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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

COUNCIL INAUGURATED JUNE, 1948 — VOLUME XLI

1951

THIRD SESSION — SECOND SITTING

13th February, 1951, to 9th March, 1951

CHRONOLOGICAL INDEX

List of Members of the Legislative Council

President:

HIS EXCELLENCY THE GOVERNOR, SIR P. E. MITCHELL, G.C.M.G., M.C.

Vice-President and Speaker:

HON. W. K. HORNE

Ex Officio Members:

CHIEF SECRETARY AND MEMBER FOR DEVELOPMENT (HON. J. D RANKINE, C.M.G.).

ATTORNEY GENERAL AND MEMBER FOR LAW AND ORDER (HON. K. K O'CONNOR, K.C., M.C.).

FINANCIAL SECRETARY AND MEMBER FOR FINANCE (HON. V. G MATTHEWS, O.B.E.).

CHIEF NATIVE COMMISSIONER AND MEMBER FOR AFRICAN AFFAIRS (HON. E. R. ST. A. DAVIES, M.B.E.).

MEMBER FOR AGRICULTURE AND NATURAL RESOURCES (MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G., M.C.).

DEPUTY CHIEF SECRETARY AND MEMBER FOR LABOUR (HON. C. H. THORNLEY).

MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT (HON. E. A. VASEY, C.M.G.).

Nominated Official Members:

HON. H. L. ADAMS (Secretary for Commerce and Industry).

DR. THE HON. T. F. ANDERSON, O.B.E. (Director of Medical Services)

*HON. F. W. CARPENTER (Acting Labour Commissioner).

HON. S. GILLETT (Director of Agriculture).

*HON. C. H. HARTWELL (Director of Establishments).

HON. J. B. HOBSON, K.C. (Solicitor General).

*HON. SIR CHARLES MORTIMER, C.B.E.

*HON. W. PADLEY, O.B.E. (Secretary to the Treasury).

BRIG.-GEN. THE HON. SIR GODFREY RHODES, C.B., C.B.E., D.S.O. (Special Commissioner for Works and Chief Engineer, Public Works Department).

European Elected Members:

HON. M. BLUNDELL, Rift Valley.

HON. S. V. COOKE, Coast.

LT.-COL. THE HON. S. G. GILRSIE, O.B.E., Nairobi North

HON. W. b. HAVELOCK, Kiambu.

HON. J. G. H. HOPKINS, O.B.E., Aberdare.

MAJOR THE HON. A. G. KEYSER, D.S.O., Trans Nzoia.

HON. L. R. MACONOCHIE-WELWOOD, Uasin Gishu.

HON. T. R. L. PRESTON, Nyanza.

HON. C. W. SALTER, Nairobi South.

HON. LADY SHAW, Ukamba.

HON. C. G. USHER, M.C., Mombasa.

* Temporary Member.

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

Asian Elected Members:

HON. C. B. MADAN (Central Area).
HON. I. E. NATHOO (Central Area).
HON. A. B. PATEL, C.M.G. (Eastern Area).
DR. THE HON. M. A. RANA, O.B.E. (Eastern Area)
HON. A. PRITAM (Western Area).

Arab Elected Member:

HON. SHARIFF MOHAMED SHATRY

Nominated Unofficial Members:

Representing the Interests of the African Community:

HON. J. J. K. ARAP CHEMALLAN.
HON. J. JERUMIAH.
HON. L. W. MATHU.
HON. B. A. OHANGA

Representing the Interests of the Arab Community:

SHERIFF ABDULLA SALIM.

Acting Clerk to Council:
T. V. N. Fortescue.

Assistant Clerk to Council:
E. V. Borrett

Reporters:
Miss R. Seeley
Miss E. Fraser

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

1951—

13th February—
Hon. Member for Rift Valley.
Hon. Member for Nairobi South.
Hon. Member for Central Area (Mr. Nathoo).

14th February—
Hon. Member for Nairobi South.
Hon. Member for Central Area (Mr. Nathoo).

15th February—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Arab Elected Member.

16th February—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Arab Elected Member.

20th February—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Arab Elected Member.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS—*Contd.*

1951—

21st February—
Hon. Member for Central Area (Mr. Nathoo).

22nd February—
Hon. Member for Central Area (Mr. Nathoo).

23rd February—
Hon. Member for Education, Health and Local Government.
Hon. Solicitor General.
Hon. Member for Central Area (Mr. Nathoo).
Hon. Arab Elected Member.

27th February—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

28th February—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

1st March—
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

6th March—
Hon. Member for Mombasa.
Hon. Member for Nairobi South.
Hon. Member for Eastern Area (Dr. Rana).
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

7th March—
Hon. Member for Trans Nzoia.
Hon. Member for Rift Valley.
Hon. Member for Mombasa.
Hon. Member for Nairobi South.
Hon. Member for Eastern Area (Dr. Rana).
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

8th March—
Hon. Sir Charles Mortimer.
Hon. Member for Trans Nzoia.
Hon. Member for Nairobi South.
Hon. Member for Eastern Area (Dr. Rana).
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.

9th March—
Hon. Sir Charles Mortimer.
Hon. Member for Trans Nzoia.
Hon. Member for Uasin Gishu.
Hon. Member for Nairobi South.
Hon. Member for Eastern Area (Dr. Rana).
Hon. Member for Central Area (Mr. Nathoo).
Hon. Member for Arab Interests.
Hon. Member for African Interests (Mr. Chemallan).

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

THIRD SESSION, 1951

Tuesday, 13th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Tuesday, 13th February, 1951.

Mr. Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 20th December, 1950, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE HON. CHIEF SECRETARY:

(a) Annual Report of the East Africa High Commission, 1949.

(b) Estimates of Revenue and Expenditure of the East Africa High Commission Non-Self Contained Services for the year 1951.

(c) East African Railways and Harbours Estimates of Revenue and Expenditure, 1951, and 1950 (Revised).

(d) East African Posts and Telegraphs Department Annual Report, 1949.

(e) East African Posts and Telegraphs Department Operating Accounts, 1949.

BY THE HON. FINANCIAL SECRETARY:

(a) Report on the Kenya, Uganda and Tanganyika Savings Bank, 1949.

(b) Treasury Memorandum on the report of the Public Accounts Committee on the Colony's accounts for 1947.

(c) The Income Tax (Non-Residents' Allowances) (Amendment) Rules, 1951.

BY THE HON. ATTORNEY GENERAL:

Police Department Annual Report, 1949.

BY THE HON. MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT:

Education Department Annual Report, 1949.

NOTICE OF MOTION

MR. PATEL (Eastern Area) gave notice of the following motion:—

"Whereas racial segregation for commercial or residential purposes in townships in Kenya is contrary to the policy declared by His Majesty's Government in the United Kingdom embodied in the White Paper of July, 1923:

And whereas such segregation is contrary to the principles and provisions of the United Nations Charter and the Declaration of Human Rights to which His Majesty's Government is a party:

And whereby His Majesty's Government is pledged to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion':

And whereas such segregation is inconsistent with the present non-racial character of the Commonwealth of which three non-European countries, namely India, Pakistan and Ceylon, are members and equal partners:

And whereas any covenants incorporated in any instruments concerning land in townships in Kenya prohibiting ownership or occupation by any person on the ground of his race or colour are contrary to the ideals for which the Commonwealth stands and therefore must be considered against public policy:

[Mr. Patel]

This Council therefore recommends to the Government to appoint a Select Committee of this Council with the following terms of reference:—

(1) To investigate and report as to the extent of commercial or residential segregation practised today in the townships of Kenya in pursuance of covenants incorporated in instruments concerning land whether granted by the Crown or by private treaty.

(2) To suggest ways and means for rendering all such covenants and restrictions as null and void."

BILLS

First Reading

On the motion of the Attorney General, seconded by the Solicitor General, the following Bills were read a first time:—

The Water Bill.

The Native Courts Bill.

The Public Roads (Amendment) Bill.

The Hotel-keepers Bill.

The Local Authorities (Recovery of Possession of Property) Bill.

The Employment (Amendment) Bill.

The Registration of Persons (Amendment) Bill.

The Compulsory National Service Bill.

The Municipalities and Townships (Private Streets) Bill.

The Customs and Excise (Provisional Collection) (Amendment) Bill.

The African District Councils (Amendment) Bill.

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

The Promissory Oaths (Amendment) Bill.

The Provident Fund Bill.

The Criminal Procedure Code (Amendment) Bill.

The Provisional Collection of Taxes Bill.

The Traders' Licensing Bill.

THE ATTORNEY GENERAL: Sir, there is also on the order paper the Pharmacy and Poisons (Amendment) Bill, but that Bill will require republication and, therefore, I will not move its first reading today.

SUSPENSION OF STANDING RULES AND ORDERS

THE ATTORNEY GENERAL moved: That Standing Rules and Orders be suspended to enable the motion standing in the name of the Deputy Chief Secretary to be moved without notice.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

SELECT COMMITTEE REPORT

Regulation of Wages and Conditions of Employment Bill

DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move that the report of the Select Committee on the Regulation of Wages and Conditions of Employment Bill be adopted.

Sir, this is rather a lengthy report, particularly having regard to the fact that there are not many important changes to the original Bill which are recommended in it. A great deal of the report refers to alterations in drafting which are of no special consequence and to which I do not propose to refer. In certain other cases, where comparatively small but important alterations have been recommended to clauses in the original Bill, the whole new section as amended has been included in the report as a matter of convenience for hon. Members. I propose, Sir, therefore, only to refer in this introductory speech to those paragraphs in the report which I think are of special importance. If any hon. Members have any questions to ask regarding other paragraphs which I do not mention, I will be glad to do my best to reply to those points when replying to this debate.

The first paragraph that I think I need refer to is paragraph 6 and the amendments proposed in sub-paragraph (*b*) and (*c*) to clause 4. The purpose, Sir, of these amendments is simply to make sure that the same procedure shall be followed by the Wages Advisory Board when making wage regulation proposals to the Member and by the Member when making a wages regulation order consequent upon receiving such a proposal from the Board, as when such a proposal is made by a Wages Council.

Paragraph 8 recommends two other important changes in the Bill. The first of these is that the Member may not of his

[Deputy Chief Secretary]

own motion set up a Wages Council. We considered, Sir, in our Committee that the setting up of a Wages Council was an important act of policy and in fact that no such urgent circumstances could be anticipated which would require the Member to set up such a Council without reference to the Wages Advisory Board. It is therefore agreed that the Member should be required to consult that body before setting up any such Council.

The second important change recommended in this paragraph is that under the original Bill a Wages Council was given powers practically identical with the powers held by the Wages Advisory Board. That, we felt in the Committee, would result in unnecessary duplication, and we now propose that the functions of a Wages Council shall be limited to making proposals regarding the remuneration and other conditions of employment in a particular trade, industry or occupation.

Paragraph 9 of our report suggests that provision be made for a wider measure of publicity to be given before any Wages Council order can be made. In the original Bill, provision was made for the publication of the terms of such an order in the Press. We did not consider that, in a matter of such importance affecting so many people, this publicity was sufficient. We therefore recommend that two such publications should be made in the Press and that the Order shall be laid on the table of this Council at the first opportunity after it has been made by the Member, and so that it shall not come into force until 30 days after it has been so laid. That will mean that this Council will have an opportunity of debating any proposal by the Member to set up a Wages Council before the Order becomes operative.

The result of paragraph 10 will simply be to require, if our recommendations are accepted, that the Member shall consult with the Wages Advisory Board before abolishing or varying the limits of jurisdiction of a Wages Council.

I would not mention to-day paragraph 11 of the report except to note that sub-paragraph (*b*) is a concession to the heart-rending plea that we heard during the second reading debate from the hon. Member for the Rift Valley for purity of language. (Laughter.)

The effect of the recommendation in paragraph 12 on page 5 of the report is simply to apply sub-clauses (2), (3), (4) and (5) of clause 10 to the Wages Advisory Board when making its proposals to the Member, so that the procedure in regard to publication of the proposals and the investigation which must go on before such can be made will be precisely the same when proposals are made by the Wages Advisory Board as and when they are made by the Wages Council.

I think, Sir, that I can pass from paragraph 12 of the report to paragraph 25, on page 8. It is in this paragraph that the next important amendment is recommended. The effect of the new clause 23 is to include in the definition "Association of Employees" works or staff councils.

In paragraph 26 the recommendation is made that provision be included in the Bill for the setting up of works or staff councils to function as the joint council for an individual undertaking. The reasons why we have made that recommendation are fully set out in the explanatory note on page 10 of our report.

The effect of the recommendation in paragraph 27 and the amendment proposed to clause 25 will simply be to require that the Labour Commissioner shall be compelled to register a written agreement forwarded to him in accordance with the provision in this clause. Under the original Bill the word "may" was used and the Labour Commissioner was not so compelled.

Under paragraph 31 we recommend certain amendments to clause 29. Sub-clause (1) of this new clause provides that the terms of any wages regulation order must be complied with before any agreement or memorandum of employment can be registered by the Labour Commissioner. Sub-clause (2) requires that any such agreement or memorandum of employment when registered shall be varied to conform with any new wage regulation order which may be made subsequent to its registration or to any new law which may be introduced by this Council affecting terms and conditions of employment, subject to the proviso at the top of page 12 of our report.

[Deputy Chief Secretary]

The amendment proposed to clause 31 in paragraph 33 of our report requires that agreements shall only be registered and registered agreements varied with the approval of a wages council where such wages council has been set up.

In paragraph 34 we recommend a new sub-clause (4) to clause 32 to take the place of the old clause 33 in the Bill. We considered, Sir, that this matter to which the old clause 33 referred was really not a matter which should properly be made the subject of penal sanctions, and even if we had felt that it was a proper subject for penal sanctions there would always be the difficulty when you may be dealing with an association of employers or an association of employees as to who precisely is to be punished. You cannot, for instance, put an association in prison in default of payment of a fine. We thought that the circumstances of default to which that old clause refers could much better be dealt with in the manner proposed in the new sub-clause (4) to clause 32, which simply has the effect of invalidating any objections which may be made by a party to an application to vary an agreement or memorandum of employment if he has not lodged his objections within the time allowed under the clause.

I think, Sir, that I have dealt with the only important changes which our committee though fit to recommend to this Council; but there are certain minor amendments which have been circulated to hon. Members this morning and which another Government spokesman will shortly propose shall be made to this report.

Sir, I beg to move. (Applause.)

THE ACTING LABOUR COMMISSIONER: Mr. Speaker, I beg to second, reserving my right to speak.

THE ATTORNEY GENERAL: Mr. Speaker, I rise to move the amendments to the report which are on the paper which has already been circulated to Members.

I beg to move that the report be amended:—

(1) By inserting the following new paragraph—

2A. That the figures "1951" be substituted for the figures "1950" at the end of clause 1 of the Bill.

(2) That paragraph 4 be amended by—these words which follow are not on the Amendment Paper circulated to Members—by deleting all words after the word "Member" in sub-paragraph (*b*) and by inserting the following new sub-paragraph. I will repeat that if I may—

(2) That paragraph 4 be amended by deleting all words after the word "Member" in sub-paragraph (*b*), and by inserting the following new sub-paragraph—

(*c*) by inserting in the appropriate place the following definition—

"labour officer" means any person appointed by the Governor by notice in the Gazette to be a labour officer for the purposes of this Ordinance, and includes the Labour Commissioner, Deputy Labour Commissioner, Principal Labour Officer, every Senior Labour Officer and every Assistant Labour Officer.

(3) That sub-paragraph (*b*) of paragraph 12 be amended by substituting for the word "same" in the fifth line of the proviso to the new sub-clause (2) of clause 10 the word "said".

Mr. Speaker, I think that all those amendments speak for themselves, except that I should say a word of explanation of the reasons for moving the deletion of certain words in paragraph 4 (*b*) to which I have just drawn attention by reading the amendment twice. The Bill originally had these expressions defined in the interpretation clause—"statutory minimum remuneration", "wages council order", "wages regulation order" and "wages regulation proposals". Those definitions were omitted from the interpretation clause, clause 2, because, as is stated in the report, definitions of them appeared elsewhere in the body of the Ordinance. It is quite true that definitions do appear elsewhere in the body of the Ordinance, but the definitions in the interpretation section gave the references to the sections in the Ordinance where those definitions were to be found, and that, I submit, is a very great convenience to busy people who have to work this Ordinance. For instance, you will find the

[The Attorney General]

phrase "wages regulation order" used twice in clause 17. Now, if you want to find out what a "wages regulation order" is, you have got to read through the Ordinance until you can dig a definition out of sub-clause (3) of clause 10, whereas if the original scheme is kept to and those definitions appear in the interpretation section, you immediately look at that and it gives you the reference right away. Therefore, I do suggest to hon. Members that, notwithstanding this may entail some slight duplication, it is of great practical convenience and advantage to keep those definitions in the interpretation section. I have mentioned this to the Chairman of the Committee and to the hon. Solicitor General, and I understand that they agree with me. That is the reason for the amendment to the paper which is before hon. Members.

Sir, I beg to move those amendments, and in doing so, I would like to express my admiration for the very careful and painstaking way in which this Committee has produced this report. If I may say, also, one word of regret, it is for the fact that, when giving comfort and solace to the feelings of the hon. Member for Rift Valley by changing an expression in sub-clause (2) of clause 9 of the Ordinance, they did not make that solace complete by changing the same expression in sub-clause (1) of clause 15. (Laughter.)

The Chief Secretary seconded.

THE SPEAKER: It has been moved that the report be amended:—

(1) By inserting the following new paragraph—

2A. That the figures "1951" be substituted for the figures "1950" at the end of clause 1 of the Bill.

(2) That paragraph 4 be amended by deleting all words after the word "Member" in sub-paragraph (*b*)—

Does that include down to the word "Bill"? The recommendation would have to go as well, I think.

THE ATTORNEY GENERAL: I beg your pardon, Sir, I did not hear.

THE SPEAKER: You say, by deletion of all words after "Member" in sub-paragraph (*b*). Does that mean down to the end of paragraph 4 of the report?

THE ATTORNEY GENERAL: No, to the end of paragraph (*b*), Sir,

THE SPEAKER: Would it not be rather peculiar to leave the recommendation in when you have struck out the effect of it?

THE ATTORNEY GENERAL: Sir, I have only partially struck the effect of it out. The effect of my amendment is that paragraph 4 will now read——

THE SPEAKER: I fully appreciate that.

THE ATTORNEY GENERAL: Yes. By deleting the definitions of "board", "employee" and "member" and it will stop there.

THE SPEAKER: By deleting all the words after the word "Member" in sub-paragraph (*b*) and by inserting the following new sub-paragraph—

"(*c*) by inserting in the appropriate place the following definition—

"labour officer" means any person appointed by the Governor by notice in the Gazette to be a labour officer for the purposes of this Ordinance, and includes the Labour Commissioner, Deputy Labour Commissioner, Principal Labour Officer, every Senior Labour Officer and every Assistant Labour Officer,

(3) That sub-paragraph (*b*) of paragraph 12 be amended by substituting for the word "same" in the fifth line of the proviso to the new sub-clause (2) of clause 10 the word "said".

The question was put and carried.

The question that the report of the Select Committee, as amended, on the Regulation of Wages and Conditions of Employment Bill be adopted was put and carried.

THE SPEAKER: I think that concludes the business on the Order Paper. You are not proposing to take the other resolution to-day?

THE ATTORNEY GENERAL: With your permission, Sir, I would ask that the remaining resolution be deferred. A point has arisen which will require further consideration.

THE SPEAKER: In that event I think we can adjourn the Council until to-morrow morning at 9.30.

ADJOURNMENT

Council rose at 10.40 a.m. and adjourned until Wednesday, 14th February, 1951, at 9.30 a.m.

Wednesday, 14th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Wednesday, 14th February, 1951.

Mr. Speaker took the Chair at 9.40 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 13th February, 1951, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By the Financial Secretary:

Schedules of Additional Provision—No. 6 of 1949 and No. 3 of 1950.

By the Director of Establishments:

Report of the Select Committee on Cost of Living Allowances for Government Servants.

BILLS

Second Reading

The Water Bill

The Member for Agriculture and Natural Resources: Mr. Speaker, I beg to move the second reading of a Bill to make better provision for the conservation, control and use of the water resources of the Colony and for purposes thereto and connected therewith.

Hon. Members have before them a Bill which consists of no less than 187 sections and about 50 pages, much of which is technical. I therefore, Mr. Speaker, do not propose to go through the sections *seriatim* and in great detail. The objects and reasons which have been published with the Bill are very comprehensive and explanatory, but I do propose to deal with a number of specific points which I have reason to believe may be subject to some misunderstandings or may be contentious.

Sir, in the first instance I would stress the absolute necessity for us to introduce in this Council a new Bill—(hear, hear)—a Bill that is more compatible with modern conditions, and the proposed Ordinance that is before Members this morning has been more or less under preparation since 1946. At the moment we have to rely on an Ordinance which was brought into operation in 1929, and, as I have frequently said in this Council, all that Bill does is to provide for the apportionment for an ever-increasing amount of water to an ever-increasing number of people; and so that is how we are going to deal with what is really the life-blood of the country because since nearly all the developmental work in this country depends on water, of which we are very short, then, Sir, I submit we should be very short-sighted and should be held very much to blame by future generations.

Now, as it has been said in various quarters, more especially when the first attempted draft of this Bill was published, that this is a socialistic measure which gives Government far too much control and is not at all the sort of Bill that a country of this kind ought to allow to be passed. But, Sir, again I would repeat that without water and without increasing the supplies of water, and increasing our methods of conserving water, development becomes impossible. We must control water in this country, and if we do mean what we say, and control is intended, then it is up to us to see that control is not merely a control in name, but is in fact an effective control. (Hear, hear.)

Now, Sir, hon. Members are aware that the previous edition of this Ordinance has been published, and was circulated and submitted to various authorities throughout the country and, as a result of that, some sixty representations were received from various public bodies and everyone of those representations has been carefully examined, and a very large number of the suggestions made have been incorporated in the Ordinance that is now before Members today. In the objects and reasons it is stated briefly what recommendations have in fact been incorporated in this new Ordinance. We have especially incorporated increased rights of a Bill not provided for, I may add, in the Ordinance under which we are working today, and we have also incorporated in this new Ordinance measures which impose considerable limitations on the powers of the Member who can now in most cases only act after consultation with the Water Resources Authority.

[The Member for Agriculture and Natural Resources]

In drafting this Bill, the Southern Rhodesian Act, the Scottish Act, the English Act and previous Kenya legislation have been carefully consulted, and furthermore a good deal of information has been gleaned from Ordinances and Acts in Australia, South Africa and elsewhere. So there is really nothing in this Ordinance that is entirely peculiar to Kenya.

Now, Sir, the Bill itself is divided into six parts, and I will just deal briefly with the matters which arise, as I have said, which are contentious or which need explanation in each part.

Part I is the short title and interpretation clause. The first matter which arises is the definition of "a body of water". Now, Sir, I shall refer as far as that definition is concerned to section 136, where it is provided that under certain conditions water which would normally be reckoned as a body of water can be exempted from the provisions of this Ordinance. I will deal with that when we come to that clause. But, incidentally, Sir, I would say that it is the intention of Government to refer this Bill to a Select Committee, and I suggest that when it comes to discussions on interpretation clauses, that those discussions should be referred to the Select Committee.

Page 824 is some difficulty perhaps in interpreting the word "filed", because it is stated here that filed means "filed on the effective date of filing, which shall be the date upon which an application, map or plan is accepted by the Chairman, or other person deputed by him, as being complete in form and substance provided that in cases of applications submitted prior to the coming into operation of this Ordinance the date on which an application shall be deemed to have been filed shall be decided by the Water Apportionment Board".

Well that does give rise to fears that when this Bill is brought into operation some of the applications may be overlooked or, indeed, that the Water Apportionment Board might not bring them into review in the right order. I suggest, Sir, that that point should be referred to the Select Committee.

Lastly Sir, in the interpretation portion of this Bill, I refer to the interpretation of "normal flow"; now, the words "normal flow" are very difficult to put in any ordinance. I admit that technicians do differ on their interpretation of this particular term, but I would add that the interpretation which appears in this Ordinance is precisely the same interpretation which appears in the existing Ordinance.

Turning now, Sir, to Part II of the Bill which deals with the duties of the Member—the duties of the Water Resources Authority—and lays down that water is vested in the Crown. Now, Sir, dealing first of all with section 3, it lays down in section 3 that the water of every body of water is vested in the Crown, and its control is vested in the Member on behalf of the Crown, subject to the provisions of this Ordinance: and that is precisely the same wording as appears in the existing Ordinance—there is nothing new about that, with the exception of instead of the control being vested in the Governor in Council, it is unworkable nowadays as the control is vested in the Member.

It then goes on to say, provided that this section shall not apply to any part of the Protectorate of Kenya which is now, or may hereafter be, held on lease from His Highness the Sultan of Zanzibar.

Now that looks as though—and indeed it reads as though—we should have no control whatever on water of any body of water which lies within the Kenya Protectorate area, and that is not intended. And when this Bill is referred to a Select Committee we shall endeavour to overcome that difficulty. It is of course in no way desired to say anything in this Bill—indeed it would be entirely wrong for us to do so—which could at all be construed to interfere with the title of His Highness the Sultan of Zanzibar to land or water in the Protectorate. That is the reason for this proviso which, incidentally, appears in the existing Ordinance. But as I stated, Sir, the Select Committee will be asked to try and amend this proviso so as to make it plain that the leasehold title to any body of water situate in the Protectorate is vested in the Crown, and the control of it will be vested in the

[The Member for Agriculture and Natural Resources]

Crown on whose behalf the Member will act.

Now, Sir, in regard to sections 3 and 4, I believe some fear exists that in view of the provisions of those sections that other rights in connexion with water, such as right of access, fishing, various other things, have been interfered with in this Bill. That, of course, is not the case. There is nothing new in this Bill in regard to that as compared with the existing one. The same rights of landowners apply.

Now, Sir, section 5 stresses the duty of the Member, and I hope that the word "further" may possibly be inserted after the word "water" in the fourth line, because I would again stress that the main objective of this Bill is to get away from the position as it is legally to-day, that it is the responsibility of no person and of no body to really get down to the problem of increasing our conservation capacity and, in other words, increasing the water supplies of this Colony. The only duty that is legislatively laid on anybody at the present time is the dating of apportionment, which is laid down in the 1929 Ordinance.

Now, Sir, section 6 deals with the establishment of an authority to be known as the Water Resources Authority, and here I would like to make some explanation of the whole idea of organization and administration which lies behind this Ordinance. The idea is that in the first instance we shall have a central body—non-sectarian in any shape or form—composed of the best people that we can possibly find for the purpose; not too large in numbers, who will be responsible for the high-level administration of the Ordinance; responsible for the formulation of policy in regard to water generally in this Colony, and will be responsible to see that the plans that they make are carried into effect. We have at the moment operating administratively a Water Resources Authority. It was my intention to read out the names of gentlemen, but I think it is rather a large body, and I do not say that to-day, for the purposes of this Ordinance, that that body is construed, or consists of, a membership that is entirely suited to the purposes of this Bill. But I think I would be entirely wrong, Sir, if I did not pay some tribute publicly to the gentlemen who have sat on the Water Resources Authority for the last two or three years. They have done an immense amount of voluntary work, and it is they who are responsible for the Bill that is before us to-day.

Now, Sir, under the administration we have in mind—the organization we have in mind—under this high level central board of directors—call them what you will—we propose to organize, and indeed have already organized, regional water boards, and they are the bodies that will advise on regional aspects, on regional planning, on law and on the execution within their areas of dealing with water generally in this Colony. I will deal more fully with certain aspects of these regional boards when we come to the section which deals with their appointment.

And lastly, Sir, we shall have a Water Apportionment Board, which is a purely executive body concerned with the distribution and apportionment of water. It is a Water Apportionment Board that does the executive work of the Water Resources Authority, and it is the Water Apportionment Board that corresponds to what is to-day the only body we have got—the Water Board, you will notice it comes third. In my submission, our present policy to-day has no guidance and no directorship, and that is what I am seeking to provide in this Ordinance.

