COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES VOLUME XXIV—PART II

1946

SECOND SESSION

Commencing 2nd July to 19th July

CHRONOLOGICAL INDEX

KENYA GOVERNMENT ARCHIVES

PHOTOGRAPHIC SERVICE

SECTION 7

REEL No.

12

G.P.K. 472—500—2/64.

KENYA NATIONAL ARCHIVES

PHOTOGRAPHIC SERVICE

Description of Document LEGISLATIVE COUNCIL DEBATES. VOL. XVIII. (PART II).

Covering Dates 11th to 20th April, 1944.

Reference No. From Central Government Library.

Date of Reproduction 30th December, 1965.

G.P.K. 1083—1m—4/65

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES VOLUME XVIII—(PART II)

1944

Second Session: 11th to 20th April, 1944

CHRONOLOGICAL INDEX

List of Members of the Legislative Council

President:

HIS EXCELLENCY THE GOVERNOR, SIR HENRY MOORE, G.C.M.G. (1)

Ex Officio Members:

CHIEF SECRETARY (HON. G. M. RENNIE, C.M.G., M.C.). (2)
ATTORNEY GENERAL (HON. S. W. P. FOSTER SUTTON, K.C.). (3)
FINANCIAL SECRETARY (HON. J. TESTER, C.M.G., M.C.).
CHIEF NATIVE COMMISSIONER (HON. W. S. MARCHANT, C.M.G.).
DIRECTOR OF MEDICAL SERVICES, ACTING (DR. THE HON. F. J. C. JOHNSTONE).
DIRECTOR OF AGRICULTURE (HON. D. L. BLUNT).
DIRECTOR OF EDUCATION, ACTING (HON. C. E. DONOVAN). (4)
GENERAL MANAGER, K.U.R. & H. (HON. R. E. ROBINS, C.M.G., O.B.E.).
DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH, C.M.G.).
COMMISSIONER OF CUSTOMS (HON. A. W. NORTHROP). (5)
COMMISSIONER OF LANDS AND SETTLEMENT (HON. C. E. MORTIMER, C.B.E.). (6)

Nominated Official Members:

HON. H. M. GARDNER, O.B.E. (Conservator of Forests).
HON. S. O. V. HODGE, C.M.G. (Prov. Commissioner, Coast).
HON. C. TOMKINSON (Prov. Commissioner, Central).
HON. K. L. HUNTER, O.B.E. (Prov. Commissioner, Nyanza).
HON. H. IZARD (Prov. Commissioner, Rift Valley).
HON. T. A. BROWN (Solicitor General). (7)
HON. G. B. HERDEN, C.M.G. (Postmaster General).
HON. R. PEDRAZA (Commissioner of Mines).
HON. W. G. EMERSON (Director of Veterinary Services) (Acting). (8)

European Elected Members:

MAJ. THE HON. J. W. CAVENDISH-BENTINCK, C.M.G., Nairobi North.
HON. S. V. COOKE, Coast.
HON. F. J. COULDREY, D.S.C., Nyanza.
HON. W. A. C. BOUWER, Uasin Gishu.
COL. THE HON. E. S. GROGAN, D.S.O., Ukamba.
MAJOR THE HON. A. G. KEYSER, Trans Nzoia (Acting).
HON. W. G. D. H. NICOL, Mombasa.
LT.-COL. THE HON. LORD FRANCIS SCOTT, K.C.M.G., D.S.O., Rift Valley.
HON. A. VINCENT, Nairobi South.
HON. MRS. O. F. WATKINS, Kiambu.
HON. E. H. WRIGHT, Aberdare.

Indian Elected Members:

HON. SHAMSUD-DEEN (Central).
HON. S. G. AMIN (Central).
HON. A. B. PATEL (Eastern).
HON. K. R. PAROO (Eastern).
HON. DHARM BIR KOHLI (Western). (9)

Arab Elected Member:

HON. SHERIFF ABDULLA SALIM.

Nominated Unofficial Members:

Representing the Interests of the African Community—

HON. H. R. MONTGOMERY, C.M.G.

REV. THE HON. L. J. BEECHER.

Representing the Interests of the Arab Community—

VACANT.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

Acting Clerk to Council:
Mr. K. W. Simmonds.

Reporter:
Mr. A. H. Edwards.

(1) Absent through illness.
(2) Presided as Governor's Deputy.
(3) *Vice* Mr. W. Harragin, C.M.G., K.C., transferred to Gold Coast.
(4) *Vice* Mr. A. T. Lacey, O.B.E., retired.
(5) *Vice* Mr. E. E. Lord on return from leave.
(6) *Vice* Mr. G. J. Robbins on return from leave.
(7) *Vice* Mr. T. A. Dennison.
(8) *Vice* Mr. R. Daubney, C.M.G., O.B.E., absent from Colony.
(9) Returned at by-election on 2nd March, 1944.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

11th April—
H.E. the Governor.
Hon. S. O. V. Hodge, C.M.G.
Hon. K. L. Hunter, O.B.E.
Hon. Member for Eastern Area (Mr. K. R. Paroo).

12th April—
H.E. the Governor.
Hon. Member for Eastern Area (Mr. K. R. Paroo).

13th April
H.E. the Governor.
Hon. Member for Eastern Area (Mr. K. R. Paroo).

14th April—
H.E. the Governor.
Hon. Member for Eastern Area (Mr. K. R. Paroo).

18th April
H.E. the Governor.
Hon. General Manager, K.U.R. & H.
Hon. H. Izard.
Hon. Member for Trans Nzoia.
Hon. Member for Uasin Gishu.
Hon. Member for Eastern Area (Mr. K. R. Paroo).
Hon. Arab Elected Member.

19th April—
H.E. the Governor.
Hon. General Manager, K.U.R. & H.
Hon. H. Izard.
Hon. Member for Mombasa.
Hon. Member for Uasin Gishu.
Hon. Member for Trans Nzoia.
Hon. Member for Eastern Area (Mr. K. R. Paroo).
Hon. Arab Elected Member.

20th April—
H.E. the Governor.
Hon. General Manager, K.U.R. & H.
Hon. H. Izard.
Hon. K. L. Hunter, O.B.E.
Hon. Member for Mombasa.
Hon. Member for Uasin Gishu.
Hon. Member for Trans Nzoia.
Hon. Member for Eastern Area (Mr. K. R. Paroo).
Hon. Arab Elected Member.

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

SECOND SESSION, 1944

Tuesday, 11th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 11th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

The Proclamation summoning Council was read.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to the following: S. W. P. Foster Sutton, Esq., Attorney General; C. E. Donovan, Esq., Acting Director of Education; A. W. Northrop, Esq., Commissioner of Customs; C. E. Mortimer, Esq., C.B.E., Commissioner of Lands and Settlement; W. G. Emerson, Esq., Acting Director of Veterinary Services; Mr. Dharm Bir Kohli, Member for Western Area.

COMMUNICATION FROM CHAIR

ILLNESS OF H.E. THE GOVERNOR

The Governor's Deputy made the following Communication from the Chair:—

Hon. members, His Excellency the Governor has asked me to say how much he regrets that he cannot preside at Legislative Council during the coming week. Last Thursday His Excellency had to take to his bed with a temperature, which has responded to treatment during the last day or two, but his general condition is such that his medical advisers consider a period of convalescence free of public engagements essential.

I know that I am voicing the feelings of all present in expressing sympathy with His Excellency in his illness and in wishing him a speedy recovery and an early return to our midst.

MINUTES

The minutes of the meeting of the 5th February, 1944, were confirmed.

PAPERS LAID

The following papers were laid:—

BY THE FINANCIAL SECRETARY (MR. TESTER):

Memorandum on the policy of Government for the development of the education of women and girls in Kenya during the next five years.

Printing and Stationery Department Annual Report, 1943.

Kenya Information Office Annual Report, 1943.

Copy of the Annual Abstract Account of Kenya for 1942, with the report of the Director of Colonial Audit thereon.

List of manufacturers' agents issued with bulk import licences during 1943, arising out of question No. 18 by the Member for Eastern Area (Mr. Paroo).

Schedule of Additional Provision No. 4 of 1943.

BY THE COMMISSIONER OF LANDS AND SETTLEMENT (MR. MORTIMER):

Return of land grants 1st October—31st December, 1943.

BY MR. T. A. BROWN (Solicitor General):

Select Committee report on Government Staff Provident Fund Bill.

NOTICE OF MOTION

The following notice of motion was given by Mr. Tester: That Schedule of Additional Provision No. 4 of 1943 be referred to the Standing Finance Committee.

ORAL ANSWERS TO QUESTIONS

No. 2—Piece Goods Purchased for N.F.D.

MR. PATEL (Eastern Area) for Mr. Paroo (Eastern Area):

Will Government please state what profit the District Commissioner of the Northern Frontier District has made out of the piece goods and other goods purchased by him from Mombasa for re-sale in his district, and how this profit will be utilized?

MR. TESTER: The profit made by the Officer in Charge, Northern Frontier District, out of the piece goods purchased on his behalf from Mombasa for sale in the Northern Frontier District in 1943 was £138. Only merdull and americani were purchased for re-sale.

2. It is intended to utilize this sum to pay for expenses in connexion with transporting from Isiolo to the District Headquarters some of the more expensive bales which remain to be sold and so reduce the cost to the tribesmen.

No. 16—African Soldiers' Misconduct on Trains

MR. BEECHER (Native Interests):

Is Government aware that a large number of complaints have been made to the Railway Administration on the misconduct of African soldiers travelling by train? If the disciplinary control of African Service passengers does not fall within the authority of the Railway Administration, will Government please approach the military authorities with a view to a more satisfactory Military Police control being effected with a consequent measure of relief from various degrees of annoyance being afforded to civilian African third class passengers who travel with them?

MR. TESTER: The answer to the first part of the question is in the affirmative.

The special attention of the military authorities has been drawn to these complaints and they have undertaken to furnish a full report upon them.

No. 17—Kenya Police Force Establishment

MR. BEECHER:

Will Government please state—

(a) the establishment provided for the Police Force in Kenya?

(b) the present strength of the Police Force in Kenya?

(c) the estimated population in its major racial classifications of the area which comes under the Superintendent of Police, Nairobi?

(d) the present strength of the Police Force available to the Superintendent of Police, Nairobi, for service in that area?

MR. TESTER: (a) The establishment of the Police Force in Kenya is:—

33 European Officers.
111 European Inspectors.
26 Asian Inspectors.
39 African Inspectors.
4,931 African Rank and file.

(b) The present strength is:—

31 European Officers.
91 European Inspectors (which does not include 8 Inspectors who have recently sailed from England).
25 Asian Inspectors.
38 African Inspectors.
4,853 African Rank and file.

(c) The estimated population of the area which comes under the Superintendent of Police, Nairobi, is:—

9,421 Europeans.
30,821 Asians and Seychellois.
59,022 Africans.
——— making a total of 99,264

(d) The present strength of the Police Force available to the Superintendent of Police, Nairobi, for service in that area is:—

2 European Officers.
13 European Inspectors (including 2 Court Prosecutors).
4 Asian Inspectors.
3 African Inspectors.
369 African Rank and file.

These numbers are short of establishment by:—

1 European Officer.
6 European Inspectors.
1 African Inspector.

The Force will be brought up to full strength as soon as the necessary personnel can be obtained.

MR. COOKE (Coast): Sir, arising out of that answer, will Government bear in mind not only the necessity of increasing the personnel of the Force but the improvement of their conditions and pay in any projected schemes Government has for them.

No. 18—Bulk Import Licences

MR. PATEL (for Mr. Paroo):

(a) Will Government please explain why bulk import licences (if any) are granted to manufacturers' agents who were not importing such goods for themselves before the war? (b) Will Government please furnish a list of manufacturers' agents who have been issued with such bulk import licences during the year 1943, stating the quantity as well as the commodities for which each such licence was issued? (c) Will the Government please state what profit the Price Controller allows to these manufacturers' agents, in addition to what they usually receive direct as their commission from the manufacturers, on the goods imported under the bulk import licences, and whether any condition is made at the time of issuing the bulk import licences under which these manufacturers' agents are required to distribute the goods imported by them to their clients? (d) Are Government aware of the practice of these agents to regard these imports as their own and to sell them to their clients on the basis of first sale, taking the profit from that sale in addition to their commission as manufacturers' agents, and that such was not their practice before the war?

MR. TESTER: (a) The hon. member's attention is invited to the reply given to Question No. 85 of 1943 by the hon. Member for Central Area.

(b) Nineteen manufacturers' agents were issued with bulk import licences during 1943 and a list of these agents is being laid on the table*. A reply to the remainder of this part of the question would be contrary to the public interest at the present time.

(c) The amount of commission allowed by the Price Controller to manufacturers' agents who import on bulk import licences varies from 2½ per cent to 5 per cent provided that such commission is not added to the landed cost. As regards the conditions of distribution made at the time of issuing the bulk import licences the hon. member's attention is again invited to the reply to Question No. 85 of 1943.

(d) Yes, sir, but it should be explained that this practice does not increase the cost to the consumer and only affects the division of profit amongst the traders.

* List of manufacturers' agents issued with bulk import licences during 1943:—

A. W. Black, Esq.
J. H. Clark, Esq.
R. S. Campbell, Esq.
Messrs. Graham Dawson & Co.
Messrs. Grayson & Co.
Messrs. R. O. Hamilton, Ltd.
Messrs. W. H. Mason & Co.
Messrs. G. B. Nicholas & Co.
Messrs. Ross & Elliot.
Messrs. P. Phillips & Co., Ltd.
Messrs. Twentsche Overseas Trading Co., Ltd.
Messrs. Townsend & Co.
Messrs. E. Whiteaway & Co.
B. J. Diebel, Esq. (South African Distributors).
J. Chittenden, Esq.
B.E.A. Corporation, Ltd.
Messrs. A. Gill & Co.
Messrs. A. H. Wardle & Co., Ltd.
Mr. A. H. Nurmohamed.

BILLS

First Readings

On the motion of the Attorney General (Mr. Foster Sutton) the following Bills were read the first time and notice given to move the subsequent readings at a later stage in the session:—

The Land Control Bill.
The Crown Lands (Amendment) Bill.
The Bankruptcy (Amendment) Bill.
The Coffee Industry (Financial Assistance) Bill.
The Courts (Emergency Powers) Bill.
The Native Foodstuffs Bill.
The Employment of Servants (Amendment) Bill.
The Amalgamated Posts and Telegraphs Department Bill.
The Asiatic Widows and Orphans Pensions (Amendment) Bill.
The Arms and Ammunition (Amendment Bill.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 12th April, 1944.

ORAL ANSWERS TO QUESTIONS

No. 2—Piece Goods Purchased for N.F.D.

Mr. Patel (Eastern Area) for Mr. Paroo (Eastern Area):

Will Government please state what profit the District Commissioner of the Northern Frontier District has made out of the piece goods and other goods purchased by him from Mombasa for re-sale in his district, and how this profit will be utilized?

Mr. Tester: The profit made by the Officer in Charge, Northern Frontier District, out of the piece goods purchased on his behalf from Mombasa for sale in the Northern Frontier District in 1943 was £138. Only merdull and americani were purchased for re-sale.

2. It is intended to utilize this sum to pay for expenses in connexion with transporting from Isiolo to the District Headquarters some of the more expensive bales which remain to be sold and so reduce the cost to the tribesmen.

No. 16—African Soldiers' Misconduct on Trains

Mr. Beecher (Native Interests):

Is Government aware that a large number of complaints have been made to the Railway Administration on the misconduct of African soldiers travelling by train? If the disciplinary control of African Service passengers does not fall within the authority of the Railway Administration, will Government please approach the military authorities with a view to a more satisfactory Military Police control being effected with a consequent measure of relief from various degrees of annoyance being afforded to civilian African third class passengers who travel with them?

Mr. Tester: The answer to the first part of the question is in the affirmative.

The special attention of the military authorities has been drawn to these complaints and they have undertaken to furnish a full report upon them.

No. 17—Kenya Police Force Establishment

Mr. Beecher:

Will Government please state—

(*a*) the establishment provided for the Police Force in Kenya?

(*b*) the present strength of the Police Force in Kenya?

(*c*) the estimated population in its major racial classifications of the area which comes under the Superintendent of Police, Nairobi?

(*d*) the present strength of the Police Force available to the Superintendent of Police, Nairobi, for service in that area?

Mr. Tester: (*a*) The establishment of the Police Force in Kenya is:—

33 European Officers.
111 European Inspectors.
26 Asian Inspectors.
39 African Inspectors.
4,931 African Rank and file.

(*b*) The present strength is:—

31 European Officers.
91 European Inspectors (which does not include 8 Inspectors who have recently sailed from England).
25 Asian Inspectors.
38 African Inspectors.
4,853 African Rank and file.

(*c*) The estimated population of the area which comes under the Superintendent of Police, Nairobi, is:—

9,421 Europeans.
30,821 Asians and Seychellois.
59,022 Africans.
——— making a total of
99,264

(*d*) The present strength of the Police Force available to the Superintendent of Police, Nairobi, for service in that area is:—

2 European Officers.
13 European Inspectors (including 2 Court Prosecutors).
4 Asian Inspectors.
3 African Inspectors.
369 African Rank and file.

These numbers are short of establishment by:—

1 European Officer.
6 European Inspectors.
1 African Inspector.

The Force will be brought up to full strength as soon as the necessary personnel can be obtained.

Mr. Cooke (Coast): Sir, arising out of that answer, will Government bear in mind not only the necessity of increasing the personnel of the Force but the improvement of their conditions and pay in any projected schemes Government has for them.

No. 18—Bulk Import Licences

Mr. Patel (for Mr. Paroo):

(*a*) Will Government please explain why bulk import licences (if any) are granted to manufacturers' agents who were not importing such goods for themselves before the war? (*b*) Will Government please furnish a list of manufacturers' agents who have been issued with such bulk import licences during the year 1943, stating the quantity as well as the commodities for which each such licence was issued? (*c*) Will the Government please state what profit the Price Controller allows to these manufacturers' agents, in addition to what they usually receive direct as their commission from the manufacturers, on the goods imported under the bulk import licences, and whether any condition is made at the time of issuing the bulk import licences under which these manufacturers' agents are required to distribute the goods imported by them to their clients? (*d*) Are Government aware of the practice of these agents to regard these imports as their own and to sell them to their clients on the basis of first sale, taking the profit from that sale in addition to their commission as manufacturers' agents, and that such was not their practice before the war?

Mr. Tester: (*a*) The hon. member's attention is invited to the reply given to Question No. 85 of 1943 by the hon. Member for Central Area.

(*b*) Nineteen manufacturers' agents were issued with bulk import licences during 1943 and a list of these agents is being laid on the table*. A reply to the remainder of this part of the question would be contrary to the public interest at the present time.

(*c*) The amount of commission allowed by the Price Controller to manufacturers' agents who import on bulk import licences varies from 2½ per cent to 5 per cent provided that such commission is not added to the landed cost. As regards the conditions of distribution made at the time of issuing the bulk import licences the hon. member's attention is again invited to the reply to Question No. 85 of 1943.

(*d*) Yes, sir, but it should be explained that this practice does not increase the cost to the consumer and only affects the division of profit amongst the traders.

* List of manufacturers' agents issued with bulk import licences during 1943:—

A. W. Black, Esq.
J. H. Clark, Esq.
R. S. Campbell, Esq.
Messrs. Graham Dawson & Co.
Messrs. Grayson & Co.
Messrs. R. O. Hamilton, Ltd.
Messrs. W. H. Mason & Co.
Messrs. G. B. Nicholas & Co.
Messrs. Ross & Elliot.
Messrs. P. Phillips & Co., Ltd.
Messrs. Twentsche Overseas Trading Co., Ltd.
Messrs. Townsend & Co.
Messrs. E. Whiteaway & Co.
B. J. Diebel, Esq. (South African Distributors).
J. Chittenden, Esq.
B.E.A. Corporation, Ltd.
Messrs. A. Gill & Co.
Messrs. A. H. Wardle & Co., Ltd.
Mr. A. H. Nurmohamed.

BILLS

First Readings

On the motion of the Attorney General (Mr. Foster Sutton) the following Bills were read the first time and notice given to move the subsequent readings at a later stage in the session:—

The Land Control Bill.
The Crown Lands (Amendment) Bill.
The Bankruptcy (Amendment) Bill.
The Coffee Industry (Financial Assistance) Bill.
The Courts (Emergency Powers) Bill.
The Native Foodstuffs Bill.
The Employment of Servants (Amendment) Bill.
The Amalgamated Posts and Telegraphs Department Bill.
The Asiatic Widows and Orphans Pensions (Amendment) Bill.
The Arms and Ammunition (Amendment Bill.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 12th April, 1944.

Wednesday, 12th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 12th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

MINUTES

The minutes of the meeting of the 11th April, 1944, were confirmed.

PAPERS LAID

The following papers were laid by Mr. Tester:

Report of the Select Committee appointed by Legislative Council on the 21st of September, 1943, to examine the Regulations under which Pensions and Gratuities are Paid to European Members of the Armed Forces and their Dependants.

Schedules of Additional Provision No. 5 of 1943 and No. 1 of 1944.

NOTICE OF MOTION

The following notice of motion was given by Mr. Tester:

That Schedules of Additional Provision No. 5 of 1943 and No. 1 of 1944 be referred to the Standing Finance Committee.

ORAL ANSWERS TO QUESTIONS

No. 15—Fort Hall Water Supply

MR. BEECHER:

In view of the very considerable increase in the work of the Medical Department in Fort Hall already effected or about to be put into effect in 1944, both for the civil population and for the rehabilitation of African soldiers, and in view of the fact that only a very meagre water supply is available by the use of the present ox-drawn water carts, will Government please give an undertaking that immediate steps will be taken to provide the Fort Hall Government Station with an adequate water supply?

DIRECTOR OF PUBLIC WORKS (MR. STRONATH): An officer of the Public Works Department is at present investigating sources of supply for a water supply scheme for Fort Hall, and thereafter the survey and preparation of the scheme will be carried out.

Owing to war conditions it has not so far been possible to obtain the piping and pumping plant required for the scheme, but every effort will be made to do so. When these become available, first priority will be given to the work.

INTERIM PENSION

R. S. CINNAMOND

MR. TESTER: Sir, I beg to move: That this Council approves the payment until further notice of a provisional interim pension at the rate of £101-6-6 a year with effect from 29th September, 1944, inclusive, to Mr. R. S. Cinnamond, formerly Foreman, Public Works Department, in respect of his service from 7th August, 1928, to 28th September, 1944, both days inclusive, in lieu of his own and Government contributions to the Provident Fund, plus the interest thereon amounting in all to £602-16-2, which revert to the general revenues of the Colony. This is to provide an interim pension on the same lines as this Council has agreed to in the past, and I commend it to Council for adoption.

MR. BROWN (Solicitor General) seconded.

The question was put and carried.

SISAL (AMENDMENT) BILL

First Reading

On the motion of Mr. Foster Sutton the Sisal (Amendment) Bill was read a first time, and notice given to move the subsequent readings at a later stage in the session.

LAND CONTROL BILL

Second Reading

MR. MORTIMER: Your Honour, I beg to move that the Land Control Bill be read a second time.

This Bill and its complementary measure, which will come along later, the Crown Lands (Amendment) Bill, have created widespread interest. They are very important measures and will have far-reaching consequences. The object of the measures is to further the interests of white settlement in the Highlands of Kenya. There is an impression abroad, judging by correspondence that has appeared in the Press, that this is an attempt by an autocratic Government to force upon an unwilling community these

[Mr. Mortimer]

measures which are regarded in some quarters as hateful. That is far from being the case, as the history of this particular measure will show. It will be well, I think, although the facts are well known to the majority of the hon. members, to recount briefly the history of these measures, not only for the information of the general public but in order that the history may be placed on record. It goes back to a date about 18 months ago when the Land Board, on which there is an unofficial majority, made a series of recommendations to the Government dealing with the subject of white settlement. There were eight recommendations in all, and two of them were these: that the Government should proceed as soon as practicable with a measure of control over land transactions, and secondly that the Government should take unto itself powers of acquisition of land required for settlement purposes by agreement, if possible, but if that failed then by compulsory powers. The reason for those recommendations was that the Land Board was a little alarmed at the tendency which they observed towards a stiffening in the price of agricultural land, and with the scarcity of Crown land still available for disposal and suitable for mixed farming purposes there was some reason to suppose that white settlement in the post-war period would be placed in jeopardy. Consequently it was felt that some drastic measures were essential at a very early stage in order to stop any unfortunate tendencies that might appear.

In response to that request, about a year ago a Bill was introduced into this Council known as the Transfer of Immovable Property (Restriction) Bill, which vested in the Governor the power of control over all land transactions outside townships and municipalities. That simple measure was intended to be a war-time control only, lasting for the period of the war and one year thereafter, and it provided that no transactions in agricultural land should take place without the consent of the Governor. The Bill was published at somewhat short notice, but there was certainly no desire on the part of Government to rush a measure of such great importance. It was therefore agreed that the Bill be submitted to a select committee, and that consideration should be given to it in the interim period between two sessions of this Council. The select committee held several meetings and received much oral and written evidence. The bulk of that evidence was to the effect that the measure by itself would be of little value for the purpose for which it was intended unless it was coupled with a measure authorizing the Government to acquire land for settlement purposes, by compulsion if necessary. The select committee therefore reported that in their opinion the Bill should be dropped for the time being, and should be reviewed again in the light of the further measure which the Government then had under preparation.

The revised Bill was published in October last and contained provisions for the control of land transactions somewhat similar to that of the earlier Bill, but vesting the control in a Control Board, which had also power to control the transfer of shares in companies which owned land; the Bill also gave powers for the acquisition of land by the Crown, by agreement if possible, but by compulsion where agreement failed. That Bill was published for criticism, and the drafters of the Bill were by no means disappointed in that matter, for it got criticism plentifully. Many public bodies, associations and private individuals came forward with criticisms of a varied character. Some of these criticisms consisted mainly of vituperation, and these I think we can safely ignore. There were, however, a great many helpful and constructive criticisms from which we profited in the re-drafting of the measure. I would like to take this opportunity of according thanks to those members of the public, members of this Council and public associations throughout the Colony who took the trouble to furnish constructive and helpful advice on the lines which this measure should take.

The nature of the criticism against the October Bill was first of all a general objection to State interference with the private rights of a citizen to do what he likes with his own property. In my opinion, and I trust that opinion is shared at any rate by the majority of the members of this Council, the day has gone when the private interest of an individual should be allowed to override the public interests of the general community. I think, therefore, that criticisms of that kind can, at all events within this Council, safely be ignored. We turn now to the more detailed and constructive

[Mr. Mortimer]

criticisms which covered a large number of points. First of all, the scope of the Bill was criticized, and it was felt in some quarters that the operation of the measure should be confined to the Highlands as defined by law. Criticism was levelled at the constitution of the board, for in the October Bill the board had an official majority and an official nominated chairman. The great majority of the critics desired that the board should have an unofficial majority and that it should have power to elect its own chairman. Criticism was also levelled against the control to be exercised by the board in the matter of the price of agricultural land as between willing buyer and willing seller. The Bill was also criticized because of the absence of any appeal provisions, it being laid down that on compulsory acquisition by the Crown the board should fix the price and their decision would be final. The bulk of the critics pressed very strongly that some appeal provisions should be brought into the Bill. Company transfer provisions also caused much criticism. There was further comment on the powers that were taken in the Bill to acquire compulsorily not only land that was undeveloped or improperly developed but also developed land, and some critics thought that the powers should be confined to undeveloped or badly developed land. It was further desired to stress in the Bill that the object of the acquisition should be for white settlement only. Now all these criticisms and comments were very carefully considered, and the Bill was re-drafted and has emerged in the form in which it is now before Council. This Bill affects every section of the European community in this Colony, and is one in which the public should take the greatest possible interest. For the measure to be effective, if it is passed, public support is absolutely essential. No measure of this kind can hope to succeed unless it has the great weight of public opinion behind it. The Bill is not by any means perfect, no one would contend that it is; we are moving in uncharted country where we have very little to guide us. It is true that similar legislation has been enacted or is in process of enactment in various other colonies and dominions, and we have taken advantage of those enactments to study them and to embody such provisions as seem suitable to our local conditions.

It is proposed that the Bill be referred to a select committee and that the select committee will take evidence from members of the public, that the committee will also take this opportunity of saying other centres of the population to facilitate the submission of evidence, and I will meet not only in Nairobi but in that if it be desired in any of the up-country centres I would be quite prepared to attend representative meetings to explain the provisions of the Bill in fuller detail.

Turning now to the Bill as it is now before Council, it will be noticed first of all that there are certain very important omissions from the October draft. The first that I will mention is that the part dealing with the transfer of company shares has been removed from this Bill altogether, and provisions have been inserted in the Crown Lands (Amendment) Bill which will come up later. It was felt that the control of company shares and the exercise of veto over transactions of that kind should properly be provided for in Part VIII of the Crown Lands Ordinance, where provision is also made for the exercise of veto over other transactions between parties of different race. The other omission is in the powers of the Control Board to veto transactions because of the person of the transferee. It has been felt that that power could also best be dealt with under the Crown Lands Bill, and I shall refer in more detail to that power at a later stage. The main purpose of the measure is aptly stated in the "Objects and Reasons" appended to the Bill, that is to ensure that the most beneficial use is made of land in the Highlands, to give the Governor power to acquire land for settlement purposes, and to prevent speculation in agricultural land to the detriment of post-war settlement. The principle features of the Bill now before Council are first that it sets up a Control Board to control all transactions in agricultural land, that the Control Board will have an unofficial majority and will have power to elect its own chairman. Machinery is provided for appeals from any decisions of the Board, and Government is authorized by the Bill to acquire land for settlement purposes either by agreement or compulsorily.

[Mr. Mortimer]

I will now briefly run through the clauses of the Bill and draw attention to their main features in some detail. Under clause 1 it will be noted that the date of operation of the Bill is 19th October, 1943. The reason for that is that the original draft was published on that date and it was felt to be desirable to control all transactions in some way or another that might take place after that date and before the Bill could be finally placed on the statute book. In order to avoid hardship and inconvenience to the land-owning section of the community, a Government Notice was published at a shortly later date empowering the Commissioner of Lands to give interim consents and stating that the measure, when enacted, would provide that any such interim consent would be regarded as the consent of the Board. Something over 400 transactions have passed through my hands during that interim period and the great majority of them have received consent, but some few have not. The interim provisions have worked with smoothness, and I think with satisfaction to all parties concerned. The members of the legal community have co-operated to the fullest extent with my department in dealing with these matters, and I feel quite sure that no one can complain that there has been undue delay in dealing with any applications for consent. It will also be noticed that this Bill is reserved in its operation until such time as His Majesty has declared that he does not propose to exercise his power of disallowance. That is in order that the Secretary of State may see the Bill in its final form before giving his consent to its operation, and that, you will recognize, is of great importance in view of the very close watch being kept on land affairs in Kenya by friends at home. You will notice that under clause 2 the definition of "land" restricts the operation of the Bill to the Highlands only. Now, the Highlands have been defined in the seventh schedule to the Crown Lands (Amendment) Ordinance, and have clearly established boundaries. It is also proposed in the Bill to exclude from the operation of the measure residential plots of less than 20 acres. As the Bill is concerned primarily with agricultural land it seemed appropriate that residential areas such as the Karen Estate, for example, should not be brought within the provisions of the Bill, and so the limitation is fixed at 20 acres which is regarded as the top limit of a residential plot.

Clauses 3, 4 and 5 deal with the setting up of the Control Board and the machinery under which it will operate. It will be noted that the membership of the Board is to consist of three official members—the Commissioner of Lands and Settlement, the Financial Secretary, and the Director of Agriculture—and four other persons to be elected by the European elected members at a meeting convened for that purpose. The period of membership of unofficial members is limited to four years, and the intention is to provide in the Bill that one shall retire each year; consequently there will always be three experienced unofficial members functioning on the Board. In order that the Highlands Board, that very important body, may be kept fully informed of what the Control Board is doing, it is provided that copies of the minutes of the latter's meetings shall be sent to the Highlands Board.

We now come to one of the most important clauses of the Bill dealing with the duties and functions of the Board, clause 7. It is there provided that, "subject to any special order or general directions of the Governor acting after consultation with the Highlands Board", the Control Board shall have powers which are classified under four separate headings. First of all, under head (a), the Board is empowered to give "advice to the Governor in the exercise of his powers under sub-section (1) of section 70A of the Crown Lands Ordinance"; that is the provision in the Bill which will shortly come before Council. That section gives the Governor power of veto over transfers to individual persons. In the original bill produced in October, this power was vested in the Control Board, but on subsequent reflection it was felt that control over persons who may acquire land was very different from control over land transactions purely for the purpose of preventing speculation and preventing land from getting into the hands of people who already owned large quantities. It was also felt that this power of control over persons who may secure land must rest with the Governor and should not be delegated to any body, however constituted. The Control Board will, however, have an opportunity of

[Mr. Mortimer]

making its representations to the Governor on these matters, as under the machinery which I think will be established all transactions will first come to the Control Board, and from there go to the Governor with the recommendations of the Board. Under (b) the Board is authorized to give its consent to land transactions or to withhold its consent. In withholding it, it can operate for only two reasons. First, that the price is not appropriate. I suppose that usually when the control is exercised it will be because the price is considered to be too high—and, secondly, that the transferee already owns sufficient land and it is against the public interest to allow him to acquire more. Under (c) the Board is given very far-reaching powers to impose conditions in consenting to a transfer. The reason for these powers being vested in the Board is that the development conditions under our Crown Lands Ordinance are particularly weak, particularly under the Ordinance of 1902. Consequently, there are large tracts of land in this Colony which have been developed sufficiently to fulfil the requirements of the law under the Crown Lands Ordinance, but are still three parts undeveloped. That is against the best interests of settlement in the Highlands and of the community in general, and it is proposed to give the Control Board power to impose new conditions when they consent to a transfer to ensure that the land shall be put to its most beneficial use by the transferee.

I think that these powers as contained in this clause can be improved upon, and I shall suggest in select committee certain improvements that I have in mind. I will mention them here so that hon. members may be thinking about them. First of all, I should like to see the Board empowered to impose other conditions than mere development conditions. I think there is a great future in this Colony for the development of leasehold tenure between the private landlord and the private tenant, and it may be that proposals will come before the Board from landowners who already own very large tracts of land for the acquisition of further land with a view to developing it and placing on it European settlers of the right type on landlord and tenant agreements, and I do not want the Board to be precluded from laying down conditions if they feel that such a transaction is in the best interests of the Colony. I can also see possibilities in the establishment in this Colony of a public utility land-holding trust company for settlement purposes with a limitation on dividends and very close control over its activities to ensure that it is operated in the public interest and not in the interest of any private individual. I would like to see the Board empowered to lay down conditions which would fit in with the requirements of such a company. There is another point I should like to bring up. District councils are now road boards and have authority over roads in their areas. They have been complaining for a long time that their task is made very much harder by lack of control of transfers, and the failure of Government to impose conditions when land is transferred that proper roads of access shall be assured before transfers take place. I should like the select committee to be empowered to consider whether it would not be proper to insert in this Bill powers to enable the Control Board to ensure that a proper road of access is provided when a transfer of a sub-division takes place. The Board is also empowered to determine the price at which Government acquisitions shall take place. They will advise the Government on acquisitions by mutual agreement, they will also advise on the price to be paid on compulsory acquisition. One important provision has been introduced, to permit parties to any transaction to appear before the Board and give evidence either in person or by a representative. The Board is required to give its decisions in writing, and to state the reasons for arriving at those decisions. That, I think, is of great importance to the land-owning public, as it is thus given every opportunity of rebutting any false premises on which the Board may have based its judgment. Finally, the Board is authorized to advise the Governor of land which, in the opinion of the Board, is suitable for settlement and should be acquired for that purpose.

We come now to clauses 8 and 9, without which the powers of the Board to impose conditions would be entirely valueless. These clauses provide penalty conditions for infringements of orders laid down by the Board as regards

[Mr. Mortimer]

development of land where transfers have been authorized. In clause 10, we have the main operative clause of this part of the Bill, Part IV. It provides that all land transactions require the consent of the Board before they become effective. It provides also that, in the event of the Board refusing to consent to a transfer, any moneys paid by way of deposit or part purchase price may be recovered as a civil debt. In order that ordinary financial transactions between a landowner and his bankers may not be prejudiced, retarded, or hindered in any way, it is proposed to exclude from the operation of the Bill mortgages to the three commercial banks operating in the Colony, or the Land and Agricultural Bank of Kenya. Hon. members will notice in the Bill that the words "equitable mortgage" are used. It has been pointed out, however, that by law the Land Bank is precluded from taking an equitable mortgage and must take a legal mortgage. I will propose in select committee that the word "equitable" be deleted from that clause, thereby leaving it open for mortgages and charges to take place without the consent of the Board with any of the three commercial banks or the Land Bank or any bank that may be established and may come within the operation of this exclusion with the approval of the Governor in Council. Under clause 11, gifts of land are brought within the operation of the Bill. In select committee I think the hon. and learned Attorney General will probably suggest that that clause be deleted and the provisions be embodied in clause 10, as there is no important difference between a gift and any other kind of disposal. The exclusion of testamentary dispositions I am not personally happy about, and in select committee I will suggest that some provision be made to cover testamentary dispositions and bring them within the operation of the Bill. Under clause 12, an appeal tribunal is established with a chairman who shall be a judge of the Supreme Court and two assessors. The term assessors is not quite a happy one as it conveys a different meaning from that which I think was intended when this proposal was first advanced, and in select committee I hope consideration will be given to an improvement upon the machinery for setting up this tribunal.

We now come to Part V of the Bill dealing with the acquisitions of land by the Crown. Under existing legal powers the Crown is able to secure land for any purpose whatsoever by mutual agreement between a willing seller and a willing buyer, and it is able to secure land for any public purpose under the Indian Land Acquisition Act. It is important that these powers should not in any way be prejudiced by the operation of this new enactment, and so it is expressly provided that these powers will remain unimpaired. Additional powers are now given whereby the Governor on his own initiative may take steps to secure land for settlement purposes under the provisions of this Bill, and in that case the Control Board will be invited to advise or, on the other hand, the initiative may, under clause 15, come from the Board itself; the Board may recommend that certain land is suitable for settlement and should be acquired for that purpose. The Board will then, after going through the machinery laid down, fix the price at which in its opinion the land should be purchased, and negotiations will then proceed. Failing a successful result of the negotiations, compulsory powers are taken to acquire the land without further ado. Provision is made for persons whose land is to be acquired to appear in person before the Board to object to their land being acquired and stating their reasons why they think it should not be so acquired. It will be noted that there is one important phrase in clause 13 (1): "All land so acquired shall be alienated only for the purposes of settlement". That is in order to make it quite clear that these powers must not be used when the other powers of Government are more appropriate; that is, for ordinary public purposes the powers of this Ordinance cannot be used.

In Part VI we have the appeal provisions. In clause 19 an appeal is allowed to the tribunal on any question of fact, and the tribunal's decision shall be final upon such question. Provision is also made for appeal on any question of law or on any question of mixed law and fact to the Supreme Court. Personally, I am not satisfied with these appeal provisions, and hope that the select committee will be able to think out more satisfactory measures whereby they can be improved upon. In clause 20 we have quite extensive rule-making powers cover-

[Mr. Mortimer]

ing all the various points that seem to require to be covered to make the machinery of the Ordinance effective and operative. Clauses 21 and 22 provide for rule-making powers by the Supreme Court and the appeal tribunal to govern their own activities, but these clauses are not quite adequate and will be improved upon, I hope, in select committee. In clause 23 penalties for the infringement of any of the provisions of the law are provided, and it will be noticed that very substantial penalties are laid down: A maximum "fine not exceeding £5,000 or imprisonment for a term not exceeding five years or both". The reason for these very substantial penalties is because Government realizes the great importance of this measure for the future of white settlement in this Colony, and is determined to make any infringement of the provisions of the law a hazardous business. In clause 24 the Registrar of Titles is given power to refuse to register any document that requires the consent of the Board and has not received that consent. In the final clause the Governor in Council is empowered by notice in the Gazette "to exempt from all or any of the provisions of this Ordinance such classes of land, and such dealings or transactions relating to land, as he may think fit". That clause was inserted in the original bill when there was no limitation of 20 acres, because the drafters of the Bill felt that Government might feel disposed to exclude from the operation of the Bill purely residential plots or possibly certain other areas where the interests of white settlement would not be prejudiced. I think it is desirable to keep this measure of exemption in the Bill, but at the moment I cannot think of any particular class of land or any class of transaction that the Governor in Council would wish to exempt.

I have concluded my résumé of the detailed provisions, and I trust I have satisfied hon. members on the other side of Council that the objections that they raised at an earlier stage in the discussions on these measures have been very largely met, at any rate so largely that they will be able to support the Bill with unanimity and confidence.

MR. FOSTER SUTTON seconded.

MR. WRIGHT (Aberdare): Sir, the hon. member has added to his laurels in the manner of his introduction of this Bill this morning: to the mastery of his subject he has brought that mastery of diction to which we are becoming accustomed and which we always admire. There are, of course, some who regard this measure as a revolutionary one affecting, as the hon. mover said, the rights of property, personal interests, and so on. Rather do we on this side of Council regard it as an evolutionary measure in keeping with the times, for it is abundantly clear that the good old ways can no longer prevail in a colony whose settlement is to increase at the rate that we require it to increase, and to secure such settlement, if we do not take such steps as are outlined here, we must know and recognize that the day is not far distant when as settlers we shall die out. I want to say at the outset that members on this side of Council are greatly indebted to the hon. mover for devoting some hours of his time yesterday to raising with us some of the points in the measure in dispute and difference between us. The effect of that elucidation, which he alone could bring because of his knowledge of the subject, was such that it is unlikely that to-day this debate will partake of a very protracted nature. There are certain of my colleagues who naturally want to bring up points of particular interest to their constituents, but apart from that we as a body are generally so happy about the assurances given by the hon. mover—first in respect of the promise that the select committee should go to various centres and hear evidence, and particularly his undertaking to go to such centres where people are specially interested—that we feel the success of this measure is assured.

There are many who think that Kenya has now, in this measure, come to the parting of the ways, that there is something radically wrong when people's titles from the Crown should now be challenged in this way, that extra conditions should be superimposed to make the scheme inoperative as they feel to old settlers who wish, in the ordinary course of things, now or later on to make way for new people, but in paying a compliment to the old pioneer settlers of the past we recognize that this parting of the ways is a necessary thing to-day. The whole progress of the world indicates that. The hon. mover gave cogent reasons for it, but one cannot look back

[Mr. Wright]

on the history, as hon. members well know, of this Colony without thinking with great admiration of those few who were its pioneers. Apart from the great Lord Delamere, one recalls those good people who came from South Africa many years ago, of whom there are some critics to-day because they had vast blocks of land given them literally as gifts from Government. There are many of them happily still alive. One recalls names such as Flemmer Bros., Russell Bowker, and Robert Chamberlain still with us, and many others of that type without whom settlement could have made no progress at all. I am so confident that the survivors of those groups will not be penalized and recognition of their pioneer spirit of development being given them for their reward that, speaking for the older generation such as my own, who struggled along since 1911, some 30 years odd, we more and more feel that it is wrong in principle that we should grasp out as and when we can to acquire for ourselves more and more land when we know that our ultimate retention of it is being imperilled unless we get fresh blood to preserve our White Highlands. We realize more and more that land ownership, the title to land, carries its responsibilities and obligations, and I have spoken with many of my contemporaries of upwards of 30 years, and we are convinced that this is the right measure and in accord with the real spirit of Kenya, which must now develop, and they have said they are convinced that the appointment of the board under the Bill will be of a satisfactory nature and comprise such well chosen men that, if it is deemed right they should part with one or even more of their scattered farms, they would be satisfied with the fairness of the Bill and stand down for new settlers. That, sir, is a trend of the times. We know that it is only by being interdependent with the new young people of our own race that we can preserve what we thought in a selfish way was ours. It is not. It is only by collaboration with new blood, and particularly young Kenya, that we shall be able to preserve and increase the strength of our white settlement in Kenya.

The hon. mover touched lightly on the history of this measure, going only as far back as the draft of last October. If you will forgive me, I will touch on a matter of more historical interest, going back some 10 years, for at that time, when a debate began on the statement issued on the definition of our White Highlands, the then elected members, without exception eleven out of eleven of the European elected members, held that in respect of one particular finding in the Carter Commission Report, despite its reservations, white settlement was in a sense imperilled. I refer briefly, and I am required to do so by my constituents, to that area between the Kittermaster and Coryndon Lines, the Leroghi and Maarti areas, some 1,085,000 acres pledged to European settlement under the terms of the Masai Treaty of 1910. A few of the members who took part in the debate and were unanimously in support of the retention of that area 10 years ago are with us to-day. There are three, or perchance four, remaining, but it was an impressive fact that their attitude was unanimous, that we have continued constantly, if sporadically, to protest against this allotment, ever remembering that the Carter Commission Report specifically stated that the tenure of that land by the Samburu tribe should obtain "for such time as may be necessary". That was the chief point of our case then, and it still exists. The pledge given in the treaty of 1910 I need not repeat. The debate that took place, led by the hon. Member for Nairobi North, then our chairman, was a most effective one, and I think that those of us engaged in that debate have retracted in no way our attitude towards that land. It is fair, however, to say that among the new blood, the hon. Member for the Coast among them, there are signs of protest that I should still go on with this issue, or any of us, who do say that it is in fact settled by the tenure now held by the Samburu tribe. But they forget the condition, and with all respect I say the sincerity of Government's intention towards the encouragement of white settlement in these our pledged Highlands will be measured largely throughout this country and support to the Bill given accordingly, as and how Government deal, not necessarily to-day but at a reasonable date, with the reversion of that pledged area of over a million acres to the areas reserved for white settlement.

The comprehensive nature of the hon. mover's speech is such that I would hate

[Mr. Wright]

to belabour the issue with which we are all on this side of Council generally in agreement, but as we will have to face our critics, and there are many, I want to say that I was converted long before the introduction of the inoperative and unworkable October draft to the principle underlying this Bill, and I am prepared—as my colleagues are—to face the critics who believe that this measure is the end of all things. Rather do we believe, after considerable study of the subject, that what to them is the end of all things is to Kenya but the beginning of new and better.

MR. BOWER (Uasin Gishu): Your Honour, I am not going to pretend that I have always been in favour of the principles underlying this Bill any more than its bitterest opponent of today is. All my life I have been brought up to the idea of the inviolability of the individual ownership of land. I have been brought up to the idea that it was mine to make or to mar within reason, that I could do what I liked with it, but I agree with other speakers that times have changed and that we have to change with those times, or otherwise we will disappear. I cannot say that I like many of the new ideas that are extant to-day, but what I will say is that I am of the opinion that the principles underlying the Bill we have before us to-day are absolutely necessary to the future well-being of Kenya. The inexorable march of circumstances and our interests demand that we be not allowed to carry on in the old haphazard and selfish way. We are undoubtedly living in a new world with new ideas, and we have to adapt ourselves to those new ideas. Whether the new world we are marching into is going to be a better one or not, our efforts will determine and time will show. There is no doubt about it that, even before he was, many thinking people were changing their opinions from the idea that a man could do what he liked with his land to the idea that the State had a very definite interest in that land, and that the landowner should be encouraged to develop his land properly, to use it properly, and should be restrained from misusing it in any way, because it was realized that the top few inches of soil supports all life on this planet; in other words that the stability of the soil should be secured.

This principle has been accepted by us in a Land and Water Conservation Ordinance, and the Bill we have before us is a natural corollary to that Ordinance, as the stability of the soil cannot be secured unless land values are stabilized, because high land values mean one of three things, high food costs, or soil mining, or, which is tantamount to the same thing, bankruptcy, and one of the principles underlying this Bill is designed to achieve stability of land values, to stop the value of the land rising to uneconomic heights. What this Bill is asking us is to go a step further than what was visualized in the Land and Water Conservation Ordinance; it is asking us to agree that the privileges of private ownership shall be taken away from us. We are being asked to give up the privilege of selling our land to whom we will at a price which is the right one in our opinion and to suit ourselves; we are being asked to give up the privilege of determining to what extent our land shall be developed beyond the barest minimum requirements; or hoarding land, or speculating in land; of having more land than we can either reasonably develop or that we have need for; of putting our spare cash into land and allowing it to increase in value by the efforts of our neighbours. All these we being asked to give up in favour of seven gentlemen, four of whom we, as representing the unofficial community, shall have the privilege of appointing. I welcome and support this principle most heartily and as strongly as I possibly can, provided that the people from whom these privileges are being taken away have a definite say as to who the persons shall be who are going to have these privileges and what their powers shall be. I am thinking particularly of clause 7 (1), the first portion of it, "subject to any special or general directions of the Governor," etc., but I will go into that later. I should first like to make one or two more general remarks.

My reasons for supporting this Bill before Council this morning, are, firstly, that I firmly believe that our sincerity and unselfishness as a white community will be judged in no small measure by whether this Bill is passed or not; as I sincerely hope and trust it will be passed. I am certain that it will help to dispel the obsession on the part of many of our "friends" in other parts of the world that

[Mr. Bouwer]

this is a land of playboys and playgirls who have no other thought but that of their own selfish pleasures, or, alternatively that this is a land where huge bearded men stride round with sjamboks, beating their cringing native servants, and whose main occupation is whisky or, as it has sometimes been called in this Council, booze! I hope it may even have the effect of convincing some of those people of the real facts of the case, of what the real Kenya is like; that generally speaking the settlers of Kenya are ordinary law-abiding, God-fearing, decent folk who have quite a lot of unselfish ideas about life in general, and of their native servants and neighbours in particular. My second reason, and a much more important one, is that many of the men and women who are now fighting our battles and who have tasted a free open life will want to migrate to a land where their desire for such a life can more reasonably be met. If I am wrong in my conclusions about that, well, all I can say is that the young men and women of to-day are rather different from what they were 25 years ago, but I refuse to believe it, and I believe that it is our duty to make provision for these men and women where it is desirable, advisible, and possible, because our land is one which is simply crying out for new white settlement in the interests of every race in the country. I honestly and sincerely believe that if we can double our present European population within the next five years, or at any rate within five years after the war, it will be to everyone's benefit, be he European, Asian or African. On the other hand, I just as sincerely believe that if we fail to do so our position is going to be very very difficult indeed. By what I have just said I do not mean that we have got to ignore our own young folk in any way; they, of course, do come first and must come first, and we must see that the youth of the country have land if they desire to settle on the land. I think that the majority of members will agree with me that the nucleus of any large increased white settlement must be settled on the land, and we must be prepared to find land for at least another 2,000 or more farmers with their families. That cannot be done unless every acre of land of the White Highlands of Kenya is developed to its utmost extent. We know there is not very much Crown land left for alienation, but fortunately we do know that there is a considerable amount of land in the hands of private landowners, land which is not at the present moment being developed to its utmost extent, and this land must be made available for settlement at the earliest possible moment and at a reasonable and economic price, because if any new settlement starts off with uneconomic land values that land settlement is doomed from the start.

