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COLONY AND PROTECTORATE OF KENYA

**LEGISLATIVE COUNCIL  
DEBATES**  
**OFFICIAL REPORT**

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**Second Series**

**Volume IV**

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**1938**

**8th APRIL to 3rd MAY**

1938  
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NAIROBI

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## COLONY AND PROTECTORATE OF KENYA

### List of Members of the Legislative Council

#### *President:*

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

#### *Ex Officio Members:*

COLONIAL SECRETARY (HON. SIR A. DE V. WADE, C.M.G., O.B.E.)  
ATTORNEY GENERAL (HON. W. HARRAIGN, K.C.)  
FINANCIAL SECRETARY (HON. C. R. LOCKHART, C.B.E.)  
CHIEF NATIVE COMMISSIONER (HON. E. B. HOSKING, O.B.E.)  
COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT,  
ACTING (HON. C. E. MORTIMER, M.B.E.): (1)  
DIRECTOR OF MEDICAL SERVICES, ACTING (DR. THE HON. F. J. C.  
JOHNSTONE): (2)  
DIRECTOR OF AGRICULTURE (HON. H. B. WATERS)  
DIRECTOR OF EDUCATION, ACTING (HON. R. H. W. WISDOM): (3)  
GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS,  
ACTING (HON. A. E. HAMP, C.B.E.): (4)  
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH)  
COMMISSIONER OF CUSTOMS, ACTING (HON. A. W. NORTHROP): (5)

#### *Nominated Official Members:*

HON. G. H. C. DOULDERSON (Prov. Commissioner, Coast Province).  
HON. H. M. GARDNER (Conservator of Forests).  
HON. S. H. LA FONTAINE, D.S.O., O.B.E., M.C. (Prov. Commissioner,  
Central Province).  
HON. G. B. HERDEN (Postmaster General).  
HON. S. O. V. HODGE (Prov. Commissioner, Rift Valley).  
HON. G. B. STOOKER (Deputy Financial Secretary).  
HON. T. D. WALLACE (Acting Solicitor General): (6)  
HON. C. TOMKINSON (Acting Prov. Commissioner, Nyanza Pro-  
vince): (7)  
HON. E. J. MULLIGAN (Acting Director of Veterinary Services): (8)

#### *European Elected Members:*

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, Nairobi North.  
HON. S. V. COOKE, Coast.  
THE RIGHT HON. THE EARL OF ERROLLE, Kikuyu.  
LADY THE HON. SIDNEY FARRAR, Nyanza.  
HON. S. G. GHERSIE, Uasin Gishu.  
LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzoia.  
HON. MARCUSWELL MAXWELL, Nairobi South.  
HON. W. G. D. H. NICOL, Mombasa.  
HON. E. H. WRIGHT, Aberdare.  
MAJOR THE HON. F. DE V. JOYCE, M.C., Ukamba (Acting): (9)  
CAPT. THE HON. E. C. LONG, Rift Valley (Acting): (10)

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

*Indian Elected Members:*

HON. A. N. MAINI (Acting). (11)  
HON. SHAMSUD-DEEN.  
HON. R. KASSAM.  
HON. J. B. PANDYA.  
HON. A. B. PATEL.

*Arab Elected Member:*

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

*Nominated Unofficial Members:*

*Representing the Interests of African Community—*

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

*Representing Arab Community—*

HON. SHEIK HEMED BIN MOHAMED BIN ISSA.

*Clerk to Legislative Council:*

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

*Reporters:*

MR. A. H. EDWARDS, MR. H. THOMAS.

- (1) *Vice* Mr. W. M. Logan, O.B.E., transferred to N. Rhodesia.
- (2) *Vice* Dr. A. R. Paterson, on leave.
- (3) *Vice* Mr. L. G. Morris, O.B.E., on leave.
- (4) *Vice* Brig.-Gen. Sir G. D. Rhodes, C.B.E., D.S.O.
- (5) *Vice* Mr. E. G. Bale, deceased (1-1-38).
- (6) *Vice* Mr. H. C. Willan, M.C., on leave.
- (7) *Vice* Mr. S. H. Fazan, C.B.E., on leave.
- (8) *Vice* Mr. R. Daubney, on leave.
- (9) *Vice* Sir R. de V. Shaw, Bt., M.C., absent from Colony.
- (10) *Vice* Lt.-Col. Lord Francis Scott, K.C.M.G., D.S.O., absent from Colony.
- (11) *Vice* Mr. Isher Dass, absent from Colony.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

8th April, 1938:

Hon. Shamsud-Deen.

25th April, 1938:

Hon. Elected Member for Nyanza.  
Hon. A. B. Patel.

26th April, 1938:

Hon. Elected Member for Nyanza.  
Hon. A. B. Patel.  
Hon. Arab Elected Member.

27th April, 1938:

Hon. G. B. Stooke.  
Hon. A. B. Patel.  
Hon. Arab Elected Member.

28th April, 1938:

Hon. H. M. Gardner.  
Hon. G. B. Stooke.  
Hon. A. B. Patel.  
Hon. Arab Elected Member.

29th April, 1938:

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

2nd May, 1938:

Hon. Acting Director of Education.  
Hon. G. H. C. Boulderson.  
Hon. Elected Member for Aberdare.  
Hon. Indian Elected Member Western Area.  
Hon. Arab Elected Member.  
Hon. Arab Nominated Unofficial Member.

3rd May, 1938:

Hon. Acting Director of Education.  
Hon. G. H. C. Boulderson.  
Hon. Indian Elected Member Western Area.  
Hon. A. B. Patel.  
Hon. Arab Elected Member.  
Hon. Arab Nominated Unofficial Member.



COLONY AND PROTECTORATE OF KENYA

## LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1938

Friday, 8th April, 1938.

Council assembled at 11 a.m. at the Memorial Hall, Nairobi, on Friday, 8th April, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning the Council was read.

### ADMINISTRATION OF THE OATH

The Oath of Allegiance was administered to:—

#### *Ex-Officio Members*—

Sir Armigel de Vins Wade, C.M.O., O.B.E., Colonial Secretary.

W. Harragin, Esq., K.C., Attorney General.

C. R. Lockhart, Esq., C.B.E., Financial Secretary.

E. B. Hosking, Esq., O.B.E., Acting Chief Native Commissioner.

C. E. Mortimer, Esq., M.B.E., Acting Commissioner for Local Government, Lands and Settlement.

Dr. F. J. C. Johnstone, Acting Director of Medical Services.

H. B. Waters, Esq., Director of Agriculture.

R. H. W. Wisdom, Esq., Acting Director of Education.

Brig-Gen. Sir Godfrey Rhodes, C.B.E., D.S.O., General Manager, Kenya, and Uganda Railways and Harbours.

J. C. Stronach, Esq., Director of Public Works.

A. W. Northrop, Esq., Acting Commissioner of Customs.

#### *Nominated Official Members*—

G. H. C. Boulderson, Esq., Provincial Commissioner, Coast Province.

H. M. Gardner, Esq., Conservator of Forests.

S. H. La Fontaine, Esq., D.S.O., O.B.E., M.C., Provincial Commissioner, Central Province.

G. B. Hebden, Esq., Postmaster-General.

S. O. V. Hodge, Esq., Acting Provincial Commissioner, Rift Valley Province.

G. B. Stooke, Esq., Deputy Treasurer.

T. D. Wallace, Esq., Acting Solicitor General.

C. Tomkinson, Esq., Acting Provincial Commissioner, Nyanza Province.

E. J. Mulligan, Esq., Acting Director of Veterinary Services.

#### *European Elected Members*—

Major F. W. Cavendish-Bentinck, Nairobi North.

S. V. Coöke, Esq., Coast.

Rt. Hon. the Earl of Erroll, Kiambu.

Lady Sidney Farrar, Nyanza.

S. G. Gherrie, Esq., Uasin Gishu.

Lt.-Col. J. G. Kirkwood, C.M.O., D.S.O., Trans Nzoia.

M. Maxwell, Esq., Nairobi South.  
 W. G. D. H. Nicol, Esq., Mombasa.  
 E. H. Wright, Esq., Aberdare.  
 Major F. H. de V. Joyce, M.C.,  
 Ukamba (Acting).  
 E. C. Long, Esq., Rift Valley (Acting).

#### Indian Elected Members—

Rahamtulla Kassim, Esq., Western.  
 J. B. Pandya, Esq., Eastern.  
 A. B. Patel, Esq., Eastern.  
 A. N. Maini, Esq., Central (Acting).

#### Arab Elected Member—

Sir Ali bin Salim, K.B.S., C.M.O.

#### Nominated Unofficial Members Representing the Interests of the African Community—

H. R. Montgomery, Esq., C.M.O.  
 Dr. C. J. Wilson, M.C.

#### COMMUNICATION FROM THE CHAIR

His Excellency made the following communication from the Chair:  
 Honourable Members of Council,

It gives me great pleasure to welcome you here to-day at forming the sixth legislative Council of Kenya since 1920, when the elective system was introduced. I would like especially to extend a welcome to those new members who have taken the Oath as Legislative Councillors for the first time. They will, I know, join with those who have returned with the experience gained from past Sessions and give the full measure of their assistance and ability in the work that lies before us.

Our responsibilities vary both in nature and degree; opinions will often differ as to the best course of action, but we are all striving towards the same objective—the prosperity and happiness of the peoples committed to our charge. It is this that we must always keep in view, use as our test and guide of our own words and actions and also as the means of judging those of other people.

I wish to express the gratitude we all feel for the generous services rendered to Kenya both inside and outside this hall by the twelve officials and unofficials who are no longer members of this Council. Honourable members will, I am sure, agree with me that there is nothing in-

vidious if I single out a few names to mention.

Thirty-nine years ago to a week, Archdeacon Burns arrived in Kenya. Ever since then he has devoted his whole time and energy with complete unselfishness to the welfare of the African. In him we had an experienced and strenuous advocate of the true interests of the natives. We all wish him renewed health and vigour as a result of his rest from active participation in the deliberations of this Council, and I know that his advice will still be available and will always be readily given.

To Captain Schwartz we owe a particular debt for over fifteen years of ungrudging service and advice both in this Council and in Executive Council. During that time his grasp of essentials and the logic of his arguments have been of the greatest value.

I know the Honourable Member for Nyanza will understand that it in no way lessens the warmth of our welcome to the first lady member of this Council when I say that we shall miss the unconquerable optimism and the loyal co-operation of her predecessor. (Applause.) Mr. Conway Harvey had the distinction of being the father of this Council, on which he served over a period of seventeen years.

Since we last met together here we miss from amongst the official members of this Council a devoted servant of Kenya and a loyal and cheerful colleague. I refer to Mr. Bale, late Commissioner of Customs. To us with whom he was sitting in this hall in the latter days of December his sudden death on New Year's Day came as a great shock. Honourable members will, I am sure, wish our records to contain an expression of their appreciation of the work he did for this country and of their deep sympathy with his widow in her loss.

It is only a short time since Council was last in session and I do not feel that the first day of a new Council is an appropriate occasion for a lengthy address from the Chair.

The years during which this Council will play its part in shaping the destinies of Kenya will, I feel sure, be important ones. The pioneers of the early years of this century have laid solid foundations for future development, and it is our duty to build as solidly and as well.

#### [H.E. the Governor]

Kenya has passed the stage when, due to world depression and other causes, its whole resources and efforts had to be devoted to a struggle for existence. For the present we are passing through the stage of consolidation and we must devote our minds to the future and to development.

High in order of importance comes the problem of soil conservation and, as honourable members are aware, work on its solution has started. As planned some time back, three officers are at present visiting South Africa in order to obtain a working knowledge of the steps taken in that Dominion to deal with the subject. I am informed that, as would be expected, they are receiving every assistance on all sides, also that their average day lasts from 5 a.m. till 10 p.m.

Liebig's factory has started work; as I indicated at the official opening on 30th March, Liebig's at present may be regarded as a factor in the campaign against soil erosion, but this is not its only work and it should be regarded as a step in constructive development.

A memorandum on the implementation of the Carter Land Commission Report is being laid on the Table. Arrangements have been made for honourable members to be furnished with copies of the Report of the Makerere Commission which will be laid on the Table when they have been received. The financial implications of this scheme will require very careful consideration, and, indeed, are already receiving it; amongst other things whether our contributions should take the form of an annual one or of a capital sum.

I had hoped that the Report of the Committee now considering the possibility of relieving African widows and independent women of some of their burden of direct taxation would have appeared during the early months of this year. It became clear, however, during the course of the committee's work, that a prior examination of the financial and functional relationship existing between Local Native Councils and the Central Government was desirable. This examination has been carried out by Mr. S. H. Fazan, one of our Provincial Commissioners. He is now on leave in England where he will prepare the final draft of his Report, and the

Taxation Committee have interrupted their deliberations until it is available.

The proposals for the Central Government Reorganization are now with the Secretary of State.

I hope shortly to have the reorganized Executive Council in being. When that does happen one of the first matters on which I shall seek their advice will be the formulation of a comprehensive scheme of development in the Colony, one which we can set before us as a goal over many years. During the last few months a good deal of spade work has been done and numerous memoranda have been prepared dealing with the various economic and social problems of Kenya and this will form a basis on which we will start deliberations.

Superimposed on all problems both past and present is that of defence, and in the present unstable state of the world it must necessarily be regarded as coming very high in the order of priority of essential requirement.

In my address of October 29th last year I reminded honourable members that we, like other colonies, have our part to play in the general scheme of Imperial defence. As I then said briefly, our duty is to provide for our own internal security, for protection against frontier raids, and a means of defence sufficient in the event of external aggression to hold on until we can be reinforced. I also indicated that we had the advice of the Committee of Imperial Defence in England and, amongst others, that of the Inspector General of the King's African Rifles who, as you know, has recently paid a visit to this Colony.

I think honourable members might wish me to go rather more into detail of the organization of defence in this Colony. Many of you have experience of active service and know, moreover, very strict limitations have to be placed on the information that one can justifiably give in public.

We have our own Defence Committee of which I am Chairman. It includes, in addition to the Colonial Secretary and the Financial Secretary, the Commander of the Northern Brigade, the Commander of the Kenya Royal Naval Volunteer Reserve at Mombasa and the Commander of the Royal Air Force Squadron. The

[H.E. the Governor] schedules of this Committee may be summarized as being to keep constantly under review the general scheme of defence, to initiate necessary action and to co-ordinate the various activities whether military, civil or those arising from voluntary effort.

The Commander of the Northern Brigade is principal adviser to the Governor on military matters and is responsible for drawing up the actual plans of operation.

A Supply Board has been formed with the Financial Secretary as Chairman, and its members include the General Manager of the Kenya and Uganda Railways and Harbours and the General Manager of the Kenya Farmers Association. I do not wish to give its full terms of reference, but these terms include such things as medical stores and petrol and oil supplies; and it has to consider not only military requirements but also those of the civil population in time of war.

At Mombasa, which has rather special problems of its own a Local Defence Committee has been formed and it is functioning with much activity.

In working out plans of defence, as indeed any other plans, more solid progress is achieved by steady advance according to a properly formed scheme rather than by a series of spasmodic jerks. It also helps to preserve a truer balance between the various conflicting requirements, both those civil requirements against military, and military requirements themselves. This is what has been aimed at in our plans: to get the central organization, which I have just described, working properly, then to deal with what I term the spear-head of our defence forces, and then to deal with such matters as Air Raid Precautions, our spear-head being the King's African Rifles, together with certain organizations at Mombasa.

Now, as indicated in the Estimates, the rearmament of the King's African Rifles is proceeding, and we have now got a full scheme for the reorganization of the King's African Rifles prepared by the Inspector General in conjunction with the Commander of the Northern Brigade. This reorganization is planned to increase its readiness for war, its efficiency if war

comes, and its facility for expansion. The scheme has not of course been completed, but the plans are finished and the work has started.

"As honourable members know, the response to the appeal for recruits for the Kenya Regiment was magnificent. It has held its first camp, attended by 257 officers and other ranks. I visited the camp and I have seen the Kenya Regiment on manoeuvres, and have been deeply impressed by the enthusiasm, initiative and military bearing of all its members, who display the British soldier's traditional qualities of endurance, loyalty and cheerfulness. I realize that membership entails a general surrender of leisure and, in some cases, even financial sacrifice, but I would like every member of the Regiment to realize that the Government, and, I feel I may say, the whole of Kenya, appreciate this and are not ungrateful. I wish also to pay a tribute to the permanent staff of the Kenya Regiment, they have just cause for pride in the results of their work. On the 4th May last year I compared the duties of the Kenya Regiment with those of two famous corps in England, the Honourable Artillery Company, and the London Scottish, and I wrote "Let us see that our Regiment not only follows their organization but emulates them in efficiency and *esprit de corps*." Our Regiment is doing so.

The progress made by the Kenya Regiment will now facilitate a start being made with the training of the Kenya Defence Force, the registration of which has recently been completed. The Brigade Commander hopes to hold the first camp for Class I of the Kenya Defence Force during July. The primary duty of the Kenya Defence Force, as indicated in the Report of the Committee on Reorganization of the Defence Forces of the Colony, is internal security. A revision of the internal security schemes, including the protection of vital points, is now proceeding.

The next stage, which we are now starting on, will be the Air Raid Precautions scheme. The Defence Committee at Mombasa have already started on this, but up to the present the progress that has been achieved is due mainly to those two great voluntary organizations, the Red Cross and St. John Ambulance. May I say, there is ample scope for both these organiza-

[H.E. the Governor] tions working side by side towards the same end. A good deal has been done in the instruction of personnel, and I would refer particularly to the anti-gas display given by the Kenya Police on the occasion of the visit to this Colony of Colonel Sleeman. When one considers the short time available for preparation and instruction I would like to pay a tribute to the very fine display that was given.

All Police officers on overseas leave to England now have to take a course of instruction at the Falfield Anti-Gas School, so that in a short time the present shortage of instructors will disappear. The next immediate step is the formation of a Committee at Nairobi to organize a complete scheme of Air Raid Precautions for our capital. The District Commissioner is going to be Chairman of the Committee.

There is still much to be done, but progress is being made steadily and, I believe, on sound lines.

There is one further aspect of this question of defence to which I must refer. We get no small value from the expenditure by Great Britain on Imperial defence. May I remind you that the expenditure during the current financial year of Great Britain is going to be £343,000,000 which is an instance of the value we get in the protection of our overseas trade. We should also think not only of the part that we must play in Kenya itself, but also whether we can take any further share in Imperial defence, especially should a war arise in which the territory of Kenya is not directly threatened. I am not thinking of financial contributions, but to some extent of man power, and more, of what products of ours are likely to be of value as a source of supply to other parts of the Empire in time of war. I do not wish to enlarge on that now but it is another way of thinking of how to take our further share in the scheme of Imperial defence.

About finance; I will not quote a large number of figures. The general results of the year 1937 have shown a substantial improvement on the revenue side over those for 1936, and also over the Budget Estimates. The increase in revenue over the original estimate amounted to over £219,000, the main items of excess being

Customs and Excise, £123,000; Hut and Poll Tax 18,000, and Post Office revenue £16,000. The yield from Income Tax up to the 31st December, 1937, was only £18,000 as compared with an estimate of £43,500, but this shortfall arises because the Ordinance was not brought into effective operation until July last year, with the consequence that a high proportion of the tax assessed in 1937 has not fallen due for payment till the current year. The final figures are not yet available but, as previously stated, when they are complete they will be submitted to the Standing Finance Committee.

Expenditure for 1937 exceeded the estimate by £129,000, a figure which includes £45,000 provided as a fifty per cent reserve against loans made to farmers under the Agricultural Advances Scheme, and £17,000 required to write down investments, including those of the Post Office Savings Bank, at the present market values.

The final result of the year's working for 1937 shows a surplus, taking all those I have mentioned into consideration, of £101,000. It brings the surplus balance at 31st December, 1937, to £506,000. That the Colony's balance should have passed the half-million mark is certainly a matter for satisfaction, although hardly for complacency, and it cannot be regarded as wholly available to make good a revenue shortfall. One of the ways of showing the true and available balance, one point that the Standing Finance Committee will be asked to consider, is the question of writing off the value of the Colony's unallocated stores which, at present, appear in our balance sheet as £48,000.

It is as yet too early for me to afford honourable members any definite indication as to the financial prospects for the current year. The fall in price which has occurred in certain of our export crops must be expected to affect customs revenue adversely, although there is nothing at present to indicate that the total revenue estimate for the year will not be realized. On the other hand, there is no justification at present for anticipating either a revenue surplus or any substantial savings in expenditure, and it will not be possible to entertain applications for additional financial provision during the current year except on grounds of com-



[H.E. the Governor] pelling urgency. So much then, for finance.

I should like to record our appreciation of the recent visit of the French Cruiser Squadron under Admiral Godfrey, the pleasure we experienced in entertaining them, and the satisfaction we had of receiving the assurance that our guests fully enjoyed their visit.

Another naval visit will take place this summer as has already been announced. According to present arrangements the Admiral Commanding East Indies Station proposes to reach Mombasa in his flagship about June 23rd, and to remain there till July 18th.

I shall conclude my communication with a brief review of the draft legislation which has already been prepared and circulated to honourable members for consideration during the present session.

There is the Lighting Control Bill; the desirability of this is self-evident. "Black-outs" are an integral part of modern schemes of defence of populous areas against attack by air, and the Bill recently circulated provides for peace-time experiments of this nature.

It has been apparent for some time that the burden of arrears of interest which have accrued against certain of the participants in the scheme for the relief of farmers effected by the Agricultural Advances Ordinance, 1930, has, through no fault of their own, become too heavy to bear. It is proposed to alleviate this hardship by the suspension of interest charges on advances with effect from the 1st January of this year.

The Public Trustees (Amendment) Bill is intended to make effective a decision reached during our last Session. Honourable members have already agreed that it is in the best interests both of the Public Trustee himself, and of those whose estates are administered by him, that the investment of trust funds should be regulated by the advice of a Board of Commissioners.

Turning to the Immigration Restriction (Amendment) Bill, I want to make it quite clear to honourable members that this Bill is a purely precautionary measure. It is directed against no immediate threat of an invasion of unskilled manual labourers from outside, nor is there any reason to

anticipate such an occurrence in the near future. It is simply one of those laws which, quite possibly, will never require to be enforced, but which, at the same time, it is desirable should be ready for enforcement in case of need.

The remaining six Bills before you call for little comment. The majority of them provide for the removal of defects or the incorporation of minor desirable alterations in existing legislation. The Sugar (Control) Bill gives effect to an international agreement to which Kenya is a party, and the King's African Rifles (Amendment) Bill makes one or two changes of purely internal discipline.

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

#### MINUTES

The minutes of the meeting of the 21st December, 1937, were confirmed.

#### PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

By THE COLONIAL SECRETARY (SIR ARMIGEL DE VINS WADE):

Schedule of Additional Provision, No. 4 of 1937, 1st October to 31st December, 1937.

By THE ATTORNEY GENERAL (MR. W. HARRAGIN):

Report of the Agricultural Indebtedness Committee, 21st January, 1938.

Vehicles Licensing Regulations, 1938, under the Transport Licensing Ordinance, 1937.

By THE FINANCIAL SECRETARY (MR. C. R. LOCKHART):

Colonial Loans Statement, No. XXVII, April, 1938.

By THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. C. E. MORTIMER):

Return of Land Grants, 1st October to 31st December, 1937.

Memorandum on proposed Legislation to give effect to the Kenya Land Commission Report.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Monday, 25th April, 1938.

#### Monday, 25th April, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 25th April, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

#### OATH OF ALLEGIANCE

The Oath of Allegiance was administered to:—

#### Ex-Officio Member

A. E. Hamp, Esq., C.B.E., Acting General Manager, K.U.R. & H.

#### Widow Elected Member

Shamsud-Deen, Esq., Central.

Nominated Unofficial Member Representing the Interests of the Arab Community

Sheikh Hamed bin Mohamed bin Issa.

#### OBITUARY

##### HON. M. MAXWELL

HIS EXCELLENCY:—Honourable members, it is only seventeen days since we last met, yet in that short space of time this Council has become the poorer by the death of the Member for Nairobi South, Colonel Marcuswell Maxwell. The constituency which so recently elected him has lost a staunch supporter of their interests, the whole country has lost a man who could be trusted to view its many problems with an unbiased mind and to express his opinion with sincerity and firmness.

On the afternoon of April 13th Colonel Maxwell came to Government House to introduce a small deputation of his constituents to me. It was a time for him of great mental strain, because he was then on his way to the nursing home to undergo what he knew must be a very serious operation. But his thoughts were not of himself, and this last act of his gives us an example of unselfish devotion to the service of others which will not be forgotten.

At the age of 47 one would naturally have anticipated that there lay before him a long period during which his ability and energy would be exercised to the benefit

of Kenya and its peoples. That was not to be, but we have the right to believe that he has been taken away in order to carry out still more important duties in some wider sphere elsewhere.

I know that I am expressing the feelings of this whole Council when I offer our heartfelt sympathy to his widow and his other relatives, and I feel that as a token of this sympathy and as a tribute to his memory members will wish to remain standing in silence for a short space.

Hon. members remained standing in silence for a few minutes.

#### MINUTES

The minutes of the meeting of 8th April, 1938, were confirmed.

#### PAPERS LAID ON THE TABLE

The following paper was laid on the table:—

By SIR ARMIGEL WADE: Schedule of Additional Provision No. 1 of 1938.

#### PENSIONS

##### MR. M. R. R. VIDAL

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

"This Council approves the payment of an unreduced pension of £862-10-00 a year to Mr. M. R. R. Vidal, who retired from the service of this Government with effect from the 12th January, 1938, inclusive, in lieu of a reduced pension of £646-17-6 a year together with a gratuity of £2,156-5-0."

Most hon. members will be acquainted with the necessity of this motion and the next one which stands on the Order paper. It was agreed some time ago that officers who had elected to receive a gratuity in lieu of a portion of their pension should be at liberty to revoke that option and it therefore becomes necessary for this Council to vote each individual pension.

MR. HARRAGIN seconded.

The question was put and carried.

##### DR. G. N. A. HALL

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

"This Council approves the payment of an unreduced pension of £108-12-9

[Mr. Lockhart] a year to Dr. G. N. A. Hall who, after having previously served in Kenya, retired from the service of the Government of Nigeria with effect from the 15th October, 1937, inclusive, in lieu of a reduced pension of £81-9-7 a year, together with a gratuity of £271-11-8."

The reasons for this motion are identical with those for the preceding one.

MR. HARRAGIN seconded.

The question was put and carried.

#### HOUSING FOR GOVERNMENT SERVANTS

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

"Be it resolved, that this Council hereby approves the expenditure of a sum of £4,500 upon the purposes specified in the Schedule hereto, as a charge against Loan Account, and further approves provision being made therefor by reallocation of the amount from Item 3. Such further items as the Governor may, with the approval of the Legislative Council signified by resolution, and of the Secretary of State, determine, of the £305,600 Loan 1933.

#### Schedule

Public Buildings—	
Housing for Government servants	£4,500"

This amount is for the replacement of the house of the Provincial Commissioner, Coast Province, at Mombasa, which is now in process of demolition. The expenditure recommended has been considered and agreed to by the Standing Finance Committee and the Loan Works Committee, and it is considered to be the lowest sum for which a suitable building can be erected.

MR. HARRAGIN seconded.

The question was put and carried.

#### MINING IN PROCLAIMED AREAS ORDINANCE, 1933

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

"Be it resolved, that the Mining in Proclaimed Areas Ordinance, 1933, shall remain in force until the 30th day of June, 1939."

The original Ordinance, which was introduced as a revenue measure, was applied in 1933 for 3 years only, subject to renewal by proclamation. It has been renewed from time to time since, and it is now proposed that it shall be renewed for a further year.

The effect of the renewal will be to bring in revenue of something over £1,200 a year. To charge fees for exclusive prospecting licences is customary: it is a payment for a privilege. The scale of fees is reasonable, and there seems no reason why Government should forgo revenue from this source during the current year.

MR. HARRAGIN seconded.

The question was put and carried.

#### AGRICULTURAL ADVANCES ORDINANCE, 1930

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

"Be it resolved, that this Council approves the creation of a reserve fund, for the purpose of meeting depreciation of outstanding advances made under the Agricultural Advances Ordinance, 1930; and directs that the sum of £45,000 be set aside for this purpose as a charge against the revenue and other funds of the Colony."

The first point which I should like to make clear is that the passing of this motion will not make any difference either to any amount which any individual has received or any losses which Government has sustained. The position is that advances were made under the original Ordinance and, as a result of the examination of each individual case by the Board of the Land Bank it is considered that individual amounts to a total of £45,000 will eventually be irrecoverable. The asset represented by the full amount of the advances appears in the Colony's balance sheet, and it was considered proper that it should be written down to the value it is now estimated to possess.

This proposal was approved by the Standing Finance Committee, subject to three qualifications. One was that the position of Government in regard to debtors would not be weakened. This is so. The existence of this reserve will not

[Mr. Lockhart]

influence the Board of the Land Bank in any way in pressing for the recovery of advances.

The next condition was that the cash position of the Colony would not be affected. That is obviously so. This is merely a book transaction, which writes down the value of an asset.

The third condition was that the writing off of bad debts against this reserve would be subject to the sanction of the Legislature; that is the proposal. Although this sum will be reserved in the accounts, no bad debt will be written off against it otherwise than under the authority of a motion of this Council.

MR. HARRAGIN seconded.

The question was put and carried.

#### BILLS

##### FIRST READINGS

On the motion of Mr. Harragin, the following Bills were read a first time:

- The Marriage (Amendment) Bill.
- The Agricultural Advances (Amendment) Bill.
- The Public Health (Amendment) Bill.
- The Public Trustees (Amendment) Bill.
- The Lighting (Control) Bill.
- The Stamp (Amendment) Bill.
- The King's African Rifles (Amendment) Bill.
- The Widows' and Orphans' Pensions (Amendment) Bill.
- The Sugar Control Bill.
- The Immigration Restriction (Amendment) Bill.

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

#### ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 26th April, 1938.

Tuesday, 26th April, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 26th April, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

#### MINUTES

The minutes of the meeting of 25th April, 1938, were confirmed.

#### MARRIAGE (AMENDMENT) BILL

##### SECOND READING

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

Hon. members are aware that the Marriage Ordinance has stood the test of time for some twenty years without amendment, but there are two small amendments which have now become necessary.

The first amendment is reflected in clause 2 which makes provision for any person entering a caveat against a marriage. As section 15 of the present Ordinance stands to-day, only a person whose consent is necessary to the marriage may enter a caveat, so that though there might be some individual in the Colony who knew perfectly well that there was an extremely good reason that this person should not get married he would not be in a position to enter a caveat. Now the law has been so amended that any person who may know of any just cause why the marriage should not take place, may enter a caveat.

The second amendment has been rendered necessary on account of one or two incidents which have happened over a period of years: where a person whose consent is necessary in order to validate the marriage has omitted to enter a caveat. As a result of this although the person could not get married without this necessary consent, that consent could not be obtained because the actual caveat had not been entered and the Court had no jurisdiction.

We have now provided that wherever a person refuses to give his consent or

[Mr. Harragin] does not enter a caveat the infant—that is, the person under twenty-one who wishes to get married—may go to the Court to give its consent to the marriage; which may in some cases be very necessary and urgent, without the necessity of getting the consent of the guardian.

MR. WALLACE seconded.

The question was put and carried.

### PUBLIC TRUSTEE'S (AMENDMENT) BILL

#### SECOND READING

MR. LOCKHART: Your Excellency, I beg to move the second reading of the Public Trustee's (Amendment) Bill.

The main feature of this Bill will be found in clause 2. The Public Trustee is faced from time to time with the responsibility of investing large sums of trust money and it is thought to be in the public interests, and that it would be of assistance to the Public Trustee himself to have the advice of a small body of Commissioners as to the investment of these funds.

As the Bill now stands, the Commission will consist of my hon. friend the Attorney General and myself, but a suggestion has been received from the Nairobi Chamber of Commerce that it would be of assistance if a commercial man with business experience were added to the Commission. My hon. and learned friend and I welcome that suggestion, and Your Excellency has been pleased to approve of it. Hon. members will see from the paper that was circulated yesterday that an amendment will be moved in the committee stage to give effect to that proposal.

The remaining clauses of the Bill effect minor technical corrections in the original Ordinance which, I think, are sufficiently explained in the "Objects and Reasons" of the Bill without my dealing with them.

MR. HARRAGIN seconded.

MAJOR CAVENDISH-BENTINCK (Nairobi North): Your Excellency, I welcome this amendment as I think it may give those responsible for dealing with trust-funds some assistance. But, as this Bill is before Council, I would like to

ask whether any consideration has been given to the provisions in the existing Ordinance as to what type of securities these trust funds can be invested?

I believe that some years ago we altered the law in that respect and that possibly some of the difficulties which were met with a few years ago were owing to that.

I wonder whether we would not be wise to bring our law into conformity with the laws existing, I believe, in most other Colonies, the Dominions and in England.

MR. NICOL (Mombasa): Your Excellency, I too, welcome this amendment, and I should like to associate myself with the hon. Member for Nairobi North. I believe that at the moment the provisions of the Public Trustee's Ordinance do not exactly conform to those in operation in other Colonies or at home, and I believe that it is possible for the Public Trustee to so invest trust-funds in investments which are not exactly approved in other Colonies.

This alteration, I believe, was made some time ago, and from experience—or from one experience—it could not in any way be deemed a success, and I should like to urge that the Public Trustee's Ordinance, in regard to the investment of funds, be brought into line with similar ordinances in other Colonies, and particularly in regard to the legislation which is in existence at home.

MR. LOCKHART: Your Excellency, the hon. member who has just spoken wishes the law to be amended further, but the point raised could not be dealt with on this Amendment Bill. It is a matter that will require considerable consideration, but that consideration will be given to the proposals.

The question was put and carried.

### PUBLIC HEALTH (AMENDMENT) BILL

#### SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move the second reading of the Public Health (Amendment) Bill.

This Bill has been introduced at the instance of the Municipal Council. The position at the moment with regard to

[Mr. Harragin]

is nuisances is that as soon as the authorities discover that there is a nuisance on some person's premises, a notice is served requesting them to remove it. An opportunity is then given for this to be done. In the event of no notice being taken of this request, it is then the duty of the Town Clerk to bring the case before the magistrate and when the case has been heard, if the magistrate is satisfied that the nuisance is still in existence he may then deal with the offender.

But a ridiculous position has arisen on many occasions, namely, when the first notice is served the occupier takes no notice whatever of it, but as soon as he receives the summons he then gets busy and removes the nuisance. He then appears in court ten days later and says: "That is quite right, but under the law you have no case because I have removed the nuisance."

Meanwhile, unfortunately, the Municipal Council has been put to the expense and trouble of bringing the case and they are unable to recover costs or have a fine inflicted on the offender. The law is being amended whereby if a person refuses to comply with the notice he will immediately be deemed to have committed an offence and may be punished by the magistrate.

MR. WALLACE seconded.

The question was put and carried.

### AGRICULTURAL ADVANCES (AMENDMENT) BILL

#### SECOND READING

MR. LOCKHART: Your Excellency, I beg to move the second reading of the Agricultural Advances (Amendment) Bill.

The Bill arises from recommendations by the Board of the Land Bank which, just now, is charged with the duty of winding up the Agricultural Advances Scheme. It is necessary under the Ordinance for the Board to add interest at the rate of 6 per cent half-yearly to each account, and the recoveries from the participants in the scheme are applied in the first place to meet the interest charges and reducing arrears of interest, with the result that in an overwhelming majority of cases no, or very little progress is being

made in reducing the capital sum. Not only that, but the Board felt that this constant addition and this very slow progress in reducing the capital sum had an extremely discouraging effect on the debtors to the scheme. Of course, it merely meant in many cases that the interest increased on the one hand, and so mounted up to so large a sum that it had to be written off as irrecoverable on the other hand.

It is thought that in the long run the financial effect of waiving the interest charges will be small, but it will, if I may use a rather overworked term, be a gesture of encouragement to those who are trying to meet their obligations and it will assist the Board in the enforcement of payment in suitable cases. Government had no difficulty in accepting these arguments and proceeding with this Bill.

It will have one slight advantage in that it will reduce the cost of administration by about £150 a year, for it will be no longer necessary to make complicated interest calculation half-yearly.

MR. HARRAGIN seconded.

DR. WILSON (Native Interests): Your Excellency, I would, if possible, like to obtain more explanation with regard to this Bill. But as it is considered by Government to be a matter which can be accepted without further question, perhaps it will not be considered my business to criticize it. Of course, I shall be told in any case, that it is none of my business, because it is not concerned with native interests. But it does concern the natives, for it is of course public money that is being dealt with in which the natives of the Colony have just as much interest as anyone else.

I should like the hon. member to explain one or two things. In clause 2 mentions made of advances made after the 1st January, 1938. Yet this Bill talks about winding up the scheme. I do not quite understand how the scheme is being wound up if it is intended to advance still further sums under this 1938 Ordinance.

And then one would rather like to know the total amount which is concerned, because interest at 6 per cent, which we are told would amount to £3,000 in 1938, presumably should mean

[Dr. Wilson] a capital sum of £46,000. It would be interesting to know how much of that capital sum it is anticipated might have to be wiped off in the future, or written off as a bad debt.

The wording of the "Objects and Reasons" is, I think, if I may say so, with all due respect to the draftsman of this Bill, somewhat cryptic. It speaks of achieving the original aim of the Ordinance. The original aim of the ordinance was presumably to loan money with the idea of getting it back with interest. In connexion with this there is one final point on which I should like an explanation. It is stated in the "Objects and Reasons" that: "The financial effect will be a loss in revenue of approximately £3,000 in 1938 (to which must be added the cost of administration, estimated at £650)". Yet the hon. member has just told us that there will be a reduction in the administration costs of about £150.

MR. LOCKHART: Your Excellency, will regard to the points raised by the hon. Member representing Native Interests, any advances now being made under this scheme are being made only in effect to keep alive the loans which have been granted. As anyone who has had experience in dealing with cases of loaning money will know, it is very often necessary to assist the debtor in order to keep the debt alive and increase the prospects of ultimate recovery.

In point of fact, except in cases of re-lending, amounts that have been paid in such advances are quite negligible sums. As to recovery, the hon. member will remember that a motion was accepted by this Council yesterday, providing for a reserve of £45,000, that will leave a balance outstanding of £41,000. It is, of course, quite impossible for me to say how much of that will be recoverable. I can only say that each case has been carefully examined by the Board of the Land Bank, who, I think, are as competent as anyone to give judgment on the matter; and they at present regard that debt as solvent. Whether it will eventually prove to be so I am unable to say.

With regard to the point which the hon. member raised as to the expenses of administration, they are at present about £800 a year and a reduction of £150 a year will leave an estimated cost of administration of the figures shown in the "Objects and Reasons".

As to this Bill achieving the original objects; the whole object of the original ordinance was to assist agriculture at a time of great crisis and difficulty and that, also, is the object of this Bill. I had endeavoured to make it clear—perhaps inadequately—in moving this Bill, that the eventual effect on the revenue is likely to be very much smaller than the figure set out in the "Objects and Reasons".

It is true that a transfer to revenue of £3,000 will not occur but, on the other hand, as I explained, the indebtedness of the scheme will not be increased by that amount which, in fact, is all that the transfer does and the amount written off will thereby be diminished. The present figure of £45,000 represents the value comprising the amounts the Board took into consideration allowing for the cessation of interest from the 1st January of this year.

The question was put and carried.

### LIGHTING CONTROL BILL

#### SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Lighting Control Bill be read a second time.

As hon. members are probably aware, this Bill is an almost model form which is being introduced all over the Empire, or has already been passed into law in various colonies.

It merely gives power to the Governor in Council in time of emergency or, if necessary, for experiments, to declare that all lights, or such lights as are considered necessary, should be put out. It naturally follows that up in clause 3 by making it clear that any person, by obeying these orders, who incurs any penalty in either criminal or civil law which he would have to pay in the ordinary way, will be exempted from such penalty. I refer, of course, to take a simple example, to a motor car with its lights out coming

[Mr. Harragin] into collision with anything, and as it is not owing to the negligence of the man that the car had no lights it will be impossible to recover anything, criminally or civilly, on that account.

Clause 4 makes it an offence for a person to fail to obey the orders of the Governor in Council in time of emergency.

MR. WALLACE seconded.

MR. NICOL: Your Excellency, I rise to support the Bill, but I should like to urge, representing as I do Mombasa, which is a defended port, that there be no delay at all in framing the rules under this Bill, and I suggest that those rules should be made public at the very earliest opportunity.

MR. HARRAGIN: Your Excellency, I may relieve the fears of the hon. member by telling him that I already have the rules in draft, and as soon as this Bill receives Your Excellency's assent they will be placed before Executive Council.

The question was put and carried.

### STAMP (AMENDMENT) BILL

#### SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Stamp (Amendment) Bill be read a second time.

This Bill is the result of an international agreement. Actually, it is a necessity that has been caused by the fact that in recent years there have been two international agreements, one dealing with bills of exchange and the other dealing with cheques. The law as it stands at present only deals with bills of exchange, but in the more recent agreement with regard to cheques a further amendment has been made necessary.

The very complicated looking section contained in clause 2, which I admit may at first sight not be very simple to understand, may be explained in a very few words, if I give you an example.

Let us take, for example, a promissory note. If a promissory note is improperly stamped, under no circumstances whatever will you be able to correct that

error, the note will be incapable of proof in a court of law. With regard to a bill of exchange, other than a bill of exchange presented for acceptance, accepted, or payable elsewhere than in the Colony, it will be in the same position as a promissory note. But that exception is the most important part of the section, and it means this.

Where, for example, a bill of exchange is given, let us say, in Paris, and it is improperly stamped, this international agreement said it was manifestly unfair that the man who accepted it in Paris and did not know the laws of Kenya should be incapable of proving that bill in a court of law in Kenya, and therefore the only people expected to know what stamp duty is necessary on bills of exchange proved here will be the people making bills here. With regard to a cheque, a cheque can be accepted if the proper duty is paid on it as set out in the last four lines of clause 2, whether it is drawn within or without the Colony.

Those are the three main differences between the three instruments to which I have referred, and I think the justice of it will be obvious to everybody.

Opportunity was taken at the same time that we were making this amendment to redress an inconvenience which warehouses had been complaining about in Nairobi particularly, and no doubt in Mombasa also, for some time. Again an example will probably explain the section better than anything else.

A consignment of coffee, let us say, is sent in to a warehouse in Nairobi. In that consignment there may be seven different types of coffee. When that coffee is auctioned, it may well be that the seven different types are sold to different people, or it may be one only, and the others remain in the warehouse. As the law stands at present, it would require seven different withdrawal notices at a cost of 50 cents each to enable that coffee to be withdrawn, if by any chance they had been bought by seven different people.

In order to meet the warehouses and the coffee industry generally—and this does not only apply to coffee, although it is more generally used among coffee

[Mr. Harragin] dealers—we are in this Bill reducing the cost of the warrant of withdrawal from 50 cents to 20 cents. We are assured that it will not mean a loss of revenue, because at present they have adopted a system the legality of which is open to doubt, where they only pay 50 cents instead of a great deal more. But they realize that they are not on a particularly good wicket in doing it, and are very anxious to have the matter dealt with in the proper form, and have requested this amendment. As I say, it is hoped the amendment will not lead to a loss of revenue.

MR. WALLACE seconded.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, I am afraid I have not given the matter sufficient thought, and am not quite clear as to exactly what this amendment proposes to do in spite of the explanation which has just been given.

I understand about the bill of exchange which is accepted or payable or presented elsewhere than in the Colony, but does it mean that an insufficiently stamped instrument presented in the Colony and accepted is inadmissible in a court, whereas at the present time, provided the right amount is paid, it would be admissible in a court? Does it mean a change of principle in that respect or not? Provided it does not, I am satisfied, but if it does, it is rather a big point.

**MR. PANDYA (Eastern Indian Area):** Your Excellency, there is only one point on which I wish to ask for an explanation. I am not quite clear as to what the hon. and learned member said as regards reduction in revenue. He said there would be no reduction as a result of the stamp duty being decreased from 50 to 20 cents. It is quite clear in the "Objects and Reasons" to the Bill that the stamp duty will be reduced. Is it the intention to make it now 70 cents or reduce it from 50 to 20 cents?

**MR. HARRAGIN:** Your Excellency, I will take first the first point made by the hon. Member for Nairobi North.

There is actually no difference being made in the law with regard to bills of exchange. The real difference which is

being made is with regard to cheques. I should perhaps have explained that in the ordinary way a cheque is a type of bill of exchange and, in common law, is classed as a bill of exchange, unless specially provided for, as is done in this case. The only difference is that now a cheque can be accepted if the proper stamp duty is paid as is demanded in the last four lines of the clause, whether it is accepted within or without the Colony. It is really allowing cheques more freedom, and that is the only alteration in law.

With regard to the point made by the hon. member Mr. Pandya, I am sorry I did not make it clear. Of course, if the withdrawal of every bag of coffee from a warehouse was now accompanied by a withdrawal note with 50 cents stamp duty on it, by reducing that duty to 20 cents there would be a loss of 30 cents on every transaction. But, in fact, that is not being done. What I believe in practice happens, although I am not suggesting that it is legal, is that when 100 bags are deposited in a warehouse there are noted against the instrument without any stamp the various withdrawals.

As I mentioned before, the coffee dealers realize that this may not be the correct or legal way of doing it. They are anxious to do it legally, but say that the charge of 50 cents on every occasion is exorbitant. They assure us that if it is reduced to 20 cents for every withdrawal, there will be a withdrawal note signed for the particular number of bags which have to be withdrawn which will be stamped with 20 cents. If there are a great number of these 20 cent stamps, the result to the revenue will be some small gain, because in the old days they only paid the original 50 cents and endorsed irregularly on the withdrawal note the number of bags withdrawn without putting on a stamp at all.

The question was put and carried.

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

SECOND READING

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

[Mr. Harragin]

This Bill is introduced at the request of the military authorities, and there are only two small amendments, both of which have been approved and, in fact, suggested by, the Inspector General and Commander of the Northern Brigade.

In clause 2 there is an alteration with regard to corporal punishment which, if the Bill goes through, can only be inflicted on soldiers after a court martial and not by the Commanding Officer as the law reads at the moment. It may be thought by some that this may cause delay and be inconvenient, but that matter has been gone into by the military authorities and they are perfectly satisfied that it will be satisfactory, even in time of war.

The second point is with regard to the Brigade Commander's right to dismiss locally enlisted British non-commissioned officers. As hon. members are aware, a certain number of British n.c.o.'s were enlisted locally, chiefly to run the transport and that kind of thing, and at the moment it is impossible to get rid of them, even when from old age, or whatever it may be, they have become inefficient. Provision is therefore made for the Brigade Commander to dismiss these men for inefficiency. I submit that this is an extremely necessary provision to have in law.

A third amendment merely puts into law what is already done in practice, which is to be found in the rules, namely, the giving of £5 to a soldier or n.c.o. who has the good conduct medal. At the moment it is done under regulations, but it has been pointed out that the correct place for such provision would be in the Ordinance itself, and the opportunity has been taken to insert it.

MR. WALLACE seconded.

The question was put and carried.

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

SECOND READING

**MR. LOCKHART:** Your Excellency, I beg to move that the Widows' and Orphans' Pension (Amendment) Bill be read a second time.

The amending Ordinance of 1937 introduced revised pension tables to the principal Ordinance. It was not the intention that those tables should affect adversely any contributor to the scheme prior to the 1st July, 1937. In introducing the new tables the opportunity was taken to extend the age limits provided for, and it has been found that, as a result, there is a small class of officers who would be affected adversely. The class is small, as it will be understood when I say that it is only those who, as bachelors, married after passing the age of 49. One or two cases have arisen, and it is plainly unjust that they should suffer through an oversight. It is therefore necessary to make this minor correction to the 1937 Ordinance.

MR. HARRAGIN seconded.

The question was put and carried.

#### SUGAR (CONTROL) BILL

SECOND READING

**MR. HARRAGIN:** Your Excellency, I beg to move the second reading of the Sugar (Control) Bill.

This bill to control the export and production of sugar has been thrust upon us as a result of the International Sugar Agreement and it is a genuine endeavour to rationalize the industry and, in fact, I am informed that it will make very little actual difference to the producers in Kenya.

The most important point to note in clause 2 is the definition of the words "total stocks of sugar in the Colony" which mean, in effect, all but the sugar intended to be used solely for distribution for consumption in the Colony or the East African Dependencies. It does not include that, so you may be assured that it should not affect local consumption in any way whatever.

