



COLONY AND PROTECTORATE OF KENYA

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**LEGISLATIVE COUNCIL  
DEBATES**  
OFFICIAL REPORT

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11th COUNCIL INAUGURATED  
OCTOBER, 1956

VOLUME LXXXIV

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**1960**

**FOURTH SESSION**

(Continued)

22nd March, 1960 to 25th March, 1960

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# List of Members of the Legislative Council

## *The Deputy Speaker and Chairman of Committees:*

\*THE HON. D. W. CONROY, C.M.G., O.B.E., T.D., Q.C.

## *Ministers:*

- THE CHIEF SECRETARY (THE HON. W. F. COUTTS, C.M.G., M.B.E.)  
THE MINISTER FOR LEGAL AFFAIRS (THE HON. E. N. GRIFFITH-JONES, C.M.G., Q.C.)  
THE TEMPORARY MINISTER FOR FINANCE AND DEVELOPMENT (THE HON. J. H. BUTTER, M.B.E.)  
THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.)  
THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (THE HON. A. C. C. SWANN, C.M.G., O.B.E.)  
THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (THE HON. W. B. HAVELOCK).  
THE MINISTER FOR EDUCATION (THE HON. W. A. C. MATHIESON, C.M.G., M.B.E.)  
THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. D. L. BLUNT, C.M.G.)  
THE MINISTER FOR COMMERCE AND INDUSTRY (THE HON. A. HOPE-JONES, C.M.G.)  
THE MINISTER FOR WORKS (THE HON. J. E. NATHOO).  
THE EUROPEAN MINISTER WITHOUT PORTFOLIO (THE HON. N. F. HARRIS).  
THE ASIAN MINISTER WITHOUT PORTFOLIO (THE HON. C. B. MADAN, Q.C.)  
THE MINISTER FOR TOURISM AND COMMON SERVICES (THE HON. W. E. CROSSKILL).  
THE MINISTER FOR HOUSING (THE HON. M. S. AMALEMBA).  
THE TEMPORARY MINISTER FOR LABOUR, LANDS AND SURVEY (THE HON. R. E. LUYT, D.C.M.).

## *Assistant Ministers:*

- THE ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. WANYUTU WAWERU, M.B.E.)  
THE ASSISTANT MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. SHEIKH MOHAMED ALI SAID EL-MANDRY).

## *Constituency Elected Members:*

### *European—*

- THE HON. R. S. ALEXANDER (Nairobi West).  
THE HON. F. W. G. BOMPAS, E.D. (Kiambu).  
GROUP CAPT. THE HON. L. R. BRIGOS (Mount Kenya).  
THE HON. S. V. COOKE (Coast).  
†THE HON. W. E. CROSSKILL (Mau).  
MAJOR THE HON. F. W. J. DAY (Aberdare).  
‡THE HON. N. F. HARRIS (Nairobi South).  
AIR COMMODORE THE HON. E. L. HOWARD-WILLIAMS, M.C. (Nairobi North).  
THE HON. SIR CHARLES MARKHAM, Bt. (Ukamba).  
THE HON. J. R. MAXWELL, C.M.G. (Trans Nzola).  
MAJOR THE HON. B. P. ROBERTS (Rift Valley).  
THE HON. MRS. A. R. SHAW (Nyarada).  
THE HON. C. G. USHER, M.C. (Mombasa).  
§THE HON. J. P. BARNARD (Temporary) (Uasin Gishu).

*African—*

THE HON. S. O. AYODO (Nyanza South).  
 THE HON. F. J. KHAMISI (Mombasa Area).  
 THE HON. D. I. KIAMBA (Machakos).  
 THE HON. J. G. KIANO, Ph.D. (Central Province South).  
 THE HON. B. MATE (Central Province North).  
 THE HON. T. J. MBOYA (Nairobi Area).  
 THE HON. D. T. ARAP MOT (North Rift).  
 THE HON. J. N. MUMI (Kitui).  
 THE HON. M. MULIRO (Nyanza North).  
 THE HON. R. G. NGALA (Coast Rural).  
 THE HON. J. J. M. NYAGAH (Nyeri and Embu).  
 THE HON. A. OGINGA ODINGA (Nyanza Central).  
 THE HON. J. K. OLE TIPIS (Central Rift).  
 THE HON. T. TOWETT (Southern Area).

*Asian—*

THE HON. S. G. HASSAN, M.B.E. (East Electoral Area).  
 THE HON. A. B. JAMIDAR (Central Electoral Area).  
 THE HON. J. C. M. NAZARETH, Q.C. (Western Electoral Area).  
 THE HON. A. J. PANDYA (Eastern Electoral Area).  
 THE HON. K. D. TRAVADI (Central Electoral Area).  
 THE HON. ZAFRUD DELEN (West Electoral Area).

*Arab—*

THE HON. SHEIKH MAHFOOD S. MACKAWI.  
 THE HON. SHARIF M. A. SIATRY.

*Specialty Elected Members:*

†THE HON. M. S. AMALEMBIA.  
 THE HON. M. BLUNDELL, M.B.E.  
 †THE HON. SHEIKH MOHAMED ALI SAID EL-MANDRY.  
 †THE HON. W. B. HAVELOCK.  
 †THE HON. C. B. MADAN, Q.C.  
 THE HON. N. S. MANGAT, Q.C.  
 †LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.  
 THE HON. J. M. MUCHURA.  
 †THE HON. I. E. NATHOO.  
 THE HON. N. G. NGOME.  
 THE HON. H. SLADE.  
 †THE HON. WANYUTU WAWERU, M.B.E.

*Nominated Members:*

THE HON. K. V. ADALJA, M.B.E., M.B., B.S.  
 THE HON. K. BECHGAARD, Q.C.  
 †THE HON. D. L. BLUNT, C.M.G.  
 \*THE HON. D. W. CONROY, C.M.G., O.B.E., T.D., Q.C. (Solicitor-General).  
 THE HON. M. H. COWIE, C.B.E., E.D.—(Director of the Royal National Parks).  
 THE HON. AHMED FARAH, B.E.M. (Northern Province).  
 THE HON. MRS. J. T. GECAGA.  
 COMMANDER THE HON. A. B. GOORD, D.S.C., R.I.N. (Rtd.).  
 CAPT. THE HON. C. W. A. G. HAMLEY, O.B.E., R.N.  
 THE HON. H. G. S. HARRISON, M.B.E.  
 THE HON. A. W. HUNTER.  
 THE HON. A. H. ISMAIL, M.R.C.S.  
 COL. THE HON. H. R. JACKMAN.

*Nominated Members—(Contd.)*

THE HON. E. T. JONES.  
 THE HON. J. K. KEBASO.  
 THE HON. J. A. R. KING, A.F.C.  
 THE HON. J. A. LUSENO.  
 THE HON. D. S. MILLER, C.B.E. (Director of Education).  
 THE HON. BALDEV SAHAI MOHINDRA, O.B.E.  
 THE HON. SHEIKH S. M. MUHASAMY, M.B.E.  
 THE HON. W. OLE NTIMAMA.  
 THE HON. ABDUL HUSSEIN NURMOHAMED.  
 THE HON. SIR EBOO PRIDHAI, O.B.E.  
 THE HON. P. J. ROGERS, C.B.E.  
 THE HON. C. W. RUBIA.  
 THE HON. KIRPAL SINGH SAGOO.  
 THE HON. SHERIFF A. SALIM.  
 THE HON. P. H. SMITH.  
 THE HON. R. J. M. SWYNNERTON, O.B.E., M.C. (Director of Agriculture).  
 THE HON. G. A. TYSON, C.M.G.  
 THE HON. R. E. WAINWRIGHT, C.M.G. (Chief Commissioner).  
 THE HON. A. J. WALKER, M.D., M.R.C.P. (Director of Medical Services).  
 THE HON. A. M. F. WEBB.

THE HON. THE EARL OF PORTSMOUTH.  
 THE HON. SIR ALFRED VINCENT.

*Acting Clerk of the Council:*

J. R. NIMMO.

*Clerk Assistant:*

H. THOMAS.

*Serjeant-at-Arms:*

MAJOR M. G. ELIOT.

*Assistant Serjeant-at-Arms:*

J. KIRK

*Reporters:*

D. BUCK.

MISS J. M. ATKINS.

MISS M. P. GUNTER.

*Hansard Editor:*

MRS. J. FRYER.

\* Deputy Speaker and Chairman of Committees.

† Also included in the list of Ministers or list of Assistant Ministers.

‡ In the absence of the Hon. K. W. S. MacKenzie, C.M.G.

§ In the absence of the Hon. Mrs. E. D. Hughes, M.B.E.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

ELEVENTH COUNCIL

FOURTH SESSION—(Continued)

Tuesday, 22nd March, 1960

The House met at fifteen minutes past Two o'clock.

(Mr. Deputy Speaker (Mr. Conroy) in the Chair)

PRAYERS

ADMINISTRATION OF OATH

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

Richard Edmonds Luyt,  
Jacobus Pietrus Barnard,  
Robert Everard Wainwright.

COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

The Deputy Speaker (Mr. Conroy): Hon. Members, I am directed to inform you that His Excellency the Governor has assented to the following Bills which were passed by this Council in December last and January of this year:—

No.	Passed Thrd Reading	Date of Assent
51. The Personal Tax (Amendment) (No. 2) Ordinance, 1959	8-12-59	24-12-59
52. The Traffic (Amendment) Ordinance, 1959	11-12-59	24-12-59
53. The Control of Nets (Nyanza Province) (Amendment) Ordinance, 1959	11-12-59	31-12-59
54. The Passion Fruit (Repeal) Ordinance, 1959	15-12-59	31-12-59
55. The Outlying Districts (Amendment) Ordinance, 1959	17-12-59	31-12-59
56. The Local Government (County—Councils) (Amendment) Ordinance, 1959	22-12-59	31-12-59
57. The Hospital Treatment Relief (Asian and Arab) Ordinance, 1959	22-12-59	31-12-59
1. The Vagrancy Ordinance, 1960	4-1-60	8-1-60
2. The Preservation of Public Security Ordinance, 1960	5-1-60	8-1-60
3. The Detained and Restricted Persons (Special Provisions) Ordinance, 1960	6-1-60	8-1-60

No.	Passed Thrd Reading	Date of Assent
4. The Firearms (Amendment) Ordinance, 1960	7-1-60	8-1-60
5. The Stamp Duty (Amendment) Ordinance, 1960	4-1-60	21-1-60
6. The Excise Tariff (Amendment) Ordinance, 1960	7-1-60	21-1-60
7. The Crop Production and Livestock (Amendment) Ordinance, 1960	7-1-60	21-1-60

I have also to inform hon. Members that Her Majesty the Queen has been pleased to assent to the Crown Lands (Amendment and Miscellaneous Provisions) Ordinance, 1959, passed by this Council on 13th October, 1959.

PAPERS LAID

The following Papers were laid on the Table:—

The East African Council for Medical Research—Annual Report, 1958/59.

Statistical Abstract, 1959.

Report by the Administrator, East Africa High Commission on Civil Aviation—Annual Report—July, 1958/June, 1959.

East African Literature Bureau—Annual Report—1958/59.

The Protected Areas Order, 1960.

The Protected Areas (No. 3) Order, 1959.

The African Courts (Dismissal of Land Suits) (Amendment) Rules, 1960.

(By the Chief Secretary (Mr. Courts))

The 1959/60 Development Supplementary Estimate—No. 1

Appropriation Accounts, Other Public Accounts and the Accounts of the Funds for the year 1958/59 with Appendices.

The Accountant-General (Transfer of Functions) Order, 1960.

(By the Temporary Minister for Finance and Development (Mr. Butler))

- The Kenya European and Asian Agricultural Census, 1958—An Economic Analysis.
- The European Agricultural Settlement Board of Kenya—Report for the period 1st April, 1958, to 31st March, 1959, and Annual Accounts.
- The Transfer of Powers (Animal Husbandry) Draft Order.
- Animal Diseases (Fees and Charges)—Amendment Order.
- The Cereal Producers (Scheduled Areas) Ordinance, 1956—Imposition of Cess, Amendment Order.
- Destruction of Cotton Plants Order (Coast Province).
- The Native Lands (Irrigation Areas) Rules, 1959.
- The Agricultural Produce (Export) (Potato) Rules, 1960.
- The Native Lands (Irrigation Areas) Rules, 1959—Application of Rules to Perkerra Irrigation Area.
- Destruction of Cotton Plants Order (Nyanza Province).
- (By Mr. Havelock, Minister for Local Government, Health and Town Planning, on behalf of the Minister for Agriculture, Animal Husbandry and Water Resources).
- The Naivasha County Council (Provident Fund) Rules, 1959.
- The County Councils (Election) (Amendment) Rules, 1960.
- The Townships (Accounts) (Amendment) Rules, 1960.
- The Malindi Township (Refuse Removal Fees) Rules, 1960.
- The Trading Centres Rules (Application of Rules).
- The Kericho Urban District Council (Capital Fund) Regulations, 1959.
- The Nyanza County Council Rating (Graded Rate) (Amendment) Rules, 1960.
- (By the Minister for Local Government, Health and Town Planning (Mr. Havelock))
- Education Department—Annual Summary, 1959.
- The African Teachers Service (Contributory Pensions—Fund) (Amendments) Regulations, 1960.
- (By the Minister for Education (Mr. Mathieson))
- The Forest Areas (Controlled Entry) (Amendment) Rules, 1960.
- (By the Minister for Forest Development, Game and Fisheries (Mr. Blunt))

The Weights and Measures (Sale by Weight and Measure) (Amendment) (No. 2) Rules, 1959.

The Colonial Air Navigation Order, 1955—Use of Government Aerodrome.

(By the Minister for Commerce and Industry (Mr. Hope-Jones))

The Annual Report of the Ministry of Housing, 1959.

(By the Minister for Housing (Mr. Amalemba))

#### NOTICES OF MOTIONS

1959/60 DEVELOPMENT SUPPLEMENTARY ESTIMATE (No. 1)

**The Temporary Minister for Finance and Development (Mr. Butter):** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:—

THAT a sum not exceeding £951,486 be granted to the Governor on account for, or towards, defraying the charges of Development Supplementary Estimate No. 1 of 1959/60.

EAST AFRICA BAG AND CORDAGE COMPANY LIMITED

**Mr. Swynnerton (Director of Agriculture):** Mr. Deputy Speaker, on behalf of the Minister for Agriculture, I beg to give notice of the following Motion:—

THAT this Council approves that the arrangements with respect to the East Africa Bag and Cordage Company Limited set forth in Sessional Paper No. 91 of 1956/57, be continued for a further period to 31st March, 1961.

THAT this Council also notes that the bank account of the Jute Control may be in overdraft up to the sum of Sh. 3,500,000 from time to time.

TRANSFER OF POWERS (ANIMAL HUSBANDRY) DRAFT ORDER

**Mr. Swynnerton:** Mr. Deputy Speaker, on behalf of the Minister for Agriculture, I beg to give notice of the following Motion:—

THAT this Council approves the Draft Transfer of Powers (Animal Husbandry) Order, 1960.

FAILURE OF LANCASTER HOUSE CONFERENCE

**Air Commodore Howard-Williams (Nairobi North):** Mr. Deputy Speaker, Sir, I beg to give notice of the following Motion:—

THAT this House notes the abject failure of the Lancaster House Conference to reach any agreement whatsoever, and reaffirms its acceptance of the Lennox-Boyd Plan for the next

[**Air Commodore Howard-Williams**]  
eight years, saving that there should be an electoral college with wider interests, professional and official, commercial and industrial, to select the 12 Specially Elected Members.

#### SOLVING OF CONSTITUTIONAL PROBLEMS

**Air Commodore Howard-Williams:** Sir, I beg to give notice of my second Motion:—

THAT this House confirms the views expressed by several former Governors of Kenya that the Constitutional problem will be best solved by way of giving the tribes an ever-increasing measure of self-governance through their Chiefs and Headmen, with a benign non-racial Government at the head, representative of and appointed by the tribes and the major-economic interests.

#### ORAL ANSWERS TO QUESTIONS

##### QUESTION No. 35

**Mr. Mulimi (Kitui)** asked the Minister for Agriculture, Animal Husbandry and Water Resources:—

(a) What steps, if any, is Government taking to improve the Eastern Crown Lands of Kitui District to provide for economic grazing facilities for the Kitui Akamba living near these areas?

(b) What is Government policy regarding the future use of these Crown Lands?

**Mr. Swynnerton:** (a) An investigation of the area was carried out by ALDEV some years ago when it was decided that its improvement by the development of water supplies would be more expensive than could be justified at the time and must be deferred until such time as more urgent agricultural development in the Kitui District has been completed.

(b) These are Crown Lands for the time being used by the Kitui Akamba for seasonal grazing, pending a decision as to the permanent use of the land in the future.

**Mr. Mulimi:** Mr. Deputy Speaker, Sir, arising out of that reply, can the Minister state how soon this will be carried out?

**Mr. Swynnerton:** No, Sir, I am afraid that no date can be given.

##### QUESTION No. 49

**Air Commodore Howard-Williams** asked the Minister for Internal Security and Defence:—

(a) Does Government consider that Prison Staff should carry firearms in the use of which some are far from proficient?

(b) How often have firearms been used by the Prison Staff in the years 1958 and 1959 to date?

**The Minister for Internal Security and Defence (Mr. Swann):** (a) Yes. Circumstances sometimes require that members of the Kenya Prisons Service should carry firearms. For this reason, all ranks of the Service are properly trained in their use.

(b) Firearms were used on four occasions in 1958, and on nine occasions in 1959.

##### QUESTION No. 68

**Major Roberts (Rift Valley)** asked the Minister for Forest Development, Game and Fisheries will the Minister state when it will be possible to declare the major portion of Lake Nakuru a National Park?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** In 1952 the Government granted a licence to an industrial organization to extract soda from Lake Nakuru. Negotiations with this organization are still being continued by the Land Office. I hope that a resolution declaring the larger part of the Lake to be a National Park can be brought before this Council before the end of the year.

**Major Roberts:** Mr. Deputy Speaker, arising out of that reply, would the Minister say that he realizes the urgency of this problem, and is he able to give us some definite date as to when Lake Nakuru will be declared a National Park?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** Mr. Deputy Speaker, I fully realize the urgency of the problem but before this can be declared a National Park there are many matters to be cleared up, of which the question of the licence to extract soda is only one.

**Major Roberts:** Arising out of that reply, would the Minister tell us of the other difficulties in this respect?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** Yes, Sir. There is the question to be decided of the safety zone for the military firing range which covers part of the area under consideration. There is the question of the road of access. There is the question of determining what riparian rights, if any, in this area the riparian owners have; and there is also a question of a 200 ft. reserve of the various farms; and I would like to hand over this area free of these encumbrances.

##### QUESTION No. 70

**Air Commodore Howard-Williams** asked the Minister for Local Government, Health and

**[Air Commodore Howard-Williams]**

Town Planning does the Government accept that the blood of different races shall be merged by transfusion in hospital without the consent of the donor, despite questions in all races of pride in racial purity, and despite that Dr. Schudder, a professor of surgery and director of a blood bank declares, viz. that when transfusions are given it is safer not to mix blood?

The Minister for Local Government, Health and Town Planning (Mr. Havelock): The Government does not propose to interfere in a matter which is purely the concern of the blood donor, the doctor in charge of the case and the recipient.

## QUESTION NO. 38

**Sheikh Mackawi** (Arab Elected) (on behalf of Sharif Shatry) asked the Minister for Agriculture, Animal Husbandry and Water Resources:—

- Is the Government aware of the serious concern among traders because of the monopoly in the export of livestock to Dubai by the Kenya Meat Commission?
- Is it in the public interest and of sound economic policy to export livestock to one sole trader in Dubai?
- Why should individual traders interested in the livestock trade be restricted from exporting livestock to any part of the sterling area?

**Mr. Swynnerton:** (a) No, Sir.

(b) In the light of the advice at present available to the Government regarding demand and trading conditions at Dubai, the answer is "Yes".

(c) There are no restrictions on the export of stock by show from the Port of Lamu to Zanzibar and Tanganyika; but with that exception, the unrestricted export of livestock by individual traders would undermine the operations of the Kenya Meat Commission which it is in the common interest to support.

## MINISTERIAL STATEMENT

## APPOINTMENT OF SELECT COMMITTEES

**The Chief Secretary** (Mr. Coutts): With your permission, Sir, I would like to inform the House that at a meeting of the Sessional Committee held on 1st March, the following Members were appointed to the Public Accounts Committee:—

*Public Accounts Committee*

- Hon. R. S. Alexander (Chairman).  
Hon. Sir Charles Markham (Bt).  
Hon. C. G. Usher, M.C.

Hon. S. G. Hassan, MBE.

Hon. A. J. Pandya.

Hon. B. Mate.

Hon. Oginga Odinga.

Captain the Hon. C. W. A. G. Hamley, O.B.E., R.N.

Hon. J. H. Butter, M.B.E.

At the same meeting of the Sessional Committee, the following Members were appointed to the Estimates Committee:—

*Estimates Committee*

The European Minister without Portfolio (Mr Harris) (Chairman).

Hon. R. S. Alexander.

Captain the Hon. C. W. A. G. Hamley, O.B.E., R.N.

Hon. S. G. Hassan, M.B.E.

Hon. Mrs. E. D. Hughes, M.B.E.

Hon. C. B. Madan, Q.C.

Hon. Sheikh Mohamed Ali Said El-Mandry.

Hon. J. M. Muchura.

Hon. J. M. Muimi.

Hon. C. W. Rubia.

Hon. S. O. Ayodo.

Hon. Sir Eboob Piribhai, O.B.E.

Hon. K. D. Travadi.

Hon. G. A. Tyson, C.M.G.

## RESIGNATION OF THE SPEAKER

**The Chief Secretary** (Mr. Coutts): Sir, Mr. Deputy Speaker, with your permission I would like to take this opportunity to say a few words about your immediate predecessor, Sir Ferdinand Cavendish-Bentinck, as I feel it would be ungracious of this House not to acknowledge what he has done in this House as well as in the country.

"C-B" as he is better known to most people, was really the father of this House. He came to East Africa in 1925, where his first duty was to become private secretary to the Governor. He became an Elected Member on the 3rd April, 1934, and became Member for Agriculture in 1945. Much of his most constructive work was done between 1945 until he was appointed Speaker of this House in 1955. The Agricultural Bill of 1955 stands as a monument to his work and he was very largely responsible for much of the economic structure of our sound farming industry as we have it today.

But, Sir, I feel that in this House we should pay tribute to him for his outstanding record here with us. In this connexion I would mention his

## MOTION

## ASIAN AND ARAB HOSPITAL FUND OVERDRAFT

**The Minister for Local Government, Health and Town Planning** (Mr. Havelock): Mr. Deputy Speaker, I beg to move that this Council notes that Government has guaranteed an overdraft to the Asian and Arab Hospital Fund Authority of an amount not exceeding £50,000 for a period not exceeding 12 months commencing 1st January, 1960, for the purpose of providing the Authority with sufficient working capital until such time as its revenue offsets its expenditure.

Sir, I do not intend to keep the House on this Motion. It is merely a result of previous debates. I think quite a number of Motions have been debated in this House on this matter and, as set out in the Motion itself, it is merely the Government's wish to guarantee this sum of money to allow the Hospital Fund Authority to start to operate. We do not think that a guarantee will be required for more than three or four months in that income is already coming in and the estimates, although rough, show that we hope by the end of the year the Fund will be in a fairly healthy state, certainly not in debit. Sir, it is quite a small amount of money compared with the total turnover of the Fund, but it is necessary in order to start things off because before revenues come in certain payments will have to be made and I therefore beg to move.

**The Minister of Works** (Mr. Nathoo) seconded.

*Question proposed.*

The question was put and carried.

## MOTION

## PURCHASE OF PARKLANDS NURSING HOME

**The Minister for Local Government, Health and Town Planning** (Mr. Havelock): Mr. Deputy Speaker, I beg to move that this Council notes that the sum of £100,000 on a £ for £ basis which was approved by the Council in 1953 has been made available to the Social Service League for the purchase of the Parklands Nursing Home by the provision of £40,000 from the Recurrent Budget in 1959/60, the balance to be available in later years from the Development Budget, when required, for the future extension of the Hospital Scheme in accordance with plans approved by the Government.

Mr. Deputy Speaker, this particular project has had rather a long history; there was a sum of £100,000 in the Recurrent Budget in the Colony's Estimates for the years 1953, 1954 and 1955, hoping that the Social Service League would start to build their hospital and that this money would

**[The Chief Secretary]**

dealings with all Members. He was always glad to give assistance to anyone who was in trouble or went to him in whatever difficulty he might be faced. In that respect, indeed, he was a father of this House and a father to the Members.

However, I think his greatest achievement was his insistence on parliamentary practice. As we all know here, he insisted on us copying—I think quite rightly—the practice of the Mother of Parliaments in Westminster, and we betide those people who, for any reason at all, slovenly or otherwise, departed from that practice, for he would quite indiscriminately jump very heavily upon them. And he did this, Sir, if I may say so, with great dignity.

For these reasons, Sir, and because he has been our mentor and our friend, and also shown us the right path in this House, we must regret his departure. Therefore, on behalf of all Members of this House I would like to wish him and Lady Cavendish-Bentinck the best possible luck in the future and in the course which he has chosen.

## BALLOT FOR PRIVATE MEMBERS' MOTIONS

**Mr. Deputy Speaker** (Mr. Conroy): Before we proceed with the business on the Order Paper, it is now time to draw the ballot which is referred to in the notice appended to the Order Paper. Hon. Members will see there, four hon. Members have tickets in this ballot. They are Sir Charles Markham, No. 1; Mr. Slade, No. 2; Mr. Mate, No. 3; and Mr. Towett, No. 4. I will now ask the Clerk to draw the ballot in accordance with the notice.

No. 4, Mr. Towett; No. 2, Mr. Slade—in Mr. Slade's name there are two Motions and it is for Mr. Slade to say which of his two Motions he wishes to put down; No. 1, Sir Charles Markham.

**The Chief Secretary** (Mr. Coutts): On a point of information, Sir, you have announced No. 4 as Mr. Towett, whereas No. 4 on the Order Paper is Mr. Mate.

**Mr. Deputy Speaker** (Mr. Conroy): On the Order Paper Mr. Slade is shown to have Nos. 2 and 3 with Motions in his name. We cannot allow him to have two chances, so numbering for the Ballot has been as follows: No. 1, Sir Charles Markham; No. 2, Mr. Slade; No. 3, Mr. Mate; and No. 4, Mr. Towett.

The result of the Ballot draw is as follows:—

*First:* Mr. Towett.

*Second:* Mr. Slade.

*Third:* Sir Charles Markham.

**[The Minister for Local Government, Health and Town Planning]**

provide the £ for £ grant for that capital expenditure. As it happened, because of a number of difficulties, the Social Service League was not able at that time to proceed with their scheme and so in 1955/56 because this Budget merely reflected a £1 vote, even so, unfortunately, nothing could happen then, and in 1956/57 £60,000 was allocated because we thought things were moving, but again the thing fell through and in 1957/58 the sum was omitted from the Recurrent Estimates. However, on this side of the House anyway, we persevere, whatever obstacles are put in our way we always achieve what we set out to do in the end, however many years it may take to do so, and the same, of course, applies to that most tenacious community which the Social Service League represents, they will not give up but go on trying. And the result of their going on trying is that a practical and desirable scheme has at last been agreed and now, Sir, we want the money to pay the Social Service League towards the purchase of a nursing home which, to some hon. Members, may seem rather peculiar, rather than their building a new hospital, but, in fact, the nursing home was a private concern and was a very expensive one, making money, the Social Service League is indeed a charitable organization with its main objective of helping the poor of all communities. Especially the Asian community, and having taken over this nursing home, they are running it as a hospital and, indeed, are providing a very necessary and desirable service to the members of that community.

The Government therefore believes that it is a very good project and the plans for the future are that what is now a hospital will be extended and further wings built. So, for the moment, Sir, we require £40,000 to help the Social Service League to purchase and to improve this particular nursing home and we will keep in reserve the £60,000 for another £ for £ grant towards an extension of what is now the Social Service League Hospital.

One other point I would like to point out for the notice of hon. Members is that the £40,000 is included in the Colony's Estimates—the current estimates—as was the original £100,000, but we think it better, more tidy and a better accounting method, if the further money which may be required for extension is included in the Development Estimates rather than the recurrent Colony Estimates. That, Sir, is the reason for this Motion before the House today and I beg to move.

**The Minister for Works (Mr. Nathoo)** seconded. *Question proposed.*  
The question was put and carried.

**BILLS****FIRST READINGS***The Native Liquor (Amendment) Bill*

Order for the First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

*The Widows' and Orphans' Pension (Amendment) Bill*

Order for the First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

*The Credit to Africans (Control) (Amendment) Bill*

Order for the First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

*The Corneal Grafting Bill*

Order for the First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

**BILL****SECOND READING***The Hindu Marriage and Divorce Bill*

Order for Second Reading read.

**The Asian Minister without Portfolio (Mr. Madan):** Mr. Deputy Speaker, Sir, I beg to move that the Hindu Marriage and Divorce Bill be now read a Second Time.