Now, Sir, section 6 (2) provides for the suggestions of how this Water Resources Authority—that is, the central body—should be composed. It is suggested that it should be composed of six persons—officials who are holding public office who are named—and six unofficial members who should be appointed by the Member. And I am fully aware already that there has been considerable dissatisfaction expressed throughout the country on the composition of the Water Resources Authority and, having had considerable experience of these sorts of Bills, I am also fully aware that no committee has ever been set up statutorily by this Council that has not been considerably criticized at the time of the suggestion from the main Council, when the commission has been criticized. But it is the wish of Government, I know, to try and be certain that this body will receive public support and I am sure that Government is

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prepared to go a long way within reason to meet the wishes of Council in respect of the composition of this Authority. I would, however, submit that it is absolutely essential that there should be a representative of the Member for Agriculture and Natural Resources who is responsible for the water policy of the Colony. I would submit, Sir, that it is absolutely essential that we should have either the Chief Native Commissioner or a representative of the Chief Native Commissioner statutorily laid down as a member of the Board. I may add, that during all the past years we have always had a representative of the Chief Native Commissioner on the temporary acting Water Resources Authority. I think, Sir, it is probably also essential that we should have a representative member for Health and Local Government because a number of these difficulties that arise in connexion with water do impinges very much on Local Government and, of course, on urban areas; in fact an immense amount, perhaps an undue proportion of the work done at the moment by the Acting Water Resources Authority is in connexion with urban water supplies. And lastly, Sir, I submit that it is quite imperative that the Director of Public Works, who deals with staff and so on and who is technical adviser and on whom we have to rely very largely for technical advice, stores equipment, and so forth, should be a member of the Water Resources Authority. Sir, beyond those four persons holding public office, subject to what the Select Committee may feel, I have no very strong views about the composition of the Water Resources Authority, beyond again wishing to stress that I do sincerely hope that we shall not try and compose a body of this nature on a representation by sectional interests (hear, hear); that, I think, would be the greatest mistake we could possibly make. We have those four officers holding public office and eight other members of whom not less than six must be unofficials. I do not mind how many really, provided it is not representative of sectional interests and provided they are the best people we can find, subject as I say, to what the Select Committee may suggest, I have no very strong feelings.

Now, sub-section (4) deals with the Chairmanship of the Water Resources Authority, and it lays down, at the moment that the Chairman of the Water Resources Authority shall be appointed by the Member from among the members of the Authority and I am told by quite a number of bodies who have seen this Ordinance that they feel that it might be wiser to add the words "after consultation with the members of the Authority" and, as far as Government is concerned, I am quite sure Government would not mind an insertion of those words. After all, the Authority is going to work under a Chairman, we would naturally like to know the Chairman we propose is acceptable and meets with the wishes of the Authority.

In sub-section (5), Sir, it is laid down that the unofficial members of the Authority shall be appointed for a period of three years and shall be eligible for re-appointment. I suggest, when this Bill goes to Select Committee, it might be wise to try and provide for an overlapping renewal of the members of the Water Resources Authority, otherwise one is apt, at the end of the period of three years, to lose all continuity which, I suggest, might be undesirable.

I do not think, Sir, anything else arises in this part of the Ordinance until we come to section 11 where provision is made under section 11, sub-section (2), for the acquisition of land for any of the purposes of this Ordinance shall be deemed to be an acquisition for a public purpose within the meaning of the Land Acquisition Act, 1894, of India. I believe it has been suggested it would be preferable if we do not specify that Act in the hope that a new Act would, in due course, be produced. That is a matter which I am afraid I must leave to my hon. and learned friend the Member for Law and Order to deal with that particular point.

Now, Sir, section 12 provides that the Member may construct works and apportion the cost and it is suggested that the cost of construction of such works, when paid for from public moneys, may subsequently be appottioned to persons who in the opinion of the Member have benefited. I know some people are frightened that that may mean imposing a considerable load of debt on people who are not in a position to bear that

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imposition. It is suggested that, for instance, in the piping of tapering streams or in a work of that nature there are some on the upper portions of the streams who are happily placed and they might genuinely say "you are tapering the stream, I have never taken out of the stream more than my sanction permits, I have paid extra money and bought this land in order to be situated far up the stream, I have been perfectly law abiding throughout—why suddenly impose a heavy debt on me and I do not particularly benefit at all". My answer to that is, under sub-sections (4) and (5), surely the Member and most certainly the Water Appeal Board as I will mention—there is an appeal to this—would say that it is not reasonable to call upon this man to contribute. The other case of course, is the man who cannot afford to benefit. He may say "I quite admit I cannot always have the water I require, but I manage to scrape along, I am making a living, I am developing my farm, and I just cannot afford any more". There again, Sir, I think one has got to bear two things in mind. One is, we have got to develop this country and secondly, a man under those conditions, if genuine ought not be called upon to pay at all.

I will now deal, Sir, with sections 15, 16 and 17 in this Part, but there again I know they are subject to considerable criticism. There it is provided at the moment that the Water Resources Authority may summon witnesses, examine them on oath or affirmation and require them to produce any relevant book, plan or document, and under section 16, summons for the attendance of a witness or for the production of any book, plan or document may be served in the same manner as a summons for the attendance of a witness at a criminal trial in a magistrate's court. Thirdly, in section 17, it provides that the Water Resources Authority shall be entitled to the same privileges and immunities as if he were summoned to attend or were giving evidence at a trial. On a reconsideration, Sir, I do not like those words myself, I think, first of all, it rather gives people the idea that, when they are asked to give evidence or asked to submit information which we badly need, they are being compared to persons that are tried for criminal offences. Also I think it is wrong, on second thought, for the Water Resources Authority to be held to be in the same category as a Court of Justice—(hear, hear)—and I suggest, Sir, that the Select Committee might consider that some way whereby, under this Ordinance provision is made that the Water Resources Authority has the right to call for information which it may require but that if people refuse to give that information, then they have to go to the court in the ordinary way and get an Order of Court or penalty imposed by the court to make sure that information is provided.

In section 21, powers are given to deal with emergencies and very considerable powers are vested in the Member in this connexion. I think hon. Members are aware that under the Defence Regulations at the present time, it is possible if an emergency occurs for the Member to exercise almost unbelievably drastic powers, but I will also add that perhaps Members are not quite so well aware of the fact that what Government terms an emergency, which calls for the exercise of such powers, is by no means the sort of annual water shortage that occurs in many parts of the country almost constantly. We have only had one emergency declared since I can remember and that was in 1946. There has not been any other emergency declared therefore for some five years. I would point that out because people are frightened, I think, when they see these immense powers that might be exercised without due cause, and it has been suggested that in order still further to satisfy the public that these powers will not be exercised without due cause that after the word "Member" should be inserted "on the advice or after consultation with the Water Resources Authority", in other words to place the responsibility of the declaring of that emergency on the Water Resources Authority and not on the Member. Well, Sir, that I suggest, is a matter on which Members of this Council—it is a matter of principle—must make up their own mind, but I would add that, on the advice of the Water Resources Authority, there was originally put in this Bill and was originally considered the right way of dealing with these matters, on the advice of somebody, at any rate in the

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present Defence Regulations and it is the only experience we had in 1946. It would have delayed matters very much indeed if we had had to have the advice of somebody of this kind because although it does not sound a very good argument, it does not sound probable, the fact is that you do not see these emergencies coming however well informed you are, you do not see them coming in the length one would imagine. One is very often hit by a big emergency very suddenly indeed and if stock are going to die from lack of water, or if the possibility of very serious outbreak of disease in an urban area through lack of water is going to occur, because one has not had time to get the Board together to give them the information and consult them, I think we should bear that aspect in mind at any rate.

Another point has been made in section 21 because this is a matter—it is not a minor matter—it is a matter of principle is that, if the Government goes into another person's land and makes them supply water to persons who have got no water in an emergency on payment, naturally they would have to be paid for it, then it is up to Government to pay for that water, in other words to collect the money and pay those people for the water they have supplied and not to expect them to go running around and try to collect it. After all, I think Government entirely agrees with that point of view and the Select Committee will be asked to make that clear.

Section 22 which follows immediately after the section providing emergency powers deals with injunctions and I think there was some doubt in the minds of certain persons who have been examining this Ordinance as to whether section 22 applied only to emergencies or applied generally to the actions of water bailiffs and so on throughout the Bill. Well, I have to leave the exact interpretation to my hon. and learned friend what the intention was. The intention undoubtedly is that section 22 should apply to the Bill as a whole and not merely to the emergency powers and I would like to explain why it is necessary to have this section in. I said just now that emergency powers were very rarely exercised but that there were, as we all know, in some districts almost annual fairly acute water shortages. In fact, I am sorry to say, in some districts in the last few years it has been annual to the extent of being throughout the year. Under those circumstances it is necessary for the authorities to limit or give priorities in regard to water for the period of the shortage. One does not want to declare an emergency but one must have some control and if you do not have a section of this kind what sometimes happens is that perhaps a more unscrupulous water user will apply for an injunction and while that injunction which has been applied for and the time it takes to hear it and so forth, he goes on using it in entire disregard to the instructions he has been given and goes on using more than his full amount of water with the result that those below him are put to very, very grave disadvantage. It is to stop that sort of bogus injunction application that a section of this kind we consider is required.

That, Sir, deals with Part II.

I now turn to Part III which deals with local planning. Part II, as I have tried to explain, deals, generally speaking, with the main formulation of policy and the main control of water throughout the Colony. Now in the local planning as I explained just now it is proposed to put a plan through with the help of Regional Water Boards—and the composition of the Regional Water Boards has deliberately not been inserted in this Ordinance. It is essential, I think, to have two aspects in mind in considering what the best method of obtaining local advice on the somewhat intricate, matters connected with water supplies. Even on a comparatively localized basis except on the basis of catchment areas, and it is no good trying to fit the somewhat artificial boundaries of, say, a district council or any other authority, into the commonsense area that you want to deal with, which is the catchment area, because for obvious reasons those boundaries have never been designed to deal with catchment areas. And although I know there is a certain amount of pressure being brought to bear now and again by district councils and other authorities, some existing body such as the district council or local native council should be the body to deal with this. I would appeal to

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the common sense of Council to refute those arguments. You must deal with the distribution of water on the basis of catchment areas. I may add that we are doing nothing to override local authorities in this matter because for a long time past we have had their complete agreement, that is with the bodies themselves, that that is the common-sense way of dealing with this problem. Now, as regards the Boards themselves as opposed to the areas over which they give advice, it is necessary to make the Boards fully representative of local and sectional interests as possible. In other words we do not want sectional interests on the Water Resources Authority, but we welcome every local section interest on the Water Resources Board. At the moment it is suggested that the Regional Water Boards consist of local production committees, district councils and municipalities, local native councils, the provincial administration and the native interests, and we have a number of Africans, and we must have, of course, complete African representation where African interests are concerned on these Regional Water Boards and they even co-opt members of the district provincial team.

Well, Sir, that's all I need explain about Regional Water Boards. The whole success of planning of water and of operating this Ordinance will lie very largely, depend very largely, on our ability to advise and keep in being effective Regional Water Boards fully representative and dealing with catchment areas.

Sir, that deals with Part III.

I now turn to Part IV of the Ordinance where we really begin to impinge on much the same type of legislation as exists today and we begin by dealing with the Water Apportionment Board which is much the same body as today is known as the Water Board.

Under paragraph 26 sub-section (2) statutory provision is made for the composition of the Water Apportionment Board and it is there laid down that the Director of Public Works shall be Chairman. Now, Sir, I believe that it is right and proper that the Director of Public Works should be the Chairman and I further believe that he will be the obvious person to be made Chairman. He has not only all the knowledge and all the records in his office, but he is in administrative control of the staff and I submit that the Director of Public Works as Chairman and a representative of the Chief Native Commissioner laid down statutorily is a reasonable provision. But so certain am I that any Water Apportionment Board would probably elect the Director of Public Works or at any rate a suitable Chairman—that subject, as I say again, could be put to discussion in the Select Committee—I do not think that Government would feel very strongly if it was desired that the Water Apportionment Board should elect its own Chairman.

Again, sub-section (4) we must, I submit, provide for an overlap in retirements and appointments to the Water Apportionment Board otherwise we shall lose continuity and I think the Water Apportionment Board is even more important than the Water Resources Board.

In sub-section (4) of section 30 appears a provision which proved very highly contentious indeed when the last Bill was introduced—the last draft Bill. It was the question of fees to accompany applications for water rights or sanctions and it was suggested that it was quite unreasonable to demand bill deposits from the public for an application for a right which after all anybody has, the right to try and use their fair share of water. On the other hand, it is suggested also that if one does not have some such provision that if people agreed and want to appeal that, to prevent the appeals being quite frivolous, there should be some form of fund. Well, Sir, that is a matter of opinion. I am inclined to veer to the opinion myself that these matters are matters of right to the public and that every man has, I think, certain rights in respect of his view to the Government and I am rather inclined to think that it is better to risk a few frivolous appeals than in any way be held to infringe on the rights of the citizen. (Hear, hear.)

Now, Sir, section 31 lays down that there should be no licence or sanction required "for the abstraction or use of water from any body of water for

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domestic purposes by any person having lawful access thereto, if such abstraction is made without the employment of works".

Now, Sir, this concession, call it what you like, has been made in an endeavour to preserve the rights that people imagine have existed for a very long time, and for that reason it has been preserved in this Ordinance. But, speaking for myself, at any rate, and not for the people who compiled this Ordinance, I consider that provision completely antediluvian. I think it is a mistaken provision and for this reason it is a little difficult to know what is meant by "without the employment of works", for, would for instance, proper provision of some form of paid access to the river and possibly some little wall in the river to hold the water up to make a proper drinking place for cattle be considered "works". And yet that is the sort of thing we want there, however primitive, you do not want the cattle going in and destroying the banks of the stream, yet the only person we give the right to deal with water without a licence or sanction is the very person who is in my submission going to do the maximum damage to the banks of the stream and pollute the water to the maximum expense. I believe, Sir, we want to encourage people to put in small dams and rams and pipe the water to troughs and water their cattle from the troughs. That of course is worse and requires money so I would ask Members to consider that in the light of remarks that are made. If that is the sort of concession that ought to be made in the year 1951, I am very doubtful.

Section 35 deals with the State scheme and provides that the Member may from time to time publish in the Gazette a notice setting out the land required for the development of any State scheme and indeed it provides considerable powers to Government to take land and make or try and make or put into operation State schemes. There is only one thing there. I know a lot of people feel strongly about, that is if these rights are given to the State, the State must exercise them within a reasonable period of time. They cannot hold land up indefinitely because they think one day it will be developed by a State scheme.

In section 35, licences or sanctions may be issued "for the use of water in an area developed or to be developed, in whole or in part in connexion with a State scheme". It says: "sanctions may be valid only until such time as such water is required for such State scheme", and so on, but there is no proviso for protecting existing landholders in the event of a State scheme superseding their particular sanction and I think some proviso must be made there for protecting the public. Either the State scheme must take charge of their right and provide them with the facilities they now have or their existing facilities will have to be protected before a State scheme can be brought into operation. (Hear, hear.) Nothing more arises there in principle—I have no doubt lots of detail will arise—until we come to section 42 which provides for certain restrictions on the sinking of wells and the sinking of boreholes. With regard to sub-section (1) of section 42, it provides that, "any person proposing to construct any well or extend any existing well within one hundred yards of any body of surface water or to abstract water from any well, so constructed or extended, shall first obtain the necessary licence", and I think it is quite obvious that in an existing body of water, to allow people to dig wells quite close to it might have a very adverse effect on the sanction and of licence-holders down in that body of water. I do not believe there is any contention at all about that clause, but sub-clause (2) lays down that any person proposing to construct within one mile of any well or to extend any existing well must first obtain the written permission of the Water Apportionment Board. That Sir, I know, is a highly contentious matter of principle in this Bill. Now, Sir, I would submit this, that although one mile may be a considerable distance, that it has never been proved, I say it has been proved but I believe some of the authorities cannot entirely prove it, that two boreholes going into the same aquifer necessarily reduces the amount of water. I believe it does, anyway, there is a great risk that it does. Although people may argue both ways, that is one argument I have never heard refuted by any landowner, that is if they have a

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useful borehole on which they depend for everything and they see someone putting down a couple of boreholes just over their boundary, I have never seen those particular farmers quite so enthusiastic on the prevention of the control over their neighbour as they pretend to be when dealing with boreholes on their own land. In that case, Sir, I do believe that something on the lines of sub-clause (2) should remain in the Bill. I leave it to the technicians and the Select Committee.

Sections 44 to 48 provide almost entirely for certain information that was asked for. There again, as a matter of principle, I know people say, there again you have got to fill up more forms, "we are sick to death of these forms, why can't you leave us alone". I only appeal to this extent, the most important inquiry we have got to make in this country, the most important investigation we have got to make is how we are going to survey our water resources and to help that out we do very badly need as much information as we can possibly get of subterranean water resources of the Colony from those persons who are relying on sub surface water.

Sections 49 to 57, I know a lot of points arise over those, I submit they are points of detail or technical points and provided hon. Members agree opposite, I suggest all those points be dealt with by the Select Committee in conjunction with the Hydraulic Engineer.

Section 58 lays down that, "Notwithstanding anything contained in this Ordinance no well shall be constructed within the limits of supply of a water undertaker without the consent of the Member". I think that has been objected to but I think on second thoughts people will realize that it is obvious. If you get an undertaker and place on him the responsibility of supplying water to a number of persons proximate to a town, you must protect that undertaker from other people impinging on the water on which he depends for carrying out his project.

In section 59 there is the question of licences or sanctions and the Water Apportionment Board may refuse to grant such licences or sanctions which have been applied for. No appeal has been provided. I am not sure whether an appeal has been provided for or not under 142, apparently not. I would now on behalf of Government say we are only too happy to provide appeals against all these decisions where it is reasonable it should exist. That, undoubtedly, is a case where there should be an appeal.

Sections 61, 62 and 63, are nearly all technical and I need not deal with them here but a point does arise on section 64 which provides that no borehole contractor shall carry out any contract or construct a borehole until he has been licensed by the Water Apportionment Board. There I would say the Government is quite prepared to give exemption to a landowner on his own land, I repeat, the landowner driller on his own land not the private driller on anybody's land.

Under section 65, sub-section (4), again there is a provision there for the Water Apportionment Board to cancel any driller's licence on certain conditions and no appeal has been provided. Obviously, whatever a man's livelihood you must give him an appeal, and Government must certainly agree to a right of appeal under those conditions.

I have nothing further now until section 91, a long way ahead. Under section 82 again, if an application is not approved, again an appeal should exist, and actually I would submit that in the existing Ordinance an appeal does exist under section 32, but if that is not clear enough we will make it quite clear in section 82 that that appeal does exist. Section 91 deals with the question as to the efficient utilization and procedure owing to abnormal conditions to be determined by the Water Apportionment Board. This only applies to a body of water. That is not quite clear. It is intended that section 91 should apply only to a body of water. Under sub-section (6) of section 91 there is provision that a licence or sanction may be cancelled on the condition that if a licence or sanctionholder commits a breach or fails to comply with any condition or wastes water—that is quite reasonable—or fails to use or makes only partial use of the water. A point of principle appears to arise there in that a number of landowners have submitted that, after all, they get a sanction in order to provide for the dry months, or in order to

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provide for exceptional circumstances such as a very dry year, and that, although they would not be making use of their water all the year round, every month, they do submit that it is only reasonable, if a sanction has been approved for a provident man to provide for exceptionally dry periods of the year, under the sub-section it is contended it might be possible, if a man does not use the water every day of the year he could have his sanction taken away. It is very difficult to get over that in an Ordinance except that one imagines, like all these complicated Ordinances, that they must be administered with a certain amount of common sense, and I can on behalf of Government at least make a quite definite statement that that of course is not the intention of Government; that whatever may happen the Apportionment Board must have the right of varying the sanction according to conditions, and I think everybody will agree with that.

Section 112 is in the same Part still. Another matter of principle arises in connexion with easements, and an easement includes the right of access along a route to be approved by the Water Apportionment Board, to any piece of land contiguous to the water of the operator in so far as may be necessary for the purpose of constructing, inspecting, maintaining, operating, and so on. Apparently, according to this section, all that can be done entirely disregarding the owner of the land. That possibly would be an infringement of the right of the citizen, and it is suggested that the words should be inserted "after consultation with the owner", and that was agreed to.

Section 116 again is one of these provisions in this Ordinance which are a little contentious, in which landowners can be called upon to provide funds in one way or another, and the intention of course in 116 is that the landowner would only be called upon to pay if he benefited as well as the occupant.

Section 121 (3) again lays down—this is rather a matter of principle—that if a landholder fails, within a certain time, to execute and deliver certain deeds or instruments to the operator, such operator shall thereupon be constituted the attorney of the landholder for the purpose of executing such deed or instrument on behalf of the landholder. That is a little bit obscure. In other words, if the person with whom you are negotiating, if he does not provide what you want, he becomes your attorney. I consider that that is a legal point to be left with the Select Committee to be dealt with by the appropriate legal authority.

In section 127 the question of swamps is dealt with and the drainage of swamps. It, of course, may be that there are swamps which are cultivated and which are of considerable value to the landowner, although it may be necessary to drain those swamps or to by-pass them in some way in order to increase or maintain the flow of the river, provided that that swamp happens to be a swamp in which there is water. The question of compensation arises. Compensation is not provided for in that particular aspect, but I suggest that there again, if hon. Members feel strongly about that, that might be raised in Select Committee.

In section 128 again there is the difficulty that under the existing wording of that section and it is, I submit again, a matter of principle, that one landowner who happens to own the larger proportion of the land abutting on a swamp may force a whole number of smaller landholders to do something, and it is suggested that although that may, or may not, be desirable, it does not altogether seem fair, especially as the other landholders will, or might be called upon to produce money for the cost of drainage of this swamp. And again, Sir, I suggest that that is a matter which I shall only throw into the boiling pot for Council—whether, in fact, one landowner who owns the largest amount of land should be in a position to force a number of small landowners to do something they may not want to do. Further, the question arises as to how these people are going to be called upon to pay. They may not have any money and all I can say on that is that I hope that, in the case of land abutting on a swamp and drainage thereof, possibly that might be covered to some extent only, by the provision of the Bill which is in force.

In section 130, I think wants rewording because in section 131 provision is

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made that, "Every licensee or sanction holder shall, whenever called upon by the Water Apportionment Board so to do, within 30 days submit to the Water Apportionment Board a certificate to the effect that he is utilizing his works in accordance with his licence", and it has been suggested that there again the existing water bailiffs in the capacity of people nowadays who go and see what is happening, that that is an unnecessary provision. Well, again, I would leave that to Select Committee. One does know of persons who are suspected of persistently taking more water than they should take and sometimes it is rather useful to get them to make a statement and if you can prove that statement is a false statement, sometimes it gives you a very useful lever for enforcing the law at the minimum of expense. I only suggest that that is why this section is put in.

Now Sir, section 134 is a very nasty section indeed, it deals with offences and penalties in certain areas. Sub-section (2) provides that, "Any person who, without authority given under the provisions of this Ordinance, obstructs, interferes with, diverts, or abstracts water from any watercourse or body of water, or who negligently allows any such obstruction, interference, diversion or abstraction, shall be guilty of an offence against this Ordinance, and shall be liable on conviction to a fine not exceeding 500 shillings a day or part of a day for every day during which the offence is continued, or, in default of payment, to imprisonment for a term not exceeding three months, and, in addition to any other penalty, any works executed may be destroyed and any plant or machinery used in connexion therewith may be confiscated". Well that is a pretty severe penalty but let me in justification say this, that a man who deliberately takes more water than he is allowed from an existing body of water is, in fact, firstly stealing water and secondly may be causing the utmost hardship, if not ruin to people below him, and unless that penalty does exist, I maintain we are not, as I said at the beginning of my remarks about this Bill, we are not serious in trying to enforce control of water in this country.

Well, Sir, that is all I have to say on Part IV.

Part V deals largely with water undertakers. Persons who are contracting to supply water to bodies or persons or towns or reticulation schemes generally. All I would say on this particular Part is on section 169. Most of the rest of them are highly technical and can be dealt with by the Select Committee—

"Where the Member, after consultation with the Water Resources Authority, is satisfied that special measures are necessary for the protection of a catchment area from which the water supply of a water undertaker is obtained, he may declare such area to be a protected area and may, by order . . ."

do all sorts of things. That is again a very drastic power. One may, for instance, have a reservoir or a dam situated in the National Game Park or situated in a Reserve or situated in private land which is the source of supply by a water undertaker for a town, and if that catchment area or land abutting on that reservoir or dam is being used, then I submit it is absolutely essential that we should have powers to protect that source of supply.

Now, Sir, Part VI merely deals with general and miscellaneous matters connected with the Bill, and the first matter that arises is a matter of some importance and appears in section 172. In section 172 it is provided that—

"Where a Member proposes to exercise any right, power or duty in a native area or in any watershed which drains into a native area, and which in his opinion is likely to affect the interests of the Africans, no action shall be taken except with the consent of the Chief Native Commissioner."

Now that is how the Bill provided as it was originally drafted. It is not how the Bill appears, as far as I am concerned, in the presentation to Council. Government has agreed to present the Bill in the form that after the word "affect" the word "adversely" shall appear. It will again read that—

"Where the Member proposes to exercise any right, power or duty in a native area or in any watershed which drains into a native area, and which in his opinion is likely to affect adversely the interests of the Africans in such native area,".

[The Member for Agriculture and Natural Resources]

That, of course, appears but, "Where the Member proposes to exercise any right, power or duty in a native area, or in any watershed which drains into a native area", I submit it is quite impossible to expect the Water Apportionment Board or the Water Resources Authority or the Member to have in every case to consult the Chief Native Commissioner. Incidentally, the Chief Native Commissioner is on the Water Resources Authority and is one of the most important members thereof. So I maintain to put in the word "adversely" there, is only reasonable, and where in the opinion of the Members and the Chief Native Commissioner are adversely affected, that matter is of course quite different and we shall have to go into the matter very thoroughly indeed.

In section 173, there is provision for the right of entry on to the property of private citizens and we must have that right of entry, but amongst other things, it has been provided in this Bill that one has the right of entry with animals. The idea of course being to provide transport or any necessary equipment that may have to be taken on somebody's land by the appropriate authorities of the Water Apportionment Board. Well, Sir, I agree that that is out of date and no animals should be taken on anybody's land for fear of spreading disease, and that will come out. (Hear, hear.)

In section 176 provision is made for penalties to be recovered by authorized persons and "such penalties may be recovered from the person actually committing the offence or from the person in whose employment he is or on whose behalf he is acting, or partly from both". Now that is a matter of principle. As the Bill stands to-day, if an offence is committed by, for instance, a resident native labourer, the penalty can be exacted from the owner of the land and I submit with all considerable conviction that that is right. That if a man has resident native labourers on his land that man's business is to control what those people do and we cannot in an Ordinance such as this allow such a person to escape by simply saying he did not know what was going on. He should know what was going on and we ought to bring this home to him. That does not mean the resident native labourer as the culprit escapes entirely.

Section 178 is one of the major matters of principle in which this Bill changes and if you look at, I think, sub-section (*h*) in the Objects and Reasons at the end of the first column of objects and reasons you will see that when the last Bill was before Council, and indeed a number of other Bills of this nature, hon. Members have objected to the provision protecting Government servants against any form of action in court, and this Bill has now been changed to this extent, that no action shall lie against or be maintained against a member of the Water Resources Authority, the Water Apportionment Board or the Regional Water Boards, and that is all. It differs materially from protecting all and sundry from action, and I hope hon. Members will allow that to pass in the form in which it is submitted.

As regards clause 186, which is the last section with which I have to deal I will mention that the rule-making powers in this Bill are very comprehensive and I have no doubt in the opinion of many hon. Members it will be stated to be too complicated. May I suggest that the question of necessity or otherwise for these very comprehensive powers should be left to the Judgment of the Select Committee for recommendation. May I draw the attention of hon. Members to sub-clause (2), where it is provided that:—

"All rules made under the provisions of this section shall be laid before the Legislative Council, and if a resolution of such Legislative Council is passed within 40 days of their being so laid, that such rules shall be revoked or amended in accordance with such resolution, such rules shall thenceforth be deemed to be revoked or amended accordingly, but without prejudice to anything previously done thereunder."

