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COLONY AND PROTECTORATE OF KENYA



LEGISLATIVE COUNCIL
DEBATES, 1936

VOLUME II

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(Part II)

NAIROBI
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1937

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List of Members of the Legislative Council

President :

HIS EXCELLENCY THE ACTING GOVERNOR, A. DE V. WADE, Esq.,
C.M.G., O.B.E. (1)

Ex-officio Members :

ACTING COLONIAL SECRETARY (HON. H. G. PILLING, C.M.G.) (2).
ATTORNEY GENERAL (HON. W. HARRAGIN, K.C.) (3)
TREASURER (HON. G. WALSH, C.B.E.)
CHIEF NATIVE COMMISSIONER (HON. H. R. MONTGOMERY, C.M.G.)
COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT
(HON. W. M. LOGAN, O.B.E.) (4)
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. A. R. PATTERSON)
DIRECTOR OF AGRICULTURE (HON. H. B. WATERS)
DIRECTOR OF EDUCATION (HON. E. G. MORRIS, O.B.E.)
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS
(HON. A. E. HAMP) (Acting) (5)
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH) (6)
COMMISSIONER OF CUSTOMS (HON. E. G. BALE)

Nominated Official Members :

HON. G. H. C. BOULDERSON (Prov. Commissioner, Coast Province) (7)
MAJOR THE HON. H. H. BRASSEY-EDWARDS (Deputy Director of
Animal Husbandry) (8)
HON. H. M. GARDNER (Conservator of Forests)
HON. E. B. HOSKING, O.B.E. (Commissioner of Mines) (9)
HON. S. H. LA FONTAINE, D.S.O., O.B.E., M.C. (Prov. Commissioner,
Central Province)
HON. S. H. FAZAN, C.B.E. (Prov. Commissioner, Nyanza Province)
HON. G. B. HEDDEN (Postmaster General) (10)
HON. T. D. WALLACE (Solicitor General) (Acting) (11)
HON. C. W. HAYES-SADLER (Deputy Colonial Secretary) (Acting) (12)

European Elected Members :

HON. F. A. BEMISTER	Mombasa
HON. CONWAY HARVEY	Nyanza
HON. A. C. HOBY	Uasin Gishu
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O.	Trans Nzoia
MAJOR THE HON. G. H. RIDDELL, M.V.O.	Kiambu
CAPT. THE HON. H. E. SCHWARTZ	Nairobi South
LT.-COL. THE HON. LORD FRANCIS SCOTT, D.S.O. ...	Rift Valley
MAJOR THE HON. SIR R. DE V. SHAW, Bt., M.C. ..	Ukamba
HON. E. H. WRIGHT	Aberdare
MAJOR THE HON. E. S. GROGAN, D.S.O.	Coast
LT.-COL. THE HON. W. K. TUCKER, C.B.E., T.D. (13) (Acting)	Nairobi North

Indian Elected Members :

HON. ISHER DASS
HON. N. S. MANGAT
HON. J. B. PANDYA
HON. SHAMSUD-DEEN
DR. THE HON. A. C. L. DE SOUSA

Arab Elected Member :

HON. SHEKIF ABDULLA BIN SALIM

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

Nominated Official Members :

Nominated Official Members Representing the Interests of the African Community :

VEN ARCHDEACON THE HON. G. BURNS, O.B.E.
DR. THE HON. C. J. WILSON, M.C.

Nominated Official Member Representing the Interests of the Arab Community :

HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

Clerk to the Legislative Council :

MR. R. W. BAKER-BRALL (Acting)

Reporter :

MR. A. H. EDWARDS

- (1) President of Council, 29th and 30th October; Acting Governor vice Brig.-Gen. Sir J. A. Byrne, G.C.M.G., K.B.E., C.B., on leave pending retirement, 22nd December.
- (2) Vice Mr. Wade.
- (3) President of Council from 4th November to 22nd December.
- (4) On leave from 10th June to 22nd November.
- (5) Vice Brig.-Gen. the Hon. Sir Godfrey D. Rhodes, O.B.E., D.S.O., absent from Colony from 7th December.
- (6) Vice Mr. H. L. Sikes, on leave pending retirement, 20th June.
- (7) On leave from 9th November, 1935 to 5th June, 1936, Mr. M. F. R. Vidal acting.
- (8) On leave from 16th April to 22nd November, Mr. R. Daubney acting.
- (9) Acting Commissioner for Local Government, Lands and Settlement vice Mr. Logan; Capt. E. St. O. Tisdall, M.C., Acting Commissioner of Mines.
- (10) Mr. O. P. Willoughby acting Postmaster General vice Mr. T. FitzGerald, C.M.G., on leave pending retirement 28th April to 11th June; from 7th to 14th November vice Mr. Hobden absent from Colony.
- (11) Vice Mr. T. D. H. Bruce, transferred to Gold Coast, 24th October.
- (12) Vice Mr. Pilling.
- (13) Vice Major F. W. Cayondish-Bentlinck, absent from Colony, 17th August.

ABSENTEES FROM LEGISLATIVE COUNCIL MEETINGS

29th October, 1936 :

THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

29th October, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

30th October, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

4th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

6th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

6th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

6th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

10th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

12th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. ELECTED MEMBER FOR THE COAST.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

13th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. ELECTED MEMBER FOR THE COAST.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

16th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT.
THE HON. ELECTED MEMBER FOR RIFT VALLEY.
THE HON. ELECTED MEMBER FOR TRANS NIGRA.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

17th November, 1936 :

HIS EXCELLENCY THE GOVERNOR.
THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENT.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

AGENTS FROM LEGISLATIVE COUNCIL
MEETINGS—(Contd.)

18th November, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT,
LANDS AND SETTLEMENTS.
CAPT. THE HON. E. T. O. ST. C. TRIDALL, M.C.
THE HON. ELECTED MEMBER FOR USUKI GISHU.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

19th November, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. B. H. LA FONTAINE, D.S.O., O.B.E., M.C.
CAPT. THE HON. E. G. ST. C. TRIDALL, M.C.
THE HON. ELECTED MEMBER FOR USUKI GISHU.
THE HON. ELECTED MEMBER FOR ABERDARE.
THE HON. ARAB ELECTED MEMBER.
VEN. ARCHDEACON THE HON. G. BURDS, O.B.E.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

14th December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR USUKI GISHU.
THE HON. ELECTED MEMBER FOR HIRT VALLEY.
THE HON. ELECTED MEMBER FOR UKAMBA.
THE HON. ELECTED MEMBER FOR THE COAST.
THE HON. J. B. PANDYA.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

15th December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

16th December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. ELECTED MEMBER FOR UKAMBA.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

16th December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. H. O. PILLING, C.M.G.
THE HON. ELECTED MEMBER FOR ABERDARE.
THE HON. ELECTED MEMBER FOR THE COAST.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

21st December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. H. O. PILLING, C.M.G.
THE HON. B. H. LA FONTAINE, D.S.O., O.B.E., M.C.
THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR HIRT VALLEY.
THE HON. ELECTED MEMBER FOR USUKI GISHU.
THE HON. ELECTED MEMBER FOR KIAMBA.
THE HON. ELECTED MEMBER FOR UKAMBA.
THE HON. ARAB ELECTED MEMBER.
DR. THE HON. C. J. WILSON, M.C.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

AGENTS FROM LEGISLATIVE COUNCIL
MEETINGS—(Contd.)

22nd December, 1936:

HIS EXCELLENCY THE GOVERNOR.
THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR USUKI GISHU.
THE HON. ELECTED MEMBER FOR THE COAST.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

29th December, 1936:

THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

30th December, 1936:

THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

31st December, 1936:

THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR NAIROBI NORTH.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

4th January, 1937:

THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR NAIROBI NORTH.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

5th January, 1937:

THE HON. G. H. C. BOULDERSON.
THE HON. ELECTED MEMBER FOR NAIROBI NORTH.
THE HON. ELECTED MEMBER FOR UKAMBA.
THE HON. ELECTED MEMBER FOR ABERDARE.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 18th November, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.) presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 17th November, 1936, were confirmed.

ORAL ANSWERS TO QUESTIONS.

FREEHOLDING OF TITLES.

No. 61.—CAPT. THE HON. H. E. SCHWARTZ asked :—

"Does Government intend at an early date to appoint a committee to consider and report on the question of the conversion from leasehold to freehold of titles in respect of land held in Townships and elsewhere in the Colony of Kenya?"

THE HON. THE COLONIAL SECRETARY: It is intended to appoint such a committee. At the present time, however, the Land Department is fully occupied with work in connection with the Land Commission Report and other duties, and it will not be possible for this committee to function until these duties have been completed and arrears of work overtaken.

THE HON. CONWAY HARVEY: May I ask, Sir, on that reply whether that work embraces a detailed investigation of the data necessary for the demarcation of the white highlands?

THE HON. THE COLONIAL SECRETARY: I am sorry that my hon. friend the Commissioner for Local Government, Lands and Settlement is not here or he would have been able to give a reply. I am not in a position to say exactly what the work consists of.

CAPT. THE HON. H. E. SCHWARTZ: I shall probably get the same answer in view of the hon. member's absence: whether the work that is proposed does include an inquiry as to whether remissions of rents in special cases is justified in other areas such as the Plateau?

THE HON. THE COLONIAL SECRETARY: I am sorry, I have not the necessary information with me at the present time to give an answer.

MOTIONS.

SCHEDULES OF ADDITIONAL PROVISION.

THE HON. THE COLONIAL SECRETARY: Sir, I beg to move the motion which stands in my name:—

"That the Reports of the Standing Finance Committee on the Schedules of Additional Provision Nos. 4 and 5 of 1935 and Nos. 1 and 2 of 1936, be adopted."

These Reports were laid on the table of the Legislative Council on the 30th October.

The items in these Schedules have been considered one by one by the Committee, which has recommended for the approval of this Council such expenditure as has not already received its specific sanction.

THE HON. THE TREASURER seconded.

The question was put and carried.

ESTIMATES, K.U.R. & H., FOR 1937.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Mr. President, I beg to move the motion standing in my name:—

"That the Estimates of Revenue and Expenditure of the Kenya and Uganda Railways and Harbours for 1937 be approved."

The introduction, Sir, of the First Supplementary Estimates for 1936, as I pointed out at the time, should be of considerable assistance to hon. members in considering the budget for 1937. In accordance with the usual practice, the budget has been drafted by comparison with the original Estimates for 1936, and it will be seen from an examination of the figures enclosed in these Estimates that there are very considerable differences between the original Estimates for 1936 and the future Estimates for 1937. I think, therefore, that the revised Estimates for 1936 will be of considerable help and will explain to some extent why these differences are so great. I will therefore during my speech refer occasionally to the revised Estimates in amplification of the information contained in the Estimates as printed.

We have heard a good deal during the last debate of the rising tide of prosperity. In the Railway finances that rising tide has been evident since the middle of 1932. From that date our financial position and the traffic we have had to deal with has steadily improved and the years 1933, 1934, 1935 and 1936 have shown an ever increasing improvement in the traffic moved and, consequently, in revenue, and I have every reason

to think that 1937 will show a continuation of that improvement and, as hon. members will see, we have budgeted rather optimistically for 1937 in consequence. That is five years of improvement, and we do not see the end at present but it is, of course, obvious that we must take every care not to be caught out when the top of the tide takes place and when some turn in the opposite direction occurs. However, I think it is clear from the figures, particularly the figures which are given in the revised Estimates for 1936, that our financial position is now very sound indeed, and we are therefore able to budget much more closely than we have thought it wise to do in the past.

If I may ask hon. members to turn to the first page of the memorandum accompanying these Estimates, they will find at the bottom of that page under the heading Revenue that the estimate for next year amounts to £3,474,565. That is a very big increase over the original estimate for 1936, but is a decrease of approximately £75,000 on the revised Estimates for 1936. The reason for that, Sir, is of course the fact that we have made due allowance for certain rates reductions which we hope to bring in at the beginning of next year. I would like to point out in connection with this estimate that I do not consider it is as conservative as our estimates have been in the past. I have explained why we are able to budget with less conservatism than has been our usual practice, but I would like to make it quite clear to hon. members that the figures that we have adopted may be affected to the extent of £100,000 or even £150,000 if we get a fortnight's bad weather next month. That may very much interfere with the cotton crop in Uganda and would seriously affect our estimate of revenues. If that is borne in mind no harm is done in estimating as closely as we possibly can based on the information regarding prospects at present available to us.

Over the page we refer to the ordinary working expenditure and there is a considerable increase over our original Estimates for 1936. If we are to have extra traffic and extra revenue we must, of course, allow for the extra traffic that we have to move and the extra cost of moving that traffic, because the effect of rates reduction does not appear on the expenditure side. The net result is an increase in our working expenditure, even over our revised Estimates, of some £50,000. Practically the whole of that is due to increased traffic but not, of course, entirely, and the other reasons for the increase have been explained fairly fully in the memorandum attached to the Estimates.

I would only refer now, Sir, to one point in connection with expenditure, and I would ask hon. members to turn to page 49 of the Estimates. Under the heading IX, Publicity,

Sub-head (A) (2), we see a new item called "Special East African Exhibit", and a sum of £250 is shown against that item. I want to explain that item because it is of interest to hon. members.

At the close of the Johannesburg Exhibition in January next we shall have available a quantity of films and other publicity and tourist matter, and we propose to send that home to the London Office where it will be made available for use there. The cinematograph also will be transferred to London. The cost of providing extra office accommodation in London, and the transfer of the publicity matter itself, we estimate will take up this £250 shown in the Estimates. That is the only particular item that I want to draw attention to now, but I want to say that, of course, our expenditure Estimates have been prepared with the usual strict regard for economy that we have followed in past years.

On the next page of the Memorandum, page 5, we come to the Harbour Services, and there we see we are budgeting for a revenue for next year of £494,000, again a considerable increase on the original Estimates for 1936 but a decrease of £14,000 only on the revised Estimates. The Harbour revenue has been based on the same data that we have adopted for the Railway, and the same figures as regards produce and development of the country have been taken into consideration. Over the page, on the expenditure side, we find that the expenditure for next year is practically the same as the revised expenditure for 1936.

I would now ask you to turn to page 9 of the Estimates, to the table at the bottom of the page entitled "Railways—Net Revenue Account": On the left hand side of that table, I need not say anything in regard to Loan Interest Charges and Loan Redemption Charges because they follow the usual practice, but the next item, Write-Off of Dead Assets £17,500, is an item which has been appearing lately in our Estimates. During the past few years we have taken every opportunity to write out of our account dead assets, assets that are no longer required. Each year we think we have come to the end of that programme, but again we find it necessary to put in a sum to cover what we anticipate will be written off during 1937. The same remarks apply to the Write-Down of Stores Stocks and the Demolition and Transfer of Assets.

The next item, Sir, is new, Widows and Orphans Pension Scheme Reserve. It has been felt for some time that it is quite wrong to put contributions to the Widows and Orphans Pension Scheme into general revenue, and we have now succeeded in obtaining the consent of the Secretary of State to our putting these contributions in future into a small reserve

fund instead of taking them into general revenue, pending a reconsideration of the whole question by the Secretary of State. This is, of course, a matter which concerns other colonies as well, so that he does not wish to be committed by this agreement to what may be decided upon in connection with the Widows and Orphans Scheme generally. But I think hon. members will agree that this is a step forward so far as we are concerned.

The last item shows the balance that is available for transfer to the Net Revenue Appropriation Account. At the bottom of page 10 the Harbours Net Revenue Account is shown, and the only comment that I wish to make in that connection now, Sir, is that for the first time we are budgetting for a surplus on the Harbour. In 1935 there was in fact an actual surplus, and in 1936 we anticipated a surplus, but this is the first time that we have actually been able to put it into our annual budget. I think hon. members will be glad to know that, because it does indicate that the Harbour position is now satisfactory.

While discussing the Harbours, Sir, I would like to explain that the shore-handling contract expires at the end of June next year, and steps have been taken to call for fresh tenders. These are now being considered; and it is hoped that as a result of the calling for fresh tenders we will be able next year to indicate savings on working expenses which I hope in due course can be passed on by a reduction in Harbour dues and charges.

There are two other matters, Sir, of interest at the Port. One is, as I mentioned to this Council the other day when introducing the motion with regard to the transfer and re-allocation of certain loan funds, the proposed purchase of the Magadi Boda Company's property at Shimani. It is hoped that that purchase will be completed before the end of the year and that we will be able to make use of that property during the coming year. That will be a very valuable addition, I hope, to our facilities there, which we anticipate will be considerably strained during the first six months of the year. That also points to the need for considering generally the increased facilities at the Port and we have now in hand an examination of the possible need to extend the deep water quays. That question is, of course, only in its initial stages of investigation and I am unable to say at the moment what the result of our enquiries will lead us to. If we find that it is advisable to consider an extension, then the necessary steps will be taken, but it is very satisfactory to know that the heavy expenditure we incurred at the Port some years ago is now being fully used and that we are in fact beginning to consider whether we will not have to extend them still further.

I will now ask hon. members to turn to page 8 of the Estimates in front of them, where we find a table called "Combined Net Revenue Appropriation Account". This table shows how we propose to allocate the funds that we anticipate will be available at the end of next year.

The first item on the left-hand side, Reserve for Depreciation of Investments, is one that has now been appearing for one or two years and therefore calls for no further comment. The last item, Pensions Reserve Account, is a new item, and I would like to explain why that is there. Up to the present time, as hon. members are aware, most of our pension liabilities are carried by the two Governments, owing to the fact that they concern officers who were in the employment of the Governments before the Railway finances were separated in 1921. But the time will come, of course, when the Railway finances will have to bear a much bigger proportion of our pension costs, and we have calculated that an average figure of £30,000 per annum would cover our pension liabilities. We therefore recommend putting into a pension reserve account the difference between our actual payments, which I think I will show you is about £14,000—on page 82, Appendix IV, at the right-hand bottom corner we find the figure £18,606, approximately £14,000, is our present annual commitment as regards pensions—and the average sum of £30,000, and that finds us the figure of £16,000 shown in this Appropriation Account.

The other two items are Betterment Fund Railways and Betterment Fund Harbours.

As regards the Harbours the amount transferred to the Betterment Fund is exactly the amount of the surplus which we anticipate. The amount shown under the heading Railways, again I would like to explain that this contribution is the first contribution we have shown in our budget since 1929. As hon. members are aware, during the crisis the Betterment Fund has been allowed practically to disappear and expenditure from that fund has been reduced to an absolute minimum. In the revised Estimates for 1936, owing to the fact that we have a greater surplus than we anticipated in that year, a sum has been allocated to the Betterment Fund, and that with this budgetted amount now will resuscitate that fund. We cannot go on indefinitely without a Betterment Fund and hope to keep the services up-to-date, therefore I hope very much indeed that the anticipated amount will be available at the end of next year.

One other important point will be noticed, we have made in the appropriation account no allocation at all to the general

reserve. Our reasons for that I will deal with very fully later on, but I will simply say at the present time that we are making no contribution to the general reserve because we feel our reserve is now big enough to meet our present requirements.

I would like to say a word about the Renewal Fund. If hon. members will turn again to the table on page 9 they will see there a renewals contribution in the Railways Revenue Account of £351,951. That contribution has been based again on 2½ per cent of our wasting assets as far as the Railway assets are concerned, and on the usual life basis so far as the Harbours, Motors and Marine assets are concerned. The expenditure under the Renewals head I will refer to again later, but I would like to mention the fact that at the end of 1935 a very important departmental report on the whole renewals position became available which has been of very great assistance to the Administration and to the Advisory Councils in considering this question. A copy of the Report has been sent home to the Secretary of State pointing out that the Report supports our contention that we have frequently pressed that our renewals contribution could safely be reduced to 3 per cent until 1946, when, of course, it would have to go back to its proper level.

May we now turn to page 78 where a very important and interesting table is published, Appendix I, a Statement showing the approximate position of the Renewals and Betterment Funds and Capital and Reserve Accounts. The first column shows the renewal fund for the Railway. I have already mentioned the contribution, and if hon. members will look a little lower down in that column they will see that the withdrawals during 1937 will exceed the contributions for that year. That illustrates, I think, quite clearly the object of this renewals fund, which is an equalization fund, and of course the contribution will be reasonably regular, but expenditure may fluctuate as requirements necessitate. In this coming year we shall therefore spend more than we are actually putting into the fund in the year.

The next column shows the position as regards the Betterment Fund. The balance with the contribution for 1937 will be £447,776. A very small expenditure against that fund is actually shown, but it is quite probable that when we come to consider the particular works in more detail some of the allocations at present shown against the next item, Capital Account, will have to be transferred to Betterment Fund expenditure. As I have explained, however, it is essential that we should make provision for ample betterment expenditure in future if we are to keep the services up-to-date.

The next item, Capital Account, is made up of two sums, one the balances from loans, which I think at the present time amount to approximately £94,000 only, and the other, Miscellaneous Capital Credits, amounting to about £361,000. This is made up by credits to this head on account of assets that have disappeared or written off but which have not been replaced. If an asset is replaced, of course, the expenditure comes directly out of the Renewal Fund, but where an asset need not be replaced the money is put into this head where it is available for future use when required. We have been very fortunate indeed, Sir, in being able to write off a large number of assets in this way to keep this head in funds from which we have been able to carry out certain necessary expenditure from time to time which would not otherwise have been possible in the absence of the Betterment Fund. This form of contribution will, however, decrease in future years, and that is another reason why it is essential that the Betterment Fund should take its place.

I do not think I need say anything particular with regard to the same heads under Harbours because my remarks apply, but to a lesser extent; but we may turn to the next series of four columns headed Reserve Accounts, and there you will see some rather interesting figures.

The first column, Depreciation of Investments, calls for no comment. It is now a routine matter and the position is quite clear. The next item I have already dealt with, contributions to Widows and Orphans Pension Scheme, but I would like to explain how the figure of £48,000 is arrived at. That represents the contributions to this scheme since it was inaugurated in 1927 and since those contributions were taken into our Net Revenue Account. By taking it out of our net revenue and putting it back into this position we have now got the pensions scheme in proper order. The next item, Pensions, I have already dealt with. The £16,000 which we show there is the £16,000 which I have explained is the difference between the £14,000, our actual commitments on account of pensions for this year, and the £30,000 which we consider should be our average commitment over a period of years. That, of course, is based on present staff requirements and may have to be modified in later years if our staff grows in numbers. The final column in that table shows the General Reserve; there is provision for £390,470 and, as I have already explained, there is to be no contribution to that fund in 1937.

The general reserve is a matter which seems to excite public opinion perhaps more than any other of our accounts. I think this is chiefly due to a misunderstanding of the position which seems to persist in the minds of the Council. I did

make quite a long explanation of our position with regard to the General Reserve last year, and as I am very anxious indeed that this situation should be fully appreciated, not only in this Council but outside, I think it would be as well perhaps if I repeat very briefly the substance of what I said last year. During the depression we had no reserve at all, and as a result we had to do a number of unpleasant things, particularly in the direction of raising the rates and tightening up our revenue collection and so on, which we would very much have liked to have postponed to more prosperous times but, in the absence of any reserve, every possible step had to be taken at that time to safeguard our revenue.

That meant that everybody at that time appreciated the need for a general reserve, and everybody was in favour of re-establishing that reserve at the first possible opportunity. In 1933, after a good deal of examination, a reserve policy was finally agreed to by the Railway Advisory Council, the Harbour Advisory Board, by both Governments to whom it was referred, and by the High Commissioner, and finally by the Secretary of State, and everybody was in full agreement with that reserve policy at that time. We have done nothing since that date but to follow out faithfully the policy then laid down.

It was agreed that contributions to this reserve would be found only from additional and unexpected traffic outside the budget allowances. Owing to the fact that we have had a number of exceptionally favourable years, when traffic has improved by leaps and bounds in a way that we did not expect, we have in fact been able to accumulate our reserve a year or two earlier than we anticipated, and that without creating any hardship at all in any direction, owing, as I have explained, to the fact that we have got our money entirely out of new and additional traffic which we did not anticipate.

That means that we have now established our reserve in a very satisfactory way, and we are able to take full advantage of that position to-day. The reserve itself, just under £600,000, would be considered small by most other railways of our size but, in our circumstances here, I believe that it is entirely adequate at the present time.

An examination of our accounts, as I have explained, shows that the position is now extremely satisfactory and that, of course, is a source of great satisfaction not only to me but, I am sure, to the High Commissioner and, I am sure also, to the public who are going to reap the benefit of that position. We are not going to use this position purely for the benefit of posterity: we are now in a position to allow the present generation, the present users of our service, to reap the advantage of that financial position.

That brings me to the question of rates reductions, the way in which we pass on to our customers and the public of the two territories the benefit we are able to give them by our improved financial position.

This question has been receiving the most careful consideration by the Railway Advisory Council, and by the Railway Administration, and I am able to state to-day that, as a result, it has been agreed that we could now devote a sum of no less than £200,000 towards rates reductions. That is a very substantial figure. Of that total, I would explain, £175,000 to £200,000 has already been given away by the return to the public of reductions on petrol rates which we introduced on the 1st August last. That leaves a sum of approximately £150,000 which will be available for rates reductions which we hope to introduce at the beginning of January next. The exact form those reductions will take has not yet been decided, but it will be definitely fixed after the next meeting of the Railway Advisory Council which takes place at the end of the present month. I therefore hope to be able to make a statement giving the details of how these reductions will be allocated early in December.

At the present time I think I may say that a very important proportion of the total will be devoted towards reductions in passenger fares, a very important proportion to a reduction of Classes 1 and 2 rates, and a proportion to primary products which require further assistance at the present time. Beyond that I cannot give any further information just now, but I think that to that extent this Council will be glad to know what the probable position will be at the end of the year.

I would like to make it clear just how we fixed the sum that we can safely set to rates reductions. The budget for next year has no real connection with the matter, although it has a general bearing on the problem, but of course we cannot always give back the full amount of surplus revenue that we may anticipate in any one year. We would find if we did that, that during certain years we would be in difficulties. What we try to do is to estimate what our average revenue, or constant revenue, or whatever you like to call it, will be each year. In doing that we take into consideration the development that has taken place in the two territories, permanent development that we can rely on, and to that extent we are able to give reduced rates which will maintain our net revenue at a constant point.

We feel that this year, in allocating the sum of £200,000 after the very substantial sums that were allotted last year, we are being reasonably generous, while we feel that we are taking full advantage of our satisfactory financial position by

giving rate reductions amounting to that particular sum of money. We hope that, as a result of the reductions which we will introduce on the 1st January next, there will result some further increases in traffic. In fact, if we do not have that increase in traffic, we may find ourselves in some difficulty next year. But in certain particular directions these reductions should be a very special help. For example, our Belgian Congo traffic has been increasing quite satisfactorily in past years, but I believe these reductions, especially on the high-rated commodities, will help that traffic very much indeed and, I hope too, our local movements in the two territories will be benefited very much by these rate reductions.

I explained last year, in reply to a question from one hon. member, that we hoped that this process of reducing rates would be an annual one. I still continue to hope so, but we cannot anticipate making such substantial reductions as last year and the present year. It depends entirely on how traffic develops in the two territories, but in new countries such as these we never know in what directions traffic and industry may develop.

In deciding the particular form in which rates reductions should take effect, we have had to bear in mind the difficulties we experience from the fact that we possess what I have called in previous years an unbalanced tariff. By that I mean we, as all hon. members know, give very low rates indeed for export produce and other primary produce in order to stimulate agriculture and industry and, in return, we have very high rates on our imports. We must get our revenue back in that particular way, and I think results have shown that this policy has worked extraordinarily well. We do, in fact, by these concessions give more to agriculture and industry than is done in almost any other country that I know of, but results have proved the wisdom of the policy.

But an unbalanced tariff of that sort does land us in certain difficulties. The importer who has no interest in export produce complains that our import rates are exceedingly high, and considered by themselves they are very high, and he does not perhaps appreciate the advantage of having such high rates in order to give very low rates to export produce. Another difficulty, of course, is that we are vulnerable to competition from other forms of transport. That is a question we have frequently debated in this Council, and certain hon. members have said we ought to look after ourselves, that if other transport carry produce at lower rates than we can quote we ought to reduce our rates. I quite agree, and that is the reason why when we have money available now we turn to these higher rates and hope to reduce the differences to much more manageable proportions.

The question of competitive transport, as you know, has been investigated by all three territories during the past year or two, and very useful representations have been submitted as a result of those investigations. In addition, this year we asked Sir Oswald Mance to come out to these territories and go into the whole question. His report will be awaited with great interest, but I am sure that one thing he will tell us will be that we must take every opportunity to reduce our high rates. He will find, I am sure, that he will be unable to suggest any reasonable way in which we can control this competitive transport, unless we can get our very high rates down. Therefore, that is why we are giving the fullest possible attention to that aspect of the matter in considering our rates reductions next year.

I think I have dealt with the Estimates before Council in sufficient detail to enable hon. members to appreciate the position, but I have said nothing at all, Sir, about our real job which, as hon. members know, is to move traffic. I feel I can leave that question entirely alone, because I believe the service we are running at the present time is giving complete and adequate satisfaction. But if there are any points upon which hon. members on the other side of Council would like further information, I will be very glad indeed to give it in reply to this debate.

All I will say at the present moment is that our operating results are excellent. They are improving each year, and we are leaving no stone unturned to make them still better. It is true, as was pointed out by one member last year, that our expenditure is going up each year. Well, with a growing service that is inevitable, our expenditure must go up, but if you judge us by our unit cost figures—which are very fully explained in my Annual Reports—you will, I think, see that our unit costs are improving each year, and I think that is where our safeguards lie. If we can give a service at a lower unit cost each year, I think we are doing all we can to assist these two territories.

I think, Sir, that is all I need say at the present time.

THE HON. THE TREASURER seconded.

Council adjourned for the usual interval.

On resuming:

MAJOR THE HON. F. S. GHOHAN: Sir, there has been a very interesting experience in the contrast of the figures presented to us to-day and the figures presented to us during the last ten days. There has been a very striking contrast in the method of their presentation, because whereas my hon.

and gallant friend the mover of this motion invariably, or generally, succeeds in obfuscating everybody except himself, my hon. friend the Treasurer only succeeded in obfuscating nobody except himself and, apparently, in certain respects, the Hon. the Colonial Secretary.

It is an outstanding paradox—this is a world of paradoxes to-day, and I suggest that this country out-paradoxaes all paradoxes, because anybody who read the paper this morning and studied the trend of things in the two contiguous and essentially identical countries, Uganda and Kenya, must have noticed the unbelievable contrast between the position of those two territories. Uganda, being a one-crop country, virtually speaking, has just introduced an obvious prosperity-recovery budget, with a tax reduction of £20,000 and preparations for capital development amounting to £1,600,000; whereas Kenya, a land of many crops, has just been considering a budget that can only be described as a budget of despair. It contains no development, it contains an increase in taxes and, to all intents and purposes, no development except the introduction of a couple of tax-gatherers. It has, too, provoked an immense amount of social strife.

What is the key to this paradox? If we turn to Appendix I, page 78, of the Estimates before us, I suggest that we shall find therein the key to this astonishing paradox, this contrast of the two countries which, in an economic sense, are absolutely one.

We find there that the total capital boodle that has been extracted from the long-suffering citizens of this country amounts to something in the vicinity of four million pounds; that is, over and above the sinking fund amounting to something in excess of a million. There may be, of course, little figures that ought to be extracted from it, but I do not propose to go into details because it is not necessary to analyse such a massive figure. But, substantially, an amount of something in the vicinity of five millions has been torn from the entrails of this country and deposited in one or other of the caches where the Railway hides its ill-gotten gains!