We must prevent the mistakes that were made at the end of the last war in this and other countries where settlers took up land at high and what proved to be absolutely uneconomic prices, and the result of which was in a very large number of cases misery and bankruptcy. We must prevent at all costs the speculator benefiting at the expense of the new settlers and we must give the new settler the start which we who settled here 25 or more years ago never had. We had to fight our way without any help whatsoever, and in spite of that I think most people will agree with me that the settlers who came here 25 years ago and more have proved beyond doubt the success of white settlement in Kenya. Our war record and our war effort is one which we settlers have no need to be ashamed of in any way. At the beginning of the war practically everyone who could hold a rifle in his hands was pressed into service to defend the country, and immediately afterwards the country was also called upon to supply the food needs of a large influx of the armed forces who came here to help us. When the war had receded from our shores we were called upon to feed many additional mouths in the form of refugees and prisoners of war, and we succeeded in doing this for a period of just about three years before it was necessary to import any foodstuffs, and it was then only in respect of maize, a crop that the European grower had been forced out of growing due to the uneconomic prices. The settler who comes to settle on the land, or rather the settler who we hope will come here in the future, will come under very different circumstances; he will have every advantage and every chance of making good that we never had. I will give you a few instances if I may. Take, for instance, dairy and cattle farming, which must be the basis of any sound farming proposition in future; 25 years ago there were only a very few

[Mr. Wright]

to belabour the issue with which we are all on this side of Council generally in agreement, but as we will have to face our critics, and there are many, I want to say that I was converted long before the introduction of the inoperative and unworkable October draft to the principle underlying this Bill, and I am prepared—as my colleagues are—to face the critics who believe that this measure is the end of all things. Rather do we believe, after considerable study of the subject, that what to them is the end of all things is to Kenya but the beginning of new and better.

MR. BOUWER (Uasin Gishu): Your Honour, I am not going to pretend that I have always been in favour of the principles underlying this Bill any more than its bitterest opponent of to-day is. All my life I have been brought up to the idea of the inviolability of the individual ownership of land. I have been brought up to the idea that it was mine to make or to mar within reason, that I could do what I liked with it, but I agree with other speakers that times have changed and that we have to change with those times, or otherwise we will disappear. I cannot say that I like many of the new ideas that are extant to-day, but what I will say is that I am of the opinion that the principles underlying the Bill we have before us to-day are absolutely necessary to the future well-being of Kenya. The inexorable march of circumstances and our interests demand that we be not allowed to carry on in the old haphazard and selfish way. We are undoubtedly living in a new world with new ideas, and we have to adapt ourselves to those new ideas. Whether the new world we are marching into is going to be a better one or not, our efforts will determine and time will show. There is no doubt about it that, even before he war, many thinking people were changing their opinions from the idea that a man could do what he liked with his land to the idea that the State had a very definite interest in that land, and that the landowner should be encouraged to develop his land properly, to use it properly, and should be restrained from misusing it in any way, because it was realized that the top few inches of soil supports all life on this planet; in other words that the stability of the soil should be secured.

This principle has been accepted by us in a Land and Water Conservation Ordinance, and the Bill we have before us is a natural corollary to that Ordinance, as the stability of the soil cannot be secured unless land values are stabilized, because high land values mean one of three things, high food costs, or soil mining, or, which is tantamount to the same thing, bankruptcy, and one of the principles underlying this Bill is designed to achieve stability of land values, to stop the value of the land rising to uneconomic heights. What this Bill is asking us is to go a step further than what was visualized in the Land and Water Conservation Ordinance; it is asking us to agree that the privileges of private ownership shall be taken away from us. We are being asked to give up the privilege of selling our land to whom we will at a price which is the right one in our opinion and to suit ourselves; we are being asked to give up the privilege of determining to what extent our land shall be developed beyond the barest minimum requirements; or hoarding land, or speculating in land; of having more land than we can either reasonably develop or that we have need for; of putting our spare cash into land and allowing it to increase in value by the efforts of our neighbours. All these we being asked to give up in favour of seven gentlemen, four of whom we, as representing the unofficial community, shall have the privilege of appointing. I welcome and support this principle most heartily and as strongly as I possibly can, provided that the people from whom these privileges are being taken away have a definite say as to who the persons shall be who are going to have these privileges and what their powers shall be. I am thinking particularly of clause 7 (1), the first portion of it: "subject to any special or general directions of the Governor," etc., but I will go into that later. I should first like to make one or two more general remarks.

My reasons for supporting this Bill before Council this morning are, firstly, that I firmly believe that our sincerity and unselfishness as a white community will be judged in no small measure by whether this Bill is passed or not, as I sincerely hope and trust it will be passed. I am certain that it will help to dispel the obsession on the part of many of our "friends" in other parts of the world that

[Mr. Bouwer]

this is a land of playboys and playgirls who have no other thought but that of their own selfish pleasures, or, alternatively that this is a land where huge bearded men stride round with sjamboks, beating their cringing native servants, and whose main occupation is whisky or, as it has sometimes been called in this Council, booze! I hope it may even have the effect of convincing some of those people of the real facts of the case, of what the real Kenya is like: that generally speaking the settlers of Kenya are ordinary law-abiding, God-fearing, decent folk who have quite a lot of unselfish ideas about life in general, and of their native servants and neighbours in particular. My second reason, and a much more important one, is that many of the men and women who are now fighting our battles and who have tasted a free open life will want to migrate to a land where their desire for such a life can more reasonably be met. If I am wrong in my conclusions about that, well, all I can say is that the young men and women of to-day are rather different from what they were 25 years ago, but I refuse to believe it, and I believe that it is our duty to make provision for these men and women where it is desirable, advisable, and possible, because our land is one which is simply crying out for new white settlement in the interests of every race in the country. I honestly and sincerely believe that if we can double our present European population within the next five years, or at any rate within five years after the war, it will be to everyone's benefit, be he European, Asian or African. On the other hand, I just as sincerely believe that if we fail to do so our position is going to be very very difficult indeed. By what I have just said I do not mean that we have got to ignore our own young folk in any way; they, of course, do come first and must come first, and we must see that the youth of the country have land if they desire to settle on the land. I think that the majority of members will agree with me that the nucleus of any large increased white settlement must be settled on the land, and we must be prepared to find land for at least another 2,000 or more farmers with their families. That cannot be done unless every acre of land of the White Highlands of Kenya is developed to its utmost extent. We know there is not very much Crown land left for alienation, but fortunately we do know that there is a considerable amount of land in the hands of private landowners, land which is not at the present moment being developed to its utmost extent, and this land must be made available for settlement at the earliest possible moment and at a reasonable and economic price, because if any new settlement starts off with uneconomic land values that land settlement is doomed from the start.

We must prevent the mistakes that were made at the end of the last war in this and other countries where settlers took up land at high and what proved to be absolutely uneconomic prices, and the result of which was in a very large number of cases misery and bankruptcy. We must prevent at all costs the speculator benefiting at the expense of the new settlers and we must give the new settler the start which we who settled here 25 or more years ago never had. We had to fight our way without any help whatsoever, and in spite of that I think most people will agree with me that the settlers who came here 25 years ago and more have proved beyond doubt the success of white settlement in Kenya. Our war record and our war effort is one which we settlers have no need to be ashamed of in any way. At the beginning of the war practically everyone who could hold a rifle in his hands was pressed into service to defend the country, and immediately afterwards the country was also called upon to supply the food needs of a large influx of the armed forces who came here to help us. When the war had receded from our shores we were called upon to feed many additional mouths in the form of refugees and prisoners of war, and we succeeded in doing this for a period of just about three years before it was necessary to import any foodstuffs, and it was then only in respect of maize, a crop that the European grower had been forced out of growing due to the uneconomic prices. The settler who comes to settle on the land, or rather the settler who we hope will come here in the future, will come under very different circumstances; he will have every advantage and every chance of making good that we never had. I will give you a few instances if I may. Take, for instance, dairy and cattle farming, which must be the basis of any sound farming proposition in future, 25 years ago there were only a very few

[Mr. Bouwer]

herds of good cattle in the country, and in fact most people found it extremely difficult to get even native cattle to live at all. To-day the dairying industry is a prosperous one in most districts. To-day there are reasonable roads all over the country; in those days there were not even tracks. I remember very well just after the last war when I had been discharged here in Nairobi and I wanted to go up-country, there was only one way to get from Nairobi to the Uasin Gishu Plateau, and that was by rail to Londiani, and then we had to travel 60 miles by a so-called road. To-day the railway taps every one of the important farming districts of the Colony; in those days most of the farming districts were 60 or more miles away. Today the settler that comes here will have social amenities we in those days never dreamed of. To-morrow we will have economical air transport which will make all Africa as small as a district in Kenya was then.

I think I have said enough to show that, provided land and finance are made available to attract new settlers, they should have every chance of making good. Many pessimists will say "what about markets?" I agree. I agree that is a big problem, but it is not a problem peculiar to farming or to Kenya only, it is a world problem, and one which will have to be settled on that basis. The conference at Hot Springs led the way, and this war will once more have been fought in vain if goodwill and sound commonsense do not ensure that we have sound distribution methods after this war and the principal that the farmer is entitled to secure the same standard of living as the townsman who is producing essential services. In any case, food will be required in large quantities to feed a devastated Europe and other parts of the world, and there is no reason why we should not play our part in producing some of it too. I think I have already said that I am in favour of the principles underlying this Bill, but there are some alterations that I hope consideration will be given to in select committee. I consider they are matters of principle, and therefore I am going to ask hon. members to bear with me a little longer; those alterations I do not consider matters of principle I will bring up in select committee.

The first point I want to deal with is in clause 7 (1): "Subject to any special or general directions of the Governor, acting after consultation with the Highlands Board, the Board shall have power". I cannot understand why this has been put into this Bill again, especially in view of the fact that at the meeting that was held with Mr. Harragin and other members of Government and the elected members, it was agreed that it was not necessary to have that and that the clause should read: "The Board shall have power". I believe that it is quite unnecessary to have that stipulation in, because if it is the desire of Government to secure themselves against any contingency I maintain that clause 25 will give them the necessary power, and I believe that this is quite unnecessary here, and I would wish to have it excluded from the Bill when it comes back from the select committee. The next point I should like to deal with is clause 9 (2). In the second last line it says: "shall, subject to relief, if any, upon such terms as may appear just, declare the land forfeited to the Crown". I would like to know exactly what that means. If my interpretation is the correct one, I believe it is most undesirable, and I would suggest that the words "if any" be deleted. If special conditions of development have been imposed and the person who has acquired the land does not fulfil them, the land should be forfeited. I agree. But I do not agree that that land should be forfeited without any relief. I agree it does say "subject to the relief the courts may determine", but I do not agree it should be left to the courts who may or may not give anything. I hope I shall be told that I am wrong and that that is not the intention. The next point I should like to make is in clauses 12 and 13. Here again I believe it is a principle that should be laid down. I believe it is only right that if land is to be acquired by compulsion by the Crown and the owner thereof objects to that, and he has to state his case before the Board, the expenses of that person should be paid in the first instance. That is, I strongly believe, a principle that should be laid down, and I further believe that if a man still feels aggrieved after taking the matter to the appeal tribunal, if he wins his case his expenses should also be paid. The next clause I should like to deal with is clause 18: "Nothing in this Ordinance contained shall affect

[Mr. Bouwer]

the right of the Crown to obtain land, for the purpose of settlement, from any person by mutual consent". I believe that that is an entirely unnecessary clause again, and I want to see it deleted, because I do not believe that the Crown should be allowed to acquire land at what might be considered a high value if the ordinary person is not, for settlement purposes of course. The explanation I was given was that it may be that the Crown wants to acquire land from the Land Bank and that the land may stand at a higher valuation in their books than the Board thought it worth. I believe that ought not to affect the principle at all, because I believe the same arguments hold good for the Crown just as for a private individual against paying an inflated price for a piece of land. I was very pleased to hear the hon. mover state that he did not agree with the clause of mixed law and fact, because I am told that a clever lawyer could always make out that any dispute was a question of mixed law and fact. With certain reservations I support the Bill.

MR. COOKE: Sir, I was a little bit intrigued by the hon. member who has just sat down when he talked about the hardships which the settlers of his generation underwent in this country, that they had to walk something like 60 miles to a railway train! I am a little bit surprised at that coming from him, whose sturdy and courageous ancestors crossed the illimitable veldt in South Africa without trains or motor cars! And my hon. friend was inclined to be a little bit ungenerous to Government. I am one of those who think that, so far as white settlement in this country is concerned, the Government of this country has been not only just but extremely generous, and rightly so; and I think that the home Government in consenting, as they have, to certain portions of this Bill, which certainly reinforce the Highlands argument, have shown themselves out to help white settlement. You, sir, have allowed a little latitude in this debate, and perhaps I may be allowed a little latitude. I was rather sorry that the hon. Member for Aberdare should have brought into this debate so controversial a subject as the Leroghi Plateau. As you, sir, know, the Carter Commission Report, after careful consideration of the matter, found that the Samburu tribe had a prior claim to the land in question, and I——

MR. WRIGHT: On a point of order, is the hon. member quoting law or a doubtful mixture of law and fact? (Laughter.)

MR. COOKE: I am quoting facts! They had a prior claim to the land in question, and I am one of those who consider that the Carter Commission Report is a closed book—the hon. member now, I am afraid, has opened that book, and I think it is most unfortunate he has done so. I must, because these words are recorded, embracing my own, dissociate myself entirely from what the hon. member said, not only because I think the Samburu have a just claim to the land in question, but I think, taking the point of view of soil conservation, my hon. friend's constituents have had thousands, and indeed hundreds of thousands of acres in Laikipia, and that land is now, owing to over-grazing and over-stocking, turned almost into a semi-desert—(MR. WRIGHT: Really?)—so that I think that, even from the soil conservation point of view, it is absolutely essential that this land at Leroghi should be kept for those for whom the Almighty meant it, that is the nomads and wild beasts. I think my hon. friend would be better advised if he told these dissident and rebellious gentlemen, his constituents, that they would be much wiser to drop the question at the present moment, because their agitation is not likely to have any effect on public opinion at home which would be liable to say "Here are these settlers, who have not developed all the land they possess, asking for more". I am speaking plainly on this matter because I am as keen on white settlement in this country as any gentleman in this Council, but our sincerity is being put to the test in this matter of our own stewardship. If I may quote Edmund Burke about the "grasshoppers under the ferns making the meadows ring with their importunate cries while under the immemorial oaks the cows chew the cud and are silent". No kind of intransigency or threat from this side will have any effect whatsoever on the people who are dictating the policy of the United Nations at home. I must thank you, sir, for allowing me to wander a bit afield, but it was a necessary statement on a matter on which I have held strong views for a long time, which I felt I should be allowed to make.

[Mr. Cooke]

There are two points about the Bill, and one concerns the acreage. I think the expression is that any land not 20 acres is cut out from the purview of this Bill. I think there is great danger in having any specific acreage stated because, take for instance agricultural land near a town like Nairobi, and suppose a man has 100 acres of agricultural land. It will be to his decided advantage to cut that land into 20 acre plots and so escape the obligations under this Bill and to sell that acreage at black market or enhanced prices. I therefore suggest that in select committee no acreage should be mentioned, that in fact we return to the original draft of the Bill. The other point was—it is not quite relevant—that originally the Colony and Protectorate came into this Bill. Now that is cut out, for very good reasons, but I had more or less an assurance from the hon. and learned Attorney General's predecessor, Mr. Harragin, that there might be no difficulty later on in bringing in a bill which would deal with land outside the Highlands. I come from the coast where there is a good deal of dealing in land speculation, not by Europeans so much as by my Indian friends, and of course they are quite right in making money when they can; we all do the same. But they are buying up large acreages of the coast which are not developed but put aside until there is an enhanced value, and this greatly increased valuation on the coast puts a great deal of money into their pockets. I should therefore like to see a bill brought in later which will include the Protectorate and other parts of Kenya which do not at the moment come within the ambit of this particular Bill.

I give my hearty support to this Bill, and that is all I have to say.

MR. BEECHER: Your Honour, I must preface my remarks by saying that I am in general sympathy with the long sighted policy which removes from the owner of any particular land in the White Highlands the opportunity of exploiting that land to his own ends. If that were all the Bill had done, and if that were all that had been spoken about in this Council this morning, I should naturally, I think, have remained silent except for just casual words of support. But it has become quite clear that that is not all. It is becoming very clear from the remarks of two speakers at least, and indeed from the remarks of the hon. mover, that, quite clearly, one of the objects and reasons of the Bill is for the furtherance of white settlement in the White Highlands. That is a matter which does not concern the residents of the White Highlands and the white race only. Recent comments both within this country and outside it have shown quite clearly that the whole question of white settlement is one which impinges quite definitely on African affairs. It might therefore be considered, I hope, not impertinence on my part to enter into this debate. The Bill as it now comes before Council is materially different from the bill which was circulated for criticism, and rightly so; but in the remodelling of this Bill no attempt appears to me to have been made to consult the African interests at all. On the face of it, it might seem totally unnecessary to have done so, but it is quite clear that the European community in this country demands, and rightly demands, to be associated with African development in this country. It interests itself very considerably in African development, and if that is to be really an honest intention on the part of the white community there should be an allowance made for a measure of reciprocity, and I submit that a case can be made, and should have been earlier considered, for taking into consultation the African community in the preparation of such a bill as this with its very far-reaching effects on the African peoples.

It will be noted that in the provisions of clause 2, where the board is set up, no provision is made for any consultation of the African interests. I agree that on the face of it there may be no apparent reason why this should be done, but the fact remains that one of the intentions of this Bill is that it should encourage the development of extensive white settlement, and that this vitally affects Africans has already become very clear in this debate. The hon. Member for Aberdare has made what is tantamount to a demand for a reconsideration of the area which has been demarcated for the White Highlands by asking that there shall be given reconsideration to the question of the Leroghi Plateau——

MR. WRIGHT: On a point of order, is the hon. member aware that that land

[Mr. Wright]

was pledged by treaty to be included in the White Highlands and that under the Carter Commission Report it is held now "for such time as may be necessary"?

MR. RENNIE: I am not quite sure what the point of order is?

MR. WRIGHT: The point of order is that the hon. and reverend member suggested that I particularly was seeking to re-include in the Highlands a certain area belonging now to the Samburu tribe. I state unequivocally that the fact is it does not, but was pledged under treaty to our White Highlands.

MR. BEECHER: I was unaware of the fact that this matter would be introduced into the debate. It was introduced on a somewhat slender pretext in my opinion, with all due deference to the hon. member, and had I been aware of the fact that it would be introduced I would have been at more trouble in reacquainting myself with the circumstances of the case. But I, none the less, interpret his remarks as indicating that he is dissatisfied with the present boundaries of the White Highlands, and what he said was tantamount to a demand for the addition of what was not formerly included, namely some million acres or so, now in the occupation of the Samburu tribe. Again, another reason for suggesting that this matter was a matter which concerns other than those of the white race is that the hon. Member for Uasin Gishu, in discussing future white settlement, said that he envisaged, indeed hoped, for possibly double or treble increase in white settlement in this country in the next five years. I will take this opportunity of reminding Council that His Grace the Duke of Devonshire, as Under Secretary of State for the Colonies, in a recent debate on white settlement in the House of Lords, gave an assurance to that House that this Bill, if introduced and passed by this Council, would concern from 150 to 250 new settlers only in the next 10 years. Now, sir, my reason for mentioning this is that any increase in white settlement in this country is only possible if certain other things are dealt with before the question of white settlement is faced, and I would point out to this Council very briefly and then resume my seat that, until we have settled the problem of our own creation, the problem of a very considerable occupation of land within the White Highlands by an enormous and growing squatter population, and until we have found an adequate place on which to put them, it is perfectly futile for us to talk about any increase in white settlement in the terms of that advanced by the hon. Member for Uasin Gishu. I would suggest that all these are prior matters which should receive the consideration of Council before further white settlement is considered, and I ask, therefore, that in the establishment of a select committee to go into this Bill, and again in the ultimate establishment of the board under the Bill, facilities should be given for the representation of the African point of view, which to my mind, is quite concerned with this subject and which cannot afford to be neglected.

MR. AMIN (Central Area): Sir, I would very much like to associate myself with the hon. mover of this Bill in what he said that the time has changed when the selfish interests of individuals could be allowed to stand in the way of the general happiness or interests of the community. And on that I am quite sure no member will contradict him. There is another aspect of this matter on which world opinion has also changed, the opinion in Great Britain has changed, the opinion in the civilized countries of the world has changed. It is that not only the selfish interests of the individual should not now be allowed to stand in the way of the general welfare of the community, but that the selfish interest of no racial group should be allowed to stand in the way of the progress of the community as a whole. It is on that ground that we on this side of Council will find great difficulty in agreeing to the passage of this Bill without opposition from us. The history of white settlement has been discussed in one way or another. The hon. mover has stated that the object of the Bill is to increase white settlement. In the Bill itself there is no such statement. I do not know what reason there is to hide this fact, the intention to increase white settlement, so far as the provisions of the Bill are concerned. Actually, the wording of the Bill in regard to the objects is this: "The objects of the Bill are to ensure that the land, to which the Bill applies, shall be put to the most beneficial use; to empower the Crown to acquire land for settlement purposes; and to prevent

[Mr. Amin]

speculation in land to the prejudice of post-war settlement". The word settlement is not qualified, and I wonder why the hon. mover states that it is. The settlement which the post-war world can foresee will be for the best interests of the whole community in the Colony and, as the hon. member representing Native Interests has already stated, there is an enormous number of squatters who have acquired some sort of rights within the White Highlands.

There is another aspect. The reason why the word "white" did not appear before "settlement" in the "Objects and Reasons" of the Bill, and the hon. mover rightly touched on that aspect of the question, is that the friends at home who will study the Ordinance before it is put into effect and before the power of His Majesty to allow or disallow it is exercised, would not like that sort of qualifying word, and I submit, therefore, that qualifying word "white" should not be there and rightly is not there. It cannot be said that Government has at any stage admitted that the white settlement question is settled for ever. They have time after time opposed the inclusion of any provisions which would mean that the area called the Highlands is exclusively for the use of the white population. All that it amounts to is that the Imperial Government has stated that by some promise the position has been created whereby in the Highlands European settlers only have a privileged position. I want to emphasize this point because it has not been emphasized before. We cannot say, this Council cannot say, that that position is an exclusive position. There are Africans—hundreds of thousands of them—working as labourers within the Highlands. They are squatters who have certain rights of land ownership in the Highlands and who also work as labourers within the Highlands. I ask whether it is right that the views of the landowner in the Highlands only should be considered in determining the personnel of the Board and not that of the labourer also? The time may not be far distant when there may be among us elected members of the African race who themselves might want to have a say in the selection of the personnel of the Board. There is also the possibility, even if there is no elected African member in this Council, that there might be a nominated African member and he might want to say something. There are already two hon. members in this Council representing African interests, and one of them has already stated that the interests of Africans connected with the Highlands should be represented through some sort of representation on the Board that may be appointed.

I now come to the interests of the Indian community in this Colony in regard to this matter. In the history of the Highlands question at every stage, when the question of excluding Asians or Indians from the territories in respect of settlement has come up, they have made their position absolutely clear. Up to the time when this war started the position was this. In February, 1939, an Order in Council appointing the Highlands Board was promulgated. In March, immediately after the promulgation and before, the Indian community protested against the formation of the Board as provided for in the Order in Council. They objected to the racial nature of the selection of the personnel of the Board. Later on, they found that the policy of white settlement was contrary to the provisions of the Congo Basin Treaties, technically called the Convention of St. Germain-en-Laye. They made representations to their organizations in England, and it was about the time the war started that the two Governments—the Imperial Government and the Government of India—took up the matter of negotiating with each other, discussing whether it was proper, whether it was within the provisions of the Congo Basin Treaty, that the area defined as the Highlands could be only for white settlement and that non-whites could be excluded from it. Then the war started, and the Indian representatives on this Council stated unequivocally that in order not to harm the common war effort they would agree to drop all controversial matters for the duration. Up till now they have kept quiet over the matter, but now that this question has come up again they cannot but do their duty, and that is to reaffirm their opposition to the principle of the exclusive use of the Highlands for white settlement. I am not against white settlement as such; I am all for making the best use of land in the Highlands, but I am for keeping the door open so that that part of the Highlands which may

[Mr. Amin]

not be used by the whites may be developed for the general use of the community by way of settlement of Indians, or, when the native reserves are found to be too small for the population they support, for the use of the Africans also. It is on that line that I suggest the time has also come when the self-interest of no racial group should be allowed to stand in the way of the general welfare of the country.

I should like to quote the words of our agent in London when we raised the question of further consideration of this issue. I will partly explain what follows. The two Governments agreed to discuss the question—the Governments of Great Britain and of India—and the then Secretary of State for the Colonies, the Right Hon. Malcolm MacDonald, informed our agent in London that because the matter was already under discussion between the two Governments it would not be appropriate for him to discuss the matter with our agent, Mr. Polak, the Secretary of the Indians Overseas Association in London, during the period of the discussion. These are the words he used: "As you are, I think, already aware the East African National Congress have made representations to the Government of India regarding the applicability of the Convention of St. Germain-en-Laye, and His Majesty's Government are now in correspondence with the Government of India on the matter. In the circumstances I am sure that you will agree with me that it would be inappropriate for me to continue this correspondence with you on a subject which is under discussion between the two Governments, and that you will not expect me to reply to the points which you have raised in your letter". The letter is dated the 12th September, 1939—that is a few days after the start of war. The reply that was given on our behalf was given on the 18th September, 1939. *Inter alia*, that reply states: "It is a matter of great satisfaction to learn that the question is the subject of correspondence between His Majesty's Government and the Government of India. I agree that, this being so, it would be inappropriate on my part to press it further with you for the time being. I would, however, be grateful if, in due course, I could be informed of the result of the discussion between the two Governments". The portion that follows deals with the spirit which we expect will dominate the minds of the people in Great Britain, the minds of the people in Kenya and the policies of the Imperial Government. The words are, I am quite sure, sufficient to prove our genuine hopes that after the war we will be treated differently: "May I, however, at this moment, since I may not have an early opportunity of discussing this and other relevant matters with you, ask you to keep in mind that, when this war is over, and, as we all hope, with the preservation and practical application of the high ideals for which the Empire is united in fighting, there will be no room for the application in any part of the Empire of any doctrine of racial preference or privilege, whether in law, practice, or custom, and that, subject to the prior rights and interests of the indigenous peoples of Africa, all immigrant communities should be placed upon the same level of equal opportunities to render common service of every kind." Those were the hopes expressed by our agent, that after the war every race within the Empire will be treated equally, and I am one of those who have not yet given up hopes that after the war these principles will be the dominating principes in the affairs of the Empire. (Mr. SHAMSUD-DEEN: I am!) At this stage, before the war is over, during the period when peoples of different colours, different stages of civilization are fighting for the victory of the United Nations, and during the period when we still realize that the hundreds of thousands of people on the Continent of Europe will have to shed their blood for the preservation of the liberties and the grand ideals we possess, we should not allow this question of the White Highlands to disturb any people in any part of the Empire. In this I am not representing only the views of the Indian community.

We are not against white settlement in the Highlands; I am not against white settlement within the Highlands; I am against the exclusive use permanently for white settlement of the Highlands area, and it is on that ground that at every stage that we are given the opportunity we want to oppose the provisions made under clause 3 of the Bill, sub-clause 2 (*d*), where it states: "four other persons appointed by a majority of the European elected members of the Legislative Council of the Colony present and voting at a

[Mr. Amin]

speculation in land to the prejudice of post-war settlement". The word settlement is not qualified, and I wonder why the hon. mover states that it is. The settlement which the post-war world can foresee will be for the best interests of the whole community in the Colony and, as the hon. member representing Native Interests has already stated, there is an enormous number of squatters who have acquired some sort of rights within the White Highlands.

There is another aspect. The reason why the word "white" did not appear before "settlement" in the "Objects and Reasons" of the Bill, and the hon. mover lightly touched on that aspect of the question, is that the friends at home who will study the Ordinance before it is put into effect and before the power of His Majesty to allow or disallow it is exercised, would not like that sort of qualifying word, and I submit, therefore, that qualifying word "white" should not be there and rightly is not there. It cannot be said that Government has at any stage admitted that the white settlement question is settled for ever. They have time after time opposed the inclusion of any provisions which would mean that the area called the Highlands is exclusively for the use of the white population. All that it amounts to is that the Imperial Government has stated that by some promise the position has been created whereby in the Highlands European settlers only have a privileged position. I want to emphasize this point because it has not been emphasized before. We cannot say, this Council cannot say, that that position is an exclusive position. There are Africans—hundreds of thousands of them—working as labourers within the Highlands. They are squatters who have certain rights of land ownership in the Highlands and who also work as labourers within the Highlands. I ask whether it is right that the views of the landowner in the Highlands only should be considered in determining the personnel of the Board and not that of the labourer also? The time may not be far distant when there may be among us elected members of the African race who themselves might want to have a say in the selection of the personnel of the Board. There is also the possibility, even if there is no elected African member in this Council, that there might be a nominated African member and he might want to say something. There are already two hon. members in this Council representing African interests, and one of them has already stated that the interests of Africans connected with the Highlands should be represented through some sort of representation on the Board that may be appointed.

I now come to the interests of the Indian community in this Colony in regard to this matter. In the history of the Highlands question at every stage, when the question of excluding Asians or Indians from the territories in respect of settlement has come up, they have made their position absolutely clear. Up to the time when this war started the position was this. In February, 1939, an Order in Council appointing the Highlands Board was promulgated. In March, immediately after the promulgation and before, the Indian community protested against the formation of the Board as provided for in the Order in Council. They objected to the racial nature of the selection of the personnel of the Board. Later on, they found that the policy of white settlement was contrary to the provisions of the Congo Basin Treaties, technically called the Convention of St. Germain-en-Laye. They made representations to their organizations in England, and it was about the time the war started that the two Governments—the Imperial Government and the Government of India—took up the matter of negotiating with each other, discussing whether it was proper, whether it was within the provisions of the Congo Basin Treaty, that the area defined as the Highlands could be only for white settlement and that non-whites could be excluded from it. Then the war started, and the Indian representatives on this Council stated unequivocally that in order not to harm the common war effort they would agree to drop all controversial matters for the duration. Up till now they have kept quiet over the matter, but now that this question has come up again they cannot but do their duty, and that is to reaffirm their opposition to the principle of the exclusive use of the Highlands for white settlement. I am not against white settlement as such; I am all for making the best use of land in the Highlands, but I am for keeping the door open so that that part of the Highlands which may

[Mr. Amin]

not be used by the whites may be developed for the general use of the community by way of settlement of Indians, or, when the native reserves are found to be too small for the population they support, for the use of the Africans also. It is on that line that I suggest the time has also come when the self-interest of no racial group should be allowed to stand in the way of the general welfare of the country.

I should like to quote the words of our agent in London when we raised the question of further consideration of this issue. I will partly explain what follows. The two Governments agreed to discuss the question—the Governments of Great Britain and of India—and the then Secretary of State for the Colonies, the Right Hon. Malcolm MacDonald, informed our agent in London that because the matter was already under discussion between the two Governments it would not be appropriate for him to discuss the matter with our agent, Mr. Polak, the Secretary of the Indians Overseas Association in London, during the period of the discussion. These are the words he used: "As you are, I think, already aware the East African National Congress have made representations to the Government of India regarding the applicability of the Convention of St. Germain-en-Laye, and His Majesty's Government are now in correspondence with the Government of India on the matter. In the circumstances I am sure that you will agree with me that it would be inappropriate for me to continue this correspondence with you on a subject which is under discussion between the two Governments, and that you will not expect me to reply to the points which you have raised in your letter". The letter is dated the 12th September, 1939—that is a few days after the start of war. The reply that was given on our behalf was given on the 18th September, 1939. *Inter alia*, that reply states: "It is a matter of great satisfaction to learn that the question is the subject of correspondence between His Majesty's Government and the Government of India. I agree that, this being so, it would be inappropriate on my part to press it further with you for the time being. I would, however, be grateful if, in due course, I could be informed of the result of the discussion between the two Governments". The portion that follows deals with the spirit which we expect will dominate the minds of the people in Great Britain, the minds of the people in Kenya and the policies of the Imperial Government. The words are, I am quite sure, sufficient to prove our genuine hopes that after the war we will be treated differently: "May I, however, at this moment, since I may not have an early opportunity of discussing this and other relevant matters with you, ask you to keep in mind that, when this war is over, and, as we all hope, with the preservation and practical application of the high ideals for which the Empire is united in fighting, there will be no room for the application in any part of the Empire of any doctrine of racial preference or privilege, whether in law, practice, or custom, and that, subject to the prior rights and interests of the indigenous peoples of Africa, all immigrant communities should be placed upon the same level of equal opportunities to render common service of every kind." Those were the hopes expressed by our agent, that after the war every race within the Empire will be treated equally, and I am one of those who have not yet given up hopes that after the war these principles will be the dominating principes in the affairs of the Empire. (MR. SHAMSUD-DEEN: I am!) At this stage, before the war is over, during the period when peoples of different colours, different stages of civilization are fighting for the victory of the United Nations, and during the period when we still realize that the hundreds of thousands of people on the Continent of Europe will have to shed their blood for the preservation of the liberties and the grand ideals we possess, we should not allow this question of the White Highlands to disturb any people in any part of the Empire. In this I am not representing only the views of the Indian community.

We are not against white settlement in the Highlands; I am not against white settlement within the Highlands; I am against the exclusive use permanently for white settlement of the Highlands area, and it is on that ground that at every stage that we are given the opportunity we want to oppose the provisions made under clause 3 of the Bill, sub-clause 2 (*d*), where it states: "four other persons appointed by a majority of the European elected members of the Legislative Council of the Colony present and voting at a

[Mr. Amin]

meeting of the European Elected Members convened for the purpose". That provides for the election of four, not necessarily European members, to represent the unofficial side of this country on the Board. In my submission there should be provision that all elected members and all non-official members, including those representing native interests and the nominated Arab member also, should have a say in the selection of the members who represent the unofficial side. It might be argued that this follows the principles laid down in the provisions for the formation of the Highlands Board. My reply is that the Highlands Board was formed against the wishes of the Indian community. We raised objections at the time. We have kept quiet during the period of the war, but now we cannot keep quiet over it when we know it is now desired to repeat in legislation of this Council what was done before only as a prerogative of the Crown under the Order in Council. This is not an Order in Council. The inclusion of provision of this nature in a bill is a matter of constitutional importance. It is wrong that a board of this kind should be so exclusively racial in character, and for that reason we will oppose the clause as it stands.

There are some provisions of the Bill which are deserving of support. One of them provides for the Crown's right to obtain land for the purpose of settlement from any person by mutual consent. That is clause 18. I would urge that the clause should be retained in that form without any alteration, because that gives opportunity to the Government here and to the Government at home, some day when better days prevail, to open the door so that the Highlands may be used for purposes other than white settlement. There is another clause which provides for the exemption of certain areas from the provisions of this Bill; that is clause 25. I also urge that this clause should be retained as it is without change, as it will strengthen the hands of Government whenever Government finds it possible, with the change of opinion, perhaps even the opinion of the European community of the Colony, when they might agree to portions of the land in the Highlands to be utilized for non-European settlement. There is one aspect of the Bill which I want to emphasize. The Bill provides for the payment of certain moneys to members of the Board by way of salary or allowances. These moneys are coming from moneys to be voted by this Council, and to say that only the European elected members should have a say as to who will be the person to represent the official side on the Board is, I think, unreasonable. The whole of the Council, or at any rate the whole unofficial side of the Council, should have a say in the matter. On the last page of the Bill there is a clause which reads: "it is not possible to estimate the expenditure of public moneys that will be involved". There is a provision in the Bill that all the moneys that will be required for the acquisition and disposal of the land which may be taken under this Bill will be raised by the vote of this Council. When moneys are to be raised for this purpose by this Council, not necessarily by the European community of the Colony but from the general funds of the Colony, and when we do not know the extent of the money that will be required, we would be failing in our duty if we did not raise our voice and state that funds that are public funds should not be utilized where all sections of the public have not the opportunity to make their representations, nor any say as to the nature of the personnel of that Board.

I have so far as the Indian side is concerned touched on the points I had in mind. I will repeat what I said to begin with, and it is this, that the principle on which this Bill is based is a very good principle. Owners of property should not be allowed to stand in the way of the progress of the Colony. But the racial group owners of property should also not be allowed to stand in the way of the progress of the Colony. I will be the first person to support the Bill *in toto* if it were general and non-racial in the principles involved in it. But because of this particular aspect of the White Highlands which has been raised, for which there is no provision in the Bill, I shall have to oppose, and I think my other hon. friends will oppose it, particularly the clause purporting to authorize only the European elected members to elect the personnel of the Board.

LORD FRANCIS SCOTT (Rift Valley): Sir, I rise to support the motion before Council. I may say that, like the hon. Member for Uasin Gishu, I have been brought up all my life in the firm belief

[Lord Francis Scott]

of the sanctity of property and land, and therefore a bill of this sort goes right against the grain, I dislike it intensely, but I am going to support it, because I believe that it is essential for the good of this country. I am quite convinced that it is essential that we should increase our white settlement very largely, and I am also convinced that the land in the Highlands must all be developed to its utmost capacity. The last two speakers have rather challenged the position of the European settlers in the Highlands area, and I should like to say this quite firmly: The European settlers in the Highlands area look on the Highlands area as their country, and theirs only, and they mean to continue to do so and hold that land and see that that land is developed to its best capacity in the best interests of the country. It is no good arguing about it. It is the policy of His Majesty's Government that that area should be reserved as the Highlands area, which has been done by law, and that it should be reserved for development by European people, and it is no earthly good the hon. Indian members or hon. member representing Native Interests or anybody else trying to resurrect that principle which has been decided on and which we never will agree to Government or anybody else going back on. The question of the Leroghi Plateau has been brought into this debate. Actually, as far as I can see, this Bill does not affect that issue at all, and I do not wish to follow up the arguments which have been put forward by various members, beyond this. I was one of those who supported the hon. Member for Aberdare 11 years ago, and his description of the historical position of the Leroghi Plateau is the correct one.

Coming to the Bill itself. The first point in it is in the second clause, the last few words, which excludes areas under 20 acres. I can see no really good reason for keeping that provision in the Bill, for this Bill does not affect land in townships and so on. I think it very desirable that any sub-divisions of farms into small areas such as 20 acres should come under the Control Board, and I trust that in select committee that provision will be cut out. When it comes to the composition of the Board, I am very glad Government have put forward the present proposals, and I must emphasize the tremendous importance of the four gentlemen who are to be appointed by the European elected members as members of the Board because, in my view, the whole practical success or failure of this Bill will depend on the attitude which they take towards all the various functions which are committed to them. There is one particular point which has exercised a certain number of people, and it was briefly referred to by the hon. mover, the question of developed land. It is very difficult to describe exactly when land is fully developed or not, but I do hope and sincerely trust that there will be no attempt made whatsoever to interfere with land which is being properly developed and properly utilized for the public benefit, and I hope that some definite statement may be made to that effect, because that has seriously perturbed some owners of land in this country who fear they may have their land taken away from them under the Bill even though it is properly developed.

The next point is in clause 7 (1). I have racked my brains to think what is the meaning of that sentence: "Subject to any special or general directions of the Governor, acting after consultation with the Highlands Board, the Board shall have power". I do not know really what it means, because if the Bill becomes law the Board is given power to do certain things, and I cannot see how the Governor can interfere, and I cannot see any necessity for keeping that sentence in. As the hon. Member for Uasin Gishu said, in our interview with the former Attorney General he agreed that there was no particular object in keeping that sentence, so I trust it will be cut out again. In that clause there is another point which I think requires a certain amount of elucidation before the Bill becomes law, and that is the relationship between the Highlands Board and this new Board. There is no question, I think, but that the duties of the new Board up to a certain extent impinge on the statutory duties of the Highlands Board, and I hope it will be made quite clear what is the relationship between the two. Coming to clause 7 (1) (*b*), I am extremely sorry that the old conditions have been cut out. In the last Bill it stated that the Board should "give its approval to any transaction relating to land; or may refuse to give its approval in respect of any transaction relating to land, on the ground that it objects to the pur-

[Mr. Amin]

meeting of the European Elected Members convened for the purpose". That provides for the election of four, not necessarily European members, to represent the unofficial side of this country on the Board. In my submission there should be provision that all elected members and all non-official members, including those representing native interests and the nominated Arab member also, should have a say in the selection of the members who represent the unofficial side. It might be argued that this follows the principles laid down in the provisions for the formation of the Highlands Board. My reply is that the Highlands Board was formed against the wishes of the Indian community. We raised objections at the time. We have kept quiet during the period of the war, but now we cannot keep quiet over it when we know it is now desired to repeat in legislation of this Council what was done before only as a prerogative of the Crown under the Order in Council. This is not an Order in Council. The inclusion of provision of this nature in a bill is a matter of constitutional importance. It is wrong that a board of this kind should be so exclusively racial in character, and for that reason we will oppose the clause as it stands.

There are some provisions of the Bill which are deserving of support. One of them provides for the Crown's right to obtain land for the purpose of settlement from any person by mutual consent. That is clause 18. I would urge that the clause should be retained in that form without any alteration, because that gives opportunity to the Government here and to the Government at home, some day when better days prevail, to open the door so that the Highlands may be used for purposes other than white settlement. There is another clause which provides for the exemption of certain areas from the provisions of this Bill; that is clause 25. I also urge that this clause should be retained as it is without change, as it will strengthen the hands of Government whenever Government finds it possible, with the change of opinion, perhaps even the opinion of the European community of the Colony, when they might agree to portions of the land in the Highlands to be utilized for non-European settlement. There is one aspect of the Bill which I want to emphasize. The Bill provides for the payment of certain moneys to members of the Board by way of salary or allowances. These moneys are, coming from moneys to be voted by this Council, and to say that only the European elected members should have a say as to who will be the person to represent the official side on the Board is, I think, unreasonable. The whole of the Council, or at any rate the whole unofficial side of the Council, should have a say in the matter. On the last page of the Bill there is a clause which reads: "it is not possible to estimate the expenditure of public moneys that will be involved". There is a provision in the Bill that all the moneys that will be required for, the acquisition and disposal of the land which may be taken under this Bill will be raised by the vote of this Council. When moneys are to be raised for this purpose by this Council, not necessarily by the European community of the Colony but from the general funds of the Colony, and when we do not know the extent of the money that will be required, we would be failing in our duty if we did not raise our voice and state that funds that are public funds should not be utilized where all sections of the public have not the opportunity to make their representations, nor any say as to the nature of the personnel of that Board.

I have so far as the Indian side is concerned touched on the points I had in mind. I will repeat what I said to begin with, and it is this, that the principle on which this Bill is based is a very good principle. Owners of property should not be allowed to stand in the way of the progress of the Colony. But the racial group owners of property should also not be allowed to stand in the way of the progress of the Colony. I will be the first person to support the Bill *in toto* if it were general and non-racial in the principles involved in it. But because of this particular aspect of the White Highlands which has been raised, for which there is no provision in the Bill, I shall have to oppose, and I think my other hon. friends will oppose it, particularly the clause purporting to authorize only the European elected members to elect the personnel of the Board.

LORD FRANCIS SCOTT (Rift Valley): Sir, I rise to support the motion before Council. I may say that, like the hon. Member for Uasin Gishu, I have been brought up all my life in the firm belief

[Lord Francis Scott]

of the sanctity of property and land, and therefore a bill of this sort goes right against the grain. I dislike it intensely, but I am going to support it, because I believe that it is essential for the good of this country. I am quite convinced that it is essential that we should increase our white settlement very largely, and I am also convinced that the land in the Highlands must all be developed to its utmost capacity. The last two speakers have rather challenged the position of the European settlers in the Highlands area, and I should like to say this quite firmly: The European settlers in the Highlands area look on the Highlands area as their country, and theirs only, and they mean to continue to do so and hold that land and see that that land is developed to its best capacity in the best interests of the country. It is no good arguing about it. It is the policy of His Majesty's Government that that area should be reserved as the Highlands area, which has been done by law, and that it should be reserved for development by European people, and it is no earthly good the hon. Indian members or hon. member representing Native Interests or anybody else trying to resurrect that principle which has been decided on and which we never will agree to Government or anybody else going back on. The question of the Leroghi Plateau has been brought into this debate. Actually, as far as I can see, this Bill does not affect that issue at all, and I do not wish to follow up the arguments which have been put forward by various members, beyond this. I was one of those who supported the hon. Member for Aberdare 11 years ago, and his description of the historical position of the Leroghi Plateau is the correct one.

Coming to the Bill itself. The first point in it is in the second clause, the last few words, which excludes areas under 20 acres. I can see no really good reason for keeping that provision in the Bill, for this Bill does not affect land in townships and so on. I think it very desirable that any sub-divisions of farms into small areas such as 20 acres should come under the Control Board, and I trust that in select committee that provision will be cut out. When it comes to the composition of the Board, I am very glad Government have put forward the present proposals, and I must emphasize the tremendous importance of the four gentlemen who are to be appointed by the European elected members as members of the Board because, in my view, the whole practical success or failure of this Bill will depend on the attitude which they take towards all the various functions which are committed to them. There is one particular point which has exercised a certain number of people, and it was briefly referred to by the hon. mover, the question of developed land. It is very difficult to describe exactly when land is fully developed or not, but I do hope and sincerely trust that there will be no attempt made whatsoever to interfere with land which is being properly developed and properly utilized for the public benefit, and I hope that some definite statement may be made to that effect, because that has seriously perturbed some owners of land in this country who fear they may have their land taken away from them under the Bill even though it is properly developed.

The next point is in clause 7 (1). I have racked my brains to think what is the meaning of that sentence: "Subject to any special or general directions of the Governor, acting after consultation with the Highlands Board, the Board shall have power". I do not know really what it means, because if the Bill becomes law the Board is given power to do certain things, and I cannot see how the Governor can interfere, and I cannot see any necessity for keeping that sentence in. As the hon. Member for Uasin Gishu said, in our interview with the former Attorney General he agreed that there was no particular object in keeping that sentence, so I trust it will be cut out again. In that clause there is another point which I think requires a certain amount of elucidation before the Bill becomes law, and that is the relationship between the Highlands Board and this new Board. There is no question, I think, but that the duties of the new Board up to a certain extent impinge on the statutory duties of the Highlands Board, and I hope it will be made quite clear what is the relationship between the two. Coming to clause 7 (1) (*b*), I am extremely sorry that the old conditions have been cut out. In the last Bill it stated that the Board should "give its approval to any transaction relating to land; or may refuse to give its approval in respect of any transaction relating to land, on the ground that it objects to the pur-

[Lord Francis Scott]

chaser or lessee or mortgagor or chargee", and then goes on to the other part. I think it is essential that the Board should have powers to object to certain people getting land, for what we want is an increase of the right type of British settler. We want first of all to settle our own youths of Kenya on the land, and then we want to settle the best type of ex-Servicemen who would like to come and live here. Unless the Board has power to object to people we may find that the people getting the land are our present enemy aliens or stateless people and so forth. I know the law at present is that enemy aliens cannot obtain land, but when the war comes to an end there will not be any enemy aliens, so that there will be no restriction on them at all. I know it is explained that this can be dealt with under clause 1 (a) of 70A of the Crown Lands Bill, which does lay down that every transaction in land has to come before the Governor, but if that is so, equally these other conditions relating to the price of land and amount of land held could be done under that, and there would be no need for this clause at all. The argument that the Board might interfere with international agreements and so on seems to me extremely far fetched. If it did so, which is unlikely, the applicant would go to the appeal board, and from it to the appeal tribunal, if the various suggestions are approved, to the appeal court, who will be the best people to give a judgment in regard to international law. So that I cannot see any danger at all if we reinsert that previous paragraph, and I think it is a way of ensuring that we only get the best people on to the land and not any riff-raff.

Also in this clause is that much debated part about sales between the willing seller and the willing buyer. At first I was opposed to that being in the Bill. I am now prepared to let it remain there if it is understood that the Board shall only interfere in exceptional cases to prevent, perhaps, some rather grasping land owner selling his land to an unsuspecting newcomer who does not know the true value of the land, because if you take people with experience of the country obviously the real value of the land is the price the willing buyer is prepared to give the willing seller. I know there will be occasions on which we shall have to protect newcomers who do not know about the values of the land, and I am prepared to let that remain in the Bill. I would emphasize once more that it does depend how that provision is employed, and on the attitude taken up by members of the Board, which is why it is so important that the very best people should be put on the Board to deal with this Bill. The next thing I want to talk about is the appeal section. Personally, I do not like it as it stands, and I was glad to hear the hon. mover say that he hoped in select committee it would be redrafted in a better way, and I trust that will be done. I know what he has at the back of his mind, and I think he is on the right lines. The question of expenses was raised by the hon. Member for Uasin Gishu, and I agree that people appearing before these boards and tribunals should be dealt with generously in the matter of their expenses. After all, take the first appeals. It is a man appearing to protest against having his land taken away from him, he has committed no crime—the only crime he has committed is holding some land, which can hardly be held against him, and I think his expenses should be paid when he appears before the first board. When he appears before the appeal board and in his final appeal, I think he should be treated in the customary manner of the law. If he loses he has to pay his expenses, and if he wins he gets them, but it should be gone into carefully in select committee and a fair and equitable provision put in.

It was suggested by the hon. Member for Native Interests that Africans ought to be consulted on this Bill, but I should like to point out once more that this is a Bill dealing with the property of Europeans; and owners in the Highlands, and nobody else. We are voluntarily in this Bill agreeing to action being taken to our own detriment as landowners, because we believe it is for the common good, and I submit that we are the only people concerned and we are the only people who ought to be consulted. With those few remarks I beg to support the Bill.

