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KENYA GOVERNMENT ARCHIVES

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SECTION 7

CONTINUED FROM

REEL No.

7

FRIDAY, 2nd AUGUST, 1935

Council assembled at the Memorial Hall, Nairobi, at 10 a.m., on Friday, the 2nd August, 1935. His Excellency THE ACTING GOVERNOR (ARMIGEL DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

HIS EXCELLENCY: Have any amendments to the minutes of the meeting of the 1st of August been notified?

THE HON. E. H. WRIGHT: I beg to challenge the accuracy of the minutes Sir, in that while the motion of yesterday (on the Report of the Economic Development Committee) was withdrawn I, as seconder, was not asked to give my consent.

I would, however, only add that I wish in saying this, to agree with the action taken and to associate myself entirely with the views expressed by the hon. Member for Nairobi North, and for the same reason I would now leave this Council.

HIS EXCELLENCY: On the point of the minutes, the record is in my opinion entirely correct. The record reads "The motion was by leave withdrawn." I am perfectly certain that I said "With the leave of this Council this motion is withdrawn." There was no dissenting voice raised by the seconder or any other member. I looked on it therefore as being withdrawn with the tacit consent of the whole Council.

MAJOR THE HON. G. H. RIDDELL: If I may say so, Sir, I have no doubt your statement was correct, but quite inadvertently the speed with which you adjourned Council made it impossible for us to rise and speak at the time. Personally, I am in favour of the action taken by the hon. proposer and seconder of the motion, and beg leave to withdraw from the Council.

HIS EXCELLENCY: I cannot accept the hon. member's contention that I was too quick in that particular matter. I was perfectly plain, because I still thought it possible that some hon. member might protest. (Hear, hear.)

(The hon. E. H. Wright and Major the hon. G. H. Riddell withdrew from the deliberations of Council).

The minutes of the meeting of 1st August, 1935, were confirmed.

NOTICE OF MOTION.

Notice of the following motion was given by Capt. the hon. H. E. Schwartz:

"In the opinion of this Council Government would be well advised to appoint a Committee, either Select or otherwise, to consider and report on the possibility of evolving a scheme for the redemption of mortgages by the issue of the Government bonds."

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, may I say that I regret giving notice of a motion so late in the session as this, and if it should mean that its hearing would necessitate Council reassembling on a day when otherwise it would not, I should be prepared to agree to the motion standing over. If it does not mean that, and the motion will take but a short space of time to discuss, I should like if possible to have it taken this session.

ORAL ANSWERS TO QUESTIONS.

CARE OF CATTLE ON RAILWAY.

No. 48.—CAPT. THE HON. H. E. SCHWARTZ asked:

"Is it a fact that 500 head of cattle recently entrained from Nakuru to Mombasa en route for Italian Somaliland were kept without water or food for a period of two days?"

If so, will steps be taken to see that there is no recurrence of such a happening?"

THE HON. THE ACTING COLONIAL SECRETARY: The answer to the first part of this question is in the negative, and the second part of the question does not therefore arise.

I may add that the Stockbreeders' Association have asked the Director of Agriculture to express their gratitude to the Transport Administration for the arrangements made during the transit of the stock in question."

CAPT. THE HON. H. E. SCHWARTZ: Arising out of that reply, Sir, I should like to explain that the question was put down in order that an opportunity should be given for Government to dispose of rumours which are very rife and which I had no reason to believe were accurate.

HIS EXCELLENCY: I am grateful to the hon. member.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Is it not a fact that every precaution was taken to see that the cattle should have food on the way down and that the dealings with them were actually very satisfactory? Further, is it not a fact that they all arrived intact at Mogadiscio?

THE HON. THE ACTING COLONIAL SECRETARY: May I read an extract from a report, Sir, on the subject?

HIS EXCELLENCY: Yes, I think it would be helpful if you did.

THE HON. THE COLONIAL SECRETARY: "Two consignments of 250 cattle were trucked at Naivasha and Gilgil on a Wednesday evening and arrived in Nairobi on Thursday morning. The stock were in charge of an experienced stockman with sixteen native boys. A special truck supplied free by the Kenya and Uganda Railways and Harbours was used for carrying fodder. The stock were fed with freshly cut green grass and mealy stalks three times during their journey to Mombasa and offered water which was refused. . . . It is not expected that cattle reared and bred under ranching conditions would take any drinking water from receptacles in enclosed trucks and further, if the cattle were fed on fresh food, they could carry through the journey without suffering from Wednesday night until Friday morning without water."

This is possibly the origin of the rumour.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Would you answer the second part of my question, that the cattle arrived safely?

THE HON. THE ACTING COLONIAL SECRETARY: I can definitely give that assurance.

MOTION WITHDRAWN.

LT.-COL. THE HON. J. G. KIRKWOOD: May I take the opportunity, with the permission of the House, to withdraw the following motion standing in my name this session?—

"Be it resolved that this Council sympathises with the agricultural producers in their protest against the increased price of power kerosene and urges Government to consider sympathetically the granting of a rebate on power kerosene used for the transport of agricultural produce."

As a matter of explanation I should say that I agree with the hon. Member for Nairobi North and my colleagues, and I propose to leave the Council during this session.

HIS EXCELLENCY: The motion standing in the name of the hon. Member for Trans Nzoia is with the leave of the House withdrawn.

(Lt.-Col the hon. J. G. Kirkwood then withdrew from the deliberations of the Council.)

MOTION.

SAMBURU TRIBE, INQUIRY INTO SPEAR MURDERS.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Your Excellency, some short while back I asked a series of questions with regard to happenings in the northern part of the country in the vicinity of where the Samburu tribe are located. The reply by Government disclosed the fact that in the opinion of Government there had been thirty-three murders committed in the neighbourhood of this tribe and that of those thirty-three murders in only four cases had convictions been obtained, which resulted in the legal death of six people implicated. Further, Sir, in reply to another part of my question, I asked if Government was aware of certain statements made corroborating the statement of Kiberenge, Government replied that they had no knowledge.

I wish, therefore, to bring forward a motion asking for an inquiry to be held into the state of affairs in connection with that part of the world, the happenings which have taken place there during recent years, because they have caused very great anxiety of feeling among a large proportion of the population of this country.

The motion is in the following words:

"In view of Government's reply disclosing such a serious situation—in that of the thirty-three spear murders in the neighbourhood of the Samburu tribe, in only four cases have the murderers been convicted—this Council considers an inquiry should be held into the administration of that tribe during the years 1930 to 1933 and all matters relevant thereto."

Now, Sir, all these murders were perpetrated in the same way, which is by the butt end of a spear, which I believe is accepted as more or less a definite indication that they were committed by members of the Samburu tribe. Can you imagine a situation in Great Britain, where a certain section of the community who are known to have committed thirty-three murders of harmless citizens, and in only four cases convictions were obtained? I suggest, Sir, if such a thing did happen you would have the whole of the Rothermere-Beaverbrook Press in hot cry, the head of the Commissioner of Police demanded on a charger, and it is likely that the Government would fall.

Here, Sir, that is not the case at all. Apparently Government do not consider that the large number of murders of admittedly completely harmless native people, is a matter of very serious importance, because when the Carter Commission were hearing evidence the officer in charge of the Northern Frontier District gave evidence to say that the only two tribes

in that part of the world who had never given any trouble to Government were the Rendile and the Samburu. But it was apparent at the time he made that statement that he must have known there had been several serious murders committed, so that one can only imagine they had given no trouble to Government because Government had taken no trouble to find out who committed those murders.

The reason I have brought forward this motion is that the public are very seriously dissatisfied with the state of affairs which has been disclosed, and it is very generally felt that the cause of it is the mal-administration of that part of the country by certainly one administrative officer.

Now, Sir, the great difficulty in all these cases is to obtain satisfactory native evidence. The natives, especially the rather unsophisticated native living in that part of the world, are very frightened of getting implicated in any case of this sort which brings them into contact with the police and Government of the country. It depends entirely on the action taken by Government as to whether any evidence is forthcoming or not. In this case, evidence has not been forthcoming sufficiently to achieve what was required. I submit, Sir, that that is due to the action of the officer in charge of that part of the world at that time.

The natives think to themselves, "What does Government want?" and if they think Government does not want their evidence they will not give it. You may say, why should any officer of Government wish to suppress evidence or not bring murderers to book? I say that there is definite reason in this case, and the reason was this. For many years there has been trouble going on as to who should occupy the Leroghi Plateau. The officers of the administration of that part of the country have fought strenuously for the Samburu to occupy it. The settlers have equally strenuously maintained that it was a part of the country which should be in the white settled areas. In this particular case, their point of view was strongly supported by administrative officers at Rumruti.

I submit that the underlying reason why the natives were not encouraged to bring forward evidence was that they did not wish the Samburu to have these murders brought to book against them, and especially they did not wish them to be convicted of having murdered a white man.

I will come to that now, Sir, because I take it that Mr. Powys' death was not included among the thirty-three murders. In anything I have to say with regard to Mr. Powys' death, which occurred in October, 1931, I wish to make it quite clear that I am in no way making any reflection whatever on the

conduct of the trial of those Samburu who were acquitted of his murder by the impartial judge who tried the case. Everybody who was present at that trial, including those who felt strongly on the subject, unanimsly agreed that no judge could have tried that case more fairly and efficiently than the learned judge who did, and the way the evidence was put forward that there was no other verdict which could be brought in. At the same time, I think I am correct in saying this: that the verdict was not one that Mr. Powys was not murdered; it was a verdict that the five Samburu who were tried were acquitted because there was not sufficient evidence to convict them. In other words, if the case had been tried in my native country the verdict would probably have been one of "Not proven." While absolutely upholding, if it is not presumptuous, the action of the learned judge, I do consider that the prosecution was not conducted in as thorough a way as it should have been, and I will come back to that question later on.

I presume that Government themselves were thoroughly satisfied that when they brought these cases against these people, that murder had been committed, or else naturally they would not have brought the case. I should like to say that, of course, it is ludicrous to suppose that Government deliberately wished to get an acquittal. I do not think that even the Government of Kenya could be accused of being quite so stupid as that, and I do not think it was quite a fair thing to do in that Paper, which I shall call the "Whitewashing Paper", which was laid in the House of Commons, that the question was brought in that certain people had made that accusation. What in effect did happen was that some people said the prosecution was so badly conducted that it looked as though Government must have wanted an acquittal. Of course, nobody seriously considered that Government could be so grossly stupid as to try for an acquittal in such a case as it was bound to undermine the prestige of Government to the great benefit of the witch doctor so much concerned with the case.

Apart from these murders, and apart from the death of Mr. Powys, these tribes had also been in a state of insubordination is a strong word—but had definitely been giving a great deal of trouble, whatever the officer in charge may have said before the Carter Commission. They had been giving a lot of trouble with regard to their grazing boundaries, trespassing beyond them. There had been increasing stock thefts, and there was one case which was perhaps definitely of insubordination, when a certain Government headman named Legoben refused to hand over some men wanted in connection with murder on Mr. Armstrong's farm to the police and threatened to turn out his Moran to drive off the *askaris*. That happened

in 1931, and I believe I am correct in saying it was not until the administration was taken over by the Rift Valley Province that Legoben was dismissed from his position.

I think we must all agree that to say this tribe had never given any trouble to Government was a certain distortion of fact, and I am very sorry, nothing is more distasteful, to have to bring in the names of certain officers who are not here to defend themselves, but as the name of this officer, Mr. Cornell, has already appeared in the White Paper it is impossible to avoid bringing in his name. Mr. Cornell was out of the country at the time Mr. Powys met his death, and in the meantime a verdict of accidental death was brought in, that he probably met his death from lions. Naturally, Mr. Cornell was not, perhaps, too anxious to have the whole case brought up again when he had the convenient method of an inquest which had decided that death was accidental.

I am going to support what I have said this morning, if the House will bear with me, by a certain number of quotations from definite statements made by natives and certified as true statements by a justice of the peace, who is Mr. Gilbert Colvile, of Nakuru, who knows these native peoples well, if not better than any other people living in this country. He has lived among them for a very long time, especially the pastoral tribes, talks their language like themselves, and has their confidence. It may be said that no native evidence is really reliable, and that the native will say what he is wanted to say. We all know there is a good deal in that, but I do submit that when you hear what I have quoted from these natives you will admit that their story hangs together and that there is a great air of truth running through it all. Apart from that, the argument that the native will say what he is wanted to say is one of the great reasons why I consider the action of the administrative officer was so reprehensible, because on the evidence of these natives they got the impression that he did not wish them to bring further evidence before him.

Now, Sir, apart from this question of getting evidence about these murders, there are two other actions of this administrative officer which I consider were very reprehensible. One has been admitted already in the Whitewashing Paper, in that he beat, quite illegally, in a fit of temper, two natives. The other is that he tried five Dorobos for having their honey-pots there and gave them the maximum penalty, although I will endeavour to show you they had always had permission to have their pots in that place from another administrative officer of Government.

I am going to ask you to bear with me while I make a good many quotations, because these are germane to the whole question, and it shows what the natives, anyhow in that part

of the world, believe. I may say that what I quote here are all "Certified as true copies of statements taken by me. Signed Gilbert Colville, J.P. Nakuru."

The first one, Sir, is signed by Mamunum ole Barsogota :

"I am head of all the Samburu moran. I am afraid of Ole Adoma, but not so frightened of him as I am of Government."

I only quote that statement for one purpose, and that is that naturally the natives are frightened of Government, and if Government through their administrative officers administered these native areas properly there is no trouble, but as soon as the officers in charge deviate from the high standards of all the Government service then you find that things go wrong.

I am going to divide what I am going to quote into three categories. The first deals with the death of Mr. Powys, the second will deal with the action of Mr. Cornell, and the third part will deal with the case of Kiberenge.

The next quotation is from Kushina ole Ketachura (Pusigishu) :

"We fought the Lerogishu when Mr. Bader was the District Commissioner at Isiolo, and we beat them and killed five of them. The Logumai girls told us that at a dance at a Logumai village the Lerogishu moran came to dance and the Logumai girls said to them, 'You are cowards you ran away from the Pusigishu, why then come here and dance?' Twenty moran got very excited and went home. The next rains we heard that a white man had been killed on the Pingwan and we also heard that Kiberenge had come to give it away later. The Lerogishu said, do you still say that we are cowards now that we have killed a white M'sungu. We all know that the moran of the Lerogishu killed the white man.

We have all heard that Leronu and Lesoiba killed Powya."

The next is by a Dorobo, Mesachi ole Mangornu :

"I have been to several Samburu dances and have heard the Samburu sing that the vultures dropped on the Pingwan to eat one loved by the people of Nairobi. Dargetti accompanied me when I went to the dance."

The next one is by Legada's older brother (Legada is the one who was beaten) :

"I was told that the European had been killed by the Samburu, and that Kiberengi had said so. I heard

the song of the vultures on the Pingwan being sung at a Lerogishu dance about three months ago. We have all heard that Legoben has hidden Kiberenge."

This is the Legada who was beaten :

"I was at a dance called the M'barangoi at my boma which is with Le bareyo's. Le bareyo heard the Lerogishu moran singing the song of the vultures dropping on the Pingwan and he told them not to sing the song in his boma but to go back to their own. Le bareyo did not want us, his own moran, to hear this song because he was afraid that it would excite us and encourage us to go and kill a white man too. Le bareyo would not tell you anything if you went up there for fear of Ole Odoma. If Ole Odoma was moved away out of the reserve as Senden was there would be no difficulty in getting evidence. When I go back to Samburu I shall go and live a long way off in the low country."

Here is another statement by the native Kotolian ole Lebere :

"Four months ago I was talking to Ole Naimputari on Mr. Tucker's farm. I said I was going down to try and make friends between Lesemeto moran and ours. He said I won't have anything to do with you, we are apart from you, we are one with the Samburu. Before you came down we had a kiama together with the Samburu. Now you have spoilt things by getting us into trouble with the Samburu. We know all the Samburu secrets, we know that the Samburu killed Powys but I won't tell you who did so, or that the Lerogishu clan did it. My moran saw the moran who killed him."

This is evidence when there were several natives together, by one called Ole Omai :

"I was asking Getaiger what he had said to Juma in the afternoon and he replied 'Oh, that was nothing'. Ole Naimputari then started to talk about it, and it came out that it was to do with Powys' murder, when Ole Naimputari said that of course the Government were very stupid not to ask them, the Dorobo about it, as they could finish the whole case at once. Two of my moran, who were out on Cole's met five Samburu carrying a European head. They spoke to two of them while the other three stood about 60 yards away. They then parted and the Dorobo went to the corpse which was all cut up so as the birds could finish it quickly. I asked Ole Naimputari the names of his moran and he said go and catch a star and I will tell you.

About a week later some of these same people were present, and Juma, who worked for the police said :

"I was trying to get out of Ole Naimputari the names of the moran who had seen the Powys murderers and he said 'I know but I am not going to say, but am going to wait and hear what the Government wants.'"

Diamitte ole Naimputari states :

"About three years ago I was looking for my lost sheep at a place called Loberik. I saw five Samburu people and spoke to two, the other three stood by a tree about 500 yards away. I first saw all five standing under a tree. Two of them came up and asked what I was looking for. I told them that I was a Dorobo and was looking for my lost sheep. They looked to me as though they were frightened and I was frightened of them, I was afraid they might kill me. They were not wearing their *shukas* hanging down but rolled up round their waists. Each had two spears. One spear of one man the man nearest to me had blood on it. About two foot of the blade and shank were blood stained. I did not ask them about the blood as I was very frightened. I thought that they had killed a man as they seemed very nervous and kept on looking all around. It was not until the following day but one that I heard a white man was lost. As soon as I heard that he was dead, I thought to myself those Samburu killed him. When I got back with the sheep I told Ole Kerura les Kebogen what I had seen. I have often heard the Samburu sing about one white man being killed on the Pingwan and we all know it referred to 'Cole's manager, Powys'. I know the two Samburu that I met. I had seen them before several times. I have not seen them since."

Another one, the man referred to in the last quotation, Lol Kerura les Kebogen :

"I remember Cole's manager was found dead. I was living at Loberik with a Dorobo. I know Diamitte. We were talking about Powys for whom Diamitte had worked. We had just heard of his death. We were talking about Powys because two months before Powys and Katrono (Lawson Shaw) came to our village and wrote on Lererch. We went back with them part of the way towards the Pingwan and Powys shot a zebra for us. It was while we were talking about this that Diamitte said 'I saw five Samburu when I was looking for my lost sheep. Two of them came up and spoke to me and three others remained some way off. The three who were standing some way off had the white man's head.' There was with me

at the time of this conversation, Londwala Ole Moti, he will bear out what I say. This conversation took place about a week after Diamitte came back with his sheep. I did not hear Kiberenge's story until much later."

This is corroborated by another man with him, Eleri ole Naimputari :

"I worked for Cole both before and after Powys' death. I was first taken on in my own village at Loberik. Two Europeans came to our village, one Mr. Powys and one called Katrono, he had left the Pingwan not long ago and I hear gone to Solai. When they gave me work, myself, Lol Kerura, les Leshaw, and the two Europeans went part of the way towards the Pingwan, and Powys shot a zebra for us. Lol Kerura and les Leshaw stopped to cut it up and the Europeans and myself went back to the Pingwan in their car. I was on leave when Powys was killed and returned to work for one month. I had not then Diamitte's story about the five Samburu. About ten days after I had returned Diamitte told me he had seen five Samburu and thought that they had killed Powys because one of them had blood on his spear and he saw them at the time of Powys' death. About a month after I left work I went to Samburu Morigith above Ngota Marsar, and heard the Narok gishu moran at a dance singing the song of the vulture. I said to myself then that they had killed Powys. As far as I can remember Powys when we went out in the car had a rifle in the car and when he rode he generally had a rhino *kiboko*."

Now, Sir, this is all I am going to say on the subject of Mr. Powys' death. I think it does show, if you put any credence at all in these statements—which in my opinion ring true—that there is not a shadow of doubt that Powys was murdered by the Samburu.

I will come to the next question, which is that of Mr. Cornell, in connection with these matters.

The first person I am going to quote you may say is not a very reliable witness, because he is the man Legohi whom I have already mentioned. This is a true copy of his statement by Mr. Colville :

"Mr. Cornell said 'I don't want to hear about the white man's murder, as I was in England. I don't want your news because Bwana Colville and Bwana Trafford want to take away Lergohi from the Samburu.'

I don't want to know whether you have killed Cornell's father or mother or whether Bwana Trafford has, and I don't know why Mr. Cornell hates you so, but I

do know that he has destroyed Samburu country. I have never been told about this European murder and now Bwana kidogo has gone on safari and has been told all this it is very bad and my country has been spoilt. It was because of what Mr. Cornell said that we gave no more evidence either about the Kikuyu or the Powys murders.

At the time Legada and Lesoni were beaten Mr. Cornell told the baraza 'what has made things bad for your country are the lies that these men have told the Europeans at Rumuruti.'

This is a further statement made by him :

"The Dorobo were tried one or two days before Legada was flogged."

That is the question of the honey pots which I will come to later.

"I was at the baraza at Nam (?) when the District Commissioner from Isiolo with one arm (that is Mr. Clive) told us that the Dorobo had permission to go to their honey pots on Leroghi. The Dorobo also went to Leroghi quite openly and slept in the same boma with the askaris on their way there. All of us Samburu knew that they were allowed to go there. I am a Government headman and neither Mr. Cornell or anyone else has ever told me that the Dorobo were not allowed to go to their honey boxes over the boundary. I was very surprised when Mr. Cornell imprisoned these five Dorobo. He did not tell me but I think he imprisoned them because he did not want the Dorobo to come over and hear our news and take it back to Rumuruti. I went up to tell him that these Dorobo had always had permission to go to Leroghi but he would not listen to me and told me to go away. The Dorobo had no weapons such as Dorobo use to hunt big game, no elephant or rhino spears, they only had the ordinary arms that old men usually carry and their ropes and leather bags for honey. I am quite certain that they were going to get honey from their honey boxes and not to hunt. Mr. Cornell was in a furious temper during the whole time he was at Sugota Marmar."