Now clause 3 provides that the Governor in Council may declare a quota, but it is to be referred to the Secretary of State before it is brought into force. That quota naturally refers to the quantity of sugar which may be exported during any quota year.

In deciding the quantity which may be exported in bulk, so to speak, the Governor in Council has to decide the quota

[Mr. Harragin] which each manufacturer may in turn export; in other words, his share of the whole. Having done that, we then say that before you can export you must receive a licence from the Director so that we are able to keep a check on these exports. In addition to the amount exported, the Governor has the power to fix the amount of stock in hand which any manufacturer may keep, and my original remarks with regard to the definition clause come in at this point—"the total stocks of sugar in the Colony" do not refer to the stocks intended for sale in the Colony or in the neighbouring territories, but means the stock you intend to export.

The reason for that will be clear to all, namely, that as this is some endeavour to control the prices of the world's markets the effect on the small amount we produce in Kenya would have little effect on the world prices.

In order to do these things that I have mentioned it is necessary to give to His Excellency power to call for returns both of the sugar manufacturers and those owning stocks at any particular time, and give every opportunity to the servants of the director and officers working under him to make the necessary inspection on the lines indicated in the last clause but one of the section.

Clause 7 deals with the offences which you may commit if you do not obey these various directions. For instance, if you export without having a licence that is an offence for holding stocks in excess of the stocks permitted. Power is given to the Court in certain cases to forfeit any sugar held illegally such as in excess of the amount permitted, although I do not suppose it will often be used, but the power naturally must be there. There is the usual provision with regard to the making of false declarations and in certain cases the Director is given power to revoke an export licence. The offender has the opportunity given to him to appeal to the Governor.

Clause 8 is pro forma and merely makes the owner liable for the acts of his servants when these acts are committed in the course of the ordinary duties of the employee. It would be

absurd that the owner should escape by saying that: "I did not know my man was doing that."

In clause 9 we preserve the present Customs laws, and say that the law we are now passing is in addition to and not in derogation of any powers in the Customs Ordinance.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, may I ask whether this Bill (which I realize is merely designed to give effect to the International Sugar Agreement signed in London) was, before it was brought before Council, submitted to the local sugar industry in any form and if they knew that it was coming up?

And may I suggest that in clause 2, the interpretation clause, the phrase "total stocks of sugar in the Colony," purely and only refers to sugar for export. There should be a definition to cover stocks of sugar kept for local distribution.

I gather from my learned friend's remarks that the provisions of this Bill were not meant to be applied to sugar which is being kept for distribution locally. If that is the case, Sir, under clause 7 (2) how are you going to check up or who is to know whether anybody holds sugar for export or is holding it for local distribution? I do not see how this can be done unless you get a declaration as to how much is held for export and how much for local distribution.

MR. SHAMSUD-DEEN: Your Excellency, I have read in the "Objects and Reasons" that the Bill is designed to give effect in Kenya to the International Sugar Agreement. But it does appear to me that the provisions of clause 8 are rather harsh and unreasonable on the owners of factories. Take, for example, the case of an owner or even the shareholders of companies who have taken all necessary precautions for the prevention of any contravention of this Ordinance. They might not be in the Colony, and yet this clause appears to render them liable even for, say, a technical offence of having exceeded the maximum stock of sugar, although the owner may have taken every precaution to put up notices and give definite instructions to his employees. It

[Mr. Shamsud-Deen] does appear that it is rather unreasonable and harsh. Again, what happens in the case of a limited company—are the shareholders or the directors liable? I should like some information on that point.

COL. KIRKWOOD (Trans Nzoia): Your Excellency, I should like to ask, in reference to paragraph 7, sub-section 2, whether it is not advisable to define the manner of holding. It may be covered under "total stocks of sugar" in clause 2, but it seems to me—I confess that it may be one of those occasions where footstep in where angels fear to tread!—it seems that that section is very difficult and certainly it is for me, to understand. It seems to me that it would only be a fair thing to define the amount of sugar as being in excess of something. Does it not mean that if you have an excess over the quota that such sugar cannot be sold? that you cannot manufacture that over a certain amount and, in other words, is the manufacturing of sugar over a certain amount prohibited?

There are certain other points I would like to raise in connexion with this Bill, and I would like to suggest that it should be sent to a select committee.

MR. WATERS (Director of Agriculture): Your Excellency, the hon. Member for Nairobi North asked whether the Bill had been put before the local sugar producers. Actually the Bill itself has not been put before the sugar millers; it has not been sent to them for criticism. But as ordinary members of the public they have had the same opportunity of putting in any protest or criticism of the Bill, just as the hon. members opposite have. On the other hand all the producers are aware of the sugar agreement. There have been several conferences with regard to the allocation of the export quota which for the present quota year is 27,000 tons for the three East African Territories, that is, Kenya, Uganda and Tanganyika.

At the present administration of this quota and the allocation of it has been conducted by the Governments concerned. The allocation for the present quota year is under review by the Directors of Agriculture, and I have recently

written to all the Kenya millers asking them where and how much they hope to export this year, so that we can see that every sugar miller is getting a fair deal. All the sugar millers are aware of the necessity for legislation in order that the allocation should be administered by the Governments concerned under proper legislation. Uganda has legislated in a common form as far as I know, with the Bill that is now before this Council.

THE EARL OF ERROL (Kiambu): Your Excellency, I understand the hon. the Director of Agriculture to say that the sugar producers have had the same opportunity of asking to see this Bill as the members of the public. But I do not think that is quite the answer the hon. Member for Nairobi North wanted. I think that what he wanted to know was if any such Bill as this, dealing definitely with products of the Colony, could not be submitted direct to the producers for any criticisms that they may have. I do not think they ought to be put on the same footing as the ordinary public. That is exactly what is wanted. May I ask that in future these Bills be shown to the industries concerned?

MR. KASSIM (Western Indian): Your Excellency, in view of the desire of the Secretary of State, the Government should keep in view that small cane farmers should be encouraged, and, therefore, when the Government fix the export sugar quota the Government should liberally consider the export quota of jaggery produced by the Kibos Indian farmers.

MR. HARRAGIN: Your Excellency, with regard to the point made by the hon. Member for Nairobi North, I can only repeat what is the definition of total stocks of sugar in the Colony. It reads as follows:

"All sugar in the Colony, whether in factories, refineries, warehouses or elsewhere or in course of transit, but does not include foreign bonded sugar or sugar intended to be used solely for distribution for consumption in the Colony or East African Dependencies." That should be perfectly clear, as I have quoted it, that sugar for local consumption only will not come within the

(Mr. Harragin) definition of total stocks of sugar in the Colony.

I can only presume that it is not the intention to interfere with what we call "local consumption" in any way and that the importance of this Bill lies in the export that is going to be permitted from the Colony. Provided that we see that these provisions are carried out I do not think, as far as Kenya is concerned, that we shall have much cause for regret. As far as the International Convention is concerned they are anxious not to interfere in any way with the sugar position in local areas, but in the world's markets. It will be readily understood from that that they are chiefly interested in the amount which is exported from such local areas.

With regard to sugar in stock, I would refer you in particular to the powers of the Governor in Council. Under the rule-making powers if necessary, rules can be passed to deal with that particular point.

A suggestion has been made that this Bill should go before a select committee. As you are well aware, I never have the slightest objection to a Bill going to a select committee if it is thought that any good purpose can be served, and if honourable members feel that it should in this case, I am prepared to agree with it. Personally, I do not see what amendment we can make at this stake to this Bill which is, in fact, an agreed Bill among the three Colonies—I was going to say in the Empire generally—but I only know of the three Colonies at the moment. But personally, if the hon. member wishes to press it, I will be quite willing to refer the Bill to a select committee.

I cannot agree to an amendment on the lines suggested by the hon. Mr. Shamsud Deen. If what I presume is his suggestion, it is, that it is an anomaly that the owner should be liable for the acts of his agent committed in the course of his duty. That amendment, of course, would be permitting a horse and cart to be driven through the whole ordinance. The owner must always be liable for what is done by his agent. The hon. member need have no fear that any person who is not really responsible will be liable. The law enquires very carefully into this and if you

appoint someone to control your business for you then that is your affair.

Exactly the same thing applies in the liquor laws, if a man employs a barmaid who offends against the liquor law, he cannot get up and say: "I am very sorry, but it has nothing to do with me." That is exactly the same position here. If your employee exports too much sugar, you are the person who is going to be brought up and the person fined. It may seem hard and one can think of hard cases, but the safeguard lies in the fact that the servant must be acting within the scope of his employment.

I do not think that I can offer any hope of an amendment with regard to that particular section.

The question was put and carried.

MR. HARRAGIN moved that the Sugar Control Bill be referred to a select committee of—

Mr. Harragin (Chairman).

Mr. Waters.

Major Cayendish-Bentinck.

Mr. Nicol.

Mr. Kassim.

MR. WALLACE seconded.

The question was put and carried.

### IMMIGRATION RESTRICTION (AMENDMENT) BILL SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Immigration Restriction (Amendment) Bill be read the second time.

This Bill has been on the way for a considerable period and I think it is safe to say that it will effect no one at the present moment in Kenya with regard to what they are doing now. But there is a danger, which arises in every colony, and that is that at times of prosperity or whenever there are labour difficulties, and it is essential that we should be able to control outside labour that is coming in. I would like to make this point perfectly clear—that this Bill which we are now considering only affects unskilled manual labour in agriculture, or in or upon mines, manufactures, roads, tunnels, railways, canals, waterworks and otherwise.

(Mr. Harragin)

It has been suggested to me that I should define an unskilled manual labourer. I can only tell you that it is practically impossible and each case must stand on its own merits, and the safety lies in the subsequent section where you see—and I am coming to that in a moment—that the Government may, from time to time, specify the activities or occupations which shall be deemed to be unskilled manual labour.

Now the first point is, that this will in no way affect labour that comes in from Uganda and Tanganyika. The second point is, that it will in no way affect skilled labour, and I should just like to say, in passing, that an artisan is a skilled labourer.

But power is given to the Governor in Council, by proclamation, to prohibit or restrict labour coming into the Colony. He may admit labour, subject—and I am speaking of unskilled labour as I mentioned before—on such conditions as he thinks fit, he may limit the numbers coming in in any particular area, or he may limit the numbers coming in any particular shipment. As I said before, he may particularly specify the type of unskilled labourer that he wishes to deal with in the proclamation. There is a penalty for any person contravening this law by aiding and abetting prohibited immigrants coming into the Colony. I would like to add one point—immigrants coming under the ordinary law of immigration may be dealt with exactly in the same manner as prohibited immigrants are dealt with. He may make rules making responsible the master of the ship who is bringing in such prohibited immigrants, and he may make rules preventing such immigrants from landing, and where the master of the ship acts contrary to these rules, he may lay down conditions in the rules under which the ship may be detained when attempting to land these labourers.

As I said before there is no intention of doing away with the importation of labour into Kenya which may be necessary. If, let us say, it is necessary to import a thousand Chinese, it must be obvious to everyone that they might come in as immigrant labourers or they

might not, but it would be necessary for the authorities in this Colony to control both their entry and the conditions of their stay after they get here.

MR. WALLACE seconded.

MR. NICOL: Your Excellency, I support this Bill, but I would remind hon. members that my learned friend mentioned that, as it stands at present, the Bill does not restrict immigrants from Tanganyika or Uganda. I suggest that for this to be effective, similar legislation, if not already in existence in those two territories, might be asked for, because otherwise there will be nothing to prevent an immigrant entering Tanganyika and eventually, from there, finding his way into this territory; and similarly as far as Uganda is concerned. Ships bringing immigrants to Uganda call at Mombasa, which is the port of Kenya, and there is nothing as far as I can see to prevent an immigrant going through to Uganda and finding his way back into Kenya.

I suggest that for this measure to be effective there should be similar legislation in the other territories, so that the three territories work together in bringing in this law.

MR. PANDYA: Your Excellency, the hon. and learned mover does not appear to have made a very strong case in regard to this Bill, and I do not agree that the Bill is so innocent as we have heard from him this morning. In my opinion, this Bill is of very far-reaching importance.

The objects or the reasons or the aims at the back of this Bill have not been made clear. The only thing which we have heard this morning is that such restriction may be required for prohibiting or controlling immigrant labourers. Now, Sir, it is intended to prohibit indentured labour coming into this country. I think that we all on this side of Council would not wish to oppose the Bill very seriously, because I think it has been agreed, even by the Government of India, that they are not in favour of sending indentured labour outside India. But this Bill imposes certain restrictions on people coming from any country except Uganda and Tanganyika.

[Mr. Pandya]

Your Excellency, in your speech at the opening of the session you made it clear that it may, perhaps, never be necessary to put into force this legislation. It is to come into force by proclamation, and perhaps it may never be necessary to issue a proclamation. If the conditions in this country are such as not to warrant the application of the principle of this Bill, I do not think that a very strong case exists for introducing this legislation this morning. We can take such legislation at any time it is considered essential or necessary, when we can discuss the merits or demerits of such legislation.

There was one important point made by the hon. mover, when he said that unskilled manual labour could not be defined properly. He went on to say that the safety lies in the proposed section 42 (c), under which the "Governor in Council may in such proclamation: (c) specify the activities or occupations which shall be deemed to be unskilled manual labour". I personally think that this leaves the door open, in thus specifying what is unskilled labour, so that we cannot possibly have the safeguard of what is understood to be the simple meaning of unskilled manual labour, which means labour which could not be performed with any skill, while decisions in other territories might be different. Once a decision is made under section 42 (c) it gives authority to consider what occupations shall come under unskilled manual labour. That is a very great danger, and is not a safeguard.

There is another point which I should like to stress, and that is in connexion with the purposes for which this labour comes to this country and which may be prohibited. It says in section 41 "for the purpose of exercising or performing any unskilled manual labour in agriculture" etc.

I should like to stress that it has been agreed by hon. members on this side of Council that this is an agricultural country, and if it is, I cannot imagine the necessity of restricting or prohibiting or controlling the type of people, the class of people, who would come to help in the agricultural settlement of this country. It is well known that we require

agricultural people to come to this country, and under this Bill naturally the unskilled agricultural man would be stopped.

But I should like to bring to the notice of Council that, as far as the Indian interests are concerned, we have got to-day a very small Indian agricultural settlement at Kibos. The gentlemen engaged in agriculture in that district are: no means the people who are skilled or the people who are educated, and if they happen to be in need of assistance from their countrymen or relatives who would like to come to this country and work with them—this Bill when it is in operation would hinder that process, and would involve them in complications in asking permission for these people to come out here.

I think, as far as the agricultural side is concerned, the portion of section 41 which I have quoted should be deleted, in my opinion. I have no objection to the other things, but this part is not in the interests of the country.

Then, Sir, there is section 45, under which power is to be given to masters of ships, or they are to be held responsible for bringing immigrants into this country without permission. This, in my opinion, is much more serious as far as we are concerned, because it is not only this country which prohibits or restricts immigrants but the power to exercise that prohibition is also to be given masters of ships, so that the authority as to who would be accepted for entry into this country would more or less lie with the shipping companies. The shipping companies, when this Bill is passed or promulgated, would be perfectly entitled to scrutinize every third class passenger coming from India or any other country and decide whether he is an unskilled manual labourer. I think that this, in a way, gives much more power to other people outside this territory.

I am glad the hon. mover made it quite clear that this Bill will not apply to artisans, who would be considered skilled labour. To that extent, perhaps, we can agree that the definition is quite clear.

This is quite a problematical Bill brought in for problematical purposes,

[Mr. Pandya]

and it is difficult to bring out instances of what will happen in the near future. But if and when this Bill comes into force as is provided, we are afraid that, to a very great extent, the activities in agriculture will be curtailed. To-day, although we have a very small settlement, we look forward to the day when, in this country, in the areas in which we have got permission to settle and engage in agriculture, those areas will be settled and populated by Indians, either from the local population or from outside. In my opinion, this Bill will restrict that enterprise.

I think it is agreed on all sides that the improved productive capacity of a country and the increased production of a country is all for the good of that country as a whole. If that is so, in my opinion, this measure restricts to a very great extent such possibilities of production, and of agricultural production in this country by the Indians.

From these points of view I am opposed to this Bill. I do not think a strong case has been made out for the prohibition or restriction as suggested, and as it is not an urgent question, I submit that the implications of the Bill should be further considered.

MR. SHAMSUD-DEEN: Your Excellency, ever since I have read this Bill I have been scratching my head as to what is really underlying the necessity of such a measure having been introduced. My hon. friend has talked about a strong case not having been made out: I do not think the hon. and learned mover has even made a weak case for the introduction of the Bill. All he has told us is that it might be necessary to have it in times of prosperity. The very introduction of this Bill is an indication that we have an abundance of labour consisting of the natives of the Colony, and that we do not want unskilled labour to come and compete with them and interfere with internal conditions.

If such a Bill had come from the hon. members representing native interests, I could have understood some reason for its introduction, but simply to say that it is a safeguard for some time of prosperity—when, I suppose, the hon.

mover means to say that the labouring population of the Colony will be automatically increased with prosperity and we are safeguarding against an influx of foreign labour—appears to be a very poor argument.

I do not want to quince matters, but I wish to say clearly here and now that I suspect this Bill to be aimed at the Indian labourer. If it had been made quite clear that it was intended to check the influx of, for instance, Chinese labour as mentioned by the hon. mover, I would have nothing to say against it, but in a country like this, where we very often have this labour problem, especially the agricultural community (by which I mean the majority of European settlers, who have had extreme difficulty in obtaining the required labour at reasonable market rates), I think it is a singularly unlucky measure to be introduced at all.

In the past we have contented—even the European farmers who have by no means always been on very friendly terms with Indians—have seriously considered bringing labour over from India. A ploughman is certainly an unskilled labourer. I think my information is correct when I say that in some districts in this Colony, Naro Moru for instance, some European farmers have actually employed Indian ploughmen, because they consider it pays them to pay slightly higher wages and get the work out of them. The same might apply to many other farmers who might like to get Indian agriculturists from India on a reasonable rate of wages, and in this way they might be able to accelerate agricultural activities in this Colony.

We also make provision in this Bill for prohibiting labour for mining, railways, and so forth. I think it should be in the knowledge of many of us here that when the Kenya and Uganda Railway was started, an effort was made to build the railway by local labour. That effort only resulted in the line reaching Makupa or Mazeras, and labour had to be brought from India to continue it. I think that in the case of any sudden mining development, when we should want more labour in the Colony, our hands should be absolutely free to get labour from anywhere, and more especially from the British



[Mr. Shamsud-Deen]

Empire, such as India, where there is a certain amount of surplus labour.

I have not only Kibos in my mind, but many other areas which might be defined as undebatable areas at the present moment, where I have made it my business to interest Indian agriculturists and capitalists to come out and take a share in developing land in what is termed the Lowlands. If this Bill is going to be passed, I think it will act as a brake on all future enterprises, and unless it is deliberately meant to keep out all Indian capital and agriculturists from this Colony I do not see any reason for the introduction of this Bill.

There are almost absurd clauses and conditions included in the Bill which simply mean that if people like to bring in agricultural or unskilled labour, they have only got to pay a few pounds more to bring them in as second class passengers, which will vitiate the whole Bill. I think that if the time comes when we are really convinced that we do not want any outside unskilled labour and that we must introduce a law more stringent than this, I should be in favour of it, but at the present moment I see no necessity whatever for the Bill, especially in view of the announcement made by Your Excellency that possibly the time may never come for the enforcement of such a law. If that is the case, why have all the trouble to put this law on our statute book?

**THE CHIEF NATIVE COMMISSIONER (MR. HOSKING):** Your Excellency, I should like to deal with that point at once. Both the hon. Indian members who have spoken have said that there is no urgency for this legislation, so why introduce it? It is because there is no urgency now that the time is opportune to introduce it.

This legislation is aimed at no one. Should an emergency have arisen and we rushed legislation through, it would be obvious that we were trying to deal with some particular company or person. Now, at a time when labour conditions are more satisfactory generally and there is no urgency for it, this is the time to have it ready for use for the future. Cases have already arisen. Towards the

end of last year a certain mining company or its managers inquired as to the possibility of introducing Asian labour to the mines; and an agricultural company also was anxious to import Congolese; at the present moment there is no application to import labour from outside.

I would draw attention to the fact that this Bill, if it becomes law, does not automatically prohibit the entry of immigrant labour, but it gives us the power to regulate or prohibit as the case may be.

The hon. member Mr. Pandya talked about settling the surplus Indian population on the land. Is the solution of that to introduce more Indians when we have already a surplus population with which we find it difficult to deal? I think the hon. member Mr. Shamsud-Deen reiterated the points made by the hon. member Mr. Pandya, so that I have nothing further to add.

**MR. MAINI (Acting Indian Central Area):** Your Excellency, I have no desire to reiterate what has been said. I only wish to draw the attention of the hon. and learned mover to what seems to my mind an error in the Bill as drafted.

I think, if I understand correctly the second paragraph of clause 2 of this particular Bill, that the word "not" should not be there. I think the hon. mover will admit that?

**COL. KIRKWOOD (Trans. Nzoia):** Your Excellency, I have no objection in principle to this Bill as it really a permissive Bill, for it is stated in the proposed section 42 "the Governor may by proclamation"; it does not say he "will". Further, if you look at the "Objects and Reasons" you will find that the language used is "unskilled manual labourers". I suggest that that might be incorporated in the early part of the Bill and subsequently carried through the different clauses.

In section 41, the condition which describes an immigrant labourer is a person who does not travel either first or second class by sea. What is going to happen if he travels tourist class? (Laughter.) Then again, you are leaving it

[Col. Kirkwood]

to the class he travels by, and the clause defines whether he is unskilled labour or immigrant labour, whichever you decide to term him, and if you go to section 43 it says:—

"Any immigrant labourer found in the Colony in contravention of the provisions of any proclamation issued under the provisions of the last preceding section shall be deemed to be a prohibited immigrant, and may be dealt with accordingly."

I maintain that we are all immigrant labourers under that clause. We were designated immigrants by the home authorities, and therefore all must admit that we are labourers, though we believe in the dignity of labour, and under that clause as it is worded we can all be deported. (Laughter.) It may be treated as a joke, but the legal interpretation would be what I say, that we come under that clause.

For these reasons I suggest that this Bill might with advantage be sent to a select committee and thus save the time of the Council going into committee and getting into a wrangle over the clauses. When it comes back the business of Council will have been expedited if my suggestion is adopted.

**SIR ARMIGEL WADE:** Your Excellency, I would just like to amplify to a very small extent what the hon. the Chief Native Commissioner said in answer to the hon. Member Mr. Pandya.

The hon. member Mr. Pandya emphasized and maintained that there was no urgency for this particular Bill at the present moment. The hon. the Chief Native Commissioner said, quite rightly as I think, that that was a very good reason for introducing it now because then it cannot be thought to be aimed at anybody.

But there is this further aspect. The hon. member Mr. Pandya said it would be time to introduce this legislation when an emergency arose. That is exactly what we cannot do, because it would be too late and the damage would be already done. As I understand it, under the present law there is nothing to prevent any mining or any other company from suddenly landing a thousand Chinamen

at Mombasa and taking them into the mines or sending them to whatever work it was. That sort of thing has led to trouble elsewhere, and we do not want the same trouble here.

We do not say that we are necessarily going to forbid anybody importing a thousand Chinamen, but we want power either to prohibit or to lay down certain conditions under which they shall be employed. Those conditions might possibly contain one for repatriation so that we should not be left with a thousand destitute Chinamen wandering about doing all sorts of serious things when the mining gave up.

The hon. member Mr. Shamsud-Deen, for some reason or other, is suspicious that this is aimed at the Indian labourer. No one can control the hon. member's suspicions, but how on earth he reads this motive into the Bill is beyond my apprehension altogether. As the hon. the Chief Native Commissioner says, the very fact that the conditions and provisions of the Bill are not likely to be wanted in the immediate future, is very good reason for putting the measure on the statute book now, so that if the emergency does arise we shall have some powers of dealing with it. And that is all there is to this Bill.

**MR. HARRAGIN:** Your Excellency, there is very little for me to reply to in view of the speeches of my honourable friends on this side of the Council. But there are just one or two small points with which I would like to deal.

The suggestion was made that this should go to a select committee. So far there are only two amendments which I have heard suggested in the debate but there have been no objections taken to the principle.

With regard to the amendments, as I say, there are only two, the first, I am very grateful to my learned friend the Indian member who pointed out that the word "not" erroneously appeared in the fifth line from the end of clause 41 of the first page. How that got there I do not know. As a matter of fact I had noted it for amendment but I am very grateful to him for also pointing it out.

The other amendment, from my hon. and gallant friend opposite, was to the

[Mr. Harragin] effect that he was worried that he would be called an immigrant labourer. Well, he is the best judge of that, I know, but personally I would have thought, if it was a matter of definition, it would have been rather difficult to include him because he would have entered the Colony as a first or second class passenger. And even assuming he came tourist or third class, I do not believe for a moment any of us would suggest that he was performing an unskilled manual labourer's work at the moment or ever had done since he came to the Colony. So he can have my assurance that he is quite safe so long as he remains in this Colony!

In view of that I think it is quite unnecessary to send the Bill to a select committee to consider accepted principles. If the Council oppose the principles at the second reading then that is a different thing, but at the moment there is only one amendment, namely the omission of the word "not".

This is, of course, an enabling Bill. And this is a thing few people seem to understand. Government takes the power to enable it to do certain things in certain circumstances. At once, hon. members get up and attack the Bill that is being brought in at that particular moment. The object of an enabling Bill is to enable Government to govern when the time arrives. I do suggest that it would be preposterous to have in one shipment 10,000 labourers—I do not mind whether they are British, Indian, Chinese, or from anywhere else in Europe—and it is for that purpose that the Bill is passed. There is no suggestion that it will happen at the moment but it might happen and therefore Government asks for power to take action when it does.

The hon. Mr. Shamsud-Deen suggests that it is hypothetical. Of course it is, but we want to be in a position to solve the problem when it arises. The only thing in such a contingency as thousands of labourers suddenly arriving would be to call hurriedly a session of Council and pass a Bill preventing them from landing. For that reason we wish to provide ourselves with the power so that we will be able to deal with them.

Then, a point was made with regard to the masters of ships—for the same reason a rule has been made—45 (1) (a)—in which we are taking powers to regulate the conduct and responsibility of masters of ships. I suggest that this is one of the most important things in the Bill, namely, a permit made necessary by the rules to let masters of ships know, before taking on a thousand labourers from wherever it is they are bringing them to this country, they will have to be prepared to come under certain conditions, and if they are not prepared to do this they will have to take them back undelivered. Therefore, masters of ships will be entitled to know before taking them on board what kind of reception there will be for them at this end.

The next suggestion is that it will curtail Indian activities. I, personally, am not aware of many unskilled labourers coming from India at the moment, and I have no hesitation, frankly in saying that I should advise Government, if they come in their thousands, that restrictions should be passed on their entry, and I do not think the hon. member himself would really cavil at that. Under such conditions as exist in Kenya to-day there is no place for them. If, by any chance, in the future there was a place for them, Government has not debarred itself from making provision for receiving and keeping these people when they come.

I would like to say a word with regard to the point made by the hon. Member for Mombasa. I entirely agree that it would be of immense help if the neighbouring territories were to pass similar legislation, and I trust and hope that it will be done in the near future.

I do not think there is any other important point except the point of mine I made in introducing this Bill, namely, 42 (c). That, of course, must remain as written. It gives the Governor power to specify the activities or occupations which shall be deemed to be unskilled manual labour. It must be quite obvious after all, that it is inserted to meet such an emergency as the one mentioned by my hon. friend the Chief Native Commissioner. Supposing some man wishes to introduce 10,000 labourers from China and he was seeking to prove, let us say,

[Mr. Harragin] that these labourers, having had some sort of training on the land from where they happen to have been working, were not unskilled but skilled labourers. I think everyone in this Council is agreed that it is very necessary to prevent the entry of such numbers. And the Governor would then use his power to declare whether they are skilled or unskilled, and preventing so-called skilled men by the employer and unskilled by the Government from entering this country.

There have been innumerable decisions at home as to what unskilled and skilled labour really means and in every particular act it would appear to mean something else. I can assure you that it is essential that this power should remain with the Governor in Council as to what should be called unskilled labour in this Colony. It may be of interest to honourable members to know that the last decision on this subject was that the difference between one who makes something as opposed to one who only does something is the difference between a skilled and an unskilled labourer. But I think to put in a definition such as that would be of little use at all. So, there can be no really valid reason why we should attempt to define here what has been so ill-defined in other places.

## BILLS

## IN COMMITTEE

MR. HARRAGIN moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Marriage (Amendment) Bill.

The Agricultural Advances (Amendment) Bill.

The Public Health (Amendment) Bill.

The Public Trustees (Amendment) Bill.

The Lighting Control Bill.

The Stamp (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

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

The Immigration Restriction (Amendment) Bill.

MIR. WALLACE seconded.

The question was put and carried. Council went into committee.

His Excellency moved into the chair.

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

The Agricultural Advances (Amendment) Bill was considered clause by clause.

The Public Health (Amendment) Bill was considered clause by clause.

The Public Trustee's (Amendment) Bill was considered clause by clause.

Clause 2.

MR. LOCKHART moved that sub-clause (1) of clause 2 of the Bill be deleted and the following substituted therefor:—

(1) The Attorney-General, the Treasurer, and one person not in the public service, to be nominated by the Governor, are hereby appointed Commissioners for the purpose of advising the Public Trustee as to the investment of trust funds, and the disposal of such investments, administered by him.

The question was put and carried.

The question of the clause as amended was put and carried.

The Lighting Control Bill was considered clause by clause.

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

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

The Widows' and Orphans' Pension (Amendment) Bill was considered clause by clause.

The Immigration Restriction (Amendment) Bill was considered clause by clause.

Clause 2.

MR. HARRAGIN moved that the word "not" occurring in the fifth line from the bottom of the first page of the Bill be deleted.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I should like to oppose that; I think it was deliberately put in. If the amendment is accepted, it will

[Major Cavendish-Bentinck] weaken the Bill very much. At the present moment, the burden of proving that a person is not an immigrant labourer lies with the person alleging that fact, and to alter it as suggested will weaken the provisions of the Bill enormously.

MR. PANDYA: Can I move an amendment before that?

MR. HARRAGIN: With regard to the point raised by the hon. Member for Nairobi North, if he reads the proviso he will see that the presumption is so much in favour of the prosecution in these cases that there is really no need for alarm at all. Actually, if he will go into the drafting carefully, it would make no sense at all if we leave the whole clause as it stands with the word "not" in. I think my hon. and learned friend Mr. Maini will agree with me there? Having put the burden of proof as he rightly says on one person, we start to make a proviso providing a certain assumption which negatives the original assumption. It was only a printer's error.

MR. SHAMSUD-DEEN: Your Excellency, I would also say that I do not understand why the burden of proof should be on a person to prove that he is an immigrant labourer. If he is called on to prove that he is not an immigrant labourer I can understand it, but to say that any person must go to the extent of proving he is an immigrant labourer is beyond my understanding.

MR. HARRAGIN: The person who has to prove it is the person alleging the fact.

MAJOR CAVENDISH-BENTINCK: I should like to move an amendment that the word "not" remain in, and that clause 2 be amended by the deletion of the words "such person has" and the substitution of the words "it has been proved" therefor. That will strengthen the Bill very much. I do not want to have the burden of proof necessitated for each individual. If a batch is coming in it is up to Government to deal with them as it thinks fit.

MR. HARRAGIN: It is quite impossible for Your Excellency to accept this amendment for the reason, and I think it

is clear if I read the whole of this particular section as I wish to amend it:—

"The burden of proving that a ny person is an immigrant labourer within the meaning of this Part shall lie upon the person alleging that fact."

You may take that to be the prosecution: the burden lies on the prosecution to prove that A is, in fact, an immigrant labourer.

Then again the proviso:—

"Provided that when such person has proved that the alleged immigrant labourer has entered the Colony subsequent to the issue of a proclamation under section 42 of this Ordinance and has since such entry been engaged in performing unskilled manual labour of the class or type specified in such proclamation, he shall be deemed to have established a presumption that such person is an immigrant labourer and the burden of rebutting such presumption shall lie upon such alleged immigrant labourer."

The position then will be that, as soon as this person has entered the Colony, having obviously made a false declaration to begin with (but we will not deal with that now), as soon as we are able to prove that he has, since the proclamation, been engaged in performing unskilled labour, the case for the prosecution will be closed and the burden of proof shifts to the immigrant himself to prove in fact that he is a skilled labourer or whatever the defence or the excuse may be.

It is impossible to deal *en masse* in criminal matters, and the hon. Member for Nairobi North will realize that under no law in the world can we deal with hundreds of people at a time. There is no procedure to convict a thousand people of some criminal offence and send them to prison; we have to deal with them singly.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am quite prepared, of course, to accept the ruling of the hon. and learned Attorney General: it is up to him to deal with these people and not me. At the same time, he may have to deal with people who may be on their way to the country so that in fact he is going to deal with batches, and although

[Major Cavendish-Bentinck] I may not have phrased my amendment legally or correctly there is more in my contention than at first appears. Provided this is taken into consideration I am quite willing to withdraw it if my hon. friend is convinced that he is right.

MR. SHAMSUD-DEEN: Your Excellency, I quite see the point made by the hon. the Attorney General, but I think the whole difficulty is met by the proviso in this clause, the wording "upon the person alleging that fact". If we could find some way to put in clearly the prosecution, that is to say some immigration officer probably, it would be better, but in its present form it seems as though the Bill leaves room for encouraging private prosecutions and will put persons in all sorts of serious difficulties.

MR. HARRAGIN: That is true of all other penal clauses in the whole of the Colony. There may always be private prosecutions if anybody is stupid enough to bring them.

The amendment moved by Major Cavendish-Bentinck was withdrawn.

The question of the amendment moved by Mr. Harragin was put and carried.

MR. PANDYA: Your Excellency, I move that clause 2 be amended by the deletion of the words "in agriculture, or" occurring in the 15th and 16th lines. I made it quite clear in my speech why I want that done.

MR. HARRAGIN: I feel that every member of the Council will realize that it is quite impossible for Government to accept this amendment which would enable a horse and cart to be driven through the Ordinance.

MR. SHAMSUD-DEEN: Your Excellency, in all the illustrations given us the hon. and learned member laid stress only on the mining industry, and I was rather impressed when I heard the explanation of difficulties arising by a large number of immigrants being imported into the Colony and having to be repatriated at the cost of Government. But I did not understand the necessity for including railways and water works, which are generally undertaken by Government. The difficulty mentioned by hon. mem-

bers certainly cannot arise in the case of railways and P.W.D. works, and it cannot arise in the case of agriculture. I have already given an illustration of a person who imports his own ploughman, and I cannot understand the necessity of restricting agricultural activities.

MR. HOSKING: That is not quite correct, one of the reasons was agricultural purposes.

SIR ARMIGEL WADE: It is true that I gave mining as an illustration; I might equally well have said a sisal company.

The question of the amendment was put and negatived.

MR. PANDYA: Your Excellency, I move that clause 2 be amended by the deletion of sub-clause (c) of clause 42 (2).

I have my suspicions that this is going to be used for something more than is intended by this Bill. I think that it is difficult to specify unskilled labour, to attempt to specify it by this sort of legislation is very undesirable. In view of that, I should like the deletion of this clause.

MR. HARRAGIN: Your Excellency, again hon. members must realize that this amendment cannot be accepted by Government. The clause was put in deliberately with the intention of giving Government power to deal with positions as they arose. There is no suggestion that Government should not be just in its definitions, but it is impossible to give a general definition that would cover all unskilled labour for all time, and therefore we preserve to Government the power to declare from time to time what is, in their opinion, unskilled labour, and that is absolutely necessary for the ordinance to be effective.

The question of the amendment was put and negatived.

The question of the clause as amended was put and carried.

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

- The Marriage (Amendment) Bill.
- The Agricultural Advances (Amendment) Bill.

[Mr. Harragin]

The Public Health (Amendment) Bill.

The Lighting Control Bill.

The Stamp (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

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

And the following Bills with amendment:—

The Public Trustee's (Amendment) Bill.

The Immigration Restriction (Amendment) Bill.

The question was put and carried.

His Excellency vacated the Chair.

Council resumed its sitting.

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

The Marriage (Amendment) Bill.

The Agricultural Advances (Amendment) Bill.

The Public Health (Amendment) Bill.

The Lighting Control Bill.

The Stamp (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

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

And the following with amendment:—

The Public Trustee's (Amendment) Bill.

The Immigration Restriction (Amendment) Bill.

## THIRD READINGS

MR. HARRAGIN moved that the above-named Bills be each read a third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

## ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, the 27th April, 1938.

Wednesday, 27th April, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 27th April, 1938, His Excellency the Governor, (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

## MINUTES

The minutes of the meeting of the 26th April, 1938, were confirmed.

## PAPERS LAID

The following paper was laid on the table:—

BY THE HON. THE ACTING DIRECTOR OF EDUCATION (MR. WISDOM):—

Report of the Commission on Higher Education in East Africa appointed by the Secretary of State for the Colonies, September, 1937.

## PENSION

MR. T. W. HODKIN

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

"This Council approves the payment of an unreduced pension of £309-3-0 a year to Mr. T. W. Hodkin, who retired from the service of this Government with effect from the 23rd January, 1938, inclusive, in lieu of a reduced pension of £231-17-3 a year together with a gratuity of £772-17-6."

The necessity for this motion was explained by me when I moved similar motions two days ago, and I think further explanation is unnecessary now.

MR. HARRAGIN seconded.

The question was put and carried.

## LABOUR SITUATION

## MOTION

MAJOR CAVENDISH-BENTINCK: Your Excellency, with the permission of Council and under Standing Rule and Order No. 28, I desire to vary the terms of the motion of which I gave notice recently to those standing on the Supplementary Order Paper which was circulated this morning.

[Major Cavendish-Bentinck]

I would say in explanation, that my colleagues and I had the opportunity yesterday afternoon of having what I think was a very useful and interesting discussion on the subject of the motion with the hon. the Chief Native Commissioner and the hon. members representing native interests. It is in the light of that discussion that we have asked leave to vary the terms of this motion.

By leave of the President, under Standing Rule and Order No. 28 the hon. member was permitted to move the following motion in substitution for the motion of which he had given notice on the 25th April, 1938:—

"That with a view to minimizing the complexity of the labour situation both in native and other areas, (a) the Resident Labourers Ordinance, which duly passed its third reading in this Council on August 11th, 1937, should be brought into force; (b) some increase in the staff of the Labour Department should be considered; (c) it should be made clear to all administrative officers that the "Dual Policy" is still being adhered to; and (d) firmer and more effective measures should be adopted in order to deal with the large numbers of unemployed and in many cases deracialized natives who are at present residing in Nairobi."

Your Excellency, before dealing with this motion in any detail I would like to say, by way of preamble, that we are aware of certain facts. We know that out of a population of well over three millions of natives there are, we are told, about 512,000 males between 16 and 40 years of age, of which about 34 per cent, I think the figure is, or anyway about 180,000 are at the moment said to be in employment. In addition to these, there are probably 10,000 immigrant natives working in this country. To-day, therefore, there are probably more natives said to be at work than ever before, or at any rate than there have been for some years.

That being the case, probably one of the first questions which will be put to us from the other side of Council will be: Well, why bring this motion at all? I will answer that before dealing with the details of the motion.

In spite of the fact that these very large numbers are said to be out, we have most definite reasons for being very happy over the labour situation. Just recently, we have had a very acute labour shortage in certain districts. At the moment, things are slightly better, but that is probably largely owing to the fact that, owing to the fall in the price of sisal, a good many of the large sisal companies have ceased cutting for the moment and also, I think, it may be attributed in some degree to the low price of coffee.

Also, we are told that probably the maximum number of natives that could go out are now out, and that there will not be many more available, should they be wanted in the future. Therefore we have cause for worrying. We have just had a labour shortage and it rather looks as though there were not much further reserves to draw upon.

But, when we come to look into that, we come to the conclusion that a real trouble is not the number of natives who go out to work but in the frightfully wasteful manner in which they are employed and the lack of organization in many other directions. There must be an enormous number of natives all over the country who are squatters, doing very little, if any, work. There are also quite a number of natives, we believe, in the reserves who only come out to work for a very short time, and who are probably not doing much good either to themselves or their tribe in the reserves.

We believe that even if the available supply of labour was even partially organized, or only utilized up to 50 per cent of its capacity, we should probably find in fact that there is ample labour to go round and more than enough labour to satisfy the requirements of this country even if settlement and productivity were doubled in the near future.

We do not want this to develop into a sort of very general debate about all and every aspect of this rather difficult problem. We know that Government is trying to do its best, but we felt that there were certain suggestions which we might put forward which we maintain would go some way to minimizing the wastage and the lack of organization which exists to-day, suggestions which might, if implemented fully, obviate these, as we

[Major Cavendish-Bentinck] think, unnecessary periodical labour crises which keep on arising in this country.

After all, in any country which you are trying to develop, you have got to organize finance, organize transport, organize all the various things that go towards development and last, but not least, you have to organize the man-power. That applies to Europe just as much as it applies to Africa.

In this motion, the first point we make is that the Resident Labourers Ordinance, which passed its third-reading in this Council on 11th August, 1937, should be brought into force.

There is a very long history behind that Ordinance. There was a Squatters Ordinance which we knew was unsatisfactory and for years, I think we may say for 5 years, members on this side of Council endeavoured to get that Ordinance amended. There was then an inquiry which lasted about two years, and its report was sent to the Secretary of State; some three years later we had a Resident Labourers Ordinance, which duly passed this Council in August of last year.

We know that there are difficulties over its being brought into force. One of the chief difficulties is that, owing to the tremendous time which has been allowed to elapse, some of these squatters, instead of being periodically engaged from a reserve with the idea that they should return to the reserve in due course, have been so long out of their reserve and so long really uncontrolled, that a position has now arisen that we have to find land for them if they are turned off the farms on which they are at present employed.

The longer these delays go on, the more do complications arise. Therefore, although I know it is difficult to find the necessary land, I do urge; as we have urged many times before, that we shall not have to wait another year or two before the Bill is in force in this Colony. We think that the putting into force of this Ordinance—and I believe officers of Government agree with us—would go a very long way to solving many acute labour difficulties which are occurring to-day.

It is a very strange thing, Sir, how difficult it is to get very necessary bills brought into force, and it is very odd how easy it seems to be to bring bills into force against our wishes.

The second thing which we deal with here is to suggest that there should be some increase in the staff of the Labour Department as soon as it can be done. We realize that this will probably have to wait until the budget is prepared, the Estimates, for next year, but we do hope that this matter will be carefully considered.

We regard the Labour Department as a most useful department, a most friendly department, and a most helpful department, both to us and to the natives of this country. We notice that, possibly emulating our department, neighbouring territories have created similar departments which have now, I believe, I am right in saying, larger staffs than the one in this country.

We do believe that as these labour difficulties arise and are solved, that this department is becoming increasingly over-worked, and we suggest that consideration should be given to the possibility of including two extra officers in the Labour Department in the 1939 Estimates.

While speaking of the activities of the Labour Department, we would like to make a suggestion. It is only a suggestion, but it might possibly be worth following up. There are certain tribes which come out very readily to work; there are certain other more backward tribes who are somewhat diffident and suspicious, and afraid of leaving their tribal area. We are not for one moment suggesting that they should be forced out, but we do believe—and I have reason to think that those who have experience in these matters in Government circles agree—that to get a certain number of young men to come out to work, giving them the larger ideas and experience which can only be obtained outside their tribal reserves, is not undesirable. They are naturally shy, some of these backward people, and if allowed to come in contact with officers of the Labour Department who might possibly go into the reserves and attend barazas with the provincial commissioner or district commissioner,

[Major Cavendish-Bentinck] they could be satisfied that conditions to-day are good conditions; that they would be looked after and, if any trouble arose, they have a friend in the shape of the labour officer on whom they can depend.

There are also other matters in native reserves which possibly the officers of the Labour Department could assist in solving.

We therefore make the suggestion, although we know they are allowed to go into native reserves, that possibly on the occasions when the provincial or district commissioner holds a baraza he may find it not entirely useless to take with him one of the labour officers.

The next point in this motion is:—  
“(c) it should be made clear to all administrative officers that the ‘Dual Policy’ is still being adhered to.”

I believe, and hope, that that is being made clear. At the same time, we sometimes are inclined to wonder just exactly what is the policy of Government to-day.

The history of the coining of this phrase “dual policy” is, I suppose, known to most of us. I think it can be said more or less to date back to 1924, when the East Africa Commission was appointed and came out here, consisting of the present Secretary of State for the Colonies, Major Church, Mr. Linfield, and Mr. Calder. Previous to that, there had been considerable labour difficulties in this Colony, and, in dealing with those difficulties, the Commission on pages 36 and 37 of their Report made the following remarks:—

“The encouragement of native production in the native areas is the subject of current controversy throughout all the East African territories in its bearing upon the labour supply for both public works and private non-native enterprises, whether agricultural or industrial. There is no use disguising the fact that there is bound to be competition between the two. In comparatively sparsely populated countries the difficulty of getting an adequate labour supply will always be a real one. In the long run the native will do what pays him best; if the wages on public works or European farms and the con-

ditions of life thereon give him better opportunities for progress, he will be attracted to labour as the means of improving himself. If, on the other hand, by increasing the cultivation of economic crops on his own land he can earn more than by going out to labour, he will quite reasonably prefer the former. The danger is, of course, lest he do neither. It is inconsistent with the economic progress of the whole country and with the advance in civilization of the native of Africa that he should be allowed to stagnate in a native reserve leaving all the work to the women, the men doing nothing. He must be taught by every legitimate means open to the Government that as he is no longer required for fighting it is his duty to the community and himself to work; and that unless he is prepared to do a reasonable amount of work on his own account it is his duty to go out to work either for Government or private employers in industrial employment.”

In connexion with these remarks, it is not uninteresting to note that it takes 2½ men to do one day's work in this country, and that I believe that a native considers a fairly hard year's work is about 4½ months.

Those remarks were contained in that Report of 1924, which was accepted by the then Secretary of State, and it was subsequently discussed at the Conference of East African Governors held in Nairobi in 1926. At that Conference, what was termed “the dual policy of development” was agreed on and was defined.

In October, 1926, Sir Edward Grigg made a speech at the opening of Legislative Council in the course of which he referred at some length to this question of labour. In his speech, he made use of the phrase “dual policy”. In January, 1927, following that speech, in accordance with instructions which he issued a circular was sent round to all administrative officers which was headed “Dual policy of development”, and they were all asked to read it and to abide by its instructions.

That was a very simple circular, quite easy to understand. I have no doubt it is out of date to-day, and it would be no

[Major Cavendish-Bentinck] use re-circulating it at the present time. But I allude to it because it was simple, and we all knew when that was circulated exactly what the policy of Government was. Three years later, however, in June, 1930, two White Papers were issued by His Majesty's Government. One referred to the conclusions that had been reached by His Majesty's Government as regards closer union, and the other was the Memorandum on Native Policy in East Africa. There were special instructions issued a year later that this particular booklet—as it was a booklet and not a circular—was to be sent round to and strictly obeyed by all administrative officers.

The phrase "dual policy" did occur in that booklet. I think it was understood to mean very much the same as we have always understood, and still understand, it to mean. But I must add that that particular booklet, the Memorandum on Native Policy in East Africa, far from being simple was one of the most complex documents I have ever tried to understand.

I therefore suggest that it might be considered by Government—it may be unnecessary, we shall hear in the reply to the motion, but it might at least be considered—whether some simple instruction may be re-issued to all agricultural and administrative officers working in the reserves, some instruction so that we knew exactly what the policy of Government really was.

Lastly, contained in this motion is the suggestion:—

"(d) firmer and more effective measures should be adopted in order to deal with the large numbers of unemployed and in many cases detribalized natives who are at present residing in Nairobi."

This is a problem which occurs in every country where there are large towns and a large native population. It is a problem which it is extremely difficult to solve in the Union, and I hope we shall never allow the position to slip as they did in certain towns in that dominion.

There are undoubtedly very large numbers of unemployed and, I am afraid, in many cases unemployable, natives

living in this town. What they live on I do not know. Many of them take these little lodgings and sub-let and sub-let and live in that way, but what the lowest range of lessees live on I really do not know.