MR. SHAMSUD-DEEN (Central Area): Your Honour, I did not wish that the Indian members should explode all their powder on this Bill this morning, but since no other gentleman seems to be keen on getting up and addressing Council I think I had better finish with

[Mr. Shamsud-Deen]

my remarks just now, especially as I feel very tired. As regards the last remark of the noble lord the hon. Member for Rift Valley on the subject of the exclusion of Africans from the Board in which the question of the Highlands will be discussed, because it is the property—I think he used the word property—of the European landowner, it is very painful history to have to repeat again and again as to how the European came into possession of this land. In a nutshell, the position is that, when the Europeans came to this country, they found the indigenous inhabitants of the country more or less in the position of a person who has been drugged or doped or who is unconscious or asleep, and they took a portion of the area of the Highlands in the Wakikuyu District which was apparently vacant at the time. But those unconscious, sleeping, or doped people are now coming back to their senses, and they have not lost any opportunity of putting forward their claim. All their property was simply stolen from them, and if the owner of the stolen property can call himself the owner of that land then I think the argument of the European members is perfectly justified. I must say from the very outset that I entirely and wholeheartedly support this Bill because the principle underlying it is a very sound one indeed, that is to say, that the land which has not been used for the last 40 or 50 years—there is no clause in this Bill laying down definitely that where the land has remained undeveloped for a stated number of years—but where it has remained undeveloped for a certain number of years, call it 20, 30 or 40 years, Government should have the immediate right to reacquire it and alienate it to the proper people.

My hon. friend Mr. Amin said that he was not against white settlement in the Highlands. I am dead against any such thing as white settlement in the Highlands. I would very strongly support the idea of setting apart an area in the Highlands, by reason of some geographical or climatic conditions, for landless Britishers to come out to this Colony, who are living as miserable a life in England as some of my own countrymen and women are in India. I very strongly support that. They could come out and settle here, an area being reserved for them which has a climate similar to that in which they have been living all their lives. But if you look at the definition of the Highlands, the definition of the Highlands to-day is what I am afraid I have reiterated so often. It is not ruled by any climatic conditions, by any temperature, or by any altitude; the definition of the Highlands as decided by the Land Commission Report was merely the land that was in the possession of Europeans. (MEMBERS: No!) That is substantially correct; I am going to substantiate what I am saying. Originally the idea of the Highlands was an area stretching from Fort Ternan to Kiu. Now it has been extended practically up to the borders of Kibos and Muhoroni on the lake side and nearly up to Makindu in the direction of the coast. If any of the hon. members of this Council visit the Muhoroni district they will find hundreds of thousands of acres which have been alienated to Europeans. I do not wish to mention names here, but that land has remained uncultivated and undeveloped, and will always remain so because of the climatic conditions. Europeans cannot live in those regions for any length of time. It is far beyond Fort Ternan, and that is one of the reasons why the definition of the Highlands has been so artificial, and why it is absolutely necessary that not only an African but an Indian should be on the Highlands Board to help in readjustment and the restoration of an area which has been quite wrongly spuriously included in the Highlands.

We have heard again and again about white settlement; we know very well what the white man did in the way of taking possession of land. Indeed, originally the Germans tried their level best to prevent Britishers having any access to the areas now known as the Colony of Kenya, and I am dead against this white settlement business, which means that in the Highlands any Greek, German, Italian or Bulgarian or anybody who trades on the colour of his skin is able to come and buy land here and take land which would be denied to a British Indian subject. I am here standing because I claim my right as a British subject, and if that right means anything at all it should certainly have some preference over the people who happen to have the colour of their white skin and whom we, the British Indians, are fighting (to-day. The hon. mover said, I think, that the days have gone when

[Mr. Shamsud-Deen]

people would be able to stick to their property for an indefinite period without development. I, sir, submit that the days have also gone when, as I have said, people were able to trade on the colour of their skin. The colour of the skin means nothing at all; it is merely due to the climate. If I wanted to trade on the colour of my skin in South Africa, where people are colour mad, I could, like some bastards in India, pass as a white man. I have very often been mistaken for a white man. I have a much fairer colour of the skin than many Europeans in some parts of Europe. I think it is quite unfair that anybody should claim any preferential right as a white man; it is the stuff here—(touching the temple of his skull)—and not the colour that should matter.

I do not like this suggestion on the part of the hon. mover about the landlord and tenant. We have had bitter experience of the landlord and tenant business in India where the tenant becomes, to all intents and purposes, the slave of the landlord. I should be against it. I am told that this Highlands business has become such forbidden fruit to the non-European and even the natives to whom the land really belongs, that the Government has no intention of appointing an Indian member on the select committee on this Bill. I submit that, for the reason I have just stated, that the definition of the area of the Highlands was artificial, an Indian should be on the committee so as to take every opportunity of at least trying to adjust it to bring it back to the area which was originally intended, that is to say Fort Ternan to Kiu, where the climate is suitable for Europeans, where there are no mosquitoes and where he should be able to develop the land properly. I think the Europeans have done very useful work in the Highlands proper and I think, with a little bit of goodwill, recognizing the rights of the co-British subject, we should be able to get along very well in this country. I have never been against European settlement. I think it is absolutely necessary for this Colony that all three—natives, Indians and Europeans—should live peacefully together. We pray every morning for the peace, prosperity and welfare of this Colony, but we keep on indulging in these interminable racial recriminations. I do not think that this Colony with its present atmosphere of racial animosity is worth living in because there is no peace, prosperity or welfare, but an interminable and bitter poisoning of the relationship of races. I was very glad to hear the noble lord the hon. Member for Rift Valley, talking about British people, ex-Servicemen, taking over land; he is saying something worth listening to, but when we talk about white men I have no time for that at all.

I have not got the same length of breath I used to have, and although one can go on discussing a lot of things, for instance, it is mentioned that the Bill will not be applicable to land of less than 20 acres, I hope that it will be so in practice, and that the name of Karen Estate will be mentioned. There are some very painful stories to tell when we come to consider the Karen Estate. I was instrumental in persuading one of the best citizens of the British Empire—the Aga Khan—to buy 10 or 20 acres of land there for residential purposes, and the moment the sale was arranged there was a delegation from the European members to His Excellency asking him to veto the sale. These are the things that cause ulcers in one's heart which cannot be very easily removed or healed. I do hope that Government will reconsider its decision as regards the appointment of the board, on which I think there should be an African member, or several Africans, as well as an Indian, so that they may know exactly what is going on, especially the question of transfers in the Muhoroni, Kibos and Fort Ternan areas, so that they may have their views expressed before the Board.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m., Thursday, 13th April, 1944.

Thursday, 13th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 13th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

MINUTES

The minutes of the meeting of the 12th April, 1944, were confirmed.

PAPERS LAID

MR. TESTER laid despatches and papers relating to the United Nations Conference on Food and Agriculture held at Hot Springs, Virginia, in May, 1943.

ORAL ANSWERS TO QUESTIONS

No. 22—Arab and African Terms of Service

MR. BEECHER:

In view of the continued dissatisfaction with the lower scales of the Arab and African Terms of Service in spite of the provision now being made for the introduction of a Provident Fund, and in view of Government's apparent unpreparedness hitherto to institute inquiries into this dissatisfaction, will Government please consider (a) granting immediate temporary relief by means of multiple increments or by transfer to the next higher scale without completing all the present incremental stages or both? (b) making an early opportunity for inquiry into the request for a reconsideration of the present terms, including the request for a consideration of a unified non-European Service?

MR. TESTER: The answer to the first part of the question is in the negative. I would point out, however, that members of the African Civil Service are eligible for promotion to higher scales of salary as and when vacancies exist without completing all the incremental stages on the scales on which they are serving.

The answer to the second part of the question is also in the negative. The question of the terms of service applicable to Arabs and Africans was fully reviewed in 1940 and 1941, and the Government does not consider that a further enquiry is necessary at the present time.

No. 26—Government Officials and Legislative Council Members

MR. COOKE:

Is it a fact that Government officials are forbidden to approach a member of Legislative Council with a view to having some question raised? If so, will the Government state the authority under which they have issued an instruction which partly disfranchises a voter who is legally entitled to vote?

MR. TESTER: No such official instruction has been issued and the second part of the question does not therefore arise.

The Chairman of a Sub-Committee of the European Civil Servants' Association was, however, recently informed in reply to a questionnaire as to the interpretation to be put upon Regulations Nos. 142 and 143 in the Kenya Code of Regulations that on all personal questions an officer should use the usual channels of approach through the Head of his Department to the Government, while to attempt to influence his member on questions of major policy is not consistent with his obligations as a Government servant.

MR. COOKE: Arising out of that answer, will Government state plainly if that does not amount to forbidding a Civil Servant to approach a member? It amounts in effect to informing the Civil Servant that he cannot approach his member, because there is an implied threat in the reply given.

MR. SHAMSUD-DEEN: Is an official a voter, a constituent, of an elected member, or is he not? That is the question.

MR. RENNIE: So far as the hon. Financial Secretary is concerned, he has nothing to add to the reply given. Perhaps at a later date, when I am sitting in my own seat, a further question might be raised.

SCHEDULES OF ADDITIONAL PROVISION

Nos. 4 and 5 of 1943 and 1 of 1944

MR. TESTER moved that Schedules of Additional Provision Nos. 4 and 5 of 1943 and No. 1 of 1944 be referred to the Standing Finance Committee.

MR. FOSTER SUTTON seconded.

The question was put and carried.

LAND CONTROL BILL

SECOND READING

The debate was resumed.

MR. VINCENT (Nairobi South): Your Honour, arising out of a point made by the hon. Member for Uasin Gishu yesterday, I should like to draw the Hon. Attorney General's particular personal attention to the uneasiness which is felt by many communities because of the increasing tendency, probably aggravated by Defence Regulations, of legislation by rule. The point raised yesterday regarding the expense to which a farmer might be put upon attending an inquiry as to whether or not his land should be taken for settlement should, I think, be dealt with as part of the Bill and not merely a rule to provide for expenses to be paid at the discretion of the Governor in Council, and I hope, as I notice that the Bill is going to a select committee, that the select committee so appointed will take great care that every rule that can be cut down and made part of the Bill is so treated.

Now the debate yesterday, happily, or unhappily, veered round to the racial question. Far be it from me to aggravate any racial feeling at the present time, I, and I am sure other members in this Council, have a great respect for other people's views provided they believe that those views are sincere. The basis of the White Highlands in this country appears to have been forgotten by my hon. friend Mr. Beecher and also by the hon. member Mr. Shamsud-Deen. Now let us get this question of the White Highlands in the right perspective once and for all, and let us cut out this incessant manœuvring. My understanding of what the hon. member Mr. Beecher said was that the natives should have representation in the matter of the handling of the White Highlands, mostly because of so many squatters being in the Highlands, and the hon. member Mr. Shamsud-Deen went further than that on the Asiatic side. Now the point of fact is, what would have happened had the British European not originally come to this territory? I submit to you, sir, that there would be no squatters to squat and there would be no Asiatics to agitate! I think that from what I have been told by an old settler who came to this country before I did—that was 34 years ago—when tribal wars, sickness, famine, and other factors were seriously decimating the indigenous population of this country, and to go further, as the hon. member Mr. Shamsud-Deen said yesterday, we happened to get here first, just before the Germans, and if we had not got here first, if the British European had not got here first, I am certain the natives of this country would have no land to-day and no rights at all, and, if there were Asiatics in this country, I believe they would not have been in a position to complain or agitate!

The reception of this Bill, which is revolutionary in character and designed to curtail the liberty of the subject, by the settlers of this country I think has been extraordinarily good, and people who have been prejudiced against any such revolutionary measure have come out into the open and have in fact welcomed it. The British European has before him a wonderful task in this country and we are proud of it. These White Highlands have been set aside for the British Europeans and, as stated before in this Council, the Premier of England, the Right Hon. Winston Churchill, had reason to state recently when being attacked on Britain's Colonial policy that it was, he thought, no part of his duty as first officer of the Crown to liquidate the British Empire, and I feel at this juncture that it is appropriate to state not only to the Indian community but to all political parties in England that we in Kenya have not the slightest intention of relinquishing our position in this territory and all that it means to us. (Hear, hear.) I have no objection to the Colonial Office and the India Office amusing themselves passing notes one to the other regarding the status of any particular portion of the community in this territory, but I most solemnly warn those in Great Britain and elsewhere that we will not tolerate any interference on any ground whatsoever, and we look to Britain to keep her pledge to us inviolate, and that we shall resist with every means in our power any attempt to betray us or to alter our status, and the sooner this is known and understood by everyone the better.

MAJOR CAVENDISH-BENTINCK (Nairobi North): Your Honour, I naturally rise to support this Bill. As I am likely to be a member of the select committee I had no intention whatever yesterday of interven-

[Major Cavendish-Bentinck]

ing in the debate, but a certain amount of latitude has been allowed in this debate which ranges a great deal further than merely a discussion of the various clauses of the Bill, and a good many, I think, rather regrettable expressions of opinion have been given vent to, to which I think we must pay some attention.

I was extremely sorry to hear the hon. member representing Native Interests (Mr. Beecher) take the stand he did in regard to this Bill. He stated that he was all in favour of a measure which would control dealings in land and the use made of land by individuals, but he had reason to fear that this Bill was in fact a bill for the furtherance of white settlement in the Highlands, and that as such it impinged on African affairs, and that he could not understand why there had been no attempt to consult African interests in regard to this measure. If he wishes to have an answer as to whether this is a Bill for the furtherance of white settlement in the White Highlands, the answer is in the affirmative. (Hear, hear.) That is what it is intended to be. As regards its impingeing on African affairs and our failure to consult African interests, he has perhaps overlooked the fact that there was a Carter Commission Report, that we had innumerable discussions in regard to that report, and that the Carter Commission's recommendations were accepted by the British Government in a White Paper, and that under sections 12 and 13 of that White Paper the following conclusions are recorded: "Having disposed of native claims and economic requirements by the additions of land referred to, and having determined the boundaries of the Highlands, the Commission recommend that all other land shall be treated as areas in which the natives will have equal rights with other races in respect of the acquisition of land"—mark you, "having disposed of claims and economic requirements"—"His Majesty's Government approve of this and of the preceding recommendations". The next section goes on to say: "It will be seen that the recommendations contained in Parts I and II of the Commission's Report constitute a comprehensive settlement and satisfaction of all native claims which on careful inquiry they hold to be well founded on legal, equitable, or historical grounds. As already stated, His Majesty's Government propose that full effect should be given to these recommendations. It follows as a necessary counterpart that the Order in Council should declare that all claims have been satisfied and extinguished by the settlement which is now recommended and approved". Now we did not take our stand on this White Highlands question and what we were going to do in the newly delineated Highlands before these recommendations had been accepted by His Majesty's Government, and is it seriously suggested a few years after that we should again be thrown into the melting pot, not knowing where we stand? (Hear, hear.)

MR. BEECHER: On a point of personal explanation, my statement was made after the hon. Member for Aberdare had thrown the matter into the melting pot by raising the matter of Leroghi.

MAJOR CAVENDISH-BENTINCK: My hon. friend then quoted what he, I think, regarded as a reassuring statement from the Secretary of State about this terrible increased white settlement. I note that the hon. member is apparently fairly well documented, but I do sincerely hope that the hon. Member, for whom we all have, I can assure you, great respect, regard and admiration, both as regards his enthusiasm and his ability in putting a case, I do hope that he will not make the mistake which has been made—I am speaking perhaps as an older man—by others in his difficult position, of throwing himself too much into the hands of gentry in England, who were described sarcastically by one hon. member yesterday as "our friends", who come from weird places in Europe and settle in London and Oxford and other university towns and elsewhere, and try to run the British Empire for us. Because that would be a grave mistake. I might add that he was incorrect in his quotation from the Secretary of State's speech. Actually, what the Secretary of State did say was that "the proposals were on a modest scale". These are his words: "the Report of the Settlement Committee, 1938, was accepted by my predecessor in office in 1939. The proposals were on a most modest scale. They propose to settle a few hundreds over a period of 10 years by Government-aided purchase of land and long term loans and the provision

[Major Cavendish-Bentinck]

of farm training. The acceptance of that report has been reaffirmed recently by the Kenya Government". What he told us yesterday was that the Secretary of State had said 150 to 200 settlers.

MR. BEECHER: On a further point of explanation, I have in front of me a copy of Hansard of the House of Lords, 1st February, 1944, where the numbers are actually stated as between 150 and 250.

MAJOR CAVENDISH-BENTINCK: I think he must be referring—and I apologize if that is so—to a statement by the Duke of Devonshire, of which I have not got a copy, I am referring to a statement by Col. Oliver Stanley, of which I have got a copy, and Col. Oliver Stanley is the Secretary of State for the Colonies at the present time. However, whatever the rights or wrongs of the numbers may be, it is suggested that both the Secretary of State, and presumably the Under Secretary of State, are reassuring certain people that settlement in this country will not be on too large a scale, and in some places that is twisted to mean that we are getting away from a dual policy. If the hon. and reverend gentleman is going to try and smash the dual policy of this country I think he is doing a great disservice to the people whom he is here to represent (hear, hear), and as the suggestion is made that we are only thinking in terms of a hundred settlers or so, I have great pleasure in saying, having been connected with settlement in this country somewhat prominently for quite a number of years, that we have in mind a very much larger scale and intend to carry through a very much larger scale. (Applause.)

There is one generalization which I have made before in this Council, which I am going to make again, and that is, that I can see no reason why, because a man is born with a black skin, he should automatically be regarded as entitled from birth to land as a matter of course, whereas if you are born with a white skin apparently the greatest crime you can commit nowadays is to go abroad and follow in the footsteps of those who were mentioned by the hon. member on my right (Hon. E. H. Wright) and by the hon. Member for Uasin Gishu, who really originally formed the British Empire of which I at any rate am extremely proud. (Hear, hear.) If we are going to argue that it is the right of every black man to have land well, very shortly, not so very long after some of us are buried, there will not be enough land in Africa. Therefore that is an entirely wrong conception. As regards the Highlands, where we maintain that the white man has rights, the very purpose of this Bill is to see that in that area the methods of developing the land are carefully controlled, that no man has too much land, that no man is allowed to gamble with that land at the expense of the community at large and, generally, the better administration of the small area of Africa in which the European has a privileged position. I suggest that if instead of attacking the white man, those responsible for the administration of the black man tried to do the same and got down to land tenure and other matters which I have mentioned in this Council again and again and again and did not funk the issue, they would do a great deal better service than by cavilling at rights we have had for the last 40 years, which I will show you very shortly.

I will now turn to the contentions of the hon. Indian members. It has been my personal policy and I know that it has been that of my colleagues for quite a period of time—that we do not want, specially in war-time, to have these racial debates and, as the hon. Member for Nairobi South said, we do try and bear in mind the points of view of other people. But there is danger if we overdo that policy because, as one gets reports from England, one realizes that these more irresponsible vapourings which we hear in this Council are sometimes translated into terms of being really responsible utterances of people who know what they are talking about. For that reason, I am going at some length this morning to pin down what are the real reasons why we claim the right to bring in a bill of this nature in order to administer our own little bit of land in Africa known as the Highlands. The Highlands which have been argued about have a very long history. It does not date back to just before the war when there was an Order in Council made, the history dates back to the year 1900, or even to 1896, when people first came out to this country. Definite encouragement to Europeans to

[Major Cavendish-Bentinck]

settle in East Africa was given from about the year 1902, and that is the date from which the principle that agricultural land in the Highlands should only be given to Europeans was established and accepted.

That is a long time back, 42 years ago. In 1906 this policy was brought into question. It was referred to Lord Elgin, who at that time was Secretary of State for the Colonies. He ruled that in view of the comparatively limited area of East Africa that was suitable for white settlement, the principle which had been acted upon by the previous Governor, namely that agricultural land should be granted only to Europeans in the Highlands, was approved. He made that ruling in 1906 on behalf of His Majesty's Government. In 1908 he again confirmed that decision in a written document, stating that in the Upland area, as it was then known, as an administrative convenience the practice should be that no grants should be given to Asiatics. That ruling kept things quiet until just before the last war. We have heard a good deal of what happened just before this war, but before the last war a similar decision was made. Out here then was Professor Simpson, who was asked to make a report on a number of subjects connected with the strongly, among other things, complete welfare of East Africa. He advocated racial segregation, both in the towns and, of course, that the Uplands area should be given out only to white settlement. That report, I may say, was accepted, and the only reason his recommendations were not brought into operation was because of the outbreak of the 1914 war. Then we come to 1915, when the 1915 Crown Lands Ordinance was introduced and the first 1902 ordinance repealed. In doing that, the system was maintained. Of course, the Crown Lands Ordinance was not a racial ordinance, it was purely a land matter, but not only was it implemented in that Ordinance that the power of veto existed on transfers between persons of different races, but the Commissioner of Lands had, when a farm or a piece of land had to be auctioned, to state definitely who was allowed to bid and when the land was in the Highlands an Asiatic was not allowed to bid. At the end of the war, in 1918, there was a local Economic Commission of Inquiry into post-war development, and certain disparaging references to the conduct of Indians in Kenya during the war were made in that report, and it was suggested that there should be control of Indian immigration from that day on. I mention this because that, in combination with Prof. Simpson's racial segregation report, which was still accepted, did cause a good deal of ill feeling among the Indian community, which I quite understand, and brought the Highlands issue to a head again immediately after the last war.

The grievances which the Indian community had about a number of matters, including the Highlands, were considered by the Imperial Government, who discussed these matters over a period of more than a year, and it is rather interesting to note that, while these matters were being discussed, Lord Milner was the Secretary of State for the Colonies, and at the same time he represented His Majesty's Government at the signing of the Treaty of St. Germain-en-Laye. It is hardly possible to imagine that, having come back from signing that treaty, he should forget all about the provisions of the Treaty of St. Germain-en-Laye in sending his despatch dated 21st May, 1920, to the then Governor of Kenya conveying the Imperial Government's decisions on the points at issue. That was in 1920. I will not go through the various points at issue, they affected elections, immigration, and a number of things, but the one I will quote was that Lord Elgin's decision with regard to the reservation of the Highlands for Europeans was to be maintained. The Government of India did not like that very much, and wrote to that effect to the Secretary of State. Meanwhile, the situation in Kenya itself was being discussed between Mr. Winston Churchill, then Secretary of State following Lord Milner, and Sir Edward Northey, then Governor here, and a deputation went home, which resulted in the Wood-Winterton Report. That was a report by an inter-departmental committee consisting of the Under Secretary of State for the Colonies and the Under Secretary of State for India, and they published a report which was not acceptable to either party, although it was intended to be a sort of compromise. I will not quote their various suggestions but, as regards the Highlands, they said: "The Colonial Office could not contem-

[Major Cavendish-Bentinck]

plate any change in the existing law and practice, having regard to past policy and commitments". That brings us to 1922. Nobody accepted this Wood-Winterton report, and as the result a number of people went home, including, I believe, an hon. member still in this Council, and their representations resulted in the famous White Paper of 1923. The White Paper of 1923, which is still quoted by the British Government, and was quoted in the 1934 White Paper, stated this: "After reviewing the history of the question, and taking into consideration the facts that during the last 15 years European subjects have been encouraged to develop the Highlands; and that during that period settlers have taken up land in the Highlands on this understanding, His Majesty's Government have decided that the existing practice must be maintained as regards both initial grants and transfers". It went on to suggest that areas of land could be found which were suitable, without infringing on native rights, for Indian settlement. We in this Council have again and again said that we would do anything we could to assist an Indian settlement scheme. Land has been offered, and good land. It has not been taken up with the exception of a small area round Muhoroni and Kibos where I might say Indians have done very well during this war. Those particular Indians in that small area have formed themselves into a local production sub-committee, which is one of the best we have in the country, but those are Indians who really want settlement, who really want to farm land, not the type of Indians who talk about it and do not take up land when it is given them. They had just the same opportunities that we had, and have not taken them up, but prefer to talk and abuse in this Council.

It is not uninteresting to see that at the very end of the 1923 White Paper there is a little footnote, and this is a quotation from it: "In conclusion, His Majesty's Government desire to record that the decisions embodied in this memorandum have only been taken after an exhausting review of the several complicating factors which have led to the present unhappy controversy. It is it has not been possible to meet the regretted that on certain material points wishes of the Government of India, whose views have received the fullest consideration from His Majesty's Government at the instance of the Secretary of State for India. It is not to be expected that issues so grave can be composed to the immediate satisfaction of the several interests concerned". That was in 1923. I am sorry that I am going to be so long over this, but there are a number of new members here who do not know the back history, and obviously from the debates that go on it is just as well to have it on record. In 1927 there was the Closer Union Commission, and that came out here to see if anything could be done in the way of unification of these territories. They published a White Paper on future policy as regards East Africa. In the final paragraph it is reaffirmed that "His Majesty's Government wish to make it clear that they adhere to the underlying principles of the White Paper of 1923, both in regard to the political status and other rights of British Indians resident in East Africa". So again in 1927 the policy of 1902 was reaffirmed. We then come to the Carter Commission Report. That was 1932. One of their terms of reference, the sixth, was: "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". The history of the Carter Commission is fairly recent. It sat in 1932 and 1933 and reported in 1934, and the British Government's reactions to their recommendations were published in a White Paper which was laid in the House of Commons in 1934. Sections 9 and 10 read as follows: "9. The Commission have defined the boundaries of the European Highlands, and His Majesty's Government propose to accept their recommendations in regard to this. 10. The Commission recommend that the boundaries of the reserves and of the Class C lands (native leasehold areas) and of the Highlands, should be declared by Order in Council. This will give an added sense of security, in that these boundaries could not thereafter be altered by local ordinance. His Majesty's Government approve of this recommendation, and propose that in due course these boundaries should be declared by Order in Council". They were declared by Order in Council. They were surveyed, and after 42 years or more

[Major Cavendish-Bentinck]

of struggle we think that we have acquired a certain security and certain rights.

I ask you, is it likely that, after all that back history, we are going to give in, or allow the matter to be brought up again, or allow it to be suggested that this is not a country where white settlement is to be encouraged? That those unfortunately already here, as it was put by some people, will have to die out as uncomfortably as possible and not be replaced? That is not our idea nor our programme! There is one other point before I close this somewhat lengthy historical treatise, but I think it ought to be stressed because it was mentioned yesterday. That is the story about the Highlands Order in Council and this Bill as referring to an area of land for settlement in the Highlands, being *ultra vires* because of the Congo Basin treaties. The Congo Basin treaties are really the General Act of Berlin dated 1885, and the General Act and Declaration of Brussels dated 1890, and these Acts were revised at the Convention of St. Germain-en-Laye and ratified on 10th September, 1919, just after the last war. I need not go into the Convention; it was subject to modifications incidentally after every 10 years, that is 1929 and again in 1939. The Convention was signed by the United States of America, Belgium, the British Empire, France, Italy, Japan, and Portugal. It is rather odd that the hon. Indian members picked on the Order in Council which refers to the Highlands as being *ultra vires*, and did not mention the Order in Council referring to native areas, which goes far further than the Highlands Order. That not only provides specifically for differential treatment but removes native lands from the category of Crown land altogether, and places them in trust, and discriminates against all other sections of His Majesty's subjects and, of course, against all foreign nationals. The hon. Indian members never protested against that, although logically and legally one would naturally think they would have protested against both, but it does not happen to suit them. Is it likely, when you think that this Act was designed in 1919, and was signed in 1919 by Lord Milner, who then sent his despatch to us in 1920, that the Wood-Winterton Report was 1922, the famous White Paper was 1923, there was a further White Paper in 1927, the Carter Commission terms of reference were drawn up in 1932—is it likely that the Imperial Government would throughout have been completely oblivious of its responsibilities under the treaty of St. Germain-en-Laye? Of course not, and it is all nonsense to pretend that is the position. I am afraid that I have taken up a great deal of the time of Council, but my facts are accurate, and I thought it just as well that everybody in this Council should know, and if anybody wishes to read Hansard that it should be on record, that we have acquired certain rights which I do not think have ever seriously been brought into question in this Council. We have established the fact that we have rights in the area known as the Highlands, and we have not, as the hon. Member for Nairobi South said, the slightest intention of giving up those rights or having them interfered with, and I think it is a real waste of time for minorities in this Council to keep on questioning them. I have taken the trouble to put this on record because of the possibility of misrepresentations at home of things said in this Council. I do not suppose this will stop it, and I do not suppose for one moment that the truth will ever appear in the type of periodical to which I refer. (Laughter.)

As regards the Bill, which is going to select committee, I think it is one of the clearest indications that has ever been given that the white community in this country, which I suggest has a pretty good war record, is very serious in its intentions as regards doing what it can to build a better post-war world. (Applause.)

MR. MONTGOMERY (Native Interests): Sir, I had no intention of rising until yesterday, when two hon. members made remarks under which I could not still sit down. I think the hon. Member for Aberdare looked at me, but I am not referring to him. (Laughter.) It was the hon. member on my left (Mr. Beecher), who made what seemed to me a strange statement, that natives should be represented on the Control Board to be established under this Bill. I can see no justification whatsoever for that suggestion. The natives of this Colony have no land interests in the Highlands to which this Bill refers. The rights they

[Mr. Montgomery]

had in that area were, after full inquiry and on the recommendation of the Carter Commission, expunged and compensation awarded the natives. The area of the Highlands was defined by the Order in Council, and cannot be added to without full inquiry and the consent of this Council; incidentally, nor can the native areas be taken away without the same procedure. I see no justification whatsoever that natives be represented on this Control Board. Equally, I see no justification for Indian members on that Board, for not the same reason but an equally obvious one. The hon. member Mr. Amin and, I think, the hon. member Mr. Beecher, referred to the large number of squatters who, they said, ought to be considered in connexion with this Bill. There again I entirely disagree. Squatters have no land rights in the Highlands. Under the old bill they were described as tenants, now they are employees. When I sat on the other side of Council I was instrumental in bringing in the present legislation. They have no rights to the land, and I hope they never will.

MR. PATEL (Eastern Area): Sir, when I came to this Council I came as a person uninterested in the Land Control Bill, and my reasons for such indifferent attitude were that the Bill was sound in principle on the face of it and, at the same time, was objectionable as regards the clause which provides for Europeans only to be members of the Board. My feeling on that question was that the Imperial Government in 1923, while reserving the Highlands, told us very clearly that the measures and rights enjoyed by subjects of the Crown were to be determined by the colour of their skins, and the civilization for which the British Empire stands is not an ethical one, but a purely racial civilization. As that judgment was given in 1923, this Bill is one of the steps in the enforcement of that judgment, and it is futile for anybody to oppose the enforcement of the judgment unless he can persuade the judge to review the judgment and set it aside. Therefore, I thought that it would be futile for me to raise any question about the merits and demerits of that judgment on this Bill which is a step in the enforcement of the judgment which was given. But as there have been so many matters raised in this debate which, strictly, were not relevant to the Bill, I am inclined to express my views. I think that, having before us the decision of the Imperial Government in regard to the reservation of the Highlands, one has to accept the necessary steps which may be taken in furtherance of the development of that area in the manner in which that policy has laid down. At the same time, as an Indian member, I must make it very clear that we, as representing the Indian community, have never accepted that decision, and I in 1939 argued my case from the Indian point of view in this Council when I moved the motion that in reserving the Highlands for Europeans the Imperial Government had broken the pledges it had given to the Indian community. I do not think I will take up the time of Council be reiterating those arguments which, strictly, in my opinion, are irrelevant to this debate. At the same time I would like to mention that the arguments I advanced then showing that the Imperial Government had broken the pledges given to the Indian community—

COL. GROGAN (Ukamba): On a point of order, are we discussing the bill "to provide control of dealings in land and to provide for the acquisition of land by the Crown for settlement purposes" or are we discussing high Imperial policy?

MR. RENNIE: The answer to the first part of the question is in the affirmative, but since a certain amount of latitude has been allowed to other speakers I think it only right that a certain amount should be allowed to the hon. member Mr. Patel.

MR. PATEL: I shall not take up the time of Council by mentioning those pledges, but only for the purposes of record, I wish to state that my arguments appear in Vol. VII of Hansard, Column 256, stating the case from the Indian point of view.

That was the reason why I felt that it was futile and a waste of time to take part in the debate of this Land Control Bill, but at the same time I am of the opinion that as the land in the Highlands is part of the land of this country and one of the important assets of this country, all the inhabitants of the country are directly or indirectly affected by the development or lack of development of that area, and are therefore interested as residents of this country.

[Mr. Patel]

The hon. Member for Nairobi South very vehemently pointed out to the Indian members that the Highlands are for British Europeans, and he warned us that they had no intention of relinquishing that position; he told us that we had no business to take any interest in this matter, and that any interference from any quarters would not be tolerated. In the first place I should like to point out that he has made a misstatement of fact when he stated that that area has been reserved for British Europeans; it has been reserved for all Europeans, whether they are Italians, Germans, Hungarians, Bulgarians or any other Europeans, living on this planet. So it is a clear misstatement of fact which he has made. We know that we Indians are a subject race and that the hon. Member for Nairobi South represents a ruling race. We know that. It was not necessary for him to remind us about this in such clear language; we know it. But at the same time we know that nature has its own ways of adjusting human affairs in this world, and however proud a race may feel, or an individual may feel proud in this world, one day human affairs will be adjusted in their own way to the ends of justice. I may say that those ends are being adjusted now in the racial groups and they will be adjusted also in the international groups. If the British race had representatives sitting in the British Parliament similar to those we find to-day sitting in this Legislative Council, that country would not have allowed the Labour representatives to sit in Parliament and would not allow the common man to have his say. So that the process of levelling up which we feel before us would not take place. That ancient and small aristocratic group in the British race will say "we have saved this country; we have brought this country to its present stage and we have the right to rule over it and enjoy all the privileges we have had so far", but that is not the ideal which is accepted by the British race at home, and sooner or later the British race abroad also will have to take note of that.

I am aware that the Highlands have been reserved for the white race, but at the same time British statesmen so far have been careful to say "well, we have made no legal discrimination against any race in any legislation because we do not believe in it". They have reserved the Highlands for Europeans by a process of deception which they call administrative practice. It would have been straightforward and honest if the Imperial Government, and also the local Government, had simply stated that, under the Highlands Order in Council or under this Bill or any other bill concerning this matter, this area had been reserved for the white race and will be developed in the interests of the white race, and that the other people have no right whatsoever even to look at this area. But no, they say, "No, we will not commit any such crime of bringing in legislation discriminating against any race; we will do it only by administrative practice and by administrative instructions". I will not enter into further argument on the subject.

The hon. mover yesterday said that the day had gone by when the self-interest of individuals should be allowed to override the public interest of the community in general. I am surprised that the hon. mover should state that this Bill is in the interests of the community in general; he ought to have honestly stated, if he was honest, that it was in the interests of the European community in general. It is deceiving people at home and abroad to state that such bills are promulgated in the interests of the community in general. There should be at least frankness and honesty, and it should have been made clear that the Bill was in the interests of the European community in general. He also mentioned in connexion with representation on the board as being of "the non-official" community, that there was "public support" and that there was "the weight of public opinion" behind the Bill. All these statements, in my opinion, are dishonest because they mislead the people outside this country. Instead, it should be stated very clearly "non-official European community", "European public support" and "weight of European public opinion". Otherwise the impression that will be given by the speech of the hon. mover outside this country will be that it was intended for the good of all the inhabitants living in this country. The hon. mover, and some other members, mentioned that this Bill is in keeping with new ideas. These hon. members exhibited some ignorance about new ideas ahead so loudly proclaimed by the leaders of the United Nations in com-

[Mr. Patel]

paring their policies with them. Such efforts to create small groups with privileged positions, such efforts to create a small landed aristocracy, were attempted centuries back. We were told that if the British Europeans had not come here there would not have been Asiatics to agitate or squatters to squat. If that is taken to its logical conclusion in every country, the privileged and ruling class should not be disturbed at all; they are the people who developed the country, and maintained the country against outside aggression and inside disorder. Further, if you take it to its logical conclusion, you might say that because the present Prime Minister of England, Mr. Churchill, and the President of America, Mr. Roosevelt, have worked very hard for this war and have contributed a great deal in saving all these countries, their children should have the hereditary positions of being Prime Minister and President in those countries. Taken to its logical conclusion, the principle is, in my opinion, against all the rules of progress and all the ethics of civilization. The small groups or individuals who render service do not work that they may be placed in a privileged position in consideration of the service they have rendered.

I strongly support that there should be an Indian and African representative on the Land Control Board, because the Highlands Order in Council states that the Highlands Board was appointed to further the interests of the inhabitants of the Highlands. The inhabitants, the word used by the Imperial Government, are all inhabitants and not Europeans only who live in that area, whether they be manufacturers, traders, labourers, skilled artisans or squatters; they are all inhabitants of the Highlands. Therefore, when the Board is appointed to deal with the development of that area, all the people are interested. I understand that the Government does not propose to appoint any non-European members on the select committee to which this Bill will be referred, and I understand that the reason which may be advanced by the Government is that non-Europeans are not interested in the Highlands. I submit that all the inhabitants living in this area are directly interested in the development of this area, but assuming, for the sake of argument, that they are not interested, there are certain aspects of this Bill in respect of which the non-European members of this Council are interested. For example, one hon. speaker in this Council yesterday mentioned that clause 7 (1), which contains the words "Subject to any special or general directions of the Governor", should be removed. We, the non-European members, are decidedly interested in seeing that the power of the Governor is maintained over the administration of this area. There was another point. In Part V it states: "Subject to the provisions of this Part and for the purpose of providing land for settlement, the Governor may, after consultation with the Board, out of moneys appropriated by the Legislative Council of the Colony for the purpose, acquire land on behalf of His Majesty". We, the non-European members, are certainly interested in the money which is being provided by this Council, and I do not know in what way this clause could be amended by the proposed select committee. Further, section 13 (3) states: "Nothing in this Ordinance contained shall affect the powers of the Governor compulsorily to acquire land for any public purpose, other than for settlement, under any law for the time being in force". We, the non-European community of this country, are certainly interested in the acquisition of land for public purposes and any land which it may be necessary to acquire for public purposes from the Highlands. How do we know that the select committee which may be appointed may not alter absolutely this particular clause? Assuming for the sake of argument that we are not directly interested in the Highlands, we are interested in many clauses of this Bill, and because of that I submit that we are entitled to have a representation on the select committee which may be appointed. As I have stated, I do not want to enter into a discussion about irrelevant matters, but before I sit down my only hope is that in the not distant future another Commissioner for Lands and Settlement will move a bill in this Council which will contain the ideal that certain small racial groups, however important or influential, shall not be allowed to override the public interests of the community in general, and that he will define that the community in general will be all inhabitants residing in this country.

MR. RENNIE: I should like at this stage perhaps to suggest that, although a considerable amount of latitude has been given up to date in order that the views of both sides be expressed at length as regards the White Highlands policy, future speakers should confine themselves more closely to the terms of the Bill—if they can find it possible to do so. (Laughter.)

MRS. WATKINS (Kiambu): Your Honour, I have been asked to deal with certain clauses in the Bill which are not entirely satisfactory to some of my constituents, and one is a point that seemed to me fairly clear but which they did not consider had been stressed clearly enough. The Bill states that the Board shall elect a chairman, and I presume he has to be one of that Board. They think that that is not stressed, and they would like it stressed so that it does not mean that there will be an extra member as chairman. They have a suspicion that Government proposes putting on an extra chairman. However that may be, there is another point. They think that a main principle in the whole of this Bill is that there should be a majority of the non-official element, and that you have given us. That is the obvious intention of the Bill, but we have only one majority. Now we do not want to ask for more than one majority, but we would like to ask for a spare wheel, because we feel that in this country when people go down to the coast or go away on business or anything else, that we simply lose our majority if one of our members is away. If you say it is not cricket I might mention that every team has its twelfth man, and I think it would be a good thing if we could have, at the same time as the other members are appointed, a spare wheel to take the place of anyone temporarily punctured. (COL. GROGAN: A burst tyre!)

The second thing they want inserted—an extra clause—is this, that local advice should be sought on the different farms or units of farms, because they do not want local advice taken across the club lunch table, across the Muthaiga lunch table or any other lunch table. They want it put in the Bill definitely that the advice of the production sub-committee or the district council, or whoever it is, shall be taken to represent the local advice, because, being farmers, we all know perfectly well that when we have a strong point to make we go to a good deal of pains to represent our own side of the case, and we do feel very strongly that there should be in this Bill a clause to say that district advice must be sought and that it should be taken from the committee representing that district. The next point is that they want a time limit to the Bill. It is said to be only for white settlement. Right, but that ought to be more or less settled in 10, 12 or perhaps a maximum of 15 years, and we would like a time limit to the Bill after which it could always be continued, because if it is really only for white settlement and not for any other ulterior motive, then we can reconsider it in a definite number of years. We consider that is an important point. Various other points were brought up which I think are more select committee points, so I will leave them. There is one point that I do feel I should like to stress and that is that the agricultural community, the part of it I have the honour to represent, is just as much dependent on the town prices of land as the country prices. I think there should be a supplementary bill after this controlling those prices too. That is just a suggestion thrown out, because our shoes and our posho, our khaki and our everything costs four or five times as much as it need because of the enormous prices charged for town land and the completely uncontrolled profits on town land and rentals, and we do think that it affects the agricultural community very strongly. We suggest that a supplementary bill be brought in.

I should just like to say a word, if I might, off the point, and it is this, that not only must we white people of these Highlands stand together, but we must show that we stand together. There is a tendency in the English race to give way to force; we call it appeasement. If you continue appeasement in this country you will lose the Colony just as we very nearly lost the Empire, and the hon. member Mr. Amin, whom I should much like to be able to answer, said he was a representative of a subject race. As the sole representative of the subject sex here I should like to point out one thing, and that is that the only way you can equalize your position is by accepting your limitations until your service to your country is so great that these limitations fall away, and the only way not—repeat not—to do it is by nagging!

[Mrs. Watkins]

As the representative of the subject sex I should like to state that. (Laughter.)

I should like to say that Kiambu is in entire agreement with the ideals of the Bill. With those few small differences, which really ensure the intention of the Bill more than alter it, they would like me to endorse it, and I think they also want me to say that we are not going to give way to clamour, and we are not going to sacrifice any of our greatness by giving in to racial clamour. There is one other point I want to make and that is this, I want to go further back than the hon. Member for Nairobi North in history. I want to say that for 200 years there were Indian traders on this coast and they never dared penetrate the interior and never dared colonize until we were here to protect them. We are still here to protect them, and I think this gives us the real right—that if the Empire is considered as the parent of its children, the parent surely has the right to give certain portions of its land to us and to the Indians, which it has done, and it is no use for any member to say "Give me a larger portion". We have got to stand by our own race and uphold our own rights, and I thoroughly believe that we are the greatest protection the Asiatics could possible have here, and if we left the White Highlands the Asiatics would not be more than six months after us out of this country.

MR. COULDREY (Nyanza): Your Honour, like a good many other speakers I had not intended to intervene in this debate, because the Bill is generally accepted by hon. members on this side, and at least two speakers have spoken to the Bill and covered most of the points! (Laughter.) But although I have a few remarks, a couple of points were raised in debate to which I must reply before I get down to the Bill itself. If I am correct, the hon. Member for Aberdare raised this question of Leroghi. Not necessarily because I disagree with his presentation of this historical fact, but because I cannot see that it has anything whatsoever to do with the Bill in question, undoubtedly the fact that he did raise it has given rise to a good deal of very irrelevant debate, which will not have a very good effect. This side of Council unanimously welcomed this Bill. In fact, in our discussions the unanimity among the elected members was remarkable, so much so that at one time it looked as if my hon. friend the Member for the Coast would have no one with whom to disagree. (Laughter.) Very luckily for him, he got that opportunity and was able to give vent to his natural proclivities, and went home to lunch yesterday a contented man! There was one other remark of the hon. Member for Aberdare with which I disagree. That is, if I heard him correctly, I think he said that the sincerity of Government towards white settlement in this Bill would be measured by the attitude they took towards Leroghi. (MR. WRIGHT: Yes.) I disagree. I think that Government has gone a long way indeed to meet the wishes of the country in respect of this Bill, and I should like to pay them a compliment and congratulate them, and if I do so somewhat lamely and haltingly it is because I have not had much practice. (Laughter.)

I want first of all to refer to the remarks of the hon. member representing Native Interests (Mr. Beecher). If I remember correctly, he started off by saying, as I did, that he did not intend to intervene except to give a few love pats to the general principles of the Bill, but that the speech of the hon. Member for Aberdare brought him to his feet. He then took not the speech of the hon. member on the Bill itself, but tried to introduce an entirely new principle, one he had not thought of until he heard it, the Leroghi issue. I do maintain that, if he had very strong and profound convictions that natives should be represented on this Board, he would have introduced them whether the hon. Member for Aberdare had mentioned Leroghi or not and, with all due respect to the Council, I do not think his convictions on that principle are long standing and therefore very profound. There is something that I must say about what an hon. Indian member said. I regret very much indeed the racial issues raised, but if I heard the hon. member Mr. Shamsud-Deen correctly he said that these Highlands were originally obtained by a process of robbery. I think he said that. Robbery is not a desirable occupation and, in fact, is a very reprehensible practice. I therefore naturally thought the hon. member and other Indian members would follow that up by saying "Let us return the proceeds of the

[Mr. Couldrey]

robbery", but if I got the right impression their complaint is that they are not allowed to buy in on the proceeds of the robbery (laughter), not that they deprecate the robbery, itself. I do not wish to add more fuel to this regrettable racial issue, but I would remind them and my hon. and reverend friend that what we are dealing with is a bill to obtain, among other things, the right to acquire land already alienated to Europeans. It is not a bill to acquire more land for the White Highlands. This land has been bought over a period and therefore, I imagine, it belongs to the people who paid for it, but under this Bill we can, and I think rightly, obtain that land for other people of the same race.

Now I will get down to the Bill. Most of the points have been covered, but there are two that I should like to have investigated when it goes to select committee. Under this Bill, it is possible for the Governor to go to a landowner and say, "I will forcibly acquire your land", and it goes to the Land Board and possibly to an appeal. But there is no power under the Bill, as I read it, to force Government to go on with that process. The Board may say the price is £5 per acre, the Government may say, after having disturbed the landowner to a very great extent, that that price is too high and therefore they back out. That is as I understand the Bill, and I should like the select committee to consider whether a clause could not be put in the Bill making it compulsory for Govern, once they decide on a process of acquiring land compulsorily, to go ahead with it. The second point is that it is possible for Government under this Bill to say to a landowner: "You must part with a portion of your farm". We know the argument why that should be necessary, but I think it is at least fair to the landowner, who has rights as the hon. Member for Rift Valley pointed out, who has committed no crime, to be able to say, "Do not take part, take the lot", and I should like that point investigated in select committee. The third point I was going to make has already been referred to somewhat briefly by the hon. Member for Kiambu, and that is the time period. If this Bill is going to do any good at all, it is, of course, going to hit certain landowning interests. It is no good barking that fact—it is going to hit them. Personally, I believe the real effect of the Bill will be more indirect than direct. The fact that it is on the statute book will go a long way to have the desired effect without invoking the clauses of the Bill. One of the slogans has been "Security of tenure", and it has got to interfere with that, and it is right and proper that it should, but if at the end of five years or some stated period this Bill has not fulfilled its object and has not induced more European settlement, then it is never going to do so. I think it should be for a stated period, coming up for reconsideration in the same way that other measures come up. Those are the only points I wish to make.

MR. KOHLI (Western Area): Sir, I am a new member of this Council, but I am not new to Control and Controllers. There have been other Controls, but they were directed towards the benefit of all communities, whereas the control under this Bill is directed towards the safeguarding of the interests of one community only. Had this control also been directed towards the war effort, I would have been all in favour of it. It is admitted that millions of acres in the Highlands have remained uncultivated. Those millions of acres could have been cultivated towards the war effort had the control opened them to Indians and other settlers, even as a temporary measure for the duration of the war, but that has not been done. Time and again, of course, the history of these Highlands has been gone into. I am not going into it, but I will quote from the preamble of the royal charter which was granted to the British East Africa Company, which says: "The possession by a British Company of the coast line . . . which includes the port of Mombasa, would be advantageous to . . . the interests of our subjects in the Indian Ocean. . ." That is the advantage we subjects in the Indian Ocean are getting.

As to the Bill itself, I see that land means "any land in the Highlands". The Indian settlers in the area of Muhoroni and Kibos and Kibigori have cultivated those lands to the fullest extent, but they have no room for expansion. If a certain area under this definition is excluded from this Bill, that would be available to those settlers. I come to clause 3, where I find that the control is given to one community. It is said that other communities are not interested, but is it so?

[Mr. Kohli]

Under this Bill public funds will be used, and in those public funds all communities are interested. If control is to be given to one race or to one community, then I claim that it should be given to the Africans. It is their land, and they are entitled to say who is to settle there, and if one immigrant community is to be given control then all immigrant communities should be given control. If control is to be given to one community which, as is very well known, is racially biased, they will see to it that future settlers who will come will themselves be similarly minded. To stop that, it is natural that other communities should be represented on that Board. I have nothing further to say, except that along with my colleagues I oppose this Bill.

MR. FOSTER SUTTON: Your Honour, several hon. members have raised the point that the opening words in clause 7 (1)—of the measure before the Council should be omitted. In the early stages of the consideration of this Bill the Government considered the possibility of doing what some hon. members are now contending should be done, but on further reflection and in the light of the Order in Council governing the Kenya Highlands it was considered that any such omission would be *ultra vires* the Order in Council. If hon. members will bear with me for a moment I should like to refer them to the relevant article in that Order. It is Article V, sub-paragraph (e), which reads as follows: "To advise the Governor in all matters relating to the disposition of land within the Highlands", and it goes on to say that the Governor shall consult the Board in all such matters as are referred to in paragraph (e). Now if you turn to clause 10 of the Bill you find these words: "No person shall, except with the consent in writing of the Board in the exercise of its powers under sub-section (1) of section 7 of this Ordinance, sell, lease, sub-lease, assign, mortgage or otherwise . . ." deal in land in the Highlands. If the words in clause 7 (1) were omitted it would, we feel, be a clear derogation from the powers that are now vested in the Highlands Board, and I think that if hon. members will consider the point they may feel themselves compelled to agree that we cannot, in the light of the Highlands Order in Council, omit the words in clause 7 (1).

Other hon. members raised the question as to whether parties who, through no fault of their own, were forced to come before the Board should be awarded costs if they were successful. That I think is a point which we shall have to consider in select committee. There can be no doubt, I think, that it would be only fair and just that if a person appealed from the decision of the Board to the Appeal Tribunal, he ought, if successful, to be given his costs, and it seems to me that if there is no other party except the Board and the Board's decision is reversed, power to order the Board to pay the costs should be given. But I think hon. members will agree that there may be cases in which you have two parties before the Board: the Crown, and the person from whom the Crown is endeavouring to acquire the land. In that case I think we should have to make provision, if the Crown were unsuccessful, in the case before the Court of Appeal, enabling the Appeal Tribunal to award costs against the Crown in favour of the person whose land the Crown was seeking to acquire. Then there is another point which struck me, and I think we shall all agree that it ought to be considered in select committee, and that is this, that if there are to be appeals against the decision of the Board there should be some provision enabling the Board to be represented at the hearing of the appeal, otherwise we should find that such appeals were *ex parte*, and there would be nobody before the Appeal Tribunal to represent the case for the Board. I understand that the hon. mover has already indicated the line which the Government will probably feel able to take in select committee regarding the other provisions relating to appeals.