Sir, the provisions of this Bill are of great concern and importance to the Indian community—the Hindu community—at whose request it is being introduced. At present the law relating to Hindu marriages and divorce is contained in Cap. 149 of the Laws of Kenya which was enacted in the year 1946. Since then about fourteen years have elapsed and with the passage of time ideas in regard to the social status of Hindus, in particular the status of women, have changed considerably. There has been a progressive acquisition of a better status by women in the Hindu society which is not so orthodox in its conception of the value of the wife as in the past. It has undergone what might be described as a revolutionary change in that the Hindu society has largely ceased to look upon women, in particular wives, as mere chattels. This magnificent change is not due to the influence of the atomic age in which we are living, even though—as some husbands know only too well—some wives can be atomic, others even explosive! Women possess a natural knack of making themselves the master.

**[The Asian Minister without Portfolio]**

Sir, as a result of this change in the concept of human values in the Hindu society, it is felt that the existing law which is perhaps a little sketchy in addition to having outlived its usefulness is neither satisfactory nor adequate to deal with the problems which arise, some of them inevitably perhaps, during the course of marital life. Here I would like to please the ladies by saying that perhaps such problems arise more often as a result of the shortcomings on the part of husbands.

Mr. Deputy Speaker, if I may say so, marriage is a specialized subject which is outside the reach of ordinary scientists. It is an institution which produces a profound sense and a state of stability in human society which is the mainstay of cultured conduct as important, in my opinion, as religion or the imparting of education. Marriage is irresistibly attractive to both men and women. Marriage provides a forum for inseparable conflicts which usually end in harmony. May I also say, Sir, that the provisions of this Bill deal with this specialized subject which apart from husbands and wives is understood generally by lawyers only. I do not therefore, Sir, propose to deal with the various clauses in the Bill in detail because apart from being self-explanatory they are made further clear in the Memorandum of Objects and Reasons. I propose to deal with the Bill in the parts in which it is divided collectively.

Mr. Deputy Speaker, Part I of the Bill deals with the definitions of the various clauses and Part II refers to the method of achieving a solemn and valid marriage. I say, achieving it, because marriage is a triumph for both the bride and bridegroom. This Part, Sir, also deals with the degrees of prohibited consanguinity and the offences which may be committed if the stated requirements for the solemnization of the marriage are not complied with.

Part II of the Bill states the grounds of petition for divorce and the grounds on which a decree of nullity may be obtained and matters related to judicial separation. Part IV seeks to repeal certain sections of Cap. 149 which I have already referred to which will no longer be necessary if this Bill is approved by the House.

May I, Sir, Mr. Deputy Speaker, now mention some of the amendments which I will seek to introduce at the Committee stage. The first of these is related to clause 2 of the Bill and at the Committee stage I would seek to move that paragraph (c) of subsection 1 of clause 2 the words "the Special Marriage Act, 1954 (India)" and the expression "No. 43 of 1954" be inserted in this paragraph and in the margin respectively. It is felt that unless this is done there may be some doubt as to the validity of such marriages

being recognized in Kenya. I am informed that several such marriages have taken place and marriages still continue to take place under the Special Marriage Act of 1954.

The next amendment, Sir, would seek to delete the words "of the brother or" and "of the sister or" which appear in paragraphs (c) and (d) respectively of subsection 2 of clause 3 of the Bill. This subsection 2 lays down the degrees of prohibited consanguinity and it is felt that these two provisions are not only not justified but that they will be contrary to the state of affairs as prevailing in the Hindu society. Such marriages do take place and it is proposed not to exclude them.

The last two amendments which I will seek to introduce are to add two additional grounds of petition for divorce in clause 10 of the Bill. These are the grounds of desertion and cruelty. These two grounds for petition for divorce are also found in the English as well as in the Indian law. Perhaps desertion and cruelty provide the basis for a larger number of the petitions for divorce.

At this stage, Mr. Deputy Speaker, may I take this opportunity to record my appreciation of the work done by Mr. Chanan Singh who hon. Members will remember was a Member of this hon. House at one time, in the drafting of this particular Bill. I should also like to pay tribute to the Indian Elected Members, the hon. Specially Elected Member, Mr. Mangat, and the Indian Nominated Members who sit on the Government Benches who have helped me to try and make this piece of legislation as good as we could in the interests of the Indian community. I am, Sir, therefore emboldened to say that the Government of Kenya with the approval and concurrence of the Indian Elected Members, Mr. Mangat, and the Indian Nominated Members offer this piece of legislation for approval by this House as a measure of social reform which is of valuable significance to the Indian community.

Sir, I beg to move.

Mr. Webb seconded.

*Question proposed.*

**Mr. Travadi (Central Electoral Area):** Mr. Deputy Speaker, Sir, I would like to speak a few words in support of the Bill moved by the Minister without Portfolio for Asians, Sir, I am not commenting or criticizing the Draft or anything of this sort which is really based more or less on the Indian Hindu Marriage Act of 1955 which has incorporated the 1954 Special Marriage Act, but I would like to congratulate the Government and the Minister himself for so swiftly bringing this Bill to this House, and putting aside all the doubts and legalities that have been cropping up every now and then. I too had a hand in the drafting of this Bill which has been brought

[Mr. Travadi]

to this House, and a couple of points which have been raised by me have already been embodied—or are being embodied—at the Committee stage. But still, there is one point which my attention has been drawn to, and it is clause 6 (3) (e), which is about the penalties.

The Indian Act only imposes a penalty of Rs. 25 only, and here it is a term of imprisonment not exceeding six months and a fine of not more than Sh. 6,000; and this is too much, and I would draw the attention of the Minister to giving a little consideration to reducing the heavy penalties, which are out of proportion to the crime alleged to be punished.

Another thing to which my attention has been drawn is clause 11 (1) (b) (iii), where it is said "that the consent of either party to the marriage or of the guardian in marriage was obtained by force or fraud". Up to "fraud" it is quite all right, but thereafter, "in any case in which the marriage might be annulled on this ground by the law of England", is a matter for consideration by the Minister. Now this Hindu Marriage Ordinance legislation is a legislation personal to Hindus and we are now to be tied here to England for this annulment or making the contract void. I would draw the attention of the House that there is nothing like this in the Hindu Marriage Act of 1955; but it has been taken, as I see it, from the Matrimonial Causes Ordinance, Chapter 145, section 13 (1) (e). Now, I do not see the necessity at all, and if the Minister finds that something like that should be incorporated in this Bill I would like to suggest that why should it not be something like "by the law of Kenya", or if not that, "by the law of India", but why does the law of England govern here? In this connexion I would say that according to the commentaries on the Hindu Marriage Act, "force, fraud and consent" have been discussed, on this very particular clause, like this: "force" or "fraud" is not defined in this Act. Force means compulsion or threat. Force may be physical or moral marriage of a man or a woman against his or her will and accompanied by force may amount to an offence under the Indian Penal Code, section 366. Now, in the Special Marriage Act of 1954, instead of "force" the word "coercion" is used as a ground which makes the marriage voidable under that Act. Force is defined in section 17 of the Contract of 1872 and which Act actually applies here, and its provisions are worth consideration by the Minister.

Without going much into the definition I would say that "the question of consent is one of fact and cannot be treated as a question of law. But the question of whether the certain facts found

amount to consent in law, will nevertheless be one of law. Therefore, the proper course to adopt is to frame an issue on the point and give to the parties an opportunity to lead evidence". But with the definition given in the Contract Act—as it applies in this Colony—I do not see any necessity again to relate this matter to any decision or case law decided in England, and I therefore request the Minister to go into this last question and see if something can be done either by putting words like the law of India, or as we have a law here—or even if he will make the Matrimonial Causes legislation, which applies to Europeans—applicable in this matter. It can be done in this way without going to the United Kingdom because more or less all the necessary provisions of annulling or making marriages void have been embodied in the local legislation applying to the Christians and the Hindus as well, and I would plead that something is done.

Mr. Deputy Speaker, with those few remarks I beg to support.

Mr. Kirpal Singh Sagoo (Nominated Member): Mr. Deputy Speaker, Sir, during the drafting stages of this Bill a number of suggestions were submitted to the Asian Minister without Portfolio in order to meet the special requirements of my community.

Sir, I would like to place on record my grateful thanks to the Minister for having incorporated them in this Bill.

I am also glad to note, Sir, that the hon. Mover has thought fit to amend clause 10 of the Bill by including "cruelty" amongst the various other grounds of divorce. I have an extreme case in mind where a Kenya-born youth—K.As.P.E. failed—goes abroad and gets married to a nuclear scientist. Whilst the wife is preoccupied with researches into outer space the down-to-earth husband believes in sticking to the inner space. Does that constitute "cruelty", mental or otherwise?

I have nothing further to add, Sir, and I beg to support.

Mr. Pandya (Eastern Electoral Area): Mr. Deputy Speaker, I welcome the provisions of this Bill and, unlike the Member for the Central Area, I think the Bill was long overdue as it is almost five years since similar legislation was introduced in India. I would like to associate myself with the other two Members who have spoken and thank the Minister for the discussions he has had with us, and, indeed, for incorporating many of our recommendations. It is a pity, Sir, that originally the Hindu religious bodies in Mombasa were not consulted. However, I had an opportunity to do so, and I am satisfied that they are in support of the main provisions of this Bill.

[Mr. Pandya]

There are one or two sections, Sir, to which I would like to refer. One is with regard to the definition of marriage in clause 2. I would like to ask the Minister whether he is satisfied that the definition meets the case of those marriages which were celebrated in countries other than Kenya, and which are valid in accordance with the law of the country in which they were celebrated, because I understand that there have been some judicial decisions which have been in conflict on this matter, and I would like some clarification on this point.

The other matter, Sir, is with regard to section 6 of this Bill (which confers powers on the Minister to make rules in respect of Hindu marriages; for example, registration. I feel, Sir, that the Minister should also be empowered to make rules for the registration of priests who officiate at these marriages and for penalties to be imposed on a priest who is not registered, of course, without in any way affecting or impairing the validity of such marriages.

With those very few remarks, Mr. Deputy Speaker, Sir, I support the principles of this Bill.

The Asian Minister without Portfolio (Mr. Madan): Mr. Deputy Speaker, I am grateful to the hon. Members who have spoken to this Bill.

If I may I would like to deal first with the last two speakers first. I will leave Mr. Sagoo where he was caught between the inner space and the outer space. As far as the hon. Member for the Eastern Area is concerned, he has said that people in Mombasa were not consulted when this Bill was being drafted. My information is to the contrary. Not only that, he will remember the Indian Association of Mombasa made representations to the Government which were fully considered in addition to my discussing those representations with the hon. Member himself. The hon. Member will also remember that he fully concurred in the decisions which we arrived at on the representations made by the Mombasa Indian Association.

He has, Sir, raised a point in regard to the definition of marriage, which appears in clause 2 of the Bill. I think it is necessary to remind hon. Members that there are two stages to marriage as far as definition is concerned. Hon. Members will note, Sir, that the definition provides that a marriage between Hindus solemnized after the commencement of this Ordinance—that will be the stage that will come into operation, or come into being after this Bill has been approved, and the stage that exists now—that is before the commencement of this Ordinance, which will be found in clause 2 (1) (b) of the Bill—"A marriage

which immediately before the commencement of this Ordinance was deemed under section 3 of the Hindu Marriage, Divorce and Succession Ordinance to be a valid marriage, or which would have been so deemed had it been solemnized in the Colony. I hope the hon. Member will agree that that is a certain guarantee to allay his anxiety that marriages which have taken place before the commencement of this Ordinance, and which were recognized as being valid or deemed as being valid will be considered as valid marriages. I would draw his attention to section 3 of Cap. 149, which is the Hindu Marriage, Divorce and Succession Ordinance, and he will find there that if a marriage is contracted in a manner customary in the Colony among persons professing the religion of the parties to the marriage, such marriage shall be deemed for all purposes to be a valid marriage. I think I can safely say, Sir, that he need not worry himself on the definition of the expression "marriage". I think it includes marriages which have taken place hitherto or, if I may say so, before the commencement of this Ordinance, provided they were valid marriages under section 3 of Cap. 149.

The next point the hon. Member made was, Sir, in regard to the registration of priests in clause 6 of the Bill. This was one of the representations made by the Association in Mombasa, and after discussion with the hon. Member himself and the other Elected Members and also the Nominated Members, and after the most careful consideration of the matter, I think we agreed not to include a provision on these lines in the Bill, because, Sir, it would not be desirable to have people who can perform marriages to be registered. I thought then it was a right decision, and I still think it was a right decision that we should not provide for the registration of priests.

Now, Sir, if I may deal with the hon. Member for the Central Area, Mr. Travadi, his first point was that the penalty under clause 6 (3) of the Bill, which would enable regulations to be made to provide for the imposition of penalties of imprisonment for a term not exceeding six months or a fine of not more than six thousand shillings or both, was excessive. Well, one answer, of course, Sir, is that people should not act in contravention of this Ordinance if it becomes law. Any contravention of this Ordinance would be an act against society, an act against regular conduct, and an act which the Indian Elected Members sitting opposite, in their collective wisdom, have agreed to support. I do not think, Sir, that we need concern ourselves with people who will be breaking the law. Surely, such people deserve to be punished and they must be punished in such a manner that it will act as a deterrent as far as others are concerned.



[The Asian Minister without Portfolio]

Then, Sir, the hon. Member went on to refer to the provisions of clause 11 (b) (iii), and he drew the attention of the House to the use of the words "by the law of England". He wanted to know why the fate of Indian or Hindu marriages be decided on the basis of the law of England. If I may say so, with respect to him, he has confused the issue. He himself went on to say, Sir, that if we must have a basis for deciding these cases it should be on the basis of the Matrimonial Causes Ordinance. May I draw his attention to clause 9 of the Bill, which he seems to have overlooked, which provides "Except where and to the extent that other provision is made in this Ordinance, the provisions of the Matrimonial Causes Ordinance shall apply to matrimonial causes relating to marriages; and the Matrimonial Causes Ordinance shall, in relation to marriages, be subject to the provisions of this Part of this Ordinance." The hon. Member will see that the procedure to be followed when the matter reaches the court is the one that is provided for in the Matrimonial Causes Ordinance, except to the extent as excluded by the provisions of this Ordinance. But, Sir, I think that one must read sub-clause (iii) carefully to realize that it is related to the grounds for the decree of nullity. It provides that where the consent of either party to the marriage or of the guardian in marriage was obtained by force or fraud, then it is that the party concerned may apply to the courts for a decree of nullity of marriage. The hon. Member said that the Hindu marriages were personal to the community. I hope he does not think that force and fraud are personal to Hindus; and the expression which seeks to provide the basis for arriving at a decision in regard to the meaning of force or fraud in such matters will be "the law of England". I think we can agree that there are numerous English precedents which have provided us with a great deal of learning on the law of marriages and matrimonial causes; and it is only in relation to the interpretation of the expression "force or fraud" that the decision will be related to the law of England and not in so far as Hindu marriages are concerned.

Those, I think, Sir, were the points raised by hon. Members.

Mr. Travadi: Mr. Deputy Speaker, Sir, on a point of explanation, in the case of nullity, one will have to go to England for that definition?

The Asian Minister without Portfolio (Mr. Madan): In that case, Sir, you will find that in an interpretation of the expression "force or fraud" we will rely on English precedents which are related to matrimonial causes where, as I said before, there is a great deal of learning and many

precedents available on the subject. This is not a matter of contract in relation to the law of contract or the Indian Contract Act which applies to this Colony; the matter is entirely different, Sir, as "force" is used in an entirely different sense in the Indian Contract Act to that which one contemplates in relation to marriages.

Sir, I beg to move.

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

#### ADJOURNMENT

The Deputy Speaker (Mr. Conroy): That completes the business on the Order Paper, and I accordingly adjourn Council until 2.15 p.m. tomorrow, Wednesday, 23rd March.

*The House rose at Twenty-three minutes past Three o'clock.*

Wednesday, 23rd March, 1960

IN THE COMMITTEE

The House met at fifteen minutes past Two o'clock.

[D. W. Conroy, Esq., C.M.G., O.B.E., T.D., Q.C., in the Chair]

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

DEVELOPMENT SUPPLEMENTARY ESTIMATE NO. 1 OF 1959/60

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Speaker, Sir, I beg to move:—

THAT a sum not exceeding £951,486 be granted to the Governor for or towards deferring the charges of Development Supplementary Estimate Expenditure No. 1 of 1959/60.

I would signify that the assent of the Governor has been given to the introduction of this Motion.

*Question proposed.*

D3-2 Sociological Research

Mr. Usher (Mombasa): Mr. Chairman, Sir, can I go to item 3 right away?

The Chairman (Mr. Conroy): On Mombasa Social Survey? Yes, it is under this Head.

Mr. Usher: I want to ask if I may, a series of questions on this. I will try and do it at dictation speed. First of all, why has there been so great delay in the printing of the report? Is it a question of the editing or the capacity of the Government Press or what? The second is, will the report be published in its entirety or has it been edited and will there be portions excluded? The third point is, in view of the great delay there has been, has there been a follow-up of any kind such as was proposed by the author of it in order to bring certain matters in the report up to date—a follow-up? The next question, when will it be printed? The next is, will it be tabled? The next is, will it be on sale, that is to say, available to the public? And the last is, if not, to whom will it be available and if so at what price?

The Chief Secretary (Mr. Coutts): I beg to reply.

The history of the survey is as follows. It was started in August, 1956, and was financed by the Government. The contributors were originally informed because there were other contributors in addition to the Government—Mombasa Municipal Board, Port Suppliers' Association, Mombasa Chamber of Commerce, the East African Railways and Harbours, and the survey took about a year to complete. The actual survey was in fact completed in 12 months and Part I of the Report—the Sociological Background and a separate study before the organization was produced. Part II of the Report, the Demographic Factors, and Part III, the Sociological Factors, were, however, held up due to

#### PRAYERS

#### NOTICES OF MOTIONS

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, I beg to give notice of the following Motions:—

#### STAFF HOUSING LOAN INTEREST EXEMPT INCOME TAX

THAT this Council notes that the Government is arranging to borrow a further sum of £50,000 for staff housing from Sceptre Trust Limited, repayable over 20 years with interest at 6 per cent on the capital balance from time to time remaining outstanding; and that this Council approves that such interest shall be exempted from income tax in the hands of Sceptre Trust Limited.

#### LOANS TO AFRICAN FARMERS AND CO-OPERATIVE SOCIETIES

THAT this Council notes that the Government is seeking to borrow £2,000,000 from the International Bank for Reconstruction and Development to finance loans to African farmers and Co-operative Societies, and to construct and improve feeder roads in African areas of high potential.

#### BUSINESS OF COUNCIL

Sir Charles Markham (Ukamba): Mr. Deputy Speaker, could I with your permission ask the Chief Secretary to inform the House of the business during this current week?

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, the Sessional Committee met yesterday evening and decided that the business would continue according to the Order Paper in front of Members until the end of this week, taking Private Members' Motions as usual on Friday morning; that the House would then rise but it would be necessary to have a meeting lasting probably one day only about 12th April so that the Estimates of Expenditure can be laid before this House a good fortnight before Budget Day which is fixed for 27th April.

#### COMMITTEE OF SUPPLY

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

**[The Chief Secretary]**

difficulties encountered over the mechanical processing of data collected during the survey. The Report in its final form was ready for publication in July, 1959, but no publisher would take it until quite recently when the East African Institute of Social Research agreed to print it. It will be published in its entirety, which was the hon. Member's second question. It will be published as soon as we can get it out now that the printer has decided to print it. It will be tabled, and it will be on sale. As regards the third question which the hon. Member asked, I cannot read my notes and therefore I cannot answer it and perhaps he would like to ask it again.

**Mr. Usher:** It was only the price, Sir.

**The Chief Secretary (Mr. Coutts):** I have now read my notes. It says, "Will there be a follow-up?" The answer is there has been no follow-up so far, but I will certainly look into it.

**Mr. Tyson (Nominated Member):** Mr. Chairman, I do not know whether this arises under the next Vote, but could I ask the Minister who is responsible if he can tell us why there has been no item included in connexion with the Social Security Committee's Report? Statistics were to be obtained. The excuse we were told at the time why they had not been obtained was that there was no money available, and I would like to ask the Minister for Local Government particularly what he has got to say now about this item.

**The Minister for Local Government, Health and Town Planning (Mr. Havelock):** I should be very glad to make a statement on the Social Security Committee's Report at a later date, but not today.

Vote D3—2 agreed to.

Vote D5—1 agreed to.

**Vote D6—1—Local Government Loans Authority**

**Mr. Alexander (Nairobi West):** Sir, what is this £500,000 for?

**The Minister for Local Government, Health and Town Planning (Mr. Havelock):** Sir, as the hon. Member knows well enough, the City Council of Nairobi has been trying to get on to the London market to borrow money for a number of months, even years, and has been unsuccessful for a number of reasons, and they have got to have money to carry out their development, and the Government is lending them £500,000 to help them meanwhile until they can find the money elsewhere.

**Mr. Alexander:** Mr. Chairman, if I remember rightly, when we discussed the Exchequer loans I think I asked at that time whether local authorities would have access direct to these loans. I think I was told that that was being looked at, and I am wondering whether the Minister can tell us what progress they have made on that, particularly in respect of this local authority which has for years had autonomy and now appears to require to come through the Government.

**The Temporary Minister for Finance and Development (Mr. Butler):** The answer is, Sir, that it is quite clear now that Exchequer loans cannot be made directly to local authorities, it is not within the terms of the legislation under which the loans are made. Exchequer loans will be one of the sources from which Government finances its development programme and the expenditure from Exchequer loans will not be tied to any particular item in our programme. The hon. Member will notice that the proposal is that the Government should make available £500,000 to the Local Government Loans Authority to supplement the £500,000 voted in the Estimates and the City Council will then seek loan funds from the Local Government Loans Authority.

**Mr. Alexander:** Mr. Chairman, Sir, that being so, could we be told now what the state of the capital programme of this particular local authority is, and how far they may be in arrears with the provision of capital, and how is the rest of the capital to be found?

**The Minister for Local Government, Health and Town Planning (Mr. Havelock):** The present position is that the City Council are working on an overdraft of something like £1,500,000. This particular £500,000 will, of course, help to reduce that overdraft. The actual financing of the programme—the City Council programme—will be helped as much as possible by Government, and we hope, indeed, that in the next development period—the actual estimates, of course, will be placed before this House in the near future—a considerable sum of money will be earmarked for this purpose. I do not think this is the place to forecast what is going to be in the Paper which has not been laid before the House. I do share with the hon. Member what seems to be his worry about the availability of capital money for the development of the City Council, or City Council development, but, of course, it is not only the City Council but it is the whole Colony which is in the same position; and I would take this opportunity of saying that the longer the period of instability continues the longer will this period of lack of finance or development funds be maintained.

**Mr. arap Moi (North Rift):** Mr. Deputy Speaker, Sir, may we be assured that there will be no more Asian constructors' hunger strikes.

**The Minister for Local Government, Health and Town Planning (Mr. Havelock):** I am afraid that I did not quite understand the hon. Member.

**The Chairman (Mr. Conroy):** I do not think it arises on this Head, anyway.

Vote D.6—1 agreed to.

Vote D.6—3 agreed to.

Vote D.7—1 agreed to.

**Vote D.8—1 European Education**

**Mrs. Shaw:** Mr. Chairman, I see that it reads here "Improvements to Existing Schools". Does that include more boarding accommodation and extra staff quarters for the Kericho school.

**The Minister for Education (Mr. Mathieson):** The money revoted includes provision for staff flats at Kitale and Kericho.

Vote D.8—1 agreed to.

Vote D.11—2 agreed to.

**Vote D.11—3 Fisheries**

**Mrs. Shaw (Nyanza):** Mr. Chairman, I would like some information on the Kisumu Fisheries Service. I understand that the Fisheries Department is being closed. Could the Minister tell me why this is so?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** Mr. Chairman, Sir, it is not correct that the Fisheries Department is being closed at Kisumu. What is happening is that the organization that has been in existence since 1947, the Lake Victoria Fisheries Service, which is an organization under the High Commission, is ceasing to exist at the end of June, but that the work they are doing, in so far as Kenya is concerned, will be taken over by the Kenya Fisheries Department and will continue.

**Mrs. Shaw:** Could the Minister tell me if some of the existing staff will be re-employed under the Kenya Government?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** Yes, Sir. Several of the African staff are being taken over and one of the European staff, by the Kenya Government.

**Mrs. Shaw:** In other words the service is being slightly cut down because the European members are not being retained.

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** I understand that Uganda have taken over a number of staff, as has Tanganyika.

Vote D.11—3 agreed to.

**Vote D.11—4 National Parks**

**Mr. Alexander:** Mr. Chairman, when recently we had a debate on the game policy of the Government I recollect that during the course of the debate we were given certain assurances that Government would have a look again at the whole of the financial policy in relation, particularly to our Royal National Parks. I know that this here is only £250 provided to preserve a dam, but do we take it from that, Mr. Chairman, that Government have not yet been able to review this financial policy in relation to the Parks, the Royal National Parks, and game preservation generally? If that presumption is correct, when are Government likely to undertake such a review and when are we likely to hear about it?

**The Minister for Forest Development, Game and Fisheries (Mr. Blunt):** Mr. Chairman, this money was required and was used for this specific purpose some months ago. Further development of game through the National Parks and through the Game Department will be provided for, I hope, in the coming Estimates; and when those Estimates are laid in about a month's time I hope the hon. Member will get his answer.

**The Temporary Minister for Finance and Development (Mr. Butler):** Mr. Chairman, I would, with your permission, like to apologize to the Council for the misleading memorandum note! The dam is not in imminent danger of collapse. It has been repaired. The money is required, as can be explained by Mr. Blunt, in connexion with certain water works in the Amboseli Park.

**Sir Charles Markham:** In view, Sir, of the remarks of the Temporary Minister for Finance, should this not have had a note on it to say it came out of the Civil Contingencies Fund, in view of the money already being spent?

**The Temporary Minister for Finance and Development (Mr. Butler):** The money has already been spent by the Trustees of the National Parks but it has not yet been paid by the Government.

**Mr. Usher:** Mr. Chairman, do I understand from the last remark that the dam job has been done?

Vote D.11—4 agreed to.

Vote D.11—5 agreed to.

**Vote D.12—2—Nairobi Airport, Embakasi**

**Sir Charles Markham:** Mr. Chairman, could the Minister for Commerce and Industry tell the House a little bit about this item 1 (iii), £14,200, required to meet the needs of large jet aircraft.

The Minister for Commerce and Industry (Mr. Hope-Jones): Mr. Chairman, it is expected that the first services to be operated by large jet aircraft between Europe and further south will start in September or October of this year on a comparatively infrequent basis. In the course of the next year or 18 months inevitably more of those large aircraft will come through. That is on the civil side. On the military side, as the hon. Member will be aware, the runway at Embakasi is now being used by large aircraft of the Royal Air Force, including Transport Command. It is also used from time to time by Bomber Command. I do not think the hon. Member would wish me to try and enlarge on that particular point; but I would emphasize that the improvements he has referred to and that I have referred to somewhat briefly, possibly a little unsatisfactorily, are necessary for both reasons that I have referred to. Now, Sir, if the hon. Member would like me to go into some little detail about what these initial measures are, I will do so. It will only take a moment. First of all it is necessary to improve the turning circle; secondly, to avoid stones and loose earth being sucked up into the jet engines it is necessary to stabilize the margins of the taxiway. By that I do not mean to broaden the taxiway but to stabilize the margins so that stones, dirt, sticks and so on are not sucked up into the engines. It is also necessary—and this is important and it is being done at the present time—to so alter the refuelling system that the aircraft that I have referred to can take in fuel at the rate of 1,000 gallons per minute. That is why the sum which my hon. friend has referred to in the Supplementary Estimates.

Sir Charles Markham: Mr. Chairman, I do not want to ask the Minister any further questions regarding the reasons which he has given to the House because I think it is appreciated that such details might be inadvisable.

I would just like to ask the Minister one further question regarding civil aircraft. Is it not a fact, Sir, that had British jet aircraft been used as opposed to American, there would be no necessity for the lengthening of the runway?

The Minister for Commerce and Industry (Mr. Hope-Jones): Sir, I have not referred to the lengthening of the runway. There have been requests from the chosen instrument of the British Government, British Overseas Airways Corporation, for some lengthening of the runway. It is also necessary to bear this in mind in the event of certain eventualities which we hope will not occur. It would be correct to say that for the existing Comet it is probable that the runway would not have to be extended. But it would be quite impossible to go further and say

it would not be necessary if and when the "V" type planes, both civil and military, come in.

Now, Sir, I should add that it has not yet been decided how much the runway should be lengthened: certain factors to which I have referred will determine that.

Vote D.12—2 agreed to.

#### Vote D.12—5—Mombasa Airport

Mr. Usher: Mr. Chairman, Sir, I am sure the Minister will understand my interest, if not anxiety, in regard to the probable date for the completion of this new runway. We are now coming into our long rains, we expect them, our heaviest rains, any time in the second half of April, a great deal in May, according to tradition, and a certain amount in July. If he could tell us how the work is proceeding according to schedule, I should personally be very grateful.

I should also like to know whether the apparent saving on the original estimate is to be devoted to any improvement of the air terminal, which is quite inadequate to our present needs.

The Minister for Commerce and Industry (Mr. Hope-Jones): Mr. Chairman, the construction of the runway at Mombasa Airport is up to schedule according to the contractor. In fact when I was last down there three weeks ago I took the opportunity to go round the works and I understood then that they were a little ahead of schedule. We are hoping that the runway will be complete to enable the four-engined inter-city service to start according to the plans of the East African Airways. I will just make quite sure that it is still up to schedule as I am speaking of three weeks ago. If there is any change in the position—and I am sure there is not—I will let the hon. Member know.