The municipal authorities are doing the best they can to deal with the problem, but I think it requires Government action as well to satisfactorily solve it. It is not good for the natives, it is not good for Nairobi, and I think it is bad for the country as a whole to allow, I may say thousands, of young men to become detribalized in the towns. I therefore do hope that possibly means will be employed to deal with the situation before it becomes aggravated.

In conclusion, I would only add that we do not want to have too wide a debate on this subject. As I said before, in any efforts that are being made to develop this country, the mobilizing of its man-power, its labour, is not one of the least effective, and I believe at the present time we are very far behind organizing the labour supply of the country on lines which will really approach efficiency.

COL. KIRKWOOD: I beg to second the motion so ably moved by my colleague the hon. Member for Nairobi North.

As he has pointed out, anybody who is aware of and has read the motion can see that it is divided into four parts. And those four parts are dealing with the principle and the perplexity of the labour situation in the Colony as we see it today. I can say that, from my own experience as an employer of labour, one is continually being requested to find ways and means to increase the flow of labour, and that the situation in the Colony is a good deal more serious than is realized by most people.

It is a very complex question. For instance, as has already been stated—and that has already been agreed to by the Labour Officer—it takes about 2½ units to keep one labourer in the field. There are many reasons for it.

The first, and I think the major issue, or major reason, is that the native does not understand the dignity of labour and, further, he has no ambition in any shape or form to become a capitalist or to in-

[Col. Kirkwood] crease his welfare or amenities by labour. Their work, as we all know, averages probably some 4½ months a year. Some work longer and some continually work but, as I say, the average native casual labourer probably works for 4½ months every year. There is no reason why he should not work for twelve months, and the longer these boys stop on the *shambas* with their employers the higher the rate of pay they receive; usually there is an increase in the scale, and by the time they have worked for a year they get more.

There are also, in fact, several reserves in the Colony not pulling their weight, notably the Suk, Turkana and Marakwet, and there are others. There are very few boys coming out of the Suk and Turkana and the Marakwet. Some probably come out for 7 or 8 weeks so as to raise enough money to pay their poll tax and then they return to their *shambas* and forget all about labour for the rest of the year.

I am heartily in sympathy with this motion and I hope, if the Government accept it, it will go a long way to relieve the labour situation.

Under the second paragraph it is suggested that the Government should consider an increase in the number of labour officers. This is a reasonable suggestion, and I hope that the Government will investigate that and get the opinion of the Principal Labour Officer, and if he agrees, find the ways and means now, though it means holding up other funds, of putting another labour officer into the budget. I see no reason why we should wait until the next budget session. It is not a big item, and it is going to help the labour situation a deal more than by votes in the long run for money making ways.

The major issue to my mind, should the Resident Labourers Ordinance be put on the statute book, is that it will definitely prove the statement I hear continually made from the other side of the Council, that further land will be required for the dispossessed squatter labourers, native resident labourers, to be quite untrue, and if for no other reason than that it ought to be put on the statute book at the earliest possible moment. I am con-

vinced that when this is done you will find that there is no necessity to find any further land than what has been found in the reserves and what it has been proposed to add to these reserves before you demarcate the Highlands.

I think that is a very great consideration, and I would reiterate that as soon as the Ordinance is on the statute book the sooner it will prove that the statement on the Government side of the Council is misfounded and not founded on fact. I am quite certain myself from the knowledge I have of this Colony that it is a good thing, and I do hope, that that will be taken into very serious consideration.

As regards the dual policy, I do not think that I may dwell on that. It has been very clearly emphasised—that is, the implications of it—by the hon. member, and, listening to Your Excellency on more than one occasion, you have stated from the chair of this Council that the dual policy was agreed to as a principle of policy by this Council.

As regards the unemployed natives and detribalized natives in Nairobi I think also, that there should be stricter discipline over these natives and every endeavour should be made to get these boys to go out to work. A few are working, but the majority must be a danger to the Nairobi community. And I would point out that they are not only in Nairobi. We have them in my town as well, and I think probably in every town in the Colony you have unemployed boys who have no intention of working at all so long as they can go to the native villages and get a place to sleep in and get sufficient food to eat. That type of boy is a menace to the Colony when subjected to those conditions.

I do not think I need stress any point any further. The motion speaks for itself, and is straightforward. It is not a contingency motion. Every paragraph, and it is divided into four, speaks for itself, and I hope that Government will agree to accept this motion and get the Resident Labourers Ordinance put on the statute book at the earliest possible moment.

HIS EXCELLENCY: I may say that I have compared this motion with the original, and I am of the opinion that the

(His Excellency) provisions of Rule 28 are complied with and that the amendment does not materially alter the principle of the original motion.

MR. MONTGOMERY: Your Excellency, I hope that the Government will not accept this motion. In any case I am going to vote against it. I think it is not the time and that it is inopportune.

For two main reasons I am going to vote against this motion. The first is that it gives a false impression that the hon. mover wishes to force out labour. This is an entirely false impression, but one, I am afraid, that will be adopted by certain people. Also, it gives an erroneous impression that the available supply of labour is not flowing properly. He quoted certain figures and actually over-estimated the figures of the number of Kenya natives who are in employment. But that is a small point. Actually, the number of natives available is not very great but they are coming out extremely well, and to have 34 per cent of your able-bodied men at work at a certain time is a very high figure indeed.

I could never understand the reason for bringing up this motion. It is perfectly well known that the majority of it could not be accepted and that the discussion might go quite the wrong way. The hon. mover himself has said that there were difficulties in the way of bringing the Resident Labourers Ordinance into force, although, of course we want it and as soon as possible, and I believe that everybody concerned feels the same way about it.

As regards (b), of course I agree that it would be advisable to increase the staff of the Labour Department. But not for the reason which I inferred from the hon. mover's thesis. I have always held the view that the officers of the Labour Department are necessary to see that the conditions are carried out under the various contracts which are entered into by the natives or by European or other employers. But I think it would be a great mistake if they were in any way concerned with recruiting or stimulating the supply of labour. I do not think that there is any harm, as the hon. mover suggested, in deputing a labour officer to accompany

the provincial commissioner to a baraza. He could, of course, tell where the best conditions of labour are available, but it would not help some of the small employers who were not able to cope with the extra conditions.

With regard to (c), of course it is the policy of Government and it has never been altered.

As regards the last part, the hon. mover and hon. members generally were informed yesterday that Government was taking action to deal with that question. Therefore it does not seem to me very much use putting in this motion which may not, and I hope it will not, be adopted.

DR. WILSON: Your Excellency, I was hoping that I might have had the opportunity of hearing some reply from the Government side before speaking. I am now, in the unfortunate position of having to speak before I know what Government's reply is going to be to this motion. And also there will be nobody with the exception of the Chief Native Commissioner, to answer any further point which may be made against what I consider native interests. I do not think I need speak at any length on this motion, because as it stands—as it is set down—it is to my mind quite innocuous. And as presented by the hon. mover I think there is very little to which one can take serious exception. Now, taking these separate points, the four heads or sections of the resolution—and may I say that I think it is always confusing to have a resolution or a motion of this nature divided into so many different parts, because one may agree with one part and not with another, so that it is difficult to express an opinion on the resolution as a whole, or to vote on it in the event of its going to a vote, as personally I hope the motion will not do.

There are certain parts one can approve of without any hesitation at all, others are doubtful and there are certain points on which opinion must be affected by the method in which they are represented and the manner in which the case is put.

We all wish to see the Resident Native Ordinance put into force as soon as possible. I have no doubt that the hon.

[Dr. Wilson]

the Chief Native Commissioner will explain why it has not been possible to do so yet. Personally, I believe that these unauthorized and unwanted squatters are doing a great deal of harm to the land in some of the best parts of what is called the White Highlands. I think they are becoming, in some instances, out of hand and lawless; they are out of touch with their tribes, living in conditions in many cases which are worse than in the reserves. I do not say in all cases, but I am speaking from experience of particular farms.

But I am certain it would be wrong, in spite of what has been said about the unlikelihood of any squatters being dispossessed—I am sure it would be wrong—to bring this Ordinance into force unless reasonable provision has been made for the accommodation of those squatters who may be, shall we say, dispossessed. It may be argued—I do not know whether this debate is going to be continued much further—it may be argued (a) that none of them will be dispossessed and (b) that if any are they will be accommodated on other farms. That is all very well, but take the case—and I have a case in mind at the moment—of an old man who has been on a farm for twenty years as a squatter. It is no use saying he ought not to have been there all that time, for the fact remains that he has been on that farm for twenty years. The farm changes hands, the incoming farmer says "I don't want this old man, he is useless to me; he has got to go." What is to happen to him? That man has nowhere to go and nowhere to spend the rest of his days. Some provision must be made for such a case as that.

Then there is the case of a squatter, a resident labourer, with so much stock that no farmer wants him on his farm. He will not be accommodated on any other farm because the farmer will say "I won't take any squatter with such an amount of stock."

This no doubt will be dealt with when we hear the Government reply. I hope I am not stealing the thunder of the hon. the Chief Native Commissioner in saying that this Bill should not be brought into force until provision has been made for

those resident labourers who may be dispossessed. I see that the word "forthwith" is contained in the motion as originally put down. It is of course obvious that the word "forthwith" should come out. With "forthwith" one cannot agree, but with the section as it now stands I think one can agree.

As regards (b) that is particularly pleasing to me. It may be remembered by some hon. members that I myself unfortunately misunderstood the hon. Member for Nairobi North in the budget debate and thought that he said he distrusted the activities of the Labour Department. I very willingly withdrew the statement based on that mistaken impression, because I think it would be most unfortunate—and I said so at that time—if this Council did not on every possible occasion give emphasis to the importance of the Labour Department or as it actually is, the Labour section of the Administration of the country. I quoted at the time, you may remember, a speech I heard in the House of Commons in which it was stated that there was no Labour Department in Kenya. So, I welcome this section of the motion and am extremely pleased that it has been put up by the hon. Member for Nairobi North, whom I misunderstood in the previous debate.

As regards (c) there can be no question about the dual policy. I agree with the mover that the present resolution is better than the original resolution, in that the circular letter referred to in the previous resolution was rather emphasising the need for more intensive cultivation in the native reserves than the necessity for the natives to come out to work for the European farmers. We know that what is wanted at the moment is not so much more intensive cultivation as more careful cultivation of the land already in cultivation in the native reserves.

As regards (d) with this I should agree, provided that the word "firmer" does not mean "unfair". We all deplore the number of idle natives in Nairobi and they are certainly a danger; they are useless to themselves and a danger to other people. But I hope that if firmer measures are adopted they will not be unfair. I am sorry to admit it, but I am rather distrustful of the way the police force do

[Dr. Wilson] their work at times. I remember a case—years ago, when I was living in Nairobi. I had a syce, and he on one occasion—very properly—washed his clothes. He dressed himself in a blanket—the only garment available—and then went off to watch a polo match a few hundred yards from my house—and I am sure hon. members on this side of the Council will agree that for a syce to watch a polo match was quite the correct thing to do. But he was promptly arrested by the police because he was unable to produce his *kipande*, for he could not carry it in his blanket. In spite of the fact that he told the police that he was actually employed as my syce, a statement which could have been immediately confirmed had they walked a hundred yards out of their way, he spent the night in the police cells. It was only by ringing up the police the next morning that I discovered his whereabouts. That is the sort of thing I fear you might discover was happening if firmer measures are adopted.

I hope these firmer measures when adopted will give every native a fair chance to go about his lawful occupations.

There is one point that was made by the hon. mover and seconder which I think entirely misrepresents the position. They said that the average native only works 4½ months every year. This fact is this: You cannot take more than a certain percentage of natives out of the reserves without entirely disintegrating the social life in the reserves. The fact is that 4½ months out of twelve is the average the natives are spending in European employment, compared with the time they are spending—that is to say adult male natives—in work generally, including work in the reserves. That is entirely a different point.

It is quite wrong to say that a native ought to be working the whole twelve months for a European on the assumption that if he is not working for a European then he is idle. It is a complete misrepresentation if, for the purpose of supporting this motion or for any other reason this is stated as a fact. It is entirely false.

There is one other word I do not like in the hon. mover's speech and that is

"organize". I do not quite like the expression "organizing labour". I am not suggesting that it means force, but it does suggest some system by which a proportion of the available adult males of the Colony will be used for some specific kind of work and that, I think, is going rather too far. I do not like the expression "organizing labour" and I suggest that it would be better to avoid using such an expression. Now, there is the fifth very important point. If you take more than a certain proportion of the adult males of any native community, away from that community, the results—to that community may be extremely bad. If I may, I should like to quote the Report on Labour in Nyasaland. I am not suggesting that the conditions in Kenya are the same as those which led to the appointment of this commission there. The point I am wishing to make, from the passage which I should like to quote, is to emphasise the danger there is in detaching the adult males from the social life of their community. It is stated in this report quite clearly what results, what bad effects may follow the taking of adult males away from native communities. In the first place the food crops may suffer since women do not do all the cultivation, a certain amount has to be done by the men; so their food supply may suffer. Their huts and *shambas* may fall into disrepair, because certain work is done by the males and cannot be done by the women. Family discipline suffers from the absence of the fathers. Tribal discipline suffers because the young men are going away and getting other ideas, while they are detached from the tribe. Conjugal relations suffer by the absence of the husbands; that may lead to immorality, and also, in the end, the birth rate suffers. This report particularly testifies to the dangers of taking away from the native community too great a proportion of the male population.

We have been told that of the adult male natives of Kenya 34 per cent are in European employment. Whether the figures are correct or not I cannot say; in any case these natives are not detached from their community in the sense suggested or discussed in the Report of the Commission on Native Labour in Nyasaland. But, if I may, I want to read

[Dr. Wilson] this quotation from the Commission's Report with reference to an investigation held in the Belgian Congo. I am sorry I have not been able to get hold of the original report of that investigation; I understand it was carried out on strictly scientific lines—if I may, I will read this quotation:—

"A Commission appointed to consider the question of labour in the Belgian Congo came to the conclusion that not more than five per cent of the adult male population could be removed from their villages for any considerable period without upsetting the economic, political and social balance of the community. It is considered that in the case of natives working in conditions that do not entail a complete break with their village life this percentage might be increased to ten. In the case of natives whose employment entailed an absence of a few days only, it was considered that fifteen per cent could be absent without bad results.

I only read this quotation to show that there is a danger not only in forcing labour out of the reserves, not only even in persuading natives out of their reserves, but even in allowing too great a proportion of the able-bodied adult males to leave their village communities and native community to work elsewhere.

MR. HOSKING: Your Excellency, as the hon. mover said, I had the privilege of meeting all the members of the European Elected Members Organization and the members representing native interests. I am a firm believer in a frank discussion of the problems that concern us, and I am sure they are for our mutual benefit. I can see the benefit to-day by the way most of my thunder has been stolen already and suitable air raid precautions taken against the few thunderbolts they knew to remain up my celestial sleeve!

I am authorized by Your Excellency to accept in principle this motion, subject to certain qualifications. I will deal with those qualifications as I proceed.

The first is as regards the Resident Labourers Ordinance. I think that every member of Council, official and unofficial, is anxious to see it enforced as soon as possible. Hon. members may be aware

that this Ordinance has been reserved for the Royal Assent, and that assent will not be forthcoming until the Secretary of State is satisfied on certain points. The essential point is that sufficient land should be available for the settlement of any squatters who may be turned off by reason of the enforcement of the Ordinance. I could quote certain portions from a despatch in which it is insisted upon that there shall be land available for natives when their contract comes to an end and is not renewed.

We were quick to give that assurance. Perhaps we could have satisfied the letter of the Secretary of State's requirements by referring to the fact that the Kikuyu land unit embraces all the Kikuyu districts and it is with the Kikuyu that we have mainly to deal as squatters. We could have said there is sufficient land in that unit for any who may have to go back. We might even have referred to the Carter Commission Report, wherein it is recommended that some 400 square miles of the Northern Yatta should be added to this unit if required owing to density of population.

We might, with our tongues in our cheeks, have satisfied the Secretary of State, but we could not have satisfied our own conscience. I know that the hon. members opposite share with me a desire to give the native a square deal and to do the right thing by him. It is obvious in all recent debates that the principle of trusteeship of natives is understood on both sides of this Council. We must, I am sure, find not only the land, but good land, if we are going to satisfy our conscience. I cannot agree with the hon. Member for Trans Nzoia that there is no necessity to find any land at all.

Personally, I believe the enforcement of the Ordinance will first bring about a redistribution of labour among the farmers. The demand for labour at the present moment is such that I do not see any of those natives going back into the reserves. But we must look ahead. There may be a change of policy which might start this flow backwards and create an ebb tide. Closer settlement entails mixed farming and makes farming better farming, and it is inevitable that it will be eventually realized that squatter farming, or rather, farming by means of squatters,



[Mr. Hosking]  
is not economic farming, and I think in years to come the ebb tide will bring back many of these squatters to their reserves.

Why do natives go out to squat? We hear of tribal discipline and the like, but the main reason is pressure in his own land, the density of population, and the dearth of good land for agriculture and grazing. The difficulty of the problem is obvious. To accommodate the native who left owing to these circumstances I, following the policy of my predecessor, was hoping to get Government to acquire an area sufficiently large to solve this problem for all time. I was hoping to get an area of approximately 100 square miles, which would suffice not for 5 or 10 years but for 50 or 100 years, so that we should be quit of the problem.

There are enormous difficulties in the way of finding that land, but we have been exploring every avenue—a trifle phrase, but apposite, because our searches mainly in forest land! The Officer in Charge of the Masai suggested that we might acquire from the Masai an area across the Mara. The Trans Mara Masai were willing to devote it as a native forest reserve. We started negotiating with the Masai for the acquisition of this land. We then had adverse reports as to the suitability of the land from the ex-squatter point of view, and sent an agricultural expert to look at it. His report was that the land was the sort of land the Kikuyu would like, but that it was dangerous to let them have it because it was protecting certain head waters. This area is 164 square miles, and we may be able to find in it a portion which will be safe to acquire for the potential use of ex-squatters.

Hon. members must bear in mind that I do not expect there will be many, if any, of these for some years to come, and any settlement authorized by Government will be under very strict control as to soil conservation, water supplies, and anti-erosion measures.

There are other schemes we are exploring. The hon. the Conservator of Forests is submitting an alternative scheme. He has told me that if he were allowed additional funds for reforesta-

tion purposes he could accommodate some 2,000 families as squatters for the development and reforestation of forest reserves. But it is a temporary solution but not an ultimate one. The Conservator of Forests is a very good employer of labour, and if the squatters did not work they would have to go. But go where? is the problem again. It is only a temporary alleviation.

I must ask for the help of the hon. members opposite in arriving at a solution of this very difficult problem.

There are other points, too, about which the Secretary of State has certain doubts, and we are at the present moment in correspondence with him as to the matters on which he requires reassurance or which he thinks should be adjusted.

The qualification then is, that the motion as it reads would seem to imply that we would undertake to bring this Ordinance into force at once. We can, of course, undertake to do all we can to clear the way of any obstacles so that it may be brought into force as soon as it is practically possible.

Passing to the second point, that some increase in the Labour Department staff should be considered, I do most heartily welcome this suggestion, and I do appreciate the way the work of this section of the Administration is appreciated by hon. members opposite, and by all sections of the community. The officers of this section have a reputation for efficiency, tact and fairness, of which we are duly proud and, speaking personally, I should welcome most heartily an addition to their number.

From time to time we have seconded administrative officers to fill vacancies and casualties due to leave or sickness, but the post of labour officer is a specialized post which cannot ordinarily be filled except by officers specially selected and trained for the post. To maintain the strength and reputation of the section it is, in my opinion, absolutely necessary to have a full complement of officers who are specialists in this line.

As the hon. mover anticipated, I on behalf of Government can only agree that it shall be considered in connexion with the Estimates for 1939.

[Mr. Hosking]

Passing to the third point, that of the dual policy, as already noted this is the policy of Government, and has been for years. I can undertake personally, as I tour the native areas of this Colony, to draw the attention of all administrative and other officers to this fact.

What exactly is meant by this dual policy? As I read it, it is that natives should not be idle in their reserves but should be active in raising their standard of living and in developing their own assets and the assets generally of the Colony.

Your Excellency in one of your Communications from the Chair has stressed the fact that Kenya is one. I think the sections of the community should work for the general advancement of Kenya. Speaking as Chief Native Commissioner, I would say that it would be a tragedy to native betterment if this white settlement were to fail. Natives generally owe much to the communications established in this country—rail, road, telephonic, telegraphic, and postal—and to the provision of markets, to the opportunity of earning money for uses of their own, thus increasing their standard of living. The opportunity they are afforded for learning would, I think, alone justify the help natives give to white settlement.

But, Sir, I would stress that it is up to the farmers to set an example of good farming if the educational value of natives going out to work is to be stressed. During the Easter week-end I was within 25 miles of Nairobi looking across a valley to a field of pyrethrum on the steep slope of a hill with no anti-erosion measures. I would hate to see natives work on that farm and watch the good land of Kenya slip down to the hungry Indian Ocean. I ask hon. members to realize that if they are to educate the natives, they must improve their own methods of farming and so be able to teach the natives while they supervise their work.

Passing to the last point:—

"firmer and more effective measures should be adopted in order to deal with the large numbers of unemployed and

in many cases detribalized natives who are at present residing in Nairobi, the hon. Member for Trans Nzoia would wish to enlarge the scope of that part of the motion and, I think, include all townships. Well, Sir, of course the number of unemployed is grossly exaggerated. Statistics are very difficult to arrive at, but the latest estimate is in the neighbourhood of 1,500 unemployed natives in the native locations. These 1,500 are an incubated, and I will tell him: on their wits and their neighbours, and the sooner we are quit of them the better.

Some years ago, I was Municipal Native Affairs Officer in Nairobi, and I was instrumental in introducing a pass law which requires a native to be in possession of a pass authorizing him to reside in the municipality if he stayed for more than 36 hours. The immediate effect on natives of that system was, according to the police, that some 5,000 natives left Nairobi. Such statistics are guesswork, but anyhow a great number left. It was the beginning of the depression, and for a long time the number of natives in Nairobi was on the decrease. At the present moment, I think they are on the increase again.

That by-law soon became ineffective owing to the difficulty the police had of proving the continuity of a native's residence for 36 hours. They would bring a native before a magistrate, who would ask: "How can you prove he was here for 36 hours?" The police would reply that they had seen him yesterday and the day before and were satisfied the native had been in Nairobi for 36 hours. The native would say: "I spent the night at Thika," and the case failed through lack of evidence.

This problem has been discussed recently at a meeting of the provincial commissioners, and my hon. friend the Acting Commissioner for Local Government and I have been in touch with the municipal authorities to see how we can deal with this problem of more effective control of the influx of natives into Nairobi. The matter has not yet come before the Municipal Council but there is, I understand, considerable support for the scheme.

[Mr. Hosking.] along the main arteries of entry into Nairobi, so that natives will be given every facility for obtaining a pass. The pass will be obtainable as they come in without payment. Then any native found in Nairobi at night should have a pass to show, or he can prove that he is a resident either by being in employment—and the entry on his registration certificate will show that—or by virtue of a permit obtained from the Municipal Affairs Officer. The permit could be for six months or a year. That is only a suggestion, but I think it will satisfy the hon. mover that steps are being taken to deal with this problem.

Reference has already been made to the fact that the labour position is, at the present moment, better than it has been for a long time. There was towards the end of last year a crisis. I think the crisis was due mainly to the uneconomic use of the existing labour supply, the uneconomic use of squatter labour, the excess number of squatters on some farms owing to the selfishness of some employers, the indolence of others. But these leakages will be stopped by the legislation which we hope will soon come into force, the Resident Labourers Ordinance and the Employment of Servants Ordinance.

Statistics, of course, are notoriously fallacious, and I am not eager to convey that the figures I am about to quote are definite, but as errors among employers are more or less constant the figures are valuable for purposes of comparison. In 1935, 150,000 natives were out in employment. In 1936 there were 182,800. This was a record to the end of last year, when it was broken in December with nearly 183,000, but it was speedily broken again in January, with 189,836. Taking it full and by, there is reason to believe that there are 190,000 natives in employment.

Fresh avenues are being opened up in that more backward tribes are coming into the field to their own benefit and to the benefit of the Colony as a whole. I was very pleased to see the other day a gang of Meru, who have not gone out to work very far from home before, working down in the Nakuru area. When they had finished their work on one particular farm they said: "We like this, have you

no more to give us?" The employer was unable to do so at the time, but he knew someone who wanted labour, and they went cheerfully to another man at Mau Summit. I think that a most satisfactory state of affairs.

I omitted, in dealing with the question of labour officers, the question of the entry of labour officers into native reserves. Of course, they are not prohibited immigrants; they are welcome, but their duties have hitherto precluded them being able to spend any length of time in the reserves. With the enactment of the Employment of Servants Ordinance they will have to spend more time in the reserves. I think in supervising the methods of recruitment which are very carefully safeguarded in that Ordinance, I think it will be up to the labour officers to see they are duly observed.

I agree with my hon. and learned friend representing native affairs that it would be a good thing for a labour officer to accompany a provincial commissioner occasionally when he goes into a reserve and to explain the conditions of service prevailing. It is rather an adventure for shy races going into the world, and I see no harm but a lot of good in a labour officer explaining the provisions made by Government for their protection and comfort when they go out. With a larger staff, the officers of the Labour section will perhaps find more time to do this.

With the qualifications I have mentioned, Sir, I have your authority to say that Government is prepared to accept the general principles of this motion. (Applause.)

Council adjourned for the usual interval.

#### On resuming:

CAPT. LONG: Your Excellency, in supporting this motion so ably put forward by the hon. Member for Nairobi North, I should like to point out that under existing conditions, with a squatters Ordinance that is quite out of practice and a new one not yet in force, there are no means whatsoever of employers engaging labour to-day under a Resident Labourers Ordinance, and from that point of view it seems essential that this Ordinance should be put into force immediately.

[Capt. Long]

No mention has been made of soil erosion, but I am sure that every one in this Council will agree that very slowly, but certainly surely, the white highlands are becoming more and more, every day, like some of the reserves, owing to the squatter system of the past twenty-five years. The country is being denuded of trees and soil fertility and the water interfered with. Under this new Ordinance, circumstances would be very much better and more in the interests of the whole country generally.

I understand, and it has been made quite plain this morning, that the reason why Government could not put this Ordinance into force tomorrow is that the Secretary of State has made it clear that he cannot consent to it before land is found on which to put those supposed to be or who are going to be turned off European farms, i.e. squatters no longer required. I agree with the hon. Member for Trans-Nzoia, I do not think, if we could put this Ordinance into force tomorrow, that we would have to find any land at all. The hon. the Chief Native Commissioner does not agree with that. I think the easiest way of settling that argument would be to put it into force and then, if necessary, find the land. The hon. the Chief Native Commissioner, unless I misunderstood him, I think said that there was no immediate need for it but that the future policy of farming may need it.

On the particular point as to whether it is 100 square miles or 1,000 square miles that are turned over to the squatters, may be turned over tomorrow or in the next fifty years, you are only making the problem—and there is one—more difficult than it is to-day. You are going to increase the reserves, in fact you are going to increase the Kikuyu Reserve which, naturally is going to make the labour problem in the Kikuyu Reserve more difficult. I am sure everyone will agree with that.

There is also the question, apart from soil erosion, of travelling stock. Owing to the present position, or present condition of things, animal diseases have been spreading, East Coast fever, heart water and so on. But under the Resident

Labourers Ordinance it would be possible to deal with these squatters in any particular district. This seems to be one of the most important reasons why Government should push forward this new Cattle Cleansing Bill. But what is the use of bringing forward these new schemes unless you deal with this most virulent form of disease of all—the squatters, their cattle and goats?

MAJOR JOYCE: Your Excellency, I rise to ask Council to support this motion.

There are very few points in support of it that have not already been touched upon, but there is one aspect which I think ought to be considered and that is the psychological effect of this Bill. We quite realize that for various reasons it has been in the past extremely difficult to bring in the Resident Labourers Ordinance, but unless determination and drive is shown on the part of all those people who have to find this land for accommodating those squatters who may be returned to these areas, the effect on employers of labour, on the natives themselves, and, I suggest, also on the Administrative officers, is deplorable for this reason: When you feel that the Ordinance in existence is in the dying stage and that the Ordinance due to come in is being delayed, none of those sections of the community are going to bother about pulling their weight in enforcing the very important provisions in either the last Ordinance or the succeeding Ordinance.

The position at present is of course ludicrous, as the hon. Member for Rift Valley pointed out. It is impossible at this moment to get rid of squatters at all for the reason that contract farms are not available. In nearly every case the squatters now on a man's land are there illegally for the reason that the existing contracts have expired. I think you will agree that there is a definite need for a drive to make this land available; after all that has been said months ago in order that the new Squatters Ordinances may be brought into force without further delay.

I should also like to stress that owing to illegal cattle movements large numbers of cattle on farms are without

[Major Joyce] control and in that connexion, as a new and acting member of Council, I feel it is extremely important to see that when Bills are passed the provisions of these measures are enforced.

I hope therefore I am in order in hoping, or requesting, that when the Resident Native Labourers Ordinance is brought into force, that, with the help of the extra labour officers—for which I am glad to see we have the support of the hon. the Chief Native Commissioner and the members on the other side of the Council, in agreeing that it would be very desirable to get more labour officers—with their help, the provisions of this new Bill when brought in will be strictly enforced. I am not suggesting for a moment that the employers of labour will not have to do their part with good will in seeing that the conditions are complied with.

Referring to part (c) of the motion which deals with administrative officers, it should be made clear to them that the dual policy is still being adhered to. I still feel that there is a danger of certain administrative officers interpreting a drive for production in native areas in different ways. There is, to my mind, great danger in overdoing the push for cash crops at the expense of the soil being made un-fertile. It is perfectly deplorable to see in certain native reserves and, of course, in other areas also, the land ploughed up and down on very steep slopes. I feel that sometimes a desire by the agricultural officers and possibly by administrative officers to be able to say in their annual reports, that native produce from these areas is on the increase, as is sometimes the case, is fundamentally unsound.

I think there should be, if possible, some definite instructions, circulated to administrative officers covering the general policy, but bearing in mind that the first consideration is the conservation of soil. There is no desire whatever to restrict native production that I am aware of, but I feel strongly that the production of crops which will raise their standard of living and a careful control of their methods of cultivation are all more important than the production of crops for export, which bring them in cash it is

true but at the expense of something that is irrecoverable. I think that is all I have to say.

MR. GHERSIE (Uasin Gishu): Your Excellency, I should like to support this Bill. I had no intention originally of entering into this debate as I considered the motion very reasonable and straightforward and ably proposed and seconded. But I was amazed at the remarks of the hon. Member for Native Interests. I considered that his views were most unconstructive and that he appeared to oppose this motion purely on a matter of principle.

I was very pleased with the sympathetic response that was given to the motion by the hon. the Chief Native Commissioner, and I suggest that his remarks were quite apt and correct when he said that this motion was brought in in the interests of all concerned in Kenya. The hon. Member for Native Interests seems to take strong exception indeed to labour officers going into the native reserves except when accompanying a provincial commissioner to a baraza, though he admits they are a kind of foster-father to the natives and studies their interests with regard to contracts entered into with European employees. Should they not be allowed to enter reserves for the purpose of endeavouring to educate the native on the subject of the dignity of labour and so further his interests in that way? I do not wish to be unjust, but I got the impression that the hon. member was prepared to leave them where they were 100 years ago and that he was not at all interested in our obtaining the necessary labour supplies and educating the natives to go out into European areas. He is apparently perfectly content to see them remain as they are and pass by any constructive improvements.

Sir, I would very much like to support this motion.

MR. COOKE: Your Excellency, I did intend to speak in this debate, but the very reasonable reply we have received from the hon. the Chief Native Commissioner has rather taken the wind out of my sails, if I may say so. I do hope he will go on and affirm a native policy and a constructive native policy in this country and that he will hot sit on the

[Mr. Cooke]

with perhaps one eye on the *Manchester Guardian* and the other on the *East African Standard!* but that he will really go in for a really firm and constructive native policy which is, I think, so necessary in this country.

SIR ARMIGEL WADE: Your Excellency, I have not very much to say because I think the ground has been fairly well covered, but I wish to be one of those to make some reference to the speech of the hon. Member Mr. Montgomery.

I am very sorry that we have not got him on our side over this. He said he hoped Government would not accept this motion, and that in any case he was prepared to vote against it. He may still possibly be open to persuasion. So far as I could make out, his reason for opposing the motion was that he feared it would give a false impression that (a) natives are to be forced out, and (b) that the available supply has not come out.

I suppose that no one can prevent anybody from manufacturing false impressions if he wants to, but I cannot see how either impression is inherent in this motion at all. It starts—

"That with a view to minimizing the complexity of the labour situation both in native and other areas"

I suggest that that is a perfectly fair statement of fact, that the labour situation is complex—not—

"That with a view to increasing the labour supply"

or something of the kind. Had it done that, Government might have found some difficulty in accepting the motion.

The hon. member went on through (a), (b), (c), and (d) of the motion, and so far as I could make out he could not find any objection either to the statement or to the phrasing, or to anything else under either one of the four heads. In fact, I gathered that he was rather in agreement with every one of them!

I think, too, that the hon. member Dr. Wilson, although he was not opposed to the motion, was in some doubt as to whether or not he ought to accept it until he had heard the arguments. I gathered

that he also had no objection to any one of the four heads, and he at any rate said that the motion was innocuous.

If it is innocuous, what justification is there for Government rejecting it? On what grounds could Government very well reject this motion as it appears now? So far from wishing to reject it, I welcome it very cordially, not because I am so optimistic as the hon. Member for Trans Nzoia who sees it as a sort of panacea to solve all our labour problems. I do not think that for a minute, but I am in general sympathy with all the four sections of the motion, and I am very very much in sympathy and wholeheartedly support one that has found unanimous support on both sides of Council, that some increase in the staff of the Labour Department should be considered.

At the start, I want to say I am very appreciative I am of the tribute paid to our labour officers by the hon. member. I, like the hon. member Dr. Wilson, was astounded when I read in the English Hansard the report of the debate in the House of Commons when it was stated quite definitely as though the fact were known to everybody that there was no Labour Department in Kenya.

When we first introduced inspectors of labour, as they were called then (I am glad the title was altered to labour officers, which represents what they are), they were looked on with a good deal of suspicion and, I think, natural suspicion. You could not blame a farmer or some other employer of labour for saying "I don't want to have a lot of inspectors going all over my farm putting all sorts of ideas into the heads of my natives, saying they ought to have swimming-baths and luxuries of that kind. They've got on well without them for a long time and don't want them."

I am glad to say that it is my experience, which appears to coincide with the experience of farmers, that the labour officers have gradually established themselves. I would almost say, in the affections of the people with whom they have to deal, employed and employer. It was a common experience when I was Chief Native Commissioner to have a request

[Sir Armigel Wade]

from a farmer that something was wrong with his labour, could we come out and see to it and put it right? We did that over and over again. Nothing pleased us more than the confirmation we have had that that is so from the hon. member this morning and the support he has received.

It would be quite wrong to suppose that the duties of labour officers are the duties of recruiters. If once labour officers started recruiting labour they would lose the confidence of the people whose interests they are primarily to protect. They have achieved what they have done by strictly sticking to their business and seeing that conditions of labour are properly observed when natives have been labourers. Their business is to look after them when they are labourers and not before, and it is because they have done that and established a great deal of contentment throughout the Colony that they have been able to do what they have done and won the confidence of employers.

I cannot too strongly emphasise the great mistake, if any sort of suggestion is made that these duties are going to cease to be their duties and they are supposed to be something else. Of course, they have got to see that the conditions of labour are observed on both sides. I am not suggesting that it is their business to go on a farm and see that the natives have got proper food, housing, pay, and things of that sort and, at the same time, wink at or overlook any breaches of the Employment of Servants Ordinance or Resident Labourers Ordinance. They have to see that what Government thinks are the proper conditions of labour are observed on both sides.

Certainly, when we come to consider the provision for additional labour officers, I can assure the hon. member that he will get no opposition from Government.

While I am on the subject of the Resident Labourers Ordinance, I entirely agree with the hon. members for Rift Valley and Ukamba that it is urgent and imperative that the Ordinance should be brought into force as soon as possible. But the simple fact remains that the Ordinance was reserved for the signifi-

cation of His Majesty's pleasure and we have not got His Majesty's Assent, and there are no means of getting it until we have satisfied His Majesty that there is land to which resident labourers can go at the end of their contracts if the farmers do not wish to renew those contracts.

It is not enough to say that in all probability we shall not want any land at once. That has been made clear by the hon. the Chief Native Commissioner. What we have to do is to satisfy the Secretary of State that there is some land to which they can go if the necessity arises, and it is no use to shut our eyes to that simple fact. We want to be quite honest about the situation. That is not quite the only fact, though that would be in itself a complete answer, to the question as to why we cannot introduce the Ordinance tomorrow, but I do not want to mislead Council into thinking that that is the only difficulty.

There are one or two other points. I do not think they are points of major importance, but it is true there are one or two other points on which the Secretary of State wishes to be satisfied before His Majesty's Assent can be given. These points are receiving the very active and earnest consideration of Government. We have not put them in a pigeon hole; we are dealing with them, and I think these points are likely to be settled before the land one. We are entirely at one with the hon. member and hon. members who have spoken on the urgent necessity of introducing this Ordinance, and we want to have it on the statute book as soon as we possible can.

There is one point which is most important that was raised by the hon. Member for Ukamba, and that is the question of soil erosion and whether in increasing native production we may not be ruining the land in the native reserves. It is true that a few years ago there was not much thought about soil erosion, and it was only brought to our notice, as it was to a lot of other people, in the last year or two. But it is realized by the Standing Board of Economic Development, which is doing what it can in the matter, and I can assure the hon. member that his point will not be lost sight of.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, there are just a few points to which I should like to reply.

The first one was the point raised by the hon. Member for Trans Nzoia, who suggested that the provision of extra labour officers need not wait until the next budget session, and that provision for further officers could possibly be made forthwith. In some ways I rather agree with him, but the reason I did not put it in that way was because I knew that Government does not like to be rushed into increasing its staff—and rightly so—without considering *pari passu* other expenditure demands. They also like to take the advice of the Standing Finance Committee. But, at the same time, I would again like to stress a point, which I think it is rather necessary to keep on stressing, and that is we do not as a Council take our orders from the Standing Finance Committee. The Standing Finance Committee should implement the instructions given to it by this Council; it is a Standing Committee of Legislative Council.

Now, in turning to the remarks made by the hon. member who now represents Native Interests in this Council, I would like to begin by saying how pleased we all are that he has not left us and that he still remains with us though he has changed his designation. Then I would like to join in appealing to him that, possibly, in the light of the discussion which has taken place he may see his way, at any rate, not to vote against this motion. As pointed out by the hon. the Colonial Secretary, he said he was going to vote against it whatever happened, and I think chiefly because he considered it ill-timed and possibly unnecessary. Then he went on to deal with each portion of the motion and agreed with every single one. So possibly, he might see his way to change his mind.

I would like to answer his contention that this motion is unnecessary and ill-timed. I think he feels that these suggestions are justifiable. In point of fact, at the meeting we held yesterday, which he attended, most of the matters were gone into very thoroughly, and I suppose he feels that we, as elected members, should

have been satisfied by the assurances given by himself and the Chief Native Commissioner.

Now, we do welcome very much indeed talks of that nature and we are always very grateful indeed to senior officers of Government when they meet us round a table and tell us what is going on. But it is not always possible for those representing and elected to represent constituencies to be too readily satisfied by statements made behind sealed doors and in the privacy of a private room. Sometimes we have to make an effort to ascertain openly what the avowed policy of Government is and what the intention of Government is. It is far more satisfactory and leads to less misunderstanding if one comes out into the open and says what one wants to say and hears what Government has to say in reply. For that reason I do not think the moment ill-chosen, nor do I think that this motion, in view of the tremendous importance of the subject to practically everybody in the Colony, is superfluous.

The other hon. member who represents Native Interests said that he was very pleased to hear a little praise as regards the Labour Department from me because he had misconstrued something which I had said at a previous session of this Council. I would just like to make that perfectly clear. I have never devalued in my appreciation of the tremendous help that the Labour Department or the Labour Section has always been to the settlers of this country, and I am not speaking as somebody who has had no experience. Although I live in Nairobi at present I have directly employed labour, and for many years in the past I handled several thousands of labourers, so I am not speaking as one who had no personal experience.

What I did say on that previous occasion was that I disagreed with a certain activity which was at that moment, I understood, being undertaken by the Labour Department. This was to list farms and plantations, and classify them as A, B, C, and D, without the knowledge of the managers or the owners, and I said that I felt that it was quite wrong and that I mistrusted it. In reply I was told that that particular practice

[Major Cavendish-Bentinck] had ceased. I make this explanation because I want to be clearly understood.

The other point he made, which was a very good one and a very true one, was that I perhaps tended to misinterpret the amount of work the natives actually did by saying that the average native only worked for four months because they were only in employment for four months and then went back to the reserves presumably to work for the remaining eight months. There is something in what he says. But if you take the figures and examine them carefully, and if you know as much as I think I possibly do of what goes on in some of the native reserves at any rate, I think we can still all agree that these natives' idea of work, compared with that of Europeans, is based on a somewhat different standard.

In his remarks he said that he did not like my having used the word "organized" with reference to labour. Well, I am very sorry, I did not mean by that that we were going to organize gangs and march them out of the native reserves. But the fact remains that wherever any form of development or production, whether it is industrial or agricultural, is undertaken, one of the basic necessities is the organization of labour: it has to be done in industrialized countries; it is done in England; and it has to be done also out here.

May I just make a few remarks with reference to the speech made by the hon. the Chief Native Commissioner. He explained the difficulties, as had the hon. the Colonial Secretary, with regard to the introduction of the Resident Native Labourers Ordinance, and I would say that we do appreciate that there is any amount of goodwill on the part of Government. We appreciate that on this occasion the Bill has been held up by the Secretary of State for certain further inquiries and because of this land question. But what we do feel, especially those of us who have been for some time in what is known as public life, that although goodwill is generally there (latterly I must certainly say it is always there), there is sometimes a lack of drive. This Bill was passed eight months ago and possibly there is some excuse for it now being

held up for eight months, but I do not think there is adequate excuse, shall we say, for its having taken us ten years to get that Bill.

We are told that this question of land is being carefully examined, and that Government are trying to find land in various districts which is good and suitable, and our help has been asked. Our help will be readily forthcoming, but I hope that that does not mean that it is going to be the White Highlands again which is going to be called upon to find more land!

There is very little further to say with regard to the remarks of the hon. the Chief Native Commissioner, except that he stated that I had exaggerated the numbers of unemployed in Nairobi. It may be that I did; but he did admit himself that statistics were very difficult to obtain because the type of gentleman to whom I referred does not particularly want to be tabulated in Governmental records, and I suggest that if we had correct statistics we should also be able to deal with these gentlemen. The fact is, of course, that half of them avoid divulging their presence and it is very hard to ascertain how many natives there are, and I do believe that there are a great many more than are shown in any official report.

Lastly, there was the point made by the hon. the Colonial Secretary and which was also made by most other speakers, that it would be entirely wrong for officers of the Labour Department, to go into native reserves for recruiting purposes, I did hope that I had made that abundantly clear. Of course it would be the wrong way of going about it and I suggested nothing of the kind. We do feel though that they could be of help in other ways which were demonstrated in the remarks made by the hon. the Chief Native Commissioner, and I will refer to them no further.

Finally, I would like to say how extremely glad and thankful I am that this motion has been accepted. I am quite impatient about having produced it, because this question of labour supplies is a vitally important one to industry, to farmers, and to everybody in this country.

The question was put and carried.

## INCOME TAX

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move:

"That, in view of the fact that some information should now be given to this Council as to the working of the Income Tax Ordinance, a specific *ad hoc* committee be appointed to inquire, in the light of experience now gained, into the operation of this Ordinance in Kenya, with terms of reference which should be sufficiently comprehensive to cover all aspects of the application, operation and effects of the tax, both direct and indirect, in order that Council may be provided with data which will warrant a thorough examination as to the suitability or otherwise of the tax to conditions in this Colony."

The object of bringing forward this motion, which I am moving on behalf of my colleagues, is mainly to ensure that by dint of passage of time the realities of the situation as regards income tax in this territory should not be lost sight of or become obscured in the course of the next few months, by the haze of detailed amendments which may be produced and suggested as regards the present Ordinance.

I should like to assure you, Sir, that there is no intention whatever to-day of re-opening the income tax debate on the principles of this form of taxation. I do not propose to speak for more than a few minutes. The present Ordinance is in force, and it is the law of the country, and I think we are only too well aware of the fact that the question as to whether or not income tax was a suitable form of taxation has been, for many years, a most bitterly controversial subject. But the main thing, we feel, which must be remembered, especially at this juncture, the beginning of a new Council, is not the contention of the past but the situation which exists to-day with regard to this form of taxation and how that position arises.

In order to demonstrate this, I would recall that, for a period of many years, the European Elected Members have been unanimous in their objection to the introduction of income tax, in that they considered that whatever might be said in

its favour in other and more highly industrialized parts of the world, this particular form of taxation was premature in this Colony. And, further, if it was eventually introduced, it should be introduced in all three territories simultaneously. Elected members, as a body have never admitted that they considered this form of taxation was really suitable, equitable, or workable at the present time in this country on the lines that that taxation is implemented in England. More especially did they maintain this so long as its application was confined to Kenya alone. When it became evident the year before last that an Income Tax Ordinance was going to be introduced, whether we liked it or not, and since that time up to any rate this Council, I admit that opinion among elected members was divided. It became divided into two sections, not because either party had changed its mind on principle but because we differed as to what was best for the country in a matter of political expediency. That is the position as it was, and that is the position as it still remains.

It is for that reason that, in deference to the views of those (of whom I was one) who felt that, rather than involve the country in intense political agitation, when more important questions of reconstruction and development were to be solved, it would be better for the time being to enable the authorities to say, in the light of experience, whether they or we were in the right, and Government undertook that the working of income tax in this country should be subject to review in the light of experience. We were told, I think during the last budget session—as I have not the most recent Hansard I cannot look it up—that as soon as reasonably possible we should be given facts and figures which would tend to show the effects *pro* and *con* to the country as a whole of this form of taxation was really having.

The first point I would like to bring out, having established the position as I believe it to be, is that so far we have not had any information whatever, not even the barest information, such as what sort of amount has been collected or may be secured last year, what is the estimate for this year, what the cost of collection is,

[Major Cavendish-Bentinck] and so on. That refers purely to quite easy information which one would have thought would have been made available to members of this Council. But I want to go further than that.

We want to really find out whether the disadvantages of this form of taxation that some of us foretold are really likely to materialise, or whether they were myths. We want to find out what is really being collected and at what cost. We want to find out whether, as some people allege, money is being kept back from or taken out of investment in this country or not. We want to find out what cost is being thrust on individuals in this country in connection with this form of taxation.

I know I shall be told in Government's reply that it is quite impossible to talk about giving this information, that we have got to have at least two years working and, in due course, probably information will be accorded to the Standing Finance Committee. I am not prepared to accept that. There must already be a very great deal of information which is available. It is ridiculous to suppose that a committee or any body to whom that information is submitted could furnish us with data we require in the course of just one or two meetings. It means, if we are going to put things off for another year, that we shall be this time next year in exactly the same position of asking what is happening, and a third year will pass before we get a report, and so on and so forth, so I do suggest that very shortly now we should be able to have at any rate the impressions that have been formed with regard to this form of taxation during the year or more which it has been in operation.

We were originally told that we should be able to get some such information in April. I understand it has now been postponed to July. Whenever it is, I do hope we shall receive some assurance that there will be somebody appointed to furnish this Council with, at any rate, some information of what is going on, in the near

That leads me to my second point, which is that we are asking that this information should be collated by a special

*ad hoc* committee. That, I shall be told, is not what Government undertook: what Government undertook was that the Standing Finance Committee should be given this information, and that quite obviously was the right committee.

I have given this matter a good deal of thought, and I believe as the result of that that the Standing Finance Committee would not be the right committee, and for several reasons.

The first is that I happened to be a member of the drafting committee of the present Income Tax Ordinance, and of the select committee which sat on the Bill when it was brought in. My experience on these two committees has led me to believe that it is absolutely essential in dealing with so intricate a subject to have not merely as evidence but as colleagues on a committee of this nature persons who have specialist and technical knowledge.