Under the inoffensive term of "Withdrawals (a nice little word that) 1937", there is a sum of no less than £783,000. If that sum of £783,000 which, quite properly, they are now extracting from its cache, if it had been included as it should have been in the surplus balance of the Colony, we would have had a very different picture to the one we have been dealing with quite lately.

That leads me to Paradox No. 2, the contrast between the general budget of Kenya and this departmental budget of the Kenya and Uganda Railways and Harbours which we are considering to-day. The amazing thing about it is there are two

parties identified with both of these documents, namely, the Hon. the Treasurer and the Hon. the Colonial Secretary. In respect of the general budget they appear in the capacity of two dismal ill-omened marabout storks hopping around the dismembered carcase of Kenya looking for odd little bits of gristle attached to the bones! The next day they appear in an entirely different capacity: cinnamonating like striped hyaenas in the entourage of the lion feasting on the fat of the Colony. (Laughter.)

What is the key to this paradox? We tried to extract it during the course of the debate—but so far entirely in vain. No explanation whatsoever has been given us—despite all appeals—by these two hon. gentlemen in such violently contrasting capacities.

Passing on a little further in examination of this contrast, I want just to draw attention to a few minor examples of the incredible absurdity of the present position.

In the expenditure side of the Colony, credited to the Railway Department, you find a number of small items, but two are quite substantial items. One, under the heading of Pensions, amounts to £14,000, which is debited to the Colony and credited to the Railway, in respect of a number of worthy citizens who took part in the building of the Railway as it is to-day. Why the Railway, entrusted with all the capital resources practically speaking of the country in respect of loan proceeds, should be able to dump on the Colony the maintenance of people primarily responsible for building up that railway, passes my understanding. The sum of £14,000 in respect of this dismembered carcase is quite an important sum, and it is interesting to note how skillful the Railway has been in passing the buck!

You will find among many minor items one for a sum of £884 payable annually to one McGregor Ross, that ardent scribe and grateful citizen of this country. (Laughter.) The Railway has arranged this allocation so successfully that of that total sum of £884 the Colony pays £669 and the Railway the sum of £14/13/4, which probably just about covers his stationery bill when he is venting his spleen on this territory!

Another matter equally absurd to my mind, is the so-called branch line guarantee, which gives us another figure of £21,000. To go on saying that it is essential for a man, the proprietor of a railway, to guarantee his own railway to the extent of £21,000 in respect of some of its tributaries, whereas he is in effect making profits on such a gigantic scale that in common decency they are disguised under a thousand different heads, is beyond words to express in terms of absurdity.

These two items amount to a total of £35,000, and it is quite obviously absurd that they should be classed as expenditure on the part of this Colony, whereas in fact they should be deducted from the profits being made by the Colony's railway.

If we compare that sum of £35,000 with the cause, the exciting cause, of all the acrid debate in the country during the last two or three months, you will find the sum of £17,000 in respect of the objectionable features of the non-native poll tax, the sum of £10,000 being the objectionable features in respect of the traders and professional licences, making a total of £27,000. That leaves a margin of quite a considerable amount, very nearly sufficient to enable my hon. Indian friends to shift the burden of their education tax upon the other sections of the community, making a total of £37,000. So that these two items alone, which are merely cross entries, would in fact, if recrossed back to their proper entries, have eliminated the whole cause of this debate on which we have been engaged for the last ten or twelve days. In fact, the whole budgetary wrangle would have vanished into thin air if these two items had been cut out.

I do not want to deal in detail with the major absurdity, members will be relieved to hear, but I would point to one or two additional absurdities.

The Hon. the Colonial Secretary in his reply yesterday, trying to gain a point on my colleague Mr. Pandya, during the hon. member's evasion of the main issue, referred to Mr. Pandya's suggestion about the need of a trunk road on the coast which, after all, seems a very reasonable need for a large area of the country at one time highly developed but now reduced to misery by lack of policy by this country. He tauntingly referred to this as likely to cost £100,000 as being one of the most fantastical conceptions of all time, whereas in his other capacity of Tweedledum instead of Tweedledee, he is busy spending £800,000 out of the accumulated hoards of the Railway. Nothing could be more absurd in the world than that this country cannot find some means of recovering some share of this gigantic boodle, whether it be by way of dividends, the ordinary business procedure of any firm, or whether by loan if it is necessary to appease the orthodox susceptibilities of gentlemen in the Colonial Office and elsewhere.

If that were done, and done on quite a minor scale, in fact, a very trivial proportion of this enormous amount of so-called withdrawals would be quite sufficient to convert this despair budget of ours into a recovery budget comparable with that of Uganda, our next-door neighbour. I suggest, Sir, that the proper policy of the Railway should be to accumulate

an adequate cash reserve; that, of course, is obviously essential—a reserve in the nature of an exchange equalisation fund at home, to iron out the fluctuations of revenue necessarily involved in the ebb and flow of the economic tide.

In addition to that there should be, of course, some middle term reserve which need not be convertible at short notice into cash, and this amount I submit should be distributed between the two proprietary Governments and used for constructive purposes, because it is no good having a railway whose main function is to tear out the entrails of the country so that the country will die while the Railway will prosper. It is essential if the country is to grow proportionately with and by the construction and elaboration of a railway system that very large sums of money should be taken from Railway reserves, either by actual dividends or loan, and used for such constructive purposes as roads, dams, boreholes, possibly the Land Bank, and so on. In fact, any sort of measure which would lead to a material increase in the production of the country and consequential progress of the Railway.

One small detail to show how ill-allocated some of these reliefs have been. While large sums are being now devoted to the relief of the consumers, you still have to pay gigantic sums to the Railway for moving such a useful tool as a boring plant. It is probably within your own knowledge, Sir, that the Public Works Department has lately been trying to sell a magnificent stable of boring plant, presumably in order to buy a new lot of typewriters! But one of the main reasons why they have been compelled to do that is that the charge for boring was so high, and especially the charges by the Railway, that very few people could possibly venture to use this magnificent stable of boring plants which was laid up in the P.W.D. yard. I had occasion to do so myself. I only had to dig through 40 feet of lava. I had originally sunk a concrete lined well, which was cheaper than boring by the time I had used the Railway, but unfortunately it got flooded out and I could not go on with the work and had to get a boring plant. The well had to go to 40 feet. The Railway charge alone cost me Sh. 25 a foot, or Sh. 10 above the contract price of an average completed borehole.

As to long term reserve, I submit it is adequately covered by the sinking fund, which most of us know is customary in London borrowings. I believe it to be monstrous to ask a child country, which is just beginning, to find out of its resources not only interest and maintenance of the Railway system, which will persist for all time, but within a relatively short time, a lifetime, to have to write it off to make a present of it to the next generation. The same thing is being done with the Harbours. It is a serious matter, and a

grievous handicap to the pioneer generation. I suggest that the sinking fund is a more than adequate reserve, and all the rest should be merely a suspension fund to be used for the development of the country and for maintenance, with a little equilibrating cash margin to iron out the differences between good and bad times so that it is not necessary when times are bad to pile up rates against the citizens.

I would put in one plea. I believe you can go too far in a reduction of actual charges. When the tide is flowing, a reduction in charges beyond a reasonable amount is to my mind a very dangerous policy, because it means to say that when times become bad you have got to put them up again. Therefore, it is very much better in respect of consumption goods to use this excess revenue coming in for the equilibrating purposes to which I have alluded. It is much more effective to reduce rates, to completely eliminate rates on such productive things as the movement of boring plant, the movement of manures, whether imported or internal, the distribution of manures such as cotton seeds. It is disastrous for this country to export thousands of tons of cotton seed, leaving a negligible margin of Sh. 5 a ton to the producer, to send it to Liverpool, instead of retaining it in the country, extracting the oil or using it as manure for coffee and other plantations throughout the country or converting it into cake to fill the bovine bellies.

Another little point I should like to draw my hon. friend's attention to is that in all this majestic display of wealth there is still procedure which is quite unbelievable: that of making any person who spends £100,000 on a plantation buy a siding to make contact with a railway. That seems to me to be the last word in inanity, but that is the practice to-day.

In conclusion, I trust if this inter-territorial inquiry which has been suggested is given effect to—and I have every reason to hope that it will be—that No. 1 on the agenda will be this Railway position. It is quite obviously a hopeless anachronism and an intolerable absurdity that there should be this immense drain of citizens' margins via the Railway into London securities with its deflationary effect upon the local monetary position. It is a stupendous farce crying to heaven for solution and somehow, by hook or by crook, these two countries must be combined into one unit or there must be some means whereby the control of the Railway and the finance of the Railway is recovered and re-incorporated in the general finance of the country. (Applause.)

THE HON. J. B. PANDIA : Mr. President, I think a VERY satisfactory position has been revealed by the hon. member in regard to the Railway finances, for from a deficit of £800,000 in 1931 we have now reached a surplus of £300,000 in 1936.

That is a very great improvement indeed. But the point the hon. mover made, and the hon. Member for the Coast also stressed it in regard to the test, is that the rising tide as far as the Railway is concerned commenced from 1932 onwards, whereas we were still, until last year, or even this year, in the middle of a depression.

The reason so far as I can see is not very far to seek, because as far as the Railway is concerned they do not take into consideration the value of the article, but their charge is based on tonnage. They do not bother very much whether it is going to pay anybody anything at all when that tonnage is transported after the amount of money which the Railway arbitrarily lays down as their share has been paid. I think that is the reason why the Railway has been prospering when we are all under a great depression. It is so in any business or industrial undertaking, that as the turn-over increases the costs go down and profits go up. And we are actually finding in this industrial undertaking, which is called the Railway, that our profits are every year going up, and the only time when we need fear they will go downwards is when the crops fail and when the imports dwindle down. As that is not likely to happen in the near future I think it is quite right that we should proceed with the policy of reduction in rates.

The hon. mover drew attention to the fact that the Railway were not increasing their general reserve during this year. At the same time I suppose he found it very creditable to add to the Betterment Fund a substantial amount. In relation to any business undertaking general reserves of various natures have only one effect, that is the stability of the undertaking, and whether you obtain it under general reserves or betterment funds, the effect is the same. The point I wish to make in this connection is this, that during these prosperous times the Railway is placing large amounts to various reserves, and to that extent the need for reduction in rates does not appear to have been realized. We all very much appreciate the continuous reductions which are being made in Railway rates but from my point of view they could be considerably more than what the hon. mover has suggested.

We have seen a very rosy picture of the material side of the Railway, the assets being in a perfect condition and so on, but I was surprised to see that the hon. mover did not give a picture of the human side of the assets in running that Railway. I should like to ask whether the human side, as we call it, those who run the Railway, are they in any way benefited by this improvement in the financial position of this undertaking? As far as I know the large staff employed by the Railway, I mean the Asian staff, do not appear to have benefited in regard to better conditions of wages, or in other ways,

and in fact there are instances where they have not only not shared in the prosperity of the undertaking but in many directions have gone backwards. I do not wish to take up the time of the House by going into the details of that question, but I hope the human side of the assets which make it possible to run the Railway satisfactorily and prosperously, will be more sympathetically considered.

With regard to the question of rates reduction, I entirely agree with the hon. mover when he said that in view of the fact that we have unbalanced rates, namely high rates for imports and very low rates for exports, there is great need for a reduction in the import rates. In the Railway Report for 1935 the cost per public ton mile was 10.717 cents, whereas the figure for certain export commodities like maize and cotton seed was 2.03 cents per ton mile, with special subsidies given to maize it worked out to 1.35 cents per ton mile. That shows that as far as exports are concerned we charge 20 per cent of the actual cost. In my opinion therefore we have reached a sufficiently low level in regard to export rates, and it is very necessary that the internal rates, which we call local rates, as well as the import rates, should be further reduced.

There is a small item to which I should like to draw the attention of the hon. the General Manager, it is very small indeed, but it shows there may be very many items of that nature which require a good deal of attention. The item to which I wish to refer is the local rate on jogree, which is produced by the Indian farmers at Kiboo. The rate on jogree to Mombasa is Sh. 4/33 per 100 lb., and to Nairobi Sh. 3/25 per 100 lb., whereas the price of the jogree at Kisumu is only Sh. 2/25 per 100 lb. That shows if you happen to transport that commodity to the Coast one has to pay roughly 200 per cent of the cost of that commodity. There may be very many items of this nature which bear very heavily on the cost of living of the people of this country, and I think that when the Railway has reached this stage of prosperity it is only right and fair that rates on items like this should be reduced.

There is another point I wish to make with regard to the passenger rates. We see in these Estimates that £37,800 has been provided for reduction in these rates, and I am very glad indeed this opportunity has been taken to reduce them. I hope they will be substantially reduced. In comparison to other Railways our passenger rates are much higher. It has always been argued that the passenger traffic is not a paying proposition and therefore one cannot reduce it to a very low figure. But the whole system of the Railway in this country is based on the goods traffic, and the people are paying very high goods rates, and it is therefore only natural they should expect some sort of reduction in passenger rates.

In this connection I have recently seen the decision of the Railway Advisory Council to the effect that they do not propose to introduce an intermediate class which we have all been expecting for many years, and instead it is proposed that the third class accommodation should be improved. I should like to point out that we did not advocate large coaches being transformed into an intermediate class but what we did advocate was that part of such coaches should certainly be transformed into intermediate accommodation, and from the Indian point of view I should like to press the very great necessity of such accommodation so that people who cannot afford to travel second class can get better accommodation than third. I hope this will be taken into consideration again by the Railway Council. After all, the facilities of the passengers as well should receive some sympathetic consideration and the Railway view-point should not necessarily predominate in these matters.

Before I conclude I should like to draw the attention of the hon. mover to one point, and I have stressed it in this House before, the necessity of increasing the local leave of the Asian staff from ten to eighteen days. I shall continue to agitate for it until the hon. mover grants it. I think it has been recognized by everybody that local leave does give the staff an opportunity for change and increases their efficiency. This question has been under consideration for the last two years, and I hope an early decision will be reached and that in view of the fact that the Railway finances are very satisfactory a small increase in relief staff required for this purpose would be made.

VEN. ARCHDEACON THE HON. G. BURNS: Mr. President, I have just one point to make, Sir, and that is to back up what the hon. Member Mr. Pandya has said with regard to the necessity for intermediate accommodation on the Railway. To be told that the third class is going to be so improved that it will meet the ever-growing needs of the community that travel by that class, to my mind is not sufficient. There are people now who would like to travel other than in the third class accommodation provided, especially on long journeys as second class fare. Therefore I do think, seeing the third class passengers play a very large part indeed in helping the Railway and in the prosperity of the Railway, that not only from the Indian point of view, but also from the African point of view, this intermediate service should be given serious thought. We have had some of our people coming up from the Coast, ordained men who are educated men, and they have had to travel and to suffer some indignity because of the lack of accommodation an intermediate class would afford and they would gladly avail themselves of such a class if it were brought into being.

I do hope the hon. General Manager will try and induce the Railway Advisory Council to reconsider this point and bring in this much needed reform on his Railway system.

DR. THE HON. A. C. L. DE SOUSA: Mr. President, on a similar occasion last year I said, in fact I prefaced my speech, with these words:

"We all know that the presentation of this budget to this Council is a sort of mockery. We have no authority, no power, to alter one line or one word, in this budget, and that is why all I have to say is only in the form of an appeal."

That holds good to-day as it did last year, and has for all these years, and I am in agreement with the hon. and gallant Member for the Coast when he suggested at the end of his oratorical flight this morning that the Railway finance should be brought under Government.

Before going into certain questions which I dealt with last year, for many of them have not been attended to, to start with I will refer to subjects which the hon. the General Manager referred to. In Abstract H there is an item "V.—Pensions, Gratuities and Compensation, £17,900." That item provides for the liabilities of the Railway in this connection for next year, and we are told, on page 8, under the Appropriation Account, that a further sum of £16,000 has been set aside for Pensions Reserve Account. I submit it is quite unfair that the present generation should go on paying for liabilities which will occur in future from year to year and which should be charged to future generations. I suggest that if the hon. the General Manager has enough surplus funds for this allocation it would be proper for him to add this amount of £16,000 to his proposed £1,600,000 Reserve Fund.

Under the item Stores Stocks there is a write-off of £3,000. We have already written off £6,692 by Supplementary Estimates, in addition to £1,000 provided in the 1936 Estimates, making a total of £7,692. In my opinion this represents stocks bought and provided for through over-estimation of actual requirements. I should very much like the hon. the General Manager to say that this is not so.

Then again, there is an item in Abstract H, XI, Loss of Stores, £150. We do not know what this actual loss represents. I believe this should have properly been put under Net Revenue Account. So, too, should an indication have been given as to the losses incurred by the Railway on such things as coal, fuel, etc. Again all these should properly have been included in the Net Revenue Account.

In the same Abstract there is an item for £500, investigations in connection with standardization of Railways in Africa.

I should very much like to know in this connection whether the Railway receives any grant from the Colonial Development Fund and why, if a grant of this kind has been received, it does not appear in the present budget.

In the same Abstract there is an item XIII—Grants to Railway Clubs and Institutes, £250. This amount, I submit, is not properly included in this expenditure as we all know there is a Pines Fund, the purpose of which is to provide for such activities as clubs and other social amenities of the staff. This amount should properly have been met from the Pines Fund and this £250 allotted to other social amenities for the staff, or improvement of leave conditions.

On the expenditure side, I regret very much to see that there has been in recent years a tendency to increase salaries, especially of the highly paid staff of the Railway. Within one or two years we have had an increase in the salary of the Chief Mechanical Engineer from £1,350 to £1,500; again, in the case of the Assistant Superintendent of the Line from £1,200 to £1,350; of District Engineers (I suppose all of them) from £920 to £1,000; and of European clerks from £540 to £600; and then for the year with which we are dealing it is proposed that the Works Superintendent's salary should be increased from £920 to £950 to £1,150, and the Stores Superintendent's salary from £1,000 to £1,100. I think if the finances of the Railway permit of an increase in salaries, that increase should be given to such members of the staff as have been for years drawing very low wages, and I suggest that any amount that is given in the way of increments should first be given to the Asian staff.

The hon. Member Mr. Pandya referred to the human touch in connection with the staff, but I do not believe in the human touch. It is not until you put your finger on the sore that things improve, especially for the class of people for whom I have been pleading these last two years; this is the third year. You know, and everybody knows, that when the Railway in 1931 faced a deficit, the very cruel process of retrenchment was adopted, and the Asian staff especially, of whom I am talking, were retrenched in large numbers; they are just beginning to be re-engaged. Those people who worked two or three years ago on high salaries and were retrenched have been re-engaged on half and on one-third of their previous salaries. I suggest that if there is any surplus available from the working of the Railway, it should properly be given back to the people who have served the Railway but were thrown out of employment, and have just been re-engaged.

Again, this question of increments is very pertinent in its application to foremen. We have a department where European artisans have been promoted to foremen. I do not mind

the increased status for these people if it does not imply an increase of salary. There are eight first-class artisans promoted to foremen, making a total of twenty-two, while there are in addition four senior foremen. All these men get increased salaries. It has been suggested that the work in the workshops particularly has been so simplified that it does not need more staff, in spite of the greater amount of work undertaken, than it did five years ago, and yet the number of these foremen is increasing very rapidly indeed.

I will come back later to my old subject, the Asian staff.

It would be very gratifying to members on this side of the House who represent the Indian community not to have to refer to these matters so frequently and, in the case of the Railway, I do not think we should be called on to speak so often and sometimes at great length, if we had a member on the Railway Advisory Council. We have always been willing to meet the feelings of some other members of this House who always misunderstand us, but I do ask that they will take this as a defence of the people undertaken under very great compulsion. We have no other means of ventilating our grievances, and it is for no particular reason as suggested in this House that we raise these issues in and out of season.

Concerning this question of Indian representation on the Railway Advisory Council, if I am not mistaken the hon. the General Manager last year, or perhaps the previous year, mentioned two reasons why it was not possible for an Indian member to be appointed. One was that that Council does not represent particular interests. Secondly, that only the best men were chosen as members of the Council. The suggestion, of course, was that the Railway Council as it is constituted to-day looked very impartially after the interests of everybody and not of any particular community or race and, secondly, that the Indian community could not produce a man who would be a suitable person to advise the Governor on Railway matters.

I beg to differ from the first point of view, that the Railway Council does not represent any particular interest. I am speaking now because of the fact that these views cannot be put forward on the Council by an Indian member. I clearly enunciated my theory last year in the budget session when, speaking to His Excellency, who was in the Chair at the time, I said:

"... there ought to be some well defined policy whereby a certain percentage of these posts should be allotted to Asians or that a certain percentage of the expenditure on these services be reflected in the salaries of Asian officials."

I say that we have a definite interest in the services of the country in every possible direction. As far as the Railway itself is concerned we have got large interests, because you see that the Railway makes a huge profit on the transport of cotton and, as you know, the buying and the exporting agencies of Uganda cotton are mainly Indian, so that we have a definite interest in this Railway. We have another interest, for the Indians are the greatest importing factor in this country, and also in connection with internal distribution. I do not, therefore, agree with the view put forward that we have no particular interest in the Railway, and if only for that reason I say that Indian representation on the Railway Council is necessary.

The second reason was that the best men available are obtained for the Railway Council. I submit it is not impossible to obtain one single Indian either here or in Uganda to represent the Indian interests of both countries on the Council. If His Excellency can have Mr. Pandya on his Executive Council, on the Standing Finance Committee and several other important committees, there is no reason why an Indian cannot be found to be a member of the Railway Council. I suggest to the hon. the General Manager that if he submits my name for the Railway Council, he will not find me an obstacle but, on the contrary, will find me of the greatest assistance. (Laughter.)

There are other matters with which I shall deal lengthily. One is the question of leave, which I will divide into local, privilege, and medical. The hon. Member Mr. Pandya referred to the human side, but I put my finger on the sore, and I now understand from the hon. Member Mr. Isher Dass that the question of leave for Asians in the Railway has already met with the sympathetic consideration of the hon. the General Manager. It is a matter of great regret with us who have raised this question every year that an indication on the subject could not have been given us in the speech of the hon. the General Manager just now.

If I am right in my information, the proposal is that local leave should be raised to fourteen days, but the original claim was for eighteen days. The history of this leave has not been very properly put before the House for several years. Before the depression set in, a memorial was sent to the Secretary of State in June, 1930, and a reply came back when the depression had set in to the effect that the Secretary of State would not be able to consider the expansion of local leave because of the loss the Railway would sustain. That was in June of the next year—I will read the relative part of the despatch:

"The Secretary of State has reviewed your memorial but he does not consider that any alteration in general

conditions of service involving an appreciable extra expenditure such as that would be involved in the grant of extra leave privileges for which you ask can be contemplated at the present time. He is accordingly of the opinion that the question of the general revision of the Leave Rules for Asians in the Service of this Administration should be deferred until the financial position improves when it can be considered on its merits."

I submit that the financial position has improved to such an extent that it is time that this demand of the Railway Asian staff should be met fully and not partly.

In this connection, it will interest the House to know in what manner certain questions of fact of the Railway Asian staff are dealt with. About three or four years ago a question was asked in Parliament by a member about the local leave conditions, and the reply given by the Secretary of State was:

"The cost of the desired concession to the K. and U. Railway and Harbour Administration was estimated in 1931 at about £5,000 per annum. I should not feel justified in adding to the financial difficulties under which that Administration is at present working."

That was in 1931. This figure had no connection whatever with actual facts. The Railway Asian Union calculated what the extra cost would be, and came to the conclusion that it was only about £350, and conveyed that estimate to the General Manager. That figure has not been challenged. This throws some light on the manner in which official representation is made to the Home Government: an actual sum has been worked out in detail of only £350. This is amplified into £5,000 and the Secretary of State puts down a petition which has all the justice possible behind it. After all, this question of local leave does not come up automatically but only when exigencies of the service permit its being granted. Meanwhile, the European local leave was increased from fourteen to eighteen days.

In this connection, I do not know if the House is acquainted with the conditions under which the running staff work. This running staff, people like drivers and guards, are not supposed to have a single holiday in the whole of the year. This was brought to my notice recently when I endeavoured to take more interest in Railway matters than I have for several years.

This staff is not supposed even to have any holidays on Sundays, and if a member does take a Sunday off, or Christmas or any other religious holiday the day is deducted from his ten days local leave. I should be very much obliged if the hon. the General Manager could contradict me on this subject, for

if there is any section of the Asian staff which deserves some leave and a little extra consideration it is this section which has neither day nor night off and works under conditions of rain, cold and heat all over the country, a type of work which needs every consideration.

On the question of privilege leave, I will make a comparison with conditions in Government service. In Government service, after 48 months, the Asian clerical staff get 120 days, against 100 days for the Railway Asian non-clerical service after 60 months and 100 days for the clerical service after 48 months. These figures prove that there is no relation between leave conditions of Railway and Government Asian employees, and it is only right it should be improved, allowing 1 month for every 11 months as was formerly the practice.

The third question is that of medical leave. This is one of those strange pieces of Colonial administration which call for very severe condemnation. The question again refers to Asians on the Railway. I am told, and shall be very glad if I am contradicted, that when a member of the Asian staff is invalided it is utterly impossible for him to get a passage back to his own country. That does not obtain in the Government Service. If a man lives in India and is invalided there he may get no consideration whatever.

I was given an instance which occurred in 1933 when a European official, probably in the Accounts Department, was engaged in England and brought out here. He worked less than two months and had to be sent back to England. I understand that he was not only given his passage but had something like three months on full pay although he had done practically no work in the Colony. I submit that in fairness to the Asian staff the same liberal conditions should be given them.

Another question to which I have again to refer is that of the artisans. The hon. the General Manager last year, or in the previous year, said he could obtain a lot of this labour in Nairobi or in the local market and engaged them at local market value. I submit that since the times have improved and more money is available for him to spend, he might consider engaging these people on more permanent lines. The Railway is not necessarily the same as a petty contractor, and I described last year and to which I do not want to refer now. The Railway is a specialized branch of Government, the people of the country here got an interest in it, and ask for benefits from the Railway in different forms as a matter of right, and the Railway cannot consider itself properly as a contractor taking labour at competitive rates bringing men, some of whom

have lived here for several years, into living conditions which are disgraceful to any contractor of repute.

A further question I have raised, and I am going to raise it again, that of apprentices. That question has been dealt with very lightly by the General Manager, who says he gets enough labour in the market and will not train Indians in these particular jobs. I suggest to him that there is a rising generation of Indians who cannot be left where they are. They ought to be given opportunities not only to qualify themselves for artisan work but for higher posts in the Railway service. It is wrong to say that because he can get labour in town there is no obligation to these young Indians. That point I have raised in connection with the Medical and other departments; that these young Indians must be given an opportunity to assist themselves, and we demand it not as a favour but as a matter of right.

In this connection I am in the happy position of being able to inform the hon. the General Manager that the young man he referred to last year as being unfit for any work on the Railway has been engaged by a private firm; this was only two months after that statement was made, at a salary he would never have got after five years in the Railway. It shows what kind of care and patience officials take as far as the Asians are concerned.

This boy went from door to door in the Railway Administration, and letters were written to the officers; because when the Railway Administration ceases to take an interest in the sons of its old employees with thirty and forty years in the Service, they come to private people like us, and they have been able to be fixed up, despite the refusal by the Railway-

The other subject to which I referred last year, and which has been partly granted by the Railway Administration, has to do with the special concession rates for school children going to the coast on holiday. My request has been met to this extent, that the age of the children does not enter into it—every student can get half fare. But my point from the very beginning has been that when liberal concessions were given to children going to the coast on excursions brought about by subscriptions, by charities, no means were afforded for children to travel at the same rate if they went down with their parents who paid out of their pockets often when they could ill afford the charges.

In this connection I must regret the almost indifferent manner in which the Education Department dealt with this matter. They tried to put up a show, on wrong lines, at the request of members of the Advisory Council on Indian Education, but did not pursue it thoroughly. It is not my duty,

there are highly-paid officials who should have done it, but they did not.

Are you not putting a premium on charity if you collect monies in the streets of Nairobi to send children to the coast? Yet you do not give the same facilities to parents who cannot always afford to send their children. It is not fair, and I hope the matter will be looked into by the hon. the General Manager because it almost amounts to a scandal.

I am sorry to be told by the hon. Member Mr. Pandya that this question of intermediate accommodation on the Railway is not being met. I also hear that so far no special compartments are set aside for women in the third class. I do not know whether it is correct, but it has been asked for a long time by the representatives of the Africans, and it is only fair that women, of whatever race they are, should be segregated from the men, especially in the third class compartments.

Lastly, I have been asked to draw the attention of the General Manager to the question of tenders. I understand that very large firms who have got monopolies in such things secure these tenders and oust the small man, but what in actual practice occurs is this. The big firms, when they get these tenders, go to the smaller man whose tender has been refused and buy from him at a lower rate. This is a question which should be gone into seriously, because there is a lot of discontent, especially in the Indian community, at the preference given to these big people. I hope I am wrong and that the General Manager will deny it.

I have said enough, Sir, and I apologize for saying so much. Again I repeat, that there should be an Indian member on the Railway Advisory Council. Then, perhaps, hon. members may be relieved of some of my talking!

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, the hon. General Manager in moving this motion said that any small points members on this side of the House wish to draw his attention to he would welcome.

There are two quite small points which I should like to mention and one is the springing of—I am not certain if they are the newest carriages, I believe they are—but whatever they are there is definitely something wrong with the springing of these carriages, and when I say I myself was thrown bodily up and down throughout the night I think that is probably sufficient proof of my allegation! (Laughter).

The second point is, I remember very well that when Great Britain went off the gold standard up went the price of such alcoholic refreshment as is supplied on the Railway

which came from foreign countries such as France where they grow beanne, and Italy where they grow chianti. Now that these countries have followed suit I hope the reverse process will be manifested on the price-list as soon as possible.

I have also been asked to ask the General Manager a definite question: why he charges the sum of Sh. 1/60 for a most obnoxious drink called a "gimlet"! I speak for all sides of the House when I say that a protest against this charge was signed by such divergent opinions in this House as the hon. Member for Nyanza, a member of the Judiciary, the hon. Chief Native Commissioner and the late Mr. Hemsted representing native interests! (Laughter.)

LT.-COL. THE HON. J. G. KIMWOOD: Mr. President, I am rising, not as I have done for many years, as champion of the branch lines rates—and consequently the General Manager will not accuse me of re-introducing my hardy annual—but on one subject in connection with the branch line guarantees. I refer to the amount of £31,354 paid by the Kenya Government to the Kenya and Uganda Railways and Harbours.

I presume that that is the amount agreed upon many years ago when the present administrative policy of the Railway was adopted. I would suggest to the hon. the General Manager that this matter should again be re-introduced and discussed by the Inter-Colonial Railway Council under present day conditions and present day atmosphere. I think the retrospective view they will now get will enable them to recommend that this amount should be eliminated from the Railway budget. Personally, I think it is an injustice and I will leave it at that, if I can have an assurance that it will be discussed on its merits.

There is also a request I should like to put to the hon. General Manager and that is that he will prepare, or have prepared, a graph showing the incidence of the taper rate from Mombasa to Kampala. I do not want to go into any elaboration or great detail; but if anybody studies any class from Mombasa to Nairobi, they will realize that a great deal, 50 per cent, of the Railway rates are collected by the time the goods reach Nairobi, which is probably due to some 300 odd miles of the unoccupied country through which the line passes and the Railway do not get any freight in that area. But irrespective of the cost there is, I think, a case to be investigated. I will not argue that case to-day beyond pointing out that there is a case to be investigated and that I hope it will be.

If you take Class I and take an approximate figure, it costs about Sh. 8 for a case of whisky, by the time it reaches Nairobi. By the time it reaches Kitale, a little under the

the futile argument of security; in other words, not having all their eggs in one basket.