In regard to the terminal building, we are making improvements within the financial resources available. I am not referring to the improvements which have been made within the last 18 months, but further improvements. We cannot, I am afraid, see our way to find the money to build the kind of terminal that we would perhaps like to build. What we are trying to do is first of all to improve the runway up to a four-engine standard. Secondly, to make the terminal adequate, and by that I mean to separate the in-going and out-going passengers; to improve the amenities of the place with regard to rest-rooms and wash-rooms; I hope to brighten the place up generally and make the terminal at any rate adequate for the type of traffic envisaged which the new service will make possible with the reconstructed runway.

Mr. Usher: Sir, I am so sorry to appear to badger the Minister who has given such an

[Mr. Usher] excellent account of what is going on, but we are now using a grass runway and with the kind of weather we might expect in May and from May onwards we may be out of action for some time unless it is at all possible to use the new runway for certain purposes beforehand. I wonder if he could expound on that?

The Minister for Commerce and Industry (Mr. Hope-Jones): I am not in charge of the operations. That is in the hands of the East African Airways Corporation, and in most efficient hands, and all I can say is that neither the Chairman who is, like the hon. Member, a distinguished Member of this House, nor the general manager of the Corporation, has approached me with any fears on that subject.

Sir Charles Markham: Sir, in view of the fact that the alternative airport to Mombasa is Malindi, would the Minister dispel the rumours, Sir, that it has been washed away?

The Minister for Commerce and Industry (Mr. Hope-Jones): If I may comment on what the hon. Member has said, it is the first time that it has been suggested that the alternative airport to Nairobi or Mombasa is Malindi.

Sir Charles Markham: Mombasa.

The Minister for Commerce and Industry (Mr. Hope-Jones): Well, I must make it quite clear to the hon. Member that we have got no intention of building a third international airport at Malindi.

As to the second part of the hon. Member's question, I have not been informed that the runway has been washed away.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Chairman, the hon. Member for Mombasa suggested that there were savings on this scheme value and he may have been slightly misled by the figure of £180,000 under the scheme value column. That is the scheme value for the 1957-60 period. The balance will be provided in the 1960-63 plan.

Vote D.12—5 agreed to.

#### Vote D.12—6—Industrial Development

Mr. Alexander: Mr. Chairman, may we be told exactly on what this £10,000 is to be expended and at the same time perhaps we could be told what has happened to the development project under this scheme in respect of such places as Yala and Bungoma.

The Minister for Commerce and Industry (Mr. Hope-Jones): I will answer the second part of the hon. Member's question first. The hon. Mem-

ber will remember that some three years ago, a committee was appointed by the Board of Industrial Development to look into the position in regard to developing industrial estates in the African areas. That committee investigated, amongst other places, Karatina, Yala, Bungoma and a number of places that the hon. Member did not mention, and on which I need not detain the House. Their recommendation was, for reasons which I will give in a moment, that we should in the first place proceed with Karatina. The principal reasons inducing the committee to reach their recommendation which was unanimous, was, first of all Karatina was in the centre of a densely populated area where there had been a measure of industrial development during the war and immediately after the war which, unfortunately, came to an end for reasons with which the hon. Member is very familiar. The amount of money voted, to which the hon. Member referred, was to be put into a revolving fund to develop this estate and if this was a success, and this point was made very clear to me by hon. Members in this House at various times, then we could use the money as it came back and with any further money that this House cared to vote, to develop further estates.

Now, Sir, the £10,000 to which the hon. Member referred is a sum of money which by Development Supplementary Estimate No. 1 of 1958 was provided for transfer to the African Industrial Estates Development Fund.

Now, Sir, the hon. Member will remember that £10,000 of the moneys that were required to develop Karatina were utilized to pay compensation for certain lands that were required, to start up the industrial estate.

Hon. Member: (Inaudible.)

The Minister for Commerce and Industry (Mr. Hope-Jones): Yes, quite. I am referring to the £10,000 because that is required now as a revote because owing to the very complicated negotiations that went on in regard to the acquisition of this land, and here there were certain real difficulties and some difficulties that were possibly the result of a certain amount of obstruction from certain quarters, it has been necessary to revote this money owing to the delay which occurred in the acquisition of the land. I hope I have answered the hon. Member's question. If not, perhaps he would ask me to elucidate.

Mr. Odunga (Nyanza Central): Mr. Chairman, could I ask the Minister to make it clear to us from what quarter this obstruction came?

The Minister for Commerce and Industry (Mr. Hope-Jones): I was not referring to this, that in any land

[The Minister for Commerce and Industry] acquisition project there are always the odd land-owners' who are difficult. Does that make my point clear? I was not referring to anything else.

Vote D.12—6 agreed to.

Vote D.16—Central Stores and Transport Organization

Mr. Alexander: Mr. Chairman—Supplies and Transport. (The Member for Central Nyanza now knows what it is like to cough against thunder!) Mr. Chairman, the last time the Minister spoke about this in this House, he talked about the beginning of an empire. It is quite clear from this, Mr. Chairman, that the empire is expanding and developing rapidly and if that is any congratulation to the Minister, then, indeed, we must express to him our satisfaction that he is able to do what other people—particularly in the British Cabinet are not able to do. When we discussed this last, Mr. Chairman, it was in November, 1957—not the last time it was discussed, the first time it was raised in this House, November, 1957—we did give Government an opportunity then to review the whole policy concerning this project and to have a look at the necessity in the light of newer circumstances of continuing to expand to the original plans envisaged. Would the Minister tell us whether, in fact, such a review was ever undertaken? And if it was, Mr. Chairman, was there ever any attempt to cut down the planning of this particular activity in order to save capital funds and perhaps save the funds we are now being asked to vote? Was it ever discussed in the Council of Ministers with that object in view? And what instructions were made to the executive staff?

On a completely different issue concerning this particular matter, Government have been asked from time to time, Mr. Chairman, whether they would consider the wisdom of placing the whole of this activity on a statutory board basis, in order particularly that it could become completely self-accounting and thereby in order that it would be able to raise charges against other departments on a basis that would embrace all overhead expenses including, Mr. Chairman, the depreciation or, if Government like to call it by the other name, the loan charges on this particular capital and other capital that is being voted now. We asked Government about this statutory board basis from time to time and it would be helpful today to have a statement from the Minister as to what progress the Government have made in that enquiry.

The Minister for Tourism and Common Services (Mr. Crosskill): Mr. Chairman, I hoped that the hon. Members opposite in regard to this

laudable project would be satisfied by seeing that this was a re-vote. However, I would remind the hon. Member that we had a debate not very long ago to which he referred when I spoke for an hour on the subject and the hon. Member did not reply, nor did he even participate in the debate, as far as I remember. I then dealt very fully with all the matters which he has again raised today. However, I understood him to express satisfaction and I am very grateful to him for expressing that feeling.

Government have from time to time reviewed this project and have decided each time that it is in the interests of Government that the original project should proceed. It is now running and fully developed. The object of this Supplementary Vote is to complete the buildings, but, as you see, Mr. Chairman, this is a re-vote. In fact, the buildings were completed before the end of the last financial year but certain retention sums remained unpaid and it is therefore necessary to ask Council to re-vote that sum in order that the final account shall be completed, although, I repeat, the buildings were completed before the end of the last financial year.

If this sum is voted it will enable us also to make improvements to the magazine and to take other steps in the interests of security. They can be included in this sum of £21,793 for which we are asking. But I would repeat that this project has been under review by Government many times during the last two years and each time it has been decided that it should go forward in the general interests of the country. The question as to whether or not it should be run as a commercial concern has also been considered and it was decided that it should, at any rate at present, be run under normal Government procedure as a common service, whereby only part of the expenditure of the organization is recovered.

If the hon. Member requires any further detail I fear I am unable to give him figures at this moment as he did not give me notice that he wished to raise the whole issue. I would naturally be glad to do so if he will see me afterwards.

Mr. Alexander: Mr. Chairman, Sir, the Minister says the organization is running fully. Those were his words. Could he tell us whether that means that the whole of this establishment is now 100 per cent utilized both in respect of the workshops and in respect of the stores space, and if it is not being fully utilized, perhaps he would care to tell us why it is not?

The Minister for Tourism and Common Services (Mr. Crosskill): Mr. Chairman, I think it would be very difficult for any commercial or quasi commercial organization to say that they

[The Minister for Tourism and Common Services] were running at 100 per cent capacity. That is certainly not so. I should say the workshops at the present time are running at about 90 per cent capacity. It is only a recent development as owing to a decision taken by Government three months ago the workshop has built up its operations to that 90 per cent, and in my opinion it is now working very satisfactorily indeed. The hon. Member, though Mr. Chairman, must appreciate that the value to Government of an organization such as this cannot wholly be assessed in pounds, shillings and pence. There is a security value to it which cannot be so assessed. There is also with regard to the stores a considerable value to Government in the cushion of supplies which are maintained and held there against any emergency. Those must be taken into account and for that reason I am satisfied that the workshops are working to about 90 per cent capacity. The stores are not at 90 per cent capacity but are effective and are extremely useful to the Government from the point of view of current supplies and also reserves which are necessary in case of any emergency.

Vote D.16 agreed to.

Resolution to be reported.

Council resumed.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

## REPORT

1959/1960 DEVELOPMENT SUPPLEMENTARY ESTIMATE (No. 1)

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, I beg to report that the Committee of Supply has considered the Resolution that a sum not exceeding £951,486 be granted to the Governor on account for or towards defraying the charges for Development Supplementary Estimate (No. 1) of 1959/60, and has approved the same without amendment.

Question proposed.

The question was put and carried.

## BILLS

### FIRST READINGS

The Consolidated Fund Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time today.

### SECOND READING

The Consolidated Fund Bill

Order for Second Reading read.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker,

Sir, I beg to move that the Consolidated Fund Bill be now read a Second Time.

This, Sir, is a Bill which authorizes the payment of the Consolidated Fund in the amounts stipulated in the Development Supplementary Estimate (No. 1) of 1959/60. Committee of Supply, This, Sir, we may regard as a formal measure because the debate on the details has taken place in the Committee of Supply.

I beg to move.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

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

## COMMITTEE OF THE WHOLE COUNCIL

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

## IN THE COMMITTEE

[D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair]

The Consolidated Fund Bill

Clauses 2, 3 and 4 agreed to.

Schedule agreed to.

Title agreed to.

Clause 1 agreed to.

The Hindu Marriage and Divorce Bill

Clause 2

The Asian Minister without Portfolio (Mr. Madan): Mr. Chairman, Sir, I beg to move that paragraph (c) of subsection (1) of clause 2 of the Bill be amended by inserting, immediately after the word "India" the words "or the Special Marriage Act, 1954, of India", and that the expression "No. 43 of 1954" be inserted in the margin opposite such insertion.

Sir, while moving the Second Reading of the Bill yesterday I explained in detail that I intended to move this amendment and the other amendments which appear on today's Order Paper.

I think, Sir, I have made clear the purpose of all these amendments and I do not propose to take the valuable time of the House today in repeating the explanation.

I beg to move.

Question proposed.

Question that the words to be inserted be inserted, put and carried.

Clause 2, as amended, agreed to.

## Clause 3

The Asian Minister without Portfolio (Mr. Madan): Mr. Chairman, Sir, I beg to move that subsection (2) of clause 3 of the Bill be amended by deleting the words "of the brother or" which appear in the first line of paragraph (c) thereof.

## Question proposed.

Question that the words to be left out, be left out, put and carried.

The Asian Minister without Portfolio (Mr. Madan): Mr. Chairman, Sir, I beg to move that subsection (2) of clause 3 of the Bill be amended by deleting the words "of the sister or" which appear in the first line of paragraph (d) thereof.

## Question proposed.

Question that the words to be left out, be left out, put and carried.

Clause 3 as amended agreed to.

Clauses 4, 5, 6, 7 and 8 agreed to.

Clause 9 agreed to.

## Clause 10

The Asian Minister without Portfolio (Mr. Madan): Mr. Chairman, Sir, I beg to move that subsection (1) of clause 10 of the Bill be amended by inserting immediately after paragraph (a) thereof, two new paragraphs as follows:—

(b) the respondent has deserted the petitioner without cause for a period of at least three years immediately preceding the presentation of the petition; or

(c) the respondent has since the celebration of the marriage treated the petitioner with cruelty; or.

## Question proposed.

Mr. Travadi: Mr. Chairman, Sir, before we deal with the two points of desertion and cruelty as reasons for divorce, would the Minister say whether he has given consideration to the point of divorce by mutual consent. That was not raised in the amendments here at all. Would he give some information on that particular point?

The Asian Minister without Portfolio (Mr. Madan): I do not know whether the hon. Member is in order in raising that point now, but if you permit it I am quite prepared to answer.

The Chairman (Mr. Conroy): I think I do permit it. You see the clause with which we are dealing has the following marginal note: "Grounds of petition for divorce". When in doubt I tend to allow questions seeking information rather than disallowing them.

The Asian Minister without Portfolio (Mr. Madan): Thank you Sir, I would like to remind

the hon. Member that the question of allowing divorce by mutual consent was considered in a meeting of the Indian Elected Members, at which the Specially Elected Member, Mr. Mangat was also present. My recollection of the matter is that the majority of the Indian Elected Members opposed the introduction of divorce by mutual consent in this Bill. I believe, Sir, that the hon. Member was one of those people who was opposed to divorce by mutual consent. In addition to that I would like to tell him that the Government has considered this matter and subsequently to the consideration by the Indian Elected Members at this joint meeting to which I have referred, and the Government also decided that it would not be advisable to introduce divorce by mutual consent in this Colony.

Mr. Travadi: On a point of information, Sir, I do not think I opposed it at the private meeting, but is the Minister aware that in the 1954 Special Marriage Act of India there is a provision under section 28 providing divorce by mutual consent? Can the Minister say why he has not thought it fit to include that here in this clause?

The Asian Minister without Portfolio (Mr. Madan): I am aware, Sir, that there is a provision in the 1954 Indian Act which provides for the obtaining of divorce by mutual consent. It is a process which takes about four years to complete provided both parties to the marriage agree that they will seek divorce by mutual consent. But the hon. Member will remember that the Marriage Act refers to a certain type of marriage or marriages which are called registered marriages. These marriages do not undergo the performance of holy rites such as the marriages that we contemplate will be required to do under the present Bill. I might describe the marriages under the Special Marriage Act as civil marriages as they are popularly called.

Mr. Travadi: I was discussing divorce, not marriage.

The Chairman: Order, order!

The Asian Minister without Portfolio (Mr. Madan): It is in relation to such civil marriages that the 1954 Act provides for divorce by mutual consent. The hon. Member, I think, will agree, Sir, that not only the idea of divorce by mutual consent will be repugnant to the Indian community but the very idea of divorce itself is unknown to the social life of the Hindu people. It is a great step forward to introduce the conception of divorce in our society, and, as I have already said, we have given very care consideration to this matter and we came to the conclusion that it should not be introduced in our Bill, and I can only repeat, Sir, that my recollection is that

## [The Asian Minister without Portfolio]

the hon. Member himself was one of those who supported the rejection of this suggestion.

Clause 10 as amended agreed to.

Clauses 11, 12 and 13 agreed to.

Title agreed to.

## Clause 1

Mr. Webb: Mr. Chairman, I invite you, under your powers under Standing Order No. 98, to alter the date from 1959 to 1960. This Bill was published last year.

The Chairman (Mr. Conroy): That has already been taken care of; and the Clerk will do that under my authority.

Clause 1 agreed to.

The Chief Secretary (Mr. Coutts): Mr. Chairman, I beg to move that the Committee rise and do report to Council that the Committee of the whole House has been through the Consolidation Fund Bill and approved the same without amendment; and that the Committee of the whole House has been through the Hindu Marriage and Divorce Bill and approved the same with amendment.

The question was put and carried.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

## REPORT

AND

## THIRD READING

## The Consolidated Fund Bill

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, I beg to report that the Committee of the whole House has considered the Consolidated Fund Bill and has approved the same without amendment.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, I beg to move that the Consolidated Fund Bill be now read a Third Time.

The Asian Minister without Portfolio (Mr. Madan) seconded.

## Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

## REPORT

## The Hindu Marriage and Divorce Bill

The Asian Minister without Portfolio (Mr. Madan): Mr. Deputy Speaker, I beg to report

that a Committee of the whole House has considered the Hindu Marriage and Divorce Bill and approved the same with amendment.

Report ordered to be considered tomorrow.

## BILL

## SECOND READING

## The Widows' and Orphans' Pension (Amendment) Bill

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, I beg to move that the Widows' and Orphans' Pension (Amendment) Bill be now read a Second Time.

Pensions legislation is inevitably complicated because it has to try to foresee and to take into account a large number of individual circumstances, and pensions legislation covering widows and orphans is even more complicated because it has to take into account the differing ages of the officer and his wife and such other matters as divorce and remarriage which are not entirely unknown even in Kenya.

The main purpose, Sir, of this amending Bill is contained in clause 12 which seeks to bring into force with effect from 1st January, 1952, revised widows' and orphans' pensions on the basis of the latest actuarial survey. These new pensions are in general more favourable than the present pensions; and I think I might give one or two examples.

An officer entering the scheme at the age of 30 with a wife aged 25 and contributing £60 per annum will acquire for his widow a pension of £507 12s., as against a pension in the present table of £312 8s. 5d. At the other end of the scale, an officer entering the scheme at 45 with a wife aged 40, and also contributing £60, will acquire for his widow a pension of £88 4s., which is less than the existing pension of 196 19s. 2d. There is, however, a provision in Note (3) (2) in Schedule B of the Ordinance to the effect and to ensure that no existing pensioner draws less than the present pension; and the new tables may possibly operate to some extent to discourage an officer in the "dangerous forties", from casting his eye too lovingly towards a sweet young thing of 22, although not to the same extent as under the provisions of the Indian Civil Service Family Pensions Fund to which I belong. Under those provisions a young man who marries a sweet young thing of 22 then he must make an outright capital payment to the Fund of several thousands of pounds, which has, to my knowledge, caused one or two officers in those circumstances to think twice.

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

Sir, I do not think I need deal in any detail with the remainder of the Bill as the clauses are explained fully in the Memorandum of Objects and Reasons, but I should, perhaps, go through them very briefly.

Clauses 2, 3 and 4 establish the principle that no officer should be required to contribute to more than one scheme. Clause 5 makes it clear that salary includes inducement pay. Clause 6 requires officers to give information about the adoption of children. Clause 7 lays down the authority to determine the amount of the fine payable if an officer fails to give the information he is required to give under the Ordinance. Clause 8 simplifies the present arrangements for calculating the Kenya scheme's share of a widow's pension where the officer has served in other territories. Clause 9 covers the position of the widow who marries again and whose second husband then dies. The effect of this clause is that when the second husband has died and the children to whom the original pension has been transferred have ceased to be of pensionable age, she again becomes qualified to receive a pension. Clause 10 covers the position of children who are adopted after both the parents of the children have died; and provides that in those circumstances the adoption need not be a bar to receipt of the approved pension. Clause 11 repeals a section of the principal Ordinance which is now redundant.

As I said, Sir, pensions legislation is extremely complicated, but I shall endeavour to answer, either at this stage or at the Committee stage, any points which may be raised from the other side.

Mr. Webb seconded.

*Question proposed.*

Mr. Alexander: Mr. Speaker, Sir, doubts have been expressed from within the Civil Service regarding the investment policy of the Widows' and Orphans' Pension Fund. There is a suggestion that the funds have not, in all cases, been invested as profitably as they might; there is a suggestion that in fact some of these funds were invested, or are invested, to construct the High Commission building on the hill and are not earning what they might earn in another investment. These, Mr. Deputy Speaker, are doubts that I think are best ventilated on the floor of this House. I raise them on a subject which, as the Acting Minister does say, is extremely complicated.

The only other question I would like to ask is whether this Bill has been fully discussed with the new, I believe its title is, Senior Civil Ser-

vants' Association, and whether it has been agreed with them, and if there is any disagreement, what are the points of disagreement.

Mr. Deputy Speaker, I am afraid that I have to go now and I am sure the Acting Minister will appreciate it if I do him the discourtesy of being absent. I am afraid there is an urgent meeting in this building.

The Chief Secretary (Mr. Coutts): I think that the hon. Member can wait for two seconds while I reply to his latter point. I will leave the hon. Acting Minister for Finance to deal with his first point.

I would like to explain to the hon. Member that this Bill has been under discussion with the old European Staff Association, not the present Senior Civil Servants' Association, and was already in draft and printed before the present Senior Civil Servants' Association came into being. The present Senior Civil Servants' Association raised this matter with me and I pointed out to them that if we held this Bill up any longer now in order to have further discussions with them it would be doing a grave injustice to a number of people, and it was therefore agreed that we should go ahead with this Bill but would still leave it open to discuss with them any other points which they may wish to raise with me; and that is the position at the present time.

I have nothing further to say on this Bill, Sir, and I beg to support.

Mr. Tyson: Mr. Deputy Speaker, Sir, the question which the Member for Nairobi West raised about the investment of trust funds, surely is a matter which was brought up some months ago and I was under the impression that the Law Society were giving consideration to an amendment to the Trustee Ordinance to enable trustees not to be confined in their investment to trustee securities but to have a certain amount of option to invest in industrial securities within certain limitations. I am wondering whether the Minister for Finance can tell us what has happened about this, whether any progress has been made, because it is a matter which has been under consideration for some time in Great Britain as well.

Mr. Webb: Mr. Deputy Speaker, although the matter which the hon. Nominated Member raised is, with respect, entirely irrelevant to the consideration of this Bill, because the funds concerned are not trust funds, and the Trustee Ordinance therefore does not apply to them, I think I might give him the information which he requires, because it will be of interest to other hon. Members generally.

The hon. Member has said, and it is a fact, that a White Paper has been published in England in

**[Mr. Webb]**

which proposals are made for a radical alteration of the powers of trustees to invest funds. Copies of that paper have been received here and we have asked the various Ministries concerned to take up with all interested bodies, the Law Society, valuers and others who are interested in the investment of trust funds, in order that they may give us the benefit of their advice of how the English proposals can best be fitted to the circumstances of Kenya. That inquiry is by no manner of means complete, but in due course I have no doubt that the Government will bring its proposals before this House and introduce the necessary legislation.

Mr. Travadi: After reading the last two items in the Memorandum of Objects and Reasons, which say that the revised benefits to the wives now payable will be increased, it strikes me whether the Asians under the Asiatic 1927 Widows' and Orphans' Ordinance who are now receiving £50 per annum will likewise receive some consideration, to see whether this trivial amount could not be increased. I would like to know whether this would receive sympathetic consideration of the Minister because £50 is not much. It was in the year 1927 when the Ordinance was passed, the market value of the money was very high then. Now it is very difficult to make both ends meet and hence a request, though it appears here a bit irrelevant. I would like to draw the attention of the Minister to it.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, I will deal first with the point made by the hon. Member for Nairobi West. He challenged the investment policy adopted in the under of these funds, but he seems to be under the impression that the European Widows' and Orphans' Scheme is a fund. It is not. The basis of the scheme is now that the contributions to the scheme that are collected are invested, but the benefits payable under the scheme are calculated actuarially on the assumption that the contributions earn 6 per cent. It would therefore, not affect in any way the benefits received by those who participate in it, whether the money was invested favourably or unfavourably. In fact, of course, the money is invested by the Government, either through the Crown Agents or locally, in gilt-edged stocks at the most favourable terms as regards interest, and I can assure him that none of the money is invested in buildings such as the High Commission building on the Hill.

I think it only remains to mention the point raised by the hon. Member, Mr. Travadi. I understand that the benefits payable under the Asian scheme will be the subject of an actuarial review

in 1962, and if that review justifies any increase in the present benefits, then I am sure that they will be increased.

Mr. Deputy Speaker, Sir, I beg to move.

The question was put and carried.

**BILLS**

**—SECOND READINGS**

*The Corneal Grafting Bill*

Dr. Walker (Director of Medical Services): Mr. Deputy Speaker, I beg to move that the Corneal Grafting Bill be now read a Second Time.

I would like to explain to members of the House what a cornea is. It is the transparent part of the front of the eye which is quite distinct from that part of the eyeball, and I doubt whether hon. Members will have given corneas very much thought until this afternoon. It is not considered in the medical world, strictly speaking, a living tissue but it is similar to an appendage like teeth and nails and is subject, in this country especially, where there is high radiation, dust and foreign bodies, to a considerable amount of damage.

As it is not a living tissue in the true sense of the word, the cornea does not have the ability to repair itself to full functional ability again, and if hon. Members in their tours around the country will take notice of the fact, they will find many young and able-bodied men and women who have lost their sight, although they have a fully functional eye, because of a scarred cornea as a result of previous damage either due to a foreign body injury or infection.

Since this particular part of the eye cannot repair itself to full functional ability such as is done with regard to the bones or with cuts of the skin, it will be necessary, if the sight of the eye has to be replaced, to remove the scarred cornea and put another one in position.

Now, Sir, doctors and surgeons are used, shall I say, to putting spare parts into the human frame and we are all familiar with such things as false teeth. At the present stage of our development in the science of medicine we can even replace arteries with plastic material and, indeed, the lens of the eye can be replaced by a plastic lens. But the cornea in itself is such a delicate and highly transparent organ, that there is no means of replacing it except from another body. Hence, Sir, the reason for this Bill.

In clause 2 (1) there is provision for the voluntary donation by a person of his cornea on death, or if a person has neglected voluntarily to donate his cornea on death, there is the provision in clause 2 (3) that such an act may be done by permission.

[Dr. Walker]

There is no objection, I think, to such a Bill being enacted. There is the possibility that there may be religious prejudices to such a course of action on the body of a deceased person. This Bill, Sir, has been under consideration for many years and, indeed, for the last two years the Ministry has been getting in touch with all religious communities as could possibly be affected to ask if they have any objections. I may say that after this considerable time, no positive objection has been received from any religious organization to the practice of corneal grafting.

I, personally, look upon the donation of a cornea as being all senses the same as giving one's blood. You voluntarily give blood to a recipient in need and I see no reason why a cornea should be treated in any different way than the giving of blood. Hence, I doubt whether there will be any valid and serious religious objection to this Bill. Nevertheless, Sir, as hon. Members will see, the provisions of the Bill are permissive and if anybody does have any objections for any reason whatsoever, it is quite simple to prevent the removal of a cornea just by refusing to give permission for the removal.

Hon. Members will have noted, however, that in clause 2, subclause (6) a designated person in charge of a hospital may authorize the removal of a cornea if permission cannot otherwise be obtained and there is nobody, apparently, in charge of the body. I can reassure the House that the person so designated will be a man of experience and discernment and will be fully capable of using his discretion when he gives his permission for such an operation to be done. This operation, Sir, I can also reassure the House, will be done with all decency, as, indeed, it will have to be done purely for surgical reasons if not for reasons connected with respect to the deceased person.

There may be occasions on which the deceased's relatives may wish for the body in no way to show any signs of having had the cornea from the eyes removed and it will be quite simple, by arrangement with the surgeon in charge of the case, to ensure that there will be no signs whatsoever of the cornea having been removed from the eye.

I have given as many reassurances as I possibly can and have probably covered all the points which may be raised. I think this is a humanitarian Bill and progressive and I will be surprised, Sir, if there is any objection to its enactment.

Sir, I beg to move.  
Mr. Webb seconded.

Question proposed.

Dr. Adajla (Nominated Member): I am wholeheartedly in favour of this Bill. Corneal grafting is a sight-restoring operation and, if successful, it can make a world of difference to the life of the afflicted person.

Up till now, this operation was available only to those who could go overseas. We have here, in Kenya, skill necessary for the operation, but we have not the material. By the passing of this Bill and getting it into law this difficulty will be removed.

The hon. Mover has referred to the possibility of objection on the grounds of religion. As far as I am aware, Hinduism has no objection at all. My information is that Gushrut Samhita, which is a Hindu surgical book of vedistimes, contains descriptions of operations where grafting was done and, if that is the case, certainly there can be no grounds for objection as far as that religion is concerned.

I have one point to make, Mr. Deputy Speaker, the corneal grafting requires great skill and experience on the part of the operator. This skill is not available to one and all, all ophthalmic surgeons have not got this skill. With the passing of this Bill I do not think we are going to have cornea in abundance. Therefore, it is necessary that whatever supply is available should be put to its best use and should therefore fall into the hands of competent people. While I do realize that we cannot legislate towards that end, I do sincerely hope that the medical profession will see that the supply does go to the right men.

Mr. Deputy Speaker, with these few remarks I beg to support.

Mr. Zafrud-Deen (West Electoral Area): Mr. Deputy Speaker, since the hon. Mover has given his assurance that the removal of the cornea will be by permission of the relatives of the deceased. I think I am quite sure in my mind, speaking on behalf of my community, that there will be no objection to it. But if there happen to be cases, such as people who have no relatives who have died in hospitals whose corneas are taken away without the prior permission of a religious body or relatives, I think, in that case, there is the possibility that religious bodies might object. I hope this point might be made clear and after that I do not think there would be any objection by my community.

Captain Hamley (Nominated Member): Mr. Deputy Speaker, he with his small cornea and I with mine. Nobody can possibly object to this Bill and I am perfectly certain it has got the full support of the House. I am only sorry that it does not go further, and arrange for an interchange of cornea between the various political parties now so frequently springing up. I support the Bill.