Furthermore, this is still a contentious subject, and I believe there is hardly anybody in this Council who is not prejudiced one way or the other. I think it is highly desirable from everybody's point of view that any committee appointed to make these necessary inquiries should be entirely and absolutely unprejudiced as well as having members with some technical qualifications.

It is for those reasons that I am venturing to put forward this motion, asking, first of all, that within a reasonable period of time these inquiries should begin and some attempt made to furnish Council with the information to which it is entitled, and secondly, that the body to be asked to perform this task should be a specially selected *ad hoc* body to perform a very difficult job, and not merely the ordinary Standing Finance Committee of this Council.

MR. GHERSIE: Your Excellency, in seconding this motion I would like to associate myself with all that the hon. Member for Nairobi North has said and would, in addition, like to make one or two remarks.

I am not for the moment interested in the principle of income tax, but rather in (a) the Ordinance in its present form and (b) the question as to whether it is the

[Mr. Gherstie]

most efficient and equitable form of taxation for this Colony in its present state.

I suggest that an inquiry was promised, and the whole Colony is awaiting the result of that inquiry. I go further. I submit there are financial houses outside the Colony that are very considerably interested in the result of that inquiry, and until such time as the inquiry is held and the result published I suggest there will be a lack of confidence in financial circles.

I submit that the inquiry should be instituted with all possible speed, so that we can reach a definite decision in the very near future.

MR. LOCKHART: Your Excellency, in replying to the speech of the hon. Member for Nairobi North, I do not of course propose to follow him in his recollection of the history of the Income Tax Ordinance.

He asks for an inquiry in the terms stated in this motion, and I have to say at once that Government does not see its way to accept this motion. But Government has no desire to put any obstruction in the way of the perfectly legitimate and natural desire of hon. members to obtain the fullest information on the operation of this Ordinance at the earliest possible date. Indeed, Your Excellency and Your Excellency's advisers are as concerned as any hon. member of this Council to establish the results of the Ordinance as clearly and as early as possible.

Where we part company with hon. members opposite is in feeling that the time has arrived for the immediate initiation of an inquiry exactly of the nature set out in this motion.

As the hon. mover said, an inquiry was promised by Your Excellency, and as I have Hansard with me I think it might be as well to read the terms in which that promise was given. It was given on the 22nd November last by the Acting Colonial Secretary, who said:—

"Under the Head Treasury" the Noble Lord (the hon. Member for Rift Valley) asked for an assurance that when income tax statistics relative to the yield, incidence of the cost of collection of the tax, etc., were avail-

able, they should be referred to the Standing Finance Committee for consideration. I am authorized by Your Excellency to say that that assurance is readily given."

Hon. members will not be told, as the hon. member forecast, that it is impossible to go into this matter for two years: full figures in the completest form which is possible for the Income Tax Department to compile them will be placed before the Standing Finance Committee in July. They will cover the assessment for the first year of the Ordinance. Surely no hon. member can suggest that it is possible to find any firm ground at all. These figures, accompanied by all the explanations and assistance that we can give, will be placed before the Standing Finance Committee. The committee will report on the conclusions to be drawn from them and, as the hon. mover well knows, if any member of that Committee draws the conclusion that some further inquiry is necessary he can so record and make his recommendations on the subject, and they will be fully considered by Government.

But the hon. mover has taken the line that the Standing Finance Committee is not the proper body to deal with the matter. As the matter in question is purely financial, and as it involves a review of the operation of a taxation measure which was passed by this Council, I should have supposed that the first body at any rate to whom information on the subject should be accorded would be the Standing Finance Committee.

But the hon. member seeks a committee consisting of specialized and technical persons who are entirely unprejudiced. I suppose there are persons in the world who are first of all specialists and technical on matters of income tax and completely unprejudiced on the subject, but it is not plain to me where they are to be found. I do not know how large a body the hon. member suggests should be got together, but personally I have great difficulty, little as I know this Colony, in believing that such a committee with such qualifications could be got together.

Actually, for the preliminary purposes for which these figures are to be placed

[Mr. Lockhart] before the Committee, it seems unnecessary to go outside its members but, as the hon. member is well aware, it is open to the Committee to take advice and, having discovered unprejudiced experts, to obtain the fullest advantage from their advice.

Reviewing the hon. member's speech, this is really the only point at which the request embodied in his motion differs from the undertaking given by Government. And I would remind hon. members that it was given less than six months ago, and I would remind them, moreover, that until two or three days ago when notice was given of this motion, it was the general assumption that the undertaking was common ground on both sides of Council.

The only point which now divides us is in the composition of the committee, and I do seriously suggest to the hon. member that the division is so slight that on reconsideration he may well take the view that, after all, the Standing Finance Committee of this Council—which surely three weeks after the general election must inspire confidence in the minds of those waiting for the report—is a body which, at any rate, can make this first examination.

I suggest that on a small point of that kind the hon. member, without sacrificing in any way at all the objects he has at heart, may see his way to withdraw this motion.

**COL. KIRKWOOD:** Your Excellency, I rise to support the motion. After having listened to the remarks of the hon. member the Member for Nairobi North I have no intention of wasting the time of the Council on the motion generally. I quite agree with the terms of the motion, and I think that the Standing Finance Committee is not the best body to inquire into this tax, which is a very debatable one. I do not propose to go into the rightness or wrongness of income tax, but there are one or two points that I might mention.

First of all, the Government did solemnly give an undertaking, as pointed out by the last hon. member who spoke, some six months ago that an inquiry would be instituted by the Standing

Finance Committee. There must have been reasons in the mind of Government six months ago to justify that promise, and the failure to put that into effect seems to me to justify this motion—that is, to try and ginger up that inquiry and have an inquiry with wider scope, whether we, for instance, think it is a very debatable measure, contentious measure or a controversial measure.

There is a great deal of difference of opinion. I think I was one of those who entered into this so-called compromise with Government. But I had definite reasons for doing that, for although I am a believer in the principle of income tax I am not a believer in income tax in a Crown colony where we do not have complete control of the finance and where the control is thousands of miles away and where they do not seem to understand the problems that affect not only Kenya but the neighbouring territories as well.

We have been told that a good deal of revenue has been lost to this Colony through the registration of companies outside the Colony. I mention that as a point that needs inquiring into, and we might be told what has been the effect of that. We are also told, and it is cried from the housetops, that a great deal of capital is kept out of the Colony as a result of the income tax. I was going to say that is true but I do know instances to the contrary. But still, that is a matter of opinion. Yet I think there is definite information that could be gathered by a committee which should be made known to everybody, and I feel that I am not in a position either to take up one side or the other, and at the moment it is not my intention to do so.

At the last election I think I was very reasonable, like most of the hon. members now here in this Council. The majority, but not all of us, took the line that a promise had been given and we were prepared to await the result of that promise. I think that was a very reasonable attitude to take, and I propose to keep on an even keel and wait for the inquiry to be made by the Standing Finance Committee, but I would prefer that it was made through an *ad hoc* committee,

[Col. Kirkwood] through which we could get more information given by men of experience, some of them specialists, on the question of income tax and on matters incidental to income tax.

Although I realize I am wasting the time of the Council, for Government will not accept this motion, I do hope that an inquiry will take place without undue delay.

I do not know myself what has been happening but incidentally, I know that quite a number of people have not had a reply from the gentleman who was responsible for collecting income tax. I have not had one myself, as far as I know. The chartered accountant who keeps my books tells me that a cheque has been earmarked but nothing has happened up to the moment so far as I know! That is an instance which the committee may go into almost instantly.

There seems to be a lag somewhere. The fact that people have not been threatened with prosecution for not paying makes me think there is an undue lag and, if that has taken place, to my knowledge in the one case I have quoted, it must have taken place in others. And how you are to get at the incidence of income tax unless it is collected I do not know.

**MR. NICOL:** Your Excellency, the hon. member drew attention to the fact that this new Council were concerned with the situation as it is to-day. The hon. member drew attention to the fact that in the investing markets there is an unavoidable—yet you must admit it is undisputed—hesitancy in the investment of capital out here. Unfortunately, the history of income tax is a sad one, and a lot of publicity has been given to the question. Also, it is known as the hon. Financial Secretary reported that a review by the Standing Finance Committee has been promised, and that naturally leads people who are considering investing money to be hesitant in coming forward, as they would rather await the result of that finding.

Now, I suggest that when it was asked in the last Council that this matter should

be referred once again to the Standing Finance Committee, it might probably not have been fully considered as to whether it would not be better to refer this matter to an *ad hoc* committee.

I am very sorry to learn that figures will not be available until July. I presume that is quite unavoidable. Probably many snags have arisen and the matter is so complicated that it cannot be helped. I do not think, however, that it was ever suggested by the hon. mover, as was implied by the hon. the Financial Secretary, that the figures which are going to be got out should be handed out to the *ad hoc* committee first and not sent to the Standing Finance Committee as well. But I do feel that it would be more satisfactory from the country's point of view and everybody's point of view here for an *ad hoc* committee to examine this matter. They can receive incalculable help from the Standing Finance Committee. The Standing Finance Committee might be held suspect possibly in the minds of some now.

I am not committed to income tax or non-income tax. I hold an entirely open mind on it, and I am very anxious to see these figures before arriving at a decision in my own mind as to whether income tax is the correct form of taxation in this country or not.

I do feel that with an *ad hoc* committee it will be possible to co-opt to that committee, men with wide experience, and men who can be relied upon and who are held in high regard, to study the matter and you are going to get a much more impartial view in that way than if it is confined entirely to a committee of this Council, no matter what amount of evidence you call, and therefore I have much pleasure in supporting the motion before Council.

The debate was adjourned.

#### ADJOURNMENT

Council adjourned until 10 a.m. on Thursday, 28th April.

Thursday, 28th April, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 28th April, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

#### MINUTES

27th April, 1938, were confirmed.

The minutes of the meeting of the 27th April, 1938, were confirmed.

#### ORAL ANSWERS TO QUESTIONS

##### NO. 12—CENTRAL ROADS AND TRAFFIC BOARD SUB-COMMITTEE REPORT

#### MAJOR CAVENDISH-BENTINCK

asked:—

When does Government propose to circulate to Members of Council the Report of the Sub-Committee of the Central Roads and Traffic Board which was appointed to consider the problem of long range road policy, and to formulate a programme of permanent road improvement consistent with the financial position of the Colony, which Report was signed on the 5th February, 1938?

**SIR ARMIGEL WADE:** The Report referred to is a report not to the Governor but to the Central Roads and Traffic Board who have not yet had an opportunity of considering it. Any action to be taken on the Sub-Committee's Report must be dependent on the recommendations of the Board.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, arising out of that reply, may we know when the Central Roads and Traffic Board are going to meet in order to discuss this Report?

**SIR ARMIGEL WADE:** Your Excellency, I think the hon. member knows as well as I do what has kept the Board from considering the Report, and that is the question of the personnel of the Board. We understand, I think quite rightly, that consequent upon the recent general election there is probably likely to be some change in the personnel and that is the reason why this committee's report has not yet been considered by the Board.

#### BILLS

##### FIRST READINGS

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

The Local Government (Rating) (Amendment) Bill.

The Shops in Rural Areas (Amendment) Bill.

The Kenya Defence Force (Amendment) Bill.

The Kenya Regiment (Territorial Force) (Amendment) Bill.

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

#### INCOME TAX

The debate was resumed.

**SIR ARMIGEL WADE:** Your Excellency, after listening very carefully to the debate, I have been unable to find an adequate reason for this motion.

Less than six months ago all members of the Council were in complete agreement as to the proper course to pursue in this matter, and that was that this matter should be referred to the Standing Finance Committee. I cannot quite understand what has happened since then to bring about this policy of vacillation.

It has been suggested that the proposal, and the acceptance of the proposal, were ill-considered or at any rate inadequately considered, but on reading the report in our Hansard I cannot think that that contention is substantiated. The proposal was made on the 12th November, 1937, by the hon. Member for Rift Valley, Lord Francis Scott, in the following terms:—

"When we have got the full figures which I think should be properly collated and analysed so as to show how much money it has brought in, what it has cost to collect the money, which section of the community have paid for that money, where it has come from and whether any hardships have been imposed on any section of the community; when these figures are available I ask the Government to have them referred to the Standing Finance Committee for a thorough report on

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its incidence and any question relating to it, and for the Standing Finance Committee to report back to the Governor. I think it is a reasonable request and a request which will be helpful to Government."

That does not sound to me like a hasty or ill-considered proposal. But, even supposing it was hasty and ill-considered, it was not until the 22nd November, that is to say ten days later, that the Acting Colonial Secretary replied:—

"Under the Head Treasury the Noble Lord asked for an assurance that when income tax statistics relative to the yield, incidence of the cost of collection of the tax, etc., were available, they should be referred to the Standing Finance Committee for consideration. I am authorized by Your Excellency to say that assurance is readily given."

Within those ten days there was plenty of opportunity for anyone to have said:—

"We made a mistake the other day in asking for this to be referred to the Standing Finance Committee. May we have some other kind of committee?" But, so far from that happening, this proposal was fully endorsed by several of the European elected members, and it was opposed by no one and objected to by no one.

The Standing Finance Committee is, of course, a committee of this Council, and I do not know what has happened to bring about this loss of confidence. I hope that, so soon after its reconstruction, Council has not acquired an inferiority complex! I think that would be deplorable.

The hon. Member for Mombasa, I think I am right in saying, suggested that there was nothing to prevent this from going to the Standing Finance Committee in the first instance. In saying that, although he purported to be supporting the motion, I think he was really supporting Government's attitude, for that is precisely what Government proposes to do, refer it to the Standing Finance Committee in the first instance. The Committee will, of course have every right in submitting its report to Your Excellency to propose, if it thinks fit, that the whole

question shall be referred to a committee of impartial experts. If it makes such a recommendation it will be for Your Excellency to accept it or reject it, or possibly to refer it to your Executive Council.

But, as my hon. friend the Financial Secretary said, we are doing nothing to bar the appointment of such a committee. If, on a full review of all the facts and data when they have been collated and analysed, as the Noble Lord, Lord Francis Scott, suggested, some further inquiry seems necessary, there is nothing to prevent the appointment of such a committee as appears to be desired by some hon. members opposite. In the meantime, Government proposes to do what it said it would do: to honour its undertaking to the Noble Lord and refer this matter in the first instance to the Standing Finance Committee the committee of this Council which is the proper committee to advise Your Excellency on matters of this kind.

**MAJOR CAVENDISH-BENTINCK:** I think I would like, in my reply, to take the remarks of the hon. the Colonial Secretary first, because they are the freshest in our minds.

First of all, he asks why we proposed this motion and what has happened since last November to make us change our minds as to the proper procedure? And he stressed that the proposal which was made last year was not a hasty or ill-considered proposal and it was not opposed by anybody on this side of the Council.

Well, what has made us change our minds, if you can call it changing our minds, is that we have discussed this question quite often since last November and all that has happened is that we have come to the conclusion that the Standing Finance Committee is not the best committee to enquire into this very intricate subject.

That any report which may be drawn up by the special committee should, in the first place, go to the Standing Finance Committee is probably quite reasonable. But we felt that before any sort of real consideration could be given to the whole question it would mean somebody mak-



[Major Cavendish-Bentick] ing a very meticulous inquiry and giving up a great deal of time, probably a great deal more time than could be given to the subject by the Standing Finance Committee. Of course, the proposal made last November was not ill-considered or hasty; of course it was not opposed by any members on this side of the Council, because the Noble Lord, who represents the Rift Valley, put forward that request on behalf of all of us.

There is no question of lost confidence or an inferiority complex when we suggest that possibly the members of the Standing Finance Committee, in dealing with a very intricate subject, have not the monopoly of all wisdom, nor possibly, in dealing with very technical questions, they have the same knowledge and experience as have other people who have spent a very long time specializing in these sorts of subjects.

To turn to the debate which took place yesterday, although Government are not prepared to accept this motion, at least we have got what we wanted. We have got definite information that certain statistics and figures in as complete a form as possible are going to be made available in July. The obtaining of that information was the real reason why we put forward this motion.

The hon. the Financial Secretary also stated, which we were very pleased to hear, that Government definitely did not desire to put any obstruction in the way of the Elected Members, who naturally desired to obtain the fullest information at the earliest possible date. But he added that where he parted company with us was that we had moved for the immediate initiation of an inquiry, the exact nature of which he was not prepared to agree with. Well, there is nothing in the motion to say that we expected an immediate inquiry. All we did want, in view of the fact that this is a new Council, was to hear quite definitely that an enquiry was going to take place. We have heard that it is going to take place and, therefore, again I say the motion has perhaps been justified.

There are, of course, two points of view. There is a great deal to be said for referring the matter in the first place

to the Standing Finance Committee and to allow them to report back to this Council that they consider further inquiries are necessary, possibly by some specialized and competent people. I must say that I was a little surprised at the somewhat facetious attitude that our friend opposite took up in replying to this motion yesterday. It seems he rather laughed at the idea that any competent person could be found in this country, who knew any more than we did. Well, I can give him—and I did not propose to give him—but if he wishes to have them, the names of at least a dozen people who know more, a great deal more about this subject than I do, who could serve on this Committee.

MR. LOCKHART: Your Excellency, on a point of personal explanation, I think the honourable member will agree that I combined both specialized and technical knowledge with complete lack of prejudice; that is the combination, Sir.

MAJOR CAVENDISH-BENTICK: Well, even that combination is obtainable, I believe.

I do not think there is any good in prolonging this debate. We have stated what we feel is the right procedure. I have heard nothing that has been said on the opposite side of the Council to change my mind. We have been told that we are vacillating and that we are not sticking to what we asked for. I admit that what we asked for in the first place was a reference to the Standing Finance Committee, but we are a new lot of elected members and we have re-discussed this very carefully, and we have thereby come to the conclusion that probably it would be wiser, taking all things into consideration, to refer this difficult subject not to the Standing Finance Committee but to refer it to a special committee which might have to sit for a very long time and might have to go into very intricate subjects which the Standing Finance Committee might find great difficulty in investigating as thoroughly as possibly they should be investigated.

That is no radical change in our position, and in view of that I do not feel that I should withdraw this motion. It is perfectly legitimate that we should differ

[Major Cavendish-Bentick] in our point of view and all this motion does is to set out perfectly clearly what we feel is the procedure to be followed, and as a record of what we feel, I think it ought to stand. If Government does not choose to accept it I do not think, Sir, any great harm will be done.

The question was put and negatived.

#### KENYA LAND COMMISSION RECOMMENDATIONS

MAJOR CAVENDISH-BENTICK: Your Excellency, this motion which appears on the Order Paper reads as follows:

"That, if the objective of the Kenya Land Commission Inquiry is to be achieved, and the existing sense of insecurity which prevails in both European and Native minds is to be at long last terminated, it is essential that local legislation and all other proposed enactments formulated for the purpose of giving effect to the Kenya Land Commission Report should be brought into force without further delay, and be so framed and worded as to conform strictly both to the conclusions reached and accepted by His Majesty's Government in the White Paper Cmd. 4580 published in May, 1934, and to the recommendations accepted by this Government in October, 1934, and that urgent representations be again made to the Secretary of State to that effect."

This motion arises out of a memorandum on proposed legislation to give effect to the Kenya Land Commission Report which was laid on the table of this Council on April 8th. I would preface my remarks by stressing that the questions dealt with in the memorandum are amongst the most important that have ever been before this Council, and, furthermore, they have been the subject of a number of debates in this Council during the last few years, a factor which I hope will help to curtail my remarks now, because it will render it superfluous for me to have to delve into the history of what led up to the appointment of the Carter Commission, as I think that history must be within the knowledge of all members of this Council.

I feel, however, that I must make some reference to what has occurred since the appointment of that Commission if only to draw particular attention to the almost incredible delay that there has been in dealing with its recommendations. And I cannot do so more effectively than by quoting the occasion on which this subject has been before this Council during the last few years.

The report of the Carter Commission which was set up in April, 1932, was signed on the 7th July, 1933. Its recommendations were, for the most part, accepted by His Majesty's Government in England in a White Paper, Command Paper No. 4580, which was published in May 1934. I might add that the Carter Land Commission recommendations were actually accepted in England before anybody out here, whom these recommendations most vitally affected, even had the chance of seeing them. That, Sir, is the procedure that we challenged at the time and a procedure, I hope, that will never be repeated.

The report was adopted in this Council on the 17th October, 1934, and it fell to my lot on behalf of my colleagues to propose a motion with regard thereto and to make a very lengthy speech on the report as a whole. In the course of that debate, to which I shall have to refer to-day, only one member intervened on behalf of Government, and he did so on the 24th October, 1934. And I notice that my reply terminating the debate was on the 25th October—so we had a very long debate at that time—and Government accepted our motion which, among other things suggested, as does our motion to-day, three and a half years later, that early action should be taken to introduce legislation implementing the general principles of the recommendations in that Report.

As we all know, no action was taken and probably could not be taken, and on the 8th July, 1935, I asked a question as to what was being done. On the 29th of July, 1935, the Hon. and gallant Member representing Trans Nzoia also asked a question. In December of that year there was a further question and in May, 1936, as we still could get no information, two more questions appeared in my

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name. On that occasion, in May 1936, it was the intention of the European Elected members to move a motion, and it was our further intention in the course of that motion to quote specific instances of what was happening to try and stress the numerous complications which were being created by the delay in implementing at least of the Carter Commission recommendations.

However, we were told that any such action at that time might incommode Government and render their position more difficult. For that reason we did not pursue the idea of a debate and contented ourselves with asking questions. Things then carried on until August 1937, over a year later, when we were still seeing but few signs of the appearance of the promised Orders in Council. On that occasion we did move a motion, and the wording of that motion is, I think, worth bringing to notice in view of the fact that this motion was also accepted by Government. It was to the effect—

"That this Council recommends that an urgent despatch be forwarded to the Secretary of State for the Colonies, pointing out that accepted recommendations of the Kenya Land Commission, whose report was signed on the 7th July, 1933, still remained unimplemented."

Then it goes on to urge this various legislation, quoting paragraphs from the Carter Commission Report, and ends up by saying that—

"The Despatch should further stress that, owing to the delay in promulgating these Orders in Council, the position as regards claims based on an allegation of right which the Commission specifically came out to settle, is becoming daily more difficult, and the delay is handicapping development in many directions."

This occasioned a fairly lengthy debate, to which on the 13th August I replied. I ended my reply by saying—

"We therefore urge with all the strength we have, that some real move be made now in order to try and get these Orders in Council and these innumerable readjustments finally settled within the next few months."

In the course of that debate I did have the temerity to quote certain specific instances of the impossible positions arising owing to delay in the implementation of the Carter Commission Report recommendations. I added that the complications had by then become far more involved, far more serious, than they were at the time the Commission made its inquiries in this country. A further eight months has elapsed, and the difficulties and the intolerable complications are still multiplying.

I do not propose to go into details, as I understand the Noble Lord who is now representing the constituency in which the more unbelievable complications are developing, is going to take part in this debate. I merely stress the foregoing facts, and perhaps over-stress them from the point of view of hon. members opposite, in order to explain and justify the inclusion in this motion to which I am speaking of an urge that there should be no further delay in introducing the local legislation to which the memorandum which was laid on the table referred.

This memorandum was laid on the 8th April. It so happened that on the 8th April the new Council took the oath. We felt that that circumstance was a happy augury for the next four years. At long last we were going to see a final settlement of all these outstanding complications. In view of the tenour of the debates which had taken place over the last four years, in view of the terms of the acceptance of the Carter Commission's recommendations by His Majesty's Government, and in view of the speeches which had been made in this Council by hon. members on either side, we naturally expected to find in that memorandum that the recommendations of the Commission were being fairly accurately followed.

Unfortunately when we came to read it, we did not find that to be the case. We are therefore faced as a new Council with the disagreeable and unexpected task of having to try and make a vehement last minute protest, and I say quite definitely that we feel we are not being fairly dealt with in that the conditions on which we accepted the Report, in spite of the sacrifices those conditions entailed

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on the European community, are apparently not going to be complied with.

That, Sir, is a somewhat serious allegation to make, and I must therefore endeavour to substantiate my grounds for making it. As this memorandum which was laid is the basis of our debate, I will try and confine my remarks to the memorandum.

In the first paragraph we are informed that two Bills will be shortly introduced, a Native Lands Trust Bill and a Crown Lands (Amendment) Bill. We quite realize that the introduction of these measures is a necessary prelude to the promulgation of the promised Orders in Council. But we would press, and the whole object of my opening remarks was to add weight to this request, that the "somewhat longer period" referred to at the end of the memorandum, in paragraph 11 "a somewhat longer period than the customary fourteen days' notice is required for the consideration of measures of such far-reaching importance" will not be too protracted, we trust. I again repeat that the complications and difficulties which are accumulating owing to the delay are manifold, and I do suggest that Government must have had time by now to make up its mind what form that legislation will take. Although I realize there are complications, I am sure Government will do all it can to implement these measures as soon as possible.

The next few paragraphs of the memorandum deal with native lands and the Native Lands Trust Board, and I do not propose to allude to those paragraphs, as I have already had an opportunity of making some suggestions on these subjects, and it seems as though most of the suggestions have been accepted.

That brings us to paragraph 8 on page 4, which refers to what, from our point of view, is the most important part of this memorandum in that it refers to the Highlands. Quite frankly, I must stress that this paragraph has occasioned intense disappointment and a justifiable sense that we have been misled.

The first obvious criticism, Sir, that we have to make regarding this paragraph is to draw attention to the careful omission

in all reference to the areas of which a definition of the boundaries is to appear in the schedule to the Crown Lands Amendment Bill of any such qualification of adjective as "European" or "White".

In referring to these areas in the past, it always has been customary to refer to them as the White Highlands, the European Highlands, or sometimes as the "Areas in which a European privilege obtains". Indeed, I would point out that in the very terms of reference which were given by the Secretary of State to the Kenya Land Commission the areas were referred to as "the area generally known as the Highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923". In their Report, the Commission consistently refers throughout that very lengthy Report to the European Highlands. The definition also appears in print in paragraph 9 of the Committee Paper, that is, in the Summary of Conclusions reached by His Majesty's Government, published in May, 1934. There they are again referred to as European Highlands. Going back in the memorandum presented to Parliament by the Duke of Devonshire on the 23rd July, 1923, "reservation of the Highlands to Europeans" was referred to, reiterating adherence to the policy of reserving the Highlands for Europeans which was definitely laid down by Lord Elgin when Secretary of State for the Colonies in 1908. Even in the Joint Select Committee Report published in 1931 the same phrase is used.

Of course, it is possible that when the Highlands Order in Council appears it will contain a clear definition of the word "Highlands" which is used in this paragraph, a similar definition to the one given in the terms of reference to the Land Commission in terms of reference which I have just quoted. If so, I suggest the memorandum should have stated that fact and set our minds at rest on this most important point. If that is not the intention, I trust that representations will be made to the Secretary of State to the effect that some such definition should be included.

The chief fault we have to find throughout those portions of the memo-

[Major Cavendish-Bentick] random which deal with the Highlands, is the studied ambiguity of its phraseology. We appreciate, Sir, the difficulties of the Secretary of State, and we do not doubt that he is anxious to give European settlers such security as he can without committing himself to anything too definite on paper. We appreciate the difficulties of his position with respect to the House of Commons, the Government of India, and certainly international arrangements and understandings.

But we cannot overlook the fact that the present position is not of our seeking. Promises have been made and promises accepted in good faith, and I maintain, and we all maintain, that any resulting inter-racial complications have got to be faced. In view of the responsibilities which a series of Secretaries of State have from time to time shouldered *vis-à-vis* the white colonists invited in the first place to come out to these countries.

We are quite prepared to admit that so long as the present Secretary of State, Your Excellency, and the present senior officers of this Government hold office and collaborate with the existing representatives of the European unofficial community, the proposed legislation outlined in this memorandum and the Orders in Council which are visualized herein may go some way towards clearing the position.

But, unfortunately, as you know, Sir, changes occur only too frequently. In a few years time an entirely different group of people will be dealing with these matters. When that time comes, it is always possible that the ambiguity of the phraseology will permit of an argument to be raised as to the precise meaning and intention of these enactments.

Sir, we are not prepared if we can possibly avoid it to hand down such a legacy to our successors. We should be traitors to the cause we represent if we took that risk. We are anxious, as anxious as you are, to avoid inter-racial complications, but there are occasions when, unfortunately, one has to come out into the open and admit that such complications do, in fact, exist. It is no good putting one's head in the sand and pretending that these difficulties are non-

existent. A policy of emulation of the proverbial ostrich, far from solving difficulties and avoiding complications, to my mind very often leads to increasing those complications a hundredfold.

I think we have sometimes to be honest, and openly admit that there are three races in this country, perhaps four, one should say. As far as possible our one desire is to collaborate and assist in securing the collaboration of all for the good of the whole. But, in a few matters and in certain respects, taking the wide view, I believe it to be in the interests of the future development of the Colony as a whole to come out into the open and insist that the rights of each race, and on this occasion, the rights of the white race must, in certain regards, be specifically recognized.

Nobody can say in view of the history of the past few years and in view of the attempts made to assist Government in implementing the Carter Commission recommendations, both in principle and in detailed readjustments, that the European community has not made, and willingly made, many sacrifices. We did so because we recognize the rights of other races. We are prepared to do so in the future for the same reason but, apparently judging from such information as is vouchsafed in this memorandum, the rights of Europeans who have come out here to play their part in developing this part of the British Empire, are now going to be conveniently overlooked.

This, then, is the first major objection we have to make to the proposals in this memorandum. We object to the deliberate omission of the word "White" or "European" before the word "Highlands".

We do not with some slight compensatory satisfaction that the boundaries of an area which will in due course be defined, which will appear as a schedule to the Crown Lands Amendment Ordinance, are to be unalterable. That, Sir, does not go far enough. That a block of land should merely be called Highland as opposed to a block of land to be called Native land does not give us the security to which we are entitled and to which we have been given distinctly to understand we should be accorded. More

[Major Cavendish-Bentick] especially is that the case when it is recalled that the native lands cease to be Crown lands, whereas the Highlands are to remain Crown lands.

I should like to refer once again to what has taken place in the past in order to prove quite conclusively the statement I have just made, that we were given every reason to expect that we would be given the security to which I have just referred.

Towards the end of my speech on the motion I proposed in 1934 on behalf of my colleagues, I dealt with the Kenya Land Commission recommendations regarding the White Highlands. At the risk of taking up a great deal of time, in view of the importance of my speech I propose to quote from Hansard exactly what I said in October, 1934:

"We now, Sir, turn to that part of the Report which deals with the definition of the European Highlands, in connection with which it will be recalled that the sixth term of reference given to the Commission is as follows:

"To define the area generally known as the Highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

It is an accepted fact that although it has, at any rate since 1905, been agreed that there was an area within which European privilege obtained, nevertheless the exact boundaries of that area have never yet been defined. Various declarations on this question were made, both by the Land Commission which sat in 1905, by Sir Frederick Jackson, by Lord Elgin, as Secretary of State, and in the White Paper of 1923; and subsequently precise boundaries of this area have been proposed by the Commissioner of Lands in 1924 (proposals which were modified in 1925), by His Excellency the Governor in 1928, and by a special sub-committee of Executive Council which submitted two reports in 1928. In the opinion of the Commissioners the proposals as regards exact delineation of boundaries which give the fairest interpretation as to what might justifiably be regarded as European

Highlands were the recommendations of the 1928 sub-committee of Executive Council. The Kenya Land Commissioners have, however, recommended considerable modifications to this sub-committee's proposals, notably by suggesting the exclusion of the Lerok Plateau, to which I have already referred; also by making specific recommendations with regard to a small block of farms to the east of Muhoroni, and by recommending certain readjustments of the Kenya and Elgon boundaries, the Mile Zone, and the Kapfumo block of farms. In addition, the Commissioners make a number of other minor exceptions and qualifications and in a schedule. On page 490, section 266, they set out a kind of profit and loss account in detail. The elected members have studied these recommendations with great care and with the definite exception of the somewhat vague recommendation made with regard to Lerok, we are prepared to accept the recommendations in their entirety, in spite of the fact, which is admitted by the Commissioners themselves in section 1978, that acceptance does entail very considerable sacrifices on the part of the European community—sacrifices which are all the more notable in view of the fact that we were led to believe that the gazetting of the native reserve boundaries in 1926 would settle the question of the requirements of natives in respect of land for very many years to come, and here we are already in 1934, substantial alterations have yet to be made. We realize, however, that at no time has any such thorough and meticulous inquiry into the whole position been made, and in order to achieve finally we are prepared to subscribe to the Commissioners' recommendations on the assumption that in accordance with paragraph 9 of the White Paper it is the intention of His Majesty's present Government definitely to accept once and for all the Commissioners' definition of the boundaries of the European Highlands, and we trust that such acceptance will be binding on successive or future Governments.

[Major Cavendish-Bentinck]

It is only fair to add that apprehension does still exist amongst Europeans that the extent of the Highlands may again be diminished, either by the Government of Kenya or possibly, should another Party come into power, by the Imperial Government in England. We have always understood—and our wholehearted acceptance and support of the recommendations contained in this Report entirely hinges on this one understanding—that the main object of the Commission has been to frame recommendations which would instill a sense of absolute and permanent security in the minds both of the natives and of the Europeans, and we therefore demand—and I think on this occasion we have a right to demand—that the boundaries of the European Highlands should be finally safeguarded by a suitable Order in Council so that we, the European community, who after all have been encouraged to come out, colonise and make our homes in Kenya, may in common justice—at least be given the same measure of security in regard to land as is given to the natives. I must, however, add quite definitely that in our opinion not even an Order in Council can furnish that security unless such Order in Council specifically provides for the grant to a statutory body comprised of the representatives of the whole of the European Highlands (as recommended by the Commissioners in paragraph 1496 of their Report) absolute power of veto over all land transactions whatsoever within the boundaries of the European Highlands on similar lines to the power accorded to the Native Lands Trust Board in regard to transactions in native lands.

Without this security, Your Excellency, we consider the whole work of the Commission as pointed out by themselves, will have been a waste of time.

Well, Sir, those were the conditions which we all accepted, and I may say that those conditions were repeated by every single European elected member who spoke during that debate in 1934, so that there can be no question that our

attitude has not been made perfectly clear.

What were the replies to that? Our speeches were replied to on the 24th October by the then Hon. the Commissioner for Local Government, Lands and Settlement. It will be found recorded on page 672 of Hansard, Volume II, 1934, and the hon. member stated to begin with, that:—

"I wish to endorse every word of appreciation of the work of the Commissioners uttered in this House, and to state that in my humble opinion the Colony owes a great debt of gratitude to them if and because they have brought finality to the problems which they were considering and for which no solution had appeared to Government for a number of years, and have dispelled, we hope for ever, the unhappy phantoms of uncertainty and disquietude."

Well, Sir, I can only say that if the hon. member was present here to-day, he could not claim, in view of the memorandum we have had laid on the table of Council, that the "unhappy phantoms of uncertainty and disquietude" have been in the least dispelled.

Again, speaking on behalf of Government, the hon. member said that His Majesty's Government had "accepted the recommendations of the Commission regarding the White Highlands"—the hon. member used the word "White"—

"After the issue in 1923 of the White Paper regarding the White Highlands, it was obviously necessary for this Government to define them. In the record of evidence and in the chapter which the Commission wrote on the subject, there have been recorded various proposed definitions which had been made from time to time to this Government; and when this Commission was appointed the matter was still inconclusive."

He goes on to say:—

"It was not inconceivable, in dealing with the first five terms of reference, that the Commission would make recommendations which would involve a diminution in the area hitherto thought of as the Highlands in previous tentative definitions. In point of

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fact, they did so, but in order to bring the same element of finality and security they advised that security should be given against further diminution of the White Highlands from the same cause save with the consent of the accredited representatives of the Highlands."

In my reply, I alluded to these remarks, and I congratulated the hon. member on his careful phraseology in his replies to this question. I quoted his words, and I repeated what I stated was the equally carefully phrased statement I had made on behalf of all elected members. I added that we on this side of Council were in deadly earnest on this particular matter. I would like to add now that, although four years have elapsed, we are still in deadly earnest on this particular matter.

That leads me to paragraph 9 of the memorandum, which provides for the establishment of a Highlands Board and lays down the personnel thereof. Again I must stress that we object, and we object strongly, to the ambiguity of this provision.

We notice, as an example of this ambiguity to which I refer, that it is proposed in addition to the Colonial Secretary and the Commission of Lands and Settlement for the time being, "five persons not holding office in the public service of the Colony" shall be nominated to the Highlands Board, that four of these shall be chosen from time to time by the European elected members of this Council, and one shall be nominated from time to time by the Governor. Although it is probably an extremely unlikely contingency, looking ahead I must point out that under such a vague provision as this it is permissible for a future Governor to nominate a person of any race.

We consider it should be made perfectly clear—and we have the right to ask that it shall be made perfectly clear—that any future Governor can only nominate a person of pure European extraction.

I am sorry to have to come into the open on these matters, but were we to fail to do so on such a vitally important

question, my own opinion is that although we might save a certain amount of trouble to-day we should be playing false to our successors and those we represent.

In paragraph 10 "the proposed functions" of the Board are delineated, and their primary duty would appear to be "to protect the interests of the inhabitants of the Highlands". Here, again, we feel that Europeans are entitled in equity to a more precise definition of what is meant. Otherwise it may be contended that there may be more natives than European inhabitants in these Highlands or, under certain circumstances, more Asiatics.

We consider that it should be clearly stated that, as far as the land is concerned, the interests it is the duty of the Board to protect are primarily those of the European colonists.

I would point out that some members of the Highlands Board or a future Governor might regard the proposed wording of what I understand is to be the Order in Council as suggested in this memorandum, as an instruction to deal with a matter, or any matters that may arise from the point of view of the interests of the greatest numbers. Indeed, some future Government in England might even issue instructions to that effect and yet be keeping within the terminology of the proposed vague wording.

In this respect, therefore, we cannot leave matters to our successors; we must protest at the present moment when we have a chance to do so by the fact that the memorandum is laid on the table. I admit that provision is made requiring the Governor to consult the Board on all matters relating to the disposition of land within the Highlands; but there is no provision requiring the Governor to accept that advice.

In paragraph 4 of the memorandum it is clearly laid down that nothing whatever can be done as regards native lands without the consent of the Native Lands Trust Board. We consider that if the recommendations of the Kenya Land Commission, especially in paragraphs 2152 and 1979—to the effect that equal security should be given—are to be followed, some reasonable degree of control

[Major Cavendish-Bentinck] must be given the Highlands Board. The mere fact that the Board might be required to give or withhold its consent under any ordinance which may in future be passed, in no way satisfies us in view of the fact that at the present moment there is no such ordinance.

Furthermore, I would again point out that it is perfectly clear that some such power of veto was visualised by this Government in 1934 for, as I have already quoted, the then Commissioner for Local Government, in answering on behalf of Government, said that in order to bring some ultimate finality and security they advised that security should be given against any further diminution of the White Highlands save with the consent of the accredited representatives of the Highlands.

We therefore consider, taking this portion of the memorandum as a whole, that the word "Highlands" should be defined or, alternatively, that the word "White" or "European" should appear in any proposed enactment.

We further consider that more power should be given the Highlands Board and, lastly, that that Board must be composed of persons of European extraction.

In conclusion, I would point out as a further plea that only in July, 1936, and I believe on a previous occasion as well, the present Secretary of State said in the House of Commons—

"I want to make it clear that the existing administrative practice which was first laid down by Lord Elgin, is to be continued. I wish that to be understood clearly both in India and elsewhere. The existing administrative practice of the Kenya Government which has been followed since 1908 will continue. In the area demarcated as the European area not by law, not by anything in the Order in Council, but as a matter of administration, that practice will continue in the future as in the past."

That statement was pretty clear, but Secretaries of State come and go, and policies change. If in fact it is the intention that the existing practice will in fact continue, why, when this opportunity offers it does now, cannot we have

that continuance ratified and made permanent by a clear statement in print of what, in fact, is intended by this legislation and by this Order in Council.

I admit that the Secretary of State does say that "there will not be anything in the Order in Council", but surely that is the very place and the very object of an Order in Council, to perpetuate and let us know precisely what he does mean, and we have the right to know what he does mean.

I think I have proved that we have at any rate justifiable grounds for saying that we have been led to expect the implementation of certain promises and understandings, and I think we have justifiable grounds for reading into the wording of the memorandum which was laid on the 8th of this month that we are not going to get what we have a right to expect. Be that as it may, I shall be interested to hear what Government have to say.

I would at least like to ask for and see whether we can secure from this Government a solemn declaration that what was said by Mr. Ormsby Gore in the House of Commons in 1936 is the policy of the Government of Kenya today and, perhaps more important, that it will be the policy of Government in future, which is that as regards the area demarcated as the European area the administrative practice laid down by Lord Elgin in 1908 shall continue. I trust that Government in its reply at any rate will be able to give us this assurance in terms which are not capable of being misunderstood.

It is no use talking of encouraging settlement, it is no use trying to pursue quite a number of avenues of development, unless at least we do know quite definitely and quite publicly what Government's policy really is.

Council adjourned for the usual interval.

On resuming:

LORD ERROLL (Kiambu): Your Excellency, I beg to second the motion moved by the hon. Member for Nairobi North. My only regret in doing so is that I had hoped that this question would have been settled long before I had the

[Lord Erroll]—honour of addressing members of this Council."

I know that in the opinion of every settler in this Colony the question of the security of the White Highlands is regarded as, if not the most, at least one of the most fundamental issues we have had to face for many years. We have for a long time lived in the hopes that security would be granted us. Our hopes were aroused not only by the recommendations of the Kenya Land Commission Report and the acceptance of it by the Governments concerned, but also by what I can now only describe as a long series of broken promises by successive Secretaries of State.

The elected representatives of the white settlers have done their utmost since the publication of the Report to assist this Government in every possible way to come to a conclusion and to help, in the delineation of the boundaries. But we are, I think, far worse off to-day than we were on the 7th July, 1933, when the Report was published.

I am in entire agreement with the hon. mover and the principles he has laid down on behalf of hon. members on this side of Council and, to my mind, it is quite obvious from the memorandum laid by Government on the 8th April that the wording of the Order in Council must be obnoxious to us. I am also at one with him when he says that under Your Excellency's administration and that of the present heads of departments of the Government here that there is little or no likelihood of our worst fears being realized. But I submit that we must look ahead and visualize another regime out here and another at home, and I cannot allow myself to put my successors in the position of accepting a gamble or being the victims of a gamble which I have taken on their behalf, and I suggest that that is what we are being asked to do to-day. It is not right that we should gamble with the only one tangible asset in this country, our land.

My particular purpose in intervening in the debate to-day, as indicated by the hon. mover, is to draw the attention once again of hon. members to another aspect of the position, one which I realize has

been mentioned in this Council before, one which I know the hon. mover himself has mentioned on several occasions, and one with which we never seem to get any "for-arder": the question of the Githaka claims in the Limoru area.

I would remind hon. members, firstly, that as long ago as 1919 or 1920 the then Chief Native Commissioner, Mr. Ainsworth, issued a circular to district officers concerned stressing that Githaka rights were to be regarded as rights of usage only and not as rights of ownership, and, secondly, all the farms to which I am about to refer to-day are freehold properties owned by European farmers. I know also that the position has been brought to the notice of Government through the usual channels, and that Your Excellency was good enough in June of last year to receive a delegation of Limoru farmers on the question.

But, Sir, the position has deteriorated to such an extent that I can hardly express it. It has become so much worse these last few months, and I submit it is only natural, if you allow natives to get away with it, that they will. And quite rightly. Why should they not? If they can try it on the dog and get away with it they tell their friends who also try to get away with it as well.

I can speak from personal knowledge of certain cases in the last few weeks. I have had an opportunity of seeing the farms for myself. I have been there and seen with my own eyes the damage done. I am referring in particular to nine farms in the Limoru area with forty-five claimant families resident on them to-day. When I say that some of these farms are only 60 to 180 acres in extent, that in one claimant family there are forty-five members, and that two families on one particular farm are occupying 150 acres of land, I think hon. members will realize that the situation is extremely serious. Very few, or only a certain number, of the claimants are even resident on the farms: they get people who act for them as dummies and who may be related to them in some indefinable manner difficult for us to understand as claimants for their rights. They also employ labour in considerable numbers to extend their cultivation.

[Lord Erroll]

The younger natives are extremely truculent. This does not refer to the older ones who have been there for many years, but to the younger ones. They take no notice of the wishes or desires of the European Farmers themselves, and they are gradually extending the land which they have cultivated in the past to such an extent that they are unable to cultivate the whole block, and so are leaving behind them land denuded of vegetation, a land of dust, which it will take years to recondition.

There is damage done also in many other ways. Another farmer I know of remonstrated only a short time ago with his squatters regarding the cultivation of the land. In a few days' time he found one of his pure-bred heifer calves had been poisoned. He sent a certain number of the organs to the Veterinary Laboratory, at Kabete, and I have their report signed by somebody whose signature is illegible on behalf of the Director of Veterinary Services! It states that arsenic was found in the rumen content, in the intestines, and in the stomach.

A sample of the soil was also sent to see whether the soil was impregnated with arsenic or not, and the report says that none was found in the soil. I think the inference is clear, and I need not go into that further.

The trouble now is that we not only find squatters on farms but natives in reserves (which is not realized) who believe they can get away with it and do damage without any further serious trouble coming to them. Only the other day some natives came out of a reserve, went on an adjacent European farm, cut down 1½ acres of wattle and took it back to the reserve. The chief offered the European as compensation Sh. 70 for estimated damage done of £70, or Sh. 1,400. The European owner did not, of course, accept the compensation. Three of those natives were prosecuted in court and found guilty and fined Sh. 15 each—Sh. 45 for £70 worth of damage!

Another serious factor in this position is that during the last few years—months, more especially—owners have had opportunities of selling off portions of their farms as residential plots, because in that

particular area of Limuru the amenities make it a fairly popular place to live in. But many sales have fallen through owing to the impossible position created by these claimants.

I know of one farmer who had a farm of which he had practically sold an 80-acre plot, and the intending purchaser had also chosen the site for the house. Rather, naturally, like all of us, he wanted to take a road to the house. Owing to the contours of the land the farmer realized that it would be necessary to align the road down one hillside and up the other. He started to make the road, and when he got to a certain part the squatter there refused to allow him to continue as he said the road was going through his land. And this in spite of the fact that this particular squatter had signed an agreement before the District Commissioner in Nairobi to the effect that he was prepared to remove lock, stock and barrel to another portion of the vendor's farm. This agreement the squatter afterwards revoked.

There is still difficulty in the negotiations going on between the intending purchaser and the vendor, both anxious to come to an agreement, the one to sell and the other to buy, but no solution has yet been found. I can give interminable instances of this sort to prove the mischief that is being done.

Your Excellency has set up a Settlement Committee for the express purpose of devising ways and means of attracting new settlers. Yet here, on the very doorstep of our White Highlands, thousands of pounds are being lost to the revenue of the country because, owing to the lamentable lack of energetic action on the part of Government, a position has been allowed to arise which almost precludes any owner selling land.

Is Government here to govern or be governed by a handful of truculent natives? Cannot Government understand the bitterness that must be in the hearts of people who see their land denuded day by day, denuded of vegetation? Cannot Government understand their bitterness and a growing sense of injustice, and above all, cannot Government understand their impotence and Government's apparent impotence to protect what is

[Lord Erroll]

after all their own? We should be proud having among us people who have shown forbearance and patience for so long. And yet they cannot go on.

For years they have been asked to wait a bit. I have letters from district officers dated twenty years back, saying: "Nothing can be done, but wait a bit, and in a month or two things will perhaps be better". Twenty months later, letters arrive saying the writers are still sorry that nothing can be done, "but perhaps next year the position may be improved". But we cannot wait for next year.

I must admit in parenthesis that every letter from a district officer shows great sympathy, but this people want more than sympathy—they want justice. How much longer can we wait on their patience?

I should like to turn now from European-owned farms to the question of the removal of natives from the Tigoni residential area. We are informed that a large number of natives have been removed, and that only a very few are left. I have seen with my own eyes gangs of boys of fifteen or twenty digging up the hill-side and slopes near the road, and we talk about soil conservation and erosion. What I do actually believe has happened in this particular area is that some of those natives who have been removed are gradually filtering back, not necessarily to rebuild their huts but rather to assist those natives who refused to go to cultivate large areas of land so that when the time comes and restitution has to be made and claims settled, those claims will be greatly increased and probably shared communally.

