that the amendments contained in this Bill have been agreed by the three East African Governments and have been drafted in full consultation with the Accident Insurance Association of Eastern Africa. The amendments have also been agreed by the Kenya Labour Advisory Board and also by the Kenya Board of Commerce and Industry.

Sir, I beg to move. (Applause.)

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question proposed.

MR. HARRIS: Mr. Speaker, Sir, as no debate developed under Order 5 on the Paper, I would like to take this opportunity of congratulating the Minister for Education, Labour and Lands on his maiden speech in this Council. (Applause.)

Sir, so that you cannot rule me out of order, I will not refer further to that speech, but I would congratulate him again on the lucid manner in which he has introduced this particular Bill.

Now, Sir, I think generally the terms of this Bill are acceptable in all quarters. I, personally, am very pleased to see that at least there appears to have been real co-ordination between the three East African territories in coming to common legislation which is applicable in all the territories concerned. I think, Sir, most people will welcome the provisions of this Bill whereby it is not necessary to take every compensation case to court. On the other hand, Sir, there is still compensation for the lawyers in this particular Bill in that, as in other Bills in other parts of the world, nobody seems ever yet to have been able to define a workman. It would appear that the real principle behind this Bill is to say to employers, "You are responsible for injury at work in those categories of work-people whom we consider have not been able, because of their salary levels, to put enough aside to take care of such eventualities". That being so, Sir, it is extraordinary that manual labourers seem to fall into a special category in that, whether they get £840 a year or £8,400 a year, they are still subject to this Ordinance and, of course, Sir, there is always the difficulty as to what is a workman. The manual worker receives this privilege but, unfortunately, at the time of his engagement, his employer does not know what a court is going to decide in the event of him being injured at work and, therefore, does not know whether he should cover this particular gentleman in his insurance premium or not. It has been ruled in England that a bus conductor is not a manual worker. Well, I would have thought, Sir, that a bus conductor is, but, however, I am told that he is not. It has also been ruled, Sir, that a grocer's assistant, in man-handling barrels in the cellar—I do not know what the barrels contain, Sir, but they were barrels—was not a manual worker.

[Mr. Harris]

There again I would have thought that probably a wise employer would have covered him for workmen's compensation even if he got more than £840 a year, but apparently that is not the case. But coming much closer to home, Sir, we are not a court of law, but courts of law are supposed to carry out the intention of legislation passed in this Council. Can this Council tell me, Sir, whether our farm managers in Kenya are manual workers? I think a great number would be very offended if you told them they were not and, therefore, should employers of farm managers insure those farm managers against claims under the Workmen's Compensation Ordinance regardless of the fact that many farm managers in this country are getting considerably more than £840 a year? There is, Sir, of course, the extreme example—I am sorry the Director of Medical Services is not here—but what is a surgeon?

A surgeon, Sir, works entirely on the skill of his hands, and therefore, apparently, it is manual, regardless of what salary a surgeon gets. If he is employed by my hon. friend, the Minister for Health, ought he to receive compensation if he chops off his own legs instead of somebody else's?

It seems, Sir, that all these matters which will have to be decided at one time or another in a court of law could be very much easier eliminated from the ground if Government would agree that, in fact, the salary level is the thing that matters, and to say everybody is subject to this Ordinance who is receiving less than Sh. 16,800 a year, and not to make this extraordinary exception in the case of manual workers because, when a manual worker is getting more than £840 a year, what is the difference between him and the next man? Why is he in a special category? Because a clerk, after all, or even a Chief accountant who, apparently, is not a manual worker, can easily cut his hand when he is sharpening his pencil—particularly after lunch—and yet he is not entitled to any compensation, but the manual worker presumably is. I would notify the Government, Sir, that at the Committee stage I propose moving an amendment which will cover this particular point.

There is one other matter to which I would draw the Minister's attention, Sir, and that is I believe, under the existing Mining Regulations in force in this country, there are scales of compensation laid down. I think there might easily be misunderstanding and uncertainty as to whether the Workmen's Compensation Ordinance would apply in the case of a mining accident, or whether the Mining Regulations would apply. That is not a criticism, Sir. It is merely a suggestion to the Minister that he might check that that particular eventuality is covered in this Bill.

Apart from that, Sir, I beg to support. (Applause.)

GROUP CAPTAIN BRIGGS (Mount Kenya): Mr. Speaker, Sir, before I go any further, I should like to associate myself with the remarks made by the hon. Member for Nairobi South regarding the excellent speech—maiden speech—made by the hon. Mover. (Applause.) It was extremely lucid. There are one or two points which I would ask him, perhaps, to clear up.

The first one he mentioned—that the legislation proposed is largely in order to bring Kenya legislation into line with that of the United Kingdom. It does seem to me that, generally speaking, in this country there is greater need to bring home to employees a sense of responsibility—perhaps rather more so than in the case of the United Kingdom—and I would not like to think that because legislation is right and proper in the United Kingdom that it is necessarily right and proper in Kenya.

Now, there are one or two points which are connected up with that. Is there any provision in the Ordinance which excludes from compensation those persons who may be injured when they are making unauthorized use of their employer's property? I did know of cases where irresponsible employees have driven off with tractors, motor cars and that sort of thing, not for the purpose of performing work on behalf of their employers, but entirely for their own purposes, and, when they have been wrecked and the employees have been injured, their employers have been called upon to pay compensation. Now, I feel that is unjust, and it should be—indeed,

[Group Captain Briggs]

it may well be—dealt with in the Ordinance, but, as far as I know, it is not done so far.

I should also like to ask what would be the position of a farm manager whose income is made up on the basis of salary plus commission. Supposing the combined total of salary plus commission exceeds the limit laid down in the legislation, what would be the ruling on that particular point?

MR. CHANAN SINGH: Mr. Speaker, Sir, I wish to join in congratulating the hon. Mover for the two excellent speeches we have heard from him this afternoon.

I welcome the amendments to the Workmen's Compensation Ordinance. I can appreciate the many points that have been raised by the other hon. Members of this Council, but they—being non-lawyers—do not know that all of them have been dealt with by courts of law although not in this country. In any case they are entitled to voice their doubts.

THE SPEAKER: No other hon. Member wishing to speak, I will call upon the hon. Mover to reply.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: First, Sir, I would like to thank hon. Members very much for the very kind remarks they have made about me this afternoon. I can assure hon. Members that this is the worst ordeal I have ever gone through in my life since I sang my first solo at my "prep" school. I can also assure the Council that the reception I received this afternoon was very much more enthusiastic than on that occasion! (Laughter.)

To get down to more serious things—the point of manual workers is an extremely difficult one, and the question of how you can define a manual worker, and it is of interest that in 1947—I think it was in 1947—the insurance companies in Kenya approached Government with the object of getting manual work defined. Well, eventually they themselves requested us not to try and define manual work, because it would lead them into more difficulties than it would benefit them. Manual workers have never been defined in the United Kingdom Acts, and each case has to be judged on its merits in a court of law in the last resort. Generally speaking, there is a

difference between manual labour and manual work. Everybody does manual work, but not everybody is a manual labourer, and I think it would go in the case of a surgeon—and, incidentally, in the case of a surgeon, I would have thought that the risk was rather greater for the patient than for the surgeon. (Laughter.)

You do, of course, get borderline cases as, for example, a qualified engineer who is engaged in an executive capacity primarily, but now and again he has to tinker a bit of machinery and, in doing so, he may cut his finger or sustain any other injury. Well, the criterion—I must stress that the last word does rest with the courts on this matter—the criterion is, for what specific purpose was he primarily employed? Was he employed as an executive engineer with a high-powered brain, or was he employed for his capacity to fiddle engines with a spanner?

Incidentally, on the question of setting a limit to the earnings of a manual labourer, I was informed shortly before I came into the Council that, under the relevant International Convention on this subject, you cannot set a limit to a maximum limit—to the wages of a manual labourer. Now, I think the idea is a very sound one because, even though he is earning big money, he is open to far greater risks of injury than the other type of worker and, for that reason, it is a very sound principle that you should not try and impose any maximum earnings in the case of a manual workman.

The hon. Member for Mount Kenya raised various points. His first one was a slight query as to whether it was always necessary or desirable for Kenya legislation to follow the pattern of the United Kingdom legislation. Well, Sir, I think in most of these things the United Kingdom can provide us with an extremely valuable model in the light of experience which has been gained in the United Kingdom over the course of centuries, but naturally it is not necessary slavishly to follow it, and it can always be adapted to meet local circumstances.

The second point the hon. Member for Mount Kenya raised was whether an employee who is making wrongful use of his employer's property is

[The Minister for Education, Labour and Lands]

excluded from compensation. I think, Sir, that that is covered by section 5 of the Ordinance, which—if I may quote, Sir—reads: "If in any employment personal injury by accident arising out of and in the course of the employment is caused to a workman, his employer shall, subject as hereinafter provided, be liable to pay compensation in accordance with the provisions of this Ordinance and, for the purposes of this Ordinance, an accident resulting in the death or serious and permanent incapacity of a workman shall be deemed to arise out of and in the course of his employment, notwithstanding that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or of any orders given by or on behalf of his employer. . . . So that, strictly, Sir, if an employee does take a fancy to your tractor, and goes out on a trip with it, you may be liable to pay compensation in respect of any injury he receives while doing it.

The third point the hon. Member for Mount Kenya raised was the position of the farm manager—I think the point was—whose salary and commission exceeded the figure of £840. He would be outside the scope of the Ordinance because, Sir, earnings under the definition in section 3 of the Ordinance include wages and any allowances in respect of increased cost of living, and so on and so forth, and any overtime payments or other special remuneration for work done. I am not quite sure whether a commission would rank as special remuneration—I should imagine it would—but in the last resort these things always have to be decided in a court of law.

Sir, I beg to move. (Applause.)

The question was put and carried.

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

#### THE EMERGENCY PENSIONS BILL

THE ASIAN MINISTER WITHOUT PORTFOLIO: Sir, I beg to move that the Emergency Pensions Bill be now read a Second Time.

This Bill provides for compensation to be made ex gratia to members of the Security Forces, and also to members of the general public who have suffered disablement during the Emergency as a result of unlawful acts of violence directly related to the Emergency, or as a result of operations undertaken for the prevention of crime and for the maintenance of law and order. It also provides for compensation to be made ex gratia to the dependants of any who have lost their lives in similar circumstances.

Claims for compensation arising from disablement or death suffered by members of the Kenya Regiment and the King's African Rifles are dealt with by the Pensions Assessment Board in accordance with respectively Her Majesty's Forces Pensions and Gratuities (European Personnel) Regulations, 1947 and Her Majesty's Forces Pensions and Gratuities (African Personnel) Regulations, 1948. In a number of cases, and on grounds of special hardship, when the awards made in accordance with these Regulations are considered inadequate, the Security Forces Compensation Committee, which has been acting under the Chairmanship of my hon. friend, the Minister for Finance, has awarded ex gratia additional compensation to members, or dependants of members, of these Regiments. In some cases these additional awards are in the form of pensions or payments over a number of years. It is considered necessary to validate such additional awards and to provide for payment up to the end of the present Emergency of continuing awards. The reasons, Sir, are obvious, but as, in the first instance, these awards are made under the Regulations, and as additional awards are made ex gratia, it is necessary that statutory authority should be provided.

There is no law providing for the payment of compensation for disablement or death suffered in similar circumstances by members of the Kikuyu home guards and such other bodies in the Security Forces, and ex gratia awards have been—and are being—made by the Security Forces Compensation Committee to these or to their dependants. It is considered necessary that in these cases also statutory authority should be provided.

[The Asian Minister without Portfolio]

There is only one group of persons for whom there is no need to provide any such statutory authority, and they are the members of the Kenya Police Reserve. Section 12 of the Kenya Police Reserve Ordinance already empowers the Governor in Council of Ministers to make any award as may be considered necessary. Furthermore, there are cases of civilians who have suffered disablement or death as a result of the Emergency, and to whom, or to their dependants, pensions have been awarded by the hon. Minister for Finance, acting on the advice of a Compensation Committee of the Treasury. I will recall to your mind, Sir, two such cases. Pensions are being paid to the dependants of the late Mr. Tom Mbotela and the late Mr. Ofasa, who were cruelly murdered by gangsters. If this Bill is passed it will give statutory authority for the continuance of payments of pensions to the dependants of these deceased persons after the end of the Emergency.

The Emergency Pensions Bill is designed to validate what the Government has done in all these cases; and to provide statutory authority for the settlement of future claims. Clause 2 of the Bill mentions the persons whose claims may be met under its provisions, and clause 3 authorizes the Governor in Council to make awards in cases not provided for in any other law, or in cases where any legal provision is in the circumstances considered inadequate.

Mr. Speaker, I think that explains the reasons why this Bill has become necessary, and I beg to move. (Applause.)

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

#### THE MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) (NO. 2) BILL

THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING: Mr. Speaker, I beg to move that the Medical Practitioners and Dentists (Amendment) Bill be now read a Second Time.

Mr. Speaker, the Memorandum of Objects and Reasons sets out the reasons for presentation of this Bill. It is a matter of a mistake which has to be rectified, and I do not think there is anything I can contribute to a debate on this matter, except to apologize to Council for that mistake.

Sir, I beg to move. (Applause.)

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

#### THE CIVIL SERVICE COMMISSION (AMENDMENT) BILL

THE CHIEF SECRETARY: Mr. Speaker, I beg to move that the Civil Service Commission (Amendment) Bill be now read a Second Time.

The purpose of this Bill, Sir, is set out with admirable clarity in the Memorandum of Objects and Reasons, and there is very little to add. Briefly, the Bill is designed to bring about certain improvements in the machinery of the Commission, which have been found necessary as a result of the first six months' working. They include provision for a Deputy Chairman, provision for the appointment of a temporary Chairman and a temporary Deputy Chairman, and an arrangement whereby the Commission is relieved of the need to advise on the transfer of officers within one group of departments which have been grouped together for the purposes of the Commission.

Sir, I beg to move.

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

THE PENSIONS INCREASE  
(AMENDMENT) BILL

MR. MACKENZIE: Mr. Speaker, Sir, I beg to move that the Pensions Increase (Amendment) Bill, 1955, be now read a Second Time.

The object of this Bill, Sir, is—as the title implies—to provide for pension increases for Civil Service pensioners additional to those they are receiving at the moment.

At the present time there are three types of Civil Service pensioners. There are what we might call the pre-Holmes pensioners—that is, the people who retired before the 1st January, 1946. Then there are the post-Holmes and pre-Lidbury pensioners—people who retired between the 1st January, 1946, and the 31st December, 1953, inclusive; and thirdly, there are the people who retired after the Lidbury Commission's recommendations came into effect, with effect from the 1st January, 1954.

So far as the last-mentioned class are concerned, Sir, those pensioners are all entitled to receive pensions based on the salaries adopted as a result of the recommendations of the Lidbury Commission.

The object of this Bill is, as far as it is possible to do so—and it is recognized that it cannot be done absolutely—as far as it is possible to do so, to bring the other two earlier classes of pensioner broadly into a similar position with the people who have retired since the adoption of the Lidbury recommendations. It also—to a certain extent—consolidates the position as between the pre-1946 and post-1946 pensioners.

To deal first, Sir, with the second class—that is, the people who retired between January, 1946 and December, 1953—the present position as regards these pensioners is broadly set out in the Second Schedule to the existing Ordinance, which is printed at the bottom of page 3 of the annexure to the Memorandum of Objects and Reasons. The position is that where a pensioner is in receipt of a pension of £210 a year and under, if the pension does not exceed £70 a year, 30 per cent of the amount of the pension is added to the actual pension as the element of increase. If the pension exceeds £70 a year, but does not exceed £210 a year, 30 per cent of the first 70

per cent of the pension is added as an increase, together with 11½ per cent of the remainder, up to a maximum of £210. For pensions of £210 and over the amount of the increase is 17½ per cent of the amount of the basic pension subject to a maximum of £175 a year. The figure in the printed extract is £150, but I am advised that this has been revised to £175, and it is clear, of course, that the £175 is based on a pension of—a basic pension of—£1,000 a year—7½ per cent of that. It conforms with the normal principle that there is a ceiling to awards of this kind.

There is one further point I should perhaps mention, and that is the 11½ per cent which I mentioned earlier, which is merely a figure that has to be used as a bridge between the 30 per cent granted on very small pensions, and the 17½ per cent which is the standard rate.

The present proposal, Sir, is that these various factors should be increased, and that, if the pension does not exceed £70 a year, the amount of the increase should be 35 per cent of the amount of the pension. If the pension exceeds £70, but does not exceed £210, the increase would be 35 per cent of the first £70, and 16½ per cent of the remainder; and, finally, the standard rate for pensions in excess of £210 a year would be 22.5 per cent with, again, a maximum of £225, which is reached on a pension of £1,000 a year. There, again, the significance of the 16½ per cent is that it is a bridge between the high rate based on the lowest pensions, and the standard rate.

I should also, Sir, mention the significance of the figure of 23 per cent. That figure is reached as a result of the statement in paragraph 113 of the Report of the Lidbury Commission, where it was stated that, so far as serving officers were concerned, the approximate amount of consolidation was 22.7 per cent, 12.3 per cent being left as a floating element.

It should also be noted, Sir, that, in accordance with the proviso—the second part of the proviso to sub-section (3) (a) of section 3 of the amending clause, the Governor in Council may, by order made with the approval to be signified by Resolution of the Legislative Council, amend the Second Schedule to the Ordinance, which, of course, means that, if necessary, the Governor in Council

[Mr. Mackenzie] could, with the consent of this Council, make such amendments to the Second Schedule as may be required from time to time.