Mr. Mangat (Specially Elected): I would like to mention a particular case whereby a particular person may donate his own cornea to another particular person because it may happen that even though he may give his cornea with the best wishes it may not go to that person to whom he would like to give it himself. I think there should be some way whereby he himself can command that his cornea should be utilized by somebody he wishes it to be utilized by.

Dr. Walker: Mr. Speaker, Sir, I thank hon. Members for their support of the Bill and there are only two questions to which I need now reply.

With regard to the hon. Member for the Western Electoral Area Mr. Zafrud Deen's point of objection on religious grounds, I would like to say that if he could inform us of specific objections on religious grounds which could be made known to the designated officers in the hospital, then they would have a means of guiding their actions in any particular case. We want to co-operate as much as possible with the public and the religious bodies in this matter and under no circumstances to give any offence to any person whatsoever. If we can know of any specific objections or specific occasions on which cornea must not be removed, that will be borne well in mind.

As regards the point made by the Specially Elected Member the hon. Mr. Mangat, I see practical difficulties in one person bequeathing, shall I say, his cornea to another person. Mr. A. will have good cornea which he wishes to give to Mr. B. who has lost his eyesight. I wonder whether Mr. B. would like to wait until Mr. A. dies, that is the practical objection. Of course there is no reason why it could not be done, but I feel that Mr. B. may get a little impatient for Mr. A's cornea after death.

That, Sir, I think answers all the questions and again, Sir, I thank hon. Members for their support. 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 tomorrow.

#### The Native Liquor (Amendment) Bill

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, I beg to move that the Native Liquor (Amendment) Bill be now read a Second Time.

The amending Bill sets out to achieve a number of amendments which as stated in the Memorandum of Objects and Reasons are for the most part occasioned by the changing social

conditions in our ordinary life and also by the alterations which have been made in the law relating to the sale of liquor, other than native liquor, since the principal Ordinance was first enacted. I will go into these matters of detail in a moment, although the reasons for the amendment and their consequential effects are set out quite clearly in the Memorandum of Objects and Reasons. I would like at this point, however, to take the opportunity of suggesting to the House that the law, both as regards native liquor as well as those matters dealt with under the Liquor Licensing Ordinance, 1957, may yet be far from being fully settled, even after the present amendments have been brought into effect. Departmental consideration is now being given to whether or not there would be any advantage or greater convenience from having the whole law relating to liquor, both native liquor and the general Liquor Licensing Ordinance, embodied in one comprehensive enactment.

Now, turning to the details of the Bill, I would ask hon. Members to look at clauses 2 and 7, sections 12 (2) and 28 of the principal Ordinance place restrictions on women being licensed to sell or being employed in connexion with the sale of native liquor on licensed premises in municipalities and townships. Hon. Members will agree, I believe, that the result of changing social conditions now/makes this subsection out of date since women now partake to a considerable extent in business and other commercial enterprises and there would seem to be no good reason to preclude them from the liquor trade, either by denying them the right to hold a licence under this Ordinance or by prohibiting their employment in connexion with the sale of native liquor. It will have escaped the notice of hon. Members that there are no such restrictions by sex in the Liquor Ordinance of 1957, for the main consideration is whether or not a licensee is a fit or proper person to hold a licence. In the view of the Government this is a more sensible approach to the problem and accordingly clauses 2 and 7 propose to repeal sections 12 (2) and 28 of the main Ordinance.

Clauses 3 and 10 seek to repeal sections 14 and 35 of the principal Ordinance. These two sections regulate the sale of wine, ale, beer, etc., by a non-African licensee of native liquor. These liquors already adequately are regulated by the Liquor Licensing Ordinance. There is no good reason for their incorporation in this, the Native Liquor Ordinance, as well.

Now, I turn to clauses 4 and 9. As the Ordinance stands at present, no person holding or having held a licence to sell native intoxicating liquor is entitled to claim a renewal of such licence as a right or to claim compensation in respect of any refusal to renew such a licence.

## [The Chief Secretary]

That is in section 19. Nevertheless, under section 34, the local authority in any area may acquire an exclusive licence for the manufacture and sale of native liquor and therefore no further licences should be granted to private individuals and no licences formally existing may be renewed. Hon. Members will see that by virtue of the present sections, that is 19 and 34, no protection or compensation or relief of any kind is afforded to persons holding licences under this Ordinance who lose them in consequence of a local authority obtaining a monopoly for the manufacture and sale of native liquor in any particular area.

Mr. Speaker, clause 9 proposes to amend section 34 so as to empower the Minister in suitable cases to offer a previous licensed holder whose trade has been brought to an end by the granting of this monopoly to choose whether he shall receive compensation from the local authority concerned for the loss of his rights or whether he should be allowed to continue operating his licence within the local authority area during such time as he continues to hold a valid licence.

Clause 6 in the draft Bill proposes to remove yet further disadvantages placed upon women as regards their right to consume native liquor. In section 25 of the principal Ordinance as it stands it is an offence under the Ordinance to sell or supply any intoxicating liquor to any female in a municipality or township and it is proposed to remove this discrepancy by making it legal to sell native liquor to women. The reasons are, of course, that in these days women who are frequently wage-earners should not be discriminated against in this way.

I also give notice, Mr. Deputy Speaker, that at the Committee stage, and with your permission, I wish to introduce yet a further amendment to this section.

Now, clause 5 of the Bill proposes an amendment to section 22 of this Ordinance. This section prohibits the manufacture or the possession of native liquor on a farm unless the occupier issues a written permit for so doing. The section further prohibits the issue of such permits except where the district commissioner has authorized the occupier to do so. It has been found necessary in practice to make it clear that the district commissioner should have full discretion which he may exercise at any time to revoke such authority. As is set out in the Memorandum of Objects and Reasons, cases have also arisen of persons possessing materials from which the native intoxicating liquor is manufactured under circumstances showing clearly that they are in fact in the process of manufacturing liquor with-

out permission and under the section as it stands it has not been possible to prosecute. It is therefore considered desirable that the section should be amended so as to make it an offence to possess materials from which native liquor can be manufactured.

I think we should note that the amended section will continue to place the onus of proof of innocent possession on the owner and this is continued in the amendment.

The present practice as provided in section 34 of the principal Ordinance is that where monopoly is granted to a local authority that body is not required to be licensed in respect of its premises, but experience has shown that this allows far too much freedom from the necessary controlling powers which are exercised under the Ordinance in respect of other licensees and the Government's view is that local authorities should be brought under such general control and should be required to be licensed. This is to be achieved by clause 8 and a further proviso is added to section 34 to make it completely clear that the power to grant licences in respect of canteens and such-like institutions of the armed forces and security services shall be preserved notwithstanding the fact that a monopoly may have been granted to the local authority.

Under the general penalty clause of the Liquor Licensing Ordinance, 1957, the maximum fine which can be imposed by the courts is Sh. 500 and the maximum period of imprisonment from three to six months. Section 42 of the Native Liquor Ordinance prescribes different and higher maximum fines and imprisonments and the opportunity is now taken in the present amending Bill of revising the penalties under the Native Liquor Ordinance so as to bring them into line with the Liquor Licensing Ordinance. I do not think that any hon. Member will take exception to this proposal. Once again, Sir, during the Committee stage, I wish by leave of the House to introduce an amendment to section 44 of the principal Ordinance and notice of this amendment has been sent to the Clerk of the Council.

That virtually, Sir, is all I have to say; I might add that one of the most distinguished of African travellers, Richard Burton, on his first visit to the East African littoral, almost precisely 100 years ago, remarked that in tropical countries it was his impression that the moderate drinker outlived the teetotaler. There will be many who will not agree, but I hope and believe that the amendment now brought before this House in the present amending Bill will remove many obvious anomalies without leading to any increase in drinking.

Sir, I beg to move.

Mr. Webb seconded.

## Question proposed.

Mr. Usher: Mr. Deputy Speaker, Sir, I hesitate to put the question which I am going to put because I feel that I should have made certain of the grounds of what I am going to say before I say it. I did not have that opportunity, but I would point out that there are certain native liquors, such as palm *tamba* on the Coast which are nutritious and palatable and taken at the right time—that is to say, about or before breakfast—they have therapeutic qualities of value. Now, the hon. Member did say, Sir, when he was introducing the Bill that social changes were responsible for some of the amendments in this Bill. There are, of course, other social changes and such social changes may drive those who have lived so far delicately upon champagne to take to humbler beverages. And I believe that it is still not possible for anybody of my race to purchase, possess or consume palm *tamba*.

I should like to be assured about this. If I am right, I would like to ask the hon. Member if I will consider removing this extraordinary piece of racial discrimination at the Committee stage!

Mr. Khamisi (Mombasa Area): Mr. Deputy Speaker, Sir, I would rather like to welcome the amendments which have been made in the Bill before the House. My only regret, Sir, is that I do not see the reason why these amendments have come now, because they are far short of the amendments which should in fact take place in this Native Liquor Ordinance. As you will be aware, this Ordinance, I think, was made very many years before the Africans were allowed to drink European beers and liquor and at that time I think the intention was perhaps that only this beer should be consumed by Africans and not by members of other races. I would like to join hands with the Member for Mombasa who suggests that the discrimination in the consumption of this liquor should be removed. I really do not see any reason why it is being perpetuated.

Now, I would wish, Mr. Deputy Speaker, that the whole of this Native Liquor Ordinance and the Liquor Licensing Ordinance should be revised because I feel the time has come when there is no more necessity for having two different liquor Ordinances which are contradictory and sometimes discriminatory in nature in our Statute Book. I believe, Sir, that even the question of the monopoly for the sale of this liquor to the local authority, should now be abolished because there is now no point in maintaining the monopoly to the detriment of the African trader. At present the local authorities are allowed to sell both the European liquor and the native liquor, whereas the African trader is only allowed to sell the

European liquor. He is not allowed to sell his own native liquor which is quite wrong. I hope, Sir, that the Government will take very swift measures to abolish this type of discrimination and to bring one comprehensive Ordinance to cover the whole liquor trade. When I say that, I do not wish to give the impression that I want drunkenness to be increased, but at the same time I would like to give a fair chance to both races in Kenya, in the consumption and the sale of these native and European liquors. Sir, with those few words, I beg to support the Bill before the House.

Mr. ole Tipli (Central Rift): Mr. Deputy Speaker, Sir, I would just like to make a few comments on the amendments before the House. I think my views are well known over this liquor business. I have repeatedly stated them in this House because I strongly feel that there is something wrong somewhere. What I am really objecting to is having any sort of monopoly or discrimination in a matter of this magnitude. Now, I can see the hon. Chief Secretary laughing, but it is something which is really serious because what I want to know is whether from the health point of view the native liquor is dangerous. I do not mean, anything like the nuban gin. I know that is quite dangerous, I do not personally even like the smell of it. But as far as the African is concerned, even before the European came to this country they were holding their tribal ceremonies and drinking and there was no danger to their health in those days. And even now, I do not think there is because if you can deprive a trader of his licence and hand it on to a local authority to brew this same native liquor, I do not see why this individual should be deprived of his livelihood.

On the other hand, I do not see, and I still insist that there is no earthly reason why the local authorities should have the sole monopoly of this native liquor. Now, it seems to me, Mr. Deputy Speaker, rather illogical here in clause 5 where it states that no person without a licence should be in possession of any material for the manufacture of native liquor, etc., etc. Now, what will happen now, especially on a farm? We know that during such ceremonies the Africans do celebrate on certain occasions by having drinking parties and they really like the taste of their own native liquor. Now, will this imply that the Government is going to hand the materials for the manufacture of this liquor into the hands of the Government so that when these labourers on a farm want to manufacture this liquor, these materials could be made regularly available to them? Or what will be made regularly available to them? Or what all if happen? I do not see why, I mean after all if a man can go to a shop and buy a bottle of brandy or whisky or gin or even a dozen bottles



[Mr. ole Tipis]

of beer for that matter, I do not see why the man cannot be allowed to have any small quantity of material for the manufacture of his own liquor, provided it is not for sale—provided it is not for sale, and from the economical point of view, I think the African is being pressed pretty hard over this one because these European drinks are more expensive than anything else, and surely it is part of somebody's life, if he so wishes to drink, to drink provided that the drinks he takes are not dangerous to his health, or are not a nuisance to the community. I entirely fail to see what we are trying to get out of this liquor licensing—this Native Liquor (Amendment) Bill, because even now we have a lot of cases both in the reserves and in the townships where people are being disturbed every now and then because they are found with a pint of the ordinary native *pombe*, whereas nothing happens to them if they are found with even five bottles of whisky. What are we trying to get at?

Now, Mr. Deputy Speaker, I understood the Mover when moving this amendment to say that they were considering reviewing or bringing into line the whole Liquor Ordinance. If that is so, well I should say that the present amendment is not justified. Why not wait and consider the whole thing together rather than bringing small bits and pieces of amending legislation. Let us review the whole thing, and having reviewed it it would be easy for us to make the necessary amendments where they are required rather than bring here today a small piece and another piece tomorrow. Let us review the whole thing, because personally, I think the Africans, as such, have been hard hit and it is a fact that the main drain on their pockets today is drinks, and it is only fair that they should have a share of any profits accruing from these drinks. I can tell you, Mr. Deputy Speaker, that this sort of monopoly by the local authority, especially in the settled areas, where you will find in certain areas beer halls and there is not a single one owned by an African at all. Not a single African has ever been granted a license to sell even the ordinary non-spirituous drinks, such as beer. This is really bad, and yet they are the people who are the main consumers of these drinks and whatever little they want to manufacture or to sell—with the little money they get, from their small wages—they are told, "No, this is too much, you cannot do this". Now what are we heading to Mr. Deputy Speaker? I think that the Mover would be well advised to at least withdraw this amendment and let us review the whole thing, or appoint a working party to go into the whole legislation. Let us make it uniform throughout. A drink is a drink. If it is the ordinary *pombe* I am sure that even the Mover if

he would come and take a pint of *pombe* he will be as drunk as if he had taken a bottle of beer, so it is a drink all the same. It is not dangerous. Let us make it uniform, and then let us not try to bring any legislation which is going to disturb the people unnecessarily. They have been disturbed long enough, and now I think it is time that we should stop things of this nature.

Now, Mr. Deputy Speaker, those are the few comments I wanted to make and I should ask the Minister to withdraw this amendment.

Mr. Nyagah (Nyeri and Embu): Mr. Deputy Speaker, Sir, I rise to support the amendments—most of the amendments, except one. Through ignorance of both making the liquor and consuming it I shall not talk much.

I feel this is a great day for the women who have been up to now prohibited by law from enjoying this liquor in the same way as men, and also, I think, it is a challenge to the local authority's monopoly and a relief to the traders in that trade.

The point I want to challenge is this. I think there is a great danger of amending the section which deals with a person who is arrested, or who is caught with material. I would like to suggest that unless a person was caught "red-handed" actually making it, he should be given the benefit of the doubt. After all, what is the material? Native liquor is made from all sorts of things, including water. And some of the equipment may be kept as a souvenir. Are you going to convict a person just because you find him with souvenirs of nubian gin making but yet he was not making it. I would say this particular section should not be amended.

With these remarks, Mr. Deputy Speaker, I support the amendment.

Major Roberts: Mr. Deputy Speaker, Sir, I would like to support my hon. friend who has just sat down. It seems to me terribly difficult for anyone to define what is material which is going to be used for the purpose of making the liquor. I think the materials should be very clearly stated as to what they are. I think the hon. Member is quite correct—water is a material. Maize, millet and things of that nature, they too can be used, and if a chap is in possession of them, under this Bill, Sir, he could be arrested. I would ask the hon. Mover if he could not move an amendment to state quite clearly what these materials are.

Mr. Odinga: Mr. Deputy Speaker, Sir, I am surprised that I found the Mover of this amendment just almost completing his explanation, but I should say, Mr. Deputy Speaker, that this is one of those amendments which is so irritating to the

[Mr. Odinga]

African ordinary man in the country, and the one which is really causing concern in every way. I remember that at every meeting which I have attended recently in my own constituency there have been so many disturbances to the very many aged persons in the country, both women and men, and they say that at the present moment they cannot brew the ordinary African beer which they used to brew both for their own consumption in their houses as well as for ceremonial purposes when the occasion arises. I could understand why the Government restricted the ceremonial brewing of the African beer because of some occasional crimes which might have occurred in the country. But I fail completely to understand the Government when it comes to just a small potful of liquor which an aged woman and her husband used for their day to day consumption in their house. It is really a shame to find the Government or a group of police officers with an old woman with a small pot moving about on the road being taken into a police station somewhere, simply because she had brewed beer for consumption or simply because a pot was found smelling of an African beer. This, I do not think, really helps to put the Government on credit with the ordinary man in the country, and it only seems to be unnecessary disturbance, and at the same time unnecessary interference in their social life in their homes. I see here that the amendment is making it that any person who, on any farm, shall manufacture, possess or use, without a permit under this section, sprouted grain, liquid yeast or any other materials or apparatus for the manufacture of native intoxicating liquor, whether such liquor is for his own use or otherwise, shall be guilty of an offence and shall be liable to a fine not exceeding one thousand shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Mr. Deputy Speaker, this native liquor, even if a person had to brew such for even a ceremonial occasion, I do not think that you will ever find anybody brewing such liquor which is worth more than Sh. 200. It may be even much less and that would be enough for so many people because they only add on water. It is only water which is added on and on when they are consuming it. And with only a small pot or bottle to be fined or to put the maximum fine of Sh. 1,000 on him, I do not know what the Government is really trying to achieve. What is the intention? It is something which will take some time to be explained, and may I just take this opportunity to tell my opposite number here what actually the ordinary man takes it to be. He takes it that what the Government is after is that they are defending, probably the European manufacture of beer,

and that the European beer should be increased and the African one should go out of the market. That is their interpretation of it, which is a most unhappy interpretation.

I think if there was an agreement that the Government wanted this beer to be put on a commercial basis, or let us say if the Government was really very keen to see that the trade is organized, and the native liquor is channelled properly, the best thing is to have these people who are trading in the beer, the ordinary men who are trading in the beer, licensed, so that the places where they are trading are known. And there should also be a restriction of the amount which the old men should have in their houses, because the African beer is regarded more as food. It is both intoxicating as well as being more or less their ordinary food. You will find there are old men who can never do without it. It is their food at home, and to do without it is really a bad thing, and it might even affect their lives. I am sure that the doctor, or the health authorities, will probably strengthen my argument, because I remember someone told me at one time it was recommended for him that he take a dose of brandy each time in order to keep up his health. And if that man's health would be preserved by a dose of brandy, probably also the Africans who have used this beer for ages and ages, their bodies need it, and they have not the money, or they could not afford to go to the shops to buy some. They can only brew it from their own stuff which they have in their homes, and use it privately at home.

Now, Mr. Deputy Speaker, I will say that I will strongly object very much to the brewing of the native liquor in the hands of local authorities, or even the municipal authorities. That is more or less as if we are trying to adopt some methods which in other quarters we do not approve of, when it comes to the African quarters we apply them; that is nationalization of some kind; I am sure when the time comes here that we introduce nationalization on a high level, so many people will find it very unpleasant indeed. I found it even in Great Britain that many people did not like nationalization of some kind. But when it comes to the African areas I do not think we should use it automatically although it is on a small scale—it still means the same thing—the principles of nationalization. And as such you must understand many people would not like such businesses to be put on a Governmental basis. It would be the same as taking the East African Brewery and nationalizing it, and putting it under the Government. I am sure those people who own it would not be pleased. That is all the same. It is the same beer, the same effect, and everything the same. Therefore I think that if there are some Africans who could trade in native liquor, well,

[Mr. Odinga]

there should of course be legislation safeguarding their business. But the ordinary men in the country especially old men should be allowed a certain quantity which he can keep in his home for his own day to day use.

Mr. Deputy Speaker, there is one very serious thing. What is so much disturbing at the moment is that the Government is using the excuse that Nubian gin is made from native liquors, and with that excuse they are moving now from house to house at night collecting empty pots which merely smell of beer and that is considered enough to take you up and you get fined very heavily, too, for it. I think these are some of the factors or some of the methods which will not really help because the Government has been doing that for the last—I do not remember—I think it was when I was probably at school. I can remember from 1925 onwards there was some talk about the native liquor—the Nubian gin—being discouraged and the Government has slowly each time tried to impose fines on those people who had it. But if ever since 1925 you have gone on fining people and still find it has not stopped—could you not devise another way—could you not think of another method of stopping it or even trying to find a way of getting the co-operation of the ordinary man. From that year and until now the people have been fined and each year large sums of money are being obtained from the people as a sort of revenue and from which the Government is eating a great deal of money at the present moment, and it is ruining the people in the country. I think that passing legislation after legislation is not the cure to all this. There must be some other method. I have said this on many occasions. Sir: the Minister for the industrial development has to devise a method by which the native liquor or even the Nubian gin could be put on a commercial basis and allowed to compete with the gin which comes from other countries, the gin which is imported, because if that were done, if some research was made into this, I am sure that this gin which is in this country is just as pure as any other gin; this gin, bottled, could be just as pure. I do not see the difference from other forms of gin, only that there may be some impurity in the local gin which might be overcome through research and other such methods; it might probably then be purified and would be just as good as any other gin. If it is put on a commercial basis like that, then probably we might stop these people who are illegally brewing gin. But I do not think that by suppression and passing legislation daily we will ever stop it. It will not stop it; it will only create more and more irritation, as this is creating at the present moment. I do not think that this is going

to do anything. I can see that the Mover is a little bit worried. He thinks that I am going a little bit astray, but I am not.

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, if I may say this, on a point of order, all this marvellous discourse we have had on gin refers to an entirely different Ordinance, not this one at all.

Mr. Odinga: Mr. Deputy Speaker, I could see from the hon. Mover's face that he was thinking so. However, they are all connected, because from native beer you get gin and all these other things. That is why I referred to it.

Now, without labouring again, far too long. Mr. Deputy Speaker, I will say that I will not support this, because if I supported this amending legislation I will be doing a great disservice to all those African people who I represent, because they are feeling greatly irritated, and I would only request the Mover and the Government that they should find another and better method of controlling this brewing of native liquor as well as also giving consideration that it is a very, very old tradition, that in all ceremonial functions of the African people in this country they always have a little drop of native liquor and they should go on drinking that. It should not just be stopped at once, but latitude should be left to them to go on steadily until they can one day conform with the changing conditions.

Thank you very much, Mr. Deputy Speaker.

Mr. Barnard (Temporary Member for Uasin Gishu): Mr. Deputy Speaker, Sir, I would like to say that I cannot see any hardship involved in the amendment to this Bill. I refer, Sir, to paragraph 5 (b) (5) where it says: "Any person who, on any farm, shall manufacture, possess or use, without a permit . . ." May I repeat, Sir, it says, "without a permit". "Any person who, on any farm, shall manufacture, possess or use, without a permit under this section, sprouted grain, liquid yeast or any other materials or apparatus . . ." I think the difficulty, as native labour see it on the farm, is that they are worried when they do prepare their material for brewing their beer; but I feel that this amendment certainly covers it in that respect in that the man at any time can have a certain quantity available under permit in his home for the purposes of brewing beer. I think that the hon. Member who spoke last was not quite clear on this point. I think that the permit issued to the holder of yeast or sprouted grain can at any one time brew up to a certain number of gallons. I think that covers it adequately. I do not think that any hardship is involved on the labour concerned under this amendment.

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, I would like to reply to the points made by the hon. Members, not in the order in which they were made but to try and take them in an order which will deal with particular points.

I would like to deal first of all with the question of materials which was raised by the hon. Member for Embu and Nyeri and also the hon. Member for Rift Valley. I am told, Mr. Deputy Speaker, by my learned friend the Solicitor-General that this is a matter of *ejusdem generis* and that the question of the words "other materials" must be taken in conjunction with the other words with which it appears. It would be wrong to prosecute for the possession of or any other material for apparatus if not for the purpose of manufacturing native intoxicating liquor. The materials obviously must relate to the purpose with which this Ordinance deals. In other words, if the hon. Member is walking along the road with a piece of piping across his shoulder and probably for the purpose of putting it into his drain at home, it would not be assumed that he was going to make native liquor necessarily. If, on the other hand, he had the piping and a bag of sprouted grain and something else with which to distil his liquor from that grain, then one must assume that all the materials taken together will be used for this illegal purpose. Therefore, I think in interpretation of this section it is necessary to realize that you do not abstract the word "materials" by itself, but run them together with all the other words that appear in it.

Now, the hon. African Members have made quite a large point over the question of unnecessary interference in ceremonial, and then in the home life, and generally interference with the liberty of the subject. Well, the liberty of the subject in so far as liquor is concerned must surely be subject to some control or other, and that is the reason for having this Ordinance. It is also the reason for having the Liquor Licensing Ordinance where we prescribe a large number of controls dealing with liquor generally. Therefore, starting from that point I would like to remind the hon. Members that if one just lifted all controls it would be perfectly possible for everyone to brew as much liquor as they wanted. I do not think that that is a state of affairs which we particularly want in this country. I remember when I first came here in a district of the Central Province there were large mills in operation. The population used to spend a great part of the day exerting great energy in operating these mills which was the crushing of sugar cane, the whole purpose of which was to produce native liquor. The result of this was that after a number of years of exerting this energy on these mills the

greater proportion of the population, I regret to say, were perennially drunk. The Government felt that it was quite impossible to allow such a situation to continue and introduced legislation which made the operation of these mills entirely illegal. Now, the operation of these mills was made illegal purely and simply as a form of control. And I still think that in exerting the control under this Ordinance which we have or the Native Liquor Ordinance in itself is not to interfere with what the ordinary person wishes to have in the shape of his drink at night and, if I may say so, being a drinking man myself, I should have hated to have anyone interfering with that part of my social pleasure. Nevertheless, it is essential that everyone should be allowed to have only that amount which will do him particular good.

Now, that particular point was raised by the hon. Member for Central Rift. He said that native liquor, from a health point of view, he asked if it is dangerous. All I can say to him is that it depends how much of it he wishes to drink. He also raised the question of depriving people of livelihood. This is not the intention of the Ordinance or of any of the sections and, indeed, I believe that in his own constituency one of the sections is designed to produce compensation for people who have been deprived of a livelihood and got nothing out of it at all. In these circumstances, therefore, I cannot agree that it is a good thing that we should hold up the introduction of this Ordinance. It is, as you can see, meant to provide certain amendments to the law which will help quite a number of people, women being included, and I think, therefore, that we should go ahead.

The hon. Member for Central Nyanza—I have already told him that his discourse on gin really does not concern this Ordinance at all and, therefore, I do not propose to deal with it. I would, however, like to refute entirely his suggestion that these amendments were brought in merely to increase the European beer trade. Perhaps the increased drinking of beer in the country is just another of these changes in social conditions which I and the Member for the Coast referred to earlier.

Now, Sir, turning to the Member for the Coast, I regret to tell him that it was pure laziness on my part that I did not explain to him the actual amendment which I proposed to introduce under clause 6. I did not do so because I did not want to extend my original speech in introducing this Bill. But the proposed amendment is in fact to remove little (a) of clause 6 which amends section 25. Therefore, there will be no discrimination whatsoever. In turning up my file I noticed

**[The Chief Secretary]**

that one of the people in my own Ministry had this to say: "The freedom of some persons to get drunk freely on palm wine must simply be regarded as part of the inexorable march of progress in this Colony".

**Mr. Usher:** On a point of order, just for the record, Sir, was the hon. Member referring to the Member for Mombasa?

**The Chief Secretary (Mr. Coutts):** I was referring to the Member for Mombasa and not the Mombasa Area. I was replying to you, Sir.

**Mr. Usher:** I thought you were referring to the Member for the Coast.

**The Chief Secretary (Mr. Coutts):** Mr. Deputy Speaker, Sir, I apologize.

What I was merely about to say was that there were obviously a number of people, including myself, who are in agreement with you.

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 House tomorrow.

**The Credit to Africans (Control) (Repeal) Bill**

**Mr. Walnwright (Nominated Member—(Chief Commissioner):** Mr. Deputy Speaker, I beg to move that the Credit to Africans (Control) (Repeal) Bill, 1960, be now read a Second time.

**Mr. Deputy Speaker,** this is a very short Bill to repeal a very short Ordinance. There is, therefore, no call for a long winded explanation. But I should like to start by saying with what pleasure I open my debut in this House by proposing the repeal of a discriminatory Ordinance.

*[Mr. Deputy Speaker (Mr. Conroy) left the Chair]*

*[Mr. Deputy Speaker (Mr. Bechgaard) took the Chair]*

Also, Sir, by way of a bonus recommending the reduction, if only by one, of the number of controls and laws which we have in this Colony.

The original enactment was to protect the unsophisticated African and it has certainly done so. As a result of it there is nothing of that crippling indebtedness which has been the bane of many other undeveloped countries. The Ordinance gave its protection by disallowing suits by non-Africans for the recovery of credit of over £100 from Africans, unless the latter had obtained permanent exemption from the Ordinance by

going before the District Commissioner, which, of course, he could always do.

However, Mr. Deputy Speaker, African leadership nowadays believes that they should be allowed to find out for themselves the effect of fire on their fingers in exactly the same way as people of all other races, and this is a perfectly sound attitude, and therefore all Africans, I think, will support the repeal of this Ordinance even though we would all recognize that there are still some unsophisticated Africans of the type for which the Bill was originally enacted.

In this Bill Government supports the African attitude and has considered it a perfectly reasonable one, especially as in this case the only thing they will burn will be a hole in their pockets and not their fingers.

**Mr. Speaker,** I beg to move.

**Mr. Webb** seconded.

**Mr. Odunga:** Mr. Deputy Speaker, we welcome the hon. Member's speech.

The question was put and carried.