In other words, any rule we make has to be laid on the table of this Council and you have every opportunity of objecting to it. Therefore, I submit that the Rules to be made under this very important Ordinance are very much in the hands of hon. Members of this Council.

[The Member for Agriculture and Natural Resources]

I am afraid I have taken an immense amount of time explaining this Bill, but I felt it might save a good deal of discussion and a good deal of time later.

In conclusion, Sir, I will again urge that this Bill be looked upon with sympathy. I am naturally very gratified at being able to introduce it. I had hoped to be able to introduce a Bill of this kind for some years, because I am absolutely convinced that a Bill of this nature is probably one of the most important and necessary pieces of legislation that is to come before us at the present moment. (Applause.)

Council adjourned at 11.00 hours and resumed at 11.25 hours.

THE SOLICITOR GENERAL: I beg to second.

THE SPEAKER: It is proposed that the Water Bill be now read a second time.

MR. BLUNDELL (Rift Valley): Mr. Speaker, in rising to speak to the Bill, I would first of all like to congratulate the hon. Member for Agriculture and Natural Resources on the extremely clear way in which he dealt with a very cumbersome and difficult Bill. (Applause.) I also, Sir, should like to congratulate him on bringing this Bill to this stage before the Council because it has represented, as far as he is concerned, a tremendous amount of work and considerable willingness to listen to the viewpoint of the persons who will largely be affected by the Bill.

Now in speaking to it, I certainly have more qualifications than many people because for many years I have lived at the bottom of a tapering stream and I learned a great deal about the necessity for control of water in that position. I was always told by those who were above the stream that I had bought the land at the wrong end of it. After something like 20 years I took the precaution to change my position and I am now at the top of a stream and, in addition, I have a very good underground supply, so that I can really see the details of water management almost from every angle. Now, Sir, I have a whole lot of points which I wish to raise. I cannot avoid being a long time and I do apologize to Council in advance. Where the Member has already dealt with the principle I shall just state very briefly whether we endorse them or wish to add anything to what he said. Where he did not deal with them I shall try and be as quick as possible, but it must take me a certain amount of time.

Now, in his reply I would like to ask the Member to deal specifically with the point whether existing sanctions and rights are in any way affected by the Bill. In dealing with that, which is clauses 4 and 28, he mentioned that fishing rights, access to water, etc., was not affected, but he did not deal with this specific point. Supposing a man has a sanction granted three years ago with seven years to run, I should like to know exactly in what way that sanction is affected by the Ordinance before us. Similarly whether a right, of which there are very few I think, whether that right is affected in any way. The best way, I think, Sir, to deal with the Bill is to go straight through clause by clause dealing only with those clauses to which we on this side wish to draw attention.

Clause 6, the composition of the Water Resources Authority. I should like to say that we endorse very strongly what the Member said in regard to its composition. We are quite happy there should be a representative of the Member for Agriculture—that is absolutely correct and proper—a representative of the Chief Native Commissioner and the Member for Health and Local Government, also one from the Public Works Department, but apart from that we should like to see the remaining members worded in some such way as the Member himself put up—eight members of whom not less than six shall be unofficials, thus removing from the Water Resources Authority any suspicion of sectional representation. In regard to the Water Apportionment Board we should like to endorse what the Member said, which is that we consider that the Chairman should be so worded that the Chairman may or may not be the Director of Public Works as the Water Apportionment Board itself wishes. Lastly, we endorse very strongly the whole question of rotation of members. It is necessary to so word it that the members retire in rotation and not in block.

[Mr. Blundell]

Clause 10 and clause 22 to which I wish to refer cover points which the Member did not raise. We feel very strongly that in general in this Bill control is necessary—perhaps I should make it clear that that is my personal opinion. In my constituency so many people have suffered from lack of control, but it is also my opinion that such control must be smooth and easy and not harsh and arbitrary, and whenever I consider that control is harsh or arbitrary I am going to draw attention to it. In clause 10 and clause 22 there is the right of entry to inspect either works or records. It is necessary to have in my view arbitrary right of entry because people abuse the use of water very considerably and if they are given notice they immediately eliminate temporarily the abuse. I should like that confined only to the water bailiff—(hear, hear)—and I think that if the Board itself — either the Water Resources Authority or the Water Apportionment Board — anyone connected with its set-up, wishes to enter, other than the water bailiff it should be after notice in writing. I believe in the fundamental protection of the individual's right. I do not like the assumption that anyone can enter either on to the land or the works of anybody who holds a licence or sanction without some sort of notification, with the exception that the water bailiff has that right.

The Member rather skated over clause 11 and said that he would leave it to his hon. friend the Member for Law and Order. We feel strongly that we should like clause 11 drafted so that it did not have any specific reference to the existing Land Acquisition Act. It is no secret I think that hon. Members on this side of the Council have for some years been doubtful of certain clauses under that Act and we should like the section to be so worded that the specific reference to that Act is deleted. (Hear, hear.) Again on clause 22 on the question of emergency, the Member raised whether he should have the right to act in emergency over the Water Resources Authority. Now my opinion is that, my personal opinion is that, I would not oppose the Member having those powers. If the Member constantly abused the powers, there is always the function of this Council with which to deal with the Member if necessary, but emergencies arise quickly in such matters as water—they must be dealt with quickly and I do not myself feel that the powers of the Member in emergency are too drastic. Again, I am not in favour myself of emasculating the Bill and not allowing, as in clause 22, those powers only for emergency. People abuse water, people up-stream take water arbitrarily over their sanctions or above their licences and the only way to deal with people who abuse those powers is by swift and fairly arbitrary action, so that I myself am not against the provisions of clause 22 as drafted.

Now, two points arise out of clauses 12 and 128. It is necessary if you are going to have an arbitrary system of assessment for the landowner, also to set up a fund from which the landowner can draw. Now, the Member touched on that but, again, I did not think he amplified it enough. Both in the case of swamps and in the case of works, if a landowner is going to have an apportionment for the cost given to him, then I think that we shall need to have some clause in the Bill to the effect that a fund shall be set up at such rates and terms of interest as may be decided from which a landowner can draw money to meet his share of the charges. That is very important because although the powers might be reasonably wielded, as the Member said, nevertheless it might cripple an owner in his development in other ways if he could not finance an arbitrary assessment of this nature despite the right of appeal—an arbitrary assessment—if he could not finance it by application to some fund specifically set up for the purpose.

Clause 16—I welcome very much what the Member said about the necessity for the Board to go to the Court for a summons and not to have the entitlement to a summons itself. There is a point—there which it is important to watch in Bills of this nature. We do not want to set up an authority more distant from the normal processes of the law than is absolutely necessary. (Hear, hear.)

Under clause 21 I should like the Member in his reply to amplify slightly in the case of an emergency, the principles under which water might be taken. You might have, if I may so phrase it,

[Mr. Blundell]

a "Water Mary" and a "Water Martha", I would like to be assured that the "Water Martha" would not be unnecessarily penalized in an emergency because of the improvidence of what I have called a "Water Mary". Judging from the puzzled expressions opposite, I doubt I have made that quite clear. I think I have at the back of my mind some reference to a widow's cruse or something—or none at all? (Laughter.)

Clause 30—I wish to stress strongly that we are opposed to a fee of Sh. 200. That is exactly the sort of thing I meant. Here we are accepting a control on water for the benefit of the country generally. There is no reason why that control should be more arbitrary or more harsh than is necessary and I do submit that to make it obligatory to produce Sh. 200 before an appeal can be made is absolutely wrong. I do not believe there will be such a great number of frivolous appeals and as the Member said, I would rather have the frivolous appeals than have this very, to my mind, irksome clause.

Clause 31—as I disagree very much much with what the Member said on clause 31, I must draw attention to it. He stated that he was doubtful in 1951 whether we were wise to allow the provisions under section 31 which allow the abstraction of water without works and he mentioned that he thought paving down to a water way or the paving of a water way itself or the building of small dams might be things that would be desirable. I should like to leave that to the Select Committee to look at more carefully because as it is now worded, as I see it, a man could invert a pipe into a stream and extract water and he would not have created any works, and secondly I must warn the Member that, at any rate in large areas in the Rift Valley, the provision of dams in water courses increases enormously the seepage therefrom and thus what he seeks to gain by the conservation of water, he may by the provision of these dams, as he said, lose it. I must just draw attention to that because in my area at any rate, it is an important point.

Clause 35 is the clause dealing with the development of a State scheme and again I want to amplify what the Member said. It is important, I think, that existing rights should be secured or existing licences or sanctions. As the clause is now worded and as I read it, at any time any block of land might well be declared an area suitable for a State scheme and any existing entitlements woud be emasculated, possibly by the State scheme. Now what the Member said partly covers it but I hope the Select Committee will look more carefully into the wording to see that existing rights are covered.

Clause 42—underground water. Here I do not like the provisions for the control of underground water and I did indeed think that underground water should not be controlled at all, but in the light of what I have heard since, I am convinced that, in certain areas, control is necessary and I would suggest that in clause 42, two amendments are considered by the Select Committee—one, a provision for either scheduling in or scheduling out areas out of or into control. Thus an area where there is a contiguous and fairly well known and well defined aquifer where the extraction of water was positively proved to effect other boreholes should be scheduled and in an area where that did not happen, that area could be unscheduled so that in effect the provision of the Bill did not apply. Secondly, I should like to see the provision for one mile reduced to half a mile, but it is a technical matter and I hope the Select Committee will take technical evidence on it.

Clause 59 is the next clause. In clause 59, the Member mentioned that he thought there should be the right of appeal and I wanted to endorse that and I think the appeal should be to the Water Resources Authority. I shall have later some remarks to make on the provisions for appeal in this Ordinance because I consider that the major principle which is embodied in the Bill, but at this stage, under clause 59, I think it is a matter where there should be appeal to the Water Resources Authority.

Clause 61 is a small point which the Member did not comment upon. I hope that there will be some reasonable application of 61 to existing wells which may not be built or designed or constructed in terms of clause 61.

Clauses 64 and 65 refer to drillers' licences, etc. There are two points I wish to raise—one, to endorse the Member's

[Mr. Blundell]

suggestion about appeal, which we think is important, and secondly, I should like to see something more specific in regard to the duration of time. I can see no reason why the licences should only be for five years. It is a man's livelihood and, presumably, he will drill for longer than five years and, if he is a suitable applicant, I would like to see the Select Committee give consideration to that figure.

Clause 68, a point the Member did not deal with—I hope I am not going too fast? Clause 68—Members feel that if an area is to be declared a conservation area, two precautions for the public are necessary—one, the obligation to advertise the area so proposed and secondly, the right of objection.

Clause 91—Now I must spend a few moments on 91. The Member touched upon it but here it seems to me that in some parts of the country, for instance such as Timau and below the Ngari Ndare you have got farms whose sole value depends on their water sanction or licence. You have a similar thing in the West of America in Oregon where the value of a farm depends on the priority of its right to extract irrigation water. In other words, a farm with an 1870 irrigation right is far more valuable than a farm with a 1890 irrigation right because irrigation is closed down as the streams drop, so the earliest rights are the last to be closed and therefore earlier right holders can irrigate the longest. What I do not like here is there are farms with existing licences or sanctions and that is indeed the whole value of the farms and nothing else, and it may well be that a man might not wish to use the water for a year or so but yet, in my view, it is an entitlement to his farm and I would like the Select Committee to look into this clause to make certain that that particular aspect is not being damaged unduly.

Now, Mr. Speaker, we can take a considerable big jump and go to 127. Clause 127—the Member touched upon it and I would just like to endorse it. As I can foresee, the agricultural development of the country's swamps may become of considerable value, especially for the cultivation of things such as edible canna and lucerne and that type of thing during the dry weather and I should like this again to be looked at to see if we ought not to provide a clause for compensation where in the interests of the community it is desired to drain a swamp.

I think I have just taken one hurdle too quickly. I would like to go back to clause 113. Now this is a matter in which I have some personal experience. If a landowner has an easement, and a water right, it may well be valueless without an easement because even though he may have a lined channel to extract the water, evil persons who are desirous of damaging his water right, may damage the channel and I do think over the question of clause 113, which the Member did not mention, there should be a clause allowing for arbitration not only on the whole question of easement but where the easement shall actually run.

Now if we may go forward again to clause 130—the Member touched upon it and again I wish to endorse what he said and hope the Select Committee will look into it. Surely the provisions of clause 130 should only apply where there is either gross misuse or inefficient use of the works and licence to abstract the water.

Clause 131, the Member has dealt with, and I will not waste time on it except to say that we support very strongly the deletion of clause 131 which is the right to demand that a man shall forward a certificate. The Member mentioned that he thought that you might get a man under a false statement. I do not think that Bills should be so drafted with the idea of catching a man on the wrong foot by so arranging it that he makes a statement which is subsequently proved to be false. From my knowledge of the operation of the water laws of this country, if a man is constantly abstracting water evilly or in a manner that is incorrect, it is not a difficult matter to find that out, so I personally would press very strongly for the elimination of clause 131 which I think is a vexatious infringement on the rights of individuals generally.

Clause 133 is a matter which I do not think has been raised before. It is the right of the Member or at least the Water Resources Authority to take over abandoned works without compensation.

[Mr. Blundell]

I would like the Select Committee to look again here whether there should not be compensation for abandoned works. A man might have quite a considerable amount of money locked up in abandoned works in the form of blocks of stone, concrete blocks, steel—that type of thing, even if he is not using the abandoned works, they are in effect his and I am unable to agree that there can be arbitrary confiscation of them and I think in this case there should be provision, if necessary by arbitration, for compensation for the abandoned works so seized.

Now, Mr. Speaker, I come to one of the major principles in this Bill, that is the whole of the principle dealing with the right of appeal. Now, I should like to make it clear that I am very doubtful indeed of the present tendency by which appeal boards are set up. When the Select Committee is considering clause 142, I would like them to take evidence from the Land Appeal Board which is set up under the Land Control Board. It is my belief that amateur bodies which function, at any rate at irregular intervals, are not so satisfactory for the correct decisions of what are the individual's rights as the courts. The courts have run for many years, they have a specific function which has been worked up over many years and that function is to adjudicate on not only matters of law but on matters of fact and also the rights of the individual. It does seem to me in this Bill all matters of law and fact should go to the courts, and I tried to look out some so the Member could have clearly in his mind what I thought on that. I think, for instance, clauses 12, 91 and 104 are matters of law or fact and should go to the court. Now I think that clauses 92 and 97 are matters entirely administrative which I will explain in a minute and might well go to the Water Appeal Board. I will just develop that. If you have a sanction to take out, shall we say a quarter of a cusec per day, and it was granted seven years ago and there has been a substantial change in the climate and the flow of the river has dropped, it appears to me to be perfectly reasonable that the Water Apportionment Board should say "your sanction, which was for 0.25 of a cusec, will now be 0.20 because of the drop in the water", and if you wish to appeal on that matter that is a matter which I shall be perfectly happy if it went to the Water Resources Authority or to the Water Appeal Board. It is a technical matter solely concerned with the flow of the stream. As the original sanction or licence was granted by that body, as they were the adjudicating authority on it, I am quite happy that they should adjudicate on whether the flow of this stream is as high as it was or the sanction should be reduced because of a smaller flow, but I do think it is wrong that in matters such as clause 91 or clause 104, a Water Appeal Board should be able to do that. There is only one case when I would allow the Water Appeal Board to deal with matters, that is when an emergency has been declared, because if you are going to allow constant appeal to the court during an emergency, you are going to actually nullify any object in declaring an emergency. But, apart from when an emergency is declared, I would prefer the courts to be the adjudicating body rather than the Water Appeal Board.

Clause 104 is a matter of the efficient drainage of lands. I am unable to believe that a Water Appeal Board, probably a retired adjudicator and a couple of amateur members, is any more capable of assessing what is the efficient drainage of land than the Courts who have over centuries adjudicated on matters of this sort and have the whole of the technique and the legal position at their fingertips.

Clause 169. I think I have made myself clear on the set-up of what I believe should be the appeal. Clause 169—this is an important point which has escaped notice I think. Clause 169 is necessary, but I should like the Select Committee to see whether there should not be some provision whereby the existing rights of farmers are not seriously impaired by clause 169. I can foresee cases where the correct and proper demands of a larger municipal body such as Nairobi might impinge seriously upon the existing rights of farmers, and I should like some proviso there whereby the existing rights of landowners in the area have some guarantee they will be assessed and not arbitrarily removed.

Clause 182. We, Sir, on this side of the Council are very doubtful whether it is

[Mr. Blundell]

necessary to have any provisions for exemptions. Water applies to all, whether in the Northern Frontier or anywhere else, and in our view there should be no provisions for exemption from this Ordinance. I do press upon the Members strongly and hope the Select Committee will look into it—what is law for one should be law for all and I can see no reason for having clause 182 in, which might in certain circumstances seriously weaken the whole design behind the Ordinance.

Lastly, I wish to refer to one matter here; it is an important one. I hope that we shall pass this Bill subject to such remarks as the hon. Members on this side of the Council may make, but it is no good having a Bill of this nature with a complicated set-up and designed to control, increase and generally manage the water resources of the Colony unless we are satisfied that the staff, the salaries for the staff, etc., are suitably arranged to ensure their remaining with us. I want to press that on hon. Members opposite. It is not anything actually to do with the Select Committee, but it is a proper matter to raise during the second reading. To my certain knowledge we have lost hydrographic engineers or hydraulic engineers of tremendous value to other colonies because either the salaries which we pay here were too low or the prospects of advancement were too vague. Now we have a precedent in that we have what I would call an extra salary scale set up for medical officers and as water is nearly as vital I should urge upon hon. Members opposite to turn their minds to this point and satisfy themselves that when we pass an Ordinance of this nature which is designed to provide us with properly controlled water we are not nullifying it immediately by the parsimony of our outlook upon the salary scales of the officers who would implement it.

Mr. Speaker, I beg to support.

MR. MACONOCHIE-WELWOOD (Uasin Gishu): Mr. Speaker, after the very comprehensive speech of my hon. friend the Member for Rift Valley, there are not many points that I wish to raise, but there are about three which I do not think he has touched on.

The first one is that the hon. Member for Agriculture in introducing the Bill skated rather lightly over the question of the other rights associated with water. I think he said that in any case the Bill was the same as the old Bill. Well, the point I wish to make is that I do not think the old Bill contained sufficient definition of the other matters pertaining to water, other than the water itself. I should like to see the Select Committee consider very seriously the introduction of some sort of limitation on the meaning of the word "water". In substantiating this suggestion I would say that in clause 188, I think it is in the rule-making powers under sub-section (x) the question of the protection of fish and fish-food is specifically mentioned. Well, I submit that this proves my point, and in fact this control of water does imply more than the actual control of water and it would be a great hardship on an individual who had put water on his land by the construction of a reservoir or a dam which might be reached by a public road at some point, if the whole of the sporting rights, both fishing, shooting and sailing were available to the general public and I would like the Member to give sympathetic consideration to that sort of definition.

In clause 21 I see that notice has to be given to the East African Railways and Harbours only before the construction of works in emergency. I cannot see why this should not be extended to everybody, particularly to the District Councils and the Road Authority.

In clause 31 I cannot entirely agree with the hon. Member for Agriculture in wishing to abolish this clause. I think this clause must remain or there would be an endless amount of applications for people to remove water-by-buckets, etc. close to their houses. I think you have got to have this clause in, but it might well be qualified in some way to cover the points the hon. Member has suggested.

Clause 28 has a bearing on clause 88 sub-section (2) (*a*). This seems to me to nullify the value of works built on private land by private enterprise. If a piece of land on which reservoirs and dams have been constructed is sold it seems to me by my interpretation of these two clauses 28 and 88 (2) (*a*) that no valde would accrue to the seller if

[Mr. Maconochie-Welwood]

he was to sell that land with those reservoirs which he has put on it at his own expense.

Clause 176 I am afraid I cannot agree with the Member on the point he has made there with regard to the liability of the owner towards resident labourers and their actions. It sounds very well to say, as he has said, that resident labourers should be controlled by the occupier. Well, it is practically impossible for any occupier to control resident labourers at all times. Anyone with actual experience of them knows, perfectly well, that it cannot be done, and I can imagine a situation arising where a member of a resident labourer's family would cut or damage or seriously destroy, for instance, a pipeline and the owner would be responsible for that act, and I submit that this would be a most unjust position.

In clause 134 (2) the same position seems to me to arise in the words "negligently allows":—

"Any person who, without authority given under the provisions of this Ordinance, obstructs, interferes with, diverts, or abstracts water from any watercourse or any body of water, or who negligently allows . . ."

I think that should also be considered by the Select Committee and defined more accurately than "negligently allows" because the phrase would merely imply a lack of observation in the owner who had not noticed an obstruction which was going on and might, to my mind, be most unfairly prosecuted.

With these reservations I would be prepared to support the Bill.

MR. MATHU (African Interests): Mr. Speaker, I should like to support the second reading of this Bill and I have a few observations to make. The first is in conjunction with the composition of the Water Resources Authority provided for in section 6 and I suggest that, although I agree with the hon. Mover that representation on the Water Resources Authority should not be on the grounds of sectional interest I think it is vital that the appointment of six or eight unofficial Members should be done having due regard to all the major interests of the country. It is not, I do not think, impossible to get suitable members from the major interests of the country to represent those interests on the Water Resources Authority, and I should personally hate to see that when the appointments are made that some major interests of the country have not been represented on the Water Resources Authority, representing as I do the overwhelming masses of this country I would definitely say that African direct representation would not weaken but strengthen the Authority and particularly strengthen the representative of the Chief Native Commissioner on that Authority.

I would like to say the same thing in regard to the Regional Water Boards provided for under section 24, but I think the Member, in moving this, covered this point most adequately and I do not think that further comment is necessary.

Now, the other point I would like to draw the attention of Council to—I do not think any previous speakers have referred to it—comes under section 14, where it is provided the question of the relation of charges on native lands for cost of works. I would like to refer specially to sub-section (3) of section 14, which reads:

"A local authority from which payment or contribution is required shall raise the money for such payment or contribution in such a manner as it thinks fit, and if the method of raising such money cannot be decided by the Chief Native Commissioner, and the time and method of any such payment or contribution shall be determined by the Chief Native Commissioner and shall then be binding on such local authority."

Now, I am not questioning the advisability of the local authority providing funds to pay for these charges, I think that is quite fair, but what I want to point out, Sir, is that particularly after the recent poll taxes at central and local authority levels one gets frightened when the Chief Native Commissioner has complete power after the local authority says that they are not going to raise the money or something, that he will have the complete authority to say how and when it is to be paid and I would like to see some safeguards about that, that either the Chief Native Commissioner consults some particular body over this issue or something, but it should not be

[Mr. Mathu]

entirely in his hands. It is a very strict part, and I would like that matter looked into when the Bill goes to Select Committee.

Now, I should like to connect that with section 172, which the hon. Mover dealt with and there again to say that we would like the Chief Native Commissioner to consult some Africans before he makes his final decision when he knows in his opinion that this question, the exercising of any right or power to put in a native area is going to affect the Africans adversely. We feel, I think, that would get matters run more smoothly than if the matter is left to his sole discretion. And that is, I think, of course, it will be easier for the Chief Native Commissioner to exercise these powers provided under this section if there was African direct representation on the Water Resources Authority because there, either through the Chief Native Commissioner himself, or through the representative of the Chief Native Commissioner, both can consult and come to some decision.

I would like to comment, Sir, on two other sections. The first is section 169, which has been referred to by both the hon. Mover and the Member for Rift Valley and say that I support the point put forward by the Member for Rift Valley that due regard should be given to the existing consumers' rights, put it that way, because if a catchment area is declared a protected area it might affect adversely the consumers who have had rights already in that particular catchment area; and I should like too, when this goes to Select Committee, that some safeguards be provided for that. He mentioned—the Member for Rift Valley—the question of, say a big municipality like Nairobi. I know of a case where the City Council has drawn water from a catchment area to such an extent that the river has dried up completely, and the Africans living in that area at the moment experience tremendous hardship around the Onditi Swamp, near the Kikuyu Station. Quite a lot of people know that. If there were safeguards existing to protect the water rights of the people living near that swamp surely the Africans would have water for themselves and for the animals. At the moment they have not. It is an example. It can happen if an area is declared as protected and it has happened as in the case I have given.

Lastly, the hon. Member for Rift Valley does not like section 182 where provision is made that certain exemptions can be granted. I personally, Sir, do not have any objections to those exemptions, because I think it gives the Bill some elasticity, because some of us think that some of the provisions in this measure are extremely strict, and if you have some safety valve such as exemption to some groups or areas or portions it makes the Bill, I think, swallowable, and I would support that the clause be left in the Bill. I think it will not be to the extent of exempting everybody and every area so that the Bill becomes abortive. I am sure not. But I think it does provide a good principle, as I say, of elasticity.

Sir, before I sit down I should like to associate myself with the remarks made by the Member for Rift Valley in congratulating the Member for Agriculture in moving this very complicated Bill. I think he did it admirably well, and all I would like to say is that I share his hopes that the implementations of this measure, when the time comes, will be for the better economic development of this country, for all the inhabitants of this land, and it should not work adversely to any section of the community but should work well for all, and I beg to support the second reading.

MR. HAVELOCK (Kiambu): Mr. Speaker, the hon. Member for Rift Valley has made nearly all the points that the European Elected Members wish to bring forward. There are one or two that have been left out, and I will not repeat what he said except to associate myself with him and the hon. Mr. Mathu in congratulating the hon. Member for Natural Resources.

There are two points that the hon. Mr. Mathu has just raised which I would like to touch on first. That is the matter of clause 14 (3), where he suggested that some consultation should take place between the Chief Native Commissioner and somebody else before he made the decision as to how the money should be raised from local authorities, and I would suggest, Sir, that at least the Member for Local Government should be considered in that respect. After all, he

[Mr. Havelock]

has surely some responsibility for local government authorities. On the matter of exemptions that the hon. Mr. Mathu has just raised, I feel entirely in agreement with the hon. Member for Rift Valley, in that if there are exemptions from the Ordinance of this sort it might lead to a strong sense of injustice on the part of those people who have not been exempted, so to that end it might not allow the Ordinance to work as smoothly as we would like to see it do.

I am very pleased indeed that this Bill is going to a Select Committee. There have been a lot of criticisms of it around the countryside, a lot of them very ill-informed. I do not think the hon. Member for Natural Resources stressed the point that, as I understand it, this Bill was mainly drafted by an unofficial committee, and I feel that point should be brought out, because many people, as I say, without cause and due entirely to ignorance, have suggested that this Bill is merely another socialistic measure imposed upon this country from abroad. That, of course, is not the case, and the fact that it was drafted and the drafting was aided so greatly by an unofficial committee should help to counteract that rather ridiculous assertion.

On clause 107 I would like to bring up one point for the consideration of the hon. Mover and the Select Committee and that is the matter of compensation for interruption. That clause does provide that any person engaged in the construction of any road, railway, or public works may, with the approval of the Water Apportionment Board and upon giving reasonable notice to the operator concerned, cross, divert or otherwise interfere with the work of such operator. I do suggest if that interference should be onerous there might be a very justifiable case for compensation for the operator, and I hope that point will be taken note of.

I understand—I am afraid I had to be absent for a while while the hon. Member for Rift Valley was speaking—I understand he did touch on clause 130, and sounded a warning that it was rather a dangerous clause for the expropriation of works. I feel strongly on this, and I do feel that there should be a definite provision in this clause that no expropriation can take place until really full opportunity has been given to the operator to develop the works himself and carry them on in an efficient manner. Under the clause as it is at the moment, expropriation could take place almost immediately. He should be given quite considerable notice and a chance to show that he could develop the works properly himself.

On clause 173 (1) (*a*) there is quite a point of principle raised. It is a matter of persons entering any dwelling or enclosed yard. I believe the hon. Member for Rift Valley did touch on it, but it is open to great objection that any Ordinance should give permission for a servant of an Authority or Government to enter a dwelling for any particular purpose without consulting the owner or occupier, and indeed in this particular clause there seems to be no need at all for that wording. The officers of the Authority would merely wish, surely, to enter a premise or premises in which works may be situated, but not the dwelling, which does seem to indicate they might want to enter the man's house; and one can see no real reason for it. It all comes back to "the old Englishman's home is his castle" etc., and I hope the Select Committee will take note of that.