This is the evidence of another man, named Samanga :

"I was at the Barsaloi crossing baraza and Mr. Cornell said 'I was in England when the European died and I do not want to hear anything about it.' I was present when Legada and Lasoni were flogged; Mr. Cornell was in a rage and shouted out in English 'Bloody

fool.' We all went away and said 'If Government flog the people who try to give it information let us go away and say nothing.'"

Ngaria Oiya said :

"I went to the Saya River near Kelele and there saw Legad with other Samburu moran where he was eating a bullock and I spoke to him. He told me that after he had been in the Samburu country he was called to the camp of the District Commissioner, Isiolo, situated at Marmar and went there immediately. The District Commissioner asked him why he had been spreading reports about the murders in Laikipia to the District Commissioner, Rumuruti, and then told his askari to beat him, and he gave him twelve strokes with a kiboko. I saw his buttocks and they bore the marks thereon. When he was beaten he returned at once to his kraal. I understand that the Samburu old men do not like Legada now, except those of his family. Legada states that he is willing to come in here to give this evidence himself if he is given escort, or if he is fetched from, say, Marmar."

This is a statement on the same subject by Lonian ole Marimbe :

"I told the District Commissioner from Isiolo, the one with one arm (that is Mr. Clive), at a baraza at Nabiere, that some of my people had been arrested by the police for going to their honey boxes on Leroghi. He asked me up to what place my people's boxes were and I told him as far as the precipice. He told Legoben that we, the Dorobo, had permission to go to our boxes and were not to be molested. And that if the Samburu stole our honey we were to report it to Government. We have never been told that we were not to go to Leroghi, and the first we have heard was when the five old men were arrested while drinking at Marmar."

Now we come to the very unfortunate story of Kiberenge. As I think most hon. members of the House know, Kiberenge came in and gave evidence that he knew that Mr. Powys had been murdered by certain Samburu. Afterwards the police were doubtful of some of his statements, and eventually he was made to withdraw them. He was then tried for perjury to which he pleaded guilty, and was sentenced to a long term of imprisonment. It is a very curious fact, Sir, that the people who Kiberenge had said had murdered Mr. Powys were the same people whom Government afterwards prosecuted for the murder, and it does seem extraordinarily hard that when a man came in to try and give evidence to help Government that he should have been sent to prison for perjury. I also

wish to give evidence here to show that the Samburu had corroborated his statement and that that corroboration was not produced at the time Kiberenge was tried for making false statements. Further, I think there is no question about it, that as a result of all this the unfortunate Kiberenge has been murdered.

This is a statement by a man called Leratin, on November 29th, 1933:

"I just heard of Powys' death when we were moving Cunningham's Dorobo. At a Samburu dance called M'baringoi to which Laidashi and myself went we heard the moran singing 'The vultures are dropping the Ping-wan to eat one well liked by the people of Nairobi'. (Ole Keroch.) I said to Laidashi if Juma or Mr. Colvile heard this they would know it referred to Powys being killed. I was called out one night to the police station at Rumuruti to act as interpreter to two Samburu elders. The two elders stated that they know Powys had been killed by six moran and one older man. Acton (the police officer) took down the statement, when he had finished Inspector Ash came over from his house and was very angry about it. I then left the station. We Dorobo all knew that Powys was killed by Samburu, but after what happened to Kiberenge we were afraid to talk about it. I don't mind telling you because I know you well and you can understand."

This is the statement by Juma, who has been quoted already:

"The first time I saw Kiberenge was when he brought a letter from the locust officer to Mr. Carver. He then told me that the Samburu had killed the European, they speared him on his horse. I told him that his evidence alone was not enough and to go out and get more evidence.

Nearly two months later I saw Kiberenge at Mugie. There were present: Wakupa, Juma ura Maswai, Kigaru. The sergeant then wrote down the names of the Samburu Kiberenge gave, and also what he said."

I will give the evidence of the sergeant presently.

"When we were talking news came in that three Samburu were at Loitigon with a rein to catch and take back Kiberenge. Kiblangat was sent to arrest them and they were brought before the sergeant. One of the elders said that Kiberenge's statement was true and the sergeant wrote this down. Next morning the prisoners were sent in with Kiblangat and myself with the two statements. We got into Rumuruti at 7.30 p.m. and handed over to

Mr. Acton. Next morning two of the elders agreed that the moran had killed Powys. That evening Leratin was sent for as interpreter and they again made the same statements. Mr. Ash came in at the end and cursed me and said this is all lies (*fitina*)."

2nd-Sergeant Ochieng, on 19th April, 1934, said:

I went to Mugie to investigate the murder of a herd of Mr. Armstrong's, December 10th, 1931. I there found Juma K. and Mr. Armstrong's Juma Wakupa, and an askari Kiblangat. They were all sitting under a bush with a Samburu by name Kiberenge. Juma K. told me that he had heard news of Powys' murder from Kiberenge. I told him to bring Kiberenge before me and I questioned him. He told me that he knew who had killed Mr. Powys and I wrote his statement down. While we were sitting there a Turkana of Mr. Armstrong's came in and said that there were three Samburu in one of his sheep camps. I sent Kiblangat and two Kangas to go and arrest the Samburu and bring them to me. This they did and when the Samburu were brought before me I asked them what they were doing and they said 'We have come to catch and to take back Kiberenge.' I told my men to take them away separately and question them, after some time one of the Samburu agreed that Kiberenge's story was true and that he had been murdered by Samburu moran. I took down this man's statement. Next day, December 11th, I sent in the three prisoners, Kiblangat and Juma, and an askari Kanga, and Kiberenge. And the two statements, Kiberenge's and the Samburu elder's, which were both on one sheet of paper, I gave to Kiblangat to hand over to the officer in charge at Rumuruti. I remained at Mugie until December 25th."

This is followed up with evidence of Kiblangat, 22nd April, 1934:

I was on Mr. Armstrong's farm at Mugie late in 1931. A Samburu by name Kiberenge came into camp. He spoke to Juma and told him that he knew that seven Samburu had killed Powys. While we were talking the sergeant (Ochieng) came up and took down Kiberenge's statement. A Turkana came up to us from Loitigon and told us that there were three Samburu there looking for Kiberenge. The sergeant sent me and Kakwashi and Mwai to Loitigon to arrest these Samburu. I found the Samburu in a sheep camp at Loitigon with a rope, I arrested them and brought them to Mugie. The sergeant separated them and questioned them individually. After some time one of the Samburu who was being questioned

by Juma, admitted that he knew that their moran had killed Powys. The sergeant then took down this man's statement. There were present Juma arap Kisirgoi, Juma (Mr. Armstrong's), Wakupa, Kigaru. Next morning we, that is Kagwashi and Juma, with Kiberenge and the three prisoners, started for Kumuruti. The sergeant gave me the statements he had made out and told me to hand them into the police station. On the way in all three Samburu pointed out to us the Pingwan plain where he had been murdered. We got into Kumuruti about 7 p.m. and saw Ash and Acton. I handed over the sergeant's statement to Mr. Acton. He told me to take the prisoners over to the police station. We put them in the cells and I went away to the lines."

Well, Sir, the police deny they knew anything about this statement.

This is the last quotation I am going to read. It is made by Juma arap Kimasoy, Wakupa of Lesopia, and Kigaru ole Karalich:

"We were at Juma's hut when a Samburu Kiberenge by name came up to us. There were also present Juma arap Kisirgoi and Kiblangat, an askari. Kiberenge started to talk to Juma K. and said he had information he wanted to give regarding the Lumbwa of Bwana Kongoni's who had been murdered a few days before. Juma K. asked who had murdered him and Kiberenge said the Samburu, whom he knew and whose names he also knew and gave us these names but we do not now remember them. Juma K. asked him what else he wanted to say and Kiberenge said that the M'sungu on the Pingwan had been killed by Samburu. Juma arap Kimasoy remained in his hut and Wakupa, Kigaru, Juma K. and Kiblangat went with Kiberenge a little way off and sat under a tree. Juma K. asked him, Kiberenge, about Powys' death and Kiberenge said 'seven moran killed him' and he knew their names and that they took his head back to show the girls. And the next day they shaved their heads. While we were talking to Kiberenge the sergeant came up and Juma arap Kimasoy also returned. Juma K. told the sergeant that Kiberenge had an important statement to make and the sergeant took out some paper and took down Kiberenge's statement as already set down above. About this time one of our Turkana, Lyengan, came in from Lottigon and reported that three Samburu elders were looking for Kiberenge. The sergeant sent off Kiblangat, one other askari and two Kangas to bring in the Samburu elders. They got back with the three Samburu just after midday. The sergeant asked them what they wanted and they said

that they had been sent by the District Commissioner and Legoben to fetch Kiberenge back. The sergeant asked for their pass and as they had none he arrested them. Juma K. questioned them on Kiberenge's statement. At first they denied all knowledge. We then divided them up and questioned them singly, when one of the elders agreed that Kiberenge's statement regarding both the Lumbwa murder and Powys' were true, but he told Juma K. not to tell the other Samburu elders that he had spoken as they wanted to take Kiberenge back and that the moran would kill him. We all then went to the sergeant who took down the Samburu's statement as above."

I am sorry to have had to take up the time of the House reading out so many statements, but to my mind, and I believe to everybody's impartial mind, there has been very gross mismanagement of all the affairs in that part of the country. And, Sir, in the case of this last part, this unfortunate Kiberenge, as a result of Government inaction has undoubtedly resulted in his murder.

I think if you believe the statements I have put before you, and I say that in my opinion they ring true, the officer in charge did not carry out his duty in the way one expects an officer of the Kenya administration to do so, and that his action did lead to very much greater difficulties on the part of Government in bringing to book those who committed these various murders, in addition to which it made the case of the prosecution in the Powys case very much more difficult.

Sir, I do feel that I have made some grave accusations to-day, and that if only for the sake of the officers concerned and also to give a reassurance to the public, Government would be very wise to accept my motion and to institute an inquiry. Further, Sir, if they do institute an inquiry I do trust that it will be thorough; not a whitewashing inquiry, but one which really will go to the bottom of everything for the honour of the administration, the honour of the police, and for the honour of the whole country.

I do not wish to labour the point more. I leave, I trust, given Government a sufficiently prima facie case to justify myself in having brought this motion before the Council.

THE HON. A. C. HOBY: Your Excellency, I have been unexpectedly asked to second the motion, due to the absence from the House of the hon. Member for Aberdare who was to have undertaken this.

I am going to second the motion formally, and briefly.

Sir, after listening to the Noble Lord and all he has to say on this subject, I would simply say this: Is there any member of this House who considers the position is satisfactory as it stands to-day?

I maintain that the facts that have been brought to light here show quite definitely that it is necessary in the interests of this country, the settlers, and the Government that there should be a further inquiry into this matter. There has been a White Paper issued on this subject, and it may mean on Government's part that it is the last word. It will never be the last word as far as the people of this country are concerned, because they think, and rightly so, I contend, that this thing was so badly mismanaged as to leave an entirely unsatisfactory position which has given rise to doubts concerning the integrity of the administrative officers during that period and, what is more, the prestige of Government. That, Sir, is undesirable from every point of view. It is essential that the position should be cleared up, and I say that if Government have nothing whatever to hide over this matter they cannot possibly object to this inquiry which the Noble Lord has asked for.

I do urge, from everybody's point of view, the whole Colony's point of view, that this inquiry should take place, because as I repeat anyone who has heard this morning the facts can come to no other conclusion that this inquiry is an absolute necessity, and I urge Government to accept the motion.

THE HON. THE CHIEF NATIVE COMMISSIONER: Your Excellency, I must say at the outset that Government is unable to accept the motion before the House for an inquiry into the administration of the Samburu tribe during the period from 1930 to 1933, as it considers that such an inquiry is not justified by the situation in the Samburu during the period in question and that it would serve no useful object.

I would state in advance that this motion by the Noble Lord has nothing to do with the rights or wrongs of the Powys case. Government has already said in a White Paper all that it had to say on that case, and as the Secretary of State has said all reasonable men will agree that the administration could not be blamed for the Powys case.

The arguments which the Noble Lord and the hon. Member for Uasin Gishu have put forward have nothing to do with the question of the administration of the Samburu. The expenditure of the time and money involved would only be justified if there were facts which this inquiry could bring to light, and which would help the administration of the tribe during the present time. But there are no such facts as I think hon. members will agree when they have heard what I have to say.

I will begin by analysing the murder cases that occurred between 1928 and 1934. I take this period because it was the period mentioned by the Noble Lord in the original question he put to the House and because the answer to that question apparently caused the anxiety which is alleged to be behind this motion, and because though the period named in the motion is limited to the years 1930 to 1933, it is very relevant to our discussion to examine the longer period. The number of persons who were murdered in respect of whom Samburu were either charged or suspected was twenty-eight and not thirty-three as originally stated in the reply to the question of the Noble Lord. The original figure had been obtained by telegram, and included murders in which tribes other than Samburu were concerned. I admit that twenty-eight murders is a formidable number, and if they had been proved to have been committed by Samburu, it would have been really serious.

Actually the murders are spread over a period of seven years. Only four Samburu were convicted of murder; twelve were prosecuted but not convicted. Of the murders in which there were no prosecutions or convictions, fourteen Samburu were suspected of having committed murders during the period of seven years. I suggest that suspicion is hardly a sound basis on which to base an inquiry of this important nature.

Taking the number of years into account, the inevitable amount of lawlessness in the Northern Frontier Province, of which the Samburu district formed a part during the period, and the other factors which I shall mention later on, I do not think the number of murders provides the slightest justification for an inquiry.

To take the years separately:—

In 1928 there were three murders and three victims. There were no prosecutions but Samburu were suspected.

In 1929 there were three murders, seven victims, and two prosecutions and two convictions. The accused were all Samburu.

In 1930 there were no murders at all.

In 1931 there were four murders and six victims. Eight Samburu were prosecuted but no convictions resulted—two other murders occurred in the North Nyeri district but the accused were not members of the Samburu tribe.

In 1932, the year before the bad year, there were no murders committed by Samburu at all.

We now come to 1933. This is the year when the murders were more numerous than in previous years, the number of murders which occurred in the Laikipia district

being five and the victims ten. The accused were all Samburu or were suspected of being Samburu. Two prosecutions were undertaken but no convictions resulted as insufficient evidence was forthcoming. Strenuous steps were taken by the officers concerned to bring the offenders to book, but their efforts failed.

I would, however, emphasize that it was only in 1933 that the murders assumed such serious proportions as to necessitate action by other than the ordinary judicial methods. It was only in 1933 that evidence was obtained pointing to the possibility that the manner of the death of Mr. Powys was not in accordance with the finding at the inquest. The conviction of Kiberengo was the act of the magistrate at Rumuruti. It was a judicial act which had nothing to do with the administration of the tribe and the policy followed in regard to them. It therefore does not appertain to this discussion at all, and I ask the House to consider the difficulties which attended the administration of the Samburu tribe during recent years.

The Samburu are of Nilotic-Hamitic origin, closely akin to the Masai, and similar to them in language, customs and habits. They own about 252,000 cattle, and as they are bound to follow the grazing in accordance with the seasons, they are perforce nomadic and rooted to no permanent home. The area over which the tribe is scattered is 7,400 square miles in extent, separate from district headquarters at Isiolo by a large stretch of country to which access is very difficult owing to imperfect roads. Like all primitive Nilotic-Hamitic tribes their young warriors are initiated during early manhood and spear blooding in order to win the admiration of the young girls, and often on direct feminine instigation, has been prevalent from the earliest times and is a traditional custom. It is a custom found in many other parts of the world.

I have no wish to condone this custom or to suggest that Government is not determined to stamp it out with all the means at its disposal. I am merely stating facts which many hon. members on the other side of the House are aware of, to show that this series of murders, execrated as they are by all civilized men, has its roots in native custom.

I would remind hon. members that the ordinary processes of criminal law are only effective when the will of the people is on the side of that law which these processes are designed to enforce. A conviction can only be obtained when evidence is forthcoming, and evidence is not forthcoming if people are unwilling to come forward and give it. In England convictions for murder and burglary would not result if the man in the street were not on the side of that law which prohibits murder and burglary and were not prepared to come forward and give evidence which might result in conviction.

Among the Samburu the general public, so far from being on the side of law and order, is definitely antagonistic to it in so far as murders of members of tribes other than their own are concerned. As I have stated, their own law and traditional custom requires that murders shall be committed at certain times, and then murder in certain circumstances is not a crime but a duty. It is the very fact which has made it so difficult for the murders to be traced. Evidence of these matters was not forthcoming because, although evidence might have been in existence, those in possession of that evidence were unwilling to come forward and give it.

In these circumstances, the discovery of the perpetrators of crimes which were winked at by the old men, who did the same in their youth, and applauded by the young women because in their eyes the reputation of the young men was enhanced as warriors, was a matter of the extreme difficulty.

It was to meet a situation of this kind that the Collective Punishments Ordinance was largely designed. The application of this Ordinance is in itself a confession of failure; or rather, a confession that the ordinary processes of criminal law have failed to detect the individual criminal. It is an Ordinance that is applied when the guilt of a community has been established or when it has been established that a community is hiding the criminal. When it became apparent that the Samburu community was guilty or was hiding the criminal, the provisions of that Ordinance were enforced, the collective punishment of £900 was inflicted on the guilty sections of the tribe, and the young men subjected to disgrace by being deprived of their spears.

I ask this House to put itself in the position of the administrative officer in charge of this tribe during recent years. He was first of all separated from the Samburu area by a large tract of practically roadless country. The Isiolo district, of which the Samburu area formed part, stretches to Habaswein on the north east and to the shores of Lake Rudolf on the north west, a total area of about 200,000 square miles.

Secondly, to show the lawless tendencies of some of the tribes on the Northern Frontier Province, I will quote two passages from the Native Affairs Department Annual Report for 1931:

"The great majority of the people are nomads who spend their lives following or searching for water and grazing. It is a common fallacy that pastoral tribes lead an easy life; but nothing could be further from the truth in the northern Provinces of Kenya, and it is doubtful if any native would willingly exchange the security of a settled home for the life of the nomad. The protection,

pasturing and watering of the stock presents daily work and anxiety: the stock sometimes has to be guarded night and day from the attacks of either human or animal enemies: there are the long waterless marches in search of grazing: and at some wells a human ladder of not less than fifteen men and women is necessary to lift water in small skin buckets by hand to hand from the bottom to the top of the well."

"The difficulty of maintaining law and order in this Province is one that has existed and will continue to exist for many years. There is little regard for the sanctity of human life and the tribesmen look upon the safeguarding of their rights and the redress of their wrongs as their own privilege and duty. During the year 117 persons, so far as is known, met violent death at the hands of their fellows."

Thirdly, as I mentioned just now, administration of the native tribes of the country is based on the rules of law, and unless or until that law has proved ineffective, the officer in charge was compelled to abide by these rules. It must also be remembered that the Special Districts Ordinance, which provides the Officer in Charge of the Northern Frontier with special powers, did not come into force until the middle of last year.

Fourthly, the officer in charge of the Samburu station, then at Isiolo, owing to the frequent absences of the Provincial Commissioner on tour, was compelled to remain at Isiolo and represent him and deal with the ordinary routine and correspondence.

All these difficulties have now been resolved by the establishment of a station at Maralal in the heart of the Samburu tribe, but they were very real indeed, and it is remarkable, I think, that until 1933 lawlessness was kept within such reasonable limits.

The Noble Lord has referred in his speech to Mr. Cornell, who was in charge of the Samburu district during a portion of the period we are discussing. He came to the district in 1931, after the death of Mr. Powys, and was in the district during 1932 and 1933. He has the reputation of being a keen and efficient officer. His main fault in the eyes of his critics is that in the administration of the Samburu and in his devotion to their interests he showed an enthusiasm which in their eyes was excessive; but I have no hesitation in saying that in championing them, whatever his faults or whatever his mistakes, he was following the best traditions of the Service.

The Noble Lord made the suggestion that this officer was influenced by his views in regard to the question of Leroghi Plateau in the action he took and in his administration of the tribe during the years he was there. That, Sir, is a suggestion which cannot be entertained for a moment. It is a reflection on the integrity of that officer for which there is no evidence or foundation and which his previous record certainly does not bear out.

The Noble Lord has quoted a number of statements recorded by Mr. Colville. I say that those statements have reference to the prosecution in regard to the case of Mr. Powys, but they do not concern the motion before the House.

Lastly, the Noble Lord referred to certain statements made by Dorobo in regard to their treatment by Mr. Cornell during the time he was at Samburu. Those statements were reported to the Secretariat, and we referred them to the High Court, together with the case file of the case which Mr. Cornell had tried. The High Court decided that there was no occasion for any revision of the case.

That, Sir, is all I have to say in the matter.

Council adjourned for the usual interval.

On resuming.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I listened to this debate in what I hope was a completely impartial manner. I had little or no knowledge of the facts which the Noble Lord has put up or of the reply Government would make. I listened to the debate with the deliberate intention of keeping an open mind and trying to form an opinion on the weight of the arguments that were adduced. No person could honestly say that the result of listening this morning has not had the effect of demonstrating quite clearly, to put it at its worst, that a very strong prima facie case for an inquiry has been made by the Noble Lord.

I paid equal attention, I assure you, to the remarks in answer by the hon. the Chief Native Commissioner. He will not think me uncivil if I state that to an impartial observer that answer was most unconvincing. First of all, it is obvious that the answer had been prepared prior to the remarks made by the Noble Lord being heard and the reply, except in very small details, did not meet or attempt to meet the case put up by the Noble Lord.