There is another point which was raised by the hon. Member for Nairobi South which, if I may be permitted to say so, I fully sympathize with. He said that there is a tendency—he also was kind enough to say that a good deal of it may be fairly attributed to the present emergency—to legislate by rules. If I may commit Government as far as this, I can assure him, speaking for myself anyway, that in select committee I shall endeavour to see that the rule-making power is confined to such matters as are in the interests of flexibility in the administration of the law. I do not think that we should

[Mr. Foster Sutton]

in a measure of this kind take unto ourselves, or that the Governor in Council should take unto himself, power to make rules affecting matters of policy. (Hear, hear.) I can assure hon. members that the position will be watched when the Bill is being considered by the select committee. There was another point which was raised by the hon. Member for Kiambu which I might deal with, and that is this. She said there was a suspicion that the Government intended that the chairman should be brought in from outside and that his selection would not be confined to the seven members who are provided for by clause 3 (1) of the Bill. I have no hesitation in saying that there is no such intention. The chairman will be elected—and I think that is clear from the clause itself—by the seven members from among their number. Another point which was raised by several hon. members on the other side was that the words "if any" in clause 9 (2), dealing with forfeiture, should be omitted, and both the hon. mover and I entirely agree with that contention. It seems to me that it would be a very high-handed and inequitable thing to do to completely deprive a person of his land without giving him any compensation in respect of that land, and if those words "if any" are omitted it will ensure that relief will be granted if the Court orders forfeiture. I do not think there are any other points, anyway of law, which were raised by hon. members that I should deal with.

MR. MORTIMER: Your Honour, the response accorded to this measure by the European elected members has been gratifying because I am fully aware, as some of the hon. members have said, that the Bill goes right against their very deep-rooted instincts and all the traditions in which they have been brought up, but they recognize, as we all do, that there is a new order to-day; that the old things are passing away and that things are becoming new. Now I am not among those who believe that the enactment of this measure will bring a new heaven and a new earth to Kenya, but I do maintain that the enactment of this Bill and its just and equitable operation over a period of a few years will give a great impetus to white settlement in this Colony, which will be to the benefit of all races residing in this Colony. (Hear, hear.)

A certain amount of latitude has been allowed in the course of the debate and, although I wish to keep as strictly as possible to the terms of the Bill before Council, I feel I must take up one or two points that are extraneous to the Bill itself that have been raised by hon. members on the other side of Council. First of all, I want to refer to the remarks made by the hon. Member for Aberdare on the subject of Leroghi. I very much regret that he saw fit to bring that question into this debate, for it has nothing whatever to do with the Bill before the Council. The position of Leroghi will be entirely unaffected by the enactment of this Bill, but I cannot allow to pass without comment his statement that there was a pledge given that Leroghi would be available for European settlement. I do not share with the hon. Member for the Coast his claim to omniscience. I do not even pretend to know for whom the Almighty meant that land, I will go for my authority to a lesser source, and yet one sufficiently exalted to be worthy of quotation: I go to the Report of the Kenya Land Commission presided over by Sir Morris Carter. That Land Commission investigated very exhaustively this subject of Leroghi and came to certain clear cut conclusions. They came to the conclusion that there was some force in the contention that at one time the Government had intended Leroghi to be open for European settlement, and they gave reasons in support of that contention, reasons which are cogent enough. Then they go on to say—paragraphs 862 and 863—"On the other hand the motive which actuated the Masai in consenting to move is recorded in the preamble to the Agreement of 1911 to have been that it is in the best interests of their tribe that the Masai should inhabit one area. In contrast to the preamble of the 1904 Agreement, no allusion was made to white settlement. The Secretary of State in a despatch dated the 30th July, 1925, and again in a despatch in July, 1929, repudiated any suggestion that there had ever been any understanding or undertaking that Leroghi would be made available for European settlement". The Commission made its final recommendation that Leroghi should be included in an area which, by law, should be regarded as open for the occupation of any race but with priority to native interests, and they added that it should

[Mr. Mortimer]

remain in the occupation of the Samburu for the time being. "It should in fact be reserved for native use and occupation for such time as may be necessary." In another paragraph they go on to say "the ultimate destination of this land after the lapse of many years is a matter with which we did not find it necessary to deal". I think that is enough on the subject of Leroghi to make the situation quite clear as it was left by the Carter Commission.

There is one other major question which has been raised and which is really extraneous to the Bill itself. That is the reservation of the Highlands for European occupation. There is no reason to add anything whatever to the able and complete exposition given by the hon. Member for Nairobi North of the history of this Highlands question. I will content myself by re-affirming that it is the policy of this Government, supported and confirmed again and again by the Imperial Government, that the Highlands of Kenya shall be reserved for the ownership and occupation of white residents only. On that subject the hon. member Mr. Patel found it incumbent upon himself to accuse me of dishonesty. I take some exception to that, because I do not like being called dishonest——

MR. PATEL: On a matter of personal explanation, I said the hon. member's statements were dishonest—I did not say he was. (Laughter.)

MR. MORTIMER: Nor do I like my statements being challenged! In order to remove any possible substance in the charge either that I or my statements are dishonest, let me at once say that, in my opinion, this Bill is in furtherance of white settlement in the Highlands of Kenya. That is its sole object, and I cannot imagine there is any doubt left in the minds of hon. members in what I state. I do say also that it is in the interests of every section of the community residing in this land that there should be successful white settlement in the Highlands of the Colony (hear, hear), that every section of the community—white, brown and black—will benefit directly and indirectly from successful white settlement, and to that extent the enactment and operation of this measure will be a benefit to all sections of the community.

Dealing with the points that have been raised on the individual clauses of the Bill before Council, I will try to refer to the various points made as briefly as possible. The hon. Member for Uasin Gishu asked that clause 18 should be deleted. It reads: "Nothing in this ordinance contained shall affect the right of the Crown to obtain land, for the purpose of settlement, from any person by mutual consent". I think that clause is quite harmless, and I cannot agree that it should be deleted, because nothing in this Bill should derogate from the right of the Crown to purchase land by mutual agreement for any purpose whatsoever. The hon. Member for the Coast and one or two other members raised the question of the 20 acre limitation. I hold no strong views on that subject, and personally should be prepared to consider in select committee the deletion of that limitation. The hon. Member for the Coast also requested that this measure should be followed by a supplementary measure dealing with the coast lands. If he will, in writing, submit a case for that, I will see that it is duly considered by the Government. I wish to refer now to the remarks of the hon. and reverend member representing Native Interests. I cannot for one moment agree that African interests are so concerned in this measure that they have any vestige of right to representation on the Control Board. The hon. Member for Nairobi North has, I think, effectively disposed of that claim, and I support the arguments used against the claim of the hon. and reverend member. Anyhow, I suppose one may ignore the claims of native interests as the two representatives opposed each other and thereby cancel out. (Laughter.)

The hon. member referred to certain remarks made by His Grace the Duke of Devonshire in the House of Lords, and by the hon. member's courtesy I have had the first opportunity of perusing the Hansard report of those remarks. What His Grace was referring to was the settlement scheme of 1939, which now holds the field, and I can see how he derived his estimate of 150 to 250 settlers. Hon. members will remember that when that scheme was first put before the Secretary of State, we asked for loan funds to be provided to the extent of £250,000. The scheme itself envisaged a grant of financial assistance of, say, round about

[Mr. Mortimer]

£1,500 to each new settler, and by a process of simple division the Secretary of State doubtless arrived at the figures of 150 to 250 whom we were designing to help by our settlement scheme. This measure goes very much further than the settlement scheme of 1939 in providing land for settlement, whether assisted or not. It may be of interest to hon. members to know that, in the interim period during which I have been authorized to give consents to land transactions, so far as I can estimate at least 55 of the transfers which have passed through my hands in that six months have been land transfers to new settlers, newcomers to the Colony, and that is an interesting sign of the present tendency.

I should like to take this opportunity of correcting, for the benefit of the public, misrepresentations of remarks I made myself at a meeting of soldiers in November last on this subject of the numbers of white settlers for whom we are endeavouring to provide. I was asked a question in that meeting: "How many new settlers do you think Kenya can accommodate?" I replied, and this is confirmed by the stenographic report taken down by a military shorthand writer, that I felt sure that within a comparatively few years after the end of the war the European farming community could quite well be doubled without great difficulty and without serious detriment to the land of the Colony. But the questioner was really concerned with the number who would be helped financially under the Government-aided scheme, the scheme whereby Government provides nine-tenths of the purchase price and the new settler provides one-tenth. In reply to that point, I said that in the immediate post-war period, if we could manage to settle under that scheme some 2–300 people we should be doing very well. I still maintain that from the financial point of view that is about all we can afford in the immediate post-war period, but that does not preclude a large number of other settlers coming in under their own steam and without financial assistance.

The noble lord the hon. Member for Rift Valley raised the question of the acquisition of developed land, and suggested that a definite statement should be made that no developed farms would be acquired by the Government on the recommendation of the board under this measure. I can give no such undertaking. The general intention of the Bill is, of course, to deal with undeveloped or badly developed farms, but I think the discretion of the Board must remain entirely unfettered. I have no doubt that the European elected members will take care to appoint to the Board gentlemen who will exercise their powers in a just and equitable manner. The official members, it scarcely need be said, will, of course, do so. (Laughter.) The same hon. member also raised the question of the deletion from the measure of control by the Board over persons who may acquire land. I explained in my opening speech the reason for the deletion of that particular power and the placing of it in the Crown Lands (Amendment) Bill. The hon. member also raised the question of control over the purchase price between a willing buyer and a willing seller, and asked for an assurance that that power would only be used in exceptional cases. I cannot give such an assurance because, of course, I cannot bind the Board as to what action they will take, but I fully expect they will use their powers in a commonsense way and with an eye to equity. The hon. member Mr. Shamsud-Deen made a statement that he has repeatedly made in this Council and on which he has been challenged, when he said that the European occupation of the Highlands was by theft and that the whole of the Highlands were stolen property. That statement should not be allowed to go unchallenged. I do not wish to go into great detail, it has been done time and time before, but it cannot remain unchallenged on the record. The hon. member also deprecated my reference to landlord and tenant farming, and said that he opposed it very strongly. If I had in mind the kind of landlord and tenant farming to which he referred, where the tenant is merely the slave of the landlord, I should oppose it just as strongly as he does, but the kind of landlord and tenant farming I have in view, and which I think can be operated with great success in this Colony, is where both landlord and tenant, and what is perhaps more important still, the land, are protected by legislation so that the rights of none can be infringed. (Hear, hear.)

[Mr. Mortimer]

I come to the remarks of the hon. Member for Kiambu. I congratulate her on keeping to the Bill. (Laughter.) She asked that it should be made clear that the chairman of the Board should be a member of the Board, and the hon. and learned Attorney General has already commented on that. Personally, I see no objection to putting a phrase into that particular clause to make it quite clear that the chairman must be a member of the Board. The hon. member made some remarks expressing a desire for a spare wheel to be used in the event of the eleventh member of the cricket team getting punctured, or something like that. (Laughter.) If the hon. member means that we should make statutory additions to this Board to provide for such calamities as any members falling ill on occasion, I should certainly have to oppose it. I see no necessity for it at all. If so many members are out of action that the Board is unable properly to function, I have no doubt that the chairman will postpone any business until members are able to function once more. The hon. member also asked that provision should be made in the Bill that the Board should be required to obtain local advice from one particular source. I cannot agree that the Board should be so fettered in its search for advice in the exercise of its very important functions—

MRS. WATKINS: I said representative advice, not private advice.

MR. MORTIMER: Even representative advice. I would not agree that the Board should be fettered in its search for either private or representative advice, and suggest that it is in the best interests of the operation of the measure that the Board should be left quite unfettered in that matter. Two hon. members have suggested that there should be a time limit to the operation of the Bill. I do not think that that is at all necessary, because it is always within the province of any hon. member of this Council to give notice of a motion that any particular measure on the statute book should be repealed at any given date. It can then be debated, and if there is a general desire for repeal the measure can come off the statute book. I see no reason for inserting a particular time limit for the operation of the measure. The hon. Member for Kiambu also requested that there should be a supplementary measure introduced to control the transfer of township properties. A measure of that kind is in operation in Southern Rhodesia, and has very much to be said for it. Perhaps it is rather late in the day to bring it in here, but if the hon. member will put forward a case in writing I will see that it is properly considered by the Government. The hon. Member for Nyanza requested that Government should be compelled to proceed with an acquisition once it had reached the final stages and the Board had fixed the price. I do not agree that the prerogative of the Board should be fettered in that way, but I do think there is a case for making provison that, in the event of Government withdrawing from a compulsory acquisition when it has reached its final stages, compensation should be paid for any proved loss or damage suffered by the owner of the land. There is a provision of that kind in the Indian Land Acquisition Act which is operative in this country, and I think it only just that some such clause should be put in this Bill. At any rate, that point can be considered in select committee. He also made the point that Government, in acquiring a portion of a property, should be required to take the whole if the owner so desired. That is a point which I think might well be considered in select committee.

I agree with the remarks made by the hon. Member for Nyanza that the very existence of this measure on the statute book will have a salutary effect. I found on inquiry in Southern Rhodesia a few weeks ago that a similar measure in operation there has had a valuable effect in the prevention of inflation in land values. Even though the veto clause has rarely been used, the very existence of the law is educative and helpful. I think I have covered all the points made by hon. members that have not already been dealt with by the hon. and learned Attorney General.

The question was put and carried.

MR. FOSTER SUTTON moved that the Bill be referred to a select committee consisting of himself as chairman; Mr. Mortimer, Mr. Blunt, Major Cavendish-Bentinck, Mr. Bouwer, and Major Keyser.

MR. BROWN seconded.

MR. PATEL: Your Honour, I beg to move that the motion be amended by the inclusion of the name of the hon. member Mr. Amin. I am aware that Government does not propose to include an Indian member on the ground that the Indian community is not interested in the development of this area known as the Highlands, but I can give instances that have taken place recently where, though directly the Indian community was not interested, yet an Indian member was appointed on the select committee. One will be seen in Vol. V of Hansard, 1938, page 686, when the hon. member Mr. Shamsud-Deen was a member of the select committee appointed to consider the Farmers Assistance (Amendment) Bill. Another is in Vol. VIII, 1939-40, when the late Mr. Isher Dass was a member of the select committee appointed to consider the Flax Bill. Again in Vol. XII of 1941, page 271 and 309, when the late Mr. Kasim was appointed a member of the select committee on the Coffee Industry Ordinance. At that time the noble lord the hon. Member for Rift Valley used these words: "As no Indian has any interest in coffee at all I think it is quite improper", and opposed the appointment of an Indian member on those grounds, and still an Indian member was accepted by Government. Similarly, in 1941, Vol. XIII, on the Pyrethrum (Amendment No. 2) Bill, Dr. Sheth was appointed as a member of the select committee. In 1943, Vol. XVII, page 84, I was made a member of a select committee dealing with European cases of pensions of disabled ex-servicemen. So that there are precedents during the last five years when Indian members were included on select committees where the Indian community was not directly interested. Moreover, the Indian members have always maintained that where a select committee is appointed from this Council, every group has a right to be represented on the matters concerned, because all questions which are considered in this Council are matters of importance for the country as a whole. Therefore I beg to move this amendment, that the hon. member Mr. Amin be included in the select committee proposed.

MR. SHAMSUD-DEEN: Your Honour, I beg to second the amendment. I only wish to say that the exclusion of an Indian member from the select committee on the principle enunciated by some unofficial members that it concerns Europeans only, is a very serious deviation from the principles of this Council. Once one is a member of this Council he is interested in all matters that come up for deliberation, and if you create watertight compartments and say that since the Indians are not interested there is no necessity to appoint one on a select committee, I submit it is a very serious violation of the rights and privileges established by democracy.

MR. FOSTER SUTTON: It may save time if I take an early opportunity of saying that Government is not prepared to accept the amendment.

The question of the amendment was put and negatived by 31 to 5, Council dividing: *Ayes*.—Messrs. Amin, Kholi, Patel, Sheriff Abdulla Salim, Shamsud-Deen. 5. *Noes*.—Messrs. Beecher, Blunt, Bouwer, Brown, Major Cavendish-Bentinck, Messrs. Cooke, Couldrey, Donovan, Emerson, Foster Sutton, Gardner, Hebden, Hodge, Hunter, Izard, Johnstone, Major Keyser, Messrs. Marchant, Montgomery, Mortimer, Nicol, Northrop, Pedraza, Robins, Lord Francis Scott, Messrs. Stronach, Tester, Tomlinson, Vincent, Mrs. Watkins, Mr. Wright. 31.

The question of the motion was put and carried.

ADJOURNMENT

Council adjourned until 10 a.m. on Friday, the 14th April, 1944.

Friday, 14th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Friday, 14th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C., presiding).

The President opened the Council with prayer.

MINUTES

The minutes of the meeting of the 13th April, 1944, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 21—Indian Entry Permits

MR. PATEL asked:—

Will the Government please state the number of Indian applicants for entry permits under the Defence (Admission of Male Persons) Regulations, 1944, and the number of such permits issued during March, 1944?

MR. TESTER: The number of applications received during March was 361 of which 164 were approved and 18 refused. The remaining 179 were still under consideration at the end of March.

MR. PATEL: Arising out of the answer, may I know the number of applicants now seeking to enter this country and the number of permits granted?

MR. TESTER: I think the hon. Member for Native Interests (Mr. Montgomery), who is Director of Man Power, is in a position to answer.

MR. MONTGOMERY: My figures are up to 12th April. Applications to come from India for employment up to 12th April were 69, the number recommended was 33, and not recommended 33. In one case a permit was unnecessary.

No. 27—Travelling Expenses of Recipients of Insignia

MR. COOKE asked:—

Is it a fact that unofficials who proceed to Nairobi to receive insignia at the hands of His Excellency the Governor are not paid travelling expenses? And is it a fact that officials proceeding to Nairobi for the same purpose are issued railway warrants? If the answer to the first part is in the affirmative, will the Government in future arrange that travelling expenses are met as they are in Great Britain? And will the Government make this arrangement retroactive to the beginning of the war?

MR. TESTER: The answer to the first two parts of the question are in the affirmative. As regards the third part, the Government is prepared to pay travelling expenses in future, as suggested. As regards the fourth part of the question, the awards referred to are made in respect of public services generally and not only in respect of public services related to the war; the Government does not therefore consider that payment of travelling expenses should be made retroactive to the beginning of the war.

THE CROWN LANDS (AMENDMENT) BILL

Second Reading

MR. MORTIMER: Your Honour, this Bill is complementary to the Land Control Bill which passed its second reading yesterday. The main purport of the Bill is two-fold. First of all, it empowers the Governor to control all land transactions in the Highlands over 20 acres in extent, and secondly, it controls the transfer of shares in companies holding land in the Colony. As I explained yesterday, in the October draft of the Land Control Bill the powers which I have first mentioned were entrusted to the Board. It is felt that it is necessary for such power to be vested in some one or some body in order that settlement in the Highlands may proceed on the most satisfactory lines, but on further reflection since the October Bill was published, the Government is convinced that this power of control over the persons who may be permitted to own land in the Highlands must remain vested in the Governor and cannot be delegated to any board however constituted. It is provided in the Bill which passed its second reading that the Control Board will have authority to give advice to the Governor upon this important question, but will not have the final say.

In speaking to the other Bill I intimated that personally I had no objection to the deletion of the 20-acre limitation insofar as it concerned the Land Control Bill. What I said then applies equally to the Bill now before us. The

[Mr. Mortimer]

proviso to sub-clause (2) of new clause 70A provides that any one who has paid a deposit or part of the purchase price in respect of any land transaction where the veto of His Excellency is exercised, shall be entitled to recover the amount so paid. The next sub-clause deals with mortgages for purely financial purposes, mortgages with either of the three commercial banks or with the Land Bank. Here again the word "equitable mortgage" is used in the exemption clause and in select committee I am going to propose that the word "equitable" be deleted in order to leave it open for the banks to take legal mortgages where they so require. The next sub-clause deals with gifts of land except by way of testamentary disposition and brings such gifts within the purview of the measure. It is proposed in select committee to delete that clause and to transfer the gift control to the major clause, and also to introduce some measure of control over testamentary dispositions.

We come now to clause 3 which controls the transfer of shares in companies owning land or having any interest in land. The intention of this clause is to remedy a defect that has been found in the existing law—the Crown Lands Ordinance, 1915, Chapter 140 of the Revised Edition of the Laws. There is no need to run over all the ground which we covered yesterday as to the reservation of land in the Highlands for European ownership and occupation; that is the declared policy of this Government and of the Imperial Government, and it is a policy that is being as rigorously acted upon as possible. The machinery used for enforcing that administrative practice is the exercise of the power of veto vested in His Excellency, the Governor in Council. It is required by law that parties to a land transaction between parties of different race shall notify the Commissioner of Lands on a prescribed form within one month of the completion of such transaction. The Governor in Council then has three months in which to exercise the veto if he desires to do so. There is unfortunately a loophole in these provisions. The law recognizes three races: European, African and Asian, but no mention is made of limited liability companies. Where it is clear that the control of a company is in the hands of parties of a different race from the transferee of the land, the veto is quite properly exercisable, but there is another class of transaction where the veto does not at present apply. There is nothing whatever to control the transfer of shares in land-holding companies, and so you have the position that, while when a limited liability company desires any particular piece of land and it is European in its directors and shareholders, the time may come when the shares are all transferred to non-Europeans, and as a consequence the directors are changed in personnel, and so in fact the company becomes a non-European company. That is not a land transaction, and therefore does not come within the purview of the existing law. It is desired, therefore, to take steps to ensure that the intentions of His Majesty's Government in this matter shall be properly carried out. The method of doing this is to bring under the veto provisions of the Crown Lands Ordinance the transfer of shares in companies owning interests in land in the Colony. It is admitted that this provision will be by no means water-tight, but it will control effectively, I hope, the transfer of shares in companies incorporated in this Colony. It will be extremely difficult to operate in regard to shares of companies incorporated outside the Colony. The Government has under consideration, and I hope the measure will be brought forward concurrently with the final stages of this Bill, the introduction of legislation to amend the Companies Ordinance to provide that no company may acquire land in the Colony unless it is incorporated in Kenya, but at the same time giving the Governor power of exemption in such cases as he may feel essential. For example, there may be some big international company or some big public utility company which for obvious reasons is incorporated in Great Britain which desires for the purposes of its operation, not as a land company, not as a farming company, but merely for the purpose of carrying out its functions for the public service, to own land in this Colony. The Governor, therefore, must properly have the power of exemption from the provisions of the contemplated measure.

I was glad to hear the hon. member Mr. Patel say yesterday that he would readily accept any control measures

[Mr. Mortimer]

which were necessary to ensure the carrying out of the adopted policy, and that if he disapproved of the policy this was not the right place nor the right time in which to attack it, and so I trust that in view of that statement, which I hope expresses the views of hon. Indian members in general, there will be no opposition to the further proceedings in this particular measure. Reverting to the earlier clauses, I am not personally satisfied that we have covered all the points that are required in regard to the machinery for the operation of the Bill and its relation to the Land Control Bill. My hon. friend the Attorney General is giving close attention to this particular question and will, I hope, have proposals ready to lay before the select committee which it is proposed to appoint to consider further the details of this measure.

MR. TOWLER SUTTON seconded.

MR. PATEL: The amending Bill before Council appears on the face of it unobjectionable, and it may be viewed as a corollary of the declared policy of His Majesty's Government and the local Government. But, as far as the Indian community is concerned, there are one or two features in the Bill which cannot be accepted by them. The hon. mover stated that I had accepted control and that if I wanted to oppose it I should do so in other quarters against the policy which has been land down. What I said was that it was futile for me and would serve no useful purpose to oppose the Bill here, as it was an enforcement of a judgment which had been given by the Imperial Government, and that the proper course for me is to go and ask for a review of that policy, and not to waste the time of Council by reiterating the arguments against that policy in this Council. But in my opinion there are one or two matters in which this Bill goes further and extends the administrative practice so far followed, and it also, in my opinion, goes against the declared intentions of His Majesty's Government. The hon. member said that the veto to the transfer of shares is for the purpose of properly carrying out the intentions of His Majesty's Government. Anybody who has followed the history of the reservation of the Highlands knows that before the first world war the policy laid down was that grants should be made to Europeans only in the Highlands, and no mention was ever made about transfers to Asians. It was only during the first world war that the Crown Lands Ordinance, 1915, included the power of veto under which His Excellency was authorized to veto any transfer from a member of one race to a member of another race, and that was the first time prohibition was made against transfers in that area. Now the administrative practice is to be extended by vetoing the transfer of shares. At no time did His Majesty's Government declare that these lands in the Highlands should not be transferred to Asians for purposes other than agricultural purposes. If we stick to the declared intentions of His Majesty's Government, they reserved this area for agricultural purposes for only Europeans, but if that land had to be used for purposes other than agriculture in my submission it should be open to all races. If, for instance, an industry is established other than the agricultural industry, the land should be open to non-Europeans. In the whole history of the reservation of the Highlands it was never intended that this area should be reserved for Europeans for other than agricultural purposes, and therefore, if now the veto is to be given not to allow transfers of shares in companies which may be carrying on activities in industries other than the agricultural industry, I submit the intentions of His Majesty's Government are being exceeded. That is one of the features of the Bill which the Indian members oppose strongly. The other objection, in my submission, is that the administrative practice is continually being expanded, and there are two matters I want to refer to before I sit down. One is that I understood the hon. Member for Nyanza to say yesterday that the objection of the Indian members was not to the robbery of the land but that they wanted some share in it. I make it quite clear that the official policy of the Indian community for the last 25 years is that land necessary for the needs of the African communities at present and for a reasonably future period, should be reserved for them, and the rest of the land should be open to all races, Europeans, Africans, and Asians. That has been the official policy of the Indian community for the last 25 years. We have

[Mr. Patel]

never said that the Asian community alone wanted to acquire land in this area, we said that the Africans or any other communities who came to reside in Kenya should have the right to acquire land in that area.

With your permission, sir, and the indulgence of Council, I want to make one personal explanation. It appears from the remarks made by the hon. mover yesterday, while replying to the debate on the Land Control Bill, that I intended to make some reference to his honesty. I may say that I have a very great regard for the ability and honesty of the hon. member, and while expressing myself in a language which is foreign to me, if I made any statement or used any expression which gave any such impression, I am prepared to withdraw that statement, and in that case it will be my duty to tender an apology to the hon. mover. (Hear, hear.) What I intended to say, or meant to say, was that if he talked on a bill like that in terms of "public opinion" and "weight of public opinion" and the "good of the community in general", it would mislead the people outside this country and give a wrong impression because, in my opinion, it is for the good of the European community and the public opinion was only European opinion, and therefore it will deceive people outside. I meant to say that those statements were not honest, but I never intended to say anything against the hon. mover, for whose honesty I have a very great regard.

MR. SHAMSUD-DEEN: Sir, while I also associate myself with what my hon. friend has said about the honesty of the intentions of the hon. mover, I must say that I have a very great suspicion as regards his having made use of information given him, information which was placed before him frankly, voluntarily, and unreservedly. I am not sure that this Bill is not the outcome of the information which I myself placed before him in confidence, otherwise this metamorphosis of the land policy of the Colony could not have reached the stage it has now. No useful purpose will be served by going over the history of the land question of the Colony, but it is a very interesting metamorphosis. It begins with the declared policy of the Imperial Government, which was a policy not to deny the grant of land to any British subjects or to have any discriminations. Then from grants of land by the Crown, it is carried to restrictions on transfers, then it comes to the veto power of the Governor, and now it is extended to limited companies. I am not sure whether I was the first stupid person to be so frank as to put before the hon. mover a transaction I had practically completed as a land and estate agent about a farm in what is technically called the Highlands. There was no law at the time under which a transfer from a European owner could be made to a limited company the shareholders of which were Indians, but I thought it my duty to place all my cards on the table and laid information regarding the whole transaction before the Commissioner, and I have a great suspicion that this clause regarding an extension of the vetoing powers of the Governor of transfers of land to certain limited companies is the result of that information I placed before the hon. member. But here is the question: We are carrying these powers rather too far. A company may be owned or practically owned by European shareholders. What you are saying now is that even if 90 per cent of the shares are held by Europeans an Indian cannot buy even purely for the sake of commercial purposes, one single share in any company which has any proprietary right in land. I think this is really carrying the matter a bit too far. As the hon. mover has said, the original intention of the Imperial Government was to deny Indians an opportunity of acquiring the transfer of land in the Highlands for agricultural purposes, but we all know that that intention has been extended practically to land for all kinds of purposes, even industrial purposes, and I am not sure whether it is also at some time going to be extended to the acquisition of blocks of land for commercial and residential purposes. It certainly has been extended to pieces of land which were meant for the extract of bark. Anyhow, it is interesting to see how far the Government of the Colony is going to be forced by the unofficial European community to carry things to the extreme of absurdity. As far as I am concerned, I stated in Mwanza that this is not our land, it belongs to the Africans. We merely came here as temporary colonists, and till our presence was beneficial to the indigenous population we

[Mr. Shamsud-Deen]

had no desire to acquire land which belonged to the African, because if we claim any right to do so we cannot blame the foreigners who come and acquire land in our own country in India. But what the attitude of Indians in this Colony has always been is that they do not wish to dispossess the Africans of any land they may have held in the past—we only wanted to develop the land that was lying absolutely useless and fallow and of no use to anybody at all.

This Bill, of course, follows the Bill passed yesterday, and I am not certain that it is proper for the second reading to be passed until the Land Control Bill has passed through the select committee stage and its third reading, because what it amounts to now is this, that it really goes far beyond the power of the Control Board—which the Bill passed yesterday constitutes. It goes to an extent of even saying that if the Control Board passes certain transactions, the Governor can veto it still, and I am not sure whether the unofficial European members will agree to that principle. Therefore I submit that the proper time for this Bill to be discussed is when the other Bill passes its final reading. I stated yesterday also that this Highlands question as it exists to-day is a very big and vexed question, and if the Governor is going to exercise the power of his veto without the advice of any of the Indian community or African community, I think he will be taking a very deep plunge into the dark and may make some very serious errors without the benefit of the advice of the Indian community. I state here that, right in the middle of the Highlands, not very far from Nairobi, almost from the beginning of the township of Nairobi, there has been quite a large estate, consisting of several thousands of acres, called the Dundora Estate, about four or five miles from Nairobi. Europeans tried to develop that land, and failed, and it was dumped on the Indians with the consent of the Governor, and they have made a success of it, and half the vegetables sold in the Nairobi market come from that estate owned by Indians, and a good deal of the milk. Similarly, as I said yesterday, most of the land beyond Fort Ternan was climatically and originally declared as low land. It has been artificially included in the Highlands, and is land where no European has ever lived or will seriously think of living, and therefore when transactions as regards pieces of land of that nature are concerned come up and you refuse to allow an Indian member on the Control Board or any board as far as land is concerned, as I have stated before, the Governor may be committing some very great blunders without having the advice of people who are, after all, domiciled in the Highlands, not only for residential purposes but for agricultural purposes. The hon. mover will be able to contradict me if I am making wrong statements. Otherwise I think it is only a waste of our time to pass these Bills, for all they really mean is that European landowners cannot trust each other and want the Governor to interfere with their liberty when they are tempted by the high prices to sell their property in open market. They want interference by the State for their own personal benefit. To put it very plainly, since it is their funeral I do not think we ought to interfere with it. (Laughter.)

MAJOR CAVENDISH-BENTINCK: Your Honour, I rise, of course, to support this Bill which, as has been pointed out by the hon. mover, is in fact the corollary to the Land Control Bill which passed its second reading yesterday. I was, however, a little worried when I heard the hon. mover's remarks in regard to clause 3 and his reference to what I consider an essential further corollary, namely, some amendment to the Companies Ordinance. As I have pointed out on more than one occasion in other places, in my opinion this alteration of section 71 which is suggested in the measure before us, is really from the point of view of implementing the intentions of Government, hardly worth the paper it is written on. All it suggests is that if any share or debenture in any company owning any interest in land situated in the Highlands is sold, assigned, or transferred, or otherwise disposed of, we have to receive information to that effect. I ask you, is it possible for us really to expect in the case of companies that may be registered in Timbuktu, London, New York, or anywhere else that they will take the trouble to inform us of the disposition of any single share in that particular undertaking? Therefore, if we are serious in endeavouring to close up the

[Major Cavendish-Bentinck]

loopholes to which the hon. mover referred, we must, as he said, insist that any company owning land in the Highlands shall register itself as a Kenya company or shall register any subsidiary company in Kenya over which we can have some control. I do not believe that is a very unreasonable thing to ask. As I say, I was a little perturbed when I heard that the one really operative measure which is going to make this Bill workable is only so far "under consideration" of Government, and it is only hoped that it might be brought in concurrently, and was referred to later by the hon. mover as a contemplated measure. Therefore, I would like to ask that, before this debate closes, we may be given a definite assurance that it is not a contemplated measure but that Government will introduce the necessary amendments into the Companies Ordinance in order to carry out its alleged intentions.

In speaking to this motion, the hon. member Mr. Patel referred to this as again an undesirable measure because, he stated, the transfers of land were never originally covered by the suggestions of the Imperial Government as to what policy should be followed here in the early days of this country. I suggest that it is as well to point out the facts of the case again, because otherwise again we might have misunderstandings. The only reason why specific mention was not made of transfers in the days before the last war and before the introduction of the 1915 Crown Lands Ordinance, was that at that time all land in the East African Protectorate was alienated by allotment, and subsequently any transfer of any kind was subject to veto, and the veto was naturally exercised in accordance with an agreed policy. It was only when the 1915 Crown Lands Ordinance was introduced, giving greater latitude to owners of land, that specific reference was made to transfers between parties of different races. It was unnecessary to do it before, because every single transfer of land was subject to veto. I have only one other remark to make, perhaps it is hardly worth making, but again it might lead to misunderstandings. It has been suggested that certain land to which this measure may refer is spuriously included in the Highlands. That, of course, is not a very accurate or sensible remark, may I say, because land is either in the Highlands or it is outside the Highlands, according to the Crown Lands Ordinance schedules, where it has been quite carefully surveyed and demarcated. With these remarks I support this measure.

MRS. WATKINS: Your Honour, there is only one question I should like to have some reassurance on and that is on the testamentary dispositions which, as has just now been rightly mentioned, the Bill is going to control. We are controlling a great deal of the land question I know, but I should like to have some assurance as to how far that provision is going, because I think that when a man has retained his land until his death it is perhaps rather bad luck to allow his widow or his children to have to contest something which during his lifetime was not contested. I should like some reassurance as to what the hon. Commissioner of Lands and Settlement means exactly about the testamentary side of the regulations that he proposes to put through select committee. I think we want it made quite clear and I think it should be incorporated in the Bill so that we may know exactly where we stand. That is all I have to say.

MR. AMIN: Your Honour, the hon. members Mr. Shamsud-Deen and Mr. Patel have covered some of the points which should have been covered in regard to the Indian views on this amending Bill, and there are two or three other points which have arisen, and with which I want to deal. The hon. mover stated that it was the policy of the Imperial Government to reserve the Highlands for Europeans only. That may be the hon. mover's view of things, but it is not, I submit, the view of the Imperial Government. The agricultural land of the Highlands was decided to be given only to Europeans for the sake of administrative convenience, and that is the real position. No Secretary of State for the Colonies up to now has ever stated that it is the policy of the Imperial Government to have any discrimination as between the different races of the Empire in regard to the acquisition or transfer of all kinds of land in the Highlands. I think that is really a very noble and admirable intention of the Imperial

[Mr. Amin]

Government, and we would not like to change that view or intention during this war period. Whether the Imperial Government was right or wrong to have imposed this power of veto against transfers to non-Europeans in respect of land during the last war in 1915 is not at the moment the question under discussion, but it is the first time that we in this Council have had the opportunity to state that, when that power was given to the Governor, no Indian members were in this Council, we were not represented, and we must take every opportunity of stating that the Imperial Government erred in giving that power to the Governor during the last war period when our representations could not be heard properly for many reasons. The world was engaged in war, our people were engaged in war, and we believed it was not right and proper that the Imperial Government, the people who represented the Imperial Government in this Council, should have then put that on the statute book of the Colony, and we again say that this war is also not the right and proper time to extend the power of the Governor in respect of veto on transfers of land in the Highlands.

I have said that it is not right to state that all land for all purposes is reserved for Europeans in the Highlands, because that is not the actual wording used by any Secretary of State for the Colonies. I will quote Lord Passfield. In the Parliamentary Debates of the House of Lords, Vol. 130, No. 16, col. 603, 1944, the Parliamentary Under Secretary of State for the Colonies, the Duke of Devonshire, said: "That policy has been adhered to by every subsequent Government and was specifically endorsed by the Labour Government in 1930, when Lord Passfield said: 'Whilst having no desire to go back on the decision come to by Lord Elgin in 1908, confirmed by the White Paper of 1923, with regard to the restriction of agricultural land sales in the so-called Highlands of Kenya to persons of European descent, His Majesty's Government are not willing to see any restriction extended to other agricultural areas in any part of East Africa'." Words more specific than those need not be used for the purpose of asking the Government not to extend its practice beyond agricultural land as already laid down. There is a difference between the policy and the practice. The practice may be necessary for many reasons and the reason given has been that of convenience. I am prepared to believe that for racial convenience, for unstrained relations, it may be necessary that the different races should not be asked to come in too close a contact with each other every day, and if there is any reason for the reservation of any particular area for any particular race, this alone is and can be; none other can be. At any rate, if we believe that in this war it is undesirable to strain further the relations between the different races. There is another aspect I would touch on, and it is that I do not believe that after the war public opinion either in England or in the Empire or international opinion will permit us to do what we are contriving to do to-day. I am quite convinced in my mind that that particular intention which the hon. mover has just expressed, the intention of amending the Ordinance so that foreign companies having any interest in land in the Highlands should notify all share transfers to the Commissioner of Lands of this Colony will be required, I beg to submit that international opinion will not submit to that sort of thing, and if we go about asking foreign companies to differentiate between their Asian and non-Asian shareholders then you will be exposing yourself to the ridicule and contempt of the whole world. Do you propose to compel a Portuguese company with land in the Highlands to inform you whether the new shareholder or transferee is an Indian Portuguese subject or a European Portuguese subject? Would the Government of America compel their companies to inform the Commissioner of Lands here whether or not the transferee of a share in an American company is a negro gentleman if the company has land in the Highlands? I beg to submit that it is in the interests of the Empire as a whole that we should make our protest against this sort of thing, and we would not be worth our salt if we did not make it now. For the sake of the good name of the Empire you should not proceed with this new measure. Whether a few acres of land in the Highlands come into the hands or under the direct control of the non-European community or otherwise, it is not worth your time to

[Mr. Amin]

attempt to bring in all these restrictions. I do not believe there is such a law in South Africa even where racialism is so rife. Do you want to go one better here? I appeal to you not to do this.

Apart from this question of the practice in the Highlands being only a matter of convenience, only in regard to agricultural land, I have one other aspect of the Bill to refer to, and that is the clause dealing with the banks which may be authorized by the Governor to take mortgages on land in the Highlands. There are several insurance companies operating in East Africa. Some of them are registered in foreign countries; most of them are, but some of them are registered in Kenya also. These companies carry on the business of insurance. Their main object is not that of acquiring land and obstructing European settlement in the Highlands; they invest money, and foreign insurance companies from India, for example, should be encouraged to invest money in this Colony. Public opinion in this country has often objected to money being sent to foreign countries by the people who earn it here. Why should we ask Indian insurance companies operating in East Africa to invest money only in India? Why should we not encourage them to invest in Kenya? I do not agree that you should put any restrictions on them in investing money in Kenya, whether in the Highlands or outside. Whether or not you like to impose restrictions on the Indian managers or servants of these companies in respect of residence within the Highlands or not, is a different question. Why not encourage them to invest money in East Africa? There is one other point on which I should like to comment, and that is the point which the hon. Member for Nairobi South raised and which the hon. member Mr. Patel touched on yesterday. It is the determination of the European community to oppose by all means at their disposal any interference with the White Highlands. The hon. member Mr. Patel described as futile any words he might use to change that sort of view. I do not agree. There are different means of exerting influence. Some people pride themselves on the power or strength, political or otherwise, that they can command, but those who have no such power but believe in their views with sincerity and strength should not hesitate to talk about them as often as they can. It is their duty. It would be cowardice on their part not to speak out. They must show that their views are expressions of a distressed heartand, therefore, must not be ignored, and that those who disregard them do so at their own peril. Some hundreds of years back an Indian poet expressed himself on this matter . . .

MR. RENNIE: I do not want to intervene unnecessarily, but I think the hon. member is straying somewhat from the Bill.

MR. AMIN: I will finish in a minute, sir. I shall quote the couplet. Translated into English it reads: "A poor man's anguish goes not in vain. Do not ignore his sigh. Even the dead cow's skin burns to ashes the strongest steel".

COL. GROGAN: Sir, I have not very much to say on this matter, but I do want to say a few words on the proposed section 71 (2) in clause 3 relating to the question of companies. As it stands, of course it is really quite absurd and means nothing at all. If it means anything, it suggests that the Kenya Government is going to put up a notice on the Stock Exchange, London, prescribing rules and conditions whereby that Exchange will operate. That might excite a certain amount of temporary interest in the members, who will say, "Where is this Government, where does it belong, and what function have they to override the procedure of the City of London?" and they will say "Oh, Kenya again!" amid laughter, and that will be the end of it. That is as far as it stands. We are given to understand that this is to be supported by some complementary measure to compel all companies holding—the actual words are "owning any interest in any land"—to take out local registration in order to cover that interest. Well, let us take one or two examples, the National Bank of India for instance, or the East African Power and Lighting Company. Is it really seriously contended that if a share in any of these companies is bought by an Asiatic in Bombay or anywhere else that that particular interest has got to be locally registered and so on? because it is too ridiculous and could not possibly work in practice. You will not get over it this way. There is nothing to preclude, supposing local

[Col. Grogan]

registration covered local interests in land, any company being formed to buy shares, and if that did not work then another company would buy shares in that company, and so on *ad infinitum*. How can you vitualize a system whereby every tuppeny ha'pendy transfer of shares, debentures, or anything else would involve investigations into the complete registry of a chain of fifteen companies or something of the kind? It is really not practical politics.

The hon. mover referred, if I remember rightly, to the attempt to differentiate between the three races. It is really an impossibility. All modern anthropologists realize to-day that their is not one single group of humans anywhere in the world whom one can describe as a race. They do suggest, as a result of careful investigations into the blood structure of gorillas, baboons, chimpanzees, Asiatics, Europeans, and others that there may be some possibility of tracing back into the infinitely remote past branches of the tree from which these various forms of alleged bipeds originated, but I do not believe that, from the point of view of practical politics, we can quite go back to that, and when it comes to this expression "Asiatic" we are immediately faced with the problem—to which category does the Jew belong? When is an Asiatic not an Asiatic? when is a Jew an Asiatic or the other thing? Is it when he is operating in the markets of Aden or is a city magnate in London or a much respected member of the House of Lords? At what particular stage does he become disqualified from buying a share in any company owning or having an interest in a bit of land in Kenya? I really say, sir, that there is only one possible solution of what we really want to do, only one possible effective and honest method—it is direct prohibition of personal occupation. I really intervened in this debate because I do not want to be classed in the future by anybody who hunts over the history of these times as a person who made rather a fool of himself. I want to point out that in my considered opinion it does not matter what you do or how you strive or how many Attorneys General you collect in the country and face with these impossible tasks, there are no conceivable means in all the wide world by which you can prevent people having an interest through limited companies in the Highlands of Kenya as distinct from the right of occupation. I am quite convinced that if we pursue this limited liability issue to its ultimate objective, we shall land ourselves in a thicket of absurdities which may well reopen the whole issue and probably lose us the principle itself.

MR. FOSTER SUTTON: Sir, there are two points that I wish to deal with. One was raised by the hon. Member for Nairobi North and supported by another member. That was the position created by the suggested amendment to section 71 of the principal Ordinance. I entirely agree, certainly with all that was said by the hon. Member for Nairobi North about that proposed amendment, and I think it right to say now that Government has every intention of amending the Companies Ordinance in an endeavour to completely, or as far as it is possible to, button the position up. As it stands, it does not, of course, really mean very much, but with the amendment we have in mind to the Companies Ordinance the position will be satisfactorily dealt with. There was another point raised by the hon. Member for Kiambu. We have already been considering the question of testamentary dispositions, and it is quite obvious that if the position is to be adequately protected amendments will have to be made to deal with that position. These are now under the consideration of Government, and we will submit our proposals to the select committee.

MR. COULDREY: Your Honour, I only wish to refer briefly to the remarks made by the hon. Member for Ukamba when he, with his usual wit and humour, referred to the question of race. If I heard him correctly, he stated that unless one went back to the gorillas and baboons there was no such thing as race. He is absolutely entitled to his own opinions, but not mine, for as far as I have been able to . . .

COL. GROGAN: I referred to it as the opinion I have gathered from studies of the anthropologists of the day.

MR. COULDREY: The opinions he gathered from the anthropologists of the day! (Laughter.) I do not know who they are, but it is not my opinion, and as far as I am able to talk for my colleagues it

[Mr. Couldrey]

is not their opinion, and that, I think, should be made clear.

MR. MORTIMER: Your Honour, I would first of all refer to the remarks made by the hon. member Mrr Patel, and would begin by saying that I unreservedly accept the apology which he has tendered in the spirit in which it was offered. I fully appreciate the hon. member's point of view and understand the intention of his remarks, and I am confident that the very happy relations which have always existed between us will remain unimpaired in the future. The hon. member Mr. Patel referred to the institution of the power of veto under the Crown Lands Ordinance of 1915 as being the first time when powers were taken to control transfers between different races but, as the hon. Member for Nairobi North pointed out, until the 1915 Ordinance was enacted there was no need for special statutory provision, because every Crown lease contained a proviso that no transfer of the whole or any part of the land covered by the lease would be valid without the consent of the Governor, and that for every such consent a fee of Rs. 15 had to be paid. The operation of that clause was wiped out by a Government Notice in 1917 as it was no longer required, having been superseded by the veto provisions of the Crown Lands Ordinance, 1915. The hon. member also referred to the utilization of land in the Highlands for purposes other than agriculture, and objected to the present Bill because no reference was made to that subject. I would point out that the position as regards agricultural land in the Highlands, or non-agricultural land in the Highlands, will remain exactly the same as it was before when this Bill has been enacted.

The hon. member Mr. Shamsud-Deen—and I am sorry he is not present to hear my reply—seemed rather perturbed lest he had given some information which put us on the track of an opportunity for evasion in the existing law. I should like to remove from the hon. member's mind any misgivings that he might have on that subject. My department has been fully aware of this possibility of evasion for very many years, and I am confident in saying that the European elected members have also been aware of this possibility. Indeed, when the Land Commission Report was under consideration ten years ago, the European elected members made representations to the Government on this very point. Repeated representations have been made since that date, and Government has decided to close this loophole which provided an opportunity for evasion in the carrying out of the policy of His Majesty's Government. I will say, however, that very little advantage has been taken of this opportunity for evasion, but in order to remove the matter completely beyond the realm of temptation we are proposing to close the opportunity for the future. The hon. member Mr. Amin I understood to object to the Bill because it seemed to extend the powers of veto geographically which His Majesty's Government had accepted as part of the policy governing land-holding in this Colony. I would point out that there is no extension geographically, and that the powers remain the same as those to which Lord Passfield expressed his adherence.

MR. AMIN: On a point of explanation, it was not my statement that I objected to the geographical extension. I stated that the practice was being extended to cover non-agricultural land in the Highlands.

MR. MORTIMER: Well, if that is so, it is a matter of practice rather than law and has no particular reference to the Bill now before Council. He referred to the certainty in his mind that international opinion after the war will sweep away all these restrictive measures that are now being imposed. Well, we can await with equanimity such an event and consider such opinion when it makes itself manifest. The hon. member also objected to clause 2 (3) relating to financial transactions with the various banks operating in the Colony, and urged that the door should be left more widely open for financial transactions with other banks than those named. I would point out that with the Governor's consent additions may be made to that list of banks which are exempt from the provisions of the law, and the Governor may extend the operation of that exemption to any bank or body of persons, whether corporate or incorporate, that may be approved by him. If any bank makes application for

[Mr. Mortimer]
exemption and it not approved as coming within the scope of the exemption, it is still open for such an institution to make application to the Governor under other clauses for permission to carry out the transactions it has in mind.

The hon. Member for Ukamba was, as usual, amusing, if not convincing (Laughter.) He referred to the definition of race and the views he had formed after consultation with his anthropological friends . . .

COL. GRIGGAN: Not consultation, reading.

MR. MORTIMER: I am sorry but I did not catch it?

COL. GRIGGAN: On a point of explanation, not consultation. I have no personal knowledge of any of these pseudo-anthropologists but, as a result of reading their views, I produced the views which I laid down.

MR. MORTIMER: I will not attempt to follow the hon. member in his display of oratorical pyrotechnics. (Laughter.) I would merely point out that the Crown Lands Ordinance definition of race is as follows: "Race shall mean persons of European, Asiatic or African origin as the case may be". That definition may be too broad, the classifications under it may be too difficult, but that is the law we have to try to administer.

COL. GRIGGAN: On a point of explanation, I might not have made myself clear, but I raised that particular issue in respect of the diagnosis of people's genetic origin that would have to be followed in respect of "every shareholder ever owning an interest in land in Kenya or owning shares in any company owning that land, and so on *ad infinitum*. As far as the practical application——

MR. COULDREY: On a point of order, is the hon. member making another speech on this subject?

MR. RENNIE: I think the hon. member is entitled to make an explanation, not a speech.

COL. GRIGGAN: I am trying to clarify my position. I was only referring to it to show that if this differentiation is applied to shareholders all over the world under that clause it will be totally impracticable.

MR. MORTIMER: I have nothing more to add, sir. (Laughter.)

The question was put and carried by 32 votes to 4, Council dividing: *Ayes*—Messrs. Beecher, Blunt, Bouwer, Brown, Major Cavendish-Bentinck, Messrs. Cooke, Couldrey, Donovan, Emerson, Foster Sutton, Gardner, Col. Grogan, Messrs. Hebden, Hodge, Hunter, Izard, Johnstone, Keyser, Marchant, Montgomery, Mortimer, Nicol, Northrop, Pedraza, Robins, Lord Francis Scott, Messrs. Stronach, Tesler, Tomkinson, Vincent, Mrs. Watkins, Mr. Wright, 32. *Noes*—Messrs. Amin, Kohli, Patel, Sheriff Abdulla Salim, 4.