Clause 178, this matter of the permission to prosecute a servant of the Government. The hon. Member for Natural Resources pointed out that this clause merely exempts the Water Resources Authority, the Water Apportionment Board and the Regional Water Boards. It does not exempt the servants of those Boards. But surely the situation is rather undesirable in any case, and I would like to know if it is not the case that in Britain it is now permissible for a citizen to take action against the Crown as such. It is not the case in this country, and it is a little invidious for a citizen, when really complaining against the action of the Crown, to have to take action against an individual, which, of course, has happened in the past in this country, and I hope that we can receive an assurance from Government that an Ordinance on the lines of that now in force in Britain is on the tapis in this country and will be coming forward, in which case, of course, a clause of this sort would not be necessary. Meanwhile,

[Mr. Havelock]

I do not seek the deletion of this clause, but I do hope the main law will be introduced in the very early future.

Now there is one point, Sir, that the hon. Member for Natural Resources touched on as regards clause 21. He had his doubts whether the emergency powers of the Member should be—if he should be able to operate those emergency powers without reference to the Water Resources Authority, or with reference to them. As he said, there have been suggestions that he should first of all refer to the Water Resources Authority, but he felt that it might be difficult in cases of emergency to get the Water Resources Authority together in sufficient time to grant these powers to him or to advise that they should be. That may be, Sir, but I can hardly visualize an emergency which is really an important emergency that would not justify a meeting, an emergency meeting of the Water Resources Authority, and surely by telegram they could be brought to the central spot where they are meeting in sufficient time to consider this matter without giving such arbitrary powers to the Member himself. In an emergency anybody who takes on the responsibility of serving on an Authority of this sort must put everything else aside, and I suggest that there definitely should be a provision in this clause that the Member should not be able to operate these powers without reference to the Water Resources Authority. Sir, there are people in the country who dislike very considerably the powers which are sought in this Bill for the control of underground water. There have been quite a number of reasons put forward by technicians and experts on this matter that there should be no such control. The hon. Member for Natural Resources referred to it. I presume it is in order that a Select Committee can deal with this particular problem of grave principle, because I am by no means satisfied that the evidence that I have received up to now justifies the very stringent control of underground water in the way that it is visualized in this Bill, but I am quite satisfied that the Select Committee should go into the matter and receive expert evidence and make up their mind and recommend back to this Council, but I hope that it is in order that they should do so, because it is a matter of such great principle and hardly one that is usually left to a Select Committee. On the grounds and understanding that the Select Committee will be able to deal with this matter, I support this Bill.

DR. RANA (Eastern Area): Sir, I rise now to clear up a misunderstanding that no one amongst the Asian Members should say a few words of congratulation to the hon. Member for Agriculture on this very complicated and comprehensive Bill. I would like to join with the hon. Members who have congratulated him. As is well known, Sir, water is a commodity which is essential, both for human life and for the development of the country. The Asian community does not depend so much on agriculture so we have not got very many remarks with which to take up the time of the Council. I only got up with a view to congratulating the hon. Member and with one request to make. As water is essential for human life I hope that, whatever the authorities we create, they will leave some water for the Coast and Mombasa to flow down, and all the water will not be consumed up-country. It is very hot on the Coast, and I hope that great consideration by the Authority and the Regional Boards will be paid, otherwise we will be in a terrible plight. I hope that all on the Coast will get their due share.

With these few words I support the Bill and I take my seat, Sir.

MR. OHANGA (African Interests): Mr. Speaker, there are only a very few remarks that I should like to make on the second reading of this particular Bill. First of all, I should like to make an observation on one matter of principle only, regarding the operation of the whole Bill when it becomes law. I should like it to be realized that when this Bill becomes law and it starts to operate throughout the country, it is going to be one of the biggest surprises that the African in this country has had. Not that I am opposed to anything in it, but it is a matter of fact that the African who still lives very close to nature has always looked upon the natural resources of the country in which he lives as given by nature and belonging to everyone that is there, and for free use every day and always by all. But just as he woke up one day to find that he was not allowed to

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cut down any tree in the forest he liked, he will also wake up to find he cannot draw any water from anywhere he likes. For that particular reason, Sir, I should like the operation of this particular legislation to be associated very closely with the African district councils who know the psychological workings of the people they represent, so that the implementations of the provisions of this law should not come without prior preliminary consultation, so that people are aware of what is happening. As I say, it is going to be a surprise that they can no longer have access to any water and the use of it as they like.

After that matter of principle, Sir, I have only small observations to make on certain sections of the Bill, which have actually already been dealt with. In the first instance I refer to section 21. I would like to support the hon. Member for Uasin Gishu most warmly on what he said regarding the privilege that has been afforded the East African Railways and Harbours but to no other authorities at all in the country. I think where the workings of any water schemes are to interfere with anything, any authority with whose property interference is likely to occur, should have the right to be consulted, and I cannot see why the East African Railways and Harbours should have that privilege, and they alone. I should like to support the hon. Mr. Maconochie-Welwood on that one.

Secondly, section 27—here, Sir, is a question of the delegation of authority. On this one, I have not heard anybody remark. I should like to draw the attention of hon. Members to this one, and I regard it as a big step and a little dangerous also that the authority of a body like the Water Apportionment Board should be delegated to anybody. I do not feel that it is just. I know provision is made that before that happens there would be a resolution of the body, before that delegation is made, but I feel that such a delegation should never be made to anybody except an officer of the Water Authority who is properly appointed under this Ordinance, and I should like to see some change made when the Select Committee sets to work on the Bill because I do not feel it is appropriate.

My last remark is on section 121 which has already been remarked on by certain previous speakers. Section 121 deals with the drainage of swamps, and I should like to draw the attention of the Council to a situation in which Africans in certain parts of the Colony depend agriculturally entirely on production from swamps, and if any provision were to be made without any serious regard to the use which those people now make of swamps and those swamps should be drained, certain hardship would be caused other than the loss of water and I should like some regard to be had to the draining of swamps.

With those remarks, Mr. Speaker, I beg to support the second reading.

MR. COOKE (Coast): Mr. Speaker, the only criticism I have to offer on this Bill is that its provisions are not severe enough!

Now, Sir, when the Bill was first printed about two years ago it was in my opinion an excellent Bill but it has been in the process emasculated to a great extent and I hope, Sir, that the Select Committee will not perform any further surgical operations.

Now, Sir, I know it will be said by people in this country—I think they call them "Pressure Groups"—that this Bill is interfering with the liberty of the subject. Well, I have been a long time in this country and the only liberty that I have ever seen those gentlemen lift their little fingers to protect has been the liberty to do precisely as they want to do themselves and that very often consists in exploiting the soil and water of this country.

Now, Sir, if we were all possessed of the high intelligence and, I might say, the great ethical outlook of my hon. friends on the other side of this Council, it might not be so necessary to have a Bill of this nature! But we are dealing, Sir, with a number—with many millions of people who have never been restrained in the use of soil and water, and therefore, Sir, it is necessary to have these very stringent provisions which I gladly acknowledge exist, in spite of what I have been saying and, Sir, I cannot agree with my friend Mr. Mathu that we should "sugar the pill". There is an old saying that "desperate diseases require desperate remedies", and the

[Mr. Cooke]

disease at the moment is very desperate. Therefore I think we should be prepared to swallow the pill, bitter as it may be.

Sir, I will wholeheartedly support the motion.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, there are a number of points that have been raised. The first one was raised by the hon. Member for Rift Valley, who raised a number of points and he asked specifically whether existing sanctions or rights are affected in any special way by the passing of this Ordinance. As I understand the position, the existing rights are not affected and existing sanctions are equally not affected, but the hon. Member will appreciate that there is a good deal of difference between a right and a sanction.

Under clause 6 the hon. Member pressed Government to agree that there should be four officials on the Water Resources Authority composition and eight of whom he suggests should be unofficials.

MR. BLUNDELL: Not less than six. You can have all of them, if you like!

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The hon. Mr. Mathu had something to say about this Board and naturally pressed that there should be, as he put it, not sectional interests, but at any rate that there should be representation from what he called a very major commmmity in the Colony.

Well, Sir, I would like to leave those points to the Select Committee as to a final suggestion as to the composition of this Board. But as far as I am aware, the Government would have no objection to a composition in the Statute on the lines suggested by the hon. Member for Rift Valley, and I can give an assurance to the hon. Member representing African Interests that naturally we are just as anxious to have adequate representation, that is, right up the scale, that is the Regional Water Board and everything dealing with water for Africans, because we realize they are a very large community and naturally have to be protected.

Clause 10, Sir, and clause 22 provide—I am not looking at the Ordinance now to save time—provide rights of entry and it has been suggested as a matter of principle that the unnotified right of entry at any time should be limited to a water bailiff and should not be given or granted to any subordinate officer. Others should have the right of entry, all right, but subject to notification. Well, Sir, again I should like to hear what the Select Committee has to say on that point, but I think that Government would have no objection whatever to those principles.

The hon. Member pressed for an answer about the Land Acquisition Act, 1894. I think I must consult my hon. friend—I have not done so—the Member for Law and Order, but as far as I can see that as long as provision is made for acquisition of land the precise wording, I should think, could be left to my hon. friend the Attorney General. I have not had a chance of consulting him.

The hon. Member under clause 21 appears not to be in entire agreement with the hon. Member for Kiambu, because one hon. Member wishes to insist particularly on the powers of emergency that can be exercised by the Member being subject to previous consultation on a state of emergency, subject to previous consultation with the Water Resources Authority, but the hon. Member for Rift Valley does not seem to attach much importance to it. I do not feel very strongly on it, that can actually be left to the Select Committee.

The hon. Member also suggested as a matter of principle that in view of the compulsory rights of the Water Resources Authority of more or less apportioning a proportion of Coast under various works under clauses 12 and 128 to people who are alleged to benefit, that there should be a fund set up under this Act from which I gather it is suggested the person who is called upon to pay could if necessary borrow cheaply, as otherwise there is no means as far as we can see of providing money for such a person and, indeed, cases might occur in which a landowner, a small man, might be crippled. Well, Sir, it is a new suggestion; I am afraid, and all I can say is that I will consult the Member for Finance and no doubt that point will be discussed by the Select Committee.

[The Member for Agriculture and Natural Resources]

The hon. Member for Rift Valley referred to section 21 again, that is the emergency powers, and wished me to amplify the principles on which one would exercise emergency powers, specially in relation to the provident person as against what the hon. Member has suggested might be an improvident person. Well, Sir, it is difficult at this stage to amplify in very great detail what one might do under a lot of unknown circumstances. All I can say is that on a previous occasion we only really embarrassed the provident person to the extent of making him provide—if it could be done, to prevent actual loss of stock or very serious risks to the population, and I think one will have to do that in any case if the same position arose again. But there will be no question of seriously damaging what the hon. Member refers to as the provident person.

I will bear in mind the points raised, for which there is a great deal to be said, which the hon. Member raised on the subject of clause 31; the possible loss there might be of seepage and so on if one did interfere with the first sub-clause (a) of that section.

The hon. Member also in regard to clause 42 suggested a way out of this question of interfering with the rights of persons who dig wells or make boreholes within certain distances of each other. He suggested that certain areas of the Colony might be scheduled or that areas should be scheduled in or out of control. Again I think that is partially a technical matter which might be referred to the Select Committee.

He suggested an appeal under clause 59 to the Water Resources Authority. I agree, Sir, that that should be given.

Under clause 61 the hon. Member suggested that he hoped that there would be reasonable latitude in implementing the provisions of clause 61 to existing boreholes. Well, I think obviously, Sir, that would have to be done. Clauses 64 and 65—only five years suggested—that is a Select Committee point.

Under clause 68, Sir, there is a fairly big point which I am afraid I meant to mention in introducing the Bill, but which I overlooked. Under 68 the Member has, after consultation with the Water Resources Authority, the right to declare areas as conservation areas, and when an area is so declared, of course it will result in a considerable amount of tightening of control on everybody in that area. I did mean to say that of course I quite agree that before an area is so declared, first of all notice should be given and a period of time during which objections may be lodged and that a decision shall be made only after the objections shall be considered by the Water Resources Authority. I think that is reasonable.

The hon. Member also referred to the difference in value of farms depending on the priority of the rights those farms might have for the extraction of water. Again, Sir, I think I would like to leave that point to the Select Committee.

Also I think the point he raised on the swamps, claims for compensation under section 137, is a Select Committee point. So is the point about the arbitration under clause 113.

Clause 130, that is a slightly more important point, I think. Yes, that raises the point about expropriation of works, and I would say, Sir, that that section really takes into account the possibility of works being in existence on which water supplies depend and the possibility of the operator being on the verge of failing to carry out his undertaking and then I think it is absolutely necessary that the Member should be authorized to step in and keep those supplies on which possibly large populations might depend going. But when it comes to expropriation I agree, Sir, that perhaps as worded the powers are too great and that the expropriation question could be referred to the Select Committee.

THE SPEAKER: It is now a quarter to one. I take it you will be some time yet?

MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I shall be about ten minutes.

THE SPEAKER: Council will adjourn until 9.30 to-morrow.

ADJOURNMENT

Council rose at 12.50 p.m. and adjourned until 9.30 a.m. on Thursday, the 15th February, 1951.

Thursday, 15th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Thursday, 15th February, 1951.

Mr. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The Minutes of the meeting of the 14th February, 1951, were confirmed.

MOTIONS

SCHEDULES OF ADDITIONAL PROVISION

NO. 6 OF 1949 AND NO. 3 OF 1950.

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move as follows: Be it resolved that Schedules of Additional Provision No. 6 of 1949 and No. 3 of 1950 be referred to the Standing Finance Committee.

Sir, this curtain-raising motion relates purely to procedure and hon. Members opposite are very familiar with this motion. I will not detain the Council on this matter at all, and accordingly beg to move.

THE SECRETARY TO THE TREASURY seconded.

The question was put and carried.

MOTION DEPLORING ACTION OF GOVERNMENT

MAJOR KEYSER (Trans Nzoia): Mr. Speaker, I beg to move that this Council, being deeply conscious of its responsibility and duty to the Colony, deplores the action of the Government of Kenya in flouting the authority of this Council, in that Government have decided not to implement all the recommendations of the Glancy Report on the Registration of Persons Ordinance, 1947, after this Council had approved these recommendations by a large majority.

Sir, in moving on behalf of the European Elected Members this motion, I must make it quite clear that it is not a question of fingerprinting, but that of a principle—of the conduct of this Council which, if not adhered to, will reduce the deliberations of this Council to a farce—(hear, hear)—and will lead to a reduction of its dignity and authority in the land. The conduct of the Government all through this sorry affair can only lead to loss of confidence in the respect for Government, and, because we think it is of paramount importance that this should not occur in the land of Kenya, I am moving this motion in the hopes that by their support of it all hon. Members will be associating themselves with these sentiments and will lay down a precedent for the conduct of this Council in the future.

Sir, in the course of my speech I will be referring to certain events which took place outside this Council and which normally I always consider to be of a confidential nature, but, as they are pertinent to this motion, I shall have to refer to them, with the full knowledge of His Excellency the Governor, I think, Sir, that it will be advisable to take the events that led up to the announcement in the *East African Standard* on the 15th January, 1951, which set out the reasons why Government had decided not to implement in full the recommendations of the Glancy Commission, and to take these events in chronological order as far as possible, and to refer to them as I go along. I will not refer to the events prior to May, 1949, as those events dealt almost entirely with fingerprinting which, as I have said, is not the issue of this debate.

On the 16th August, 1949, I moved in this Council that this Council request Government to appoint a Commission to review the Registration of Persons Ordinance, 1947, and to make recommendations for any amendment of the Ordinance as the Commission may consider necessary or desirable. After a number of Members on this side of the Council had spoken in support of the motion, the hon. Chief Secretary rose and, in the course of his speech, he said "that is the law at the moment and so far as Government is concerned we know of no reason to take the initiative in making this inquiry".

Now, Sir, that sentence from the hon. Member's speech has been given a totally different meaning in the announcement which I have referred to that was published in the edition of the 15th January, 1951, in the *East African Standard*, because the following sentence appeared in that statement "Government made it clear in the debate on the original resolution that it saw no reason

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to alter the present law which appeared to be a good law" and the words "we know no reason to take the initiative in making this inquiry" can only refer to the attitude of Government to an inquiry, and cannot mean that it saw no reason to alter the present law, which appears to be a good law.

Now, Sir, the reason why I stated this so positively is that on the 7th August, 1949, the hon. the Attorney General handed to me copies of an amendment to the Registration of Persons Ordinance, which provided for an alternative to fingerprinting, and I distributed those copies to the European Elected Members. On the 15th May, on the eve of the introduction of my motion in this Council, the hon. Chief Secretary and the hon. Attorney General suggested to the European Elected Members that it would be better to move an amendment to the Registration of Persons Ordinance in the terms of the draft which had been handed to me, rather, Sir, than move my motion for the setting up of a Commission. Because the European Elected Members had discussed the appointment of a Commission with their constituents and had received support to the setting up of a Commission and because, Sir, the draft Bill did not deal with the matter of the *kipande* and because at that time it had been made clear to us that a large number of Africans did not want to lose the record of employment that was on the *kipande*, the European Elected Members decided to go on with the motion for the setting up of a Commission. So, Sir, it is quite clear that at that time Government could not have thought that they saw no reason to alter the present law which appeared to be a good one. They might have thought that the law appeared to be a good one, but they certainly saw some reason to alter the present law.

But, in any case, Sir, Government accepted the motion for the appointment of a Commission of Inquiry and whatever their fears and trepidations might have been in taking such a decisive step nevertheless they cannot now dissociate themselves from the responsibility that was entailed in supporting the setting up of that Commission. The Commission was set up and reported, and I will not go into that matter, Sir,

I will now move to the 17th May, 1950, when the Acting Chief Secretary, Mr. Thornley moved "that the Report of the Commission of Inquiry appointed to review the Registration of Persons Ordinance 1947, and to make recommendations, be adopted". In the course of that debate he—the hon. Acting Chief Secretary speaking for the Government—made the position of the Government in this matter completely clear. He said that "so far as the Government was concerned, no reason was seen to take the initiative in making this inquiry". In other words, the Government was perfectly content with the law as it stood. On the other hand "it had been made clear", he said, "during the debate that hon. Members opposite, without exception were in favour of the appointment of the Commission".

Now, Sir, I cannot think why, for the reasons I have stated, he should interpret the words "no reason was seen to take the initiative in making this inquiry", into the words "the Government was perfectly content in the law as it stood". In view of the fact that the Government did have a draft Bill on the stocks, that condition could not have prevailed at the time.

He then, Sir, went on to explain at length the recommendations of Sir Bertrand Glancy, and I will not refer to those. He continued by saying: "I have tried, Sir, to underline in the course of this speech, the precise recommendations which are made in this Report, and the principal reasons which have led the Commissioner to make them. I know that strong views are held on this matter, but whether right or wrong, the Government feels that having entrusted this Inquiry to a distinguished and experienced Commissioner at the unanimous wish of Unofficial Members of the Council and having before us, as we now have, such clear evidence of the thorough investigation which he has made into those particular provisions of the 1947 Ordinance on which different views are held, the right thing to do now is to advise this Council to adopt the recommendations which have been made".

This shows, Sir, unquestionably that at that time Government was in full support and agreed with the recommendations made by Sir Bertrand Glancy. He went on then, Sir, to say: "In proposing this course, the Government is seeking to interpret the wishes of

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Unofficial Members opposite in the belief that having submitted, as it were, a case for arbitration, or rather impartial examination by consent, it would be unreasonable not at least to try out the advice which has been given to us".

There is no suggestion, Sir, in any of those paragraphs that I have read out nor, Sir, in any of that speech in which the hon. Member moved the adoption of the Report, to suggest that Government was in any way at all testing the opinion on this side of Council; nor, Sir, that Government would base its final action on that opinion. But, Sir, there is an indication that Government held the view that because Unofficial Members had agreed to submit the case to a Commission, that it would be unreasonable not at least to try out the advice which the Commission had given. That Government held this view is borne out by the speech of the hon. Member for Agriculture and Natural Resources, made a few hours after the speech of the hon. the Acting Chief Secretary. In the course of that speech the hon. Member said: "If, as was said by the last speaker, persons are not prepared to accept any recommendations altering the law as it stands to-day, then why did they support the motion for a Commission of Inquiry? I submit from Government's point of view it looks as though certain Members who feel strongly on these matters, on the unofficial side of Council, in matters of this kind, like to play the game of 'Heads, I win—Tails, you lose'. In other words, had the Commissioner reported that no change in the law was possible they would have applauded his finding. But, as he has reported that, in his opinion, it is possible and might indeed be advisable to introduce certain changes, they refuse to accept the Report".

So, Sir, if Government thinks that support by the unofficials to the appointment of a Commission must be followed by support being given at least to try out the advice which has been given to us, is it not reasonable to expect that Government, who also voted for the appointment of the Commission, too should follow this up by giving a trial to the advice of the Commission?

In that debate, Sir, only three hon. Members on the Government side spoke. The Government Member to follow the hon. Acting Chief Secretary was the hon. Member for Agriculture and Natural Resources.

Now, Sir, I want to make one point clear about the speech made by that hon. Member, because I have heard a certain amount of criticism of it, in that he might possibly have been speaking out of turn. Now, Sir, I was present in his office upstairs when the hon. the Acting Chief Secretary asked the hon. Member for Agriculture and Natural Resources to speak in the course of that debate, so there can be no question, Sir, that the hon. Member was definitely asked by the leader of the Government side to speak in that debate, and so the views that he expressed must be taken as the views held by the Government at that time.

In the course of his speech he said, Sir: "On such occasions if Government does not take a strong line, and does not know what it wants, we should very soon have a form of Government which we find in countries such as France—about 14 different parties all fighting like cats and dogs, no issue ever brought to conclusion and matters drifting from year to year, as this one seems to be doing".

I might add, Sir—"and is still doing".

He said later: "If, as was said by the last speaker . . ." I did read that out before, Sir, so I won't again.

He said: "He (referring to Sir Bertrand Glancy) has reported and he has made suggestions for certain improvements to certain provisions in this Ordinance", and just because there is divergence of opinion on the other side of Council, that Government at this stage, shilly-shally, waffle, and be frightened and not press the adoption of the Report to a division, I think, would be merely making the Government machine look foolish.

"For that reason I believe Government is absolutely right in introducing this motion this morning and declaring its intention of voting for it."

And later he said, Sir: "All we have before Council is a report making certain suggestions that will have to be gone into in very great detail before they could possibly appear before this Council in the form of an amending measure.

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All Government is asking is that these suggestions, which are the result of very careful investigation by very experienced men, should be gone into—should be presented to this Council—in the form of concrete proposals, which can be presented in the form of a Bill. I believe that to be the proper procedure and the proper course for Government to take".

And again Sir, he said "We did not press this inquiry on you. On the contrary we said we were quite happy with the law as it stood but, having allowed you to have this inquiry, the least we can do now is to see what there is in the recommendations made by the Commissioner and give them a trial". Actually, Sir, he also had been misled at that time in saying we said we were quite happy with the law as it stood because in my view Government could not have expressed that and have taken the action, as I stated before of having a draft Bill on the stocks, but Sir, nothing in the speech of the hon. Member would give any indication to anyone on this side of the Council that their opinion was being tested on the Glancy Commission's recommendations. It is the strongest possible support that Government could have made for those recommendations. The last speaker on the side of Government was the hon. Member for Commerce and Industry. I will only read one small part of his speech. He said, "I want to make it quite clear in this instance that my advice in this matter has been, that this motion should be fully supported by Government and should be put and carried". Again in his speech, Sir, there is only support for the recommendations of Sir Bertrand Glancy. There is no indication again that Government was testing the opinion of this side of the Council or that Government was going to abide solely by the voting on this side of the Council and that they were going to ignore the voting on their side.

On the 17th May, Council adjourned at its normal time while the hon. Mr. Jeremiah was speaking and the motion did not appear on the order paper the next day. Council adjourned till the 23rd, which was the following Tuesday and on the 22nd May the hon. Acting Chief Secretary intimated to me that Government would like to adjourn the debate on the motion for the adoption of the Glancy Commission Report till the next session of Legislative Council which is to take place in August 1950. I asked if I have Government's reasons and Government's attitude to the motion when it would come up again at the session of Legislative Council as I would like to discuss them with the European Elected Members. The hon. Member gave me a short unsigned memorandum and intimated that he would like to meet the European Elected Members. He came in the afternoon with the hon. Director of Establishments who, at that time I think was acting as Deputy Chief Secretary. We discussed the question of the adjournment and the two hon. Members then left and I told the hon. Acting Chief Secretary that I would hand him my reply in writing the next morning; the next morning I handed him a written reply to this Council before the proceedings started.

Now, Sir, I am going to read the letter that I wrote to the hon. Member as I handed to him that morning. It is dated 22nd May, 1950, and it is written on the paper of the European Elected Members' Organization. It is addressed to the Hon. Acting Chief Secretary, Nairobi:

"Dear Sir,

1. With reference to our discussion with you to-day on the question of the debate on the Glancy Report, the following decision was taken by members:—

> We are of the opinion that the debate on the Glancy Report should be continued at this session, but if Government considered that, because of the information at their disposal the debate should not be proceeded with at this session, we shall support Government's decision.

2. Our decision is based on the Memorandum sent by you to me today summarizing the decision of Government that when the debate on the Glancy Report is resumed, Government will continue to support the motion."

For ease of reference the memorandum referred to in the preceding paragraph reads:—

"*Registration of Persons Ordinance, 1947*

If possible it should be so arranged that the debate in Legislative Council

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on the Government's motion to adopt the Glancy Report should not be resumed at the present. If, however, it should prove necessary to have the motion placed on the Order Paper for Thursday, 25th May, and the debate should be resumed, it would be essential to continue the debate until Council adjourned. The debate should be further continued at the August sitting when the Government support of the motion should remain unchanged. The Government attitude to any amending Bill introduced into Legislative Council as a result of the adoption of the motion should be considered in the light of the voting on the motion."

Now, Sir, the English language has a very rich vocabulary, so rich, Sir, that it permits of a statement being made with no doubt at all as to what it means. If this was meant to mean that Council, as a result of the adoption of the motion should be considered in the light of the voting on the motion, if that was meant to mean that the voting by the Government side was to be ignored and that the only consideration in voting was to be given to the voting on this side of the Council, then, Sir, I say that the English language permits of that being said without any doubt at all. (Hear, hear.) But, Sir, it stated that it would depend upon the voting on the motion and the only voting on the motion I know is the total voting of this Council, Sir, whether it is of the official side or the unofficial side, but, Sir, Government also said that "when the Government's support of the motion should remain unchanged".

On 25th May this Council adjourned till 8th August, 1950. Now, Sir, during the three months that elapsed between May and August, something happened in the mind of Government. Now, what it was, I do not know. The two hon. Members—possibly the three hon. Members—who played an important part at that time in the debate, whom I have mentioned, are the hon. Acting Chief Secretary, the hon. Attorney General, and the hon. Member for Agriculture and Natural Resources, and if anybody, Sir, is going to ask me to doubt the integrity of those three hon. Members I say I flatly refuse to do so because I believe I know them. But, Sir, something happened in those three months which changed the attitude of Government to the motion, and which induced Government to break the agreement made between them and myself for the support of the adjournment in May, and so we come back, Sir, to 16th August, 1950, when the debate was resumed.

It started, Sir, by you reading the names of the hon. Members who had already spoken so as to ensure that no hon. Member forgot and spoke a second time.