I notice, as usual, that the racial matter has been raised by the cross benches, but from a racial point of view I do not wish to answer it beyond saying that one case has been quoted by the hon. Dr. de Sousa—whether it is true or not I cannot say—where a certain Indian employee of the Railway having gone to India has not been able to return on account of his fare not being paid by the Railway. I know nothing of the fact, but my comment on that statement is this, it would be a very good thing if Indians who come from India and are employed by the Railway, when they return to India, are made to remain there, in the interests of the Indian community of this Colony as a whole. Those who investigate the subject are well aware of the fact that there are more Indians in Kenya to-day than the labour market can absorb. I suggest from that point of view, that to bring Indians from outside to compete with locally born Indians instead of giving preference to the local people, there must be something wrong both with the Railway policy and also with the Government policy.

Dr. THE HON. A. C. L. DE SOUSA: On a point of explanation, Mr. President, I am afraid the hon. member has misunderstood what I said. I did not say the Indians came from India.

Mr. COL. THE HON. J. G. KIRKWOOD: I am not in the habit of throwing bouquets, Mr. President, but I do wish to take the opportunity of congratulating the hon. the General Manager on the large number of natives that are employed by the Kenya and Uganda Railway and Harbours. I think he has done more in that direction than the conglomerate collection of nominated members who are supposed to represent native interests and invariably succeed only in raising questions in this House which give the "thick end of the stick" to somebody at home to criticize everybody in this Colony. It happened at the last meeting of Council and again at this session that accusations are made and the inferences drawn are always adverse to this Colony. I very much regret to have to say that, it would have been better if in the native interests

THE PRESIDENT: You must stick to the Railway Estimates. You cannot bring in these outside subjects into a debate on the Railway Estimates to which the hon. members for native affairs have made no reference during the debate.

Mr. COL. THE HON. J. G. KIRKWOOD: I am sorry. It is a question of comparison.

I compliment the hon. the General Manager for doing—I repeat it again—more in the interests of the natives by giving employment to natives in the Kenya and Uganda Railway than all the rest of the forces put together. I think he is deserving of credit for the benefit the natives get from employment in the many branches of the Railways and Harbours.

I do not wish to take up the time of the House. The Railway budget is not a very interesting one, I do not think, either to the Elected Members or anybody else, due to the constitution of that Railway, for it is really run by the Inter-Colonial Railways and Harbours plus the General Manager.

I will ask, before I sit down, that the Railway budget in future could be accompanied by a memorandum on similar lines to that issued by the Government, I think it would be very much appreciated by everybody.

THE HON. F. A. BRIMSTER: Sir, the hon. the General Manager has said he would like comments on small matters. There is a question I brought up two or three years ago in the connection with the settlement of retired Railway men on the land.

I understand that the system on retirement of Railway men is that they get a large or substantial sum of money (large to us but substantial to them). It has always been within my knowledge that Railway men all over the world make excellent small farmers; in fact, those of you who have been privileged in the last few years to see the English Railways, will have seen gardens and allotments near the railway ways, will have seen gardens and allotments near the railway ways. I have been approached by several Railway men in the Colony, both English and Indian, to put before you a scheme whereby a certain number of years before they retire an arrangement could be made between the Railway and Land Department of the Civil Government whereby they could be granted a small acreage of land on which it would be necessary and incumbent on them to build a house for their wife and family and then, when they retired, there would have to be certain conditions of development.

To my mind it has two very far reaching effects. First of all, it would encourage Railway men to take an interest in retiring to a small holding in this country where they would be able to live in some degree of comfort and under conditions which they had been used to for several previous years. It would keep in the country the amount of money they would receive, it would add to production in the country, and particularly it would encourage co-operative working where a number of people, say 20, 30 or 40, happened to settle in one place. I am not suggesting 100 or 200 acres, or anything of

the sort, but I would suggest for the consideration of the hon. General Manager his taking a census of the men shortly retiring, say within the next eight or nine years, who would be willing to enter into such a scheme.

I feel, Sir, the response would be very encouraging, and it is this type of man who I would prefer in the country, and a good many more, and the advantage of keeping that type of man here, who has worked in the country, knows the habits of the country and has gradually grown a family in the country, would be of immense value.

THE HON. SHAMUD-DEEN: Mr. President, I look upon the Railway Estimates merely as a courtesy on the part of a parallel Government, which is not only a parallel Government but an independent and prosperous Government, and I cannot understand really the propriety of such Estimates being laid before this Council for the purpose of discussion. This I consider is merely one of the ordinary bulletins issued by the hon. General Manager for the information of the people. The wording of the motion, I think, is that "the Estimates be submitted for approval." As a matter of fact, I think what the hon. and gallant member has been accustomed to in the past is approval from this side of the House because obviously this House has no power to disapprove these Estimates.

I think that the defects manifested in the separation of the Railway during the last ten years from Government have shown already that it is a matter which ought to be re-examined. I personally think it was a mistake to separate the Railway, one of the greatest assets the Colony had, and to make it independent of Government. Here we are to-day, we have been racking our brains over all sorts of methods to try and balance our budget and in order to do that we have been thinking of all sorts of scientific and unscientific taxes and various other things, but the Railway, which I described as a parallel Government, are in a much happier position. They have had no Sir Alan Pim to investigate the working and expenditure of their department, they have no Standing Finance Committee, and they have really no other committee which can scrutinize the Estimates. I am therefore not making any attempt to scrutinize the Estimates at all. I personally think that our position to-day is that of parents who have, in their generosity of mind, at some inopportune moment, transferred to one of their children the best part of their property. The parents to-day are impoverished and starving while the child is prospering. All these Estimates mean is a sort of statement the child brings to the parents and says "I propose to buy a motor car next year", but does not come to the rescue of the parents.

I think the hon. Member for the Coast described quite correctly; that the Railway is prospering while the country is dying. Their revenue estimates are actually something like £345,000 more than ours. We are not at all jealous of the Railway. I think it is much better to have a prosperous Railway than a bankrupt Railway, but the question is, how is it that in the midst of depression the Railway prospers? I submit that the analysis that has been attempted by one or two previous speakers is not a correct one and I am going to submit mine. I submit the reason why the Railway is prospering is that they have all the privileges and no responsibilities. Here we are, year after year, with impoverished communities, asked to provide no less than £90,000 for a Military garrison, asked for the protection of this Colony. Why should the Railway not be responsible for bearing a proportion of that expenditure? Does not the Military afford them the same protection as for other communities?

As a matter of fact the Railway only contributes to the funds of this Colony very kindly the sum of £6,500, being the contribution for maintenance of railway telegraph wires, and £5,000 for medical services. It also contributes something like £1,740 for prison accommodation and £5,500 for the Railway Police. I do not know whether this provision of £5,500 is actually the figure that should be responsible for a used by them, but I submit they should be for the head office full share of the Military vote and also for the head office staff of the Police, because they fully enjoy it. They come to us and ask for protection against road transport and we give them that. But the revenue that we lose by taking away the competition against the Railway is not contributed and is completely lost to the Colony. They pay no customs for their materials they get and are in the happy position of getting their lorries free of customs duty and pay no taxes at all. As a matter of fact they are to-day to all intents and purposes in the same category as a private company which bears no responsibility to the State. I do not see why if we are thinking of income tax, the Railway should not pay a proper share of taxation and so relieve the tax payers of the Colony. Again, we have given them a free gift of the land traffic, the rolling stock, and a tremendous area of the land of this Colony. One reason for their prosperity, as I have said, is that they have all the privileges but very few responsibilities.

In order to show how prosperous they are I have been trying to just give a cursory glance through their Estimates. I am not going to ask, as some hon. members have done, for improved springing to the carriages, or to be more considerate and humane to their staff, to increase their leave every year, and so on, which is just like appealing to a despotic king.

because I do submit that although theoretically the Railway Administration is subordinate to the High Commissioner, the High Commissioner has no more control over its head than His Excellency the Governor has control over the Judicial Department. It is an entirely technical department, and the head of that Administration is an absolutely despotic authority.

I wish to show that the lavish scales of salaries paid by the Railway Administration to their staff is a matter of great alarm to me, because I think if we do not look out it will mean our already heavy expenditure will be automatically increased, because the heads of departments and staff will have very good arguments. In one of the departments of the Railway the salary of the Chief Engineer, for instance, is no less than £1,750 a year. That salary is higher than that of any of the heads of departments sitting in this House, with the exception probably of yourself, Sir, and the Colonial Secretary. Take the Postmaster General, who administers three territories, he gets only £1,600, while the Chief Engineer gets £1,750.

I shall take 10 or 15 minutes more, Sir, and it is 1 o'clock.

The debate was adjourned.

*Council adjourned till 10 a.m. on Thursday,
10th November, 1936.*

THURSDAY, 19th NOVEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 19th November, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGIN, Esq., K.C.) presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 18th November, 1936, were confirmed.

ORAL ANSWERS TO QUESTIONS.

EDUCATION DEPARTMENT ANNUAL REPORT.

No. 60.—DR. THE HON. A. C. L. DE SOUSA asked :—

"1. Will Government state to what school or schools the table showing heights and weights of pupils in Appendix C on page 58 of the Education Department Report for 1935 refers to?"

2. Will Government state the reason why a comparative table of heights and weights of boys attending one or both of the Government Indian Secondary Schools and similar schools in England and/or India is not given in the Annual Reports of the Education Department?"

3. Will Government consider the advisability of including such tables in all future Annual Reports of the Education Department?"

THE HON. THE DIRECTOR OF EDUCATION: 1. The table refers to the pupils in the European Primary Schools of the Colony. A large proportion of the pupils in these schools are boarders.

2. With the exception of a few boarders at the Government Indian Boys' Secondary School, Nairobi, all Government Indian schools are day schools. Weights and heights have not been recorded since medical inspection was discontinued. It will be realized that in boarding schools the responsibility for the well-being of the children lies with the school authorities, and it is advisable to record their heights and weights, especially in the case of the younger children. This does not apply to the same extent in day schools.

3. Consideration will be given to the inclusion of tables in respect of weights and heights of Indian Secondary School pupils in the future Annual Reports of the Education Department.

MOTIONS.

ESTIMATES, K.U.R. & H., FOR 1937.

ESTIMATES, KENYA AND UGANDA RAILWAYS AND HARBOURS, FOR 1937.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS, HAVING MOVED—

“That the Estimates of Revenue and Expenditure of the Kenya and Uganda Railways and Harbours for 1937 be approved.”

THE HON. THE TREASURER HAVING SECONDED.

The debate having been adjourned.

The debate continued.

THE HON. SHAMSUD-DEEN : Sir, yesterday I was trying to put a contrast before this House as regards the relationship of the Railway with society in general, and I compared them with the position of parents who are hard up and children who are prospering, or the position of a merchant or shopkeeper prospering while all his customers are starving. In doing so, I was trying to show a contrast of how lavishly money was being spent on the staff of the Railway.

I think I was comparing the salary of the Chief Engineer, who gets £1,750, with some of the salaries of the heads of departments of Government, and I was trying to show that the post of Chief Engineer should be really less than that of the Director of Public Works. Our Director of Public Works only gets £1,350; the Postmaster General, who has to look after three territories, only gets £1,500, whereas the Chief Engineer gets £1,750, or just about £50 less than the salary drawn by your good self, Sir. I will only give two more. The salaries of the Lines Superintendent and the Chief Mechanical Engineer are £1,500 each, which again practically exceeds the salaries given to the Chief Native Commissioner and the Director of Agriculture, who get £1,450, while the Judges of the High Court get about £1,450. With the exception of the Postmaster General, the Director of Medical Services and one or two others who get a little more, these two officers receive higher salaries, although they are only in charge of a branch of Government administration as it were. I am mentioning these facts because for the last five or six years the Estimates of Government have been discussed threadbare, and we have gone over the same items over and over again, and in certain cases we have effected economies to an extent beyond which you cannot go. I will point out one way in which Government has effected economy. Hon. members on this side of the House are supplied with pencils of a length which makes it

difficult to hold them in the hand, and that is one of the reasons why I had to go and buy pencils and present one to each Elected Member! (Laughter.) While we are doing that the Railway are spending money lavishly, and if we pretend to have any control over the Railway at all the time has now arrived when we ought to appoint an independent committee to investigate if there are any avenues for economies in this department.

To give you one instance of the autocratic manner of the Railway Administration, and to show you how helpless people are who are sufferers from their decisions, I want to mention one case. In the beginning of this year there was an Indian motor trolley driver engaged by the Railway. He was ordered to drive one of his superiors to a certain place. This young gentleman thought it below his dignity to be driven by an Indian driver, and he told him to sit by his side, and started to drive himself. This young gentleman had no driving licence for a motor trolley. When he started from a station called Sabatia he had warning that there was a push trolley on the line. This gentleman, a novice driver, did not know anything about driving, and the result was that on the road he dashed against this other trolley. He did not even stop—these facts cannot be denied by the General Manager—he simply jumped off and left this wretched Indian on the motor trolley. There was a collision and he broke both legs, and was in hospital until the middle of May. His case was under consideration to the end of September, and at the end of that time they admitted he was treated as totally incapacitated. He is crippled for life, hardly fit to do any other work, unless the Railway have sympathy with him. But what did they do? They simply offered him a sum of £170 as compensation for total incapacity for his life. That wretched man, Abdul Latif, met me on the road one day, and said, “This is my position.” I said that as far as my experience went, it was perfectly useless to appeal against the decision of the General Manager—who is really a despotic king of the Railway—and I advised him to go to one of the best European firms of lawyers. They have done everything they could, but there is no hope at all for the man. Can anyone think that this is the proper way of dealing with their employees?

What I am really very much distressed at is that there is no appeal against this order. Theoretically speaking, the High Commissioner for Transport is the person to appeal to, but past experience has shown that the word of the General Manager is not gone against. In a case like this, a wretched Indian employee, through no fault of his own but the negligence of another employee, has been crippled for life, and they want to take shelter behind legal quibbles, under the Employers'

Liability Act, 1868, of England, under which a person who has been injured and wishes to claim compensation must give notice of his intention within six weeks of the date of injury, and if he wants to file an action he must file it within six months. This poor fellow was lying in hospital for six weeks, and before six months expired he did not know where he was. That is the treatment employees get.

As far as the public is concerned, we have been talking about reserves. I personally think that the Railway has not got enough, but ought to have more reserves.

I do not pretend to be a prophet, and I do not want to be an alarmist, but I give warning that, in view of the way the Railway is run, it is not going to be very long before they will have to pay a very heavy bill for endangering the public safety, and it is not surprising that nothing has happened up to now. I have been in so many railway accidents that whenever these trains travel at a terrific speed my personal feeling is that, had I a few fellow-passengers with me who felt the same, I would pull the driver down from his engine!

Here is a train, with 500 or 600 people's lives entrusted to the Railway Administration; and one man who is driving the train. During the time of the late lamented Mr. H. A. F. Currie he did the proper thing and prosecuted about half-a-dozen drivers for endangering the public life, and something of that sort should be done now. It should be in the knowledge of all members that trains going to Mombasa stop at some roadside station, sometimes for about an hour, where the staff have a chat, and then the train starts on its way at a terrific speed—I should not be surprised if they go at a speed of 60 or 70 miles an hour! (Laughter.) Some day there will be a heavy crash, and you will pay for it. I am not in favour of speeding on the Railway, and this is a snatter not to be laughed at, and I am giving you due warning.

Now, Sir, talking about the accommodation on the Railway. I recently have been taken to see the carriages on the Tanganyika Railway. Our Railway is supposed to be the most advanced railway in Eastern Africa, but I must say that while I think the difference between the first and second class carriages of this Railway and of the Tanganyika Railway is not ours. Without the agitation we have here, their third class carriages have separate compartments for males and females, and a latrine attached to each compartment, and the floors are all cement plaster, which appears to me to be quite a good idea, especially for carriages in which natives travel. At any rate, I hope we shall take a lesson from the Tanganyika Railway in this respect and that this improvement will be introduced before very long.

I think that yesterday the hon. member Dr. de Bousa referred to the method of the Railway giving out contracts. In some cases the Railway contractors have become absolute permanent fixtures. They have been contracting for years, and their contracts are extended when they expire without tenders being called for. I have tried to make representations that it is a wrong principle to let people have extended contracts without giving others a chance by calling for tenders, but evidently that does not worry the Railway Administration at all. Again I say, that if you wish to make representations to them there is hardly any effect at all.

I notice an item of £5,000 in the Estimates for the demolition and transfer of assets. I think the House would like to know something about it, what the assets are, and, with respect, I should like to ask, in what category does the Railway Administration include the houses at stations like Makindu? I think they cost a good deal of money at one time; and now they look like haunted houses in a wilderness. What do they propose to do with them, and will they consider proposals from the public to make use of these houses?

Another asset that has been entirely wasted is, I think, the brick kiln at Changamwe, which at one time cost the State a lot of money. I understand that offers have been made to the Railway by private people to take it over and run it, but nothing has materialized. After all, these great savings of about £300 odd are not such a terrific profit that the Railway can crow about it. The Railway represents an investment of 23 million pounds by the State, and without any taxes to pay, any Customs duties to pay, without any land rents to pay, I do not think it is a matter of which they really need boast very much.

As far as the taxes are concerned, I will quote one of the resolutions passed by the International Chamber of Commerce in Europe:—

"The International Chamber of Commerce does not consider that the levying of taxes on one of the forms of transport for the sole purpose of limiting its use can bring about a rational and fair division of traffic. As regards special taxation, public road transport should pay only its proper share in the cost of maintenance, renewal, police improvement, and construction (whether directly or through the service of loans) of roads, and the railways should only pay taxes covering the expenses incurred on their account by the State. Further, the Government should reimburse the public transport services, both road and rail, for the service which it requires of them."

The Railway do not pay any taxes at all for the expenses that the State incurs, and I do not see any reason why they should not bear one or two items.

One is their due share of the military expense. Why should they be exempt from Customs duties and pay no land rents at all? I hope that when income tax does come in the Railway will be made to pay a tax on their income!

Then we have been hearing rumours, though I hope there is no truth in them, that the Railway have been selling to Japan their scrap iron. It may be mere rumour, but the rumours are very current, that the Railway have a contract with the Japanese Government or firm for the sale of their scrap iron and old engines, and, in the end, it was found that the total weight of the scrap iron contracted for was not available, and the Railway had to buy from elsewhere to make up the quantity.

The hon. the General Manager tried to give us a forecast of the Mance Report, and I do hope that when that Report is available among the other forecasts will be included one that the Railway should not continue with the monopoly it is enjoying at the moment, to the entire exclusion of all sorts of modern transport, such as lorries, road transport, and so on.

As far as the passenger service is concerned, I personally think a Railway which has just one train service each way every day is a very poor railway, but a railway which cannot manage even a daily service is no railway at all. As far as our Railway is concerned, unless you carry a time-table in your pocket all the time, you never know when the train leaves Mombasa or Nairobi. I read in the paper the other day that the General Manager had been pleased to attach a bogie to the train every day for the use of passengers. Well, that should have been done, I think, long ago, but the Railway is working on the principle of the shopkeeper who says, "First bring me my customers and I will provide what you want, but I will not get the things before I get the customers."

That is what has been going on. If you want to go to Kisumu you might, if you are lucky, get one of the direct connections which exist twice a week. Why cannot the Railway act as all other modern railways are doing? Why cannot they have a motor rail trolley, as in India and other places? There they use bogies with a small engine enclosed. There is no reason why such a service should not be given here, to give everybody a chance of travelling frequently. But the Railway does not care for passenger traffic, and that is why an anticipated decrease in that traffic is shown.

Their main concern is with goods, and these goods are entirely given to them by the natives and Europeans, for the Indians have been eliminated as producers. But what is the position of the European farmers to-day, and the natives? Both communities are suffering terribly, and the Railway is prospering, and pays no heed at all to the passenger traffic. I hope, but it is a poor hope, but I hope against hope, that some day there will be a more regular service between Mombasa, Nairobi and Kisumu.

Well, Sir, I have already taken up a good deal of the time of the House, but I do think we ought to come to some sort of arrangement to take the Railway under the proper control of Government, and, when their Estimates are placed before this House, it should be in a manner that they ought to know that unless they satisfy public criticism those Estimates will not be passed year after year without the House having some effective say in the matter.

MAJOR THE HON. G. H. RIDDELL. Mr. President, this is the first time that I have taken an active part in this debate on the Railway Estimates since I have had the honour of being a member of this Council. It is customary for the political party of which I am a member to delegate the main speech to one of their members who is considered to have special qualifications to deal with the matter. No departure has been made this time from that excellent plan, and I trust some of the remarks of our spokesman, the hon. and gallant Member for the Coast—with which remarks I entirely associate myself—are ranking in the minds of some of the opposition party who still control the destinies of Kenya.

I only get up now to correct one statement made by the hon. member. That was the statement to the effect that we asked for Sir Osborne Mance to deal with our transport problems. If by "we" is meant the hon. members of the whole of this Council, that statement is incorrect, inasmuch as we were never consulted. If by "we" is meant the members of the Co-ordination of Transport Committee which was appointed by His Excellency about this time last year, I as a member of that Committee say that the statement is also inaccurate.

The actual decision to appoint Sir Osborne Mance was arrived at by the Governors' Conference somewhere in the late spring of this year. In due course, the Committee to which I have already referred were informed of this decision, and by that time we had been sitting some months. In other words, the appointment was arranged in the first instance by His Excellency, and we were then asked at that Committee to confirm it and so on, which we did in terms of a minute which is not before me.

It is another instance of the procedure to which we have become sadly accustomed during the last five years—first of all facing us with an *au fait accompli* and then asking us to agree to it. I believe this is described in some Government circles as a form of co-operation!

However, Sir Osborne Mance has come and gone. Three months is the average time required by an expert to thoroughly examine the whole system of transport in Kenya. Of course, the long and arduous deliberations which you, Mr. President, as our chairman, know took place have been concluded and our report has been issued, together with a draft Bill which, of course, is completely obsolete owing to the advent of Sir Osborne Mance. You are aware, Sir, that a reference was made to the labours of this Transport Committee in His Excellency's address at the opening session. This reference proves to me at any rate that the object for which the Transport Committee was called into being, as reflected in the terms of reference which are before you, was completely subjected to Sir Osborne Mance's Report.

The hon. the Colonial Secretary told us that in his opinion Government are tired of these commissions which we ask for sometimes, but, *per contra*, I can assure him that we, and a large body of public opinion in this country, are heartily sick in every sort of way of these experts foisted on us from time to time. (Hear, hear.) £1,500-a-year experts to put through a form of income tax on us; Sir Alan Pim to advise us how to tax the natives of our country; and this latest addition which we now have to bear.

There are two unofficial elected members of this Council who were members of this Transport Committee—the hon. Member for Nyanza and myself. Sir Osborne Mance apparently did not think it necessary to ask us to give him our personal views, although both of us have nearly forty years' experience of all forms of transport in Africa. I suppose that all our labours on this Transport Committee have gone completely west.

Whatever the general public, if they have read so obsolete a document, may think of the report of the Co-ordination of Transport Committee, one thing at any rate we did try to do: We tried so far as in us lay to restrict the power the General Manager of the Kenya and Uganda Railways and Harbours from obtaining that strangle-hold on the road system of our country which he has already succeeded in obtaining on our railways.

I could, Sir, have been rougher over this than I have been, but I have to keep in mind that if I am too rough I shall have some Government bacteriologist or colleague springing up,

accusing me of having some form of *psychosis menti* or *Granganitis*, so I will not say any more!

But before I sit down I should like to ask the hon. the General Manager one specific question. There was a statement made in some of these speeches that Sir Osborne Mance has been paid partly out of the Colonial Development Fund and partly by contributions from the three territories. I suppose we have therefore to pay some part of the bill for a man whose we did not ask for. I would like to know what our contribution was, and whether the Railway contributed anything towards the expense of Sir Osborne Mance's visit.

There is actually nothing more to be said on this subject. We shall have to wait until we get the Report of this latest "little Johnny Head-in-Air". We must wait for his Report. But when it is said by the hon. mover that we asked for it, that, in my opinion, is adding insult to injury.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, as a member of Railway Council I refrained from entering into the debate until I had had an opportunity of hearing the criticisms which are put forward, as looking at myself in the position of a director of the Railway I naturally have to take up my share of any blame that may be thrown about. I have listened as well as I can to all that has been said, and I find that there is very little with which I can properly deal.

The hon. member Mr. Pandya appealed to the mover of this motion that in future he should take into greater consideration the human side. Speaking as a member of the Railway Advisory Council, of which there are three other members present in this House to-day, I should like to say that that is a criticism which is entirely undeserved. I do not think there is ever a meeting of Railway Advisory Council when there is not some point or other brought up which is for the benefit of some of the human elements which form the staff of the Railway. I should like to say this most definitely: that in the deliberations of that Council racialism is absolutely and entirely absent, and has never come in on any single occasion. (Hear, hear.) Not very long ago we spent a very long time going into the question of the terms of service of the local employees, especially with reference to their period of local leave. I think I am correct in saying it was decided that their local leave should be extended a certain amount. I think the hon. mover will be able to reply to that better than I can when he comes to reply to this debate.

The hon. member Mr. Pandya made an appeal that the question of the rates on jaggas should be considered. I should like to say this to the hon. member and to anybody else who

is interested in the question of reduction of rates that, as Railway Council is going into all these questions of how these rates should be distributed in the very near future, I do trust that anyone who has a good case where rates might be reduced in fairness to the industry they should put it up in writing for the consideration of Council. I can assure him, and anybody else, that if he has a good case as to why the rate of jaggree should be reduced, or any other commodity, it will receive the fullest consideration on its merits and with regard to nothing else.

The question has been raised of having an intermediate class. That again the Railway Advisory Council went into very thoroughly and without any prejudice whatsoever, and heard all the arguments for and against. I think it is generally accepted in railway circles that the fewer differentiations in classes which one can have the better it is from the economic point of view of running the railway, and on the whole it was considered it would not be a sound policy from the point of view of the economic running of the Railway to have an intermediate class. At the same time, we considered there was a case for some improvement in the third class, and especially rather on the lines which the hon. member Mr. Shamsud-Deen mentioned just now, of separate compartments for females and better latrine accommodation, and so on. That question was gone into, and experiments are going to be made to meet that demand. If they do not prove satisfactory, of course the question will be gone into again. It is not a closed subject, and it is receiving the fullest and most sympathetic consideration of Railway Advisory Council.

My hon. friend the Member for Trans Nzoia made an appeal to the General Manager that he should prepare a graph showing the effect of taper rates. I should like to support that appeal. It would be of great help to the members of Railway Council if we could have such a graph for reference when we are dealing with the question of some of these rates for which applications have been put up. The taper is very steep now, of course.

The hon. member Mr. Shamsud-Deen criticized the salaries of some of the senior officers on the Railway. I may say, Sir, as you know, and as my hon. colleagues on Railway Council know, it has been the subject of considerable criticism among the Railway Advisory Councillors themselves. We have gone very thoroughly into this question. Perhaps my hon. friend the Member for Nairobi South, who was on a sub-committee to go into the question of these salary rates, can tell you more about it than I can. But there is one point which must not be lost sight of. The Railway is a commercial undertaking, and the people who hold the chief posts on it

have got to be paid a salary which competes with other similar commercial undertakings in other parts of the world. They are technical men who have to hold these posts, and in that way they differ from the ordinary Civil Servants in this country, who join as young men without any special technical qualifications—I am talking of the ordinary Administration and so on—and work up in the ordinary course of their service. You cannot actually compare them and say that the Chief Engineer on the Railway should be exactly the same as some head of a department in Government. They have to be judged on a different basis. Whether our scale is too high or not is a matter of opinion, but we have had all the figures of corresponding railways and posts in other parts of the world, and for the most part it has been found that our rates of remuneration are not excessive, though I think our hidden emoluments, as apart from substantive salaries, are higher than in many other parts.

Another point was that it was wrong to give the same contractors contracts year after year, and that tenders should be called for all the time. I am not quite conversant with what is done, but I do submit another side to the question is that if contractors give satisfactory service year after year it is a little hard that they should lose that contract because somebody else, who may not be as efficient, quotes a slightly lower cost. I do not say that tenders should not be called for, because they should in the ordinary way, but I do say that contractors who have given satisfactory service year after year should have every consideration.

There is one other small point. It has been decided at the last meeting of the Railway Advisory Council that there should be some accommodation daily to and from Nairobi and Mombasa for passenger traffic.

These are all the points which I have noted which I felt in any way I could answer, and I do not want to butt in on what the General Manager wishes to reply to himself, but, on the other hand, I feel that as a member of the Railway Advisory Council it is up to me to either take credit or blame, as the case may be, for what is done in the administration of the Railway.

I want to come to the only part of this debate which I think is really of any importance, and that is dealing with the question of these reserve funds. The first point I should like to bring to the notice of the hon. the General Manager is on page 9, where it shows Interest on Cash Balances, Investments and Advances; £75,000. It does seem, if we have £4,000,000 in our various reserve funds, or thereabouts, if we only get £75,000 interest on that we are getting a very low rate

of interest. I suggest further we should have it shown somewhere how these funds are invested. I presume they are done chiefly by the Crown Agents in London, but there is nowhere I can see (I may have overlooked it) how our reserve funds are invested. I think it should be shown somewhere in these Estimates.

There was one remark of the hon. mover to which I take some exception, and that is, he said that in considering these rates one must consider the interests of the importers who have no interests in exports. I submit that there can be no importer who can have no interest in exports. The value of imports must depend on the value of exports, and therefore all importers, even if they do not deal directly with exports, must have an interest in exports.

The main point I wish to speak about really is the relation of the Railway to the country. For better or for worse, rightly or wrongly, it was decided some years ago that the management of the Railway and its finances should be divorced from the finances of the country. This was done chiefly because of the complaints of Uganda that, whilst the Railway was theirs as much as ours, the profits of the Railway were used by the Government of Kenya for their own purposes. Anyhow, the result was the Order in Council under which the Railway is now administered. Unless that Order in Council is altered, we have to carry on under the methods which pertain to-day, and, of course, those of us who are responsible in the form of directors of the Railway have to do our duty in accordance with that Order in Council.

THE HON. SHAMSHUD-DHAN: On a point of order, may I remind the hon. member that he is not a director of the Railway, only a member of the Railway Advisory Council—he is only an adviser.

LT.-COL. THE HON. LORD FRANCIS SCOTT: It is perfectly true. I am only an adviser; but advisory directors, however you like to put it. I feel one has responsibility, and I do not want to shirk that responsibility.

The point is this, that the result of that Order in Council is that the Railway has become a separate entity from the Colony. It is a State railway, and yet it is divorced from the State, and we have seen the anomalous position during the last year or two when the Railway has been making very large profits indeed, and is in a very flourishing condition, while the country has been in a very difficult financial position and has been at its wits' end how to balance its budget without bearing too heavily on the people who have to find the money to do so. My hon. and gallant friend the Member for the

Coast pointed out that here we are to-day, he used the word, I think, wrangling, or something of that sort, over a question of £30,000 or £40,000 as to whether we are to have income tax or not, while the Railway is able to spend £780,000 on renewals and improvement of stock and so on. And that brought to light what an absurd position really we were in.

How can we bring back the Railway without altering the Order in Council? How can we bring back the Railway so that it is more closely associated with the interests of the country and the people of the country, who are in fact the shareholders of the Railway? We can get back quite a lot in the form of rates reduction, but, as was pointed out by my friend, there are dangers if we go too far in rates reductions, if things go bad and we suddenly have to put up rates again, which is not a very desirable thing to do. Further, you cannot reduce rates in such a way as to have an exact science that you will just exactly balance the budget on both sides, nor can you give back rates retrospectively. The result is that, even after large reductions have been made in rates, it is almost certain there will be considerable surpluses at the end of the year.