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

**MOTION****TRANSFER OF POWERS (ANIMAL HUSBANDRY)**

**Mr. Swynnerton:** Mr. Deputy Speaker, on behalf of the Minister for Agriculture, I beg to move that this Council approves the Draft Transfer of Powers (Animal Husbandry) Order, 1960.

*[Mr. Deputy Speaker (Mr. Bechgaard) left the Chair]*

*[Mr. Deputy Speaker (Mr. Conroy) took the Chair]*

**Mr. Deputy Speaker,** I do not propose to speak very much on this Motion because it is all set out in the Schedule to the Transfer of Powers Order referred to.

The transfer of powers refers to sections 3 (4), 3 (5), 3 (6) (a), 3 (6) (b), and section 4, and the transfer of powers involves the substitution of the word "Minister" for the word "Governor".

**Mr. Deputy Speaker,** I beg to move.

**Mr. Webb** seconded.

*Question proposed.*

The question was put and carried.

**MOTION****EAST AFRICAN BAG AND CORDAGE COMPANY LIMITED**

**Mr. Swynnerton:** Mr. Deputy Speaker, on behalf of the Minister for Agriculture, I beg to move that this Council approves that the arrangements with respect to the East African Bag and Cordage Co. Ltd., set forth in Sessional Paper No. 91 of 1956/57 be continued for a further period to 31st March, 1961.

This Council also notes that the bank account of the Jute Control may be in overdraft up to the sum of Sh. 3,500,000 from time to time.

The following Resolution was approved by the Legislative Council on 18th April, 1957: "That this Council approves the arrangements with respect to the East African Bag and Cordage Co. Ltd., set forth in Sessional Paper No. 91 for the period up to the period 31st March, 1958." That has been renewed annually since then.

The substance of the agreement was that for one year at a time and subject to the approval of the Legislative Council the Jute Control would enter into an agreement with the company for the purchase from the company of that part of the company's production of bags which it was impossible to dispose of elsewhere up to the limits of the controlled requirements of any particular type of bag. The price to be paid would be based on the production costs. The maximum period during which any renewal of any agreement entered into would be made would be one to five years. Any agreement entered into would be subject to annual revision as well as the annual renewal within the period of the five years referred to. The end of that period comes at the end of March, 1961, and Members will therefore note that this is the last year of the present agreement with the Bag and Cordage Co. and therefore it is the last renewal that this House will be asked to make under the present agreement.

In return for these arrangements the company refunds to the Jute Control at the end of each financial year that proportion of the profits as computed for income tax purposes derived from the overall activities of the company after payment of income tax equal to the proportion of the company's sales of jute, sales to Jute Control, to the total sales of the company.

In recent years the amount which has been paid to the Jute Control out of these profits has increased very substantially, and for the year ending 31st March, 1958, it was just under £9,000, for the year to the end of March, 1959, it had gone up to £27,000.

The result of this agreement has been a very substantial increase in the production of the factory and this has led to lower production costs and has enabled the company to sell its products both in East Africa and in the overseas markets. Exports from the company are made to South Africa, Rhodesia, Australia, Sudan, West Germany, Sweden, Italy, the United States of America, and to the West African territories, and these export markets are constantly expanding. The effect of this agreement, Mr. Deputy Speaker, has therefore been to give us an expanding and valuable industry in this territory.

Owing to the increased production of the company the proportion of the output which is being taken by the Jute Control will decrease whereas last year the percentage taken was about 42 per cent, in the current year it is expected to drop down to 35 per cent.

One of the major factors in the operation of the company has been to draw off the market very substantial quantities of low-grade sisal. In 1958, which is the latest year for which I have figures, the company drew out over 4,000 tons of low-grade sisal and, whereas there is a market at the present time, in that year it was a great help in the marketing of sisal that this quantity could be disposed of locally.

Owing to the increase in output from the company and the company's present ability to purchase forward supplies of jute and other soft fibres, the price of the gunny bags sold by the factory to Jute Control has been reduced from the highest price of Sh. 1,016 per bale in early 1957 to Sh. 735 a bale at the present time. Had it not been for the continuing high prices, the reduction would have been far greater. As against this, the price of gunnys from India and Pakistan has risen considerably due to the poor jute crop and the very heavy buying by China. The result is that for the first time the cost of the local product approximates to that of the imported product.

**Mr. Deputy Speaker,** I do not think I need say more than that at the present stage. The agreement which this Council is asked to approve is one which will be of substantial benefit to the economy of the country both at the present time and in the coming year.

**Mr. Deputy Speaker,** I beg to move.

**The Minister for Commerce and Industry (Mr. Hope-Jones)** seconded.

*Question proposed.*

The question was put and carried.

## NOTICE OF ADJOURNMENT MOTION

The Deputy Speaker (Mr. Conroy): That concludes the business on the Order Paper, but before adjourning Council I think I ought to tell hon. Members that I have received notice under Standing Order 10, paragraph 2, from Mr. Alexander, that he wishes to raise an Adjournment Motion to deal with "the current speculation in the country concerning the general economic situation and the need to establish the true facts". In accordance with the terms of that Standing Order I allot tomorrow, Thursday, 24th March, as the day on which he can raise this matter on the Adjournment.

## ADJOURNMENT

The Deputy Speaker (Mr. Conroy): I now adjourn Council until 2.15 p.m., tomorrow, Thursday, 24th March.

*The House rose at fifty-five minutes past four o'clock.*

Thursday, 24th March, 1960

The House met at fifteen minutes past Two o'clock.

(Mr. Deputy Speaker (Mr. Conroy) in the Chair)

## PRAYERS

## PAPERS LAID

The following Papers were laid on the Table:—  
East African Meteorological Department  
Annual Report for 1958/59.

(By the Minister for Local Government, Health and Town Planning (Mr. Havelock) on behalf of the Chief Secretary)

Report on the Commission of Enquiry into Certain Matters concerning the Pyrethrum Industry.

The Minister for Local Government, Health and Town Planning (Mr. Havelock): Mr. Deputy Speaker, Sir, I would like to say here that in view of laying this particular Paper, the Government will not proceed with Sessional Paper No. 9.

Mombasa Pipeline Board: Report and Accounts for Financial Year ending 30th June, 1959.

(By the Minister for Local Government, Health and Town Planning (Mr. Havelock) on behalf of the Minister for Agriculture, Animal Husbandry and Water Resources)

## MOTION

## LOANS TO AFRICAN FARMERS AND CO-OPERATIVE SOCIETIES

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, Sir, I beg to move:—

THAT this Council notes that the Government is seeking to borrow £2,000,000 from the International Bank for Reconstruction and Development to finance loans to African farmers and Co-operative Societies, and to construct and improve feeder roads, in African areas of high potential.

Last August, Sir, a commission came out from the International Bank to investigate an application which the Kenya Government had put forward for a loan of £2,000,000 for the purposes set out in this Motion. The application was then revised with the very helpful advice of the members of the commission and we have now heard from the International Bank that they are ready to hold discussions with representatives of the Government in Washington.

[The Temporary Minister for Finance and Development]

I must make it clear that this loan has not yet been approved but I think we can legitimately say that the agreement of the Bank to hold discussions in Washington is a hopeful sign.

The purpose of this Motion is firstly to inform the Council of these developments and secondly to bring to the notice of Council that it will be necessary, probably in the near future, if this loan is approved, to introduce a special Bill to cover the arrangements for this loan. It is not possible to draft and introduce such a Bill now as until the discussions have been held in Washington we will not be able to know that they are meeting fully the requirements of the International Bank.

The present position is that, as has been announced already in the Press, the Minister for Finance and the Minister for Agriculture will be proceeding to Washington during the next few days and I understand that you, Sir, will be joining them there. It is therefore desirable that this Motion should be taken so that the representatives of the Government in Washington may be able to say that the application has been made with the full approval of the Kenya Legislative Council.

As far as the use to which the loan will be put, it has already been put forward by many Members on the other side of the Council, and it has been accepted by the Government, that it is vitally important now to follow up the land consolidation and farm planning measures that have successfully gone ahead by the provision of adequate amounts of credit to enable those whose lands have been consolidated to develop them to the fullest possible extent. The improvement of roads is almost equally important, but there is obviously no point in increasing production if the production cannot be got out along the roads.

I would like to emphasize that capital is an extremely scarce commodity. It is very difficult to obtain it, that it only can be obtained after prolonged negotiations, that it is also expensive, that the terms of these International Bank loans tend to be rather more arduous than loans on the public market, when the public market can provide our needs, or the loans raised from the British Exchequer. It therefore means that it is probable that the annual loan charge on this loan, if it is obtained, will be high.

Finally, Sir, I would like to express the hope that you, Sir, and the other representatives may succeed in bringing the discussions in Washington to a successful conclusion.

I beg to move.

Mr. Webb seconded.

Question proposed.

Mr. Slade: (Specially-Elected Member): Mr. Deputy Speaker, in view of a debate on this subject which we held in the course of last year, and which the Minister himself has referred to, I naturally welcome this Motion very strongly.

There are one or two points I would like to make. The first, which I am sure the Government will accept, is that this can only be regarded as a start. We are going to need very much more than £2,000,000 for these purposes in the very near future. Secondly, I hope it is clearly understood—and I should like confirmation—that this is unrelated to the other fund of the minimum of £5,000,000 that we have been promised for the purpose of resettlement, which again we believe will have to be much more than £5,000,000. For the rest, Sir, I should like confirmation that this money will be handled, by some kind of Land Bank and in the form of a revolving fund, so that when it is paid off it will become available again; and, secondly, that in making loans to individual farmers it will be possible to lend on such long term, and at such low rate of interest, that the farmer will have a real prospect of repaying it without being held up in the process of his development.

Subject to those points, Sir, I would repeat that I very much welcome this Motion.

Mr. Hassan: I rise strongly to associate myself with the previous speaker for this loan to Africans and I also fully agree with him that this amount is very small. The amount should be increased still further.

I only wanted to make one point, Sir, that financial loans to African farmers would have been better named, farmers, specially African farmers and co-operatives, because we have come to the stage now where we must have a non-racial outlook in all the new projects.

Mr. Ngala: Mr. Deputy Speaker, Sir, I rise to support this Motion very strongly, but I would like to know from the Minister whether in his referring to consolidation he implied that African farmers who are unwilling to consolidate the land would not be getting these loans. And also I would like to emphasize a point that has been touched upon by Dr. Hassan, that this loan, although we very much appreciate it, seems to be very much below the need that does exist in the country as far as the improvement of African farming is concerned, and I would like to know how the Minister has reached that figure, and whether it is not possible to press for a further figure or an increase on this.

[Mr. Ngala]

Again, Sir, the point that has been touched upon by the Specially Elected Member, Mr. Humphrey Slade, on the £5,000,000 which was promised us as a result of the recent talks, I thought, together with improvement in agriculture, African education was also covered in that, and I wonder whether the Minister could make that quite clear as well.

With these few words I would like to support the Motion.

Major Day (Aberdare): Mr. Deputy Speaker, Sir, I would like to welcome this Motion and follow up what the Specially Elected Member, Mr. Slade, said or indicated. I would like to have something clearly stated as to the exact nature of this £5,000,000 loan promised after the Constitutional Conference. I think there is a good deal of misunderstanding as to what precisely it was intended for.

The Minister for Local Government, Health and Town Planning (Mr. Havlock): Mr. Deputy Speaker, on a point of order, I think the Motion has nothing to do with the £5,000,000, Sir, and I do suggest that the hon. Member should not refer to it in this debate.

Major Day: It has already been referred to Sir—

The Deputy Speaker (Mr. Conroy): It has been referred to by other hon. Members and no point of order was taken, however, so I did not rule on it. It clearly is irrelevant to the present Motion however interesting it may be to some Members.

Major Day: I would like a clear answer on it, if I may.

The Deputy Speaker (Mr. Conroy): Well, I have ruled categorically that it is irrelevant to the present Motion and may not be debated.

Mr. Smith (Nominated Member): Mr. Deputy Speaker, Sir, I would like to welcome what the Minister has said on this loan. I was not quite clear what he said on one particular point. I gather it was rather for development and other purposes, and he mentioned in particular that further sums have already been advanced on land consolidation which, as most of us know, really concerns the Central Province. This question of agricultural loans has been raised by me, not in favour of other African land units which are very badly needing further sums for development. Perhaps the Minister would assure us that this money will be available in all African land units.

I beg to support.

Mr. Alexander: Mr. Deputy Speaker, Sir, this has been borrowed at the rate of 64 per cent. May we be told what—I am sorry, I am looking at the wrong one. I was looking at the next one.

Mr. Deputy Speaker, perhaps we can be told what rate of interest it is expected that Government will have to pay for this money? Having established that, may we know what rate of interest above what Government has to pay that the farmers and co-operative societies will have to pay. I imagine the Government will already have made up its mind irrespective of what it has to pay of a rate that will be required to administer this fund, that would be obtained from the subsidiary borrowers.

Secondly, may we be told, Mr. Deputy Speaker, what security Government intends to obtain from the subsidiary borrowers.

Thirdly, Mr. Deputy Speaker, this is interesting and important in the context of much woolly talking in this country at the moment about the settlement. May we be assured that none of this money will be used for mere subsistence agriculture because, surely, it will be of no real benefit to Kenya to have borrowed £2,000,000 merely to pass it on to enable people to do no more than scratch the soil and fill their own tummies and have nothing over as exportable wealth for the good of the whole of Kenya.

Mr. arap Moi: Mr. Deputy Speaker, I should like to welcome the Motion on loans from the International Bank, but I should like to point out, Mr. Deputy Speaker, that these loans which have been asked for, as it was indicated before that the United States Government or the United States bankers might give us loans of £1,000,000, and this is another move to improve agriculture as a whole, but I should like to point out, Mr. Deputy Speaker, that the Government in insisting that areas of high potential—areas in African areas should only be consolidated and the pastoral areas where people keep stock should not be improved. This, I fear, is a negative attitude towards backward areas, the loans should rather spread the improvement of agriculture irrespective of areas of higher potential or areas of low productive areas, and thus improve the standard of living of our people.

I should like to oppose the Member for Nairobi West, Mr. Alexander, saying that it is not wise to give these loans to Africans who would like to improve their subsistence or their standard of living, but should go to farming or estates where—

Mr. Alexander: Would the hon. Member like to give way so that I can get this correct. I never suggested at all that I was opposed to African farmers who were able to use this money to

69 Motion—

[Mr. Alexander]

What I was querying was that it would do nobody any good to put it into subsistence agriculture.

Mr. arap Moi: Mr. Deputy Speaker, I thank the hon. Member. The trouble is that the hon. Member used the words "scratch the soil" and the men who scratch the soil are the Africans.

Mr. Deputy Speaker, I should like to raise another very important point. At the moment the Government has not made it quite clear as to how these loans should be loaned to the African farmers. At the moment you have the Joint Loans Board. We have also got the Ministry of Agriculture, through which these loans go, and I should like to point out and suggest that since there will be in future more loans towards African agriculture, the Government ought to investigate a better system of lending these loans to African or other farmers in the best way rather than have different channels through which they are given.

So, Mr. Deputy Speaker, I support the Motion very strongly.

Mr. Khamisi: Mr. Deputy Speaker, while I would like to support the Motion before the House, I very much doubt the wisdom of seeking a loan which is purely discriminatory in nature, in that it is going to be used in African areas of high potential. Well, my understanding of this, Mr. Deputy Speaker, is that the interest on this loan will be paid for by public funds and these public funds will be derived from all Africans living in Kenya, not necessarily Africans living in high potential areas. It is considered that Government is only thinking of improving the lot of those Africans who are already in good condition. I would like to see this money distributed equally to all areas who are backward and need such an assistance, and not those who are well advanced and have got good soil. Therefore, Mr. Deputy Speaker, I would also like to suggest that £2,000,000 is a very small sum of money. I would have suggested £5,000,000 should have been sought by Government, or even £10,000,000, in order to improve the lot of the African.

Therefore, Sir, with those few remarks I would like to support this Motion, but I would suggest to the Minister that he consider very seriously increasing this sum and also consider the areas which should get the benefit of this loan money.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, Sir, I welcome the support that has been accorded from all sides of the House to this Motion, but I should, I think, emphasize again that this loan has not been approved, as I think it has been assumed

by almost every speaker that this money is now in the bag and they were, if I may say so, putting forward various suggestions of how we might get more and how we might spend this money when we have got it. Well, let us first get it and when we have got it we will then include our proposals for expenditure either in the annual development estimates or in supplementary development estimates and I feel myself that that is the stage at which we should discuss the details of exactly how these funds should be administered, exactly what rate of interest is to be charged on the loans and I would point out that in the unlikely event of the International Bank being willing to lend us a larger sum, we have to be very careful about the extent of our loan programme, we have to be very careful to see that our loan programme is fixed in relation to our resources.

I start by referring to the hon. Specially Elected Member, Mr. Slade. He said he hoped that this £2,000,000 loan would be only a start. There will be an opportunity for covering that point later when the Government lays its Sessional Paper on its 1960-63 plan. This loan has been assumed as one of the sources from which we will finance that plan, and I think I would be misleading the House if I indicated that I thought we would be able to find more than £2,000,000 for these particular projects during the course of the next three years, and that is a question which must be considered against the background of our whole development programme which will be presented to the House in the near future.

His second point related to the other fund to which I would be out of order in referring, but I think I can say quite clearly that this application has no connexion whatsoever with the other one. This application was made many months ago, it was the subject of detailed investigation by an International Bank mission last August and September and is quite a separate operation.

His third point concerned the question of whether it was going to be a revolving fund. We will have to see exactly on what terms we are going to get this loan before we decide that particular point. Obviously a farmer requiring credit for the purchase of stock can reasonably be expected to repay the loan over quite a short period. A farmer requiring a loan for other forms of development may wish to have it for a longer period, but the periods for which the loans are lent will have to be related to the particular project.

The next speaker was the hon. Member for the East Electoral Area who asked whether this loan could be lent to Asian and European farmers as well as to African farmers. Well, the negotiations

[The Temporary Minister for Finance and Development] with the International Bank have proceeded on the basis that this was part of a scheme which was included in our development plan for the development of African areas of high potential. We have other proposals for providing other funds for other organizations which do provide credit for both European and Asian farmers, in fact for farmers of all races.

The next speaker, the hon. Member for Coast Rural asked whether those who were unwilling to consolidate their land would qualify for this loan. The detailed administration of this loan will be in the hands of the Ministry for Agriculture and, naturally, the applications of those farmers who are thought to be able to make best use of the money will be given preference, and I think it was the recommendation of a committee of this Council which visited the Central Province that the provision of this credit as a follow-up to land consolidation was essential—and I think that deals also with the point made by the hon. Nominated Member, Mr. Smith.

The hon. Member for Coast Rural also made a reference to African education, which I fear I cannot understand at all. I think he is thinking of the announcement which was made by the Secretary of Estate that the British Government would take over the recurrent cost of the East African Land Forces, but there was never any suggestion in connexion with this application that any of the money that we borrow from the International Bank would go towards African education.

Mr. Ngala: Mr. Deputy Speaker, Sir, on the point of explanation, I was referring to the £5,000,000 which we were promised during the Lancaster House talks recently, which I think was in the mind of the hon. Specially Elected Member, Mr. Humphrey Slade.

The Temporary Minister for Finance and Development (Mr. Butter): The next Speaker was the hon. Member for Nairobi West, who asked what the rate of interest would be and what rate the farmers would have to pay. I fear that I cannot give him that information at this stage. The rate at which International Bank loans are made depends upon the rate at which the International Bank itself borrows in the international markets of the world, mainly in New York and London. My recollection is that the International Bank raised a loan recently in London at somewhere between 5 and 5½ per cent, which gives an indication of the sort of rate at which the International Bank are now obtaining their money. As far as the period is concerned, International Bank loans are normally for fairly short periods, as I said in my original statement, that is normally not more

than about 15 years, and that is why I emphasized that the loan charges spread over that period would be quite heavy.

He also asked at what rate farmers would have to pay. Well, we will have to decide in the light of the terms on which we obtain the loan what rate we charge to the farmers, but I would say the Government will probably follow the principles which we have followed in the past with the ALDEV loans and with rehabilitation and land development loans, which is, in general, that Government meets the cost of administration but that the interest charges are reimbursed in full by the farmers to whom the money is lent.

The hon. Member also asked on what security a loan would be raised. It will be raised on the security of the revenues and assets of this Colony and if we have legislation, which I hope we will have before long, charging the interest of loans on the Consolidated Fund that will constitute the security; and, as I said before, it is probable that the loan will have to be specifically covered by a Bill which will have to be introduced into this Legislative Council.

The hon. Member for North Rift asked whether the money would be used only for areas of high potential, and the answer is that it will. It is part of the finance for a scheme which covers this side of development in those areas and other sides of development, too, and that will become apparent when the Government Sessional Paper is laid. That does not mean to say as he will see when he reads the Sessional Paper that the backward areas have in any way been neglected in the Government's plans. I think that also covers the point made by the hon. African Member, Mr. Khamisi.

I think I have covered most of the points which have been raised and I beg to move.

The question was put and carried.

#### COMMITTEE OF WAYS AND MEANS

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

#### IN THE COMMITTEE

[D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair]

#### MOTION

STAFF HOUSING LOANS: INTEREST EXEMPT FROM INCOME TAX

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Chairman, I beg to move that this Council notes that the Government is arranging to borrow a further sum of

[The Temporary Minister for Finance and Development] £250,000 for staff housing from Sceptre Trust Limited, repayable over 20 years with interest at 6½ per cent on the capital balance from time to time remaining outstanding; and that this Council approves that such interest shall be exempted from income tax in the hands of Sceptre Trust Limited.

Mr. Chairman, I will be very brief. As recently as last October a very similar Motion was approved by Council and Council was also informed by Sir Ernest Vasey that he had been able to obtain from the Sceptre Trust a further £250,000 which is the subject of this Motion. Sir Ernest also said that he hoped it would be possible for this money to be used on Government staff housing, in particular for Police housing. I do not therefore need to say more than that I have recently had confirmation from the Sceptre Trust that this money is available and that it may be used to provide much needed housing for the police in Nairobi, mainly in the form of flats. The terms of the loan will be the same as those for the original £250,000, almost the whole of which we have already taken up.

As was explained in the Motion on the earlier loan, it is desired to make interest on it free of income tax as is our normal practice where we obtain special loans from non-resident sources of this kind.

Mr. Chairman, I beg to move.

Mr. Webb seconded.

Question proposed.

Mr. Bompas (Kiambu): Mr. Chairman, Sir, I think we are all glad to hear on this side of the House the word "arranging", means more than that in this instance, and that this hare has been caught. And, if I may mix my metaphors, the harrising is in the tin.

Sir, I would like to ask the Temporary Minister, in regard to this matter of income tax in the hands of the Sceptre Trust Limited, whether the holdings of the Sceptre Trust are entirely domiciled outside this country.

Mr. Tyson: Mr. Chairman, may I ask whether this can be regarded as a precedent and that similar applications from other investors would be treated in the same way, namely that they would be exempt from income tax as indicated in this memorandum? Sir, I think that, there is a possibility, if this is more widely known, of attracting capital for purposes such as referred to here from overseas.

Mr. Muchura (Specially Elected Member): Mr. Chairman, Sir, would the Minister please

tell us how many of these flats or houses will be for Asians, Africans and Europeans.

The Minister for Internal Security and Defence (Mr. Swann): Of the total sum everything will be for the housing of the rank and file, that is the African ranks, with the exception of £24,000 which will be spent on flats for inspectors.

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Chairman, I only have two points to answer, one from the hon. Member for Kiambu. I can confirm that this company is domiciled in the Bahamas.

The other point was from the hon. Nominated Member, Mr. Tyson, who asked whether these arrangements could be regarded as a precedent for other loans from non-resident sources. As far as the Government is concerned we would look at each case on its merits. There are various factors that come into this. In the case of this particular company, they will not be required to pay income tax on the interest they receive from Kenya in the Bahamas. Therefore, the concession that we are making is not going merely to swell the coffers of the treasury of some other country. Where we have offers of loans from the United Kingdom we have to look into the matter because there is a double taxation agreement between Kenya and the United Kingdom, and there is, therefore, no point in our exempting from income tax the interest on a loan which is subject to the full rate of United Kingdom tax.

Mr. Chairman, I beg to move.

The question was put and carried.

The Chief Secretary (Mr. Coutts): I beg to move that the Committee do rise and report to Council that the Motion before the Committee of Ways and Means has been approved.

Mr. Webb seconded.

Question proposed.

The question was put and carried.

The House resumed.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

#### REPORT

The Temporary Minister for Finance and Development (Mr. Butter): Mr. Deputy Speaker, I beg to report that the Committee of Ways and Means has approved a Motion set out in the Order Paper at Order No. 4 without amendment, and I beg to move that the Council do agree with the Committee in the said Report.

Mr. Webb seconded.

The question was put and carried.

## COMMITTEE OF THE WHOLE COUNCIL

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

## IN THE COMMITTEE

[D. W. Conroy, Esq., C.M.G., O.B.E., T.D., Q.C., in the Chair]

*The Widows' and Orphans' Pension (Amendment) Bill*

Clauses 2, 3, 4, 5, 6 and 7 agreed to.

## Clause 8.

Mr. Tyson: Mr. Chairman, I am not sure under which clause I should bring this up. I wanted to raise the question of trust funds about which the Solicitor-General replied to me yesterday.

The Chairman (Mr. Conroy): Trust funds do not arise under this Bill. I would suggest that possibly the best way of dealing with the problem would be to discuss it with the Solicitor-General or one of the law officers. The funds with which this Bill is concerned are not trust funds.

Mr. Tyson: Am I to understand, Sir, that funds which have been contributed by the staff of the Government to a superannuation and pensions fund are not regarded as trust funds?

The Chairman (Mr. Conroy): My understanding of the position is that they do not fall within the definition of "trust funds" in the Trustee Ordinance and that this is not the Ordinance we are now proposing to amend.

Mr. Tyson: Well, if so, it is so contrary to the practice adopted by commercial organizations.

The Chairman (Mr. Conroy): I am not going to enter into an argument on this, Mr. Tyson. I am afraid that I have had to rule that it is irrelevant to this Bill. If you want to raise the matter you can do so either by putting down a Motion, or putting down a question, or speaking to one of the law officers.

Clause 8 agreed to.

Clauses 9, 10, 11 and 12 agreed to.

Schedule A and Schedule B agreed to.

Title agreed to.

Clause 1 agreed to:

*The Corneal Grafting Bill*

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

*The Credit to Africans (Control) (Repeal) Bill*

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

*The Native Liquor (Amendment) Bill*

Clauses 2, 3, 4 and 5 agreed to.

## Clause 6

The Chief Secretary (Mr. Coultts): Mr. Chairman, Sir, I beg to move that clause 6 be amended by leaving out paragraph (a) of the proposed section in substitution for Section 25 of the principal Ordinance, and by relettering paragraphs (b), (c) and (d) thereof as paragraphs (a), (b) and (c) respectively.

Sir, I do not think that I need to say much in explanation today of my reasons for moving this amendment in view of the fact that I think what was stated by my hon. friend, the Member for Mombasa yesterday and the reply I gave to him yesterday explained that it is really removing a clause discriminatory against people other than those mentioned in little (a) of the Bill, and therefore I beg to move.

The Chairman (Mr. Conroy): I will propose the question in the form of the first part of the amendment and not the second because the consequential renumbering is done without the necessity of a resolution in this Committee. Therefore I will propose the question in this form.

Question that the words to be left out, be left out, put and carried.

Clause 6, as amended, agreed to.

Clauses 7, 8, 9, 10 and 11 agreed to.

## New Clause

The Chief Secretary (Mr. Coultts): Mr. Chairman, Sir, I beg to move that paragraph (4) of Section 44 of the principal Ordinance is amended by deleting the words "the strength of 7.5 per centum by weight of absolute alcohol", and by substituting therefor the words "such strength by weight of absolute alcohol as may be prescribed".

Now, Sir, in explaining to the House the reason for this additional clause I want to say that in examination of the revenue estimates recently, particularly from excise, it was noticed that there had been a certain amount of falling off of excise from bottled beer, and when we examined the situation we discovered that it was largely due to the fact that in certain places there had been a much greater consumption of native liquor than in the past. And when we further went into the matter and discovered that certain people in

**[The Chief Secretary]**

been increasing the alcoholic content of that liquor. Therefore this "new brew", if we can put it that way, was appealing to people far more than the ordinary bottled beer which you could buy in a shop. The result is that there has been a certain falling off of the revenue, and I would like to make it quite clear in putting this to the House that this is not in any way trying to protect one industry against another, but merely to protect Government's position in so far as its revenue estimates are concerned. In order to put the matter right, therefore, it seemed to us the question resolves itself into whether we should put excise duty on native liquor, and if I may deal with that one straight away, the answer is from our point of view, "no", because we do feel apart from interfering with matters which the African Members themselves raised yesterday, it is, to a large extent, the poor man's drink in this country, and I do not see why we should put excise duty on it. Or, possibly to reduce the alcoholic content of native liquor. Therefore, Sir, we felt that the only way to deal with this properly was to delete "the strength of 7.5 per centum by weight of absolute alcohol" and under this section which gives us power to prescribe by rule, we would put in "such strength by weight of absolute alcohol as may be prescribed" by us. And that is the reason for suggesting to the House that we should have this addition clause.

Sir, I beg to move.

New clause read a First Time.