MR. FOSTER SUTTON moved that the Bill be referred to a select committee comprising himself as chairman, Mr. Mortimer, Mr. Blunt, Mr. Gardner (Conservator of Forests), Major Cavendish-Bentinck, Mr. Bouwer, Major Keyser, and Mr. Amin.

MR. BROWN seconded.

MR. WRIGHT moved that the motion be amended by the addition of the following words: "Provided that, in the unlikely event of Col. Kirkwood returning to Kenya prior to the termination of the select committee's deliberations—which would entail the Acting Member for the Trans Nzoia (Major Keyser) relinquishing his seat in Council and on the select committee—this Council desires that the hon Member for the Rift Valley (Lord Francis Scott) should take the place of Major Keyser, in view of his having had the opportunity of listening to and participating in this debate".

MAJOR CAVENDISH-BENTINCK seconded.

The question of the amendment was put and carried.

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

BANKRUPTCY (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: I beg to move that the Bankruptcy (Amendment) Bill be read a second time.

Before dealing with the measure now before Council I thought it might be helpful if I very briefly stated the position of the bankruptcy legislation in the Colony, past and present. The first

[Mr. Foster Sutton]
bankruptcy law to be passed in the Colony was Ordinance No. 1 of 1926. That was repealed by Ordinance No. 32 of 1930 which is the Ordinance that the present Bill seeks to amend. Prior to these two enactments bankruptcy here was governed by the Indian Provincial Insolvency Act which was applied to the Colony by the Application Ordinance of 1910. The 1930 Ordinance was to a great extent taken from the Bankruptcy Act of the United Kingdom of 1914. Since 1930 it has been found that there are in the principal ordinance of 1930 a large number of loopholes which, probably not unnaturally, have been taken full advantage of by dishonest debtors in an endeavour to defeat the rights of their creditors. The tightening up of the existing legislation was first agitated for in this Council by the hon. Member for Nairobi South, and his agitation was followed up by very strong and cogent representations which were made by the Chambers of Commerce. The Bill under consideration now is an endeavour by the Government to close some of the loopholes which at present exist. I have no doubt that some hon. members may feel that the Government in this amending Bill has not gone far enough, but Government does not regard this as the final answer to the matter and I have no doubt later on it will be considered necessary to completely revise the bankruptcy legislation by bringing the whole of our law up to date. In any event the present measure does go some considerable distance in filling the gaps which are now known to exist.

Turning to the Bill, clause 3 deals with the position of a debtor in respect of whom a receiving order has been made. Under the principal ordinance a debtor is allowed 14 days in which to file his statement of affairs, irrespective as to whether the receiving order has been made on his petition or on the petition of his creditors. In most bankruptcy legislation it has been found necessary and desirable to limit the time in which a debtor is allowed to file his statement of affairs, and I think the reasons for such limitation are obvious. Take the case of a petition by the creditors. The longer the time allowed to the debtor in which to file his statement of affairs the more opportunity is given to him to remove his goods, and in other ways plan to defeat the rights of his creditors. Clause 3 seeks to bring the principal law into line with the legislation now in existence in the United Kingdom, by cutting down the period allowed to the debtor in which he is compelled to file his statement of affairs with the Official Receiver, if it is on his own petition, to three days; if it is on the petition of his creditors, to seven days. As I said, those are the time limits imposed by the legislation now in force in the United Kingdom, and in case hon. members feel that any hardship may be created by such a short time limit I would remind them that under section 16 of the principal ordinance the court has the power to extend the time on special cause being shown. That being so, if there is any real and genuine cause for extending the time, the court has full powers to do so. Clause 5 seeks to introduce a degree of flexibility which does not at present exist. Clause 6 is a consequential amendment to clause 5, and clause 7 is a clause which I venture to think is almost essential in the interests of creditors. That clause seeks to compel every debtor residing in the Colony against whom any order of adjudication is made to keep the case may be, informed every six months Official Receiver or the trustee, as the as to his place of abode, and a return, verified by an affidavit, giving full particulars as to employment, salary, earnings and other income during the preceding six months. The object of that is, I think, obvious. If the Official Receiver or the trustee is in possession of those facts it may well be that it will place him in a position to go to the court and obtain an order from the court for a payment by that debtor to the creditors. Without such a provision, a debtor disappears and nobody knows where he is or what sort of income he is in receipt of.

Clause 8 seeks to enable the court in any case where an order of adjudication is made after the 1st June, 1944, to specify the period in which a bankrupt shall apply for his discharge, and it further provides that such application shall not be heard until the public examination of the bankrupt is concluded. The proviso to this clause seeks to compel any debtor who has been adjudicated a bankrupt before the 1st June, 1944, to apply for his discharge within three years from that date. I am quite sure members of the business community will

[Mr. Foster Sutton]

agree that such provision is essential. In the past, debtors who have been adjudicated bankrupt were not compelled to apply for their discharge; they could leave their application as long as they liked. In the process of time creditors disappeared or died, everything became obscure, and when ultimately the debtor saw fit to go to the court and apply for his discharge, there being no opposition, the court was almost bound to grant that discharge. This clause seeks, as I have already said, to compel the debtor to apply for his discharge within a limited time and no order, as I pointed out, can be made by the court until the public examination of the bankrupt is included. That gives his creditors ample opportunity of examining him and of presenting any objections they may have to such an application. Clause 9 seeks to add a new section to be numbered 29A, which provides that, if the debtor does not appear on the day fixed for the hearing of his application or if he fails to apply for his discharge, the order of adjudication shall be annulled, in which event the provisions of sub-section (2) of section 31 of the principal ordinance apply. That sub-section enables the court to make a vesting order in respect of the debtor's property. This is also considered a desirable provision in the interests and protection of creditors.

Clause 10 seeks to add another sub-section to section 38 of the principal ordinance, which has as its object the prevention of a debtor defeating the rights of his creditors by showing in his books sums of money due to relatives by way of unpaid wages and loans. I have no doubt that hon. members in this Council who are engaged in commerce have often in their experience come across book debts of this kind. It is common practice here, I am told, and certainly in my own knowledge it is common practice elsewhere in the world. The annoying part about that position is this, that up to a thousand shillings debts due for wages have preference over debts due to other creditors, and even if the amounts are over a thousand shillings they rank equally for payment with the debts of other creditors. Such a provision could not possibly, in my submission, work any hardship, because if the relative is employed by a debtor he can easily prevent any hardship to the relative by the simple expedient of paying the wages due to the relative as and when they become due. The only hardship that might be created is in the case of loans. Well, the debtor should be careful about borrowing from relatives. What this amendment really does is to place relatives, which incidentally are defined in clause 2 of the Bill, in the same position as the debtor's wife is at the present time. At the present time it is a fruitful source of evasion. Clause 11 seeks to amend sub-section (2) of section 40 of the principal Ordinance. Under that section which we are now seeking to amend, the debtor's clothes and those of his family and the tools of his trade up to the value of Sh. 300 are exempted from being taken into consideration in the bankruptcy, but under the existing law the court has power to increase the amount to Sh. 800. It is felt that that amount is far too large, and all that clause 11 seeks to do is to cut out the power of the court to increase the amount which the debtor may retain. It cuts it out, and instead of the court being able to make the amount Sh. 800 it confines the amount to £15, which is £5 lower than the amount allowed to a debtor in the United Kingdom. In the United Kingdom a bankrupt is allowed to keep his clothing and that of his family and the tools of his trade up to the value of £20. I have not been able to find out why it was thought necessary when the principal ordinance was passed to vary the provision that was then in force in the United Kingdom.

Clause 12 seeks to create a bankruptcy contingency fund and a board to administer the fund, and that fund will consist of indivisible and unclaimed balances. Clause 13 is consequential to the amendment of section 21 (4). Clause 14 seeks to amend section 134 of the principal ordinance by making the following acts offences which may be punished by imprisonment. The first one is if he has continued to trade after knowing himself to be insolvent. At the present time it is no offence. The second is if, within six months before the making of a receiving order, he sells goods at a price lower than cost, unless he proves that he had no intention to defraud his creditors. The third, if he has contracted any debt provable in the bankruptcy without having at the time of contracting it any reasonable or probable ground of expectation (proof whereof shall lie on him) of being able to pay it. If I may respectfully say so, it seems to me that those acts obviously should be made offences.

[Mr. Foster Sutton]

Section 134 of the principal ordinance sets out a number of acts which are punishable offences under the law, and clause 14 seeks to make in all those offences, except three of them, the person committing them liable to imprisonment for three years instead of two years. There are three offences which render a person liable to five years imprisonment, and they remain the same. Some hon. members may feel that clause 17 is not going to do much good, but I have had an opportunity of discussing the matter with the Official Receiver, and he informs me that he thinks it would have the effect of strengthening his hand. At the present time he is only allowed when making inquiries to go back two years; he cannot inquire into anything that happens beyond that period. This amendment seeks to increase the period to three years, and I understand that if in the past he had been able to go a little further back he would have been able to improve the position of creditors. Clause 20 is, I think hon. members will agree, a provision that is essential. Under the existing law, if a bankruptcy offence is committed, we can only proceed against the bankrupt within one year from the time that the offence is discovered. If it is a year and a day he gets off scot free, it does not matter how serious the bankruptcy offence he has committed may be or how many he has committed. If he chooses to make himself scarce for something over a year, he can leave the Colony, he can then come back and, as I have already stated, irrespective of the seriousness of the bankruptcy offence committed, it is impossible to proceed against him. This amendment seeks to remove that time limit and to make it possible to proceed against a bankrupt at any date after the offence has been committed. In the committee stage I propose to move the deletion of certain of the clauses now included in the Bill, with which I have not dealt, as they are, I think, unnecessary. Clause 20 of the Bill, hon. members will see, is exactly the same as sub-section (1) of the existing section 143. It provides that any person guilty of an offence under the Ordinance in respect of which no special penalty is imposed elsewhere in the Ordinance shall be liable on conviction to imprisonment for a period not exceeding two years. That is a general penalty clause, and the only amendment to section 143 is the deletion of the proviso to sub-section (1) and the deletion of sub-section (2). In the Bill there are clauses which impose the same penalty, and I do not see the point of including them in an amending measure of this nature, if the provision is the same as in the general penalty clause. In conclusion, I should like to say that no person who is an honest trader, however unfortunate he may be in his trading activities, has anything to fear from the proposed amendments. On the other hand, these amendments undoubtedly are a menace to debtors who set out to defraud their creditors.

MR. BROWN seconded.

MR. VINCENT: Your Honour, I was very interested, and very pleased, to hear in the first place the hon. and learned Attorney General give us an assurance, and a voluntary assurance, that Government are prepared to proceed much further than the amending bill before us, as soon as time permits. I would like to congratulate Government on bringing these amendments forward, and I should also like to congratulate the Chamber of Commerce and the Official Receiver for the enormous amount of work and collaboration which has arisen as a result of this endeavour to close this very sad gap in our commercial law. I do not like repeating the obvious, but our present law as it stands is ludicrous and an encouragement to dishonest traders who rob the community, instead of being a deterrent in order to keep those inclined to be wayward on the straight and narrow path. But one of the worst features of our present law is that it has encouraged a most unsatisfactory position as between these territories, and I say these territories advisedly, and London. Prior to the war, among many of the great buying houses in London our credit name was, I think, the lowest of practically any colony. I will go so far as to say without fear of contradiction, that there were frauds which were deliberate and calculated upon the good old-fashioned trusting London merchants. It has always been my endeavour to try and do something to prevent a successful

[Mr. Vincent]

bankrupt having some special social distinction even greater than "Failed B.A.". I asked a broker the other day: "Do you know so and so?" "Oh, yes, he very clever man. He had very good bankruptcy and made a lot of money". While such kudos attaches to illegal extortion from decent members of the community our commercial morals cannot be very high and our law must be very bad.

I am not going to attempt to go into the details of the Bill. As a matter of fact, as I see it there is only one small amendment I should like to propose to make it a little bit more specific, but I do want to stress a very pathetic portion of this Bill, to which I take the greatest possible exception, the second paragraph of the "Objects and Reasons". In going through the Chamber of Commerce files kindly loaned me for the purpose of refreshing my memory on the subject, I was rather alarmed to read that the Official Receivers of the adjoining territories did not intend, according to the information received, to alter or amend their legislation during the war. Well, I do not want to start an inter-territorial conflict, but I cannot believe that the law officers of Tanganyika and Uganda are anywhere near as hard pressed as our own law officers, and I believe that can be the only rational reason why this decision should have been made by the adjoining territories. The difficulties of our Official Receiver are great enough as it is, but if we are going to just let people slip across the border, across this imaginary line which divides these territories, and just evade our laws which we spend some time in putting into force, I believe—and perhaps the hon. and learned Attorney General will correct me—the question of extradition may enter into it. In any case, a great deal of unnecessary time and trouble will have to be used. I think it is disgraceful, and I do hope we can have an assurance from Government that the Bill as passed, if it be passed, by this Council will be sent to the other territories asking them in the interests of the honest people in our respective territories to pass similar legislation on identical lines as soon as possible. I hope that, if for any reason this is refused, this Council shall be made aware of it, but I hope that I shall be saved the trouble, and this Council the time, of dealing with a motion asking the Secretary of State to instruct that similar legislation be brought in in the adjoining territories. I hope that in the working of this amending bill we shall not wait until after the war to consider any portion which is necessary or add to it in order to fulfil our object. I believe our bankruptcy law is just as important as our criminal laws and, if I may say so, our income tax laws, and I hope the hon. and learned Attorney General will not be tempted to wait until we can get a complete bill before any amendments are brought into this Council but will watch the working of this amending measure and, as soon as he spots any hole in the bucket we can close it up immediately.

MR. KOHLI: Your Honour, this Bill is brought, so far as I can see, for two reasons: one, for more efficient administration of the principal ordinance, and two, to prevent evasions on the part of debtors. As far as the tightening up of the bankruptcy laws is concerned, we are all in favour of it, we welcome it, subject to some remarks which I have to make. One reason why the principal ordinance did not work well was because not enough use of it was made by the department concerned. The debtors were not deterred, sufficient precautions were not taken against them under section 134. I know of at least one case in which leave of the court was obtained to prosecute a debtor on several counts, but still no prosecution was taken against him. Ultimately, when the debtor applied for his discharge and the reason why no prosecution was taken was asked, the answer was given that the clerk concerned in the department was in India. It is no use increasing the punishment if the department is not going to make use of them, that is to prevent dishonest debtors. But I see in clause 10 that even honest relatives are going to suffer through financing dishonest relatives. Under this clause, as far as I can see, even if relatives trust their money to a debtor, they will also be affected. Under section 40 (1) trust moneys are exempt, and I would like to know what will be the position of the trust money of a relative? I hope it is known that all these small traders, who are popularly known as "duka wallahs", are financed mostly by relatives. If this clause remains as it is, one effect will be that there will be a run by relatives on these duka wallahs to withdraw their finance, and that will

[Mr. Kohli]

result in more bankruptcies. I would like to see in select committee that definition of relatives changed to exclude certain relatives, or this clause so amended so that honest relatives are not precluded from investing or financing money or helping their relatives. In other words, something like the onus is put on those relatives to prove that it was an honest transaction, and if they succeed in that they should come in as other creditors.

I would like to make some remarks on clause 9. If the order is annulled and a debtor is arrested under the civil procedure, will he again be able to make application for his insolvency, because he at present has got the right to intimate to the court that he intends to file his petition in bankruptcy? Perhaps I did not catch the remarks of the hon. mover about clause 12, under which the Bankruptcy Contingency Fund is created. Will the money that will go to that fund affect the creditors, will it be in any way to the detriment of the interests of creditors? If it is not I certainly accept it. Perhaps in the past prosecutions were not taken for lack of funds.

MRS. WATKINS: Your Honour, when these bills come before Council I generally submit them to my legal friends in the constituency so as to get more or less of a report on anything that ought to be said, and one of the largest firms in town has stated that they think that it is a very cumbersome and unwieldy ordinance and that it ought to be entirely redrafted. I therefore heartily welcome the statement of the hon. Attorney General when he said that this is not the final touch but that they are going to do quite a lot more. I think it ranks with one or two of the other bills—or rather other ordinances—that want entire reorganization, and in this case they particularly suggest that we should be much more in line if we adopted the one that has been in force for some time in South Africa as being far more suitable to this country. I should like to support for a moment what the hon. Indian representative said about bankruptcies and relatives, but it does not by any means only affect the duka wallah; it affects the farmers. I am a farmer. If and when I go bankrupt—for I may be nearing that stage!—the first person it would be proper for me to go to would be my brother or some other relative. I should hate to do so if I knew I should be involving him in a debt which I might not be able to cover and which would not even rank with other debts, yet if I could go and get some help from him it would probably be the saving of a bankruptcy, and for that reason I think it should be incumbent upon the court and not upon legislation to decide when relatives should come into it and when they should not, when they should rank with the other creditors. I should not ask that preference should be given to relatives, but I do think that in the normal state of affairs a relative is the normal person to go to for an advance, especially—and I speak for my sex, for there are such things as honest bankrupts, especially among farmers—when the protection of markets that we now enjoy is taken off, and especially among a farmer's dependants, when the farmer himself dies. For that reason I very much hope that the court will be allowed to decide whether the relative should rank among the other creditors or not.

There is another point on which I was not asked to speak, but which I should like to put up with all the personal vehemence I can, and that is that I consider £15 allowance for your working tools, for your clothes and your family's clothes, without any option for the court to allow up to £40 is in no way enough. I submit it might be made at the discretion of the court and based on the size of the family, but to allow anyone with a family not even a change of clothes, to allow none but the cheapest tools—no carpenter could go to work to-day without tools costing at least £15, let alone his clothes. He could not arrive at his work in a completely nude state because he would not get employment, but might even get arrested! Apparently we are not even going to give the court jurisdiction as to what a man shall be allowed to keep. I think this is rather strange, and I cannot see why the hon. Attorney General so mistrusts the court. I should have thought the court the proper authority to decide each individual case; it is not for us members here to decide. I should say, as you stand here, that each one of you has cost at least £15 to clothe, even in the one suit of clothes you have now got on and the one pair of shoes, etc. So if you are going to deduct everything else beyond £15 from the whole

[Mrs. Watkins]

family and not enable the court to allow anything more at all, you are going to have to lighten your laws in some way about indecency. Also it means that when a man becomes bankrupt he is going to be very unpleasant because he cannot even send his clothes to the laundry! We have heard to-day of other legislation we are putting through. It sounds ludicrous, and I submit to you gentlemen that if you can seriously pass that, your sense of humour is entirely absent. You could not possibly allow that to stand or allow the Attorney General to get away with a proposal like that. After all, bankrupts are not clad only in one shirt and one pair of shorts, and all families are not just one size—an Indian may possibly have five or six children. I should like to make a very strong personal protest against that limitation of £15 by law, and I should like to suggest as an amendment that the whole matter be left in the hands of the court up to £100, because it depends entirely on the tools the man needs, on the size of the family and on what it is necessary to leave to him.

MR. AMIN: Your Honour, there are several aspects of this Bill which need amendment, not at the committee stage in my opinion but in a select committee. The reasons are many. Already a few of them have been touched on by hon. members. Clause 2 provides a definition of a relative by consanguinity affinity, and I think the definition is unnecessarily wide. I would from my own experience of bankrupts and business affairs in Kenya suggest the only people who need be included in this provision are fathers, mother, son, daughter, and brother, to prevent them standing in the shoes of ordinary creditors and getting away with it. But there is one aspect that the hon. and learned Attorney General has perhaps not been able to appreciate, and that is that all creditors who are relatives under the clause are not creditors because the debtor chose them to be creditors. There are among certain sections of the community here social obligations which require that, if a lady marries away from her family, all her dowry and small savings are deposited in the parental family. If a sister or a father's sister, having some money, wants it to be deposited with a business man, then I can assure everybody here that it cannot be avoided, and it would be wrong to avoid it because among them there is no custom and they are not sufficiently educated to operate postal savings accounts or bank saving accounts of their own. The money is deposited in this way. It must be protected as moneys deposited by the creditors. There is another reason. An ordinary business creditor who becomes a creditor with a prospect of earning profits on his business should not be preferred to a depositor who is a relative and cannot find any more trustworthy person than he or she knows the relative to be. Such a relative must have as much protection as the business man who is earning a profit out of his business with a business debtor. These are things I am quite sure are worthy of consideration, and I am quite sure can be considered properly in a select committee.

There is one clause which other hon. members have not yet noticed. That is clause 5. That clause provides that in the case of an Official Receiver being appointed a trustee, there is no necessity for a committee of inspection unless he so desires. Having been a lawyer for some years here I suggest it should not be within the discretion of the Official Receiver who becomes a trustee to say whether he wants a committee of inspection of creditors or not. The interests concerned, that is those of the creditors, should have that right even if the Official Receiver is the trustee. I am quite sure the desire being only to inflict some heavier sentence on debtors. I hope that this will be taken into consideration, and creditors' rights are not curtailed. Clause 9 has already been referred to by my hon. and learned friend Mr. Kohli. I would only add that the period provided is too short. If application is not made within this period, to annul adjudication would be repeating the process of bankruptcy of every man. Because once the court annuls an order for adjudication then I think he can go to court again and ask for re-adjudication because there is nothing to prevent it. My submission is that there is no necessity for making it so strict. You may keep the period as it is, but do not impose on the courts the duty that they shall annul their adjudication. I would suggest that the way we should word that is that the court might annul the adjudication and

[Mr. Amin]

not that they shall. There are one or two small points in regard to clause 3 and its sub-clauses. The hon. Attorney General mentioned that in England the period provided for a debtor to file his statement of affairs is only three days, and in respect of the petition of the creditors, only seven days. I should like to mention this, that in respect of those who do not speak or write the English language, it would be impossible to prepare the statement within a few days, even if a lawyer is able to do so, and just to rely on the court that they will have the right to extend the period is to allow lawyers to make more money because of adjournments. I am sure my other learned friends will not object to this tendency to a spirit of self-denial on my part!

I think these points are worthy of consideration by the select committee and not at the committee stage of the whole Council.

MR. NICOL (Mombasa): Your Honour, first I wish to say that I wholeheartedly support this Bill, and as a matter of fact I did press as far back as 1938 for something to be done to amend this Bankruptcy Ordinance. Of course, we fully realize that the Bill is intended to get hold of the dishonest bankrupt, and the hon. mover said that the honest man need not be frightened by the clauses of this Bill. I think we can all agree with that and accept it, but this Bill does not go far enough by a long way, and I am very glad to learn from the hon. mover that the Government do not consider this to be the final answer. For example, as I have said, if we are getting after the dishonest man and this Bill is to be a protection to the honest trader, I submit that in flagrant cases of bankruptcy persons who origin is other than East Africa should be deported. That was a recommendation put up, I know, originally by the Mombasa Chamber of Commerce, but it was not accepted, and I should like note made that in any subsequent bill that comes forward provision should be made for that, even if when this Bill goes to select committee we cannot put it in that. There was one point which the hon. Member for Nairobi South mentioned and on which I should like to support him, and that is when I read the "Objects and Reasons" and noted that the Governments of Uganda and Tanganyika had indicated that they would have no objection to similar legislation being introduced there, I thought it would be automatic that when this Bill had gone through here we were going to have the same bill brought in in the adjoining territories. I think it is absolutely essential that these laws are the same for all three territories, and I was horrified when my hon. friend the Member for Nairobi South said that the Official Receivers in those territories were going to do nothing until the end of the war. I do want to register a very strong protest, and I hope that this Government will make the strongest representations so as to have the laws made uniform.

Coming to the points of the Bill, under clause 2 I was not quite certain when the hon. mover referred to this clause whether among relatives a wife was included. I did not quite hear whether the hon. mover did refer to wife or not?

MR. FOSTER SUTTON: On a point of explanation, the wife is in the same position as this clause seeks to put other relatives under existing legislation.

MR. NICOL: Thank you, sir. It has been suggested by the hon. Member for Kiambu that perhaps it would cause a certain amount of hardship to a person, say a farmer, who was in difficulties and wanted to go to a relative, but there I suggest that this particular clause is definitely aimed at the dishonest trader and not at the honest person. If, for example, a farmer was in difficulties and wanted to go to a relative for money, presumably he would put a statement of his affairs in front of the relative and if that statement revealed that he was up to the eyes in debt and there was no hope at all, the relative would be sensible and not advance the money. I am all in favour of clause 10 and I think that clause 2 also is an extraordinarily good one. Coming to clause 3. I had first thought that perhaps three days was a bit on the short side for the debtor who was petitioning to become bankrupt and seven for the creditors, but having heard the hon. mover say that the court has powers to extend this period within limits I am prepared to accept it. In regard to the man who petitions on his own, then presumably he would have taken steps to

[Mr. Nicol]

have drawn up a statement of his affairs, and it should not be difficult for him to put that in within the prescribed time.

I heartily welcome clause 7, which I think is an excellent clause. I should like to know whether there is any possibility of making that clause perhaps a little bit safer by not allowing the bankrupt to leave the territory during this time. We do not want him to slip across to Tanganyika or Uganda and eventually out of the country, because he could easily do that. After having once reported he then slides away the next day. In regard to the point made by the hon. Member for Kiambu on clause 11, in view of the fact that, if I have understood my hon. friend correctly, he said that the amount allowed at home was £20—Sh. 400—I would be prepared to go up to the home amount, but I do not like the suggestion that it should be extended to £100 at the discretion of the court. In regard to clause 17, I should like to know whether the Official Receiver would be in a position now to re-open some of these cases where he has found he has been handicapped in the past, because if we could make this retroactive it would be a very good thing. With these remarks I heartily support the Bill, and look forward to seeing the measures still more tightened up in, I hope, the not too distant future.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 18th April, 1944.

Tuesday, 18th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 18th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

MINUTES

The minutes of the meeting of the 13th April, 1944, were confirmed.

PAPERS LAID

MR. TESTER laid Standing Finance Committee Reports on Schedules of Additional Provision Nos. 4 and 5 of 1943 and No. 1 of 1944, and gave verbal notice to move their adoption at a later stage.

NOTICE OF MOTION

MR. WRIGHT gave notice of the following motion under Rule 34: That the following proviso be added to the motion passed last week appointing a select committee on the Land Control Bill: "Provided that, in the unlikely event of Col. Kirkwood returning to Kenya prior to the termination of the Select Committee's deliberations—which would entail the Acting Member for the Trans Nzoia relinquishing his seat in Council and on the Select Committee—this Council desires that the hon. Member for the Rift Valley should take the place of Major Keyser, in view of his having had the opportunity of listening to and participating in this debate."

ORAL ANSWERS TO QUESTIONS

No. 25—Agricultural and Nutrition Policy

MR. BEECHER:

Arising out of Chapter X of the Food Shortage Commission of Inquiry Report, and in particular out of Recommendations 21 and 24 of that report on agricultural policy and nutrition respectively and in view of the British Government's acceptance of the findings of the Hot Springs Conference, will Government please make a statement of its attitude towards these recommendations, of its policy in regard to the complementary improvement of African farming and African nutrition based on the most up-to-date

[Mr. Beecher]

findings on this subject, and of its plans for putting that policy into effect?

CHIEF NATIVE COMMISSIONER (Mr. Marchant): (*a*) The Government has accepted recommendations Nos. 21 and 24 of the Food Shortage Commission of Inquiry; in this connexion the hon. member's attention is invited to the documents which were laid on the table on the 13th of April dealing with the resolutions of the United Nations' Conference on Food and Agriculture held at Hot Springs in May and June, 1943.

(*b*) The Government's policy with regard to agricultural practice has been to encourage, as far as possible, the most modern methods, and in Kenya, as in other parts of the world, it has come more and more to be recognized that the types of food which are required are in many cases those which are produced by the methods of farming best calculated to maintain the fertility of the soil. As the hon. member is aware a comprehensive plan for soil conservation and improvement in farming practices in the native areas (and for soil conservation in the settled areas) has been accepted by the Secretary of State as suitable for assistance from the Colonial Development and Welfare Vote, and steps will be taken to implement the plan as soon as circumstances permit. Moreover, financial assistance has been promised from the Colonial Development and Welfare Vote for the establishment of Agricultural Training Schools in the Central and Nyanza Provinces for the training of African staff.

(*c*) The Government realizes the wide implications of the resolutions of the United Nations Conference on Food and Agriculture, and it is for this reason, coupled with the recognized necessity of improving methods of agriculture in the native areas, that it proposes to implement as soon as possible the scheme referred to above for which assistance from the Colonial Welfare and Development Vote has been provided. The Government also realizes the close connexion between nutrition and agriculture, and the Government departments most closely concerned have given much thought to the problem recently. At present the Native Welfare Committee has under consideration the best methods of implementing Recommendations 21 and 24 of the Food Shortage Commission of Inquiry Report.

No. 33—Tribal Police

MAJOR KEYSER (Trans Nzoia):

(*a*) Will Government state whether the experiment of substituting the Tribal Police by the Kenya Police in certain Native Reserves is considered to have been successful?

(*b*) If the answer is in the affirmative is it Government's intention to extend this policy to all Native Reserves and when?

MR. MARCHANT: (*a*) The experiment referred to was instituted only recently in certain native areas and it is not yet possible to state whether it has been completely successful or not.

(*b*) The question of extension will depend upon the success of the experiment.

No. 36—Asian Local Civil Service

MR. AMIN:

If it is a fact that the Kenya European civil servants, who, according to their terms of service, were not entitled to free Government quarters or house allowance, have recently been granted assistance towards house allowance as from 1st January, 1944, is the Government aware of the fact that their Asian employees serving under Asian Local Civil Service terms are also suffering the same kind of difficulties in respect of housing as their European colleagues and will the Government take steps to grant assistance to their Asian employees serving under Asian Local Civil Service terms?

MR. TESTER: The answer to the first part of the question is in the affirmative: in regard to the second part of the question the Government already has the matter under examination, and a decision should be reached shortly.

No. 38—Butter Rationing

MRS. WATKINS:

Is Government aware that Kenya butter is unrationed in Uganda? Would it not be possible to adjust our export to bring Uganda butter consumption into line with that in Kenya? If it is considered that the saving would be

[Mrs. Watkins]
infinitesimal in relation to our larger population, would it not be possible to apply the extra amount to the schools in Kenya which cater for the school children of all three territories, and whose food problems are at the moment considerable?

MR. TESTER: (1) Coupon rationing of butter on the Kenya scale was introduced into Uganda in July, 1943, but was later abandoned, with the agreement of the East African Production and Supply Council. Control of distribution is now effected in Uganda by rationing supplies to retailers. A bulk allocation of Kenya butter is now made to Uganda based on population statistics and calculated on the same ration scale as applies in Kenya, local production of Uganda being taken into account.

(2) The export of Kenya butter to Uganda is accordingly in line with the rationing of butter in Kenya and when a reduction in the individual ration in Kenya was made a reduction in the bulk export to Uganda was made.

(3) In view of the replies to the first two parts of the question this part does not arise.

MRS. WATKINS: Arising out of that answer, a friend in Uganda assures me that they are getting 2 and 3 lb. per head per week?

MR. TESTER: I think the explanation of that is that individual rationing is not carried out in Uganda.

GOVERNMENT STAFF PROVIDENT FUND BILL

SELECT COMMITTEE'S REPORT

MR. BROWN: Your Honour, I beg to move: That the Majority Report of the Select Committee appointed to consider the provisions of the Government Staff Provident Fund Bill be adopted with the following amendments:—

(*a*) by deleting item (*a*) of paragraph 4 thereof and by substituting the following paragraph therefor:—

"(*a*) by inserting the words 'discharging the duties of' between the words 'of' and 'his' in the second and third lines of proviso (*c*) of sub-clause (1) thereof; and by inserting after the word 'depositor' in the first line of sub-clause (2) thereof the words 'or of a person who has transferred from the service to any approved employment';

(*b*) by the insertion of the figure and brackets "(1)" between the figures "15" and the word "On" in line one of the proposed new clause 15 in paragraph 8 thereof;

(*c*) by the addition of the following sub-clause to the proposed new clause 15 in paragraph 8 thereof:—

"(2) When the Governor has directed, by notice in the Gazette, under section 2 of the Ordinance, that any person or class of persons shall be a member or members of the Government staff, there shall, if the Governor so directs, be paid to the Fund from the general revenue of the Colony to the credit of every person to whom such notice applies, and who becomes a depositor, such sum as would have been paid to the Fund from the general revenue by way of bonus in respect of each such depositor under section 7 of this Ordinance, if this Ordinance had been in force and such direction had been given on the 1st day of July, 1941:

Provided that the Governor may, in the case of any such person or class of persons, by notice in the Gazette, direct that the sum that shall be paid to the Fund under the provisions of this sub-section shall be such sum as would have been paid if the direction making such person or class of persons a member or members of the Government staff had been given on such date, being subsequent to the 1st day of July, 1941, as the Governor may determine.";

and

(*d*) that item (*a*) of paragraph 10 thereof be amended by deleting the words "first day of July, 1941, in the case of a member of the African Civil Service, prior to the date on which he first became a depositor in the case of a member of the Government staff who is not a member of the African Civil Service" and substituting therefor the words "the date from which the sum payable to his credit, by virtue of the provisions of section 15 of this Ordinance, was paid to the Fund, or

[Mr. Brown]
if no such sum was paid to his credit, prior to the date upon which by virtue of the provisions of this Ordinance he is deemed to have become a depositor."

At the first meeting of the select committee we devoted a good deal of time to the point which has been made by the hon. Member for Kiambu about what is to happen to a depositor's money when he dies. She had objected to the provision whereby the district commissioner or some other appropriate local authority was to distribute the money in accordance with native law and custom, because she said that would not be fair on the widow whose position under native law and custom she described as "just a bit of property". We were unanimously in support of her principles, but we felt that this Bill was not the place to give effect to them, and we agreed that that would be more properly dealt with by a Succession Ordinance dealing with African succession, which we all hoped would be on the statute book at an early date. Meanwhile, we decided to recommend that the discretion of the district commissioner should be unfettered, and we recommend the deletion of the reference to native law and custom and the addition of a proviso whereby, if there is a law regulating succession in the case of any race or community to which the depositor belongs, the money shall be distributed in accordance with that law. That meets the case of Arab members and all Mohammedan members, and it will meet the case of African members when a Succession Law is on the statute book. Apart from that, we make two recommendations. The first deals with the point which was made by the hon. member Mr. Beecher with regard to reciprocity with other funds of a similar nature. We recommend that where a depositor leaves the Government service for other approved service—service approved by the Governor—where there is an approved fund, the depositor shall not take with him the moneys standing to his credit in our fund, but they will remain in our fund drawing interest until such time as he leaves that other approved service. We differentiate, however, between the rate of interest which will be drawn on the money of such a depositor—the depositor who has left Government service to go to approved service—and the money of a depositor who remains in the Government service. In the case of a depositor who remains in the Government service, we recommend that the rate of interest on his money should be guaranteed at not less than 3 per cent, but in the case of a depositor who leaves the Government service to go to other approved service we recommend that there should be no such guarantee, but that the rate of interest on his money shall be at such rate as is earned by the fund.

Our third recommendation is the subject of controversy. We recommend that the Government contributions—"bonuses" as they are called in clause 7—should be made retroactive to the 1st July, 1941, without any corresponding contributions from the staff. The members who signed the minority report recommend that these Government contributions should be made retroactive at least to the 1st January, 1938, and preferably to the 25th May, 1936. The significance of those two dates is that on the 25th May, 1936, the Pim Report was published, in which Sir Alan Pim said that the "time certainly seems to have come for a decision on the question of a pension or provident fund for the African staff, and *prima facie* a provident fund seems the best solution". The significance of the date, the 1st January, 1938, is that on or about that date the Government, in commenting on the Pim Report—this particular section in the Pim Report—said "This question is under active consideration, but it has not yet been found posible to reach a decision". In the debate on the second reading the hon. member Mr. Beecher made reference to a promise which he said had been made by the Secretariat in, I think, the year 1927, and I am very anxious to deal with that because it was a matter which exercised the select committee a good deal. It was first represented to us that this implied promise—there was never any question of it being a legal promise—that this implied promise was contained in the circular which accompanied the memorandum on the Arab and African clerical service which was inaugurated in 1937, and we were referred to this passage: "It will be observed that no mention is made in the memorandum in regard to pensions and gratuities. The question is at present under review and a decision so far as it

[Mr. Brown]

affects this service will be given at a later date". I think we most of us felt that that certainly did not contain any sort of promise, implied or otherwise. But it has been said that an implied promise could be found in the subsequent correspondence, and we felt that that having been said, it was necessary to adjourn the select committee in order that the subsequent correspondence might be examined and investigated as to whether there was any sort of promise contained in that correspondence. As a result of that examination the contention that Government had given an implied promise to the staff that a provident fund would be introduced was, very wisely, if I may say so, abandoned. But the contention that this retroactivity should go back to the year 1936 was not abandoned, and the claim now is upon the ground—if I may say so, the much more strong ground—of the delay which the Government has shown in reaching a decision on this matter. But it is impossible to say that if Government had come to a decision in the year 1936, or in the year 1938 (as in my view they should have done, one way or the other, either "yes, we will establish a provident fund" or "no, we will not, because the conditions and the time are not ripe"), it is impossible to say that if they had come to a decision at that time, the decision would have been to establish a provident fund. But it can be said with reasonable assurance that if, on the 1st July, 1941, which was 2½ months after the Arab and African Terms of Service Committee had reported, Government had then come to a decision (as in my opinion they should have done), the decision would then have been to establish a provident fund. That is why the signatories of the majority report favour, and recommend, this retroactivity to 1st July, 1941, but they see no justification, whatever the procrastination or delay, for going back to 1936 or 1938. Logically speaking, it may be said that it is illogical to give any retroactive benefits to members of a Service which was not inaugurated until 1st January, 1943, but however strong the logical argument against giving any retroactive benefits at all may be we, the majority on the select committee, have recommended that this should go back to 1st July, 1941, for the reasons which I have stated.

In the motion there are certain amendments to our recommended clause 15. Clause 15 is the one we recommended should be inserted in the Bill to provide for these retroactive payments back to 1st July, 1941, and in clause 15 as it is drafted in the majority report we have only given these retroactive payments to members of the African Civil Service. By the amendments which are set out in the motion, the holders of the gazetted posts under clause 2 of the Bill will also come within the scope of this clause providing for these retroactive payments. In the case of members of the African Civil Service we have made the granting of these retroactive payments to the 1st July, 1941, mandatory. In the case of holders of gazetted posts it is obviously impossible to make those payments back to 1st July, 1941, in every case, because a post might not be gazetted until long after the coming into operation of the ordinance, and obviously we could not make retroactive payments to the holders of those posts back to 1st July, 1941. So a measure of flexibility is introduced in the case of those members in the gazetted posts making it incumbent to make these payments retroactive to such date as the Governor may determine.

MR. FOSTER SUTTON seconded.

MR. BEECHER: Sir, I rise to move the amendment to the motion to the following effect: That the motion before Council be amended by the addition of the following words: "Save that the date to which the retrospective contributions payable under new clause 15 be made shall be the first day of June, 1936 (being the first day of the month following the submission of Sir Alan Pim's report), and that new clause 15 be amended accordingly."

It would be improper for me to go over the whole ground that was covered in the original debate once again, and, in view of the fact that the hon. mover has already made considerable reference to the grounds on which the minority report is submitted, he has freed me of a certain major responsibility in speaking to that minority report. However, I would ask your indulgence and that of Council in pointing out as emphatically as I am able that, unless something along the lines of the minority report is accepted by this Council and by Government, yet a further grievance will be added to those

[Mr. Beecher]

which already exist in the African Service, and the sense of frustration which at present is inhibiting their best service will be increased. I have endeavoured to call the attention of Government to that sense of frustration in a number of questions on the Arab and African Terms of Service, and the replies which have been given have, in my humble opinion, been most unsatisfactory, if I am allowed to say so. But if one may confine one's remarks solely to the minority report, I will take up some of the points of the hon. mover in which, as I understood them, he seemed to cast some slight on my right—possibly on my honesty—in submitting that there was a case for retroactive consideration.

MR. BROWN: On a point of explanation, I certainly did not intend to cast any slight whatever on the hon. member, and most certainly none on his honesty. I was merely referring to points he used in the debate on the second reading, which I thought necessary to make the position quite clear.

MR. BEECHER: Thank you. I should like, however, to continue my remarks with all that the hon. mover has so very kindly said clearly in my mind. When I spoke at the first meeting of the select committee, reiterating my remarks to the effect that there was a consideration which should be given to something which was interpreted as an implied promise in 1927, I became very painfully aware of the fact that those who drafted that circular on the one hand and the Africans who read it on the other write and speak two different languages, because that circular, in spite of what has been said by the hon. mover, clearly in the minds of the African did engender a hope that, when the question of the provident fund was being reconsidered, he would be entitled to it, and I maintain that that hope has been active in the hearts of the African Civil Service from 1927 on. But, as the hon. mover has already indicated, early in the discussions of the select committee we found it necessary to adjourn in order that the correspondence might be examined. It will be remembered that the files of the Secretariat which deal with this particular matter were lost in the great fire, and the Civil Servants Association very kindly placed the whole of their correspondence unreservedly at the disposal of the committee, and an examination of it made it quite clear—first, let me repeat, that two different languages were being written; one by the Secretariat and one by the African Civil Service Association and, secondly, that Government had intended to make it clear to that Association that all the salaries being paid were at that time what might be described as "all-in" salaries. It is not relevant that I should at any length discuss the morality or otherwise of paying members of the Service all-in salaries and making no provision whatever for their provident fund. But the two representatives of the Civil Service Association before the select committee made it quite clear that they could no longer hold to any implied promise as they understood it dating back so early as 1927. The correspondence indicated, particularly during the slump period, that Government could not afford and would not afford any provident fund for them.

If we are quite fair in that, equally fairly must we also admit the fact that in 1936, when Sir Alan Pim reported, conditions in this country were very materially changed. Government, I submit, could at that time have afforded and should have afforded to pay the necessary contributions to the African Civil Service provident fund. May I remind you, sir, and this Council that Sir Alan Pim was a singularly economically-minded man? Some of us would argue that this country in its administration is still suffering in some respects from the drastic economies carried out as a result of his recommendations. I would submit that, when we have a gentleman with a mind so set on saving as much money to Government and the Colony as he could, when he recommended, as I suggest his words do recommend, that consideration should be given to an African staff provident fund, we may be very sure that we have a good case for considering payment from that date onwards. Although the hon. mover has made reference to the particular passage in the Pim Report, I ask to be allowed to repeat it: "The question of a pension or provident fund for African Civil Servants has been under consideration for a considerable time, and a pension was in fact recommended by the Fitzgerald Committee in 1930. The time certainly seems to have come for a decision on this question and,

[Mr. Beecher]

on the analogy of the terms laid down for the European and Asian Local Civil Services, a provident fund would seem *prima facie* the best solution. If, however, a pension is considered more suitable . . . . —it should be on a contributory basis". There is, I believe, an error in his reference to the Fitzgerald Committee. As far as one is able to determine, there was a Scott Committee at the time with a Fitzgerald minority report, and the date 1930 will remind us that it was a period of financial depression, and Government was naturally unable to implement the minority recommendations. It was thereafter nearly two years before Government made any pronouncement on the Pim Report. That pronouncement was made in Sessional Paper No. 2 of 1938; it bears no date, but presumably it was issued early that year. But one fails to see why Africans should be penalized by having to wait (or nearly two years while a report of such moment as Pim's was under consideration by this Government in connexion with that report, one might have expected less frugal minds to have expressed themselves more strongly on the need for this fund, but we have Sir Alan Pim's definite recommendation there, and when the sessional paper was published in 1938 it used what I have previously referred to as the language of the Secretariat when it said that "the question is under active consideration"—and it goes on to cover itself by saying "it is not yet found possible to reach a decision".

I trust that a recommendation going back to 1936 will receive a measure of support from this side of Council. I would dare even to ask that members on the other side be given a free vote in this particular matter, They as heads of departments are much more intimately in contact with staff affairs than the Secretariat is, and will realize the attitude of mind, and the sense of frustration, which is making for so much difficulty with their African staff. I am certain that if the Council could see its way to adopting 1936 as the date to which these retroactive payments could be made, if that could be done with the hearty concurrence of both sides of Council, we should go a very long way to remove that sense of frustration, and rightly so. As the hon. mover has indicated, it is his opinion that the Government at that time should have come to a decision, and should have said "Yes" or "No". The fact remains that they said neither "Yes" nor "No". It is immaterial to the argument that they might have said "No". The fact is that they have said "Yes" to a question they should have answered in 1936, and the question therefore seems to a mind unaccustomed to the language of the Secretariat still to be settled by that admission on the part of the hon. mover. I would suggest that the Council considers it favourably and Government would consider the possibility of giving members on the other side an opportunity to vote freely on this proposed amendment, and I trust that a very definite sense of grievance and frustration may thereby be removed.

LORD FRANCIS SCOTT: Sir, on a point of order, is the hon. member in order in moving this amendment under Standing Rule and Order No. 32, which states: "It shall be competent for any member to propose any question for debate in Council; and such question if seconded by any other member shall be debated and disposed of according to the Standing Rules and Orders: Provided always, that no ordinance, vote or resolution the object or effect of which may be to reduce or to charge any part of the revenue arising within the Colony or to revoke, alter or vary any existing charge upon the revenue shall be proposed except by the Governor or with his consent". I understand that this motion if agreed to will make a charge on the Colony's funds of between £20,000 and £30,000.

MR. RENNIE: I think the hon. member's point is a good one, but in view of the fact that His Excellency the Governor has tacitly assented to this course, I think we may assume his consent has been given under Standing Rule and Order No. 32.

MRS. WATKINS: Your Honour, I rise to second the motion. I am very glad to be able to do so, first of all, because I support every word which the hon. and reverend member has spoken, and secondly because my husband, when he was on the other side of Council, was one of the people who were fighting for this particular pension or provident fund for the natives. So it gives me the greatest pleasure to second the amendment now by which it may become retrospective to

[Mrs. Watkins]

Sir Alan Pim's Report. I think there is one additional point I might make, and that is this, that it seems to me that it should not pay the Government as well as it does to delay matters. The Secretariat language to all of us on this side of Council, except perhaps two of our members, is difficult enough; to the African it is impossible, and the idea of frustration is, I think, augmented when we realize that the delay is going to cost the victim a good deal and is going to save the Government a considerable amount, because then we know they are delaying to a purpose, and we do not very much like it. This used to be known as the "land of *bado kidogo*", now it is known as the "land of active consideration", and I suggest to you, Your Honour, that those two terms are now synonymous, and I think it is a great pity that it should be so. These natives feel that they have been set back, that they have not been provided for in some way, and we have not done so partly because, I think, at the back of our minds is the thought that they are landed gentry with vast reserves and enormous resources behind them, which colours all our actions towards the natives. We have now got to realize that the landed gentry are not so very landed after all, that they have been landed in another way—they have got the land and yet there is not enough for them all to go back to when they get older. Therefore we have to see that we are not only just but that we appear to them to be just, which seems to me a very important point, so I do support it. When we have had a big Government report by that Scotchman, Alan Pim—I think he must have been Scotch—(MR. COOKE: North of Ireland!) —I am sorry!—we should then anyway support such minimal beneficial measures as even he considers necessary to implement, and not by further delay outscotch the Scotch, which is what we are doing at the present moment.

MR. COOKE: I rise, sir, to support the amendment. As we have heard, this matter was something like 17 years under consideration. "Under consideration" it has remained ever since and, as I endeavoured to say once before, that must be nearly if not quite a record in procrastination by the Government of this country. At any rate, it is a very good effort indeed on their part! Certain pundits on the other side of Council, notably my hon. friend the Commissioner for Lands and Settlement, think the term "under consideration" is non-committal, but to you and me, sir, and to other intelligent people, if I may say so, sir (laughter), such a term must mean "under immediate consideration" if it has any meaning at all. I was greatly intrigued the other day to hear my hon. friend use that term "under consideration" with regard to the Companies Ordinance, and that brought the hon. Member for Nairobi North to his feet, and he pointed out that it was a very vague term, and I am glad to say that he was supported by the hon. and learned Attorney General, who got to his feet later on and said he would promise that the Companies Ordinance amending bill would be brought in as soon as possible. This shows that the Attorney General attaches to the term "under consideration" the meaning which all reasonable and thinking people attach, and that is that it is under immediate consideration. When these Africans were told 17 years ago that the matter was under consideration, they had no idea that Mr. Dilly and Mr. Dally would take nearly 20 years to make up their mind, and if they had known that I do submit that a great number of these African servants might have said, "Well, it is not worth while remaining in Government service", and might have accepted jobs in commercial houses and other businesses which at that time were in great demand for Africans. So in deceiving the Africans in this way I say Government have been guilty of a somewhat mean attitude. We find it said in novels that the African regards Government as his father and mother, and they use other filial expressions of that nature. It does not seem to me quite consistent with that attitude that Government should treat Africans in this way. For instance, in a formal baraza, wherever Government says to the people "We are considering raising the tax", I think the Africans are wont to notice that that term "consideration" is usually followed by very active consideration and the tax is raised. The whole point is, as the hon. and reverend member pointed out, what meaning did the Africans give this term? and there is no doubt whatsoever that they gave the meaning that Government had the intention within some short period of bringing in a provident fund.

[Mr. Cooke]

For that reason I do submit that Government are under an obligation to implement that implied promise.

I would personally like to see the retroactivity go to 1930, which was the date of the Fitzgerald report, but I am perfectly prepared on the principle that half a loaf is better than no bread to support the amendment. I will not say I was surprised, because I am not surprised in these days at things certain gentlemen on this side of Council occasionally say, but I was a little bit irritated that the noble lord the hon. Member for Rift Valley should have, cavilled at an expenditure of £20,000 or £30,000——

LORD FRANCIS SCOTT: On a point of order, I rose to a point of order on the privileges of this Council and the rules of debate in this Council.

MR. COOKE: Nevertheless, the impression which the hon. member gave me was that he cavilled at it. I accept his explanation, but that was the impression he gave me, and I hope the impression will not go abroad that he did cavil. I would say that the Europeans of this country, and rightly so, have received large grants from time to time, and in 1930 they received a large advance, a great deal of which has not been paid back, so I do submit that it is very unfortunate that any such impression should obtain in this case. For my own part, I support the amendment very strongly. There is just one point, about retroactivity. I think I am correct in saying that the Tanganyika Government, two years ago, when it inaugurated a provident fund, made it retroactive for something like 10 years, so that there is very good precedent for us. I very much welcome this provident fund. I know myself from communications I have had with Africans that there is a lot of dissatisfaction, and I feel that that dissatisfaction will be to a great extent removed if this amendment is accepted. Of course, what the Africans really ask for is a unified service of Indians and Africans, but at any rate this a very good and encouraging start.