What would happen supposing this was a commercial railway and not a State railway? What I suggest would happen is that at the end of the year the board of directors of that commercial railway would consider the figures of the working for the previous year; they would have before them the amount of profit which had been made, they would then consider how much of that profit should be put to reserve on a sound commercial basis, and the rest would be paid out in the form of dividends to the various shareholders. If we apply that analogy to the Kenya and Uganda Railway, we find that what you call debenture-holders, that is, those who have raised the loans raised for the purpose of the Railway, interest every year according to what is settled with.

Then you come to the ordinary shareholders of this Railway and the ordinary shareholders of this Railway in Kenya and Uganda. It is impossible to individuals. Nobody holds any sort. Therefore the only way you can get the necessary amount has been put to whatever may be needed, should be dividends to those two Government should be put into general revenue used, as was suggested by the hon. the Coast, for a special fund for the

to say definitely now. Personally, I favour the latter idea, because it has the great merit that if it is put definitely for the purpose of development then the Railway itself is going to profit very much from that development. It would be a means of having a fund which could be used for certain necessary developmental objects which at present are frustrated by lack of funds. I do say this in all seriousness; it does seem to me this is a way by which you could once more link the Railway with the peoples of these countries, to make the people of the country interested in any profits which are made by the Railway, as they know that they will go to their benefit, whereas at the present moment here is quite a justifiable feeling that the Railway is taking far too much out of the pockets of the people without benefiting them in any material way in return.

You cannot get away from it, when you look at the figures and see there is approximately 24,000,000 in various reserve funds, that that amount has been taken out of the pockets of the various users of the Railway in these two countries. I think it is generally admitted—the hon. the General Manager said so in his speech—that we are now satisfied that we have got these reserve funds up to the figure necessary for the safe running of the Railway, and I do submit that to build up reserve funds unnecessarily is not sound finance, and that any money surplus to what is required for the soundness of the reserves of this commercial undertaking should be distributed in such a way that is going to be productive and of real benefit to the two countries. This is not a question I expect the hon. member to reply to; it is a question really rather beyond the scope of this, but I do put it up in all seriousness for the most earnest consideration of the Government of Kenya in conjunction with the Government of Uganda, whether it is really a matter of practical politics; but I trust very much that Government will go into this question, and consider it very seriously indeed. (Hear, hear.)

LT.-COL. THE HON. W. K. TUCKER: Mr. President, it has become traditional, I think wisely so, that members of the Railway Council should take only a minor part in these Railway debates year after year. We have the widest possible opportunities of advancing our views throughout the year, and I can assure this House that that robust realism that was talked about by my hon. friend the other day is not only allowed but is exercised, and my colleagues in this House will, I am sure, support me.

Rather do I feel that the first duty of a Railway Councillor in this House to-day is to ask himself the question: Do the Estimates as submitted by the hon. the General Manager agree completely with those passed by the Railway Advisory Council a short time ago, and, secondly, does his address in submitting

them harmonize broadly with the inevitable discussions that took place in the Railway Council? I have no hesitation in answering both these questions in the affirmative. Therefore I think the only other question I ought to put to myself is, very much as the Noble Lord has just done; have any points been raised in this debate which we, as Railway Councillors, can answer conveniently without leaving the whole lot of them to my hon. and gullant friend? As far as I am concerned, I have made note of two—one a small one, and one smaller than the other!

The smaller one is the complaint which we get year after year from the cross-benches that they have no direct representation on the Railway Council. I would just like to point out to them—not that I have any hope that they will strike out to them—but that I have any hope that they will minimize any grievance they have—that although His Excellency the Governor is not called upon by statute to consult any particular bodies in his nominations, he has very frequently indeed consulted that very representative body I have mentioned many times during this session, the Associated Chambers of Commerce. That body itself represents seven chambers of commerce within the boundaries of Kenya.

THE HON. SHAMSUD-DEEN: On a point of order, Sir, it does not represent any Indian interests.

LT.-COL. THE HON. W. K. TUCKER: If the hon. member will allow me to complete that one sentence, I hope I shall have adequately replied to that point, namely, that these seven chambers of commerce within the confines of Kenya have all of them Indian representatives, many of them a very strong representation; and I contend that when the Association of Chambers of Commerce focuses the views of all these chambers, which include many railway views as well as others, they have taken the additional step of creating a very firm and very useful liaison with the Indian Chambers of Commerce, so that people like myself who, for the time being, are representing them in such a body as the Railway Council feel, and rightly feel, not only in theory but in practice, that we have the Indian point of view. I may say personally that I am on the one hand very frequently receiving representations from that particular community, and, on the other hand, I am very often able to make the most useful representations to the Administration, both inside the Council and out, along those lines.

The other point, which I need not go into in great detail because the Noble Lord has anticipated me, is this challenge as to the adequacy or inadequacy of the salaries, more particularly of the higher posts, in the Railway Administration. I

have been sitting with my Uganda colleague for no less than three years on this particular subject, and although it sounds a long time I assure you it is only commensurate with the volume of work required to be done, and while I agree with the Noble Lord that there may be room—and I think there probably is room—for changes in a downward direction from time to time, I am bound to say, entering that sub-committee as we did three years ago in a very critical frame of mind, we came to the conclusion, and the Railway Advisory Council after examining our report came to the same conclusion, that in the main these gentlemen are not overpaid, certainly not as regards their substantive salaries, and when we come to the question of hidden emoluments the very substantial variation between what they enjoy here and what they enjoy elsewhere is extremely difficult to compare, having regard to the different conditions under which railway people serve in various countries.

I would like to point out to this House a major conclusion we arrived at: that there is not necessarily any relation whatever between the services or salaries of railway servants and those of Civil Servants generally. The fact is that if a man once trained in railway work in England desires to go abroad, he has three directions only he can pursue. He can go into the Colonial Railways, the Indian Railways, or the South American Railways, and we had the rates of pay and the fullest details of emoluments, hidden and otherwise, of every grade, from the general managers down to office boys of every railway of repute in these three great sections of the world. So I repeat, that while I am sure the hon. member advances his arguments in all good faith, whatever other attacks he makes on the salaries of railway officers, it should be done on a basis of their market value, as distinct from what may or may not be paid to heads of departments of Government.

THE HON. SHAMSUD-DEEN: I was trying to explain to the House that there is not one single member of this House, including the Deputy Governor and all heads of departments, who gets such a salary as the hon. General Manager, and I cannot admit that he does any more work than anybody else.

LT.-COL. THE HON. W. K. TUCKER: You will not wish me to elaborate this point, but perhaps if I am allowed to address one word to the hon. member—if he chooses to come to my office some time, I really think I could convince him as regards the relative rates of pay of the General Manager and other officers of the Railway vis-à-vis other railway services in the world.

I am very glad indeed the hon. Member for the Coast has taken the line of argument he has done, and I listened with great interest to what the Noble Lord said thereon. I think this is one of those cases; and I am sure the hon. General Manager will forgive me saying so, where these rumblings and mumbblings among unofficial communities come to our ears and mumbblings among what they do to him. And I say that with very much quicker than they do to his. And I say that with some feeling, because it was discussed at very great length by the Convention of Associations a short time ago, and it led up to a considerable extent to our present feeling in the matter.

Now, Sir, whether it is in business with a partner or whether it is an international affair with treaties, as a rule there is some point upon which review, if not revision, is possible, and to those of my friends who are so afraid to go publicly into this matter for fear of disturbing or losing something, I would suggest, on the experience of a business partnership and like things, that one is very apt to overlook the advantages when the disadvantages are so obvious, and in suggesting, as some of us do, that the time has come carefully to examine the tariffs arising out of the Order in Council and to examine the enactments in this House and elsewhere as a many other enactments in this House, in examining their effect over result of this Order in Council, in examining their effect over these years, I believe very sincerely that innumerable advantages will be brought to light which will enable the people of this country and of Uganda to view the whole position in a very different perspective to what they do so long as things are allowed to carry on as they are to-day. But our real business to-day—certainly more ours than that of the Railway Council—is to see that the Order in Council and other enactments are properly interpreted and administered, and in that regard I would like to take the opportunity of saying that I am just entering my fourteenth year of railway work, and there has never been a moment when there has been such complete co-operation with the other partner of this business. We are able to state, and I think it useful to state in this House, while we are able to secure a very great deal of sympathy and a very great deal of assistance from our Uganda colleagues, so in the same way they feel that we are helping them and are genuine. Whether the arrangement is good or bad, we are getting the very best out of it at the present time in the interests of the people we represent.

MAJOR THE HON. SIR ROBERT SHAW: Mr. President, I only want three minutes to propound one question to the hon. the General Manager.

I should like to ask the hon. the General Manager whether there is any known mechanical device whereby the sparks issuing from the funnels of locomotives can be controlled.

On the first occasion I travelled up from the Coast a good many years ago I noticed a funny little arrangement alongside the railway which looked like a little clearing at the side of the track, and on asking the guard what it was I was told it was the official railway idea of a fire break. I remember the days when a thing like a tea-kettle on wheels used to pull a glorified string of trucks from the Coast once a week or so. The arrangement was more or less adequate. But times have changed, and now huge locomotives haul trains from the Coast to the Highlands. They belch forth sparks and cinders in such volcanic manner that the wind carries them away to the veldt, and in dry months of the year produces a spectacular destruction, the most lamentable I have ever seen.

Anybody who knows that section of the Railway east of Nairobi, over which the mail train runs up and down during the early hours of daylight, will bear me out. A little further down, when the passengers have been gently rocked to sleep in the manner so movingly described by the hon. Member for Nairobi South, it does not matter so much. But it is just as well to remember that the section to which I have referred includes Kapiti and the Athi Plains, long famous for the variety of game which used to pasture there and still does as long as any grass is allowed to survive.

I can only add, Sir, that if a representative of the Masai electorate were present in this Council he would also voice with fury and vigour his protest at the destruction of the grazing which takes place every year from this cause. If there is any device such as I have alluded to, it might well be added to the list of withdrawals which are to be permitted from the Railway's various and mysterious hoards of wealth shown in Abstract L of the Estimates!

Council adjourned for the usual interval.

On resuming.

THE HON. ISHAK DAS : Sir, I had no intention of taking part in this debate, but a few members have raised most interesting and amusing points that I have taken it on myself to reply on behalf of the community I represent.

With regard to the hon. Member for Nairobi North, I quite see his difficulty. Being a member or, if I may call him, a director of the Railway Advisory Council, he has come forward to defend and speak on behalf of that Council, and the only point about which he was most emphatic was the nomination of an Indian member on that Council. He may have some personal reason, that if ever an Indian member was appointed, it might be in his place, but I must say that when the hon.

Member for Nairobi North suggests that the Associated Chambers of Commerce represents the commercial interests of Indians as well as Europeans it is high time that we made it clear once and for all that that Association in any form does not represent the interests of the Indian commercial community. The Indian commercial community have got their own institution in the Indian Federation of Chambers of Commerce, and I think that statement I make will be quite enough to satisfy the hon. Member for Nairobi North, and I hope sincerely that in future he will not repeat the statement which he is so much in the habit of making.

The hon. member also suggested and asked the hon. the Colonial Secretary and the hon. mover that on more important matters connected with the budget or the Railways the Associated Chambers should be more often consulted. If the Colonial Secretary or the General Manager is to take this thing seriously, then I suggest that whenever such a consultation takes place the Indian Chambers of Commerce be consulted along with the Associated Chambers of Commerce.

The hon. Member for Nairobi North should have been the last person to suggest that, on the Railway Council or Associated Chambers, he represents the Indian interests. Does he honestly think we are orphans, not intelligent enough to represent our own interests? Does he mean in years to come to put forward the claim on behalf of some Indian institution that it is enough for the Europeans to represent the Indian interests? I hope, and I sincerely warn him, that no such statement would ever be tolerated. Indians alone have any privilege, any right, to represent the Indian community. We are competent to represent our own interests, and would represent them without asking the Associated Chambers of Commerce or the hon. Member for Nairobi North.

There is one thing I would ask the hon. Member for Nairobi North. He wants us to believe that he or his Associated Chambers of Commerce represents us faithfully. If I were to give him my word that I would represent European interests faithfully, would he accept it in the same spirit as he apparently expects us to accept it from him? (Laughter.) No, he would not. And when he is not prepared to take my word surely he does not expect we are so imbecile as to take his word that he represents our interests.

I will point out to him how far the question of representation has actually been taken into consideration. We do not expect even in our dreams to let the Associated Chambers of Commerce or the hon. Member for Nairobi North represent our interests on the Railway Advisory Council, and I will quote him an instance. A long time ago there used to be a

member representing the Chamber of Commerce in Mombasa. His name was Mr. P. H. Clarke, and somehow or other he did not see eye to eye with the European members of the Council, and probably, I think, he was kicked out of the Council. If the members in the Highlands cannot tolerate the presence of one of their own kith and kin and blood from Mombasa, how can they expect us to believe they represent our interests and are competent to do so?

My colleague, Mr. Pandya, when speaking on the Railway budget, appealed to the hon. the General Manager that, whenever the question of the betterment of the material side came up, the human element should be taken into consideration. It is a very innocent appeal after all. But the hon. the General Manager himself and every member of this House knows that the Railway, or any other employer, has not yet reached the perfection stage. There is still a lot of room for improvement, and so innocent an appeal was no cause for the hon. Member for the Rift Valley to give us an assurance that whenever questions are considered on the Railway Council there is no question of racial feeling. No such assurance was asked, and there was no necessity to make such an uncalled-for statement. In brief, there is still room for plenty of improvement among the human element, as individual cases have been cited by the hon. members Dr. de Sousa and Mr. Shamsud-Deen.

No statement made this morning amused me more than the one made by the hon. and gallant Member for Kiambu. Last week we heard in this Council a request for another commission to inquire into the forms of direct and indirect taxation, and I was glad the hon. member should come forward this morning to suggest that the majority of people are of the opinion that there should be no more commissions appointed to inquire . . .

MAJOR THE HON. G. H. RIDDELL: On a point of order, Mr. President, I never said any such thing. I said we were tired of the experts whom we did not call for. I actually said in my speech we have asked for a commission—

THE HON. ISHER DASS: And you said we were tired of commissions.

MAJOR THE HON. G. H. RIDDELL: I said we were tired of experts.

THE HON. ISHER DASS: I am sorry if I differ with the hon. member Mr. Shamsud-Deen in one respect, when he said that the trains were run too fast, and he probably believes that as a result of the shakings a few passengers inside get hurt, for

which he feels he should catch hold of the driver and lynch him. I am entirely in disagreement. I do not think he believes himself honestly that in 1936 there can be any lynching, and if he does he should be afraid in case he should be the one lynched. This matter of the trains being run too fast and shaking people reminds me that there was once a professor teaching a class . . .

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, I ask your leave to move that the question be now put.

MAJOR THE HON. G. H. RIDDELL: And I second, Sir.

THE PRESIDENT: The question before the House is that the question be now put. Those in favour say "Aye", those against "No".

The "Ayes" have it.

I will now call on the hon. mover to reply.

THE HON. N. S. MANGAT: Sir, I am entirely in agreement with my learned friend that the question be now put, but does that mean that when a speaker is in the middle of a speech he has to stop then? I am not worried about this particular case, but for precedent's sake. Has not a particular speaker to finish his speech, and this applies to future speakers?

THE PRESIDENT: That is not my view. The Rule is quite clear—

"43. (viii) With the leave of the President any member may at any time during the course of a debate move that the question be now put. No debate on this motion shall be allowed, and, if such motion be carried, the debate shall, subject to the right of reply provided for in sub-Rule (vii), of this Rule, cease and the question shall be put."

It means any time while the debate is in progress and somebody presumably is speaking.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: Mr. President, I will try not to take too long a time in my reply to what has been rather a rambling debate.

The hon. and gallant Member for the Coast has raised several points with which I have some difficulty in dealing, because they raise political questions, which are rather outside my control. However, he expressed himself as being in some difficulty in understanding the position in this country, where

we find a prosperous railway and the country in financial difficulty. I think, Sir, if we face the facts we will find these difficulties disappear.

The facts are that in 1931 the Railway was in such a derelict condition and the finances in such bad condition that it was found necessary to reorganize the whole Railway organization which existed at that time. An inter-colonial organization was introduced which, as the Noble Lord the hon. Member for Rift Valley has explained, has been in force ever since. Our organization is covered by Order in Council and by the Railway Ordinance, and we are working at the present moment under those particular laws.

The main condition laid down which I, as the General Manager, have to follow is that we should administer this system of transport as a business concern, and that all services should be paid for, and that we should utilize proper prudence in allocating monies to reserve and so on.

Under our mandate, under the law laid down, we have built up the organization that we now see in existence, we have now re-established our funds, and, in speaking to the table shown on page 78 of our Report—where we indicate the total reserves of something over four million pounds—I have, I think, been able to explain the reason for the existence of each one of those funds satisfactorily under the Ordinance and under the laws which we are bound to follow.

Obviously, we must have a renewals fund. We cannot leave the question of renewals entirely alone, leaving our annual expenditure to fluctuate up and down, from nothing in some cases to hundreds or thousands of pounds in another. It is, in fact, an equalization fund. We have created another fund which we call the betterment fund. Obviously, we must have some betterment fund. It would be the worst finance possible not to put money into that fund, and the policy of using a betterment fund is, I suggest, one of the reasons why we are in such a satisfactory condition at present. If we had not during the boom years put something like two to two and a half million pounds into the betterment fund, we should not be in the position we are in to-day; we should either not have the facilities for carrying on the services we have to provide, or would have had to have found the money from loan, thus having to pay at the present time additional interest and sinking fund charges.

The only other item of importance in that table is the General Reserve, which I think we have all agreed must exist, and that has reached the figure of approximately £600,000. In the light of this explanation of the reasons for the existence of these funds, it cannot be said that the position is either

strange or unsound in any way. It is a fact that these colonies of Kenya and Uganda have at their disposal now a railway transport service that is in sound condition, able to carry out the services for which we are here, and there will be no further anxiety whatsoever with regard to our finances.

That is something which I think both colonies will appreciate, and which will undoubtedly relieve them of very great anxiety when the colonies themselves have to go to the markets for further loans.

The hon. and gallant member mentioned two points particularly in connection with our finances, and asked why the Colony should be called upon to meet them.

The first point was with regard to the pension liabilities for the period when the Railway was under the control of Government. Well, Sir, the agreement that was come to at that time was that the Government of Kenya would assume responsibility for all the charges that were properly due against the Railway Administration for the period when Government had control of the revenue. This £14,000 for pensions—the whole of it is not chargeable to the Kenya Government—that portion is due because of the liability incurred at that time. I suggest that one section only of the agreement cannot be altered at the present time.

The other point mentioned was in connection with branch line guarantees. That, again, was the subject of an agreement. If this Government wished a certain branch line to be built which, in the opinion of the Railway Administration, would not be profitable within a certain reasonable period of years, then that Government was entitled to ask for the branch line on condition that they guaranteed the working costs and loan charges. That was quite a fair agreement at the time, and Government undertook that agreement with their eyes wide open. I suggest that it would not be fair on the other partner in this organization, Uganda, to ask for that agreement now to be cancelled or altered.

The hon. and gallant member suggested that the Colony gets no dividends. That point has been touched upon by the Noble Lord, and I do not want to say very much about it except this: that dividends we give to the two colonies at the present time are given in efficient services on the one hand, and, on the other, in reduced charges for the services rendered. Those are the only two forms at the present time in which we can give dividends to shareholders of the Railway in these two colonies.

The suggestion made by the Noble Lord that there should, in addition, be some payment by way of dividend to the two Governments for use in whatever way they decided was a very

interesting one indeed. It is one, I may say, that I have considered from time to time lately, because I foresee the time is coming when it will be unwise to go on giving rates reductions. The time will come when our rates are reasonably low from every point of view, not only the average charge, but from the point of view of individual rates, and we still may have a surplus. I quite agree that once our reserves are fully established we should not build up reserves beyond that point. I think the suggestion that has been made is one well worthy of consideration. (Hear, hear.)

The only point I would make in connection with that now is that that stage has not quite been reached. We have got a lot of rates that are far too high, and until we deal with them, I think the question of this other point must remain in abeyance. That does not mean it should not receive consideration. I think it is a very useful and very important suggestion.

I do not want to go into detail with regard to some of the points mentioned by the hon. and gallant Member for the Coast; for example, the charges of conveying boring plant from Nairobi to Taveta. The point there is that the service has been rendered, a reasonable charge is made, and if it happens to be a high cost per foot for work done that is not our responsibility. But I suggest that the charge, which was approximately Sh. 500 odd each way, was a very small proportion indeed of the benefit that the hon. and gallant member received from the results of the work done! I am sure that the value of the benefit from the water obtained far outweighs the charge made for carrying his boring plant down to Taveta!

The same remark applies to the question of private sidings. We cannot give services free. If a private siding is required by anybody, payment on a reasonable basis must be made, and I am sure hon. members will agree there can be no other system, for if there were no safeguard of this nature private sidings would be demanded everywhere, and many of them would serve no useful purpose whatever.

The hon. and gallant member did make one statement to which I wish to draw attention, because it is a very fundamental one. That was, that, in his opinion, reduction in charges when the tide is flowing is wrong. That is a very valuable point indeed, and I am very glad to hear him make it. That is quite true in general circumstances; it is unwise to reduce charges when the tide of prosperity is flowing. We should, if possible, try and retain our surpluses until they are needed when the tide turns and begins to go out. Our trouble is—and this one paradox I have found—that we are never allowed to accumulate our funds for that purpose, for as soon

as they reach a reasonable figure somebody wants money for other purposes! And the hon. member himself, I think, was the first to suggest that our funds were already too high.

I do not think there is anything else that I need to deal with as regards the speech of the hon. Member for the Coast.

The Hon. Mr. Pandya suggested again that we should not add to our reserves but that we should give a reduction of rates instead. I had hoped that in my opening speech I had pointed out we were giving reductions in rates to the utmost limit that is safe. We cannot go too far, because rates reductions are intended to be permanent, and we do not want to find ourselves in difficulty if suddenly traffic falls away and our revenue decreases. But we are giving away from the 1st of January as much as we can possibly give in the way of rates reduction with safety. I will say this, that the sum is so large that I am quite sure it is going to have repercussions in other directions. Adjustments that will be necessary in general business on account of these rates reductions will be quite serious. I think those disadvantages are outweighed by the advantages, but there it is, we are giving away such a large sum that it will have repercussions and will introduce other difficulties in other directions. I think this will be the last time that such a large sum can be given away, so that probably these sort of difficulties will not arise again in future.

I am very glad of the opportunity to speak on the staff question. Various hon. members have drawn attention to what they have called the human side of the Administration. As General Manager, I would like to make it quite clear that that does receive the most careful attention at all times, and I would like to take this opportunity of paying tribute to the staff of this Railway Administration, a staff of all nationalities and all grades. We have many thousands of people in our employ, as hon. members know, and it is seldom that I can get a real opportunity of saying what splendid work they are doing. The results we obtain year after year are largely, if not almost entirely, the result of the efficient and careful work done by every member of the staff. I, as General Manager, who have to stand up here and perhaps take some of the credit for these results, would like to take this opportunity of passing it on where the credit is due. (Applause.)

Having said that, I want to confirm what has already been said by the two hon. members of this Council who are also members of the Railway Advisory Council. They know, Sir, that staff matters occupy a very large proportion of our time and our deliberations. I can assure every hon. member of this Council that the human side of the Railway does receive the most careful attention, not only from me, but from

every head of a department and his own senior staff. We feel that the staff themselves would resent very much the suggestion that there is any serious difficulty between us. It is quite true that our ideas on scales of salaries and so on do not always coincide, but I am quite sure that the staff does feel that they get the fullest and most careful consideration in these matters, even if we cannot always accede to the whole of their demands.

The question of leave conditions and passage conditions has been mentioned in several places, and I think I might as well cover that point now. The Asian staff did make certain requests whereby some of their conditions should be raised to an equality with the conditions applicable to the servants of the Government of Kenya. We offered these servants, through their association, the acceptance of the conditions as a whole, the leave and passage conditions of the Local Civil Service. That would have given them 18 days' local leave, together with other conditions applicable to passages, privilege leave, etc. They found when they went into it that that would not satisfy them; some of the Government conditions were better than ours, but some worse. They therefore declined our offer, but again pressed that we should give them the concessions that were in their favour. The most we could do, after considering the matter very fully in Railway Council, was to agree that their local leave should be raised from 10 days to 14 days, and I omitted to say in my opening address that these Estimates have been based on that assumption, that local leave will be increased from 10 days to 14 days from the 1st January next. That is the most we can do at the present time, and we feel that the conditions as they stand now as a whole are eminently fair from every point of view. If we are to run this Railway for the sake of the staff and put up salaries and conditions of service and so on whenever they ask for it, well, our working costs will go up and rates reductions will go down, and the country generally will pay more for their transport, so that we have got to try and find a fair balance between those two things. We think, Sir, that our service conditions at the present time are quite fair and reasonable.

The hon. member mentioned joggree, and the Noble Lord asked for letters for any other claims for rates reductions. In order to safeguard the position to some extent, and avoid having a spate of fresh letters, I would like to make it quite clear that we already have joggree on the list for examination; and also hundreds of other items, and I think we have probably covered everything that anybody is likely to want us to consider. I will not say that everyone will be included, and I cannot of course foretell the position that will exist after the next meeting of the Railway Council, but that item I can assure the hon. member is on the list.

The question of an intermediate class has been touched on by several hon. members, and the Noble Lord has also explained the Railway Council's attitude with regard to this matter. This is one of the things that one would like to do if one could afford it. But the cost of introducing an intermediate class is extremely high. Not only is the cost of the additional vehicles that would have to be purchased high, but also the cost of running the coaches, many of which would be empty, or partially empty, most of the time. At the present time, at any rate, we have decided that we will experiment with improving the third-class accommodation on the lines that have already been pointed out. We hope to break up one of the larger compartments in the existing third class coaches into two smaller compartments, one of which will be reserved for women and the other, we hope, for better dressed and better class natives or Asians, and in that way we hope to improve class accommodation without having in any way to increase the charges to make up for the small extra cost involved. In addition, the rates reductions that will apply to passenger fares will, I think, help many of those who would like to travel second class. They will find the second class charges more reasonable and within their powers to pay, and they will probably be able to get the necessary comfort and segregation that they desire by travelling second class in future. Beyond that I do not think we can go at the present time. It is too costly, and this country cannot afford to spend money in that way. There are many other ways in which money could be more usefully spent.

I now come to the remarks of the hon. member Dr. de Sousa. I have tried to deal with the staff question in general terms, but there are one or two minor points.

The first question the hon. member raised was with regard to this question of pension reserve, and he has suggested that this should be left over to future generations. I do not think that is sound finance; I think the present generation ought to bear the cost of its own transport, and that does include some share of the future pensions of people who are now carrying out that service.

He asked also whether the write-off of stores was not too large, and whether our stocks had not been over-estimated. That is quite a fair point. Our write-offs have been large during recent years. As I have tried to explain, much of that is due to the fact that no write-offs at all have been carried out previously in the history of the Railway, or none of any importance. When you come to overhaul your stores stocks, some of which have been in existence for nearly the whole life of the Railway, you are bound to find reason to write off

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I now come to the remarks of the hon. member Dr. do Sousa. I have tried to deal with the staff question in general terms, but there are one or two minor points.

The first question the hon. member raised was with regard to this question of pension reserve, and he has suggested that this should be left over to future generations. I do not think that is sound finance; I think the present generation ought to bear the cost of its own transport, and that does include some share of the future pensions of people who are now carrying out that service.

He asked also whether the write-off of stores was not too large, and whether our stocks had not been over-estimated. That is quite a fair point. Our write-offs have been large during recent years. As I have tried to explain, much of that is due to the fact that no write-offs at all have been carried out previously in the history of the Railway, or none of any importance. When you come to overhaul your stores stocks, some of which have been in existence for nearly the whole of the life of the railway, you are bound to find reason to write off

considerable amounts. Many are obsolete, many have been there for years without being required, and are not likely to be required in future. There have obviously been some cases of overstocking; we have in some cases obviously over-estimated requirements. But we are all subject to human error, and I can only say that the amount involved in that way is not large. The sum that we have put aside for loss of stores is £150, which I think, for an Administration of this size, is a very small one indeed.

We have received no grant from the Colonial Development Fund towards railway extensions in recent years.

The grant to railway clubs and institutes is limited to small grants to clubs that are not entitled to assistance from the Fines Fund. We try to confine our allocation of the Fines Fund to the staff from whom the fines are obtained, and that means that certain clubs are not likely to get any assistance in that direction, so we have provided a small amount to meet the needs of these clubs.

The staff salary question was, I think, reasonably and adequately answered by the hon. members who are members of the Railway Council. That was the subject of a very long and very exhaustive inquiry. We did make inquiries among all other railways that might give us assistance in that direction, and we are satisfied that the present results are as satisfactory as they can be. I believe, and I say this after due consideration, we are getting full value for the money that we are paying to our staff.

The question of Indian representation on the Railway Council lies rather outside my sphere. I am not responsible for the constitution; I am not responsible for nominating or selecting members of Railway Council. Although one or two of my hon. Indian friends seem to think I have this power in my hands, that is the prerogative of the Governor and his advisers. The Railway Council is not intended to be a representative body, and to this extent I would join issue, I think, slightly, with my hon. friend the Member for Nairobi North wherein I think he said he represented certain sections of the community. I do not regard him as a representative of any section of the community; I regard him as one of the wise men in this country who have been selected by the Governor to give sound advice on railway matters. If we are to try to make the Railway Council representative of everybody we should have a council of thirty or forty members before we knew where we were. We find the present size of the Council, four from each colony, is about as much as we can manage. I would like to make that quite clear: none of them is representative of anybody. They are, of course, expected to make

themselves fully acquainted with conditions and different viewpoints of the country, and with that knowledge they come to Railway Council with their advice and knowledge on which sound decisions can be made on railway policy.

The hon. member Dr. de Sousa made one statement, that the running staff have no holidays at all. I do not know where he got his information from. It is quite true that the running staff are some of the most hardworking people on the Railway, because during the busy season they do not really get much opportunity for a holiday, but during the slack season every opportunity is taken to let them have their local leave and so on. They get well paid for their services, and, I understand, on a very satisfied section of our staff. The running staff, of course, includes drivers upon whom depends the efficient running of our trains, and I must say, Sir, on this Railway, the operating side is extremely well handled.

There is, however, one point to which he has drawn attention where I think something should be done. He has pointed out to me that the Asian staff who are invalided out are not entitled to passages unless they have fulfilled a full tour and are entitled to a passage on that account. I looked that point up, and he is quite correct in that statement, and I think it is one that should be corrected. I propose to have this matter very closely examined. I think that any staff invalided out of the country should be entitled to a passage, and I believe that in the Government that is so, I will find out why it is not so with us.

The other point the hon. member raised again this year, as he did last year, is the question of the daily paid artisans. I can hold out no hope at all for a change in that respect for that type of staff, the numbers of whom depend upon the works which we have to carry out from time to time. The daily paid system is a recognized system of employment all over the world, not only in Kenya, but elsewhere, and I can hold out no hope for a change. It would not be fair on the users of the Railway to adopt a more expensive system.

As regards the Asian apprentices, we have a number in our employment; we have over 20 in various departments at the present time, and, as vacancies occur or as apprentices are required, additional numbers are taken on. We have—I think this is a point which the hon. member complained about—no special school for the Asian apprentices as we have for the Africans, but we do take our Asian apprentices into the open line school when required, and we do train them on the open line and permanent way work out of doors, and we have no difficulty whatsoever in meeting all our requirements for Asian staff when vacancies occur.