Now, it may be that Government seeing this motion, knowing that this motion was coming up, discussed the matter and came to the conclusion that it did not feel there was sufficient justification for accepting it and agreeing to an

inquiry but, after all, I do suggest that serious motions put up in this House should not be turned down in advance without hearing the arguments for the motion.

I honestly believe, I am making no attack on anyone, that a strong prima facie case has been made out, and I can see no possible harm in the inquiry being instituted; I believe it is not only in the interests of the country but in the interests of the gentleman whose name has been mentioned. What would be the result of any impartial person reading this debate? They must come to the conclusion that accusations have been made against an officer of Government. The defence on his behalf has been entirely inadequate, and, rightly or wrongly, that gentleman in the eyes of impartial people will continue under a stigma which for all I know may not be deserved.

The object of my intervening, which I had not intended to do, is because as a result of listening, and listening without my mind being made up, I do make an appeal to Government not to stick to their preconceived idea of turning down this motion irrespective of the arguments put up in support, but will at least consider the matter to-morrow and see if they cannot agree to this inquiry which, in the interests of all concerned, is only fair and just. (Hear, hear.)

THE HON. SHAMSUD-DEEN: Your Excellency, my latest acquisition of knowledge and wisdom in this House is that I must never get up to raise a point of order, especially when any of the gentlemen on my left are speaking. But, Your Excellency, with all the patience in the world one cannot sit and listen to a speech by an hon. member who starts by saying that the 1933 murders mentioned in this motion have nothing to do with the Powys case, and he goes on to read a series of statements which all concern the Powys case.

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, I did not say that—I do not quite understand?

THE HON. SHAMSUD-DEEN: Your Excellency, my impression is that the hon. mover said that the thirty-three cases mentioned in the motion did not include the Powys case at all. I may be wrong.

LT.-COL. THE HON. LORD FRANCIS SCOTT: That is correct.

THE HON. SHAMSUD-DEEN: And he goes on to mention all the statements and even to read the evidence given in the case of Powys' death.

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of explanation, if the hon. member would read the last line of my motion it says: "and all matters relevant thereto."

THE HON. SHAMSUD-DEEN: I am not going to argue that point any further, Your Excellency, but to hear the statements which have been made in this House this morning one would think, anyone listening to the debate, that the whole machinery of the administration and the Government has gone out of gear: that not only has the officer in charge of the administrative district not carried out his duties properly, but the Attorney General has not conducted the case in its proper manner, Mr. Ash, the Inspector of Police, has been telling witnesses that all they say are lies and discouraging them from bringing forward any proofs; and, last of all, to hear that Mr. Cornell, the European administrator of that district, not only suppressed but discouraged any evidence in the case of the Powys murder simply because the Europeans wanted Leroghi Plateau is a sort of story I think it difficult to discover even in "The Arabian Nights," and I submit that even with the intention of keeping clear of a motion like this it requires almost superhuman patience to do so when such things are mentioned.

And we have heard some very extraordinary statements read out by the hon. mover this morning. I am not quite clear as to whether he said this evidence was before the court or was in the possession of the police or the Attorney General at the time of the trial, but if it were not, why in the name of all which is bad was this damning evidence against the accused persons not brought out during the trial of the case one fails to understand. We hear that Kiberenge was sentenced to a term of imprisonment on a charge of perjury, though evidently telling the truth. Then we hear he has been murdered, and yet the murderer of that person has not been brought to justice even to this date. The whole machinery of administration and justice in the Colony has simply gone wrong!

We cannot possibly listen to statements of this nature. The Powys murder case has been the subject of an inquest and many inquiries and an elaborate trial in the highest court of the Colony, and if we are going to use the powers that are given us in this House for the purpose of challenging the integrity of all the law officers, courts, administrative officers, police, everybody, then, I think to say the least it is not the proper thing to do. I do not think that the prestige of the Government or the white man has been harmed by this case of the Powys murder. In my opinion, the prestige of Government has been very very considerably enhanced in the eyes of the natives, who have been convinced that, even in a case of the murder of a European who belongs to the same caste as the administrative officers themselves, a person, no matter who he may be, is not liable to be convicted because that

murdered person is a white man and that British justice is like the scales: if there is not enough evidence no person is liable to be convicted.

As far as the Powys case is concerned, I have read the reports of the trial and the White Paper with an entirely disinterested mind and all that a person who is not biased one way or the other concludes after reading everything is that there was undoubtedly a temporary wave of insanity in this district, which is really the ramifications of the old customs as explained by the hon. the Chief Native Commissioner, and that Powys, as the court found, met his death through the misadventure of those fellows who, wanting to appear brave in the eyes of the young women, simply came, cut off the head and certain parts to take and show them to these young women and prove that they were great heroes.

I do think there is some occasion for a new law to be framed to deal with offences of that type, but at the present there is nothing in the laws of the country to deal except with those people who have been convicted of murder.

As regards the other murders, we have seen only recently in the Masai reserve that there have been cases of a similar nature, and there will be until the British administration has remained in this country long enough to bring about a state of law and order.

I am the last person to encourage any kind of lawlessness among natives, but I do think the present case has been exaggerated to an extent that no useful purpose will be served by any inquiry especially after a White Paper has been issued and there have been so many inquiries, and to expect Government at this stage, merely in order to placate the opinion of a certain section of the community, should go to the extent of having an inquiry into this matter, would be sheer waste of time and money.

MAJOR THE HON. SIR ROBERT SHAW: Your Excellency, I had no intention whatever of intervening in this debate, even for a moment, and I do not rise for the pleasure of hearing my own views or to justify myself for the attitude I propose to take in strongly supporting the motion. I rise only because the last hon. member gave me my cue. I will take one point only.

He stated that from what had been said on this motion it would appear that the administration of this country was useless and inefficient. It is nothing of the kind, we have no feeling of that sort. As the Noble Lord and his secondor, and the hon. Member for Nairobi South pointed out, it is in support of that administration that we wish the inquiry to

take place. I say without hesitation that we have the greatest faith in our administration, and I personally consider the standard they set themselves is magnificent. It is because in the most unfortunate history of this particular tribe it would appear there is a very bad blot on the fair name of our administration over those appalling series of murders over a considerable time, and it is in the interests of that administration and because we do not wish the public of this or any other country to think those fine standards have fallen off in the slightest degree that we ask for an inquiry, in order that it may be shown to be an exceptionally unfortunate case and one which the public of the country may suppose will never recur. That is why I am rising and those are my views.

THE VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, at the expense or cost of being thought, as we have been accused already during this session, antagonistic to the European interests, I want briefly to say a few words with regard to the impression that has been left on my mind by the facts as read out by the Noble Lord when moving his motion.

They have been a startling array of facts, I admit at once, and if they were brought forward in a court of law and if my hon. and learned friend the Member for Nairobi South was conducting the case, and there was no evidence to be brought on the other side to disprove one thing or the other, I for one would be compelled to vote with those who ask for this inquiry. But it is a fact that we have this morning only heard one side of the question. I am not going to mention, because the Noble Lord has not mentioned in his motion, the name of Powys—although he has in his speech—but what strikes me is this: to send a responsible officer into a district such as the district occupied by the Samburu and such tribes, to administer that district, to try and bring into being law and order in the face of established customs, customs which we all know and deplore—and I should like to say here that from my knowledge of Government's attitude to such customs no one is more determined than His Excellency the Governor in putting a stop to these customs which we deplore so much, I am referring to the blooding of spears—to think that during five years in such a country, separated as these officers are from the centres of administration, that in such a vast area as 20,000 square miles there should have occurred during five years, as stated by the hon. the Chief Native Commissioner this morning, in that district only twenty-eight murders, . . .

THE HON. THE CHIEF NATIVE COMMISSIONER: On a point of order, the period was seven years.

VEN. ARCHDEACON THE HON. G. BURNS : I thought the hon. member mentioned from 1928 to 1933?

THE HON. THE CHIEF NATIVE COMMISSIONER : 1934.

VEN. ARCHDEACON THE HON. G. BURNS : That makes my case all the stronger—that during those seven years there were twenty-eight murders committed by a people that are only being brought under the administration of justice and fair play as we understand it, seems to me—I may be wrong—to be one up for the administrative officers who have had the onerous duty of administering these tribes during that term of years. Four murders a year, it works out according to the hon. member's statement.

CAPT. THE HON. H. E. SCHWARTZ : One a quarter! (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS : The hon. Member for Nairobi South is very strong on figures, so that I have to work it out. (Laughter.)

CAPT. THE HON. H. E. SCHWARTZ : Each quarter one, I said! (Laughter.)

VEN. ARCHDEACON THE HON. G. BURNS : Well, even each quarter one under such conditions and among such people is to my mind an astonishing fact, and compares to the credit of the administrative officers who have to administer and to bring that tribe into submission.

One other thought struck me as I listened—and I listened patiently, because I was asked by an hon. member "Do you represent these people or not?" Well, I try to, but it is not always easy when I am up against certain elements in this House, but I do try to as far as I can. But that any responsible officer, or an officer thought by Government to be responsible enough to be sent into that position to administer that district, should during the carrying out of his duties undertake such a dastardly thing—excuse the strong word!—as the suppression of evidence from natives where human life is concerned, seems to me to be an entirely unacceptable thing. I cannot understand a responsible officer or officers deliberately doing such a thing as that for any purpose whatsoever.

Then I had to ask myself the question, what would they have gained by the suppression of that evidence? What was their objective? Was it that they wanted the Samburu to gain something by the suppression of that evidence? or was it that they wanted to hide from the general public concerning

inefficiency in the administration of that tribe? Again I am entirely unconvinced that such officers responsible to His Majesty's Government and your Government in this Colony would be capable of doing such a thing as that, as repressing evidence which may bring heathen people who are only emerging, and have not yet emerged very far, out of the awful chaos of the heathenism so that they are not brought to justice for the crimes committed. I cannot understand any responsible officer doing a thing like that.

I should like to say here that the Noble Lord or any member of this House is no more anxious and keen than I am to see this sort of thing suppressed, but having read this White Paper—and I have from cover to cover—I believe myself frankly that everything that could be done to bring these people under the most difficult circumstances to justice for the crimes they have committed has been done by the Government of this Colony. They make mistakes. Who does not? The members on this side of the House make mistakes sometimes. They say I have made them, that I have made some bad blunders too during this session. (Laughter.) But that does not affect the case one bit. I do not see—although I would vote for the motion if I honestly saw it—what is to be gained by appointing such a committee of inquiry into the whole matter which has been gone over again and again, both by the officers of the law and by administrative officers, an inquiry into the administration of their duty and of justice.

Therefore I express my regret, because I do hate to be up against this sort of thing, but I am unable honestly and truly to see what benefit would accrue to the community and to the native community especially if a further inquiry was opened up. Certain witnesses who were involved in the first examination are not available to give their evidence if such an inquiry was to take place. Therefore, Your Excellency, I am unable to support this motion.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency, I am prompted to intervene in this debate because of a question put by the hon. and reverend member. He does not seem to understand why a responsible officer should be interested in suppressing evidence in a case not only of murder of natives by natives but also of the murder of a European by natives. While he was asking this question, I saw the Leroghi Plateau before me. I saw it during the discussion on the Carter Commission Report, and references have been made to the Plateau in this debate. To that extent I regret to say that the Noble Lord has vitiated or weakened his case. If the Leroghi Plateau had been left alone, we should be able to view this motion in quite a different light, in the light of justice or of vital evidence supposed to have been suppressed by officers

concerned. But I say that this motion is not entirely dissociated from the question of the Leroghi Plateau, on which I say covetous eyes are cast by a certain section of the farming community.

I do not want to raise old troubles, but a story in the Bible has just occurred to me as being very fitting. There was a King by the name of Ahab, a King of Israel, and next to his palace there was a farm, a very beautiful and attractive farm. Both the King and his wife, the beautiful Jezebel, used to cast covetous eyes on it day in and day out. A proposal was made to the farmer by the King to exchange it for better and bigger land elsewhere, but he would not give up the inheritance of his ancestors. He refused, until the last, the noble and sweet queen put up a charge of blasphemy against the farmer, who was sent to death. Those of us in this House who are Christians know what happened to the King and what the Prophet Elijah said to him.

When I have said that, I do not think I should say anything more, save to remind the hon. mover and the acting seconder of a similar motion put up in this House asking Government for an inquiry in a matter which may not be of such vital importance to the Colony generally but it was certainly very vital to a section of the community, the Indian community. I hope the hon. members will remember what part they played on that motion, in the debate, and on the vote. (Lord Francis Scott: We did not vote.)

THE HON. THE ATTORNEY GENERAL: Your Excellency, at least one hon. member of this House imagines that the integrity of the law officers of the Crown has been attacked, though I personally failed to hear any attack made by the Noble Lord, in fact, if I may say so, it was exactly the reverse, because he said perfectly clearly that the points made in what he called the whitewashing paper were quite unnecessary with regard to the suggestion that this Government through the law officers at any rate, had desired in any way to lose the case. However, to my regret the Powys case has been brought into this debate a great deal—though having read the motion I thought that it might be left out—I think therefore that it is only right for the House to hear a few words from me on the subject. All that I have got to say on the details of the case has been written. The House is entitled at any time to know how its officers on this side of the House are doing their business, and if they want to know how the law officers conducted this case they have only got to read this White Paper, and therefore I will not go into all the details of the case again.

In considering this motion, what I feel we should ask ourselves is, what good will be derived from appointing a committee to inquire into the events of the years 1930 to 1933?

In support of the motion the Noble Lord has read to us many quotations from statements which were made to a justice of the peace. Well, all those statements will do for you is to take you this far: they will prove to you that the prosecution was right in thinking that they had a good case against the persons whom we accused of being murderers. It was my opinion, and the opinion of every officer in my office, that we had a good case, and we put it up. The point that the Noble Lord himself forgets is that a great deal of what he has read is hearsay evidence and therefore could not be given in the case before the judge, and secondly, that a great deal of what he read to us was in fact brought out very strongly. I may say to the Noble Lord that there is nobody in this House more disappointed than I at the result of the case, though I also join with him in casting not the slightest reflection on the learned gentleman who tried the case and who I have no doubt gave a just and proper decision.

We have been accused by the hon. Member for Nairobi South with having decided this motion in advance. In a sense I must plead guilty to having made up my own mind in advance, because I knew there was nothing that could possibly be brought out in this debate that I did not know already. That is his first point. My premonition was correct: there is absolutely nothing new.

The Noble Lord has asked us to appoint this commission of inquiry, but from my own point of view I can see no specific good which will arise out of it. A commission of inquiry a year ago, before Government had acted in this matter, might have been a necessary thing to have. You have heard that the number of murders in 1933 went up to an alarming extent. But I am glad to tell you that as a result—I think the direct result—of the action taken by Government immediately afterwards, to wit in 1934, the incidence of murder in that district has gone down. I think I have recited before, in answer to a question, the action which Government took. One of the principal evildoers of the place was removed to the coast in banishment; we levied collective punishment on a large portion of the tribe; we placed patrols in the district from the King's African Rifles; and there has been established a special police post which they have to pay for.

What, then, can we gain out of this inquiry? At one time I thought it would be suggested that there should be an inquiry into the failure of the evidence in the Powys case, but no good purpose can be served, the case has failed and can never be revived. There is no chance of bringing the accused before the courts again, and whatever we may or may not think of the prosecution, no specific good will be done to the

Colony or to the House if as a result it is found that a young officer—and I do not admit it for a moment—that a young officer had not brought forward the evidence quite in the same way as a more experienced person would have done. I wish to make it quite clear that I am perfectly satisfied that that would not be the result, but if it was, how far would that take you. The next thing you would discover, assuming every point in favour of those who wish the inquiry, would be that certain other measures should have been taken by a certain administrative officer. That officer is no longer there, and it seems to me of little use now to say if someone else had been there from 1930 to 1933 and had acted in a different manner there might have been other results. You have already had administrative reasons why Government has complete confidence in this officer still, but in any event I wish to stress this one point only, that no specific good can be done to the Colony at large by holding this inquiry, even if everything can be proved that has been suggested.

Reference has been made in the course of this debate to the unfortunate Kiberenge, and also to what I call the two honey pot cases. These are more individual and local matters, perhaps, but I will make some passing reference to them. Kiberenge rightly or wrongly was convicted on his own evidence, namely, by pleading guilty to the charge of perjury or something of that description. The Noble Lord told you that quite fairly himself. It seems to me there can be little reflection on anybody in Government if Kiberenge, as a result of that plea of his, was imprisoned for two or three months hard labour. The facts were as you know, that he originally came in and made a statement which the Crown officials at any rate believed to be quite true when they brought the case against the five accused Samburu with regard to the death of Mr. Powys. As the Noble Lord has told you, on investigation certain of the side issues in that statement were found to be incorrect, and when Kiberenge was taxed on this, he, for reasons known only to himself, went back on his own statement and said the whole thing was a tissue of falsehood. On that charge he was put before a magistrate, who was not the gentleman referred to so often, but another magistrate who came from Nakuru, and was duly sentenced.

So much for Kiberenge, and I think we can have little sympathy for anybody who goes into the dock and says "I am guilty". If as a result of having so pleaded he is sent to prison without the usual investigations into the details of the crime.

The honey pot cases, as you were told by the hon. the Chief Native Commissioner, were referred to Government, and as a result were sent to the Supreme Court, either on

appeal or revision, it does not matter. The cases were investigated by the Supreme Court, and the Court came to the conclusion that the correct sentence had been given. You must remember that there are a great many *ex parte* statements made from time to time in and out of the House which do not appear in the evidence before the Court. For instance, it is asserted definitely in this House that these people had been told they could go to the Plateau and get their honey pots. I do not know whether that is true or not, but I do know that that did not appear in the evidence. I mention this in order to make it quite clear that the court which sat in revision on the cases had not that fact before them in the evidence. If it had appeared, I have not the slightest doubt that the magistrate originally would not have convicted at all. If on appeal that fact was not brought out then again I say it is no fault of the administration of justice or anyone else but it is the fault of the appellants. It would seem to me that it should have been the first fact brought out before the Court of Appeal if it were true.

I would like to dissociate myself, I am afraid, from some of the remarks of the hon. and reverend member, because I can assure him that Government does not view with equanimity the fact that there was even one murder per quarter in this area. I am glad to say that the incidence of murder in this district is now reduced, not to one a quarter but to one a year, and long may it remain so!

VEN. ARCHDEACON THE HON. G. BURNS: On a point of explanation, I did not say Government were patting themselves on the back because there was only one murder a quarter!

THE HON. ISHER DASS: Your Excellency, the Noble Lord, in moving this motion, has without the slightest doubt made out a very strong case for an inquiry. The hon. the Chief Native Commissioner, replying on behalf of Government, pointed out certain difficulties that he could see and assumes that no useful purpose would be served by holding such an inquiry in face of those difficulties. What are the difficulties that he finds? That the area inhabited by the Samburu is so very large that it would be humanly impossible for a committee of inquiry to go around and collect evidence, and that it would mean a lot of money spent unnecessarily. My answer to that is, that the same amount of trouble is experienced in collecting the hut and poll tax. In a question of this importance, which concerns any section of the community, a difficulty of this nature should not be taken into consideration too seriously.

The hon. the Chief Native Commissioner also informed the Noble Lord that Government had collected a fine of £900

from the Samburu tribe. If that is so, it means that Government have some reason for believing that the gentleman has been murdered by certain members of that tribe.

THE HON. THE ATTORNEY GENERAL : On a point of order, I do not know who the hon. member is referring to, but it was not the direct result of the Powys case that this fine of £900 was levied but as the result of all the cases to which reference has been made to-day.

THE HON. ISHER DASS : I am grateful to the hon. and learned Attorney General for telling us that this case forms part of all the other cases.

Now, the hon. and learned Attorney General in his eloquent speech made two or three points. He asked us, what actual useful purpose would be served by having this inquiry, that even if various things were found out connected with this case the accused could not be retried for that offence. I cannot agree with him, because among primitive people, when a period of five or six years has elapsed, it does occur that those who have committed some crime begin to talk about it, because they think nobody will take any notice of it and that the Government machinery will not work. Hence that is more reason why this case, having gone to the Supreme Court and been disposed of, should be made the subject of an inquiry, so that the truth should be got from these people who think that no further action is likely to be taken by Government at all.

But that is not the point. The hon. the Attorney General told us that even if some new things came to light, no useful purpose will be served by an inquiry. We know perfectly well that the unfortunate gentleman who was murdered has gone from the world, that there is no chance of him coming back again, and to ask for an inquiry is only to prevent a repetition of such things. No power on earth can bring him back and the accused cannot be retried even if to-morrow they admitted they had committed this offence, but the motion asks that there shall be no repetition of these things, that other natives shall think twice before committing any crimes in the future. That is the spirit of the motion moved by the Noble Lord.

There is one personal explanation, however, which I should like to make. While I am in full sympathy with the motion and on principle would have supported it, I shall have to vote against it for one reason, and that without imputing motives to anyone. As an honest man, while sympathizing with the European elected members in principle, I say that as a mark of retaliation I shall not vote for this motion because of the treatment they accorded me when my motion was moved.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Sir, I cannot help feeling extremely gratified with the way the debate has gone, because in point of fact the only answers given seem to me to completely justify my request for this inquiry. The fact that though the hon. member Mr. Isher Dass is going to vote against me I have his support anyhow of the principle of the thing, shows that I must have put up a pretty good case!

The hon. the Chief Native Commissioner said he was quite satisfied that all that was wanted was this White Paper, and he quoted the Secretary of State as saying that all reasonable people must agree that Government had taken every possible step to deal with this question. I can only tell him this, that all the reasonable men whom I have met and discussed this question, who knew something about it—and I am quoting reasonable men—consider that this White Paper was an absolute insult, that it was an instance of *suppressio veri, suggestio falsi*. Therefore I am afraid the Secretary of State will be disappointed if he thinks all reasonable men like his view.