I come now, Sir, to my first class of pensioners, and those are what I call the pre-Holmes pensioners—the people who retired before 1st January, 1946. Their position, Sir, is a little more complicated. Under the present law they are entitled to receive 7½ per cent of their original pension, plus the appropriate factor as set out in the Second Schedule of the original pension, subject again to a maximum of £175 per annum at the present time. There is to be a slight change in so far as they are concerned, in that in future it is proposed that they should receive the appropriate fraction set out in the Second Schedule on a basic sum, consisting of their original basic pension plus 7½ per cent. That will in future be treated as the basic award and, in addition to that, they will receive the appropriate factor as set out in the Second Schedule of the combined amount of the original pension, plus 7½ per cent. This will not make a great deal of difference, but it does have the effect of setting the pre-Holmes pensioner on the same footing as the post-Holmes pensioner, and it does give him some slight assistance. The maximum, of course, is the same in both cases in that they have £225 per annum as the maximum increase.

These proposals, Sir, have been the subject of discussion between the three East African Governments and the High Commission, and have been generally accepted. The principle of retroactivity to 1st January, 1954, has also been accepted.

There is one point, Sir, that I should mention, and that is the new clause 3 (2). This particular clause, Sir, merely affects—so far as we know—one officer who was transferred from Kenya to another Colony before 1st January, 1946, and who retired shortly after that date without having received the benefit of any post-war salaries revision, either here or in the place in which he was serving at that time. Under the law, as it stands, he can have no benefit out of the existing Pensions Increase Ordinance, because he retired after 1st January, 1946. It is considered that this is inequitable, and that he should be treated—in so far as his

Kenya pension is concerned—as if he had retired in this Colony before 1st January, 1946. If, of course, there were any other such officer to come forward at any time, he would be treated in the same way, and the sub-clause is, in fact, drafted in general terms for that reason.

The cost of these various proposals, Sir, will be between £12,500 and £15,000 a year.

Sir, I beg to move. (Applause.)

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question resolved.

MR. COOKE: Mr. Speaker, I should first of all disclose my interest in this matter—not that it really amounts to a great deal. If this Bill is passed I will get the magnificent sum of £18 a year extra—about as much as I get for six days' attendance in this Council!

Now, Sir, last evening there was held a meeting of the European Civil Service Association. It was very well attended—I should think there were about forty representative people there, and at first the general inclination was to reject this Bill as being most parsimonious and very mean. In fact, they asked me to register not only their disappointment, but their indignation that Government were treating old servants so scurvily; and when I look over to the other side of this Council and see those young, healthy faces glowing with pride in the future—and perhaps pride in the past—and I think what they will be like in 20 years' time, I wonder if they will be standing on this side of Council asking for an increase of pension! And therefore, I think one might get a little bit more sympathy from them than one has received in the past. I will mention no names, but I remember one quite high officer—from Tanganyika, as a matter of fact, who was one of the high powers in the Secretariat. We brought to his notice the fact of the miserable pensions that the old pensioners were receiving, but we received nothing but rather sarcastic letters from him to the effect that everybody in the world was suffering, so we must suffer too; but, since this gentleman has retired, I have myself received two or three personal letters from him expressing great indignation that pensions had not gone up! So I hope

[Mr. Cooke]

that history will not be repeated with regard to my hon. friends on the other side of Council!

Now, Sir, I have been asked to read out—I hope I will not bore the Council—I have been asked to read out a Resolution passed by the European pensioners yesterday. It was a very modified Resolution. It was an amendment really to the original Resolution, and it is as follows:—

“The East African European Pensioners Association, having debated the terms of the Bill entitled ‘An Ordinance to Amend the Pensions (Increase) Ordinance, 1951,’ at a Special General Meeting held at Haig House, Nairobi, on this the fourth day of October, 1955, appreciates the gesture towards pensioners which the Bill represents, but expresses disappointment at the inadequate nature of its proposals. Considering them to be out of keeping with the requirements of the situation, this Association prays Government to consider favourably the amendments suggested in Appendix I to the Resolution, and supported by the representations made in Appendix II. This Association therefore prays Government, after considering this resolution and the arguments put forward in the supporting memorandum, substantially to accept the proposals and incorporate them in the Bill.”

Now, the supplementary memorandum contains three arguments. One point disputes the fact that Government are denying the 10 per cent floating cost of living allowance which they are paying to serving officers. We can see neither the logic nor the justice in refusing to pensioners what has been accorded to gentlemen on the other side of Council, especially, Sir, in view of the remarks in the Memorandum of Objects and Reasons, and the remark which fell from my hon. friend to-day—just now—about the object of this Bill, which was to bring pension increases into line with those of serving officers. Now, the Memorandum of Objects and Reasons does not put it quite that way. It says “as a result of the revision of salaries which followed the Lidbury Report the Financial Secretaries of the three Territories,” et cetera, decided on these increases.

But the hand-out from the Press—the Press hand-out—put it as my hon. friend put it just now—that the object was to bring pension increases into line with those of serving officers. Well, how, by any stretch of imagination, they can pretend that an all-round pension increase which amounts all round to 22½ per cent is in line with the increase of the hon. gentlemen receiving about 35 per cent, beats me. The latter are receiving, of course, 25 per cent consolidated cost of living allowance, plus 10 per cent floating cost of living allowance—that is 35 per cent increase. A very miserable increase I think it is, but I supported it strongly in this Council, as, indeed, I supported the retroactivity which the hon. gentlemen are getting for two years, against the highest opposition of other people; for I have always been on the Officials' side, having myself been an official, and I always try to look after the interests of those on the other side as well, and therefore I think that they should do the same so far as we pensioners are concerned.

Now, the hon. gentleman did say, I think—and I think the Association has overlooked that particular—and that is that, under provision 3 (a) (ii), the Governor in Council of Ministers may, by Order made with the approval to be signified by Resolution of the Legislative Council, amend the Second Schedule. Well, I presume that means that these particular recommendations in the Second Schedule with regard to (a), (b) and (c) can in future—and we hope in the near future—be amended, and we suggest that, apart from the 10 per cent floating cost of living allowance which we very strongly urge that Government, both in justice and logic and equity and everything else, should give us—that there should be a reconsideration of the Second Schedule; and I hope my hon. friend has given me that assurance—that I am reading—interpreting—correctly this clause of this Bill, that is to amend the Schedule in the near future, if Government, in its wisdom, thinks it right.

Now, we do not think that it is quite fair to have such a small maximum of £70 a year drawing only 35 per cent extra. We are very glad indeed that those very small pensions will get a 35 per cent increase, but we feel that others on,

[Mr. Cooke]

say, the £200 margin should also be fairly and squarely entitled to a 35 per cent increase. I may say, Sir, it is a fact that 20 years ago the pound—one pound—was worthy, twenty shillings. It is now only worth something over eight shillings. Therefore, in pure justice, we are entitled to two-and-a-half times the pension that we are receiving at the present moment. Well, of course, we all know that it is quite impossible, but even 35 per cent of the present pension is very small, and we do ask Government to reconsider that point number one.

Perhaps, Sir, you wish to adjourn?

THE SPEAKER: This is an appropriate time to suspend business for fifteen minutes. Council will sit again at half-past Four.

Council suspended business at fifteen minutes past Four o'clock and returned at thirty minutes past Four o'clock.

MR. COOKE: When the House adjourned for its quarter of an hour, I was making an appeal *ad misericordiam* about these pensions and about the rather miserable proposals from Government.

The Pensioners' Association asked me to make these points, especially if I may reiterate the first one, and that is about the 10 per cent floating cost of living allowances. We believe that, in all justice, we are entitled to that. Now we think that the 35 per cent, which is applicable to those getting a pension of less than £70 a year, that £70 should be raised, at any rate, to some figure like £210 which is a figure to which the 22½ per cent applies. As I was saying, the cost of living, if you take into consideration those who retired 20 years ago, that the £ is now only worth about Sh. 8, that means that anybody who retires, say, after 20 years, 20 years ago, is receiving less than a half now of the pension of those who retire to-day. Well, it has thrown everything, of course, completely out of balance and it means that a great many pensioners have had to seek other work in this country, many of them are men over 70 who are working every day in order to eke out a livelihood and I personally think, and I think a great many other people think the same, that it will eventually have

an influence on recruiting in this country and elsewhere. I know I was reading an article in *The Times* the other day where it said the British Government are very seriously concerned with regard to the scarcity of recruits especially in the higher Civil Service at home, and one of those reasons is the fluctuating pound.

Now pensions are usually referred to as deferred pay—that is, money which Government puts aside which they should have paid to the pensioner when he was a serving officer—well if you put a pound aside and find it is only worth Sh. 8 in 20 years, you will not find many people being attracted by a pension. These young men will go into the higher business circles, such as the oil companies and so on, where they receive a higher pay and make their own investments, and be able to look after the pound themselves, and they will be in a much stronger position then when they retire—at any rate if they are not it will be entirely a matter of their own fault. But we pensioners have nobody to blame except the circumstances of the time—the inflation—and so on, which is world wide. Therefore I plead with Government that they should give further consideration to this matter.

We did suggest, Sir, and I know it will depend on the other territories (and I would pay this regard to my hon. friend, the Minister for Finance, that he has been very sympathetic in the past); but a lot of his efforts have been limited by the Financial Secretaries of the other two territories. We did suggest about a year ago, that the three Financial Secretaries should meet the Pensioners' Association, but that was turned down by the Financial Secretaries of Tanganyika and Uganda who said they had no mandate to meet unofficials in Kenya. It did not seem to me to be a very helpful way for officials to treat others who had been officials in the past. I do ask Government to consider, within the near future, trying to arrange a meeting between a few representatives of the Pensioners' Association and the three Finance Ministers of the three territories, so that they can devise ways and means, perhaps, of altering the schedule somewhat on the lines of that which I have suggested.

(Mr. Cooke)

I do say, at any rate, that the all-round pension increase should be 35 per cent—that is consolidation of 25 per cent more and 10 per cent floating cost of living allowance—that would be 35 per cent altogether. I may remind my hon. friends on this side of the Council, that as I read the Libbury proposals, they have received a bigger increase than 35 per cent—I think their increase is really something in the nature of 38 per cent because there was first consolidation of 25 per cent made and the cost of living allowance has been paid on that consolidated salary instead of being paid on the original salary—so I think I am right in saying that actually their increase is not 35 per cent but more in the nature of 40 per cent, but we are not asking for that.

Now, Sir, I am not going to keep the Council any longer except to read out a peroration of my hon. friend, the Finance Minister, in 1949, when he was on this side of the Council. It is couched in language which I would never aspire to using, and he was then in the position that I am to-day—except he was speaking in the Memorial Hall—and in that persuasive way of his he leant on the Despatch Box and he pleaded the cause of the pensioners. Amongst the things he said was this: "It is said, and I am sure hon. Members opposite will agree with this, that he who serves his country serves an ingrate"—that is an ungrateful person—"and I suggest that very rarely have we had a more typical example of the truth of that particular statement than the Bill now in front of us". That was a Bill, Sir, even more generous than the Bill to-day; although it was not very generous.

"It is, of course, somewhat farcical that we on this side of Council"—that is to-day you and I—"should be arguing the case which I feel certain is in the heart of every Member, on the other side of the Council"—that is my hon. friend to-day, "This is one of the cases where we feel that it is on their behalf as against the people in England that we must wage this particular battle" (because we have been told that in England the pensions were not going up).

Then it was with a real sob in his voice, which affected me very much at the time because I looked aside and there

were almost tears dropping down my hon. friend's cheek; and I must say I felt full sympathy with him and I like that sentimental side which sometimes, not often, occurs in his nature! He said (I quote from HANSARD) "I am perfectly sure that when hon. Members on the other side of Council"—that is you, gentlemen, there now—"vote once again for the acceptance of this Bill, it will be because they must, in this case, follow the dictates of the power behind the throne"—that is, if you to-day vote for the Bill—"and not"—and then the sob came into the voice—"because they believe, deep in their hearts, that it offers just treatment to the men who have gone before them". (Applause.)

MR. CHAMAN SINGH: Mr. Speaker, Sir, I have no interest to declare, but I strongly support the views put forward by my hon. friend, the Member for the Coast. It does appear that the increase allowed to pensioners is about half the increase allowed to civil servants now in the Government service. I do think that there is a good case for giving the pensioners more than half the proper increase, and I do hope the Government will find it possible to reconsider this matter in consultation with the Pensioners' Association.

THE SPEAKER: No other hon. Member rising to speak, I will call on the hon. Member to reply.

MR. MACKENZIE: Mr. Speaker, Sir, I listened with great interest to the speech made by my hon. friend, the Member for the Coast, and took a very careful note of the points which he made. Of course I almost feel that on a question of this kind I should declare some kind of an interest myself, in that with every year that passes my sympathy with pensioners increases quite considerably. Anyway, Sir, I took a careful note of the various points which were made and I can assure the hon. Member that they will be considered by the Government although, as he pointed out and as is well known, it will be necessary to consult the other East African territories on a matter of this kind. I can also say that the Government will be prepared to consult the other territories regarding the suggestion that there should be a meeting with the Pensioners' Association, although, naturally, I cannot commit

(Mr. Mackenzie)

either the Government or the other governments at this stage, as I am sure my hon. friend would not wish me to.

There are one or two points arising out of my hon. friend's speech which I might mention now. The first concerns the provision for reconsideration of the Second Schedule; that provision exists at any time, and if the Government were to consider that the schedule should be amended, it would be simply a question of the issue of an order and which would have to be ratified by an affirmative Resolution of this Council.

The only other point which I would make is that as regards the comparison with serving officers, my understanding of the position from reading the Libbury Report was that the amount generally consolidated was 22½ per cent, and that an amount of approximately 12½ per cent was left floating. That, I think, is the interpretation which should be placed on the relative paragraph of the Report.

Finally, Sir, there is the general question of inflation. Of course we all are aware of that, of the fact that with the depreciation in the value of money, pensions have not kept the value that they had when they were issued. It is of course a problem that arises not merely in regard to Government pensioners, but it also arises in respect of anybody who is dependent on a fixed income—people who invested their money in gilt edged securities 20 years ago and that kind of thing. It is a very difficult problem which, as I am sure all hon. Members are aware, we in this Colony are not really able to do very much about. We are entirely at the mercy of world forces which are very much stronger than we are.

The Government will, however, as I say, consider the various points that have been made and will consult with the other territories to see to what extent it is possible to meet the request that the representatives of the three governments should meet the Pensioners' Association. (Applause.)

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council to-morrow.

## MOTION

TRANSFER AND DELEGATION OF POWERS  
THE CHIEF SECRETARY: Mr. Speaker, Sir, I beg to move:

BE IT RESOLVED that the Orders cited—as the—Transfer of Powers (Chief Secretary) (No. 1) Order, 1955, and the Transfer of Powers (Chief Secretary) (No. 2) Order, 1955, respectively, be approved.

Sir, the Transfer and Delegation of Powers Ordinance, which was taken earlier this session, provides in the second section, "Where by any Ordinance the exercise of any power or the performance of any duty is conferred upon or vested in the Governor, or the Governor in Council of Ministers, it shall be lawful for the Governor, or the Governor in Council of Ministers, as the case may be, by order to transfer the exercise of such power or the performance of such duty to any Minister".

This section goes on to say: "The draft of every order to be made under this section, shall be laid before Legislative Council and shall be approved by resolution of the Legislative Council before the same is submitted to the Governor, or the Governor in Council of Ministers, as the case may be".

The first order, Sir, of the two orders now before the Council, seeks to transfer to the Chief Secretary, the exercise of certain powers under the Immigration Control Ordinance which are conferred by the Ordinance upon the Governor. The first item refers to section 5 (1) (d) of the Ordinance. This section, Sir, describes various categories of persons who are prohibited immigrants and whose entry into the Colony, or presence in the Colony, is unlawful. The section in question reads, "Any person who not having received a free pardon has been convicted in any country, other than the Colony, of murder or any offence for which a sentence of imprisonment has been passed for any term, and who by reason of the circumstances connected therewith is deemed by the Governor to be an undesirable immigrant, but this provision shall not apply to offences of a political character, not involving moral turpitude".

Now, Sir, the deeming or demption in this matter is based entirely on issues of



[The Chief Secretary] fact, and is well within the capacity of the Chief Secretary. It is therefore proposed that he should undertake the deeming or demption.

In addition to murderers, the section is intended to deal with any kind of criminal who has been sentenced to imprisonment.

The second item, Sir, refers to section 9 of the Ordinance, the relevant part of which reads as follows, "The Governor may make an order directing that any prohibited immigrant, or any person unlawful, shall be deported from and remain out of the Colony either indefinitely or for a time to be specified in the Order". The inclusion of this item, Sir, is a formality only because the powers provided by this section were, in fact, delegated to my office last year.

The third item refers to deportation. The gist of section 10 is that a person against whom an order for deportation has been made shall be deported to the place whence he came or, with the approval of the Governor, if he is a British subject, to a place in some part of Her Majesty's dominions or country under Her Majesty's protection to which he belongs or to any place to which he consents to be deported provided the government of such last mentioned place consents to receive him. There are parallel provisions for persons who are not British subjects.

The arrangement is based on the principle of compulsory deportation to the place to which the deportee belongs, or a voluntary deportation to a place which will agree to take him.

The last item refers to the provision under section 12, sub-section 4, whereby the Governor is empowered to authorize the return to the Colony of a person who has been deported from it. My office is now responsible for deportation orders and it is reasonable that the authority to allow a deported person to return to the Colony, should come from the same source.

The second order, Sir, before the Council, seeks to transfer to my office the exercise of the powers now vested in the Council of Ministers for the making of regulations governing the fees payable under the British Nationality (Offences

and Fees) Ordinance. In so far as is possible, fees are standardized throughout the Empire and any alteration made in them would be universal; I need hardly say that any local alteration would be made in consultation with the Treasurer.

Sir, I beg to move.

THE MINISTER FOR LEGAL AFFAIRS seconded.

Question proposed.

THE SPEAKER: If no hon. Member wishes to speak, I will put the Motion.

The question was put and carried.

### MOTION

SESSIONAL PAPER No. 107

THE CHIEF SECRETARY: I would seek your authority, Sir, to stand this over until to-morrow.

Question proposed.