As regards the question of concessions to school children, I think we have now given every possible concession to them. During the summer holidays they get, if they travel in organized parties, special reduced fares, and, if they travel with parents to the Coast during the concession periods they get half the normal rates. I think that particular form of concession is on a satisfactory basis. I am, however, looking into the question at the request of the Director of Education, as to whether it is possible to extend facilities in other directions in order to facilitate the travelling of children in this colony. The Director points out that it is very valuable indeed that children should move about, and hopes concessions can be given in other directions. That point will be examined.

The question of tenders has been mentioned in several quarters, Sir, and it has been suggested that big firms tender and get contracts and then they sub-let or buy their commodities from people who have already tendered. I can only say that we call for tenders publicly, the tenders are fully examined by a very responsible tender board, and their recommendations are based on price and service. In all cases the endeavours to select the tenderer who will give the most satisfactory service to the Administration. It has been suggested that in some cases tenders are not called for, and services are renewed automatically. I cannot think of any case at the moment, but there may be cases of that nature, though generally speaking we do call for tenders for all our services. Within the last week, I have signed several tender board reports giving the result of the tenders which have been called for in connection with our supplies for foodstuffs, provisions, wines and spirits, and so on.

The hon. and learned Member for Nairobi South raised two or three small points. The first was the springing of our new coaches. I quite agree with him. That has been a difficulty which we have not yet fully overcome. The three latest coaches, which were rather heavier than the older ones, are more lightly sprung, and this causes the very objectionable movement of which the hon. member complains, but we have tried all sorts of expedients to get rid of that difficulty without complete success. The latest ones now actually being tried out is a type of shock absorber which we are putting on to the coaches, which we hope will damp down or eliminate entirely this very objectionable up-and-down movement.

While speaking on that point, Sir, I would like to refer to one other common type of complaint, one which we had only a day or two ago, and that is the objectionable jerking of coaches and trains at the starting and stopping points. That can be brought about from several causes. One is bad driving. Well, I think with our present system of caboose coaches and

experienced drivers that is not the case at the present time. Our drivers are all experienced Europeans, on the mail trains and to the Coast particularly, who are well aware of the need to start their trains off gently. Another possible cause is some sticking in the Westinghouse braking apparatus, but that, too, has been almost entirely overcome by more efficient and regular inspection. The third factor, which I believe is the principal cause of it all, is the fact that on our bigger and heavier trains we are stressing our coupling springs almost to the limit; and that means that these springs give with the heavier weight behind the engines, and then you get the jerk as they contract again. If that is the real reason, there is no course open to us except to keep down our trains to lighter and fewer coaches. That is a question that we will have to examine, but I can only repeat that we will do everything we possibly can to eliminate these two complaints.

While I am on the subject, I can perhaps deal with a point mentioned by the hon. Mr. Shamsud-Deen—the question of so-called excessive speeds. Well, Sir, if our engines ran away they could not possibly go faster than 45 miles an hour, even if they ran away down the steepest hill! The reason is that the movement of the pistons becomes so rapid with the small diameter wheels, that it corresponds to the speed of bigger locomotives at home of 60 to 70 miles an hour. Our locomotives going all out cannot do much more than 45 miles an hour, so I suggest that he need not have very many qualms about excessive speeds.

Another point the hon. Member for Nairobi South raised was in connection with our charges for wines, especially the Continental wines. Our policy in that respect, of course, is to base our charges partly on our costs which again results from the tenders, but also partly so as not to undercut local hotel-keepers. I am told that the particular price the hon. member referred to, that of a "ginlet", is just slightly above the price charged by local hotel-keepers, but I believe our "kote" are rather larger! I suggest the hon. member was getting full value for his money.

The hon. Member for Trans Nzoia raised the question of branch line guarantees, which I think I have answered already.

He also raised an important point, the question of taper rates, and asked for a graph, as did also the Noble Lord, the Member for Rift Valley. We have graphs in almost every traffic office showing these taper rates, and there is no difficulty in showing them to any hon. member who is interested. We have got taper rates, and they are there for a purpose. We do not consider they are excessive in any way; in fact, in some countries they are even steeper; that is, they taper off more

rapidly than our own particular rates taper here. In South Africa, for instance, they taper for long distances rather more rapidly than ours.

It seems to me that we forget the object of the taper rate. The object is, of course, to stimulate the largest possible movement of traffic. If you have a straight line rate, it would mean that the up-country people would not buy in any quantities because the rate would be far too high, and we should be told it would be greater than the value of the commodities and so on—a very familiar complaint. So we have designed the taper rate to ease the burden to some extent on long-distance consumers. The particular rate quoted by the hon. member was, I think, Sh. 8 a case of whisky to Nairobi cannot Sh. 12 at Kampala. I suggest that Sh. 8 to Nairobi cannot be considered excessive, whereas anything more than Sh. 12 at Kampala would have an effect on the consumption of whisky. Therefore, both parties benefit: the people near the Coast benefit by the fact that there is greater traffic moving, and the people up-country benefit by the fact that the charge is within their capacity to pay.

That is the scientific reason for a taper rate, and I can see no reason for any fundamental change in the tapers we have in force here.

The hon. member mentioned that the price of petrol varied at different centres. That is quite true, and if he went into it closely he would find there must be other reasons, because we have found cases where petrol is sold at lower prices although it paid a much longer railway charge than petrol sent to other centres. Other factors come into consideration, such as the cost of land, rentals for property, and things of that sort.

The hon. member states that our railway rates generally are high. I would like to disagree with him. I agree that some are high, some very high; some, on the other hand, are very low, but our average for a railway of this size, working under conditions such as we have here, is not high. If the hon. member would compare us with some of the other colonial railway systems of a similar size, he would find that our figures compare very favourably with them.

He also said there was a very large increase in rates during the depression period. I must differ with him again, because the increases, although they were unfortunate, were not generally high, and have been more than compensated for by the reductions in rates which have since taken place.

He asked me to consider the question of consolidated pay. That has been under consideration for some years, and we have made considerable progress in that direction. I hope very

shortly to put up for the consideration of the Railway Advisory Council certain proposals, particularly in connection with a superannuation scheme, to take the place of the present Provident Fund Scheme.

The hon. member further suggested that if we invested our money in local loans we should not have to allow for depreciation. In the past, our investments have appreciated very considerably, and we took all that money to the credit of revenue. We have ceased to do that, although we still get some credits, and we are, as I have explained, putting something by now for the time when our investments must depreciate again. We also do invest in local funds when that is possible, and in the recent loan raised a short time ago in this Colony we invested quite a considerable sum of money; we are prepared to repeat that performance whenever there is another opportunity.

The question was raised by the hon. Member for Mombasa of the offer of land instead of provident fund to members of the staff who were retiring. That, I think, is hardly within my province. If the Government of Kenya is in a position to offer attractive land proposals to members of the staff about to retire, I am sure they will consider it. I cannot, of course, substitute a land scheme for a provident fund, as I cannot force individuals to dispose of their money in any particular way.

THE HON. F. A. BEMISTER: On a point of explanation, I never said that; the hon. member must have misunderstood me. I asked that land should be given so that a man who got provident fund money in this country should remain here with that money, not that he should buy the land at all.

THE HON. THE GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS: I am sorry if I misunderstood the hon. member. It is a matter, of course, for the Government of Kenya to consider whether they can give land for this purpose without charge. I had anticipated some charge; probably a reduced charge.

Now I come to the hon. member Mr. Shamund-Deen, and I see some difficulty with regard to this hon. member, because he always starts off by saying that he has never read the Estimates, he has never studied my Annual Reports, has only made a cursory glance at the revenue side, and so on. That probably accounts for some of the statements he has made.

He states that we have had no Sir Alan Fin, no Standing Finance Committee, and no attempt has been made to cut down expenditure. Well, Sir, we have had in our history General Hammond and Mr. Roger Gibb, and from both of

these gentlemen we got a great deal of assistance, and I hope we learnt a lot from their reports. We also have our Standing Finance Committee in the shape of the Railway Advisory Council and the Harbour Advisory Board, and I consider that they function very adequately in that respect. As regards our attempts to economize, I can only refer the hon. member to my past Reports, and ask him to read and study them; and he will find that very considerable economies indeed were carried out right from 1931, the beginning of the depression.

The hon. member made one important suggestion. That is, it was time that railway transport should be taxed. In talking about that question, he seemed to suggest that the Railway was some outside organization that did not really interest him or the public of this country. Is it wise to tax transport? I suggest to the hon. member that it is the users who would have to pay that tax, those who use the Railway, those who ship goods, because whatever tax you imposed on this transport has to be recovered in some way or other. It would mean either a surcharge on rates to cover the additional taxation, or it would mean postponing some of the rates reductions. That is the policy which this Colony has, I think rightly, decided on, that railway transport should not be taxed in any direction. Moreover, the grants to Government by means of rebates on Government passengers and goods transported of 15 and 20 per cent. amounts to a considerable sum. That concession would, of course, have to be cancelled. But again, it is purely a question for the two colonies to decide. If they wish to tax transport the money must be recovered through charges.

I cannot support the hon. member's desire for greater control. I would only refer him again to the position that existed when this Government had full control of the Railway at the end of 1921.

The hon. and gallant Member for the Coast described the Railway as a ribbon of rust, running from Mombasa to Kisumu. That was quite true, but this Government need not be ashamed of that. No government in the world that I know of has ever succeeded in running a railway as part of government and running it successfully. They have always adopted eventually, after many experiments, some such system as the one adopted in this country, and I suggest that if the hon. member compared our present position and the present services given with what the country had at its disposal in 1921, he will agree that the experiment in this case has been a striking success.

The hon. member Mr. Shamsud-Deen drew attention to one particular case of a hardship on an individual who had suffered total incapacity owing to an accident. That is a hard case, but I would point out one or two inaccuracies in his

statement. The driver of the motor trolley was fully entitled to drive that trolley, it was his own trolley, for he was an inspector of works with one placed at his disposal for his daily use, and he was an authorized driver. In that respect the hon. member's statement is not quite accurate. There was a very regrettable accident. The driver himself damaged one of his legs, and the other driver also suffered damage to both his legs.

It is a hard case, and the Railway have done everything possible within their powers to meet the man's claims generously. We looked after him the whole time he was under treatment, for seven months giving him full pay and paying hospital charges, and so on. When he was finally boarded, the question of compensation came up, and we have adopted the most generous scale available to us under what we call the Indian Workmen's Compensation Act. This Act, of course, is not applicable here at all; I understand no Compensation Act is applicable at the present time, but that is the one we have always worked under in past years, and I believe Government are guided by it as well.

We have given this particular individual the maximum relief that can be given under that Act. If he wishes to take legal action for higher compensation, well, that is his own affair.

I have dealt with the question of speed, and I have also dealt with the question of third class accommodation.

The hon. member did ask the specific question: What was the object of the amount of £5,000 for demolition and transfer of assets? I regret that I cannot give him without due notice a full list of the assets which we propose to demolish or transfer during the coming year. I can only say that from time to time such cases arise, and we make adequate provision for this item in the budget.

We cannot move all the houses from Makindu, nor have I been able to suggest any way by which that place may be resuscitated, but possibly at some future date we may dispose of some of them.

He also asked a question with regard to scrap iron which he said I was selling to Japan. We called for tenders, and the highest bidder got the tender allotted to him. As a result, we have recently sold a lot of scrap iron to a certain gentleman, but what he is doing with it I have not the faintest idea. He is presumably not getting it for his own use, but has made some arrangement for its disposal, but how or to whom I have no knowledge, nor am I particularly interested.

The question of Sir Osborne Mance's visit here has been mentioned in two places, by the hon. Member for Kiambu particularly, and I must correct one statement that I made when I said we asked for Sir Osborne Mance. I was, of course, speaking for East Africa, pointing out that each of the three territories had appointed committees to look into this whole question. I should have said, perhaps, that East Africa had asked for the visit of an expert to go into that question. That request might not have been made in Kenya, but I suggest that Kenya cannot shirk its share of responsibility, as the other two territories alongside are closely concerned with the same problem, and it would be quite right for Kenya to accept such a request from the neighbouring territory in this particular case.

This is a question which requires the greatest possible consideration, for it is full of difficulties, and I am sure that, however wise we may be here, we shall be able to learn something from this expert. He is, of course, particularly knowledgeable in this particular direction. The expense of his visit was met partly from a Colonial Development Fund grant, partly from grants from the three territories, and partly, I am able to tell the hon. member, from a grant from Railway funds, so that I hope that disposes of his question.

The Noble Lord, the hon. Member for Rift Valley, asked me one or two questions.

I have dealt with the question of local leave for the Asian staff, and also pointed out that jogree is on the list of rates reductions for consideration.

The hon. member has drawn attention to the question of interest on cash balances, and has suggested that perhaps £75,000 was too low. I cannot argue on that point. All I can say is that that is the figure my Chief Accountant estimates is a fair one, after taking into consideration not only the balances we are likely to have at our disposal, but also the rates of interest likely to be available. It is quite true that if the interest rates increase the amount we estimate for this year will be exceeded. I hope that will prove to be the case.

He also asked that a list of investments should be shown. We do not publish such a list in the Estimates, but we do each year in the Annual Report. If the Noble Lord will turn to pages 160 and 161 of my Report for 1935 he will see a full list there.

I will not say any more about the question of the possibility of paying dividends to Governments, because at the present stage I do not think I can add anything to what I have already said. I am most anxious—and I would support

the hon. member to this extent—to get the whole country linked more closely with the Railway, and to get a better understanding of Railway policy, because although these mumbings and rumbings that the hon. Member for Nairobi North mentioned do come to my ears, I hear them probably not to the same extent that he does. But I do hear them; and I do consider we have a very good answer to every one, because I consider that our policy is directed to the best advantage of the country as a whole.

People sometimes judge us who are not always in full possession of the facts, and who certainly are not in as full a possession of the facts as members of the Railway Advisory Council are. I hope therefore that our members of the Railway Advisory Council will take every opportunity to try and make our policy quite clear to those who have any doubt, because we think we are serving their interest and not our own.

The hon. Member for Ukamba asked me whether there is any known mechanical device for preventing sparks from our engines setting fire to the countryside. I am afraid the answer to that is in the negative. There is no really effective device, as far as I know, to prevent sparks coming out of the smoke-stacks of the engines without at the same time preventing steam coming too, which would stop, of course, the movement of the engine itself. What we have done is to provide the best device we can inside the smoke-box and, at the same time, with the co-operation of neighbouring landowners, to provide firebreaks that are reasonably satisfactory.

We have, as hon. members know, a limited space in which to do anything. Our boundary, as a rule, is not more than 100 feet from the centre of the line of the railway—very often a shorter distance than that. When a high wind is blowing, sparks go right outside our boundary, so that we have in a local Ordinance provision for co-operation with neighbouring landowners whereby if they consider their crops sufficiently valuable they will build a firebreak on their side of 10 feet and we will build one on our side of 10 feet, which gives a 20 feet firebreak. This, I suggest, is reasonable, and all that can be done at the present time. Anything more would cost a great deal of money, and there seems no reason to suggest any further expense.

While undoubtedly the Railway does cause a great number of fires, they do occur, as the hon. member knows, from other causes, and there are very many causes which bring about a greater destruction of grass and fodder than, I think, fire caused by sparks from railway engines. In the old days of the wood-burning engines, of which we used to employ large numbers, we did destroy large areas of grass and fodder, but with

the coal-burning engines now used, such as the Garrett, we do not do anything like the damage we used to do.

I think, Sir, I have dealt with all the points which require answering. (Applause.)

The motion was put and carried.

STANDING FINANCE COMMITTEE: PROPOSED ADDITIONAL MEMBER.

The name of the hon. the Arab Elected Member, Sheriff Abdulla bin Salim, having been called from the chair—

THE HON. F. A. BEMISTER: With the leave of the House, Sir, I ask permission to move the motion standing in the name of the hon. member Sheriff Abdulla bin Salim, who is forced to be absent owing to the feast of Ramadan—

"That the hon. Elected Member for the Coast be appointed a member of the Standing Finance Committee to represent Arab interests."

THE PRESIDENT: You say, by leave of the House?

THE HON. F. A. BEMISTER: I thought I had to ask for leave to speak for another member. I am asking your permission.

THE PRESIDENT: If you ask for my permission, I cannot give it, because naturally a substantive motion must be moved by the member in whose name it stands. There is another way of getting around the difficulty. It is done sometimes in this House by a formal motion.

THE HON. THE COLONIAL SECRETARY: Sir, in accordance with Standing Rule and Order No. 109, I beg to move that Standing Rules and Orders be suspended in order to allow this motion to be moved by the hon. Member for Mombasa.

I do so because I think it would be rather hard to deprive the hon. member of the opportunity of moving this motion merely because he was ignorant, I take it, of this ruling you have just given.

It does not, I think, appear in our own Standing Rules and Orders, and I do not think every member can be expected to have May's *Parliamentary Practice* in front of him always and to know everything contained therein. It would have been quite easy for the hon. member to have given notice of the motion himself a day or two ago, and it could have been taken to-day. Now, if he were to give notice of the motion, it could

be taken to-morrow if Council were sitting but, as it is, he might not be able to produce the motion until after the adjournment, which might not suit him as well.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

Standing Rules and Orders were suspended to allow the motion to be moved.

THE HON. ISHER DASS: I want to have your permission, Sir, to just point out one thing. The hon. Member for Nairobi South, in moving his motion that the question be now put—

THE PRESIDENT: You are out of order; you cannot go into that now.

THE HON. ISHER DASS: Under Rule 43 (viii) permission to move it should have been obtained from the President.

THE PRESIDENT: And permission was given from the chair.

THE HON. ISHER DASS: The words "with permission" I do not think were sufficient.

THE PRESIDENT: I am not prepared to argue upon the ruling given, and that ends the matter.

THE HON. ISHER DASS: —

THE PRESIDENT: Will you please sit down?

THE HON. F. A. BEMISTER: Sir, I beg to move:—

"That the hon. Elected Member for the Coast be appointed a member of the Standing Finance Committee to represent Arab interests."

I am very sorry that I did not take the necessary care to see that the Rules were carried out, but I do thank the hon. the Colonial Secretary for helping me out of a very difficult position.

I was asked by the hon. Elected Member to put this forward in his name, and I thought at the time that it would be a non-controversial measure; I thought everybody would have agreed to it, in view of the special request of the Arab members to have representation at this particular time on the Standing Finance Committee, when such a large question as an alteration in our fiscal policy will be discussed. You can imagine my surprise when I was informed this morning that Government did not intend to accept the motion. In fact, at the moment I am a bit astonished because, in view of the

great courtesy I have received at the hands of the hon. the Colonial Secretary, I cannot believe that Government have made up their minds to refuse the motion, but will give me a fair hearing and listen to the pros and cons of the Arab people and Arab members.

Sir, this request comes from a meeting of three-fifths of the Coast Members' Association. The idea was not suggested to them in any way whatever. I happened to be in Mombasa at the time, and a special meeting was called. The hon. member Mr. Pandya and the hon. Member for the Coast were in Nairobi, and in consequence they could not be consulted. Subsequently a letter was handed to me, and I took it personally to the Colonial Secretary, and delivered it to him through the Clerk of Legislative Council. The reasons for Arab representation were set out, I think, very clearly in that letter, which was written by a lawyer. It was carefully worded and respectfully, as all communications from Arabs are. I would ask your particular attention and consideration to this petition, because one has to remember that the Arabs were not a subject race of the British Crown, but handed over their country at the Coast under treaties, with no thought of trouble of any kind, and the loyalty of the Arabs at the Coast and Zanzibar is proverbial. In fact, the signatory to the letter which I have presented was the one man whom the British Crown asked to settle the Arab rebellion at Mbaruk, and he has been honoured by His Majesty the King for his particular services; but not only for his particular services, for he has been the recipient in the name of his tribe of these honours which the British Government have thought fit to bestow.

Now a crisis comes in our history. We Europeans are represented, the Africans are represented, and the Indians are represented—(An Indian Member: Very negligibly.)—and the one section which is left out is the Arab section. I want to impress very carefully on you very especially that their claims are that they are the largest landowners at the Coast; they practically control the revenues to Government from a strip of land about 300 miles by 12 miles; their influence is of very great value to this Administration, and it is only because they themselves are prevented through religious observances, which they cannot avoid, that they have sought for the best advocate they can get. It is only the best that the Arabs want, and they have unanimously selected the hon. Member for the Coast for two reasons. The first is that he understands their wishes. For three hours they discussed them with him. The second reason is, that it is recognized right through the country that he would be the best spokesman, not only for the Arabs themselves, but for the other large interests at the Coast. Remember, Sir, although I speak at the moment only for the Arabs,

because I am acting for one, we have great claims to a seat on this Standing Finance Committee, whether you consider it by race or by district.

It has been suggested to me that if any other name had been put forward Government would not have made up their minds before they came into this House to refuse the request; that had the Arabs been able to sit on this Committee, especially Sir Ali bin Salim, you and your Indian colleagues would have acceded to the request. I would ask you particularly to keep out from your minds the personal equation. All I ask is that the Arabs, on this occasion only, shall have their petition granted. They will abide faithfully and loyally by every decision that is made by that Committee, and I do suggest that you will give it the utmost consideration, and if instructions have been given that your supporters are to vote against it, that you will, out of courtesy to these loyal people, withdraw those instructions, and give it your fair and honest consideration, as in the prayer every day you appeal that you will consider all matters in so just and faithful a manner. (Applause.)

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

The debate was adjourned.

DR. THE HON. A. C. L. DE SOUSA: Sir, I wish to record my protest in your allowing the motion of the hon. Member for Nairobi South while the hon. member Mr. Isher-Dass was speaking, which I consider a restriction of our privileges.

THE PRESIDENT: That is out of order, and no reference will be made to it in the minutes.

Council adjourned at 1 p.m.

On resuming, at 2.15 p.m.

LT.-COL. THE HON. LORD FRANCIS SCOTT: Mr. President, at the adjournment I had just seconded the motion put up by my hon. friend the Member for Mombasa on behalf of the Arab Elected Member, who is unable to be present. As neither of the Arab members is present to-day, I have been asked to second this motion, but in doing so I should like to make it quite clear that this motion did not emanate in any way from the European Elected Members' Organization, nor did we ever discuss it or consider the matter, and the first I knew about it was when the hon. Member for Mombasa showed me a copy of a letter from the hon. Sir Ali bin Salim, which I think was sent to Government.

I do not feel altogether out of place in speaking on behalf of the Arabs because on no less than two occasions the Arabs

have asked me to put up petitions on their behalf to the Secretary of State in England, petitions which I did put up and for which I was subsequently thanked by the Arab community.

I heard the hon. Member say that Government had informed him they could not accept this motion. I may say that surprises me, because, quite frankly, I do not see how Government can refuse this motion. The origin of the Standing Finance Committee was about, I think, three years ago, and it was considered that the old system of the Select Committee, on which all the unofficials were members and a certain number of Government officers, had become too cumbersome and difficult to deal with the business, and so it was decided to have a smaller committee, the Standing Finance Committee, which should be there to represent all interests. At the time I remember having a discussion with the hon. Arab member as to what the Arabs wanted in the way of representation, and he pointed out it was very difficult for the Arab members to come up here to attend this Standing Finance Committee themselves, but that they did feel confident the European Elected Members on that Committee would put up their case for them whenever necessary.

At that time it was imagined that there would be an evenly balanced Committee, and that everything would be dealt with on its merits, but, unfortunately, since then it has become very apparent, not only to us here but also to the Arabs, that the poor downtrodden representatives of the European Elected Members have never had a chance at all; we have been in a permanent minority on that Committee, and have been permanently ruled out by the regular forces of the Government representatives, supported by the auxiliary forces representing the Indian and the native interests on that Committee. And so it has become apparent to the Arabs that, whilst they had every confidence that we should be able to put up their case for them in the early stages, we have not been able even to get a full hearing for our own case on our own questions, and therefore it has become apparent to them that they must have some direct representation for their special interests.

They find, owing to religious difficulties, it is impossible for either of these Arab gentlemen to be on this Standing Finance Committee themselves, and therefore they looked about to see who they could get adequately to represent their interests, and what could be more natural than that the first person they should think of should be the hon. Member for the Coast, where the majority of the Arab population resides? The hon. and gallant Member for the Coast not only has qualifications from his territorial associations, but further he has been longer in this country than any other member here,

and consequently has perhaps longer and more intimate association with the representatives of the Arab community than anyone else; and, thirdly, whether you agree or disagree with his monetary and financial views; I do not think anybody can deny that he has a far greater grasp of financial questions, economic and monetary, than any other resident in the whole of this Colony. (Hear, hear; and Question 1)

If it is argued that because he happens to be a European Elected Member it is therefore going to upset the balance of that Committee, of course that does not hold water for a moment. First of all, you should not consider the fact that he is a European Elected Member any more than you should consider the fact that my hon. friend Dr. Wilson was once a Government official and is now here to represent the interests of the natives. In every case those gentlemen can be relied on to represent the interests of the people they are put on to represent, rather than any personal predilections of their own.

With regard to the work of that Committee, though there was a sort of balance made originally, in fact one always goes into that Committee in the hope that everybody will come to a mutual agreement, which, I am sorry to say, has not always been the case in past years. But even supposing that the balance remains as it has in the past and that the hon. and gallant Member for the Coast did find his views coincide with those of the three European Elected Members who represent European interests, there would still be five other gentlemen, who, if they thought all our views were wrong, would have a majority over us.

If Government turns down this resolution I do honestly believe they will be making a very serious mistake. They will be refusing to one section of the community in this country; and that community which can claim to be the oldest of all in this country, they will be refusing them their very legitimate request of having representation on this most important Committee at perhaps one of the most important times in the financial history of this Colony.

DR. THE HON. A. C. L. DE SOUSA: Mr. President, I am in the very unfortunate position of not being able to give support, which it was my earnest desire to do, to the hon. Member for Mombasa, who has moved this motion on behalf of the Arab members. I wish to make it very clear indeed that I am not in any way opposed to the Arabs having direct representation on the Standing Finance Committee, because I think that the principle of the representation of the various communities concerned in the matter of taxation has already been accepted by Government by the appointment on that Committee of European, Indian and African representatives.

But in this particular instance, I am rather surprised at the way in which this motion has been brought; not only at the manner in which it was brought, but at the time it was brought in. I will not be so guilty of attributing motives, but I cannot disabuse my mind of this one fact, that Arab-representation is being sought on the Standing Finance Committee through a European Elected Member. In actual words, the racial composition of the Standing Finance Committee is sought to be increased by one more European Elected Member. I would have been very glad to support a motion by an Arab member asking for Arab representation on that Committee through an Arab. Now it seems to me that that position is not possible, and I will give you the reason why.

I am sorry to have to say it, but I have noticed that during the last two years, 1934 and 1935, Arab representation on Legislative Council has not been as satisfactory as it might have been. For instance, if you examine the attendance of these members on this Council you will find that in 1934 the Council sat for 35 days. Now out of those 35 days, on 25 days one Arab member was invariably absent from the Council, and on 8 days both members were absent from meetings of the Council. In 1935 we had 20 Council days, and out of these 20 days one member was absent on 23 days and both members were absent on 20 days. I submit that we have got here a representation provided by Government to a community the members of which, either elected or nominated, are not in a position to serve their own community. I think that if that is so in connection with the Legislative Council meetings, which are more or less regularized by periodical sessions, how much more difficult would it be for these same members to attend meetings of the Standing Finance Committee, which are held at no proper time and may be called any week or perhaps any day? The excuse for this motion has been made on the grounds of Ramadan, which is a period in the Mohammedan religion equivalent to our Lent, because it means a period of fasting. I submit that if a good Muslim like the hon. member Mr. Shamsud-Deen can attend Council meetings during the month of Ramadan, Arab members could have done likewise. If the Arab members wanted someone, a non-Arab, to represent them on the Standing Finance Committee on account of this fast, I would point out that Ramadan should be finished within another twenty days, and, as the hon. the Colonial Secretary has told us that the deliberations of the Standing Finance Committee are likely to be protracted until the middle of next year, the excuse of Ramadan does not hold good. I am very much surprised at some of the things said by the Noble Lord, and I am sure that, acquainted as he claims to be with Arabs

and Arab conditions, he might have had the honesty to admit that there was no justification on account of religious circumstances for the Arabs to be represented by a non-Arab.

The Noble Lord made a great profession of faith that this question did not emanate from the European Elected Members. Speaking as a gentleman—I think I can still consider myself a gentleman—I must accept that, but I cannot believe there have been no conversations, no talks or aspirations between certain sections of this House to force the issue on Government and to get what I call a back-door entrance on the Standing Finance Committee so as to strengthen their position on that body. I maintain that, intentionally, or unintentionally it may be, the fact is that this is connected with an increase of Europeans on the Standing Finance Committee, and if only on that score I would object, although I have better and more claims to object to this motion.

LT.-COL. THE HON. LORD FRANCIS SCOTT: I do not wish to interrupt the hon. member, but if he is insinuating that he did have some discussion with the Arab members I tell him, Sir, that that is not so. The hon. Member for Mombasa informed this House quite frankly that he did have conversations with the Arab members because they have an association, I understand, of Coast members at the Coast, but he was the only member of the European Elected Members who had anything to do with it at all.

DR. THE HON. A. C. L. DE SOUSA: I must accept the explanation of the Noble Lord, Sir, but I have qualified whatever I have said.

It is claimed by the Noble Lord that he has the interests of the Arabs at heart, so much so that they have sent him representations on various occasions, which representations have been brought up here now as a justification for the defence of the motion; in other words, the defence for Arab representation by a non-Arab.

The Standing Finance Committee was appointed in 1934. The Noble Lord, interested as he is in Arab affairs, might have then realized that the Arabs had no representation at all. I think if he is interested in the Arabs, seeing the Committee is now two years old . . .

LT.-COL. THE HON. LORD FRANCIS SCOTT: I am sorry to interrupt again, but I thought I made it clear that I had discussed the question at the time with the Arab representatives, who said they were prepared to entrust the welfare of the Arabs to the Elected Members. I did take an interest at that time.

DR. THE HON. A. C. L. DE SOUSA: At any rate, I have just been acquainted with these divergent views of interests about the Arabs. In any case, I suggest if anyone had the interests of the Arabs at heart, either European Elected or Nominated Members, they would have suggested an Arab member on the Standing Finance Committee in 1934, or alternatively, they would have asked Government to make adequate provision from European sources.

As I say, I am extremely suspicious when political passions are roused to the extent they have been during the last two or three months, and are to be blamed if we are suspicious? I say this move is not an innocent move; it is a very clever move; although there are people cleverer than some of them who can see through their game, and I cannot for a moment believe any of the Indian members especially will commit themselves to this motion.

I wish to make it clear that I have an interest in the Arabs, because their interests and ours are more or less the same. I have made it clear that there is an affinity of interests, inasmuch as they are downtrodden as we are. There is a community of interests among us, we belong to the same race for one thing; and I say I am all for Arab representation on the Standing Finance Committee, but for Arab representation by Arabs, and not through this backdoor business!

THE HON. SHAMSUD-DEEN: Sir, although I think there is a lot of truth and justification in what the last speaker has said, I am always for upholding the right principle, even under adverse circumstances. I have maintained from the very commencement that this Standing Finance Committee was a curtailment of the privileges of this Council, and I said so at the time. I have had the pleasure of working with my colleague Mr. Pandya for nearly fifteen years and have never quarrelled with him. If I have quarrelled with him it was on this occasion when I told him it was his duty to have declined to work on this Standing Finance Committee unless Government granted two Indian members on it. I mentioned it to the Hon. Sir Ali bin Salim at the time that they must make the strongest representation for an Arab member to be appointed on that committee. I am not saying this as an afterthought which has just sprung into my head because of this motion. But they are, unfortunately, very indifferent, as we have often found out and, as the hon. Member Dr. de Sousa has said as regards attendances on this Council, they did not see the importance of it.