Several hon. Members on this side of the Council spoke, some of them in support of the motion and some of them in opposition, but no hon. Members from the other side spoke until the hon. Acting Chief Secretary rose to reply to the debate, and he started off, Sir, by replying very strongly to hon. Members who had opposed the motion, and he then said, Sir, after speaking for a considerable length of time, "it is now necessary for me to explain what is the attitude of Government to this motion now that all those hon. Members who wish to speak upon it have had their opportunity to do so. I would repeat that the reason this motion was brought forward was that the Government believed that in doing so it would be complying with the wishes of all hon. Members opposite who had all been in agreement with the appointment of the Commission. Now, we have heard what the views of hon Members are. What we do not yet know is whether any hon. Members who have already spoken have in any way changed their minds in this matter in the light of what has been said by other Members or in the light of anything I have said during this speech in reply to the debate". That is the first sign in the whole of this motion of wobbling on the part of the hon. Member or any representatives of the Government benches. He then went on to say "I would also explain that the reason why we have brought this motion and the reason why we shall support it as a Government is that we want to know precisely and we shall only finally know in the light of the figures of the division as to what exactly are the views of the hon. Members on this issue. I want also to make it absolutely clear in case there should be any possibility of misunderstanding that Government will consider itself as

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entirely free in framing the policy which will be reflected in the draft legislation which will have to be passed into law to give effect to any of the recommendations in this Report". That is the increasing of the tempo of wobbling, Sir. Now, Sir, can anybody say that that is carrying out the undertaking given to me over the adjournment of the debate in May that Government will continue its support of the motion, because, quite frankly, Sir, I do not think it is.

The hon. Member for Nairobi South, then at that moment Mr. Erskine, interjected by saying "Explain what that means" and the hon. Acting Chief Secretary said "I will try and explain what that means. If this Report is accepted by this Council it is for Government then to consider the next stage. The next stage is the preparation of legislation which would have to be brought before this Council under the terms of our constitution before the Registration of Persons Ordinance could be amended. Is that clear? As soon as we can, we shall come forward with a Bill for consideration in this Council, but we are not, as a result of this debate, committed in any way as to the provisions which will be put into the Bill". That was the end of his speech. That, Sir, that last sentence is considered to be the great let-out of the undertakings given by Government to this Council. (Hear, hear.) The hon. Member, Sir, came out with Government's real policy at that time in the last sentence of his speech when he knew perfectly well I do not say he did it intentionally, but he knew perfectly well that no hon. Member could get up and speak again.

Now, Sir, if Government really wanted to test the feelings on this side of the Council and did not want to implicate themselves in voting, they could quite easily abstain from voting, but they could, Sir, if they did not want to go on with support for the motion, they could, Sir, at that time, and I say that it was the correct attitude for them to have taken, the correct constitutional step at that moment if they did not want to continue to support in full Sir Bertrand Glancy's recommendations, they should have moved an amendment before the Acting Chief Secretary spoke, an amendment that would have excluded the alternative to fingerprinting from the motion before the House. That, Sir, would have been the correct attitude and they would then have maintained their correct constitutional position, but Government did not choose to do that Government, instead, voted for the motion, so that the final voting on that motion was 25 in favour and 10 against. It is true, Sir, that on this side of the Council there were 10 in favour and 10 against.

Now, Sir, the impression left on the country at the end of that debate, because of the indecisive terms, the vague terms, in which the hon. Acting Chief Secretary had spoken at the end of his speech—the impression left on the country was that Government was going to implement the recommendations of Sir Bertrand Glancy. And that, Sir, was the impression that not only did the country have but the Press had. But above all, Sir, it was the impression that was left on the then hon. Member for Nairobi South, Mr. Erskine, and Government allowed Mr. Erskine to continue with that impression and Government allowed that hon. Member to resign from Legislative Council on a principle because Government allowed him to think that they were going to implement fully the recommendations of Sir Bertrand Glancy.

THE CHIEF SECRETARY: No, that is not so, as you know.

MAJOR KEYSER: Would you like me to read his letter?

Now, Sir, there is also in my opinion a constitutional point that arises and I will quote very shortly from Sir Erskine May's Parliamentary Practice. On page 270, Thirteenth Edition, Sir.

THE ATTORNEY GENERAL: Unlucky number.

MR. BLUNDELL: Unlucky for some.

THE CHIEF SECRETARY: Out of date. (Laughter.)

MAJOR KEYSER: I thought, Sir, that the practice of the House of Commons—

THE SPEAKER: We don't know until you read it.

MAJOR KEYSER: I thought Sir, it was dependent on tradition of the past. Chapter 9, page 270, at the top of the page:—

"Every matter is determined in both Houses upon questions put by the

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Speaker, upon a motion made by a Member and resolved in the affirmative or negative as the case may be."

And at the end, Sir, of the same chapter he says: "every question when agreed to assumes the form either of an order or resolution of the House. By its orders the House directs is committees, its Members, its officers, the order of its own proceedings and the acts of all persons who may be concerned. By its resolutions the House declares its own opinions and purposes".

And taking it, Sir, that that was a resolution of this Council, this Council declared its opinion that the recommendations of the Glancy Commission were good recommendations and it declared its purpose that those recommendations should be made law. (Hear, hear.) Now, Sir, if this Council is to spend some three days debating a motion on a report, and, after having adopted them, Government will refuse to implement those recommendations, Sir, I say that the authority of this Council is being flouted and the deliberations are being reduced to that of an absurdity. And, Sir, I would like to remind hon. Members that they have a responsibility to this Colony, not only for the present but for the future and that by their actions to-day they should ensure that future Members of this Council, the future generations in this Colony, that the conduct of this Council will be kept up to a high standard.

Mr. Speaker, I beg to move. (Applause.)

MR. SALTER (Nairobi South): Mr. Speaker, I beg to second and I reserve my right to address later.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I rise to oppose the motion.

I shall have something to say later in my speech regarding the points of criticism of Government's conduct in handling this matter which have been made by the hon. Mover, but before I do so I think it is most necessary that Council shall understand the full history of this lamentable controversy from the beginning, as only against this background can the full justification and constitutional propriety of Government's actions in the matter be properly appreciated.

Hon. Members will remember that right at the beginning of 1946 the Labour Advisory Board were giving consideration to the need for some reform in the law governing the *kipande*. Later in the same year a strong sub-committee of the Board was appointed to inquire into this matter. The members of that subcommittee were the Labour Commissioner as Chairman (the previous Labour Commissioner, Mr. Hyde Clarke), my hon. friend the Member for Education, Health and Local Government, who had not at that time joined the Government, the hon. Mr. Patel, the hon. Mr. Mathu and Major Hearle as members. Mr. Khamisi was subsequently co-opted as an additional member. This sub-committee toured extensively throughout the country hearing evidence from a large number of witnesses. In October of the same year it submitted its report to the Labour Advisory Board recommending universal fingerprinting as the method of identification for the purpose of compiling a National Register. That recommendation was fully endorsed by the Labour Advisory Board and legislation was then prepared to give effect to that recommendation. In July of the following year that legislation was introduced into this Council and given a first and second reading, subsequently being submitted to a Select Committee. The members of that Select Committee were my hon. friend the Solicitor General as Chairman, Messrs. Wyn Harris, Carpenter, Bouwer, Mundy and Mathu as members, and the late Mrs. Watkins and the late Mr. Cockar. The Select Committee report was presented to Council towards the end of the same year and the Registration of Persons Bill was passed into law in December. The second reading of that Bill was passed without a division with the Asian elected members only in opposition and the report of the Select Committee was also adopted without a division.

Then followed a period of quiet while the necessary machinery for the operation of the Ordinance was being set up. This period of quiet came abruptly to an end in the spring and early summer of 1949 when all was ready for the operation of the Ordinance. Serious controversy then started to rage over the provisions of the Ordinance and many bitter and intemperate things were said

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and written about the provisions of the Ordinance which required universal fingerprinting as the only method of identification. As a result of this, my hon. friend the Member for Trans Nzoia then moved the motion, to which he has referred, in this Council, in August, 1949, requesting Government to appoint a Commission of Inquiry to review the Ordinance and to make recommendations for any amendment of the Ordinance as the Commission may consider necessary or desirable. The motion was seconded by my hon. friend the Member for the Eastern Area, Dr. Rana. It was supported by the previous Member for Nairobi South and by the hon. Member for African Interests, Mr. Mathu. Only the Government at that time expressed itself as being perfectly content with the law as it stood and as it still stands. My hon. friend the Chief Secretary then said, " . . . so far as Government is concerned we know of no reason to take the initiative in making this inquiry, but if it is the general opinion of Council that an inquiry ought to be held, and I think Council this morning has made it clear that that is its view, Government will accept the motion".

Now, I would just like to make one or two comments on what the hon. Mover has said of Government's interpretation recently of what those words mean. He has drawn a distinction, which I certainly cannot appreciate or understand, between a statement that one is content with a law as it stands and a statement that that law is a good law. Is my hon. friend suggesting that the Government would express its contentment with a law which it did not think was a good law? Is it being suggested that Government would express contentment with a bad law and which it thought ought to be amended?

MAJOR KEYSER: Mr. Speaker, I referred to the statement made in the *East African Standard* on the 15th January and I quoted from that Government statement. Now, I did not bring in the question so much of whether it was a good law, the statement was "Government made it clear in the debate on the original resolution", that must be the resolution on the motion to set up a Commission, "Government made it clear in the debate on the original resolution that it saw no reason to alter the present law which appeared to be a good law". Now the emphasis is on "no reason to alter the present law". That is the point that I was making, you see in spite of the fact that the Government at that time had a draft Bill on the stocks.

THE DEPUTY CHIEF SECRETARY: As I was not here at that time in 1949—I do not propose to comment on that part of the hon. Member's statement, that will be dealt with by my hon. and learned friend, the Member for Law and Order, but I still maintain that it is splitting a hair which I, personally, think won't split. If the law had not been a good law then I trust that Government would have seen reason to amend it.

MAJOR KEYSER: Why did it?

THE DEPUTY CHIEF SECRETARY: So much for that particular point; but I would repeat again now as I did in this Council last May, that no word of protest or opposition to the suggestion that this Commission should be set up was uttered by a single hon. Member. It seems perfectly clear that notwithstanding the Government view as then expressed by my hon. friend the Chief Secretary, that Government would indeed have been defeated on a division had it pressed its view that there was no need for any amendment to the law—

MAJOR KEYSER: It would not have hurt them.

THE DEPUTY CHIEF SECRETARY: I would only add one further comment on the debate that took place on this motion because I think it is not unimportant. It is that every single Member of Council must have understood perfectly well at that time that the main purpose of the inquiry which was proposed was to see whether or not there was a practical and acceptable alternative to fingerprinting as the method of identification. It is inconceivable that any hon. Member could have had the slighest doubt on this point.

Sir Bertrand Glancy was then appointed to conduct the inquiry and submitted his report at the beginning of last year. There were two main recommendations in it. The first provided for an alternative method of identification for purposes of registration for persons who had acquired a certain educational standard and the second for a voluntary

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record of employment for employees who wished to have it. In considering this report the Government, believing that having regard to their attitude in the debate the previous August, Unofficial Members generally would wish to adopt the report, introduced a motion accordingly into this Council at its May sitting last year. We did so notwithstanding at that time—remember this was May and August of last year—the degree of impairment to the efficiency of the National Register which was to be expected as a result of this departure from the most infallible method of identification which is accepted by all to be fingerprints. We considered that this would be a reasonable price to pay if, as we then had very good reason to hope, it would settle this miserable controversy once and for all. I submit that in introducing the motion I made this perfectly clear when I said as follows, "The hon. Chief Secretary speaking for the Government made the position of the Government in this matter completely clear. He said that so far as the Government was concerned no reason was seen to take the initiative in making this inquiry". "In other words, the Government was perfectly content with the law as it stood"—

MR. BLUNDELL (Rift Valley): Why did he not say it?

THE DEPUTY CHIEF SECRETARY: "On the other hand, it had been made clear, he said, during the debate that hon. Members opposite, without exception, were in favour of the appointment of the Commission and Government therefore was not disposed to object. Indeed, it was abundantly clear that if Government had opposed that motion it would have been defeated on a division by the Unofficial majority which constitutes the Council." That was what I said in moving the motion. I submit that I made this attitude on the part of Government clear beyond any possibility of doubt when I said when winding up the debate "I would repeat that the reason this motion was brought forward was that the Government believed that in doing so it would be complying with the wishes of all hon. Members opposite who had all been in agreement with the appointment of the Commission". The hon. Mover has said, and I agree with him, that I pressed the adoption of the report as strongly as I knew how on the Council and I think he is inferring that this was entirely inconsistent with the attitude now adopted by the Government in the provisions of the Registration of Persons (Amendment) Bill, just recently introduced into this Council. It is perfectly correct, Sir, that I used all the arguments I could think of to advance in support of the motion for the very simple reason that if a compromise on the lines suggested by the Commissioner in the first of his recommendations would have proved acceptable to the majority of Unofficial Members and thereby brought to an end this unhappy controversy, no one would have been better pleased than this Government. What in effect happened? I take no pride in the fact that those arguments were of no avail. They certainly were of no avail and the debate conclusively showed that there was a serious and deep rift between hon. Members opposite on this important issue. Ten, as the hon. Mover has said, voting for the adoption of the report and ten voting against its adoption.

Now, Sir, I would ask hon. Members to try and appreciate for a moment what the position of the Government was when, as the debate proceeded, this deep and clear rift to which I have referred gradually became apparent. It began to emerge that the whole premise on which the Government had brought the motion before Council was incorrect. What was the Government to do in the circumstances? We had two alternative courses of action. We could have asked leave of the Council to withdraw the motion in order to reconsider our attitude in the light of the changed circumstances since the debate of the previous year on the motion to appoint the Commissioner, or we could press the motion to a division so as to ascertain exactly by the voting which would then be recorded what the final views of all hon. Members opposite were after listening to all the arguments and all that had been said in the debate. On so important an issue as this the Government decided that the better of the two courses was to press the motion to a division so as to ascertain this final opinion in the only way that final ascertainment was possible. On the other hand, it was obviously necessary, in order that Council should not be misled into thinking that the Government attitude

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had necessarily changed from the position as stated by my hon. friend the Chief Secretary a year earlier, that a caveat should be entered before the debate concluded, fully reserving the position of the Government to review its policy in the light of the views expressed during the debate, and of the voting upon it. I submit, Sir, that I made this fully clear to hon. Members in the remarks which I made towards the end of my final speech and which have been largely quoted by the hon. Mover from columns 43, 44 and 45 of the Hansard Report. This, Sir, was not an afterthought, or a quibble as I have seen suggested, it was a very obvious caveat that had to be made, having regard to the divergent views that were then clearly held, as a result of the speeches made during the debate on the matter.

MR. BLUNDELL: Why did you not start with that?

It must, Sir, have been perfectly obvious to anybody who had listened to what I said that Government might decide not to accept either one or both of those major recommendations in that Report, notwithstanding its intention to vote in support of the motion. Now, Sir, if this intention had been unconstitutional, I would have expected my hon. friend the Mover, feeling as strongly as he apparently does on this matter, to have leapt to his feet on a point of order as to whether I was not attempting to reserve for the Government a freedom of action inconsistent with its responsibility to implement without further ado a policy on the lines recommended in the motion. Yet, Sir, there was not a stir on the benches opposite.

MR. GHERSIE: —Mr. Erskine leapt to his feet.

THE SPEAKER: Order.

THE DEPUTY CHIEF SECRETARY: There was no point of order made during that speech. I was referring to a point of order. There was no stir when I sat down. Indeed when the debate was all over I was actually congratulated by one hon. Member sitting on the benches opposite and to my left, on having made quite a good speech! At this point, Sir, it became obviously necessary for Government to consider the policy which should be adopted in the light of the debate on Sir Bertrand Glancy's report. Then the position demonstrably was that whereas in August, 1949, all Unofficial Members had wished for an alternative means of identification to be explored, a year later they were evenly but sharply divided on the question whether the alternative recommended should be accepted or rejected. What more logical or natural attitude can possibly be imagined, Sir, in such circumstances that that the Government having found the Unofficial side of the Council completely divided should decide to maintain the *status quo* in a law which had been passed as recently as 1947 without a division at all. It was, I submit, Sir, the right and obvious course for the Government to pursue. The Government had itself always maintained that the provisions of the law regarding the registration to be adopted—the method of identification to be adopted—was perfectly in order and it now found after an exhaustive inquiry into possible alternatives that half of the Unofficial Members were in agreement with it. A careful study of the views expressed in the 1950 debates and the voting on the 1950 motion showed conclusively that the vast majority of the people inhabiting this land, and I include in that majority a large number of the European element of the population, prefer the law as it stands in this respect to the alternative provision recommended by Sir Bertrand Glancy.

I submit, Sir, that in these circumstances, it would have been undemocratic and quite wrong for the Government to have done otherwise than it has done in deciding not to accept this recommendation in the report. To have done otherwise would have been to acquiesce in an alternative method of identification for purposes of registration which no one has ever suggested is as efficient as fingerprinting, thereby impairing in some measure at any rate the efficiency of the national register and merely exchanging one cause of friction for another. I submit, Sir, that to have done otherwise than we have done would have been improper in the circumstances and certainly not in accord with the spirit of the constitution.

There is another very important factor—a very important factor—which the Government has had to consider in reaching a decision on this matter. Hon. Members will not argue with me when I remind them that the international situation generally throughout the world has considerably deteriorated since last autumn. Let me now say this with all solemnity. Even if the Government had taken the view, which emphatically it did not take, which is held by the hon. Mover that it was bound constitutionally to introduce amending legislation to make provision for an alternative to fingerprinting as a means of identification, and even if a Bill containing such provisions had been introduced into this Council, then it would have been the duty of the Government in the situation now obtaining throughout the world to have withdrawn it. We consider that the present situation calls for the most efficient national register that we can produce—and even if a year ago we should have been content, if only it would have settled the controversy, to introduce the alternative suggested by Sir Bertrand Glancy, that would certainly not be the case to-day. We regard it as of the greatest importance that we shall have the best and most efficient national register that can be built up, and as a means to this end we propose to press on with the registration of registerable persons who have not yet been registered.

Now, Sir, the hon. Mover has said—not precisely perhaps in these words—that this act of the Government is quite unconstitutional and I rather imagine that he would wish to infer that it was without precedent. Well, whether that is so or not I am not prepared to argue. But I would ask him in replying to let me have any precedents that he can for a constitution which makes provision for a government by minority. It must, Sir, be obvious to the hon. Member and to every other hon. Member of this Council that there must be occasions when a Government placed as we are will wish to ascertain the views of the majority of this Council on important matters of public policy before introducing legislation. Why should it not? Why should it be denied in these circumstances the right of testing the views of the hon. Members before proceeding to the preparation of legislation? And yet that, Sir, is the apparently dreadful thing that this Government did during the debate on the motion to adopt the Report last year.

Now, Sir, I would like before I sit down to make a few remarks on the views expressed by the hon. Member for Trans Nzoia in his speech. He started off by suggesting that the conduct of the Government in this matter can only lead to loss of public confidence in it. (Hear, hear.) All I can say as to this, Sir, is that I believe exactly the reverse to be true. (Hear, hear.) He has said that we have deliberately misinterpreted the statement made by my hon. friend the Chief Secretary in 1949 in subsequent publications. I have already dealt with that.

As regards the Bill which the Attorney General showed to him, I will leave that to my hon. and learned friend. But when he says that that was any proof that the Government desired amendment of the law, I would remind him of my hon. friend the Chief Secretary's remarks at about the same time that Government saw no reason to take the initiative, even in setting up an inquiry as to whether the law should be amended. I must also say this about the suggestions which apparently have been made, though they have certainly not come to my ears, that my hon. friend the Member for Agriculture and Natural Resources was talking out of turn when he intervened in the debate. He was, Sir, doing nothing of the kind. He was making it perfectly clear and possibly very much clearer than I made it, that if only we could in pressing that motion on the Council have solved this controversy once and for all, we would have reckoned a year ago that it was a small price to have paid for the degree of impairment in the register that might have resulted. Let us be perfectly frank, we did press that motion on the Council for the reason which I have explained. I only regret that the controversy did not die a year ago at that time and that it should be revived again now at this time. The hon. Member was arguing on exactly the same lines and let me, in case there should be any misunderstanding, make it perfectly clear that all hon. Members on this side speaking in that debate had one object in view and no other. We were united in what we were doing.

Then the hon. Member referred to the memorandum which I sent to him at the

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time when the debate was adjourned last May. Let me say that I was grateful then, though I had no doubt whatever what would happen, to hon. Members for accepting the Government view; they accepted it then and when approached in such a way urgently on a matter of such public importance, they would always do it at any other time—that I know. But he read out that memorandum and suggested that Government has for some reason gone back on it. I cannot see that there has been any going back on it at all, Sir. We said in that memorandum that we would continue to support the motion before the Council then in May when the debate was resumed in August. We did, when the debate was resumed in August, continue our support of the motion.

MAJOR KEYSER: On a point of order, Sir, the words I used were "should remain unchanged". My argument was that the support did change. A very different matter, Sir.

THE DEPUTY CHIEF SECRETARY: I suggest that that is another hair that I find difficult to split. We did continue to support the motion, and we have on the second point very, very carefully, believe me, considered the voting on that motion and the views expressed during the course of the debate before reaching the policy decision that we have reached.

We have done, Sir, both those things and when the hon. Member says that he can only interpret a reference to the voting in the last line of that memorandum as being to the voting of the whole Council, including the Official Members, I cannot see that anybody could so think. The voting on the Government side, as has already been made clear, was already known. It was stated in the memorandum how they would vote. The only unascertainable votes at that time were the votes of hon. Members on the other side of the Council. I have already said that we would have liked to have solved the controversy that way if only it would have been acceptable to hon. Members; and that is true.

The hon. Member went on to say that the first sign of any wobbling on the part of Government came in my winding-up speech. Well, Sir, was there not some cause for Government to begin thinking very seriously what the country wanted at that time. The attitude of Unofficial Members of the other side had completely changed during the debate from the attitude that they showed in the debate a year earlier. There was indeed some occasion for concern to the Government and the Government, indeed being very wide awake during the debate, had realized that it would have very seriously to consider what the policy should be in the light of those changed circumstances. I am only glad, Sir, that the hon. Member has not accused me of concealing this fact from Members of Council. It was obviously very necessary that I should give some indication in that winding-up speech that Government would have to think very seriously before it introduced amending legislation on the lines recommended in the report, and I make no apology whatever for the line then taken. I am only glad that the hon. Mover does accept that I began to give warning then that those recommendations might not necessarily be accepted by the Government.

MAJOR KEYSER: I accept it now, not then.

THE DEPUTY CHIEF SECRETARY: Now, Sir, the hon. Member has said that this is an extremely important matter on which there must be no doubt in the minds of the hon. Members as to what happened. He has said that we, on this side, the Government, deliberately left the country in the belief at the end of that 1950 debate that we were going to implement those recommendations in the report and he went on to say that we deliberately allowed the previous Member representing Nairobi South to resign from this Council in the belief that that was so. That, Sir, is absolutely and completely untrue. I am not accusing my hon. friend of deliberately telling an untruth. It is a thing I would never do and I am not doing it now. It may be, no doubt it is, that he does not know the facts; but I can assure him and I do assure all hon. Members of Council that in the correspondence which took place at that time it was made perfectly clear to the then hon. Member for Nairobi South that the Government had not made up its mind then to introduce legislation including provision for implementing all the

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recommendations in that report. The position was made absolutely clear to the hon. Member.

MAJOR KEYSER: He resigned because Government had not made up its mind to do either.

THE CHIEF SECRETARY: Nonsense.

THE DEPUTY CHIEF SECRETARY: Sir, I have already talked longer than hon. Members perhaps would have liked but it is a very serious motion which has been brought against the Government. I would only say now in conclusion that I would like to submit to hon. Members that in introducing the Registration of Persons (Amendment) Bill, this Government, Sir, in omitting Sir Bertrand Glancy's first recommendation has correctly interpreted the wishes of the majority of this Council and has acted in accordance with the wishes of a great majority of the people in this country—(hear, hear)—and that in so doing it has acted fully in conformity with the spirit of our constitution.

Sir, I beg to oppose. (Applause.)

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

MR. PATEL (Eastern Area): Mr. Speaker, I rise to oppose the motion.

While speaking on this motion it is very difficult to divorce one's mind from the events which took place before the Registration of Persons Ordinance was brought on the Statute Book and what took place thereafter. It is true that we in this Council should be fully conscious of our responsibilities to the country, but, unfortunately, it is also true that on this issue a great deal of irresponsibility has been exhibited, perhaps natural to a young and growing country. We have been told this morning that the conduct of the Government in this case was not proper. I am not going to pass a judgment on that, but I would certainly say that no side of this Council is free from the blame of bungling on this issue. Throughout the consideration of the question of National Registration, I am afraid that people outside and in this Council have not been consistent. If we cast our minds back and recollect what happened when evidence was given before the sub-committee of the Labour Advisory Board, it will be clear what I mean to say. The chief question before that sub-committee was to retain some form of identification, and at the same time to satisfy the African community that there was a need to do so. The evidence which was given by the African witnesses made it very clear that they would not support any form of identification unless it was non-racial in character, and the European members of the Committee who first did not see eye to eye with that point of view and did not see any reason for extending the registration system to non-Africans, felt later on that if this country wanted to retain some form of identification in the interest of the country, then it would help to meet the African community on this issue of having the whole system on a non-racial basis. Now, that was a point which one has to remember while considering the spirit which was at the back of the minds of those who recommended the identification system and the fingerprinting. Now, Sir, the Africans then, as far as I can remember, were not happy in the retention of an identification system but were prepared to support it as, firstly, the *kipande* system, as it was then, would be abolished, and the identification system with fingerprinting would be purely non-racial in its character. In spite of that, as far as the Asian side is concerned, when the Bill was introduced in this Council, the Asian Members opposed it on the ground that no good grounds were shown for introducing the system of National Registration, but the Bill was passed, the whole Council voting for it except the Asian Members. The Asian Members held the view that if the principle of National Registration was accepted, then it appeared that there was no efficient and proper method of doing it except by fingerprinting, and in my view, any attempt to introduce any alternative method would have immediately created a suspicion in the minds of the African community. That is how the Ordinance was passed at the time, and later after a period of a certain period of quiet in the country, a section of the European community started agitation against it. The Asian community, as is well known went to the Registration Offices and about 70 per cent of them put their fingerprints and got themselves registered in spite of their opinion contrary to the whole system. While the European Elected Members supported

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the Ordinance, but the European community had not registered more than 40 per cent of the population in this country.

Now the Government later found that the country was divided on the issue. Now it is argued that the constitution of this country is not observed, and that the authority of this Council has been flouted in not accepting the alternative which was recommended by Sir Bertrand Glancy. Now, Sir, the constitution of this country is very peculiar. (Laughter.) We have the Government in minority, we have 40,000 Europeans, having parity with the non-Europeans, who form the bulk of the population of this country, and the whole position is very difficult. But one can certainly say one thing, and during my stay in this country, I always understood so that owing to our multi-racial representation in this Council, the Government is supposed to hold evenly the scales of justice when the various racial groups do not see eye to eye on a certain question. That is the primary function of the Government in my view in a country like this, otherwise the position will be very difficult, and I believe that the Government action in this case is in conformity with the spirit, if not the letter, of the situation. (Hear, hear.) Firstly, because it supports the very first principle which influenced the sub-committee to recommend National Registration with fingerprinting in order to make it non-racial in character. The Government action supports that principle. Any alternative system would have certainly been against this spirit which moved the Committee to recommend fingerprinting. Now, in my view, whatever accusation may be levelled against the Government, there is no intention whatever to flout the wishes of this Council. (Hear, hear.) At that time, ten Members on this side voted against that motion. That means all the non-Europeans voted against it and one European Elected Member also voted against it. Then it was very clear that the public opinion of this country, the majority of the public opinion of this country was against that motion, and I think that Government was wise in taking a note of that.

There is another thing which I would like to mention, Sir, that after the passing of that motion in this Council, if Government had taken any action in promulgating any law or regulations by their Executive Authority against the motion which was adopted by this Council, then there would be justification in saying that the Government has ignored and flouted the wishes of this Council, but, in this case, the Government comes before this Council again with a Bill and says—now we want this Council to approve, disapprove or amend it. (Hear, hear.)

THE ATTORNEY GENERAL: Precisely.

MR. PATEL: The constitutional position has not been flouted in this manner. Supposing this Council passed a motion six months back, this Council certainly has a right to review that in the light of any circumstances which may arise later on. Any motion passed by this Council does not bind this Council for all the time, and therefore to say when a Bill is introduced here on this question that the wishes of this Council are flouted, is, in my opinion, not understanding the constitutional position properly.