MR. AMIN: Your Honour, I am very glad to have this opportunity of supporting the amendment before the Council moved by the hon. and reverend member representing Native Interests. I had the honour to be on the select committee when the pros and cons of the amendment were gone through, and I formed the opinion that if the Government benches were given an opportunity of voting as they personally might be inclined to vote, then the amendment would be carried through. I will not go further on this point. I whole-heartedly support the amendment.

MR. BROWN: Sir, during the speech of the hon. mover of the amendment I thought it very necessary to intervene in order to correct any misapprehension that I might quite unwittingly have caused. I want to go further, now that I have an opportunity, and say that far from suggesting what the hon. member seemed to think I suggested, I think that he was perfectly right in what he said in his speech on the second reading. He has told us—and I know that he thinks—that the correspondence that has been issued on this matter made some people think that there was an implied promise. Therefore I think he was perfectly correct in saying what he did on the second reading, but that, surely, is one of the objects of appointing a select committee, to go into these matters and to see if the representation which has been made is correct. In the opinion of the majority of us, and in the opinion indeed of all of us who were present at the select committee, the representation about this implied promise was incorrect. The hon. Member for the Coast was unfortunately not present at the select committee. Had he been I do not think that he would, alone in this Council, be adhering to this representation of an implied promise. He bases his view on the admittedly too frequent reiteration of the expression "under consideration", but whatever you may say about that expression—and the hon. member, I think, has said most of the things that can be said about it, both in his speech at the second reading and now—whatever may be said about it, it does not constitute any sort of undertaking whatever. (MR. COOKE: It is meaningless in that case.)

THE PRESIDENT: Order! Order!

MR. BROWN: It is in no way meaningless, because it means you are going to deal with the matter one way or the other at some time (laughter), and I have already expressed my own personal feeling that the matter should have been dealt with before. But it certainly does not mean that when somebody writes asking you to do something, and the reply which he receives is that the matter is under consideration, it certainly does not mean that the decision when taken is going to be that which the applicant asks you to do. If it does, I can only say there are a good many implied promises lurking around. (Hear, hear.) Such a suggestion could not be accepted. The hon. member Mr. Beecher in fact says that the Government should have introduced this provident fund at the time of the Pim Report. That is exactly the issue between us. The hon. member says, speaking in the year 1944, that if he had been here in the year 1936 he would have adopted Sir Alan Pim's paragraph and introduced a provident fund; we say, speaking in the year 1944, that had we been projected back to 1936 we would not by any means have established a provident fund because the conditions at that time were very different to what they were in 1941, to which date we make these retroactive payments. In 1936 you were recovering from a very serious slump, and Government at that time took the view that this was not the time to increase its commitments in this way.

The hon. member Mr. Amin said that if the Government benches had been free to vote as they pleased they would support this amendment. I think that what he is harking back to is the attitude of some members of the Government in select committee on this question of implied promise. Some of us were very inclined to the views of the hon. mover of this amendment so long as there was any ground for believing that the suggestion of the implied promise was correct, but once that was out of the way and had been abandoned—as it had to be when we examined the correspondence—the majority of the members of the select committee were of opinion that it would be quite unjustifiable to make these retroactive payments back to the year 1936 when there was no reason to suppose—and indeed the contrary was the case—that Government would have introduced a provident fund then if it had come to a decision at that time.

MR. SHAMSUD-DEEN: On a point of order, may I ask whether at any time there will be a free vote allowed in this Council?

THE PRESIDENT: I am not aware that that is a point of order. (Laughter.)

The question of the amendment was put and negatived by 24 votes to seven, one not voting, Council dividing: *Ayes*—Messrs. Amin, Beecher, Cooke, Couldrey, Kohli, Shamsud-Deen, Mrs. Watkins, 7. *Noes*—Messrs. Blunt, Brown, Donovan, Emerson, Foster Sutton, Gardner, Col. Grogan, Messrs. Hebden, Hodge, Hunter, Izard, Johnstone, Marchant, Montgomery, Mortimer, Nicol, Northrop, Pedraza, Lord Francis Scott, Messrs. Stronach, Tester, Tomkinson, Vincent, Wright, 24. Did not vote: Mr. Patel, 1.

The question of the original motion was put and carried.

DEFENCE (ADMISSION OF MALE PERSONS) REGULATIONS, 1944

MR. PATEL: Your Honour, I beg to move:—

"Whereas in the opinion of this Council the Defence (Admission of Male Persons) Regulations, 1944, which were promulgated by the Government without any proved necessity or valid reasons, are unacceptable to a large and important section of the immigrant communities and are generally proving harmful to the best interests of the Colony and unfair in their incidence, this Council requests the Government to repeal the said Regulations forthwith."

I am going to submit my argument in four parts. Firstly, I am going to state that there was no necessity to pass Defence Regulations to control immigration; secondly, there was no necessity whatever at the present stage to pass either any regulations or any other law to control immigration; thirdly, I am going to submit to Your Honour the feeling of the Indian community upon this question; lastly, I am going to state that these regulations have done more harm than good, if any, and have worked very unjustly against certain domiciled persons of this country.

In my submission, Defence Regulations ought not to have been used for providing any control or restriction on Indian immigration. In the first place, there was no hurry about passing any such legislation so quickly, there were

[Mr. Patel]

no circumstances that the Government ought to have taken steps so quickly. The dhow season, as Government was aware, was over, and no more Indians would have come to this country in any numbers until December next, and the Government is also aware that it is not possible to secure passages by steamer from Bombay; occasionally a steamer brings about 30 to 40 Indian passengers, and the average is not more than 30 to 40 a month. In these circumstances, I submit that Government ought not to have resorted to passing Defence Regulations and ought to have submitted the whole case to this Council by producing a bill, if it were considered necessary; a bill even for temporary purposes could have been produced, with powers given to the Governor in Council to terminate that bill when circumstances which Government thought existed should have ceased. I submit, and further state, that there is a tendency for Government to use these Defence Regulations for governing this country more than is justifiable. The hon. Member for Nairobi South referred to the extensive use of rules and regulations and the protest Nairobi Chamber of Commerce has raised against the Government ruling its citizens by regulations, and I submit the same applies in regard to rule by Defence Regulations after the war has receded from the shores of this country. I would quote in my support an extract from the editorial of the *East African Standard* of yesterday's date, which says: "There is no section of the community, European, Asian or African, that can afford to permit their Government unchallenged freedom to resort for too general a purpose to Defence Regulations clearly intended to relate only to specific problems affecting the efficient prosecution of the war and the security of the State. In the changing war circumstances of East Africa there should now be fewer reasons to invoke Defence Regulations, not more." In the case of control of immigration, I submit that not only were there no reasons for producing these regulations but there was no reason whatever for not submitting the whole case to this Council in the form of a bill, if Government thought it was necessary in the best interests of this country.

It is stated that these regulations are non-racial in character, but it has been generally recognized that they affect the Asian community only, and I do not think any member of this Council will contend otherwise. It is also suggested that these regulations were introduced because there was a food shortage and a housing shortage. These shortages were noticeable more than a year back in a form more acute than was the case in March of this year when these regulations were introduced. The three Governments of the East African territories, namely Tanganyika, Uganda, and Kenya, have suggested, if you read their official communiqués, that these regulations were adopted by all of them because joint action was necessary. If I may quote from the Uganda Government's communiqué: "It will be remembered that without uniformity between all the territories concerned in East Africa, the operation of the regulations in any one territory might be seriously impaired if not stultified, as there is no internal system of exit permits." So the three Governments had, it appears, intended to take joint action, and that was the reason why one by one they came forward and promulgated these regulations. The Tanganyika Government, which has in the first instance, published these regulations, had no justification whatsoever to take that step. I know that while arguing in this Council about a measure of this country, the reference to the promulgation of the regulations by the Tanganyika Government may be considered irrelevant, but this Government, in publishing its regulations, referred in their communiqué to Tanganyika Government and the action taken by that Government, and I submit that I shall be within my rights to point out to this Council how the action taken by the various Governments was not justified. When Tanganyika Government came forward and published its regulations the position was this. In the three months prior to these regulations only 25 new Indians had entered that territory, while 1,200 Indians had informed Government or the authorities concerned that they intended to go to India if passages were available. Even during this year, January to March, there was no more than 30 per month who entered Tanganyika Territory, and the position about food and housing, as every well-informed person knows, was in Tanganyika far better than we could imagine in Kenya. When

[Mr. Patel]

Tanganyika was chosen as the first to promulgate these regulations, one would be inclined to ask why Tanganyika was asked by the East African Governors' Conference or any other authority to come forward in the first place when there was no justification whatever for introducing the regulations, or, if there was any justification, it was the least in its case.

Even if we take the circumstances of our country, the regulations were introduced at a time when there was no necessity for them whatever. I am aware that communications and correspondence had appeared in the local European press suggesting that dhow-loads of Indians had recently arrived from India, and that there were organizations in Bombay and Mombasa which gave certain money to these emigrants from India to enter this country. I would like to point out to this Council that people who entered this country during this year in the dhow season were about 6,000. Taking an average of 30 or 40, even 50 per month, coming by steamers, the number would not be more than 600 a year, so that the total number entering this Colony would not be more than 7,000. I would remind Council that even before the war, when the Indian population was smaller in number than it is to-day, the average movement between East Africa and Bombay was about 800 per month both ways. That means that about 10,000 entered from India and about 10,000 went back. There are no steamer passages available to-day, and the dhow season is once a year only. They all happened to come during a short season, and the same number would have gone back, even a larger number, but for these regulations. They were frightened, and that is why thousands of them cancelled their passages to sail by dhow to Bombay. What I want to point out is that that press correspondence referring to dhow-loads of Indians coming to this country was not only misleading but has created a certain amount of mischief. It was an ill-informed statement that these dhow-loads had come and increased the numbers already in this country. The majority of them were old residents, or wives and children of those who were resident in this country; its minority consisted of new arrivals. That also took place because, as is generally known, the Indian Man Power Committees in this country had encouraged artisans in this country to write to their relatives to come to this country to take up service with the armed forces of the Crown. At one time it was considered that they should encourage at least 1,000 clerks and 2,000 artisans to come to this country. When these clerks and artisans had secured their passports and passages, owing to shipping difficulties they could not come earlier, when they were required, and they started late because contrary information had not reached India—that is why that minority of new passengers entered this country. If the information had gone off and reached India that there was no more employment for those artisans and clerks, I am quite certain most of them would have decided not to sail.

As I have submitted, the movements of Indian passengers between this country and India averaged 10,000 a year even before the war, so that the figure of 6,000 or 7,000 entering during the dhow season was not so excessive that the European press should have allowed the impression to get round that Indians were invading this country in large numbers. The Government should have been well-informed of the position, and should not have taken this hasty action, for which no grounds existed. It was also broadcast in the European press that there was some organization in Bombay and in Mombasa which lent money or gave money to each passenger when he landed in Mombasa. That is not only false, it is extremely ridiculous, and in my opinion it has aroused a feeling of hostility among certain European sections against Indian immigrants. On account of that hostility, expressed publicly in some quarters, I submit that Government was influenced to a certain extent to promulgate these regulations without in the first instance giving any opportunity to the Indians to submit their case. In my opening remarks I submitted there was no necessity for these regulations, because the next dhow season would not commence until October or November for sailings from India, and therefore if Government had reached any conclusion that a certain control or restriction over Indian immigration or any immigration was necessary there was time enough until October to take steps, and as this Council was having a session in April and there is likely to be a further session

[Mr. Patel]

before the dissolution of the present Council, I submit that Government, without any harm whatever, could have put the whole case before Council in the form of a bill, instead of passing Defence Regulations.

Further, it is well known that members of the Indian community have generally come to this country according to the economic capacity and requirements of the country. Anybody who has followed in the past the figures given of the Indian population and its movements will know that in the last depression, which commenced in 1931, 5,000 Indians left this country within two years of the depression starting, and the population, which was then, according to the immigration figures, 39,000, came down to 34,000. We have pointed out to Government so many times that there was no necessity to keep the Indian population away from this country—the mere information in India that there was no employment available here would have been sufficient. Not only that, but a larger number of Indians than those who entered this country would have left this country if they had been informed that there was no more employment available here. I am really surprised that this Government should have passed these regulations when, with a little care and inquiry, they would have known that in March there was no possibility of more Indians entering this country while thousands were ready in all three territories to leave and go away. Yet that was the time they selected to pass these regulations. It has been made sufficiently clear by the Indian community that these regulations are very strongly opposed by them, as they are the only people affected. It is the unanimous opposition of the Indian communities of all three territories. Perhaps a stranger who does not know the history of the question of immigration in which this country has been concerned may not readily recognize why the Indian community should oppose a measure like this, which the Governments have stated in their communiqués is of a temporary nature.

The history of the question of Indian immigration into this country has been very unpleasant for the last quarter of a century, and on more than one occasion hostility has been shown in certain quarters in this country towards Indian immigration, and time after time expressions have been used that Indian immigration should either be stopped or restricted. No wonder therefore that the Indian community views this whole question with a great deal of suspicion. Moreover, anybody who knows the history of the question of Indian immigration into this country knows very well that at one time the Indian community was told and the Indian Government was informed that it was necessary to restrict Indian immigration in the interests of the settlers of this country. Later we were told it was necessary to restrict it in the interests of the settlers and African population of this country. When that did not appeal to the higher quarters, we were told it was necessary to restrict it in the interests of the Africans, and a bill was produced in 1923 or 1924 to restrict Indian immigration in the name of African interests. When the higher authorities did not accept that position, we are now told that it is necessary to restrict Indian immigration in the interests of Indians settled in this country. We are told very privately that it was in our best interests to see that Indian immigration was restricted. Last year, I had occasion to travel in Uganda and Tanganyika, and I also had occasion to get information from reliable sources. I found in Tanganyika, Uganda and Kenya certain officials and non-officials used to talk privately with my countrymen to the effect that it would be in the best interests of Indians settled here to agree with this measure of control. Formerly, the interests of the European settlers, later the interests of the Africans, and now the interests of the Indians settled here, require the restriction of Indian immigration, but the Indians settled here say, "Thank you for your good wishes for us and the concern you show, but we do not desire to have restriction of Indian immigration." One does not understand this, because in several quarters of East Africa and also other parts of Africa there is a continuous movement, an agitation, for increased white settlement, while the Indians settled here are told that they should agree, in the best interests of the Indian community, not to have more Indians coming into this country. We certainly do not understand

[Mr. Patel]

the reasons for making this distinction between the two communities. Furthermore, whether the Governments of these territories like it or not, or agree or not, or the elements composing the population of this country like it or not and agree or not, as far as India is concerned it has received a promise from the Imperial Government that, in consideration of her being a subject country, as long as India is within the Empire she shall have free entry into the territories governed by the Colonial Office, and India and the Indian community cannot agree to any restrictions, against which they protest, being made to restrict Indian immigration into this country.

As to the effect of these regulations, in my submission they have done more harm than good, which was not intended by the Governments. As I submitted a few minutes earlier, one or two thousand Indians have decided not to leave this country because they think that probably they may not be allowed to return. An association named the Social Service League in Mombasa, which looks after the interests of dhow passengers and assists in fixing the passages, fares, etc., were informed by hundreds of people to cancel their sailings because of these regulations. I am quite definite and make this statement after full inquiry, that if the regulations had not been published a larger number would have left East Africa than that which entered. Now the position is that the dhow owners cannot find passengers. They had to reduce their passages because they could not get a sufficient number of passengers, while before the regulations were published dhow owners were all charging black marketing prices of Sh. 300 per head—to-day they are prepared to take Sh. 100 because they know Indians do not intend to leave in such large numbers. That is the effect of these regulations, which were intended to reduce the Indian population of this country to conserve food supplies.

The second thing which it has done is that it has quite unnecessarily offended the Indian community of this country, and has compelled them to pass their time in considering the steps they should take against these regulations in making their protest, and in taking steps to see that these regulations are repealed.

Thirdly, which is more important than any of the other factors, in India, which is naturally interested in the welfare of the Indian community and also in preserving her right which has been conceded by the Imperial Government of entry into certain quarters of this planet, the effect has been very bad and it has upset a great many people in India, and as India is to-day one of the most important centres in respect of the war effort I submit that these regulations have done to a certain extent great harm to the war effort. These regulations have also worked in their operation very unjustly.

The Tanganyika Government when they published their regulations exempted visitors for three months from the operation of the regulations. In the Tanganyika regulations, Schedule II (g), it states that visitors to the Territory who state that they do not intend to stay in the Territory for a period exceeding three months need not have an entry permit. If I were to go to Tanganyika to-day, not intending to stay more than three months I would not need an entry permit, but the Governments of Kenya and Uganda, who wanted to take uniform action, have conveniently omitted that particular clause and have made it obligatory on Tanganyika and Uganda residents to obtain permits before they can enter Kenya even for short periods. Everybody knows that there are certain business houses which have branches in Tanganyika and Uganda which in the normal course of business may have to allow employees to go on leave or may have to transfer employees from one territory to another, and that is now stopped by these regulations. Those who drafted these regulations did not even stop to consider what would be the effect. Tanganyika was wise enough at least to allow visitors to Tanganyika for a period of three months but, no, Kenya said, "Everybody who intends to come even for a day must have an entry permit", and Uganda followed suit. Further it is stated that any Indian who is to-day in India and who is absent for more than two years from this country cannot enter this country without a permit. Everybody knows that in 1941 people on the coast were encouraged to evacuate; they were encouraged to leave. A large number of Indians came up-country where there was accommodation available, and a fairly large

[Mr. Patel]

number went to India. It is well known that it is very difficult to secure a passage from Bombay unless good reasons can be shown why the prospective passenger should have priority, because when it is only possible for 30 to 40 passengers to sail from Bombay per month it is not possible for everybody to secure a passage. I have seen dhows and realize that everybody may not like to travel by dhow. To prohibit those Indians who left this country at the time of evacuation and could not return, from entering this country without a permit is in my submission gross injustice. Some of these people have properly here, and they are in India, and they cannot enter this country without a permit. If by any misfortune any of them died the Estate Duty Commissioner will say that he was domiciled in this country and his estate should pay death duties on movable property situated in India, but when his right to enter this country is concerned his domicile does not matter, he must obtain an entry permit.

Now we are told that these are measures of a temporary nature. I am glad that the Government has made that declaration, but at the same time the Indian community looks with great suspicion on these regulations, and for good reasons. Only a few months back the Committee on Post-war Employment, on which I was the only Indian member, which consisted of officials and non-officials, unanimously recommended that after the war there will have to be control or restriction on immigration, and the reasons then advanced by me are applicable on this occasion, and I shall crave the indulgence of Council in referring to them to some extent. I said, "I also informed my colleagues that restriction on immigration is associated in the minds of Indians with a long and unpleasant history and that the Indian community cannot agree to any legal limitation. Those who are acquainted with the history of the various unsuccessful efforts made in the past to restrict, unjustifiably, Indian immigration and are aware of the intense desire among certain sections of the European community to stop Indian immigration altogether, will easily understand my objection to the recommendation made by my colleagues. Moreover, the Indian community has bitter experience of administration of such harmless looking provisions which, in due course, are likely to be used as a thin end of the wedge to restrict Indian immigration. With the general and continuous demand for increased white settlement in the Colony, is it unreasonable to believe that in practice the limitation may be exercised against Indians only?" The unofficial and official members of the Post-war Employment Committee have unanimously recommended—I, the only Indian member, opposing it—that there should be limitation or control of immigration after the war. Does this Government honestly and sincerely assure us that these regulations are a measure of a temporary nature and will cease as early as possible, and if the Indian community views with great suspicion any such assurance who will blame them?

I do not propose to take up the time of this Council by quoting any extracts which I might have done to support my case, but I only state this, that these regulations have been published at a time when there was no necessity whatsoever, that instead of actually fulfilling the purpose for which the Government drafted these regulations they have had quite the contrary effect and have kept a large number of Indians in this country who intended to leave, that the Government has misused its power of rule by Defence Regulations, that the Government has definitely taken a step which is harmful to the best interests of this country, that there is no necessity whatever of continuing these regulations any more, that it is well known to the Government that the Indian population in times of depression or unemployment readily go back and that the population adjusts itself to the circumstances of the time, and I submit that these regulations should be repealed if the Government thinks that they have served no purpose whatsoever, and it is necessary to see that the unjust operation of these regulations should cease as early as possible. (Applause).

MR. KOHLI: Sir, I beg to second the motion before Council. I reserve my right to speak later.

MR. FOSTER SUTTON: Your Honour, in replying to the motion of the hon. member Mr. Patel, I think it right to say that we should examine some of the statements which he has put forward to support his contention, firstly that the

[Mr. Foster Sutton]

regulations were unnecessary, and secondly, that the introduction of these regulations has worked considerable hardship on one particular section of the community. Let us briefly examine the facts with which the Government was faced when the introduction of these regulations was under consideration. But before going into these facts, I should like to say this. It has been suggested that Government was influenced by outside pressure, not only in this country but in the adjoining territories. I think it right in that connexion to say that His Excellency the Governor, by whom these Regulations were made, had the position under consideration for what I hope I shall be able to satisfy hon. members on the other side of Council were very substantial reasons. First of all, we know that there has for a considerable period been an acute shortage of food in Kenya. Secondly, and I do not think anybody will attempt to deny the principle of this assertion, there has been and still is a considerable shortage of housing accommodation. Moreover, a thing which may not have been generally known at the time, which is relevant to this debate, is that there were in Kenya some thousands of unemployed male persons. With all those facts, which were facts, and the mere statement that there was no necessity for any restriction of immigration cannot alter them, it was known to Government that the figures for immigration had taken and were taking a considerable leap, and I propose very briefly to give hon. members the figures which were at that time in the knowledge of Government.

First of all, in 1943, for the months of January, February and March the figures were as follows: Immigrants, male, 106 in January, females 26, children 28; February, 325 males, 32 females and 39 children; March, 494 males, 56 females, and 54 children. Those were reasonably normal figures if compared with previous years. Then we come to the position for the same months of 1944. In January there were 952 males entering this Colony, 114 females and 130 children. In February there were 1,624 males (as against 325 in the same month of 1943), 370 females and 336 children. In March the figures were 1,232 males, 221 females and 241 children. If I may be pardoned for giving the figures again, in 1943 there were 925 males in that period and in 1944 3,808. This considerable increase was first noticed in December, 1943, because when the figures for December, 1943, were compared with the figures for December, 1942, it was found that in 1942 there were 100 males, 7 females and 17 children, but in December, 1943, there were 974 males, 144 females, and 176 children, so that it is right to say that this very considerable increase in immigration commenced towards the end of last year.

I may say in passing that it is suggested that the regulations worked considerable hardship on the immigrants from India who arrived in March, and that they are therefore unfair and unjust. The March immigrants were all allowed entry, because it was not desired to create any hardship. They had already made their arrangements, and these regulations came into force on 1st March, and it was felt by Government that it would probably work considerable hardship if any were refused entry, so that all the immigrants for March, whether they were returnees or new immigrants, were allowed entry. What are the figures for April? It is now the 18th, and I have the figures before me. I think hon. members on the other side of Council know them. From the 1st to the 15th April the applications of Europeans were 53, refusals 2, granted 34, and 19 are pending; Asians: 361 applications, 18 refusals, 164 granted, and 177 pending; others: 11 applications, 7 granted, 4 pending.

If we are prepared in this Council to look calmly and coldly at the facts, I think it is difficult to justify the statement made by the hon. mover that these regulations do in fact work hardship on anybody. I on behalf of Government refute any such suggestion because, as I say, it is not borne out by the facts. As I have already said, and hon. members will pardon me repeating it, Government had all these factors in mind—the food shortage, housing, unemployment—and it knew there was a considerable increase in the influx of immigrants, and what was it to do? Was it to sit down and allow the population of this country to be considerably increased, with the probable result that unemployment would be added to and that the unemployed ultimately would have to be supported by the rest of the population? Or was it to act and take such steps as it considered

[Mr. Foster Sutton]

necessary in the interests of the people of this country as a whole? I venture to suggest that had Government, with these facts before it, failed to take any steps, responsible opinion in this country would have been fully justified in saying that whoever was responsible had utterly failed in his duty.

We have heard a lot about emigrants who left this country for India, and it seems to me, unless I have got the hon. mover wrong, that it is suggested that the persons coming in are balanced by the persons going out. Well, I am not suggesting that I have any personal knowledge of this matter, but I have taken the trouble to verify my facts, and one finds that the great majority of people who leave this country leave it not permanently but they leave it for a trip, and their intention is to return. What the hon. member said supported that statement, because he said that a lot of people have not gone away because they were afraid. Afraid of what? Afraid that if they went they might not be allowed to return, because most of them have every intention of returning as soon as they have done whatever they have to do in the country of their origin. If I may be permitted to turn to the regulations, I should like to point out that there is no real necessity for the alarm and despondency that it is alleged they have created because if they have cause for alarm and despondency it seems to me possible that such a state of affairs has been brought about through persons who are hopelessly misinformed. Any person who is a genuine resident of this country and who leaves it and returns within two years, requires no permit under these regulations; they come in without any permit at all. In support of that statement I refer hon. members to Regulation 7, paragraph (1) of the second schedule. I do not suppose—and I say this without wishing to cause offence—I do not suppose the hon. mover will be satisfied with this assurance, but I can assure him that there is no intention whatever, even if a person leaves and returns after the two years, of preventing the entry of that person if he is genuinely a resident of this Colony; none whatever. As I pointed out, as a fact there is no justification for the allegation that, up to date, hardship has been created. Such a statement is not borne out by the facts as we know them.

It has been suggested that this action on the part of the Governor could more properly have been done by means of legislation which would have had to be passed by this Council. No. 1: It was obviously necessary to take prompt action at the time. No. 2: It seems to me that it was essentially a matter, having regard to the circumstances, which ought to have been done by Defence Regulations. I may say that for several reasons, one of them being this—I understood the hon. mover to say they would not treat any such assurance with very much credence, but one of the reasons is this—that the regulations have always been regarded by Government as a purely temporary measure. If you had put such provisions on the statute book, even if they had been made to terminate at any particular time, there might have arisen and there might have been good grounds for causing the feeling to arise that such legislation was permanent, but there is no such intention. When the necessity which caused the passing of these regulations passes away, these regulations will be revoked, and I think it right to say that they in no sense whatever represent the Government's policy regarding immigration after the war. It has been suggested, I do not know if the hon. mover was serious in making it, that we should have waited until the end of the year. Really, it would appear to me that if we had done so it would have been a case of shutting the stable door after the horses had bolted, and I think, as I have already said, that Government would have laid itself open to a considerable amount of justifiable criticism if they had done any such thing. In conclusion, I say that Government has nothing to apologize about or excuse. It is felt that the regulations which were made by the Governor under the powers conferred upon him by the Emergency Powers Acts of the United Kingdom, as extended to this Colony by Order in Council, that that action was fully justified on the facts and was in the best interests of the community as a whole.

MR. SHAMSUD-DEEN: Sir, I only wish to ask the last speaker what he really thinks is the cause of this rather unusual influx of Indians to the Colony during the three months from the beginning of this year? One can quite easily see by the atmosphere of this Council, from the applause given to the last speaker from

[Mr. Shamsud-Deen]

both sides of Council, that this is merely a gesture on the part of the Indians in order to show that we are not inanimate material but are living beings with feelings and, as they naturally appreciate an act of kindness, they resent maltreatment. You find these feelings even in a dog, who wags his tail when patted and yelps when kicked. I think this motion is nothing more than a justified yelling and screaming by a hurt community because we cannot allow our silence in the matter to be construed as acquiescence in these things. There is no secret about the fact that simultaneously, while everything is being done to discourage and restrict Indian immigration into this Colony, we have been talking in this session of devising ways and means of encouraging white settlement and white immigration into this Colony. Is there any gentleman who will have patience enough to analyse what is the cause of this somewhat abnormal influx of Indians? Is it due to political reason, to inundate this Colony with an Indian population so as to swamp the whites here, or to what is it due? The cause is perfectly simple. When there was a danger of an Italian invasion and air raids, we were all asked to carry on with propaganda and ask everybody to leave this Colony at the earliest possible moment, with a view to accelerating and expediting the methods of evacuation. A large portion of the Indian population left the Colony, and immediately after that, owing to the dangers of the Indian Ocean and the difficulty of getting passages from India, nobody would come back. Even now, those people who travel in dhows know perfectly well that it is no pleasure to undertake the journey, and those people who have come back, as I think has been admitted on the other side, represent mostly what you might call the surplus population, the people whom we as members of the Man Power Committee were asked to encourage to come here and be enlisted in the military. There was a time when it was seriously suggested that personnel for the Services departments should be recruited in India, but the Government of India flatly refused, saying that if anybody came to India to recruit them they would not only not allow any person to leave but the recruits would be prosecuted, and therefore we had to adopt this method and ask them to come. I respectfully submit that even Indians are a little bit different from the category of a sucked orange, that you cannot treat them like one, and when the immediate necessity for their presence disappears you should take such drastic measures as to restrict the immigration of the whole population.

There are ways and means of stopping that surplus immigration into the Colony. There is no one more concerned with the surplus population of this country than I am. I think you will remember, sir, that long before these regulations came into force I made official application for arrangements to be made for four ships to take Indians who were desirous of going back to India, and stated that I would undertake to supply the necessary passengers who were waiting impatiently to get away. That should convince Council that there is no intention of aggravating the position that exists in this Colony regarding food shortage and other things. I must make it clear that I withdrew that application in view of the regulations which have been enforced, because, as the hon. mover said, people have now come to know that once they go out they do not know if they will be allowed to come back. As I stated, these things could have been done in a different manner. I think there must be some hon. members in this Council who remember that only a year or two before this war I led a procession of unemployed to this Council, of which I was not then a member. The procession consisted of the signatories to a petition which was presented to this Council. As the result of a false alarm that was raised the police mustered all their Force, machine guns and rifles, thinking that we were going to smash windows and doors of this Council which was then in session. I was actually prosecuted, but it was my good luck that I was acquitted by the magistrate who heard the case (laughter) very patiently. Otherwise I might have quite easily been in gaol for about a year or so for leading an unlawful procession, so that I ought to know something about the dangers of a surplus population and the dangers of unemployment. The object of discouraging immigration into the Colony could easily have been done, as I say, in other ways. For instance, when I came to Kenya in 1900, there was the scare of man eating lions at Tsavo, and everybody in India was frightened for

[Mr. Shamsud-Deen]

everyone who came here. I came out to this Colony in the same year, and was told by all friends that I must not be so foolish as to come to Kenya Colony where I would be eaten by lions! That naturally discouraged and scared people and consequently delayed the construction of the railroad for quite a long time. Take the present time. I do not think I am contravening any regulations by saying what is really common knowledge in India, that the Indian Ocean has not been without danger in the last two years, and while the Germans and Japanese broadcast wireless programmes daily and say they have no grouse against Indians and will never hurt them and that their only quarrel is with the English, the fact remains that quite a few hundred Indians of this Colony have been sent down by the Japanese submarines in the Indian Ocean while on their way to and from India, and only recently quite a few dhows—

MR. RENNIE: Order, order! I think the hon. member should refrain from making any remarks which are likely to be against the public interest.

MR. SHAMSUD-DEEN: Yes, sir. I respectfully submit there was no need to restrict immigration at all if Government had taken steps to counteract that propaganda by telling people in India the difficulties of travel to this country, and nobody would have come. But those facts were not known, and instead the British authorities tried to suppress these facts instead of adopting the proper way by telling the people in India that if they came here there were a lot of dangers to be faced, when these dhows, when they found there were no passengers to take back, would not have come out. As regards any desire for emigration, I can assure the Council that the Indian by nature is not an adventurer. I would even go to the extent of admitting that he is not a colonist. There is a proverb in India that half a loaf of bread at home is far better than a full loaf of bread abroad, and when talking about abroad it generally applies to a man going from one province to another. Nobody cares to come to this Colony, where there are interminable racial differences and controversies of white versus black and brown. People do not care to come out here at all. What is there to attract any self-respecting Indian to come to this Colony? I certainly would not have come but for the starvation with which I and my family were faced in India, but would have remained at home, where I should probably have been better off in the long run. Take this Council. Even in this corner of the Council anybody coming into the hall can smell the odour of untouchability. We are in a sort of Untouchables' corner, and nobody cares to come near us. The tuppenny hotels in Nairobi are closed to us, whereas the best hotels in India and England are open to us. I have submitted that there can be no desire on the part of Indians to inundate this Colony with an influx with a view to swamping white settlement, as some white agitators have been frightening their own people. I, however, fully agree with the quotation from the leading article of the *East African Standard*, that in this instance there has been no actual move on the part of the unofficial European community to persuade Government to bring in these regulations. The hon. mover is the Indian member of Executive Council, and if he had only been taken into consultation and asked his views he would probably have told His Excellency the real state of affairs. But no, instead of sitting around a table and taking the Indian community whom the regulations are going to affect into confidence this drastic law has been promulgated overnight. We never expected this bolt from the blue. If we could have sat around a table and discussed the problems as regards the difficulty of food and housing accommodation, probably the Indian community would have agreed not exactly to Defence Regulations but to certain regulations so that there should be no surplus population in the Colony.

As regards the food shortage, what is the reason for that? The reason is that in this Colony, as somebody stated the other day, the European community has kept not only all the trump cards in their hand but have taken out the best cards in the pack and left the yarborough in the hands of their Indian opponents. All the food controls are in the hands of the Europeans. Europeans who have never tasted ghee in their lives, who do not know what atta is, or dhall or any other Indian food is, have all the controls in their hands. If these things were left in

[Mr. Shamsud-Deen]

the hands of the Indians—and I once conveyed to His Excellency the unanimous desire of the Indian elected members that whatever food was available in this Colony should be handed over to the Indians in this Colony to be distributed among their own countrymen—we would not only have enough food for ourselves but could also perhaps spare a little for the use of the European communities! But no, they were anxious to have all these controls in the hands of the Europeans. As regards housing accommodation, I think I have stated before, and even at the risk of reiteration I must say it again, that the Building Control Committee, of which I believe one of the hon. members, the hon. Director of Public Works, is vice-president, is one of the Government's deliberate policies to obstruct by all possible means any kind of housing accommodation for the Indian community. The Indians have the materials; there is plenty of stone in this town, and plenty of temporary materials with which people would be able to erect houses themselves, but the Building Control Committee has proved to be the curse of the whole town, especially of Nairobi, by their obstructing methods. That is the reason for the housing difficulty. There need be no housing difficulty at all.

I think I have made it clear that this apparent influx is really an accumulation of people who have been awaiting opportunities of passages for more than a year or two to come out here, and that is why they came out here in somewhat larger numbers. I will take the risk of being ruled out of order by you, sir, but I respectfully beg to submit that while we are discussing these immigration regulations the general subject of immigration cannot be irrelevant. While you have restricted the immigration of Indians into this Colony, India still remains the hunting ground for everybody from all over the globe. The wretched Japanese are, I think, only excluded for the time being; after the war is over they will again come in in bigger influx into India than the Indians into this Colony. If these things go on I am firmly and honestly of the belief that, as the Dyer and O'Dwyer incidents of Jallianwala Bagh in 1919 were really responsible for the awakening of India, the Europeans of this Colony will be due a deep debt of gratitude from India for having evolved a real sound policy of immigration in India because at the present moment any Tom, Dick and Harry from anywhere in the world can go to India, but when it comes to Indians going abroad restrictions are imposed on every part of the British Empire. Only recently one gentleman, who is an Australian, was appointed Governor of one of the Provinces of Bengal, although Australia is a forbidden country to Indians. The natural logical corollary must be a policy retaliatory, a rigidly restricted immigration into India, especially to those who shut the door of their country to Indians. I always try to limit my time, but I am very tempted to quote here a letter which appeared in the *Kenya Weekly News* in their issue of 24th March, 1944, where a correspondent, a European lady who has lived in India, who writes under the *nom de plume* of "Kim"—I know her perfectly well, she is a respectable lady friend of mine—said: "I have read the anti-Indian letters which appear from time to time in the Kenya press and they seem one of the most subtle forms of fifth column propaganda I have ever met. I do not say that all who write these letters are disloyal, but I assert that they are doing the enemy's work for him extremely well".

So far we have been blaming the unofficial European community; I was not attacking the assurance given in the *East African Standard* yesterday, and I accept that assurance, that this time Government has taken this drastic step without consulting anybody, and I submit they are helping enemy propaganda wonderfully well by taking action which is totally unnecessary and which is doing a lot of harm in India. I think some people who read the English papers will know of the commotion caused in the Council of State in India where this matter has been discussed, I believe only last week, and it is going to do a lot of harm to the war effort in the way of recruitment. If we are not allowed to come to a British colony, why should we fight for these people and give our lives when we are treated as "Untouchables" in this Colony? Some Englishmen find it incredible to believe that, while the highest military honours in India and elsewhere are being given to Indians, we are treated in this fashion in this Colony;

[Mr. Shamsud-Deen]

not only socially but in other respects we are being treated, as I have said, as "Untouchables". While on this subject I beg of you to just give me permission to quote on the question of immigration, as to what really is immigration and what is not. We suspect that, in spite of the assurance given to us, these things will not disappear at the end of the war. I think this will be a very great help to all those gentlemen who have been out for the restriction of immigration since 1923. I think the hon. Director of Public Works will bear me out that as far back as 1927 the Government actually entered into an agreement with me to obtain Indian artisan staff from India. They asked me to bring out 400 Indian artisans from India. Immediately very strong representations were made to His Excellency, the Europeans raised a hue and cry when they found Government wanted to get Indian artisans out. They said, "Here you are trying to get 400 of them in by agreement and you are allowing this agitator to bring them out while we are trying to restrict Indian immigration into the Colony". So the agreement was broken and nothing happened, although I think I could have taken action against the Government for breach of contract.

However, that is the point I have been trying to make, that the attempt to reduce immigration of Indians to this country has been consistent for at least the last 20 years, and that is the reason why I was asking permission to quote from the Simon Commission Report, which begins: "The central mass of Asia throws out to the west, beyond the Urals, the sub-continent which we call Europe, and to the south, behind the higher barrier of the Himalayas, the sub-continent which we call India". Really when you come to think of it, the Europeans and Indians come from one and the same stock. All it amounts to is that some people migrated to the west and others to the south, the former are called Europeans and the latter Indians, but we, the British subjects, belong to one family known as the British Empire, and I think that at this juncture some gesture on the part of the Government to treat the Indians in this Colony in a decent and kindly manner would have gone a very long way to create an agreeable atmosphere in India. It has been said again and again that the Indians came to this part of East Africa because of European protection. That may be true as far as the British Government is concerned with respect to Nairobi and the interior of the Colony, but I may say that the presence of Indians in East Africa was recognized and appreciated by the British Crown in a more deserving manner before Kenya Colony or East Africa came into existence. Up till now I know of no Indian who has been created a knight in East Africa, but if you, sir, refer to the records of Zanzibar, you will find that an Indian named Thria Topan was created a knight in the 19th century before any white man set foot in this Colony. His Majesty the King, or Her Majesty the Queen, whoever represented the Crown of England at that time, would not have conferred a knighthood on an Indian if Indians were merely a useless population.

I think I have really exceeded my time limit, although I have a lot more to say on this subject because, as I say, immigration into this Colony has saved a lot of starving families from death in India, and I have not the slightest hesitation in admitting that I am one of them. If I had not come to Kenya probably my father, mother, younger brother and I would have died of starvation. Therefore, I think every possible step should be taken to encourage Indian immigration in the same way as we are trying to encourage European immigration, instead of taking unjustifiable action as has been done by Government in their presentation of these Regulations. I only wish to say that this Council, as far as I can see, is merely a camouflage to keep up appearances. You call this Council once, twice or three times a year to pass pious resolutions and harmless legislation, but the real thing is done by just one man, and he has been encroaching on the rights of the Indian community.

MR. AMIN: Your Honour, the hon. Attorney General in his reply to the hon. mover of this motion gave figures of immigration during certain months of this year. Those figures are irrelevant, but more relevant in my opinion will be the figures of emigration from Kenya to India during the whole war period and the years before. These are wartime regulations, and wartime regulations must

[Mr. Amin]

take into account wartime conditions. At the beginning of the war, great encouragement was given by the leaders of the European community to people who wanted to evacuate to safer places, not because the people were frightened of staying here, but I want to say here without fear of contradiction, that the organizations which were created in Nairobi, as I know from my personal contact with them, made arrangements for the evacuation of European women and children south of these territories, and utilized the A.R.P. organization for the purpose of obtaining information as to the number of people who would be willing to avail themselves of this opportunity. European wardens and Indian wardens in Nairobi were asked to collect facts and figures of European men, women and children who might be wanting assistance by way of transport. An Indian warden friend of mine who was in charge of an area in which there were Europeans and Indians, was asked to collect figures about European women and children, but was never told of the necessity of obtaining numbers of Indian women and children living in that particular area who might be wanting transport facilities, because at the time——

LORD FRANCIS SCOTT: On a point of order, has this anything to do with the motion before Council?

MR. RENNIE: I think the hon. member is working up to his point. (LORD FRANCIS SCOTT: It will take some time.)

MR. AMIN: I have brought these facts before Council for the purpose of explaining what happened at the beginning of the war. Indian people left this Colony with the intention of keeping away from the Colony during the period of the war, and Government desired that they should evacuate as far as they could, and they did so. Five years have passed, and is it now suggested that they should not come back? They all intended to come back when the opportunity presented itself. Evacuation took place in 1939 and 1940. Then the shortage of shipping became acute, and people who would normally have returned found it impossible, and it was only at the end of last year that dhows became available, and it was possible to bring passengers from India who had waited for years to return to Kenya or to these territories. When the dhow season begins it is one way traffic. The figures should have given immigration and emigration during the past five years, 1939 to 1943 inclusive, and then I feel the Government's argument would have been convincing. Without any shadow of doubt, the whole romantic story about dhow-loads coming into the harbours of East Africa and pouring hungry masses into these territories was pure fiction and unjustifiable. Dhows are starting to go back to India now, and when they go back they carry as many passengers as they brought.

As the hon. and learned mover has already suggested, it was the intention and the view of the representatives of the European community and of the departmental heads who represented Government on the Post-War Employment Committee that they must make some sort of provision to restrict immigration of Indians into these territories, and that they went out of their way to make their recommendation in that report, and the date is relevant. It is stated in this Council that it was only in December, 1943, that the matter first came to a head. This is not correct. Government had decided for some restriction on immigration as early as September, 1943. I refer to the Post-War Employment Committee report, it is dated 21st September, 1943, and the report is entirely opposed to free Indian immigration in future, and it was only the Indian member who opposed this proposal. The hon. member Mr. Patel has quoted from his minority report opposing the recommendation for restrictions. Can anybody blame the Indian community upon this, in view of the past history of this Colony and many of the Imperial Government's dealings with us? Can they blame the Indian community if they said that the food and housing shortage was only an excuse to bring about these regulations and that at the end of the war, on the basis of this committee's report, they would find another excuse, the unemployment of Indians, &c. These are excuses and not the causes for the regulations, and while these excuses are very limited the real intentions are shown in many divers and unhappy ways. There are so many committees at the moment working for employment of one kind and another——

MR. RENNIE: I do not want to interrupt the hon. member, but if he is likely to take some time the debate had better be adjourned now in order that we may proceed to the first reading of certain bills so that we can take their second readings to-morrow.

The debate was adjourned.

BILLS

FIRST READINGS

On the motion of Mr. Foster Sutton the Mining (Amendment) Bill and the Increased Production of Crops (Amendment) Bill were read a first time and notice was given to move the subsequent readings at a later stage of the session.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 19th April, 1944.

Wednesday, 19th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 19th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

MINUTES

The minutes of the meeting of Tuesday, 18th April, 1944, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 19—EUROPEAN REFUGEES, PRISONERS OF WAR, ETC.

MR. AMIN:

Will Government please state—

(1) the number of alien European refugees who have entered Kenya since the beginning of the war;
(2) the number of British European subjects who have entered Kenya since the beginning of the war;
(3) the number of prisoners of war;
(4) the respective numbers of said refugees working in civilian and other capacities;
(5) the respective numbers of prisoners of war working in civilian and other capacities;
(6) the number of Asians working with the military departments, enlisted, civilian and casuals as on the 21st March, 1944;
(7) the number of Indians released from military service from the beginning of 1943.

MR. TESTER: (1) 241; (2) 11,011 (this figure includes old residents); (3) 54,684; (4) 171 refugees are working in civilian and 32 in other capacities; (5) 21,105 prisoners of war are working for the military authorities, 4,225 for Government Departments and 5,013 in other civil capacities; (6) the numbers of enlisted and civilian Asians working with the military departments in the East Africa Command as at the 21st of March, 1944, were 2,018 and 1,080 respectively: no figures of casual employment are available; (7) 181 enrolled and 67 enlisted Indians were released between the 1st of January, 1943, and the 23rd of March, 1944.

The figures given under (6) and (7) refer to all the East African territories. Separate figures for Kenya are not available.

No. 35—NON-EUROPEAN EX-SERVICE MEMBERS' PENSIONS AND GRATUITIES

MR. BELCHER:

Will Government please state what steps are being taken to examine the regulations under which pensions and gratuities are paid to non-European members of the Armed Forces and their dependants?

MR. TESTER: The necessary action is being taken to appoint *ad hoc* committees for the purpose.

No. 37—MEMORIAL HALL, NAIROBI

MR. AMIN:

Is the Government aware of the deplorable acoustics of the hall in which this Council meets for its deliberations at present and the great and unnecessary strain this state of affairs places on the members of the Council?

If the answer is in the affirmative, will the Government take early steps to remedy the defects of the hall or, if it is not possible, arrange that the Council holds future sessions in another and less objectionable place?

MR. TESTER: The Government is aware that the acoustics of the hall are not entirely satisfactory.

The question of improving them will be examined.

DEFENCE (ADMISSION OF MALE PERSONS) REGULATIONS, 1944

The debate was resumed.

MR. AMIN: Sir, when I left the subject yesterday when Council was adjourned, I was dealing with some of the committees which are connected with the problems which are described as problems associated with the regulations. I would refer for the purpose of relating the workings of these committees to the regulations, by quoting some portions of the Government communiqué issued through the Kenya Information Office on these Regulations. I will quote a portion of it to save time: "The necessity for the conservation of food supplies and accommodation is no less urgent in this Colony where the situation is further aggravated by the fact that considerable numbers of Asian artisans are at present unemployed. In the past the shortage of skilled artisans was such that it was the policy both of the local Government and of the military authorities to facilitate their entry and recruitment, and the introduction of a permit system was considered likely to have a discouraging effect. The situation has now changed, and not only does the supply of this class of labour exceed the demand, but it also appears that some of those who have entered the Colony in search of employment do not possess the qualifications of the skilled artisan. In these altered circumstances it is considered essential to introduce the permit system as early as possible". This refers to employment among Asian artisans. Then the general grounds: "The objects of the Regulations (which apply to all non-natives alike) are to conserve food supplies and ease the housing situation by prohibiting the entry of persons whose presence is not essential to the efficient prosecution of the war". This communiqué clearly indicates that two main grounds and one secondary ground are given as the necessity for the Regulations.

"I will first deal with the minor one—the question of unemployment. By the beginning of 1943 it appeared that the country was out of danger and that East Africa, and the people in East Africa, were safe from any possible threats from any side. It was then that this agitation on the overcrowding of East Africa came to the fore. The first result was the Traders' Licensing (Amendment) Ordinance of March, 1943. This was a measure which before the war had been asked for for years by those who object to a great number of traders in this country. Immediately this area became safe from the threat of war, this Ordinance was pushed through against the united opposition of the Indian members of this Council. Later on, by March or April, the correspondence columns of the European Press began to indicate the trend of the anti-Indian agitation. Very serious allegations began to be made against the Indian community generally, and it was then that the public opinion which, as my hon. and learned friend Mr. Patel has often stated, only amounts to European opinion, began to be felt. It was the general allegations which, in my opinion, resulted in swaying Government into taking action, and it was by September that the Government officials on the Post-War Employment Committee

[Mr. Amin]

came to the conclusion that at some stage or other restrictions on Indian immigration would be necessary. In regard to this agitation I would only refer to two examples. First, I will quote from the *Sunday Post* of the 4th July, 1943. This is what appeared under the caption "Feudalism in Kenya": "In the future Kenya will have to suffer to an extent never contemplated in the past from the most evil influences of oriental feudalism. Thousands of years of autocracy have made the Indian people what they are to-day: a race of usurers and gamblers. Usury and gambling are in the pigmentation of their blood. They can no more resist the temptation to exploit their fellowmen than the drunkard can resist the taste of liquor. Land, food, living space, the means to live, are the counters with which they most love to gamble. The past eighteen months have given us a taste of their methods".

MR. RENNIE: I do not want to curtail the hon. member's speech, but I would ask him to adhere more closely to the motion (Hear, hear.)

MR. AMIN: I am leading up to the point that it is not these apparent causes which are responsible for these Regulations, but something else, and that Your Honour's——

MR. RENNIE: I have given my ruling on the matter.

MR. AMIN: That quotation concludes with a general accusation against the Indian community. Other European papers followed suit. The *East African Standard* had several scores of letters appearing in one shape or another accusing the Indian community of being a danger to these territories, and later on the high water-mark was reached in the *Kenya Weekly News* under the heading "Shadow over Africa", when everything terrible that has happened in East Africa before is described as due to the presence of the Indian community here. It was about the 15th October, 1943, that this article "Shadow over Africa" appeared in the Press. All these things, combined and strengthened by rumours, strengthened by the general anti-Indian rumour-mongering in all the places which are famous for that sort of thing, resulted in some sort of a change of attitude in the mind I think of the Government, and

without going into details, without going into its possible repercussions, they listened to the general talk about dhows coming in and bringing thousands of people when the food position was very serious, they brought in these Regulations. In my submission the figures that the hon. and learned Attorney General quoted yesterday are not relevant to the issue at all, because those figures are figures of immigrants who came subsequent to the decision to introduce the Regulations. In my submission, the idea of restricting immigration in one way or another was formulated in December. A decision in one form or another must have been taken before the communiqué was issued, and the communiqué was issued in February. One assumes before the communiqué was issued the East African Governors had some sort of consultation among themselves, and one assumes that is a correct assumption as all the three Government ultimately came to the same conclusion, and that they had some time beforehand come to that decision. I submit that those figures are not relevant. The figures for August, September, October, November and December cannot be relevant, because on those past facts alone could such decisions be justified.