I always have been, and always hope that I shall be, an upholder of native rights regarding just claims to land. But have our own settlers no rights? Have they no just claims? I am perfectly aware of the answer that I shall receive; that is: "We can do nothing until local legislation is introduced". But, Sir, it is nearly five years since the Land Commission Report showed us how to deal with these two problems. It showed us in paragraphs 367 and 394 what we were to do.

In conclusion, Sir, I can only appeal to Government with all the strength at my

command to bring in this legislation not in six or twelve months' time but now, so that this unhappy position which is doing nothing but harm and which can only be described as intolerable and potentially highly dangerous may be settled once and for all.

MR. PANDYA: Your Excellency, the motion is the result of the laying on the table of this memorandum by Government. We do not wish from our side to bring in a separate motion or to move an amendment to this one, but we shall be satisfied with having this opportunity to express our views on this issue. So far as the motion is concerned, we shall have to oppose it.

Before I come to the questions raised by the hon. member, I shall deal with one or two aspects of the native lands question as mentioned in the memorandum.

We all agree with the proposed security by an Order in Council being given to native land in this country. The reason for that agreement is that there are possibilities of inroads on this land by other people if the natives are not given that security immediately and as firmly as possible. It is as a result of the policy of Government and Secretaries of State since 1926 that the present position of insecurity exists as far as native lands are concerned.

With regard to the proposed Trust Board, according to paragraph 5 of the memorandum there is provision for representation on that board of the European elected members of Legislative Council by one of their number. This is a rather unhappy position, and very unfair from the point of view of native interests. I do not impute any motives, but if we have regard to the history of the land transactions in this country I think it will be fair to say, and I hope we all agree, that there are conflicting interests in regard to land between natives and Europeans. In view of the feelings of natives in this matter, it would have been far better if this board was composed entirely of independent men who have no axe to grind in regard to native lands. I do not say that the member who may be appointed to that board will have any personal axe to

[Mr. Pandya] grind, but the point is quite clear: that the interests are conflicting.

If we take another reason, and at the present moment we are entirely in the dark as to the reasons why this proposal has been made by the Secretary of State, but it is for the reason of safeguarding European interests in native lands or reserves, or even from the point of view of associating the European or Indian communities in the trusteeship of the natives, I submit that from that point of view the Indian side has also a claim for nomination on that board.

I should, therefore, like to submit that in view of the very large Indian interests involved in native reserves—not particularly in land, but everybody will agree we are interested in the setting apart of trading centres and in regard to markets for produce, and we have also certain interests in water-mills and other things. All those interests will come up for consideration before such a board, and it is only fair that Indians should be appointed on that board to represent the case from their point of view.

I notice under (d) of paragraph 5 that there is provision for a person to be nominated from time to time by the Governor. Your Excellency has power to nominate someone, and I submit that when the time comes Your Excellency should take into serious consideration the case I have just submitted for the nomination of an Indian member on that board. At least we have no axe to grind in regard to land interests, and I think it could be absolutely relied upon that the Indian member would be helpful towards the preservation of the security of native lands and the improvement of the reserves.

Coming to the question of the Highlands, the hon. mover made a point and complained at the very great delay in coming to the conclusions or to the decisions in regard to the security of the White Highlands. I should like to submit that the question we are discussing to-day is not a parochial question, it is not a question which interests only a few people in this country. If I may, I should like to make my remarks from a more general and broader point of view in-

volving various other interests, and those interests are not necessarily local but are wider, and are Imperial interests.

Living in this country we should not forget that this Empire is composed of various races who have rights to settle in this country. If we take this land question from that Imperial point of view, the delay complained of is not the right viewpoint to take; other viewpoints must be taken into consideration. Even at the end of the delay, from our point of view we regret to find that our position is worse than it was and that the Indian side has not got a fair deal in the settlement.

Under this proposed Order in Council the administrative practice will be continued, but the principle of that practice is based on an unjustifiable racial bar against His Majesty's Indian subjects in this country. There is no doubt, and it is natural, that it will be very much resented in every part of India, and we who have come to this country are not only speaking for ourselves but for the whole of the Indian people, because this bar is not based on any qualification; it is based on the race. It is most galling to the sense of self-respect of the Indian race that they should find in a colony of the Empire this disqualification for the holding of land in the Highlands, and when particularly that disqualification is in comparison with foreigners, I think that all those who are patriotic Britons will agree with me it goes much further than it should be allowed to go in the interests of the Empire as a whole.

The position is, briefly, that to-day in this Colony a German, an Italian, a Greek, or a Bulgarian can come and settle in the Highlands, whereas a British subject from India—even His Exalted Highness the Nizam and other Indian princes—would be refused to be allowed to have even ten acres of land on the Karen Estate. They are good enough for big Empire affairs and are considered pillars of the British Empire, but not good enough to settle on the Karen Estate.

This sort of disqualification is a thing to which I should like to draw the attention of my hon. friends on this side of the Council. If they were in the position

[Mr. Pandya] in which we find ourselves to-day I should like to draw the attention of my hon. friends on this side of the Council. If they were in the position in which we find ourselves to-day I know the way in which they would handle the situation. They would have been furious and have threatened all sorts of things. But we are here to argue reasonably, and to request and reasonably put up our point of view, which is this: that we might be treated as you would like to be treated yourselves.

Have we not a claim on your consideration and sympathy that we who come from the same Empire should enjoy the same privileges in regard to the occupation of land?

It is not only a local feeling but, as I prefaced my remarks by saying, this feeling finds expression throughout the Indian Empire. I would not take up the time of Council but I think it would be fitting for me to make it quite clear that this feeling comes from a very responsible source.

We had recently a debate in the Council of State in India, the Central Government of India not controlled by Indians yet. The view expressed by the Central Government must receive consideration. A motion was moved by the Opposition in that Council, and with your permission, Sir, if I read it it will make the whole position quite clear. It reads:—

"This Council recommends to the Governor-General in Council to take prompt action not only to prevent the issue of the proposed Order in Council by His Majesty's Government implementing the recommendations of the Kenya Land Commission but also to remove the ever increasing disabilities imposed on Indians in Kenya, specially in pursuance of the so-called administrative practice which prevents Indians from acquiring and occupying land in the Highlands by grant, transfer or lease and which is now sought to be legalised and so widened as to shut out Indian settlers both from the African reserves and the European Highlands and to discriminate against them in favour of even non-British European settlers."

This motion, proposed about a month ago, was accepted by the Government of India, and in a nutshell it voices the feelings not only of Indians in India or of Indians in this country, but of the Indian race wherever they have settled. It may be noted that the whole race has expressed itself in this view.

We are told that in this Highlands Order in Council there will be no legal disqualification, that it will involve no statutory inhibitions in regard to the acquisition of land in the Highlands. I quite agree with that contention, because from what I can read in this memorandum it appears there will be no legal disqualification. But the people in India and the responsible people who brought this motion in the Council of State made it quite clear that they believe that the proposed Order in Council, by implementing the recommendations of the Commission, would be legalising the racial discrimination.

That statement was made in the Council of State by the mover of the motion, and when we come to the Government reply, the member in charge said he—

... accepted the resolution with great pleasure, and stated that it was and had always been the policy of the Government of India to safeguard the honour and interests of Indian nationals abroad. He quite appreciated that the implications of the proposed Order in Council would be to give moral acquiescence to the administrative convenience. The Government of India had already represented to the British Government the strong feeling in India on the subject."

A great point was made by the hon. Member for Nairobi North that in this memorandum the Highlands are not qualified by the word "White" or "European". I do not know whether there is any necessity to define any geographical land by any colour, but if there is I think it is obvious that the right colour to use would be green or yellow. If there is rain, they would be green, otherwise we would have the "Yellow Highlands", and perhaps when there is no vegetation, by the colour of the earth we can call it the "Red Highlands" (Laughter).

(Mr. Pandya)

But I cannot imagine how the word "white" would be proper for that particular section of land. In any case, I can quite understand what is at the back of that word, and I think it would be very unfortunate if anything like that is to be prefixed to the word Highlands. The situation in the world changes so fast, the positions of the various countries change so fast, that the time will soon come when these Highlands will have to be thrown open to other races, so that we had better leave it without any prefix.

I think the statesmen at home have more consideration of the various issues than we think of in this small colony. The hon. mover said that we have in this country three, or four, races, and that he would like the rights of each race properly recognized or separately recognized. He has claimed recognition of the rights of the European race in regard to the Highlands, but he did not say what he felt of the rights of the other races. If, as he claimed, this is in the interests of the country as a whole, I do not think it would be statesmanlike to divide that country into small groups of various races. So far as economic benefit is concerned, it would be unwise to do that, because the economic benefit would react on everybody, whether the lands are suitably utilized by Europeans, Indians or natives.

That classification is not justified, and I think, from our point of view, while we do not claim to have any special reservation for Indians in the Highlands we do claim that in the interests of the whole country the interests of all races ought to be recognized. In regard to landed interests, the interests of the Indian race have not been recognized. Not only that, but in this arrangement they are particularly debarred from having any right of ownership in the Highlands of this country.

The hon. member complained that Government has not considered the viewpoint which was placed before them for so many years in regard to the recognition of this principle of reservation for the European race. I think he is on a worse wicket than usual, because what is the history?

The history is that the thing started from a little promise, in a little informal conversation, and ultimately administrative practice or convenience was the word coined for giving some sort of recognition to that thing. Sir, that administrative practice which has worked for so many years to the detriment of other races is now sought to be regularized in one form or another, and to give what is certainly a step forward beyond the old administrative convenience.

Therefore, I cannot see where his complaint is. The complaint is from our side, that instead of keeping on with this administrative practice, which was altered as and when administrative practice desired, it is now being put a little higher in the form of an Order in Council, which makes it more difficult for us to get anything later on.

There is another point also which takes this a step forward. In this memorandum it is provided in paragraph 9 that the Highlands Board shall be appointed. Is that not a recognition of the principle of reservation? We are most strongly opposed to these things, because we are convinced that these two or three things mentioned in this memorandum are giving an unqualified recognition to the principle of reservation on a racial basis to which we are all opposed.

This Highlands Board is a step forward in that direction, and we are therefore opposed to it.

Now, it will be said that this board is only an advisory board. We have in this country many advisory boards, and we know that in most cases the advice offered is usually accepted, and in due course the advisory function may be changed. We have also another instance in the Bill which Government has brought forward and which will be discussed to-morrow regarding shops in rural areas, where the advisory function of a district council is being changed into the permanent function of deciding. There is nothing to stop that taking place in future if once this concession is made about the advisory capacity of the Highlands Board. We are quite sure, as far as our experience in this country tells us, that this advisory council will dictate even taking the legal and technical

(Mr. Pandya)

phraseology, Your Excellency has authority to over-ride that advice, but there is nothing to prevent later on making it obligatory.

In regard to this, the feeling of the Indian community here, and even in India, is that they treat this question as a test case of the right to play their part in the Empire scheme, and I think it quite right if I quote here from the debate in the Council of State, when one member expressed himself in this fashion:—

"Is there going to be racial discrimination in a country directly administered by the British Colonial Office? If that was going to be so then how could Indians be expected to have any love for the Commonwealth when membership of that Commonwealth did not ensure equality of treatment to its members? Let the Government of India remember that India's allegiance to the British Commonwealth depends on the satisfactory solution of the Kenya issue."

I should like to appeal to hon. members here that it is not a local or parochial issue, for we cannot control the feelings of millions of people in India by simply deciding here that we should like to have this done. You can see that the feelings on this question are very serious, and it raises issues of very far-reaching importance, so that I would appeal to Government that in these Orders in Council there should be nothing which gives any recognition to the principle of exclusive reservation. Further than that, there is no necessity for this Highlands Board, because it would mean a step forward in that direction.

There is a provision, according to paragraph 9 (c), in the formation of that board that one member can be nominated by Your Excellency, but the hon. mover made it clear before I submitted my case that that nomination should be a man of European descent. I was going to say, if it ultimately came to the worst, that in view of the very large interests we have in the commercial and industrial development of the Highlands areas there should be a recognition of them by allowing an Indian member to be on that board. It is a lost hope but still, my plea is quite

justified, and I hope it will be sympathetically considered.

Sir, I oppose the motion.

**CAPTAIN LONG:** Your Excellency, in supporting this motion, so ably put forward by the hon. Member for Nairobi North, and seconded by the Right Hon. the Earl of Erroll, I would like to draw attention to the fact that the European community in this country accepted the Carter Commission Report much against their will and at great sacrifice, in order to get the position settled once and for all on the lines laid down in the Carter Commission Report and agreed to by the home Government.

I am sure that if that is admitted, Government must feel that it is their very definite duty to get this matter settled as soon as possible. In fact, the European community in order to achieve this gave up what was a part of the White Highlands. I refer in particular to land which was given up by the Masai in the north in exchange for other land in the south, and this land, in the ordinary course of events, should have been given out for European settlement whereas it was leased to the Samburu.

Now, when I saw that the impression I got as a farmer in this country and not as an acting politician, I remember feeling perfectly well when the Carter Commission Report came out (and certainly everybody was saying what it was going to do for us) what is the use of it, and we were persuaded and readily so by the Elected Members to accept it and settle things once and for all.

To my mind if it is not settled, and I hope nobody will take offence at what I am going to say, if it is not settled now, once and for all, it is on a par with a man who takes you for an interesting walk, points out a view and then hits you behind the ear. Because if the word "White" or "European" is left out we are left with nothing.

**MR. GHERSI:** Your Excellency, I would like to support this motion too, and as I am a representative of one of the largest and most important agricultural districts in the Highlands, I feel very



[Mr. Gheris]

strongly on the subject. I have been recently studying the Carter Commission Report, and up to a stage I was prepared to believe that the omission of the words "European" or "White" in this memorandum was possibly a printer's error. But having read Chapter IX of the Carter Land Commission Report, a chapter which consists of eleven pages only, I find that this word "European" occurs on fifty-two occasions. So I suggest that there can be no doubt in the minds of that Commission as to what their terms of reference were.

I submit that while we may have every confidence in you, Sir, and the heads of departments here, we have got to look to the future, and if the words "European" or "White" are not included in this Order in Council we shall be betraying the European settlers and their children. I suggest that it is incumbent upon us to see that this measure in its present form is not steam-rollered into law, and if there is any suggestion of that taking place I urge you, Sir, to first obtain the voice of the Colony.

MR. SHAMSUD-DEEN: Your Excellency, I should have thought that members of this new Council would at any rate have waited a while, and given us a breathing space of about six months, before bringing any racial question before this Council. That, however, was too good a thing to expect, and in the first session and within a very few days of the inauguration of the new Council we are confronted with a motion on which, if they keep quiet, it will be nothing short of criminal negligence on the part of the Indian members.

I would make it quite clear from the very outset that this is really a quarrel between the unofficial European members of this Council and Government or, more exactly, the Government in London. What the unofficial European members say quite plainly is: "We do not trust the local Government, including the Governor, we do not trust the Government in England and all the people who are running this country and the rest of the British Empire, and we fear that changes in future Governments will be going back

on what has been given to us", and so forth.

The hon. mover referred to the Command Paper. That Command Paper in itself is not a document that can easily be ignored or which any future Government in England can repudiate what is contained in it. I submit that the Command Paper in itself, if our European friends have any confidence in the British Government at all, has the full effect and force of law behind it if the words of the member of any Government mean anything at all.

After all, what was the Land Commission asked to do? They were asked to define the area of the White Highlands. They have done that, it is contained in this book (the Land Commission Report) which will remain on the records of Government for all time. That is all they were asked to do, and they have done it. They were never asked to choose any method or means of security, and they have gone out of the terms of their reference in doing so.

This particular question has been coming up in one form or another for the last three or four years in different ways. I was rather struck by the remarks with which the hon. Member for the Rift Valley concluded his speech, when he said: "If you don't insert the word 'White' before Highlands in the memorandum or in the Order in Council we shall be left with nothing". That was surprising to me.

Why are they left with nothing? Are they not in possession of property deeds signed in the name of His Majesty the King, giving them a title of no less than 999 years for every acre of land they possess? What is there in the world to take away from them any form of properly executed deed by the Governor of the Colony in the name of the King? They have everything unless they suspect really that there are some European farmers who would give their farms away to Indians, there is absolutely no need for any kind of pledge at all. If I were in the happy position that they are, if I had all the heads of departments of my country and the Governor of the Colony and Secretary of State sitting in London as my countrymen, and the other

[Mr. Shamsud-Deen]

people in charge, unless there was something radically wrong with my mentality I should not entertain the slightest fear or danger of insecurity. Yet they always keep harping on this question, and do harm to themselves and to the Empire.

The debate on this motion and the Squatters Bill yesterday has revealed another skeleton in the cupboard. I for one did not realize that, quite apart from the land that has been set apart for the natives in this Colony by the Land Commission, there was a very large number of the native community on the European Highlands for whom even the Carter Land Commission Report does not make any specific recommendation as to where they are to be settled, and there are no less than 110,000 to 150,000 according to the figures contained in this Report.

I was rather surprised when the hon. the Chief Native Commissioner yesterday told us they were trying to find a suitable area where to settle these squatters. I think he mentioned one hundred square miles which they needed for the purpose. Now, Sir, one hundred square miles on which to settle about 150,000 people is a very poor solution of the problem. The density of population will be something like 1,500 to the square mile.

So much has been said about squatters doing damage to property, and that Government are unable to do anything to remedy it. We all know what the original policy was: that it should be recognized by all those to whom the land had been granted that where there were natives on the land they were not to be moved from that land. Of course, in most cases the natives, it is true, came on the land after it had been alienated, but it is difficult to discriminate to-day as to who were the actual people on the land when it was alienated and who came afterwards.

After all, what is the position to-day? This land at any rate did belong to the Africans. The Europeans and the Indians were always invaders, nothing more or less. They robbed and took away land belonging to the natives of this country, and we all know that in Kikuyu and Limoru there have been some very serious infringements of private owner-

ship, which were even admitted in the Commission Report.

From the Indian point of view, what we think has, I believe, been ably expressed by my colleague, that we are being gratuitously insulted in being told that in a Colony administered by the British Government we cannot even talk about equal rights with British people; we cannot even have equal rights with enemies of the British nation. That is what it comes to. That has been carried on to such a madness that while my hon. colleague mentioned a hypothetical case of an Indian Prince who would be refused permission to buy land in a particular area I can quote an actual case that took place, that of His Highness the Aga Khan, who is President of the Assembly of the League of Nations, an international institution, who is known all over the world.

I think that if I was personally insulted I should not take it seriously on being told that I could not have land in such and such a place. That would be a personal insult to me, but in this instance it is an insult to the whole of the Indian nation, because the Aga Khan is admittedly one of the highest individuals of the Indian community, which fact is admitted by the British nation themselves. Yet he is denied a right which could be claimed by any man from Czechoslovakia, any man from Europe.

That brings me to the fact that this is another violation of the original idea contained in the White Paper of 1923 which has been quoted *ad infinitum*. In that White Paper it is laid down that Indians were not allowed to own agricultural land in what was called the White Highlands. This particular instance I have referred to consisted of an application to purchase land for residential purposes in a residential area, and not agricultural land, but the practice has been stretched to almost absurd limits. That White Paper gave the Indian community a guarantee that whereas they were not allowed to have agricultural land in the Highlands, they would be allowed the fullest liberty of taking part in the development of commercial and industrial undertakings in the Highlands.

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Of course, they were also allowed perfect liberty for acquiring land for residential purposes.

This is going too far indeed, when you refuse, or Government veto, a perfectly legitimate transaction for a piece of land for residential purposes to an Indian who, as I have stated, is considered to be a person that any community could be proud of having in their midst. You cannot say that he does not know western manners and western amenities, and how could there be any opposition against that application?

That brings me to a series of violations of all the pledges that have been given to the Indian community in the past.

Lord Elgin gave a clear pledge that it was not consonant with the view of His Majesty's Government to impose any legal restrictions upon His Majesty's subjects in acquiring land. You can still say there is nothing legal to prevent them acquiring land, but what has been done in the past? Under the pretext of this administrative convenience miles and miles of land have been granted to Europeans, and Indians have watched it tacitly and passively as helpless witnesses. They have always raised objections but said: "Let the Europeans have it, we will wait".

Again, we are told that we cannot even purchase land from people who have acquired it. Here is another violation and a distinct departure from past administrative practice.

As I have said, although heads of departments are not my warmest friends or those of Indians, Indians have the fullest confidence in them, and are leaving the question of grants in the hands of the Governor and his heads of departments. But, with due respect, we cannot say the same thing about our unofficial European community, because we contend they do not exercise the same sense of responsibility towards their fellow subjects as is done by the Government officials themselves.

On this Highlands Board there is going to be a preponderance of unofficial Europeans. From the speeches we have heard this morning and from what is

contained in this memorandum, it will be an entirely white board, because if the intention of Government was to nominate an Indian, I see no reason why it was not mentioned. European elected members are specifically mentioned, but because the interests of the Indians clash with Europeans there is no specific mention of them or provision for the inclusion of an Indian member on that board. That, I submit, is another violation of past practice.

I cannot lay my hands at the moment on the Hansard of the House of Commons to make quite certain what the Secretary of State said, but I know he did say that the definition was to be "Non-native Highlands"; he never mentioned "White" or even "European" Highlands. He said there should be a definition of non-native Highlands, and that there would be no legal disability for any Indian subjects of His Majesty in acquiring land or buying land in the Highlands. At any rate he said there should be no legal disability.

I do not know what is contained in that Order in Council, but it is definitely a recognition of an immemorial practice that has been going on for the last thirty years, and I hope that it will not be the practice for all time.

I feel that it is really good luck that Government have not hastened the introduction of the local legislation or the Order in Council. A number of things have been discovered since. For instance, this question of finding land for squatters. Things have also changed considerably to-day. I was thoroughly sick to keep hearing about Europeans and European Highlands. I think the condition of Europe to-day is such that the inhabitants of Europe cannot take a very great pride in what is happening in Europe to-day. If you talk about the British people, yes, I would listen, but for God's sake do not talk about Europeans.

And, Sir, I do not think my friends realize what harm they are doing to the Empire to which they belong. I do not think my hon. friends on this side of Council really represent Europeans at all. I have a very clear idea that the definition of the voters who sent them to this Council excludes all those who were

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not British and could not vote for them. If those hon. members have come here by the vote of the British people and advocated the cause of the British people, I could understand it, but when they talk about Europeans and Whites it is puzzling. I really wonder if there is any European colony in the world where the nationals of that colony—take the Italians in Ethiopia, or the Germans—would advocate the cause of the British people the same as this Council advocates the cause of all non-British people? I should like my hon. friends to have some practical test of this, and if they have ever been to Italian Somaliland I should like to see what sort of right they have there or if they would find any Italian who would advocate their cause in the same way as we advocate the cause of non-British people here to-day.

I honestly think that if there was a war, the enemies of England would not be able to do the same amount of harm that I feel Britishers here are doing by bringing this totally unnecessary motion before Council.

I have recently visited India, and I hope I know something of the feeling that exists there. Whenever I mentioned even to a European from the Central Legislature the sort of thing which is happening here, they were astounded and could not believe that British people could advocate such a thing. That is not only the feelings of Indians either, but of the united country, including the Government of India, the European group, the Hindus and Mohammedans, of all parties. They think it is an insult that we should not possibly stand.

That is why I say, although this is a small part of the Empire it will be found that a handful of Europeans are doing such great harm to the Empire as no enemy of Great Britain could possibly do.

Some hon. members have mentioned something about the seriousness of the situation since the Report was published. I could not quite catch where the seriousness came in or where they had suffered from lack of the Order in Council. If there have been one or two trespasses by

native squatters or native labourers, that does not justify Government being hustled to introduce the Order in Council; that cannot constitute grounds for this motion at any rate.

I do not think I should take up the time of the Council very much longer, but I would remind my hon. friends that those days when they used to talk about the "white man's burden", European prestige, and all that, have gone. If we were to talk to an ordinary intelligent native of the Colony to-day he would tell you that from the reports he hears of what is happening in Europe the Mzuungu is not the same sort of figure he used to respect about twenty years ago, so that it is no use talking about the white man. If we want to talk, let us talk about British subjects, and come to some sort of arrangement about the place in which certain British subjects would prefer to settle. I would certainly listen to that.

I would also remind my hon. friends that the delay in the introduction of the definition of the Highlands is greatly to the advantage and benefit of the white settlers in this country. There was a time in this Council when I myself asked for a definition of what is called the "Highlands". If the Highlands had been defined then, they would only have ranged from Kiu to Fort Ternan, but by the question being delayed they have been enlarged. Hon. members are talking about having lost something, but what they really mean is they have lost the opportunity to get more land for future individual farmers, and they are not able to do it.

So far as Indians are concerned, there has been included in the Highlands all land from Fort Ternan to Muhoroni, even to Kisumu. Any land which is owned by Europeans in Highlands to-day, and that is where they have gained, whereas in 1922 or 1923 they were not able to get that. All land acquired by Europeans subsequent to 1922-1923, even in the Lowlands, has been included in the Highlands, so that they have not lost but gained a lot.

I heard some suggestion about the locality of the land for the squatters, and it was also mentioned in the Report about Kikuyu squatters being given some

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land in the Mara River neighbourhood in the Masai country. We know the land in that vicinity is arable, but it is not advisable to settle a tribe in the land of another tribe who have always been at war with each other. In the present circumstances it is impossible to find land for the Wakikuyu in Kikuyu. The density of the population of Kikuyu exceeds that of India or China. There is no room for any more people, not even for those who are there at present. How could they accommodate 150,000 squatters with half a million cattle and sheep?

There are so many other things that do not happen although there is no law against them. For instance, I cannot possibly expect now, or at any future time that an Indian will become a judge or magistrate here, although there is no law against it, but we know the power is entirely in your own hands. I cannot expect my hon. friend on my right (Mr. Maini), a barrister at law, to hope justifiably for a seat on the bench or that he can ever be appointed a magistrate in this Colony. There is no law against it, but it is simply not done. Therefore, although my hon. friends keep speaking of what they have lost, you will find there is no loss at all, and there is no fear whatsoever as to the security of what they have got.

When the world has got clear of the present clouds it will be time enough to talk about such motions as this, say in four, five, or ten years' time, but this is a most inopportune time for bringing it forward. I am not using any expression of threat when I say that, if a discriminatory measure of this type is introduced, it will certainly hasten the disintegration of the Empire, because it would be to all Indians merely because they are members of the British Empire, and especially it might have serious repercussions in obtaining men and money to defend the Empire in case of another war.

The debate was adjourned.

## ADJOURNMENT

Council adjourned to 10 a.m. on Friday, 29th April, 1938.

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Friday, 29th April, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

## MINUTES

The Minutes of the meeting of 28th April, 1938, were confirmed.

## PAPER LAID

The following paper was laid on the table:

By THE HON. THE ACTING COMMISSIONER OF CUSTOMS (MR. NORTHRUPE): Annual Trade Report of Kenya and Uganda, 1937.

## ORAL ANSWERS TO QUESTIONS

No. 5—WORKMEN'S COMPENSATION MODEL ORDINANCE

MAJOR CAVENDISH-BENTINCK asked:

Why, until specific application for one copy was made, did Government fail to circulate to Elected Members, or to the Elected Members' Organization, a copy or copies of the revised draft of the Workmen's Compensation Model Ordinance (East and West Africa) together with the Report of a Sub-committee of the Colonial Labour Committee appointed to revise the Model Ordinance, although this document was comparatively widely circulated in other directions by Government, owing to the obvious importance of the subject to all sections of the community?

SIR ARMIGEL WADE: Copies were circulated to bodies representing interests which would be directly affected by such legislation. No reason was seen to circulate any other bodies at that stage.

MAJOR CAVENDISH-BENTINCK: Arising out of that answer, Sir, in view of the fact that these bodies do apply to elected members very often, could we get an undertaking from Government that at least one copy of this sort of document be sent to the Elected Members' Organization?

SIR ARMIGEL WADE: I think the hon. member will agree that it is quite impossible for me to select any particular section of this Council for special treatment, so that at present I could not give the assurance that the European Elected Members' Organization would be the recipients of copies unless I am in a position to extend the same courtesy to other sections of this Council.

No. 9—MASAI WATER SUPPLIES

MAJOR JOYCE asked:—

1. What steps are Government taking to implement promises made to the Masai to provide and improve water supplies in the Kedong and Simba areas respectively, in exchange for cattle to be supplied from those areas to Messrs. Liebig's, Ltd.?

2. Referring to question 1 above, in view of the fact that the Masai have already supplied a large number of the cattle referred to, when does Government expect the work to be started and completed?

MR. HOSKING: 1. Surveys and detailed estimates have been prepared for two water supply schemes using the Usao-Kedong and Simba springs. Applications in respect of these two schemes are at present before the Water Board.

2. The work will be started as soon as the Water Board has approved the applications. In the meantime the Government Geologist and the Hydraulic Engineer are investigating at Simba an alternative scheme which it is hoped to start almost immediately. The importance of making an early start both at Simba and in the Kedong is fully appreciated.

No. 11—LAND AND WATER PRESERVATION LEGISLATION

MAJOR CAVENDISH-BENTINCK asked:—

When does Government intend to introduce the proposed Land and Water Preservation Bill or some similar measure?

SIR ARMIGEL WADE: The preparation of legislation of the nature indicated is one of considerable difficulty but it is hoped to publish a Bill for criticism before the end of the year.

## KENYA LAND COMMISSION RECOMMENDATIONS

MOTION: DEBATE RESUMED

The debate was resumed.

MR. MORTIMER: Your Excellency, the motion now before Council deals not so much with matters of principle as with the necessity for immediate action to carry into effect the principles already approved.

I would first of all emphasise that this Government yields first place to no person and to no body of persons in its desire to foster and encourage in every way possible that sense of security in land matters without which no permanent progress can, of course, be possible. Government fully recognises the urgency of dealing at the earliest possible moment with these very important problems.

I want, if I may, to take this opportunity of explaining, not only for the benefit and information of this Council but for the information of the public in general, both in this Colony and elsewhere, what action is proposed and what has already been done to carry out the intentions and recommendations of the Kenya Land Commission.

The Land Commission Report was, of course, as you know a very large document, containing a mass of recommendations, dealing not only with matters of great principle but also dealing with minute and somewhat intricate problems. There were something over 100 of the minute detailed recommendations requiring attention. These had to receive individual action, and I am happy to say that, with the exception of those requiring legislation to be put into effect, they are practically all now carried out.

Just in passing I would refer to the financial side of carrying out the Commission's Report: As hon. members are aware, £50,000 was voted by the Imperial Parliament for assistance to Kenya Government in carrying out the intentions of the Commission. Of that sum, practically all has been spent: on the purchase of land to be added to the native areas, nearly £21,000 has gone; in compensation to natives a sum of something over £9,000 has already been spent; and there is in reserve for definite commitments under this heading a matter of

[Mr. Mortimer] something over £8,000. I will not go into details, but the result is that a matter of only about £200 remains unallocated.

The motion before Council requires immediate action to put into effect the principles already acknowledged and accepted, and that the legislation should conform strictly both to the conclusions reached and accepted by His Majesty's Government in the White Paper Cd. 4580, published in May, 1934, and to the recommendations accepted by this Government in October, 1934.

The intentions of Government with regard to the legislation have been explained fairly fully in the memorandum which is now in the possession of hon. members. These legislative proposals conform strictly to the Cd. Paper No. 4580 and will, with certain minor alterations rendered necessary, carry out the recommendations of the Commission as accepted by His Majesty's Government. The debate in 1934, to which reference is also made in the motion, was based on a motion by the hon. mover of the present motion, and the only definite request made in that motion was that full consideration would be given to the locally expressed views in regard to the detailed recommendations. That motion was accepted by Government and has been meticulously carried out. The local Government and the Secretary of State have fully considered all the locally expressed views put forward at that time, and at all other times on this vexed subject.

Complaints have been made by hon. members opposite of the delay in carrying out the recommendations of the Report. One is bound to admit that delay there has been, a very much longer delay or a very much longer lapse of time than was expected when the Commission reported. But, I suggest, there have been very definite reasons for that delay which may be accepted as adequate.

First of all, the Report recommended quite a number of acquisitions and purchases of land from various parties for addition to native areas. The negotiations took quite a long time. Some of the negotiations were rather delicate, parties outside the country were involved, and months and months went by on individual

negotiations before results could be achieved. Then there had to be various boundary alterations, excisions from forest reserves made, and all those necessitated survey work. An Order in Council by its very nature presupposes at any rate a certain amount of finality, and it was necessary to ensure that all the boundaries of the various areas to be confirmed in the Order in Council were fully known and could be accurately described.

Now I am able to say that the work is so far finished, that adequate descriptions of all the boundaries are now completed and ready for publication.

So far as the legislation itself is concerned, measures of such far-reaching importance must, of course, be very carefully prepared and be subject to the closest scrutiny. These factors have accounted for the long lapse of time since the Commission reported. Now we are happily in a position to be able to go ahead with confidence, knowing that everything is ready for early action.

I would now like to explain in broad outline a little more fully perhaps than the memorandum has done what these legislative proposals involve.

The are divided into two parts naturally, the first dealing with native areas, and the second with the Highlands. The object of the Commission may be put into these words: it was to ensure finality in regard to Kenya land questions and, so far as might be possible, to prevent any alteration in the settlement they recommend. It was intended that the settlement should be as permanent as anything might humanly be.

The word "permanent" used to have a meaning. Since the hairdressers have got hold of it its meaning has been somewhat abused! (laughter) but using the word in its original sense the settlement was intended to be a permanent one. In order to ensure a permanent and immutable as might humanly be possible, it is proposed to embody that settlement in two Orders in Council.

It is not in accordance with constitutional practice for Orders in Council which lie within the prerogative of His Majesty to be published in draft form. The Secretary of State has, however, authorized the publication of the statement

[Mr. Mortimer] which has been placed in the hands of hon. members setting out the substance of what will be contained in those Orders in Council.

Some hon. members opposite, I think I am right in saying, cast some little doubt on the matter as to whether the Orders in Council when published would be in accordance with the memorandum now placed before members. I can assure members of this Council that they need have no misgivings on that point: the memorandum does accurately reflect and represent the intentions of His Majesty's Government so far as the Orders in Council are concerned.

The Native Lands Order in Council I will mention first.

The main object of this is to provide security for the native lands which are lands occupied by the natives by reason of historic right. These are to be declared as no longer Crown lands but native lands, a distinction to which the natives themselves attach very great importance. The Order in Council will define the nine native land units into which these native lands will be divided. These land units amalgamate the present reserves into larger units.

The object of that is as explained by the Commission in their Report: to encourage and regulate inter-penetration between various sections of the tribes, and to permit of internal re-adjustments of boundaries.

These boundaries will be unalterable except as provided in the Native Lands Trust Ordinance, where provision will be made for small adjustments, for exchanges, and for exclusions of land from the native lands for public purposes.

With the publication of the Native Lands Order in Council there will be settled once and for all the question of native land rights on historic grounds.

I will now briefly explain the significance of the other terms which are to be used in the Native Lands Order in Council. These are: native reserves, temporary native reserves, and native leasehold areas. These correspond with the Commission's classification of B1, B2, and C Areas.

B1 areas, native reserves, are those which are to be granted to the natives for their occupation and development on the ground of permanent economic needs. B2 areas, temporary native reserves, are to be added on the ground of less permanent economic needs. C areas, native leasehold areas, are to be available for leasing to those members of the native races who desire individual tenure of their land and who are outside the ordinary tribal organizations.

The B1 and B2 areas will not be defined by the Order in Council and will not require an Order in Council to amend the boundaries. The reason for that is explained by the Commission as a desire to encourage, as far as possible, fluidity in the land assets of the Colony and to make it possible, when the needs for which these reserves have been set aside have ceased, to reassess the situation and either allot these lands to other tribes or do something else with them in the best interests of the Colony as a whole. Furthermore, it was desired to preserve by every possible means that the land should be protected from misuse.

Other lands known as D areas do not come within the scope of the present legislation. This land will be open for all, and there will be special provision for the protection of native rights in Turkana, Northern Frontier District, and such areas as those occupied by the semi-nomadic tribes such as the Galla.

The Order in Council will also provide for the setting up of a Native Lands Trust Board. This board will consist of five members, of whom the Chief Native Commissioner will be the chairman, including the two members representing native interests, one member chosen by the European elected members, and one member nominated by the Governor.

Representations have been made by hon. members on the other side of Council, both European and Indian, that the Governor's right of nominating that fifth member should be restricted in some way. One section of the Council desires the Governor's nomination should be restricted to a European, and the other section desires it should be restricted to an Indian. No derogation of the Governor's powers and his unlimited right of free

[Mr. Mortimer] choice in this matter can be accepted. The Governor must be free to choose for the fifth member any person whom he considers to be the best suited for carrying out the implications of the trust.

The hon. member Mr. Pandya in his speech of yesterday made reference to this question of representation on the Native Lands Trust Board, and made the suggestion that the European representatives on the board would be there for one of two reasons: either to protect European interests or as trustees for the natives. Well, Sir, I affirm that there can be no question of protecting European interests being any part of the functions of the Native Lands Trust Board. The only protective duty which that board will have is that which is set out in the memorandum to protect the interests of the natives of the Colony in the areas of land set apart for their occupation.

The other point, the trusteeship of the native, is of course, quite right, and the hon. Indian member stressed the point that it that be the function of the Trust Board and the only function the Indian members claimed the right to take part in that trusteeship for the natives of this Colony.

May I remind hon. members of what seems to be a very obvious principle? that the function of trusteeship for the natives of this Colony is not confined to the membership of the Native Lands Trust Board. Trusteeship for the natives is a function that every single one of us as members of immigrant races have to carry out. It is at once our duty and our privilege, and an obligation from which we would not if we could try to escape.

It is our duty and privilege to maintain everywhere those principles of fair dealing and of right business relations which are alone the basis of confidence and security.

I can say, Sir, without fear of contradiction, that in no country in the world where immigrant and native races intermingled are the relations between the immigrant races and the indigenous natives more amicable than they are in Kenya. It is for leaders of public opinion in all sections of these immigrant communities to be constantly on the alert to check any tendencies that may be observed

amongst individuals of those races, members whose personal standards are not quite so high as could be desired, to lower that conception of trusteeship which has been so highly maintained in this Colony and of which we are so justly proud.

Another important section of the Native Lands Orders in Council is that which deals with the extinguishment of certain native rights which I will reserve for reference a little later.

Now I turn to the Highlands Orders in Council and the measures which are being taken to carry out the intentions and recommendations of the Commission. The sixth term of reference of the Kenya Land Commission was this—and in reading it I am proposing to put in the commas where they ought to have been placed. To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923.

Well, Sir, the Commission did define the Highlands and that definition was accepted by this Government and by the Imperial Government. The Commission had a colossal task before it and it was not to be expected that its report would not be without errors, or that it would not require certain emendations, when we got down to a closer examination of the various recommendations made. In fact, that proved to be the case and certain alterations in detail were necessary; alterations affecting the boundaries of the Highlands. On every one of these occasions the accredited representatives of the Highlands were consulted, and I would like to pay a tribute to the very reasonable and accommodating spirit with which these proposals were met. Every one of those necessary and desirable recommendations was agreed to after discussion and they have been put into effect.

I do not want to enter upon a discussion of the boundary definition as recommended by the Commission. Of course, it was inevitable that the "King Charles' Head" of every discussion on the Kenya Land Commission Report should be brought into this debate. I refer to Leroki. But, as I say, it is no part of the motion to call into question any part of the de-

[Mr. Mortimer] finition of the Highlands, so I do not propose to take up the suggestions that have been thrown out on this subject of definitions.

These boundaries recommended by the Commission were to be safeguarded by an Order in Council. That recommendation was accepted by His Majesty's Government in Command Paper No. 4580, and the Highlands Order in Council will define those boundaries recommended by the Commission, subject to the very small emendations that have already been agreed to by the accredited representatives of the Highlands. These definitions will be unalterable except in accordance with the Crown Lands Ordinance and the Native Lands Trust Ordinance. Now, there is nothing sinister in that suggested exception. The provisions in these two Ordinances which will be placed before this Council at an early date, cover the necessity that may arise from time to time of making small alterations in the boundaries of the native reserves and native lands in order to provide for alterations in the Highlands area, for areas to be added to native reserves in compensation for exclusions. Provision will be made that in no case will such an alteration be made affecting the Highlands without the consent of the Highlands Board.

It has been repeatedly affirmed that the Order in Council will contain no legislative discrimination either against or in favour of any particular race. And that is the reason why the suggestion from the other side of the Council cannot be accepted for the introduction of the qualifying adjective "White" or "European" before the word "Highlands".

The Noble Lord, the hon. Member for Kiambu in his otherwise admirable speech made one statement which I cannot allow to pass unchallenged. He said, and I trust I am quoting correctly, "We have had nothing but a succession of broken promises by successive Secretaries of State for the Colonies." That, Sir, I challenge as being a statement that is not founded on fact. Successive Secretaries of State have made it abundantly clear that His Majesty's Government could not tolerate any racial discrimination in legis-

lation on the occupation of land in Kenya. (Hear, hear.)

There has been no equivocation about this statement which has been repeated from time to time, and that attitude has been consistently maintained.

On the other side, I would take this opportunity of affirming with emphasis that there is no intention whatever of departing from the administrative practice which has been in force for 30 years, whereby no Crown land in the Highlands is alienated to non-Europeans and whereby the veto of His Excellency the Governor in Council is used to protect and preserve the privileged position held by the European race. By reason of long usage and definite pledges, a privileged position which, as I have said, has been affirmed from time to time by His Majesty's Government and especially in the White Paper of 1923.

The hon. member said in the course of his speech that Secretaries of State come and go and policies change. Well, Sir, this policy has remained unchanged for 30 years and I now declare that there is no intention of changing it in future.

I do not propose to go into the old controversies with hon. Indian members. They are, I hope, happily allayed but in confirmation of what I have said I would like to quote *in extenso* from the statements made in the House of Commons by two successive Secretaries of State.

Sir Philip Cunliffe-Lister (now Lord Swinton) in February, 1935, said:—

"Ever since 1906 the alienation of agricultural land in the European Highlands has been granted only to Europeans. That policy is tantamount to a pledge and it has been followed by every Government since, and I have no intention of changing it."

Mr. Ormsby Gore in November, 1937, said:—

"It is not intended that the Order in Council defining the boundaries of the Highlands area shall include any provision involving legal or administrative discrimination on the basis of race or nationality in connexion with the occupation of land in that area. The issue of the Order will, therefore, not affect

[Mr. Mortimer]

the policy which has been followed since 1906, as set out in Command Paper 1922 of 1923."

"The Kenya Land Commission," he added, "framed what they recommended as a comprehensive and final settlement of Kenya's land problems, and from an administrative point of view such a settlement is of the first importance."

Such unequivocal statements, I submit, leave the policy of His Majesty's Government on this point beyond all shadow of doubt.

I trust that the hon. mover will accept that statement as the solemn declaration which he desired and that it will go far to "dispelling the unhappy phantoms of uncertainty and disquietude" to which reference has been made (applause).

"I would like at this point to emphasise my own conviction that there is in this Colony ample land for all races resident therein and for all reasonable expansion. And I would plead for the co-operation of all sections of the unofficial community in pulling together to develop to the fullest and best extent those areas which are open to their development, to abandon this old controversy once and for all and devote their energy and ability towards filling up the unoccupied spaces and developing this bright gem of the Colonial Empire.

Now, while the legal position and the administrative practice will remain unaltered, there is one new feature introduced in the shape of the Highlands Board. The functions of the Board are explained in the memorandum and it is unnecessary for me to repeat them. Reference has been made to one of the functions of the Board, "to give such consent or withhold such consent as is statutorily necessary under the existing laws". That refers to the matter on which I have already spoken, where the consent of the Highlands Board will be required to the diminution of the areas in the Highlands in connexion with the increase of the native areas.

One of the important functions of the Highlands Board will be to advise Government on all matters connected with the dispossession of land, and such

matters will invariably be referred to the Board. But I must aver that the power of veto, which is now vested in His Excellency the Governor in Council, by virtue of Part VIII of the Crown Lands Ordinance, must remain the function of Government a function of which it cannot divest itself in favour of the Highlands Board. In order to remove any misconception that may be in the minds of the hon. members opposite, I would say that the words "disposition of land" will include declarations of new township areas or the extension of old township areas and the declaration of trading centres.

As to the constitution of the Board: There will be seven members of whom the Colonial Secretary will be chairman. The Commissioner for Local Government Land and Settlement will be a member and four members will be chosen by the European elected members of this Council, and there will be a seventh member in the nomination of the Governor. Here, again, the right of the Governor to choose the fittest person available must remain absolutely unfettered.

Now, Sir, I come to one very important matter that has been repeatedly mentioned during the course of the debate. That is the extinguishment of certain native land rights which will be carried into effect by the Native Lands Order in Council. The Noble Lord, the hon. Member for Kiambu, made very special reference to the extremely difficult position in which farmers in the Limuru and upper Kiambu areas are finding themselves.

The intention is that when the Native Lands Trust Ordinance has been enacted, section 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance, 1915, will become operative. In addition to the native rights which were safeguarded by these sections there are other rights which are causing a great deal more trouble, and those are the native rights on freehold areas, for these two sections apply only to leasehold areas. The native rights on freehold areas are very much more difficult to deal with; they, too, will be extinguished by the operation of the Order in Council.

[Mr. Mortimer]

Now, it has transpired that the number of claims of right concerned in this matter are very greatly more than the Commission envisaged and that has created additional difficulty in dealing with the problem. I would like, Sir, to pay a very warm tribute to the farmers in that area, who were affected in this way, for their patience and forbearance in what have been well-nigh intolerable circumstances, and I will plead with them that they continue that patience and forbearance for a little while longer, until the matter can be dealt with in a constitutional manner. I would beg of them that they would refrain from any precipitate action by taking the law into their own hands. It will serve no useful purpose and will only accentuate the difficulties with which Government and the unofficial community are faced in this matter.

There is, however, in dealing with this problem, one factor which is of even greater importance than expedition, and that is justice. This Government must be satisfied that justice will be done to the natives who are being removed and whose rights will be extinguished. The Commission recommended that some £2,000 should be made available out of the £50,000 parliamentary grant for utilization in compensation for disturbance. In view of the fact that the numbers are far in excess of what the Commission had in view, it may be necessary at an early date to come to this Council and ask for votes in extension of that sum in order to provide adequately for compensation for disturbance.

The Native Lands Trust Ordinance will provide that that extinguishment which is contained in the Order in Council cannot be put into effect in individual cases except under an order from His Excellency the Governor, and that order will not be given unless His Excellency is satisfied that there is sufficient suitable land for the occupation of the natives concerned and that provision has been made for compensation for disturbance.

The provision of adequate suitable land is not an easy task. The hon. the Chief Native Commissioner, the hon. the Provincial Commissioner for the Central Province and myself are in frequent con-

ference upon this matter in an endeavour to satisfy ourselves, to satisfy Government and to satisfy the consciences of the European community, that this matter will be justly dealt with when the time comes for the natives to be removed.

One reference was made by the Noble Lord the hon. Member for Kiambu, which I must take up. He referred to the Tironi area and said that the natives were going back to that area and cultivating in extension of the already existing *shambas*. I am in a position to deny that statement. A visit was made to the area only yesterday by the District Commissioner, Kiambu, and he reports that the cultivation that is now going on there is being carried out only by those two and a half clans who refused to remove when the voluntary move of the other seven and a half clans took place.

I would now, Sir, refer very briefly to the Bills which will be brought before this Council at an early date. These must be enacted before the Orders in Council can be promulgated, because the Orders in Council will refer to the definitions included in the Schedules to these Bills. These Bills are now completed in draft form. They are being sent to the Secretary of State, I think, by tomorrow's air mail for final scrutiny before publication. An endeavour has been made in these Bills—and I would say here, in parenthesis, that the Commission was not always singularly lucid as to what its intentions were—an endeavour has been made to put in legislative form the Commission's recommendations. And I think I am right in saying, Sir, that the intention of Government is that these Bills shall be brought before this Council in a July session, so there will be no months and months and even years of further delay, as has been suggested.

There is one other very important matter included in the Commission's Report to which I must make reference in order to complete the picture and show what has been done and will be done to carry out the Commission's recommendations. That matter is the very important one of over-stocking and soil erosion. The Commission very rightly laid great stress on the necessity of effective and early action in dealing with these cognate

[Mr. Mortimer]

problems. Subsidiary legislation has been necessary in some instances and I think my friend the hon. the Chief Native Commissioner will at a later stage of the debate explain what has been done and what is being done.