However, even maintaining the suspicions that are entertained by my hon. friend Dr. de Sousa, I will still vote in favour of this motion, knowing perfectly well what the effect

of it is going to be, because it is the right step in the right direction. I understand the hon. Member for the Coast is not going to be a permanent member of this Committee, and if and when Ramadan is over I think an Arab member should be appointed. I suppose they have the right to choose their own member, and even if the two Arab members are not as articulate as might be desirable the time may come when they will find a sufficiently articulate member to represent this community.

I think this is the right step in the right direction and, in spite of what my hon. friend has said, I am going to support the motion.

THE HON. N. S. MANGAT: Mr. President, lest it be misunderstood that because of the views expressed by the two members who have just spoken, our opinions are divided, I must make it clear that we are liable to jump to conclusions as far as this motion is concerned. It requires us to do two things: firstly to accept the principle that Arab representation must be granted on the Standing Finance Committee and, secondly, that if and when granted, it may be utilized by the Arab members in the way suggested by the appointment of a third party. Government has not decided that Arab representation is to be granted on the Standing Finance Committee, and I think it should not be granted.

In spite of what the hon. Member for Mombasa said of Arab interests at the Coast, I think if you appoint one Arab member it means you are appointing 100 per cent of Arab representation on the Standing Finance Committee, because the other hon. member nominated is really more or less of an act of courtesy, and we know the Hon. Sir Ali is not able to attend the sessions because of age, or the trouble of getting up here. The European community to-day has about 27 per cent of their elected members on the Standing Finance Committee, the Indians 20 per cent and the natives, whose interests predominate and must be considered of first importance and whose representatives represent a population of 3,000,000, are one out of two; or 50 per cent. It is absurd to suggest that two Arab members, who represent a very small population and an infinitesimal proportion of interests, should be granted representation. It would be tantamount to any landlord or big farmer in this Colony, not satisfied with the Elected Members, saying he should be represented on the Standing Finance Committee because his interests are affected!

The Indian Members, with the exception of the hon. Mr. Shamsud-Deen, who in theory supports it, but not in practice, are strongly opposed to the motion, and insist that another Indian member should be appointed to give proper Indian representation.

I had thought these racial matters had come to an end, but by this strange device they have been raised again, and there is a danger if it is pressed too far that Indian members also will be compelled to ask for more representation.

I am against this motion most strongly.

THE HON. THE COLONIAL SECRETARY: Mr. President, it is with very great regret that I am unable to accept this motion on behalf of Government, regret because the natural inclination of all of us would have been to accede to any request of my hon. friend Sir Ali bin Salim, to whom, as the hon. mover quite rightly said, the Government of the Colony owe so much.

I think there seems to be some misunderstanding still as to the nature of the Standing Finance Committee. The hon. mover said that he only asked for this additional appointment for this occasion only, but the Standing Finance Committee is not in that category, it is a permanent Standing Committee appointed for the life of this Council. It is worth while reading the exact words of the resolution as a result of which this Standing Finance Committee was appointed. It was on the 29th July, 1954, that the following resolution was adopted, I think I am right in saying unanimously:—

"Be it resolved that, in accordance with Standing Rule and Order No. 51, a Standing Finance Committee be appointed for the remainder of the life of the present Council for the purpose of considering and reporting upon the annual and supplementary Estimates of Revenue and Expenditure in accordance with the procedure laid down in Standing Rule and Order No. 52, and of advising the Governor upon such other financial questions as His Excellency may from time to time refer to it.

The Standing Finance Committee shall consist of:—

- The hon. the Colonial Secretary (*Chairman*).
- The hon. the Treasurer.
- The hon. the Chief Native Commissioner.
- Lieut.-Col. the hon. Lord Francis Scott.
- Major the hon. F. W. Cavendish-Bentinck.
- The hon. Conway Harvey.
- The hon. J. B. Pandya.
- The hon. R. W. Hemsted."

I may explain that in that one resolution there were really four. The first is the resolution establishing the Standing Finance Committee; the second says that that Committee shall continue in existence during the life of the present Council;

the third determines the composition and the numbers; and the fourth gives the actual personnel: the three officials are members by virtue of their office, and the five unofficial members are actually mentioned by name. The only alteration in that personnel has been that on the retirement of Mr. Hemsted from this Council, his place on the Committee was taken by his successor in office.

It is clear from the records and from Hansard that the numbers and composition were determined upon by general agreement and after the most careful and thorough consideration. When I say "general agreement" I think I am right in making one reservation, and that is to the effect that my Indian friends felt at the time that their representation was rather inadequate, or some of them did, but with that reservation I believe the members and the composition were approved unanimously, and it was obviously the intention that the Committee should remain until the end of the life of this Council. At the time, so far as I can make out, and the Noble Lord has confirmed me in this belief, the Arabs raised no objection whatever to the composition—neither the Arab community nor the Arab members of this Council. I gathered they were perfectly satisfied to leave their interests in the hands of the Committee as constituted.

It would take a very great deal to make me consent to putting the composition of the membership of this Committee again in the maelstrom of controversy. I would have to be shown that it had turned out to be all wrong, and that the Committee had failed in fulfilling the intentions of Government when it was constituted, or that some entirely new set of circumstances had arisen which necessitated a reconstruction of the constitution and the reorganization of the Committee.

It was suggested by the hon. mover that if some other person had been named as an additional member, Government possibly would not have been so adamant. I can assure him I should have resisted any addition to this Committee unless, as I have just said, it could have been shown to the satisfaction of this Council and to the satisfaction of Government that some new set of circumstances had arisen which necessitated or indicated some entire change of policy with reference to this Council. The composition was settled then and nothing has happened now to make Government reverse its policy in that respect.

Naturally, I am as anxious as anybody else that the Arab interests should not suffer as a result of any decision of my own, and I suggest that this situation has been met by those who wisely drafted the amendments to our Standing Rules.

and Orders, and it has been met by Standing Order No. 63 (ii), which says—

... when the motion referred to in sub-Rule (ii) has been adopted, any member of the Council shall have the right to appear and be heard before the Committee at a place and time to be fixed by the Committee. Provided that any such member shall have given previous notice to the Clerk of his intention to appear before the Committee and of the particular points on which he wishes to give evidence.

Under that Order it is perfectly competent for the hon. Member for the Coast to give notice to the Clerk of the Council that he wishes to bring forward some points in the interests of the Arab community and if he does that, or any other member of the Council does that, I can assure him he will receive the most sympathetic hearing. It so happens that on the Council as at present constituted every one of us three official members have been stationed at the Coast at one time or another, and it is not in the least likely we are going to forget those Arab friends we made when we were there any more than the three European Elected Members, and I certainly endorse everything the Noble Lord has said on that subject. I know perfectly well that in the Committee we can rely on their giving most sympathetic consideration to the interests of the Arabs and to any point any member of this Council might like to bring before them. Of the other two members, the hon. Member Mr. Pandya is not ignorant of Coast conditions, and I think that possibly the hon. Member Dr. Wilson may have personal experience or, though I am not certain, has served some considerable time at the Coast, because I know he is not ignorant of Arab laws and conditions, and he will, too, bring a sympathetic mind to consideration of their problems.

It certainly is not because I am not interested in Arab conditions, or indifferent to their interests; it certainly is not because I would not go a very long way indeed to meet the wishes of Sir Ali. It is simply because two years ago this Council knew what it wanted, said what it wanted, and got what it wanted, and I see no reason whatever for upsetting the policy that was then adopted.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: Mr. President, it seems rather futile at this stage of the debate for anybody to get up and support this resolution, but I am doing so on principle. I am in support of the motion before the Council. It is very distressing indeed that this motion has been refused by Government for no vital or logical reason whatever. There is nothing in Standing Rules and Orders to prevent Government accepting this motion. Nos. 51 or 53 or 63, quoted by

the Hon. the Colonial Secretary does not bar this motion from being accepted by Government. It has been taken up by two Indian members on racial grounds. They object to the Arabs being represented by Europeans. Why is Government not objecting to the Indian community being represented by a Goan?

DR. THE HON. A. C. L. DE SOUSA: On a point of personal explanation, the hon. and gallant member needs a little information about myself. I am an Indian by birth—a pure undiluted Indian by birth. I happen to come from a province of India which is to-day under the Portuguese—it might have been the British or any other people—and I am a British subject.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: I do not think these facts are relevant, Mr. President (laughter). If the cap fits I am sorry but the hon. member will have to wear it as far as I am concerned. He did not require to be named—he named himself.

It is very regrettable indeed that Government apparently on every conceivable occasion this racial question has been brought up, take it up. They are bringing this issue much nearer to finality than they imagine. The time will come—I hope it will not be long—in the distant future, when the Europeans will realize what has been happening for close on six years.

If the Arabs realize they are inarticulate to a great extent, and have the greatest confidence in the hon. Member for the Coast—who represents the majority of Arabs and their interests, as well as those of other communities—can one blame them for asking that the hon. Member for the Coast should be allowed to represent them on the Standing Finance Committee? The hon. Indian Members who have spoken admit that the Arab has a right to be represented on that Committee, but Government disagree. I have already pointed out that our Standing Rules and Orders do not stand in the way and, even if they did, where there is a will there is always a way, and Government should find that way. But they are determined to suffer from what might be termed "Groganitis", and will not have the hon. and gallant Member for the Coast on the Standing Finance Committee. Remarks passed by that hon. member have been taken as personal by the Treasurer, and I must interpret the situation that the hon. Member for the Coast is not a desirable member on that Committee for these reasons.

I think it is deplorable from all angles that if you concede the right to the European, Native and the Indian communities

to be represented on that Committee, surely it is only going a very small step to concede the right to Arabs to have direct representation on that Committee, either by themselves or by a selection of their own choosing.

I can guarantee that as far as I am concerned and as far as my colleagues are concerned, there is no collusion. I was not aware of the matter until some days ago when the hon. Member Mr. Bemister said he wanted to deliver a letter to the Colonial Secretary, and it was my privilege to drive him up to the Secretariat in my own car! That was the first intimation I had until this morning that the motion was coming before this Council. It has been turned down, for what? Government psychosis. I hope that next time the Hon. the Director of Medical Services reads a paper to this Council on psychosis he will consider it from the point of view of whether psychosis should be co-related to the position that is now before us. He might even go further and take this morning's incident, of the height and weight of school children—what relation has psychosis to their height and weight?

I will close my remarks by saying I think it has been a very trying debate for everybody on this side of the House, and it will not be forgotten in the near future.

THE HON. F. A. BEMISTER: Sir, there is not very much for me to say except how sincerely I regret the decision of the Government. I regret it all the more because the highest official in the land has stated that he would consider this if a new situation or a new set of circumstances had been created. Will he say that a new set of circumstances has not been created? Can he possibly stand before this House and say that the whole fiscal policy of this Colony is not being changed? Will he repudiate the statement he made the other day that he was not introducing a certain Bill here, he was referring it to the Standing Finance Committee because they would be the judges of the whole fiscal system? But he has the pluck to stand up and say he recognizes no new set of circumstances.

THE HON. THE COLONIAL SECRETARY: As a matter of explanation, I think the hon. member has entirely misunderstood me, Sir. I did not say no new circumstances. I said such a radical alteration of existing conditions as would justify Government in changing the policy it had adopted.

THE HON. F. A. BEMISTER: The words have the same meaning. A new set of circumstances has arisen, and I ask this House to give this motion their consideration on these grounds. I ask it only for this particular debate and session of the Committee. I did not ask for it regularly. The Arab

members could at another time appear for themselves. I am sorry, deeply sorry, not only for the sake of the Arabs but because the honour of the Government has been thrown away.

The question was put and negatived by 23 votes to 8.

Ayes.—Mr. Bemister, Mr. Harvey, Col. Kirkwood, Major Riddell, Lord Francis Scott, Mr. Shamaud-Deen, Sir R. Shaw, Col. Tucker.

Noes.—Messrs. Balo, Boulderson, Daubney, Fazan, Gardner, Major Grogan, Messrs. Hedden, Hosking, Isler Dass, Mangat, Montgomery, Morris, Pandya, Dr. Paterson, Mr. Pilling, Dr. de Souza, Messrs. Stronach, Wade, Wallace, Walsh, Waters, Dr. Wilson.

LIEUT.-COL. THE HON. J. G. KIRKWOOD: On a point of order, could the number be recorded of the hon. members on the other side who have been compelled to vote, as they are told? (Laughter.)

THE PRESIDENT: Certainly not!

THE NATIVE TRIBUNALS ORDINANCE, 1930.

THE HON. THE CHIEF NATIVE COMMISSIONER: Sir, I beg to move—

"Be it resolved that the Native Tribunals Ordinance, 1930, as amended by the Native Tribunals (Amendment) Ordinance, 1934, and the Native Tribunals (Amendment) Ordinance, 1935, shall remain in force until the 31st day of December, 1937.

Section 44 of the Ordinance of 1930 provided that the Ordinance should remain in force for three years, until the end of 1933, but it could then be extended, with the sanction of this Council. That was done by the amending Ordinance of 1934, when its life was extended for another three years, to the end of 1936, with the proviso that it could be further extended by proclamation with the approval of this Council. That approval I now seek.

It might be said that as the Ordinance has worked extremely well these six years we could repeal that section and make it permanent. I hope that will be done, but we cannot do this at the present moment because the Secretary of State has asked for a report on the working of the tribunals during 1937. That report, I may say, to my own personal knowledge can be nothing else but a favourable one.

During 1935 the Ordinance was amended in two small respects. Whereas under the principal Ordinance a member of a tribunal could be suspended by a Provincial Commissioner

and dismissed by him with the approval of the Governor, it now provides that a District Commissioner can suspend and a Provincial Commissioner dismiss a member for bad conduct. Another small amendment was an extension of the jurisdiction of tribunals to try comparable offences within their jurisdiction in townships and native reserves.

As regards the working of the tribunals, I refer hon. members to my last Annual Report, in which it is stated quite definitely from all provinces that they are working quite satisfactorily and are improving in efficiency every year. Of course, the greater number of cases occur in the two big provinces, Central and Nyanza, and I am glad to say that it is in those provinces where the greatest progress has been made. There were 8,200 criminal cases in the Central Province in 1935, and 8,800 civil cases; in Nyanza, 13,000 civil cases and 5,800 criminal cases were tried. Of the civil cases, 680 cases went to the Appeal Tribunal out of 13,000, and 183 were appealed from there to the District Commissioner, and on a further appeal to the Provincial Commissioner the number was 3. Of the 5,000 odd criminal cases, 358 were revised by the District Commissioner, and 66 by the Attorney General.

I think that shows that these tribunals are working satisfactorily, and from personal observation I know they are working reasonably well, although I, nor anybody else, would say they are perfect.

If any hon. member has any doubts about these tribunals I would invite him at any time to go and see for himself how they are working. There are some very good ones working within reach of Nairobi, and in other districts, and members would be welcome guests at the sittings.

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

THE HON. F. A. BEMISTER: Sir, I am intensely interested to know that these tribunals are working excellently apparently right through the country, but I would like the Hon. the Chief Native Commissioner to tell the House what his opinion is of the tribunals on the Coast.

It is a very great pity that the Arab nominated member is not here, he could give you much information. Apparently, previous to these tribunals, most of the cases at the Coast used to be heard by the kadis, mudirs, and liwalis, and I think you will find that the work of the native tribunals is not so clear and straight forward and acceptable to natives at the Coast as the old system was.

I speak personally as the representative of Mombasa, but I have heard complaints in other districts. I am not mentioning hearsay evidence, but there is a feeling among, naturally,

the governing class at the Coast that they could, did and will administer justice better than the untrained people who are the pets of the Administration.

THE HON. N. S. MANGAT: I did not wish to go into details of the matter at this stage, but since the Hon. the Chief Native Commissioner mentioned that next year it might be possible to make this Ordinance permanent I would ask your good self, Sir, to consider the idea of a complete reorganization at that time. You know better than myself that there have been difficulties in the administration of the law, especially because of the fact that in nearly all cases no records are kept by the Provincial Commissioner, when the Supreme Court asks for a case to be stated by a District Commissioner.

I do not grumble at the legal profession having been excluded from these courts, but it makes it difficult to follow the proceedings if there are no records, especially in matters of land, so that if there is any intention on the part of Government to make this Ordinance permanent it would be just as well if the whole of the legislation it contains were redrafted and a select committee appointed to go into it thoroughly.

THE HON. THE CHIEF NATIVE COMMISSIONER: Sir, the hon. member Mr. Bemister referred to tribunals at the Coast and hinted that, although he says he has no personal interest in it, that some of them are not very satisfactory. I could not quite make out what he meant by his reference to the old established courts. If he means the Arab courts of the liwalis, mudirs and kadris, there is no connection between them and the native tribunals. The former still function.

As regards the work of the tribunals on the Coast, particularly in Mombasa, I think I must beg to differ with him if he says they do not work well. I say in my Annual Report on page 82:—

"The mixed native tribunal in Mombasa continued to prove a substantial success, though fewer cases came under its jurisdiction than in the previous year. It meets every afternoon and, as there are very few appeals from its decisions, it appears to have the confidence of the natives."

As I said before, it could never be stated by anybody that these tribunals are perfect, but give them a chance: they are improving every year, and that is all we can expect.

With regard to the remarks of the hon. member Mr. Mangat, I think I need say nothing, as the Ordinance is not under amendment at the present time.

The question was put and carried.

BILLS.

SECOND READINGS.

FUGITIVE OFFENDERS (PURSUIT) BILL.

THE HON. T. D. WALLACE: Sir, I beg to move the second reading of the Fugitive Offenders (Pursuit) Bill.

In recent years some District Officers in the border districts have on numerous occasions approached Government pointing out the difficulties with which they were faced in bringing to justice persons who had committed an offence in this Colony and had then escaped across the border. Similar complaints have been made by Administrative Officers both in Uganda and Tanganyika Territory, and as a result of these complaints we have this Bill before us to-day.

As most hon. members are aware, the law governing extradition insofar as these three territories are concerned, that is Tanganyika, Uganda and Kenya, is contained in the Fugitive Offenders Act of 1881; which has been applied to these territories. It is not intended by this Bill in any way to supersede those extradition provisions, but rather to supplement the provisions with regard to the apprehension of fugitive offenders. Tanganyika has already passed an Ordinance by virtue of which the police of this Colony will have similar privileges to that suggested by this Bill insofar as Tanganyika and Uganda are concerned.

It is hoped that this Bill will have the effect of enabling administrative officers and police officers to deal more effectively with stock theft cases which, as all hon. members are aware, are the most fruitful cases of really serious crime in these territories.

Clause 2 is merely a definition section, and I do not think it needs any explanation.

Clause 3 states that if Tanganyika and Uganda make reciprocal arrangements whereby the police of this Colony can go a certain distance into Tanganyika or Uganda, as the case may be, when in hot pursuit of fugitives, the Governor-in-Council may make a similar order with regard to this territory, and it is proposed the area referred to in that section should be defined by a line running through police posts.

Clause 4 (1) merely provides that if the police of Tanganyika or Uganda, as the case may be, follow an offender into this Colony they should forthwith, if they manage to apprehend him, hand him over to the police of this Colony with a view to his being brought before a magistrate before being surrendered to the territory concerned.

Clause 4 (8) provides that proceedings for the surrender shall be those outlined, or prescribed, by the Fugitive Offenders Act.

I then refer back to clause 4 (2), which states that a magistrate shall be entitled to retain the offender so brought before him pending the receipt of a warrant from the territory concerned.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE COFFEE INDUSTRY (AMENDMENT) BILL.

THE HON. T. D. H. WALLACE: I move that the Coffee Industry Amendment Bill, 1934, be read a second time.

Under the Ordinance of 1934, a levy is imposed on all coffee produced in, and exported from the Colony, but buni is specifically exempt. Buni as defined in the present Ordinance is coffee, dried in the fruit or cherry and doubts have arisen as to whether coffee dealt with in that way but which has been hulled before export should be liable to the levy or not. It was never the intention that coffee so dealt with should be exempt, and therefore the definition of buni has been amended. If hon. members will refer to clause 2 of the Bill they will observe the new definition of buni, meaning "coffee dried and exported in the fruit or cherry" and exported in that condition.

There is only one other small amendment, and that is in clause 3. Under the existing law a licence of Sh. 80 has to be taken out in respect of every coffee plantation, and it is considered desirable that, insofar as a coffee plantation not exceeding one acre is concerned which is being used for experimental purposes, this licence should not be charged.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT) BILL.

THE HON. T. D. WALLACE: I move that the Employment of Women, Young Persons and Children (Amendment) Bill be read a second time.

This Bill, Sir, is the outcome of deliberations of a General Conference of the International Labour Ordinance legislation during 1935, deliberations which resulted in the adoption of

a Convention concerning the employment of women on underground work in mines of all kinds. His Majesty's Government propose to proceed with the ratification of this Convention, and it is considered desirable it should be ratified insofar as this Colony is concerned. Although I understand it is not the practice to employ women in underground work in mines, yet it is necessary in order to give full effect to this convention to pass this legislation.

Clause 2, as is perfectly obvious, is merely a definition of a mine and follows verbatim the definition contained in the convention.

Clause 3, which has a new section, 5A (1), sets out the only conditions under which women can be allowed to work underground, and clause 5A (2) is inserted because in the principal Ordinance a woman is defined as being under eighteen years of age. The penalty clause appears in (3) and is exactly the same as that providing for offences under the principal ordinance.

THE HON. THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT seconded.

The question was put and carried.

THE HON. T. D. WALLACE moved that the Council resolve itself into committee of the whole Council to consider clause by clause, the following Bills:—

The Fugitive Offenders (Pursuit) Bill.

The Coffee Industry (Amendment No. 2) Bill.

The Employment of Women, Young Persons and Children (Amendment) Bill.

THE HON. THE TREASURER seconded.

The question was put and carried.

Council went into committee.

In Committee:

The Fugitive Offenders (Pursuit) Bill was considered clause by clause.
Clause 2.

THE HON. T. D. WALLACE moved that clause 2 be amended as follows:—

"That the definition of 'police of an adjoining territory' be amended (1) by the deletion of the word 'includes' which occurs in the first line thereof and by the substitution therefor of the word 'Means', and (2) by the insertion therein immediately after the word 'authority' which occurs in the fourth line thereof of the words 'in each adjoining territory'.

THE HON. CONWAY HARVEY: If my geography is not defective, Sir, may I ask why the Sudan is left out of this? A few years ago we heard more than once in this House that cattle and camels were constantly being thieved in the north-west corner which, so far as Kenya is concerned, is a source of some difficulty to this Administration.

THE HON. THE CHIEF NATIVE COMMISSIONER: The answer to the hon. member, I think, is that we have only a very, very small portion in the north-west corner and there are no police there at all. There are border guards who in that part of the world carry on as best they can.

The question was put and carried.

THE COFFEE INDUSTRY (AMENDMENT NO. 2) BILL.
The Bill was considered clause by clause.

THE EMPLOYMENT OF WOMEN, YOUNG PERSONS AND CHILDREN (AMENDMENT) BILL.
The Bill was considered clause by clause.

THE HON. T. D. WALLACE moved that the Fugitive Offenders (Pursuit) Bill be reported to Council with amendment, and the remaining two Bills without amendment.

The question was put and carried.

Council resumed its sitting.

The President informed Council that the Fugitive Offenders (Pursuit) Bill had been considered clause by clause and had been reported without amendment.

THE HON. T. D. WALLACE moved that the three above-mentioned Bills be read a third time and passed.

THE HON. THE TREASURER seconded.

The question was put and carried.

The Bills were read a third time and passed.

*Council adjourned till 10 a.m. on Monday,
the 16th December, 1936.*

MONDAY, 14th DECEMBER, 1936

Council assembled at the Railway Club, Whitehouse Road, Nairobi, at 10 a.m. on Monday, the 14th December, 1936, THE HON. THE ATTORNEY GENERAL (W. HARRAGEN, Esq., K.C.) presiding.

The President opened the Council with prayer.

OATH OF ALLEGIANCE.

The Oath of Allegiance was administered to the following Ex-Officio Member:—

ARTHUR EDWARD HAMP, Esq., Acting General Manager, Kenya and Uganda Railways and Harbour.

The minutes of the meeting of the 10th November, 1936, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE HON. THE COLONIAL SECRETARY:

Report of the Standing Finance Committee on the Draft Estimates of Revenue and Expenditure for the year 1937, Part I.

Schedule of Additional Provision No. 3 of 1936.

Colonial Audit Department Annual Report, 1935, with copy of Despatch No. 617 thereon to the Secretary of State for the Colonies.

ORAL ANSWERS TO QUESTIONS.

SQUATTERS, KIAMBU NATIVE RESERVE.

No. 51.—VEN. ARCHDEACON THE HON. G. BURNS asked:

"Will Government please state what arrangements have been made for settling the squatters, who have been returned from off the farms to the Kiambu area, with their cattle, sheep, etc.?"

THE HON. THE CHIEF NATIVE COMMISSIONER: It is true that a considerable number of natives have recently returned to the Kiambu Native Reserve from farms on which they were living on agreements under the Resident Native Labourers Ordinance. Their return is the result not of any action taken by Government but of a general tendency to replace resident native labourers by casual labour. The natives who have returned are at present living in the Ndeiya location of the Kiambu district. The Government is aware that there is insufficient land in the Kiambu Native Reserve to accommodate

the large number of resident native labourers on up-country farms, many of whom were born on the farms and have lost any right to land in the Reserve. The question of finding additional land is receiving immediate attention, but is not, of course, confined to the Kiambu Reserve.

VEN. ARCHDEACON THE HON. G. BURNS: Sir, may I ask if it is possible for Government to stay their hand with regard to the return of these men until provision has been made in the way of water and other things necessary for these people to be settled on certain areas in the Kiambu district?

THE HON. THE CHIEF NATIVE COMMISSIONER: It is not possible for Government to prevent any employer of labour from cancelling any contract under the Resident Native Labourers Ordinance, but it is not anticipated that there will be any large return of natives until land is available.

WORKMEN'S COMPENSATION ACT.

No. 54.—DR. THE HON. A. C. L. DE SOUSA asked:

1. Has the question of the introduction of a Compensation Act for the Colony and Protectorate ever been raised by the Secretary of State for the Colonies? If yes,

(a) When?

(b) What action has Government taken in the matter?

2. Has the Government ever considered the necessity of introducing a general Compensation Act for the Colony and Protectorate of Kenya?

(a) If not, why not?

(b) If yes, when and what action have they taken in the matter?

3. On what basis is compensation being paid to European, Asian and African employees in Government and Railway Services in cases of accident?

4. Are the European non-pensionable employees in the service of Government and/or Railway covered in case of accidents by Compensation Regulations? If yes—

(a) Are similar Asian and African employees in either or both services equally covered?

(b) If not, why not?

THE HON. THE COLONIAL SECRETARY: 1. Yes.

(a) The last communication on the subject from the Secretary of State was received in September, 1933.

(b) Copies of a draft Model Workmen's Compensation Ordinance, forwarded to this Government by the Secretary of State, have been circulated to the Law Society, the Chambers of Commerce, and representatives of Insurance Companies. Further action has been deferred pending information in regard to the views of the Secretary of State on the observations on the Model Ordinance of unofficial interests which have been consulted in England.

2. The draft Model Ordinance is applicable to workmen whether employed by Government or by a private employer.

3. In the case of European employees of Government and the Transport Administration, the basis laid down in Regulations made under the European Officers' Pensions Ordinance, 1937.

In the case of Asian employees and Africans serving on Asian terms of service who were in the service of Government on or before the 30th April, 1933, on the basis laid down in Regulations made under the Non-European Officers' Pensions Ordinance, 1933. In the case of Asian employees of the Transport Administration based upon the Indian Workmen's Compensation Act.

In the case of other Asian and African employees of Government and African employees of the Transport Administration compensation is assessed by the Principal Labour Officer in accordance with a scale of compensation based on the Model Workmen's Compensation Ordinance already referred to.

4. Yes.

(a) Yes, in the case of Asians or Africans serving on Asian terms of service who were in the service of Government on or before the 30th April, 1933. Other Asian and African employees of Government are awarded *ex gratia* compensation based on the scale adopted by the Principal Labour Officer.

Asian and African employees of the Transport Administration are not covered by Regulations. In practice Asians so employed are paid *ex gratia* compensation based on the Indian Workmen's Compensation Act, while Africans so employed in Kenya are paid compensation based on the scale adopted by the Principal Labour Officer and those so employed in Uganda are awarded *ex gratia* payments based on the Uganda Mining Ordinance, No. 14 of 1935.

(b) Does not arise.

NAIROBI EUROPEAN PRIMARY SCHOOLS.

No. 50.—THE HON. MEMBER FOR NAIROBI SOUTH asked :

"Has any communication been received from a responsible source regarding the unsatisfactory conditions prevailing in the Nairobi European Primary School with special reference to the boarding accommodation?"

THE HON. THE DIRECTOR OF EDUCATION: Yes. In view of discussion of the subject by the School Committee I asked the Medical Department for a special report on the buildings and site. The report, a copy of which has been forwarded to Government, showed that the existing buildings were in many respects unsuitable for their present purpose. The Advisory Council on European Education has asked that the attention of Government be called to the deficiencies in the accommodation for boy boarders at the Primary School and Government has now under consideration the possibility of providing the required funds for new buildings.

BILLS.

FIRST READINGS.

On the motion of the Hon. T. D. Wallace, seconded by the Hon. the Treasurer, the following Bills were read a first time:—

The Agricultural Mortgagees Relief (Amendment) Bill.

The Branding of Stock (Amendment) Bill.

The Distress for Rent Bill.

The Licensing Bill.

The Moneylenders (Amendment) Bill.

The Kenya Cotton (Amendment) Bill.

The Mining (Amendment) Bill.

The Trading in Unwrought Precious Metals (Amendment) Bill.

The Marketing of Native Produce (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

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

Council adjourned till 10 a.m. on Tuesday,
the 16th December, 1936.

TUESDAY, 15th DECEMBER, 1936

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 15th December, 1936. THE HON. THE ATTORNEY GENERAL (W. HARRADIN, Esq.; K.C.) presiding.

The President opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 14th December, 1936, were confirmed.

MOTIONS.

SCHEDULE OF ADDITIONAL PROVISION.

THE HON. THE COLONIAL SECRETARY: Sir, I beg to move the motion standing in my name.

"That the Schedule of Additional Provision No. 3 of 1936 be referred to the Standing Finance Committee."

As this Schedule will be examined item by item by the Standing Finance Committee, I do not propose at this stage to go into details, particularly as there is an explanation in the Schedule of all the major items.

In accordance with the practice recently introduced, there is a footnote on the title page which shows the net financial reflection of the provision in the Schedule. It will be seen that, after providing for set-offs by savings, sums recoverable by way of reimbursements, and consequential revenue, the total net additional expenditure amounts to £19,727.

THE HON. THE TREASURER seconded.

The question was put and carried.

MRS. LOWSLEY: COMPASSIONATE PENSION.

THE HON. THE TREASURER: Mr. President, I beg to move:—

"In consideration of the destitution of the widow of the late Dr. L. D. Lowsley who, after fourteen years' eight months and five days' satisfactory service in the Medical Departments of Kenya and Uganda, retired on the 31st July, 1916, and was in receipt of a pension at the rate of £302/10/0 a year when he died on the 11th May, 1936, this Council is pleased to award her a compassionate pension at the rate of £50 a year with effect from the 12th May, 1936, inclusive."