The question was put and carried.

### MOTION

THE PENSIONS (AMENDMENT) (No. 2) REGULATIONS, 1955 (Retroactive Effect)

(Governor's consent signified by the Minister for Finance and Development)

MR. MACKENZIE: Mr. Speaker, Sir, I beg to move that:—

WHEREAS, in exercise of the powers conferred by section 3 of the Pensions Ordinance, 1950, the Governor in Council of Ministers, with the sanction of the Secretary of State, has made the Pensions (Amendment) (No. 2) Regulations, 1955:

AND WHEREAS by regulation 1 of the said Regulations it is provided that the said Regulations shall be deemed to have come into operation on the 1st day of January, 1954:

AND WHEREAS by the proviso to sub-section (3) of section 3 of the said Ordinance it is provided that no regulations made under the said section shall have retrospective effect unless the same have received the prior approval of the Legislative Council signified by Resolution:

BE IT RESOLVED that this Council approves the aforesaid Regulations.

[Mr. Mackenzie]

The substance of the regulations in question, Sir, deals with the commutation of part of a civil servant's pension on retirement. Regulation 25 of the Pensions Regulations, 1950, provides that any officer who is eligible for a pension may, at his option, be paid a reduced pension and gratuity instead of the full pension. The amount of the gratuity which is payable is equal to ten times the amount of the reduction made in the officer's pension, and, as I think the Council is aware, that amount is normally 25 per cent; so that if an officer were entitled to receive a pension of £1,000 per annum unreduced, he could, under the existing regulations, instead of receiving the £1,000 a year pension, receive £750 a year pension, and a lump sum of £2,500.

Early last year the Secretary of State reviewed this multiplying factor and he was advised by the Government Actuary that ten times was too little. The ten times figure I should say was fixed in 1924 and the Secretary of State was advised that ten times was too little with the retiring age of under 55, which was the retiring age which it was adapted to, and that also it was too low in view of the improvement in vitality since 1924. The Secretary of State suggested that the single factor should be replaced by various factors ranging from 13 with a retiring age of 45, to 12 with a retiring age of 50. That was considered but it was felt that to have a series of different multipliers would be extremely inconvenient to apply in practice and, in those circumstances, since the normal age of retirement in Kenya has been changed to age 50, it was decided that the obvious thing to do was to adopt the multiplier of 12. The object of the regulations is to give effect to that.

I come now, Sir, to the reason that really brings these regulations before the Council, and that is the fact that they are being applied retrospectively. Well, Sir, the position is that all pensioners who retired after 1st January, 1954, have, owing to the recomputation of their pensions in accordance with the recommendations of the Salaries Commission which have been accepted; all those pensioners have to be given the right, whether they have exercised the option to commute or not, they have

now to be given that right again in the light of the new circumstances. Since the Secretary of State's advice was received early in 1954 at about the same time as the Library Report recommendations became effective, it was felt only reasonable that those pensioners who have retired since that date, 1st January, 1954, should be given the option of applying to commute their pensions with the higher multiplying factor of 12 instead of the old one of 10. It may be of some interest to the Council to know that it has been noticeable, in fact, that over recent years, although in the Colony's expenditure the amounts that have to be provided from pensioners have been increasing rapidly, the amount for gratuities has not changed a great deal and I think that, of itself, is another indication of the way in which the ten times multiplying factor has been inadequate, although, of course, we have now the very much better information that 12 times is the figure that the Government Actuary thinks to be appropriate.

Sir, I beg to move. (Applause.)

THE PARLIAMENTARY SECRETARY TO THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING seconded.

Question proposed.

MR. CROSSKILL (Mau): There is one point in the permutations and combinations suggested by the hon. Member opposite which I do not quite understand. He has suggested that the ten times factor is inadequate, but has he, Sir, borne in mind that the amount of the pension has increased very considerably and, therefore, I do not really see why the multiple should also increase?

MR. TYSON (Nominated Member): Mr. Speaker, Sir, there is one point I would like the Secretary to the Treasury to explain why, if it is going to be backdated at all, why should it only be backdated from 1st January, 1954? It seems to me, Sir, it is rather an injustice against the pensioners of what I think he calls the intermediate period.

THE SPEAKER: If no other Member wishes to speak, I will call on the hon. Member to reply.

MR. MACKENZIE: Mr. Speaker, Sir, to reply first to the points raised by the hon. Member for Mau. The reasons why

[Mr. Mackenzie] the multiplier has to be increased in spite of the fact that the basic pension has been increased, is that the computation is based on so many years' purchase on actuarial assessment of the number of years that would normally be left to the pensioner to enjoy his full pension and we are now informed by the actuary that, whereas in 1924 apparently it was 10 years, it is now 12. It is a straight-forward actuarial assessment which has nothing really to do with the actual size of the pension.

As regards the point mentioned by my hon. friend on this side of the Council, why this amendment is only backdated to 1st January, 1954, I think the only answer one can give to that is that there has to be some date, and this was the one which was a very appropriate one; it coincided with the adoption of the new scales of salary; it was one fairly closely related to the date when the new position was brought to the attention of the Government, and, if the Government had gone back any farther, it would have been difficult to say quite how far to go back. If not 1st January, 1954, why not 1st January, 1946, or why not even some earlier date and, of course, that would naturally have involved very many questions, very many calculations and would, I believe, Sir, have been extremely difficult to justify.

The question was put and carried.

#### MOTION

##### THE CROWN ESTATES DEVELOPMENT FUND

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: Mr. Speaker, Sir, I beg to move the following Motion:—

WHEREAS by a Resolution dated 3rd December, 1952, it was resolved that a Crown Estate Development Fund be established to facilitate the alienation of Crown land for commercial, business and residential purposes,

IT IS RESOLVED—

- (a) THAT the objects of the Fund shall in addition include the alienation of Crown land for industrial development and purposes ancillary thereto;
- (b) THAT there shall be paid into the Fund all moneys from time to

time voted by the Legislative Council for the purpose and all sums from time to time received from the grantees of land in respect of industrial development undertaken with moneys from the Fund;

- (c) THAT any moneys voted for industrial development shall be kept separate from those provided for residential, business and commercial development;
- (d) THAT the statement of the financial position of the Fund which is to be laid on the Table of Legislative Council annually in accordance with the previous resolution of Council shall show separately the expenditure of sums voted for industrial development.

In moving this Resolution to enlarge the scope of the Crown Estates Development Fund, I would like to give a very brief account of the events which led up to the establishment of the Fund.

In their 1951 Report the Planning Committee recommended that a corporation should be established which would develop Crown land set aside for industrial purposes under the aegis of the Minister for Commerce and Industry. The Committee also recommended that a section of that corporation should be responsible for the development of Crown land for residential purposes and that £100,000 should be allocated for this work. As a result of this last recommendation the Standing Finance Committee, in 1951, recommended the creation of a self-replenishing Fund, to facilitate the alienation of Crown land for commercial, business or residential purposes, and £100,000 was allocated to it from D.A.R.A. money.

In 1952 a Crown Estates Development Committee was set up under the Chairmanship of the Commissioner of Lands to administer the Fund, and the Fund was established by a Resolution passed in Legislative Council on the 3rd December to the following effect. It is quite a short Resolution passed and I will quote it:—

BE IT RESOLVED (1) that there be established a Crown Estate Development Fund which shall be subject to the control of the Members for

[The Minister for Education, Labour and Lands]

the time being responsible for lands and out of which shall be paid all expenditure (including administration expenses) which may be incurred in the development of Crown lands to facilitate alienation purposes:

THAT there be paid into the Crown Estates Development Fund—

- (a) all moneys from time to time voted by the Legislative Council for the purpose; and
- (b) all sums from time to time received from the grantees of land in respect of development undertaken with moneys from the Fund;

Rules governing the administration of the Fund were also published in 1952.

Up to the end of 1954 the Crown Estates Development Committee had been concerned in 17 schemes for the development of Crown land, and 538 plots had been made available.

As I said earlier, Sir, the Report of the Planning Committee in 1951 recommended the setting up of a corporation which would develop Crown land set aside for industrial and ancillary purposes, under the aegis of the Member for Commerce and Industry. This proposal was considered by the then Member for Commerce and Industry and the then Member for Lands, and the conclusion was reached that it would not be desirable to set up a separate corporation on the lines proposed, at any rate for the present. Such an organization would necessitate the recruiting of new staff and the formation of a new department.

It was thought that it would be more suitable to use the machinery of the Crown Estates Development Committee, and the following proposals were formulated:—

- (a) That the terms of reference of the Committee should be extended to include the development of Crown land for industrial and ancillary purposes;
- (b) that a separate self-reimbursing Fund should be created for the development of Crown land for industrial purposes.

Although these proposals were approved by the Executive Council in July, 1953, it was not possible to implement them until finance was available for the purpose of establishing the Fund.

Finance is now available in the form of the allocation of £50,000 in the Development Programme for 1954-1957, which this Council approved in April this year in Sessional Paper No. 51 of 1955. I quote the relevant passage in that Sessional Paper—again it is very brief. It reads—

“One of the best means of assisting industrialists to overcome the inevitably greater difficulties of establishing factories in a young country is by the Government offering plots ready for immediate occupation at reasonable prices and with roads of access made up and services available. Accordingly it is proposed that £50,000 should be allocated to establish a revolving fund, administered by the Crown Estates Development Committee for the development of Crown land for industrial and ancillary purposes. To this end the Government will introduce, in due course, a Resolution into Legislative Council extending the present terms of reference of the Committee.”

The present Resolution which I am now moving, Sir, is that referred to in the quotation I have just read.

Sir, I beg to move.

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES seconded.

Question proposed.

MR. HARRIS: Mr. Speaker, Sir, in replying to the debate, would the Minister tell us the personnel of the Crown Lands Development Committee?

THE SPEAKER: No other hon. Member wishing to speak, I will call on the hon. Member to reply.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: The Crown Estates Development Committee, Sir, consists of—

The Commissioner of Lands.

The Director of Public Works.

The Commissioner for Local Government.

The Chairman of the Road Authority.

[The Minister for Education, Labour and Lands]

The Assistant Commissioner of Lands.

The Committee also has power to co-opt additional members.

MR. HARRIS: Might I rise on a point at this stage, Sir? The point I was trying to get at, Sir, was to know whether there was any representation of the Minister for Commerce and Industry who, I would have thought, should have been represented on a matter of industrial plots?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: I apologise, Sir, I omitted that point. In view of the enlarged scope of the committee, if this Resolution is passed, it is intended that the Secretary for Commerce and Industry should be appointed to it, and also an unofficial member of the Board of Commerce and Industry, on the advice of the Minister for Commerce and Industry after consultation with the Board. (Applause.)

The question was put and carried.

#### ADJOURNMENT

THE SPEAKER: That terminates the business on the Order Paper. I adjourn Council until to-morrow at 2.30 p.m., Thursday, 6th October.

*Council rose at fifteen minutes past five o'clock.*

Thursday, 6th October, 1955

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

[Mr. Speaker in the Chair]

#### PRAYERS

#### PRESENTATION OF INKSTAND FROM C.P.A.

THE MINISTER FOR FINANCE AND DEVELOPMENT: Mr. Speaker, Sir, I have been deputed as a member of the General Council of the Commonwealth Parliamentary Association to present to the Kenya Legislative Council, this inkstand as a commemoration of the Commonwealth Parliamentary Conference held in the Chamber of the Legislative Council in August, 1954, and have been requested to read this letter from Mr. Harold Holt, the Chairman of the General Council, written from Melbourne, Australia:—

"My dear Mr. Vasey,

This letter accompanies the silver inkstand presented to the Legislative Council of Kenya by the General Council of the Commonwealth Parliamentary Association. With vivid and most happy recollections of my visit last year, I wish that I could be with you to hand it over personally.

The gift is a modest one in itself, but we are all members of a Commonwealth dedicated to democratic principles, and the symbols of those parliamentary institutions, through which we give effect to these principles, have a special significance for us all. Because your councillors will be aware of the circumstances which prompted our gift and sense the spirit in which it is made, I know they will welcome it as being very much more than a gesture of good will from their colleagues of the Association.

The gift commemorates an historic event—the holding, in the Chamber of your Legislative Council, of the first conference of our Commonwealth Parliamentary Association to occur on the continent of Africa. For those of us who participated in what we believe to be the best conference ever held by our Association, and who were the beneficiaries of your warm-hearted hospitality, the occasion of this presentation provides another opportunity to express our thanks.

[The Minister for Finance and Development]

Reflecting, as we do with admiration, on the courage with which you planned the Nairobi Conference, at a time when your handsomely distinctive House of Parliament was still only in the blue-print stage, and recalling the notable contributions made by your delegates to the Conference discussions, we feel confident that Kenya's Parliamentary representatives will meet successfully their many problems, and establish their country as a prized member of our family of Nations.

On behalf of the Commonwealth Parliamentary Association, I send, with our gift, best wishes for your Legislative Council and its Members.

Yours very sincerely,

(Sgd.) HAROLD HOLT,

*Chairman, General Council,  
Commonwealth Parliamentary  
Association.*

(Applause.)

I now, Sir, hand into your keeping on behalf of the General Council this commemoration of the Conference. (Applause.)

THE SPEAKER: Hon. Members, I am confident that you all desire that I should, on your behalf, express our deep appreciation of this gift by writing to the Commonwealth Parliamentary Association in London, and also to Mr. Harold Holt.

The Commonwealth Parliamentary Association plays a very great part in knitting together and consolidating the British Commonwealth of Nations, and it was a very great privilege indeed, as well as a great source of inspiration, when we were chosen as the meeting place for the first Commonwealth Parliamentary conference to be held in Africa and the first Parliamentary conference ever to be held in a Colony.

That some should consider the conference held here as fruitful and successful, perhaps as successful as any ever held previously, is a matter of great satisfaction to us all. We are deeply grateful to Mr. Harold Holt for his very gracious and very encouraging letter

which accompanies this very handsome gift. (Applause.)

#### ORAL ANSWERS TO QUESTIONS

##### QUESTION No. 112

MR. COOKE asked the Minister for Finance and Development to state whether the Minister prevented the Central Nyanza Council from levying a graduated tax?

If so, under what authority did he act?

THE MINISTER FOR FINANCE AND DEVELOPMENT: No, Sir.

MR. COOKE: Arising out of that answer, in view of the fact that a committee had reported and recommended this graduated tax, does not the hon. gentleman think it is a good opportunity to try it out first in local government?

THE MINISTER FOR FINANCE AND DEVELOPMENT: Mr. Speaker, with your permission, I would like, in answer to that supplementary, to quote a passage from the Marchant Committee of Inquiry, of which I think the hon. Member was a signatory, into the practicability of introducing a graduated or personal poll tax to Africans which was laid on the Table of Legislative Council on 31st October, 1951. "It suggested that the local African authorities should share in the revenue derived from graduated tax, either because it seemed right that they should do so, or because witnesses thought that this would provide a local incentive to make the system popular and efficient. We cannot accept, Sir, so violent a departure from the accepted principles of revenue collection as between central and local authorities, where it is held that a matter derives from national causes—as in the case of individuals' incomes—the Central Government is considered to be entitled to impose taxes. A graduated tax based on income is, therefore, to be regarded as a source of central revenue and not a source of local revenue." Sir, without expressing any opinion, I merely answer my hon. friend, by reading his own opinion.

MR. COOKE: Well, if the hon. gentleman has accepted our opinion, which is gratifying, I would then suggest that Central Government should expedite this

[Mr. Cooke] matter. Sir, would he see his way to central action—the recommendation of the committee was, I think, that in a few years time the tax would be appropriate and the committee signed and sealed and delivered this report seven years ago.

**THE MINISTER FOR FINANCE AND DEVELOPMENT:** Mr. Speaker, I have already, I think, expressed an opinion on this from time to time and I submit, with due respect, Sir, that this supplementary question does not arise from the original question.

#### QUESTION NO. 113

**MR. COOKE** asked the Minister for African Affairs to state: With reference to the recent firing of field guns at the Meru Agricultural Show and their reported terrifying effect on the African children present:—

(a) Who was responsible for this incident?

(b) That an assurance will be given that such demonstrations will not take place in future?

**THE MINISTER FOR AFRICAN AFFAIRS:** What the hon. Member refers to as an "incident" in part (a) was in fact a demonstration which was received with interest and encouragement by many Meru loyalists. It was arranged by officers of the Provincial Administration in conjunction with the military unit concerned, and consisted of the firing of 20 rounds from one gun. This resulted in rather less noise and effect than many salutes fired on ceremonial occasions, and the suggestion that African children were terrified is an exaggeration.

As regards part (b), no such assurance can be given.

**MR. COOKE:** Is the hon. gentleman aware that the expression, "the African children were terrified" was taken from the Information Office hand-out?

**THE CHIEF SECRETARY:** I think there was no Information Office hand-out on that occasion. It was a Press story of great human interest.

**MR. COOKE:** Is the hon. gentleman aware, that there was a Press hand-out, and the Press hand-out said that

hundreds of African children threw themselves terrified on the ground? I do not want to make a speech, but I do not think it is a good advertisement for British rule in this country.

**THE CHIEF SECRETARY:** If I am wrong, Sir, I apologize.

**MR. HARRIS:** Arising out of that, Sir, would the Chief Secretary agree that in future he should get together with the Minister for African Affairs before Press hand-outs are issued?

**THE CHIEF SECRETARY:** No, Sir, I cannot guarantee that. The news must be fresh and we must use our initiative and our discretion.

#### QUESTION NO. 105

**MR. SLADE** asked the European Minister without Portfolio:—

(1) Does the reduction of military forces in this Colony, recently announced, imply that the Emergency situation is so much improved as to justify relaxation of effort in the troubled areas?

(2) If the answer is in the affirmative, what corresponding relaxation of effort by, and of restrictions upon, farmers in those areas is proposed?

(3) If the answer is in the negative, what measures are contemplated for maintenance of the present scale of offensive and defensive action in those areas?