I seem to have been speaking for an unconscionable time and I trust I have not overstrained the patience of the Council. I would just conclude by saying that, while there is no objection whatever on Government's part to submitting to the Secretary of State the representations that have been made during the course of this debate, I would inform hon. members that every matter that has been raised during the debate has already been fully considered both by this Government and by the Secretary of State in England and that no alteration in matters of principle can be expected. Subject to this qualification which will require no alteration in the wording of the motion, I am authorized on behalf of Government to accept the motion.

MR. KASSIM: Your Excellency, I should like to associate myself with both the hon. members Mr. Pandya and Mr. Shamsud-Deen in their speeches of yesterday.

There are millions of acres of uncultivated and unalienated agricultural land in the Kenya Highlands and, according to the agricultural census, only 10 per cent of that land has been cultivated. There is a fear in the minds of the European community that a large portion of land in the Highlands will be taken up by Indians. Your Excellency, there is no bar in the Tanganyika Highlands to Indians acquiring land, and such a ban against the Indian community in Kenya is a great insult. Indians are not only British subjects but India is recognised by the British nation as an equal partner in the British Commonwealth. The Kenya Highlands question has become a national question in India, and I appeal to Your Excellency to consider this question very seriously.

LADY SIDNEY FARRAR (Nyanza): Your Excellency, in supporting this motion so ably put before us by the hon. Member for Nairobi North, I should like to take this opportunity of saying that he

has voiced the feelings of the unofficial community in this country very conclusively and that we greatly appreciate the fact that he has voiced them so bravely and without any political verbiage.

It was with great regret that I heard the hon. the Commissioner for Local Government Lands and Settlement state that Government had any reservations in supporting the motion before us, and I still hope that those reservations may not be unshakable. I think that all sections of the Council are satisfied that the Order in Council as regards native interests is satisfactory to all sections of the community and it has our warmest support. But I am afraid the same cannot be said of the Order in Council as applied to the White Settler community as regards the Highlands, Highlands with that unfortunate exception and omission of the term "White" or "European" Highlands.

The hon. mover of the motion has set before us the past history of this Order in Council. I should like to bring forward one plea to obtain unanimity of the Council; the unanimity of all sections of this Council.

The British Government believed in the first place that white settlement was necessary to the true development of this Colony of Kenya. That, I think, was proved conclusively, by their readiness to issue land for white settlement for nominal sums before the war; and it was certainly fostered and pressed forward in the Soldiers' Settlement Scheme after the war whereby men were encouraged and urged by the British Government to come out to Kenya and bring their wives and families to settle in Kenya Colony, and invest all their financial resources in this country. I do not believe that the British Government has lost its belief in the desirability of white settlement for the development of this portion of the British Empire. I cannot believe that they did not realize that for the furtherance and encouragement of this white settlement in which they believe, it is necessary to give us security in the tenure of our land.

I do beg hon. members on both sides of the house for unanimity in supporting the motion before us to strengthen the hands of the Secretary of State when he

[Lady Sidney Farrar]

comes to draft the final Order in Council that will be put into force, drafted not as a document of political expediency or phrased in diplomatic language, but as a straightforward assurance that we have a right to expect, and without the omission of a word which makes a very great difference to our expectations and belief in the genuineness of that Order in Council, because they may fear that it will give offence to other sections of the community.

Lack of this assurance would breed fear, fear amongst all sections of this community as the hon. the seconder very conclusively proved in regard to one area only. I contend that fear is borne of distrust and suspicion; I contend that until this fear is laid there can be no honest co-operation between the races in this country; and I contend that no thinking person could fail to agree with paragraph 1979 of the Carter Report which, Sir, with your permission, I should like to quote.

"These recommendations may perhaps give rise to a natural apprehension among Europeans that the extent of the Highlands may again be diminished. One of the main objects of our Report has been to frame recommendations which would instil a feeling of security in the minds of the natives with regard to their lands. If, in doing so, we had only transferred the feeling of insecurity from the natives to the Europeans, we could not feel that we had succeeded in our task. We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives."

I contend that once we have that measure of security, it will be natural as history in the past has proved—it will be natural for us to turn to the solving of the like problems confronting our Asiatic neighbours in a spirit of co-operation which is hardly possible in the present circumstances. I feel sure that the opinion that was recently expressed by the hon. Indian member Mr. Shamsud-Deen

in a letter to the Press, which I cannot at the present moment lay my hands upon, that underlying their present dissent from our point of view—and they are naturally concerned for their own security—they too hold the same belief that until the White community in this country, as the native community in this country, is assured of its own security, there is very little hope of a genuine co-operation throughout Kenya Colony.

And with this belief I raise my plea for the unanimity of this Council in supporting the motion before us.

Council adjourned for the usual interval.

On Resuming:

MR. HARRAGIN: Your Excellency, I suppose there are few of us with any experience of debating in this Council sanguine enough to hope that this very innocuous motion before us would escape without some reference to the racial question. I personally have no intention of following that line, as it has been answered so often in this Council, and has again been answered by the hon. the Acting Commissioner for Local Government to-day. But there are one or two very small points that I should like to deal with, quite apart from the more substantial points which my hon. friend the Acting Commissioner has dealt with so ably earlier.

Those of us who have had experience realize how easy it is, let us say, to draft a report. The report may take some little time, a few months, to evolve, and particularly will it be shortened if you do not visit, in every case (perhaps because you are unable to do so), the districts which you are going to report on. The next that happens to a report is that it is submitted either to the Cabinet, the Governor in Council, or to the Legislative Council, and again, in a comparatively short time, those bodies have given their approval to the principles of that report.

When the hon. mover mentioned the times that were taken, those who have had no experience might think that, in fact, there had been some sort of delay which could have been avoided in bringing that report to fruition. I think a simple example of how impossible that is contained in the Land Commission Report

[Mr. Harragin]

Take one of the short paragraphs which deal with the rights of natives in the Highlands. In one short sentence it declares that the rights of the natives in the Highlands shall be expunged, and that seems a very easy method of settling a very difficult question.

But then you must remember that there is added a proviso, which says that provided somebody else, not the Commission, but of course Government, finds a suitable area upon which to put these natives whose rights have been expunged. I think the hon. mover himself will admit that therein lies a most difficult task which anybody could be given, and it is a pleasure and relief to-day to hear that at long last it has been finally settled; we hope.

There are one or two very small points with regard to the delay in the legislation which I should like to mention.

There are some people who imagine that because legislation is going to take the form of an Order in Council—which as a rule is much shorter than an Ordinance or Act—therefore it is quite easy to put it through in the shortest possible space of time. In point of fact, you will find that Orders in Council have to be scrutinised, take this one as an example, not only by the Secretary of State for the Colonies, not only by the authorities in this Colony itself, but by other Secretaries of State who may not always see eye to eye with the Secretary of State for the Colonies as to the form the wording should take, and before legislation can be submitted to His Majesty in Council, naturally the matter has got to be settled between the Secretaries. You will therefore realize that it was no simple task, when this original Order in Council came up, to reach a finality with the other Secretaries of State who were interested. We are very grateful to know that at last this finality has in fact been reached.

I do not think it can be suggested that by delay, and thereby obtaining agreement, the effect of this very important Land Commission will in any way be lessened. In fact, I think the time taken has allowed people to realize that it is not as vicious as so many seemed to think when it first came to light.

I think that perhaps it is a little hard on the draftsman that this particular moment should have been chosen for a motion which more or less suggests delay in the production of legislation when, for the first time, we are able to put a memorandum on the table to tell you that it is all finished. I can assure the hon. mover that no one is more anxious than I am to see the back of this legislation.

There are one or two small legal points with which I should like to deal, and the first arises in that eulogistic exposition of the Job-like virtues of his electorate which perhaps account for the return to this Council of the Noble Lord. I should like to say at once that I associate myself entirely with everything he said with regard to the restraint and patience of the settlers to whom he referred. I have had personally a great deal to do with that side of the trouble, and I would like personally to thank them for having behaved in the way they have.

But there were one or two remarks made by the Noble Lord which, I think, require a little explanation.

He made an awfully good case out of the various iniquities that had happened on these estates, but where I join issue with him is that he imagines when this legislation is passed all these iniquities will automatically cease. If I may take them one by one, I quite agree with regard to the natives who are what we call "right-holders". I should like to clear up one point here: there is all the difference in the world between right-holder and squatter. During the debate one frequently hears reference to squatters and the Squatters Ordinance in relation to the matter we are now discussing, but they are nothing to do with it at all. Squatters are not there as a matter of right but because they signed an agreement with the owner of the estate who permits them to remain. We know there are difficulties about them going off, but when the Squatters Ordinance comes in to force the local settlers will have certain rights regarding cattle and that sort of thing, and extra land may have to be found in the reserves for those squatters who leave the farms. But, so far as the motion is concerned, the squatter question has nothing to do with it at all, and we must confine ourselves entirely to those

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who remain on the estates because they think they have, or actually have, a right there.

The first case mentioned was a real and genuine case which will have to be looked into very carefully when these right-holders are being removed. I refer, of course, to the man living quite happily for years on 10 acres and because he hears he is going to get compensation for moving in a year's time gets in all his friends and relatives and cultivates 50 acres. Of course, that is wrong; in fact he has no right to do it, and I can assure hon. members that when the matter is looked into he will be paid for no more than the 10 acres he always had. That will be a matter for inquiry at the time by whoever is given the task of deciding how much compensation shall be given.

With regard to the case of the poisoned heifer, I am afraid that may happen under any circumstances. It might happen because a man discharges a servant he is employing under the Employment of Servants Ordinance, and it has no relation whatever to the matter we are discussing now.

Lastly, and this I look on as the most serious case of all because as told by the Noble Lord it sounded really very disgraceful, one of his constituents, he said, who lives near a native reserve had 1½ acres of wattle cut down, that three alleged thieves were caught, and the magistrate only fined them Sh. 15 each.

LORD ERROLL: On a point of personal explanation, I was in no way criticising the magistrate, but quoting it as an illustration of the impossible position created by the absence of legislation.

MR. HARRAGIN: Whether it was criticising the magistrate or not, I can assure the hon. member that if his facts were correct I would criticise the magistrate very severely, but the actual facts of the case are these.

It is perfectly true that the unfortunate settler had somewhere about an acre and a half of wattle cut down. Who by, we can only suspect; there is no actual proof. But it so happened that three old women were walking past next day and dis-

covered some firewood nice and handy which they were looking for. They collected a few pieces of it, they were duly caught and charged. The value of the pieces of firewood was 15 cents each, and the magistrate fined them Sh. 15 each, so that all hon. members will agree that the magistrate used his judicial discretion wisely.

There is just one small point I would like to refer to in that delightful and excellent speech of the hon. Member for Nyanza.

She clearly put forward the only point which has come up in this debate, and which has been referred to by several speakers, namely, her rooted objection to the word "Highlands" without affixing "White" before it.

In view of what we have heard of Secretaries of State and their peculiar habit with regard to their promises and statements, which we heard, perhaps erroneously, from the Noble Earl, I also tell her that if in legislation the word "White" were to appear at least half a dozen Secretaries of State of the past would have to eat their words, because it is laid down almost from time immemorial—at least from Queen Victoria—that in legislation of this description there shall be no racial discrimination. That is quite apart from any point that may be raised with regard to treaty rights, etc., which I feel sure all hon. members know about and to which there is no necessity to refer.

I would only say on behalf of Government that no one is more anxious than we are to see this legislation brought into force.

COL. KIRKWOOD: Your Excellency, I rise to support the motion before Council, and I should like to compliment the hon. mover on the restraint which he has exercised in the debate, and also compliment him on putting up what I consider is an unanswerable case. He has given the history and quoted documents which can be referred to to prove the case which he set out to make.

I should also like to reiterate the fact that, in speaking, he was speaking not only as the hon. Member for Nairobi North, but as the Chairman of the



[Col. Kirkwood]

European Elected Members' Organization, and consequently he was speaking on our behalf.

I should like, before proceeding any further, to refer to the attitude of the hon. Indian elected members. They have seized upon this occasion—as they do on all other occasions where possible—to turn an issue into a racial bias, and discuss it from that angle. It is only recently that the hon. member Mr. Shamsud-Deen, who is not present at the moment, returned from India where he went not to carry out the oath he takes to His Majesty the King of England but to stir up racial feeling in India, where the difficulties of the statesmen at home, if I may say so, have been strained and increased by the attitude of Indians in this Colony; and more especially by the elected members of the Indian community who sit on this Council.

To my mind, it does not conform to the oath that I took and they took in this Council, the oath of allegiance to the King of England.

I myself cannot admit, and never have, that they have any right to sit on this Council. Neither can I admit, and neither have I admitted in the past, that they have any right to have a member of their race on Your Excellency's Executive Council. The gentlemen who sit on that Council should be men of very high standing and men open to conviction, who can keep an open mind and discuss every subject that comes up on its merits.

That is my interpretation of how an Indian elected member sitting on Executive Council can conform to those principles or ideals of mine, I leave it to you to say.

The hon. member Mr. Shamsud-Deen in his speech stated that this was a quarrel of the European elected members with Your Excellency and with the Government at home. It is no such thing. Sir, it has not developed into a quarrel. We are doing our best at the moment to prevent it becoming a quarrel. We have no quarrel with Your Excellency or your Government. We are trying during this debate to point out that promises which have been made and reiterated over a longer period

than 30 years are apparently not going to be implemented, and we are asking, before it is too late that representations will be made to the Secretary of State to alter, or agree to alter, paragraph 8 of this memorandum which was circulated on the 8th April:—

"8. As regards the Highlands, a Notice giving a detailed definition of the boundaries of the Highlands will be published shortly. This will subsequently appear in a Schedule to the Crown Lands (Amendment) Ordinance, and in due course the Highlands Order in Council will define the Highlands by reference to that Schedule; except as provided in the Crown Lands Ordinance, and the new Native Lands Trust Ordinance, the boundaries so defined will be unalterable."

I maintain, after listening to the debate and after hearing the two Government speakers, that I believe it is intentional and wilful that no reference has been made to either European Highlands or White Highlands, and that there has been no such insertion in this memorandum foreshadows that it will not appear in the Order in Council. If you leave out "European" or "White" there will be no reference that within that European Highland persons of European descent will have a privileged position.

The reference to the Kenya Land Commission, it was laid down there for their guidance, was:—

"To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position."

Even in the terms of reference to the Commission it was very definite. Not only is it a definite statement but it foreshadowed on its wording that Europeans are to have a privileged position in the Highlands when the area was defined. It was also pointed out by the hon. member that Lord Elgin in 1908 and his successors in the Colonial Office who were Secretaries of State in 1931, 1933, and 1934, and Mr. Ormsby Gore in 1936, have introduced that phraseology with slight variation, either Europeans or persons of European descent. They have never varied in general principle, but we find in paragraph 8 of this memorandum that it is

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foreshadowed—and it is also confirmed by the hon. the Acting Commissioner for Local Government and the hon. the Attorney General, speaking on behalf of Government—that there is no intention to include either word or to make reference as foreshadowed and wished by the European elected members representing the Europeans in this Colony.

As regards the native legislation foreshadowed, I am sure the European elected members on behalf of our people in this Colony, welcome it. We have always endeavoured to do justice to the natives. We realize, apart from any other issue, that the natives are first of all entitled to justice, and unless they get just treatment they will not be contented, and without a contented native population in this Colony you cannot have a contented European or Asian population, and there will be trouble. They are entitled to justice, and we are prepared to give it to them.

In the debate in 1934 on the Commission Report, great emphasis was laid on the statement that had been made by every speaker on this side of Council, and especially as detailed by the hon. Member for Nairobi North. We were prepared and we were aware that we had to make big sacrifices in the interests of the natives at the expense of the Europeans and European Highlands. We were prepared to make those sacrifices, and we agreed to the Report being implemented *in toto*, and we stressed the point that there was one reservation: that provided it was implemented *in toto* and that the reference to the European Highlands was implemented also. The one would naturally by a corollary to the other.

On page 613 of Volume II of Hansard, 1934, in finishing my speech on that occasion I said:—

"It is also appropriate if I quote the terms of reference—

"(6) To define the area, generally known as the Highlands, within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

They propose in paragraph 1979 that the European Highlands shall be

demarcated, and that Europeans should have the same security there as the natives in the reserves. I am agreeing to the implementation of these recommendations on the understanding that that paragraph will be implemented also and that it will not be a one-sided affair as has been the case on many occasions in the past. There would be very serious opposition to this Report if such a recommendation had not been included."

I would stress that every European elected member in his own way emphasised these points at the end of his speech deliberately and wilfully. On reading this memorandum, as I have stated before, and after listening to the two speakers on the Government side, I fail to see that that Report as promised is going to be implemented as we have a right to expect. It has been accepted at home; it has been accepted here, yet for some reason it may be a good and sound reason, but if there is a good and sound reason why our wishes cannot be complied with I think we have a right to be told more than we have been told.

As I understand the logic, as it were, put up from the other side, the principles laid down at home would not allow any racial discrimination in an Order in Council of this sort. Yet the Government speaker states that there is to be no variation of the principle of the administrative practice that has been in force for over 30 years in the Highlands. Is that a racial discrimination or not? I say definitely that it is racial discrimination, and I fail to see, if racial discrimination is there, why it cannot be put in plain English in the Order in Council when it is published.

As I pointed out, we are anxious to prevent a quarrel, we are not trying to make one. I myself always like to think of the lines of the poet who said:—

"England, England, England,  
surrounded by sea and by sky,

The home of a race and the pride  
of the world,

With a faith that never dies."

I still feel that the Secretary of State and the powers that be at home will listen to our appeal, and when representations are made that we consider that again

[Col. Kirkwood] promises have definitely been broken, they will consider the advisability of listening to our wishes and appeal from this Colony.

Kenya, if I may take it from another angle, both geographically and strategically in the case of war and as it will affect the African continent, this little Colony of ours is the strategic position of the whole situation, and that strategic position relies on the European population, or will rely on them, in holding the fort as it were until relief can be afforded. Once Kenya goes, there is nothing to stop the rot from here to Capetown, except the forces further south. It is a magnificent position, and I should like to see it in my time filled up with not only Englishmen but with Britashers who have the ideals of their race and the justice of their race to take this Colony and make it even greater than the present jewel it is within the Empire.

I do not think, Sir, that any good purpose will be served by prolonging this debate. (A member: Hear, hear.) That "Hear, hear" comes from a very ominous quarter (laughter), a quarter where if they have the opportunity they will easily take some three hours to weary this Council into an adjournment.

As I have already said, no useful purpose will be served by my continuing to speak. I am not speaking as a stonewaller, but I would remind this Council that an unanswerable case has been made out, in my opinion, with the just suggestions and demands that we have put forward. I can also say, that if logic and reason will no longer prevail, the European elected members representing the European population of the Colony cannot compromise on this issue.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, I think the general impression that has been left on all those who have taken part in this debate is that, as has happened on previous occasions when this subject has been before Council and discussed at any length, there has been particular interest shown and the debate, possibly, has reached rather a higher standard than most of our debates. That is, Sir, because it is a subject on which we feel very deeply indeed; a subject on which I have reason to believe

that we have on the other side of Council a great deal of sympathy with our point of view.

I should like at the commencement of the remarks I have to make in reply, to try and counteract an impression which I think there has been some attempt to convey by certain speakers, the impression that we perhaps do not realize our responsibilities and have rushed in to a debate on this difficult question in a manner that may raise bitter racial issues without first carefully considering what we are doing. I can assure you, Sir, that that is not the case. We considered very carefully what attitude we were going to take over this memorandum. We knew perfectly well that there were two courses open to us in view of all we have said in the past. One course was to have accepted the memorandum and avoided what might be a rather difficult debate. We might, in justification of taking that line, have argued that we are indeed only very small fry out here and that when it comes to really big issues, such as issues that can antagonize the Government of India, and which can therefore vitally affect the whole Empire, it would be merely ridiculous and a waste of time and even harmful to put up a bitter contest on behalf of a few farmers in this part of the world whose interests cannot be expected to predominate.

That might seem quite logical, but there is another aspect and an equally important one. I think that aspect may take the form that one may feel one is performing one's best service to the Empire as a whole by trying to fight for what one knows is the ultimate well-being of the particular small portion of that Empire in which one happens to reside, and about which one happens to have special knowledge. I have no hesitation in saying that even from the Empire point of view, which has been stressed by the hon. Indian members during this debate, the points that we have brought up are justified and are right. I believe that it is for the ultimate good of this country that there should be a portion of the country which is going to be kept open for white settlement and safeguarded for further European people. I go further. I say it is for the good of Africa that there should be a corner-stone of white settle-

[Major Cavendish-Bentinck] ment, which cannot be threatened, half way up Africa on the east. I will go still further. I say it is for the good of the British Empire that white settlement should be so secured here that it could not be threatened for many, many years to come.

For these reasons I think we were entirely justified in not remaining silent and, just because it was inconvenient, accepting something which really amounts to ambiguous verbiage which does not convey what we were led to expect, and we are justified in trying our very hardest to get the principles that I have just outlined, formally and legally established. That, I think, refutes any possible argument that we rush into these debates without thinking what difficulties we may bring on others or that we do not consider beforehand any action we take in this Council, or that we would deliberately, or from lack of consideration, damage the prestige of the British Empire, as suggested by one hon. speaker.

There are just a few points of detail that I now wish to allude to. But before doing that I would like to refer, as it really is connected with what I have just said, to the remarks of the last speaker of Government, my hon. and learned friend the Attorney General, who said that ever since the days of Queen Victoria, it has been an accepted principle by all the Secretaries of State and, indeed, by the British Government, that there should be no racial discrimination in legislation.

Well, that may be. All I can say is that it is very odd that they should try and get over these difficulties by having no racial discrimination in legislation but accepting racial discrimination in administrative practice. I think probably we should hear less about "Perfidie Albion". If when a ruling is asked for a sitaigh answer were given and any consequent legal enactments were so framed as to show precisely what is meant! And it is rather strange that this diffidence about racial discrimination in legislation immediately disappears when the more virile sections of the British become self-governed. We have only to point to Australia, the Union and other parts of the Empire. There are occasions in which racial discrimination would be wrong, but

there are occasions when it is necessary and desirable. Therefore, when we think it is desirable why can we not come out into the open instead of implementing it in an underhand manner? That is really the basis of our argument.

We are told—and I think it is the first time we have been clearly told so in this Council and so, for that reason alone, this debate has been very valuable—we are told that the present administrative practice was to continue, I think that is of some value as I have said, but I think also it seems rather unfortunate that at the same time an ordinance and an Order in Council should be brought in in which land is referred to as "Highlands" and in which no definition whatever is given of what is meant by that. By native lands, it is perfectly clear, what is meant; they cease to be Crown lands, they become native lands and there is a Board which has complete control. But, when it comes to the Highlands, we have no definition. We are simply given boundaries, and a Board which is supposed to look after the interests of the inhabitants of that particular piece of land. Who the inhabitants are and any qualification of the area to be specifically safeguarded is carefully not specified. If the states of the two are compared it cannot be said that these two pieces of land are being given the same security, which is what was recommended.

I will allude in detail to one or two of the speeches made.

The first speaker to whom I would like to refer, was the hon. Mr. Pandya, representing the Mombasa Indians. As usual he expressed his case very moderately and very carefully, and, if I may have the temerity to say so, very well indeed. He, of course, tried to turn the whole thing into an Empire issue. He said how unfortunate it was that we were going to alienate the sympathies of the Government of India, and how dangerous it was from the Empire standpoint to have these sort of debates. Well, I have answered that, and I have only one word to add. That is, as far as we Europeans in this country are concerned the threats of the Government of India leave us perfectly cold. We do not want to have racial trouble, but if it comes I know which side is going to win.

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In matters of detail he then went on to criticise certain Boards, and said that he hoped there might be an Indian appointed to the Native Lands Trust Board. Well, I do not want to labour that point beyond saying that in principle—I think I am right—the European community out here have never been prepared to associate the Indian community with executive authority over the natives of this Colony. If it has been done, it has been done against our wishes. At the same time, we do not propose to elaborate this point. We refer to it because it was also referred to by the hon. the Commissioner for Local Government, Lands and Settlement, who said that there was some difference of opinion and that we had suggested that the Governor's nominee must be a European and that the hon. Indian members had suggested that this nominated member must be an Indian. We did not refer to it in that light at all, and we took it for granted.

He then went on to make certain remarks with regard to the proposed White Highlands Board and suggested, I think, that the extra member to be appointed to that might be an Indian, in view of the various interests that they might have in that area. Now, I was a little bit alarmed when I heard the hon. the Commissioner for Local Government, Lands and Settlement this morning trying to define the word "disposition", saying that it included declarations of townships, towns, trading centres, etc., etc. If that is the case I can only say that, from our point of view, he made it still more essential that we should press, and press as hard as we can, that the Highlands Board should consist purely of Europeans. And I trust that that point will be clearly conveyed to the Secretary of State as a result of this debate.

I now come to the speech made by the hon. Mr. Shamsud-Deen. He began by saying that he thought it was quite unbelievable that we should have brought this motion up so early in the life of the new Council, and that he thought at least six months should have elapsed before we brought forward a racial issue. Well, this debate is not of our seeking. If so happens, as I pointed out in my opening remarks, that on the 8th April—on the

very first day of this new Council—the memorandum was laid. Had we not taken this opportunity of debating the contents of that memorandum we should have lost the opportunity of expressing our views.

He again went on to say, Sir, that the White Paper which is referred to in this motion cannot easily be disregarded. Now, I allude to that particular remark of his, because the hon. the Commissioner for Local Government, Lands and Settlement, this morning also said that a part of our motion asked that legislation should strictly conform to the White Paper and he said that it would do so. Now, Sir, I challenge that, and I did so yesterday, because in the White Paper it is clearly laid down that the boundaries that are to be delineated are to be the boundaries of the European Highlands. If you read it, you naturally will imagine that that particular area the boundaries of which are to be delineated would be known as the White Highlands, or the area in which European privilege obtains. Thus we are told that legislation and Orders in Council will conform precisely to this document and yet we heard, in the same breath, that the "Highlands" means nothing except an area of land of 4,000 feet and upwards. I maintain strongly that the memorandum does not give us to understand that the legislation we are to get is going, in fact, to conform with the recommendations accepted by His Majesty's Government.

The hon. Member Mr. Shamsud-Deen also suggested that we came here and we robbed the natives of their land. Well, it is hardly worth while going into all the details of the exaggerated and loose statements made. But I would like to draw attention, in case these sort of remarks get into the Press, of the state of this country when Europeans first did come into it. Half of the land was not used at all except for purposes of fighting, and the people who occasionally roved across enormous areas of this country did not appear to occupy the land. Who started to develop this part of the Empire, or any part of the Empire? The white man. You can hardly say that because some years ago people came out to these territories, developed and civilized them, broke down the virgin bush and managed to get the natives to work for and live

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in piece with them, can be accused of robbing the natives of their land!

He also made some allusions, which again might do harm if they got into the Press, suggesting that 150,000 people—I think he was referring to squatters who might be turned off farms—were going to be pushed into 100 square miles of land. I was sorry that that point was not answered by Government because these things do have a habit of being misrepresented. I need hardly say that there is no such intention. To begin with nothing like that number of people will ever be turned off, if any. And I am perfectly satisfied that the officers of Government are doing everything they can to make proper provision for such people who will be turned off. Moreover, they are doing it with our complete approval and help.

Now, Sir, turning to the main speaker—the hon. the Commissioner for Local Government, Lands and Settlement—I would like to say that we are fortunate in again having in that particular position a gentleman who is a very able debater and who made a most excellent speech. (Applause.) He found himself in the position of being obliged to emulate his predecessor, and he began by apologizing and explaining delay. We realize the difficulties, and I must admit that possibly I am rather inclined to over-stress these delays and possibly exaggerate the lack of drive, shall we say, on the part of Government. The same point was also brought up by my hon. friend the Attorney General. He rather felt that it was rather unfortunate that this opportunity should have been taken to move a resolution suggesting the acceleration of the implementation of this legislation, just when a memorandum had been read showing that all the work has been completed.

Well, Sir, in reply to that I would draw attention to the last paragraph of this memorandum which suggests that even at this stage a longer delay than usual is needed in order that people may study the proposed legislation. I can only refer to a previous debate that has taken place in this Council in the last two or three days, brought about because another ordinance took ten years before it was introduced, was passed eight months ago

and is still not in force in this country. Even though the memorandum might give us to understand that the legislation is nearly completed, I think that, making all possible excuses and allowances, that it is "permissible for us to urge that there should be no further unavoidable delay."

He then went on to tell us what the main objects of the Kenya Land Commission were. They were to make a permanent settlement of land adjustments and boundaries. I think I have already referred to that point but I would just repeat again that I quite agree. The Report was to lead to a permanent settlement of boundaries for certain lands for certain purposes. In one case, the natives, they have done it, but in the other case, the Europeans, it has not been done.

He then found fault with a statement and yesterday about a series of broken promises from a series of Secretaries of State. He said that that was not the case. Possibly the Noble Lord who made that statement did slightly exaggerate but, in principle, I think the Noble Lord was right. I do not believe that any ordinary person carefully reading the records of what has taken place during the last twenty years could have obtained any other impression whatever but that, when this final settlement was going to take place it would be so phrased that there could be no possible ambiguity whatever. That has not happened, and, therefore, I think there is some justification for the remarks that have been made.

There is one tremendous step forward which we have, I think, achieved by this debate. I did particularly ask in my opening speech whether Government would be prepared to repeat in this Council the statement made in the House of Commons. We have had it repeated and now, as I understand the present position, no matter what happens with regard to any representation which may be made as a result of this debate, it has been clearly stated that the policy of this Government and the policy of the Imperial Government is and will be that the existing practice will continue, and that in this particular area to be known as the Highlands, European privilege will in fact obtain. That, at any rate, is something.

He then went on to discuss some of those difficulties that were referred to in

[Major Cavendish-Bentline] the debate yesterday, the difficulties which have arisen for the most part in the constituency represented by the Noble Lord who seconded this motion.

One of the first things that was referred to was Tigoni. He said he had inquiries made yesterday, and that far from there being more natives there he was informed that cultivation was only taking place by the 2½ clans who refused to move and none was taking place by the 7½ clans who had moved. That, to me, was an unsatisfactory reply. What was alleged was that cultivation was increasing, and the answer does not say that it was not increasing but merely says that the 2½ clans still are cultivating there. It is quite possible for them to have added to their number, as natives very often do.

Whatever may be the position at Tigoni, the fact does remain, no matter what excuses are made by the hon. the Attorney General and the hon. the Acting Commissioner for Local Government, that in any other country in the world it would be unbelievable that on freehold land there should be persons who allege they have rights, who remain on it, and no Government action ever arises. I think everything that has been said is perfectly justified. If this position had been taken in hand, even without the implementation of the Commission's Report, the situation would not be what it is to-day.

In that connexion we are told that right-holders are different from squatters. We know they are, but the fact remains that a lot of people on the land to-day could be said to be squatters, and are not legally resident there as resident native labourers because there are no forms to sign them on under, though forms can be obtained under an ordinance not yet in force. Therefore, that is a potential danger if perpetuated much longer. When it comes to the right-holders, they have certainly multiplied since the Commission sat and, as I have just said, it is rather difficult to understand how there can be a right-holder on land which one holds on a freehold title signed by the Governor of the Colony.

Well, Sir, there is no particular purpose in dealing with any further small points. But, whether we get an amended Order

in Council or whether we get some satisfaction in some other way, I do think we are entitled first of all to some definition making it perfectly clear to posterity that, within that area which is to be known as the Highlands, European privilege obtains and will still obtain. Administrative practice is all very well, but it is not really a satisfactory security.

Secondly, we have a right to ask for an assurance in some form or other that the Board which is to look after these matters should have some power of veto or power of control and be more than advisory.

The third point is, that I think in common justice, in view of the history of the past and in view of what is admitted by Secretaries of State, and by this Government, to be the real intention, although they do not say so, of this Order in Council, that the Highlands Board should be composed exclusively of persons of European descent.

I hope, Sir, that these three points will be stressed and will be laid before the Secretary of State at the earliest possible moment.

The question of the motion was put and carried.

#### LOCAL GOVERNMENT (RATING) (AMENDMENT) BILL

##### SECOND READING

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

The "Objects and Reasons" as published indicate quite clearly the object of this comparatively small measure.

Section 29 of the Local Government (Rating) Ordinance, 1928, provides for the application of the provisions of that Ordinance to townships established under the Townships Ordinance, 1930. As the section stands, however, the Governor himself is deemed to be the local authority for the purposes of the Ordinance when the Ordinance is so applied. Of course, it is obviously quite impracticable for the Governor to take over the functions of mayor, town clerk, and town treasurer. No doubt when the Bill was drafted, it was expected that the Governor would be able to delegate his powers,

[Mr. Mortimer] but it appears that that delegation is not legally possible.

It is now desired for the first time to apply the Ordinance to a Grade A township, and this difficulty has been brought to light. This Bill is designed to make the necessary amendment to provide that, in the case of the application of this Ordinance to townships, the local authority shall be not the Governor but the district commissioner acting with the advice of the township committee.

The Bill proposes to restrict the application of the Ordinance to Grade A townships, as it is intended that only these shall be brought within the operation of the Rating Ordinance.

MR. HARRAGIN seconded.

The question was put and carried.

#### KENYA DEFENCE FORCE (AMENDMENT) BILL

##### SECOND READING

MR. WALLACE: Your Excellency, I beg to move that the Kenya Defence Force (Amendment) Bill be read a second time.

Under the existing law, it is not incumbent upon British subjects of European origin over the age of 55 years to enrol in the Kenya Defence Force. When the Defence Force Bill was before the select committee about a year and a half ago, it was pointed out by the Commander of the Northern Brigade that this was a serious omission, in that when the Defence Force was called out those persons would not be under military control.

At that time we did not wish to postpone the passage of the Bill, but the select committee recommended that this point should be brought to the notice of the Secretary of State; it was accordingly referred to him and he agrees with the recommendation. Clauses 2 and 3 (a) therefore provide that all British subjects of European origin over the age of 18 years resident in the Colony shall enrol in the Defence Force. The Defence Force will be divided into three classes: 1, those under 30 years; 2, those between the ages of 30 and 50; and 3, all those over the age of 50.

Turning to clause 5, this is a consequential amendment, and contains a

further provision that members of Class III over the age of 50 years shall not be required to undergo any peace training.

Clause 6 is again consequential, and provides that members of Class II shall not be called out until members of Class I have been called out, and that members enrolled in Class III shall not be called out until those in Classes I and II have been called out.

Clause 9 is once again consequential, and merely provides that persons now required for the first time to enrol in the Defence Force shall do so within one month after the commencement of this Ordinance.

Reverting back to clause 3 (b), this amendment provides that aliens, who are with Your Excellency's permission permitted to enrol in the Defence Force, shall not be required to take an oath, because it is realized that aliens in this country owe a local allegiance to His Majesty.

Clause 4 is formal; the marginal note to the principal Ordinance does not quite express the meaning of section 10.

Clause 7 makes it quite clear that only the disciplinary provisions of the Army Act apply to officers and members of the Defence Force on the occasions specified in section 23 of the principal Ordinance.

MR. HARRAGIN seconded.

COL. KIRKWOOD: Your Excellency, I must express the opinion that I am not satisfied with this Bill.

I understand that clause 3 proposes to do away with the age limit. In other words, every male irrespective of age is liable to be enrolled in the Kenya Defence Force.

The unofficial community have had their minds exercised lately quite considerably—probably through ignorance or want of information being passed on by Government—as to what was happening in the defence of the Colony. Probably we are over-anxious on the subject, but I think it is permissible.

In the past it was the practice to have what was known as a Local Committee in various places. That Local Committee dealt with district affairs, and it was carried out by members of the unofficial

[Col. Kirkwood]

community who were not liable to be called up for service in the Defence Force. The committee, for instance, was responsible for arranging the evacuation of women and children, an assembly point, and so on, in case of a native rising or other circumstances arising which made it necessary for them to be removed from outlying and back farms. It also meant that certain men who were not eligible for service, retired officers on pension maybe or officers, n.c.o.'s and men in receipt of wound gratuities who were suffering a physical disability, and consequently would be of little value to the Defence Force, could be of great value to a district inasmuch as they could be sent to a farm that had no European on it because he had joined the colours. I think it absolutely essential that those farms should be managed by somebody.

That was the duty of the Local Committee. It is not as simple as it looks, but I will not take up the time of Council by going into the fullest possible details. We have, however, to realize that in times of war or trouble, the food supplies will have to be guaranteed in the event of the Defence Force being called out. You will not be able to guarantee your food supplies under war conditions if the farms are left empty of Europeans throughout the Colony, and how you will manage under this Ordinance I fail to see. If everybody is called out and given a job of work to do in the Defence Force, the points I am trying to make will be overlooked and there will be a serious disability in the outside districts of the Colony.

I should also like to take the opportunity of saying that I regret very much that the position of Commander of the Defence Force is no longer in existence. I would like to see it revert back to the Defence Force Commander, who was under Your Excellency as officer in charge of the whole of the King's forces in this Colony.

I have not prepared any amendment, but I hope the points will be borne in mind and the Bill not rushed through this morning. I fail to see, if everybody is called out and comes under the Commander of the Kenya Defence Force, what is going to happen to the women and

children on the farms which will be left without anybody to control the native labour on those farms. If the natives are to be sent back to the reserves there will be no food or posha which is absolutely essential for any fighting force in Kenya and to the native askari.

MR. MAINI: Your Excellency, when this and similar Bills have been before the Council, the Indian members have taken the opportunity of expressing their views very strongly on the exclusion of British Indians from the Defence and Auxiliary Forces. I think that on this occasion I should like to call the attention of Council and Government to one provision contained in this Bill which I think is wrong.

I refer to the provision contained in clause 3 (b) relating to the oath.

One of the main grievances, or the main objection, of the Indian community in this country to legislation of this type is that while you are, on the one hand, excluding your British Indian colleagues from taking part in rendering service to this country, you are making it possible for non-British Europeans to take part on an equal basis with the British Europeans. That, to my mind, is an inherent injustice and an iniquity which should not be perpetuated within the British Empire.

It might be said that in any case there is a protection insofar as non-British Europeans, to be admitted to this particular Force, will be admitted only with Your Excellency's consent. There might be something to be said for this argument; but there is in my opinion a very strong case against it.

Can it be said, in the present state of European politics, that we are justified in extending this privilege to non-British Europeans? In the atmosphere of Europe at the present time I suggest as a matter of Imperial policy that it is worth while considering the question of extending these privileges to non-British Europeans. I am not aware whether similar reciprocal treatment exists in any other non-British colonies. As far as my information goes, I do not think that any British subject, European or non-European, is placed on a basis of equality at all in any of the non-British colonies.

[Mr. Maia]

To some extent it may be justified here, that there is not enough British European man-power available to take responsibility for the defence of the country under the circumstances laid out in this Bill. Then, if this statement is correct, it will be a special justification for calling on non-European British subjects to assist in this defence. But I say, Sir, that this statement is far from the truth, and my hon. colleagues on this side of Council will strongly contradict it. More than that, Government, before extending these facilities to non-British subjects, should consider the possibilities of extending similar privileges to British Indians in this Colony.

In reply to a question asked in this Council some years ago, it was stated by Government that they would consider the question of utilizing Indian man-power of the country for the purpose of defence when the whole issue was again considered. Before Government extends the principle as is contained in this particular Bill, of permitting foreigners to serve without taking an oath of allegiance, they should seriously consider the question of enlisting the Indian man-power of this country.

The taking of the oath is a very important matter, and I cannot understand how, from the point of view of military discipline or the tactics of military operations, the privilege of enlistment without the corresponding obligation of taking the oath can be extended to non-British subjects. When the time comes I shall strongly oppose the inclusion of this clause.

MAJOR JOYCE: Your Excellency, I have one or two remarks to make about this Bill referring more particularly to clause 3 (b), and I find myself in certain respects in complete agreement with the hon. Indian member over the question of the desirability or otherwise of allowing foreigners to become members of the Defence Force without taking the oath. I agree that this question is largely a matter of opinion, and a thing that can be argued both ways. But I do feel strongly that, with things as they are, and even allowing for the fact that under the Bill the Governor has the right to exclude any particular foreigner or otherwise—in spite of that,

I say it would be undesirable to allow foreigners to take part in the defence of the country if they find themselves unable to take the oath.

Should they find themselves unable to do that, I consider the discretion should not be in anybody's hands to exclude them. I feel they ought to be automatically excluded under the Bill as it stands.

That is the particular point I want to make. I do not quite know the procedure or occasion under which we shall have an opportunity of discussing it, but if I am allowed to at a later stage or if the procedure of the Council admits I should like to have the opportunity of proposing an amendment to embody that alteration.

HIS EXCELLENCY: In the committee stage you will have an opportunity.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I note that this Bill is an amending Bill which is being introduced to give effect to the recommendations of the select committee which was appointed some time ago to consider the principal Ordinance. I was not on that select committee and I do not know how they arrived at their recommendations, but my colleagues have discussed this Bill at some length, and we are not very happy with it as it is at the moment.

The first point has already just been touched on by the last speaker, and to some extent by the hon. Indian member. We do feel, some of us, that it would probably, on the whole, be undesirable to have aliens in the Defence Force. Others feel that in exceptional circumstances there are people of foreign nationality who might be very useful, and who might have been out here for a long time, and that in such cases, special cases, with your agreement, Sir, they might be allowed to serve in the Defence Force.

But we are all in complete agreement that, if they do so, they should take the oath. I am aware that under the old Defence Force Ordinance no oath was taken, but we all feel it should be now.

There is one other point not yet raised, and I was asked to bring it up by the organization representing the ex-Service men. That is, that now all males are to go automatically into the Defence Force, it

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should not be necessary for anybody who has been discharged as permanently unfit or crippled from the Army to have to make application for exemption to have to go and be re-examined by a doctor. They feel, rightly or wrongly, that if they have been permanently incapacitated in the service of the country, the fact should be recognised, and the mere fact of showing their discharge papers and the grounds of discharge should automatically exempt them from the provisions of the Ordinance.

Thirdly, I would like to stress what has been said by the hon. Member for Trans Nzoia. I do not know what the object was of altering the two classes, one of men up to 30 and the other up to 35, and making three classes, bringing in men in the eighties and nineties. There was probably some reason, and it is alleged, I understand, that they want to get everybody in the country under military control.

Strictly speaking, from a military point of view that may be quite reasonable, but in a country of this kind when all the younger men are removed it is very hard to carry on in the districts unless there is some civil organization composed of the older people who can arrange to do so beforehand. I do not believe it is possible for any centralized military organization to arrange effectively for the carrying on of the necessary activities in widely scattered districts such as exist in this country.

I believe it would be far simpler in practice if any trouble arose or unfortunately war occurred and it would be found to work better, if men over a certain age were in effect exempted from service in the Defence Force. In other words, one goes back to what was found practicable in other countries, that up to a certain age the younger and middle-aged men were enrolled in the Defence Force and the older men were not.

I should like to hear a great deal more about that point before agreeing to the provisions of this Bill.

The debate was adjourned.

#### ADJOURNMENT

Council adjourned till 10 a.m. on Monday, 2nd May, 1938.

Monday, 2nd May, 1938

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Monday, 2nd May, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

#### COMMUNICATION FROM THE CHAIR

##### DEFENCE PLANS

HIS EXCELLENCY, Hon. members of Council, I wish to expand slightly a short statement I made on the 8th April with regard to internal security and the Kenya Defence Force.

In order to avoid any possible misunderstanding, may I say straight off that there is no supposition or any reason whatever to suppose there is going to be internal trouble in this Colony? In fact, all the evidence is rather the other way. But, in the same way that one insures against fire without anticipating a fire, so one naturally has to make arrangements for internal security.

I indicated on the 8th April the order of priority given to the whole of the problems of defence, which include internal security. There may be differences of opinion as to whether that priority is correct or not. I am not going to argue about that now, but what I do want to state quite definitely is that there has been no avoidable delay on the part of the military authorities, if by avoidable delay is implied slackness or indifference.

I say this not on account of any of the words used in a motion that is on the Order Paper for to-day, but simply in order to try and clear away misunderstandings before they arise.

The Commander, Northern Brigade, and his staff have worked and are working very thoroughly and very loyally for the good of this country. They have quite rightly interpreted loyalty as a study of economy in every possible direction, and one of their economies has been in keeping their headquarters staff small. I believe that events have proved that that staff is too small, and steps are being taken to increase it. But it would be very

[H.E. the Governor] unfair on the military authorities to blame them, because they have been trying to work really economically, and in doing so may perhaps have cut down their staff a little bit too much.

I am watching the whole question of internal security personally. It does not in the least imply any lack of confidence in those on whom the direct responsibility lies. It is simply this: that the stage has now been reached in the whole defence problem when internal security has come up to the top, other things having been done, or at any rate cleared away as far as possible. I am watching to see that it remains at the top until the work on it is completed.

The second reason why I am paying particular personal attention is to ensure the co-ordination of all the various departments and interests that are affected.

As an instance of this matter, may I just refer to a point brought up in discussion of a Bill still before Council: that was the need for ensuring that men are available to carry out the necessary agricultural work for the country, and food production as well. That is very important, and has not been forgotten, and it applies to many other things outside food production. I will just mention water, electric power and light, the harbour at Mombasa, and so forth.

Internal security implies not only the Kenya Defence Force. Actually, in the whole programme of the internal security scheme, the Kenya Defence Force comes in at what is known as Stage C. Stages A and B are questions purely for the Police. The Police have not been reorganized, they have their scheme, which is kept up to date, and the whole of it is in working order.

When we get to Stage C, the changes made in the Kenya Defence Force meant that a complete new plan had to be made out. Then one has got to remember, too, that internal security is not only a question of internal problems. One has got internal security in the event of external aggression, which has to be tied up and co-ordinated with the whole defence plans of this Colony.

Internal security was also referred to in connexion with outlying farms. There

are also outlying shops, certain missions, and in one or two cases outlying hospitals. All of these have got to be brought into this scheme. Stages A and B in the programme, that is the police work, are as I said already done.

A good deal of ground work has also been covered already as regards what is called stage C, which includes the organization of the Kenya Defence Force. I have got here now what may be called a progress report of the Kenya Defence Force organization. It includes such things as the division of different provinces into districts, the division of different districts into sections, rallying points for women and children, etc. where they are to come to in cases of urgent necessity.

The suggested names for the district commandants and the section commandants cannot be given out yet, because they are all merely proposals at present. Various individuals have been suggested for the different posts; they have in all cases to be consulted; and in some cases it may not be thought that the original suggestions are the best possible. Rallying points have got to be inspected as regards questions of accommodation, defence, and so forth.

I bring this up to show that the thing is at any rate beginning to move. Having got to the top of the whole defence scheme, it is moving, and although it is quite right to say that nothing has been given out yet, the first steps have been taken towards what may be regarded as the completion of Stage C; that is, when every individual in the Kenya Defence Force knows where he has to go to in case of trouble or when a signal is received, without any further orders, when he knows where his rifle is if he has not got it with him, and also every woman and child who might have to move in case of emergency knows where to go and how they are going to get there. We have made the first beginning of it all.

May I just say in conclusion that the efficiency of the Kenya Regiment gives a very good indication anyway that the Kenya Defence Force will be just as efficient in its particular role as the Kenya Regiment gives every proof of becoming in its role. That, I may say in passing,

[H.E. the Governor] implies the compliance with and, if necessary, the enforcement of regulations on the subject. The Kenya Defence Force has got various roles to carry out. There is internal security, which includes—and I put this first—the direct protection of the women and children; also the protection of certain vital points which I need not mention; and also such things as, at Mombasa, training in the use of anti-aircraft machine guns.

All that is going on, this progress report is proof, if necessary, that things are moving, and I only repeat in conclusion that it is having my personal attention. (Applause.)

#### MINUTES

The minutes of the meeting of the 29th April, 1938, were confirmed.

#### PAPER LAID

The following paper was laid on the table:—

By MR. LOCKHART:

Report of the Board of the Land and Agricultural Bank of Kenya, 1937.

#### ORAL ANSWERS TO QUESTIONS

##### No. 7—GAME DEPARTMENT

LORD ERROLL asked:—

In view of the fact that all Officers of the Game Department have either left the country, or are shortly due for retirement, will Government state what steps are being taken to reorganize this department?

SIR ARMIGEL WADE: It is not proposed that any steps towards permanent reorganization of the Game Department should be taken before the return of the Game Warden to the Colony, which is expected to be at the end of July next. Provision for temporary assistance has been made in the Estimates.