Coming to the question of the building shortage and the food shortage, I will first take up the question of the building shortage. My hon. friend Mr. Shamsud-Deen has already described the work of the Building Control Committee as at best obstructive of Asian housing plans. I would like to refer to what members of the Municipal Council of Nairobi said about this Building Control Committee, and I will refer to two paragraphs from the *East African Standard* dated the 4th April, 1944: "Councillor Rathbone supported the remarks and said that in the last 12 months many essential requirements had been whittled down, while unessential work was permitted to go on. The Main Committee was out of touch with things due to the lack of unofficial representation and instanced a case of this, where an ancillary authority had whittled Council's labour on its Municipal housing project while still permitting full labour requirements on unessential private housing last year. He understood that a permit for this Mombasa hotel had been given, or approved, while the stone requirements for the

[Mr. Amin]

Government's main African housing scheme had been cut by half, to the delay of contractors. He thought that there was evidence of great mismanagement in the functioning of Building Control. Councillor Rathbone did not agree that the Commissioner for Local Government and Lands was in effect an unofficial representative on the committee, although he might put forward some of Council's views on occasion." Councillor Thakore criticized the Nairobi Building Control Sub-Committee for disregarding the recommendations of its Indian advisers and said that many deserving Asiatic applications had been turned down. The whole question of Building Control was scandalous. He knew of many applications for the construction of two or three rooms urgently needed not for letting but for existing tenants which had been turned down. He had chucked his job in disgust after a few months of working with the Control and seeing how unfairly it functioned. He instanced that there were many cases of whole families living in one room without kitchen or bathroom and averred that out of 30 deserving applications made at one meeting all but four had been turned down. His information was that people had obtained building permits not once but two or three times by what he regarded as improper means and he advocated that Building Control be suspended for, say, six months to allow people to see what they could do by fending for themselves. He knew of many cases of people not being allowed to use building material actually in their possession and contended that if the Control was suspended for six months people who needed accommodation would find enough material to build 100 houses." Apart from this, representations had been made not only to Indian members of this Council but also to the hon. member representing Native Interests, Mr. Beecher, and he could not feel satisfied that poor people who wanted to build houses were treated in the manner he was informed. I would like to quote from the letter a copy of which he addressed to me, that he had to his personal knowledge several friends of his who had approached him who had had material at their disposal for some time, and that although people with good financial backing could obtain building permits, these poor people had not been able to obtain permits. Not only has he made representations to the proper quarters, but others also have done so without any adequate response from the authorities. I would like to quote one example.

MR. RENNIE: I do not want to interrupt unnecessarily, but the debate is on the Immigration Regulations at the present time, and not on the Building Control Committee.

COL. GROGAN: I move that the question be now put.

MR. COULDREY: I beg to second that.

MR. RENNIE: Such a motion requires my prior approval, and although I do not wish to have this debate carried on too long to-day I think the hon. Indian members should have an opportunity of airing their views sufficiently. I trust, however, that this indulgence will not be carried too far.

COL. GROGAN: I beg to withdraw my motion.

MR. AMIN: Your Honour, I was trying to make the point that the building shortage is not the fault of the Indian community, but it is the Government-appointed building control and sub-committees which are responsible. To give an instance I will quote my own case. I made an application in January and I have not yet had a proper reply. After three of four months I was asked whether, before I left for India last year, or the year before, I lived in a house of my own or somebody else's. That inquiry could have been addressed to me at least two months before.

I will now come to the question of the food shortage. This question has been debated in this Council very often, at least twice, in one form or another. My suggestion is that if the food and housing shortages were the real reasons for these Immigration Regulations, then the Regulations could have been in a different form. The Regulations would have been in a form which would encourage people who are in India to remain there, and people who are here to go to India and stay there with confidence as long as they can afford. I will refer to the Regulations, and it is easy to see that my point is clear. The Regulations as they stand

[Mr. Amin]

would encourage people who happened to be in India to hurry back now because they left the Colony at the beginning of the war and have been away from the Colony for more than two years. Instead, we should ask them to stay there and come back only after the war or after the food shortage has eased. If you had stated that anybody who left the Colony before or at the beginning of the war could come back to the Colony at the end of the war and one year thereafter, and if people who are here and are anxious to go to India were to be informed that if they came back to the Colony after the war and one or two years thereafter, and that there would be then no necessity for a permit, then those who wish to go could go with an easy conscience as to their right to return. Those two points I make to suggest that the easing of the food and housing situation would have been better served in this way and not by the regulations which were promulgated. I will now deal with the question of food shortage in regard to the future. Is it imagined that for years to come there is likely to be a food shortage? I submit not, and if the food shortage is the only reason, these Regulations should not have been so strict as to the period within which people could return. There is another point, and it is that there has been for the last three years a considerable amount of land which is good for cultivation which has remained out of cultivation. If the Indian community had been asked by Government for their co-operation in making use of that land, and had they refused, I am quite sure the Government could have justified these Regulations on the ground that the Indians did not co-operate, and there would have been some justification in saying that although the Government asked the people in the Highlands to cultivate this land they refused. I have immense faith in human nature. I am quite prepared to believe that the people in the Highlands region would not have refused to use the uncultivated land during wartime for food crops for the use of the general community if schemes had been proposed.

I will now touch on only one point, and that is the question of unemployment. There is little unemployment in the Colony at the present time, and the little which is there has been brought about owing to the intention on some people's part to see that Asian employees are sooner or later put out of employment. I do not want to mention names, but in regard to the employment of Italian prisoners of war, the military authorities had their attention drawn to their obligations and they decided that they themselves should not give preference to Italian prisoners over Asian artisans. Ultimately certain military factories were closed down, and the work which had been done by those factories was transferred to private contractors. Among private contractors there are Asians and Europeans. The European contractors succeeded in getting Italian prisoners of war, who are paid far lower wages than the ordinary wages of an Indian artisan. This has resulted in the use of prisoners of war for the purpose of lowering the wages and the standard of living of the working man of this country. I would not go further than that because I do not want to waste time, but I have proofs of this matter that I can produce at any time.

I have mentioned three points—the food shortage, building shortage and unemployment. On none of these grounds could these Regulations have been justified. I would repeat that if the food shortage was the only reason for these Regulations they could have been worded differently. You would have allowed people in India who formerly resided in this Colony to return a sufficiently long time after the war without any nervousness as to their right to return, you would have given greater confidence to the people here who want to go to India and assured them that they can come back to Kenya after the war without any nervousness as to their right to return. In conclusion, I would say that the Indian community should not have been forced to concentrate on this matter which, to say the least of it, has been unnecessary. Time will prove that these Regulations have not served the purpose for which they were intended, but that they have served quite a contrary purpose.

MR. KOHLI: Your Honour, I will only say a few words to touch on a few points other than those which have already been dealt with. We send our children to India for further education, and now they

[Mr. Kohli]

remain at the mercy of permits that they can return to this country. We also have marriages of our children in India because of our religious customs, which do not allow us to have marriages in this country because we have not got enough population. These brides and bridegrooms will be at the mercy of permits; in other words, marriages will have to be performed on a permit system. I consider these regulations nothing else but a slow process of strangulation of the Indian community in this part of the world. I will touch on another aspect of that, that owing to the food shortage there was appointed a commission of inquiry, and we were not given representation on that commission. Had we been given representation, we would have suggested certain ways and means of raising enough food.

MR. PATEL: Your Honour, the hon. and learned Attorney General yesterday referred to figures of Indian immigration during the months of December, 1942, and January, February and March, 1943, and compared them with the figures of December, 1943, and January, February and March, 1944. Those figures are misleading, because it should be understood that this was the first time the concentration of Indian immigrants by dhows became possible. Formerly they used to arrive by steamer, but as steamer accommodation became difficult the dhow passenger traffic increased, and that was the only reason why in December, 1943, and January, February and March, 1944, the figures showed such a large increase. The hon. member also quoted the figures of women and children who came in in large numbers in those months. That is no reply to my argument, for it should be realized that these regulations have laid down that entry permits are needed for males only. As far as the women and children are concerned, they are still governed by the regulations which came into force in 1941 or 1942, under which even now women who have their husbands here can come back to this country without a permit, and children below the age of 18 whose parents are here can also enter without permits. If so many women and children entered in such large numbers in December, January, February and March last it showed that their husbands or parents were in this country ordinarily resident, and that they came in such large numbers in that particular period was because they had no other way of arriving except by dhows. In my submission, the figures quoted by the hon. member support my case, and not his, because, assuming more people entered during this particular period in large numbers than did prior to that year, it shows that the only way of coming to this country was by dhow during the dhow season, and not by steamers. The hon. member mentioned that there was a large influx. I pointed out yesterday that there was no large influx, that it was a normal entry into this country of residents and of women whose husbands were residents, and of children whose parents were residents, and a few people who were waiting to come to this country because of the encouragement given to them to come; they could not, however, leave India for five or six months. I also pointed out in my opening remarks that, even before the war, the normal movement both ways was about 10,000 a year, so that 6–7,000 or 4,000 coming in in that period of four months was by no means an influx. He also mentioned that people arriving in March had been allowed to enter although the regulations came into force on the 1st of March. I take this opportunity of thanking Government for allowing those people to land here, but I would point out that that concession was granted to passengers who had left India by dhows on or before the 29th February, 1944, the day prior to the coming into force of the regulations, and it would have been, in my submission, absolutely unjust had they not been allowed to land, as when they sailed they did not know that any such regulations had been drafted here.

The hon. and learned Attorney General quoted the number of Asians who had applied for permits, 361, and also mentioned the figure of the applications that were granted and of those still under consideration. Those figures, if the correct information is given, are about permits for interterritorial movement of Indians. The hon. member Mr. Montgomery, who is acting as Director of Man Power, gave in reply to my question figures of those who were now in India and who had applied for entry permits: 69, of which 35 have been granted. Therefore, it is

[Mr. Patel]

quite clear that about 300 Asians residing in adjoining territories have applied for permits. That was one of my arguments, that it is wrong that people residing in Uganda and Tanganyika should be asked to apply for permits to enter Kenya. As a matter of fact, it is against the interests of this country. As members of this Council ought to know, a very large number of Indians ordinarily resident in Tanganyika and Uganda came to this country as volunteers or conscripts to work for the armed forces. I have definite information that the Uganda Government does not propose to allow their residents to return to that country if they have resided in Kenya for more than two years during which time they have served with the armed forces. If those people leave the service of the armed forces and try to return to Uganda, the door is closed to them because they have been here for more than two years, but that is the ruling in Uganda, and in my submission it is wrong to have permits for interterritorial movements—

MR. FOSTER SUTTON: On a point of explanation, I think it right to say that the hon. member has referred to figures supplied by the Acting Director of Man Power, and those are only in respect of Africans looking for employment. Those are the people who apply to him—all other applications from India or else where go to the police.

MR. PATEL: One point which I want to refer to was the mention about prompt action being taken by Government. The hon. and learned Attorney General asked why I had said that action could have been postponed until October of this year? What I said was that there was no necessity for taking prompt action. Government knew very well that the dhow season was over by March and that no more Indians could have come in in large numbers until October or November, 1944. They themselves referred to that in their communiqué. They also knew that there would be a movement back to India. Government knew that very well. Therefore, there was no necessity, I say, to provide restrictions on immigration by Defence Regulations; if necessary, it could have been done in October without any harm whatsoever, and there was no necessity to pass these Defence Regulations in such a hurry. In fact, if we examined the case very carefully, there was no necessity whatever for such prompt action as the hon. member suggested. The hon. member Mr. Kohli referred to the case of students who have gone abroad for their education, who have reached the age of 18 years, and who will be required under these regulations to apply for an entry permit. I am quite certain that the authorities will readily grant such permits for those students, but I submit it is unnecessary for boys or girls born in this country, educated in this country, who have gone abroad for further education, to be required to apply for entry permits before they can come back to join their parents. That is another instance showing how these regulations were drafted without due consideration to the incidence of their operation. I submit that the reply given by the hon. and learned Attorney General did not refute any of my arguments. The case for the repeal of these regulations is very strong, and though Government will override all reasonable arguments advanced from the Indian side I submit that the regulations were unnecessary, and if the Government feels any sense of justice it should accept this motion.

MR. RENNIE: Before I put the question there is one small point to which I would refer in case there is any misapprehension. I think the hon. and learned Attorney General, rising to a point of explanation, referred to the number of applications from Africans for employment. Am I right in thinking he meant Asians?

MR. FOSTER SUTTON: I meant Asians.

MR. RENNIE: There is one other point. In view of certain statements made in the course of this debate, I should like to make it clear that the Government's immigration policy after the war will be determined in the light of the circumstances that obtain at that time and will not be affected by the fact that it has been found necessary to enact these Defence Regulations as an emergency measure to meet special wartime conditions.

The question was put and negatived.

SCHEDULES OF ADDITIONAL PROVISION

NOS. 4 AND 5 OF 1943 AND 1 OF 1944

MR. TESTER moved that the Standing Finance Committee Reports on Schedules of Additional Provision Nos. 4 and 5 of 1943 and No. 1 of 1944 be adopted.

MR. FOSTER SUTTON seconded.

The question was put and carried.

LAND CONTROL BILL

SELECT COMMITTEE

MR. WRIGHT: moved that the following proviso be added to the motion passed last week appointing the select committee on the Land Control Bill: "Provided that, in the unlikely event of Col. Kirkwood returning to Kenya prior to the termination of the select committee's deliberations—which would entail the acting member for Trans Nzoia relinquishing his seat in Council and on the select committee—the hon. Member for Rift Valley shall be appointed in the place of Major Keyser, in view of his having had the opportunity of listening to and participating in this debate".

MAJOR CAVENDISH-BENTINCK seconded.

The question was put and carried.

BANKRUPTCY (AMENDMENT) BILL

SECOND READING

The debate was resumed.

MR. FOSTER SUTTON: Sir, I do not propose to take up much time in answering the points raised by hon. members on the other side of Council, but there are a few which I feel in fairness I should deal with. The hon. Members for Nairobi South, Nyanza, and Mombasa stressed the desirability of the enactment of similar legislation by the adjoining territories, and they urged that Government should take up immediately the question of such enactment with the Governments of those territories. The position up to date is that copies of the Bill have been sent to the Governments concerned, and this Government will make representations along the lines urged by those hon. members. Another matter which was represented very strongly by the hon. Member for Nairobi South was that Government should not go to sleep on this legislation but that if, after the enactment of this measure, other loopholes are found, he urged Government to proceed to deal with them forthwith. I am very happy to be able to give him an undertaking that that will be done. The hon. Members for Kiambu, Western Area, and Central Area (Mr. Amin) urged that the provision in clause 10 regarding the position of debts due to relatives would work considerable hardship. If I may be pardoned for saying so, I can understand the hon. Member for Kiambu falling into an error of that type, but I find it difficult to believe that the other two hon. and learned members who made the point could have been serious when they made it, because there is nothing, as they must, I should have thought, have been aware, to prevent a person if he desired to protect a loan made by a relative, from either giving that relative a mortgage on his real estate or a bill of sale on his chattels. What is the objection if it is an honest, straightforward transaction? Why should he not have the intelligence to protect the relative by giving him a bill of sale on the chattels? If it is a genuine transaction there is no conceivable objection. But the point is that the lack of this provision has been taken full advantage of in the past and has been one of the means which has been used, and extensively used, to defeat the rights of creditors, and this provision was expressly put into this Bill to try and stop the dishonest practices. We know, and creditors know, perfectly well that these fictitious entries in books regarding wages due and money due in respect of loans have no reality; they are merely put in in a large number of cases to protect the debtor because they take priority, and a debtor by that means is able to retain some of the moneys or some of the value of his goods to the detriment of his creditors. I suggest that the hon. members, at any rate the learned members, who expressed these fears over this clause, might look up section 24 of the 1930 Bankruptcy Ordinance, under which bona fide conveyances made by a bankrupt before his bankruptcy are fully protected. In the light of that, I think Government would, if I may be pardoned for using the expression, be foolhardy to lend their support to an amendment of the measure along the lines suggested.

It was also urged that the three days in which a debtor is to be allowed, if this Bill becomes law, to file his statement of affairs, once a receiving order is made against him, is too short. Well-

[Mr. Foster Sutton]

really, I suppose the same argument would be employed about any period allowed. It has not been found too short in the United Kingdom, it has been three days ever since the bankruptcy legislation of 1883, I think that is the year, and in the light of experience there they have not amended that provision of the bankruptcy law, and for a very good reason, and I suggest we should make similar provision here. If an insolvent debtor makes up his mind to file his petition in bankruptcy, surely, before he makes up his mind to file his petition, he has fully acquainted himself with his own financial condition, he knows all about his own affairs, so that it would hardly be a hardship for him, I venture to suggest, to be ready, once he decides to file his petition, with his statement of affairs: he could walk in, file his petition with one hand and hand in his statement of affairs with the other one. Anyhow, if there is any hardship, the court has ample power to extend the time in real cases of hardship. I hope that such extensions will be confined to cases where there is real hardship.

It was further urged that clause 7 of the Bill created hardship. That clause is one which requires a debtor, once he has been adjudicated bankrupt, to keep the Official Receiver or trustee informed of his whereabouts and financial position once every six months. It is suggested that that period is too short and it works some sort of hardship. Obviously, as I pointed out, in moving the second reading of the Bill, the proposed new section is designed to keep the Official Receiver and trustee fully informed and at reasonably frequent intervals, and it seems to me that with a debtor who has deprived a number of people of their just debts it is little enough to expect him to write in once every six months, verifying his statement by an affidavit, setting out his financial position. Of course, debtors will not like it, because if their financial position is such as to warrant the Official Receiver going to the court and asking for an order for the payment of money, it naturally puts the debtor in a less favourable position. The hon. Member for the Western Area asked for an assurance that the fund created by clause 12 would not in any way adversely affect the creditors. I can give that assurance, and have no hesitation in doing so. The fund will be made up of individual assets; as he probably knows, there are frequently in bankruptcy small sums that if is impossible to split up, and there are also unclaimed dividends. It will not affect the creditors at all. The hon. member for the Western Area, however, went on to say that one reason why the present legislation is unsatisfactory is that, at present, steps are not taken to prosecute people who commit offences against the law. He will appreciate, of course, that I am not in a position to express an opinion about that, but it is a matter which, I can give him my assurance, I will interest myself in keeping an eye on in the future.

It was urged by the hon. Member for Mombasa that the measure now before Council does not go far enough. In my opening remarks I anticipated that that accusation might be made. All I can say as to that is that I think it goes a long way and is a considerable advance, and I suggest that we content ourselves with the measure now before Council, and if it becomes necessary, as I have already said, in the light of experience to make further amendments Government will do so. The hon. Member for Kiambu painted such a pathetic picture about debtors only being allowed clothing up to the value of £15 that I must say I personally felt touched! In any event, I think it is a matter that we can debate and finally decide upon in select committee.

The question was put and carried.

MR. FOSTER SUTTON moved that the Bill be referred to a select committee consisting of: himself, as chairman, Mr. Tester, General Manager, K.U.R. & H. (Mr. Robins), Mr. Nicol, Mr. Vincent, Mr. Kohli.

MR. BROWN seconded.

The question was put and carried.

COFFEE INDUSTRY (FINANCIAL ASSISTANCE) BILL

SECOND READING

MR. BLUNT: Your Honour, I beg to move that the Coffee Industry (Financial Assistance) Bill be read a second time.

The objects of this Bill, as stated in the "Objects and Reasons", are to enable advances from State funds to be made to coffee farmers in order to assist the

[Mr. Blunt]

industry during the present critical period. I would like to try and indicate how and why this Bill becomes necessary. It is probably very well known that the coffee crop for the last four years has been on the whole extremely small. We had one good crop in 1941/42 amounting to about 18,000 tons, but in the other three years of those four the crops have been exceptionally small due to unfavourable climatic conditions, lack of rain and the advent of thrips. To try and give you some indication of the position I would like to quote the exports of coffee for the four seasons before the war, and compare them with the exports of coffee in the past four seasons. For the four seasons immediately before the war exports were 71,000 tons. In the last four years, even including the peak year of 1941/42, they have not amounted to more than 41,000 tons. I believe if we had figures indicating the value of the coffee crop in those four years before and since the war we should find the discrepancy was even greater than in the quantity of exports. I have not those figures accurately, but from investigations I have made I am pretty certain that the gross return to the coffee industry in those four years has not been more than half the gross return for the four years just before the war. The coffee industry, like every other agricultural industry in this country, has had to face difficulties caused by the war. It has had to face increased costs, difficulties in securing labour, increased costs of labour, and difficulties over machinery, and all this with practically half the normal gross return for its product.

The position has arrived when a certain number of good coffee farmers, through no fault of their own, are unable to carry on their estates in the way in which they ought to be carried on, and unless they can get some assistance in the form of loans the cultivation of the crop is going to deteriorate. It will be known to this Council that the coffee industry of Kenya has in the past been its major agricultural industry, and although at the present moment it is not a crop of any particular priority, certainly not in comparison with some of our other crops, it is an industry which has very much more money invested in it, which has a very large personnel occupied in it, and which is one which I suggest the country cannot afford to see going downhill. (Hear, hear.) Moreover, it is a long term crop, and whereas in the case of a short term crop it is possible to switch over to some alternative crop which is going to give better results, that is not the case in respect of coffee. It is not possible to change over and that coffee must be maintained. I would point out that the industry is not asking for subsidies or grants; it is merely asking for a loan, and for a short term loan too, because, as will be seen when we come to the Bill, it is proposed to repay the loans in the course of the next three years. The coffee industry is, I believe, the only one of the larger agricultural industries at the present moment which does not enjoy the advantage of any guarantee of price or guarantee that its output will be taken.

If I may turn to the Bill itself, clause 2 contains a number of definitions, and as members will have seen from the papers they have in front of them, it is proposed to make two slight amendments in the definitions by adding the definition of coffee plantation and by enlarging the definition of coffee planter. I have no doubt that the hon. Attorney General will refer in more detail to the reason, particularly for the latter, at a later stage. Clause 3 provides for the establishment of a board, and the board in the case of this ordinance is a most important issue. It will be seen that the number is limited to five. The board will be charged with carrying out the whole of the terms of the ordinance except in so far as the Land Bank will act as agent for it, but it will be required to consider each loan for which application is made, and for that purpose it is obvious that it must be a board which is readily available, which can meet at frequent intervals, and which must contain persons with an intimate knowledge of the coffee industry and the economics of coffee. I believe that the board which has been recommended to Government by the Coffee Board will meet the case. I would point out that the membership of the board, as recommended by the Coffee Board and as accepted by Government, will consist mainly of people from this part of the country. It is frequently argued in the case of boards of this kind that they should be regional and representative of different areas. In this particular case I suggest that cannot be so for two reasons. The board is required to meet very frequently and, as far as coffee grown west

[Mr. Blunt]

of the Rift and in the Rift is concerned, it is not anticipated that there will be many, if any, applications for assistance under this ordinance. Coffee grown west of the Rift, as members are well aware, is mainly carried on as part of a mixed farming organization, and those farmers in the main have other sources on which they can draw for financial assistance should they need it. It will in the main I believe be used in connexion with the main coffee areas here to the north.

Turning to clause 5, it will be noted that a coffee planter may apply to the board for an advance, and in 6 that any moneys advanced under the authority of this ordinance are in the first place a charge against the coffee grown or to be grown. It is provided under clause 6 that the loan shall form a first charge upon the coffee, and subsequently, in paragraph (b), that the loan shall also be a charge against the land, but in that case it does not take priority of existing charges. It is proposed at the committee stage to introduce an amendment in clause 7 to the effect that "where the board proposes to make an advance of money which is subject to a statutory or contractual registered charge or mortgage, the board shall in writing inform the chargee or mortgagee, as the case may be, who shall, if he objects to the making of the advance, be given an opportunity of being heard by the board before the advance is made". The Coffee Board, which instigated this Bill, desire that nothing appearing in the Bill should have the effect of preventing those firms and organizations which now provide advances for the coffee industry from continuing to do so, and in regard to clause 6 (a), which refers to an advance under the Bill taking priority over any existing charge, the Board felt that it was desirable that where there was an existing charge, the chargee or mortgagee should be given an opportunity of making his case to the Board before the advance is actually given. In clause 7 it will be noted that the total advance which may be made shall not exceed the sum of £7 per acre of planted coffee. The Coffee Board were of opinion that that figure should be adequate in all cases, and generally expect that the advance which will be applied for will be within and, in many cases, considerably less than that. In clause 8 we come to the really important point of this Bill, that is the rate of interest at which these advances are to be made, and I regard that as vital to the whole of this proposal. It is possible in many cases for advances to be obtained from other sources. In many cases coffee planters could apply to the Land Bank, but there is no source of finance which coffee can get at the rate of 4 per cent. It is essential to my mind with a crop of this kind that, during the difficult period through which the industry is going, it should not have to pay a higher rate of interest than this for any loan which is not going to be immediately productive, but is father designed towards maintaining coffee plantations in good order so that they should be productive in the future.

Clause 9 requires that in applying for an advance full particulars such as the board requires shall be given, and clause 10 provides that the coffee which is the subject of a charge laid down under this ordinance shall be disposed of as the board may direct, and that the board may appoint a person or body of persons through whom that coffee shall be marketed. I believe that that point is likely to be taken up by members on the other side of Council as to who this person or body shall be. At the moment of course it is the Coffee Control, since the Coffee Control is the only body to which coffee may be sold, but I should like to assure members that in the view of the Coffee Board the new board should not refuse to appoint any existing agent through whom a planter is in the habit of marketing his coffee under this particular clause. In a later paragraph of clause 10 it will be noted that provision is made for the repayment of these advances at the rate of 14 cents per lb. on coffee produced unless the average crop in any one year exceeds 4 cwt. per acre, in which case an additional 14 cents will be recovered on every lb. in excess of the 4 cwt. average per acre produced. The Coffee Board considers that that is a reasonable rate at which repayment should be undertaken by coffee planters, but of course there is no objection to any person paying off at a greater rate than that if he is able and wishes to do so. Provision is made for that in the second proviso to that clause.

Clause 11 provides for notification to be given, when an advance is made, to

[Mr. Blunt]

the Registrar of Titles, who shall register the notification against the title, and to the Registrar General, who shall also register it, and in the case of companies to the Registrar of Companies, in each case without any fee being charged. It may be felt by members that clause 12 presents a difficulty in accepting this Bill in that it provides that the Land Bank, in issuing an advance, shall cause notice of such advance to be published in the Gazette. Naturally the coffee industry would have preferred that this should be achieved without the necessity for notification in the Gazette, but it was perfectly ready to agree to it under the circumstances. Clause 13 provides that the Registrar General shall refuse to register any chattels transfer over any coffee unless he is satisfied that the board has granted its consent thereto. Passing on to clause 16, provision is there made that any advance given must be applied for the purpose for which it is given, and in clause 17 provision is made that such advance cannot be attached for any other purpose. Clause 18 requires that a planter to whom an advance is given shall submit to the board, or to any person authorized by the board, any information or accounts that they may require from time to time, and clause 19 provides that the board may have inspections made of the premises of the borrower to see that the coffee is being properly treated after an advance has been given, and may see the books. Clause 20 is one with which we are familiar in the Increased Production of Crops Ordinance, requiring the man obtaining the advance to observe the rules of good husbandry to the satisfaction of the board and to comply with any orders in that connexion which the board may issue.

Clause 21 provides that he shall take out an insurance policy. I understand that in the committee stage the hon. Attorney General will move amendments to some of these latter sections, because the provision as the Bill is now drafted covers the man who originally obtains an advance, but does not cover his successor in title should he die or assign his coffee to some other person, and it is proposed therefore to cover that possible position should it arise. Clause 22 is the penalty clause, and I need not refer to it in detail, and clause 23 contains the rule-making powers such as are considered necessary to enable the ordinance to be properly carried out. I would like to point out to Council that this Bill was asked for by the Coffee Board on behalf of the industry, that the Coffee Board was responsible for the original draft, and has considered subsequent drafts, and the final bill in its present form, and even these amendments which have only just been submitted, and approves and asks for the passing of this Bill. I would like finally to point out once more that it is loans repayable in a short period that the industry is asking for, and not a subsidy or grant of any knid.

MR. TESTER seconded.

MR. VINCENT: Your Honour, I was relieved and pleased to hear the hon. Director of Agriculture explain the intention as contained in clause 10 (1). I do not think, however, that it is correct for this Council to allow any portion of the Bill before us to remain in a condition which can be misinterpreted by those who will ultimately administer the Bill. There has been a certain uneasiness among those who have for many years been the backbone of the coffee industry financially, houses which have dealt in coffee, and which have on many occasions, if not permanently in some cases, financed coffee planters to a very considerable degree. I only want to speak very briefly on this subject, as I would like the hon. members to know that I will send a note to the select committee, which I take it will be appointed, suggesting that clause 10 (1) be amended to read as follows: "All coffee subject to a charge under section 6 of this ordinance shall be disposed of as the board may direct, always provided that the board shall appoint a person or body of persons duly licensed as a coffee dealer and nominated by the coffee planter owning the coffee as his agent, to be the agent through whom the said coffee shall be marketed". That will permit the continuance of the relationship between the coffee merchant and his client. The Coffee Board or Coffee Control will, I am sure, make very certain that the people that they recognize as dealers will be in a position to keep their financial obligations towards the Control itself. I think that we must remove any uneasiness by being specific, and I am certain the hon. Director of Agriculture will be one of the first to agree with me in this.

MRS. WATKINS: Your Honour, I have been studying the amendments that were put on the table a day or two ago, after I had consulted my friends in the constituency who are on the Coffee Board. I presume the last amendment has gone through with their sanction, and we have the assurance from the hon. Director of Agriculture that that is so. But I think there is one thing that the Coffee Board and the hon. Director of Agriculture have overlooked, and that is in the amendment that was put on the table the other day which reads: "That clause 6 be amended by deleting the proviso and substituting the following therefor: 'Provided that where the Board proposes to make an advance on coffee which is subject to a statutory or contractual registered charge or mortgage, the Board shall in writing inform the chargee or mortgagee, as the case may be, who shall, if he objects to the making of the advance, be given an opportunity of being heard by the Board before the advance is made.'" I consider that is a completely fair proviso if the man is in the country, but we so continually have absentees from this country that it would mean that if a man is not here and he is given an opportunity of appearing before the board, it may take weeks or months to get that particular proviso put through. It may mean that a person might not be able to get his loan in time to pick his coffee or to manure his coffee or to spray it against some coffee disease, and I therefore would ask that the words be inserted in that sentence, "the board shall in writing inform the charge or mortgagee", the words "or his legal representative", and that would be, I think, a safeguard for the farmer not having too much delay about his loan.

Another thing about these loans, I am a little wondering how it is going to affect the ordinary and rather more casual dealings that most of us farmers have with our banks. Continually one is towards the end of the year £100 or £250 or £400 down, and the bank says nothing, but cashes your cheques provided you have made a reasonable arrangement. But will they continue that rather more casual arrangement? Will they in fact give you any advance at all if you can go behind their backs and get a further advance from the Coffee Board? I think that may well be rather a difficult point. I believe, in fact I was told by the hon. Member for Trans Nzoia, that they had had the same trouble with the Production of Crops Ordinance and K.F.A. bills, that farmers have been mounting one bill and getting the money from a different source, which ultimately reacts on the farmer because the farmer cannot carry on with his ordinary commercial transactions. My friend the bank has carried me over difficult periods for 20 odd years, and I think they probably will continue, but if this Bill goes through they probably will not. This may be for the good of the community, perhaps it is, but it would seem a cumbersome thing to have to go right through the Official Gazette and be gazetted and go and fill in the extraordinary number of application forms which are always necessary (I have just licensed a lorry and know all about it!) for a sum you can get by going to your bank manager and saying "Could I have £100 this month?". I do not know whether the one is going to affect the other, or whether it can be avoided. I have nothing against the amendment of the hon. Member for Nairobi South, which will probably be a very good thing. I had no idea until the hon. Director of Agriculture mentioned it that there was no guarantee that our coffee was to be sold. Perhaps that is a compliment to the Coffee Board, because it has worked now for three years as if there was a guarantee. My coffee and that of my neighbour has been taken away, and I always understood there was a guarantee. I did not realize that at all.

There is another point which I want the hon. Director of Agriculture to clear up, and that is he said there were 71,000 tons of coffee sold over the four years prior to the war and 41,000—I think I am correct—in the four years since the war exported, but does that take into account the enormous extra amount of coffee consumed by the Army, the Navy and the Air Force and by our other visitors, or is that just export? Because whether it is exported through our visitors drinking it or whether it is exported in ships going home, matters not at all to the coffee farmer. And again, another point which perhaps again I am not legally minded enough to comprehend, but I do object very strongly to one thing in clause 19 by which, because I might have wanted a small advance to pick my coffee, any clerk or anybody else can have the perfect right to enter any

[MRS. WATKINS]

of my premises at any time he likes and examine and inspect everything. I think if premises includes house it ought to be very definitely stated that premises in this case includes offices, warehouses or stores only. I do not imagine that our bank managers ever insist on coming into our houses and other places and inspecting everything we have got merely because we have got a £50 overdraft, and I do not see why the Coffee Board or the Land Bank should want to do so either. Warehouses and coffee land I think should be plenty. Also I should like a certain amount of notice given when they want to look at our books. I think people would be shocked if they saw the untidy state in which most of our books are kept; they are usually done in a hurry, but after they have had the attention of our chartered accountants usually they work out very accurately, but still one wants a little notice of these sudden inspections. After all, we are not criminals because we have accepted a small loan to get our coffee picked.

Now I shall be entirely beside the point. I am afraid that unless we can get a little help from the Chief Native Commissioner in the way of labour Government on this loan is going to be sometimes very badly landed, because in the past two years I have not been able to pick my very small crop because the labour is not there to pick it. Therefore I think if we are going to have any form of conscription it might be used to protect the money that is going to be loaned to the coffee planters. It is very disappointing indeed when you have got coffee on the trees, non-helpful authority says "That is just too bad, you will not be able to pick this year". It becomes a matter of public concern when Government money is being used to pick the coffee with. I do not know if the hon. Chief Native Commissioner has anything in his mind about that, but I can assure him that if he has not, I have it extremely on my mind, and I should like him to lighten my mind a little bit more.

I should further like a little enlightening as to why it has been necessary for these amendments to come in in respect of the definition of coffee planter. I have not quite gathered why a different term has to be used. I should like to have some explanation, because very often there is a catch in these things, and unless I can clearly understand it I cannot advise my constituents as to what I think has really been happening. As has already been pointed out to-day I am not legally minded, and I am very glad indeed when I can get help from the other side.

MR. COOKE: Sir, I think it is a matter of some remark that whereas yesterday we were refusing the legitimate and equitable request of a certain section, an important section, of the community, we are here to-day acquiescing in the demand of another section of the community. I support this Bill as I support any effort for the improvement of agriculture in this country, but we are entering into serious commitments. It is no use us that this is not a subsidy but merely a loan, because he knows as well as I do that loans in the past have had a way of disappearing and never being repaid. We are dealing with public money in this matter, and I cannot see any assurance in this Bill that steps will be taken to ensure that money is not advanced on coffee farms which are tottering and perhaps should be allowed to totter. There is no assurance that the board will have any Government official on it, and there is no assurance that I can see that this board will not be composed of five members of the coffee industry, all of whom, naturally, will be interested parties, and no man is capable of judging his own case. It is very difficult nowadays, with so many demands, to get suitable people, and I have talked to several farmers about this, men who are entitled to an assurance that this board will be composed of people who are disinterested and that there will be on this board at least one Government official to look after the financial provisions. As I said before, I do not oppose this Bill because I always support, so far as I can, anything for the good of agriculture in this country, but I do ask that some method or some way will be found by which we can get an assurance that the money is not advanced on land which should probably be allowed to go back to grass now and which will never be able to repay interest or the money borrowed. This is a country of jolly good fellows, and there is a tendency, because a man happens to be a jolly good fellow, to be sentimental towards him. I have some experience in my small job as Fish Con-

[Mr. Cooke]

troller. I have had applications from several Europeans who pleaded *ad misericordiam* that they should be employed as Assistant Fish Controller and so forth, although they have no aptitude for or claim to the job. Naturally I have turned them down at once. But I say this to support my argument that in this country we are inclined to think because a man is a "jolly good fellow" we should be sentimental towards him, and I want an assurance that public money is secured when it is advanced.

MR. BEECHER: Sir, I rise to perform a somewhat painful duty. I shall endeavour to do it briefly. (Hear, hear, and laughter.) It would be the wish of those Africans whom it is my task to try to represent in this Council that I should oppose the measure now before Council, for two reasons. First, as a protest, and secondly, as a warning. Before I enlarge, and I promise to do it very briefly, on those two points I should like to make a personal explanation. In a very kindly manner the other day the hon. Member for Nairobi North gave me a warning. He said that if I tried to smash the dual policy in this country I should be doing a disservice to the people whom I represent. I should like to say that I have no desire whatever to attempt to smash the dual policy, as that dual policy has hitherto been understood by His Majesty's Government at home and by us in this country, because I am convinced that it is possible and it is essential for us to work out that dual policy in partnership between the black and white peoples of this country, and I am sure that the Africans of this country are coming in increasing measure to realize this and appreciate it.

If I may now enlarge on those two points. First, the protest. I should like on their behalf to protest against this subsidy by means of a loan because it represents yet a further stage in the consolidation of the position of a privileged minority in this country by an extension of those privileges, subsidies and loans. A subsidy to the coffee industry by means of a loan—and if I may add, there is no need for me to enlarge on the nature of that loan and its possible lack of security, for that has already been referred to by the hon. Member for the Coast—will be opposed strongly by the African people because the coffee industry itself, for the most part, is still closed to them, in spite of an assurance that appears to have been given some long time ago that this would not be the case. After the debate in this Council yesterday I hesitate to use again the words "implied promise", but I have before me the Hansard of this Council for 1932, which records a remark of a predecessor of the hon. Director of Agriculture, discussing the development of the African coffee industry, in which he said: "We intend to set up an organization whereby coffee produced in native reserves will be of a quality equally as good as that produced on European plantations and which can be sold safely under the Kenya mark". In spite of that promise the coffee industry is for the most part still closed to the African, and for that reason he would oppose a subsidy of the coffee industry by means of a loan. I know that an hon. member on the other side of Council will doubtless rise at a later stage to remind me that there are certain parts of the native reserves in which the coffee industry has been established. I am aware of that. I am aware that a few Africans in backward parts who had no desire, or comparatively little, to grow coffee have been encouraged to grow it, whereas Africans in other parts who were very strongly desirous of being allowed to grow coffee—and indeed, by the standards of their husbandry, have shown themselves perfectly capable of growing coffee—have not been allowed to do so.

The second point—and this I pass on as a warning. I do not wish here to be misinterpreted, and what I am about to say is by no means a threat, but I should like to make it clear that in my opinion the coffee industry in this country as hitherto been carried on mainly, if not entirely, by European coffee farmers will not be saved by means of a subsidy in the form of a loan such as this measure contemplates. The continuance of the coffee industry in this country has been dependent on a large and cheap labour force which, as already indicated clearly by the speech of the hon. Member for Kiambu, is not at present easily obtainable, and in future years will be obtainable with still greater difficulty. For those two reasons, it is my painful duty to oppose the measure. Many of my friends are coffee farmers and I greatly respect them and their work and the difficulties under

[Mr. Beecher]

which they do it, nevertheless I must oppose this measure.

COL. GROGAN: Sir, or Your Honour—I really do not know which is correct. I imagined that "Your Honour" applied to a beak in police court. (Laughter.) Would you kindly tell us which is the correct designation—is it correct to say Your Honour or Sir? (Laughter.)

MR. RENNIE: I really could not answer the question at once—I should require notice of it. (Laughter.)

COL. GROGAN: Well, sir, the only thing I have to say in particular about this measure, with which I am entirely in accord, is to draw attention to clause 10 (33), in the proviso of which it appears to me that the arithmetic must have gone a bit wonky because, as I read it, it is quite clear, this redemption is to be at the rate of anything up to 14 cents a lb. limited by an imaginary horizon of 4 cwt. per acre. Below this ceiling it is elastic, and is left to somebody to decide. But as soon as there is one extra pound of coffee produced on the estate, bringing the average return over 4 cwt., the whole thing rises to an arbitrary amount of 14 cents. Surely that ought to be calculated in some sort of proportion and not be some very arbitrary decision. It is a simple matter to adjust, but this does not seem to me quite good arithmetic.

With reference to the intervention of the hon. Member for Nairobi South in the debate, it rather startled me, because he referred to the financial element in this coffee industry as "the backbone of the industry". If we are going into anatomical terms, I suggest that is entirely improper—I suggest a more proper term would be the intestinal tract. (Laughter.) With respect to the general observations made by the hon. and venerable gentleman on my left, I cannot imagine any single issue on which I could find myself in more direct disaccord. He referred, presumably to the European lement, as a privileged minority. That is a grotesque term to apply to that element in contradistinction from the other members of society which he claims the right to represent, or is appointed to represent. I should have thought that that obviously would be described as a privileged majority, in view of the fact that they have got the best pieces of land in the country specifically reserved for their exclusive use without any obligations in respect of it. I therefore suggest that the term "privileged minority" is entirely out of place. The hon. and venerable member also appears to have forgotten that this coffee industry is, as was rightly pointed out by the hon. mover, is one of the financial pillars of the State. As he rightly pointed out, it is not one of those industries which can suddenly switch from one thing to another, it is a permanent industry which, if allowed to slip, as I know to my costly experience, for a few months costs untold money and time to bring it back into correct production. The venerable member seems to have entirely forgotten, or perhaps his interest in the coffee industry is so slight that he has never taken the opportunity to ascertain it, that these privileged coffee planters do not treat it as a cauliflower in a pot but employ a large number of natives to co-operate with them in this endeavour, and the coffee industry is of enormous benefit not only to a large number of natives who participate in the growing of coffee but to a large number of natives round about who send their women and children in to pick up an odd shilling for a simple task, and in growing in the ordinary course of events a large amount of food for consumption by the people employed.

MR. BEECHER: On a point of explanation, there is no venerability about me! (Laughter.)

COL. GROGAN: I assumed there was. In any case, my hon. friend, if he were aware of the past financial history of the coffee industry of the country, of which I have also got a painful memory, he would realize that practically the entire financial results of the coffee industry for a great number of years have in fact, except that proportion absorbed by the intestinal tract, been disbursed and divided among the natives employed in co-operating with the industry. And that is all I have got to say. I think it is a grand bill, very essential, and with the one little exception to which I have referred which is easily capable of amendment, I entirely support the Bill.

MR. PATEL: Your Honour, I am in favour of granting a subsidy or loan which is necessary to any industry in this country and which may face difficult times. At the same time I believe that

[Mr. Patel]

Government has satisfied itself that this is not only a necessity, this is not a symptom of, as some people outside this country say, lack of success of farming in the Highlands. I was inclined to support this Bill wholeheartedly because, as a resident of this country, I know that the coffee industry has served this country and is one of the industries which has proved a very important factor in this country, but the speech of the hon. and reverend member reminded me of a resolution which was passed by the East African Indian National Congress last January, urging Government that the African community should be allowed to grow all economic crops without any racial discrimination, and following that policy, which I consider was right, though I am in favour of this Bill I propose to vote against it as a protest that the Africans still are not allowed to grow coffee. There is one point which was made by the hon. Member for Kiambu in criticizing clause 19. I think there is a tendency during the war to start with the presumption that every citizen has criminal tendencies unless proved otherwise. Such clauses have lately been introduced during the war in a great many of our regulations because I think the Government considers that every citizen must be presumed to be criminal unless he is proved otherwise, while before the war the general presumption was that a citizen was innocent unless he was proved criminal. I therefore join wholeheartedly in criticizing clause 19.

MR. TESTER: Your Honour, I should like just to make one or two remarks on two points. Firstly, that raised by the hon. Member for the Coast in regard to the board. If this Bill becomes law it is the Government's intention that a Government servant should be a member of the board, and it will be an officer who has financial experience who, I have no doubt, will look after the points which the hon. member indicated required looking after. The hon. member also spoke on the subject of lending money on estates that were not likely to do any good. I must say that, at the various meetings I and my hon. friend the Member for Nairobi North have been to, it was most impressive the way in which the Coffee Board took the point that this assistance was to preserve an asset, and therefore I feel myself quite sure they will not lend for some temporary purpose just to bolster up an estate for the time being. The hon. Member for Kiambu expressed some concern as to whether this Bill would in fact stop up channels of commercial lending. The Bill has been evolved stage by stage, and every amendment made to it has been in order to make it possible for commercial borrowing to go on to the greatest extent. Members will appreciate that, for example, the mortgage and repayment clauses were specially designed so that, for example, the whole of the proceeds of the crop will not be taken but only 14 cents a lb. as set out here. I calculate that if on a hundredweight of coffee you got 100 shillings you will only be called on to pay to the Board Sh. 16, and the difference of course you spend, some on producing the crop, but the balance between that Sh. 100 and the Sh. 16 after producing the crop is available to placate your bankers and to give them confidence.

MRS. WATKINS: On a point of explanation, only A grade or first grade gets Sh. 100; the rest gets anything from Sh. 70 to Sh. 80. I had only about 40 bags which were able to go into first class this year.

MR. TESTER: Yes, I am sure that is so, but under clause 10 it will be seen that the amount is not to exceed the amount of 14 cents, and it seems to me quite a sensible idea that this 14 cents should apply to the highest grades and a less sum will apply to the less high grades. I think those are the only points that I wish to speak on, except of course in regard to clause 19. It is only the guilty person who should fear this clause, although I appreciate it is a nuisance to have people looking at your books, but I imagine the clause will not be used much and I think it is right that it should remain in the Bill.

MR. BLUNT: Your Honour, I will refer in the first place to the point raised by the hon. Member for Nairobi South, and say that while I gave an assurance in my opening address that what he wanted would be done, I see no objection to accepting an amendment on the lines that he has proposed, if there is a real desire to put the point into the Bill. The hon. Member for Kiambu suggested that there would be difficulty in getting further advances from one's bank if one

[Mr. Blunt]

were in the position to get an advance from the Board. I suggest that the proper line to take is for the coffee planter to decide how he is going to finance himself during the coming year, and whether he is going to do it through his bank or whether he is going to do it under the terms of this Bill and, if he does it under the terms of this Bill, there should not be any need subsequently to go to the bank for further advances if he has applied for the advance he ought to have applied for in the first place. But even if that difficulty should arise, I cannot see why it should not be possible to come to an agreement with one's bank that if one has an advance from the bank one will undertake not to apply to the board for an advance, and I feel certain in my own mind that the banks will agree to an undertaking of that kind, which could, if necessary, be passed on to the Land Bank for information, and then they might continue to provide finance in the ordinary way. The hon. member was worried about the powers of entry and inspection given under clause 19, but I would like to point out that it, is only under the authority of the board that anybody will enter anyone's premises. They have to be duly authorized in writing, so they will at least be reputable people; and I think one can leave it to the board not to send a clerk, as I think the expression was, to go through her house and other parts of her farm, which it is quite unnecessary to do. The hon. Mr. Patel also took the point that this is not entirely wartime legislation. I would point out that for many years the Director of Agriculture and his inspectors have had the right to enter on any farm under the Diseases of Plants (Prevention) Ordinance to see what is going on, and there is other legislation which provides for that right of entry.

The hon. Member for the Coast referred to the question of whether there would be any Government member on this board, and the hon. Financial Secretary has replied to him and assured him that there would be. I would like, however, to rebut his suggestion that when matters of this kind are left in the hands of unofficials there is apt to be too much good fellow feeling. That is not my experience, as I have already pointed out, in the case of Production Sub-Committees, and I have in fact on my table now a document indicating a very different attitude. It is a long complaint from an individual that his Production Committee has been unduly hard upon him, and has failed to give him what he thinks he ought to have had in the way of a minimum return guarantee. The hon. and reverend gentleman representing Native Interests issued a protest and a warning. The question of the position of the privileged minority to which he referred has been taken up by the hon. Member for Ukamba, and all that I have to say in addition to what he said is to emphasize the fact that the coffee industry, in its effect on the labour and on the native generally, has probably put more money into their pockets than any other industry in this country, and that but for a sound and stable coffee industry the native, at any rate in the Central Province, would be in a very much worse position financially than he is at present. He quoted from Hansard of, I think, 1932, a promise of my predecessor that steps would be taken to ensure that the quality of native produced coffee was kept up to a good standard. He did not go on to say anything about it, but my impression was that he intended to suggest that that promise might not have been properly carried out. But if that was his intention I can assure him that such native grown coffee as is produced has for some years been of a comparatively high standard of quality, and certainly well up to the average of European production.

MR. BLETCHER: On a point of personal explanation, my intention in quoting that remark was to suggest that there was an implied promise of an extensive organization of the coffee industry in the native reserves.

MR. BLUNT: Coming to the actual position in regard to native coffee growing, perhaps I should give Council some information as to what is the position. It is true that coffee growing by natives has not yet been authorized in the Fort Hall, South Nyeri or Kiambu districts, but it has been authorized in certain other districts—Embu, Meru, South Kavirondo and in the Teita Hills. The position is that some years ago, 1937 I think was the date, the growth of 100 acres in each of those districts was authorized. Now in 1944 there is in the Embu district 243 acres planted of that

[Mr. Blunt]

100 acres authorized; in the Meru district, of the 100 acres 61 acres are planted; in South Kavirondo they arrived not long ago at the full 100 acres and an extension of the area authorized was then made, and the total area under coffee in South Kavirondo is now 159 acres. The Telta Hills position was somewhat different. The coffee there, which was in the neighbourhood of 160 acres, and I believe originally belonged to a mission, has been taken over by the Local Native Council and has been reduced from that 160 odd acres to 91 acres, which is the quantity in existence to-day, together with one acre in the private possession of a native. There is one more thing I should like to say on the question of native coffee growing, and there will be people who will disagree with me, but I believe that the future of the coffee industry of this Colony is going to necessitate a vastly larger production of coffee one way and another than we have it at the moment, and I personally look forward to the time when, side by side with flourishing European coffee production, there will be fairly extensive and flourishing native coffee production, and that the whole will give us such an output that we can have a much greater effect on the markets of the world than we are able to have with the comparatively limited quantities that we can export at the present moment. That is, I think, in the distant future, but before we can arrive at that position the one great difficulty in connexion with native coffee growing which we have been up against in the past will have to be overcome, and that, as my hon. friend no doubt knows, is the question of theft from estates alongside the reserves.

There is only one other point I want to make, and that is the point raised by the hon. Member for Ukamba in connexion with clause 10, the proviso. It has already been touched on by the hon. Financial Secretary, but I do suggest to him that it is a perfectly reasonable provision. The man who takes a loan is asked to pay up to a certain sum on the first 4 cwt. per acre he produces. The sum was fixed with the idea of leaving him a sufficient amount of money to carry on his estate, and it is considered generally that if he keeps the balance after the 14 cents has been taken off for the first 4 cwt. per acre, that should enable him to carry on. There should be no reason therefore why the full 14 cents should not be taken from the additional yield that he gets over and above the 4 cwt. per acre.