The question that the new clause be read a Second Time was put and carried.

The question that the new clause be added to the Bill was put and carried.

Title agreed to.

## Clause 1

Mr. Webb: May I invite your attention to the date in clause 1, and ask you to take the necessary action, please.

Clause 1 agreed to.

The Chief Secretary (Mr. Coultts): Mr. Chairman, I beg to move that the Committee rise and that it be reported to Council that the Widows' and Orphans' Pension (Amendment) Bill, the Corneal Grafting Bill and the Credit to Africans (Control) (Repeal) Bill have been considered by a Committee of the whole House and have been approved without amendment. And further that the Native Liquor (Amendment) Bill has been considered by a Committee of the whole House and has been approved with amendments.

Question proposed.

The question was put and carried.

The House resumed.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

## REPORTS AND THIRD READINGS

*The Widows' and Orphans' Pension (Amendment) Bill*

The Temporary Minister for Finance and Development (Mr. Butler): Mr. Deputy Speaker, I beg to report that a Committee of the whole Council has considered the Widows' and Orphans' (Amendment) Bill and has approved the same without amendment. I beg to move that Council do agree with the Committee in the said Report.

The question was put and carried.

The Temporary Minister for Finance and Development (Mr. Butler): I beg to move that the Widows' and Orphans' Pension (Amendment) Bill be now read a Third Time.

The Asian Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

*The Corneal Grafting Bill*

Dr. Walker: Mr. Deputy Speaker, Sir, I beg to report that a Committee of the whole Council has considered the Corneal Grafting Bill and approved the same without amendment.

The Chief Secretary (Mr. Coultts): I beg to move that the Council do agree with the Committee in the said Report.

The question was put and carried.

Dr. Walker: Mr. Deputy Speaker, Sir, I beg to move that the Corneal Grafting Bill be now read a Third Time.

The Asian Minister without Portfolio (Mr. Madan) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

*The Credit to Africans (Control) (Repeal) Bill*

Mr. Walwright: I beg to report that the Credit to Africans (Control) (Repeal) Bill, 1960, has been considered by a Committee of the whole Council and has been approved without amendment.

[The Earl of Portsmouth] in order to be constructive, into three categories. Work which could be done immediately within the very meagre resources of the Government on well chosen lines of minor construction and so forth, something worth producing. Secondly, there is need not only to go forward saying we want funds for settlement, that will answer some of the question but only a little bit. I think it is absolutely necessary that we approach the world agencies on lines of far larger things that will be generally wealth-producing and upon which we can pay interest in this country, for unemployment to produce new wealth and to use unemployment, as I have said before, as a drive to develop this country and not drag it down.

Thirdly, Sir, I would like to say that with all due respect, talking to a good many people in financial circles, that there is a tendency in financial circles today to ask for the welfare state, in other words they will only tend to move this money where it is dead safe, just as you would ask for a new set of false teeth from the Government. I believe that the empire, not politically but commercially, which Great Britain built up was built on risk and if there is any question of people being unable to risk money then the British Government should produce something in the nature of a capital export credit scheme as compared to the export credit schemes which they have created a precedent for in the past by guaranteeing exports to doubtful countries. That was all done in the thirties. Sir, today, would it not be possible for Her Majesty's Government to say that when a big finance house is going to do a big work on approved schemes out here, wealth producing schemes, and that they will guarantee, if you like, 50 per cent of that capital in case of political disaster? If that could be done, Sir, and I can see no difference fundamentally between that and the export credit schemes of the thirties. Then we would have the capital which would bring the economic stability and which might bring the political stability, too.

**Mr. Mboya (Nairobi Area):** Mr. Speaker, Sir, I want to make a few observations, especially on some of the points raised by my hon. friend the Member for Nairobi West.

I fully endorse what he said and agree with him, especially on the question of letting us know precisely the accuracy of these rumours about capital leaving the country and how far this has been effected or how far this has been going on, especially in the last few months.

The other point on which I agree with him is the question of unemployment. Now, we cannot overemphasize, I think, the necessity for Government to take immediate action. It is indeed sur-

prising that at this late stage the Government should be telling us that they are merely investigating the degree of unemployment. There is no question at all in the mind of anyone walking the streets of Nairobi and other urban areas and walking around the industrial areas, that there is a high degree of unemployment and the implications of that are too obvious for us to set up an Enquiry. The amount of the crime wave can be associated to this high degree of unemployment both in the urban areas and also in the rural areas. What is needed now is not another six or nine months Enquiry but rather action, and urgent action, to meet this problem of unemployment. I do not think it can be met by negative policies of control of repatriating people back into the reserves where they have no jobs and no food and no subsistence. This is negative and does not meet the problem. The problem has to be met by generating employment, and, if necessary, Government programmes have to be produced now to meet this very urgent problem.

There are two other points which my hon. friend made and on which I just want to make a very passing observation. He has touched on the question of land use and settlement schemes. I thought he made references intended to convey a certain type of thinking on this question. We, the African Members, have very definite ideas on the question of land which I will not try to develop during this debate, but I do want, at least, to say this: that those European settlers who are talking in terms of repatriation or of evacuation money are a liability to this country. The sooner they leave the better. Those Europeans who have the courage of their convictions, and who really talk in terms of Kenya as their country and have no other loyalty, can stay here and they have a future, and we are prepared to say so. But those who have two loyalties, double loyalties, those who easily, in the case of hardship, begin to think of England as their home, are a terrible liability. They lend a lot to the present political instability of this country. They live on past glories and think of the days when they talked of the white man's burden. Those days are gone; they are not going to come back; and I think it is time they reversed their thinking and realized that changes are taking place and that no amount of talking is going to stop those changes. But one thing we can give them is this assurance—that if they are truly adopting Kenya as a home, accept those conditions which prevail in this country, and, with us jointly, intend to develop this country for the good of every citizen—and I mean every citizen—as an individual, then they have nothing to fear from us. We can give them every security, much more than they have been given in the past.

**[Mr. Mboya]**

In so far as the Civil Service is concerned, Sir, all I can say is that with independence must come a Civil Service that is truly one of this country. In other words, we want to see the Civil Service localized. Our local people must enter the Civil Service. I have much respect for the expatriate civil servant but the independent Kenya cannot be dependent on expatriate civil servants, however loyal or however good. They are a temporary type of person, however good they may be, and we welcome them here; we want them to help in developing our local Civil Service. But it would be a very wrong policy to depend on expatriate civil servants in a future and independent Kenya. This Government is very much behind in so far as this development is concerned. They are now beginning to think of localizing the Civil Service when we are approaching the day of independence. This is something they ought to have done a long time ago and, therefore, there is greater urgency now that they should move much faster in localization of the Civil Service. So far as political instability is concerned, all I can tell the hon. Members here is that there is too much talk, I think, glibly, about the Lancaster House goodwill atmosphere. Goodwill is not a commodity on a shelf to be bought. Goodwill does not merely emerge like a mushroom in circumstances which are unrelated to the atmosphere that exists in the country. What people have to do is to be realistic and understand and appreciate the forces and trends in our own country now. If they do that I am sure there will be much more talk of co-operation than of good will.

Thank you.

**The Temporary Minister for Finance and Development (Mr. Butter):** Mr. Deputy Speaker, Sir, far more points have been raised by hon. Members than can possibly be answered in the few minutes left, and I will merely try to deal very briefly with two.

The first is the question of whether the Government intends to freeze assets and, secondly, there is the question of the flight of capital from the country.

On the first point His Excellency the Governor, in a Press conference which was reported in the *East African Standard* on 26th February, is recorded as having said that there was no power to freeze assets in Kenya and that, even if the Government had it, it would have no desire to use it. His Excellency is also recorded as having stated that it would be an absurd thing to do and that "I would like to quash this rumour." I trust that this rumour, which is not yet dead, will soon be dead. It would, in fact, not be a practical proposition for the Government of this country to

try to prevent the movement of money from Kenya to other Sterling area countries and there is nothing in the Exchange Control Ordinance which would give us power to do that as the control is confined to movements to non-scheduled or non-Sterling area countries. It would also be the height of folly for the Government of a country such as Kenya, that depends on attracting more capital, to try to treat unfairly or to restrict the movement of the capital which is already here.

The second point is the one concerning the amount of money which has been leaving or which has not been leaving Kenya in the last few weeks. The substantive Minister, Mr. MacKenzie, gave a Press conference yesterday in London which I hope will be reported fully in tomorrow's papers. He made it clear that on information that he had obtained from financial circles in London and from financial institutions with branches in Nairobi, and from reports that had been sent to him from here, the report that sums of the order of £900,000 or £1,000,000 had been leaving Kenya was entirely unfounded and incorrect. The further details of that statement will appear in tomorrow's *East African Standard*. It is obvious that political uncertainty does not provide the best possible climate for rapid economic development, but on the other hand these rumours that have been circulating are quite incorrect and I am glad of this opportunity to say so.

**The Minister for Commerce and Industry (Mr. Hope-Jones):** Mr. Deputy Speaker, I just wanted to enlarge on one point. The figure of nearly £1,000,000 has been bandied about not only here but in another place.

The hon. Member for Nairobi West who spoke first said: "How could the figure have been arrived at?" Well, Sir, it is fairly easy to see how the figure could be arrived at. If the hon. Member would care to look at the trade returns for the Colony and Protectorate of Kenya for the last five or six years he will see that the total cost of our import bill in any one year has been over £50,000,000. By a simple process of arithmetic, Mr. Deputy Speaker, it therefore follows that about £1,000,000 per week to pay for our imports must have left the country, on an average, every week for the past five or six years.

Mr. Deputy Speaker, I am not suggesting that the hon. Member who spoke was referring to that figure. I know very well that he was not. But I know that there are some people who are only too anxious to sell this country short, who will take any opportunity within their power to put us in a dark light, and I would suggest, Mr. Deputy Speaker, that the only way they could have arrived at that particular figure was the way that I have suggested, because if they had been speaking of capital movements all I can say is that it



[The Minister for Commerce and Industry] takes the East African Statistical Branch of the High Commission at least 18 months after the year they refer to before they, with all the facts at their disposal, can arrive at an estimated figure. So, Mr. Deputy Speaker, I hope that what I have said will at any rate bury that particular canard.

Now, Mr. Deputy Speaker, there is at any time in this country, and particularly at a time of uncertainty, a tendency to move capital out of the country; and I am proud and I am pleased that my hon. friend was able to say that we have got no intention of preventing such a movement of capital. But, Mr. Deputy Speaker, those who are shrewd in business are those who see that opportunity sometimes beckons when the foolish herd do not think that it does; and it is only a matter of two months ago that a representative of one of the most powerful groups in the City of London was here, and when I said: "What are you doing?" he replied "I am buying because some people are talking about selling". I would suggest, Mr. Deputy Speaker, that that is not a bad principle in business.

Now, Sir, I do not want to try to deal with the very important points that were raised by certain other hon. Members. In a debate on the Adjournment it would neither be proper or treating with respect those Members who, like the hon. Corporate Member for Agriculture, spoke on something that I know he feels very deeply, something which I feel very deeply myself; but, clearly, Sir, in 15 minutes for either side it would be foolish to try to deal with such a serious problem as unemployment.

I beg to support.

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, I feel that there are two points which I must deal with in this short time that we have available. One is unemployment and the second is the question of the Civil Service which have been raised in this debate.

As regards unemployment, the hon. Member for Nairobi West mentioned the question of the Commissioner, I would like to inform the House that I have appointed a subcommittee of the Council of Ministers to enquire urgently as to whether there is any development money which can be provided for schemes which may be able to provide for the relief of unemployment.

The Chief Secretary (Mr. Coutts): Hon. Members may say, "Hear, hear" but this is a very short-term proposal and my own belief is that we have got apparent unemployment with us for a very specific reason and that is that because of our control of movement during the Emergency which has been going on for the last ten years, namely, an increase of population, has been

thoroughly obscured. That fact has come home to us as a very considerable bombshell. The only way that we can deal with this problem is to encourage people from outside to invest capital and to start industries in this country, and the one thing that is preventing that is instability, lack of confidence, and the fact that people are not prepared, so far as I can make out, to create the conditions now which we need to invite these people to come in. Nevertheless, as I have said, the Government does not take this problem lightly and will do what it can.

As regards the Civil Service, which I must say I am surprised was raised in a debate of this sort but which I am now glad has been raised, I would like to reply to the hon. Member for the Nairobi Area. Certainly as long as I have been back in this Government it has been a directive from the Government to the Public Service Commission that on no account should they recruit anybody from outside unless they have first employed a local person. Therefore, localization has been going on in this country for quite some considerable time.

Mr. Mboya: It is very small.

The Chief Secretary (Mr. Coutts): I also regretted his statement when he said that an independent Kenya cannot be dependent on an expatriate Civil Service. The expatriate Civil Service has done a great deal for this country and I would like him to realize that what has happened in other countries which have become independent is that they have discovered that they have needed just as many expatriate officers after independence as they had before; and I would like him really to reconsider what he has said because it is not the experience of other countries that have become independent. I submit to him that because of historical matters, particularly referring to education where it has not been possible to expend as much money in this country as in others, it has not been possible to educate people as quickly as in other countries. Nevertheless in these countries it has still been necessary to depend on that service, and I suggest to him that it is a very unwise thing, particularly at this moment, to say things which will upset that Service on which this country relies; and I would like to assure him that in so far as localization is concerned we will continue with our existing policy.

#### ADJOURNMENT

The Deputy Speaker (Mr. Conroy): The time has now arrived to interrupt business and I accordingly adjourn this Council until 9 a.m. tomorrow, Friday, 25th March.

*The House rose at forty-six minutes past Three o'clock.*

Friday, 25th March, 1960

The House met at Nine o'clock.

[Mr. Deputy Speaker (Mr. Conroy) in the Chair]

#### PRAYERS

#### ORAL ANSWER TO QUESTION

##### QUESTION No. 67

Major Roberts on behalf of Group Capt. Briggs asked the Chief Secretary what is the scope of the discussions which it has been announced are to take place between Her Majesty's Government and the United States of America concerning the future development of certain territories south of the Sahara?

The Minister for Legal Affairs (Mr. Griffith-Jones): May I crave your indulgence on behalf of my hon. friend, the Chief Secretary who is not present. Perhaps this Question might be taken — I withdraw that, Sir.

The Chief Secretary (Mr. Coutts): Mr. Deputy Speaker, Sir, I apologize for being late. The answer is: No special discussions are in prospect but as the hon. Member will know, Her Majesty's Government frequently exchanges views, through diplomatic and other channels, with the United States and other friendly Governments interested in Africa.

#### MOTION

##### LIBERTY OF SUBJECT

Mr. Slade: Mr. Speaker, I beg to move:—

That this Council urges Government, during its review of the Immigration Ordinance and Regulations, to pay particular attention to all provisions affecting the Liberty of the Subject.

Sir, I understand that our present Immigration Ordinance of 1956 is at present under review. If I am wrong in that, then, Sir, for reasons that I shall give in this Motion I suggest that it certainly should be under review.

Now, Sir, it has been a noticeable tendency in some of our legislation of recent years that in order to make sure that our laws are enforceable, we are a little too careless of the essential liberties of the subject. I have had occasion to comment on this with regard to other legislation and I am convinced that it arises again with regard to this Ordinance. It is perfectly true, Sir, that in emergency legislation one has to forget some of these cherished privileges, but in our substantive law we have got to be very careful. Even then, I know, that it is no good making laws without the

machinery for enforcing them but it is even worse to sacrifice essential principles to our desire for fool-proof machinery.

Mr. Deputy Speaker, in this matter of immigration legislation I recognize that the question of whether or not any stranger shall be allowed to enter this country for the first time must be a matter for executive discretion rather than a matter of any legal right. Indeed, Sir, I have been one of those who have urged that principle very strongly in the past and I know that that principle underlies the Ordinance which I am now discussing. It is right that anyone who wants to enter this country for the first time should have to satisfy the Government that it is in the interests of the Colony that he should do so, and should not be able to claim any right of doing so, but we must make a clear distinction, Sir, between that executive discretion with regard to the initial admission of strangers, and the rights of people once they are in this country, particularly with regard to the liberty of their persons—freedom of their persons. We must also be careful that once Government has, rightly or wrongly, allowed a person by certificate or otherwise to reside in this country, he should not then be subject to arbitrary interference with the right which has been given to him. In either of those cases, Sir, it is my firm submission that the person who is already in this country must have recourse to law for, at any rate, the protection of his person, and also for the protection of any rights that have been accorded to him by the Government.

Well, Sir, this trouble—or the points to which I want to refer—arise mainly with regard to what are called "prohibited immigrants" and the question of whether or not a person is lawfully in this country. "Prohibited immigrant" is defined by section 7 of the Ordinance as "any person who is not the holder of a resident certificate, or entitled to a resident's certificate, or is a member of certain defined classes"—largely defined by subsection 2 of the same section. So we find the prohibited immigrant clearly defined in a way which the court of law can interpret.

Mr. Deputy Speaker, Sir, turning to section 4 we find that under the law as it stands the Crown has very wide powers of acting without resort to any court of law at all. First of all there is the right of the immigration officer to interrogate persons—not only persons who are seeking to enter the country for the first time—but also persons whom he has reasonable grounds for believing—that they are prohibited immigrants. That is to say persons who are already in this country. In section 4 (1) (b) for the purpose of exercising these powers any immigration officer may interrogate any person who desires to enter

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the Colony or any person whom he has reasonable grounds for believing to be a prohibited immigrant. Now the person who refuses to answer questions put to him in these circumstances is committing an offence, and may be sent to prison for three years and fined £1,000. If he does answer in a way that incriminates him then his answers, as I understand it, are admissible in criminal proceedings against him. So you get the extraordinary position, Sir, quite contrary to other principles, that a person suspected of being subject to criminal prosecution may be questioned, has to answer the questions under pain of prosecution if he does not and, having answered the questions, his confession, or whatever it may be, can be used in evidence against him. We had a long discussion about confessions to police officers and others not long ago in this Council, and here, cutting right across that, is a power to compel a person to confess or make other statements to an immigration officer with a view to his subsequent prosecution. It is true enough, Sir, that the power of questioning the suspect only arises if the immigration officer has reasonable ground for believing that the man is a prohibited immigrant, but the unfortunate person who is questioned has no power of testing whether or not the immigration officer has reasonable grounds because his grounds are not disclosed, and so he has to take the risk of saying, "This man has no reasonable grounds and I will not answer him", or guessing that he might have, whether it turns out eventually to be good grounds or not, and facing subsequent prosecution. There, Sir, I do submit that we have something that cuts right across all accepted principles and which is also unnecessary because if it is a question of establishing that a person already in this country is a prohibited immigrant and here unlawfully, and that he therefore should be deported or prosecuted, the Crown is well covered by the provisions of section 18 (2) which puts upon the person concerned the burden of proving that he is here lawfully. Now, I have got something to say about that section, too, Sir, but in substance I am prepared to accept that if a man says he is here lawfully it is up to him to prove it; but if it is up to him to prove it then why should he have to answer questions on interrogation before he is brought before a court of law to prove his case?

Sir, coming to section 11, we find something even more serious. Under section 11 the Minister may make an order directing that if any person whose presence within the Colony is unlawful he shall be removed from the Colony, and he may also direct that such person shall be kept in prison or in police custody pending removal. Now, that does not require, as one might expect,

the Minister first to get the finding of a court of law that the person concerned is here unlawfully, or an order of a magistrate that he may be imprisoned. No, Under this section, as it stands, the Minister may of his own executive initiative say to himself, "This person is here unlawfully; I am going to deport him and I am going to imprison him meanwhile." Now, the mischief of that, Sir, has been proved in at least one case that has been brought to my notice, and that is the case of one Lalji Devraj. The Minister is well acquainted with this case already. I know that he has very good reason to be because in this case, on two occasions, the Minister exercised his powers under this section with regard to a gentleman who arrived in this country in March, 1948, 12 years ago. In 1958 the Minister resorted to these powers ten years after Walji Devraj arrived in this country, put him into prison with a view to deportation, and, I think I am right in saying, was compelled by subsequent proceedings of *habeas corpus* to let him out of prison, proving that the man was lawfully here and that the Minister had imprisoned him for no good cause at all.

**The Minister for Legal Affairs (Mr. Griffith-Jones):** Question!

**Mr. Slade:** Well, the Minister will have a good opportunity to answer this instead of asking questions.

**The Minister for Legal Affairs (Mr. Griffith-Jones):** Mr. Deputy Speaker, I was not asking a question; I was questioning the hon. gentleman's conclusion.

**Mr. Slade:** Your turn is coming.

Not content with that, Sir, a year later the Minister—and I believe that it was this very Minister whom we are going to have the pleasure of hearing very soon—resorted to the same powers again in respect of the same man, put him into prison, and was told by the court to release him. Now, Mr. Speaker, if we are all going to be subject to be put in prison by direction of a Minister without any magistrate ordering that we should go into prison, without any court establishing that we are here unlawfully, where is the liberty of the subject. I do suggest, Sir, that the enforcement of this Ordinance, which, indeed, is most necessary, could equally well be achieved if there was power to arrest the person suspected of being here unlawfully, provided that, as in all other cases that I know of, the suspect then has to be taken before a magistrate within a limited time and the magistrate then directs his imprisonment pending ascertainment of whether or not he is here unlawfully; and the magistrate directs his deportation if the case against him is proved.

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Then, Sir, we have the ordinary right of the subject to resort to a court of law for his own protection instead of having to take the very last resort of a writ of *habeas corpus* after he has been wrongly imprisoned. So there, Sir, is provision of the present Ordinance which I do suggest has got to be reconsidered very carefully and, in fact, altered as soon as possible.

Then, Sir, coming to another provision—that is, section 8—we have the position that if anyone wants to be in this country he has to get some kind of entry permit or pass from the Immigration authorities, and, as I acknowledged, the grant of that entry permit or pass is a matter of executive discretion. Once he has got it, I submit, it is a matter for a court of law if it is to be taken away again. Under section 8, any entry permit, pass, certificate or other authority which is or was obtained by fraud or misrepresentation or concealment or non-disclosure, whether intentional or inadvertent, of any material fact or circumstance, shall be, and shall be deemed always to have been, null and void and of no intent.

Now, that, Sir, on the face of it is fair enough, that an entry pass obtained by some misrepresentation even innocent should be subject to cancellation because it has been granted under a misunderstanding. But I do submit, Sir, that once the Crown has granted a pass giving a person a right to be in this country, then if the Crown wants to say that that pass is void because of some misrepresentation, the burden of proof of that should be upon the Crown and be enforced only in a court of law. We come back to the same point. Let the Crown have full executive discretion as to the initial grant of a pass but once the Crown has given a pass or otherwise given any person the right to be here, then that right should only be taken away by proof in a court of law, if circumstances have arisen to justify taking that right away. But there should be no power for the Crown to say arbitrarily, "Oh, we gave you this certificate by mistake or through misrepresentation. Now, go away!" which as it stands, Sir, as I understand it they can do even after a matter of ten years. It should be for the Crown to establish before a court of law with the burden of proof on the Crown that there was in fact misrepresentation in connexion with the issue of the pass concerned.

Then, Sir, we come to section 18 with regard to evidence. Section 18 (1) allows in evidence for the purpose of any proceedings under this Ordinance certificates signed by a responsible Minister or official or duly accredited representative in the Colony of any other country. Now, Sir, that may be desirable because of the difficulty

of getting direct evidence from places abroad which are the only places sometimes where evidence of birth or so on is obtainable. But we have to be very careful how we accept this kind of evidence and there should be some sort of caution, I suggest, Sir, to courts as to the use of this evidence; perhaps to the extent of saying only that it may be corroborative evidence or that it has to be corroborated in some particular because referring back again to this notorious case of Lalji Devraj my information is that the Crown relied on two different certificates which were completely contradictory. There were certificates from the Commissioner of India; one dated 2nd December, 1957, certified in effect that Lalji Devraj was not the son of another person and that there had been no formal adoption of Lalji Devraj by that person. Yet another certificate from the Commissioner of India dated 4th July, 1959, certified that according to enquiries made in India Lalji Devraj was adopted by this person some 25 years ago, in a perfectly formal manner. So one sees the danger of convicting people on these certificates.

But coming to section 18 (2) we find this provision, that the burden of proof that any person who is not or was not at any time a prohibited immigrant shall lie on that person. Sir, I may have been in this country many years. It is suddenly suggested that I am here unlawfully. I am brought before a court and I have to prove that I am here lawfully.

Now, however objectionable that may seem to some people, I accept that that is one of the provisions that we have got to have if this Ordinance is to be effective. But it is very dangerous as it stands. What I do suggest, Sir, coming back again to my same theme, is that once any person resident in this Colony has an entry permit or pass issued by the Government authorizing him to be here, then that is prima facie evidence that he is lawfully here, and he has to that extent discharged the burden of proof upon him and it is then for the Crown to prove that there is something wrong with that pass which he holds as his authority for being here.

So that is a qualification, Sir, that I suggest most earnestly should be annexed to a provision, that the burden of proof of lawful residence is on the person charged.

Now, Sir, there is another matter which troubles me not related to the interference with the freedom of the subject, but with regard to restricting rights of long standing which have been sanctioned by the Government. That arises under section 6 (10) (b). It may be to some extent past history, this, because it was a transitional provision of this Ordinance but the effect

[Mr. Slade] of this provision was that certain resident certificates, that is to say, the certificates saying that a person belonged to this country, not merely a temporary pass, certain residents' certificates issued before this date, the date of this Ordinance, should be deemed to have expired and ceased to be of effect even though when issued they purported to have several years still to run. Well, the reason I have raised this is because of another case that has come to my notice of a certain Mrs. K. M. Patel who held a resident's certificate granted under a previous Ordinance which had many years to run; a certificate saying she belonged to Kenya. She went away to India for a short time and about the time the new Ordinance of 1956 became law. Under this Ordinance her resident's certificate for some reason unknown to me became null and void and she has never since been granted another one or allowed back into this country. Now, that is a case, Sir, of completely ignoring previous recognition of a person's right to be in this country and I do submit again, Sir, that we must respect, we must honour, rights of such an important kind that have been granted however discretionary the powers of the Government is to grant them in the first place.

So, to sum up, Sir, the purpose of this Motion and I am only moving that Government should accept the responsibility of general reconsideration of this Ordinance with particular regard to the liberty of the subject—to sum up, my main theme is, "Let Government have all the discretion it likes in the first place as regards allowing people to enter this country, but once Government has exercised its discretion and given a pass or certificate, then give the subject who has that pass or certificate all the protection as regards interrogation and liberty of the person and everything else that is accorded to any other person for any other purpose in this country. And let him have in all circumstances the ordinary protection of a court of law before he is deprived of his personal liberty." This, Sir, is a matter of great importance for two reasons. One is the particular importance of giving confidence and a sense of security to those whom we want to enter this country, whose skill or capital we badly need and who must come here feeling that they are safe from arbitrary executive action, after they have got here. Secondly, the more general and vital issue still, that is, in all circumstances in all our substantive law respecting the essential liberty of the subject.

I beg to move.

Mr. Nazareth, Mr. Deputy Speaker, Sir, I beg to second the Motion. I find myself at some

disadvantage in doing so because I was under the impression that the Motion which had been drawn earlier in the list by the hon. Mr. Towett on citizenship would come on first and that it would be on the Order Paper for today. I found suddenly that this Motion which I had agreed to second was the only Motion on the Order Paper and I also laboured under some old idea that the Council sat at 9.30 a.m. although I had distinctly heard last night, yesterday evening, that the Council sits at 9 a.m. This old idea persisted in my mind and I came a little late into the Council. Therefore I did not hear the earlier part of my learned friend, the hon. Mr. Slade's speech, and I hope that I shall not be repeating anything that he has said in the course of moving the Motion.

The policy of the Immigration Ordinance, that of the present Ordinance, was introduced as a result of the recommendation of the Royal Commission on Land and Population, the Dow Commission. Originally there was a good deal of control by the judiciary or quasi-judicial bodies over the issue of residents' certificates, entry permits and so forth. But as a result of the recommendations of that Commission the control passed very largely from the hands of the judiciary into the hands of the executive and the consequence has been that there has been a considerable danger to the liberty of the subject.

Having regard to the limited scope of the Motion I do not, of course, intend to embark upon the general question of policy except to say one or two things in regard to the general control. An appeal lies to the Supreme Court against the refusal of a residents' certificate and against the refusal of an entry permit to a resident only in one case, that is, in this particular case. In all other cases the right of appeal is only to the Minister and the Minister is not bound to give any reasons and in practice he does not give any reasons for refusal to grant any entry permit or for any action that he takes. And there is power in the Ordinance given to the Principal Immigration Officer in subsection (3) of section 3 to delegate his powers to subordinate officers with the result that much of the power contained in the Immigration Ordinance is exercised at a fairly low level. And the right that the subject has to go to the courts for relief is of a very limited character through prerogative writs or extraordinary remedies or such action as *habeas corpus*. These, therefore, afford a very limited protection and the powers that are given to the Immigration Officers therefore can be exercised in a way which operates very harshly against the subject and tend to encroach very heavily on his liberty. I think the hon. Mover has referred

[Mr. Nazareth] to the power of the Immigration Officer under section 4, subsection (1), clause (b) to interrogate any person in respect of matters arising under the Immigration Ordinance and he can summon any person for interrogation under section 3, subsection (3).