I must say that I was somewhat horrified to hear the defence put up this morning both by the hon. the Chief Native Commissioner and the hon. and venerable member representing native interests, that really a few murders—28, 29, or 33 whatever it is—did not matter very much. I was glad to see that my hon. friend the Attorney General shared my amazement . . .

THE HON. THE CHIEF NATIVE COMMISSIONER : On a point of explanation, I did not mean to suggest they did not matter but that it was remarkable no more had occurred under the circumstances.

LT.-COL. THE HON. LORD FRANCIS SCOTT : I am very sorry he quoted this point of view which I cannot share. If you really followed it up more logically, I suggest Government might institute a new form of tax, in issuing licences to these various tribes for so many murders per year!

What emerged from the speech of the hon. the Chief Native Commissioner was this: that though there had been only twenty-eight, I suggest there were a good many more not allowed for. I will quote, for instance, the mysterious death of the native who gave evidence before the Carter Commission against the Samburu. He died mysteriously four days later. Of course, there is the case of Kiberenge which I presume is not included in this list but whose death is strictly due to the question we have been discussing.

What was so very strikingly a justification of my case was that although so many murders are known and cases tried, so few convictions were obtained for lack of evidence, and

the gravamen of my attack is this, that the officer in charge of that district did not use his influence to produce that evidence in the way he should have, but, if there is any truth in some of the statements which I have read this morning, he acted in the other direction and gave the natives anyhow the impression that he did not want them to come forward and give evidence. That is a very serious thing; I think, as the hon. and venerable member said, it is almost unbelievable it should happen, but I suggest that in the natives' mind anyhow it did happen.

This case of Kiberenge. I must say that for an unfortunate native who is not only first of all put into prison for some months for giving what the legal officers of the Crown believed was the truth and that he subsequently met his death, I consider is a much more serious thing than just something which deserved a little bit of Government's sympathy. The hon. and learned Attorney General said it was his own fault because he pleaded guilty. We all know that an unfortunate native of this sort who found that what he said was not believed and did not know what to do, would think it was the best thing to withdraw it and say it was not true at all, on which he was sent to prison. That is obviously what happened with Kiberenge.

Nobody has attempted to answer this: why was that evidence corroborating his statement and which was, according to what I have read this morning, definitely taken down by a sergeant of police and handed to an officer of the police, and which the police said subsequently they did not know what had happened to it—although the Commissioner of Police, in an interview at Government House, admitted they might have forgotten about it—why was that evidence lost and not produced at the trial? Nobody has answered that question, and that is one of the worst instances in the whole case. Although it is an attack on a certain police official for not producing it, I suggest that the real reason was the human one: that having given his opinion that the thing was an accident, he did not wish it to be brought up again in another way.

But, Sir, it was a very serious matter for the unfortunate Kiberenge as resulting not only in his imprisonment but in his death subsequently.

I was interested to find that the hon. the Chief Native Commissioner did refer to the murder of Mr. Powys and that the hon. and learned Attorney General was apparently of the same view, that is of course without casting any reflection on the finding of the court. I thought that the excuses of the hon. the Chief Native Commissioner for this were really the

weakest thing I have ever heard. He admitted it was a confession of failure, those were the words he actually used, and because of this confession of failure other steps had to be taken.

In further support of my motion, a very remarkable thing has been pointed out by officers of Government, that there has been a marked improvement in the condition of that area during this last year. I suggest that is because it was taken away from the administration of those who administered it before and put into far more capable hands. (Hear, hear.)

With regard to the question of these honey pots and the revision court, I did not say that the conviction of these Dorobo was an illegal one or one that the High Court should turn down; what I did say is that it had always been the custom of these Dorobo to have their honey pots in that part of the district and that in no way had they committed an offence. The district officer up there took what I consider a savage method of dealing with them, and I do not consider that because the High Court did not revise the case that that bears on the matter at all. I should very much like to know whether Government have ascertained from Mr. Clive if it was a fact or not that he did give them permission to go to that place.

The hon. member Mr. Shamsud-Deen asked why all this evidence which I have read was not brought out at the trial? That is one of the things we want to know. It is one point we feel sore about, that the evidence brought out at the trial was not made strong enough, and that if the people in charge of the area had acted better they would have brought further evidence which would have secured a conviction. The hon. member also brought in the question that I had made an attack on the Attorney General for the way he conducted the case. I never did, as the hon. the Attorney General has already said. What I did say was that I did not think the young officer who conducted the prosecution had conducted it as it should have been conducted, and that there was a strong feeling at the time that in such an important case—important not only with regard to the Powys murder but important from Government's point of view because of the tremendous amount of prestige to Government or the counter-feeling of the prestige of the witch doctor which depended on the result of that case—it should have been in the hands of a more experienced man.

It is well known that this witch doctor told these Samburu that he would protect them, that he was much stronger than Government, and that he would get them off. Unfortunately, the result was they did get off. Many of us feel that if only my hon. and learned friend opposite (the Attorney General) had conducted that case they would not have got off.

I should like to draw attention to a remark in the White Paper on that matter, in which His Excellency Sir Joseph Byrne states:

"I wish to make it quite clear that I attach the greatest importance to maintaining the constitutional position which is that the Attorney General, by virtue of his office, is solely responsible for deciding whether a prosecution should take place; and, moreover, that the conduct of any prosecution is entirely within his sphere.

There cannot in my understanding of the English constitutional position, be any question of his receiving instructions from his Government in this matter."

In point of fact, the hon. and learned Attorney General, on page 27 of the same Paper, in his own statement says that as Legislative Council was sitting at the time he had to be present, and although he wished the Solicitor General to prosecute in his stead "I was instructed to recall him to take his place in Council." I suggest that that is a direct contradiction of Sir Joseph Byrne's statement, that he never interfered in any way with the way in which the Attorney General should conduct a prosecution.

The hon. members Dr. de Sousa and Mr. Isher Dass said they were going to vote against my motion because of the part we took in the debate on the motion concerning the arson case. To my recollection, it is a little time ago, and the debate took up a long time, not a single European member took part in the debate at all, and we certainly did not vote because the motion never went to a division.

DR. THE HON. A. C. L. DE SOUSA: The hon. Member for Mombasa took part.

LT.-COL. THE HON. LORD FRANCIS SCOTT: He seconded the amendment moved by the hon. member Mr. Pandya. That was the only part we took.

I hope that the hon. member Mr. Isher Dass will reconsider his decision as he obviously agrees with the case which I put up.

I regret very much that Government refuses to grant this inquiry. I am afraid that it will leave a very bad impression in the country, and the impression will be that Government dare not face an inquiry because they are frightened of what will come out if it is held.

The question was put and lost by 7 votes to 23, one member not voting.

Ayes: Messrs. Bemister, Hurvey, Hoey, Major Robertson-Eustace, Capt. Schwartz, Lord Francis Scott, Sir Robert Shaw.

Noes: Mr. Barton, Major Brassey-Edwards, Mr. Bruce, Archdeacon Burns, Messrs. Fazan, Fitzgerald, Harragin, Kirsopp, La Fontaine, Logan, Morris, Pandya, Dr. Paterson, Mr. Pilling, Sir G. Rhodes, Messrs. Shamsud-Deen, Sikes, Dr. de Sousa, Capt. Tisdall, Messrs. Vidal, Walsh, Welby, Dr. Wilson.

Did not vote: Mr. Isher Dass.

BILLS.

SELECT COMMITTEE REPORT.

THE CRIMINAL PROCEDURE (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider the report on the provisions of the Criminal Procedure (Amendment) Bill be adopted, subject to the deletion of the first three lines of paragraph 11 thereof and the substitution of the following: "That the present clause 23 be deleted and the following be substituted therefor."

The majority of the amendments are amendments of which notice was given previously, at the second reading of the Bill, and which we actually discussed. For instance, paragraph 2 of this Report has already been discussed; it was originally brought in in order to conform with similar legislation in Tanganyika and to bring it into line with a certain section which appears in the Code itself. Clause 2, as hon. members probably gathered on the second reading, is necessary in order to delete the provision which appears in this amending Bill, whereby confessions could be made to certain policemen. The law regarding confessions will therefore remain as it is at the present moment.

Paragraph 3 is merely a verbal amendment, dealing with such things as "stayed or terminated" for the word "stayed" for the sake of clarity.

Paragraph 4 dealing with section 196A of the Principal Ordinance, merely makes it clear that when a man is discharged he is in fact acquitted. It is simply making assurance doubly sure.

Paragraphs 5 and 6 refer to the list of jurors which has to be prepared by the Registrar. It provides for the list to be made triennially, but that alterations shall be made yearly and posted up in the offices of the Provincial Commissioners and in every district.

Paragraph 7 is more important. It deals with the question which was debated at some length on the second reading with regard to depositions which can be read in the High Court. The suggestion made in the Bill was following the Bushe Report, that depositions therein enumerated should be read as a matter of right, subject of course to the disallowance of the judge. Hon. members thought that was going too far, and as a result amendments were put in. I commend to your attention the word "unreasonable" and also the proviso which limits to a great extent the power of the prosecution to put in these depositions, namely, by providing that the court must be satisfied that it will not unduly prejudice the accused. With that proviso no accused person need be afraid of the reading of these depositions without due consideration by the court.

Paragraph 9 refers to clause 20, and deals with the point taken up by the hon. and learned Member for Nairobi South on the second reading. You will remember that again following the Bushe Report, there was a clause put in the Bill providing that every appellant should have the right of appearing at his appeal. This matter has been considered by the hon. member and myself, and we have also discussed it with the learned Chief Justice. As a result of that consultation we have amended the clause appearing in the Bill to conform with the law as at present in force in the Rules of the Court of Appeal for Eastern Africa, by which an appellant in custody will not be allowed to be present when it is merely a question of law which is being discussed on his appeal, though if prepared to pay the expenses he will always be able to appear. It does not interfere with the right of the court to say they think an appellant should be present.

Paragraph 10 merely makes it clear that a person pending his appeal may have the right at his own request to begin to serve his sentence before the appeal starts, and paragraph 11 contains merely a verbal amendment to which I do not think any further reference is necessary.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

The hon. the Attorney General moved that the Criminal Procedure (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE SALE OF PYRETHRUM BILL.

THE HON. T. D. H. BRUCE: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Sale of Pyrethrum Bill be adopted.

The only amendment recommended to this Bill by the Select Committee is that a clause be added providing that there shall be a maximum price to be charged by the agency appointed under the Bill for pyrethrum powder consumed or used in East African territories and that it "shall not exceed the export parity of pyrethrum flowers based on the average London price for the previous three months plus 20 per cent and cost of gristing and packing".

Hon. members are aware, I think, that the export parity, which is a technical phrase, is the price in London less the price of getting the product to London. Thus, if the price in London is £90 a ton of pyrethrum powder and the cost of getting it there is £30, the export parity is £60 a ton. I may say that this definition has the approval of the Kenya Farmers Association and the Coffee Board, and the reason for the addition of the clause is to prevent possible exploitation of local consumers by the agency.

It is felt that this Bill when passed into law with the addition of this clause will afford protection to an industry which all hope before long will become a very important industry in this Colony.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

THIRD READING.

THE HON. T. D. H. BRUCE moved that the Sale of Pyrethrum Bill be read a third time and passed.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

The Bill was read a third time and passed.

Council adjourned till 9 a.m. on Saturday,
the 3rd August, 1935.

SATURDAY, 3rd AUGUST, 1935

Council assembled at the Memorial Hall, Nairobi, at 9 a.m. on Saturday, the 3rd August, 1935, HIS EXCELLENCY THE ACTING GOVERNOR (ARMIGRI, DE VINS WADE, Esq., C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 2nd August, 1935, were confirmed.

MOTION.

MORTGAGE REDEMPTION BY GOVERNMENT BONDS; WITHDRAWN.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I beg to move:—

“In the opinion of this Council, Government would be well advised to appoint a Committee, either Select or otherwise, to consider and report on the possibility of evolving a scheme for the redemption of mortgages by the issue of Government Bonds.”

I have to thank you, Sir, for allowing this motion to be taken first, in view of the fact that I shall not be here after the interval.

I shall not take up the time of the House at all in view of the fact that I have been informed that Government are prepared to accept this motion.—I therefore only want to say this—because one is so often apt to be misunderstood in this Colony—that I want to make it quite clear this motion does not suggest for one moment that any legislation which is introduced should effect any compulsory taking over of mortgages by Government. The whole idea of the scheme, if a practical scheme can be worked out, is to put money into circulation in this Colony by the release of frozen wealth.

There can be no two opinions that one of the most important things in times of depression is to achieve the result, if one can, of putting more money into circulation. There is an enormous lot of money in this Colony invested on mortgage which is to-day frozen; that is to say, mortgagors are unable to pay the interest on the mortgage either wholly or in part, and the mortgagees are unable to realize their security, either because in times like this that security in present day values rarely bears any relation to the real value and the value it would have when times get better, and also because the mortgagors in this country—anyone who knows anything about

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

THE HON. T. D. H. BRUCE moved that the Coir Fibre Industry Bill be read a third time and passed.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE LEGISLATIVE COUNCIL BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Legislative Council Bill be adopted.

Frankly, Sir, I am very disappointed at the length of this Report. As the Council are aware, a Select Committee of the House was appointed last year, and as a result of their Report this Bill was presented. Unfortunately, when the Bill went to Select Committee this session, apart from the few amendments which we knew would have to be made, the members of the new Committee differing considerably from those who sat on the original Committee, held different views on various points, and they have been reflected in the Report now before us. I may say that except on what I may call the principle issues, or constitutional issues, Government is naturally anxious to put into this Bill anything hon. members on the other side think will facilitate the elections of members, and the majority of the amendments we are considering today were proposed by the elected members.

I will not deal with the first paragraph, because it contains only verbal amendments.

As I said on the second reading, it is necessary that this Bill should come into force by proclamation, because we have as you all know provided for a new form of registration of voters, and until those registers are ready it would be impossible for this Bill to come into operation.

The most important, in my opinion, amendment to the whole Bill will be found in paragraph 4, where we extend the life of the Council from three to four years, and there are various consequential amendments to that later on.

On page 2, paragraph 7, we have made small amendments with regard to the marking of ballot papers and clarified the position with regard to what is meant by the words "without

due authority". What we sought to do in the principal Ordinance was to see that no one did mark a ballot paper for another person who had not due authority for so doing. It was pointed out that that might give rise to some misunderstandings, and we have therefore put in that these papers shall not be marked unless authorized under the Ordinance or the rules.

There is another important amendment to which I should like to draw hon. members' attention, and that is on the same page, paragraph 7 (c). This is with regard to the printing of pamphlets. It has been pointed out that in Kenya to-day, particularly during an election, it is possible for any printer, either on his own or at the request of some other person, to print scurrilous pamphlets concerning candidates who may be standing for Council. They will not even have the opportunity of replying before polling day, and it is always impossible to bring it home to one particular person as having published a libel about a candidate. We therefore make provision now that the name of the printer shall always appear at the bottom of any of these pamphlets so published.

It has been necessary on page 3, paragraph 11, to make provision for by-elections. As hon. members are aware, at the next general election there will be three Indian areas instead of one. It is obviously clear that if there is to be a by-election between now and the dissolution of Council, it will be impossible to work under the new Ordinance. We have therefore made provision that the existing voters' rolls will have to be kept up *pro tem*.

We have also accepted an amendment which was suggested with regard to reducing the penalty for unsuccessful objections from Sh. 5 to Sh. 2/50.

We have defined exactly what is meant by "Government relief". It was always a rather nebulous term, and one member went so far as to suggest that borrowing money from the Land Bank would be receiving Government relief. We have therefore made clear what is really meant.

We have all the way through provided, and I am now dealing with the Rules, that Commissioners of Oaths shall be added to the other functionaries under the Ordinance who can sign their names as witnesses to various documents that have to be signed.

We had cut out the right of candidates to be present inside the polling booths. It was pointed out that this might be extremely hard; that it was all very well for a candidate who had a reliable agent, but as the candidates were the people most interested in the whole election it seemed a little hard

that they should not be allowed inside to see that things were being carried on correctly.

We have also added the word "Hindi" to the various other languages in which the names of candidates in the Indian elections will be printed. This was done at the request of the hon. Indian member, because he was going to move later that with this language added it might be unnecessary to use symbols on the ballot papers. While the majority of the Committee agreed there was no objection whatever to adding Hindi to the other languages, we did not agree that it would be wise to omit the symbols we were providing for.

The last amendment, on page 4, merely deals with making provision for where two candidates are elected as will be the case in the central Indian area.

On page 5, at Rule 32, provision is made for a recount. It has never been quite clear how often or when there had to be a recount in the votes. We have therefore provided that on the application of any candidate or the agent of such candidate, one recount, or as many recounts as to the returning officer may seem reasonable, shall be made before the returning officer makes his declaration. Obviously it is necessary, particularly in the case of a close election, that provision should be made for one, two or three recounts. We put the word "reasonable" in so that there should be some discretion given the returning officer as to the number of times he should make recounts of the poll.

In paragraph (h) we have reduced the fraction from one-sixth to one-eighth. It was pointed out that one-sixth might be a real hardship on a candidate. An example was given of a very close election which took place last year in which a candidate who, though having one, did not obtain one-sixth of the number of votes, and it would be extremely unjust if he had had to have his £50 deposit forfeited under this Rule.

We have also for the same reason put in a proviso whereby the Governor can, in a case of hardship, return the deposit even if one-eighth of the poll has not been obtained.

In the Rules as presented on the last occasion by me, provision had been made whereby the District Commissioner could refuse to issue postal ballot papers on the day of the election. Hon. members on the Select Committee say that this Rule is a hardship also, that on innumerable occasions it is quite impossible for them to know beforehand whether their supporters are going to be ill or away on the day of the election, and it was not thought by a large majority that it really involved as much work as was suggested in the evidence

before the original Committee on the officer in question. We have therefore made provision on page 6, sub-paragraph (b), by the deletion of the proviso to allow postal ballot papers being issued on the day of the election.

The last paragraph on page 6 merely defines such things as a postmaster. A postmaster in the Rules as printed was permitted to witness signatures of postal voters. It was pointed out that there were actually only two postmasters as such in the whole Colony, which naturally was not the intention of the draughtsman of the Rules, who imagined that every post office had a postmaster. As that is not so, we have defined postmaster as the person for the time being in charge of a post office, and have also again made provision for signature before a Commissioner of Oaths.

I think those are the only amendments. I do not think they are of any great importance, and the only serious discussion we might have this morning will be on certain amendments which form the subject of a Minority Report which you will find at the end of the Report.

THE HON. T. D. H. BRUCE seconded.

THE HON. J. B. PANDYA: Your Excellency, I regret the amendment suggested in the Minority Report regarding the number of polling days for the Indians has not been accepted by the majority.

We understand that this Bill will come into operation by proclamation, and I hope that the proclamation will be issued in time to prepare the registers of the various constituencies which are created for Indians by this measure.

With regard to the Minority Report, the original Committee (of which I was a member) had accepted the principle of symbols for Indian elections. It was practically based on the ground that we wanted to reduce the number of polling days for the Indian elections and that the use of these symbols would make it much easier for illiterate persons to vote without assistance from the officer in charge of the election. In view of the fact that Government have not accepted the one polling day or the suggestion to reduce the number of polling days, and further, that Government have accepted the Hindi language in addition to the other languages used, I think this symbol system could safely be left out.

With regard to the division of the Indian electoral areas, the point made in the Minority Report I had made in the original committee and I would have preferred to have single constituencies. That was not accepted by the majority, and

after very careful consideration the Indian political organizations have ultimately accepted this division into three areas. I consider this is an improvement over the present arrangement of five seats for the whole Colony, and if in practice we find there is any real hardship it will be for us to bring that difficulty before Government.

THE HON. N. S. MANQAT : Your Excellency, I have only a few points, some of which have already been discussed by the hon. member Mr. Pandya.

The first is about the polling day. It is a matter on which the Indian community feels keenly, that although Government have not bound themselves to one day it will be seen that the Governor can exercise his discretion in the matter and give not more than three days for polling.

One of the amendments suggested by the hon. Indian member on the Select Committee, referred to by the hon. and learned Attorney General, went so far as to say that borrowing money from the Land Bank should be considered as Government relief. I do not think that is the interpretation which can be put on the recommendation, for clause 9 (5) of the Bill says :—

"No person shall be entitled to have his name on any register of voters if such person . . . (5) has, since the publication of the last revised register of voters, received from Government funds or from the funds of any local authority."

The word "relief" would only mean that only those voters who have had mortgages or money advanced them from the Land Bank and that money has been written off and forgone by Government, would be in the same category as any relief from Government funds or local authority. If that is a correct interpretation, and I submit it is, there is no harm in keeping that amendment in the Bill.

The third point is about the symbols. I think they are unnecessary because, after all, we have at least three days for an election, and the inclusion of Hindi will facilitate very much the filling up of ballot papers, specially by the Hindu ladies. Moreover, symbols have very keenly appreciated psychological results, as a candidate who has the symbol of a lion may have a walkover and a candidate who has the symbol of a rabbit will have no chance!

A fourth point is about the electoral areas. We only hope that in the near future Government will consider making one candidate for each constituency, in view of the expense incurred by Government and candidates.

THE HON. SHAMSUD-DEEN : Your Excellency, I have to make two small comments on the Report.

One is that I do not find any provision for the consent of the candidate being obtained before he is nominated. I have myself once been the victim of that sort of joke, when without me having been consulted or my consent obtained some of my opponents in order to ridicule me got nine signatures and put in a nomination paper for me, and I recorded a few votes. I realize that now the £50 deposit is introduced, probably a nomination will not be accepted until the money is put down. Even then, a nomination of that sort does expose a person to a certain amount of ridicule if he is nominated without his consent. That is one point on which I should like the consideration of the hon. and learned Attorney General.