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** Mr. Speaker, Sir, in the absence of the European Minister without Portfolio—and I hope the hon. Member for the Coast will notice—I beg to reply as follows:—

(1) No relaxation of effort is implied. The reduction in military forces is justified partly by the general improvement in the Emergency situation and partly by the increased capacity of the Security Forces, of the Police and Administration to maintain tight control in the reserves and to take responsibility for restoration of law and order, in all but the prohibited areas, with only occasional assistance from the Army.

(2) The answer is not in the affirmative.

[The Minister for Agriculture, Animal Husbandry and Water Resources]

(3) In the reserves closer administration, backed up by the large and widely deployed Security Forces of the Police and Administration is denying supplies and recruits to *Mau Mau*, and the enemy is being forced to forage in small groups on which proportionately heavy casualties are being inflicted. Some of these groups are seeking softer food targets in the settled areas and farm guards must be prepared to deal with them in the first instance. We are planning to make farm guards more mobile. They will continue to be backed up by the police and, where necessary, the Army, but the main role of the latter is now the hunting and harassing of *Mau Mau* in the prohibited areas where Tracker-Combat teams continue to achieve good results. The willing co-operation in food denial measures given by so many farmers is gratefully recognized and it is our intention that the sacrifices they are called upon to make shall not be continued longer than is necessary. The importance of food denial is so great at the moment, however, that it would be wrong to make any immediate relaxation.

**MR. SLADE:** Arising out of that reply, Sir, do I understand from the Minister that since there is to be no relaxation of effort in the troubled areas, the troops that are now being removed will be replaced by a corresponding increase in the police forces?

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** No, Sir, the hon. Member would be wrong to assume that. We can remove the troops which are going because the intensity of effort of big scale sweeps is no longer profitable. We are planning, however, developments in the Security Forces which will, up to a point, meet the removal of those forces.

**MR. SLADE:** Do I understand from that answer, Sir, that there will be a relaxation of effort.

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** No, Mr. Speaker, there will not. The hon. Member will have to accept that there is a difference of opinion between us on the matter.

**MR. MATHU:** Mr. Speaker, Sir, arising from the original answer, would the Minister say whether, when he talks about the farm guards being mobile, whether he means they will be strengthened in numbers and weapons to fight the enemy or what?

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** No, Mr. Speaker, the numbers will not be changed—the establishment will be maintained at the same level—but the role of the farm guards will be an aggressive one and a flexible one and not a defensive one solely to protect farmers, their houses and stock. I perhaps did not make that quite clear.

**MRS. SHAW (Nyanza):** Mr. Speaker, arising out of various answers, may I ask the hon. Minister who is standing in for the European Minister without Portfolio, if we may expect a debate on the progress of the Emergency in the near future as this seems rather an unsatisfactory form of questions which turn always into a debate?

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** Mr. Speaker, with all due deference to the hon. and gracious lady, I do submit that that is a new question.

**MR. COOKE:** Perhaps the hon. Member will say whether when he claims he is going to make them more mobile, he is going to mount them on horses or elephants or what?

**THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES:** Well, Mr. Speaker, I will certainly give consideration to the hon. Member's suggestion.

#### QUESTION NO. 123

**GROUP CAPTAIN BRIGGS** asked the Minister for Finance and Development whether he is aware of the financial hardships being inflicted on members of the commercial community owing to the failure of certain Government departments and branches of the Security Forces to effect payment of accounts within a reasonable period. Will he take steps to have the matter rectified?

**THE MINISTER FOR FINANCE AND DEVELOPMENT:** It has not been brought

**[The Minister for Finance and Development]**

to my notice that any members of the commercial community are suffering financial hardship through the failure of certain Government departments and branches of the Security Forces to effect payment of accounts within a reasonable period. Instances of delay in paying bills have, however, recently been brought to the notice of the Treasury and these cases are being taken up with the Accounting Officers involved who are primarily responsible. Any failure to pay accounts is, of course, directly contrary to Treasury Instructions and, if any further specific instances of delays are brought to my notice, I will see that they are brought to the attention of whichever of my colleagues is primarily concerned. My hon. friend will, however, appreciate that, under the Exchequer system, any question on an individual case should, in the first instance, be addressed to the Minister responsible for the service involved.

Mr. CROSSKILL: Arising out of that reply, would the Minister agree that the delays which have been brought to his notice may be due in part to the changing custom wherein Administrative Officers do not now, I believe, have imprest accounts, and, if he agrees with that, would he consider restoring the situation in which they have such imprest account in their own names?

THE MINISTER FOR FINANCE AND DEVELOPMENT: I will look into the point raised by my hon. friend, but I do not think, in the cases that have been called to my attention, that this was the deciding factor at all. I would draw his attention to what was said in the last part of my original answer—“Under the Exchequer system, any question on an individual case should, in the first instance, be addressed to the Minister responsible for the service involved”. The Exchequer system has removed detailed financial responsibility in this regard to the department concerned and to the Accounting Officer concerned, and he is the person primarily responsible for the efficiency and quick payment of accounts.

Mr. COOKE: May I say, that I was paid within a week of putting in my claim.

THE MINISTER FOR FINANCE AND DEVELOPMENT: I am delighted to hear, Sir, the hon. Member for the Coast springing to the defence of the hon. Minister for Finance. (Laughter.)

**MOTION**

**CALL FOR INQUIRY INTO THE REASONS WHY SENIOR SUPERINTENDENT SWAYNE WAS REQUIRED TO RETIRE**

Mr. SLADE: Mr. Speaker, Sir, I beg to move that this Council calls for an inquiry into the reasons why Senior Superintendent Desmond David Claud Swayne of the Kenya Police was, on 31st December, 1954, removed from his post and acting rank of Assistant Commissioner in charge of Nyanza Province, to become Second-in-Command of Coast Province in his substantive rank and why he was subsequently required to retire from the service.

Mr. Speaker, I would like to open this Motion by making it quite clear that I have not asked any Member of this Council in advance to give blind support to this Motion. I have asked all, and I ask all, on either side of this Council, to hear what I have to say and what other speakers supporting this Motion have to say, and then to decide for themselves, whether or not I am justified in asking for this inquiry.

Sir, this Motion and the facts which give rise to this Motion are, in many respects, similar to those which occurred in a Motion to inquire into the case of Chief Inspector Hughes which I moved about a year ago. It is most regrettable that it should have appeared to me necessary to move two such Motions within a year, both concerned with the police force, both calling for inquiry into what amounts to allegations of victimization. I very much regret that, in this case, as in the case of Chief Inspector Hughes, the hon. Chief Secretary should have felt unable to accede to my request for an inquiry which would have obviated a Motion in this Council. I am very conscious, Sir, that this Council is not normally the right place for ventilating personal complaints. It is a Council in which we are concerned mainly with principles and policies. But, Sir, this Motion does involve what are, in my view, questions of principle and policy,

[Mr. Slade]

and there is nowhere other than this Council where I can put forward my views on such principles and policies, if Government does not accept the necessity of inquiry from time to time into cases of this kind without waiting for a Motion in this Council.

It would appear that the principles I tried to put forward in the case of Chief Inspector Hughes, were not accepted by Government then and have not been accepted since, so it seems likely that not only to-day, but hereafter from time to time, it will be necessary for somebody on this side of Council to bring forward a Motion of this kind.

Let me say, Sir, before I go any further into the details of this case, that I am concerned in this Motion for the police force as a whole and for other departments of Government as a whole, much more than I am for the particular affairs of Senior Superintendent Swayne. Indeed, I do not imagine, I do not suppose Superintendent Swayne imagines, that at this stage, we can help him much; it may be though that we may yet be of some use to the police force and other civil servants in discussing this Motion.

Sir, this case is not only parallel with that of Chief Inspector Hughes, but it is to some extent connected with it. I know that the hon. Member for Internal Security and Defence does not approve of what he describes as the “King Charles’s head” of the Hughes case coming up from time to time in this Council—but I am afraid he has got to face his ugly visage yet again.

Mr. Speaker, it must be that in stating the case for this Motion, I rest my facts to quite a large extent, on what Senior Superintendent Swayne has told me. It may be that some of the things he has told me will ultimately prove incorrect, or only part of the picture, but I do submit, Sir, that that can only be established by inquiry and I cannot help it if I am forced in this Council to state the allegations which, in my view, necessitate an inquiry. I would remind this Council that hon. Members are not asked to judge here and now in this Council the merits of this case; they are asked to judge whether or not there is a prima facie case for an inquiry. Hon. Members are

not the Trial Jury—they are the Grand Jury which has to decide whether or not there is to be a trial.

Coming to the facts of this case, Sir, I must first give you as briefly as I can the record of Senior Superintendent Swayne’s service. He has had over 28 years’ service in the Kenya Police Force. He joined it on 1st February, 1927. He came to Kenya after six months’ training with the Royal Ulster Constabulary on 5th August, 1927. He served in various parts of the Colony and, in 1934, he was promoted to the rank of Assistant Superintendent. He was promoted to the rank of Superintendent in 1939 and as Senior Superintendent in 1951.

From July, 1950, to October, 1952, he was Senior Superintendent in charge of Nairobi City; and in February, 1952, he was entrusted with the security arrangements for the Visit to Nairobi of then Her Royal Highness the Princess Elizabeth. That fact, Sir, I think, is of some significance, because one does not entrust responsibilities of that kind, careful security of Royal persons, to irresponsible officers. Hon. Members may remember that Her Majesty took the question of security arrangements so seriously as to require our Commissioner of Police to go to London for that purpose—at the time of the Coronation, I think—and that it was considered justifiable for our Commissioner of Police to go to London for that purpose, even in the middle of the Emergency here. That is the measure of the importance of a task like this, a task which was committed to the care of Senior Superintendent Swayne and which, I have every reason to believe, he discharged with full efficiency and responsibility. At least we know that Her Majesty suffered no hurt.

Sir, following that service in Nairobi, which ended in October, 1952, Senior Superintendent Swayne was posted as Officer-in-Charge of the Province of Nyanza, which office then held the rank of Senior Superintendent. He remained in that post until he proceeded on overseas leave in March, 1953, a matter of some five months later. He was away on overseas leave until November, 1953, and when he returned he was posted to the command of Nanyuki district until such time as the Nyanza Province became vacant again. That was November, 1953.

[Mr. Slade] In January, 1954, the Officer-in-Charge of Nyanza Province—that is to say, the officer who had taken over when Senior Superintendent Swayne went on leave—retired; and accordingly Mr. Swayne was re-posted to the command of Nyanza Province.

Now, while he was in command of that Province in April, 1954, after he had been there some three months, the Province was inspected by the Commissioner of Police, then Colonel Young. Colonel Young expressed himself as very pleased with the state of police work in the Province; an official statement by him appeared in the *East African Standard* on 13th May, 1954. It read as follows:—"Colonel Arthur E. Young, Kenya's Commissioner of Police, expressed his great satisfaction with police work in Nyanza at the end of his recent tour of the Province." Now, following soon after that, what one might imagine to be a natural sequence, in August, 1954, Mr. Swayne was gazetted as Acting Assistant Commissioner in charge of Nyanza Province with effect from 1st July, 1954. Now, I understand that the principal reason for that was that the provincial commands were upgraded at that time, to Assistant Commissioner instead of Senior Superintendent, but one would have thought, Sir, that if an officer in charge of a province was proved unsuitable, it was at the time of upgrading that one would consider removing him—but no such thing. Mr. Swayne was not then replaced by another, but was upgraded with acting rank of Assistant Commissioner. Just at that time of that *Gazette* publication, that is, August, 1954, the Province was visited by His Excellency the Governor, and Mr. Swayne was personally congratulated by His Excellency the Governor on the standard of police work in his province. Hon. Members will not be forgetting that Nyanza Province has, during the last few years, been of particular importance to the police; true it has not been a so-called "troubled area", but it has been an area which has caused all of us a great deal of anxiety and not the area where one would put dead wood.

Now, in November, 1954, when Mr. Swayne was still Acting Assistant Commissioner in charge of the Nyanza

Province, there were visits by the Deputy Commissioner, Mr. McGoun, and by Mr. Catling, who is now Commissioner, to the Province. As far as I am aware, Mr. Swayne received no comments from either of those officers on their visits and certainly no criticisms. But very soon afterwards there were some rather curious developments. There was one thing that happened before those developments occurred. It may be of extreme importance. Chief Inspector Hughes, who hon. Members may remember, had been put back to his substantive rank of Chief Inspector after being an Assistant Superintendent, Acting, for over a year, was posted to Nyanza in that substantive rank of Chief Inspector and so came under the command of Mr. Swayne. Now, Mr. Swayne was impressed with the performance of Mr. Hughes, unlike some other people who had reported so adversely on Mr. Hughes. Mr. Swayne thought that during his time, under the command of Mr. Swayne, Mr. Hughes had proved himself fit for the rank of Assistant Superintendent after all, and he had the temerity to write to the Commissioner for Police to say so. That was in July, 1954.

Now, there was a little chain of queer developments. On 8th December, 1954, that is, within six months from the appointment to acting rank of Assistant Commissioner in charge of the Province, within four months from the gazetting of that appointment, Mr. Swayne was called to an interview with the Commissioner of Police—that was Colonel Young. Colonel Young suggested to him that, i.e., Colonel Young would like Mr. Swayne to retire under the 45-Rule. He assured Mr. Swayne that this was in no way as a result of his work or his character, but he wished to give another officer a chance of a provincial command since Mr. Swayne was, anyhow, intending to retire at the end of his tour. Mr. Swayne was to think it over and write a personal letter giving his views. It did not take Mr. Swayne very long to think that over and he wrote a letter giving his views on 14th December. I need not quote the whole of it, a letter to Colonel Young: "I appreciate your very fair action with regard to Holmes"; he was the proposed substitute for Mr. Swayne as Assistant Commissioner, "for he is a personal friend of mine, but I do feel that it is

[Mr. Slade] not quite fair to me that I should be required to stand down when there are certain other officers in charge of provinces, much junior to me, especially, Sir, in view of the fact that, at my interview, you informed me that you had nothing whatsoever against me or my work. I will be most grateful if you will give your further consideration to this when I shall be readily prepared to exercise my option under the 45-year Rule and give six months notice by the end of next year, 1955." There was no answer to that letter, no contradiction of the statement that the Commissioner had informed Mr. Swayne that he had nothing whatsoever against him or his work, but, on 17th December, 1954, Mr. Swayne was called up on the telephone and informed that Senior Superintendent Holmes would take over the Province on 3rd January, 1955, and that Mr. Swayne would go as second in command, Coast Province, and that he was to interview the new Commissioner, Mr. Catling, on his way through Nairobi.

On 4th January, Senior Superintendent Holmes did arrive and took over the Province. He came as Acting Assistant Commissioner, or Assistant Commissioner, I do not know which. It may or may not be significant that Mr. Holmes has since resigned of his own accord, for his own reasons, that is to say, no reflection on Mr. Holmes whatsoever, but some dissatisfaction on the part of Mr. Holmes.

Now, on 4th January, having left the Province, Mr. Swayne attended a social occasion where he met, among other people, the hon. Minister for Internal Security and Defence, who is sitting on the other side to-day. Mr. Swayne alleges that the Minister said this to him, that Colonel Young had said to him—the Minister—"Swayne must go, he has been disloyal". Swayne must go, he has been disloyal. I believe, in fact I know, that the hon. Minister is going to deny that, he is going to deny that he ever said any such thing. As I said earlier in this speech, I have to tell this Council the facts given to me by Senior Superintendent Swayne, the facts which can be proved or disproved by inquiry and by inquiry only. I would point out that further justification of my

mentioning this fact to-day, notwithstanding possible denial by the hon. Minister, is that the hon. Minister had a chance to deny it before and has not done so. On 13th January, 1955, Mr. Figgis, lawyer of Mr. Swayne, wrote to Mr. Cusack repeating this statement that Colonel Young had said to the hon. Minister, that Swayne must go because he had been disloyal and asking the hon. Minister if he would confirm, and no answer came, neither confirmation nor denial. And, as hon. Members will see very soon, it is quite an important factor in the case, because on the following day, Mr. Swayne learnt from a brother officer, whose name I shall not disclose, that the Deputy Commissioner, Mr. McGoun, had referred to the letter recommending Mr. Hughes for reinstatement as an act of disloyalty on the part of Mr. Swayne. Now, I am suggesting to this Council that, on the face of it, those two things tie up. Those two things from independent sources. Swayne must go because he has been disloyal, Swayne's letter recommending Hughes for reinstatement was an act of disloyalty. If they do tie up, Mr. Speaker, they tie up in a very unpleasant manner; it is all part of a rather long and beastly story. That, Sir, is why I am bringing this matter to the notice of this Council.

Mr. Speaker, on 11th January, Swayne went to see Mr. Catling, present Commissioner of Police, as required, and was then informed first of all, that the Commissioner could not have a Provincial Commander who had adverse reports on his file. Adverse reports. He referred to two reports; one in 1951, and one in 1953. And Mr. Swayne is quite positive that neither of those reports had ever been communicated to him. I make two comments on this, Sir, before I go any further. First, we have here again, as we had in the case of Chief Inspector Hughes, adverse reports which have not been communicated, which were saved up for a rainy day and the reason for getting rid of a man eventually. I do not want to repeat all the comments that I, and other Members, made in the Hughes debate on this question of undisclosed adverse reports, except to say, Sir, that the sooner this practice is stopped the better. I do believe—indeed I have been told by the hon. Chief Secretary—that some amendments have recently been made in

[Mr. Slade]  
the regulations to improve the position. I do not think they go quite far enough.

The other remarkable feature about these two adverse reports which now appeared on 11th January for the first time, is that each one of them happens to have been made just before Mr. Swayne got special responsibility assigned to him. First in 1951 apparently; yet in February, 1952, he is put in charge of security for Her Majesty in Natal. The next is in 1953, yet in 1954 he is put back in charge of Nyanza Province. So much for the adverse reports.