The only way Government could have flouted the wishes of this Council would have been if they had taken independent action outside this Council without consulting this Council on this issue. When a Bill is to be introduced here it means that Government is very anxious to know the wishes of this Council again on this very matter. Perhaps it can be reasonably argued that the best course for the Government would have been to withdraw that motion at the time when they saw that the Unofficial opinion was divided and they could have reserved the right to take any action which they thought fit in the light of the voting which took place in this Council. I daresay that would have been a better procedure than the procedure adopted by the Government in this case, but I do not think thereby Government has taken any improper action or Government has flouted the wishes of this Council.

But, to those who are discussing this motion, I wish to remind them of situations which have arisen in this Council time and again of this nature. I would remind the Council about what took place in regard to the money voted by this Council for educational buildings in respect of the various communities. This

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Council approved by a motion that the Government should spend from the Development and Reconstruction Authority about £640,000 for the European educational buildings and more or less the same amount for the Indian educational buildings. Later Government came to this Council and said that they wanted approval for the European education buildings of the amount of £1¼ million and for the Indian education buildings of the sum £800,000. No one then said that the Government had flouted the wishes of this Council. It was not suggested by any one that Government in not carrying out the wishes of this Council that were expressed once and having come to this Council again for altering those wishes, had flouted the opinion of this Council. I believe one can quote several instances of this nature when the Council expressed its view in one way and after a few months the Government came back with an amended or modified proposal because they did not think they could carry out the wishes of this Council and this Council had agreed to those modifications and amendments time and again.

Now, in this case, if the Government comes with a Bill to ask this Council that the opinion of this Council now is required whether a Bill should be passed in a form which is in conformity with the public opinion of this country, to say that the Government has flouted the wishes of the Council is, in my opinion, an erroneous view.

For these reasons, Mr. Speaker, I strongly oppose the motion before the Council. (Applause.)

MR. MATHU: Mr. Speaker, I rise to oppose this motion and in doing so, I should like to congratulate the Government in the action they have taken. I think I would be painting a very fair picture when I say that, as far as the African community in this country is concerned, the confidence of the Government has deepened in that community, since the 15th January when the announcement came in the Press that they were going to take the action which they have taken to-day. (Applause.) And to suggest then that we should support a motion which, in effect, is a motion of censure on the Government, I think we would ourselves on this side representing African Interests not be acting in the interests of our own people.

Sir, previous speakers have gone over the historical grounds which have led to the present situation, I do not propose to go over that because it has been done I think quite fairly and accurately by the hon. Deputy Chief Secretary and my hon. friend the Member for Eastern Area, Mr. A. B. Patel, but I would like to say this, that when I agreed to the appointment of the Glancy Commission in this Council, I made a definite reservation that my agreement to that appointment did not commit me or commit the African community to accept any recommendations which that Commission may put forward —that is in the Hansard. And when the motion to adopt the Glancy Report came up, I emphasized that very aspect of the problem very carefully. Now, Sir, the hon. Mover has, I think laboured very meticulously over this question of accepting the appointment of the Commission and I should like to place on record again that the African community never committed itself to accepting any recommendations which that Commission had to make without looking into those recommendations very carefully, and when the recommendations came and we looked at them very carefully, we found ourselves unable to support them. The recommendation which is mainly responsible for this motion was that of finding an alternative to fingerprinting. Now, Sir, even those who supported that alternative method of fingerprinting admitted that fingerprinting is the only infallible way of identification and if it is the only infallible way of identification, I can see no other reason for not continuing with that system which is the one and the only one that gives us exactly what we want, and on those grounds, I think that this Council would be most unwise in adopting a motion which is before us to-day which would indirectly go to support this alternative method of fingerprinting.

Now, Sir, the constitutional issue has been raised and the hon. Mover says in the motion that the Government of Kenya is flouting the authority of the Council. Now, I think my hon. friend, Mr. A. B. Patel, dealt very ably with that

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and I do not think that, constitutionally, Government has acted in any way except the proper way and that point I do not think therefore arises.

Now the hon. Mover mentioned the question of precedence. Now he says that if we allow the Government to get away with it, so to speak, then this thing will happen every time this Council passes a resolution. Now I do not think that that is the case particularly when we have pointed out that there is no constitutional point which arises but even if it were, I do not think we can make a general rule from one particular case. It would be illogical during the days of Socrates and the days of the hon. Mover to-day and in that way, therefore, I do not think the question of precedence has very much weight.

In moving the motion, he did say that apart from fingerprinting, later it was found that the Africans throughout the country did not want to part with the record of employment which is contained in the *kipande* which they have been carrying about with them since the passing of the Native Registration Ordinance. Now, that, as I pointed out during the debate on the Glancy Report, is a surprise to us because the view we have from most of the Africans is directly opposite and where this other evidence comes from the Africans that they want to retain the *kipande* as it was, I cannot understand, when they have agitated ever since it was introduced in 1919 and they have gone on persistently against it and now the hon. Mover says that evidence was that they wanted to retain it. I would like to place on record that that is not a proper representation of the facts as the African people have always opposed this and I think they will continue to oppose it even if it came in a disguised form in the form of a voluntary record of employment.

Now there is a final point, Sir, I want to make, and it is this: that the European community have claimed, and I think rightly, leadership for all the communities in Kenya. We do not grudge them that, and we would support them to guide this country in the right direction wherever possible. We feel, Sir, that is just, but if this motion goes through and further controversy starts encouraged by a motion of this kind, then that will not help to convince the lad that this leadership is a wise one, and I think the European Unofficial Members of this Council would be very well advised perhaps to think it over and see whether they could not see their way to withdrawing their motion because it would definitely be to the interest of the whole country and not to any one section, because I feel in the event of their withdrawing not only would there be better relationship between the people and the Government but there would be also inter-racial harmony if that happened, because that is definitely what I think would happen, and if they would like to think again I think it will not show that they were going back on their word. It would actually show the nobility which I know is in the depth of their hearts. I appeal to them that this motion, if they would look into it, should be withdrawn, and then we could deal with the more important matters which are placed on the programme of this Council this time.

Sir, I beg to oppose the motion. (Applause.)

MR. BLUNDELL (Rift Valley): Mr. Speaker, in speaking to the motion I do not want to deal at great length with the question of fingerprints. I feel we have, once or twice in this debate diverted, from the real issue which lies in the terms of the motion. Now I have not had a great deal of training—none in fact—in the tortuosities of the law, nor have I sat for some years in Colonial legislatures and therefore developed a way of speaking which makes what I say to-day different to-morrow. I am going to try and put the situation as I see it on this matter quite plainly, as I believe the ordinary citizens, the ordinary European citizens of the Colony, will see it. I also believe that this debate will be of value to us because I think there is a fundamental weakness in the approach of Government to the problems which Government in a minority present, and I think we can draw a lesson through this debate which will not only help us on this side of the Council but help the hon. Members in the whole business of Government. There is a fundamental in governing, in my view. It is this: you cannot govern unless you know what you wish to govern about. It is a fundamental that unless your mind is made up you cannot govern, and it is

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my submission the whole of this trouble has arisen from the word "go" because there was an instability of decision from the beginning on the Government side.

It begins—I am not going to go into the history—but at the time, the very moment when the Chief Secretary had said that Government did not think there was any cause to alter the law as it now stood; whatever the words he said were, I think his intention was clear—in his view there was no need to alter the law, it should stand. (Hear, hear.) Nevertheless, at that time there was prepared and ready a possible amendment to the Registration Ordinance, so that even at that very early stage, despite those bold words, there was in effect the beginnings of a "let out" if public opinion for the development against fingerprints, or an alternative, proved to be very strong. I think myself that that fundamental indecision of Government in these matters has continued almost up to the very present time, and the tempo of what the hon. Member for Trans Nzoia called "wobble" has increased. I am certain in my own mind—and, as I said, I am going to speak as (I hope you will agree) an honest, decent European citizen of this Colony. I am certain that when the Government moved the adoption of the Glancy Report at that time they were of the opinion that they would back it. There is no doubt in my own mind, reading the speeches of the hon. Acting Chief Secretary, the Member for Agriculture and Natural Resources and the Member for Commerce and Industry, that they had no other intention but that Government would support the motion, and the interpretation which I and ordinary people drew from that was that in supporting the motion they would support the suggestion in the Report. Three months have passed—and I am citing a point which the hon. Member for Trans Nzoia made—I am clearly certain in my own mind that during those three months something happened and the Government decision—that decision altered. From having been determined to press the matter forward they began to waver, and that is why the hon. Acting Chief Secretary put in the last part of his speech a caveat which would enable him to have a "get out" if he wanted it. I am perfectly certain in my own mind that even at that stage the Government had not made up their mind whether to support the Glancy Commission's recommendations or not; nevertheless, they presented to this Council a face which suggested that they did, until the very last moment. Now I am absolutely unable to accept the suggestion by the hon. Acting Chief Secretary, as he then was—he is now Deputy Chief Secretary—that Government can come to this Council and put forward a point of view when they hold literally the opposite point of view, in the hope that they will sway Members on this side. I ask hon. Members here if that is the case—if, when Government Members are speaking, they are speaking with one voice, but behind in their minds is the opposite. What reliance can we place on any one single word? I believe it is the whole basis upon which my former belief in the integrity of Government was brought up. Now the lesson I want to drive home from this motion is, it is essential that Government make up its mind on its policy and go forward. It is absolutely wrong that the Government should say so many words and yet in their heart of hearts know or suspect that they are going to rat. They must have known that, or the hon. Acting Chief Secretary, as he then was, would never have put in the end of his speech the caveat which he did.

Now, I think there is a lesson which we must learn. It is that, although Government is in the minority, the fundamental essence of Government is decision.

Now, Sir, the Deputy Chief Secretary has not in my opinion given us any reason why Government voted. None. I cannot see why Government voted.

THE DEPUTY CHIEF SECRETARY: You cannot have been listening.

MR. BLUNDELL: Would you get up and say it again?

THE DEPUTY CHIEF SECRETARY: Most certainly. I said the reason that we voted was to ascertain in the only way in which ascertainment was possible what the views of hon. Members opposite were. Is that not a perfectly good reason?

MR. BLUNDELL: No, Sir, it is not a perfectly good reason. They could have

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ascertained the views of hon. Members on this side by not voting and they would have had a straight-cut issue of ten votes for and ten votes against. It was not necessary for hon. Members on the other side in my opinion to mislead the ordinary decent citizen by voting. When they voted on that motion in my view every member of the public who read reports of the debate would believe that Government was behind the motion and in so being behind the motion intended to implement the recommendations of the report. If the hon. Member is really honest when he got up and made the impassioned, sincere, honest part of his speech at the beginning of Hansard, something like five columns of it, with at the back of his mind the idea that he would sway all of us on this side, and if he did not, he would throw overboard every word of his sincerity, every word of his honesty, then all I can say there is no object whatsoever any Member on this side of the Council sitting here and listening, because there is no truth and no sincerity in what the hon. Member opposite is saying.

Now, the hon. Member asked when he was speaking why a Member on this side did not get up on a point of order and challenge what was his real intention. I could only speak for myself. I have always, until recently, certain revelations were made by the hon. Labour Commissioner in London about the efficacy of trades unions in this country before the Royal African Society and I contrasted what he had said in London with what he had said in this Council. I had always believed in the integrity of Government. And the reason hon. Members I believe on this side did not challenge it is that they were left with the impression that in voting Government intended to support the recommendations of the Glancy Report.

Now, Sir, the hon. Member made great play with the fact that as the voting was level, he thought the *status quo* should be maintained, but it has not been. If I may take the voting and analyse it, and let us forget for a moment anything about race or colour, but merely treat it as the voting of citizens of Kenya on this side of the Council. What was the position? If we may cast our minds back to the satires of Swift and use the similar sort of words that he would have used, there were ten on this side anti-reporters and there were ten pro-reporters. What has Government done? It has not been consistent even to the very end. It has now said that, in the light of the voting, it has developed in policy. What has it done? As far as the pro-reporters were concerned it has incorporated those suggestions dealing with a voluntary record of employment and as far as the anti-reporters were concerned it has not incorporated the suggestion dealing with an alternative to fingerprinting, so even at the very end the Government did not follow the voting. The voting was ten-ten, and if it was going to support the anti-reporters I cannot see why it has brought in these two amending Bills. If on the other hand, it intended to support the pro-reporters, why has it left out the one initial and most vital recommendation in the Glancy Report? Now, it is these inconsistencies in the Government attitude—hon. Members will forgive me if I speak with some amount of—not temper, Sir, but—feeling. I have done my best in the three years that I have been an Elected Member on this side of the Council to support and believe in the integrity of Government, but hon. Members will forgive me if I am absolutely frank. I found the speech of the hon. Deputy Chief Secretary a mass of inconsistencies. I felt that he was a man who, from the word go, like an unwilling maiden, had been forced to go against his will and that the whole of the time, at each of the steps, he had left a little gate out of which he could slip if necessary and with which he could defend himself in this Council. Now, he will forgive me saying that, but I am certain of it. I am certain that from the word "go" the Government wanted to stick by the Law, but they had not, if I may use a medical term—no, I will not use it, Sir—(laughter)—they had not got the courage to say "this is our opinion and we are going to stick by it". When each time they said that they fiddled about behind unlocking the gate so that they could, if necessary as I have already said, slip out.

Now, again I think that that inconsistency, that specious outlook on the part of hon. Members opposite is brought out again in the sobstuff about "in the emer-

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gency with which we are now surrounded it is essential, etc., that there should be some adequate national registration". It may be so, but it was not necessary in the last war and it was not necessary in England. The hon. Member may have arguments about a homogeneous community, but nevertheless I do not believe that that was the actuating factor which made the Government's decision. It is now being brought forward as an excuse for that decision, but there is a vital difference, and that is where I accuse the Government of being inconsistent in this matter. I believe that all the time in your heart of hearts you have wanted to insist upon the Law. You have been driven off that course hither and thither, but how you have made up your mind you are not prepared to give the real reason and you have adduced all these other reasons which in my opinion are merely after the fact and nothing to do with your actual decision.

A further point, Sir; the hon. Member glossed over the resignation of the late—(laughter)—of the ex-Member for Nairobi South. Now, those who on this side of any race or colour, who served with the ex-hon. Member for Nairobi South will never, never doubt one thing about him, that was his integrity. (Hear hear.) Now, I am certain that had he had any suspicion of the real intentions of Government he would not have resigned and it was because he was doubtful, whatever any hon. Member says—

THE CHIEF SECRETARY: Nonsense!

MR. BLUNDELL: The hon. Member may shout "nonsense", Sir, but if he is not an intelligent human being and he cannot decide what is intelligent sense and what is nonsense I cannot help him. (Laughter.) You will never convince me, never, that the hon. Member for Nairobi South resigned because he thought you were going to let the Law remain as it was, you will never convince me of that. He would never have resigned, and it was because he suspected you and he knew at that time that you had not made up your minds that he resigned, and no amount of glossing over is going to get over that.

Again, Sir, this soft sweet plea that the Government decision can only be made in the light of the voting on our side of the Council. How many times in the last three years have I sat here and heard Bills—controversial Bills, the shilling on the income tax for companies—passed by hon. Members opposite voting with one or the other groups on this side. If we are going to adopt this attitude that we cannot decide anything until hon. Members on this side have voted, I do not believe that we shall be able to govern at all.

Now, to finish, I have spoken with a certain amount of heat—

THE ATTORNEY GENERAL: No!

MR. BLUNDELL: But I do not think any hon. Member on the opposite side will say that I put into anything that I have said any bitterness. The lesson which I wish hon. Members of this Council to draw is what I began with. Here we have a set-up where, for the good of all races, it is essential that there should be a Government, and that Government is in the minority, and I have felt for a long time that the only basis upon which it can govern is the absolute sureness and sincerity of its own decisions. It can never govern as long as it is prepared to alter those decisions according to the blowings, hot or cold, from every quarter. The lesson that I want to bring out is, and this debate in my view is of the greatest value, is this, that very lesson. Even if Government are wrong and even if you are defeated, if you are convinced that your opinion is right, the responsibility for the decisions will rest on this side of the Council, and let that responsibility rest with us. That is the plea I want to make arising out of this motion.

Sir, I am not going to deal with the actual essence of constitutional matters because, as I said as I began, I am not skilled in the tortuosities of the law and making one word say one thing and mean another.

Mr. Speaker, I beg to support. (Applause.)

THE SPEAKER: If no other hon. Member wishes to speak, I shall have to come upon the Mover.

THE CHIEF SECRETARY: On a point of order, Sir, I believe that hon. Members opposite want to make points on the legal and constitutional position. Obviously, my hon. friend, the Attorney General, cannot speak until those have been made.

MR. BLUNDELL: On a point of order, Sir, is there not the hon. and learned Member, the Solicitor General, also to support the hon. Member for Law and Order? You have got two guns!

THE ATTORNEY GENERAL: I would suggest, Sir, that as the hon. Members opposite are putting forward this case which they expect the Government to answer, it would be reasonable and proper for them to put forward their whole case, including the legal side of it, before expecting the Government to answer. As to who answers on the legal side is a matter for the discretion of the Government side. We have not attempted to dictate who should put forward the case on the other side.

THE SPEAKER: It is not a matter of order as far as I am concerned. If no Member rises to speak within the next thirty seconds, I shall call upon the hon. Mover to reply to the debate.

MR. SALTER: Mr. Speaker, in order to clarify the position, may I say at once that in my submission to this Council, this is not so much a question as to whether Government have acted constitutionally correctly in seeking to introduce only a portion of the recommendations of the Glancy Report but rather it is a question of whether they have acted in a desirable, even if constitutional way. (Hear, hear.) This is not a question of power or powers, it is a question of conscience. It is the difference between "could" and "should".

I suppose anybody can make this Council look foolish and the Government machine look foolish and, indeed, the hon. Member for Agriculture and Natural Resources in the debate on the 17th May referred to that very matter when he said "just because there are divergencies of opinion on the other side of Council"—that is us—"that Government, at this stage, shilly shally, waffle and be frightened and not press the adoption of the Report to a division, I think would be merely making the Government machine look foolish". I suppose anybody can make the Government machine look foolish and at the same time be constitutional about it. It is perfectly constitutional so far as I know and I would assure hon. Members opposite that there is no legal point to this, as my hon. friend the Attorney General will know. The question is whether Council should be made to look foolish, and I would draw attention, as we seem to have departed from this to some great extent, to the original wording of this motion which we are debating. It is "That this Council, deeply conscious of its responsibility and duty to the Colony, deplores the action of Government in flouting the authority of this Council". That is the point. It is in the consciousness of that responsibility and duty that we deplore this action. We do not say it is unconstitutional or that Government have no right in law to do it.

The hon. Member for Eastern Area has said there cannot be any question of flouting the authority of this Council because Government are going to introduce an amending Bill which will be debated. Have you ever heard of such a gross gloss in the whole of your lives? It is supposed that if you introduce part of a Bill whilst you forget altogether the other half, that is not flouting it. That is the point. There could be no flouting of the authority of this Council if the Government had introduced *all* the recommendations of the Glancy Report as decided upon by this Council in August of last year. But where it says in its whim "we will forget half"—and a very material half—"of that Report and we will only introduce another part, and that part only will be debated on the amendment" then I say, and I repeat, that that is definitely flouting the decision of this Council.

The hon. Deputy Chief Secretary said that if the Report had been adopted by the majority on this side "well, of course we would have done it". Well, what sort of words are these when Government moves the thing itself, invites support for it, and then disregards half the opinion on this side of the Council. It is suggested that the object of that exercise, if I may use a military expression for the moment, was merely to test the voting on this side. The only test which was ever suggested in the course of the debate was to test whether the recommendations were good or bad in practice. I would like again to refer to the remarks of the then Acting Chief Secretary in his speech in this Council on the 17th May. It is, in fact, column

[MR. SALTER]

151 in the Hansard Reports, and he says this—"I know that strong views are held on this matter, but whether right or wrong, the Government feels that having entrusted this Inquiry to a distinguished and experienced Commissioner at the unanimous wish of Unofficial Members of the Council, and having before us, as we now have, such clear evidence of the thorough investigation which he has made into those particular provisions of the 1947 Ordinance on which different views are held, the right thing"—*the right thing*—"to do now is to advise this Council to adopt the recommendations which have been made. In proposing this course, the Government is seeking to interpret the wishes of Unofficial Members opposite in the belief that having submitted, as it were, a case for arbitration, or rather impartial examination by consent, it would be unreasonable not at least to try out the advice which has been given to us." That is the test: to try out the advice which has been given to us. Can anybody doubt that the then acting Chief Secretary was not suggesting that *all* the recommendations of that Report should be tried out in practice? And was it upon that premise that he based his argument; what is the test, then, now? It is that only half the recommendations should be tried out and one, the one upon which the greatest controversy arose, or perhaps the greatest controversy arose, should be left in the background never to be tested, never to be tried, but hoped to be forgotten? If it was desired —apart from any specific reference to it, but only by implication—if it was desired to test the opinion of this Council on this side of the Council, then what test was it? My hon. friend, the Member for Rift Valley, has already questioned the wisdom of Government in voting at all if they were to put that to the test, but having done so, and having regarded, as indeed they must have regarded, only the voting on this side of the Council, they were left with a fifty-fifty division of opinion. What, then, is the justification for Government to disregard the votes of that portion of the Unofficial Elected Members who supported them and whose votes they had asked for, to disregard those votes and to pay attention only to the votes of those Members on this side of the Council whom they had tried unsuccessfully to persuade to their own view? What sort of logic is that? I do not want to introduce any racial matter in this, although it would appear that there are some Members of this Council who would like to do so. This is, and has always been, accepted—I refer to the Glancy Report—as a non-racial, a non-biased Report.

If you accept that, what possible justification can Government have for rejecting the votes they ask for, and supporting those whom they could not persuade to their view?

Now may I refer—I am sorry to refer so often to the previous debates, but I would like to refer to the words of the hon. Member for Commerce and Industry, again in the speech of 17th May which is reported in column 184. He says: "Sir, I cannot believe that the hon. Members on the other side of Council look upon this motion as racial in character. I think some may be a little frightened to take an honest course on what, it has been freely admitted, is a Report without bias based on the integrity of a Commissioner to whom every Member has paid tribute. With these words, Sir, I beg to support". Those were his words, and I suggest that there are Members on the Government side of this Council who are unable, however much they may wish, to adopt an honest course in this matter. Something, as has been said, must have happened. We should like to know what. We should like an honest explanation, decent and honest, from hon. Members opposite who have been placed in an incredibly embarrassing position by introducing an amendment in the way they have done in this Bill. We should like to know whether they have got any minds of their own, left, or any conscience, or whether they have been bulldozed into this action by some higher authority. It is fantastic to suppose that the ex-hon. Member for Nairobi South, whose place I inadequately fill, did not resign because he knew that Government were going to support the whole of the recommendations. I was interested to hear the Deputy Chief Secretary say this morning that that could not be true because at that time Government had not made up its mind. "Had not made up its mind"!

[Mr. Salter]

It applied a test, so it says, to seek the voting, the views of the Members on this side of Council. I suppose it did not take long to realize that they were ten and ten. When did they take this incredibly difficult decision? Was it only the other day? Why could they not have taken it at once? Why not come forward honestly then and say, "This is what we are going to do", instead of allowing people to think—whether rightly or wrongly they do think throughout this country, they were led to believe by the representations which were made in debates in Legislative Council—that all the recommendations of the Glancy Report were going to be moved as an amendment to the Ordinance, and the question of the miserable controversy over fingerprinting would be solved. If you ask anybody in this country, that is what they think, and that is in my submission what they were justified in thinking.

THE CHIEF SECRETARY: No.

MR. SALTER: And if this had been a matter of legal argument—as I have said, it is not—I should have thought that the doctrine of estoppel would have applied to every single Member of the Government in the action which we are now taking; because they made representations and they invited us to support them in their representations; then they throw us away and they leave people to think this, that and the other; and they have led one hon. Member to act to his detriment in retiring from this Council. (Hear, hear.) What has now at last been finally decided, so it would seem, is that the Government have said, just as we were accused on this side of the Council of saying, "Heads I win, tails you lose". That accusation was thrown at Members on this side of the Council by the hon. Member for Agriculture and Natural Resources. Again, in the debate of 17th May, column 178 in the Hansard Report, he says: "I submit from Government's point of view it looks as though certain Members who feel strongly on these matters, on the Unofficial side of Council, in matters of this kind, like to play the game of 'Heads I win, tails you lose'. In other words, had the Commissioner reported that no change in the law was possible, they would have applauded his finding. But, as he has reported that in his opinion it is possible and might indeed be advisable to introduce certain changes, they refuse to accept the Report". That was the accusation flung at us on this side and I return it.

There is only one other thing I would like to add to what I have already said, Sir. By manifesting their intention to implement only part of the Report, and to disregard that part of the recommendations of the Glancy Report which deal with the alternative to fingerprinting, there is hardly a person in this country who will not regard Members of the Government with disrespect. They have lost their prestige, and I can assure you they will be a matter—however regretfully it may be—of contempt. (Question.)

THE CHIEF SECRETARY: Rule him out of order.

MR. SALTER: It is bitter for me to say this, and I refuse to believe that many of the Members opposite are honest in their consciences in seeking to—

THE CHIEF SECRETARY: The hon. Member is out of order.

MR. SALTER: If I am out of order I will withdraw it, but it will not stop people thinking it. That is what I am saying.

There is only one other thing, Sir. In my view this motion does not go far enough. I am not going to move any amendment to it. I will reserve such comments on that subject if and when the Bill is introduced at a later stage in these sessions. I do not think it goes far enough, because I think that not only should we state that we deplore the Government's action and openly state our disapproval of it, but we should say, "Take this thing away and bring in what the Council decided".

DR. RANA (Eastern Area): Mr. Speaker, I rise just to pass a few remarks over this lamentable debate.

First of all, Sir, having opposed the Commissioner's report, also having accepted universal fingerprinting for the good of this country against my wishes, I must say that after this debate I have a sympathy with the Mover of this motion for the objects and reasons which prompted him to bring it but at the

[Dr. Rana]

same time I have never during the course of the period that I have been a Member of this Council, ever believed in remaining neutral, but with the heat which has been created already by the hon. Member for Rift Valley I thought it would be better not to associate the Coast heat as well. I have decided to remain neutral, Sir, on this matter, before I sit down I would make a plea, and I will endorse the words of the hon. Member for African Affairs. He pleaded that the Mover of this motion should withdraw it after expressing all that they had to say, and the Government had to say, as we all know honestly what is good for the country and there being no legal point. I think that that is enough and I would request him that he should withdraw his motion for the good of this country and the future good relations of all races.

With these few words, Sir, I sit down.

THE ATTORNEY GENERAL: Mr. Speaker, I rise to oppose the motion. I rose to my feet a few moments ago to ask that the complete case for the other side should be put, including any legal points that there might be on what has been called the constitutional issue. I need not have made that request, for, indeed, in the speech to which we have listened from the hon. Member for Nairobi South there has been little that needs a reply—nothing in fact, I think, except vituperation. I am quite convinced that if a lawyer of the eminence and ability of the gentleman who has spoken before the last speaker had been able to discover one shred of justification of what has been advertised up and down the country as a constitutional issue, he would have put it forward in this Council. (Hear, hear.) I entirely agree with him there is no constitutional issue and I shall deal with that matter more fully in a later part of my speech.

Now, as I have said to hon. Members, I rise to oppose this motion, but there is one part of it with which I heartily agree and entirely endorse. It is the sentiment expressed in the first two lines, that, "this Council being deeply conscious of its responsibility and duty to this Colony". Being, I venture to say, Sir, as deeply conscious as any other Member of the responsibility and duty of this Council to this Colony, I am going to oppose this motion, and in doing so to put forward two contentions.

The first is that so far from flouting the authority of the Legislative Council, Government has correctly interpreted the wishes of a majority of its hon. Members by publishing a Bill which does not propose to give effect to that part of the Glancy Report which proposed an alternative method of registration to fingerprinting. And, secondly, in the changed situation which has arisen since August last, when the debate occurred on the motion on the Glancy Report, and in the state of international tension which now exists, Government would not be justified in introducing into this Council legislation which might impair the efficiency of the national register as now by law established.