The second point has to do with the plural voting. I am open to correction, but my impression is that about a century ago the British Empire did away with plural votes, and a system of one man one vote introduced. I cannot see any reason why there should be two members for one constituency, and especially I am convinced by the weight of evidence in the Minority Report that the interests of Indians living in the out-district are entirely distinct from those in the townships. Naturally a member who stands as a candidate for say Nairobi realizes full well the number of votes he is likely to get from Musai or Machakos will be comparatively speaking infinitesimal, and he will not care to go to those people for their votes or, if elected, all his attention would be concentrated on the interests of the people in the bigger towns. All those people living in the out-districts will simply have no representation in his House at all.

I cannot see any reason why if a member can be elected with about twenty-eight votes or from others with about fifty or sixty votes, a constituency could not be created for Indians consisting of Indians in the outlying districts or divided into two, one up-country and the other down-country, so that you would have one member for one constituency in which a voter would have only one vote. I hope that this last point will be taken into consideration.

LT.-COL. THE HON. LORD FRANCIS SCOTT : Your Excellency, I do not wish to intervene in this debate beyond correcting a misapprehension on the part of the last speaker. Plural voting on property qualifications existed up to twenty-five years ago. I think it was in 1910 that it was abolished, but even to-day it exists in Great Britain in the City of London and in the Universities.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, in reading the Report again this morning there is one little matter which I do not think is possibly quite clear, and that is in connection with prov. so 14 (g). It says "one recount, or as many recounts as to the returning officer may seem reasonable". It may be argued—a lot of things are argued in this Colony, sometimes with success!—that if a returning officer does not consider it reasonable he could refuse one recount, and I do not think that that is intended. I therefore move that the Report be amended by inserting the words "as of right" after the word "recount" in the third last line of subparagraph (g) of paragraph 14 and by the insertion of the word "subsequent" between the words "many" and "recounts" in the same line.

It will then read:—

"Provided that, upon the application of any candidate or of the agent of such candidate, one recount as of right, or as many subsequent recounts as to the returning officer may seem reasonable, shall be made before the returning officer makes the declaration."

I feel certain that the hon. and learned Attorney General will accept that amendment.

THE HON. CONWAY HARVEY seconded.

THE HON. THE ATTORNEY GENERAL: I am quite prepared to accept that amendment, which was the intention of the Select Committee, and I think it does make it even clearer than I have shown in the Report.

The question was put and carried.

The debate on the original motion as amended was resumed.

CAPT. THE HON. H. E. SCHWARTZE: Your Excellency, regarding the point raised by the hon. member Mr. Shamsud-Deen, as to provision being made in the Bill to prevent a person being put up for election without his consent having been obtained it must, as he says, be a keen supporter who would do that because of the £50 deposit that has to be made, or it might be done by a bitter enemy who roars with laughter because you did not know you had been put up. I do not know if it is possible to make an amendment to clause 12 to cover the point raised by the hon. member, by putting in after the word "shall" on the second line the words "subject to his written consent being obtained". I rather think that perhaps we can agree on this in the interval.

Regarding the question of symbols, I suggest that the simplest way would be for all candidates to take symbols of different birds, and each would then know he is top of the tree! (Laughter.)

DR. THE HON. A. C. L. DR SOUSA: Your Excellency, there are just two points which I mentioned on the second reading, with reference to symbols and constituencies, which I wish to mention now.

The Indian elected members are united in asking Government to consider these two points, and I hope the hon. and learned Attorney General will give me some indication of Government's intention in meeting us in this respect. In the debate on the second reading the hon. the Attorney General said he had made an advance in that Indians instead of having five votes would now only have two, and I hope that Government will go further and give one, by having five constituencies, and each voter having one vote. As for the symbols, it is the general desire not only of us but the electorate that they should be deleted. In the Select Committee on the Liquor Bill an indication was given that Baluchis would be put on the same level as other Indians, and I hope some indication will be forthcoming as to that from the hon. the Attorney General.

THE HON. THE ATTORNEY GENERAL: On a point of order, Sir, would it not be easier if members had definite amendments like the hon. member Capt. Schwartzé has moved which I can accept, instead of just suggesting that it would be a good thing for a certain thing to happen under the Ordinance? I put out this suggestion. I am not at all averse to putting in some words which would indicate that a candidate would have to sign his nomination paper. May I suggest that some member of the Council move that Council report progress so that this order can stand over until after the usual interval, when we can find out what particular amendments hon. members wish to put in?

THE HON. CONWAY HARVEY: Your Excellency, I move that progress be reported on the debate for the reasons given by the learned member who has just sat down.

LT.-COL. THE HON. LORD FRANCIS SCOTT seconded.

The question was put and carried.

The debate was adjourned.

MOTION.

SALE OF CROWN LAND IN TOWNSHIPS.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT; Your Excellency, before formally moving the adoption of the motion standing in my name, I wish to offer an apology to the hon. member for Nairobi South and to this Council for the inadvertent omission of his signature to the Report which has been circulated. The hon. member did sign the Report, the omission is entirely my fault, and has been rectified in the official records of the House.

It is also a matter of regret that when this Committee commenced to sit the hon. member Mr. Shamsud-Deen, who was the Indian representative on it, was unfortunately out of the country. Furthermore, that certain correspondence which I had with the Indian Merchants' Federation at Mombasa appeared unfortunately to have miscarried in the post.

I beg to move, Sir:—

"That the Report of the Select Committee appointed to report on certain financial questions in connection with the sale of Crown Land in Townships be adopted."

This Report is not a very lengthy document, and has been in the hands of members for some time now, so that it is perhaps unnecessary for me to go over the reasoning which has led to the conclusions which the Committee have summarized in paragraph 11 of the Report on page 4.

Briefly, their recommendations are so far as initial terms of sales go that we should retain the present formula distributing the capital value as to one-fifth as to cash-down payments and a rental on the remaining four-fifths, with this amendment—that the interest rates on the four-fifths should now be reduced from 6 per cent to 5 per cent. Subsequently, at any time during the currency of the lease, the lessees would have the option in the case of expensive plots valued at more than £1,000 of redeeming up to one-half of the rent at twenty years' purchase and in the case of less expensive plots up to three-quarters rental. It is thought that if an option is given it will remove any possibility of discouragement to purchasers on the grounds of very high rentals as well as the initial purchase price.

THE HON. THE TREASURER seconded.

The question was put and carried.

BILLS

SELECT COMMITTEE REPORT.

THE LIQUOR (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Liquor (Amendment) Bill be adopted.

Again we have very substantial amendments, though I do not think any extremely important amendments, but on a subject such as this where such a lot is said about it, it is difficult not to have some type of amendment.

The first amendment of importance is with regard to the Shop Hours Ordinance and the Liquor Ordinance. It has been represented very strongly to the Committee that where the Shop Hours Ordinance applies, particularly with regard to grocers' licences, that that Ordinance should prevail. The reason is that there are so many shops which have both liquor and ordinary licences under the Licensing Ordinance that, while they are in theory supposed to close in accordance with the Shops Hours Ordinance, there are in the case of grocers' licences certain hours under the Liquor Ordinance in which they can keep open. As it has been pointed out, it is quite impossible for the police to supervise the shutting of these shops when one Ordinance permits them to open for one particular class of trade, and in practice what is happening is that all which have liquor licences keep open as long as they are permitted under the Liquor Ordinance. We have therefore amended the Liquor Ordinance to make it subject to the Shop Hours Ordinance.

In paragraph 2 there is a typing error which I should like to correct at once. It occurs in the third line from the end where it says "members or the invited guests of members". The words "or invited guests of members" should be crossed out. It is a mistake of mine which I will explain. It has regard to clubs, and as I said on the second reading the difficulty was under the old Ordinance or in theory that no person except an actual member was allowed to enter the precincts of a club at all, even the grounds. Clearly that was not the intention of the Liquor Ordinance, which was to say that no one who was not a member would be able to buy a drink. In making the amendment to permit people to enter club premises although not permitted to buy liquor therein, these unfortunate words crept in.

The next amendment is really a formal one, and deals with railway ships. It is pointed out by the Railway that their ships on the Lakes are frequently changing routes. One goes

in dock and another takes it place, and for the transfer of a licence from one to the other it is necessary under the law to give thirty days' notice of the transfer. This is not a matter of practical politics, and we have therefore permitted them to transfer the licence more easily.

The next amendment is to meet the hon. Member for the Coast chiefly on a point which you will remember he raised on the second reading regarding canteens, that under the wording of the Ordinance no one except actual serving officers of the mess of the Police or K.A.R., or whatever it might be, could pay for a drink in that mess. We have therefore added the words "honorary members".

The same remark I made with respect to ships is applied to railway restaurant cars, and you find that reflected in paragraph 5.

There was some discussion with regard to the issuing by District Commissioners of what I might term extension licences, up to 2 a.m. or whatever the time might be. Under the Bill, a District Commissioner was going to be given permission to issue these licences subject to any restrictions. Some hon. members thought that though in practice that would probably work out well, if you got an unreasonable District Commissioner he might impose conditions which were hard. We have therefore restricted his discretion in the manner reflected at the bottom of page 2:—

"(b) The district commissioner may grant such licence subject to such reasonable restrictions and conditions as to him may seem fit: Provided that such restrictions and conditions shall not in any case be such as unduly to restrict the amenities which, by the granting of the licence, it is proposed to provide."

That of course is to make it perfectly clear that he cannot put in any ridiculous conditions. I think one member suggested he might insist that roast beef be served free after 12 o'clock!

We clear up in paragraph 8 on page 3 a point which seems to have been worrying the Liquor trade for some considerable time, and that is with regard to the necessity to open. There are a lot of views on this subject, but I do not intend at this juncture to raise any argument, except to say we are now putting in a provision making it definitely clear that although you have a licence, if you do not want to open you need not.

Paragraph 9 refers to the nominated member of the municipal council who serves on the Liquor Licensing Court. As you know, it was pointed out, and I mentioned it at the second reading, that whereas the municipal council could

appoint one of the members of the court, whom we will call the judge, it was also able to put the Town Clerk up to object to some particular licence. The original amendment reflected in the Bill sought to provide that the nominated member should not adjudicate upon an application which was being opposed by his council, but it went even further, and said that no member of the municipal council should adjudicate in such a case. To my horror I discovered that it would mean that half the court would have to go out of action as nearly all the members, in some capacity or other, are serving on the municipal council. We have therefore restricted that particular clause to the one member of the council who is nominated by the council to the Governor to represent them, and he will be the only one who will have to withdraw when his council objects to any particular licence.

The next point I would like to draw attention to is the extension in the proviso to paragraph 10, which means clause 17 of the Bill and clause 43 of the Ordinance. It has been pointed out that as the law stands at the moment, although you may go in and buy a drink at one minute to midnight, another section of the Ordinance says that no drinks shall be consumed after twelve, with the result that unless you are a particularly fast drinker it is quite impossible for you to consume the drink. Although we will insist that no further drink shall be sold after twelve o'clock, provided you have a meal—and this is taken verbatim from the English law on the subject—you will be allowed a quarter of an hour in which to consume your last drink.

The other amendments I think I can safely say are only verbal, such as on page 4, paragraph 12, making it clear with regard to whom exactly the Ordinance applies. This is necessary, because the definition in the Ordinance which came in; it also makes it clear that Baluchis born in Africa do not come under the heading of natives.

THE HON. T. D. H. BRUCE seconded.

THE HON. F. A. BEMISTER: Your Excellency, I want to move an amendment to the Report to follow on page 4, item 2. My amendment is, that in the event of a hotel being outside the municipal area or within three miles of the municipal boundary the licensee shall have the right of appeal to the Governor through the Provincial Commissioner of the district concerned against his classification as a town hotel. Further, should the appeal be allowed, the rate of the licence shall be calculated as from 1st of January, 1935.

Owing to the attenuated attendance on this side of the House perhaps it is a little presumptuous of me to attempt

the proposed amendment, but having noticed a look of mercy on the other side of the House I am hoping I can get a little of that great boon! I would ask you, Sir, if possible to refer to the debate on the second reading of this Bill where the hon. and learned Attorney General, after I had asked if he would consider this, said:—

"I do not think that this is a suitable time to go into the question because we are not seeking to alter the licences laid down in the schedule in any way whatsoever, but at the same time I think we might in Select Committee consider a proviso to this effect—I am not attempting to draft it but merely to give you an idea of what it will contain—that the Governor in Council may in certain cases remit any fee or licence or part thereof where sufficient cause is shown. That appears in other Ordinances and I will not say that it could not be in this case, and I had intended on another question altogether, nothing to do with the point raised, to suggest something of that description to the Select Committee in due course."

It shows therefore that at that time the chairman of the Select Committee did hand out to me reasonable hopes that this question would be considered. It is interesting to notice this morning that four out of the seven gentlemen who signed the Report are present and might perhaps give reasons why such an elementary piece of justice should not be inserted in this Bill.

In practically every law, ordinance or resolution passed here there is always a chance for anybody aggrieved to place their case before you, Sir, through your proper officers, and if you will see the wording of my amendment I am not asking that the case shall be prejudged, I am not demanding anything, but only asking that the person who considers himself definitely aggrieved can have the machinery provided whereby their special case shall come to Your Excellency and be judged. If you will allow me I will go over the ground in a few words with regard to one hotel in Mombasa.

Had the boundary of the town remained as the people of the town asked for, this question would not have arisen, because the building I am thinking of would be outside the limit according to this Bill. But because somebody comes with no interest in the country and puts the boundary 2½ miles beyond where the people of the town asked it to be, ground on which nobody goes except to go through it very quickly, this hotel situated in perhaps the most beautiful place in the Colony, with the finest views which remind one of Scotland,

this hotel is suffering in that the people owning it have to pay the full licence of £5 per month in order to attract people to that place.

As I say, I do not ask for the licence to be altered but that the licensee should have the machinery laid down there through which he could appeal to Your Excellency. You need not grant it, your Provincial Commissioner may say no, but actually, Sir, I do really consider that it is an insult to every Provincial Commissioner, an insult to the Governor, and it is a great hardship to the person, to debar anybody having that access which should be the right of every Britisher.

THE HON. J. B. PANDYA seconded.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I am going to support this, and I would ask the hon. and learned Attorney General to accept it because it was not discussed by the Select Committee on the lines that the hon. Member for Mombasa has now put it up. We never realized that what was wanted was what is being asked for now, and those members present, the hon. the Attorney General and the hon. the Commissioner for Local Government, will agree with me that what we thought was being suggested was that any hotel out of the boundaries of the two municipal areas should have the right of appeal. We unanimously turned that down for the simple reason that we felt that every single hotel except the largest would come appealing to the Governor or Governor in Council on the ground that their turnover and profits were not comparable to the big hotels in the municipal areas, and the original Committee were quite clear that we could not differentiate between licences granted in a municipal area between one hotel and another. That was quite impracticable.

This amendment is apparently asking for the right of a hotel which is placed in a very peculiar position because it is outside the municipal area or within three miles of it. That, of course, would limit the appeals to a very large extent, and it does seem fair, from what the hon. member has said, that a hotel placed in that peculiar position—not within the municipal area and therefore not getting the advantages of being within it but being three miles outside and therefore having to pay the full rate as if it were in the municipal area—should have the right of appeal.

I do not like the actual terms of his amendment. You do not want an appeal to the Governor through the Provincial Commissioner; but that is a small point. But I ask that the amendment be accepted, and I genuinely believe that if it had

the proposed amendment, but having noticed a look of mercy on the other side of the House I am hoping I can get a little of that great boon! I would ask, you, Sir, if possible to refer to the debate on the second reading of this Bill where the hon. and learned Attorney General, after I had asked if he would consider this, said:—

"I do not think that this is a suitable time to go into the question because we are not seeking to alter the licences laid down in the schedule in any way whatsoever, but at the same time I think we might in Select Committee consider a proviso to this effect—I am not attempting to draft it but merely to give you an idea of what it will contain—that the Governor in Council may in certain cases remit any fee or licence, or part thereof where sufficient cause is shown. That appears in other Ordinances and I will not say that it could not be in this case, and I had intended on another question altogether, nothing to do with the point raised, to suggest something of that description to the Select Committee in due course."

It shows therefore that at that time the chairman of the Select Committee did hand out to me reasonable hopes that this question would be considered. It is interesting to notice this morning that four out of the seven gentlemen who signed the Report are present and might perhaps give reasons why such an elementary piece of justice should not be inserted in this Bill.

In practically every law, ordinance or resolution passed here there is always a chance for anybody aggrieved to place their case before you, Sir, through your proper officers, and if you will see the wording of my amendment I am not asking that the case shall be prejudged, I am not demanding anything, but only asking that the person who considers himself definitely aggrieved can have the machinery provided whereby their special case shall come to Your Excellency and be judged. If you will allow me I will go over the ground in a few words with regard to one hotel in Mombasa.

Had the boundary of the town remained as the people of the town asked for, this question would not have arisen, because the building I am thinking of would be outside the limit according to this Bill. But because somebody comes with no interest in the country and puts the boundary 2½ miles beyond where the people of the town asked it to be, ground on which nobody goes except to go through it very quickly, this hotel situated in perhaps the most beautiful place in the Colony, with the finest views which remind one of Scotland,

this hotel is suffering in that the people owning it have to pay the full licence of £5 per month in order to attract people to that place.

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THE HON. J. B. PANDYA seconded.

CAPT. THE HON. H. E. SCHWARTZ: Your Excellency, I am going to support this, and I would ask the hon. and learned Attorney General to accept it because it was not discussed by the Select Committee on the lines that the hon. Member for Mombasa has now put it up. We never realized that what was wanted was what is being asked for now, and those members present, the hon. the Attorney General and the hon. the Commissioner for Local Government, will agree with me that what we thought was being suggested was that any hotel out of the boundaries of the two municipal areas should have the right of appeal. We unanimously turned that down for the simple reason that we felt that every single hotel except the largest would come appealing to the Governor or Governor in Council on the ground that their turnover and profits were not comparable to the big hotels in the municipal areas, and the original Committee were quite clear that we could not differentiate between licences granted in a municipal area between one hotel and another. That was quite impracticable.

This amendment is apparently asking for the right of a hotel which is placed in a very peculiar position because it is outside the municipal area or within three miles of it. That, of course, would limit the appeals to a very large extent, and it does seem fair, from what the hon. member has said, that a hotel placed in that peculiar position—not within the municipal area and therefore not getting the advantages of being within it but being three miles outside and therefore having to pay the full rate as if it were in the municipal area—should have the right of appeal.

I do not like the actual terms of his amendment. You do not want an appeal to the Governor through the Provincial Commissioner; but that is a small point. But I ask that the amendment be accepted, and I genuinely believe that if it had

been put up on these lines in Select Committee we should have accepted it, because the reasons on which we turned it down were reasons which do not apply now.

MAJOR THE HON. F. W. B. ROBERTSON-EUSTACE: Your Excellency, I support the amendment. It is a case where hardships exist, and it may occur again in other places. If the amendment is accepted the wording can easily be put right.

THE HON. THE ATTORNEY GENERAL: Speaking to the amendment, Your Excellency, I think it extremely unfortunate that I should always be put in the position of being always hard-hearted and not accepting what on the face of it would appear such reasonable and kindly thoughts! But I do not agree with the hon. and learned Member for Nairobi South that had the amendment been put in this form the Select Committee would have accepted it. He will agree with me that a bad case makes bad law, and the history of the matter is this.

When we originally discussed the advantages of the towns with regard to these licences and whether licences in townships or municipal areas should pay more than others, it was pointed out that it would be extremely unfair if we allowed someone just the other side of the township boundary to come in under a small fee. We therefore decided with all seriousness on the decision which was supported in this House afterwards, that for the purposes of the Liquor Licensing Ordinance a township boundary should be the accepted boundary plus three miles. That was our serious decision, and we have heard nothing advanced except the one hard case to suggest that it was not a sound decision.

The position to-day is that the hon. Member for Mombasa has put up a case for small hotels not doing particularly well being able to appeal to the Governor, who would have to be some sort of court of appeal to decide a matter which incidentally the original committee found it impossible to decide.

THE HON. F. A. BEMISTER: May I refer to Hansard that my contention is exactly the same as to-day?

THE HON. THE ATTORNEY GENERAL: The idea which I understood he was conveying was that it was unfair that places in a small way should pay as much as the big hotels, and he quoted this unfortunate hotel which he has in mind. The position is this. That hotel will be within three miles of the town—there are no doubt innumerable other hotels in the same position, I do not know, there is no time to go into that now—but, in any event, is there any reason why a hotel in such close proximity to that town as this should

have a reduced licence? The answer is that it should never have had a licence at all because there is no necessity for one, and that is the basis of the whole law, the question of necessity. I have no doubt that it is a hard case, I am not doubting the word of the hon. member. The whole point is answered by the fact that it should never have got a licence, because having got it it cannot carry on and wants to appeal because it is in such a bad way, for a reduced licence.

My objection to this amendment in a nutshell, and the committee realized it, is that the ideal method of taxation under the Liquor Ordinance would be so much a bottle, a percentage on sales. We went into the point, and decided that under existing circumstances, and this was unanimous, that it was impossible at the moment to introduce that, and this is really the bugbear, with the greater objection that we have it for one particular hotel, and the Governor is going to be put in the invidious position of having to decide what, within this particular boundary, this three-mile limit, what is a case of hardship.