Then the Commissioner went on to tell Mr. Swayne that he would not agree to Mr. Swayne remaining until the end of the year, but he had recommended termination of his service under the 45 Rule, that the references to disloyalty which Mr. Swayne raised, were pure rumour and Mr. Swayne should not listen to rumours, that the Commissioner would give his reasons, in writing, in a few days; and that Mr. Swayne must go as Senior Superintendent for Mombasa for the remainder of his service.

Well, the Commissioner did give his reasons in writing in a few days, they were very brief, and they corresponded to what he said at the interview. "I promised to let you have in writing the substance of what I told you, when I saw you in my office on Tuesday. It is that in view of advice from my senior officers that your work has been indifferent for some time past, because of the fact that your annual confidential reports, since 1951, are indifferent and, in some respects, adverse, and because the responsibility which faces the police force now does not permit me to retain an indifferent officer to a senior rank. I was proposing to Government that you should be retired under the 45 Rule. I have in fact, already put the case of your retirement to the Government."

Now I would like to make one point clear here, Sir, before I go any further. I have very little to say against the present Commissioner in this case. It is quite apparent to me that if there was mischief, it was done before he came on to the scene; and whatever he did, at this interview and writing that letter, he did as a newcomer, and, as he says himself, on the advice of his senior officers. I

think certainly any one of us in his position would have done the same. The thing had gone too far. It is the senior officers who advised him with whom I ask this Council to be so interested.

That, Sir, is about the end of the story; except that all these facts that I have stated to-day, every one of them, including what I called the rumours of alleged disloyalty, were embodied in a petition sent to the Rt. Hon. Secretary of State through the Commissioner of Police and the hon. Chief Secretary and His Excellency the Governor. The petition was for reconsideration of Mr. Swayne's case. It was rejected; but there has not, from that day to this, been any traversal of anything alleged in that petition, by any of the officers through whom it passed. And it is on those facts, Sir, that I submit an inquiry is necessary.

It is not very surprising that the Rt. Hon. Secretary of State rejected this petition. He was doubtless told that Mr. Swayne was dead wood. You, very likely, will be told in this Council, Mr. Speaker, likewise. Well, let them say it, if they believe it; it cannot hurt Mr. Swayne much more than he has been hurt already. Mr. Speaker, if I believed it, if I really believed that this was a case of dead wood being cut away under the 45 Rule, I would not dream of bringing this Motion, but, Sir, I do not believe it, without an inquiry. If you believe the statements made by Mr. Swayne which have not yet been denied, there is something very sinister in this case, something very much too closely resembling the case of Chief Inspector Hughes. I ask whether hon. Members will disbelieve all this without inquiry. I ask hon. Members, Sir, to consider the different reasons given for Mr. Swayne being removed from Nyanza and sent away from the force. First of all, he was told by the Commissioner of Police that there was nothing wrong whatsoever with his work or his character. Next, he was told, indeed, quite unofficially, but he was told, that the trouble was his disloyalty. Lastly, he was told by another Commissioner that it was really an adverse report, that had been lying in his file for quite some time. I suggest, Mr. Speaker, that those facts do not fit together; and when you find conflicting statements of that kind, you begin to think all the more that there is something wrong.

[Mr. Slade]

Mr. Speaker, nothing short of an inquiry can tell us what was the true reason of what happened. Can we be sure, without an inquiry, that it was not sheer victimization, boosted up by secret adverse reports, which have been kept in case of need? I might be less anxious if it was not so much the same story as we had already encountered in the case of Chief Inspector Hughes. I do hope, Mr. Speaker, we shall not hear again on this occasion that the hon. the Chief Secretary is satisfied that all is well and, therefore, all is well. That is the answer we received last time. It is no answer, Sir. It is not only a question of Government being satisfied that all is well, it is a question of Members of this Council being satisfied that all is well; the public being satisfied that all is well; and, most important of all, the officers of the force, high and low, being satisfied that all is well. I hope, Mr. Speaker, we shall not hear from hon. Members opposite that it is impossible and beyond question ever to have an inquiry into matters of this kind, which involve the exercise of the discretion by a high-placed officer. If that is really so, we are very much more close to totalitarian Government than even we imagine on this side of the Council if it be so, that the exercise of a high-placed officer's discretion can never be investigated by independent inquiry, however strange the aroma may be, the position of this country is bad indeed. It is, Sir, a question of the morale of the force.

I have had it suggested to me, only this morning, that by a Motion of this kind, I am undermining the authority of the Commissioner, I am damaging the morale of the police force. Sir, if I believed that, I should not move this Motion. I beg to differ, I beg to submit that the morale of the police force is dependent on complete confidence that they must always at all times receive justice; if they or any fellow officer is victimized, or even if there is a suspicion of victimization, it will be looked into to the very bottom by, if necessary, independent inquiry. If they can be sure of that—if this Motion produces that result—I am convinced, Sir, it will not only strengthen the position of the Commissioner but it will strengthen the morale of the officers that serve under him. One

cannot over-exaggerate the importance of this matter.

I have here, Mr. Speaker, a book written by Sir Percy Sillitoe who, hon. Members will remember, visited this Colony not very long ago to advise us. It is his autobiography entitled *Cloak without Dagger*. It does help sometimes, when humble members of the public, like myself, are trying to make a point, to quote from those who are much better qualified to speak on the subject in hand, and who so often use so much better language than one can call to one's own command. What, he said, just in passing, describing the movements of his life, is this. "In the years that I had spent in Chesterfield and then in the East Riding of Yorkshire, it had become apparent to me that no matter what personal brilliance a Chief Constable may possess, he can never succeed in his job unless he is able to ensure that the men under him are his willing and loyal colleagues, actively eager to co-operate with him. Obviously men with a grievance, men without incentive, or men with no sense of purpose in their work, who see themselves as meaningless cogs in a rather ungrateful machine, are never going to combine to make up a police force that is on its toes and a credit to its chief. So I was determined when I began work in Sheffield that whatever happened my men should be as contented as I could possibly make them. I had no doubt that any time and trouble I devoted to this object, and any expense which might be involved, would be amply repaid."

Sir, it is with those thoughts that I am moving this Motion and it is in that spirit that I am asking this Council to consider this Motion as one concerning the welfare and morale of the police force, and to support this application for an inquiry, if not absolutely satisfied that all is well. Because if Council is not prepared to do that, this Council is a farce and a hollow mockery of the Mother of Parliaments.

Sir, I beg to move. (Applause.)

Mr. COOKE: Mr. Speaker, Sir, in seconding this Motion, I find it difficult to follow the eloquent plea that my hon. friend has made when he expressed in such clear, and forceful terms what he feels in the matter: and I share those

[Mr. Cooke] feelings and find that I have not very much to say, but it does seem to me more than a coincidence that within a period of less than one year there should have been brought in this Council two Motions asking for an inquiry into the police.

The first was in respect of a comparatively junior officer, and in this case we are dealing with a very senior officer, I think, of nearly thirty years' service. By mistake it was given as twenty years' service, but I think it is actually twenty-eight years' service. Now, there is an old saying that there is never smoke without fire. In this case there seems to me to be a lot of murky smoke about—in fact, it is a sort of black smoke you see coming from the exhaust pipe, and you know that the plugs and various other things in the engine of the car are not in order. In this case we feel—a great many of us—that things are not too well with regard to the police, and that is a feeling that has prevailed for two or three—if not more—years. I remember very well when I was on the Civil Service Board that a number of police used to come forward—and young recruits many of them are—and ask for transfers to other services of the police, and when one asked them their reason they were too loyal usually to say, but they usually said, "I don't like what is going on", or something to that effect, and I understand at the present moment—I may be wrong about my figures—I understand at the present moment that fifty per cent of the contract policemen who have come out here in the last few years wish now to end their contract. Well, if that is so, it is a very disturbing position. I have met a lot of these young contract policemen, and I must say I formed a very high opinion of them. If these young men now after two years—having sacrificed two years of their lives—are wanting to take on another job, if they want to terminate their appointment, or in fact, if they do not wish to renew their appointment, there must be something very seriously wrong in the set-up of the police, and I submit that what my hon. friend has said just now, certainly bears testimony to that fact. I have been long enough in this country to remember when policemen made the police service

a career. I can remember the stout old stagers there were in men like Bentley and Thyssen and Lundley and others—who were thirty or more years in the police service; and in those days—at any rate when I was an administrative officer—I never heard anything like the number of complaints that are being made to-day. It is not to say that the police were not efficient in those days, because, taking their number into consideration, and taking the advance of the African policemen into consideration, it was an extraordinarily well-run police administration.

Now, there must be many things that people are asking themselves after what my hon. friend has said. We must wonder how the position arose that this senior superintendent who was a well-trusted man in July, 1954, was distrusted six months later. There must be something in writing. There must be some record saying what happened in that period of five or six months, that turned him from a trusted policeman, and an efficient policeman, into a distrusted and, I think the term is, "indifferent officer".

Now, the hon. gentlemen on the other side of Council cannot get away in this manner in my opinion. If they promoted an indifferent policeman, and if they used him on such an important occasion as the visit of our beloved Queen, they must have to use a common expression—"slipped up", to put in a man whose efficiency, and even probity, they had not the fullest confidence. In fact, to employ the language of Macaulay, they "can only be defended from the charge of being knaves by arguments which would make them out to be fools"; because, if they did not know this officer was inefficient after 28 years, they should have known it, and they are the people—not the officer in question—who should be the men who should be dismissed from the service, if, indeed, what they are telling us now is the truth, the whole truth and nothing but the truth.

Now, we know that senior officers in Government have their own views of loyalty. They have loyalty to their own men, which is a very great thing, to their own senior officers and, I hope, to their own junior officers; but there is a greater loyalty even than that, Sir, and that is loyalty to this country. And I do not

[Mr. Cooke] really think that, in the final summing up, that you are being loyal really to your own people if, in order to defend them, you do not discharge your duties to this country as a whole. And I would put that aspect of the matter to my hon. friends on the other side of Council.

Now, this Motion would never have been brought if the Motion—probably—if the Motion which was brought 10 months ago had been accepted. And if this Motion is not accepted to-day, I can well see another similar Motion will be brought within the next few months, because I know myself—although they have not approached me—of two other senior officers who are very dissatisfied with the manner in which they have been treated, and the manner in which they know things are proceeding. Now, they must know—and my hon. friend, the Chief Secretary, cannot get away from it. He must know in his own heart of hearts if there was any misdemeanour, or any mistake made by this senior officer in those seven months—five or seven months. There must be some record to that effect. It is quite absurd to tell me that the man you trusted in July you distrust a few months later, without being able to give a very valid reason for it. And no amount of argument, and no amount of trying to cover up the tracks of any senior officer, will get away from that.

Now, it must be more than a coincidence as well, Sir, that the Inspector John Hughes, who was sent down to Nyanza, and whom the Senior Superintendent, Mr. Swayne—very loyally, I think—protected, and whose interests he looked after—that both these men should have been involved in mutual dismissal from the Government service. It is more than a coincidence. There must be some reason. Nobody is such a fool as to think that there was not some kind of a feeling that Mr. Swayne, by protecting Inspector John Hughes, had let down his own senior officers, but, not only do we have that, we have the actual testimony of a good witness having been uttered that that was the reason why Mr. Swayne was being dealt with in this manner.

Now, my hon. friend, the Minister for Defence, will get up and deny this. Well, it is only one man's word against another,

but it is a very amazing coincidence that Mr. Figgis, I think it was, who was involved in both these matters—he also took a different point of view in his interview with the Commissioner of Police, and with others, that there was a divergence there. Now, Mr. Figgis is not a man with anything to gain or anything to lose. He was not in the police, or trying to make any kind of a false charge against a police officer. The only people who had anything to gain by making a false statement were the police officers themselves—or the Government officers themselves. To use an old Latin quotation, "cui bono"—to whose good was it? To whose advantage was it to lie or to prevaricate, or to conceal the truth? And the answer must be that the only person to whose advantage it was, was either one of the policemen or one of the senior Government servants on the other side of Council.

Mr. Catling is reported to have said that there were adverse reports against Mr. Swayne, dating back to 1951 and 1952. Well, what kind of an officer—what kind of a promotion system is it that puts a man with adverse reports immediately—almost immediately—into such an extremely important position, as my hon. friend has very well said, as Acting Assistant Commissioner of Nyanza Province? Now, I beseech my hon. friends on the other side of Council, in their own interests, to grant this inquiry. I have seen myself papers which make the most serious aspersions on two or three senior officers on the other side of this Council. Now, those aspersions are either true or untrue—and I believe they are untrue—but surely it is to the advantage of the hon. gentlemen on the other side of Council, if they are untrue—and I believe they are untrue—to have a full, free and impartial inquiry so that their names can also be lifted above this cloud of suspicion which is now hanging over everything; and, therefore, I make that plea—not only on behalf of Mr. Swayne, but on behalf of the senior Government officers themselves—to have this full inquiry. If there is nothing to conceal, then they will not lose anything. If it is found that Mr. Swayne was, indeed, a very inefficient officer, and that he was treated with every kind of respect and tact, by which he should have been treated, then the gentlemen on the other



(Mr. Cooke) side of Council will have completely absolved themselves; and surely they should be just as anxious as we are to see this matter is completely and clearly gone into, Sir.

Sir, I beg to second. (Applause.)

*Question proposed.*

**THE CHIEF SECRETARY:** Mr. Speaker, Sir, I oppose this Motion. Before I reply to the various allegations made by the hon. Member for Aberdare, I should like to refer to the two main ingredients of the Motion, and explain why the Government would not be prepared to agree to an inquiry into either of them.

First, the Government cannot accept the suggestion that acting appointments and appointments and transfers in the Kenya Police are the responsibility of any authority but the Commissioner of Police; and, secondly, the Government is quite satisfied—entirely satisfied—that the circumstances in which Mr. Swayne was required to retire are in complete accord with the accepted practice whereby—provided certain conditions have been fulfilled, and the officer concerned has completed a minimum period of service, and reached a certain minimum age limit—he can be compulsorily retired. Further, the Government is satisfied that this practice was followed, not only in the letter but also in the spirit. The Government is satisfied that there was no victimization.

To revert to my first point, Sir, hon. Members on both sides of Council must realize the danger of allowing promotions and reversions and postings in a uniformed, disciplined service to be subject to the control of any officer, or any authority, other than the authority responsible in law for the command, superintendence and direction of the force. The officer responsible for the command, superintendence and direction of the Kenya Police is the Commissioner.

I have no doubt that hon. Members—especially those who have served with the armed forces—can visualize the chaos which would arise if it were possible for promotions and transfers from station to station in the Colony to be controlled—or even remotely influenced—by a fear of political pressure. The force would cease to be the strong,

reliable, non-political weapon that it now is, and would turn into an organization of unpredictable inefficiency, whose officers had one eye on the Commissioner and the other eye on some political patron. I would like to make the position quite clear, Sir. These responsibilities are the responsibilities of the Commissioner of Police. The Government has the utmost confidence in the Commissioner, and does not propose to allow these responsibilities to be in any way reduced or removed.

I now come to the second point, Sir, concerning the circumstances in which Mr. Swayne was required to retire. His retirement was effected under an arrangement which has come to be known as "the Forty-five-year Rule." It is now, in fact, the Fifty-year Rule, but the ingredients—the elements—of the rule are the same. This is an arrangement which was reached in 1948 in connexion with the Holmes Commission, between the Government and its servants, whereby any man who has attained the requisite age, and has completed a minimum of ten years' service, can—if he so wishes—be allowed to retire before he has reached the minimum pensionable retiring age under the Pensions Ordinance. The Pensions Ordinance lays it down that no officer may retire until he has reached the age of fifty-five, but this arrangement, which was subsequently given the force of law in this Council, provides that a man may retire at forty-five—as it then was—and at fifty now, and draw such pension as is due to him on account of the service he has rendered. The effect of this scheme is that, if an officer of over-forty-five years feels that his future in Government service holds no prospect of promotion, and not much of enjoyment, and if he pines for the freer air of the farm or the warehouses, he may be permitted to retire, and take with him such pension as he has earned.

Now, under this arrangement, the Government has a complementary right. If the Government feels that an officer has no prospect of further promotion in the Service, and that it is not in the public interest that he should be allowed to go soldiering on to the legal retiring age of fifty-five, the Government may require him to retire from the Service. This arrangement is specially designed to deal with those officers who, although

*[The Chief Secretary]*

perfectly able to carry out the duties and responsibilities of the junior or middle ranks of the Service with a reasonable degree of efficiency, have not the qualities, and have reached an age when they are never likely to acquire the qualities, which would enable them to undertake the responsibilities of the higher ranks. The Government considers it essential that officers who are unfit for further promotion, and who have reached an age when they are no longer suitable for employment in junior posts, should not be encouraged—should not be allowed—to entrench themselves in jobs which are designed for younger men. Such officers do not contribute to the efficiency of the Service. I apologize for this phrase, but they are, in fact, the "dead wood," about which we have heard so much for the past three years from the other side of Council.

As I think I have explained, this arrangement is embodied in legislation which was passed by this Council when the matter was first debated in 1948. The hon. Member for the Coast, who seconded this Motion, expressed fairly powerful views on the subject. With your permission, Sir, I would remind hon. Members what he said. Mr. Rankine had observed:

"This Council agrees to the proposal in paragraph 260 of the report that for an experimental period of three years an officer should be permitted to retire, or be called upon to retire without reason given, on or after attaining the age of forty-five."

The hon. Member for the Coast said:

"Mr. Chairman, I should like an assurance from the other side of Council that this particular recommendation will be ruthlessly acted upon. It is not the object, I hope, to get rid of any officer of forty-five if he is efficient and if Government thinks his services should be retained, but if an officer is merely waiting for his pension as it were, as I am afraid in the past some have, and are sitting down and doing very little work, will Government give an assurance that that officer will be retired?"

Sir, a modified assurance was given, but naturally Mr. Rankine declined to be ruthless!