Under section 4, subsection (4), it is an offence not to attend, to refuse to answer, to give answers that are untrue or misleading, and then the Ordinance provides that these answers which the subject is in a sense compelled to give if untrue can be used in evidence against him, or even if true, of course. And the result is that the person is put into the position of incriminating himself and in effect to a great extent of convicting himself. This is a power which I would submit ought not to be placed in the hands of the executive. It is against the basic principles of English law that a person should be forced to incriminate himself. In one sense, it may be said, he is not forced to incriminate himself; but on the other hand, he is forced to attend, forced to give answers and placed in a position in which he may incriminate himself. That has never been a power which normally is given to the executive to put the subject in such a difficult position. On the contrary, when a person is in police custody normally his answers are not admissible in evidence. Why this extraordinary action—this extraordinary power—should be given to the executive is extremely difficult to understand. And it is to be remembered—I hope I am correct in thinking that the section that applies is section 15, subsection (2)—it is to be remembered that the penalty for any of these offences is three years or a fine of Sh. 20,000. This, then, is power contained in the Ordinance which is a very great danger to the liberty of the subject and I suggest that it is one of those powers that ought to be reviewed when the Ordinance is reviewed, as is being done at present.

Now, another matter that was referred to by the hon. Mover—I need not trouble the Council with it, that is the power contained in section 7 subsection 1 clause (1) under which persons who have entered the Colony before this Ordinance came into force years before may be considered still unlawful or prohibited immigrants because their entry was unlawful at that time. One does feel that if the person had entered and been here for many years he should be able to regard himself as safe after a period of time. The case of Lajji-Devraj has been referred to but I think the hon. Member did not mention that his rights were called into question after he had been in the Colony for a period of 11 years without anything in the way of any offence having been committed by him after having lived a blameless life

in this country for 11 years. The details of that case are no doubt in the hands of the Government. A certain amount of it was published in the *Sunday Post* in an issue of 11th October, 1959. In that issue several other cases were set out where the Ordinance has operated in a most oppressive manner against several persons. The hon. Mover has referred to section 18 subsection (1) where the Government is given power to act on information received from any Government source outside the country, so I will not deal with that.

He has also referred to section 18 subsection (2) 'placing the burden on the subject to show that he is not a prohibited immigrant. That again is a power which can be exercised—it is a provision which can operate—oppressively against a person who may have been resident in this country for as long as ten or fifteen years. That he should be suddenly called upon to prove that he is not a prohibited immigrant, to prove a negative, is something in the way of placing a burden, a very heavy burden, on a person. When it is remembered that powers of arrest are given to the executive and that they can call into question the rights of any subject at any time, even after many years of residence, then one ought to scrutinize with very great care the immunity which is given to Government officers who act in good faith. They are saved not only from any criminal action; they are saved also from civil liability. If the executive is vested with so much power and the subject is not in a position effectively to safeguard himself against the aggressive exercise of such power, then I feel that it would be right to ensure that these powers are exercised with caution by rendering the arrest of a person who is entitled to be lawfully in the country unlawful, to provide that such exercise of power is penalized at least by rendering the person exercising the power liable to civil action.

The hon. Mover has referred to the case of Mrs. Motibhai Patel, where a certificate of permanent residence which had been granted to the person just a short while before she left for India, was cancelled while she was in India within a very short time of its issue. It was apparently deemed to have expired. This was a case where a person had a right, who considered that she had a right, and is suddenly told that she has that right no longer. She marries in India; she is unable to bring her husband back to this country and she herself apparently is unable to come back to this country.

There is another case which has not been referred to by the hon. Mover and that was a case of, I think, a person named Marles, from the City Council of Nairobi. I believe he was a person who had come here on a temporary

[Mr. Nazareth] occupation permit. He had bought property in this country and he was refused the right to continue in this country, apparently for no reason at all. Now, it is surely right that when a person has come to this country and he has bought property in this country that the executive should be put under an obligation to give the reason why they consider the person should be deprived of his right to remain in the country. The Ordinance, in my submission, contains provisions which constitute a very great danger to the liberty of the subject and since the Ordinance is being reviewed I would urge that during this review these provisions which constitute so great a danger to the liberty of the subject ought also to be reviewed and encouragement given to persons who have come into this country to remain in the country.

Mr. Speaker, I beg to support the Motion.

*Question proposed.*

The Minister for Legal Affairs (Mr. Griffith-Jones): Mr. Deputy Speaker, in explaining the terms of this legislation in relation to the criticisms which have been raised by my hon. and learned friends opposite I must, in order to place the matter in its proper perspective, make certain observations which, I fear, are unpleasant observations, and I dislike having to make them. But it is a fact, and we must not blink it, that in the operation of our immigration control legislation over the last 12 years, and before that—because it was in 1948 that the original Immigration Control Ordinance came in; before that it was done through certain Defence Regulations—but during that period I regret to say that the capacity for fraud and misrepresentation in order to obtain entry to this country, particularly from the subcontinent of India, has been infinite, and we have had to consider and face this fact in formulating our immigration policy and in providing ourselves with the legislative powers to safeguard this country and the legitimate residents of this country against this form of crime—for it is a crime. It is stated to be so in the law.

We are, of course, and we have found ourselves over the years in the administration of this legislation, severely handicapped. We could probably today expel several thousands—several thousands—of illegal residents of this country. In order to do that we would have to bring evidence in each case from the subcontinent of India. Now that is one alternative which this Council would have to consider if it wishes us to relinquish the powers which by bitter experience over the years we have found to be indispensable to the enforcement of this legislation against those who are determined to defeat it if they possibly can. And I must also say this, that

among those persons who are determined to defeat it, and who have exhibited a determination to defeat it are not only people outside this country seeking to get in, but also people in this country seeking to obtain, literally by "hook or by crook", and preferably "by crook", the entry of other persons from outside this country—either relatives or non-relatives for ulterior motives.

I said in opening, Mr. Deputy Speaker, that I disliked having to say these things because I realize they are unpleasant things to have to say, particularly with my Asian friends opposite, but I believe that they know in their heart of hearts that what I have said is true.

Now the Government wishes to have no unwarrantable or unjustified arbitrary powers, but if it is to have no powers, then let us throw our frontiers wide open. Let us abandon the futility of attempting to enforce immigration control with both hands tied behind our back and both feet shackled. It would be literally an exercise in futility. I think really that the justification, in a broad sense, of this legislation goes back to the principle which my hon. and learned friend, the Mover, enunciated, and which was the main theme right through this legislation as the Government presented it to this House on its enactment; namely that immigration control must be, to be in any degree effective, a matter of executive discretion. We have not given—and we do not intend to give—any person outside this country who has no claim on this country a right in law to enter it. We intend, and this is the theme of this legislation, we intend to exercise a selective discretion in regard to those whom we allow into this country—the criterion being, in general terms, the benefit of the country.

We have made a number of concessions from time to time. We made a concession some years ago in regard to the entry of husbands of women—particularly Asian women—resident in this country. We made that concession with some misgivings because the normal civilized procedure ordinarily regards as the proper practice that a wife should follow her husband. Modern thought does not regard ordinarily a husband as a chattel or appendage of the wife; indeed we are moving rapidly and realistically away from regarding the wife as the appendage or chattel of the husband! Certainly modern philosophy does not ordinarily regard the wife as, you might say, the main factor in determining the domicile or home of the couple. However, we made that concession. We found from the start that it was abused widely, and with an ingenuity which was a revelation. We therefore restricted this concession, and we were forced by a progression of similar experience to import further restrictions, and I

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must say that we have reached the stage when we may very well have to consider whether that concession, restricted, as it has had to be, in the light of experience over the years, has now served its purpose, and should be withdrawn altogether.

Mr. Deputy Speaker, I detected in the submissions of both my hon. and learned friends opposite, a thought—a principle—with which I find it impossible to identify myself. That is, roughly, that if a person has got into this country illegally—in other words—if his deceit has succeeded—then he should acquire over the years a prescriptive right to remain in this country, despite his deceit. I find that difficult to accept. I find it difficult to believe that fraud, misrepresentation, indeed a crime, becomes necessarily a right by the passage of time. To take an extreme case—I think it would be a great comfort to some of the more hardened criminals in this world if they felt that by escaping detection for a murder, a rape, a robbery with violence—it is an extreme example, of course—for a number of years, they could, to resort to a colloquialism, "cock a snook" at the law.

I entirely agree, Mr. Deputy Speaker, that where the executive is given powers, its exercise of those powers should be subject to challenge in the courts. It is subject to challenge in the courts. This Motion has arisen because it has been challenged in the courts and challenged successfully. I cannot see, however, that before exercising any power the executive itself should seek in every case the order of a court—in other words that the executive should have no power, but that the whole power should be vested in the court. As a purely practical consideration, that would itself very largely stultify the administration of this legislation. The courts would be swamped by, shall we say, that the plethora of applications under this Ordinance, if added to the other duties and functions of the courts, which are already keeping them more than fully occupied; and really the practical enforcement of immigration control would be considerably delayed, and very largely frustrated, by reason of such cumbersome procedure. I believe that the rights of the subject are safeguarded provided the subject, if he thinks that he has been wrongly dealt with, can place himself and his case before the court and call upon the court to decide between him and the Government. That he can do. That, as we have heard, he does do and has done, and I believe that that is the safeguard of the liberty of the subject in these matters, which is fundamentally right and the correct safeguard. I do not think that one can really compromise in terms of practical efficacy between executive and judicial administration of immigration con-

trol, I think, myself, that were it suggested that the courts should take over, in effect, the enforcement, the practical enforcement of immigration control, I have an idea that the judiciary would be extremely unwilling and reluctant to undertake the function, which I do not frankly regard as primarily a judicial function in that sense.

May I now, Mr. Deputy Speaker, refer to some of the points which have been raised? First, I think, is the point relating to the powers of interrogation and the liability to prosecution. Now I do, with great respect to my hon. and learned friends opposite, submit that the situation is not really quite as they have represented it. If one looks at subsection (5) of section 4 of the Ordinance, it reads that all answers to questions lawfully put in interrogation of the nature we have been discussing, all answers to questions lawfully put in such interrogation, shall be admissible in evidence—not in a general sense—but in this qualified sense: I proceed to read on in the section—"in relation to any matter arising under or connected with this Ordinance or any regulations made thereunder, in any proceedings to which this subsection applies." And it goes on: "This subsection shall apply to any civil proceedings, any criminal proceedings in respect of an offence against subsection (4) of this section, and any proceedings under section 388 or 389 of the Criminal Procedure Code", which speak, I think, of conspiracy. That is the extent to which answers to questions in interrogation are made admissible in evidence, and is that really very different from the situation in law in relation to perjury? If a person has perjured himself in evidence, what he has said in evidence—he may have been compelled to answer the questions put to him—if he perjures himself, the perjured statement is admissible in subsequent proceedings for perjury. We have this power of interrogation. We say that a person who is interrogated must answer truthfully. Is that such a terrible thing to require of a person who is under interrogation—that he should answer truthfully? Do we wish the law to be such that, by repeating this, we say, "You can answer truthfully or not truthfully, as you like." Is it such a terrible thing to require a person like—under the sanction of prosecution, as we do for perjury, to tell the truth? And if he does not tell the truth, is it really such a very terrible thing to say that he would be charged, could be charged and prosecuted, for not telling the truth, and that in those proceedings—his untruthful statement should be admissible in evidence? Admittedly he is required to answer the questions, and to answer them truthfully, but that does not necessarily make him incriminate himself. It may, of course, reveal, if he does answer truthfully, it may reveal the fact that he has no just right to be in this

**[The Minister for Legal Affairs]**

country, but if he does answer truthfully he will be liable to prosecution under this section. Is it wrong that he should be required to answer truthfully when being interrogated specifically in regard to his immigration status? And if he does, by his answers, show that he is illegal in the country, that he should then be subject to the sanctions of this Ordinance, whereby he can be required to leave this country, and if necessary, be removed from it? Is this really such an invasion on man's thinking of the rights and wrongs of dealing with individuals. I seriously suggest, Mr. Deputy Speaker, that when we acknowledge that a person has no right to enter this country, and when we know, as a fact, that many thousands cheat themselves into this country, against that background, to say that when we exercise the right of interrogation and require them to speak the truth, and tender them liable to prosecution if they do not speak the truth in regard to the immigration status—because that is all this section deals with—when we do that, I really feel we are doing only what we can reasonably and dispassionately and objectively say is a sensible and justifiable enforcement of our immigration control under this Ordinance in the interests of society at large in this country.

Now I must refer to the case of Lalji Devraj, to which my hon. and learned friend referred in his opening speech, if I can find my place—which I cannot at the moment. Now, the case of Lalji Devraj was in summary as follows. During the validity of the Defence (Admission of Women and Children) Regulations, 1940, a number of Kenya residents applied for passes for the admission of children from India. In a number of cases these were granted in favour of a son, or, of course, daughter, although we are dealing with a son in this case, on the understanding that he was natural born, but, in fact, quite often, as a son, or under the representation that he was a son, or a child of no blood relationship, or of remote blood relationship, was brought in—sometimes under a form of adoption, some of them privately adopted and some of them not adopted within the recognition of even the party's own personal law. Now, as the Investigation Branch of the Immigration Department has grown and its activities expanded and its techniques improved, a large number of cases have been discovered, in which the entry of these people was obtained by false pretences, fraud, misrepresentation, etc. In regard to an adopted child, because that question does arise in this case, the Supreme Court held and, naturally, the Government in administering this legislation is bound by the decisions of the Supreme Court, that an

adopted child is not a child for the purposes of this legislation, and that where the legislation provides for the entry of a child, it does not include an adopted child. And we have never specifically, in regard to this legislation, included an adopted child by definition because, again, experience has shown us that even without that definition there has been such an infinity of fraud in regard to adoption. Now, this boy, as he then was, entered Kenya in 1948. It was some seven years later that the Immigration Department received information that he was not the son of the particular resident in Kenya who had obtained his entry as his son. The matter was therefore investigated, and as is current practice in these matters, since we cannot undertake ourselves investigations in India, we seek, and I am glad to say we always receive, the co-operation of the Government of India. Now, this is no foreign Government for the parties concerned. It is their own Government—the Government of the country from which they seek to enter our country. Therefore, one would not assume that there is any bias in favour of the Kenya Government as against the individual seeking entry and, indeed, it is quite apparent to us that the Indian Government deal with these matters completely impersonally, objectively and responsibly. We received a certificate from the Office of the Indian Commissioner, certifying that this person was not the child of the father—so-called father—who had obtained his entry into this country; that he was, in fact, the son of a cousin of the so-called father, and that, in fact, at that time, it had not been possible to establish that he had been formally adopted. On the basis of that certificate, which is expressed by this Ordinance to be admissible in evidence, a removal order was made. That was followed by the application to the Supreme Court for a writ of *habeas corpus*. In those proceedings it was found that the certificate which we had received from the Indian Commissioner's Office was technically defective, and therefore the application succeeded. A fresh certificate was obtained from the Indian Commissioner without the technical defect concerned, and a fresh removal order was issued. Again, an application for a writ of *habeas corpus* was made to the Supreme Court and the issue was tried. Now, the issue was simply this, was "A" the son of "B", since he had obtained entry into this country as such? We had the certificate of the Indian Government, furnished to us as a result of the enquiries which it had carried out through its officials in the home area of the parties concerned, and through such records, presumably, as existed in that area, and the certificate said—and we have had many, many other certificates in similar cases—that "A" was not the son of "B". However, "A" and "B", who were the parties

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to the application, produced in rebuttal—I cannot remember how many—but in any case a fair number of affidavits to say that "A" was the son of "B". Well, the court held that the affidavits were, in total, the greater weight of evidence. It did not hold necessarily that the Indian Government's certificate was false, but it held that on the evidence before it the balance of probability, or the weight of the evidence—before it, was such that it must accept the affidavits, which, of course, we, the Government, were unable to contest otherwise than through the Indian Commissioner's certificate, and that that weight of evidence must be accepted and, therefore, the man was released.

Now, in those circumstances I do not consider that there is anything improper in the conduct of the Crown, which after all has been charged by this House with the administration of this Ordinance and the enforcement of immigration control under it. It acted absolutely in good faith. It founded itself on the information supplied to it by the party's own Government and it has of course accepted the decision of the courts, and that is that. But I do not think that the Lalji Devraj case necessarily exemplifies any system of arbitrary oppression. If there were a system of arbitrary oppression Lalji Devraj would never have got to the courts. It is indeed the measure of our insistence on the rights of the individual that he was able to challenge this decision; it is right that he should be able to challenge it, and he succeeded in his challenge. Well and good. That does not, as I see it, exemplify, as I say, a system of arbitrary oppression.

Section 8 has been mentioned, in which we provided in this Ordinance that if a pass or permit was obtained by fraud, misrepresentation or non-disclosure, and thus obviously it was issued erroneously, whether the grounds of misrepresentation or non-disclosure were deliberate or inadvertent, it did not convey the authority which it was intended to convey. Therefore it is regarded as null and void. That must be, surely, a principle which we can all accept. My hon. friend the Mover suggests that this should only be established in a court of law. Well, ultimately of course it is the decision of a court of law. We interpret and act on it in the Government; if we are challenged then we have to establish our case and meet the challenge in the court of law: the ultimate arbiter is the court. But we cannot put everything to the court in our day to day lives. We have got to interpret the law ourselves; we all do, daily, in a myriad ways; and so in regard to this section we interpret it and act on it, ready to justify ourselves if we are challenged. Again, I do not think one could reasonably suggest that

no pass or permit should be regarded as invalid, however flagrantly it is shown to have been fraudulently obtained, without a pronouncement of the court. We must assume that we can interpret this section, subject to the challenge in the courts.

Section 18 deals with the certificates of foreign Governments and it is, I fear, as a result of our experience, particularly in this case and in one or two other cases, going to be of very limited value to us. It was introduced in order to give us some chance of combating this widespread fraud and deceit, but unless this Council were prepared to go so far, and I do not think it would and I do not think it should, as to say that the certificate of any Government, any foreign Government, in regard to any of its own nationals shall be accepted as conclusive by the courts of this country—it is quite a considerable argument that should be adopted—but unless the Council is prepared to go that far, then we must either very largely abdicate our control or go to the expense of importing witnesses from overseas. That will cost us, shall be say, several hundred pounds in each case, and there will be several thousands of cases.

I do not think the point as to whether the certificate should be only corroborative, or should only be accepted if corroborated, arises, I would sooner scrap the whole thing; it is not worth a row of beans if we go that far. It is worth only a tenuous row of beans in its present form—or one bean, perhaps, one small bean!

Now, I am afraid that I have taken up rather a long time, Mr. Deputy Speaker, but I think I should refer to the case of Mrs. Patel which my hon. and learned friend the Mover referred to. Mrs. Patel of course absented herself from Kenya for at least two years before her marriage in India, and when she came to seek a certificate, a resident's certificate, under this Ordinance, she was not qualified, because she had not been in this country for a minimum of five years out of the preceding eight. Now, we may be right or we may be wrong in this Council in requiring that the qualification for a resident's certificate shall be lawful residence in the country for a minimum of five years out of the preceding eight. We may be right or we may be wrong, but if we are wrong then it is we who are wrong and not the Immigration Department, because the Immigration Department is applying the law as we have laid it down. Mrs. Patel, by absenting herself during the period of qualification for a resident's certificate, had not then qualified. That was the reason why she was not allowed to re-enter on her previous certificate of permanent residence which, when it was issued to her, was issued with a clear

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indication to her that it would expire on the date of introduction of the present law, which in fact arose before her return to this country. So she chose to absent herself over the period during which to her knowledge her previous certificate would expire. It did expire. But by absenting herself in total for a period of two or three years, of whatever it was, she disqualified herself at that time for the issue of a fresh certificate under this Ordinance. In due course if she gets back under some other authority under this Ordinance, she might be able to qualify for that certificate. But that was the position in regard to Mrs. Patel.

Mr. Deputy Speaker, oddly enough, perhaps on a comparison of the speeches of my hon. friends opposite and mine, the Government accepts this Motion.

Mr. Travadi: Mr. Deputy Speaker, I beg to stand up here and support the Motion moved by the Specially Elected Member, Mr. Slade, and in doing so I say that the request made by the hon. Mover is a very reasonable one in that he does say that when the review of the whole Immigration Ordinance and Regulations is made particular attention should be paid to the liberty of the subject. Now, had the hon. Minister simply replied to the specific cases related by the Mover and the Seconded I would have kept quiet and sat, without any intention whatsoever to get up and speak on it. But in the beginning he started castigating the whole Asian community as if it was a community of criminals and as if that was the only community existing in the whole world, whether it was in England, in the United States of America, in the east, or in the west. He said that thousands and thousands of Asians have entered illegally here into this country and that the Immigration Department and even the Attorney-General's Department are just acquiescing or either aiding or abetting the crime committed by the Asian community; and further, Sir---

The Minister for Legal Affairs (Mr. Griffith-Jones): On a point of order, I never said or implied that. The last thing that either the Immigration Department or my department will do is acquiesce in, let alone aid and abet, the form of fraud which I have mentioned.

Mr. Travadi: I understand what he meant, Sir. He went further and said there were many people here in Kenya. Asians he mentioned more particularly, who are also encouraging such illegal entry. I thought when he was referring to such matters that he would come forward with the facts and figures so that we can understand what he was talking about. But just to generalize and castigate the community because it is a

community here represented in a minority and with little say in the Government I challenge that as I have challenged other things. Yesterday I heard one challenge, and today I throw another challenge asking the Minister to come forward with all his thousands of cases so that we may know where we stand as a community.

Last year I was reading in many of the local English weeklies something to the tone that Indians were conspiring there and conspiring here to bring illegal persons here, making them enter Kenya just to offload and remove the overflowing millions of people from India over to this continent; but I never believed them and I would like to have certain facts and figures brought before us so that one day we may satisfy ourselves that the charge laid against the Indian community is a true one.

Mr. Deputy Speaker, I do not want to go too much into it, but one day I would like to have all these "thousands and thousands" of names of persons the Minister talked about, to be laid on the Table here.

I beg to support.

Mr. Slade: Mr. Deputy Speaker, Sir, I am very glad that the Government has felt able to accept this Motion although I am at the same time very much disappointed that the Minister's speech should have been so much in support of expediency as against principle. Almost every argument he put before us indeed was an argument of expediency which, as I said in moving, we have met too much in our legislation of recent years.

He spoke of the Indian's capacity for fraud and misrepresentation in matters of immigration and the need to protect legitimate residents and the futility of this legislation if Government's arbitrary control were abandoned. Sir, I still do not understand from all that he said why this legislation is futile and why it is not possible to prevent fraud to protect its legitimate residents without having arbitrary control, without resorting to the courts when it is a matter of the actual freedom of the person; and that is what we are seeking and indeed demanding as a very basic principle. Sure enough, Mr. Deputy Speaker, when you are talking of protecting the interests of legitimate residents you are very much jeopardizing those interests if you are subjecting them to the possibility of mistaken arbitrary action.

Sir, my hon. and learned friend opposite suggested that we had urged for some sort of prescriptive right by virtue of long residence even in spite of initial deceit. We certainly did not urge any such thing, but what we do say is that when someone has been allowed to live in this country for a number of years, allowed by the Government to do so, and has lived quite quietly and

**[Mr. Slade]**

then to say that he should not be blamelessly, then to say that he should not be here after all. "You must be deported and you will be put in prison until you are deported", that must require something more than the decision of a Government officer. It must require the authority of a court of law, and that is all we ask. My hon. and learned friend did seem to miss the main point of what I said in moving this Motion when he insisted on the importance of executive discretion in Government in matters of immigration and questioned whether we could compromise between that discretion and judicial control. Sir, I do submit that the distinction is very clear cut and I must say it again, and let us accept it as I do, that the whole question of whether someone comes into this country or not rests with Government's discretion. No court of law should or need have any say in that. Let the immigration officers have all their powers of interrogation and everything if someone is asking to come in. Let them be prosecuted if they tell him lies. Well and good. But when in the exercise of their discretion Government has, rightly or wrongly, let someone into this country and he is living here, and you want to interfere with this body, his person, by deporting him and by putting him in prison, then he must have the same protection of a court of law as everybody else has in any other matter. It is not enough to say, "Of course he always has protection by writ of *habeas corpus*." If we were going to say that that was enough, well, then, none of our laws need provide that people require warrants of arrest or, if arrested without warrants, must be brought before a magistrate to see whether they are to be kept in detention or not. It would be all right in every case to give Government the powers of arrest and imprisonment and then let the fellow resort to *habeas corpus*. That is not our way, Mr. Speaker. It is not the answer in this case.

Now, my hon. and learned friend urged, with regard to the case of Lalji Devraj, that but for the basic protection of *habeas corpus* he might never have got to the courts at all for his protection and release. That is true, Sir, but my answer is that but for the arbitrary powers given to Government by this Ordinance he might never have got to prison at all, and there he was, put into prison twice, and released on application to the court by *habeas corpus* each time.

Now, Sir, very clear evidence emerges that the arbitrary power can be abused, can be misused, and it would be quite sufficient protection for Government, and much fairer to the resident, if an application had to be made to a magistrate for the man to go to prison in the first place rather than have power to put him

into prison and then shriek for *habeas corpus* to get out again. That is the whole essence of this Motion, Sir, that when you want to interfere with the liberty of the subject by deporting him or putting him into prison you must have to seek the authority of the courts before you do so. My hon. and learned friend said that you cannot put everything to a court of law. That may be true. But I will say in this law and in every other law, that one thing which must always go to a court of law is the right of Government to interfere with the liberty of the subject.

Now, Sir, in view of the acceptance of this Motion I need say no more, but I do hope that Government intends not only to accept this Motion but to follow it up in the spirit that we have urged rather than a spirit of pure expediency justifying an infringement of basic principles.

I beg to move, Sir.

The question was put and carried.

**DRIVING LICENCE LEGISLATION**

Sir Charles Markham: Mr. Deputy Speaker, I beg to move that this Council requests Government to introduce legislation to control the activities of driving schools.

Up until yesterday, Mr. Deputy Speaker, I thought the chances of this Motion coming before the Council were rather remote in view of the fact that notice was given of it in November of last year and on all occasions I had been unfortunate in the ballot, but this time, luckily, my hon. friend, the Member for Southern Area, dropped out and therefore we have a chance of giving our views today.

Sir, this started, this subject, being brought to the House as a result of a question which was asked on my behalf by the Specially Elected Member, Mr. Blundell, on 23rd July of last year. The reply from the then Minister for Defence was not very satisfactory. He replied, Sir, to my question, "The Government will keep the matter under review." I now quote from page 182 of the HANSARD, "MR. BLUNDELL: Arising out of that answer, Sir, may I ask the hon. Minister how long he proposes to continue to keep it under review in view of the danger to the public which may arise from a denial of proper examination of people who have driving schools. THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Sir, oddly enough, at the moment, neither the Government, nor the Kenya Police, nor the London Metropolitan Police, share the hon. Member's view about the danger to the public which may arise from this. MR. BLUNDELL: I may assume from the hon. Minister's answer then that anybody who has just passed

[Mr. Nazareth]

occupation permit. He had bought property in this country and he was refused the right to continue in this country, apparently for no reason at all. Now, it is surely right that when a person has come to this country and he has bought property in this country that the executive should be put under an obligation to give the reason why they consider the person should be deprived of his right to remain in the country. The Ordinance, in my submission, contains provisions which constitute a very great danger to the liberty of the subject and since the Ordinance is being reviewed I would urge that during this review these provisions which constitute so great a danger to the liberty of the subject ought also to be reviewed and encouragement given to persons who have come into this country to remain in the country.

Mr. Speaker, I beg to support the Motion.

*Question proposed.*

The Minister for Legal Affairs (Mr. Griffith-Jones): Mr. Deputy Speaker, in explaining the terms of this legislation in relation to the criticisms which have been raised by my hon. and learned friends opposite I must, in order to place the matter in its proper perspective, make certain observations which, I fear, are unpleasant observations, and I dislike having to make them. But it is a fact, and we must not blink it, that in the operation of our immigration control legislation over the last 12 years, and before that—because it was in 1948 that the original Immigration Control Ordinance came in; before that it was done through certain Defence Regulations—but during that period I regret to say that the capacity for fraud and misrepresentation in order to obtain entry to this country, particularly from the subcontinent of India, has been infinite, and we have had to consider and face this fact in formulating our immigration policy and in providing ourselves with the legislative powers to safeguard this country and the legitimate residents of this country against this form of crime—for it is a crime. It is stated to be so in the law.

We are, of course, and we have found ourselves over the years in the administration of this legislation, severely handicapped. We could probably today expel several thousands—several thousands—of illegal residents of this country. In order to do that we would have to bring evidence in each case from the subcontinent of India. Now that is one alternative which this Council would have to consider if it wishes us to relinquish the powers which by bitter experience over the years we have found to be indispensable to the enforcement of this legislation against those who are determined to defeat it if they possibly can. And I must also say this, that

among those persons who are determined to defeat it, and who have exhibited a determination to defeat it are not only people outside this country seeking to get in, but also people in this country seeking to obtain, literally by "hook or by crook", and preferably "by crook", the entry of other persons from outside this country—either relatives or non-relatives for ulterior motives.

I said in opening, Mr. Deputy Speaker, that I disliked having to say these things because I realize they are unpleasant things to have to say, particularly with my Asian friends opposite, but I believe that they know in their heart of hearts that what I have said is true.