The first matter raised by the motion, Sir, and falling to be examined is whether Government has in any degree flouted the authority of this Council or committed any constitutional impropriety. I suggest that it has not. Now, in examining this point it is necessary to see first what was the constitutional position, if you like—or if Members now want to get away from that, what were the wishes of this Council —when the debate on the Glancy Report to which this motion refers took place, and in order to do that I am afraid that I must go back to the original position when the law which it has been sought to amend was passed, and I must enter into a certain historical resumé which I will make as short as I possibly can.

I start with the debate in this Council on the second reading of the Registration of Persons Bill in 1947, which constitutes the present law on the subject. That debate took place on the 24th July, 1947, and is reported in Hansard, Vol. XXVII at column 117 and following columns. This is from the speech from Mr. Wyn Harris, then Chief Native Commissioner, in moving the second reading of the Bill, which constitutes the existing law—"The history of registration goes back a long way not quite as far as soil erosion but very nearly. It was in 1915 that regulations were first enacted, but it was not until 1919 that any were actually brought into force. By that time we had had a very serious lesson in the need for native registration. We had in our possession some £200,000 which was

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payable to various members of the Carrier Corps or their dependants, and we failed completely to identify the recipients, and the vast majority of that money had to be retained and paid to native trust funds. I would compare that with the last war, where Col. Imbert in Military Records used a very similar system of registration and identification to ours, which interlocked with the Kenya system. Payments had gone up to £7,000,000, and the money was paid out to Africans without any friction and very little abuse of identity. The present Ordinance which works the present *kipande* system came into force in 1921, and with few modifications has persisted until now and, on the whole—and I say on the whole advisedly—it has done us very well for a quarter of a century". I pause there to say that there may, of course be other uses for an efficient and complete national register than the payment of gratuities.

The next passage to which I must refer to column 121, when Mr. Wyn Harris recited some of the history of this matter and mentioned and that a "sub-committee which was very well publicized and toured the country and heard a great deal of African evidence and received a considerable amount of evidence from Europeans" had been set up. "It also had—I forget how many but I think 88 memoranda from Africans and something in the neighbourhood of 20 or 30 from Europeans. They made ten recommendations to the Labour Advisory Board." Then he went on a little lower down—"The recommendations to Government as modified are ten in number. The first one was that universal registration should be introduced into this Colony for all races". Then he mentions—"The second recommendation was that a system of identification should be based on fingerprints. Here again, I submit, that the committee could have come to no other conclusion whatsoever. We already have an excellent system working in this country covering 2,000,000 of our citizens. I will go as far as to state that to the uninitiated the system is almost magical in its working. You can at the present moment take any African over 16 years of age and without asking any question but by taking his fingerprints establish his name and where he comes from, usually in less than ten minutes. It is impossible, I submit, to use any other effective system for universal registration in a multi-racial community where at least 90 per cent of the population is illiterate". He then went on to say that the fingerprint system should only be used for literates. "We who have to deal with the system consistently have told the African again and again that there is nothing harmful in giving fingerprints, and I consider that if we—

MR. USHER: On a point of order, is all this support of universal fingerprinting relevant? We have had a great deal of it from the other side.

THE ATTORNEY GENERAL: I was endeavouring to illustrate, Sir, the wishes of the Council which passed the original law. We have been accused of flouting the wishes of this Council and it seems to me, with respect, that we are entitled to go into what were the wishes of the Council throughout. (Hear, hear.)

MAJOR KEYSER: Mr. Speaker, may I say that in the debate for the setting up of the Glancy Commission I said that I believed in a National Register. Surely, Sir, we can cover all the ground and get to that stage where, on behalf of the European Elected Members, I admit the National Register. We never said we did not believe in that.

MR SALTER: On a point of order, is that not the particulars of flouting, because it says "flouting the authority of the Council in that Government had decided not to implement all the recommendations of the Glancy Report"?

THE ATTORNEY GENERAL: If I may reply to that last point, Sir, Government has decided not to implement, or rather, if I may say so, has decided to come back to this Council with a proposal which would not implement, all the proposals in the Glancy Report because of certain motives which are being very thoroughly impuned from the other side. Government, I submit, is entitled to go into the history of the matter and to show what it is and then to explain its reasons.

MAJOR KEYSER: Sir, we will be patient.

THE SPEAKER: The hon. Member who first raised the point or order must exercise a little patience and must realize that Parliamentary relevancy and legal relevancy are two different things. (Laughter.) The motion is very wide in its terms and being one of censure it must be replied to quite fully and Members must possess themselves in patience and be prepared to listen as well as to speak. (Applause.)

[The Speaker]

THE ATTORNEY GENERAL: I am obliged for your ruling, Sir, and in return may I say that I will curtail my remarks on this part of the argument as much as I can.

Well, I was quoting, Sir, from Hansard and it is only necessary for me on this debate to refer to the fact which is not in dispute that this proposal to have a national register—not only national registration, but national registration by fingerprinting, compulsory fingerprinting —received the complete and full support of the European Elected Members in that debate. That, I think, will not be gainsaid and, if I may quote one sentence from the speech of one of them (and they were all in agreement), it is this: "As the hon. Chief Native Commissioner has pointed out in the interests of good Government it will give us complete identification of all citizens, without which the modern State will not work. I will go further and wholeheartedly support fingerprinting for everybody". There were only, I think, two Asian Members who were against that proposal to pass that law in that form.

That was the reception which that Bill got in the Legislative Council when it was passed in 1947. Now, I am not suggesting that the wishes of the Legislative Council in 1947 or at any other time are immutable. Far from it; I maintain the exact opposite. But when one is accused of flouting the authority of the Legislative Council as to an amendment of the law, I think it is material to see what support that law got when it was originally passed. And it got the unanimous support of this Council except for two Asian Members.

That Bill duly became law and it is still law, and at that time it had undoubtedly this Council solidly behind it.

There was an interval while machinery to put the Bill into operation was prepared, and in the spring and summer of 1949 a considerable agitation arose in certain quarters against that part of the Bill which provided for the compulsory fingerprinting for literates. It was said that literates had other means of identification and that they should not be forced to give their fingerprints, thereby descending to the level of an illiterate. I have descended to that level—but still, that was the argument. Now, that agitation assumed some volume. It was not confined to a particularly vituperative group. If it had been it should and would have been ignored. (Hear, hear.) But it did command, undoubtedly, the support of a considerable volume of feeling in the country, as Sir Bertrand Glancy later reported. Nor is there any room for doubting the strength of feeling generally prevailing in many quarters. Hon. Members of this Council, both. Official and Unofficial, are, and I suggest should be, sensitive to genuine feeling prevailing in the country. That is; after all, part of the democratic system. I think we all took some notice at that time of the existence of that feeling and it would be less than frank to say that we did not. If hon. Members opposite were not so sensitive—were not sensitive to that feeling, I do not mean "so sensitive" in that sense—then, of course, they would not have moved for the appointment of a Commission. Similarly, if hon. Members on this side had not realized that there was feeling in the country, they would have not entertained that proposal.

I am afraid, Mr. Speaker, that I am bound to be some time.

THE SPEAKER: The clock is five minutes fast.

THE ATTORNEY GENERAL: Discussions took place. A Bill which I drafted has been referred to and I must deal with it. I was asked by certain Members of this Council—the first request came from an Unofficial Member opposite; I think, but I do not lay any stress on that—whether there was a feasible alternative to universal fingerprinting and, if so, whether I would prepare a Bill which would embody my ideas as to how that could be provided. I did so, and that is the Bill to which the hon. Mover has referred.

Now, if I may digress for one moment, and this is merely because the Bill has been referred to and I therefore must say something about its contents, I only want to give a brief outline on views which it contains which were my views. I am and have always been in favour

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of fingerprinting, for numerous good reasons which I will not go into now, because I do not think they are relevant to this debate. But if I am asked, as I was asked in 1949, whether there is any feasible alternative to fingerprinting, my answer would be as it was then and was until very recently when, in spite of what has been said opposite, the deterioration in the international situation caused me to change my view, my answer would have been "Of course there can be an alternative to fingerprinting provided that too many people do not make use of it, so as to destroy the efficacy of the register". If I may, I will explain what I mean by that. It is this: you can catalogue and categorize fingerprints and you can have, up to a very, very high limit, as many as you like, without interfering with the efficacy of the register. But if you have photographs, you cannot catalogue them, and you cannot categorize them under names or alphabetically or anything that will work in a country which may have a thousand Patels, five hundred Jagat Singhs, and innumerable Kamitis s/o Kamau. So that it just does not work. Therefore, if you have more photographs than a certain figure—I was given 10,000 as the figure—you impair the efficacy of the register. Now, that has been my attitude throughout until, as I say, very recently: that there is, of course, an alternative to universal fingerprinting provided that too many people do not make use of it so as to impair the efficiency of the register. How could that proviso be secured? The only way in which it could be secured, in my view, was to make the alternative either difficult or expensive, and my proposals—which I will not go into at length—but if I am challenged on them, I have the Bill here and it can always be read—my proposals were to suggest a system which would have been far more difficult and restrictive than that which was eventually suggested by Sir Bertrand Glanvy. That was in default of the imposition of a fee, which was my first proposal and which was the one which I would have liked to have seen adopted.

The debate was adjourned.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Friday, the 16th February, 1951.

Friday, 16th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Friday, 16th February, 1951.

Mr. Speaker took the Chair at 9.35 a.m.

MINUTES

The minutes of the meeting of the 15th February, 1951, were confirmed.

ORAL ANSWER TO QUESTION

QUESTION NO. 3

MR. HAVELOCK:

(*a*) Is it a fact that under the Kenya Income Tax Ordinance personal allowances for single individuals reduce as income increases so that they are finally eliminated when the total reaches £1,000?

(*b*) If the answer to (*a*) is in the affirmative, and especially in view of the high level of the cost of living pertaining in the Colony—

(i) Will Government consider amending the Ordinance so that the same principle is applied to the single individual as to a married man?

(ii) Will Government consider increasing the non-taxable allowances for the family man?

THE FINANCIAL SECRETARY: (*a*) Yes. (*b*) The Government will give the most careful consideration to this matter.

MOTION DEPLORING ACTION OF GOVERNMENT

THE ATTORNEY GENERAL: Mr. Speaker, before the adjournment I was relating the facts about a Bill which I drew in August, 1949, and to which the hon. Mover referred. He also referred to an interview or meeting with the hon. Chief Secretary and myself on the eve of his motion to have a Commission appointed. I think that the hon. Member has forgotten some of the material facts. I would not, myself, like to rely upon my memory at this distance of time; but, fortunately, records exist from which the facts can be checked. I would not, as he has said he would not, mention confidential matters which occurred; but when they are mentioned from the other side, I feel sure that the hon. Member, with the great sense of fairness and justice which I know he possesses, would fully agree that we must have the whole story.

MAJOR KEYSER: Certainly.

THE ATTORNEY GENERAL: I felt sure of it, Sir. As I have said, I prepared a Bill, primarily at the instance of an Unofficial Member though I was very glad to do it, which embodied my ideas of how the controversy might be settled and I gave copies to the hon. Mover as a basis of discussion, and I did discuss it with him. He did not like some of the provisions, and I noted his suggestions on my copy of the Bill. The hon. Chief Secretary knew that I was doing this: but, so far as I am aware, neither he nor any other Government Member had seen the exact terms of the Bill. It had certainly never been to the Executive Council. Government did not take the initiative in that matter, though I am fully confident that they would have been very willing that a solution should be found, if one could have been found along those lines. However, it never got to that stage. The hon. Mover and I discussed the draft. He did not like parts of it. He said he would refer to his colleagues, and he told me, some days later, that they would prefer to ask for a Commission.

He gave notice of a motion to have a Commissioner appointed, and that debate was put down, I think, for the 16th of August, 1949. Now, he has referred to a meeting which took place on the previous day—that was on the 15th of August, 1949—and he has said that Government preferred, or urged that instead of this motion there should be an amending Bill. That, I think, is perfectly true, according to my recollection, that is to say that Government, faced with these two alternatives—a Commission or an amending Bill—would have preferred an amending Bill rather than raising this controversy all over the country again, as might happen if a Commission were appointed. That is, *if the law were to be altered at all*. But Government, at that discussion which took place, made it clear then—and the Hon. Chief Secretary emphasized then—that Government felt that this was a good law and saw no reason for altering it. To the best of my knowledge that is the position which Government has maintained throughout.

Government is being accused now of misrepresenting, in a statement which was published in *The East African Standard* recently, the meaning of what the Chief Secretary said in the debate on the proposal to appoint a Commissioner which took place on the 16th May, 1949. Now, at the meeting which took place the very day before, the Chief Secretary had himself said in terms precisely what the Government attitude was. Government is now being accused of misrepresentation, and this is how it is put: The hon. Member for Trans Nzoia yesterday referred to the Government statement which appeared in *The East African Standard* on the 15th of January, 1951, in which it was stated that Government had made it clear, in the debate on the original motion, that it saw no reason to alter the present law which appeared to be a good law. He argued that that could not have been the meaning attached to what the Chief Secretary had said in the debate, which was as follows: "That is the law at the moment, and so far as Government is concerned we know no reason to take the initiative in making this inquiry".

The hon. Member said: "That can only refer to the attitude of Government to an inquiry, and cannot mean 'saw no reason to alter the present law which appears to be a good law'".

And the reasons the hon. Mover gave for stating this so positively, I will quote from the Hansard report of his speech:

> "Now, Sir, the reason why I stated this so positively is that on the 17th August, 1949 . . ."

I think the hon. Member is a little out in this date: it was a little before that, if my recollection is right——

MAJOR KEYSER: Sir, the Hansard is wrong. It was the 7th of August.

——THE ATTORNEY GENERAL: Thank you, very much. I thought it was somewhere about that:

> "On the 7th August, 1949, the hon. Attorney General handed to me copies of an amendment to the Registration of Persons Ordinance which provided for an alternative to fingerprinting, and I distributed those copies to the European Elected Members. On the 15th May"——

(I think that should be "August")——

> "the 15th August, on the eve of the introduction of my motion in this Council, the hon. Chief Secretary and the hon. Attorney General suggested

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to the European Elected Members that it would be better to move an amendment to the Registration of Persons Ordinance in the terms of the draft which had been handed to me"—

("Along the lines of that draft" would be more accurate, but never mind)—

"rather, Sir, than to move my motion for the setting up of a Commission. Because the European Elected Members had discussed the appointment of a Commissioner with their constituents, and had expressed their support for the setting up of a Commission and because, Sir, the draft Bill did not fit this matter of the *kipande*, because at that time it had been made clear to us that a large number of Africans did not want to lose the record of employment which was on the *kipande*, the European Elected Members decided to go on with the motion—to go on with the setting up of a Commission. So, Sir, it is quite clear"—

(This is still a quotation from the hon. Member)—

"*So Sir, it is quite clear that at that time Government could not have thought that they saw no reason to alter the present law which appeared to be a good one.*"

Now, Sir, I propose to quote an extract from a minute of that Meeting which I have in my hand, by courtesy of hon. Members opposite:—

"15th August, 1949. The Chief Secretary outlined the reasons why the Government Members had asked to meet European Members, and to discuss the question before Major Keyser's motion was taken. He stated that Government felt that by having a Commission of Inquiry the whole argument for and against fingerprinting would be opened again and Government thought that it might be better to bring in an amendment straight away. Government did not wish to see a split between European Members.

After a great deal of discussion, the Chief Secretary stated that having listened to what Members had to say he was satisfied that they wished to have a Commission of Inquiry. In reply to questions he stated that he could give no assurance that Government would support the Motion in the initial stages of the discussion although he would be willing to say that if it were the wish of the Council that this Commission be appointed then Government would agree."

Then lower down:—

"Mr. Rankine would give no definite assurance that Government would support the Motion and stated that it was because Government wished to avoid a split that the matter was now being discussed. *He emphasized that Government felt that this was a good law and saw no reason for altering it.*"

MAJOR KEYSER: May I interrupt the hon. Member for a moment? Sir, when he was reading the Hansard of my speech of yesterday morning, he read right down, but he did not quite finish that sentence. The end of the sentence was, "They might have thought that the law appeared to be a good one, but they certainly saw some reason to alter the present law". That does make a difference to the arguments, Sir, made by the hon. Member.

THE ATTORNEY GENERAL: I will read that sentence, lest it should be thought that the case is not being fully represented: "They might have thought that the law appeared to be a good one, but they certainly saw some reason to alter the present law".

MAJOR KEYSER: That is my argument.

THE ATTORNEY GENERAL: I will read again the sentence from the minute: "He emphasized that Government felt that this was a good law *and saw no reason for altering it*". That is the minute.

The argument of the hon. Member was that the Chief Secretary could not mean in the debate next day that Government thought the law a good law and saw no reason for altering it, because of what occurred at the meeting on the day before. But, at that meeting on the day before, the Chief Secretary had specifically stated that Government felt that this was a good law and saw no reason for altering it.

Now, I do not suggest, for one moment, that the hon. Member is knowingly misrepresenting the position to the Council. I have the most complete confidence in the hon. Member; but I do suggest that the Council should have all

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this before it, and should be able to judge.

I suggest also that, in the debate on the following day, when the hon. the Chief Secretary said this: "That is the law at the moment and, so far as Government is concerned we know no reason to take the initiative in making this inquiry": at all events the European Elected Members should not have been under any misapprehension as to what that meant, in view of the categorical statement which had been given to them on the previous day. I also suggest that the subsequent statement which was published in the *East African Standard* did not misrepresent what was meant by that statement. I do, of course, fully agree that the statement, "So far as the Government is concerned, we know no reason to take the initiative in the inquiry", refers in terms to the initiative in the inquiry, but I suggest that the meaning of that was quite clear.

The Commissioner was, as hon. Members know, appointed, and he reported and the report seemed to meet with a fairly large measure of approval. If that was what the Council wanted, and it would settle the matter, Government was prepared to give it a run. Remember, that that was a year ago, when, as I suggest, the international situation was very different.

On the 17th May, 1950, the Acting Chief Secretary moved the adoption of the report, and he said this:—

"The hon. the Chief Secretary, speaking for the Government, made the position of the Government in this matter completely clear. He said that so far as the Government was concerned no reason was seen to take the initiative in making this inquiry. In other words, the Government was perfectly content with the law as it stood. On the other hand, it had been made perfectly clear during the debate, that hon. Members on the opposite side, without exception, were in favour of the appointment of the Commission, and Government therefore was not disposed to object. Indeed, it was abundantly clear that if Government had opposed that motion, it would have been defeated on a division by the Unofficial majority, which constitutes the Council."

There again is an interpretation, on the 17th May, 1950, of what the Chief Secretary had said a year earlier on the motion: "So far as the Government was concerned no reason was seen to take the initiative in making this inquiry". "*In other words, the Government were perfectly content with the law as it stood.*"

Now, that was said *at the outset* of the debate, not at the end.

Again, in column 151, in the speech of the Acting Chief Secretary, he says:—

"In proposing this course" (that is, that the recommendations of the Glancy Report should be given a trial). "In proposing this course Government is seeking to interpret the wishes of Unofficial Members opposite."

Again that was said at the outset of the debate and not at the end, and I think it gave a tolerably clear indication of what Government's attitude was.

The debate was adjourned, and when it was adjourned five hon. Members had supported the motion—apart from the Mover—including two Government Members, and six had opposed, at that stage. It was becoming clear that, instead of a unanimous or preponderant opinion on the Unofficial side in favour of the recommendations of Sir Bertrand Glancy, there might even be a majority of Unofficial Members against.

We were, at that time, in the midst of a general strike and all hon. Members—and I particularly in my present post—had other and more important, I venture to suggest much more important, things to think about than a debate on fingerprinting. I was unwilling that, at that moment, any decision either way that might exacerbate public opinion, which was already rather exacerbated, should be come to, and I suggested that the debate should not be pressed to a division at that time. Hon. Members met me on that request, as they always would, I feel quite confident, meet me on any request which was in the public interest.

That debate was adjourned and, in return, I think the Government had an obligation to see that their position on the motion was maintained. I think that the Government did do that in August, though it is alleged that they did not. So far as I know, they would have had

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to do in May upon that voting, had the debate been finished in May, what they did in August—that was to maintain their voting of the motion and reserve their position as to any legislation which might be introduced in the light of the voting on the motion.

It has been suggested that Government should not have voted on this motion. That would have been a possibility in May. Had the division come then, I think it would have been a possibility. But in August it was no longer a possibility. I think that it would have been completely wrong for Government not to have voted for that motion when the debate had been adjourned at their request. And there is another reason why Government should, I think, have voted on the motion, and that is that, had the motion been lost, the whole of the Report would have been lost, which undoubtedly contained many valuable recommendations—although I am not saying that those recommendations could not have been put forward again.

Reference has been made to a memorandum which was sent, and it has been alleged that the statements in that memorandum were in some respect misleading. The statement was: "The Government support of the motion should remain unchanged. The Government attitude to any amending Bill introduced into the Legislative Council as the result of the adoption of the motion should be considered in the light of the voting on the motion". Now, I should have thought—it may be because I have been trained in the tortuosities of the law—but I should have thought that that would convey the idea—particularly in view of all that had happened and the fact that the Council had been told that Government was endeavouring to interpret the wishes of Unofficial Members opposite—that that would have conveyed the idea that what the Government primarily wished to consider was the Unofficial voting. After all, Government does know what its own vote is, and the only variable factor is the voting on the Unofficial side.

But it has been suggested that "something happened" between May and August. One hon. Member has gone further and suggested that Government was "bulldozed by some higher authority", I think, was the phrase, between May and August. Now, I suppose that the illusion must be quite obvious to everybody and the suggestion is that Government received some instruction from the Secretary of State. The hon. Chief Secretary will, no doubt, answer that categorically. I can only say that I know of no such instruction and I am quite unaware of being bulldozed, directed, or instructed, by anyone at all upon this matter. (Hear, hear.) I also know this, that the decision of the Government was not taken between May and August, it was taken long after. I suggest that that is another of these fantasies upon which charges are levied at the Government.

I trust that hon. Members will forgive me for making rather a long, dreary, and factual speech, it is not at all the kind of speech that I should like to make, but the charges have been made and I must deal with them one by one.

It is also suggested that the Government would not have introduced legislation to put the Glancy Report into effect even if there had been a preponderant Unofficial vote in favour of it in the debate on the motion. That position did not arise; but for my part and in my opinion, I think that Government would in that case have introduced such legislation a year ago before the international situation deteriorated. That I can only give as a personal opinion, because, as I say, the situation did not arise.

It is alleged that somehow the authority of this Council has been flouted and it has been said that there is a constitutional point. I know that that suggestion has been withdrawn or I understood yesterday that it had; but it has been advertised up and down the country and I fear that I must deal with it.

The debate was resumed on the 16th August, 1950 and is reported in Volume XXXVIII of the Hansard, and I need only—

MR. SALTER: Sir, on a point of explanation it is not a question of withdrawing a constitutional point. What I did say, I think, subject to correction, was that I considered the question was whether it was constitutionally desirable to do this, and that it was not a question of being constitutionally correct. I think those were, more or less, my accurate

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words, and I was referring not to any wider constitutional point which might arise or any legal principle involved, but I considered it was more a moral issue and that of confidence, a "should" rather than a "could", rather than any particular matter of procedure. I want to make make that quite clear.

THE ATTORNEY GENERAL: I am much obliged to the hon. Member, but, as I said, it has been suggested that there is some constitutional impropriety, so I will endeavour to answer both points.

Now, I first of all have to refer to the debate—the resumed debate, upon the motion in August, and the caveat, as it has been called, which the Deputy Chief Secretary entered. This was, of course, at the end of the debate, as has been pointed out by hon. Members on the other side. He said:

"I would also explain that the reason why we have brought this motion and the reason why we shall support it as a Government is that we want to know precisely and we will only finally know this in the light of the figures on a division exactly what are the views of hon. Members opposite on this issue. I want also to make it absolutely clear in case there should be any possibility of misunderstanding that Government will consider itself as entirely free in framing the policy which will be reflected in the draft legislation which would have to be passed into law to give effect to any of the recommendations in this Report."

Then, the hon. Mr. Erskine said: "Explain what that means". The Acting Chief Secretary went on:

"I will try and explain what that means. If this Report is accepted by this Council, it is for Government then to consider the next stage. The next stage is the preparation of legislation which will have to be brought before this Council under the terms of our constitution before the Registration of Persons Ordinance could be amended. Is that clear? As soon as we can, we shall come forward with a Bill for consideration in the Council, but we are not, as a result of this debate, committed, in any way, as to the provisions which will be put into that Bill."

It does seem to me that the position could scarcely have been put more clearly than it was put in that last sentence and, if the hon. Members opposite did not understand it, I do not think that the blame for that can really or justly be laid upon the Government, because, to my mind, that sentence, at any rate, is very clear.

Upon the division, as we know, the motion was carried by 25 votes to 10, 15 of the Ayes were Official votes and there were 10 Unofficial Ayes, and there were 10 Unofficial Noes, and two Members were absent, one of whom had already vehemently opposed the motion.

Now, it is said that the Government is flouting the authority of Legislative Council. What were the wishes of the Legislative Council on this matter? Analyse the voting, as Government said that it would do:

First, 15 Official Members, who had been in favour of the motion, if it would resolve the matter and would result in agreement, that is 15 Official Members whose spokesman had said that they wanted no change in the law, but would agree to a change if the voting showed that that was the wish of the Council, who had said that they would vote for the motion in any event in order to test the matter, but would reserve Government's rights as to the legislation which Government would introduce. That was the attitude of the 15 Official Members of the Council.

Next, 10 Unofficial Members who voted for the motion;

Next, 10 Unofficial Members who voted against;

and two Members absent.

Now, on that voting, what are the wishes of the Council as regards amending the existing law? Fifteen Members have said they do not want it amended but will agree if it is the general wish. And what is the general wish? There is no general wish. There are 10 on one side and 10 on the other. Then what is the correct interpretation of the wishes of the Council? I suggest it is to maintain *status quo*. (Hear, hear.) And I say that, so far from flouting the Legislative Council, even if there had been no inter-

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national situation, as most emphatically there is, Government is correctly interpreting the wishes of this Council in not putting into effect, or suggesting that there be not put into effect, the first recommendation in Sir Bertrand Glancy's Report. If the debate on the motion is considered it will be seen that there was a considerable amount of support for the second part of the Glancy Report. I will come to that in a moment.

I have seen it stated that in some manner Government has overruled Legislative Council. The Government has not by any executive action overruled this Council: it has not certified legislation. It comes back before this Council again with a measure which it says correctly interprets the wishes of this Council, and if Government is wrong on that, then this Council has full power to say so. It will, no doubt, throw out that Bill and something else can be introduced that appears more correctly to interpret the wishes of this Council. Where is the overruling of the Legislative Council in that? The Legislative Council is being asked to say whether Government does correctly interpret its wishes or not. And where is a constitutional point there, or where is the overruling of this Council, or where is the "should" of which the hon. Member for Nairobi South spoke? I suggest that that is what Government both can, and should, do.

Now, if a Bill to put into effect the whole of the Glancy Report had been passed in August last, could not Government come here—six months later and say—"We want to amend or repeal that Bill"? Would that be flouting the wishes of the Legislative Council? Of course, it would not. *A fortiori* when all that was done was to pass a motion. We have no laws of the Medes and Persians in our Constitution, and it is always open to the legislature to reconsider what it has previously done. It is not possible for a legislature, according to our constitutional ideas, to bind either its successors or its own future actions. Then what is improper, constitutionally, in coming back and asking this legislature to reconsider what it has previously done? I am totally at a loss to understand what constitutional issue is raised by this.

So much then for the constitutional issue. There is no constitutional issue on this matter.

MR. BLUNDELL: You have got your dark glasses on this morning.

THE ATTORNEY GENERAL: Got my dark glasses on?—And I suggest that there is no constitutional impropriety, I think the hon. Member's interjection was possibly due to the existence of other and totally distinct constitutional discussions which are, of course, going on; but that, of course, has nothing to do with this matter.