I now come, Sir, to the history of the handling of Mr. Swayne's case. I will deal with it from the broader Civil Service aspect. There is—as I have already said—no doubt at all in the minds of the Government that this is a case in every way suited to the application of the 45 Rule. Both the present Commissioner of Police and the previous Commissioner, Colonel Young, were convinced that Mr. Swayne had not the qualities which would justify his promotion to a rank higher than that which he substantively held; that is the crux of the matter. In January this year, in accordance with the rule to which I have referred, the Commissioner of Police recommended to the Government that Mr. Swayne should be required to retire from public service. The matter was considered with the greatest care, and in great detail, by the Government, and the recommendation of the Commissioner was accepted. As the hon. Member for Aberdare has told the Council, Mr. Swayne made an appeal to the Secretary of State. Early in June it was learned that the Secretary of State was not prepared to vary the decision recommended by the Government that Mr. Swayne should be retired. He was afforded the opportunity of resigning, but did not wish to do so, and, on 14th June, the Government was compelled to give him six months' notice of retirement. I may say that I have known Mr. Swayne for 20 years, and it is very painful for me to have to go into such detail in a matter of this sort.

May I deny, Sir, categorically that, when the case of Mr. Swayne was examined by the Government the suggestion that he had been disloyal was considered. There was no suggestion whatsoever of that nature. The decision was reached upon his capacity in his present position, and upon his probable capacity in the future.

With regard to the aspect of the matter which has so concerned the hon. Member for the Coast—I refer to the mystery of the change in the outlook of the Commissioner toward Mr. Swayne in the second half of 1954. The matter is, I think, clear enough. What happened was that in the second half of that year Mr. Swayne came under scrutiny, with the object of deciding whether or not he had those qualities which were essential if he

[The Chief Secretary.]  
were to be promoted. It was clear that he had not.

Finally, Sir, may I assure the hon. Member that of course an occasion may arise in which an inquiry may have to be held in the activities of a senior officer, but this is not one. I think I have said enough to satisfy hon. Members that an inquiry of the sort suggested in this Motion would be thoroughly undesirable.

Sir, I beg to oppose. (Applause.)

MR. HARRIS: Mr. Speaker, Sir, when I first received notice of this Motion, my immediate reaction was to support it, on the grounds that surely an inquiry could do nothing but clear the air. If there was justification in the complaint, then the complainant would be happy. If, on the other hand, the action of Government was substantiated by an inquiry, then we could feel satisfied that there was nothing very much wrong—at any rate on that particular aspect of the Police Administration.

On more mature thought, however, Sir, I decided that there was a far more important principle involved in this Motion than the mere question of Mr. Swayne—and let me say here, Sir, that, owing to the responsibilities I held some five or six years ago, I have had to work very closely with Mr. Swayne, and therefore probably know more about his actual work on the ground than most hon. Members of this Council—but I would prefer, Sir, to deal with the matter far more as a matter of principle on the question of inquiry, rather than the merits or demerits of the case of Mr. Swayne.

Now, Sir, from what the hon. Member for the Coast said, the Kenya Police Service has shown signs of unhappiness—and occasionally eruption—for many years. We have had a succession of Commissioners who have come and left their mark—good, bad or indifferent—on the country, and gone. We now have a new Commissioner and, as I understand the correspondence as quoted by the hon. Member for Aberdare, this final recommendation came from the present Commissioner. Now, Sir, I happen to know that among the police with whom I mix they may not be a typical cross-section, I would not know—but both the Regular Police and the Kenya Police Reserve in

Nairobi—the ones that I know—have the greatest confidence in the present Commissioner of Police. I have discussed this matter with certain members of both the regular and volunteer police forces since I received notice of this Motion and without exception, I have found complete and absolute support and loyalty to the Commissioner, and I believe that, Sir, is a thing that we have wanted in the Kenya Police for a good many years. I believe that if we are going to take an opportunity of every executive decision with regard to staff as a matter for Motion in this Council, we will never get the kind of Commissioner that we want.

I do not think, Sir, that the detail of Mr. Swayne's career is really relevant to this principle, but the hon. Member for Aberdare did make one point, and I would like to put the record quite clear. It could be inferred from the hon. Member's remarks that Mr. Swayne had special responsibilities in connexion with the visit of Her Royal Highness in 1952. In fact, of course, Sir, Mr. Swayne at that time was Senior Superintendent in charge of Nairobi City, and had exactly the same responsibilities towards Her Royal Highness as the senior police officer in any other area to which she went. The special security arrangements, I happen to know, were made by then Commissioner of Police, Mr. O'Rourke, and special officers of either the C.I.D. or the Special Branch—I never know which is which—were detailed for the job of looking after the security arrangements for Her Royal Highness. Mr. Swayne did undoubtedly do a job—a good job—at that time of considerable stress, but he was not assigned, as far as I am aware—and I think I am right—any particularly special duties on that occasion, and of course on the same subject, Sir, it was made to sound rather more important that our Commissioner of Police was sent to look after Her Majesty in London. Of course we know, Sir, he was seconded by the City of London Police, and naturally at that time of considerable stress and celebration they wanted to borrow their own Commissioner for the time being.

But, Sir, that is not dealing with this principle. I believe it is essential that in all these matters of staff administration there must be some ultimate authority: somebody who has the final "yes" or

[Mr. Harris]

"no", and God forbid, Sir, that this Council should be called upon to adjudicate or set up inquiries on every operation when any member of the public service is dismissed or retired and consider that they have a grievance. We—all of us who were in the Forces during the war, Sir—got very tired, particularly in the 1945 era, of the gentlemen from Birmingham, Leicester, Bristol and Glasgow who used to write to their Members of Parliament. We knew, Sir—especially in overseas commands—the amount of disruption that was caused because some member of the serving Forces thought he had a grievance. Invariably he had not, and I do feel, Sir, that General Montgomery would still be in Egypt—I should think he certainly would never have got as far as Europe—if he had had to give evidence in a court of inquiry in the case of every officer whom he either demoted or sacked.

I believe that probably what we want is a little bit more of the Montgomery spirit in the police force here to instil discipline, and my experience, Sir, in making inquiry of this particular Motion is that for the first time for many years there is in the police force to-day a spirit of loyalty and of discipline which we have not seen certainly since the war, and to bring an executive decision of the Commissioner up as a matter of public or private inquiry I think, Sir, is merely undermining the authority of the Commissioner, on whom we depend for a decent police force. (Applause.) I oppose the Motion.

MR. LETCHER (Trans Nzoia): Mr. Speaker, I have only one point I wish to make, and that is I feel if Government has nothing to hide, then why not have an inquiry—at least an inquiry within the police force?

I should like to support the Motion.

MR. CHANAN SINGH: Mr. Speaker, Sir, I have no personal knowledge of the facts of this case, but I support the Motion on principle.

My own experience of Government service leads me to believe that heads of departments are human beings. They have their prejudices, and they have their whims. They are as much likely to

make mistakes as ordinary human beings. I do not rule out the possibility of the Commissioner's being right in this case, but I also do not rule out the possibility of his being wrong. What I am concerned with is that there should be some arrangement under which officers who have a grievance will be able to appeal. It appears that the head of department has the support of the Government, and that the individual officer who has a grievance has no genuine right of appeal. I should have thought that in a matter like this, where a senior police officer was involved, the Executive Council would set up some sort of committee which would inquire into the complaints of the officer, and would try to see whether or not the Commissioner of Police was, in fact, right.

It is for these reasons that I support the Motion. (Applause.)

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE: Mr. Speaker, Sir, I share my hon. friend, the Chief Secretary's, disapproval—which I do not doubt is shared also by other Members of this Council—of a Motion seeking to make a public issue of matters of promotion and retirement in the Civil Service, and particularly in a uniformed and disciplined branch of it. The procedure is becoming familiar. A man whose view of his own capabilities differs from that held by the Commissioner of Police goes to the legal firm of Daly and Figgis and at a later date the hon. Member for Aberdare pleads his case in this Council. I hope when the hon. Member speaks again he will declare whether he has any interest in this firm, or whether—as I hope is the case—it is merely a remarkable coincidence.

AN HON. MEMBER: Order!

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE: I must confess also to a good deal of personal distaste about this debate. Mr. Swayne is an old friend of mine. I knew him in Ireland before either of us ever came to this country. I have known him here for many years, and served with him. Every personal sympathy I have in the matter could be with him.

The facts of the case of Mr. Swayne are these: when he was stationed in Nairobi he was to my knowledge

[The Minister for Internal Security and Defence]

seriously reproved by the then Commissioner of Police, for what the Commissioner considered his irresponsible handling of a murder case which, on Christmas Day in 1950, very nearly led to a public disturbance in Nairobi. His confidential report for 1951 was unsatisfactory, and his confidential report for 1953 was more unsatisfactory still. I should explain that Mr. Swayne's rank required him to be reported on every second year. Both these confidential reports were, in fact, communicated to Mr. Swayne, which is a point which the hon. Mover queried. The specific paragraph in them is:—

"Have any criticisms of the officer's work or conduct which are made in the above report been communicated to him?"

Beside that paragraph is written "Yes", and it is signed by the Commissioner of Police. One report is dated February, 1951, and another is dated March, 1953, and it seems a very long shot indeed to imagine that they were either deliberately prepared or deliberately faked to fit in with matters which happened a great number of years later.

However, to continue on Mr. Swayne. The Emergency stressed our great shortage of experienced officers. Mr. Swayne was, in fact, an experienced officer, although he was a lazy one. He was posted to Nyanza in January, 1954, in his substantive rank of Senior Superintendent of Police. Nyanza was a peaceful area, not concerned with the Emergency, and it was hoped that Mr. Swayne would handle it satisfactorily. As a result of the recommendations in the Police Commission Report—as the hon. Mover has correctly stated—the posts of police officers in charge of provinces were upgraded from the rank of Senior Superintendent to that of Assistant Commissioner, Mr. Swayne automatically became an Assistant Commissioner with effect from 1st July, 1954. There is a very great difference between this and the deliberate appointment of an officer to act in a higher rank so as to test his ability for later substantive promotion. I should say here—and can say also on behalf of my hon. friend, the Chief Secretary—that neither he nor I—who

would necessarily have been consulted—could, from our own knowledge of Mr. Swayne, possibly have agreed to his substantive promotion to any rank greater than that of Senior Superintendent.

My hon. friend, the Member for Nairobi South, has correctly explained the nature of Mr. Swayne's duties in connexion with the visit of Her Royal Highness, the then Princess Elizabeth, to Nairobi.

Now, by December, 1954, Colonel Young had become dissatisfied with Mr. Swayne's command in Nyanza and—as you have already heard—he told Mr. Swayne that he intended to ask for the Forty-five-year Rule to be applied to him but, in fairness to Mr. Swayne, and in consideration of his long service, told him that he would not be expected to leave the force at very short notice if it did not suit Mr. Swayne to do so, and if he wished to remain for more than a month or two, he would post him in his substantive rank as second in command to some other province. Mr. Swayne had personal reasons for wishing to remain, and was, in fact, posted as second in command of the Coast Province in his substantive rank. When Colonel Young resigned his command of the police in December of last year, the present Commissioner, in whom—as the hon. Member for Nairobi South so correctly said—the force has every confidence—the present Commissioner told Mr. Swayne that he was not prepared to carry indifferent officers in senior ranks, and told Mr. Swayne that, unless he could see his way to retire, he—the Commissioner—would feel compelled to ask for the Forty-five-year Rule to be invoked in his case. During early 1955, the Commissioner of Police took that action.

MR. HARRIS: Mr. Speaker, could the Minister please speak up against the noise of the grader? We cannot hear him.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE: The Commissioner of Police approached Government and asked that Mr. Swayne be called upon to retire, as he was not capable of performing his duties efficiently, and was no longer a useful member of the force. There were no other grounds—and this is important—there were no other grounds put before Government, and on those grounds—which were the only grounds

[The Minister for Internal Security and Defence]

put before it—Government agreed that Mr. Swayne should be required to retire if he declined to do so voluntarily. Government, being a good employer, and wishing to meet the reasonable requests of officers in these circumstances, arranged that the retirement should not be effective until the end of 1955, which was the date which—for personal reasons—Mr. Swayne wished to serve until.

Now, the trend of the hon. Mover's speech has been to suggest a hidden motive of victimization because of a report on Inspector Hughes, who was serving under Mr. Swayne at Kisumu. The hon. Mover has suggested that I, personally, told Mr. Swayne that he was accused of disloyalty because of this. Well, as the hon. Member—

MR. SLADE: I beg your pardon. Not because of that. According to my speech, Mr. Swayne said to me that all he had from the Minister was that "Colonel Young said, 'You have been disloyal'", and that the ground of disloyalty was not then stated.

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE: Thank you. Well, as the hon. Member foresaw, I should only make a categorical denial of that, and—as the hon. Member also foresaw—that is a question of one man's word against another. I can, however, add—and it perhaps to some extent bears out what I myself say on the matter—that when I last visited Kisumu, which is the relevant occasion—it was in very early January—I think about 2nd or 3rd January this year—I went for the specific purpose of visiting the prisons establishments on Mgeta and Salyusi Islands—I had no time to, and did not, in fact, visit the Provincial Police Headquarters, and did not know that Chief Inspector Hughes had been posted to Kisumu, and did not know that Mr. Swayne had made any report about it.

MR. SPEAKER: Have you much more to say?

THE MINISTER FOR INTERNAL SECURITY AND DEFENCE: I have very nearly finished. The hon. Mover made mention also of a letter addressed to me by Messrs. Daly and Figgis about this par-

ticular case, and queried why I had not answered it. The reason is, in fact, an extremely simple one. At the time I received the letter, the subject matter of the letter was already coming officially before the Government. It was a matter with which I myself would have to be concerned, and I could not honestly, and by reason of certain oaths one takes, deal privately with a legal firm about it.

To conclude, Sir, Mr. Swayne was called on to retire in accordance with the policy of Government of removing officers who, having passed the age of 45, have passed their usefulness, which is a policy which—as my hon. friend the Chief Secretary pointed out—we are very frequently asked to apply by hon. Members on the other side of Council. Mr. Swayne was asked to retire simply and solely because he had become a passenger of the force, and the force cannot afford to carry passengers. Mr. Swayne was, in fact—as sometimes happens to people of his character—hoping to enjoy a long golden afternoon of decreasing effort with increasing pensionable return.

MR. SPEAKER, Sir, there is no question of agreement to an inquiry such as the hon. Mover proposes, and my hon. friend the Indian Elected Member, Mr. Chaman Singh, supports.

MR. SPEAKER, Sir, I oppose the Motion.

THE SPEAKER: Hon. Members, before suspending business, I would ask you to be as careful as possible not to be carried away to impute any form of injustice or questionable ideas or reasons for the actual speeches of other Members I did not actually intervene, but I hope hon. Members will help me in the future by bearing that in mind.

We will suspend business for fifteen minutes.

Council suspended business at twenty minutes past Four o'clock and resumed at thirty-five minutes past Four o'clock.

THE SPEAKER: If no other hon. Member wishes to speak, I will call on the hon. Mover to reply.

MR. SLADE: Mr. Speaker, Sir, the explanations that this Motion has received in answer to this Motion from the hon. Members opposite, are very much those which I anticipated, regretfully much

[Mr. Slade] those which I anticipated. We hear once again that appointments, transfers, promotions, demotions, are the sole responsibility of the Commissioner and cannot be subjected to the control of anyone else. Well, I do hope, Sir, that I did not present this Motion in such an obscure manner as to suggest that appointments or promotions should be subject to the control of political pressure or of any one other than the officers concerned. What I did suggest, what I am suggesting, and what has not yet been answered, in my submission, is, that alleged abuses of position by officers which have the result of unfair transfer, or demotion, or retirement, should be investigated. Investigation of alleged abuses, not control by political pressure of appointments or promotions. That is what this Motion asks for. That is what we asked for in the case of Chief Inspector Hughes.

We heard, as I feared we would hear, that Government is completely satisfied with the incident and that that is the end of the matter. I have spoken about that. I will say no more.

We have had a very clear exposition of the 45-year Rule. We have been told how it is applicable to those who are found unfit for further promotion; and how this rule was particularly suitable for application to this case, because, if Mr. Swayne had stayed in charge of Nyanza, he would have had to be confirmed as an Assistant Commissioner. Well, Mr. Speaker, I do suggest that that is rather special pleading, because surely the point is not the rank, but the appointment, the responsibilities held. That is what we are concerned with always—is the officer fit for further responsibility, or is he staying so much where he was before that he had better go away?

THE CHIEF SECRETARY: No, Sir, that is the very point I made. The 45 Rule applies to those who, although adequate in the middle ranges, have not the qualities which would enable them to undertake the responsibilities and duties of the senior ranks.

MR. SLADE: Well, I am grateful for that explanation, Sir, because it then shows that the 45-year Rule is singularly inapplicable to the case of Mr. Swayne.

Because Mr. Swayne had held this very appointment both before going on leave in 1953, that is to say Officer-in-Charge of Nyanza Province, and again for a whole year in 1954, so it was not a question of his being considered for further responsibility, it was a question of his being pushed out of the responsibilities that he had held for so long. How the 45-year Rule fits to that, has not yet been explained. Nor do I think hon. Members will take very seriously an explanation by the hon. Member for Internal Security and Defence, the Minister, the Mr. Swayne was sent to Nyanza because Nyanza was a "peaceful area". I would suggest there are certainly more peaceful areas in this Colony.

Now, we are assured, and I quite believe it, that Colonel Young and Mr. Catling were convinced that Mr. Swayne was not fit for higher rank. They were evidently convinced that he was not fit even to hold the appointment he held previously on two occasions—for a year and then previously on another occasion. But by whom were they convinced? They were convinced, as Mr. Catling said himself in his letter to Mr. Swayne, by their senior officers. It is quite natural; you have to rely on your senior officers for advice in these matters, particularly when you are so new to the country.