My own personal opinion is that if we give way on this, we should go into the whole question again. There is no reason why a small hotel just within the boundary of a township should pay whatever the licence is and that after an appeal the Governor in Council should be able to reduce the licence to the amount suggested in the amendment. I appeal to the House not to tinker about with an important principle like this. If necessary, the whole question might be gone into, though heaven forbid, for we could not settle it last year, and I do not think any committee is capable of settling it this year. I am afraid that I cannot advise Government to accept this amendment.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, I should like to remind the hon. the Attorney General that when we sat on the original Committee one of the difficulties was to decide what limit outside municipal areas should be the limit when hotels should have to pay the high licence on the ground which he has just put forward. It was first suggested that five miles outside was too far, and we got to three. As I understand it, this particular hotel I believe is situated about four miles from Macupa Causeway. You would think it obvious that the limit of Mombasa municipality would be on the Island and not on the mainland. As for some reason it was extended to the mainland, this hotel, instead of being four or five miles away from the municipal area, when it would come under the lower rates, has been brought for no particular reason within three miles.

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have a reduced licence? The answer is that it should never have had a licence at all because there is no necessity for one, and that is the basis of the whole law, the question of necessity. I have no doubt that it is a hard case, I am not doubting the word of the hon. member. The whole point is answered by the fact that it should never have got a licence, because having got it it cannot carry on and wants to appeal because it is in such a bad way, for a reduced licence.

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It does show that there is a case, which would be limited to very few hotels, a borderline case like this for having an appeal to the Governor allowed. I should certainly oppose an appeal for all hotels all over the country on the lines that the hon. member on my left (Capt. Schwartz) has just pointed out. I should add that I understand this hotel is situated seven miles from the nearest other licensed hotel.

THE HON. THE COLONIAL SECRETARY: Your Excellency, I move that progress be reported so that the matter can be considered in the interval.

THE HON. THE TREASURER seconded.

The question was put and carried.

The debate was adjourned.

MOTION.

FREE FERRY SERVICES, MOMBASA AND COASTAL AREA.

THE HON. F. A. BEMISTER: Your Excellency, I beg to move the following motion:—

"That in the opinion of this House it is essential for the economic development of Mombasa and the Coastal Area that a free ferry service connecting the main trunk roads be provided out of Central Revenue."

I think it will be agreed that it is one of the most important, if not the most important, motion ever produced in this assembly. I have not the slightest doubt that if this debate ever got to the ears of the people in England it would cause them a tremendous amount of surprise. It might not have done a few years ago when this was considered Darkest Africa, but when you read the papers to-day you notice there are many thousands of people in England, some even members of Parliament, who to-day agree that Mombasa is neither a suburb of Nairobi nor part of the Union of South Africa! In fact, there are many people in England drawing good fat incomes derived either from pensions or dividends taken from the revenues of this country, many of which have their sources in the labour and enterprise of Mombasa. Just imagine, therefore, their surprise when they read that over five million pounds were invested in Mombasa in putting in an up-to-date wharf system and that within about 250 yards there is a toll ferry system!

For the benefit of those people who live in the interior I would beg leave to give a few points of information.

Mombasa should not be thought of only as a pleasant place to look at, or a place where in concrete sheds you attempt

to evade your proper taxes by getting through a very efficient Customs service. Let it be remembered always that Mombasa was, is, and always will be the principal town of the Colony. (Laughter.) When you had to build forts in practically the district in which we find ourselves now to protect trade and travellers from savages, Mombasa was under a special Government who carried out their duties for the peace and welfare of the people under their charge. The whole business of Uganda and the interior started and was built up from and through the enterprise of the people of Mombasa and yet, Sir, to-day, forty years after British occupation, anyone who wishes to inquire can find that so far as the Central Government is concerned Mombasa is the only place of any importance that cannot elect its own chairman of the Municipality, it is the only place of any importance that does not own its own water supply, and it is the only place at all in the whole Colony that has a toll ferry system inside its borders. (Capt. Schwartz: And it does not have an election.) You omit a bit.

Only a few years ago Government, through the Railway Department, built a magnificent causeway over the Macupa Reach which cost several thousands of pounds. Did it ever enter your minds or their minds to put a toll on passengers crossing that bridge? Obviously it did not, because once you have spent thousands of pounds on a foot bridge, a bridge which people can walk or drive over, no Governor and no Government would ever dare to suggest that people should pay a toll anywhere in this Colony. The Macupa Causeway is merely part of the main road system and as such essential to the development of the coastal area and Mombasa.

We all know that it is impracticable to build a bridge across the coast ferries, but to establish a free ferry service would cost little more than the construction of a bridge. We ask for something which the capital cost of maintenance would not equal the maintenance alone of the Jinja Bridge. Actually, Sir, I feel you will consider it an insult to talk of such a trivial matter of cost to you, but we have not had £100,000 for the country outside the coastal area. Therefore, I will put it on a higher plane.

I would ask you to grant a boon: to remove for ever an anachronism from the administration of the Colony. I would ask you to establish a free ferry service to a part of the country which has had little or no assistance from the Central Government, which has traditions which to-day are the pride of the whole Colony and a part of the country which has suffered from neglect more than any other part of the Colony. By granting this, I am confident that you will at one stroke of the pen assist the coast to be developed and that you will give heed to thousands of your loyal people.

THE HON. J. B. PANDYA : I beg to second, Your Excellency, and I think it will be agreed by all concerned that it is extremely important that the development of the coast depends upon a free ferry service. I hope Government will agree to this motion.

MAJOR THE HON. R. W. B. ROBERTSON-EUSTACE : I beg to support the motion, Sir. Having only recently expressed my views very clearly on the subject it is unnecessary for me to repeat them. I understand the motion is to be withdrawn, but I do trust and urge on Government that they will give this matter their very serious consideration and come to some conclusion as to who should run these ferries, whether they should be leased to private companies, whether they should be run by a contractor, or whether the municipality of Mombasa is to take them over and run them.

VEN. ARCHDEACON THE HON. G. BURNS : Your Excellency, I entirely support this motion. I understand of course that it is dealing with the main trunk roads leading from the mainland into the Island. It does not say so in the motion, and I presume that it refers principally to the Likoni ferry service, because if it meant that Government was being asked to take over the Nyali Bridge or to relieve the burden that is on the people there it would be difficult for me to support it. But, seeing that the motion deals chiefly with the Likoni ferry I heartily support it, especially from the point of view of the natives in that part of the country who make use of that ferry.

A man or woman, coming with perhaps 50 cents worth of produce, before getting to the markets to sell that produce, has to pay 3 or 4 cents to get across, and again on the return journey, so that I hope Government will see their way to accepting this.

THE HON. CONWAY HARVEY : Your Excellency, I do not at this juncture intend to speak either for or against the motion, but I should like to know whether the matter has formed the subject of investigation by the Central Roads and Traffic Board. As every one is aware, there is an *ad hoc* body set up specially to deal with problems of this nature, and I suggest there is some little danger of doing the wrong thing if we consider one isolated item in our transportation scheme without fully considering its bearing on the transportation scheme of the Colony as a whole.

THE HON. SHAMS-UD-DERN : In supporting this, Your Excellency, I wish to say that I do not look on this ferry quite as linking the island with the mainland, but my

impression is that Likoni is really an extension of Mombasa town itself. If this motion is accepted, I have not the least doubt that it will result in a great deal of extension at Likoni as merely an extension of Mombasa town separated by this small piece of water.

THE HON. THE COLONIAL SECRETARY : Your Excellency, the motion moved by the hon. member for Mombasa reads :—

"It is essential for the economic development of Mombasa and the Coastal Area that a free ferry service connecting the main trunk roads be provided out of Central Revenue."

I have listened in vain to the hon. mover for the grounds on which that categorical statement is based. He merely stated that if the ferries were not free the economic development of Mombasa would be retarded but gave no grounds in support of that view.

As I understand the motion, it deals with the three ferries—if I am wrong the hon. member will correct me—that it refers to the Likoni, Mtwapa, and the Kilifi Ferries. (Mr. Bemister : That is right, and that is what the words "coastal area" mean.) Mtwapa and Kilifi are under Government control, and the future of Likoni is at present under consideration. The hon. member for Nyanza reminded this House that the Central Roads and Traffic Board was an *ad hoc* body appointed to consider such questions as this. As recently as October, 1934, the question whether the Mtwapa and the Kilifi ferries should be free was considered by that Board, and the following decision was recorded :—

"The question of free ferries was discussed. The Board recorded the opinion that the ferry fees should be reduced to a minimum but that the ferries should not be free."

Reductions were accordingly made in the schedule of charges and were applied with effect from the 1st of January of this year. In the aggregate, the reduced charges amount to about 30 per cent of the previous charges.

The present position is that Government will receive approximately £450 in revenue this year from the ferries under Government control, and the expense of repairs is also estimated at £450. Government, however, bears the cost of depreciation, and considerable replacements will have to be put into effect in the very near future.

The hon. Member for Mombasa drew a rather distressing picture of the sad position of Mombasa, and said the fact that Mombasa had not a free ferry and was not connected with the

mainland by a free ferry would surprise the people at home. If, however, anybody in this Council is acquainted with the city of Sydney in Australia, he will remember that not long ago it was a town literally divided in two by an arm of the sea, and that until the wonderful feat was accomplished a few years ago of building a bridge across the harbour, ferry fees were collected.

At the present time, the fees charged on the ferries at Mombasa are considered by Government to be very reasonable, and, as I have said, the principle of charging fees on ferries is a universal one. There may be exceptions in certain cases for special reasons, but the generally accepted principle is that fees should be collected at least to cover the cost of maintenance of ferries.

I may say that I asked the other day what was the difference between a ferry and a bridge, and as far as I could ascertain the only logical difference between the two appears to be that in the one case you transport yourself and in the other you are transported. Whether that difference justifies the imposition of a fee I am not prepared to argue!

As at present advised, Government sees no adequate reason for accepting the principle that ferries should be free or that this Colony should depart from the practice accepted elsewhere, that tolls should be collected to cover at least the cost of maintenance. Government is, however, prepared to consider, in consultation with the Central Roads and Traffic Board, the representations now made and to examine whether and concessions in respect of agricultural produce would be practicable. I am unable to hold out any hope that it will be found practicable or that any concession can be made to other users of ferries.

To give effect to the motion would mean that Government would be subsidising the public to the tune of approximately £2,500 a year. I have ascertained the figures regarding Likoni from the hon. the General Manager of the Railways, and he informed me that the cost of running Likoni is between £1,500 and £2,000 a year, exclusive of overhead supervision, insurance, petrol duties, etc.

For the reason given, Government is unable to accept the motion, but will consider the matter in consultation with the Central Roads and Traffic Board.

THE HON. F. A. BEMISTER: May I thank, Sir, the Acting Colonial Secretary for so heartily supporting the proposition, by giving me the actual data which I had not before? I am very glad to find this ferry costs only £2,500. I am also

glad to know that the Central Roads and Traffic Board will consider this matter, because may be at some time they will have somebody from the Coast on the Board and they may hear something about the Coast.

THE HON. CONWAY HARVEY: On a point of order, I suggest that the hon. Member for the Coast is and has been a member of the Board.

THE HON. F. A. BEMISTER: He ought to have done better than this!

HIS EXCELLENCY: Do I understand that the hon. member wishes to withdraw his motion.

THE HON. F. A. BEMISTER: Thank you.

THE HON. LORD FRANCIS SCOTT: Have you the leave of the seconder? (Laughter.)

The motion was by leave withdrawn.

Council adjourned for the usual interval.

On resuming.

BILLS

SELECT COMMITTEE REPORT.

THE LEGISLATIVE COUNCIL BILL.

THE HON. THE ATTORNEY GENERAL having moved:—

“That the Report of the Select Committee appointed to consider and report on the provisions of the Legislative Council Bill be adopted.”

THE HON. T. D. H. BRUCE having seconded.

CAPT. THE HON. H. E. SCHWARTZ having moved:—

“That the Report be amended by inserting the words ‘as of right’ after the word ‘recount’ in the third last line of sub-paragraph (g) of paragraph 14 and by the insertion of the word ‘subsequent’ between the words ‘many’ and ‘recounts’ in the same line.”

THE HON. CONWAY HARVEY having seconded.

The question having been put and carried.

The debate on the substantive motion as amended continued.

THE HON. N. S. MANGAT: Your Excellency, after consultation with my colleagues, I have only one amendment to propose out of the Minority Report of the two members. I move:—

“That the Report be amended to give effect to recommendation (2) of the Minority Report by the Hon. Isher Dass.”

I think that this question of symbols is a domestic matter which should be left to the Indian members to determine, and if there is any difficulty caused by the absence of the symbols I think it is covered by Rule 23, which provides that where a voter is illiterate the District Commissioner or the returning officer can be informed and fill up his paper. As there are very few cases where a voter cannot speak one of the four languages, I think Rule 23 can be used to make up for the absence of these symbols. I ask that this amendment be accepted.

DR. THE HON. A. C. L. DE SOUSA seconded.

THE HON. THE ATTORNEY GENERAL: Speaking to the amendment, Your Excellency, this point, as hon. members probably realize, was very carefully gone into by the Select Committee. In the first place, it came up originally on a suggestion which I think was made by the hon. member Mr. Shamsud-Deen, and on considering it we referred to the practice in India, where we found something of this description was done.

If I may say so, the answer to the hon. member is this: In the first part of his speech he said he was most anxious that the Indian elections should be reduced to one day. As I said on the second reading, that is the earnest desire also of Government, and the only reason the Bill is worded in this way is that we believe that in practice it will take longer; we hope, however, that the elections will only take one day. One hon. member said that the reason why he was in favour of symbols was to facilitate Government having the elections on one day, and that is my position now.

Indian members wish their elections to be held in one day, we hope to be able to meet them in the near future, and we are told that by having symbols they will assist materially in reducing the period to one day. For that reason, if for no other, I suggest that the use of symbols be retained.

It is now suggested that because we have added the language of Hindi to the provisions of the Rules, that the necessity for symbols will go by the board, that everybody will be able to read one of the four languages now mentioned.

With all due respect to hon. members who think that, my information is to the contrary. I am told by those who have had to do with the Indian elections that there is really a large number of, the Indian electorate who are not able to read. Those officers who are responsible for the carrying out of these elections and whom we have been able to speak to—and I admit that I did speak to them, because the suggestion did come from Indian members that we should have symbols, and before I finally agreed I asked the officers concerned. They said that in view of the fact there were so many illiterate voters it would be easy for those voters to see the symbols of the candidates whom they wished to vote for, and the officers thought it was an extremely good idea. That was put into the Report of the Select Committee which originally sat, at the request of two Indian members, who also said it was a good idea, and we adopted their suggestion on that point *in toto*.

Now we are told, having been persuaded, perhaps against our better judgment, we were and are persuaded, that for some reason not really disclosed at all in the debate they think they would like to do away with symbols. If the object of the election is to elect a person by the vote of the majority, it seems to me it is absolutely essential that the majority should know exactly for whom they are voting, and we know that in this case, in order to do that, it will be a wise precaution to have symbols and not to rely on having the ballot paper read to them or the fact that they can read one of the four languages.

THE HON. J. B. PANDYA: Your Excellency, I am very sorry indeed that the hon. the Attorney General has twisted my argument. I did not mean that because one-day polling was the ultimate aim for the elections that it would be essential to keep the symbol system. If it was stated in the Bill that the polling should only be on one day, there was every justification for Government to insist on the symbols, but when Government is unable to agree to our suggestion of one-day polling I cannot understand why they should insist on the symbol system.

The point is that the last time when the hon. the Attorney General took the advice of the returning officer in the matter, he forgot to ask in what language the papers were printed. The only language at that time was English; therefore, naturally, it was found that there were a large number of people who could not read English and required the assistance of the returning officer. But in view of the fact that four Indian languages are now going to be used I can see no reason why this amendment should not be passed.

I do feel, although I was in favour of symbols before, there is no necessity now, and the Indians themselves do not want the symbols.

The question was put and lost.

The debate on the substantive motion as amended was resumed.

THE HON. SHAMSUD-DEEN : I beg to move that the Indian electoral area be constituted as follows . . .

THE HON. THE ATTORNEY GENERAL : Your Excellency, on a point of order, has the hon. member not already spoken to this motion? There was one motion before the House, and he has spoken to that, and I think moved or suggested that he was going to move an amendment with regard to a candidate signing his own application form. He is only entitled to speak once on the substantive motion and should move all the amendments he desires when he does so speak.

HIS EXCELLENCY : I had forgotten that the hon. member had spoken, but I think he has.

THE HON. SHAMSUD-DEEN : Shall I be precluded from moving any amendment?

HIS EXCELLENCY : I am afraid that is so.

DR. THE HON. A. C. L. DE SOUSA : Your Excellency . . .

HIS EXCELLENCY : The hon. member has already spoken to the motion.

DR. THE HON. A. C. L. DE SOUSA : On a point of explanation, I understood that when this matter was deferred until the interval that we should have an opportunity of discussing whatever amendments we were going to move. On that assurance, some of us kept quiet.

LT.-COL. THE HON. LORD FRANCIS SCOTT : As I understood it, the suggestion by the hon. the Attorney General was that the Indian members, when they asked for certain alterations, should put them up in the concrete form of a definite amendment which they would have an opportunity of moving. That is the actual position, not that they should make other speeches on the whole Bill.

HIS EXCELLENCY : I understood that they were going to hand written amendments to the hon. the Attorney General during the interval, but I do not think that that can give them authority to make a second speech.

THE HON. THE ATTORNEY GENERAL : On a point of order, as has been shown the hon. member Mr. Mangat understood the position very clearly, because he came back and moved a definite amendment which we have just dealt with, which is what I wanted. Progress was reported in order that those desiring to, could put up amendments, which was done by the hon. member quite correctly.

DR. THE HON. A. C. L. DE SOUSA : And another of us wants to move another amendment.

HIS EXCELLENCY : I cannot have every member speaking two or three times. The amendments could have been moved by the hon. member Mr. Mangat.

DR. THE HON. A. C. L. DE SOUSA : I say that that is most unfair.

HIS EXCELLENCY : I must keep to the Standing Rules and Orders of this House.

THE HON. THE ATTORNEY GENERAL : The hon. member Mr. Isher Dass has not spoken, he can move the amendment.

THE HON. ISHER DASS : Should I move the amendment, Sir?

HIS EXCELLENCY : Yes.

THE HON. ISHER DASS : I have only one amendment, which is contained in Recommendation 4 of the Minority Report. I understood from the hon. the Attorney General that he would make some kind of statement and give an indication as to how the situation mentioned in this recommendation was going to be met, and I leave it at that. I move :—

"That the Indian Electoral Area should be constituted with the five following constituencies :—

- (1) Nairobi Municipality.
- (2) Mombasa Municipality.
- (3) Kisumu Municipality.
- (4) All trading centres and other places not included in the above three Municipalities and situated to the East of Nairobi town, to be known as the Eastern Constituency.
- (5) All trading centres and other places not included in the above three Municipalities and situated to the West of Nairobi town, to be known as the Western Constituency."

In moving this amendment I have only one reason, and that is that my other colleagues have suggested there is no necessity of having two votes in one constituency, and that Government intends, and we are all in favour of it, that there shall be one-day elections. I suggest that the municipalities of Mombasa and Nairobi have too many representatives in this Council, for the simple reason that both actually elect two of the Indian community who are supposed to represent all interests. In addition, there are two European members from each place, while there are two members representing the native interests. I think, if I am not mistaken, that the twenty members on the other side represent Nairobi as well! so that those two places are very well represented, while actually the places contained in the eastern and western areas are not well represented. One member comes from Aberdare, and that is all. I do not think that Government should have any objection to accepting this amendment.

DR. THE HON. A. C. L. DE SOUSA seconded.

THE HON. J. B. PANDYA : I know that we are pressed for time, Your Excellency, and I think it unfortunate that this important amendment has been moved at the last moment in this House. We have been dealing with this Bill in committee for a long time, and we carefully considered the whole situation and arrived at understandings acceptable to the Indian Congress and Indian political organizations of the country. It is in keeping with the irresponsibility of certain members in the House that this sort of thing should be brought in in this manner without consulting the people concerned.

THE HON. SHAMSUD-DINN : Your Excellency, can an hon. member describe other members as irresponsible? We have been called too many things, and we cannot stand it any more!

THE HON. J. B. PANDYA : I never called anybody irresponsible, but said this was in keeping with their irresponsibility.

To change the whole construction of the representation of the Indian people at the last moment is absolutely indefensible, and to say that there should be only one representative for each municipality of Mombasa and Nairobi without giving anybody the opportunity of considering whether it is the right thing to do is in my opinion nothing less than irresponsible. I cannot under any circumstances support such an idea of division of constituencies without being given an opportunity for consideration.

THE HON. ISHER DASS : On a point of explanation, this is a point which we have already raised on the second reading of the Bill, and is not a new one as the hon. member has suggested.

HIS EXCELLENCY : The hon. member must not make a second speech. He can rise on a point of personal explanation.

THE HON. THE ATTORNEY GENERAL : I intend to say very little, Sir, on the amendment, but would merely point out that this is an amendment of the principle of the Bill, and we are now discussing the details of the Select Committee Report. If for no other reason I must resist such an amendment.

Members of the House must realize that it is quite impossible for the proceedings of the House to continue efficiently if we are going to have such amendments of principle sprung on us at the last minute. Not for one moment would I consider this amendment at any time, but I should at least have to speak to it if it were raised at the proper time, and this is not the proper time.

DR. THE HON. A. C. L. DE SOUSA : On a point of information, this question was before the Council at the second reading.

HIS EXCELLENCY : I do not want a point of information, only a point of explanation or order, which is a different matter.

DR. THE HON. A. C. L. DE SOUSA : I suggest that I am entitled to say something?

HIS EXCELLENCY : You may speak to the amendment.

DR. THE HON. A. C. L. DE SOUSA : I will in that case.

I am sorry that the hon. member Mr. Pandya has taken up an attitude which is deplored by the other four Indian members. The contention is that this matter has been brought up at the last minute, or it is I believe the contention of the hon. the Attorney General. But this question was raised towards the end of June, in the earlier part of the session, and Government had enough time to consider it. It was also raised in Select Committee, and that is some weeks ago. Government therefore cannot say they did not have enough time.