LORD ERROLL: Arising out of that answer, can Government inform Council whether, when the Game Warden returns, his stay is intended to be of some permanence, or is he to be wafted away to any other colony?

SIR ARMIGEL WADE: We have had no information yet as to whether any

other colony has asked for him. I would not say they will not!

#### No. 8—DAIRY AND MEAT CONTROL BILLS

MR. LONG asked:—

What are Government's intentions as regards the introduction of—

(a) The Dairy Control Bill, and

(b) The Meat Control Bill?

SIR ARMIGEL WADE: (a) As regards the Dairy Control Bill, a draft Bill, embodying certain new proposals put forward by the industry, is being prepared for consideration by the Standing Board of Economic Development at the Board's request. The further recommendations of the Board will be awaited.

(b) A draft of a Meat Control Bill is in the course of preparation by the Director of Veterinary Services, who is now on leave, and it is expected that it will be submitted to Government shortly.

#### STANDING FINANCE COMMITTEE

##### APPOINTMENT OF

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"Be it resolved that, in accordance with Standing Rule and Order No. 51, a Standing Finance Committee be appointed 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 Financial Secretary.

The Hon. the Chief Native Commissioner.

Lt.-Col. the Hon. Lord Francis Scott,  
K.C.M.G., D.S.O.

Major the Hon. F. W. Cavendish-Bentinck.

The Hon. W. G. D. H. Nicol.

The Hon. J. B. Pandya.

Dr. the Hon. C. J. Wilson, M.C."

[Sir A. Wade]

In moving this motion, I think I should say that it is possible it will prove rather a sort of interim motion, because there are certain conversations now being conducted between Your Excellency's Government and the Secretary of State, and the result of those conversations may be a certain readjustment of the respective duties of the Colonial Secretary and Financial Secretary. It is, therefore, possible that before long this Council may want a change of personnel.

In the meantime, there are various important matters awaiting the consideration of the Standing Finance Committee, and Government thought it better to appoint the Committee on the former lines and consisting so far as possible of the former personnel.

MR. HARRAGIN seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, in supporting this motion I would only ask for an assurance that if, at a later stage, and as a result of any correspondence which may take place between your Government and the Secretary of State, any suggestions are made to change the personnel of the Committee, that this Council will have an opportunity of discussing them, because I understand that the Committee is appointed in accordance with our Standing Rules and Orders No. 51.

SIR ARMIGEL WADE: I can readily give the assurance asked for by the hon. member. In fact, I think it is plain from our Standing Rules and Orders Nos. 52 and 56 that it would be quite impossible to alter the composition of this Committee without a motion approved by this Council.

The question was put and carried.

#### SCHEDULES OF ADDITIONAL PROVISION

##### No. 4 of 1937

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That Schedule of Additional Provision No. 4 of 1937 be referred to the Standing Finance Committee."

This Schedule, which was circulated to hon. members on the 8th April, covers

the period from 1st October to the end of last year.

As is explained on the inside of the memorandum, the total additional provision amounts to £122,476 but, when the set-offs in the form of savings and recoveries by way of reimbursements and increased revenue are taken into account the net additional expenditure amounts to £50,871.

A motion of this kind is always regarded as formal, and I do not therefore intend to discuss any details in the Schedule at this stage but to await the Report of the Standing Finance Committee when any details can be discussed.

MR. LOCKHART seconded.

The question was put and carried.

##### No. 1 of 1938

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That Schedule of Additional Provision No. 1 of 1938 be referred to the Standing Finance Committee."

This Schedule covers the period from 1st January to 31st March, the first quarter of this year. It provides for additional expenditure amounting to £48,289, but as a sum of £2,775 is an offset by specific savings and a further sum of £38,087 is recoverable in the form of reimbursements, the actual net additional provision amounts to £7,427.

For the reasons I gave in moving the previous motion I do not propose to go into details of the Schedule.

MR. LOCKHART seconded.

The question was put and carried.

#### INTERNAL SECURITY

##### MOTION RE

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move:—

"That immediate steps be taken to make plans providing for internal security and the evacuation of women and children from outlying districts in the event of disturbance, and further, that the organization of the Kenya Defence Force be proceeded with without further delay."

[Major Cavendish-Bentinck]

In moving it, I would just like to explain in a few words why we have brought this motion forward.

In the first place, I would like to stress, as you, Sir, did this morning, that we have no reason whatever to anticipate any internal trouble. Secondly, we did not mean in moving this motion to make any suggestion of censure of the military authorities. We are aware that they have been working overtime in trying to reorganize the defences of this Colony, and we are also aware that they have had to do so with very limited finances at their disposal. We are also aware that plans for the defence of this Colony in the event of war are much better left to the military, and we do not wish in any way to interfere with their plans. They are the experts, it is up to us to do as we are told.

The same thing also applies to internal security measures, in the sense that rather complicated plans have to be made to provide internal security in the event of external aggression or in the event of a world war. We thoroughly realize that those plans, as you pointed out, are bound to take a great deal of time to complete.

But we did bring forward this motion, because we felt that in the meantime, which entails and has entailed a period of a great many months, there were no plans whatever, not even elementary plans, for possible sudden local disturbances, to provide for the safety of our own people. Hitherto, over a period of many years, we always have had our provinces, as Your Excellency suggested, divided into districts, districts into sections, with section commanders and rallying points, so that in the event of a sudden internal disturbance people did know where to go and some arrangements could be made to evacuate the women and children.

That was the only point on which we were dissatisfied.

We felt, perhaps, that in the much more important work of drawing up plans for the defence of the Colony in the event of war, the possibility in the meantime of any internal trouble—which is extremely unlikely but which, never-

theless, is a possibility—was not being guarded against.

For that reason, and that reason alone, we felt we had to bring forward this motion because, after all, we are the people who are responsible for seeing that the lives of those we represent are properly safeguarded.

But, in view of Your Excellency's statement this morning, and in view of the fact that you are watching this yourself, and I should like to add that we have the completest possible confidence that you will do everything that is necessary, I beg leave of Council to withdraw this motion.

The motion was by leave of Council withdrawn.

#### KENYA DEFENCE FORCE (AMENDMENT) BILL

##### SECOND READING

The debate on the second reading was resumed.

MR. HARRAGIN: Your Excellency, in intervening in this debate, I wish to make it perfectly clear that it is not because I am not satisfied that the points would have been adequately dealt with by the hon. mover, but because I am anxious that hon. members on the other side of Council should have the opportunity of raising any further questions that they may consider necessary after I have spoken.

The history of these amendments is rather interesting. There are two amendments of any importance: the first dealing with old gentlemen being enrolled, the second with aliens taking the oath.

The reason why you find the first amendment in the Bill is because, when the select committee of this Council sat on the principal Ordinance some months ago, that committee unanimously recommended that this amendment should be in the ordinance. That ordinance being a matter of defence, it was necessary for us to refer the matter to the Secretary of State before it becomes law, if we made any amendments in a Bill of which he has already approved.

An undertaking was therefore given to the select committee that the amendment would be made at the first possible

[Mr. Harragin] opportunity which, incidentally, is today, and that meanwhile that Bill will go through in the form in which it was drafted.

From the point of view of practical politics, I would ask hon. members on the other side of Council to seriously consider the position.

All we are asking for really by this amendment is a registration of what I will call the old gentlemen in the Colony. It was suggested that it was intended to make them march about, forming fours, and so on, but, as you well know, the object is that we may be able to regulate the man-power in the Colony at any particular moment.

Take, for example, internal unrest. Is it desirable that those gentlemen should be allowed to stay by themselves on their estates, perhaps pig-headedly insisting that they will not leave? Is it not better that they should be made to fall in with the defence scheme of which we have heard so much this morning, and be brought to rallying points so that they can be used perhaps to defend the women and children?

That is all that is asked for in this amendment, and I do seriously suggest it is the only practical course we can take.

So much for the enrolment of the old gentlemen in order that they may be brought to the rallying points which are considered most suitable for them.

The second point concerning the oath is interesting.

As you know, under the old Kenya Defence Force Ordinance there was no oath at all. Under the present Kenya Defence Force Ordinance there is no oath for a British citizen, but for some reason an oath was inserted in cases where aliens were allowed to join. It has been pointed out to us that it is impractical to ask a person who possibly has already taken the oath of allegiance to some other king to be asked to take another oath of allegiance to our King. After much discussion, with the safeguard that the Governor has in that he can decide who shall and who shall not join, it is suggested that we delete from the present ordinance the necessity for an alien taking the oath.

The only question I would ask hon. members is: Is it desirable or not that these aliens should be called in to protect our women and children—and their own incidentally, and you must realize that in any event we shall have to protect them, whether they join the Kenya Defence Force or not?—Is it better that they should be enrolled and made to do a useful job of work in case of trouble, or not? I think you may take it that if they are going to be forced to take this oath so few will be able to join that it is not worth considering, and you are ruling them out of the Kenya Defence Force altogether and thereby assisting in defending their own as well as our own women and children in the event of internal trouble.

In the event of external trouble hon. members know what will happen. If by any chance some of the aliens happen to belong to a nation at enmity with us, they will be immediately interned, so that there will be no cause for anxiety.

I therefore suggest it is desirable in this country under present conditions that, subject to the safeguard Your Excellency has in regard to those who may join, the Bill be allowed to remain in its present form.

MR. NICOL: Your Excellency, having listened to Your Excellency's address this morning and to the remarks of the hon. and learned Attorney General, the question of the correction of clause 3 in the Bill is one which, to me, does not really require serious debate, but I may say that I did and do support what the hon. and gallant member for Trans Nzoia said on Friday. At the same time, I cannot imagine that Class III, which my learned friend described really as including all the obstinate old gentlemen, would be called out in the event of any emergency; I realize that their duty will be to protect the women and children. A platoon or company of Methuselahs would be of little practical use really in conditions that would have to be met with in Africa! But I was wondering whether we could not overcome it in another way: that it is not the intention to call them out for military service under the corrected clause 3 at all. Still, I am not going to press that point.



[Mr. Nicol]

My greatest objection to the Bill we have at the moment in front of us is the proposal that aliens shall be allowed to join the Defence Force without taking the oath. And, in taking this exception, I wish to associate myself with the remarks of the hon. and gallant Member for Ukamba and also the hon. and learned member Mr. Maini. Now, I see the point of view of the Indian community. The Indian community are British subjects and as British subjects I submit that they are entitled to, in fact should, shoulder their share of the defences of the country.

At this stage I am going to crave the indulgence of Your Excellency and the hon. members of this Council if I appear to digress for a moment or two. The remarks I am going to make do have a bearing on this particular issue and I feel that it would be of advantage to elaborate my point in debate. I feel strongly on this question of enabling aliens to join without the oath as things are at the moment.

I have the honour to represent Mombasa. I am not parochial in my remarks, for Mombasa is the port town of Kenya and Uganda, and by its geographical situation it holds second place to none in its strategic importance. And I am sure all hon. members will agree with me that Mombasa is their port and, without going into details, you will, I am sure, appreciate what that means. For the defence of that port you have a handful of Kenya Royal Naval Volunteer Reserve, a small but highly efficient coast unit, to handle the guns. I contend that more is required. To have a garrison of regular troops would cost money; to have a volunteer unit would also cost money, but not so much. The available European man-power in Mombasa is very small in relation to the population of the town. In the event of an emergency the majority would really be filling positions classed as key or pivotal positions, and the defence available would be so small as to be of little practical value. Now, I submit that a volunteer unit of Indians and a volunteer unit of Africans would be of real use in Mombasa.

I am fully alive to the fact that such a scheme would cost money, but we on this

side of the Council realize that for defence money has got to be found. I am convinced that every thinking person in this Colony realizes the importance of having our defences assured. We all realize that every Colony has to pay its whack and it cannot expect financial assistance of a large order from the Imperial Government. I am also confident that everybody is anxious for us to set our house in order and while none of us like it, yet, in view of the urgency, all will be prepared to pay their share towards maintaining reasonable and effective measures for the defence and protection of our families and property.

So, Sir, I oppose this proposal to allow aliens into our defence units without the necessity of taking the oath of allegiance to His Majesty until practical and effective steps have been taken to make use of the man-power available from the many British subjects already resident in this Colony.

MR. COOKE: Your Excellency, I would like to support the hon. Member for Mombasa in his suggestion that aliens should take the oath of the Kenya Defence Force. In saying this I am not critical of the foreigners in this country whose public spirit and loyalty to the Kenya Government everybody recognizes, and it does seem to me a monstrous thing that foreigners should be permitted to enter the Kenya Defence Force when we deny these privileges to our fellow subjects. I do not know, but perhaps there are many people in this Colony who would prefer, in a time of great crisis, to have their women and children guarded by some adventurer from Europe, but personally I would prefer to see some loyal Sikh or Pathan in that position. Hon. members on the other side of the Council in Friday's debate warned us in solemn terms against racial legislation. Well, Sir, this appears to me to be an instance of racial legislation and I quite honestly think it is a great mistake to allow it to go through.

CAPT. LONG: Your Excellency, under the standing ordinance of the Defence Force, it seems to me not to be a question whether Indians should be allowed to join the Defence Force or not.

[Capt. Long]

I am perfectly certain that if the Indians want to they will be allowed to organize their own defence force, and in my opinion there is not the slightest objection to them doing so. The whole point seems to me whether you are going to allow foreigners and aliens to join the Defence Force in this country without taking the oath. It seems to me that if it is compulsory to join the Defence Force then I think one might say they may not, possibly, be made to take the oath. But, as it is a voluntary measure it seems to me quite clear that those people who want to join the Defence Force and take the oath, will join it, and those who are not in that position will not.

MR. WALLACE: Your Excellency, had I anticipated that this seemingly innocuous measure would be subjected to such a barrage from my hon. and gallant friends opposite, I might have made, or should have made, a more detailed explanation of the proposals contained in this Bill. It will, therefore, perhaps be pardoned if I deal at some length with the various criticisms which have been levelled at it, although, I may say, most of my remarks must be in the nature of a recitation of what my hon. and learned colleague has just said.

The first point with which I propose to deal is that raised this morning by the hon. Member for Mombasa, and raised by the hon. Indian members, namely, that British Indian subjects should not be excluded from the scope of this Bill whilst aliens are entitled or may volunteer to enrol in the Defence Force. I think I may say that my view on this matter and, I think, the attitude of the Government, is that expressed by the Hon. the Acting Member for Rift Valley a moment ago. Further, I do not think I can do better than to read to hon. members the reply given by the Hon. the Colonial Secretary when this point was raised on the principal bill some sixteen or seventeen months ago, which will be found in the 1936 Hansard on page 879.

The Colonial Secretary at that time said, inter alia:—

"The Bills are concerned with the reorganization of the existing European force, and have nothing to do

with any proposal to raise additional forces of any other race or kind, and the passage of these Bills will not affect in any way whatever the issue as to whether or not we want an Indian regiment. If the time comes when circumstances seem to warrant the establishment of a new force of whatever kind, and if we are sure of getting the right kind of material, and the material would come forward if all the circumstances, as I say, would seem to warrant such a departure from the existing practice, the passage of these two Bills would do nothing whatever to prejudice the acceptance of any such proposals."

"If the time comes"—and this is the part I would draw particular attention to—"If the time comes when circumstances seem to warrant the establishment of a new force" then this Bill will not prejudice the acceptance of any such proposal. I do not propose to dilate any further on this particular subject. I understand that the attitude of Government remains unchanged and no good purpose would be served by any further remarks on this particular point.

Now, the next matter upon which members appear to feel rather strongly is the proposal that all Europeans, all British subjects of European race or origin, over the age of eighteen, should be required to enrol. My hon. and learned colleague has already explained that at some length, and while I admit quite frankly that under the old Defence Force Ordinance and the existing ordinance it is only necessary for people up to the age of fifty-five to enrol, I do suggest that the arguments adduced by my colleague this morning are sufficient to show that the advantages far outweigh the disadvantages of confining enrolment to people between the ages of eighteen and fifty-five.

I must admit that when my friend the hon. Member for Trans Nzoia was speaking the other day, it sounded rather amusing to visualise old gentlemen, possibly suffering from gout or asthma, or other ills to which this flesh is heir, being asked to march down the highway from the Kinangop to Naivasha, shouldering their muskets! That, it is perfectly

[Mr. Wallace] obvious, was not the intention. I did, in introducing this bill, draw specific attention to the fact that people in Class 3, over the age of fifty, will not be required to do peace training. Moreover, I might say that there are several people over the age of fifty-five who could, in case of emergency, be utilized to the greatest advantage. One has not got to look round very far to find several people over that age who are probably much better shots than people, shall we say, twenty or thirty years their junior. I trust that the objection on this count has been sufficiently answered.

Turning to the question of the Oath, although my hon. and learned friend has already explained the position, I propose to go into some detail.

This question has always been a very vexed one and in 1924, when the first draft of the Kenya Defence Force Bill appeared and was sent home, a large section of the community out here felt very strongly on the question, and a provision was inserted in the Bill requiring all members of the Defence Force to take the Oath. It was pointed out by the Committee on Imperial Defence at the time that it was a most unusual provision to have in a compulsorily enrolled force. A Select Committee was set up by the then Governor, Sir Edward Grigg, and it was agreed and recommended by that committee that the provision requiring compulsorily enrolled people to take the oath should be excised. In that Defence Force Ordinance, which eventually reached the Statute Book in 1928 and under which the Defence Force until September of last year was enrolled, there was provision whereby an alien, who had volunteered, could enrol with Your Excellency's permission. But at no time, as far as I have been able to ascertain, either before or since, has it ever been suggested that aliens who volunteered to become members of the Defence Force should be required to take the Oath.

It is natural, therefore, to endeavour to find out when this provision crept in. Hon. members may recollect that some two years ago Your Excellency's predecessor appointed a Committee to con-

sider the whole question of internal defence, and in the enclosure to their report they suggested, for the first time, that foreigners or aliens who volunteered to enrol should be required to take the Oath. I can only assume that the draftsman, whoever he was, came to the conclusion that as the same arguments did not apply to foreigners who volunteer as applied to people compulsorily enrolled, there was no reason why aliens should not take the Oath.

As hon. members seem to feel very deeply concerned about the question, it might be interesting to know what the legal position is with regard to aliens in this Colony.

Their position is that they or their families, so long as they remain under the King's protection, owe allegiance to His Majesty and, what is more important, they are punishable as traitors for acts of treason whether the country of which they are nationals is at enmity with this country or not. That is, broadly speaking, a statement of the legal position. It is not a mere statement and it has ample authority. Perhaps hon. members will be a little more convinced if I tell them that the authority is that of the highest judicial officer in the Empire and the highest judicial tribunal in the Empire.

Perhaps I will not be accused of verbosity if I refer hon. members for a moment to a passage from a judgment of the Privy Council in the case of *Do Jager* versus the Attorney General of Natal. In that case Lord Loreburn, then Lord Chancellor, delivering the judgment of the Judicial Committee of the Privy Council observed *obiter*—

"It is old law that an alien resident within British territory owes allegiance to the Crown, and may be indicted for high treason, though not a subject. Their Lordships consider that the duty of a resident alien is so to act that the Crown shall not be harmed by reason of its having admitted him as a resident. He is not to take advantage of the hospitality extended to him against the Sovereign who extended it. In modern times great numbers of aliens reside in this and in most other countries . . .

[Mr. Wallace]

It would be intolerable and must inevitably end in a restriction of the international facilities now universally granted if, as soon as an enemy made good his military occupation of a particular district, those who had till then lived there peacefully as aliens could with impunity take up arms for the invaders. A small invading force might thus be swollen into a considerable army while the risks of transport would be entirely evaded by those who, instead of embarking from their own country, awaited the expedition under the protection of the country against whom it was directed."

It may well be asked then, if that is the position, why are they not asked to take the Oath of Allegiance to His Majesty? But as my hon. colleague has already pointed out, it would be constitutionally improper to ask an alien who already owed allegiance to his own country to take an oath of allegiance to His Majesty without first divesting himself of his alien nationality. But, Sir, there are further safeguards. Not only do these aliens who are resident in this Colony owe this allegiance but, if, with Your Excellency's permission, they enrol in the Defence Force, they immediately become members thereof, and as members, are subject to all the provisions of the Ordinance, and all the provisions contained in the regulations, and any time they are called out or when they are on peace training, they are subject, which is most important of all, to the disciplinary provisions of the Army Act.

I may have taken slightly longer time than I intended in replying to this debate, but as hon. members are obviously very concerned, I felt that it would be discourteous not to have given a fairly lengthy explanation. I only trust that I have succeeded in allaying their fears and that they realize that this legislation is not hasty and ill-considered.

As far as my hon. and gallant friends opposite are concerned, being true soldiers I trust they will accept the assurance of their superior officers, even though one of them be but an Acting-General!

The question was put and carried.

## KENYA REGIMENT (TERRITORIAL FORCE) (AMENDMENT) BILL

### SECOND READING

MR. WALLACE: Your Excellency, I beg to move that the Kenya Regiment (Territorial Force) (Amendment) Bill be read a second time.

Those hon. members who were present some seventeen or eighteen months ago when I moved the second reading of the principal ordinance, may perhaps recollect that I informed this Council that the Army Council at home had intimated at that time that they would only be able to give some provisional comments on it and wished to be given the opportunity of examining the Bill when it had passed all its stages in this Council. Most of the amendments contained in this Bill are the result of suggestions made by that body. It is true there are a few other amendments which have been suggested by the Commander, Northern Brigade, with a view to clarifying certain minor matters and removing a few anomalies.

If I may turn to clause 4 first, under the existing law Your Excellency can call out the Regiment by notice, while under the Defence Force Ordinance Your Excellency calls out that force by proclamation. It is considered advisable that the machinery to be used should be the same in both cases; and that a formal proclamation is the more correct procedure. Accordingly, provision has been made on these lines in subsection (1) of the proposed new section 13.

Moreover, there is provision in the Defence Force Ordinance whereby Your Excellency, instead of calling out the Defence Force can order it to hold itself in readiness, and further provision empowering provincial and district commissioners in their respective provinces and districts to call out the Force in the case of sudden and imminent danger. It is considered advisable to have similar provision in the Kenya Regiment Ordinance, for it will be appreciated that there might be times when it might be more advisable to call out the Regiment prior to calling out the Defence Force as the former is a highly trained unit. Provision is therefore made in the proviso to subsection (1) of section 13 and the proposed new subsection (2) of that section.

[Mr. Wallace]

Referring back, clause 2 is a consequential amendment on the amendment in clause 4.

With regard to clause 3, under the existing law a cadet who had passed the prescribed tests gets a certificate of efficiency, and the section goes on to say: "Holders of such certificates may be transferred to the Regiment as trained men". It has been pointed out that no special privilege is conferred on trained men, and therefore the last two lines of present section 11 are to all intents and purposes meaningless. It is really intended to be an instruction to the military authorities that cadets who have obtained certificates of efficiency should not be asked to start from the beginning.

Clause 5 provides that in exceptional circumstances the privilege of retaining the rank and wearing the prescribed uniform should be confined to officers who have served for ten years on the active list. This is to bring our law into uniformity with the practice now prevailing, or will in the near future prevail, throughout the whole of the British Empire.

Clause 6 is a similar provision to that in the Defence Force Bill, and makes it clear that it is the disciplinary provisions of the Army Act which apply to the Kenya Regiment.

Coming to clauses 7 and 8, section 29 of the principal ordinance provides a penalty for committing an offence against the regulations provided for the requisitioning of supplies. It has been realized that under section 36, which gives Your Excellency power to make regulations, there is no provision enabling Your Excellency to make any such regulations. Accordingly, clause 8 amends section 36 giving Your Excellency that power. But it is considered that the penalty imposed by section 29 is rather too severe, and it is therefore proposed to repeal that section, the result of which will be that any person who commits a breach of the regulations will be subject to the general penalty clause contained in section 31, namely £10 or one month's imprisonment.

MR. HARRAGIN seconded.

The question was put and carried.

Council adjourned for the usual interval.

On resuming:

### SHOPS IN RURAL AREAS (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Your Excellency, I beg to move that the Shops in Rural Areas (Amendment) Bill be read the second time.

In order fully to understand and appreciate the significance of this small amending measure, it is necessary to review briefly the circumstances out of which the principal ordinance, which this Bill is designed to amend, was enacted. The establishment of shops on farms is a very old practice in this Colony and presumably, originated because of the lack of trading facilities in the early days. In 1913 the question was causing the Government some concern and the ruling was then given that Government had no objection to the establishment of shops on farms, subject to the restriction that the land should not be sub-leased to others for the purpose of erecting shops and that only one store, which should be managed by the farm lessee or his employee, should be allowed on each farm.

The question came up again from time to time, in 1921, 1924, 1928 and in 1930. During the intervening period a number of townships had been established in the Colony and there had, on every side, been a complete change in the character of many of these stores. In the first instance they were designed as a means of providing for the labour on individual farms, a place close at hand where they could meet their small day to day requirements without making a considerable journey to the trading centre or township nearest to the farm, which might be many miles away.

Now, many of these shops have been turned into large general produce buying stores and it was largely for that reason that, in 1930, the district councils throughout the Colony made representations to Government and requested that some action should be taken to establish control and regulation over these shops on farms. In 1931, therefore, Govern-

[Mr. Mortimer]

ment adopted the policy of permitting such shops where the district council or committee recommended them, and where they thought that such shops were genuinely required. A charge of Sh. 72 per annum as a permit fee was made and the agricultural title of the land was endorsed to the effect that Government had permitted the establishment of a shop on the leasehold area.

The view of Government was that the proper place for trading was a township or a trading centre and not a farm sold or leased for agricultural purposes. It was recognized, however, that the existence of these small shops on farms throughout the country, where they were in such situations as not to interfere with the trading of a township or trading centre, was a useful adjunct, and indeed, in many cases a necessary assistance to the farming community. Consequently Government policy was designed not to stop the establishment or continuation of shops on farms, but to regularize their existence in relationship to the needs of the district and to the covenant in the particular title on which the land was held.

There was one attendant circumstance over which, unfortunately, Government had no control. There was no means of bringing freehold areas under the regulating measures which Government was then imposing. The policy too was not regarded as satisfactory because of the charge of Sh. 72 as a permit fee. This was regarded as being too high a charge. And as Government did not wish to regard the measure as a revenue producing project, but merely as a regulating measure, it was brought under review.

In 1932 a Select Committee was appointed to consider the whole subject of "change of user" on agricultural land and this question of shops on farms was rightly regarded as coming within the scope of that Select Committee. In the report of that Committee the following paragraph occurred:

"In the view of the Committee, public interests would be prejudiced by a total prohibition of shops on farms, but control should be exercised. The number of shops should be controlled

by the local authority; the buildings should conform to public health requirements; and power should be retained to close down any shop in which malpractices occurred. Under existing enactments it appeared that there is no effective control of shops on freehold land. It seemed preferable therefore that this question of shops on farms should be dealt with by *ad hoc* legislation applicable to all shops wherever situated outside townships or trading centres. For this purpose, a Bill is appended hereto in the form adopted by the Committee. The Bill provides for the control of all shops on farms (both leasehold and freehold where no transfer of ownership of the land is concerned) and provides for the issue of annual licences by a licensing officer after consultation with the local district council or committee. As regards the fee to be charged in respect of such licences, the Committee recommends that the charge for a licence in respect of a shop should be Sh. 10 per annum if it is situate outside a radius of four miles from a trading centre or township, and Sh. 40 per annum if it is situated within that radius."

That report was adopted and given legislative form in Ordinance No. 20 of 1933, the measure which it is now sought to amend. Under the licensing provisions of that Ordinance the District Commissioner was appointed licensing officer, and it was laid down that before he issued a licence under this section the licensing officer was to take the opinion of the district council or committee, if any, within whose area such a shop is situated.

In August last a proposal was brought forward by the hon. Member for Trans Nzoia that no licence should be issued without the consent of the district council or committee, and an undertaking was given by Government that the district councils throughout the country would be consulted on this point. They have been consulted and all, with one exception, have replied in favour of the proposed amendment.

Now, Sir, it seems to me that this question of the allowance of shops on

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farms is one primarily for the consideration of local authorities. It is a matter in which district councils are very rightly concerned and it is a legitimate extension of the provisions of local government that the district councils and committees should be entrusted with this additional authority.

I think, Sir, that the extension of this measure may assist, in some ways, in checking the illegitimate extension of trading on farms in competition with townships and trading centres and those who are by law established therein and, furthermore, the placing of the authority on the district council or committee will take the onus off the District Commissioner, as licensing officer, as to the granting of licences. An objection may be raised that the district council and/or committee is not really interested in the administration of the townships within its area and, therefore, there would be a tendency to extend trading in areas outside the townships and trading centres. In reply to that I would point out that the District Commissioner would still be the licensing officer, and that, whilst no licence may be issued without the consent of the district council or committee if this amending Bill is passed, there is nothing to prevent a District Commissioner, as licensing officer, from refusing to grant a licence if he considers that public interests so demand.

It is proposed to provide in this measure that there shall be an appeal to the Provincial Commissioner if any party considers that he is aggrieved by the decision of the district council or committee. That will, I think, effectively obviate any charge that may be levelled against unfair treatment or arbitrary action on the part of the local council or committee.

I wish to say, Sir, that objections to the enactment of this measure have been received by telegraph from the Indian Associations of Nakuru, Eldoret, Thomson's Falls and Kisumu. But in these telegrams no reasons were advanced for the objections. I move, Sir, the second reading of this Bill.

MR. HARRAGIN seconded.

MR. MAINI: Your Excellency, I am very deeply indebted to the Hon. the Acting Commissioner for Local Government for the very lucid explanation he has given in moving the second reading of this particular Bill.

I regret that I cannot agree with him in the reasons which have impelled Government to bring in this particular legislation, and I could not support the principles that underlie this Bill.

The first point really is, whether the intention of the motion proposed by the hon. Member for Trans Nzoia can be carried into effect by legislation of the type we have in front of us to-day. If I understood the intention of that motion correctly, it was that the revocation and granting of licences should be placed on a par. I do not consider that this Bill places these two things on a par or that they are capable of being placed on a par. In my opinion, the granting of a licence and the revocation of a licence are entirely two different things. Indeed, this fact is recognized by the principal ordinance itself, which lays down the test by which a district council can oppose and a district officer can cancel existing licences. But it does not go to the extent of stating the principles which should govern the granting of a licence. Naturally, that should depend on the discretion exercised judicially by the district officer concerned, and I see no reason for altering this particular practice.

For what I may say now, I might be blamed that we on this side of Council are responsible for bringing to this Council racial issues. Speaking for myself, I can say that I am absolutely and entirely free from any racial bias of any nature whatsoever.

In spite of what is being said and done in several countries of the world about race theories, and in spite of what we all listened to a few days ago in this Council, my firm opinion still is that humanity fundamentally here, there and everywhere is substantially the same. In this country we have to remember that the Indian community has been mainly devoted to commercial activities. In the light of this historical circumstance, the objections of the community to certain measures deal-

[Mr. Maini] have forgotten one thing. We are providing in this particular Bill for placing the granting and revocation of a licence on the same basis. I wish we did so consistently, for in section 6 of the principal ordinance, dealing with the granting of licences, the provision is that in the event of a shop owner being dissatisfied with the decision of a district council or district commissioner he can appeal to a magistrate and to the Supreme Court. I cannot see any special reason why a similar provision should not have been embodied in this Bill in regard to revocation of licences.

We have been told that the British people at some stage of their history refused to vote supplies until their grievances had been redressed, and that they refused to pay their taxation without adequate representation. And, Sir, these very principles have become embodied as the essential features of British government. It is on the basis of these very principles that we raise our objections to legislation of the type we have here before us to-day. It is not entirely illogical to call it "racial bias" when all that we are asking for is the application of principles evolved by your people by great sacrifices and over a long period of time.

I submit that if the Indian community refuses to agree to these powers being given to district councils for licensing shops they are quite justified, because except in one case they have no representation at all on these councils. From that point of view, I consider the handing over by Government of the function of licensing shops is not justified. For myself, I cannot see what justification there is for making this change from the present practice. The law as it stands provides ample protection for the interests of the district councils and the people they represent. A district council is first consulted, and I am sure that except for very good reasons a district commissioner would not go against the advice given by a district council. No evidence has been brought before us to-day that that discretion has been exercised in a harsh or undue manner. In these circumstances there is no reason for making any change.

I know that consistency is not one of the virtues or qualities of politicians, but I would like to stress this particular point very much, as it seems to me we

have forgotten one thing. We are providing in this particular Bill for placing the granting and revocation of a licence on the same basis. I wish we did so consistently, for in section 6 of the principal ordinance, dealing with the granting of licences, the provision is that in the event of a shop owner being dissatisfied with the decision of a district council or district commissioner he can appeal to a magistrate and to the Supreme Court. I cannot see any special reason why a similar provision should not have been embodied in this Bill in regard to revocation of licences.

Government is perfectly familiar with my reasons for having these matters decided in a court of law rather than before provincial commissioners, and I have on previous occasions elaborated in great detail this point. I fail to see why a departure is made in this case when the express intention is to place the revocation or granting of a licence on the same footing.

It has been said, rightly or wrongly, by the Hon. the Acting Commissioner for Local Government, that this Bill is being brought at the request of all district councils except one and that it is right that it should go through. There is another point of view to be considered, and it is that, in a matter of this character, certainly the point of view of the commercial community who are to be affected by this Bill deserves equal consideration as the district councils themselves. In view of the telegrams read by the hon. member and the resolutions passed by various commercial bodies, I think Government should consider whether they are justified in introducing such legislation on the request of what I consider to be only one of the parties concerned.

This Bill is fundamentally concerned with the interests of the shopkeepers and I consider they should have been consulted. After all, the proper persons to say whether a shop should be carried on in a particular area are, in my opinion, the owners of the land, and the people who want to carry on the shop. Government can see whether the provisions for the carrying on of shops in these areas relating to sanitation, etc., are carried

[Mr. Maini] out, and I do not think they should have any objection at all beyond that to trading being carried on in any of these places. It is the right of every subject to carry on trade where and how he likes, subject to conformity with the existing laws.

I submit, Sir, that diverting the power from district commissioners to district councils is a highly dangerous principle, and is not understandable, coming as it does from the scions of the great nation of shopkeepers. I am opposed to any increase of restriction in these matters, and for these reasons I am opposed to the Bill.

COL. KIRKWOOD: Your Excellency, I rise to support the Bill. The hon. mover has given the Council the history of this legislation connected with shops on farms, but there are one or two other angles of thought which I should like to touch on.

In the first place, shops on farms have always been looked upon—the legislation in connexion with them and the shops themselves—as creating an amenity for the labour in certain areas and on certain farms where there is more than the average labour employed, but they have never been looked on as a trading or commercial enterprise to be established on every farm in any district.

I did move the motion some time ago which was detailed by the Hon. the Acting Commissioner for Local Government, and the letter Land 1/11/77 dated the 8th September, 1937, was circulated to local authorities throughout the Colony. They have all replied in the affirmative that they would agree that district councils should be the principal licensing authority, with the exception of one. The Government undertaking that was given to me when I withdrew my motion has been implemented by putting this Bill before Council to-day, but I maintain it does not go far enough.

Behind it, of course, is the fostering of the principle of local government. That can be done in this case through a district council or local authority or district committee. I maintain that Government, and rightly so, looks on it from that

angle. But it does not go far enough, and I propose at a later stage to move an amendment that no licence or renewal shall be granted without the approval of the local authority.

At the present time, and under the existing ordinance, the district officer is the licensing authority. It is laid down in the ordinance that he should first obtain the opinion of the local authority, but it is not laid down that he has to accept their views. If this Bill passes the licensing authority will still be the district officer, but he will have to get the approval of the local authority before he can issue a licence. I suggest that it is only right and reasonable that no licence or renewal should be granted without the approval of the local authority. Then you are conforming strictly to the ideal that local government, as far as shops on farms are concerned, is vested in either the district council or district committee or whatever the local authority may be.

I am astounded to hear that a telegram has been received from Kitale protesting against the passing of this Bill, because at a meeting of Kitale Chamber of Commerce at which the Indian representatives were present from their own Chamber, they strongly opposed any licences to shops on farms being granted. They maintained, and I have no doubt rightly from their point of view, that it is interfering with their vested interests in the townships. They have bought their plots at considerable expense, they have had to conform to the building conditions and put up more or less expensive buildings, they carry large stocks, so that I presume that, from their point of view, if every farm or the great majority of farms in a particular district has a small shop run by the owner or one of the native employees for the purpose of supplying small trades goods which the labourers require, it naturally will interfere with the township, town, and trading centres.

Again, we have in my own district one trading centre and, as I understood the ordinance as read out by the hon. mover, it restricted licences to shops on farms being granted within a radius of four miles. But Trans Nzoia District Council

[Col. Kirkwood] have passed a rule that that be extended to six miles. Again, while it is hitting at the larger townships, it is also hitting at the shops on farms. But there is more than one angle we should look at it from. I definitely think these shops should be restricted in reason, for if there are 400 farms in a district we do not want a shop on each farm.

I agree with the principle. It was probably unfair to expect labourers on their day off, such as Sunday, having to walk ten, twelve or fifteen miles to a trading centre, Kitale for instance, to give a concrete case, to buy a three shilling blanket or whatever they required. Certainly they should be able to obtain their wants nearer to their work, and I maintain this Bill would still supply that amenity by allowing a reasonable number of shops to be opened without going too far by interfering with what one can term vested rights of Indian traders in the trading centres in the townships.

I do hope my amendment will be accepted that no licence or renewal be granted without the approval of the local authority.

I notice that there is a proviso that there is a right of appeal to the provincial commissioner. Why this appeal should exist I fail to realize or appreciate. The onus is taken from the district commissioner and put on the provincial commissioner. I presume that under common law, if anybody has a grievance in connexion with this ordinance they still have an appeal to a court of law, but why bring in the provincial commissioner I fail to appreciate.

I do hope the hon. Indian members will look at this from the facts as they exist to-day, that the shops on farms are definitely interfering with the vested interests of Indians trading in the trading centres or townships, and I ask them also to realize that licences can only be granted to European owners of the agricultural lands in the various districts. It is not a racial measure. All it does is to move the responsibility of issuing a licence from a district commissioner or district officer and place it on a local authority which, in most cases, is a district council.

I do not think I need keep the Council any longer. This is a very short measure, and I hope my proposal to be moved later on will be supported by all hon. members.

MR. PANDYA: Your Excellency, we have had the history of these shops in rural areas from the hon. the Acting Commissioner for Local Government. He took us to the point where it was necessary to introduce legislation for controlling these shops in 1933. The history reveals one fact: that these shops were first introduced for the benefit of the farmers themselves, and that it was in the interest of the labour working on those farms so that they did not have to walk miles to buy their necessities.

At that time, in 1933, when this legislation was introduced, the proposal which was accepted was to give certain advisory powers to the district councils for or against the issue of licences in their areas. Since then, something must have happened to require an amendment in that law.

The debate we have heard this morning reveals not one case, not one solitary instance, of what has happened which has made it necessary for Government to bring in this amendment. I referred to the previous debate, when the hon. Member for Trans Nzoia was given the promise that this question would be referred to the district councils. In that debate as well I did not notice one single instance or argument whatever, except that it was the wish of the Trans Nzoia District Council to have the authority or power to issue such licences. I do not think any promise was made by Government at that stage, that it was binding on them to bring in this amendment.

Without going through the whole question as regards the necessity of this change, if we read the "Objects and Reasons" of this Bill the only thing we find is that Government promised to refer this matter to the various district councils, and therefore, they not having objected to this amendment, it is being brought in this morning. I cannot understand any responsible Government making light of a very serious amendment in this particular way by referring the mat-

[Mr. Pandya] ter to the various district councils who are the people interested in having that power. Why should anybody say: "I am not going to have this power"? If anybody asks me to take a certain thing which I covet, why should I refuse it? And this is the same thing. Government ask the district councils: "Will you have this power of controlling shops in rural areas?" and they say: "Very glad indeed to have that power". Is there anything more absurd? Is there anything more insulting to the intelligence of Government than to go to the very people and ask them to have that power?

If there was any other reason for this Bill, I should have thought we would have heard from Government serious argument for the justification of the measure. But what is the history of it? The hon. Member for Trans Nzoia said just now that this is only an extension of the principle of local government. What is the principle of local government? I should like to know.

District councils are formed to-day by law, I entirely agree, but who is providing the money to run those councils? What is the taxation those councils pay themselves to run that local government? The history of it—and it is a fact—is that the Central Government is providing every penny of the money which is being used by district councils to-day, and the members of those district councils are having the run of that money without paying anything for it except in the same way that we all pay as taxation in this country.

Where is the principle of local government then? Does local or self-government mean "do what you like at the expense of somebody else"? or does it mean any responsibility towards that local government? In point of fact, I do not think there is anything in the argument that there is an extension of the principle of local government in this Bill.

Another point was advanced by the hon. Member for Trans Nzoia when he said he was going to move an amendment at a later stage on the question of the renewal of these licences. That makes the position even worse. The hon. mover said that this authority given to district

councils for issuing such licences did not mean that district commissioners should not refuse to issue licences. I am not quite sure on the point. If the officer has that power, where is the necessity for this amendment giving the power to local authorities? In any case, the question is going to be made worse by introducing the renewal of licences.

As I am against the whole principle, I will not deal with the arguments advanced at the time by the hon. member. One surprising thing that he mentioned was that he was of the opinion that the Indian merchants themselves required this protection, and that at a certain meeting in Kitale they expressed themselves to that effect. It is one of the most amazing things which has come from the hon. member.

His love for the Indian community is well known and has been expressed many times in this Council, and if he is filled with sheer love for the Indian community this morning that would be sufficient reason for us for oppose it and to thank him to keep his love in his own pockets.

But we have also heard from the hon. mover that he received a telegram from Kitale, the very place the hon. Member for Trans Nzoia mentioned, saying the Indian merchants were opposed to the Bill. I therefore think there were one or two gentlemen who might have met the hon. member but who were not expressing the views of the Indian community as a whole.

I think that this Bill involves a very important principle. Here is the beginning of the giving of authority to the people who have interests in that particular area against the people who have no representation or who have no access to that representation in that particular Council. It is a very serious issue from our point of view, because it is the beginning of the thin edge of the wedge which might be used for a similar purpose in other spheres.

District councils to-day are bodies who should look after the interests of their districts and be well informed, particularly from the point of view of roads, hospitals, communications, etc. Here are

[Mr. Pandya] new principles introduced, that they are going to look after the interests of the shopping centres.

I do not think it fair to hide one important factor, that in view of the feelings of the hon. European members in regard to their safeguard in the White Highlands we are honestly afraid that these small things introduced in this manner are going to lead to a very unjustifiable and unfair exclusion of Indian people from those trades and vocations in which they are engaged in the Highlands. That fear is well founded from the way in which these various issues are handled, and this appears to be the beginning of things which, if passed, would lead to very great disaster from the point of view of Indian interests.

I would like Your Excellency to consider this serious aspect of the situation from that point of view. It may be only our apprehensions, but those apprehensions are well founded on facts and on various expressions of opinion which hon. members have stated in this Council. I appeal to Government that this Bill should not be considered lightheartedly. It is a small amendment which deals with a very great principle, and from that point of view I believe that, although it has been proposed by Government, it should be withdrawn from further consideration. That is the only suggestion I can make at this stage, and in my view no case has been made out. If there is a case, we should at least be given the opportunity of hearing it and have some more data, so that we can be in a position to really fight out the issue on its merits.

To-day, the whole thing is absolutely in the dark, and we ourselves do not know what is going to happen. No reasons have been given to justify it, nor why it appears that Government has no confidence in the district commissioners, their own serjeants. Why should Government come forward and wish authority given to district councils in place of the district commissioners? The advisory functions of a district council we understand, and they have them, but there must be somebody who can say whether the advice is impartial and whether it should be taken or not, but the privilege of

district commissioners to issue licences is being taken away under this scheme.

The hon. Member for Trans Nzoia was against even allowing an appeal to a provincial commissioner. The hon. Indian member Mr. Muni supported the idea of an appeal going to the courts, and I think it right, when people have no representation and are denied it: they must be given a certain safeguard in the way of an appeal to the courts, which is the only consolation you can give in fairness and justice.

But, with all that, the principle is such a dangerous one to us that I do appeal, even now, to Government to defer this Bill and give us more time to consider the whole thing.

I am opposed to the motion.

MR. HARRAGIN: Your Excellency, if I may deal with one or two of the legal points which have been raised by the hon. and learned Indian member, I should like to do so at once. I refer, of course, to his suggestion that appeals against refusals to grant licences should be referred to the Supreme Court.

By issuing a licence to a farmer for a shop on his estate, one of four things may happen: it may be granted, refused, its renewal refused, or it may be revoked. If my hon. and learned friend will refer to section 6 of the principal ordinance, which I think he knows well because he quoted from it, there we find that in the case of revocation (it only refers to revocation) the aggrieved person may appeal first to a magistrate and then to the Supreme Court.

There is a great deal of difference, I think all will admit, between a revocation and a refusal to grant a licence. In the case of a refusal to grant a licence, the person applying has no vested interests whatever. He is applying for the first time and wants to know whether he will be permitted to have a shop in a certain district. There are many things to be considered. Among others, how many shops there are in the district, in the same way that under the Liquor Ordinance that consideration has to be gone into. In no essential way can he be said to be damaged if he is not granted a licence,

[Mr. Harragio] because presumably he will not have been able to stock his shop and so on.

But, from the moment a licence is granted, he builds a shop, stocks it, when suddenly along comes the licensing officer and revokes the licence. In that case, provision is made under the ordinance for him to appeal to the Supreme Court. We even set out in the ordinance itself the reasons for which a licence may be revoked. They are the ordinary reasons one would expect to find, and it would be a waste of time reading them, such as if the holder has been convicted, is conducting the shop in a manner dangerous to peace and good order, and so on. Under those circumstances, if he is dissatisfied with the revocation, he is entitled to go to the Supreme Court.

But surely, when it becomes a matter of policy of whether or not a shop shall be opened on a certain estate, I do submit that the proper person to decide that in the first case is the licensing officer with the advice of the district council or, in future, as has been explained, the officer will have to have the content of the district council before issuing the licence. I suggest that the proper person to deal with it is the political head of that district, namely, the provincial commissioner.

It is not a matter, as I explained before, of any vested interests whatsoever, and it does seem to me that the provincial commissioner should decide the policy of Government with regard to saying whether a licence should be given within one, two, three, four or five miles of a township or any shopping area.

That is why you see us depart in this particular Bill from the usual procedure of appealing to the Supreme Court. I do submit that in the ordinary way, a matter of public interest should not be referred to the Supreme Court but some other body such as the Governor in Council or the Governor himself, so in this case it is referred to the provincial commissioner, and that is the reason why hon. members see that provision in this Bill to-day.

With regard to the amendment, which the hon. Member for Trans Nzoia will

move in the committee stage, I will say at once that, in view of section 6 of the principal ordinance—which lays down the particular offences for which a licensing officer may revoke a licence—as the revocation of a licence and the refusal to renew a licence have the same effect, I for one, if there was any question of Government accepting the amendment, would have to move that the matter be adjourned and the Bill be gone into *de novo*, because it is impossible to revoke a licence under certain conditions but the refusal to renew is to be left to the discretion of a district council as suggested. For that reason only, if for no other, I shall oppose the amendment.

MR. SHAMSUD-DEEN: Your Excellency, I think the most important point as regards this Bill has not yet been touched on.

The whole injustice lies in the constitution of the district councils. If they were properly constituted, and all the partners whose interests should be represented are represented on these councils, there would probably not be so much opposition from this corner of the Council. If I am not wrong (I am not quite certain), Government did at one stage make it public that there would be no objection to the appointment of Indian representatives on district councils, but the last time a question was put the answer was that nothing new had happened. I think somebody said facetiously that the only new thing which they could expect was the next war, after which Government might appoint Indian representatives on these councils!

I think it has been fully manifested here that, at any rate, some European members are not very much in favour of an extension of commercial activities in these rural areas by Indians: their desideratum would be the complete elimination of all Indians. Yet Indians have been denied taking their part in agriculture, and their only parts now are trade and commerce. Is it fair that Indian shopkeepers should be left completely at the mercy of district councils on which there is not one single person to represent them?

A European farmer may be very desirous of opening a shop on his farm.

[Mr. Shamsud-Deen] and an Indian may wish to run it, yet the district council concerned refuses it.

Reference has been made to the appeal to the provincial commissioner. Again, knowing conditions in the districts, I think it would require a very strong-minded provincial commissioner to overrule a decision of a district council, and unless he likes to make his own life hot in that particular district he will not do so. Therefore an appeal to him is useless.