One of the purposes of the inquiry, which this Motion suggests, is to see just what those senior officers were up to. Why they gave the advice that they did. We are assured by the hon. the Chief Secretary, and we have every reason to believe in his assurance, that when the question of Mr. Swayne's retirement came up to Government, there was no suggestion of disloyalty on the part of Mr. Swayne. In fact, we would have been very surprised to hear that there had been any suggestion at that stage to Government that Mr. Swayne had been disloyal and that his disloyalty had consisted of an act recommending Chief Inspector Hughes for reinstatement. No, Sir, this question of alleged disloyalty lurked in the background, the fact that it lurked in the background does not mean to say it was not there. There is plenty of evidence, in my submission, to justify an inquiry as to whether it was there or not.

Was this so-called disloyalty the motive for the advice which certain

[Mr. Slade] senior officers gave to Mr. Catling and Colonel Young, and, subsequently, to Government?

Now, the hon. Member for Nairobi South pointed out how wrong this Motion is in principle, how one had not got to consider the merits of the case at all. It could not be right, as I understood it, ever to ask for an inquiry into alleged victimization. He did rather spoil his case by the debating trick of exaggerating my case. He said it is going to be fantastic—I am sorry if I do not get the words quite right, he will correct me if I get them too wrong—he said it is going to be fantastic if every executive decision is to be made the opportunity for a debate in this Council; and how impossible the position of a General would be if every appointment, promotion, transfer, demotion, was to be made the subject of critical debate.

Now, Mr. Speaker, we have had two debates like this in a year. I regret we have had so many. Hon. Members might be surprised to know how many grievances have been brought to my notice in various branches of the service, and how many I have answered. I can do nothing in this matter because it appears to be a proper exercise of the discretion of the officer concerned.

The hon. Member for Nairobi South either failed to understand, or deliberately ignored, the point of this Motion. It is an inquiry into alleged victimization, abuse of position. If he really maintains that such things should never be made the subject of inquiry, or the subject of debate in this Council when inquiry is refused, I respectfully disagree with him.

The hon. Minister for Internal Security and Defence gave us the history of this case very much as I outlined it in the Motion, and he said it is becoming a familiar procedure for officers with grievances to resort to the firm of Messrs. Daly and Figgis and for me, subsequently, to represent the case in this Council. My answer to him is, in the main, the same as my answer to the hon. Member for Nairobi South. He asked two questions—one was had I any interest in the firm of Messrs. Daly and Figgis? Well, as of course he knows, having been in the Colony just about as

long as I have, that I was practising in a rival firm for 19 years. My only interest in Messrs. Daly and Figgis is the very high regard I have always had for that firm, as champions of people whom they thought were suffering wrong.

The hon. Minister said this is indeed a case of dead wood—of very dead, rotten, wood, if you are to accept all that he says now. All the same, it is difficult to understand just when the wood died. Did it die before Mr. Swayne was in charge of Nairobi in 1952? Or was it good wood then? Did it die before he was put in charge of Nyanza Province the second time in 1954? Or was it still good wood in the middle of 1954, good living wood, when Colonel Young was so pleased with the state of police in Nyanza? Was the wood dead before August, 1954, when His Excellency was still so pleased? But did the wood die rather suddenly, round about—did it begin to rot a bit in July, 1954, when a certain letter was written to Police Headquarters? It might be worth the subject of an inquiry just to see when this wood died.

In spite of all the satisfaction on the other side of this Council, there are some things not yet explained. We have heard no explanation of why Mr. Swayne was given the responsibilities he was given after he had had adverse reports that mattered so much. There is no explanation why he was removed from a post—not merely denied a promotion—but removed from a post on very short notice. There are certain facts at issue here—very vital facts. Is it true that these adverse reports were ever shown to Mr. Swayne? Or, as he says, untrue? Is it true that from two separate sources he has heard that the real reason for his removal from Nyanza was because of allegations of disloyalty by the senior officers at Police Headquarters? Or not true? Are you going to leave it in the air? Or are you going to have an inquiry to find out?

Mr. Speaker, there is, I suggest, around this case, an unpleasant smell, and I only know two ways of dealing with an unpleasant smell—one is, the modern way, of using special medicines to prevent you suffering the smell—I refer to such things as "Air Wick", "Fresaire" things that you spray about or put up

[Mr. Slade] so that you just do not notice the smell is there any more. The other way is to go and look for the source of the smell and remove it. Now, if I was going to advocate the earlier of those two courses, I should have to declare an interest because I am a director of a company that purveys such useful commodities. But it so happens that I do not advocate that course, Sir, because, in the long run, you have to stop deadening your nostrils; you have to face the fact that there is something nasty around the place and you have to go and dig it out and bury it.

What I am asking, in effect, is that Government should make up its mind now, and in the future, to pursue that latter course and not to indulge in anaesthesia of the nose, but, indeed, to seek out the cause of the smell, or make sure, without anaesthesia, that there is in fact no nasty smell, no cause for a nasty smell. (Applause.)

The question was put and negatived.

#### COMMITTEE OF THE WHOLE COUNCIL

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

#### IN THE COMMITTEE

[Mr. Speaker in the Chair]

**THE LAND ACQUISITION (MOMBASA OIL REFINERY) (AMENDMENT) BILL**

Clauses 1 to 3 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE ASIATIC WIDOWS' AND ORPHANS' PENSION (AMENDMENT) BILL**

Clause 1 agreed to.

Clause 2

MR. MACKENZIE: I beg to move the following amendment that clause 2 of the Bill be amended by substituting in the new section 12 of the Ordinance for the words "until he leaves the service" the words "until he leaves the service or until he attains the age of 55 years whichever is the earlier".

The object of this amendment, Sir, is to impose a ceiling age beyond which it will not be necessary for contributors to continue to make payment to this fund,

thus bringing the Ordinance into the same category as all other similar Widows' and Orphans' or Family Pensions Funds.

Question proposed.

The question was put and carried.

Clause 2, as amended, agreed to.

Title and enacting words agreed to.

The Bill, as amended, to be reported.

**THE SPECIAL TAX (TEMPORARY PROVISIONS) (AMENDMENT) BILL**

Clauses 1 to 3 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE AFRICAN CHRISTIAN MARRIAGE AND DIVORCE (AMENDMENT) BILL**

Clauses 1 to 6 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE WORKMEN'S COMPENSATION (AMENDMENT) BILL**

Clause 1 agreed to.

Clause 2

MR. HARRIS: Clause 2, Mr. Chairman, in speaking yesterday, on the Second Reading of this Bill, I did state that I intended to move an amendment to clause 2 (a) to-day to have the effect of deleting from the principal Ordinance the expression "employed otherwise than by way of manual labour". On further consideration, Sir, I feel that there would be no need to move this amendment as I realize we want to get agreement between the three East African territories, but I am wondering whether the Minister would give an undertaking that he would consider the points I made yesterday and, if necessary, consult with the authorities in the other territories to try to get uniformity to meet my point?

THE CHAIRMAN: I am not very clear, Mr. Harris, as to where these words are.

MR. HARRIS: They are in the Main Ordinance.

THE CHAIRMAN: You are really seeking clarification on this Bill of something in the main Ordinance.

MR. HARRIS: Yes. All I want at this stage, Sir, is an undertaking that my point will be considered by the Minister. I am not actually moving an amendment.

THE CHAIRMAN: Well, that is up to the Minister if he wishes to do so.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: I will see that consideration shall be given to the hon. Member's point.

THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES: In clause 2 (b) there is repetition of the word "in" in the last line, and it should be deleted.

Question proposed.

The question was put and carried.

Clause 2, as amended, agreed to.

Clauses 3 and 4 agreed to.

Clause 5

THE MINISTER FOR EDUCATION, LABOUR AND LANDS: Mr. Chairman, in connexion with clause 5, I would like to add a little, by way of explanation, to what I said yesterday in reply to the point raised by the hon. Member for Mount Kenya regarding a workman making wrongful use of his employer's tractor. I said yesterday that, if an employee takes a fancy to his employer's tractor and goes out on a trip with it, the employer may be liable to compensation in respect of any injury he receives while doing it. That statement needs some amplification, Sir, as I should hate a somewhat hurriedly considered pronouncement of mine to bring the agricultural life of the territory to a standstill as a result of a sudden and large-scale misuse of tractors and similar machinery by workmen for sky-jarking. Under section 5 (1) of the Ordinance the employer is liable to pay compensation in respect of an accident arising out of and in the course of the workman's employment. For the purpose of the Ordinance an accident resulting in the death or serious and permanent incapacity of the workman is deemed to arise out of and in the course of his employment, notwithstanding the fact that the workman was at the time when the accident happened acting in contravention of any statutory or other regulation applicable to his employment, or in contravention of any orders given by or on behalf of his employer, or with-out instructions from his employer if— and these are the important words—the act was done by the workman for the purposes of and in connexion with his

employer's trade or business. Now, Sir, as I, a non-legal man, interpret these words, the position is that if a workman, against his employer's orders, took out his employer's tractor and proceeded in an orderly fashion to plough up some land for the purpose of his employer's business and was injured in the process, he would be eligible for compensation. As I have said, Sir, that is my personal reading of the words. If, however, the workman was merely joy-riding or something of the sort, it would not be for the purposes of and in connexion with his employer's trade or business and, therefore, as I see it, no compensation would be payable if he were injured.

The employer has further safeguards under proviso (b) to section 5 (1) where it is laid down that compensation shall be disallowed in respect of any injury if the injury is attributable to the serious and wilful misconduct of the workman; it is, however, provided that where the injury results in death or serious and permanent incapacity, the Court on a consideration of all the circumstances may award compensation.

I would emphasize that, in the ultimate resort, the decision as to whether compensation is or is not payable rests with the court.

Clause 5 agreed to.

Clauses 6 to 25 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE EMERGENCY PENSIONS BILL**

Clauses 1 to 6 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) (NO. 2) BILL**

Clauses 1 and 2 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

**THE CIVIL SERVICE COMMISSION (AMENDMENT) BILL**

Clauses 1 to 7 agreed to.

Title and enacting words agreed to.

Bill to be reported without amendment.

### THE PENSIONS INCREASE (AMENDMENT) BILL

Clauses 1 to 3 agreed to.  
Title and enacting words agreed to.  
Bill to be reported without amendment.

**THE CHIEF SECRETARY:** Mr. Chairman, I beg to move that the Committee do report back to the Council its consideration of the Bills on the Order Paper and its approval of the Asiatic Widows' and Orphans' Pension (Amendment) Bill with one amendment and of the remainder without amendment.

*Question proposed.*

The question was put and carried.

*Council resumed.*

[Mr. Speaker in the Chair]

### REPORT

**MR. SPEAKER:** I have to report that the Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE LAND ACQUISITION (MOMBASA OIL REFINERY) (AMENDMENT) BILL

**THE MINISTER FOR EDUCATION, LABOUR AND LANDS:** Mr. Speaker, Sir, I beg to move that the Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.  
The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Asiatic Widows' and Orphans' Pension (Amendment) Bill has been considered by a Committee of the whole Council and approved with amendment.

### THE ASIATIC WIDOWS' AND ORPHANS' PENSION (AMENDMENT) BILL

**MR. MACKENZIE:** Mr. Speaker, Sir, I beg to move that the Asiatic Widows' and Orphans' Pension (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.  
The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Special Tax (Temporary Provisions) (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE SPECIAL TAX (TEMPORARY PROVISIONS) (AMENDMENT) BILL

**THE MINISTER FOR FINANCE AND DEVELOPMENT:** Mr. Speaker, I beg to move that the Special Tax (Temporary Provisions) (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the African Christian Marriage and Divorce (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE AFRICAN CHRISTIAN MARRIAGE AND DIVORCE (AMENDMENT) BILL

**THE MINISTER FOR LEGAL AFFAIRS:** Mr. Speaker, Sir, I beg to move that the African Christian Marriage and Divorce (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Workmen's Compensation (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE WORKMEN'S COMPENSATION (AMENDMENT) BILL

**THE MINISTER FOR EDUCATION, LABOUR AND LANDS:** Mr. Speaker, Sir, I beg to move that the Workmen's Compensation (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Emergency Pensions Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE EMERGENCY PENSIONS BILL

**THE ASIAN MINISTER WITHOUT PORTFOLIO:** Mr. Speaker, Sir, I beg to move that the Emergency Pensions Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Medical Practitioners and Dentists (Amendment) (No. 2) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) (NO. 2) BILL

**THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND HOUSING:** Mr. Speaker, I beg to move the Medical Practitioners and Dentists (Amendment) (No. 2) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Civil Service Commission (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE CIVIL SERVICE COMMISSION (AMENDMENT) BILL

**THE CHIEF SECRETARY:** Mr. Speaker, I beg to move that the Civil Service Commission (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### REPORT

**MR. SPEAKER:** I have to report that the Pensions Increase (Amendment) Bill has been considered by a Committee of the whole Council and approved without amendment.

### THE PENSIONS INCREASE (AMENDMENT) BILL

**MR. MACKENZIE:** Mr. Speaker, I beg to move that the Pensions Increase (Amendment) Bill be now read a Third Time.

*Question proposed.*

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

### MOTION

SESSIONAL PAPER NO. 7.—EMOLUMENTS OF H.E. THE GOVERNOR AND OF H.H. THE DEPUTY GOVERNOR

(Governor's consent signified)

**THE CHIEF SECRETARY:** Mr. Speaker, Sir, I beg to move:—

BE IT RESOLVED that this Council doth approve the proposals made in Sessional Paper No. 107 of 23rd September, 1955.

It is not usual, Sir, to debate issues of the sort dealt with in the Sessional Paper and I, therefore, do no more than to commend the matter to the attention of the Council.

Sir, I beg to move.

**THE MINISTER FOR FINANCE AND DEVELOPMENT** seconded.

*Question proposed.*

**MR. SLADE:** Mr. Speaker, Sir, the hon. Member said that it is not usual to debate Motions of this kind; but whether that be the position or not, Sir, it seems to me very wrong that a matter of this importance should be left without debate, when it affects not only the status of the Governor of this Colony and his need for proper remuneration and allowances on the one hand, but also on the other hand, expenditure by the public of which we are the custodians. Therefore, Mr. Speaker, with due respect, I do propose to debate this Motion.

What I do agree, Sir, and I am sure every hon. Member would agree, is that in discussing this question, it must be

[Mr. Slade] quite clear that we are discussing the nature of the office as opposed to the merits or demerits of the incumbent of the office. There can be no question on this Motion of having regard to persons.

Sir, I beg to support this Motion; but, in doing so, I think it is necessary that Council should understand the picture a little more fully than appears from this Sessional Paper. This Sessional Paper proposes, in effect, that the salary of His Excellency should go from £5,000 to £6,000 per annum and a duty allowance from £3,500 to £4,500 per annum and that the earlier figures have remained virtually unchanged since 1926. Sir, I think hon. Members opposite will agree that that is not quite a true picture. In fact, it is with figures kindly supplied by them which I wish to elaborate the picture.

To begin with, Sir, there is the additional contribution towards entertainment which is part of the duty allowance which the Sessional Paper itself mentions in paragraph 2, £2,000 per annum. There is also another indirect contribution to the value of the salary itself. That is, that in the course of years, certain offices, for which the Governor used to pay out of his £5,000 per annum are now paid for by other funds. I understand, and correct me if I am wrong, that the value of that relief to His Excellency now amounts to something in the neighbourhood of £2,000. So that since 1926, as I see it, the salary has, in fact, become worth £7,000 a year more than it was before and the amount contributed towards entertainment for the Governor, one way and another, has also been increased by £2,000. Even that is not quite the whole picture. £5,000 per annum, or £6,000 per annum, may not seem a very generous salary, but it is a good deal bigger than when you realize that the Governor in this Colony receives a salary free of income tax and income tax on £5,000 a year would now be £1,662; whereas, of course, in 1926 there was not any income tax and everyone was in the same position. It is true that money was not worth any more to the Governor now for that reason; but when his position is compared with others, it was a consideration. Again, you have to bear in mind, to have the full picture, that the Governor

is allowed relief from all customs duties and hon. Members will appreciate the value of that. So the present proposal is to give the Governor a good deal more by way of salary, by way of indirect benefits, and by way of allowances to cover his undoubtedly heavy expenses than might appear at first sight. In spite of that Sir, but facing that, I support this Motion for these reasons.

Although the Governor's position may be better than appears on paper, it has been so for some time, for the most part. Now, we have recognized in the Libbury Report and in other ways the depreciation value of money through inflation and increased cost of living and the need for increases all round, and it would be quite unjust to say that the Governor does not need a corresponding increase as much as anybody else does. It is rather tempting to suggest that this is a bad and unhappy time to raise this matter and when the Colony is so pressed financially, but, then again, it has been raised by the Libbury Report and accepted as a result of the Libbury Report and perhaps that is a good reason for accepting the matter this time.

Another consideration, which has not been mentioned, is that the Governor does perform quite a lot of incidental services. I do not mean in any derogatory sense, but as the Chairman of the High Commission and other functions for which he is not paid any extra at all.

The third consideration is one which must be a very cogent one, in that I understand there has recently been a considerable increase in the salary of the Governor of Tanganyika up to a basic figure more than our Governor now receives and I believe that similar increases have been made, or will shortly be made, in the salary of the Governor of Uganda. And it is a matter of the dignity of this Colony that we, if nothing else, at least keep pace, if not saying "stand ahead".

There is only one other point, Sir, that I do think we should bring into the open; that is, that many of us have felt disturbed for some time that we should be carrying in this Colony two Governors. Indeed, many of us advocated the appointment of a Deputy Governor at one time; but that, as many persons

[Mr. Slade] believed, is on the understanding that for the Emergency the Governor needed to be supported either by a Deputy Governor to relieve him of some of the civil work, or a Commander-in-Chief to relieve him of the responsibility for the operational side of the Emergency, and now we have both, a Commander-in-Chief and a Deputy Governor. It did occur to me, when I first read this Motion, that one might suggest the time to consider the increase of the Governor's salary was at that time when we found that we no longer needed a Deputy Governor.