As for the fulminations of the hon. member Mr. Pandya against us and his reference to the Congress, I might inform him that as far as I know, and I am a member of the Indian Association of Nairobi, this question was never referred to

us, and we constitute a large percentage of the Indian population of the Colony. Whatever has been done has been done within the closed walls of the hon. member Mr. Pandya's party. I am sorry . . .

THE HON. THE ATTORNEY GENERAL: On a point of order, I do not like taking this point, but I really must ask if the hon. member is in order on the particular motion before the House to discuss individual and private matters between himself and Mr. Pandya?

HIS EXCELLENCY: The hon. and learned Attorney General is perfectly right, and I must ask the hon. member to confine his remarks to the terms of the motion, which is the amendment proposed by the hon. member Mr. Isher Dass.

DR. THE HON. A. C. L. DE SOUSA: Yes, I was prepared to do that, but the hon. member referred to the Congress, so that I have too, otherwise you cannot have a correct idea of the argument for or against.

I think, Sir, when this Council, when considering any matter affecting any interests, the primary duty of Government and of all other members interested, is to listen to the representatives of the Indian community, and if it is a case that out of the five, one member . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, the hon. member is now speaking on general lines. May I suggest that he speaks on the amendment?

DR. THE HON. A. C. L. DE SOUSA: As I am not well acquainted with the rules of debate, I do not wish to continue speaking.

THE HON. CONWAY HARVEY: On a point of order, may we hear the terms of the amendment?

HIS EXCELLENCY: They have been read, it is only wasting the time of the House.

THE HON. CONWAY HARVEY: It is quite impossible for anyone to follow.

HIS EXCELLENCY: I know.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I support the contention of the hon. the Attorney General, Sir, that this is a question of amendment to the principle of the Bill. The main principles were thoroughly discussed and an agreement was reached by the Committee which dealt with the Bill, and

speaking for the European elected members, we could not in any way at all agree to this amendment being brought in at this stage.

HIS EXCELLENCY: The question is, that the amendment be adopted.

The question was put and lost by 3 votes to 21, one member not voting.

Ayes: Messrs. Isher Dass, Shamsud-Deen, Dr. de Sousa.

Noes: Messrs. Barton, Bennister, Major Brassey-Edwards, Mr. Bruce, Archdeacon Burns, Messrs. Fazan, Harragin, Harvey, La Fontaine, Logan, Morris, Pandya, Dr. Paterson, Mr. Pilling, Sir G. Rhodes, Major Robertson-Eustace, Lord Francis Scott, Capt. Tisdall, Messrs. Vidal, Walsh, Welby.

Did not vote: Mr. Mangat.

The debate on the substantive motion was resumed.

THE HON. SHAMSUD-DEEN: On a point of order, I wish to ask if it is in order to move Rule 81 of the Standing Orders:—

"81. If the reference is in respect of specified clauses the report of the Select Committee shall be debated in Council on not less than one day's notice of motion for its adoption. The Bill shall then or at a time to be arranged be referred or returned to the Committee of the whole Council."

I wish to know if I am in order to move that this Bill be returned to committee of the whole Council?

THE HON. THE ATTORNEY GENERAL: The hon. member is in order to move it. I doubt whether the Council will accept his motion. A Bill may always be returned to committee of the whole Council when the whole Council so desires.

THE HON. CONWAY HARVEY: Surely an amendment must be moved by a member who has not spoken to the substantive motion when that is under discussion?

THE HON. SHAMSUD-DEEN: Rule 81 allows you to do so, and I formally beg to move that the Bill be referred to committee of the whole Council.

THE HON. ISHER DASS seconded.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I do not think there is any need for me to speak on it and the House will not allow its time to be wasted in this ridiculous

manner. Nothing can be gained from any point in the Select Committee Report and the innumerable amendments we have made, by referring the whole Bill, which will mean taking it clause by clause. I trust that members will reject the motion.

The question was put and lost.

The debate on the substantive motion was resumed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, there has been so much said already on this Bill and on the various amendments that there is little left for me to say in reply to my motion. But I would remind hon. members that in view of the tone the debate has taken the suggestion would appear to be that Government has been forcing on them some Rules or an Ordinance that they themselves do not wish. With regard to the main principle which was referred to in the amendment offered, all knew we could not accept it. Every detail in this Bill and the Rules were, in fact, either proposed or accepted by the hon. Indian members on the Select Committees, and to suggest now that Government is trying to put on to them what they do not want is ridiculous in the extreme. At the same time, as responsible members of the House they must realize that Government cannot go on *ad nauseam* altering Bills or Rules every time someone has a bright idea. We discuss whatever it is, Indian members agree to them, and then come to the House three weeks or a month later and think it should be something else and that Government has treated them harshly because their motion is not immediately accepted.

The question that the Report as amended be adopted was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Legislative Council Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. SHAMSUD-DEEN: Your Excellency, I think I have the right, even at this stage, according to Standing Orders, to get up and move that the Bill be recommitted. Rule 81 provides for that. Although I do not wish formally to suggest that the Bill should be recommitted, I do say that the hon. and learned Attorney General, when he says that because certain members sit on a select committee, that other members are precluded from expressing their views afterwards,

is entirely out of place. On a point of order, even at this stage, I have the right to move that the Bill be recommitted, according to Standing Orders.

HIS EXCELLENCY: The position is that the hon. the Attorney General has moved that the Bill be read a third time and passed. I have put that, and have declared that the Ayes have it.

The Bill was then read the third time and passed.

SELECT COMMITTEE REPORT.

THE LIQUOR (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL having moved:—

“That the Report of the Select Committee appointed to consider and report on the provisions of the Liquor (Amendment) Bill be adopted, subject to the deletion of the words ‘or the invited guests of members’ in the sixth line of paragraph two.”

THE HON. T. D. H. BRUCE having seconded.

THE HON. F. A. BEMISTER having moved an amendment to the Report.

THE HON. J. B. PANDYA having seconded.

Progress having been reported.

The debate was continued.

THE HON. THE ATTORNEY GENERAL: Your Excellency, on a point of order, during the adjournment I had the opportunity of conferring with the hon. member Mr. Bemister, and I understand that the exact form in which he wishes to move his amendment is as follows:—

“That the following addition be made to the Report:—

“That the Schedule to the Ordinance be amended by the addition of the following proviso at the end of sub-clause (f) of clause (1) thereof:

“Provided that in respect of premises situated without the Municipality or Township boundaries but within three miles of such boundaries the Governor may, on the application of the licensee, remit such portion of the license fee as, having regard to all the circumstances of the case, he may deem to be reasonable.”

I have been instructed by you, Sir, to say on behalf of Government that we accept this amendment.

The question was put and carried.

The question that the Report as amended be adopted was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Liquor (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

NATIVE MARKETING BILL.

On the Order being called from the Chair—

(The Hon. Indian Members, Messrs. Isher Dass, Mangat, Shamsud-Deen and Dr. de Sousa retired from the deliberations of Council.)

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Native Marketing Bill be adopted.

As hon. members are aware, this Bill was referred after a long debate to a Select Committee, and I intimated at the time that it was unlikely there would be many substantial amendments. The Report you have may appear bulky, but one reason is that I had to incorporate in it the several amendments which I had had printed at the end of the Bill for the information of members. I have no intention of referring to those matters which have already been debated. Actually, from my point of view, there are only about four points on which I need touch. Mainly the amendments are verbal; we have, for instance, used the word "specified" all through before produce, because it was argued that if we left the word "produce" without the qualifying adjective it might include any product. We have therefore inserted "specified native" before "produce" to make it quite clear as only referring to produce which the Governor specifies in his notice under section 3. We have done the same with regard to references to all divisions of land; all through the Bill we have used the words "declared area" as meaning declared under section 3.

The first amendment of importance to which I invite Council's attention is on page 3, paragraph 5, which refers to the power to prescribe conditions including the power to

require that all purchases must be paid for in cash. We have introduced there the words "minimum prices". It was thought by your Committee that it would be wise if we gave authority to the authority under the Ordinance to prescribe the minimum prices, and I am sure that everyone will agree with it.

There are two further amendments to which I will now refer. One is in paragraph 7. You will remember that we gave power to the District Commissioner—or as he is to be called in the Ordinance the licensing authority—to refuse to renew or grant a licence, and it is stated that he shall give reasons to the authorities above him, namely the Provincial Commissioner and the Governor, to whom an appeal is provided when he sends forward an appeal. I think everybody—certainly I did—considers that when an officer is acting in a judicial manner such as would be demanded of him under this section, that when he is giving reasons to his superiors he should also give them to the appellant. This was not quite clear under the section as formerly worded. It might have meant that he had only to give his reasons to the Provincial Commissioner and the Governor, which would be manifestly unfair to the appellant who would not know what he was appealing against, except that he had been informed he could not get what he wanted; it would also make it difficult for the Governor to adjudicate in the matter.

Clause 17 of the Bill has been deleted as redundant, but a new clause has been substituted. This new clause contains the provision which at present appears in clause 16. Now clause 16 deals with the rule-making powers of the Governor, and it is thought it is unnecessary to establish a market by rule. The Report therefore proposes in clause 17 to give the Governor power by notice to establish new markets in any declared area and also to declare any place in a declared area to be a market for the purposes of the Ordinance. The latter amendment is to clarify the position with regard to markets which already exist and which the Governor may declare to be markets under the provisions of this Ordinance.

Hon. members were told in the course of the second reading that it was the intention of Government to declare as markets as far as possible all trading centres. I say as far as possible advisedly, because there will be certain cases where that will be impossible, and we therefore see no objection to the proviso which we have now added to this clause:—

"Provided that when the Governor has made an order under the provisions of section 9 of this Ordinance, in respect of any district or part of any district, all trading centres situate in such declared area, other than such

The question was put and carried.

The question that the Report as amended be adopted was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Liquor (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

NATIVE MARKETING BILL.

On the Order being called from the Chair—

(The Hon. Indian Members, Messrs. Isher Dass, Mangat, Shamsud-Deen and Dr. de Sousa retired from the deliberations of Council.)

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Native Marketing Bill be adopted.

As hon. members are aware, this Bill was referred after a long debate to a Select Committee, and I intimated at the time that it was unlikely there would be many substantial amendments. The Report you have may appear bulky, but one reason is that I had to incorporate in it the several amendments which I had had printed at the end of the Bill for the information of members. I have no intention of referring to those matters which have already been debated. Actually, from my point of view, there are only about four points on which I need touch. Mainly the amendments are verbal; we have, for instance, used the word "specified" all through before "produce", because it was argued that if we left the word "produce" without the qualifying adjective it might include any product. We have therefore inserted "specified native" before "produce" to make it quite clear as only referring to produce which the Governor specifies in his notice under section 3. We have done the same with regard to references to all divisions of land; all through the Bill we have used the words "declared area" as meaning declared under section 3.

The first amendment of importance to which I invite Council's attention is on page 3, paragraph 5, which refers to the power to prescribe conditions including the power to

require that all purchases must be paid for in cash. We have introduced there the words "minimum prices". It was thought by your Committee that it would be wise if we gave authority to the authority under the Ordinance to prescribe the minimum prices, and I am sure that everyone will agree with it.

There are two further amendments to which I will now refer. One is in paragraph 7. You will remember that we gave power to the District Commissioner—or as he is to be called in the Ordinance the licensing authority—to refuse to renew or grant a licence, and it is stated that he shall give reasons to the authorities above him, namely the Provincial Commissioner and the Governor, to whom an appeal is provided when he sends forward an appeal. I think everybody—certainly I did—considers that when an officer is acting in a judicial manner such as would be demanded of him under this section, that when he is giving reasons to his superiors he should also give them to the appellant. This was not quite clear under the section as formerly worded. It might have meant that he had only to give his reasons to the Provincial Commissioner and the Governor, which would be manifestly unfair to the appellant who would not know what he was appealing against, except that he had been informed he could not get what he wanted; it would also make it difficult for the Governor to adjudicate in the matter.

Clause 17 of the Bill has been deleted as redundant, but a new clause has been substituted. This new clause contains the provision which at present appears in clause 16. Now clause 16 deals with the rule-making powers of the Governor, and it is thought it is unnecessary to establish a market by rule. The Report therefore proposes in clause 17 to give the Governor power by notice to establish new markets in any declared area and also to declare any place in a declared area to be a market for the purposes of the Ordinance. The latter amendment is to clarify the position with regard to markets which already exist and which the Governor may declare to be markets under the provisions of this Ordinance.

Hon. members were told in the course of the second reading that it was the intention of Government to declare as markets as far as possible all trading centres. I say as far as possible advisedly, because there will be certain cases where that will be impossible, and we therefore see no objection to the proviso which we have now added to this clause:—

"Provided that when the Governor has made an order under the provisions of section 3 of this Ordinance, in respect of any district or part of any district, all trading centres situate in such declared area, other than such

trading centres as the Governor in Council may by order declare not to be markets, shall be deemed to be markets for the purposes of this Ordinance."

The only reason for putting that in—because I would have argued that it is a distinction without a difference—is that apparently there are some people in this Colony who are a little anxious as to what is going to happen under the Ordinance, and they think that trading centres are not going to be declared markets. It is in order to reassure them that in the ordinary course of events all trading centres will automatically become markets, but that exceptions may only be made by special order of the Governor after considering all the circumstances of the case.

THE HON. T. D. H. BRUCE seconded.

THE HON. J. B. PANDYA: Your Excellency, I have outlined in my minority report the amendments which I consider desirable, and I shall briefly try to state my reasons for these amendments. I am not going to be very long and I shall try and finish as quickly as possible.

I am opposed to the principle of exclusive licences, and believe that whenever it is necessary for any new article to issue such a licence a new Bill should be introduced by Government. My reason for saying this is that it is not in my opinion desirable or necessary to introduce the principle of monopoly in this Bill, which should be limited to the improvement of marketing conditions; its scope should not be extended to bring in the principle to which I have referred.

I agree that the principle accepted by the Select Committee would give us an opportunity to discuss in this House whether a certain article should be subject to an exclusive licence, and I think that to a certain extent it meets our objections, but when this principle is conceded I should have thought that the principle of a Bill for every new article would have been equally acceptable. What objection could there be to that? My reasons are that we might then have an opportunity again of bringing forward the question of procedure in regard to the issuing of these licences. When a new Bill is introduced, it would be possible for us perhaps to persuade Government to accept certain amendments, based on previous experience, amendments which Government is not prepared to consider to-day.

The majority have accepted these clauses, and I therefore suggested another amendment that the purchase right of an exclusive licence should be auctioned. This I consider to be very necessary, and an essential safeguard to maintain the

quality of opportunity and fairness between all those who are interested. If such a safeguard is not there, I am afraid that various undesirable practices may creep in; even the past experience we have had in this matter makes me believe it will be desirable to have this safeguard. I do not lose sight of the fact that there are certain administrative difficulties, because it might happen that even the one who got the right by auction to have that monopoly might not be a desirable person, but I am prepared to accept an amendment which would satisfy Government that it should be subject to the final decision of the Governor in Council. In this I am to a great extent persuaded by the precedents which we have in other spheres. In Mombasa Municipality to-day, the final power to nominate the members of the Municipal Board rests with the Governor, but as a rule the results of the informal elections which are held are accepted by him. In the same way, if in the first instance there was this provision for auctioning an exclusive licence, subject to the approval of the Governor, I am sure it would work out to the satisfaction of all concerned. Otherwise I am afraid that the issuing of an exclusive licence would depend entirely on the goodwill of the administrative officers and other persons, which is likely to create an atmosphere of favouritism.

With regard to clause 13, I am grateful to the Select Committee for accepting the amendment, namely, to convey to the applicant the reasons for the refusal of his application for a licence. I should, however, like to have pressed further for an amendment to have the right of appeal to the courts. A clause to that effect appears in the Uganda Ordinance which was passed subsequent to the Tanganyika Ordinance, and it is one which I think it is very desirable to include in this Bill.

Coming to the amendment accepted by the Select Committee in regard to the establishment of markets, may I take this opportunity of thanking Your Excellency personally and the senior officers of your Government for the sympathy and fairness with which our point of view has been considered in this matter.

This amendment is in implementation of the assurance conveyed in this House by the hon. the Chief Native Commissioner, and I had not the slightest doubt that Your Excellency is going to put it into practice.

But there is a difference, and I do not think it can be denied, that the legal provision in the Bill is very much more than an assurance conveyed in this House, and we are very grateful for this amendment. While it is no more than an implementation of the assurance, it means very much more to us, not because it gives us anything more than was originally

trading centres as the Governor in Council may by order declare not to be markets, shall be deemed to be markets for the purposes of this Ordinance."

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intended to be given by Government but because it is proof of the intention of Government which shows they are willing to take into consideration sympathetically the vast trading interest which we have in this country.

I do not wish to take any credit to myself, but if I had followed the policy of negotiation which was followed by the other hon. Indian members, who preferred to walk out and remain absent during the discussions on this important Bill—which they also consider vitally affecting the interests of the Indian community—if I had been foolish enough to follow that course, it is quite clear that important amendments which have been accepted by Government at my representations in this matter would not have received their sympathetic consideration. In that case, I would have done the greatest harm to the interests which I was sent here to safeguard and advance. In my opinion, if single-handed I was able to get the Select Committee and Government to a certain extent to accept my amendments and was able to achieve that result alone, how much more the Indian community would have gained in regard to other amendments if the other hon. Indian members had co-operated in this matter. I hope, Sir, that a lesson will be learnt from this experience that in this country a policy of negotiation will not pay and that those who follow that policy will be doing immense harm to the interests of their constituents.

I should like to say one or two words on general issues. On the second reading, I tried to substantiate my case with reasoned arguments, quotations from well known authorities, and from experience in the neighbouring territories. I spoke with great restraint and humility, and appealed to the European elected members for their sympathy and impartial consideration. Instead, I got their opposition. I do not wish to take the time of the House by making any reference to that past experience because it would hardly serve any useful purpose at this stage, but I should like to say that if on a Bill in which their direct interests were not involved this was their attitude it proved to us that we could expect very little sympathy from them at any time. They should not be surprised if the same feeling is reciprocated. This demonstrates to us why we should be governed from Downing Street in this country.

HIS EXCELLENCY: Order, order! I quite realize that the hon. member has been in a very difficult position. I have allowed him a very great deal of latitude, but I cannot think that this is in any way connected with this motion.

THE HON. J. B. PANDYA: Very well, Sir, I will drop that.

The only other word I should like to say is to the hon. Members representing Native Interests. They failed to realize the real implications of the Bill and the way in which it would affect the natives. With due respect, I should like to say they have not had first-hand information in regard to these matters . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT: On a point of order, Sir, is this not a second reading speech and nothing to do with the Select Committee's Report?

HIS EXCELLENCY: That is exactly what I am trying to persuade the hon. member. I implore him to keep to the terms of the motion and not make a speech on the second reading.

THE HON. J. B. PANDYA: I am concluding now, Sir.

In conclusion, Sir, I should like to say that I have remained on my post to the last minute. I have advised the Government in regard to this Bill, and I admit that my labour is not wasted, as I have been able to persuade the Government to accept certain amendments for which I am grateful. But still, the Bill contains certain objectionable principles to which we are opposed and, as according to Standing Rules and Orders I could not speak to make my position clear as I have done just now, at the third reading stage when the Bill is finally being passed, following the intention which I made clear at the second reading debate I should like to record my dissent by walking out of the House at this stage and remain absent until the Bill is finally passed.

(Mr. Pandya then withdrew from the deliberations of the Council.)

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I have not very much to say with regard to the matter. One cannot help admiring the way in which my hon. Indian friend has stuck to his job in dealing with the matter of this Bill.

With regard to the point raised by him, I should like to say we who are representing native interests in this Council have gone to a considerable amount of trouble to find out from the natives whom we look on as being able to give us their opinion and advice as to the value of this measure what their views were. In every single instance in which I have had the opportunity of questioning natives and trying to explain to them the measure now before the House they have not only agreed to it but thank Government for having introduced such a measure as this.

There are some points, of course, which I should like to see made clearer, but at this stage I cannot because of course my colleague was on the Select Committee which dealt with the Bill and I must be true to whatever he did. I can assure the House that the natives, as far as they understand it, are—I am supposed to be in this House representing natives who do not understand the position, and I think it is going to be to their benefit throughout the whole Colony that this Bill should be brought in and passed.

THE HON. THE ATTORNEY GENERAL: Your Excellency, my only reply is to apologize to the House for having been responsible for yet one more member leaving! (Laughter.) As he only spoke to the principle of the Bill and not to the amendments, I do not think there is anything for me to reply to. As this Council well knows, it is not desirable to introduce into this type of legislation reference to the Supreme Court which only leads to delay and expense to the unfortunate litigant.

The question was put and carried.

THIRD READING.

NATIVE MARKETING BILL.

THE HON. THE ATTORNEY GENERAL moved that the Native Marketing Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

MOTION.

SELECT COMMITTEE ON ECONOMY REPORT.

Notice of motion having been given by **LT.-COL. THE HON. LORD FRANCIS SCOTT** :—

"This Council expresses its appreciation of the work performed by the members of the Select Committee on Economy and of the able Report produced by them. This Council, whilst emphatically disagreeing with the recommendations set forth in paragraphs 114 and 251 on the subject of (a) Defence Force and (b) District Councils, trusts that Government will lose no time in considering the Report in detail in order that the majority of the remaining recommendations may be implemented forthwith and become effective prior to the submission to this House of the 1936 Estimates."

The Order having been called from the Chair.

THE HON. THE COLONIAL SECRETARY: In view of the fact that Your Excellency has not had an opportunity of considering the recommendations of the Select Committee on Economy and that since, therefore, it would not be possible for Government to take any effective part in the debate other than giving assurances that Your Excellency will consider most carefully these recommendations, I suggest to the Noble Lord that he may desire in the circumstances to defer his motion until a subsequent session of the Council.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Sir, having been warned by Government as to the attitude the hon. the Colonial Secretary was going to take, I discussed this matter with my colleagues and they all unanimously agree that we should accept Government's suggestion that the matter should be postponed until a later date, when Government is in a position to fully answer all the points that will then be raised.