Now the Government wishes to have no unwarrantable or unjustified arbitrary powers, but if it is to have no powers, then let us throw our frontiers wide open. Let us abandon the futility of attempting to enforce immigration control with both hands tied behind our back and both feet shackled. It would be literally an exercise in futility. I think really that the justification, in a broad sense, of this legislation goes back to the principle which my hon. and learned friend, the Mover, enunciated, and which was the main theme right through this legislation as the Government presented it to this House on its enactment; namely that immigration control must be, to be in any degree effective, a matter of executive discretion. We have not given—and we do not intend to give—any person outside this country who has no claim on this country a right in law to enter it. We intend, and this is the theme of this legislation, we intend to exercise a selective discretion in regard to those whom we allow into this country—the criterion being, in general terms, the benefit of the country.

We have made a number of concessions from time to time. We made a concession some years ago in regard to the entry of husbands of women—particularly Asian women—resident in this country. We made that concession with some misgivings because the normal civilized procedure ordinarily regards as the proper practice that a wife should follow her husband. Modern thought does not regard ordinarily a husband as a chattel or appendage of the wife; indeed we are moving rapidly and realistically away from regarding the wife as the appendage or chattel of the husband! Certainly modern philosophy does not ordinarily regard the wife as, you might say, the main factor in determining the domicile or home of the couple. However, we made that concession. We found from the start that it was abused widely, and with an ingenuity which was a revelation. We therefore restricted this concession, and we were forced by a progression of similar experience to import further restrictions, and I

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must say that we have reached the stage when we may very well have to consider whether that concession, restricted, as it has had to be, in the light of experience over the years, has now served its purpose, and should be withdrawn altogether.

Mr. Deputy Speaker, I detected in the submissions of both my hon. and learned friends opposite, a thought—a principle—with which I find it impossible to identify myself. That is, roughly, that if a person has got into this country illegally—in other words—if his deceit has succeeded—then he should acquire over the years a prescriptive right to remain in this country, despite his deceit. I find that difficult to accept. I find it difficult to believe that fraud, misrepresentation, indeed a crime, becomes necessarily a right by the passage of time. To take an extreme case—I think it would be a great comfort to some of the more hardened criminals, in this world if they felt that by escaping detection for a murder, a rape, a robbery with violence—it is an extreme example, of course—for a number of years, they could, to resort to a colloquialism, "cock a snook" at the law.

I entirely agree, Mr. Deputy Speaker, that where the executive is given powers, its exercise of those powers should be subject to challenge in the courts. It is subject to challenge in the courts. This Motion has arisen because it has been challenged in the courts and challenged successfully. I cannot see, however, that before exercising any power the executive itself should seek in every case the order of a court—in other words that the executive should have no power, but that the whole power should be vested in the court. As a purely practical consideration, that would itself very largely stultify the administration of this legislation. The courts would be swamped by, shall we say, that the plethora of applications under this Ordinance, if added to the other duties and functions of the courts, which are already keeping them more than fully occupied; and really the practical enforcement of immigration control would be considerably delayed, and very largely frustrated, by reason of such cumbersome procedure. I believe that the rights of the subject are safeguarded provided the subject, if he thinks that he has been wrongly dealt with, can place himself and his case before the court and call upon the court to decide between him and the Government. That he can do. That, as we have heard, he does do and has done, and I believe that that is the safeguard of the liberty of the subject in these matters, which is fundamentally right and the correct safeguard. I do not think that one can really compromise in terms of practical efficacy between executive and judicial administration of immigration con-

trol. I think, myself, that were it suggested that the courts should take over, in effect, the enforcement, the practical enforcement of immigration control, I have an idea that the judiciary would be extremely unwilling and reluctant to undertake the function, which I do not frankly regard as primarily a judicial function in that sense.

May I now, Mr. Deputy Speaker, refer to some of the points which have been raised? First, I think, is the point relating to the powers of interrogation and the liability to prosecution. Now I do, with great respect to my hon. and learned friends opposite, submit that the situation is not really quite as they have represented it. If one looks at subsection (5) of section 4 of the Ordinance, it reads that all answers to questions lawfully put in interrogation of the nature we have been discussing, all answers to questions lawfully put in such interrogation, shall be admissible in evidence—not in a general sense—but in this qualified sense: I proceed to read on in the section—"in relation to any matter arising under or connected with this Ordinance or any regulations made thereunder, in any proceedings to which this subsection applies." And it goes on, "This subsection shall apply to any civil proceedings, any criminal proceedings in respect of an offence against subsection (4) of this section, and any proceedings under section 388 or 389 of the Criminal Procedure Code", which speak, I think, of conspiracy. That is the extent to which answers to questions in interrogation are made admissible in evidence, and is that really very different from the situation in law in relation to perjury? If a person has perjured himself in evidence, what he has said in evidence—he may have been compelled to answer the questions put to him—if he perjures himself, the perjured statement is admissible in subsequent proceedings for perjury. We have this power of interrogation. We say that a person who is interrogated must answer truthfully. Is that such a terrible thing to require of a person who is under interrogation—that he should answer truthfully? Do we wish the law to be such that, by repeating this, we say, "You can answer truthfully or not truthfully, as you can answer truthfully to require a person under the sanction of prosecution, as we do for perjury, to tell the truth? And if he does not tell the truth, is it really such a very terrible thing to say that he would be charged, could be charged and prosecuted, for not telling the truth, and that in those proceedings—his untruthful statement—should be admissible in evidence? Admittedly he is required to answer the questions, and to answer them truthfully, but that does not necessarily make him incriminate himself. It may, of course, make him reveal truthfully, it may reveal the fact that he has no just right to be in this

[The Minister for Legal Affairs]

indication to her that it would expire on the date of introduction of the present law, which in fact arose before her return to this country. So she chose to absent herself over the period during which to her knowledge her previous certificate would expire. It did expire. But by absencing herself in total for a period of two or three years, or whatever it was, she disqualified herself at that time for the issue of a fresh certificate under this Ordinance. In due course if she gets back under some other authority under this Ordinance, she might be able to qualify for that certificate. But that was the position in regard to Mrs. Patel.

Mr. Deputy Speaker, oddly enough, perhaps on a comparison of the speeches of my hon. friends opposite and mine, the Government accepts this Motion.

Mr. Travault: Mr. Deputy Speaker, I beg to stand up here and support the Motion moved by the Specially Elected Member, Mr. Slade, and in doing so I say that the request made by the hon. Mover is a very reasonable one in that he does say that when the review of the whole Immigration Ordinance and Regulations is made particular attention should be paid to the liberty of the subject. Now, had the hon. Minister simply replied to the specific cases related by the Mover and the Secondor I would have kept quiet and sat, without any intention whatsoever to get up and speak on it. But in the beginning he started castigating the whole Asian community as if it was a community of criminals and as if that was the only community existing in the whole world, whether it was in England, in the United States of America, in the east, or in the west. He said that thousands and thousands of Asians have entered illegally here into this country and that the Immigration Department and even the Attorney-General's Department are just acquiescing or either aiding or abetting the crime committed by the Asian community; and further, Sir—

The Minister for Legal Affairs (Mr. Griffith-Jones): On a point of order, I never said or implied that. The last thing that either the Immigration Department or my department will do is acquiesce in, let alone aid and abet, the form of fraud which I have mentioned.

Mr. Travault: I understand what he meant, Sir. He went further and said there were many people here in Kenya. Asians he mentioned more particularly, who are also encouraging such illegal entry. I thought when he was referring to such matters that he would come forward with the facts and figures so that we can understand what he was talking about. But just to generalize and castigate the community because it is a

community here represented in a minority and with little say in the Government I challenge that as I have challenged other things. Yesterday I heard one challenge, and today I throw another challenge asking the Minister to come forward with all his thousands of cases so that we may know where we stand as a community.

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Mr. Deputy Speaker, I do not want to go too much into it, but one day I would like to have all these "thousands and thousands" of names of persons the Minister talked about, to be laid on the Table here.

I beg to support.

Mr. Slade: Mr. Deputy Speaker, Sir, I am very glad that the Government has felt able to accept this Motion although I am at the same time very much disappointed that the Minister's speech should have been so much in support of expediency as against principle. Almost every argument he put before us indeed was an argument of expediency which, as I said in moving, we have met too much in our legislation of recent years.

He spoke of the Indian's capacity for fraud and misrepresentation in matters of immigration and the need to protect legitimate residents and the futility of this legislation if Government's arbitrary control were abandoned. Sir, I still do not understand from all that he said why this legislation is futile and why it is not possible to prevent fraud to protect its legitimate residents without having arbitrary control, without resorting to the courts when it is a matter of the actual freedom of the person; and that is what we are seeking and indeed demanding as a very basic principle. Sure enough, Mr. Deputy Speaker, when you are talking of protecting the interests of legitimate residents you are very much jeopardizing those interests if you are subjecting them to the possibility of mistaken arbitrary action.

Sir, my hon. and learned friend opposite suggested that we had urged for some sort of prescriptive right by virtue of long residence even in spite of initial deceit. We certainly did not urge any such thing, but what we do say is that when someone has been allowed to live in this country for a number of years, allowed by the Government to do so, and has lived quite quietly and

[Mr. Slade]

blamelessly, then to say that he should not be here after all. "You must be deported and you will be put in prison until you are deported", that must require something more than the decision of a Government officer. It must require that of a court of law, and that is all the authority of a court of law, and that is all we ask. My hon. and learned friend did seem to miss the main point of what I said in moving this Motion when he insisted on the importance of executive discretion in Government in matters of immigration and questioned whether we could compromise between that discretion and judicial control. Sir, I do submit that the distinction is very clear cut and I must say it again, and let us accept it as I do, that the whole question of whether someone comes into this country or not rests with Government's discretion. No court of law should or need have any say in that. Let the immigration officers have all their powers of interrogation and everything if someone is asking to come in. Let them be prosecuted if they tell him lies. Well and good. But when in the exercise of their discretion Government has, rightly or wrongly, let someone into this country and he is living here, and you want to interfere with this body, his person, by deporting him and by putting him in prison, then he must have the same protection of a court of law as everybody else has in any other matter. It is not enough to say, "Of course he always has protection by writ of *habeas corpus*." If we were going to say that that was enough, well, then, none of our laws need provide that people require warrants of arrest or, if arrested without warrants, must be brought before a magistrate to see whether they are to be kept in detention or not. It would be all right in every case to give Government the powers of arrest and imprisonment and then let the fellow resort to *habeas corpus*. That is not our way, Mr. Speaker. It is not the answer in this case.

Now, my hon. and learned friend urged, with regard to the case of Lalji Devraj, that but for the basic protection of *habeas corpus* he might never have got to the courts at all for his protection and release. That is true, Sir, but my answer is that but for the arbitrary powers given to Government by this Ordinance he might never have got to prison at all, and there he was, put into prison twice, and released on application to the court by *habeas corpus* each time.

Now, Sir, very clear evidence emerges that the arbitrary power can be abused, can be misused, and it would be quite sufficient protection for Government, and much fairer to the resident, if an application had to be made to a magistrate for the man to go to prison in the first place rather than have power to put him

into prison and then shriek for *habeas corpus* to get out again. That is the whole essence of this Motion, Sir, that when you want to interfere with the liberty of the subject by deporting him or putting him into prison you must have to seek the authority of the courts before you do so. My hon. and learned friend said that "you cannot put everything to a court of law. That may be true, but I will say in this law and in every other law, that one thing which must always go to a court of law is the right of Government to interfere with the liberty of the subject."

Now, Sir, in view of the acceptance of this Motion I need say no more, but I do hope that Government intends not only to accept this Motion but to follow it up in the spirit that we have urged rather than a spirit of pure expediency justifying an infringement of basic principles.

I beg to move, Sir.

The question was put and carried.

#### DRIVING LICENCE LEGISLATION

Sir Charles Markham: Mr. Deputy Speaker, I beg to move, that this Council requests Government to introduce legislation to control the activities of driving schools.

Up until yesterday, Mr. Deputy Speaker, I thought the chances of this Motion coming before the Council were rather remote in view of the fact that notice was given of it in November of last year and on all occasions I had been unfortunate in the ballot, but this time, luckily, my hon. friend, the Member for Southern Area, dropped out and therefore we have a chance of giving our views today.

Sir, this started, this subject, being brought to the House as a result of a question which was asked on my behalf by the Specially Elected Member, Mr. Blundell, on 23rd July of last year. The reply from the then Minister for Defence was not very satisfactory. He replied, Sir, to my question, "The Government will keep the matter under review." I now quote from page 182 of the HANSARD: "MR. BLUNDELL: Arising out of that answer, Sir, may I ask the hon. Minister how long he proposes to continue to keep it under review in view of the danger to the public which may arise from a denial of proper examination of people who have driving schools. THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (Mr. Swann): Sir, oddly enough, at the moment, neither the Government, nor the Kenya Police, nor the London Metropolitan Police, share the hon. Member's view about the danger to the public which may arise from this. MR. BLUNDELL: I may assume from the hon. Minister's answer then that anybody who has just passed



[Sir Charles Markham] a driving test is competent to teach other people how to drive. Is that the hon. Minister's view or the view of the Government?" Then, Sir, Mr. Cusack and I did not understand him, started talking about teaching a friend to drive.

[Mr. Deputy Speaker (Mr. Controy) left the Chair]

[Mr. Deputy Speaker (Mr. Bechgaard) took the Chair]

Sir, one of the peculiar situations in Kenya over the last two or three years is the number of driving schools which have been established, particularly in Nairobi. Many of these schools are first class but many of them could only be described as extremely doubtful. At the moment, as the supplementary question of my hon. friend the Specially Elected Member stated, anybody holding a current driving licence can set up a business as a driving school. Sir, the point of my Motion today is not to prevent a friend teaching a friend, or a husband, if he is so stupid to do so, teaching his wife to drive a motor-car, but to control the activities of those people who are running a business of teaching others to drive. That, Sir, was the point of my question and that is why this Motion is being introduced to the House today.

Those of us who have the misfortune to live on the Langata Road or who have occasion to drive down on the main Mombasa Road towards Nairobi Airport can daily see lorries of all shapes and sizes, with "L" plates on them, driving with a crowd of African students in the back being taught how to drive a lorry. Some of those lorries are peculiar in shape and certainly the instructor seems to have little idea of what he is meant to be doing. Those of us on the Langata Road daily, particularly at rush times, I never know why, will see a mass of cars with "L" plates announcing that they come from a certain driving school, and having seen examples of some of the drivers being taught we wonder how the instructor ever got a driving licence, let alone the person who is being taught.

Sir, this problem of control of driving schools is not only found in Kenya and very fortunately, Sir, an article dealt with the subject in the *Sunday Dispatch* of 13th March, and with your permission, Mr. Deputy Speaker, I would like to quote extracts from that article because I believe it puts the case for the control far better than I can. I believe, Sir, under Standing Orders, that it is necessary, if one quotes from a newspaper, to table that paper. Unfortunately, Sir, it cost Sh. 2, and I do not know whether I will get it back afterwards.

[Mr. Deputy Speaker (Mr. Bechgaard) left the Chair]

[Mr. Deputy Speaker (Mr. Controy) resumed the Chair]

The heading of the article is "Does the L. Driver. Get a Square Deal?" It says, "The Ministry of Transport is considering a plan to test and license L. driving instructors and schools. The idea is sponsored by the Motor Schools' Association who have campaigned for years for a clean-up of shoddy L. learner concerns." Then, Sir, if I may, I will quote extracts from this article because I think they will be of value to the House in deciding the issue before us. "Last week the *Sunday Dispatch* inquiry team investigated the L. schools and teachers in all parts of the country. They discovered (1) that more than two-thirds of the instructors are poor and many of these completely inadequate; (2) that even some of the biggest schools employ unqualified or barely qualified instructors; (3) the large number of rackets are being practised on the public." Again I quote, Sir, and hon. Members should remember that this is about England and not Kenya. "More than 3,000 schools of driving have mushroomed in the past few years. Many more individuals run part-time or pin-money concerns and their number may exceed 15,000. Of all these only 350 schools can be guaranteed as first class, giving expert tuition for a reasonable charge and operating with suitable qualified instructors. These are registered by the Motor Schools' Association and are subject to periodic inspection. Beyond that a large proportion of the remainder are either get-rich-quick smart boys, unqualified butchers, bakers and candlestick makers, cashing in on a driving craze or rejects from other jobs. Legally, anyone except a blind man can open a school, says the Motor Schools' Association. There are two known cases of cripples teaching driving, one in Portsmouth and another in Glasgow. Drivers convicted of being drunk in charge of a car are known to be giving driving lessons in Cheshire and Birmingham. A large number of others are known to be heavy drinkers. Legally anyone except a blind man can open a school, says the Motor Schools' Association. One of the biggest schools with many branches refuses to seek either the Motor Schools' Association or the Royal Automobile Club's approval. The reason is that it does not want to be restricted to tested drivers approved by either of these bodies. About 40 per cent of its drivers are youngsters or others with no previous experience of driving instruction other than two and half hours given them by the school itself."

My last extracts from this article, Sir, are these. "A Birmingham motor school of reputed pass

[Sir Charles Markham] The following day his out a pupil for his test. The following day his instructor saw him teaching driving with L plates of his own school up. Even in Stevenage, Hertfordshire, a young labourer passed his test. The following week he was advertising 'evening lessons.' And the final extract, Sir: "What is the answer? The *Sunday Dispatch* inquiry fully supports the Motor Schools' Association case for Government driving schools and Government licensed instructors. This is the only way that the learner-teaching can be cleaned up."

Sir, I quoted at some length from that article because I believe if you substitute Kenya for England in a smaller degree the case is made out for us. What I said so far is destructive and I would like to put to Government some suggestions how this problem could be tackled in Kenya. First of all, Sir, I would urge that both the driving school and its instructors should be licensed either by the police or the Royal East African Automobile Association if they could do it. The licence obtained would only be after a test had been taken to prove to the licensing authority that the individual was fit to be an instructor and that the school was run properly as opposed to some of the rackets which I will mention in a few minutes.

The second suggestion would be that the vehicles used for teaching should be examined periodically by the police to make certain that those vehicles are safe. A third suggestion would be that the instructors should be made to pass the Royal East African Automobile Association driving test which is not compulsory at all for the moment. And it might also be a good thing if the driving examiners also passed that test.

Another suggestion would be of the control of numbers allowed in the vehicle being used for instruction. At the moment the number is only limited by the capacity of the vehicle to carry them and I do not think instruction can be given properly with an overcrowded vehicle. The next suggestion is that if the Government agrees to a system of licensing, then there should be conditions for the withdrawal of either the instructors' or the schools' licence in the case of fraud. At the moment in Nairobi there are driving schools which advertise the fact that they guarantee—guarantee—that the pupil will pass his driving test. How can you guarantee such a condition I do not know, although rumour has it that there are methods. But what is wrong, Mr. Deputy Speaker, is the fact that certain of these people—the disreputable firms—are cashing in on the fact that with unemployment at the moment many Africans think that their chances of getting a good job are improved by the possession of a driving licence, particularly that for a

commercial vehicle. Another suggestion to Government is that instructors themselves should be people holding some responsibility towards the public when death or serious injury can result from faulty tuition. If somebody wishes to learn to fly he can do it if he is lucky through a flying school where the instructors have to pass a very rigid test to make certain that what they are teaching will not result in any harm to the public or the pupil. At the moment in Kenya anybody can teach anyone else to drive by charging them a fee through one of these schools and I believe one of the reasons why Nairobi has perhaps the lowest standard of driving in the world is because the number of people who have been taught to drive in recent years have not been taught properly.

I do not want to mention in this House the name of any firm who in my opinion are not first class. We are privileged and can be entirely wrong. But I think any member of the public who has seen certain of these vehicles belonging to businesses in Nairobi know which they would go to if they wished to pass a driving test and which they would not unless they could not get anyone else to take them.

Sir, this Motion is a simple one. It does not require any Lancaster House Conference. It does not require any major principle to be established. But I will ask Government to accept it and set up the necessary legislation. If it can be done by rules, so much the better, because the time of the legal draftsmen will not be taken up to such an extent.

I would like to point out, Sir, in case of some misunderstanding that those firms who are running their businesses correctly with good instructors and good vehicles would welcome the introduction of legislation. I feel, Sir, certain that they will have nothing to fear by any rules drawn up by the Government for the operation of their schools. What they do fear is the fact that unqualified competition is getting them a bad name and I would suggest that unless the Government does take action fairly soon there will be a repetition of some of the tragic accidents which have involved instructors of driving schools. If Government says that this problem does not require their attention, then, Sir, they must take the risk and the public will have the right to demand safety.

I hope, therefore, Sir, that the case which I have put—thanks to my hon. friend the Member for *Sunday Dispatch*—will convince the Government that there is a necessity for setting up control of driving schools and accordingly, Sir, I beg to move.

Mr. Bompas: Mr. Deputy Speaker, I am very glad indeed to second this Motion. The hon. Member has made so good a case and covered so much ground that I do not think there is anything very much more to say.

He claimed it was his misfortune to live along the Langata Road. May I claim that it is my misfortune to live in Anderson Road which, indeed, is a recognized test hill for that peculiar performance of stop and start. Believe me, Sir, there is far more stop, there than start! I have had more than ample opportunity to observe the vehicles that do come out from driving schools. So I submit it is important that the legislation should be wider than a mere control of the schools and the Mover has put forward certain constructive suggestions which should, in fact, be included in the legislation. I suggest, Sir, too, that in that legislation there should be power for some authority to allot areas and to include or exclude zones on a time basis, or otherwise, where tuition can take place.

The Mover has mentioned, Sir, the necessity for inspection of all vehicles from driving schools and I think it is obvious that not only is mere inspection required but the standard of road worthiness of such vehicles should be abnormally high, probably higher than is required for an ordinary vehicle. I might suggest also, Sir, that in the case of instructors of recognized driving schools, as opposed to the husband teaching the wife, that the instructor should be required to wear some quite specific form of identification—a uniform or something of that sort—because in the lorries, the commercial vehicles, that the Mover has spoken about, it is sometimes quite impossible to distinguish who is the instructor. One does not really know whether he is having a ride in the back and whether one of the pupils is, in fact, teaching another pupil.

Sir, finally, the only other comment I would like to make is on this question of control over the number of passengers in a vehicle where somebody is under tuition. In Britain, or, indeed, in any reputable organization, in this country, it would be an undreamed of thing that you should train a driver whilst carrying a large number of passengers. One wonders sometimes with some of the lorries that one sees with 20-25 people in the back and "L" plates on the vehicle, whether they have all gone along for the driver, whether they are part of the queue awaiting lessons, or whether that lorry is performing a dual function and acting as a sort of unauthorized unlicensed bus.

Mr. Deputy Speaker, I beg to second.

Question proposed.

Mr. Walwright: Mr. Deputy Speaker, Sir, I think in the hon. Mover's speech there were really two considerations: one is value for money and whether the pupil is being deceived by an incompetent person who makes himself out to be competent; and the other is danger on the roads. Now, I would suggest that the first consideration is entirely a matter for the public and the pupil. I think I remember in the original debate the hon. Specially Elected Member, Mr. Blundell, enquired concerning the licensing for teaching the piano. I would suggest that that is a fairly similar situation and nobody would suggest that because incompetent teachers obtain money by, to some extent, false pretences in teaching the piano that they should be licensed. I think, in fact, in this particular Motion the only real consideration of importance is the one of danger on the roads and I think the article he quoted from supports this proposition.

Now, when the Minister for Defence answered the question in July last, which was not very long ago, he did state that the Government would continue to keep this under review. Mr. Deputy Speaker, I would say that while the Government is keeping that under review and until the police, who are the people who have the facts and figures, are satisfied that there are more accidents caused by drivers and learners in these driving schools which charge for teaching, there is no case for controlling the schools. And at the present moment this is not in fact the case. There is no evidence that the schools, the people who teach for money, cause more accidents than the rest of the public. It is, of course, true, as the hon. Mover stated, that the standard of driving in this country is low; but surely the consideration which decides the standard of driving generally is not the standard of teaching but the standard of examination and there may well be a case that the standard of examination is not high enough. At the present time I believe roughly 55 per cent of those that apply for testing are failed.

I think the hon. Mover has made certain excellent points in respect of the fact that nobody should be allowed to teach, certainly for reward, if certain qualifications are not satisfied such as that he has had a licence, shall we say, for two years and has not been convicted of certain traffic offences within that period, that he is over 21, that he is not halt and maimed and blind as was suggested in the article; and perhaps also for the very sensible suggestion that no one should be allowed to teach and carry passengers in the vehicle at the same time. Those are the sort of things which could be inserted into the Traffic Ordinance comparatively easily when other

[Mr. Walwright] amendments come up. However, I think Government cannot at the present time, Mr. Deputy Speaker, agree that there is a case for a special Ordinance for licensing these people.

There is one further point that I should like to make and that is that only half the people in this Colony are in fact taught by schools for reward. If we were to license the schools I think you would get the situation that those that were not licensed or thought they might not be licensed if they applied would simply withdraw their advertising but they would still go on teaching and you would have the usual difficulty that one has in these sort of cases of proving that in fact they were teaching for reward.

In conclusion, therefore, Mr. Deputy Speaker, I would say that the Government will continue to keep this under close review and if there is any evidence at any time from the police that action is required the Government will certainly take that action. In these circumstances, Mr. Deputy Speaker, it is with regret that I cannot accept on behalf of the Government this Motion.

Sir Charles Markham: Mr. Deputy Speaker, I would like to congratulate my hon. friend, the Chief Commissioner, on having (a) entered into this subject and (b) having made his maiden speech in this Council. We look forward, Sir, to many more of them.

I was sorry that he should have been given the task of dealing with this problem and I found his argument somewhat unconvincing although I appreciate that he was only doing what he was told. Sir, I cannot accept the argument about the public and value for money between the chap who is teaching a piano and a person who is teaching to drive a motor-car. Some people may say, Sir, that both are equally lethal, but really, Sir, I would suggest to the Government in all sincerity that both cases are not comparable in any way at all. A motor-car, Sir, is a dangerous animal; a piano is a matter of opinion.

Sir, I think I must have put my case badly because I am not suggesting that a very high

percentage of those who are being taught to drive commercial vehicles necessarily pass their tests. I think the figures given by the Government of passes does not include a lot of people who never get as far as taking their test. Let us face it—it is part of the racket. They pay a certain amount of money to learn to drive and once that money is exhausted so their tuition stops, and that is one of the reasons, which is supported by those in the trade, to prevent rackets such as that. I do not know why, Sir, the Government cannot bring in legislation, why they cannot control such activities, but I believe it is in the interests of the Government and the police to prevent a continuation of events such as I have mentioned. Sir, I am sorry that Government has not seen its way to accept this Motion, and in the hope, Sir, that when the amendments to the Traffic Ordinance come up that they can include certain of the items mentioned by my hon. friend, so that that will be "half a loaf" if not the "whole loaf".

I would hope, Sir, that the matter could be discussed again with the police, or alternatively for the Government as a whole, or my friends opposite, should go out on the Langata Road when the vehicles are being used, and if they see them perhaps there might be rebellion from the Back Benches of the Government when I bring this Motion, on another occasion.

I see no point, Sir, in continuing with very few on this side, and I therefore, Sir, with regret that Government have not accepted this Motion, beg to move.

The question was put and negatived.

#### ADJOURNMENT

The Deputy Speaker (Mr. Conroy): That completes the business on the Order Paper, and I accordingly adjourn Council *sine die*.

The House rose at ten minutes past Eleven o'clock.

## WRITTEN ANSWERS TO QUESTIONS

No. 20

Mr. M. Blundell (Specially Elected Member) to ask the Minister for Agriculture, Animal Husbandry and Water Resources:—

- The approximate maximum potential of the Perkerra Irrigation Scheme;
- the total number of settlers who have at present been accepted as tenants under the scheme and the tribes from which they come;
- the potential maximum number of settlers to whom the scheme could offer individual holdings;
- the estimated average size of the holdings.

## REPLY

(a) The maximum potential of the Perkerra Irrigation Scheme is limited by the water in the Perkerra River and on present information is estimated to be about 2,400 acres for the first crop and 1,200 acres for the second crop. This disregards the possibility of large-scale storage which would, in any case, be very expensive.

(b) The total number of settlers at present is 114. The majority are Tugen with a few Njemps.

(c) On the basis explained, the potential maximum number of settlers is about 600 families.

(d) The present average size of holdings is four acres.

No. 52

Air Commodore Howard Williams (Nairobi North), to ask the Minister for Internal Security and Defence:—

Will Government give a record of the numbers of:—

- Prisons.
- Commissioners of Prisons.
- Assistant Commissioners of Prisons.
- Superintendent of Prisons.
- Visits to Prisons by each rank during 1959 to date?

## REPLY

On 31st December, 1959, there were 52 prisons established under the Prisons Ordinance. On the same date, the authorized establishment of Senior Officers in the Kenya Prisons Service was:—

Commissioner of Prisons .. .. .	1
Deputy Commissioner .. .. .	1
Assistant Commissioner .. .. .	1
Senior Superintendents .. .. .	7

With the exception of the post of Commissioner, all these posts were filled.

In 1959, the Commissioner made 24 visits to prisons, the Deputy Commissioner 27 visits, the Assistant Commissioner 14 visits, and the Senior Superintendents 253 visits.

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11th Council—Fourth Session

VOLUME LXXXIV

22nd March, 1960 to 25th March, 1960

## Explanation of Abbreviations

Notice of Motion = NoM; Question = Qn; Bills: Read First, Second or Third Time = 1R, 2R, 3R; In Committee = IC; Report = R; Consideration of Report = Cons.R; Referred to Select Committee = SC; Select Committee Report = SCR1; Recommitted to Council = Re.C; Withdrawn = Wdn.

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