Again, Sir, I think it is very clear that in this no personalities whatsoever are involved. On the contrary I would express my personal respect for the Deputy Governor. But that struck me, and it must have struck many people in this country. But I have heard the answer from the hon. Minister for Finance and I would like to state in this Council that the matter has been considered and is answered, that is, that the whole salary of the Deputy Governor, as I understand, is carried out of the Emergency Vote, which we know is not contributed in the funds of this Colony. It is an Emergency appointment paid for out of the Emergency funds and, therefore, is quite separate from the basic question of the Governor's salary.

As regards the actual figures for the increase of the Deputy Governor's salary, I do not think any of us can quarrel on this, Sir.

For these reasons, I beg to support the Motion. (Applause.)

THE SPEAKER: If no other hon. Member wishes to speak, I will call on the hon. Mover to reply.

THE CHIEF SECRETARY: I am relieved that the hon. Member for Aberdare's regard for dignity and for a proper show of ceremonial has conquered his natural asceticism. I agree with him entirely. I strongly support the principle which he set out about the consideration of matters of this sort by this Council, and

I would not wish it to be thought that I had any other intention when I introduced this Motion.

I confirm, Sir, that the emoluments of the Deputy Governor are met entirely from the Emergency Fund and that the arrangements made in this Colony with regard to the Governor's salary and income tax are the same as those in the other East African territories.

Sir, I beg to move. (Applause.)

The question was put and carried.

#### ADJOURNMENT

THE SPEAKER: Hon. Members, that concludes the business of this Session. Now I will ask the Clerk to read the Proclamation.

#### PROCLAMATION

##### PROROGATION OF LEGISLATIVE COUNCIL

By His Excellency the Honourable Sir Evelyn Baring, Knight Grand Cross of the Most Distinguished Order of Saint Michael and Saint George, Knight Commander of the Royal Victorian Order, Governor and Commander-in-Chief of the Colony and Protectorate of Kenya.

IN EXERCISE of the powers conferred upon me by Clause XXX of the Instructions passed under the Royal Sign Manual and Signet and dated the 29th day of March, 1934, I do hereby proclaim that the Legislative Council of the Colony shall be prorogued with effect from the 6th day of October, 1955.

GIVEN under my hand and the Public Seal of the Colony at Nairobi this 6th day of October, 1955.

#### GOD SAVE THE QUEEN

THE SPEAKER: Members, Council accordingly stands prorogued. As hon. Members are aware, the opening of the new session, the official opening by His Excellency the Governor, takes place on the 18th next.

Council rose at thirty-one minutes past five o'clock.

# Index to the Legislative Council Debates

## OFFICIAL REPORT

10th Council—Fourth Session—Fourth Sitting

VOLUME LXVI

4th October, 1955, to 6th October, 1955

### Explanation of Abbreviations

Notice of Motion=NoM; Bills: Read First, Second or Third Time=1R, 2R, 3R; In Committee=1C; Referred to Select Committee=SC; Select Committee Report=SCR; Recommitted to Council=Re.Cl.; Withdrawn=Wdn.

Ads; Mr. J. J.—

See Minister for Education, Labour and Lands

Adjournment—

Daily, 10, 59  
(Prorogation—see Proclamation)

Administration of Oath—

2

Asian Minister without Portfolio—

(Mr. A. D. Patel, C.M.G.)  
Emergency Pensions Bill, 10, 35-7, 105

Bills—

African Christian Marriage and Divorce (Amendment), 1R, 10, 2R, 23, 1C, 100, 3R, 104

Asiatic Widows' and Orphans' Pension (Amendment), 1R, 10, 2R, 16, 1C, 99, 3R, 103

Civil Service Commission (Amendment), 1R, 10, 2R, 3R, 1C, 102, 3R, 105

Emergency Pensions, 1R, 10, 2R, 35, 1C, 102, 3R, 105

Land Acquisition (Mombasa Oil Refinery) (Amendment), 1R, 9, 3R, 13, 1C, 99, 3R, 103

Medical Practitioners and Dentists (Amendment) (No. 2), 1R, 10, 2R, 37, 1C, 102, 3R, 105

Pensions Increase (Amendment), 1R, 10, 2R, 39, 1C, 103, 3R, 106

Special Tax (Temporary Provisions) (Amendment), 1R, 10, 2R, 20, 1C, 100, 3R, 104

Workmen's Compensation (Amendment), 1R, 10, 2R, 24, 1C, 100, 3R, 104

Blundell, Mr. M., M.B.E.—

See Minister for Agriculture, Animal Husbandry and Water Resources

Briggs, Group Captain L. R.—

(Member for Mount Kenya)

Delay of payment of Accounts, 66

Workmen's Compensation (Amendment) Bill,

32

Cavendish-Bentlinck, Major F. W.,

C.M.G., M.C.—  
See Speaker, The

Chairman of Committees—

(Mr. Speaker)

Reports, 103, 104, 105, 106

Workmen's Compensation (Amendment) Bill, 100, 101

Chanan Singh, Mr.—

(Central Electoral Agent)

Asiatic Widows' and Orphans' Pension (Amendment) Bill, 18

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 89

Workmen's Compensation (Amendment) Bill, 33

Chief Secretary, The—

(Mr. R. G. Turnbull, C.M.G.)

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 83-7, 95

Civil Service Commission (Amendment) Bill, 10, 3R, 105

Firing of guns at Meru Agricultural Show, 63, 64

Government and Visiting Delegations, 9

Ministers' visits to Great Britain, 9

Papers Laid, 5, 7, 11

Sessional Paper No. 7—Emoluments of H.E. the Governor and of H.H. the Deputy Governor, 7, 52, 106, 109

Transfer of Powers (Chief Secretary) Orders, 7, 50-2

Welcome to New Speaker, 2

Committee of the whole Council—

Bills In Committee—

African Christian Marriage and Divorce (Amendment), 100

Asiatic Widows' and Orphans' Pension (Amendment), 99

Civil Service Commission (Amendment), 102

Emergency Pensions, 102

Land Acquisition (Mombasa Oil Refinery) (Amendment), 99

Medical Practitioners and Dentists (Amendment) (No. 2), 102

Pensions Increase (Amendment), 103

Special Tax (Temporary Provisions) (Amendment), 100

Workmen's Compensation (Amendment), 100

Communication from the Chair—

Cooke, Mr. S. V.—

(Member for Coast)

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 78-83

Central Nyanza Council and graduated tax, 62

Delay of payment of accounts, 67

Firing of guns at Meru Agricultural Show, 63

Ministers' visits to Great Britain, 9

Pensions Increase (Amendment) Bill, 42-8

Reduction of Military Forces and Relaxation of Effort in Troubled Areas, 66

Crosskill, Mr. W. E.—

(Member for Mau)

Delay of payment of accounts, 67

Pensions (Amendment) (No. 2) Regulations, 1955, 54

Cusack, Mr. J. W., O.B.E.—

See Minister for Internal Security and Defence.

Cherie, Lt.-Col. S. G., O.B.E.—

(Member for Nairobi North)

Asiatic Widows' and Orphans' Pension (Amendment) Bill, 18

Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill, 15

Publication of Gill Report, 12, 13

Griffith-Jones, Mr. E. N., Q.C.—

See Minister for Legal Affairs

Harris, Mr. N. F.—

(Member for Nairobi South)

Asiatic Widows' and Orphans' Pension (Amendment) Bill, 17

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 87-9, 92

Crown Estates Development Fund, 58, 59

Firing of guns at Meru Agricultural Show, 64

Lease of Crown plot and building covenant, 11, 12

Publication of Gill Report, 13

Welcome to new Speaker, 3

Workmen's Compensation (Amendment) Bill, 30-2, 100, 101

Havelock, Mr. W. E.—

See Minister for Local Government and Housing

His Excellency the Governor—

(Sir Evelyn Spring, K.C.M.G., K.C.V.O.)

Installation of new Speaker, 1

Installation of New Speaker—

1

Letcher, Mr. R. C. J.—

(Member for Trans Nzoia)

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 89

Mackenzie, Mr. K. W. S.—

(Nominated Member)

Asiatic Widows' and Orphans' Pension (Amendment) Bill, 16, 19, 99, 103

Pensions (Amendment) (No. 2) Regulations, 1955, 8, 52-5

Pensions Increase (Amendment) Bill, 39-42, 48-9, 106

Muthu, Mr. E. W.—

(African Representative Member)

Publication of Gill Report, 13

Reduction of military forces and relaxation of effort in troubled areas, 66

Minister for African Affairs—

(Mr. E. H. Windley, C.M.G.)

Firing of guns at Meru Agricultural Show, 63

Special Tax (Temporary Provisions) (Amendment) Bill, 10, 20, 22

Minister for Agriculture, Animal Husbandry and Water Resources—

(Mr. M. Bulandell, M.B.E.)

Reduction of military forces and relaxation of effort in troubled areas, 64, 65, 66

Minister for Community Development—

(Mr. B. A. Obanga)

Paper Laid, 7

Minister for Education, Labour and Lands—

(Mr. J. J. Adie)

Crown Estates Development Fund, 8, 58-9, 59

Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill, 9, 14, 16, 103

Lease of Crown plot and building covenant, 11, 12

Paper Laid, 6

Workmen's Compensation (Amendment) Bill, 10, 24-9, 33-5, 104

Minister for Finance and Development—

(Mr. E. A. Vasey, C.M.G.)

Asiatic Widows' and Orphans' Pension (Amendment) Bill, 10, 17

Central Nyanza Council and graduated tax, 62, 63

Delay of payment of accounts, 66, 67, 68

Paper Laid, 5

Pensions Increase (Amendment) Bill, 10

Presentation of inkstand from C.P.A., 60



Publication of Gill Report, 12, 13  
Special Tax (Temporary Provisions) (Amendment) Bill, 104

**Minister for Forest Development, Game and Fisheries—**  
(Mr. D. L. Blunt, C.M.G.)  
Paper Laid, 6

**Minister for Internal Security and Defence—**  
(Mr. J. W. Cusack, O.B.E.)  
Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 90-4  
Paper Laid, 6

**Minister for Legal Affairs—**  
(Mr. H. N. Griffith-Jones, Q.C.)  
African Christian Marriage and Divorce (Amendment) Bill, 103, 21-4, 104  
Paper Laid, 5

**Minister for Local Government, Health and Housing—**  
(Mr. W. B. Havelock)  
Medical Practitioners and Dentists (Amendment) (No. 2) Bill, 103, 17, 105

**Minister without Portfolio, Asian—**  
See Asian Minister without Portfolio

**Minister without Portfolio, European—**  
See European Minister without Portfolio

**Minister for Works—**  
(Mr. I. E. Nathoo)  
Paper Laid, 7

#### Motions—

Call for inquiry into reasons why Senior Supt. Swayne was required to retire, (NoM) 7, 46  
Crown Estates Development Fund, (NoM) 8, 55

Pensions (Amendment) (No. 2) Regulations, 1955, (NoM) 8, 52

Sessional Paper No. 107—Emoluments of H.E. the Governor and of H.H. the Deputy Governor, (NoM) 7, 52, 106  
Transfer of Powers (Chief Secretary) Orders, (NoM) 7, 50

**Nathoo, Mr. I. E.—**  
See Minister for Works

**Ohang, Mr. B. A.—**  
See Minister for Community Development

#### Papers Laid—

Colonial Reports, Kenya, 1954, 4  
Report of the East Africa Commissioner, 1954, East Africa Office, London, 5  
East African Posts & Telecommunications Administration Annual Report, 1954, 5  
Transfer of Powers (Chief Secretary) (No. 1) Order, 1955, 5

Transfer of Powers (Chief Secretary) (No. 2) Order, 1955, 5  
East African Railways and Harbours Annual Report, 1954, 5  
East African Terrestrial and Trypanosomiasis Research and Reclamation Organization Annual Report, 1954/55, 5  
Department of Immigration Annual Report, 1954, 5  
Report on the Working of the Civil Service Commission from 1st January to 30th June, 1955, 5  
East African Statistical Department Annual Report, 1954/55, 5  
Annual Trade Report of Kenya, Uganda and Tanganyika, 1954, 5  
Report on the Kenya, Uganda and Tanganyika Savings Banks, 1954, 5  
Sessional Paper No. 107—Emoluments of H.E. the Governor and of H.H. the Deputy Governor, 5  
(BY THE CHIEF SECRETARY)

Report on the Administration of the East African Airways Corporation, 1954, 6  
Industrial Management Corporation (Inc.) Balance Sheet and Accounts, 14th February, 1955, 6  
Mines and Geological Department Annual Report, 1954, 6

Weights and Measures Department Annual Report, 1954, 6  
Report of the Committee to Examine the Need for Primary and Secondary Industries, excluding Agriculture, in the Colony, 7  
(BY THE CHIEF SECRETARY for the Minister for Commerce and Industry)

The Transfer of Powers (Minister for Agriculture, Animal Husbandry and Water Resources) (No. 1) Order, 1955, 11

The Transfer of Powers (Minister for Agriculture, Animal Husbandry and Water Resources) (No. 2) Order, 1955, 11  
(BY THE CHIEF SECRETARY for the Minister for Agriculture, Animal Husbandry and Water Resources)

Annual Report of the Department of Community Development and Rehabilitation, 1954, 7  
(BY THE MINISTER FOR COMMUNITY DEVELOPMENT)

Education Department Annual Report, 1954, 6

Royal Technical College of East Africa Annual Report and Accounts for 1954, 6

Land Acquisition (Mombasa Oil Refinery) Ordinance, 1953 (No. 35 of 1953), Statement in accordance with section 8, 6

Report of the Controller and Auditor-General on Accounts of the Crown Estates Development Fund for period ending 31st December, 1954, 6

Resident Labourers (Appeals) Rules, 1955, 6  
Department of Lands Annual Report, 1954, 6  
Survey of Kenya Administration Report, 1954, 6

(BY THE MINISTER FOR EDUCATION, LABOUR AND LANDS)

A Summary of the Events leading up to the introduction of the Exchequer System in 1955, and an Outline of the General Principles of the Control of Public Expenditure and Revenue in Kenya, 5  
The Land and Agricultural Bank in Kenya Annual Report, 1954, 5  
Sugar Price Equalization Account—Statement of Income and Expenditure for the year ending 31st December, 1954, 5  
The Pensions (Amendment) (No. 2) Regulations, 1955, 5  
Annual Report of the Inland Revenue Department, 1954, 5  
(BY THE MINISTER FOR FINANCE AND DEVELOPMENT)

Review of Kenya Fisheries, 1954, 6  
(BY THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES)

Department of Agriculture, Annual Report, 1953—Part II  
(BY THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES for the Minister for Agriculture, Animal Husbandry and Water Resources)

Prisons (Amendment) Rules, 1955, 6  
Sessional Paper No. 99 of 1955—Report on the Manpower Policy in the Emergency, 6  
Kenya Police Annual Report, 1954, 6  
(BY THE MINISTER FOR INTERNAL SECURITY AND DEFENCE)

Annual Report of the Registrar General's Department, 1954, 5  
Annual Report of the Judicial Department, 1953, 5  
(BY THE MINISTER FOR LEGAL AFFAIRS)

Road Authority Annual Report, 1953/54, 7  
(BY THE MINISTER FOR WORKS)

**Patel, Mr. A. B., C.M.G.—**  
See Asian Minister without Portfolio

**Presentation—**  
Of inkstand from C.P.A., 60

**Proclamation—**  
Prorogation of Legislative Council, 110

#### Questions (Oral Answers)—

- No.  
105 Reduction of military forces and relaxation of effort in troubled areas, 64  
107 Government and visiting delegations, 9  
108 Lessee of Crown plot and building covenant, 11  
110 Publication of Gill Report, 12  
111 Ministers' visits to Great Britain, 9  
112 Central Nyanza Council and graduated tax, 62  
113 Firing of guns at Meru Agricultural Show, 63  
114 Delay of payment of account, 66

#### Reports—

African Christian Marriage and Divorce (Amendment) Bill, 104  
African Widows' and Orphans' (Amendment) Bill, 103  
Civil Service Commission (Amendment) Bill, 105  
Emergency Pensions Bill, 105  
Land Acquisition (Mombasa Oil Refinery) (Amendment) Bill, 103  
Medical Practitioners and Dentists (Amendment) (No. 2) Bill, 105  
Pensions Increase (Amendment) Bill, 106  
Special Tax (Temporary Provisions) (Amendment) Bill, 104  
Workmen's Compensation (Amendment) Bill, 104

**Shaw, Mrs. A. R.—**  
(Member for Nyanza)  
Reduction of military forces and relaxation of effort in troubled areas, 66

**Slade, Mr. H.—**  
(Member for Aberdear)  
Call for inquiry into reasons why Senior Supt. Swayne was required to retire, 7, 65-78, 92, 94, 9

Reduction of military forces and relaxation of effort in troubled areas, 64, 65  
Sessional Paper No. 107—Emoluments of His Excellency the Governor and of His Excellency the Deputy Governor, 106-9

**Speaker, The—**  
(Major E. W. Cavendish-Bentinck, C.M.G., M.C.)

Adjournment, 10, 59  
Communication from the Chair, 3-4  
Installation of, 1  
Members—  
not to impute any form of injustice or questionable ideas or reasons for actual speeches of other Members, 94  
Presentation of inkstand from C.P.A., 61  
Prorogation of Legislature, Council, 110

**Tyson, Mr. G. A., C.M.G.—**  
(Nominated Member)  
Pensions (Amendment) (No. 2) Regulations, 1955, 54

**Turnbull, Mr. R. G., C.M.G.—**  
See Chief Secretary, The

**Usher, Mr. C. G., M.C.—**  
(Member for Mombasa)  
Government and visiting delegations, 9

**Vasey, Mr. E. A., C.M.G.—**  
See Minister for Finance and Development

**Welcome to New Speaker—**  
2

**Wadley, Mr. E. H., C.M.G.—**  
See Minister for African Affairs

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