I think this Bill provides a very good excuse for a reconstruction of the district councils and for the fulfilment of the promise given by Government a long time ago.

It has been admitted to-day that some of these shops are well stocked and well built. Even granted that a man has the right to lodge an appeal with the Supreme Court, I would ask whether any of these men would continue to invest capital and continue to trade under these conditions of insecurity.

I submit that before the Bill passes in its present form, Government must take into serious consideration the reconstruction of the district councils and the viewpoints of the Indian shopkeepers in those areas.

A rather surprising statement was made this morning. The hon. Member for Trans Nzoia said he knows a meeting was held at which the Indians were present and did not object, and the hon. mover has said that he has received telegrams from Indians protesting against the Bill. Surely one statement must be incorrect?

MR. GHERSIE: Your Excellency, in supporting the motion, I view the proposed legislation as a measure to endeavour to protect legitimate traders in township areas from possible unfair competition outside township areas. I submit that if statistics were available we should find that, in most of the up-country townships, Indian traders are very much in the majority, and this measure, therefore, is as much for their protection as anybody else. There can thus be no question of racialism underlying the intention of this Bill. I wish to support the motion.

SIR ARMIGEL WADE: Your Excellency, I cannot help thinking that the hon. Indian members are a little unduly suspicious of this measure. I cannot help feeling that they think it is in some way or other aimed at the Indian community, or at least that part of the Indian community which is concerned with trading. I listened very carefully, but I could find no real reason or justification for these suspicions. In fact, I believe the hon. Member for Trans Nzoia was entirely right when he says this Bill will be in the interests of those legitimate Indian traders who will, in fact, be protected to some extent by this amendment.

If the Bill is aimed against anybody, it seems to me it is aimed rather against the European farmers; to this extent: that it makes it a little bit more difficult for them than it was before to get shops on their farms.

The Bill, as I see it, does not affect a district commissioner's power of refusal at all. He can still go on refusing applications. The only thing the Bill says is that a licence shall not be issued unless the district council approves. Hitherto, he only had to consult the district council, which might say: "We do not think there is any need for a shop here and do not approve", but the district commissioner will say: "Although I have heard what you say I do not agree", and he grants the licence. The result, if any, will be that there will be rather fewer shops on European farms, rather fewer applications by European farmers, than has been the custom in the past. How is that going to affect the Indian community?

So far as I see, the only people it can affect adversely would be those few Indians who might have hoped to get a job as managers of these shops. Is it really right to consider the interests of Indians who hope to get jobs on shops which are believed, with good reason, to be entirely unnecessary, rather than the interests of those genuine legitimate traders who have shops in trading and other centres decided on by Government to be in the right situations?

Surely those are the interests we want to consider, and if their interests are to

[Sir A. Wade] be affected in any way we believe by this measure it seems to me they must be improved rather than otherwise, because the uneconomic competition with them by unnecessary shops on Farms will be to that extent removed.

I would ask my hon. Indian friends to view this measure dispassionately and without any suspicion that they are trying to be put at in some way or other, or suspicion that this Bill is aimed against them from some racial point of view.

#### MAJOR CAVENDISH-BENTINCK:

Your Excellency, I rise to support this Bill. I think perhaps we have not paid quite enough attention to the principles underlying the ordinance itself or this amendment. It was always agreed, I think, that as far as possible, real trading should be limited to trading centres and townships, and this has been explained at considerable length by the hon. mover. It was found that in certain cases it was undesirable to allow a certain type of trading to take place in out-of-the-way districts on agricultural land, and the type of trading envisaged by the ordinance was purely for the sale of necessary articles for the convenience of labour.

Now, I do hope we will not forget that this is, fundamentally, the sole and only reason for permitting shops on agricultural lands which are referred to in this Bill. Unfortunately, in course of time, this principle was rather lost sight of and it is because we all realized what was happening was undesirable that this matter was reviewed in 1921, 1924, 1928, 1930 and in 1931. A Select Committee sat in 1932 and the principle ordinance was passed in 1933. In the light of experience, I think it is still found that the measure passed in 1933 does not quite give the necessary control, and I think, probably, that it is still found that certain persons may be permitting these shops to be run, possibly in order to get a monetary consideration by leasing them, and possibly in places where it is very undesirable that there should be a shop at all. I think everybody agrees—quite obviously all the district councils did because they were all asked—that some further tightening up of this legislation, in view of

the experience of the last two or three years, has been found necessary.

That is the principle and I hope, in view of that principle—I think we can all agree with it—that at any rate the great majority of the members will support this Bill.

It has been suggested by hon. Indian members that this Bill is going to be very unfair on their community. They say that we have given no reasons whatever for wanting this amendment or some such amendment. I suggest that several reasons have been given and I have just given at least one very cogent reason. I still, if I may say so, do not see what arguments they have brought up in support of the alleged unfairness of this measure to their community. If it was open to any Indian trader to go and apply for such a licence to run a shop on a farm, then I might agree. But this has never been possible. The only person who can apply for a licence is the owner or occupier of the land, and he has to run the shop in person or get an employee to run it for him. We do not want him to be given the power to sell the licence, we want him to run the shop for the limited purposes for which the shop is actually licensed. Therefore, I cannot see why it should be considered that this Bill acts in any way unfairly on the Indian community.

Of course, the opportunity has been taken to suggest that district councils are not properly constituted. Well, I do not think one wants to enter into that argument at any length. The fact does remain that the particular district councils referred to are local authorities to whom certain powers have been given in Highland areas. The Highlands are, at any rate, in practice reserved for Europeans and I can hardly think that it is very unreasonable that district councils should therefore be composed of Europeans. I see no reason to suggest that they would be opposed to the Indian community who have interests in the Highlands outside townships and trading centres. At the same time I think it will be remembered that in certain districts Indians are co-opted in order that they might represent any particular wish of the community that they represent.

[Major Cavendish-Bentinck]

I do think that it is a very reasonable thing indeed that district councils should be the authority to decide as to whether it is, in the interests of the district around that a shop for specific purposes should be erected on agricultural land.

Getting down to details, I would like to ask whether this Bill is really going to do what obviously we want it to do. I did want to find out what the position was going to be as regards renewals. This question was raised by the hon. Member for Trans Nzola and has been answered by the hon. the Attorney General, and I understand that unless some amendment is suggested and accepted by Government, if this amending Bill passes the position will be that district councils will have no powers to revoke existing licences. Personally I think that there should be some such powers. Whether it is worth holding up this Bill to go into that very thoroughly or not, I am not prepared to say at the moment, but I do think that if the licensing authority is to decide how many shops there can be and where they should be, they should, to some extent at any rate, have powers to revoke existing licences.

The argument against that is the vested interest argument. But I maintain that it was never the intention in the principal ordinance or in this Bill that any vested interest should be established in putting a shop on a farm, and if this is happening it is absolutely wrong. A shop is permitted for the convenience of labour in a rural area and it is not meant to become a profit-making concern. I hope that will be remembered.

There are other things as well as the revocation question, and one is transfers. A point I would like to know is whether the transfer of a licence is subject to the agreement or otherwise of the local authority. Then comes another question, which is that of conditions. I would like to know whether under the existing law and the proposed amendment a person who has held a licence say for two years or more and who possibly is not quite conforming to what the district council wishes, if it would be within the power of the district council when the renewal question comes up to impose conditions

which were not in existence when the original licence was granted. I think that is important.

Also I would like to know whether or not an original licence is issued subject to conditions, and if there is anything in the present legislation to provide for immediate revocation should these conditions not be complied with. I am sorry to raise these points in such detail, but people may say: "Very well, let us try to get the Bill through as it is." But before passing any ordinance I would like to know exactly what it is going to do and what it is intended that it should do.

MR. MORTIMER: Your Excellency, I will endeavour to reply briefly to the various points that have been raised during the course of this debate. The hon. Indian member, Mr. Maini, suggested that the object of the Bill was to hand over the function of the licensing authority to the district council or district committee. That same error was repeated by the hon. Member for Trans Nzola. It is not intended to hand over the function of the licensing authority. The licensing authority will remain the district commissioner. What the Bill purports to do is to lay down that no licence shall be issued under the provisions of this section except with the approval of the district council or committee.

The next point raised by the hon. and learned Mr. Maini is with reference to the appeal clause. That has been very adequately dealt with by the hon. the Attorney General so I do not propose to refer to that further. It was also said that the Bill was concerned with the interests of shopkeepers who were chiefly Indians and therefore that the Indian commercial community should have been consulted upon this measure. I submit that the Bill is not concerned with Indians in that manner at all. The licensee is the European holder of the land. He is the applicant for the licence and he is the person to whom the licence is granted. The hon. Member for Trans Nzola gave the impression that he is proposing to move an amendment at the Committee stage of this Bill, to include renewals in the provisions of the Bill. For the reasons expressed by the hon. the Attorney General I personally could not support such



[Mr. Mortimer]

an amendment and, without further consideration by Government, should not be able to accept it. It is quite a new idea on the part of the hon. Member for Trans Nzola and was not raised when this question was originally brought forward in August, 1937, when the hon. member then said:—

"It will be seen that while under section 3 a licensing officer is bound to take the opinion of the district council regarding the issue of a licence, he is not bound to accept it. In clause 6 he is also bound to take the opinion of the council but cannot revoke a licence until the council agree.

"That is what I want altering, and I suggest that the Ordinance should be amended, and that it should be provided that no licence be granted or revoked without the council's consent, or words to that effect."

And that, Sir, is precisely what this Bill proposes to do.

The hon. member also said that the existing ordinance restricted the operation of the ordinance to areas outside the four-mile limit from any township or trading centre. That is not so. The ordinance lays down in section 3, sub-section 4:—

"For every licence issued under this section and for every renewal thereof there shall be paid the sum specified in the Schedule to this Ordinance."

And the Schedule lays down the licensing fee:—

"For each shop situated within four miles of the boundary of a municipality, township or trading centre, per year or part thereof—Sh. 40; for any other shop, per year or part thereof—Sh. 10."

It is indicated quite clearly that the principal ordinance definitely contemplated the existence of shops if such were in the interests of the community at large within four miles of a trading centre or township.

The hon. Mr. Pandya has expressed appreciation on behalf of the Indian community, but those suspicions and apprehensions, I think, have been very adequately, or should have been, set at

rest by the remarks of the hon. the Colonial Secretary and the hon. Member for Nairobi North.

The hon. Mr. Shamsud-Deen raised the question of the representation on the district councils of the Indian community. That matter does not arise under the present measure and although it is irrelevant, I would just remark in passing that in one district where the Indian community has interests, Nyanza, the Indian community is represented on the district council.

The hon. Member for Nairobi North raised three questions. First of all he asked does this Bill really carry out the intentions implied and he also suggested that powers of revocation should be placed in the hands of the district councils or committees, remarking that no vested interests could possibly have arisen or certainly should not have arisen in a shop on a farm. Apart altogether from vested interests in the goodwill of the business there is the actual value of the shop building which is not inconsiderable in many instances. Therefore, there is always a certain amount of vested interest which must have adequate protection under the law and that protection is afforded by section 6 of the principal ordinance.

Another question raised referred to the powers of the district council or committee in objecting to transfers when farms change hands. Well, under the principal ordinance and under the amendment now before this Council a transfer would not be subject to the veto of the district council. It is also suggested that the district council should be able to impose conditions on the renewal of a licence. The existing ordinance does not provide for the imposition of conditions for the granting of licences and it is not proposed to make any special provision for conditions on the renewal of licences.

I trust, Sir, that I have adequately dealt with the points raised in the course of the debate.

The question was put and carried.

#### ADJOURNMENT

Council adjourned to 10 a.m. on Tuesday, the 3rd May, 1938.

Tuesday, 3rd May, 1938

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 3rd May, 1938. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

#### MINUTES

The Minutes of the meeting of 2nd May, 1938, were confirmed.

#### ORAL ANSWERS TO QUESTIONS

##### NO. 4—NATIVE HOSPITALS

DR. WILSON asked:—

1. What is the present position with regard to the provision of a new Native Hospital for Nairobi?

2. Is it a fact that the existing Native Hospital in Nairobi is so grossly overcrowded that on occasions the number of patients in a ward is more than double the number of beds, while at the same time natives who are seriously ill and in urgent need of hospital treatment are refused admission?

3. What steps are being taken to relieve the overcrowding of native hospitals at other centres, such as (a) Nakuru, where the average daily number of patients during 1936 was 122, while the number of beds was 72; (b) Kakamega, where the corresponding figures were 120 and 100; (c) Kerugoya, where the figures were 58 and 41?

#### THE HON. THE ACTING DIRECTOR OF MEDICAL SERVICES (Dr. Johnstone):

1. The plans for native wards of the new Group Hospital at Nairobi are well advanced. It is hoped to begin building within the next few months.

2. It is true that on occasions during the year 1937 the number of patients in a ward at the existing Native Hospital in Nairobi was more than double the number of beds, but the daily average of African patients during the year was 233.2, while there were 196 beds available for Africans.

Whilst urgent and emergency cases have never been refused admission, many cases requiring hospital treatment have had to be refused admission owing to lack of accommodation, more particularly

during the months of May, June and July, on account of the incidence of malaria and pneumonia.

3. The relief of overcrowding in native hospitals at other centres such as Nakuru, Kakamega and Kerugoya, is receiving consideration, but the financial implications render the solution of the problem difficult.

#### NO. 13—INCOME TAX

MR. WRIGHT asked:—

1. What is the present estimate of the amount of income tax that should have been and will be respectively collected in 1937 and 1938?

2. What proportion does the collection of income tax from Government officials bear to the total amount?

3. (a) What was the proportion of income tax to total revenue collected during 1937? And what is the estimated proportion for 1938?

(b) What is likely to be the proportion of income tax collected from each major industry and category of trade and vocation?

4. What was the cost of collection of income tax per £1 collected in 1937, and what is the estimated cost per £1 for 1938?

5. Of the number of persons and companies required to lodge returns of income, what is the percentage that are actual income tax payers?

6. By what date is it now estimated that assessments for the year 1937 will be completed?

7. Have any complete data been obtained as to the cost and loss inflicted upon the non-official community in filling up returns, preparing accounts, etc?

8. What was the total number of the initial forms sent out to prospective or possible taxpayers during the year 1937, and what number of further similar forms have been sent out so far during 1938, and is it considered that such numbers are now complete except, of course, in the case of possible new taxpayers in the Colony?

MR. LOCKHART: 1. The amount which should have been collected in 1937

[Mr. Lockhart] was £15,788 and this was paid within the year.

The amount to be collected in 1938 will exceed the original estimate of £43,500 but a revised estimate cannot be given until further returns have been examined.

2. The proportion cannot be stated at present but figures will be furnished in July.

3. (a) The proportion for 1937, which can best be expressed as a percentage, was 82 per cent. The proportion for 1938 cannot yet be stated.

(b) This information is not yet available but will be submitted to the Standing Finance Committee in July when statistics have been prepared.

4. The cost of collection per £ collected in 1937 was Sh. 4.40 cts. An estimate of the cost per £ collected in 1938 cannot be given at present. It will show a substantial reduction on the 1937 figure.

5. A number of returns have not yet been examined. The approximate percentage is 30 per cent.

6. It cannot be said that the assessments for the year 1937 will be completed before the 31st December, 1943. The bulk of the assessments should be completed towards the end of this year.

7. The answer is in the negative.

8. The total number of initial forms sent out during the year 1937 was approximately 7,200; the number of similar forms sent out during 1938 was approximately 130. The answer to the last part of the question is in the negative.

#### QUESTIONS NOT ANSWERED

COL. KIRKWOOD: Your Excellency, may I ask when I can expect an answer to the two questions which I tabled a week ago?

SIR ARMIGEL WADE: I am afraid I am unable to give any information. I have not yet seen the questions. If the hon. member could indicate the nature of the questions it might give me some sort of idea?

COL. KIRKWOOD: One was with regard to vacancies at the Scott Laboratory and vacancies in the field veterinary

officers, and the number, if any, of resignations from either in the near future.

SIR ARMIGEL WADE: I am informed that the hon. member will receive a written reply in the course of a day or two.

COL. KIRKWOOD: The second question was with reference to the amount of mechanical reconditioning that is or may be going on in native reserves.

MR. WATERS: Your Excellency, the reply is in course of preparation. We are getting information from the Masai Reserve.

MAJOR CAVENDISH-BENTINCK: In connexion with that, I also asked a question regarding the Colonial Development Fund which I thought fairly simple: how much had we borrowed? I do not know when I can get an answer to that, although it is a fairly simple question.

SIR ARMIGEL WADE: Your Excellency, I am informed that this question has in fact necessitated a considerable amount of work. It means collating figures from a number of files, and the hon. member will, I think, agree that we have had a number of questions this session which have been answered with even more rapidity than usual. I do not think we have done too badly.

MAJOR CAVENDISH-BENTINCK: I do agree that the answers have been given very well, but I thought somebody would know how much we had borrowed from the Colonial Development Fund.

#### BILLS

##### IN COMMITTEE

MR. HARRAGIN moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:

The Kenya Defence Force (Amendment) Bill.

The Kenya Regiment (Territorial Force) (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill.

The Shops in Rural Areas (Amendment) Bill.

MR. WALLACE seconded.

The question was put and carried. Council went into committee.

His Excellency moved into the Chair.

The Kenya Defence Force (Amendment) Bill was considered clause by clause.

#### Clause 2.

COL. KIRKWOOD: Your Excellency, I beg to move that Clause 2, section 8, be deleted. The reason is that I am not satisfied there is adequate consideration given for members of the community over military age in the outside districts to take care of the women and children, the food supply, and also to give some assistance in running the farms when the owner and other members have to go and serve.

SIR ARMIGEL WADE: I suggest, in view of the arguments brought forward yesterday, that Government cannot accept this amendment. I understand the hon. member's objections were fully answered and I do not think I can say anything more that will be of any use.

MR. WALLACE: I might point out that Class III of the Defence Force, that is those people over the age of 50, cannot be called out until after Classes I and II have been called out. That might be a sufficient answer to the hon. member.

MAJOR CAVENDISH-BENTINCK: I think that why the hon. member put forward this amendment was because we are a little bit afraid that if everybody in the country comes directly under the orders of the military headquarters it might be found in practice that, as the military headquarters would have a great deal more important things to think about, the ordinary keeping up of district activities might very badly suffer.

If we could get an assurance that this will be carefully considered, possibly the hon. member will withdraw his amendment, because we do not want to do anything or propose anything against the military authorities.

MR. HARRAGIN: I can certainly assure the hon. member that district activities will be most carefully considered and also, before we hand over lock, stock and barrel to the military, as the

hon. member is well aware, the civil authorities will have surrendered and admitted that they are unable to control the position any further. The mere calling out of this class does not mean that the civil authorities have handed over all authority to the military and I can assure the hon. member that his points will be most carefully borne in mind by myself and the civil authority.

COL. KIRKWOOD: Your Excellency, with that assurance, I beg leave to withdraw the amendment.

The amendment was by leave withdrawn.

The question of clause 2 was put and carried.

#### Clause 3.

MAJOR CAVENDISH-BENTINCK: Your Excellency, as regards Clause 3, I would like to suggest the amendment, that 3 (b) should read, instead of "upon taking the prescribed oath": "upon taking a prescribed oath".

I think that most members of this side of Council have explained that we are not very happy about the inclusion of aliens in the Defence Force, and certainly extremely unhappy if they are to be permitted to serve with your leave and having taken no oath. I suggest that they could have an oath, a prescribed oath—it might be the regular oath taken by His Majesty's Forces all over the world; they could have some such form of oath. It was disclosed in the debate yesterday that these aliens do owe allegiance to His Majesty.

MR. HARRAGIN: I am afraid the hon. member does not realize what a difficult task he is setting anyone who prescribes an oath which would not offend against the oath taken in their own country. It is almost impossible to devise such an oath which will not offend the Oath to His Majesty and the Government, any anything short of that would mean nothing. I do not know what the hon. member has in mind, but if the alien finds himself in a position of taking two oaths, one of allegiance to his own king and one of some sort of allegiance to our King, I do not think the safety of this Colony would be furthered any more

[Mr. Harragin]

by hoping that the alien would prefer the second oath to the first. For the reasons given yesterday I do not think it is possible for Government to accept the amendment.

**MAJOR CAVENDISH-BENTINCK:** I believe that suggestion has been made by a higher authority than us. At the same time, if it cannot be accepted by this Government, I think, though I cannot answer for what my colleagues have to say, I would prefer that aliens did not serve in the Defence Force. Therefore, I suggest an amendment whereby they should not be permitted. In other words that would mean an amendment annulling section 9 of the Principal Ordinance.

**MR. PANDYA:** I would like to say that I cannot understand why it should not be possible to get out some sort of form of oath. As I understand it, the idea behind the Government's intention is, if in case of war certain countries were against the British King, other aliens should certainly be encouraged to enlist in the local Defence Force. But in the case of those whose countries are against England then they should no longer be members of the Defence Force. I cannot see, certainly it is an extremely difficult thing, why an oath on these terms cannot be enforced and taken. Otherwise, if an alien has neither the right to serve His Majesty's kingdom in the war nor has he anything to do with the war, he will certainly be a menace to the country in belonging to the Defence Force.

**MR. WALLACE:** I do not think the amendment suggested by the hon. Member for Nairobi North, that the word "the" should be deleted and the word "a" should be substituted, makes the slightest difference, because all this section says is that they may be permitted to take the prescribed oath which under our Interpretation Ordinance means the oath which Your Excellency, under the powers conferred upon you under section 36, is entitled to prescribe by regulation. As the hon. the Attorney General has pointed out, it is almost impossible to prescribe such an oath. It would also, in my view, be improper to ask an alien to take an

oath without divesting himself first of his alien nationality.

I may point out, as I think I did yesterday, that under the Defence Force Ordinance which was in force from 1928 until September of last year, the section read something like this:—

"With the permission of the Governor any male person not being a British subject, but otherwise qualified in regard to age and origin or descent, might volunteer to serve in the Defence Force, and in such case such person shall attend at the office of the District Commissioner as aforesaid, and shall enrol himself as a member of the Defence Force."

As I pointed out yesterday, the first occasion on which this oath crept in was in the Bill which was introduced as a result of what I might call the Byrne Report two years ago. During the period in which the Defence Force was in being from 1928 to 1937, several aliens, at one period over 60, and I think the greatest number was 90, did enrol without the oath in that Defence Force, and, as far as I have been able to find out, no one has ever objected to their joining. It seems surprising at this stage that objection should be taken. I may, perhaps be permitted once again to summarize the position as regards aliens. It is whether they belong to the Defence Force or not, every alien resident in this country owes allegiance to our sovereign and is punishable as a traitor for any act of treason he may perform.

In so far as the members of the Defence Force are concerned there are three further safeguards. In the first place—and this is the greatest safeguard—before they can enrol they have first to get His Excellency's permission. That permission is not lightly given to every person volunteering to enrol; his credentials are gone into very carefully as to whether he is a fit and proper person to be a member of the Force. There are then two further safeguards. In the first place immediately they are enrolled as members they become subject to the Ordinance and Regulations therein, and also, which is very important, on active service and in times of training they come under the disciplinary provisions of the Army Act.

[Mr. Wallace]

If, as I think it is perfectly obvious is the main intention, the primary function of the Defence Force is to preserve life and property in the event of internal disturbance, it seems to be unreasonable that these people should not be allowed to look after their property and families or of their neighbours in times of stress. As the hon. member Mr. Shamsud-Deen pointed out, they could also be called out in times of external aggression, but, as the hon. the Attorney General stated yesterday, it is most unlikely that, if an invading force of the country of which the alien is a national were to attack this country, such an alien who is a member of the Defence Force would be called out. It is open to His Excellency to call out every person available, but he would not call out a man who happens to be a member of the country which is the invading force. I will go even further, knowing of instances of what happened during the late war, the most likely way of dealing with such a situation would be to intern such people unless they decided to leave the country.

**MR. NICOL:** Your Excellency, I am still not satisfied after the remarks of my learned friend opposite, wherein he stressed the point that, by virtue of the fact that a man is resident in this Colony, he does owe allegiance to His Majesty the King and yourself. Therefore, why cannot he take an oath emphasising that point? I do feel very strongly on this matter. I do not intend to go any further in my arguments of yesterday, but I would ask my learned friend the Attorney General whether it is absolutely impossible to prescribe an oath which will meet our wishes on this side of the Council?

**MR. HARRAGIN:** Your Excellency, if I knew exactly what the hon. member's wishes were it might be possible. But just to say "an oath" and leave it at that would be impossible.

**MR. NICOL:** An Oath of Allegiance to His Majesty and to the local Commander of Forces.

**MR. HARRAGIN:** If it is an oath of allegiance then I say it is impossible.

**SIR ARMIGEL WADE:** Your Excellency, I think hon. members attach a fictitious importance to the subject. Having heard the hon. the Solicitor General I cannot think of any act or line of conduct which would be in any way affected, so far as being treasonable was concerned, by taking an oath. It will not make one iota of difference as to whether an alien takes the oath or not as far as the safety of the realm goes. If anyone does anything treasonable he is equally guilty whether he takes the oath or not and, as you have heard, it is quite impossible to make an oath. So is it not surely reasonable to do what we have been doing for the last 10 or 15 years? Let them enrol and let them help us. I cannot see why that cannot be done.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, I think after hearing the arguments, and most of my colleagues feel, we would rather move, instead of deleting certain words, the deletion of the whole of sub-section 2 of the principal ordinance. In other words, cut out the provision permitting aliens to be taken in the Defence Force. It must be remembered that some years ago, when the Defence Force was originally started, we looked upon it as a means of internal defence. We were not, in those days, in a position as we are unfortunately now, of having to anticipate the possibility of war. Now, I understand, part of the duties of the Defence Force might be to guard bridges, electricity stations, ports and so on, under the changed conditions in the world to-day. It might be better not to have aliens placed in that very important position of being members of the Defence Force in the light of the discussion we had yesterday. I therefore move this amendment.

**MR. HARRAGIN:** The hon. member withdraws the first amendment and substitutes?

**MAJOR CAVENDISH-BENTINCK:** Yes.

**MR. HARRAGIN:** I would point out and stress once more that the first thing you have got to think of is internal trouble, and by this deletion you will be depleting your forces, and possibly, the

[Mr. Harragin]

very able and helpful members of that force, numbering I think 90, may not remain: It seems to me absurd that we should say in one breath—it is a fact by law—that these 90 people still owe allegiance to this country and then say they may not take part in helping to put down any internal trouble that may be a danger to their wives and children, to say nothing of property.

**MAJOR JOYCE:** I would like to support the amendment proposed by the hon. Member for Nairobi North. I cannot feel that 90 aliens would make that vast amount of difference if the question at issue be one only of internal security. Further, in the event of external trouble I do not believe for a moment that these men would be available if required or not for service. The point at issue seems to me a very important one, I think in the possibility of war these aliens would, after all, whatever oath they take, owe allegiance in their own mind to the country of their origin and would not hesitate to adopt whatever methods they thought would be in the best interests of their own country. For that reason I would like to support the amendment.

**MR. SHAMSUD-DEEN:** I would like to explain my point very clearly. In the case of internal disturbance one could quite see the reasonableness of making use of every person in the Colony, and for that purpose I see no objection to aliens being in the Defence Force. But supposing the internal disturbance were to last six months and in the meantime war took place in Europe and the particular country that goes to war does so with Britain. I see nothing in this Ordinance which would allow you to strike such men out of the Defence Force.

**MR. HARRAGIN:** They would be interned.

**DR. WILSON:** In the position of this amendment, would not these 90 aliens be safer in the Defence Force than left at large in the country?

**MAJOR CAVENDISH-BENTINCK:** What about the electric power stations?

**DR. WILSON:** Surely that would be the last place they would choose.

**MR. HARRAGIN:** They would be interned the moment they became enemies. There is no question of their continuing in the Force.

In view of the discussion that has taken place this morning might I move that we report progress on this Bill, and then we shall have time to consider it in detail.

**MAJOR CAVENDISH-BENTINCK:** That does not mean that the Bill will be taken right out? It merely means that it remains in its present stage?

**MR. HARRAGIN:** It remains in committee.

**MR. HARRAGIN** moved that progress be reported.

The question was put and carried.

The Kenya Regiment (Territorial Force) (Amendment) Bill was considered clause by clause.

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

The Shops in Rural Areas (Amendment) Bill was considered clause by clause.

**MAJOR CAVENDISH-BENTINCK:** Your Excellency, we wish to move that clause 2 be amended by the insertion of the words "renewed or transferred" after the word "issued" on the fourth line thereof, and by the insertion of the words "and under such conditions as may be laid down by" after the words "approval of" on the fifth line thereof. This would mean that no licence would be issued or renewed or transferred under the provisions of the section concerned except with the approval and under such conditions as may be laid down by the local authority.

We discussed the principles of this Bill yesterday, and I think we agreed that we felt the amendment as it stands does not in fact implement the principles agreed upon and all that could be done, if the Bill were approved, is that a local authority could refuse a new licence. It can make no conditions, it can do nothing even in the case of a new licence, even if we agree that existing licences should not be altered. For that reason we offer this amendment.

**MR. HARRAGIN:** Your Excellency, for the reasons given yesterday, which it is useless to repeat, I am afraid that I personally must vote against the amendment.

I referred yesterday to vested interests, and I do not think the hon. member can seriously suggest that the holder of a licence has not acquired a vested interest therein. I quite see his point with regard to renewals, and I am personally prepared to meet him this far, namely, to put renewals in the same position as revocations, and I would be prepared to advise Your Excellency to accept an amendment, which I have prepared, to the effect that a licensing officer may refuse to renew the licence of any shop on the same grounds that he may revoke a licence under the provisions of section 6. This would have the effect of giving the shopkeeper the right to appeal to the Supreme Court in the manner indicated yesterday regarding revocations. That is as far as I can go to meet the hon. member.

**MAJOR CAVENDISH-BENTINCK:** That will go somewhere, but would it be possible in the case of new licences which to-day do not exist to do anything to enable a local authority to lay down conditions? At present I do not think it can be done.

**MR. HARRAGIN:** With regard to conditions, I could not accept that, because one has no idea of what conditions would in fact be inserted. There are certain conditions it is quite easy to accept here and now, but it would be impossible to leave it in this nebulous way that they could insert any conditions which they think fit.

**MR. PANDYA:** Your Excellency, I am entirely opposed to both amendments, the one proposed by the hon. Member for Nairobi North and the one suggested by the hon. and learned Attorney General. I think this is an instance of never being satisfied with what you have. In the first place it was a great mistake to bring forward this amending Bill without any justification, and now you find that something else is required.

These two amendments are a very serious issue of principle and should not

be allowed at this committee stage. I think the question of the renewal of licences is one principle of the issue of licences under section 6. There is no reason why in any way these amendments should be accepted at this stage, and I am entirely opposed to them.

**COL. KIRKWOOD:** Your Excellency, I had intended to move an amendment that no renewal of a licence be granted without the approval of the licensing authority, but in view of what has been said, rather than stress the point I shall be prepared to accept the amendment proposed by the hon. the Attorney General.

**MR. HARRAGIN:** In point of fact, I have not moved the amendment yet. I have told hon. members what I would be prepared to move if the other one is withdrawn.

**MAJOR CAVENDISH-BENTINCK:** That being the case, I am prepared to withdraw the amendment I put forward in favour of the hon. member's.

The amendment was withdrawn.

**MR. HARRAGIN:** I beg to move that the Bill be amended by adding thereto the following new clause:

"3. The Principal Ordinance is hereby amended by inserting therein, immediately after section 6 thereof, the following new section:—

"6A. A licensing officer may refuse to renew the licence of any shop on the same grounds as he may revoke a licence under the provisions of section 6 of this Ordinance, and the provisions of that section shall apply *mutatis mutandis* to a refusal to renew any such licence."

I can assure the hon. member Mr. Pandya that he need have no fears. The position would be this:

Let us say that in July a shopkeeper offended against the Ordinance, he could have his licence revoked when it came to the notice of the licensing officer. If, however, he were to offend on the 28th December and the licensing officer did not hear about it he would get his new licence from the 1st January, and there would be no opportunity of refusing the licence.

[Mr. Harragin]

In fact, I am particularly anxious that this amendment should go through, because the Ordinance is not at all clear as to what happens in the case of a renewal. There is only one mention in the Ordinance of a renewal, when it is referring to the amount that should be paid under the schedule. This clarifies the position, and I suggest that it is perfectly logical, namely, you can refuse to renew a licence for the same reason that you can revoke one.

MR. PANDYA: My objection is that the amendment brings in another principle, and I do not think at this stage, in committee, we should establish a new principle. If it is necessary, it should be put up at a later stage by giving notice as usual. I think this does bring in a principle which is a very serious one, for not only is the issue of a new licence to be considered by a district council but it is proposed to deal with licences which now exist, which is a matter of principle and should not be allowed to pass as an amendment.

MR. SHAMSUD-DEEN: Your Excellency, I think the amendment in its present form is absolutely absurd if you wish to bring the question of renewals into the same category as revocations under section 6. I take it that that section contemplates very serious misconduct or something that justifies the revocation at once of a licence.

But supposing the man is convicted at the beginning of the year and the licensing officer or district council waits to the end of the year to refuse the renewal of the licence, it is perfectly absurd for if the man has behaved in an obnoxious manner his licence should be revoked at once. I take it there is plenty of power under section 6 that the authorities should not have to wait to the end of the year to refuse a renewal.

MR. PANDYA: Under Standing Rules and Orders Nos. 35 and 36 a motion may be amended by leaving out certain words or inserting or adding others, and an amendment must be relevant to the question; and so on. I do not think this amendment comes under either of those rules.

LORD ERROLL: On a point of order, Sir, surely this amendment is moved under Standing Rules and Orders No. 71?

MR. PANDYA: It does not come under No. 71, which says:—

"Amendments may be made to a clause; or clauses may be deleted; or new clauses may be added, provided they are relevant to the subject matter of the Bill and otherwise in conformity with the Standing Rules and Orders."

MAJOR CAVENDISH-BENTINCK: Surely this is raised under No. 36 in the ordinary way? These questions were debated at great length as matters of principle yesterday; and nothing else is raised now. I am afraid I entirely disagree that it is a matter of new principle: it is nothing of the kind. The whole idea is that shops are to be allowed in certain conditions outside trading centres on farms, and we all agreed yesterday, at least I think Government did, that it was wise to give district authorities certain powers of control. Surely two of the powers of control in the issue of licences are revocation and renewal? I submit there is no change of principle whatever. If we revoke for certain reasons we can refuse to renew.

MR. SHAMSUD-DEEN: Your Excellency, may I be allowed to bring a point of order to the notice of Council? One of the practices in the past has been that when a particular section of a measure was proposed to be amended, a copy of the section must be reproduced in the Bill before the Council. We have heard so much about section 6 but I am absolutely in the dark as to what it is. Naturally, if the Bill was before us containing that section, no amendment could be moved until members had had the opportunity of reading it.

MR. HARRAGIN: Your Excellency, I should like to associate myself with the Noble Lord in his interpretation. This is what you might call special legislation in No. 71 as opposed to general legislation in No. 32, which deals entirely with motions. When you come to No. 71, it is dealing with the procedure as to Bills and not as to motions, which are dealt with earlier, and as pointed out by the Noble Lord it lays down that "Amendments

[Mr. Harragin] may be made to a clause; or clauses may be deleted; or new clauses may be added, provided they are relevant to the subject matter of the Bill."

If Your Excellency is prepared to rule that this is a relevant matter, I suggest the amendment is in order under No. 71.

HIS EXCELLENCY: I rule that the amendment is in order as stated by the hon. and learned Attorney General.

Council will adjourn now for the usual interval partly to enable hon. members who wish to do so to examine the principal Ordinance which it is proposed to amend.

Council adjourned for the usual interval.

On resuming:

MAJOR CAVENDISH-BENTINCK: Your Excellency, having had the opportunity of looking at the principal Ordinance, it does seem that if the intentions which underlie this Bill are to be fulfilled, at any rate, consideration might be given greater control as regards new licences.

I think we all agree that we do not want to do anything to interfere with any section of the community, but we do want to have a very strict control over these shops which are not in trading centres or townships. I would venture to suggest that perhaps it would be wiser to go into the matter very carefully and possibly report progress now to enable us to resume the Bill at this stage, having had time to give it a little further consideration.

I beg to move that progress be reported. The question was put and carried.

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

The Kenya Regiment (Territorial Force) (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill

and that progress be reported on the following Bills:—

The Kenya Defence Force (Amendment) Bill.

The Shops in Rural Areas (Amendment) Bill.

The question was put and carried.

His Excellency vacated the chair. Council resumed its sitting.

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

The Kenya Regiment (Territorial Force) (Amendment) Bill,

The Local Government (Rating) (Amendment) Bill,

and that the following Bills had been considered clause by clause and progress reported:—

The Kenya Defence Force (Amendment) Bill.

The Shops in Rural Areas (Amendment) Bill.

THIRD READING

MR. HARRAGIN moved that the following Bills be read a third time and passed:—

The Kenya Regiment (Territorial Force) (Amendment) Bill.

The Local Government (Rating) (Amendment) Bill.

MR. WALLACE seconded.

The question was put and carried.

The Bills were each read a third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

\*No. 1—STATUS OF IRISH FREE STATE CITIZENS

BY CAPT. H. E. SCHWARTZ:

1. Are citizens of the Irish Free State still British subjects—

(a) according to the law of the Irish Free State?

(b) according to the law of the United Kingdom?

2. If the answer to 1 (b) above is in the negative, are citizens of the Irish Free State who are officers of the Kenya Government still eligible to retain their official posts?

\*Questions asked by former members of Legislative Council for Nairobi South and Mombasa prior to dissolution.

Are posts in Government service still open to citizens of the Irish Free State?

Are citizens of the Irish Free State eligible to exercise the franchise in Kenya?

*Reply:*

(a) Government has not yet received a copy of the recent legislation in the Irish Free State on this subject and is therefore not in a position to give an authoritative reply.

(b) According to the law of the United Kingdom a person who has once acquired British Nationality (i.e. is a British subject) retains such nationality until divested of it by some provision of the law of the United Kingdom.

2. It is possible for a person to be a citizen of two or more countries. Government is not aware of any general provision in the law precluding a non-national from occupying a post in Government service.

Citizens of the Irish Free State if they are also British subjects are eligible to exercise the franchise in Kenya.

\*No. 2—MOMBASA WATER SUPPLY  
BY MR. BEMISTER:

Will Government explain why the revenue from Mombasa water supply is given under Head V of Revenue Estimates as £45,000 but in Appendix O as £42,500?

*Reply:*

Appendix O was prepared and printed before the report of the Standing Finance Committee was approved by the Legislative Council. The original estimate of £42,500 appearing in the Draft Estimates was increased to £45,000 on the recommendation of the Standing Finance Committee to paragraph 33 of whose report the hon. member is referred.

\*No. 3—REVENUE SURPLUS, 1937  
BY CAPT. H. E. SCHWARTZ:

From the figures at present available, what is the estimated surplus of revenue over expenditure for the financial year ending the 31st December, 1937?

\*Questions asked by former members of Legislative Council for Nairobi South and Mombasa prior to dissolution.

*Reply:*

The surplus for the ten months ending the 31st October, 1937, was £178,473. It is not yet possible to estimate with any prospect of accuracy the surplus or deficit off the remaining two months of the year.

No. 6—RECONDITIONING IN NATIVE RESERVES

BY COL. KIRKWOOD:

What mechanical reconditioning is at present being undertaken in native reserves? What areas are being dealt with in this manner? and at what cost?

*Reply:*

One R.D. 4 Caterpillar Diesel Tractor and one No. 22 Caterpillar Tractor have been purchased out of the £10,000 free grant from the Colonial Development Fund for use in the Machakos Reserve. These implements have been used to terrace the Government Seed Farm at Machakos as a demonstration and will be used later on the demonstration training ground at Matungulu. In addition, three Martin Hummer graders, costing about £30 each, have been purchased out of the £24,000 loan to the Local Native Council for use in other parts of Machakos Reserve.

No other work entailing the use of large-scale mechanical implements is at present being undertaken in native reserves.

The cost of the large scale mechanical equipment purchased for use in the Machakos Reserve is approximately £1,200. The cost of operation of the tractor-terrace unit is estimated at approximately £6 a mile, but actual costs based on experience are not yet available. This expenditure is being met wholly from the grant from the Colonial Development Fund.

No. 10—COLONIAL DEVELOPMENT FUND  
BY MAJOR CAVENDISH-BENTINCK:

What sums have been obtained from the Colonial Development Fund—

(a) for purposes of water supplies or water conservation;

(b) For provision of stock routes;  
(c) for soil conservation and anti-erosion measures?

Will Government please state in their reply which of the amounts, if any, are in the form of free grants; which of the amounts, if any, are in the form of loans free of interest; and which of the amounts, if any, are loans; and who is bearing the interest charges thereon.

Will Government also state the precise purpose for which these sums have been allocated; and the total amount of money which this Colony has now been granted from the Colonial Development Fund?

*Reply:*

The following sums have been obtained from the Colonial Development Fund for the purposes of—

1. Water supplies or water conservation:

(i) Tana River Investigation	2,450
(ii) Preliminary Investigation Perkerra River Scheme	1,000
(iii) Water Supplies in Native Reserves	42,000

2. For the provision of Stock Routes

11,400

3. For Soil Conservation and Anti-Erosion Measures—

(a) 10,000

(b) 24,000

All these sums were free grants except that mentioned under Item 3 (b), which was granted as a loan at 3½ per cent to be repaid by annuities between the 4th and 30th years from the date of the advance, and the interest charges on which are to be met by the Local Native Council, Machakos.

The purposes for which the sums mentioned above have been allocated are as follows:—

1. *Tana River Investigation*.—The purpose of the investigation was to consider the agricultural potentialities of the Tana River Basin area and to investigate the possibility of irrigating the area with a view to its eventual settlement and development.

2. *Preliminary Investigation—Perkerra River Scheme*.—The purpose of this investigation was to carry out a survey of an area of 12 square miles on the Perkerra River in the Baringo District. The investigation was carried out by an officer who had served in the Irrigation Department, Punjab.

3. *Water Supplies in Native Reserves*.—The purpose of this scheme was the provision of improvement and investigation of water supplies in the native reserve.

The scheme fell into four parts:—

A.—The provision of water supplies in agricultural districts with a view to the development of areas at present uninhabited or sparsely inhabited on account of the absence of inadequacy of water supplies.

B.—The improvement of water supplies in populous areas where supplies are inadequate or polluted, with a view to demonstrating the more economic use of water and its value to the public health and in raising the standard of living.

C.—The provision of new or improved supplies in the Masai Reserve.

D.—A survey of the northern waterless areas.

4. *Soil Erosion*.—The grant and loan were made for the purpose of reconditioning and reclaiming the Machakos Native Reserve by the acceleration and intensification of work at present being done on an inadequate scale, and the re-establishment of grass lands, vegetative cover, afforestation, gully-stopping, terracing, strip cropping, stagger trenching and other works to protect the soil in seriously eroded areas where erosion is gaining ground.

5. *Stock Routes*.—The free grant of £11,400 was made for the provision of water supplies and cattle dips on stock routes in the native pastoral areas with a view to affording native live stock access to markets and to developing the native cattle industry.

2. The total amount of grants authorized to date for Kenya from the Colonial Development Fund is £329,921/10/17 cents, of which £198,305/14/76 cents had been received up to 31st December, 1937.

No. 14—RESEARCH AND FIELD  
VETERINARY OFFICERS

BY COL. KIRKWOOD:

Will Government please state the position as regards—

- (a) Research officers at Scott Laboratory?
- (b) Field veterinary officers?
- (c) The number of vacant posts under (a) and (b)?
- (d) The number of retirements expected in the near future?
- (e) Action being taken by Government to fill present vacancies?

Reply:

(a) There are five posts for Veterinary Research Officers on the establishment, excluding the Director, who is on overseas leave, and the Deputy Director (Laboratory Services). There are, however, only three posts filled. Of these, one officer is seconded to the Colonial Development Fund for work at the Government Experimental Station, Naivasha, and one is on overseas leave, leaving only one for duty at the Laboratory. The effective strength, therefore, at the Research Laboratory at the present time is one research officer, and one field veterinary officer recruited towards the end of last year, who has been seconded to the Laboratory for training and duty.

(b) There are eleven posts for veterinary field officers, excluding the Deputy Director (Field Services) and one part-time veterinary officer. Ten of these posts are filled but three of the holders of these posts are on overseas leave and one is already stated is seconded to the Laboratory.

The effective strength, therefore, in the field at the present time, is six veterinary officers.

- (c) The number of vacant posts under (a) is two, and under (b) one.
- (d) One veterinary field officer.

(e) The Secretary of State has been notified of existing vacancies and has been requested to recruit suitable candidates as early as possible, and in this connexion Mr. Daubney, before his departure on overseas leave, communicated with

various Veterinary Colleges, and he is, it is understood, in constant touch with the Colonial Office.

No. 15—AERIAL SURVEY, COAST  
BY MR. COOKE:

Will the Government consider the expediency of utilizing the services of Mr. Sheppard, lately Surveyor General to the Egyptian Government, and now engaged in an aerial survey of Zanzibar, to make a photographic survey of the country between the Tana River and Lamu during the rains, with a view to ascertaining the best and driest line for a road in that area?

Reply:

Mr. V. L. O. Sheppard has already sailed for England. He has no direct connexion with aerial photography. He visited Dar es Salaam and Zanzibar in order to study the possibility of applying aerial photography to assist in the problems of cadastral survey in Uganda.

The present route across the Tana River delta was chosen after ground surveys, and the line was confirmed by aerial reconnaissance. It is the driest route available. There is only one method by which this portion of the road could be made an all-weather route and that is by raising the road on an embankment with a hard surface and the construction of suitable openings. The work would be very expensive as regards surfacing, as no rock is available nearer than the vicinity of Kipini where there is coral.

No. 16—REDUCTION OF HOSPITAL FEES  
BY MR. NICOL:

Will Government inform Council if they can see their way to reduce and revise hospital fees to unofficials, and state that such fees or scale of fees should be based on the capacity to pay in relation to the income of the individual?

Reply:

A Committee is being appointed at an early date to consider the subject of this question.

No. 17—SOIL EROSION

BY MR. WRIGHT:

1. In view of the serious import of a report on "Soil Erosion and Conservation in Kenya" compiled and recently published by the Imperial Bureau of Pastures and Forage Crops, will Government, in the public interest, now publish the reports of the Administration and technical departments, stated in the report under reference to be collaborating in these matters?

2. Further, in view of the frequent references in the above publication to Mr. C. Maher's memoranda and erosion surveys, will Government now lay on the table Mr. Maher's memorandum dated 18th November, 1937, together with reports of his surveys made in the Machakos, Kitui, and Kamasia reserves and also, if available, the surveys of the Suk and Elgeyo-Marakwet Reserves?

3. Will Government now make public the general policy and estimated annual cost of erosion control recommended by the Soil Conservation Service of Kenya?

4. Will Government report action taken and results regarding compulsory culling of cattle under the Yatta Rules which were to become operative last November?

Reply:

1. & 2. Some of the reports referred to have been published, such as the memo-

randa on "Soil Erosion, Deforestation and a Land Utilization Survey" and "Steps taken to Combat Soil Erosion in Kenya Colony" published at the end of 1935. Reports of surveys of certain districts have not been published because sufficient copies are not available for general publication. Mr. Maher's memorandum of November, 1937, was written as a contribution towards a draft of the Kenya section of the bulletin entitled "Erosion and Soil Conservation" referred to in the question, and has been in the main incorporated in that bulletin. There is, therefore, no purpose to be served by laying this memorandum on the Table.

Copies of all these memoranda can be made available to any persons interested.

3. It is hoped to make a statement on this subject after consideration of the advice which has been sought from Dr. Pole-Evans.

4. Under the Yatta Plains (Grazing Control) Rules, 1937, which have since been replaced by the Crop Production and Live Stock Rules, 1937, the number of cattle on the area known as the Machakos Yatta has been reduced to 12,000 head. These cattle have been branded and control is being maintained.

A line has been cleared east and west across the Yatta and the grazing of the two areas thus formed is to be used alternatively. The improvement resulting from the control now established is already considerable.

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SECOND SERIES

VOLUME IV

First Session, 1938: 8th April to 3rd May

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Com. = In Committee. SCR = Select Committee Report.

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