BILLS

SELECT COMMITTEE REPORT.

THE LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Local Government (Municipalities) (Amendment) Bill be adopted in so far as that Report is signed by the majority of the members of the Select Committee.

Two members of the Committee recommended that the Bill be amended by the deletion of those words in one clause of the Bill which deal with the ability of the Municipal Board to lease ferries if they so desire, and one member of the Committee recommended that the Bill should be thrown out *in toto*. A further member did not sign the Report at all.

Hon. members will remember that in the course of the debate on the second reading of the Bill, opposition was expressed to those clauses of the Bill which deal with leasing ferries to private companies. There appeared to be in the minds of members who opposed that if this clause remained and if the Municipal Board of Mombasa in effect made that agreement with a company, such procedure would delay the possibility of the policy of freeing the ferries. During the first meeting of the Committee, after a prolonged discussion on this point, at which we were not able to arrive at an agreement, we did agree that those members who happened to live in Mombasa and were returning there should discuss

the matter with the Municipal Board in order to discover whether the Board would be prepared to take over the ferries without the inclusion of those powers in the present Bill. I understood that the arrangement then was that if the Board took the line that only by the retention of this clause could they consent to take over the ferries, the members would withdraw their opposition.

The subject was discussed by certain members of the Committee with the Municipal Board, but I understand that the question of free ferries was introduced at that discussion. In consequence possibly of that, the Municipal Board at a later meeting did pass a resolution that in view of the widespread desire for a reduction in tariffs to stimulate coastal development, that it introduced a new factor into the matter which is beyond the scope of the Board which, though it recognized such reduction should receive serious consideration, is not in a position to subsidize the losses recommended, and that in their view the ferry services should not be taken over by themselves but should be taken over the managed as a Government concern.

The question of a free ferry service is not really germane to the passage of this Bill because, as I pointed out in my reply, on the second reading, this is purely an enabling measure. Moreover, during the course of this morning, the question of free ferries has been discussed and Government gave an assurance that that matter will be referred to the Central Roads and Traffic Board. Furthermore, it was agreed during the second reading that the correct authority to establish and run ferries at Mombasa was the Municipal Board.

Therefore, Government proposes to proceed with this measure, which embles the Municipal authority to take over ferries and, if they so desire, to enter into an agreement—and again I would stress the fact that if an agreement is proposed to be entered into the terms of the agreement have to be referred to the Governor in Council for approval, and any question of connected with or of free ferries will naturally be one of the subjects which will receive attention when it is submitted for Your Excellency's approval.

THE HON. T. D. H. BRUCE seconded.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, if the municipal authorities are given this power, which this Bill unquestionably gives them, will it enable them to squeeze out ferries so that natives who are deriving a benefit from the existing ferries will be denied rates that they have had to my knowledge for thirty-six years?

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: The Bill does give power to the municipalities to take over these services, and if they do take over what has hitherto been run by private agencies then due notice has to be given of that action and the approval of the Governor to such a course has also to be given.

The question was put and carried.

THIRD READING.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT moved that the Local Government (Municipalities) (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE HARBOURS REGULATION (AMENDMENT) BILL.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Harbours Regulation (Amendment) Bill be adopted.

This is a complementary measure to the Bill which has just passed, and the Select Committee recommend that it be approved with one amendment which deals with the power to be given the Governor to appoint the date on which it shall come into force. That is an obviously required amendment because of the delay which must occur before any actual transfers of ferry control are effected.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

THE HON. THE COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT moved that the Harbours Regulation (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SELECT COMMITTEE REPORT.

THE WAKF COMMISSIONERS (AMENDMENT) BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Report of the Select Committee appointed to consider and report on the provisions of the Wakf Commissioners (Amendment) Bill be adopted.

There is only one amendment proposed in this Report, which was one which in effect I gave notice of on the second reading. It puts in the word "means" for the words "shall include" which appear in clause 3 of the Bill. The reason for this amendment is that it might be held, if we say "shall include" to automatically include Indians.

The hon. member Mr. Shamsud-Deen said on the second reading that it might be possible to include all Indians in this Bill. He attended the meeting of the Select Committee, and when we went into details of the small Bill before us, he agreed with us that perhaps it would be wiser if his amendments were postponed until a more comprehensive measure was introduced to deal with the whole subject if it were desirable.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Wakf Commissioners (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SECOND READING.

THE AGRICULTURAL ADVANCES (AMENDMENT) BILL.

THE HON. THE TREASURER: Your Excellency, I beg to move the second reading of the Agricultural Advances (Amendment) Bill.

This Bill is, I think, entirely non-controversial. It provides a measure of relief to the parties to the agricultural advances scheme by reducing the present rate of interest, which is 8 per cent. to 6½ per cent, with effect from the 1st of January of the present year, the latter figure being equivalent to that charged by the Land Bank. The suggestion

came from the Land Bank Board acting as agents for Government in regard to the agricultural advances scheme, and it has been approved by the Secretary of State. The reasons for the change will be found in paragraphs 17 to 19 of the Land Bank Report on the agricultural advances scheme and in the reasons attached to the Bill.

THE HON. THE ATTORNEY GENERAL seconded.

The question was put and carried.

SECOND READING.

THE SUPPRESSION OF NOXIOUS WEEDS BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Suppression of Noxious Weeds Bill be read a second time.

This Bill has been before Government for some considerable time, and is really designed at the request of the agricultural authorities not so much to deal with the noxious weeds in existence at the present moment but to deal with any new weeds which may happen to come into the Colony. It is necessary to have such a Bill in order that we can act quickly and eradicate them in their initial stages and not wait until they have gained possession of the country before we move.

Clause 3 gives the Governor power to declare a particular area to be infected by any weed which he shall declare to be noxious in that area. Clause 4 puts the duty on the person responsible to report the presence of that weed and to proceed to clear it. Clause 5 provides for the inspection of that land by inspectors who will be duly appointed under the Ordinance and who may give notice to the person responsible to clear that land if necessary under the Ordinance.

Clause 7 gives power to an inspector or authority where the person responsible refuses to get on with the clearing, to do the work and charge it to the person responsible. Other sections are only matters of detail, such as the manner in which notice shall be served and so on. Clause 10 links up the native reserves with the other portions of the Colony, and its meaning is to put the responsibility on to the headman in charge of a particular area in which these weeds are found. By linking up this Ordinance with the Native Authority Ordinance and the Compulsory Labour (Regulation) Ordinance, the headman is empowered to give orders to the natives within his jurisdiction to remove any weeds which have been declared noxious.

THE HON. T. D. H. BRUCE seconded.

THE HON. CONWAY HARVEY: Your Excellency although I feel somewhat like Horatius, the circumstances of this particular case hardly justify me in emulating all that great Roman's physical prowess!

There is nothing original about this legislation, which has been proved necessary in all agricultural countries, and, as the hon. the Attorney General indicated, has formed the subject of representations from various farming communities in this country to Government during the last few years. I may add, it has also the complete approval of that representative Board, the Agricultural Board, which before arriving at a decision circularized the Farmers Associations throughout the Colony. Everybody knows that up to now Government have taken certain steps, and in doing so many of us think they have unduly strained the provisions of the Diseases of Plants Prevention Ordinance. We therefore welcome the *ad hoc* legislation giving Government power which may at any moment be so very, very necessary to eliminate the spread of noxious weeds.

It is fully realized, Sir, that without the co-operation of the farmers of the country whose interests are to be served, and the native authorities, this legislation will be quite ineffective, but so far as the former are concerned I can assure Government that that cordial co-operation of the European farmers will not be lacking.

VEN. ARCHDEACON THE HON. G. BURNS: Your Excellency, I will only deal with clause 10, and as I presume this Bill will go before the committee of the whole Council there is just one amendment I should like to propose. It refers to that part of the clause where it says "each headman who, under the provisions of the Native Authority Ordinance read together with the Compulsory Labour (Regulation) Ordinance, 1932."

That is the difficulty I experience in giving my whole-hearted support to this Bill. It means there is going to be added on to the already fairly formidable list of things that natives can be compelled to do without any remuneration, another duty. The difficulty I experience is that in a headman's district which includes one side of the railway, will the natives in that district under that headman be compelled to clear the noxious weeds that may be found alongside the railway in that district? It will be putting on the natives in that district a real hardship indeed, if that is the case.

My objection to this being read with the Compulsory Labour (Regulation) Ordinance is that it gives a man, I speak reservedly, an unscrupulous headman—there are not

perhaps many but there are some—an opportunity to make use of the natives whom he can control behind the shadow of Government's authority to not only clear his own land whatever it may be but to also clear his very much larger piece of ground which he has accumulated since he become a headman under the shadow of Government.

I feel that it is quite possible that men who are unscrupulous will make use of this compulsory labour to serve their own ends instead of helping the natives in their little patches of land. I will move that the reference to the Compulsory Labour (Regulation) Ordinance be deleted from the Bill.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I feel I owe an apology to the hon. and reverend member for not explaining clause 10 more clearly than I have, because the result of the clause is exactly opposite to what he thinks.

The reason why I have added the words Compulsory Labour (Regulation) Ordinance, 1932, to the Native Authority Ordinance is in order to limit the power of the Native Authority Ordinance. Under the latter, a headman has power to give orders with regard to innumerable matters which have to be paid for. Subsequently, there was introduced the Compulsory Labour Ordinance which restricted the number of things for which unpaid labour could be called out. Therefore, I have linked up the Compulsory Labour Ordinance with the Native Authority Ordinance to remove from the minds of anybody that it would give any additional powers to a headman.

—Actually, I am of the opinion now, that reading both of these Ordinances together and in spite of the restrictions placed on a headman by the Compulsory Labour (Regulation) Ordinance, if there is any noxious weed in that area on any particular person's land, it will be perfectly lawful for the headman to order the occupier to remove it, and that is as far as the matter goes.

I am glad to say that the hon. the General Manager has left the House, because he would be very alarmed to hear that a headman had any rights over his railway line! I can assure the hon. and reverend member that the General Manager will not be able to get the headman to call out his men in order to clear the railway lines.

VEN. ARCHDEACON THE HON. G. BURNS: Thank you.
The question was put and carried.

SECOND READING.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Girl Guides Bill be read the second time.

This Bill, and the one which immediately follows regarding the Boy Scouts, I must apologize for introducing into this extremely busy session and at this time. I know there are certain members who may not think it is of sufficient urgency, but actually Your Excellency has been good enough to show me one badge at least which was supposed to represent the Girl Guides Association which had in fact been made in Germany or somewhere and was being sold at the ordinary *dukas* in the town. It is therefore clear to everyone in authority that we must act quickly in order to stop this sort of thing. Both measures are the same, except for one section in the Boy Scouts Bill.

Clause 3 is the important clause, that no person shall use the uniform, badge, or anything of the description resembling the Girl Guides Association badges. You all know that the Girl Guides have been incorporated by charter in England, and this Bill forbids anyone imitating their badges. It also restricts in clause 4 the right of anybody and everybody to import even the correct badges and they cannot be sold without the authority of the Commissioner. You may rest assured that that authority will not be unduly withheld, because the more sales there are the better it will be in the interests of the Association. Clause 5 deals with falsely pretending to have any connection with the Association, and that is to prevent people going around the country and pretending they hold some position of importance in connection with the Association.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

SECOND READING.

THE BOY SCOUTS BILL.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Boy Scouts Bill be read the second time.

This is the exact counterpart of the one which has just passed its second reading, with only one addition, clause 5, where provision is made to prevent a boy dressed in Boy Scout's uniform passing himself off as a police officer, a member of the K.A.R. or anything of that description. The object is to protect the native. No European would suspect a Boy Scout to be a person of authority such as a policeman, but

you must remember that Scoutmasters might represent themselves to natives as persons having legal authority to do something or other under the Police or any other Ordinance. This provision is inserted so that they will be punished if they do so represent themselves to be other than what they really are.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Council do resolve itself into committee of the whole Council to consider the following Bills clause by clause:—

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girl Guides Bill.

The Boy Scouts Bill.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into committee.

In Committee.

THE AGRICULTURAL ADVANCES (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE SUPPRESSION OF NOXIOUS WEEDS BILL.

The Bill was considered clause by clause.

Clause 7.

THE HON. THE ATTORNEY GENERAL moved that the words "Power of Inspectors to eradicate noxious weeds" be inserted as a marginal note.

The question was put and carried.

Clause 10.

VEN. ARCHDEACON THE HON. G. BURNS: In view of the explanation given on the second reading by the hon. and learned Attorney General for which I thank him, I understand that a headman will not have authority to call out men for a longer time under this measure, so that I do intend to move any amendment.

THE HON. THE ATTORNEY GENERAL: With regard to that, I would make it quite clear, not for a longer time than is permitted under the Compulsory Labour Ordinance.

VEN. ARCHDEACON THE HON. G. BURNS: That is what I mean.

THE HON. CONWAY HARVEY: Suppose the amount of time is insufficient to eradicate the weeds, what happens then? One would have thought that to carry out the provisions of this Ordinance it means eradicating the weeds irrespective of any time consideration.

THE HON. THE ATTORNEY GENERAL: As you are aware, Sir, I think sixty days is the permitted time under the Compulsory Labour Ordinance, and if natives working for sixty days in the reserve are unable to suppress these weeds it could hardly be said to be a new menace to the reserve.

THE HON. CONWAY HARVEY: That is quite right.

THE HON. THE CHIEF NATIVE COMMISSIONER: Under the Native Authority Ordinance headmen are empowered to call out natives for labour for so many days unpaid. If any additional labour is required, presumably it would be paid for, but I do not anticipate any need for paid labour. Probably there will be a larger number of natives available to do the work in the days allowed, and in that way all requirements will be met.

THE GIRL GUIDES BILL.

The Bill was considered clause by clause.

THE BOY SCOUTS BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL moved that the following Bills be reported to Council without amendment:

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girls Guides Bill.

The Boy Scouts Bill.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY reported that the following Bills had been considered clause by clause in committee of the whole Council and had been reported to Council without amendment:

The Agricultural Advances (Amendment) Bill.

The Suppression of Noxious Weeds Bill.

The Girl Guides Bill.

The Boy Scouts Bill.

THIRD READINGS.

THE HON. THE ATTORNEY GENERAL moved that the above Bills be each read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

STANDING ORDERS SUSPENDED.

THE HON. THE ATTORNEY GENERAL moved that the Standing Orders be suspended to enable the Police (Amendment) Bill to pass through all its stages without due notice.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Standing Orders were suspended.

BILL.

FIRST READING.

On the motion of the hon. the Attorney General, seconded by the hon. T. D. H. Bruce, the Police (Amendment) Bill was read a first time.

SECOND READING.

THE HON. THE ATTORNEY GENERAL: Your Excellency, I move that the Bill be read a second time.

This very short and urgent Bill has become necessary because it has been discovered that, under the present Ordinance, which was passed in 1930, in section 14 the following words occur: "this Bill shall apply to all future entrants into the police force and to all those who elect to come under the Ordinance within six months." That sounded very well no doubt at the time the Bill passed, but they forgot this and repealed the old Ordinance, with the result that all those persons who have not elected to come under the new Ordinance are not at the moment serving under any Ordinance whatsoever!

It is an omission which might happen to anyone, and must be rectified as soon as possible, and to ante-date it to the 1st of January, 1935, because the 1930 Ordinance was brought into force from that date. It is necessary this Bill should be passed at this session, otherwise many actions taken by some policemen during the last six months may be held to be illegal and *ultra vires*. Then no one will have an excuse of bringing an action against them and being over-ruled by an Ordinance later on.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

THE HON. THE ATTORNEY GENERAL moved that the Council do resolve itself into committee of the whole Council to consider the Police (Amendment) Bill clause by clause.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

Council went into committee.

In Committee.

THE POLICE (AMENDMENT) BILL.

The Bill was considered clause by clause.

THE HON. THE ATTORNEY GENERAL moved that the Bill be reported to Council without amendment.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY reported that the Police (Amendment) Bill had been considered clause by clause in committee of the whole Council and had been reported to Council without amendment.

THIRD READING.

THE HON. THE ATTORNEY GENERAL moved that the Police (Amendment) Bill be read a third time and passed.

THE HON. T. D. H. BRUCE seconded.

The question was put and carried.

The Bill was read a third time and passed.

Council adjourned sine die.

WRITTEN ANSWERS TO QUESTIONS.

THE CURRENCY ORDINANCE, 1933.

No. 1.—THE HON. F. A. BEMISTER asked :

"Have the East African Currency Board Commissioners made use of the power to overdraw on the security of the three territories granted to them by means of the Currency Board Bill, 1933?"

If the reply is in the affirmative, to what extent have they overdrawn, and what amount has been debited to Kenya?"

Reply.

The answer is in the negative.

No. 2.—THE HON. F. A. BEMISTER asked :

"What amount of currency was in circulation on 31st December, 1934?"

Reply.

The records of the Currency Board relate to currency in circulation in the currency basin of Kenya, Uganda and Tanganyika Territory, the returns prepared by the Board covering twelve months ending on 30th June of each year.

The quantity of shilling currency in circulation on 30th June, 1932, 1933 and 1934, respectively, was as follows:—

On 30th June, 1932	...	71,383,426	32
On 30th June, 1933	...	76,448,668	09
On 30th June, 1934	...	83,033,363	24

It will thus be seen that the quantity of currency in circulation on 30th June, 1934, shows an increase over 1933 of Sh. 6,584,693/25, and an increase over 1932 of Sh. 11,649,935/92.

KENYA LAND COMMISSION : SUPPLEMENTARY INSTRUCTION TO CHAIRMAN.

No. 3.—THE HON. SHAMSUD-DEEN asked :

"Is the Government aware that subsequent to the appointment of the Land Commission, the Secretary of State for the Colonies had issued any supplementary instructions to the Chairman of the Commission, which instruction went outside the terms of reference of the Commission?"

Reply.

No supplementary terms of reference or instructions were formally issued to the Commission. Their opinion was taken, however, on certain matters, which may, perhaps, be held strictly to fall outside their published terms of reference, e.g. the draft Native Lands Trust (Amendment) Bill, 1932, land required for mining purposes in Native Reserves, a certain area of land in the Coast Province, and the "privileged position" of Europeans in the Highlands.

KENYA LAND COMMISSION : ORDER IN COUNCIL *Re* HIGHLANDS.

No. 4.—THE HON. SHAMSUD-DEEN asked :

"Is the Government aware of any reason why the Land Commission went out of their terms of reference and recommended the promulgation of an Order in Council restricting all land transactions between different races, instead of merely defining the limits of the Highlands as intended by the terms of reference?"

Reply.

Government is not aware of any reason other than that contained in the Report why the Commission recommended the promulgation of an Order in Council regarding the Highlands.

ALLOWANCES TO POLICE OFFICERS.

No. 12.—THE HON. N. S. MANGAT asked :

"Will the Government state what sums were paid as travelling allowances and/or special allowances to the following police officers in respect of their investigation work in the arson case against the hon. N. S. Mangat and four others :

Capt. Neil Stewart,
Inspector W. R. Elliott,
A.S.I. Partap Singh?"

Reply.

The following motor allowances were paid to the officers named in respect of their investigation work in the case against the hon. N. S. Mangat and four others :—

	Sh. cts.
Capt. Neil Stewart	41 60
Inspector W. R. Elliott	61 50
A.S.I. -Partap Singh	59 50

Apart from these payments, no special allowances of any kind were granted to these police officers, or to any other member of the Force, in connection with their investigations.

POISONING OF CATTLE.

No. 35.—THE HON. E. H. WRIGHT asked :

"In view of (i) the serious cattle losses sustained last year by Colonel Abbay of Naro Moru, (ii) the subsequent evidence by both the Veterinary Department and the Police that the high mortality caused by arsenical poisoning and (iii) the belief that this arsenic was issued by a forest officer to his employees for poisoning baboons (and that without giving warning to neighbouring farmers), will Government disclose the findings of the Criminal Investigation Department, Police, and Veterinary investigations and, if (iii) above is confirmed therein, state what action they propose to take to deal with the poisoners and to compensate the loser?"

Reply.

Government is aware that cattle losses were sustained by Colonel Abbay of Naro Moru last year and that some of the deaths were caused by arsenical poisoning.

Investigations carried out by the Veterinary Department have proved that potential sources of arsenical poisoning, accessible to Colonel Abbay's cattle, existed on his farm at

the time of the said losses, and it is presumed that such sources were the cause of the loss of the cattle.

The last part of the question does not, therefore, arise.

EUROPEAN GOVERNMENT SCHOOL, KITALE.

No. 50.—LT. COL. THE HON. J. G. KIRKWOOD asked :

"Is Government aware of the deplorable situation now existing at the European Government School, Kitale, i.e. :—

1. An outbreak of measles has taken place?
2. There is no sick room at the school?
3. The Principal's house has been turned into a hospital?
4. The Headmaster has been and is nursing girl pupils in his own quarters?
5. Will Government hasten the construction of a sick room?"

Reply.

Government is aware of the situation.

1. There have been 16 cases of measles during the current term, 14 girls and 2 boys.
2. There is no separate sick room. A portion of one of the dormitories was screened off but could not be used for infectious cases.
3. The answer is in the affirmative. The greatest number of cases of measles accommodated at any one time in the Principal's house was seven.
4. The answer is in the affirmative. There are at present no pupils suffering from measles at the school. The pupils concerned have either recovered or been removed from the school by their parents. The nursing of the cases was in charge of the Matron but it is understood that the Principal did duty on occasions at night time.
5. The proposal to expend the sum of £355 on the construction of a sick ward is being referred to the Standing Finance Committee at its next meeting.

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