It is, fortunately, a fact that motions of this sort very seldom come before this Council, the chief reason for that being the inauguration some years ago of the Widows and

Orphans Pension Scheme. A list of the current pensions approved by resolution of this Council, a small one, will be found on page 124 of the Estimates for 1937. In this particular case, Dr. Lowaley was not in a position to take advantage of the Widows and Orphans Pension Scheme.

Dr. Lowaley joined the Colonial Government Service as long ago as 1901 as a medical officer, and was first stationed in Uganda, subsequently transferring to Kenya, and retired at the age of fifty on the grounds of ill health, stated to have been contracted in the course of his duties in East Africa. After his retirement, I understand he attempted to practice for a time, but ill health continued to dog his footsteps, and he ultimately returned seeking health to East Africa, but unfortunately died in Mombasa on the 11th May of the present year. His age at that time was seventy.

I am personally satisfied that the officer in question could not make adequate provision for his family, and I also know that his widow at the present time is also ill, and is practically in a state of destitution. The Government of Uganda have recognized the validity of the case, and have recently approved of the grant of a pension of £50 a year to her. I strongly recommend that this Council should follow a similar course of action.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

THE ENTERTAINMENTS TAX ORDINANCE, 1931.

THE HON. THE TREASURER: Mr. President, I beg to move:—

"Be it resolved that the Entertainments Tax Ordinance, 1931, as amended by Ordinance No. 46 of 1933, be continued in force till the 31st December, 1937."

Section 10 of the principal Ordinance provides that the Ordinance shall remain in force until the 31st December, 1933, and shall then expire, provided that the Governor may by proclamation with the approval of this Council declare that the Ordinance shall remain in force until a date to be fixed by such proclamation. Extensions of the Ordinance to cover the years 1933 to 1936 have been made from time to time, and permission is now sought to make a further extension until the 31st December, 1937.

As regards the financial results of the working of the Ordinance, the yield last year was £3,737, as against an estimate of £5,000. During the present year £4,384 has been collected up to the 30th September, as compared with a collection of £4,418 in the same period last year. That is a very

small diminution of the revenue estimated for the whole of the year, which is £8,000. The cost of administration in connection with this Ordinance is extremely small.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

BILLS.

SELECT COMMITTEE REPORT.

REGISTRATION OF DOMESTIC SERVANTS (AMENDMENT) BILL.

THE HON. THE CHIEF NATIVE COMMISSIONER: Mr. President, I beg to move:—

"That the Report of the Select Committee on the Registration of Domestic Servants (Amendment) Bill be adopted."

It will be recalled that clause 2 was the subject of considerable comment during the second reading of the Bill, and reference to the Report will show that the committee unanimously recommend that that clause be deleted. It was inserted as a safeguard against a servant coming from some outlying district who may or may not have a bad character, getting employment before the parties concerned were able to see whether he was fit for that service or not. We consider that the position is amply safeguarded, because in section 19 of the principal Ordinance an employer is able to send a servant who has no registration certificate to the registering office to get one and, under clause 4 of the Bill, if a servant has forfeited his certificate owing to bad conduct he is prohibited from seeking employment in any part of the Colony until he has re-obtained his registration book. We considered that that was sufficient safeguard and clause 2, to which exception was taken, can be deleted.

The opportunity was taken to amend a very minor matter, in clause 5 of the Bill, by inserting the words "Sub-section (1)" before section 18.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

NORTHERN FRONTIER POLL TAX ORDINANCE, 1930: CONTINUATION.

THE HON. THE CHIEF NATIVE COMMISSIONER: Mr. President, I beg to move:—

"Be it resolved that the Northern Frontier Poll Tax Ordinance, 1930, as amended by Ordinance No. 15 of 1934, be continued in force till the 31st December, 1937."

As hon. members are aware, section 17 of the principal Ordinance lays it down that the Ordinance should expire at the end of three years unless it is continued in force by a motion of this Council. In November, 1933, such a motion was adopted, keeping the Ordinance alive until December, 1936. It is now desired to carry it on to the end of 1937.

It might be asked, why do we not repeal that section, and make the Ordinance a permanent one? I hope that will be done, possibly in 1937, but the Ordinance may require amendment in view of certain recommendations of Sir Alan Pim.

In 1934, the Ordinance was amended in one important respect, by allowing imprisonment before recourse to distraint and, in another respect, by shortening the period in which in one case the Governor and in the other the Provincial Commissioner could double the tax if it were not paid promptly.

The difference between this measure and the Native Hut and Poll Tax Ordinance is that under the former commuted and lump sum payments are allowed. I may say that, certainly this year, no commuted or double payments have been levied at all. Taxes have been paid individually, and paid exceedingly well. But it is desirable to keep this provision, because you are dealing with a nomad tribe, and without these powers it might not be so easy to collect the tax.

The Provincial Commissioner informs me that he has had no difficulty at all since this Ordinance was in force in carrying out its provisions, and certainly in 1936, owing to the increased prosperity by the sale of cattle to Italian Somaliland, the tribesmen have been very well off and have paid up exceedingly well. We do, however, want to keep these powers.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

THE AGRICULTURAL MORTGAGORS RELIEF (AMENDMENT) BILL.

THE HON. T. D. WALLACE: Mr. President, I beg to move the second reading of the Agricultural Mortgagors Relief (Amendment) Bill.

The principal Ordinance came into force on the 37th August, 1934, and by section 18 thereof it is due to expire on the 31st December this year.

The main object of the principal Ordinance, as all hon. members are aware, was to prevent mortgagors from swooping down and selling up the security of the farmers who, unfortunately, had to mortgage their property during the depression

period. At first blush it might appear that there is no longer any necessity for an Ordinance of this sort to cumber the statute book, but I think a moment's reflection will make it apparent that such is not the case.

Clause 2 of the Bill, which repeals and replaces section 18 of the principal Ordinance, provides that the Ordinance shall stay in force for another year and the reason, of course, is to allow mortgagors to consolidate their position and to take advantage of the rising tide. The proviso to that clause is obvious. It merely enacts that if it is considered desirable that the Ordinance should remain in force for a still further period, this can be done without the necessity for amending legislation.

THE HON. THE TREASURER seconded.

The question was put and carried.

THE BRANDING OF STOCK (AMENDMENT) BILL.

THE HON. THE DIRECTOR OF AGRICULTURE: Mr. President, I beg to move the second reading of the Branding of Stock (Amendment) Bill.

Clause 2 of this Bill makes an addition to section 21 of the principal Ordinance which authorizes the Chief Veterinary Research Officer to register any brand for the purposes of the Veterinary Department. One of the principal brands registered under that section is the A.M. brand, which denotes immunity to rinderpest. The Veterinary Department has established proof that natives in certain native reserves have branded their cattle with some A.M. brand.

This has been brought to light first of all, because certain cattle bearing the A.M. brand were found to have died from rinderpest, and secondly a number of cattle with the A.M. brand on them have been examined and from the irregularities in the letters it is shown that some unauthorised brand has been used to put the letters A.M. on to the cattle. These same cattle, on being tested, were found to be susceptible to rinderpest.

Further, clause 2 of the Bill provides a penalty if anybody illegally uses a brand such as the A.M. brand which is registered by the Veterinary Department. I am sure that hon. members will agree it is important that this should be done in the interests of stock owners purchasing cattle branded with a brand denoting immunity to disease.

Clause 3 of the Bill is an addition to section 27 of the principal Ordinance. Section 27 gives an inspector of brands or a police officer power to seize any stock the owner of which

is suspected of any breach of the Ordinance, and clause 8 also provides for a case in which the owner cannot be found. It makes a provision which enables a magistrate to order the forfeiture of an animal in respect of which an offence under the Ordinance has been committed.

Both of these clauses, 2 and 3, are necessary in order to preserve the integrity, shall we say, of a brand such as the A.M. registered by the Veterinary Department.

THE HON. T. D. WALLACE seconded.

The question was put and carried.

THE DISTRESS FOR RENT BILL.

THE HON. T. D. WALLACE: Mr. President, I beg to move that the Distress for Rent Bill be read a second time.

Before coming to the details of the Bill I think it might be as well to explain shortly the present position with regard to distress in this Colony, in order that hon. members may be able to appreciate the necessity for this measure.

The right to distrain, which was originally a common law right, is an incident of the law governing the relationship between landlord and tenant, and the law governing that relationship in this Colony is contained in the Indian Transfer of Property Act, which has been applied to the Colony by Order in Council. But in that Act there is only one reference to distress, and that merely an incidental one. I think it is quite clear that the common law applies in this Colony in the absence of any local statutory provision, but where we have an applied act or a local Ordinance in force dealing with a specific branch of law and such act or Ordinance, as the case may be, is deficient in certain respects, it is open to doubt, if in fact the common law can be called in to supply those deficiencies. Even assuming that it can, there have during the past 650 years been no less than twelve statutes at home whereby the common law has been amended and the rights of the landlord and tenant in a distress have, in certain respects, been amplified and, in other respects, modified. Even if these acts can be held to apply in this Colony which, I think, is very doubtful, we are still in a difficulty because there are references in these acts to bodies and officials of which there are no counterparts in this Colony.

The position, I suggest, is most unsatisfactory, as it is obviously of the first importance that not only a landlord and a tenant but an under-tenant and a lodger and any other person concerned, should know exactly what rights they have, and it was with that object in view that this Bill has been

Clause 2 is an interpretation clause and, I think, is self-explanatory.

Clause 3 provides that, subject to the provisions of this Ordinance, the common law of England shall apply with regard to distress for rent which is in arrear in this Colony, and the remaining provisions of the Bill are an endeavour to consolidate the various English statutes to which I have already referred by which the common law has been varied.

Clause 4 I will deal with in comparative detail, as there are several references to that clause throughout the Bill.

Sub-clause (1) provides that goods distrained for rent in arrear may be sold after ten days if the tenant does not, during that period, pay the rent and costs of the distress. Sub-clause (2) provides that if the tenant requests the landlord in writing so to do the goods are to be sold by public auction and, of course after they have been sold, if there is any surplus it shall be handed back to the tenant.

Sub-clause (3) provides that if the tenant requires it, the goods shall be valued by an approved valuer appointed under the Estate Duty Ordinance of 1926. It goes on to say that if the tenant does not require the goods to be sold by public auction, the landlord can sell them for the best price he can get, the surplus, of course, after the rent and costs of distress has been met, to be handed back to the tenant. Sub-clause (4) provides that if the tenant requires the landlord, the period shall be extended from ten to fifteen days.

Clause 5 provides that if on the determination of the tenancy there is rent in arrear, the landlord may distrain for such rent, but such distress must be made within a period of six months after the determination of the tenancy.

Clause 6 deals with loose crops, and provides that they may be distrained, but there is a proviso to that clause, which says that crops so distrained shall not be removed by the person distraining to the damage of the owner, while sub-clause (2) provides that the provisions of clause 4, which I have already explained, shall apply in the case of loose crops as they do in the case of ordinary goods or chattels; that is, that if the tenant requires they shall be sold by public auction, or shall be valued by an approved valuer and, if he requests it in writing, the ten days shall be extended to fifteen.

Clause 7 deals with pound breach; that is, that any person who removes distrained goods from a place where they are lawfully stored shall, on conviction, be liable to pay treble damage to the person aggrieved, in addition of course to any costs which the person aggrieved may have been put to in the prosecution. It goes on to say that the tenant is liable to similar penalties if the goods which have been removed are found in his possession.

Clause 8 provides that the tenant can recover double damages and costs against a landlord for illegal distress for rent which is, in fact, not in arrear.

Clause 9 deals with the fraudulent removal of goods with the object of avoiding distress, and enables a landlord to follow the goods so fraudulently removed from the premises. It provides further for the limitation to the effect that it must be done within thirty days, and a still further limitation that goods which have been sold bona fide and for a valuable consideration cannot be so followed.

Clause 10 is consequential on clause 9, and provides a penalty for fraudulent removal or for aiding and abetting fraudulent removal. This penalty is double the value of the goods so carried off.

By clause 11 landlords are given power to break open a house in which goods fraudulently removed are suspected of being concealed. But there are several limitations in this clause as it is obviously most important that this should not be done in any cavalier manner. Before breaking open a house, it is necessary in the first place to call in the aid of an assistant inspector of police and, in the second place, if the house which it is proposed to break open is a dwelling house it is necessary to go before a magistrate and make oath that there is reason to believe that such goods are stored therein.

Clause 12 gives power to distrain stock, growing crops, or cattle. There are several limitations imposed on the landlord distraining on such stock, crops and cattle. In the first place, the crops when they are seized are to be stored on the premises on which they are found or, if they are not suitable premises, on premises as near as may be, to the place where they are found and, of course, the provisions of clause 4 to which I have already alluded more than once will apply in this case also; that is, public auction, valuation, and extension of time. There is a further proviso, that if a valuation has to be made of such, it should be made "when such crops are cut, gathered, cured, and made and not before".

Sub-clause (3) makes provision that notice is to be given to the tenant and, if the tenant pays the rent and costs of the distress and so on, the crops shall be handed back to him.

In clause 13 it is provided that the distress may be secured and sold on the premises and, in order to allow people to go and view the goods the subject of the distress, it makes provision that they are entitled to do so and, if they go with that object in view, or of buying, they shall not be guilty of trespass. It provides, of course, that if the distress is secured on these premises and is removed, similar penalties to those

I have already alluded to in the case of the person who removes goods from the place where they are lawfully stored will be imposed, that is, treble damages.

Clause 14 provides that if a tenant gives notice to quit and does not deliver up possession at the time specified in such notice, he shall pay double rent for the period he overholds. It provides, further, that a landlord is entitled to distrain for that double rent.

In clause 15 it is provided that if the distress was in itself lawful in origin that afterwards the person distraining is guilty of some irregularity, that irregularity shall not affect the original distress, but the party aggrieved by such irregularity is entitled to sue and recover for any special damages which he may have sustained by reason of such irregularity. There is a proviso to that, that the tenant shall not recover in any suit if tender of amends has been made by the party distraining before action is brought.

I do not think that clause 16 needs any explanation; it merely sets out the type of goods which are exempt from distress. Sub-clause (2) provides that a subordinate court, on complaint that goods exempt under this clause from distress have been taken under distress, may direct that they be restored.

Clause 17 provides that if a tenant requires, the person causing the distress shall give to the tenant a copy of the costs and charges of the distress, with a maximum penalty of £5 for failing to do so.

Clause 18 says that no person is to act as a bailiff unless he obtains a certificate from the Registrar, a Deputy Registrar or a District Registrar of the Supreme Court. Sub-clause (3) provides that a non-certified bailiff who levies a distress shall be liable to a penalty of £10 or to imprisonment for a term not exceeding three months; while sub-clause (4) provides that a person authorizing a non-certified bailiff to levy a distress is liable to a penalty not exceeding £10.

Clause 19 is an endeavour to embody the provisions of the 1906 Distress Act at home, by virtue of which the power of the landlord to distrain on any goods found on the premises was limited. It sets out the rights of the lodger and under-tenant and the person whose goods are found on the premises. It states that an under-tenant may serve the superior landlord with a declaration setting forth that the immediate tenant has no beneficial interest in the property and may contract to pay the superior landlord any rent which he owes to his immediate landlord; that shall be sufficient.

Clause 20 should be read in conjunction with clause 19, because it says that if the under-tenant does get out in writing that he is prepared to pay the amount of the rent he owes his immediate landlord to the superior landlord, the distraint of the goods of such under-tenant after that declaration is illegal.

Clause 21 provides that after such declaration the under-tenant shall be deemed to be the immediate tenant of the superior landlord, and sums due by the under-tenant shall be deemed to be rent, and that the under-tenant can set off any payment he makes to the superior landlord against the rent which he in fact owes his immediate landlord.

Clause 22 provides that the under-tenant does not receive the benefit of the preceding two clauses if the under-tenancy has been created in breach of covenant.

Clause 23 provides that in order to avoid distress, a superior landlord can give notice to an under-tenant to pay direct to him, and if he does pay direct to the superior landlord the latter can give a valid discharge for such rent.

Clause 24 provides that if A gets a judgment against B, who in fact is the tenant of C, A cannot execute on the goods of B until he has paid to the landlord the amount of rent due by B to C; in other words, the landlord has priority in any execution.

Clause 25 provides that where live stock belonging to another person has been taken in by the tenant of an agricultural holding to be fed at a fair price, that stock shall not be distrained if there is sufficient other distress; but, if it is distrained, there shall not be recovered by such distress a sum exceeding the amount of the price agreed to be paid for the feeding. Sub-clause (2) provides that the owner of the stock can redeem it by paying that amount, and sub-clause (4) provides that agricultural machinery, and stock the property of a person other than the tenant, and such stock, the property of a person other than the tenant, which is on the land solely for breeding purposes, cannot be distrained.

Clause 26 (1) merely provides that any dispute with regard to distress shall be heard by a magistrate, and sub-clause (2) gives the right of appeal from such subordinate court to the Supreme Court.

Clause 27 is, I think, self explanatory. It merely provides that the Chief Justice may make rules with regard to certain matters of procedure and for the better carrying into effect the operations of the Ordinance.

THE HON. THE TREASURER seconded.

CAPT. THE HON. H. E. SCHWARTZ: Mr. President, any small details of this Bill can, of course, be dealt with in select committee, and I do not propose to say anything about them here.

Nor do I propose to say anything more than that I welcome the Bill, as I think anyone would, because although its title may give people to think that here is some frightful legislation to help the rapacious creditor to seize upon his creditor, as has been explained by the hon. and learned mover exactly the reverse is the case.

My only excuse for rising is to mention one point which was dealt with by the hon. mover when he said it was at least doubtful whether the common law right of distress in England applied to this Colony and that it was also doubtful whether the statutory provisions in England applied to this Colony. I think it only right to remind him that the Supreme Court of this Colony quite definitely has held that the common law right of distress does apply to the Colony and that the statutory provisions did not, so that as far as this Colony is concerned these doubts have been removed. Once that was decided it became necessary to bring in legislation for the purpose of giving the same statutory protection to tenants in this country as exist in England. Therefore the Bill will be welcomed by everyone on this side of the House.

THE HON. F. A. BEMISTE: Mr. President, I only rise to try and discover if this Bill is intended to apply to natives, to Africans.

The difficulty I have is this: that in Mombasa, and I have no doubt in other towns, large holdings have been laid out to encourage Africans to build their own houses, and each pays a small ground rent monthly to the landlord. Up to a few months ago, when the rent was in arrear, we used to take the cases to the magistrate and, say a man owed Sh. 500, be used to offer to pay at cents 50 a month. It was, of course, refused, and a distress was obtained, costing money. Eventually, after about three months, a distraint order was obtained.

Since then, by consulting one or two lawyers, it has been found that without this Act we can give notice to the lessee, and we can seize his house within fifteen days by employing a court broker, and without the expense, trouble, and nuisance of going to court. That is a very good rule, because there is a mass of people in a town like Mombasa where natives are very highly paid who could pay their rent but do not, knowing full well that by going to court and getting the sympathy of a lot of people they are apt to get it into their heads that they have only to wait long enough and the landlord will get tired of the expense.

Having found this new method, we have discovered that it is a very great lesson to the African, and in the last three months I think I have raked in £300 or £400 arrears of rent without the slightest difficulty and without the turning out of any tenant.

If this Bill is going to affect that power, which has worked extremely well in the Protectorate, I am afraid I shall have to vote against it. My own principles, of course, are that nobody should pay rent. That is quite right. (Laughter). But I have to earn my living and we are forced to pay rent. If there is anything in this Bill that will take away the power to which I have referred, and it would seem to me that right away through the country is copying some old law of England, I would be glad if it could be explained whether it will affect any tenancies such as I have outlined.

VEN. ANORHAGON THE HON. G. BURNS: Mr. President, I am not quite sure whether the hon. Member for Mombasa is dealing with people who rent houses? or with people who are granted a plot of land on which to build? If he means he is dealing with people who rent houses, I cannot understand any landlord allowing a tenant to run up rent to say Sh. 500 before he takes some action to recover it from that tenant. I am asking really for information on that point. Whether it is a matter of land rented to a native who has not paid his rent or whether it is a matter of a house in the township of Mombasa where natives are living—and he is allowed to run up rent to the extent of Sh. 500—I do not quite understand.

THE HON. ISHER DASS: Sir, I rise to oppose this Bill. I fail to understand why Government should be so anxious to protect a class of exploiters only, the only people interested in this Bill, who are time after time classed as landlords and superior landlords. This Bill seems to me to only protect the vested interests. It does not protect the tenants at all. In fact, some of these landlords are absolutely out to exploit their tenants in the worst form humanly possible.

To quote an instance. A house is available at a rent of Sh. 25, containing 12 or 14 rooms, and each room is let for Sh. 300 a month. That is Sh. 3,600 interest on the capital. If this is the case, I do not understand the necessity of protecting the interests of these exploiters, and why they should deserve special treatment at the hands of Government is beyond my imagination.

If Government also brought in a measure in the form of a Rent Act one could then suggest that Government was anxious to protect the interests of the tenants as well, but when they bring in simply a measure to protect the interests

ERRATA

PAGE 791.—Insert after "The question was put and carried" the following:—

THE HON. T. D. WALLACE moved that the Bill be referred to a Select Committee consisting of—

The Hon. the Commissioner for Local Government, Lands and Settlement (Chairman).

The Hon. the Director of Agriculture.

The Hon. T. D. Wallace.

The Hon. Elected Member for Nairobi South.

The Hon. Elected Member for Mombasa.

The Hon. Elected Member for Nairobi North.

Hon. Isher Dass.

THE HON. THE TREASURER seconded.

The question was put and carried.

of a certain privileged class of people it shows clearly that Government is more on the side of the exploiters and capitalists than the people.

Clause 14 of this Bill is very strange. It suggests that if a tenant gives notice to the landlord that he is quitting the building on the last day of the month but does not do so, he shall pay double rent to the landlord for the extra time he stays there. At the same time, the practice is that if the landlord on the 15th of the month gives notice to the tenant to quit the premises on the last day of the month, and the poor tenant is not able to find suitable premises to occupy, the landlord still charges him increased rent, so that the landlord benefits both ways. If the tenant after notice does not quit, he charges him increased rent, and if the tenant gives notice that he cannot afford to pay so much rent the tenant is victimised in both cases.

I should be failing in my duty if I did not oppose this Bill whole heartedly. Unless Government brings in any measure of protection for the tenants it has no justification to bring this in to protect the interests of the capitalists and exploiters.

THE HON. T. D. WALLACE: Sir, with regard to the point raised by the hon. and learned Member for Nairobi South, at any rate we agree there is a necessity for such a measure as this, even if the Supreme Court have decided that the common law applies without the statutory modifications.

I do not quite understand the criticism which the hon. Member for Mombasa levelled at this Bill. In the first place, if he is prepared to read the Bill, there is no discrimination of any sort or shape but it applies to every person in the Colony and Protectorate. Presumably, if he has been giving fourteen days notice he has been proceeding under the common law right. What is provided for in this Bill is the common law with the statutory variations.

With regard to the remarks of the hon. Indian Member Mr. Isher Dass that the tenants' interests are not protected, the whole object of the legislation throughout the past five or six centuries at home, as I explained—this Bill is an endeavour to embody that legislation—has been to protect both the tenants' interests and the landlords' remedies as equally as possible.

The question was put and carried.

Council adjourned for the usual interval.

On resuming.

THE MONEYLENDERS (AMENDMENT) BILL.

THE HON. T. D. WALLACE: Sir, I beg to move the second reading of the Moneylenders (Amendment) Bill.

The principal Ordinance prescribes certain formalities in connection with all moneylending transactions with a view to safeguarding the interests of borrowers, but it was never intended that the Ordinance should apply to persons other than moneylenders who lent money either on the security of a mortgage or a chattels transfer. Reference to section 2 (1) (b) of the principal Ordinance makes that quite clear.

It provides that a moneylender shall not include "any person bona fide carrying on the business of banking or insurance or lending money on chattels transfer or on mortgage".

But this section has not been altogether satisfactory, because it is open to a mortgagee, when the time came for him to pay his just dues, to suggest that the mortgagee who had lent the money was in fact a moneylender and that he has not complied with the provision of the Ordinance and cannot recover because he has no memorandum in writing of the transaction as is required by the Ordinance. It is therefore proposed to amend the principle Ordinance by excluding entirely persons lending money on a mortgage and a chattels transfer, charging interest at a rate less than 9 per cent, irrespective of whether they are moneylenders or not.

This may appear at first sight to defeat the whole object of the Ordinance, but I think this is not so because the main reason for the Ordinance is to ensure that the debtor's obligations shall be set out in writing. With regard to money lent on a mortgage or chattels transfer this is provided for by the fact that the amount due, the time for payment, etc., are set out in the mortgage deed or memorandum under the Chattels Transfer Ordinance. It would appear to be merely surplusage to require that a further memorandum should also be in existence.

Clause 4 (b) therefore excludes any moneylending transaction where the security is a mortgage, and sub-clause (c) excludes any moneylending transaction on a chattels transfer where the interest is less than 9 per cent.

That necessitates a consequential amendment which is provided for in clause 3, and all that does is to delete subsection (1) (b) of section 3 of the principal Ordinance which provided only for partial exclusion.

Clause 3 merely provides that if one member of a firm takes out a licence the other members shall be issued with a licence free of charge.

Clause 5 repeats the amending Ordinance of 1933 which in effect was merely an amendment of clause 3.

THE HON. THE TREASURER seconded.

The question was put and carried.

KENYA COTTON (AMENDMENT) BILL.

THE HON. T. D. WALLACE: Sir, I beg to move the second reading of the Kenya Cotton (Amendment) Bill.

The principal Ordinance, Chapter 154 of the Revised Edition, is an enabling Ordinance by virtue of which powers are conferred on the Governor in Council to make rules providing for the control of the cotton industry.

Up to quite recently, the powers conferred by that Ordinance were entirely satisfactory and worked very well, but there has during the past year or two been a rapid development of this industry, and that development is still taking place, and may be expected to continue in future. It is, I think, quite obvious that this industry should be fostered, but it is fostered so that each section of the industry should be adequately protected, and in order to enable the Agricultural Department to look after the interests of all parties concerned it is necessary to give wider powers to the Governor in Council to make further rules.

Clause 3 repeats and replaces section 2 of the principal Ordinance, and that is the rule-making section.

Paragraphs (a) to (d) are actually, word for word, the same as (a) to (d) in the principal Ordinance. In paragraph (e), which provides for the Governor in Council to make rules for "regulating and controlling the method, time and place of sowing, growing, collecting, storing, ginning, baling or otherwise preparing cotton", the only new things are "sowing" and "storing". Paragraph (f) is, to all intents and purposes, the same; (g) is new, empowering the Director of Agriculture to "fix and vary the minimum prices to be paid to natives for cotton". This is necessary in places where buyers make price arrangements between themselves or where there is no competition.

Paragraph (h) is also new. It empowers the Director of Agriculture "to prohibit or otherwise control the transport or movement of cotton from one area to another". This is similar to the rule which obtains in Uganda; and although it is not proposed to make any rules on the matter in Kenya at the moment under this paragraph it is considered advisable to have the power should necessity arise, because in Uganda at the moment, and it has started in Nyanza, there is a rather objectionable practice by which buyers send out lorries

to distant parts and bring in natives to their stores in order to get the necessary amount of cotton. This practice is objectionable from two points of view. Firstly, that on quite a few occasions it has been found in Uganda that a native has been left stranded at the buyer's store to which he had been taken; secondly, it is uneconomic, because the buyer may have to resort to under-weighing or under-cutting in order to be able to make a profit.

The next five paragraphs are, to all intents and purposes, the same. Paragraph (m) merely adds cotton residues to the list, "providing for the destruction or removal of any soil, seed crops, cotton plants, cotton residues and implements," and is necessary in order to control disease. (n) is also new. It requires "cotton ginners to supply to the Director of Agriculture free of charge samples of cotton for experimental purposes". This is considered necessary as samples are wanted occasionally to send home to the Imperial Institute for examination.

Paragraph (p) is new, and is to ensure cleanliness, while (q) and (r) are the same as in the existing Ordinance.

The second part of clause 3 merely provides that the Governor in Council may by rule require acts to be done to the satisfaction of an officer of the Agricultural Department, a medical officer or administrative officer. It will give power, for instance, to an inspector to inspect a cotton plantation. If he finds diseases or pests thereon he obviously must be empowered to give such orders as are necessary to deal with them. That is one example.

Clause 3 repeals and replaces section 4 of the principal Ordinance. It is actually the same, with the exception that the word "order" is included. It is a penalty section: "The Governor in Council may by proclamation or rule fix such penalty for the breach or attempted breach or non-observance of any proclamation, any rule", and we have added the words "or any order issued under or by virtue of such rule" to provide a penalty for non-compliance with an order issued by an agricultural officer by virtue of any power conferred on him.

THE HON. THE TREASURER seconded.

THE HON. P. A. BENISTER: Sir, the hon. and learned mover said the powers up to now had worked satisfactorily. That was intensely interesting to me, because one has to remember the Mazeras and Itangala. In the first place there is a concession running on the coast which I understand is for all time, and nobody can go into that area to assist in the buying of cotton competitively or otherwise, no matter what inducement they can give. If you call that satisfactory, I am afraid I must disagree.

This Bill is brought forward with a total misconception of the seriousness of the whole problem. When the original ginneries were granted at the coast, I took it upon myself to approach His Excellency the Governor to ask him to start the industry in the same way as they did in Uganda, in which I was interested for nine years. I only speak of the start, because the object of the Agricultural Minister there, Mr. Simpson, was to get the natives to grow cotton. That was the idea, and from the first word go.

But I was met with this: that it is all very well to talk about this type of people, you must secure for the capitalist, a man who puts money in and takes the risk, a return for his expenditure on his ginnery. With that policy I absolutely and entirely disagree. The object of cotton growing is quite different to any other produce in the Colony. It is a purely native crop, and cannot be grown on the plantation method. It is one of the great raisers of the standard of the native, and anything which can be done to increase the production of cotton should be done, always with the idea in mind that the native must receive the maximum benefit.

In propositions that arise in this country there is always a query. If you put up a new scheme or a new suggestion, there is always the idea: has it been done anywhere else? any other country where it has been done? I do not know and I do not inquire. I think we should approach this cotton industry in Kenya with an entirely new sense, and we should try to get away from all the abuses which have happened in other countries, some of which the hon. Member Mr. Wallace has mentioned, and we should try to work a system whereby the native, who is the real root of the industry—you would not have any ginneries if there were no cotton—should receive some of the benefit from the trade, working co-operatively with the ginneries.

Now, Sir, it is absolutely impossible to have in this Bill a clause that the Director of Agriculture shall fix the minimum prices. It is absolutely impossible for any human being. In fact, I would put the Angel Gabriel up against it to fix the minimum price which would reflect the actual price earned—I want to emphasize that word—by the native in his cotton production. For this reason. A price is fixed on the basis of Manchester Middling plus so many points according to staple and quality. Uganda used to get 300, but the coast gets something like 150, which is 1½d. On that price the Director of Agriculture has a scheme which he works in with the other territories, and to allow a native to get 10 cents they get 6d., for 7d.—12 cents, and so on.

Circumstances may arise whereby that cotton that has been sold for 10 cents on the basis of 6½d. might rise to Sh. 2 or Sh. 3 a lb., and the ginner gets the whole of the profit. Why should he? The ginner is an ordinary man of business, and is entitled to a fair profit. I have laid a scheme before the Agricultural Department, and I am willing to lay it before Government officials, whereby a proportion of the surplus profits, after the ginner has received a definite interest on his outlay, should be returned to the native.