COL. GROGAN: On a point of personal explanation, I quite understand the purpose of the thing. I merely wished to point out that the excess over the average which might amount to only 1 lb. was a very violent transition instead of the ordinary proportional one.

MR. RENNIE: Before putting the question I should like to refer to the remark made by the hon. Member for Nairobi South on the question of the appointment of a select committee. I understand that it is a matter of urgency that this Bill should be passed as soon as possible, and if a select committee were appointed now it would in the ordinary course of events report back to the next meeting of Council. That will involve some considerable delay, and in the circumstances I hope that any amendments suggested by hon. members on the other side of Council which are unacceptable to the Government side will be worked out between now and the time when we take the committee stage, so that everything can be done in the committee stage.

The question was put and carried.

COURTS (EMERGENCY POWERS) BILL

SECOND READING DEFERRED

MR. BROWN: Your Honour, the next bill on the order paper is the Courts (Emergency Powers) Bill. Representations have been made by the hon. Member for Mombasa who has suggested that the bill should be put back until the next session of Council. With the leave of Council I propose to defer it until the next session.

MR. RENNIE: Does the Council agree with that?

MR. COOKE: The hon. member has not given any reason, it is merely a suggestion by some member on this side of Council.

MR. BROWN: The suggestion has been made on behalf of the Chamber of Commerce, Mombasa, which has raised a number of points on the bill. It has been suggested by the hon. Member for Mombasa, and I agree with him, that they are points which can be more suitably cleared up by an interchange of correspondence. That is being done. The Chamber has already submitted a memorandum, and I believe the hon. member has taken my reply with him to Mombasa, where it will be discussed by the Chamber.

With the leave of Council the second reading of the bill was deferred till a later date.

NATIVE FOODSTUFFS BILL

SECOND READING

MR. BROWN: Your Honour, I beg to move that the Native Foodstuffs Bill be read a second time.

Under the existing ordinance, when an area is threatened with or suffering from a food shortage, the Governor in Council is empowered by proclamation to prohibit the re-sale or export from that area of native foodstuffs generally. There is no power under the existing ordinance for the Governor in Council to regulate the re-sale or export of native foodstuffs under a permit system. It has recently been done by Defence Regulations in order to maintain supplies which are essential to the life of the community, but there is no statutory power. Paragraphs (a) and (b) of clause 3 of the Bill are inserted to make it possible to permit the control of sale or export. Clause 4 implements recommendation 23 of the Food Shortage Commission of Inquiry Report with regard to the Coast Province. They recommended that instead of waiting until a food shortage was imminent before prohibiting re-sale or export, power should be given to prohibit exports until it had been ascertained that the next harvest was not going to fail. They therefore recommended that, as this was a local matter which might be of some urgency, this power be given to the Provincial Commissioner of the Coast Province rather than, as is the case in other areas of the Colony, to the Governor in Council. Clause 4 goes somewhat further than that recommendation, because their recommendation was confined to maize. Under clause 4 this power is given to the Provincial Commissioner to prohibit the re-sale or export of native foodstuffs generally.

MR. FOSTER SUTTON seconded.

MR. BEECHER: Sir, I would support most wholeheartedly the provisions of the Bill, but ask leave to point out that the provisions of clause 3 would be rendered, in my opinion, entirely nugatory in the absence of any form of price control within the African reserves. I had asked a question on this subject, and hoped it might have been possible for Government to have given a reply before this Bill came before Council, but not knowing exactly the form the answer will take I should like to point out that the provisions for the control of foodstuffs within native areas and their movement from native areas to other areas, or from one native area to another, will be rendered entirely of no effect unless Government take steps to control prices at which the transfer of food from one individual to another will take place. I know that it is often argued that price inflation in native reserves (the term black marketing apparently not being allowed in this connexion) merely affects the circulation of money, but the experiences we have had during the past few months indicate quite clearly that as the result of the lack of any form of price control the movement of native foodstuffs has not proceeded as satisfactorily as Government wished, and at the same time the rich have got richer and the poor poorer, with consequent detriment to the native reserves as a whole. I should like to take this opportunity of pointing out that, while I support the Bill, I do not consider that it goes in any manner or form far enough, and although it may have been impossible with the present staff and in present circumstances for an overworked Administration to countenance price control, famine is a thing which will recur, unfortunately, after the war is over, and whereas price control in the non-native areas is a wartime measure carried out under Defence Regulations, the situation in African reserves is such that price control will need to be part of some such measure as this which will remain on the statute book after the war is over, and is something which in my opinion is absolutely essential.

MR. BROWN: Your Honour, the hon. member is raising a big question when he proposes to give Government power to control prices, not as a wartime expedient but as a permanent measure. We have heard in this Council more than once of the impracticability of controlling prices in native reserves but, quite apart from that, if what I have described as this very big question was to be answered in the affirmative, this Bill would not be the place to do it, as it deals purely with the movement of native foodstuffs.

The question was put and carried.

EMPLOYMENT OF SERVANTS (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Sir, I beg to move that the Employment of Servants (Amendment) Bill be read a second time.

Ordinance No. 2 of 1938, the title of which, oddly enough, is the Employment of Servants Ordinance, 1937, provides a form of contract of service which shall be entered into by an employer who desires to employ servants for service outside the Colony. For a long time, and I think it right to say so, it has been felt that the form of contract provided by that ordinance is not really adequate and does not meet the situation. In addition to that, His Majesty's Government in the United Kingdom entered into the International Labour Contract of Employment (Indigenous Workers) Convention in 1939, and having entered into that convention on behalf of the United Kingdom and the Colonial Empire, is became necessary to take action to bring our legislation into line with the requirements of the international convention. That is the object of this Bill. All it seeks to do is to repeal the schedule of the 1937 ordinance and substitute the schedule set out in this Bill. On the opposite page of the Bill hon. members will find the schedule which we now seek to repeal. Practically no information or undertakings are contained in that contract, whereas the new contract, I think hon. members will agree, supplies a number of deficiencies in the interests and protection of the servant who is employed. For instance, it provides the period of service, the wages to be paid by the employer to the servant, the method of payment, and contains provisions for dealing with transport and rations, housing accommodation and medical attention. There is also in paragraph 10 a provision that a servant's wife may accompany him, and if so she shall be given free transport, medical attention, housing and hospital accommodation, half rations, but no pay. There is also provision regarding the position if a servant dies during the existence of the contract. Paragraph 12 contains provisions regarding the termination of the contract; 13 provisions as to re-engagement; and 14, an important paragraph, lays down the conditions under which a servant shall be repatriated to Kenya at the termination of the engagement. Those, briefly, are the objects of this measure.

MR. BROWN seconded.

MR. BEECHER: Sir, as I understand this Bill is not to be sent to a select committee, I will ask your leave to criticize it in one or two particulars. At the same time I should like to suggest to the hon. and learned Attorney General that a task which awaits him and his department is the consolidation of ordinances affecting African employment for which, I think, both employers and employees will be very grateful. Concerning the schedule itself, in paragraph 4 it would seem essential that some facility should be afforded for family remittances. The value of such a facility has been experienced by troops on overseas service, and it is something which employees on overseas service would very definitely appreciate. In paragraph 5, I think it is obviously desirable that the words "where possible" should be deleted. In paragraph 11, the question of what will happen to the moneys due to a deceased servant is a very important one, and when the Provident Fund Bill was in the committee stage we did agree to make some reference to a future Succession Ordinance, and the hon. member Mr. Brown yesterday gave an assurance that it was Government's intention to deal with the matter at an early date. I feel that this schedule should contain some reference to the disposal of moneys which have accrued to a deceased servant in accordance with the provisions of a Succession Ordinance. Paragraph 12 refers to the conditions under which this contract is subject to determination, and I feel that

[MR. BEECHER]

for the safeguard of the employee there should be an addition that that would be the case unless repugnant to the law of this Colony. There is no indication of the territory, country, or area in which the overseas employee is to be employed, and I feel some saving clause such as that is necessary. Paragraph 15 is one in which reference is made to the attestation and agreement. I feel it is highly desirable that the schedule should make provision for a Swahili or a vernacular edition of the contract to be prepared. There have been a number of instances in the past where Africans have blindly affixed their thumbmark or signature to an agreement the exact nature of which has not been made apparent to them, and it is important that both sides should understand clearly what the nature of that agreement is. Finally, in connexion with the "list of servants attested", I feel that the column should be increased to include one showing the apparent age, and another the numbers of the registration certificates. I may easily be misunderstood when I suggest that the numbers of registration certificates should be introduced into that list because Africans generally have opposed rigorously the use of registration certificates, but in view of the fact that an African is going overseas it is clearly a duty that he should have something comparable to a passport, and the use of the registration certificate in that way is not open to exception. I suggest the inclusion of apparent age as well as registration number, because there are cases on record in the Labour Department of the definite abuse of recruiting facilities. Certain individuals have been brought before an attesting officer and medical officer, and they have never reached the other end; there has been substitution by recruiters on the way, and if we are dealing with overseas service we must take every opportunity to avoid that. I welcome the Bill, because it does bring the law of this country into line with international agreement, but at the same time the schedule would seem to be open to considerable criticism.

MRS. WATKINS: Your Honour, I will be very brief indeed. With all due deference to the hon. Attorney General, I think this Bill means a great deal more than just coming into line with international law. We have heard quite a considerable amount lately about a willing seller and willing buyer, and here in paragraphs 13 and 14 we see that the willing employee who may wish to stay with his employer and the willing employer who may wish to keep his employee will be debarred from doing so, and that the money that is being taken from the employee for no reason that I can see and placed with the District Commissioner during the man's absence shall be forfeited if this paragraph is not kept. It seems to me quite wrong. The sort of man I visualize taking any of our natives abroad would probably be a District Officer on transfer to the Seychelles or Zanzibar or elsewhere who takes his servant with him, and if that servant wishes to stay on an extra six months why on earth should half his pay be forfeited, and anyway, is half our pay paid involuntarily into English banks when we are serving out here? It seems to me a very onerous condition. And, Your Honour, I think we have got to watch the department a good deal because there is a great deal more power being taken by the department; even some of our records for the public are being lost on quite false premises, as far as I can see. We were told a short time ago when we gave up our excellent labour returns at the end of the month and went on to the postcard system, that it was to save Asian staff. Has it saved staff? The figures are so clouded I do not know. I have got the figures, but they are clouded so that I would not like to say it has definitely led to an increase in staff, but I would like to say that it has led me to believe it has increased the staff very considerably—in fact two Asian clerks. Where there used to be two in 1940 there are now four in 1944. I say that with reservation because I do not know quite, nor does anybody of whom I inquired, know just what their duties are and how they overlap and so on, but I submit that the department is getting a sort of Hitlerite power into its hands, and now will give us no chance of making arrangements with our employees, for if anybody now wants to take an employee abroad it takes half the man's pay away. Which of you would go and serve abroad under the condition that half your pay was to be sent home whether you liked it or not, and forfeited if you wished to continue your employment?

[Mr. Watkins]

I am suspicious because last time we were told definitely that it was to save personnel when the last amendment was brought in, but we seem to have lost some records and apparently have not got the saving in personnel. We had a case of smallpox on the farm the other day, which was very bad, and because of the postcard system we could not trace that man's contacts. So we have lost a valuable thing and we lost it under a promise that I anyway do not understand. We had to give up our records for a certain purpose; that purpose has not been fulfilled, or has it? And now they want us to give up a great deal more of the liberty of the subject, and I think it needs very careful consideration and very careful watching. I do not at all agree to having all the power vested in one man's hands over labour both in this country and outside this country. We, the public, are sorely enough tried by labour conditions anyway; we can do little or nothing about it and our records are imperilled by the things recently done.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 o'clock on Thursday, 20th April, 1944.

Thursday, 20th April, 1944

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 20th April, 1944, the Governor's Deputy (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Governor's Deputy opened the Council with prayer.

COMMUNICATION FROM THE CHAIR

OBITUARY:

MR. T. A. WOOD, C.M.G., M.B.E.

MR. RENNIE: Hon. members, before we proceed with the business on the order paper I should like to express our deep regret at the death of Mr. T. A. Wood, C.M.G., M.B.E., who was for several years a member of this Council and also of Executive Council. He was one of the leading citizens of Nairobi and rendered most valuable public services both to Nairobi and to the country generally over a long period of years. I feel sure that hon. members will wish to express our deep sympathy with his widow and family in their loss. I suggest that we should stand in silence for a few moments as a token of respect.

Council stood in silence.

ORAL ANSWERS TO QUESTIONS

No. 32—UKAMBA RESERVE

MR. COULDREY:

(1) How much wheat-flour has been sent to the Ukamba Reserve during the past six months?

(2) What payment therefor (if any) has been made by the African consumers?

(3) What percentage of Wakamba adult males is in civilian employment outside their Reserve?

MR. TESTER: (1) No wheat-flour has been sent to the Ukamba Reserve for native consumption during the last six months, but during that period approximately 129,500 bags of various food grains have been sent as famine relief to the Machakos district and 15,300 bags to the Kitui district. Of this total of 144,800 bags approximately 56,500 bags were unmilled wheat.

(2) A small quantity of the famine relief foodstuffs was sold at a rate based on Sh. 13, per bag f.o.r. unmilled, but most was sold at Sh. 10/50 a bag. No

[Mr. Tester]

free issues have been made. The amount paid by African consumers in the Ukamba Reserve for this famine relief during the period in question is approximately £80,000.

(3) The percentage of able-bodied adult Kamba males in civilian employment outside their reserves, according to the latest figure, is: Kitui, 26.96 per cent.; Machakos, 35.48 per cent. This does not include the very large number of Kamba serving with the Military Forces.

EMPLOYMENT OF SERVANTS (AMENDMENT) BILL

SECOND READING

The debate was resumed.

MR. AMIN: Your Honour, there are some clauses in the Bill in respect of which I should like to have some doubts removed from my mind. Clause 10 of the schedule provides that servants may be accompanied by their wives, one each. It suggests that if they do not so desire, the wives and children of course will be in the Colony. Clause 4 provides that half the pay will be paid to the man himself and the other half will be sent to the District Commissioner, and it is stated definitely that it is for payment to him on his return home. I feel inclined to suggest that the half pay which is to be paid to the District Commissioner should be made available for payment to the wife or wives or children to the extent that may be necessary, because the servant will be given rations and all his requirements and will have one half of his pay. Then the rest of the pay—the other half which is to be paid to the District Commissioner—in all fairness should be made available to the dependants who will be in the Colony. Now I will deal with paragraph 14. It provides for the employer repatriating a servant and states that the servant binds himself to allow the employer to repatriate him on the termination of his agreement, and a servant who refuses to be repatriated will be liable to forfeiture of the half pay held by the District Officer which, if so forfeited, shall be disposed of under the orders of the Labour Commissioner of Kenya". I suggest that a forfeiture clause of that kind should be a little more expressly worded. In the ordinary way all money should go to the dependants; otherwise one cannot understand the provision at all. Why should his money be forfeited unless it is for the purpose of persuading him not to stay out of the Colony? These three paragraphs as they are worded suggested to my mind that the clauses are not in accordance with the recommendations made under the Convention. If these are the recommendations, then I suggest there is no reason why they cannot be changed. They suggest that it is the spirit of the Convention which is being carried out and that perhaps the local Government prefers to provide for local circumstances in these paragraphs. I should like to have some explanation.

LORD FRANCIS SCOTT: Your Honour, in view of the many criticisms on this rather simple Bill which have come from the last three members I do trust that Government will refer it to select committee as otherwise it will take up another two or three hours of our time in committee stage.

MR. FOSTER SUTTON: Your Honour, at one time I felt much the same as the last hon. and gallant speaker, but I think that I shall be able to meet the criticisms of hon. members in such a way as to render such a course unnecessary. I agree with the contention that paragraph 4 of the Schedule should be amended, and I suggest that it be amended by adding the words "or such person as he may in writing direct" after the word "home". I took the opportunity of discussing the mechanics of such a provision with the Labour Commissioner, and we agree that by administrative action it will be a simple matter to ensure that the employee's wishes are respected. When he presents himself to sign a contract of employment he can either make his mark or thumb print or sign his name directing that the money which is to be sent to the District Officer shall be paid to his wife or to such other relative or person as he wishes the money to go to. I suggest that it would not be wise to be more explicit because if you are you may do something which conflicts with the wishes of the employee. After all it is the employee who is earning the money and one does not want to compel him to make an allotment to some person who has no right to it. I have seen that sort of thing happen in the Army, where a man has been compelled to make a payment to his wife who has deserted him and is living with

[Mr. Foster Sutton]

somebody else. I think that if we amend the paragraph as I have indicated the wishes of hon. members in that connexion will be met.

I agree with the contention of hon. members that the words "where possible" should be omitted. It seems to me that it is up to the employer who takes a servant away from his district to find the means of sending him home again. I personally think it is a reasonable suggestion that "where necessary" should be omitted.

It was further contended that paragraph 11 should be amended and I agree. It reads: "The employer shall report all deaths, desertions" and so on "and shall remit any moneys due to deceased servants to such district officer for payment to relatives". I suggest we amend that by deleting the word "relatives" and inserting the words "the person or persons entitled thereto". I hope we shall soon have a succession law which will deal specifically with inheritance in such cases.

It was further urged that the columns should be amended by adding two columns, one "apparent age" and one "registration certificate number". I think I have satisfied the hon. member who raised the point that that is not really necessary.

The hon. Member for Kiambu raised the point that under paragraph 14 a servant could not extend his agreement if he wished to do so. I think her point is answered by reference to paragraph 13, which reads: "No servant desiring to extend his period of engagement shall be allowed to do so except with the consent of the Labour Commissioner of Kenya". I understood the hon. member to say that she was under the impression that the period could not be extended, even if the servant wished to extend it. The position is that if a servant wishes to extend it he can do so, but he has to have the sanction of the Labour Commissioner, and I think the reasons for that are pretty obvious.

The hon. Mr. Amin suggested that paragraph 14 should be amended by deleting or amending the forfeiture clause. I have not had the opportunity of discussing that with the Labour Commissioner, but I hope to have the opportunity during the adjournment in the middle of the morning. I feel sure then that during the committee stage I shall be able to satisfy him on the matter.

Another point raised was the question as to which law should apply if a breach of contract is committed. That is under paragraph 12. I would ask the hon. member who raised the point not to press it because I am of the opinion that the contract must, if there is a breach of it in another country, be governed by the law of that country. If either side wishes to take the matter to court the court can only administer the law as it exists in that particular territory.

I think those are all the points that were raised.

The question was put and carried.

AMALGAMATED POSTS AND TELEGRAPHS DEPARTMENT BILL

Second Reading

MR. TESTER: I beg to move that the Amalgamated Posts and Telegraphs Department Bill be read a second time.

I do not think this Bill should take up a great deal of the time of Council, because it can properly be said to be a formal measure to remove any doubts as to the procedure that has been going on for 11 years, principally in regard to the pensions of people serving in the Posts and Telegraphs Department. As hon. members will know, the whole of East Africa—that is to say Tanganyika, Uganda and Kenya—formed a combined service with effect from the 1st January, 1933, and from that time the postal employees were dealt with as if they were members of the Kenya service for purposes of pensions; Uganda and Tanganyika bore their portion of the cost of the pensions on a statistical basis. It is rather doubtful whether the Kenya Ordinance, which applies to Kenya persons serving in Kenya, did in fact apply legally to Kenya officers who were sent to Uganda or Tanganyika when the combined service came into effect, because under the combined service naturally they had to be posted anywhere connected with the Government service, and it is for that reason that this Bill is put before Council. There is no new principle and there is no new financial obligation. In clauses 5 and 6 again it makes it clear that, although the Postmaster General is

[Mr. Tester]

the head of the combined service, he also exercises the powers of the Postmaster General in Kenya, and I am informed that each of the other territories is passing complementary legislation in order to regularize these matters.

MR. FOSTER SUTTON seconded.

The question was put and carried.

ASIATIC WIDOWS AND ORPHANS PENSIONS (AMENDMENT) BILL

Second Reading

MR. TESTER: Your Honour, I beg to move that the Asiatic Widows and Orphans Pensions (Amendment) Bill be read a second time.

My remarks in regard to the regularization of the procedure which has been going on for some time, when I moved the second reading of the last bill, also apply to this Bill. The point has been raised that the concession given to people serving in Tanganyika to opt should be applied to people serving in the Kenya and Uganda Postal Departments before 1933. That option is not given to them because people in Tanganyika, although the Kenya law provides for an option, had no Tanganyika law which provided that they should ensure the option. Therefore legally they are in the position of having done nothing wrong in not yet having made an option. Clause 3 of the Bill is not quite on all fours with the rest of the Bill in regard to past practice, because it seeks generally to clarify the position of persons who are re-engaged. Section 31 of the principal ordinance gives the Governor very wide powers in connexion with matters where there may be difficulties, but the advice of the law officers is that it is not certain that he has the power to call upon a re-engaged officer to contribute, and for that reason clause 3 is inserted in this Bill.

MR. FOSTER SUTTON seconded.

The question was put and carried.

ARMS AND AMMUNITION (AMENDMENT) BILL

Second Reading

MR. BROWN: Your Honour, I beg to move that the Arms and Ammunition (Amendment) Bill be read a second time.

The provisions of this Bill are confined to the Northern Frontier District, and its object is to tighten up the control of firearms in that district. It does two things. It increases the maximum penalty for an offence under the ordinance from 12 months imprisonment and a fine of £200 to five years imprisonment and a fine of £500, and it also extends the power of search, which is at present confined to police officers of or above the rank of assistant superintendent, to all police officers in the Northern Frontier District. The position at the moment borders on the ridiculous. Suppose that an African, or any police officer below the rank of assistant superintendent, receives information that there is a store of firearms in a remote village on the border, he has to go back to Isiolo or Wajir, he has to find a European police officer, he has to take him out to that village and, when they arrive, the news has probably gone around and the firearms have been moved elsewhere. But if by some lucky chance they are still there the European Police Officer can do nothing, he can make no arrest unless he has reasonable cause to believe that the offender will not appear in court in answer to any process that may be issued against him. It is considered that the penalty of 12 months or a fine of £200 is quite inadequate. The profits to be derived from the traffic in firearms make a penalty of 12 months imprisonment of small effect as a deterrent, and if a fine is inflicted it is probably paid by the members of the tribe to which the offender belongs, so that nobody is materially inconvenienced at all.

MR. FOSTER SUTTON seconded.

The question was put and carried.

SISAL (AMENDMENT) BILL

Second Reading

MR. BLUNT: Your Honour, I beg to move that the Sisal (Amendment) Bill be read a second time.

This Bill is a short and simple one, and it seeks to delete the limitation that is placed on the amount of the sisal levy under the original ordinance. There appears to be no good reason for such a limitation and, in fact, the Kenya Sisal Growers Association, which represents practically all the sisal growers in the Colony, as well as the Kenya Sisal Board, desired to increase the levy immediately to a figure above that which is permitted under the present ordinance. They have

[Mr. Blunt]

therefore requested that the limitation in the existing ordinance be deleted. I would just like to point out that there is a further safeguard in the matter of the sum that may or can be levied in that there is already a section in the amending Ordinance No. III of 1940 which says that the Governor, with the advice of the Board, may at any time alter the rate of levy, so that the advice of the Board is still required before the levy can be altered.

MR. FOSTER SUTTON seconded.

The question was put and carried.

MINING (AMENDMENT) BILL

SECOND READING

MR. BROWN: Your Honour, I beg to move that the Mining (Amendment) Bill be read a second time.

At present there is no power to arrest without a warrant, a person who is unlawfully prospecting or mining, and by the time the police officer has gone to get the warrant and returned to arrest the offender, the offender probably is not there. The object of this Bill is to make the offence of unlawfully prospecting or mining a cognizable offence.

MR. FOSTER SUTTON seconded.

The question was put and carried.

INCREASED PRODUCTION OF CROPS (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Honour, I beg to move that the Increased Production of Crops (Amendment) Bill be read a second time.

I feel, if I may be pardoned for saying so, a little diffident in moving the second reading of this measure, because there is at least one person in this Council—I refer to the hon. Member for Nairobi North—who knows considerably more about the subject than it has been possible for me to acquire in the short space of time I have been here. The main object of the amending Bill is to facilitate the administration of the principal ordinance, and to provide a greater degree of flexibility than that existing at the moment. It has been found in operating under the principal ordinance that a number of provisions are so inflexible that it has not been possible to give effect to the original intention of the legislature. Turning to the Bill, clause 2 seeks to amend section 4 of the principal ordinance by giving the Governor in Council power to prescribe a guaranteed minimum return in respect of crops which are not annual crops within the meaning of the legislation. Clause 3 seeks to extend the information which a farmer is required to give to the Board when he submits his harvesting return under section 13 of the principal ordinance. Hon. members, if they have the law before them, will see that section 13 provides that every farmer shall, immediately after harvesting his crop, submit to the Board a return of the crops which he has actually harvested, and it goes on to provide a form which shall be used when the farmer submits that return. This Bill seeks to increase the information that will be made available to the Board, and in the light of experience it has been found very necessary.

Clause 4 again provides for a greater degree of flexibility, by enabling the Governor in Council to approve advances in respect of such crops as pyrethrum and rubber in cases where a guaranteed minimum return has not been provided. In practice, I understand that it has been found impracticable for the Board to order a farmer to plant specific crops on all the areas of land which he has broken. I think it does not require any much imagination to appreciate that it must be extremely difficult for a board sitting in Nairobi, or indeed anywhere in the Colony, to be able to give every farmer who has received a breaking grant directions as to how he shall plant every piece of land that he has under cultivation. That has been found in practice to be impracticable, and the Bill seeks to rectify the position. The clause in question seeks to amend section 16 of the principal ordinance to enable the Board to dispense with that necessity, and the proviso seeks to add to section 16 a clause enabling the Board to permit any farmer who receives a breaking grant to cultivate any other crop other than the crops included in the definition of crop in section 2 of the principal ordinance. Some hon. members may think the wording is rather odd, but I could not think of any better way of doing it because of the definition of crop in the principal law. Clause 7 seeks to amend section 31 of the principal ordinance to extend the power of entry upon the premises of any person upon whom an order has been served under the provisions of section 11 of the principal ordinance, in order to ascertain whether or not such person is carrying out the obligations imposed upon him by the law. I have no doubt that we may have certain objections to that, but the Board approves of the provision, and they consider such provision is necessary and desirable.

[Mr. Foster Sutton]

Then clause 8 seeks to rectify a position which was never intended, in the original legislation, to be created. It was never intended that the farmer should be restricted as to the manner in which he spends the money received as a breaking grant, but it was intended that he should be restricted if he received an advance under the law, as distinct from a breaking grant, that he should be restricted to using that advance for the purpose for which it was given. The clause seeks to make it clear that he is not open to prosecution and the resulting penalty if he employs a breaking grant for any other purpose. I dare say, certainly those who have been working under the principal ordinance have noticed it, that there are a number of sections in the law which provide no penalty and which do not make it an offence for breaches of the provisions of the ordinance. Clause 9 seeks to rectify that position by making it a punishable offence to contravene any of the provisions of the law. These, very briefly, are the amendments from the legal point of view and I have no doubt, if there is any debate on the Bill, that the hon. Member for Nairobi North will be able assist by giving a fuller and more ample explanation regarding the difficulties that have been experienced. It is Government's intention that this measure should go to a select committee for further consideration. I mention that now because it may have the effect of shortening anything hon. members may wish to say.

MAJOR CAVENDISH-BENTINCK: I beg formally to second, and reserve my right to speak later.

MR. COOKE: Your Honour, I rise only to produce my usual caveat against any possible waste of public money in this matter. We were informed yesterday by the hon. Director of Agriculture that he is under the impression that every Production Sub-Committee, every farmer in this country, has suddenly grown wings. That does not fit in with the circulars which the hon. Member for Nairobi North has recently been issuing, where he has, under veiled threats, called upon farmers to send in their returns more promptly and to submit more accurate figures. I am one of those who feel it is no use having these penalty sections in an ordinance like this unless they are enforced, and when I asked a question on the subject last year, the number of prosecutions that had taken place for offences against this ordinance were so small as to be really no deterrent whatever to people who want to get away with public money. I know I will be accused possibly of casting aspersions on the settlers of this country. Nobody has more regard than I have for the settlers of the country, but in every community you are bound to get a minority who will take advantage of these very generous terms which this Production of Crops Ordinance offers, and as I am representing the ratepayers—or a certain number of the ratepayers of this country—I do put in this caveat that very great care should be taken in future to see that any money expended is productively employed.

MAJOR CAVENDISH-BENTINCK: Your Honour, I formally seconded the motion, and I welcome the suggestion that the Bill should go to a small select committee. Replying in the first instance to the hon. Member for the Coast, I would draw his attention to the fact that the whole object of this Bill is to strengthen such powers as the Board possesses, and in that regard I take it that it should meet his expressed wishes. I should explain perhaps more fully the reasons for one or two of these clauses. Clause 2 has already been explained, it is to provide not only for annual crops but also for crops which are not annuals. We have already under the ordinance as crops rubber and pyrethrum as two examples, and we have discussed the possibility of dealing with flax somewhat differently to the way we dealt with it before, and for that reason this small amendment is required. It does not really alter anything contained in the ordinance, but legalizes in more accurate wording what is the present practice. Clause 3 has been re-

[Major Cavendish-Bentinck]

worded, and is a re-wording of section 13, and this is necessary for a reason which may interest the hon. Member for the Coast.

When we originally drafted this ordinance, we laid down that every farmer shall, immediately after harvesting his crops, submit to the Board a return of the crops actually harvested in such form as the Board may require, stating the quantities he intends to retain for his own use. We thought that that was pretty definite, and on one occasion we took action against a farmer for not submitting the required return. That action failed because it was held that this section was too loosely worded, that the farmer had to submit a return "in such form as the Board may require". The farmer pleaded that he did not know what form that was and so on, so that to get away from the very loose wording which annulled the value of a prosecution, we have re-worded the section. I am a little worried about the re-wording of this amending bill, because it says in 13 (2): "The return to be used for the purposes of this section shall be in the form approved by the Board". It has been suggested, in view of the failure in our prosecution under the old wording of the section, that a farmer may in future plead that the return to be used "shall be in the form approved by the Board" and that he had no opportunity of obtaining such a form, and that plea might still get him off, I cannot believe that because, after all, income tax returns have got to be made out on an "approved form", and these returns can very easily be obtained from the Production Board or chairmen of local production sub-committees, and I do hope the responsibility for obtaining the proper form will, under this amending bill, rest on the farmer.

Clause 4 might again, and I was rather astonished nobody raised it, be the subject of misunderstanding. It is meant to provide for, among other things, such a case as this. A man is given a breaking grant and puts the land under a crop recognized under the ordinance in the first or second year. It so happens that the army is anxious to obtain dried vegetables or canned vegetables from the factory in his neighbourhood. The man happens to have a piece of the land for which the breaking grant was given two years before, particularly suitable for the production of vegetables. I therefore wish to give him an order to produce vegetables for military purposes for this particular factory and grow them on the land for which he was given a breaking grant. At the moment, if I do so, it is *ultra vires*, and this clause is merely to put that sort of case right. Now we come to clause 6, which amends section 21 of the principal ordinance. It is on account of this clause that I would particularly ask that Government approves or Council does the suggestion made by the hon. and learned Attorney General that the Bill should go to a small select committee. I have never liked the wording of section 21. It is purely a matter of drafting, but in section 21 (which is a very long section, 2½ pages) the procedure is laid down for the payment to farmers of the minimum guaranteed returns in the event of their not having a crop sufficient to cover the amount guaranteed. If you read the section and try to make the intention of the ordinance correspond with the wording, I may be stupid, but I have a great difficulty in doing so. As an example, under the existing section 21 (2) (*b*), supposing a farmer has had an advance and the whole of the advance has been repaid to the bank. He has had a bumper crop of the value of £2,100, and the guaranteed minimum return in respect of that land is £1,000. According to the wording of this, as I read it, it is possible for him to claim that Government should give him £1,100 because the section says "the difference between the value of the crops so produced and such guaranteed minimum return". I consider the wording of the old section is faulty legally and mathematically, and I am not entirely satisfied that the new wording suggested in this amending bill is as good as we could achieve. I have had an opportunity of discussing this with the hon. and learned Attorney General, and I think he is rather inclined to agree that this section had better be completely re-worded. I have always held that view, and that being the case I should like very much that he should have an opportunity of doing so and that this Bill should come back at the next session. Incidentally, I would draw the attention of Council to section 21 (6) of the principal ordinance, where it is laid

[Major Cavendish-Bentinck]

down: "In any case where the balance of any guaranteed minimum return is paid to any farmer to whom an advance has been made under the provisions of this ordinance, the bank shall, on the order of the Board, write off the outstanding amount of such advance to, and the amount of any interest due thereon from, such farmer". It may be that we cannot get away from this, but I hope the select committee will go into the matter. The section gives me personally a good deal of trouble, and I do not understand what I am signing. The Land Bank also has a good deal of trouble, for they do not like the system, and this is all really due to the wording of this particular paragraph of the principal ordinance.

I do not think there is very much else in this amending bill which needs comment. Clause 7 has been explained by the hon. mover; it gives greater powers for checking what a farmer is using of that part of his crops which he says he wants to retain for his own use. At the moment I do not think that under the ordinance I have the powers really to go on a farm and on behalf of the Board ascertain what stock he actually has got. I have these powers under Defence Regulations, but obviously they should be part of the provisions of this ordinance. One last thing I should like to say is in regard to clause 8. The hon. mover explained that as regards the grant for breaking land there was no restriction in the use to be made of the money so given. That is true, but I should like to explain more fully what that means. The procedure is that we do not pay a man money by way of a breaking grant until we have actually measured up the land broken and inspected it to see it is in a fit condition for planting a crop, and only at that stage a man receives any money at all. If he wants money to undertake this work before that stage is reached, he has to apply for an advance against his guaranteed minimum return. Therefore, when the money for the breaking grant is given a person, he has already had to find that money himself, and it is not reasonable to lay down what he has got to do with what is in fact a repayment of money advanced out of his own pocket.

The question was put and carried.

MR. FOSTER SUTTON moved that the Bill be referred to a select committee consisting of; himself as chairman, Mr. Tester, Mr. Blunt, Major Cavendish-Bentinck, Mr. Vincent, and Mr. Amin.

MR. BROWN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. FOSTER SUTTON moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—The Coffee Industry (Financial Assistance) Bill, the Native Foodstuffs Bill, the Employment of Servants (Amendment) Bill, the Amalgamated Posts and Telegraphs Department Bill, the Asiatic Widows and Orphans Pensions (Amendment) Bill, the Arms and Ammunition (Amendment) Bill, the Sisal (Amendment) Bill, the Mining (Amendment) Bill.

MR. BROWN seconded.

Council went into committee.

The Bills were considered clause by clause.

Coffee Industry (Financial Assistance) Bill

Clause 2.

MR. FOSTER SUTTON moved that the clause be amended by deleting the definition of "coffee planter" and substituting therefor: "'coffee plantation' means a coffee plantation in respect of which a current licence issued under the provisions of section 9 of the Coffee Industry Ordinance, 1934, is held; 'coffee planter' means the owner of a coffee plantation and any person for the time being legally charged with the cultivation or beneficially entitled to the rents and profits of the coffee plantation, and includes life tenants, guardians of infants, managers of lunatics' estates, trustees and executors, if such trustees are to charged by the instrument of their appointment, and receivers if appointed to take charge of, cultivate and receive the rents and profits of such coffee plantation;".

The question of the amendment was put and carried.

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

Clause 6.

MR. FOSTER SUTTON moved that the clause be amended by deleting the proviso and substituting the following proviso therefor: "Provided further that no order for sale in respect of the charge referred to in paragraph (*b*) of this section shall be made unless the coffee which is the subject of the charge created by paragraph (*a*) of this section, in the opinion of the Board, has not been grown or has been abandoned."

The question of the amendment was put and carried.

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

Clause 7.

MR. FOSTER SUTTON moved that the clause be amended by adding the following sub-clause to be numbered (3) immediately after the proviso to sub-clause (2) thereof: "(3) Where the Board proposes to make an advance on coffee which is subject to a statutory or contractual registered charge or mortgage, the Board shall in writing inform the chargee or mortgagee, as the case may be, who shall, if he objects to the making of the advance, be given an opportunity of being heard by the Board before the advance is made".

The question of the amendment was put and carried.

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

Clause 10.

MR. FOSTER SUTTON: I beg to move that this clause be amended by (i) deleting sub-clauses (1) and (2) and substituting therefor the following sub-clause: "10 (1) All coffee, the subject of a charge under section 6 of this Ordinance, shall be disposed of by direction of the Board by such person as the Board may appoint: Provided that the coffee planter whose coffee is the subject of such charge may nominate any person, being a person duly licensed as a coffee dealer under the provisions of the Coffee Industry Ordinance, 1934, for appointment for such purpose by the Board", (ii) by deleting the words "or body of persons", which appear in line one of sub-clause (2), and by substituting "(1)" for the figure "(2)" wherever it appears in the sub-clause, (iii) by deleting the words "who has obtained an advance under this Ordinance, and", which appear in lines one and two of sub-clause (3), and by substituting the following words therefor: "whose coffee is the subject of a charge under section 6 of this Ordinance", (iv) by deleting the word "any", which appears between the words "of" and "coffee" in line two of sub-clause (3), and by substituting therefor the word "such".

The first part of this amendment is moved at the instance of the hon. Member for Nairobi South. As to the second part, if hon. members will look at clause 10 (4) in the Bill, they will see that the wording is: "Any coffee planter who has obtained an advance". The object of the legislation was not only to bind the coffee planter who received an advance but any successors in title, and if we are imposing a preferential charge on the coffee and a second charge on the land, as we are in clause 6, it will be inconsistent not to make those charges fall on whoever may subsequently be the successor in title.

MAJOR CAVENDISH-BENTINCK: Can we be satisfied, although under these amendments the coffee may be marketed by somebody else who is a registered dealer, that the proceeds are fully secured for Government?

MR. FOSTER SUTTON: I think they are fully secured under this new amendment, because we are linking it up with the charge on the coffee which is the subject of a charge under clause 6.

MR. RENNIE: "Shall be disposed of by direction of the Board by such person, as the Board may appoint."

MAJOR CAVENDISH-BENTINCK: It is the grower who appoints and not the Board. Under clause 6 it is the Board who appoints and not the grower.

MR. RENNIE: I take it that the amendment proposed does not alter the basic principle involved in the old clause 10 (1) and (2)?

MR. FOSTER SUTTON: It does to some extent, because under the old 10 (1) and (2) the Board had power to appoint anybody they pleased. Under the amendment I have moved the Board has power to give directions as to how the coffee shall be sold and power to appoint a person to sell it, and if the owner of the

[MR. FOSTER SUTTON]

coffee directs the Board to appoint by name a duly licensed dealer the Board is bound to do so; if he fails to make such an appointment the Board have power to make one of their own choosing.

MR. COOKE: Under Standing Rule and Order 43 (i), should not hon. members stand up when addressing the chair? I am not referring to the hon. and learned Attorney General in particular but to other members!

MR. RENNIE: The hon. member's point of order is quite correct. I thank him for inviting our attention to it.

MRS. WATKINS: I raised a point yesterday which is not included, as to whether under clause 6——

MR. RENNIE: We are dealing with clause 10.

MRS. WATKINS: We wanted the words "local representative" put in.

MR. FOSTER SUTTON: I think I can satisfy the hon. member. It is covered by the definition of coffee planter, if she will look at the new definition.

MR. RENNIE: I do not think we can have any discussion on clause 6. Any such remarks are strictly off the record. We are dealing with clause 10.

MAJOR CAVENDISH-BENTINCK: I am not entirely satisfied. I want to see the grower nominate.

MR. FOSTER SUTTON: The hon. member wants the Board to be bound to appoint the nominee of the owner of the coffee?

MAJOR CAVENDISH-BENTINCK: If the owner of the coffee is a free agent it is all well and good, but if he has borrowed money it is rather dangerous. Our first duty is to make quite sure that the money is going to be repaid. I know that is the intention of the Coffee Board, and I know that Board is most meticulous in trying to tie it up. This amendment was produced not by the Coffee Board but by the representative of certain trade interests in the country.

MR. FOSTER SUTTON: As amended it does not affect the implications that arise under the new clause 2. A nominee of the owner of the coffee would be bound by the provisions of the new sub-section (2) of clause 10, but he cannot evade his responsibilities there if he is so appointed. You empower the Board to do certain things, and then there are certain obligations. I understood the Board were extremely careful in licensing persons to sell coffee, and if that is so I naturally assume such a person could be relied upon. If they do not carry out their obligations, we can deal with them; if they try to evade the provisions of (2) we can compel them to fulfil their obligations.

MR. VINCENT: The object of the proposed amendment was to allow the coffee owner to appoint a person, not that the Bill should give overriding powers to the Board to say there should be one channel for sale only.

MR. RENNIE: Would that object be nullified, the proposal of the hon. Member for Nairobi South, if the nomination should be subject to the approval of the Board?

MR. VINCENT: It could if the Board was unreasonable. After all, if you have licensed dealers I cannot see any reason why they should not be used as the channel for the disposal of coffee provided the money which is lent is fully covered in the conditions of handling the coffee.

MR. BLUNT: The Coffee Board would be quite content to leave the question in the hands of any licensed dealer, because the Board are taking steps to tighten up those dealers and are very careful to whom a licence is given. I do submit in reply to the hon. Member for Nairobi North that since (3), now (2), remains, there is the necessary protection for Government funds in the clause.

MAJOR CAVENDISH-BENTINCK: If the hon. Director of Agriculture is satisfied, I am.

The question of the amendment was put and carried.

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

Clause 11.

MR. FOSTER SUTTON moved that the clause be amended by (i) inserting the word "prescribed" in between the words "the" and "form", which appear in the second line of the said clause; and (ii) deleting the words "prescribed by Rules made by the Governor in Council", which appear in the third line thereof.

The question of the amendment was put and carried.

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

Clause 16.

MR. FOSTER SUTTON: I beg to move that the clause be amended by deleting the words "coffee planter" which appear in the first line thereof and substituting therefor the word "person". It deals with rather a legal point, but what I felt was that a person might be a coffee planter when an advance was made to him and he might, after receiving that advance, misapply the money advanced; he might then within a few months lose his property or sell out and cease to be a coffee planter within the meaning of the ordinance, and he could not be prosecuted successfully because the charge would have to read "being a coffee planter", which he would not then be. The word person would apply whether he was a coffee planter or not.

The question of the amendment was put and carried.

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

Clause 18.

MR. FOSTER SUTTON moved that the clause be amended by deleting the words "Every coffee planter to whom an advance has been made under this Ordinance", which appear in the first and second lines thereof, and substituting therefor the following: "During the subsistence of charges created by section 6 of this Ordinance any coffee planter whose coffee and land are bound by such charges".

The question of the amendment was put and carried.

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

CLAUSE 19.

MR. FOSTER SUTTON moved that subclause (1) of clause 19 be amended as follows:—By deleting the words "owned or occupied by any coffee planter to whom an advance has been made under this Ordinance", which appear in lines two, three and four thereof, and substituting the following therefor: "the subject of a charge under section 6 of this Ordinance".

The question of the amendment was put and carried.

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

Clause 20.

MR. FOSTER SUTTON moved that the clause be amended by deleting the words "Every coffee planter to whom an advance has been made under this Ordinance", which appear in the first and second lines thereof, and by substituting the following therefor: "During the subsistence of charges created by section 6 of this Ordinance any coffee planter whose coffee and land are bound by such charges".

The question of the amendment was put and carried.

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

Clause 21.

MR. FOSTER SUTTON moved that the clause be amended as follows: (i) by deleting the words "Every coffee planter to whom an advance has been made under the provisions of this Ordinance", which appear in the first and second lines thereof, and substituting the following therefor: "During the subsistence of charges created by section 6 of this Ordinance any coffee planter whose coffee and land are bound by such charges"; and (ii) by inserting, between the words "in" and "section", which appear in the fourth line of the clause, the following words: "paragraph (a) of".

The question of the amendment was put and carried.

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

The Employment of Servants (Amendment) Bill

Clause 2, *Schedule*.

MR. FOSTER SUTTON moved the following amendments to the Schedule:—

Paragraph 4: That after the word "home" in the last line the following words be inserted: "or to such person as he may, in writing, direct".

Paragraph 5: That the word "relatives" be deleted from the last line and that the following be substituted therefor: "person or persons entitled thereto".

Paragraph 14: That the following words be deleted after the word "agreement" in the second line: "and a servant who refuses to be repatriated shall be liable to forfeiture of the half pay held by the district officer which if so forfeited shall be disposed of under the orders of the Labour Commissioner of Kenya.", and a full stop substituted for the comma after the word "agreement".

Column 8 of List of Servants Attested: That the word "tax" be deleted and a capital "R" substituted for the small "r" in the word "registration".

The question of the amendments was put and carried.

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

MR. FOSTER SUTTON moved that the following Bills be reported to Council with amendment: Coffee Industry (Financial Assistance) Bill, Employment of Servants (Amendment) Bill, and the following reported without amendment: Native Foodstuffs Bill, Amalgamated Posts and Telegraphs Department Bill, Asiatic Widows and Orphans Pensions (Amendment) Bill, Arms and Ammunition (Amendment) Bill, Sisal (Amendment) Bill, Mining (Amendment) Bill.

The question was put and carried.

Council resumed its sitting.

The Governor's Deputy reported accordingly.

THIRD READINGS

MR. FOSTER SUTTON moved that the following Bills be read a third time and passed.

Government Staff Provident Fund Bill.
Native Foodstuffs Bill.
Coffee Industry (Financial Assistance) Bill.
Employment of Servants (Amendment) Bill.
Amalgamated Posts and Telegraphs Department Bill.
Asiatic Widows and Orphans Pensions (Amendment) Bill.
Arms and Ammunition (Amendment) Bill.
Sisal (Amendment) Bill.
Mining (Amendment) Bill.

MR. BROWN seconded.

The question was put and carried, and the Bills read a third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

No. 29—LORRY PRICES

MR. KOHLI:

1. Is Government aware that some of those who have bought recently lorries released by the Overseas Purchasing Commission consider the price of £500 to £700 per lorry as too much?

2. Will Government please explain the difference between the pre-war and the present prices of such lorries?

Reply:

1. Only one purchaser has complained to the Overseas Purchasing Division that the price of these lorries is excessive.

2. The difference between the pre-war and the present prices of lorries arises from wartime factors beyond the control of the Government. These factors include the increased cost of production, freight and insurance, and the cost of war risk insurance. Moreover, the type of lorry now being received is considered to be superior to that normally imported into East Africa before the war.

No. 30—EXPULSION FROM PROCLAIMED AREAS

MR. KOHLI:

1. Is it a fact that a person, convicted under the Trading in Unwrought Precious Metals Ordinance, has been proceed against and an Expulsion Order made against him under the Expulsion from Proclaimed Areas Ordinance? If the answer is yes, why so?

2. Will Government please state, since 1939—

(*a*) against how many persons an Expulsion Order under the Expulsion from Proclaimed Areas Ordinance has been made under the following heads: (i) Indians; (ii) Europeans.

(*b*) in how many cases the Expulsion Order was for (1) limited time, (2) unlimited time.

3. Will Government please state the number of European and Indian members on the Boards appointed under the Expulsion from Proclaimed Areas Ordinance?

Reply:

1. Twelve persons have been convicted under the Trading in Unwrought Precious Metals Ordinance and have had Expulsion Orders made against them under the

Expulsion from Proclaimed Areas Ordinance, 1935. The conviction of an offender under the former Ordinance does not preclude action being taken against him under the latter.

2. (a) Twelve Expulsion Orders have been made in respect of Indians since 1939.

No Expulsion Order has been made against any European.

(b) In one case the order was for the period of the present war. In eleven cases the orders were for an unlimited period.

In one case an appeal to the Governor-in-Council against an Expulsion Order under section 5 of the Ordinance was allowed; there are consequently eleven orders in force at the present time.

3. There are in existence at present four Boards established under section 4 of the Ordinance and composed as follows:—

South Kavirondo: Two Europeans; one Indian.

North Kavirondo: Six Europeans; no Indian.

Central Kavirondo: Three Europeans; no Indian.

Kisumu-Londiani: Three Europeans; one Indian.

The question is under consideration whether there should be one Board under the chairmanship of the Provincial Commissioner, in which event the various proclaimed areas would be re-proclaimed as one area.

No. 34—Settlement of Squatters

MR. BEECHER:

In view of the expressions of opinion in the debate on the Land Control Bill, 1944, to the effect that, in the near future, additional European settlement is envisaged on a scale far beyond the "proposals on a modest scale . . . to settle between 150 and 250 settlers over a period of ten years on what is already European-owned land" to which the Parliamentary Under-Secretary of State for the Colonies, His Grace the Duke of Devonshire, referred in a debate on White Settlement in East Africa in the House of Lords on 15th February, 1944, and in view of the fact that a considerable part of this "European-owned" land is at present in the occupation of African squatters who must inevitably be removed to make way for such settlement, will Government please make an announcement of the measures which it intends to adopt for the suitable settlement of the removed squatters?

Reply:

It is assumed that the hon. member is referring to Africans employed on farms under the provisions of the Resident Labourers Ordinance.

Before that Ordinance was brought into force an area of land was specially set aside for the purpose of accommodating such resident labourers as could not be accommodated in their own land unit.

2. Any closer settlement of the Highlands after the war is likely to increase rather than decrease the demands for African labour on farms. While it is the settled policy to reduce the uncontrolled number of cattle, sheep and goats which resident labourers are at present grazing on European farms no general removal of those resident labourers who agree to attest under the Ordinance is contemplated. The Government is under no legal obligation to provide alternative land for those who are at present in illegal occupation of land on European Farms, but the whole question is receiving the attention of Government at the present time.

Index to the Legislative Council Debates

OFFICIAL REPORT

SECOND SERIES — VOLUME XVIII (PART II)

Second Session: 11th to 20th April, 1944

EXPLANATION OF ABBREVIATIONS

Bills: Read First, Second or Third time=1R, 2R, 3R; Com.=In Committee; SC.=Referred to Select Committee; SCR.=Select Committee Report; ReCl.=Recommitted to Council.

KENYA NATIONAL ARCHIVES

PHOTOGRAPHIC SERVICE

Description of Document: LEGISLATIVE COUNCIL DEBATES, VOL. XVIII (PART II).
11th to 20th April, 1944.

Reference No. From Central Government Library.

END

G.P.K. 1083—1m—4/65