I will not keep you long on that, but I want to say that what I am leading up to is this: I disagree entirely with the whole system in this Bill, of putting it into the hands of the Governor in Council. In my opinion, and I think it will be agreed to by most people, there should now be established a Cotton Board, a Cotton Control Board, which would be representative in proper proportions of all the interests involved, to issue rules as are necessary to control the cotton industry, always with fairness to the ginner and a strong bias to secure to the native a proper return in his dealings.

Such a Control Board would have a system whereby the Director of Agriculture should be not an administrative officer as you have made him under this Bill, but where his duty should be confined entirely to curing pests, testing of seeds, all real agricultural activities, and the administration should have items such as to prohibit or control or otherwise ginny sites, and have stores for the purpose of buying cotton, which is about the most valued clause in any Bill, taking the standard of politics in this country.

To-day we are agitating and trying to put into operation a Marketing Bill, and here you have the very thing started whereby the cotton markets would obviously grow in adjacent neighbourhood to productive areas, adjacent to where the natives grow their products. Yet you have a suggestion that you can prohibit cotton markets being used for any other purpose. Of course, I do not know if you mean for Punch and Judy shows, but doubtless if they could handle any other produce you would then build up big market stands which would include cotton, and be able to carry on right through the year with other produce, under the control of the administration, and administration only, subject to the control of the projected Cotton Board.

I do hope that Government will consider such a suggestion. It is a very small industry at the moment, but as you start so you finish. If you make mistakes now it will take a lot of trouble to pull you out of the fire presently, but in the adjoining territory they have had experience and have got

such knowledge as you will get to come back to the pool system. If you start with the Board, bringing all interests into it, I believe we can make this industry a very valuable one to the country and to the natives or, I should say, to the natives and to the country; you would get it on straight lines for ever.

THE HON. J. B. PANDYA: Sir, this Bill is viewed by the ginners in Nyanza Province with apprehension and they hope it will be postponed, but in view of the fact that the measure is going to be referred to a select committee I am not going to press at this stage for a postponement. It is a very serious Bill. It only gives power to the Governor in Council for framing rules, but it does contain very serious issues affecting the cotton industry as a whole.

The hon. mover mentioned that the rules which are going to be drafted under the Bill would be in the interests of both parties, namely, the growers and the ginners, and the interests of the country as a whole are no doubt very greatly affected by the rules, because they may either hinder production or support production. At the same time the hon. mover draws attention to paragraph (g), in which the power of fixing a minimum price is provided for.

Under paragraph (h) the competition in prices may be restricted. I do not understand how both parties interested can be served by those two antagonistic provisions. I think the hon. mover was quite frank in regard to paragraph (h) when he said it was intended to stop competition. I do not think he knows what use this rule is put to in the neighbouring territory of Uganda.

The justification of that rule in Uganda is to stop cotton—the mixing of cotton—for the purpose of safeguarding the quality. That was the justification in any case for that type of clause in Uganda. The hon. mover said quite frankly—and he let the cat out of the bag—that this rule is intended to safeguard against competition between ginners. If that is so, it would mean that Government could interfere and would not allow natives to have better prices because of competition between ginners.

I feel that that is going too far. Although the hon. mover said that at the present moment Government had no intention of framing rules under this paragraph, that is the very reason why I think it is quite fair to oppose such a thing. The intention is not there at present, but it might be put into practice.

of the people who are engaged in the cotton industry. The only thing that appears to me to be left out is that Government cannot interfere with the time that anyone should have his breakfast, lunch or dinner and possibly his time of going to sleep!

It is a formidable lot of clauses which interfere with almost everything. I should have thought that with an industry like this, hardly born, hardly in its infancy in this country, it was not necessary to adopt such drastic measures to achieve the very object with which it was started. I should like to have heard from the hon. mover whether all these restrictions which it is proposed to put in this Bill are or are not in existence in Uganda, because, after all, that country has had more and better experience than we have.

Again, I see that the penalties are so drastic that a man can get imprisonment up to three months and pay a fine of £500, or both, which is hardly an encouragement to people who intend to invest their capital here.

The hon. Member for Mombasa said no cotton, no ginneries: I can hardly imagine any use for cotton if there were no ginneries at all. I do not think we have yet reached the stage where we ought to apply these very hard and fast rules and discourage investment of capital, although I do think it should be the duty of Government to bring about a fair adjustment for the working of the whole industry as between producers and ginners.

In any case, I do not think any harm can be done if this Bill is not rushed through and enough time is given representatives of both growers, if necessary, and ginners in this Colony to place their views before the select Committee.

THE HON. THE DIRECTOR OF AGRICULTURE: Sir, all the members who have spoken to this Bill have agreed, I think, that the present Ordinance is out of date; there is no doubt about it that with the rapid expansion of the cotton industry we must alter the Ordinance to deal with the development which is going on. We all start on the common ground that we wish to improve the present Kenya Cotton Ordinance.

Most of the alterations and additions in the Bill now before Council are fairly small on the whole, although in one or two of course big points are raised, but they follow generally the principles which we follow in the previous Ordinance; that is, that it is an enabling Bill more or less on the same lines.

So far as I can see, there is nothing in this Bill which would prevent the establishment of a Cotton Control Board, although that particular question has not received the consideration of Government, at any rate, as far as I am aware.

The hon. Member for Mombasa mentioned that various powers were given the Director of Agriculture, but I think he will agree that in some cases it is quite possible that any further powers may not be given to him but may in fact be given to administrative officers. When it comes to paragraph (m), for example, in clause 2, that is a technical matter, and obviously the Director is concerned, but in some cases, (e) for example, regulating the method, time and place of moving, etc., that may be done by the Director or it may not.

THE HON. F. A. BEMISTER: I said that distinctly.

THE HON. THE DIRECTOR OF AGRICULTURE: It all depends on the Rules made under this Bill.

The hon. Member Mr. Pandya has mentioned the question of zones, which relates to (h) in clause 2, "empowering the Director of Agriculture to prohibit or otherwise control the transport or movement of cotton from one area to another". I think he also pointed out that in Uganda the abuses had been so great that Government found it necessary to pass legislation definitely dealing with that point. It was, I believe, called a Zone Ordinance, under which a ginner had a certain area in which he can buy and no other ginner can buy from that area. It may be necessary to have exactly the same thing here, but we do not know yet.

The hon. Member for Mombasa mentioned that we should get away from all the abuses in other countries; but at the same time he said that we should look at this question *de novo* and not look at the experience of other countries.

So far as verbal orders are concerned, that was put in because I asked for it. There may have to be a rule made to say that it is necessary that all cotton plants in a certain area shall be destroyed at a certain date. I cannot go along and see it is done, and possibly an agricultural officer cannot, and he sends along an agricultural instructor, who says: "You know what the order is, to pull the plants up; then pull them up." That was the reason for the verbal orders. But we may find that it makes for difficulties if an instructor gives a verbal order which is not legal.

So far as the present Ordinance is concerned, it has worked satisfactorily to the extent that the cotton industry has gone ahead during the last three or four years by leaps and bounds, and we hope it will go ahead, so that whatever and however the fact that the industry is progressing and its difficulties the fact that there cannot be anything improving and developing shows that there cannot be anything radically wrong with the administrative methods that have been adopted by Government.

THE HON. T. D. WALLACE: Sir, there is at any rate one fact which emerges quite clearly from the debate which has taken place on the Bill, and that is that everyone who has spoken is quite satisfied that the industry is developing, and that the best methods which are possible should be adopted to ensure proper control.

I am, however, in slight difficulty, because whereas the hon. Member for Mombasa wants a Control Board set up the hon. Member Mr. Shamsud-Deen says there is far too much interference. At any rate, this Bill, as hon. members are aware, is going to a select committee, and all the points which have been raised can, I think, and I hope also, be brought to the attention of the committee, and I trust the best methods which can possibly be adopted will in fact be adopted.

As the Hon. the Director of Agriculture has pointed out, most of the extra paragraphs in clause 2 of the Bill follow the Uganda legislation, and it has been found necessary there, and apparently is necessary here, to make provision to adequately control various matters which occur.

With regard to the last part of clause 2, which gives power to the Governor in Council to require acts or things to be performed or done to the satisfaction of the various agricultural officers, that is inserted in order to provide that the Governor in Council may delegate certain administrative matters to these officials; and was inserted as a result of a Supreme Court judgment which was given actually in Tanganyika under a very similar rule to that which we have in this Colony.

The hon. Member Mr. Bemister-mentioned paragraph (g) of clause 2. That is the paragraph which empowers the Director of Agriculture to fix minimum prices. He said that the prices altered very often and that it was impossible to say from week to week, month to month, what was a fair price. I would point out in that connection that that was realized, and the paragraph actually empowers the Director to fix and vary the minimum price.

On the point raised by the hon. member Mr. Shamsud-Deen that the penalties prescribed are rather high, all I can say in that connection is that they are exactly the same as will be considered by the select committee and altered if it is considered necessary.

The question was put and carried.

The Hon. T. D. Wallace moved that the Bill be referred to a Select Committee consisting of:—

- The Hon. the Director of Agriculture (Chairman).
- The Hon. the Attorney General or the Hon. T. D. Wallace.
- The Hon. S. H. Fazan.
- The Hon. Elected Member for Mombasa.
- The Hon. Elected Member for Nyanza.
- The Hon. Elected Member for Ukamba.
- The Hon. J. B. Pandya.

The Hon. the Treasurer seconded.

THE HON. F. A. BEMISTER: Would it be in order, Sir, to suggest a name for a chairman, because it should be an administrative officer, for this is an administrative job entirely?

THE PRESIDENT: My ruling is that a member can move any amendment to a motion if he sees fit.

THE HON. F. A. BEMISTER: I beg to move that the head of the Administration, the Hon. the Colonial Secretary, or his nominee, be chairman.

THE PRESIDENT: May I point out that as the motion stands the Hon. the Colonial Secretary is not a member so that he cannot be chairman? The motion is that the Bill be referred to a Select Committee consisting of the names just read out by the hon. Member Mr. Wallace, and the Hon. the Colonial Secretary is not one of them. You can move an amendment that he be added. The hon. Member Mr. Wallace had better read them again.

THE HON. T. D. WALLACE:

- The Hon. the Director of Agriculture (Chairman).
- The Hon. the Attorney General or the Hon. T. D. Wallace.
- The Hon. S. H. Fazan.
- The Hon. Elected Member for Mombasa.
- The Hon. Elected Member for Nyanza.
- The Hon. Elected Member for Ukamba.
- The Hon. J. B. Pandya.

THE HON. F. A. BEMISTER: Sir, I beg to move that the motion be amended by the addition of the name of the hon. the Colonial Secretary or his nominee to those members already

proposed, and the substitution of the hon. the Colonial Secretary or his nominees for the chairman already suggested.

THE HON. J. B. PANDIA seconded.

THE HON. THE COLONIAL SECRETARY: Sir, I am afraid that I cannot accept the amendment.

In the first place, I suggest that the committee is large enough as it is proposed, so I do not see any reason for adding my name to it. Secondly, if my name were added to it I do not think I should be as good a chairman in this particular matter as the hon. the Director of Agriculture. I think he is the natural person to be chairman of a committee like that. He knows the history of the cotton-growing, and knows all the technicalities of it, and how to control it.

For those reasons I am unable to accept the amendment.

THE HON. F. A. BEMISTER: I withdraw the amendment with the permission of the House.

THE PRESIDENT: With the leave of the Council the amendment is withdrawn.

The question of the original motion was put and carried.

THE MINING (AMENDMENT) BILL.

THE HON. E. D. HOSKING: Mr. President, I beg to move that the Mining (Amendment) Bill be read a second time.

I must apologize generally to this Council for introducing yet further mining legislation, but an industry growing at the speed with which the mining industry is growing in Kenya makes it difficult, if not impossible, to attain at once to that perfection in legislation that is finality. One has only to look at the times of mining legislation in countries where mining is the premier industry to realize the difficulties of attaining such finality.

There are two sources of the amendments contained in this Bill. The main source is the constructive criticisms made by the Law Society of Kenya on the existing legislation, and I should like to express my sincere thanks to that Society for the trouble they have taken and the time they have spent in pointing out the weak places in our existing legislation, and for their suggestions for reinforcing them. Their action, I think, is in accordance with the highest traditions of that Society, and is extraordinarily altruistic.

The other source is the mistakes made by myself. It has been said that my chief virtue, I trust not my sole virtue, as Commissioner of Mines has been my readiness to admit my

mistakes! Whether it is from virtue or from necessity, I have taken the opportunity to rectify some of the mistakes I have made.

I do not intend to deal with matters of detail in this Bill, as I understand it will be referred to a select committee, to which I hope some of the members of the original committee that helped me to frame the mining legislation will be appointed.

It is hoped, when this Bill is passed and becomes law, to submit to the Governor in Council an abbreviated form of the regulations under the Ordinance. Some of the existing regulations have been brought into the Ordinance, and it is hoped in consequence to produce a code of regulations very simple and considerably more abbreviated than they are at present.

Dealing with the clauses in the Bill, the most important point in clause 2 is that dealing with sub-clause (c), where it introduces the words "and of the Mining (Safety) Regulations, 1933, or any regulations amending or replacing the same," into the definition of "minerals." The reason for that is that it is considered "advisable" that, though the mining of certain minerals does not come under the provisions of the Mining Ordinance as a whole, it should be brought under the safety regulations. After all, we should protect employees from being killed by inefficiency, whether they mine murrum or gold, and this provision will see that safety regulations apply to all types of mining, whether that type of mining is otherwise controlled by the Mining Ordinance or not.

Again, in clause 3, sub-clause (a), reference is made to Part VI of the Ordinance, which deals with inspections and accidents. The same principle there obtains, and, even though the Mining Ordinance does not apply, the provisions as to safety regulations and inspections and accidents will.

Sub-clause (1) of clause 3 was previously a Government Notice, and has been brought into the Ordinance, where it properly belongs. It is to be enacted that when an exclusive prospecting licence is issued, and within that area there are certain mining locations still existing, when these locations lapse the area previously covered by them shall be deemed to be absorbed within the exclusive prospecting licence. Had no such provision been made, then these particular areas would have been open to general prospecting shortly after the lapse of the title. That has been considered undesirable.

In clause 4, section 13 is amended by making provision for a renewal of a prospecting right in lieu of the issue of a fresh one. That is a legal point not brought to my notice by the Law Society, but it is rather a nice one. By virtue of a

prospecting right a man may obtain a protection area. Another man may have a protection area that would overlap the previous one should it at any time lapse. A protection area is held by virtue of a prospecting right. That right dies a natural death after twelve months, and the holder has to take out a fresh one, and there is a moment of cessation between the old and the new in which the overlapping of other protection areas would prevail. By providing for a renewal, that moment of cessation does not occur, which tends to simplification and not confusion.

Clause 6 relates to the vexed question of occupier and owner. We seek to amend section 15 of the Principal Ordinance, which reads:—

"Any person intending to prospect on private lands shall when practicable give notice of his intention to the occupier of such land before commencing prospecting operations."

We are amending it to say:—

"shall, before creating any disturbance thereon, give notice to the occupier of such land, and, if practicable, to the owner thereof."

The interests of an owner and an occupier are not always identical |

Suppose you rent a farm to a tenant who was growing fruit. He might not get worried over the prospect of having furrows dug across land which the owner required for other purposes. We have therefore brought the owner as well as the occupier into this section, and made provision for giving notice not only to the occupier but, where practicable, also to the owner of the farm.

In clause 8, which amends section 17, it is laid down that an exclusive prospecting licence shall only last for a specific period and cannot be renewed for a year after by the holder or any person associated with him. What it really meant was associated in prospecting, not merely associated as a partner at tennis or in some other concern such as trading.

We have also in sub-clause (b) deleted the reference to the normal area of an exclusive prospecting licence. The Ordinance read that an exclusive prospecting licence should be up to 8 square miles, and anything in excess was to be looked on as abnormal. In point of fact, the area of an exclusive prospecting licence is entirely arbitrary, and there is no special reason for retaining an area of 8 square miles. We now suggest an area of any size.

Still in clause 8, sub-clause (d) adds provision for the renewal of an exclusive prospecting licence at a registration fee of Sh. 10 and a conveyancing fee of such sum not exceeding Sh. 150 as the Registrar of Mines may determine. The reason for that is where there is a renewal of a simple exclusive prospecting licence which entails no conveyancing, it is rather absurd to charge Sh. 150 for a few words on the back of the document, but where the conditions of the exclusive prospecting licence have to be re-drawn then a reasonable fee should be paid for the work entailed.

In clause 9 we have made it an offence to withhold information as well as to give false information. We have taken advantage of this amending Bill to try and cut out unnecessary penalty clauses and to bring them, as far as possible, under one general penalty clause.

Clause 10 is important in so far as it is laid down that the transferee of a licence as well as the transferor—

"shall be liable for all rents and obligations which may have accrued at the time of the transfer, but the transferor shall not be liable for any future rents or obligations."

That seems reasonable; when a new firm takes over an exclusive prospecting licence they should be responsible for any liabilities that may have occurred, but it is limited in so far that the transferor shall not be liable for any future rents or obligations.

In clause 11, section 25 is re-drafted, where again an owner and occupier come in. But the important point is the provision as to successor in title. We hold that a successor in title shall incur liabilities as well as privileges which were held by his predecessor in title.

You will notice that in clause 13 the provisions as to rents have been deleted. The present Ordinance gives a false impression, that no rent was payable for a location. That meant no mining rent. There is a registration fee, and a renewal fee, but we do not charge rent for locations. Rent is charged for a lease; and I trust hon. members will not think we have deleted entirely all reference to rent in a lease, for by a reference to clause 28 we find rent reinstated in its proper place.

Clause 14, dealing with section 29, anticipates a change proposed in the regulations. In the section as it stood originally, the applicant for registration of a location had to state the nature of the location and claim. That was rather indefinite. Under the regulations of which I have spoken there will be definite types of locations, definite classes, in which a location shall be registered.

I come to, perhaps, the most vexed question of all, clause 15, which amends section 30 of the Principal Ordinance, and here a definite alteration is made. In section 30 it is laid down that—

"A mining location shall be valid for one year from the date of pegging and may be renewed on payment of the prescribed fee for further terms of one year each up to a maximum of five years in all."

That was one of the mistakes I made! I thought, in originally proposing that limitation of five years, that a prospector or miner could reasonably find out within that period whether it was worth going on with his location or not. I did not, at the time, look for the depression which affected the whole of the Colony, including mining, nor did I know the complexity of mining, especially in Kakamega goldfields where, owing to the volcanic action, exploration underground is extremely difficult.

Those mines which have been developed far in advance of the minimum required under the regulations are still finding difficulty in their explorations underground, and I have come to the conclusion that five years is an insufficient period to allow the holder of the location in which really to satisfy himself whether he should apply for a lease or not or for how long he should apply for it.

A lease is an expensive thing to get, and a man wants to know whether he should apply for a 21, 10 or 5 years' lease. I have therefore made provision for an extension up to a maximum of ten years in all.

Since the publication of this Bill certain criticisms have been levelled at this section. I have, however, never heard if said that the time should not be extended, but it is suggested that natives may consider it a breach of faith if the period is doubled. I have some experience myself of administration in the goldfields, and I am assured that there would be no objection to an extension of time. As to whether the time should be ten years, without further qualifications, I think is a matter for discussion in select committee, but I trust that Council will agree to granting an extension of the period for a continuance of a location, inasmuch as the five years originally laid down have proved in practice insufficient.

This limit was really imposed on the recommendation of the Carter Land Commission, which recommended that the claim title allowed or the location title should be limited to a reasonable period. No actual period is mentioned in the Report of the Commission, and it is open to argument as to whether ten years is not more reasonable than five years in view of the circumstances.

Clause 19 endeavours to cut down section 34 to essentials. A location shall be liable to forfeiture if the holder does not comply with the provisions of the Ordinance or its regulations, or if registration has been obtained by false or fraudulent representation or concealment. That is a simple statement, and condenses five sub-clauses of the original section.

The next few clauses merely simplify the sections they replace, and there is no point of, I think, more than academic interest until we come to clause 30, which deals with section 64 of the Principal Ordinance, about which the Law Society and I had much to say to each other!

It was my object in section 64 to ensure that there should be a clear title, and it was originally enacted that—

"No sale, lease, mortgage, charge, lien or other dealing relating to any exclusive prospecting licence, location or mining lease shall be valid, and no evidence thereof shall be receivable in any civil proceedings before any court, unless it is registered in the prescribed manner."

The object was a man could go to the Registrar himself and find out whether the title in which he was interested was clear or not. If there was any option or any charge or lien on the property, it should have been registered with the Registrar, while if there was no such entry he would know the title was clear. Representatives of the Law Society have pointed out to me that we should, at any rate, preserve the right of action *in personam*, even if we abolished the right of action *in rem*.

I am sure that that is clear to you all! But it means this: If a man sells you a pup you can have a go at him but not at the pup! To bring it to mining parlance, if A granted B an option on a mining location, and failed to register that option, and subsequently A sells that location to a third party, C, B, who had obtained the option, could lay an action against A, but could not attach the title which had been granted to C, the third party. That, I think, is reasonable, and provision is made in clause 30 to that effect.

Then we pass to another important alteration in principle, and that is in the reversion from the Warden's Court to the Commissioner's Court. I say reversion, because the original Ordinance of 1931 made provision for a Commissioner's Court and the Ordinance of 1933 altered it to Warden's Court. That was at the time of intense prospecting, when many small matters required immediate attention on the field, and it seemed preferable for first and second class magistrates, *ex officio* wardens, to deal immediately with these matters as they arose in the field.

Mining disputes have been reduced to a minimum. The difficulty of the Warden's Court was the limitation as to value, as a warden only had the powers of a first class magistrate, and consequently could only deal with disputes where the cause of the action did not exceed in value £75. There are few, if any, mining disputes where the value assessed by one party at any rate is not easily a hundred times that amount.

It seems therefore desirable to revert to the Commissioner's Court with unlimited jurisdiction, on the understanding that the Commissioner may delegate his authority, with also unlimited authority in certain cases, where that course appears advisable. I have been approached on more than one occasion to act as arbitrator in cases where the litigants did not wish for the minutes of the law so much as a quick hearing and a little commonsense. It is suggested, then, that the court shall be held by the Commissioner and not by the Warden, and provision is made for an appeal from his court to the Supreme Court.

I should mention that it is open to any of the litigants to file his suit in any court of competent jurisdiction. He does not of necessity have to go to the Commissioner's Court.

Clause 49 endeavours to simplify section 90 of the Principal Ordinance. It is an important section, and, from the mining point of view, still not perfect.

It has always been difficult, where the holder of any location or licence has died or gone into bankruptcy, or has been found a lunatic, to know how long we should keep the obligations and rights alive or in abeyance until someone is definitely appointed to manage the affairs for the original location-holder. It may sometimes go on for years, owing to the difficulty of obtaining probate or a receiving order, especially when one has, for instance, to send to Australia to obtain the necessary sanction.

We have therefore divided the original section into two parts: one dealing with the case of death, where the obligations are suspended and rights reserved for six months from the date of death. Discretionary power is given the Commissioner to extend that period. It should be noted that the original section only dealt with obligations; the amending clause also extends to rights as well as to obligations. The second part deals with bankruptcy and lunacy. Again the Commissioner has discretion in extending the time beyond that laid down for the present procedure.

Clause 43 abolishes a very vexed section (91) dealing with the payment of wages due. I am averse to having special legislation in a Mining Ordinance wherever it can be avoided.

and in view of the recent judgment in the Supreme Court, generally known as the "Truck" Case, it is no longer necessary to retain that section. I understand, too, that legislation dealing with the question generally may possibly be introduced.

Clause 44 requires the holder of a mining title to register an address with the Commissioner and to keep him advised as to changes. Hon. members will be surprised at the number of people whose address is still P.O. Kakamega, and how few people have collected letters sent to that address nowadays. Provision is therefore made for a registered address, and for the serving of all notices to that address by registered post.

Clause 46 (d) really gives sanction to the powers exercised by the Senior Inspector of Mines when enforcing the safety regulations. That Senior Inspector is a greater autocrat underground than the Commissioner would ever dare to be in his office!

I think we have adopted some 75 per cent of the recommendations made by the Law Society. It may be asked why we have not adopted them all *hokus-bokus*. Well, the mining community are simple folk, and we have endeavoured in our legislation to have an Ordinance that he who runs may read. If we were to adopt all the recommendations of the Law Society we should have an Ordinance that he who reads would run!

We have done our best to produce a straightforward Ordinance, and it is my intention, if this Bill becomes law, first of all to submit abbreviated regulations which will supersede the existing ones, and then produce a handbook index, which will bring these amendments into their proper order, and to index them most carefully so that the most simple mining prospector can understand them.

THE HON. T. D. WALLACE seconded.

THE HON. CONWAY HARVEY: Mr. President, in spite of the alleged mistakes to which the hon. member confessed, I should like to assure him that his tactful and tolerant administration of the Mining Ordinance has justly secured the warm praise of everyone directly identified with the mining interests. (Hear, hear.)

He paid a tribute to the Law Society, and mentioned that about a quarter of that Society's recommendations had not been accepted by him. We were told authoritatively only yesterday that one very important amendment was to be put up to the select committee which is to be appointed to go into the detailed provisions of this Bill, and I think it important that should be mentioned in order that the public may know

the position and the people who are intimately concerned with this matter may get their arguments ready and look up their facts.

I had hoped, Sir, to be in the position of a markaman, as I understand the hon. and gallant Member for Nairobi South was going to put up this proposal. Unfortunately, I have been converted from markaman into a target, but I do not mind that.

The proposal was this: I understand there are very great objections on the part of the legal fraternity to the Commissioner of Mines, who now replaces the Warden in that respect, being endowed with power to hear and settle disputes. Rightly or wrongly—I think, very wrongly—there are a number of legal luminaries who suggest that all such matters must go before the courts of the Colony. I have the profoundest respect for Kenya courts, but very much less respect for some of those rapacious legal vultures who haunt the precincts of those courts clad in sinister garb! (Laughter.)

I think, Sir, that as the present arrangement has worked very, very smoothly, with undoubted satisfaction to everyone concerned, by which those administering the Mining Ordinances shall deal with petty disputes, there is no reason in the world why such an excellent arrangement should not be allowed to continue.

More particularly do I support clause 15, which, perhaps, is one of the most important from the point of view of the investor in mining, and the proposed amendment which, as the hon. mover mentioned, extends the period of tenure of a location from five years to ten. I think he gave very cogent reasons for that, and I cannot believe that anyone who has the interests of the native at heart or the interests of mining can seriously cavil at such a very wise provision.

In addition to the reasons mentioned by the hon. member in charge of the Bill, I should like to point out that very few, if any, natives really will regard any change as a breach of faith. To most of them the income they derive from the owners and lessees of locations is really money from home. They never dream, in their wildest moments, that they would ever have such a sure and steady source of income. They like it, and I am quite sure most of them would like it to go on for ever.

One other point is somewhat important. That is, that in the majority of cases where very active mining is being pursued, it is in very poor land from an agricultural or pastoral point of view. Consequently, there is little, if any, hardship imposed on the native in this regard, and I suggest that, on the contrary, the balance is entirely in favour of the native.

I give the mining measure my enthusiastic and whole-hearted support, Sir, and I sincerely trust it will not be whittled down or modified in any respect whatsoever by the select committee which is to be appointed.

VEN. ARCHDEACON THE HON. G. BURNS: Mr. President, I have only one point that I want to speak about. I know nothing about mining, but the last point which the hon. Member for Nyanza touched on I should like to draw the attention of the select committee to. That is, where compensation is paid to the owner of the land for disturbance and for which authority is given to disturb for one year.

I am not disagreeing with the extension of that time, which is or may be extended from one year to ten years. We have heard of the benefits natives are deriving from the mining industry in Kavirondo, and I for one do not doubt that for a moment, but if the compensation given to the owner or the man to whom the tract of land belongs, and during the first year there are certain buildings erected there and a disturbance of the land takes place which does not make that land very valuable to the owner for crops or grazing or anything else, is it not fair that he should receive something, whether in the way of compensation or whatever you like to call it, if the term is extended to ten years? Should not the native gain something or get something for that extension of time? I do not call it compensation, but some little recognition for the land being used.

Of course, I understand that when a lease is taken out, he would, if I understand the position aright, get rent for the land, but the lease has not yet been taken out. The only thing that has happened is that a location licence has been obtained for prospecting. The native, the owner, gets compensation for one year for the disturbance, certain huts and other buildings are erected on the land, and the time is to be extended for ten years.

I do with all sincerity recommend this matter to the select committee which is to deal with this Mining Bill, that during the time of the extension, when the native can derive no benefit from his land, he should get something to recognize the ownership of that land.

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I give the mining measure my enthusiastic and whole-hearted support, Sir, and I sincerely trust it will not be whittled down or modified in any respect whatsoever by the select committee which is to be appointed.

VEN. ARCHDEACON THE HON. G. BURNS: Mr. President, I have only one point that I want to speak about. I know nothing about mining, but the last point which the hon. Member for Nyanza touched on I should like to draw the attention of the select committee to. That is, where compensation is paid to the owner of the land for disturbance and for which authority is given to disturb for one year.

I am not disagreeing with the extension of that time, which is or may be extended from one year to ten years. We have heard of the benefits natives are deriving from the mining industry in Kavirondo, and I for one do not doubt that for a moment, but if the compensation given to the owner or the man to whom the tract of land belongs, and during the first year there are certain buildings erected there and a disturbance of the land takes place which does not make that land very valuable to the owner for crops or grazing or anything else, is it not fair that he should receive something, whether in the way of compensation or whatever you like to call it, if the term is extended to ten years? Should not the native gain something or get something for that extension of time? I do not call it compensation, but some little recognition for the land being used.

Of course, I understand that when a lease is taken out, he would, if I understand the position aright, get rent for the land, but the lease has not yet been taken out. The only thing that has happened is that a location licence has been obtained for prospecting. The native, the owner, gets compensation for one year for the disturbance, certain huts and other buildings are erected on the land, and the time is to be extended for ten years.

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THE HON. E. B. HOSKING: Sir, I thank the hon. Member for Nyanza for his support, not only of the Bill but of the Department with which I am connected.

The venerable and hon. member has raised the question of compensation. I think he is under some misapprehension. Compensation is not payable once, and once only, in ten years.

but it is paid so long as the disturbance lasts. It is not dealt with under the Mining Ordinance, but under the permit by which the prospector is allowed to prospect in a native reserve.

By virtue of that permit, he has to pay the compensation required for the continuance of the disturbance, and, not only for the disturbance itself, but if he cuts down crops he pays, and if he digs trenches in the area disturbed.

The venerable and hon. member has also misunderstood the section itself when he said the period is altered from one year to ten years. The limit of renewal was five years; we are asking for ten years, but the compensation continues to be paid; it is not one payment only.

VEN. ARCHDEACON THE HON. G. BURNS: That entirely meets my point, Mr. President.

The question was put and carried.

THE HON. T. D. WALLACE moved that the Bill be referred to a Select Committee consisting of—

The Hon. E. B. Hosking (Chairman),

The Hon. the Attorney-General or the Hon. T. D. Wallace,

The Hon. the Director of Public Works,

The Hon. the Elected Member for Nairobi South,

The Hon. the Elected Member for Nyanza,

The Hon. the Elected Member for Uasin Gishu,

Dr. the Hon. A. C. L. de Sousa.

THE HON. THE COLONIAL SECRETARY seconded.

The question was put and carried.

*Council adjourned till 9 a.m. on Wednesday,
the 16th December, 1936.*

KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION. 7.

CONTINUED ON
REEL No.

9

KENYA GOVERNMENT ARCHIVES
PHOTOGRAPHIC SERVICE

SECTION. 7.

END

OF REEL NO.8.....