Now, that was one complaint, that we were flouting in some may—which I must confess is quite incomprehensible to me—that we were flouting in some way the wishes of this Council or the authority of this Council. Diametrically opposite, as I see it is the theme of the speech of the hon. Member for Rift Valley. His theme is apparently that Government should *not* take notice of what may be the feelings on the Unofficial side—should be prepared, if necessary, to flout the wishes of the electorate as represented opposite, and—should above all "take a line" and stick to it, and go down, if necessary, with flags flying, and exhibiting those medical adjuncts to which he referred. (Laughter.) And, Sir, if I may interject here, talking of anatomical details, I do hope that, whatever the Council does in this debate or does not do, that they will come quickly to the rescue of the persons that the hon. Member told us about in the debate last year who are in a most distressing and unfortunate predicament. He said that there were people going round the Rift Valley "with the bottoms of other fellows' tops and the tops of other fellows' bottoms". (Laughter.)

Sir, there is a great deal to be said for what the hon. Member for Rift Valley has so very forcibly and also so very good humouredly put forward. There is a great deal to be said for that view. But it is not a very easy one for a minority Government to adopt. What is more, in a multi-racial society, surely sectional splits should, where possible, be avoided and agreement, where possible, be secured—where that can be done without a sacrifice of principle or too great a sacrifice of efficiency.

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Government *has*, albeit perhaps rather late, now taken a line on this matter and intends, I hope, to stick to it. I shall expect the approval of the hon. Member for the Rift Valley for that, even though I may not get his support. I do not delude myself that I am going to get his support, but, even though I do not get it, I expect to get his approval.

The line which he indicated is the line which the Government usually does take—(Cries of "wobble" from Opposition.)—No, not "wobble", but that which the hon. Member indicated, that is to "take a line" and try to put it through. Government puts forward a proposition and it may have to vote with one or other group; but it also does try, as I have said, to avoid sectional splits if that is possible, particularly on issues which arouse hard feelings. Government was prepared to go a long way, perhaps too far, to avoid a serious division in the country on this issue and, of course, it has been attacked for "wobble". I think there has been "wobble", if by "wobble" is meant willingness to reconsider, but that is a charge from which I suggest that hon. Members opposite are not quite free. I think, if I may say so without offence, that there has been "wobble" on both sides of the Council.

Next the Government is attacked for insincerity. I have no doubt that hon. Members opposite are completely sincere, but I would say that they have no monopoly of sincerity. (Hear, hear.) Some of them make very free with charges of dishonesty, on grounds which will not bear examination. I, for one, if I may be permitted to say so, propose to vote against this motion and for the Bill, believing sincerely that that is the right course. That has not always been my view, as I have frankly explained; but I have no doubt whatever that it is the proper course now in the situation which now obtains and I have arrived at that conclusion quite sincerely and with no assistance whatever from the Secretary of State or from anyone else, and so I think have other Members on this side.

There *is* the fact of this international situation. I cannot think that the hon. Member for Rift Valley was really serious when he put forward the argument that because we got through the last war all right without universal registration by fingerprinting, we should not have it in this. Is he on the same analogy, going to vote against the Compulsory National Service Bill when it comes up?

MAJOR KEYSER: We had one in the last war.

THE ATTORNEY GENERAL: We had a very different one. In any case I am afraid that I differ from the proposition that what we had in the last war is good enough for this war, if it comes. It was one thing to accept last August an alternative system of registration which would have damaged, even to a slight extent, the efficacy of the register. That was a second best. It is quite a different thing I suggest to accept that now.

I have seen this stated in print, by a small and vociferous group, regarding the Government's attitude on this matter:—

"The latest pretext given is the changed situation. If this is examined it will be found that the situation (presumably the danger of another war) is very much as it has been for the last three years."

Is very much as it has been for the last three years! I wonder how those people would fare if they went and made that statement to our troops fighting in Korea, how they would fare if they made that statement in New York, or even in impoverished Britain, feverishly rearming to meet a serious threat.

MR. HAVELOCK: They were fighting in Korea in August.

THE ATTORNEY GENERAL: They were, but does the hon. Member suggest that the situation is better now than it was then?

MR. HAVELOCK: I do not.

THE ATTORNEY GENERAL: In truth, I suggest we are faced with a very menacing situation. We all hope that it may get no worse; but if anything breaks, we are going to be all in it together. Is this the time for some of us to plead "benefit of clergy" as against our less fortunate brethren, who are not so well educated or so fortunate, but who have also in the past been, and may again be, called upon to serve His Majesty? I suggest that the *East African Standard* was quite right when it said the other day that, "however important to some the

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matter of personal dignity may be, their views about fingerprinting do not compare in importance with the great need to understand the other man's feelings". In a time like this I say that that has a vastly added emphasis.

I suggest that the time has come to say, "No second best for us"; and I appeal with confidence to those, so many of whom are ex-Service men, who have led us in the past and who will lead us again, to set an example which those less fortunate will follow and admire. Those, not the small band of agitators, are the people for whom I care and whom hitherto I have been anxious not to victimize or affront. But I feel perfectly certain that, in these present circumstances, they will not be victimized or affronted: but will respond now, as they always do when there is danger or difficulty, and will say that Government, in taking the stand it has, has properly interpreted their views at least, and is fully justified in what it has done.

Now, Sir, if that is "sob-stuff" in the words of the hon. Member for Rift Valley, I apologize for it. I can only say that I personally believe in it, and I believe that there are a great many people in this country who will believe in it, too.

Sir, I beg to oppose.

MR. BLUNDELL: On a point of explanation, the apostle of sob-stuff in this Council is the hon. Member for the Coast.

THE ATTORNEY GENERAL: It was in the speech of the hon. Member for Rift Valley, unless I am quite wrong.

MR. BLUNDELL: "Speak soft", I believe I said, not "sob-stuff".

THE ATTORNEY GENERAL: It was in your speech.

MR. PRESTON (Nyanza): Mr. Speaker, I had hoped, Sir, that we were going to be able to manage to get through this debate without degenerating into another debate on national registration. I, personally would prefer to have discussed what I regard as a debate on matter of principle without considering the subject matter of the Glancy Report for it is the way in which this thing has been done rather than the thing itself which concerns me, and as far as I am concerned it would not have mattered to me if Sir Bertrand Glancy had been reporting on the desirability of sausages with skins against those without skins. My reaction was on a matter of principle and would have been just the same.

Now, Sir, much has been said about the position of Government according to constitutional law and precedent but I am not concerned with this, Sir, because not being a lawyer or having legal knowledge I think it is a subject beyond me. Like a great many other Kenya citizens who have not had the advantage of a legal training I think it is wiser to stick to the question of what I regard is the moral principle involved, but as to whether Government has or has not acted constitutionally or in accordance with precedent—I leave that to others to judge. But one thing which is quite certain is that they have handled this matter in such a way as to give an impression to a great many people in this Colony that they have in fact acted unconstitutionally. The hon. and learned Member for Law and Order has said himself that all over the Colony people were making a good play of the constitutional position or words to that effect. It is therefore quite apparent to me that Government must have been aware that some misunderstanding existed. Now, at the very best a Government which handles the situation in such a way as to leave doubt, or unnecessary doubt or fears, in a situation where principles and precepts are involved, I think, Sir, lays itself open to criticism, at least putting it kindly of being a trifle inept. Had Government taken, what I believe would have been the right and proper course, a perfectly simple course that should have been taken in deference to a motion which was carried by 25–10 votes. Now this course would have been perfectly simple, do all that was required in my opinion to have placed Government in a position where the public would have been in no doubt whatsoever as to their intention would have been for Government to have produced a Bill embodying all the recommendations of the Glancy Report, not half, but all, and to have brought that Bill before the Council, for in this Council, which is the right place, in my opinion for alterations to be made, they could have moved their amendments.

Now, Sir, much has been said about testing the opinion of this Council by

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voting and division. Surely, Sir, the best way to have discovered the genuine opinion of this Council on the whole Bill not only half the Bill, would have been to have moved each amendment separately as I should have thought Government would in that way have acquired far more information than in the way they have chosen.

Now, Sir, to return once more to the express desire of Government to gauge the feelings of Council by division and by vote, I would suggest that to-day when the voting takes place on this motion, Government should abstain from voting, thereby acquiring very specific information.

THE CHIEF SECRETARY: What about a line. Take a line.

MR. PRESTON: Now, Sir, I do not intend to labour a great deal of what has been said to-day, but I would pray that Government in future in their dealings would subscribe to the principle that whatsoever is decided by a majority of this Council cannot be altered except within this Council, open to all to debate upon the floor of this Council. If, Sir, this principle cannot be adhered to, I shall feel, as I think others feel, that we who sit on this side of Council will feel we are wasting our time if we continue to sit here.

I beg to support, Sir.

THE ACTING LABOUR COMMISSIONER: Sir, the hon. Member for Rift Valley in the course of his speech remarkable for its vigour than its logic, gave us a reason for doubting the integrity of the average Government servant.

MR. BLUNDELL: I did not say that.

THE ACTING LABOUR COMMISSIONER: He had heard "the Labour Commissioner" express in London, at the Colonial Advisory Board, opinions on trade unions very different from those he had expressed in this Council. Now, Sir, I am not concerned with what was said, but I would make it clear I was not that Labour Commissioner—I wish I were—as I would then be in a position to defend the imputations.

MR. BLUNDELL: Mr. Speaker, I would like to make it clear when I made that remark I was naturally not imputing to the existing hon. Labour Commissioner any offence. If I have offended him, I am sorry. It is no personal imputation to himself.

THE CHIEF SECRETARY: Mr. Speaker, if there is no other speaker on the other side, except for the Mover in winding up, then I should like to speak.

THE SPEAKER: That is a matter for the Whip to arrange.

THE CHIEF SECRETARY: Mr. Speaker, the hon. Mover will perhaps be surprised to hear——

MR. HAVELOCK: I just want to make it clear, before the hon. Member speaks, it is not necessarily a fact that there will be no more speakers on this side.

THE CHIEF SECRETARY: I think it is only reasonable that one speaker on this side should be allowed to wind up before the hon. Mover does so.

MAJOR KEYSER: Sir, that is, of course, a new departure. It has never been practised in this Council and I do not think I should like to be suddenly confronted with that suggestion. I would not say there will not be any other speaker after the Chief Secretary.

THE CHIEF SECRETARY: It is a vote of censure and that is only reasonable.

THE SPEAKER: If we are to look to and follow general House of Commons practice, what the hon. Chief Secretary says is correct, but if you wish to maintain what you allege to be the custom of this Council, that is not to follow the practice of the House of Commons, I do not know whether there is a custom of that kind. Generally, these matters are arranged between Whips, or through the Sessional Committee or something of that kind and it is not left for the Chair to interfere in such a thing at all.

MAJOR KEYSER: I would like to say, Sir, at this stage I would not like to have to commit myself to a suggestion of that sort. I have never heard it suggested in this Council before, never certainly been confronted with it. If I accept it now it will probably be a precedent for the future.

THE ATTORNEY GENERAL: Reserve your right to future legislation.

THE CHIEF SECRETARY: Mr. Speaker, may I refer to Standing Rule and Order No. 1, which says: "all cases not herein provided resort shall be made to

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the Rules, forms, usages and practices, of the House of Commons."

THE SPEAKER: Anybody else wishing to speak on this point of order?

MAJOR KEYSER: Sir, may I say on this occasion I will conform to that suggestion. If the hon Member speaks, I will follow, but I do not want it to be made a precedent without thinking about it first.

THE CHIEF SECRETARY: Mr. Speaker, I am much obliged to the hon. Member. I quite agree that if this is to be made a precedent, it is a matter which might be discussed by the Sessional Committee.

I was saying that the hon. Mover might, perhaps, be surprised to hear that I agree with the first part, the first few words of his motion.

MR. HAVELOCK: I should hope so.

THE CHIEF SECRETARY: We live in difficult times and in particular the international situation must be a cause of grave concern to all of us. At the present time therefore in this Council we have very great need of people who really are deeply conscious of their responsibility, and their duty to the Colony, and are prepared, as the hon. Member for Rift Valley has suggested, courageously to discharge those responsibilities. I do not, of course, agree with all that the hon. Member for Trans Nzoia has said. Indeed, I shall endeavour to prove conclusively that much of what he has said is in point of fact completely inaccurate, but before I begin, I would like to pay one tribute to him. He has been good enough to make it clear in moving his motion in moderate and reasonable terms that he does not intend to impugn the character or integrity of officers on this side of Council who are discharging their duty in dealing with this matter. We would like him to know that we appreciate those sentiments, and that we feel that he has moved the motion, in striking contrast perhaps to the Member for Rift Valley and especially the Member for Nairobi South, the hon. Member for Nairobi South, according to the traditions of British Parliamentary practice.

At the beginning, when this motion was first mooted abroad, a great deal was said about a constitutional issue. The Government was to be attacked for acting unconstitutionally in not adopting all the recommendations of the Glancy Report. That accusation appears to have dissolved during the debate.

MR. HAVELOCK: No.

THE CHIEF SECRETARY: No hon. Member certainly has succeeded in substantiating it in any way. On the contrary, more than one has certainly tacitly admitted that there is, in fact, no constitutional issue at all. As the hon. Mr. Patel has pointed out, there is no constitutional issue involved. The Government does not either, Sir, accept the allegation that it is flouting the wishes of this Council. The Government has no intention whatsoever on this particular question of flouting the wishes of the Council. It is doing nothing of the kind. On the contrary, it believes that it is carrying out the wishes of this Council. In any case, Sir, Council, itself, is the best guardian of its own authority. The Government is in a minority and if there is any question of its flouting the wishes of the Council, it would soon hear about it, and then indeed there would be a major constitutional issue! What the hon. Members opposite really complain about is that Government has not flouted the wishes of the Council by introducing a motion or making provision in a Bill for matters which it knows that the Council does not want.

Having failed to make out a case either on constitutional grounds or that Government has flouted the Council, some hon. Members have been driven back upon rather vague allegations of bad faith on the part of Government, based mainly on two grounds. The first is that Government did not make it clear, when accepting the motion for the appointment of the Commission, that it was opposed to amendment of the law and that it considered that the law was a good one, and did not require amendment.

The second is that the Government did not make it clear at the time that the motion to adopt the Report was moved, that it was not committed to accepting all the recommendations. Now, Sir, it has been suggested that the main issue before Council really began and was determined in the debate for the adoption of the Report. I do not wish to weary

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the Council too much by going back over old ground, particularly as that has been well covered.

MAJOR KEYSER: Too well.

THE CHIEF SECRETARY: But such a suggestion is very misleading and in order to put the question in its proper perspective I must ask the Council to bear with me for a few moments while I make some reference to the past history; because, as I have said, it is only in the light of that history, whatever some hon. Members may say, that the real issue can be seen and can be decided.

Now, Sir, it will be recalled that the original Ordinance was passed in this Council without a division. No one opposed it, with the exception of some of the Indian Members. It had the full support of the Council. In view of the fact that it is now being suggested that it is unconstitutional, or improper to go back on a decision once taken, or that the Government ought to take a line and stick to it, it is as well to remember that the Bill was passed without a division, without opposition against it. It is perhaps of interest also to recall that when a suggestion was made during the third reading that it should be deferred, it was rigorously opposed by the leader of the European Members. It was not till some time after the enactment of the Bill that an agitation started to secure to an amendment of it in so far as the method of identification was concerned, an agitation which culminated in a motion moved in this Council for the appointment of the Commission. It must seem rather odd now that although apparently it is wrong to revise a decision taken in this Council or to depart from a line once taken, the Mover at the time was not in any way handicapped by any consideration of that kind.

In reply to the motion, I made the position of the Government quite clear, that it was satisfied with the law as it stood, which it considered to be a good and proper law and saw no reason to take the initiative in amending it. I will come back shortly to the allegations that have been made with regard to the terms of that statement.

However, there is an additional factor which has a most important bearing on this decision. It is that the Government in this Council is in a minority, and had the Government at that time, as everyone knows (and no one better than the hon. Mover), had the Government not accepted the motion for the appointment of a Commission it would have been defeated and then again a major constitutional issue would have arisen. The point I wish to make, Sir, is that in those circumstances the Government had no real alternative but to accept the motion which was supported by the whole of this Council. That is the first point that I wish to emphasize upon the Council this morning. The motion was supported by all Unofficial Members opposite and the Government had no real alternative but to accept it.

May I turn now to the original motion proposed by the hon. Member for Trans Nzoia in August, 1949. No one who is being frank can say that he did not know what was the real object of the Commission. The object was to find an alternative method of registration. As I have said, the Government being in a minority accepted that motion. It was supported by all of the other side of the Council and it therefore seemed a reasonable and logical conclusion on the part of the Government that an alternative to fingerprinting was supported, at least by the majority of hon. Members opposite. I would suggest that there was no other reasonable conclusion. That is the second point I wish to emphasize this morning. The Government at the time was led to believe that Unofficial Members opposite supported an alternative method. (Hear, hear.)

I ought to make it clear that a reservation, a caveat to some extent, was made by the hon. Member for Nairobi South at the time, and by the hon. Mr. Mathu, who did state that they would give evidence before the Commission.

But, there is still another factor to be borne in mind. In this Colony of plural communities and mixed races, the Government has a very important duty, that of avoiding controversy where that is reasonably possible and can be done without the sacrifice of important principles or efficiency, and or of resolving any controversy which has arisen, if that also can be done within reason. In this particular case, as everybody knows a very serious controversy had arisen. The Government was therefore prepared, as

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my hon. friend has made quite clear, to accept an agreed solution if that would resolve the controversy. Let me make that clear—if that would resolve the controversy, and did not detract too much from the value of the register. The Government's duty was to act as conciliator. That Sir, is the third point that I would wish to emphasize to this Council. The Government was prepared to accept a compromise even although it was not the best course in its opinion if it would resolve the controversy.

May I turn now to the Report itself. I have already pointed out, I think, that it was reasonable that the Government should assume what was the primary object of the Commission. In order to resolve the controversy which had arisen, the Commission recommended an alternative method of registration. Although the Government had made its position quite clear from the start that it saw no reason to alter the law or take the initiative in amending it, and that had been emphasized once again, my hon. friend the Deputy Chief Secretary, both in opening the debate and in winding it up. He repeated what I had said in accepting the motion to appoint the Commission when he opened the debate so that there was no question of bringing that in at the last moment. For that reason, and for the reasons which I have explained, and because the Government was in a minority and because it had been led to understand that there was a solution to this controversy, the Government itself moved the adoption of the Report. I believe that the Government's reason for this course is not only crystal clear to everybody who is prepared to consider the matter on an objective basis, but I believe now—and this is for the Member for Nairobi South—as a matter of conscience that the Government was right in its action and that action can be fully justified.

In the event, as all hon. Members know, when it came to the decision on this particular motion, contrary to the indications which had been given at the time the Commission was appointed, it was seen that instead of there being a solid majority of Unofficial Members in favour of it. Members were, in fact, evenly divided. What is more, if two Members who were not present during the debate had been here, there is little doubt that there would have been an Unofficial majority, against it.

MR. BLUNDELL: You do not know, you are guessing.

THE CHIEF SECRETARY: Yes, I do, I have heard what they have to say.

MR. MATIU: As I spoke in the debate in May opposing the motion, I would have voted against it for one thing.

THE SPEAKER: That will be a convenient time for the Council to adjourn. Business will be suspended for fifteen minutes.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

THE CHIEF SECRETARY: When we adjourned the Council, I had just reached the point at which it had become clear, contrary to our expectations, that there was no substantial majority of Unofficial Members in favour of the recommendations of the Report. Thus, the reasons for the amendment to the law had disappeared. In the first place, the Government was no longer, as it had thought, in a substantial majority and being forced to accept a situation which it had made clear all along it did not like, but which it was prepared to accept in order to resolve the controversy. Secondly, it had become clear that, far from resolving the controversy, the amendment to the law would merely exacerbate it.

Finally, Sir, there is the additional factor to which reference has been made earlier. The deterioration in the international situation made it more important to have a really satisfactory register, and this strengthened the Government in the opinion, which it had held all along, that there ought to be no amendment to the law in that particular respect. We are advised that the register would be much more effective if there was no alternative, and there are strong reasons, which have been emphasized by my hon. friend, the Member for Law and Order, for having the most effective register we can, based on the simplest and most foolproof system of identification. It is, in my view, following the terms of this motion, the duty of all responsible citizens, to press for such a register at the present time and to support the Government in its efforts to establish and maintain, and I hope, Sir,

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that the hon. Member for Rift Valley, who unfortunately is not present at this time, will give his whole-hearted support to the Government now that it is taking a line, albeit in the opinion of some people, rather late in the day, and that he will give his whole-hearted support to it.

Now, Sir, may I deal with some of the points and allegations which have been made against the Government in the course of this debate. First, as regards the statement by the hon. Mover, that I did not make it sufficiently clear, either in this House or in my discussions with the European Members, that the Government considered the law to be a good one and saw no reason to amend it. Now, Sir, there has already been some argument as to what exactly was said and I do not wish to take up too much time in quoting from Hansard, but in order that there should be no argument on this particular point, may I very briefly refer to the actual remarks of the hon. Member for Trans Nzoia. My hon. friend has already quoted him in full, I would merely like to draw attention to the fact that he was referring to the discussions which my hon. friend and I had with the European Elected Members on the 15th of August, 1949, and he said: "So, Sir, it is quite clear that, at that time, Government could not have thought that they saw no reason to alter the present law which appeared to be a good one".

I have a very vivid memory myself of the conversation, but I do not wish to rely on that, I am quite prepared to take the hon. Member's own record of what took place, and I am obliged to him for having made it available to me. My hon. friend the Attorney General has already quoted and I would merely, briefly, refer once again to this sentence at the end of the record. It is, as I have said, their own record of what actually took place— "*he emphasized that the Government felt that this was a good law and saw no reason for altering it*".

So much for that quibble.

As regards what was said in the debate, it is recorded in the Hansard and I have no wish to take up further time in quoting from Hansard. Let any impartial person read it and let him form his own conclusions as to whether I misled this Council or anybody else. The hon. Member for Valley has been good enough, Sir, to confirm, in his own words, that there was no misunderstanding and that what I said was quite clear.

Now, Sir, the hon. Member for Trans Nzoia, the hon. Member for Rift Valley, and the hon. Member for Nairobi South, have all alleged that, at the time the Glancy Report was before this Council, the Government did not make it clear either that it thought the law was a good one and there was no reason to amend it, or that they were not committed to implementing all the recommendations. All those Members have all stated that we misled them, the country, and, above all, the Member for Nairobi South who resigned. My hon. friends the Deputy Chief Secretary and the Attorney General have dealt with those allegations. I would merely say this, that it has now been said that we did not make that position clear. It has also been said that I did not say that the law was a good one and there was no reason for amending it. May I repeat that if, in fact, there was any misunderstanding as to what I said at the time, my hon. friend the Deputy Chief Secretary, in introducing the motion in May, repeated what I had said and went on to explain exactly what I meant, and nobody raised any objection or any query at that time. It was only months afterwards that people thought of suggesting that there had been any misunderstanding.

Now, Sir, once more, in order that there should be no quibbling as to the actual terms of what was said, let me read what the hon. Member for Nairobi South had to say on this matter— "Something, as has been said, must have happened. We should like to know what. We should like an honest explanation, quite decent and honest, and hon. Members opposite have been placed in an incredibly embarrassing position by introducing an amendment in the way they they have done it in this Bill. We should like to know whether they have got minds of their own left or any conscience or whether they have been bulldozed into this action by some higher authority. It is fantastic to suppose that the ex-hon. Member for Nairobi South, whose place I inadequately fill, did not resign because he knew the Government were going to

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support the whole of the recommendations".

Now, Sir, my hon. friend the Deputy Chief Secretary has explained that there was, in fact, no misunderstanding, that the position had been made crystal clear, but I should like just—with your permission, Sir—to read the letter which was addressed to the hon. Mr. Erskine before he resigned. I have his permission for reading it. I do so merely in order to show, Sir, that what the hon Member for Nairobi South said is absolutely incorrect. The letter was addressed to him in August—

"Sir,

I have the honour to acknowledge receipt of your letter——

MAJOR KLYSER: The date of the letter?

THE CHIEF SECRETARY: The 21st of August——

". . . resigning your seat as Elected Member of the Legislative Council. His Excellency asks me to say that if after reading what follows you still wish to resign, he will, of course, have no option but to accept your resignations, but before doing so, I must point out that your decision appears to have been based on a misapprehension. You say in paragraph 2 that the Government has no alternative but to introduce a discriminatory method of identification by way of an amendment to the Ordinance'. That is not correct. When the motion to appoint a Commission of Inquiry was moved from the unofficial side of the Council in August last year, the Government made its position in the matter quite clear. It saw no reason to take the initiative in amending the law. If, however, the majority of the Council desire the inquiry, the Government, being itself in a minority, had no practical alternative but to acquiesce. This motion was carried. All the Unofficial Members voting in favour of it. At the time, the Government took this to mean that all, or at least the great majority, of the Unofficial Members were in favour of finding some alternative to fingerprints as a means of identification and therefore, when the Report was presented, its adoption was moved as a matter of course. When it became evident that, on the unofficial side, there was a marked difference of opinion as to whether the recommendations in the Report should be adopted, I, as Acting Chief Secretary, explained that the Government was not in any way committed to adopting the whole or any of the recommendations. It proposed to consider what amendments, if any, should be made to the law in the light of the opinions expressed during the debate and of the voting on the motion to adopt the Report. The motion to adopt the Report was taken to a division since this was the only means of ascertaining finally the considered view of Members on the recommendations in it. The question of what amendments should be made to the law will, as I have said, now be considered in the light of the views expressed during the debate and of the voting. In any case, the final question of whether the law should be amended is one to be decided by the Council if and when an amending Bill is presented to it."

MR. SALTER: May I ask whether there was any reply to that letter as to the point whether he accepted the explanation offered?

THE CHIEF SECRETARY: I will try and have that question ascertained but I do not think it has any real bearing on this matter.

MR. HAVELOCK: It has a lot, Sir,

THE CHIEF SECRETARY: The hon. Member for Nyanza suggested that the proper course would have been for the Government to have published a Bill containing all the recommendations even although it did not intend to implement them. We have been accused of misleading the country. There are, of course, various views as to what is right and proper and of morality.

MR. PRESTON: On a point of explanation, that is not precisely what I suggested. I suggested that Government should bring the Bill into Council and move its amendments to ascertain the true wishes of the Council.

THE CHIEF SECRETARY: I am grateful to the hon. Member for his explanation but it does not alter the point. My point is that if there was any question of misleading the country—to publish a Bill

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containing all the recommendations which the Government had no intention of passing, was the clearest possible way of misleading the country—(hear, hear)—and I cannot agree with the hon. Member for one moment that that would not have been seriously misleading the Council.

Now, Sir, the hon. Member for Nairobi South did ask whether there was any reply to that letter. There was a reply and I am afraid it is a little long but, as he has asked for it—with your permission, may I read it.

"Sir—(This is dated two days later)

I have the honour to acknowledge receipt of your letter, of 21st August which replies, etc.

I am grateful to His Excellency for the sympathetic concern with which he has received my decision, and I appreciate very much the trouble you have taken to explain, so clearly, Government's attitude in regard to the controversy over the Registration of Persons Ordinance, 1947, culminating in the demand for the Commission of Inquiry and the acceptance by Council of the Commission's Report.

I note too that His Excellency suggests that I might reconsider my resignation in the light of this explanation; but I regret that I must adhere to the decision I took last May and in consequence I must beg that my resignation be deemed to have taken effect from Thursday, 17th August, in accordance with section 20, Legislative Council Ordinance.

I am grateful to you for reiterating what you clearly implied in your final speech, that Government was not bound to adopt the whole or any of the recommendations in the Glancy Report. I believe, Sir, that Government is well aware that the African people of Kenya, through their representatives in Legislative Council, accepted the Registration of Persons Ordinance in 1947 because it was non-discriminatory as between racial and cultural groups. I believe, therefore, that your Government after due consideration of the present position, must come to acknowledge that the amendment of the Ordinance at this stage and the introduction of an alternate and 'second best' means of identification for persons literate in English would be, at best impolitic, and, at worst, indefensible."

MR. HAVELOCK: Carry on.

THE CHIEF SECRETARY: I will carry on—

"Unfortunately the two Members of Government who spoke in support of the Motion last May, both ignored this aspect, and actually appeared to advocate the introduction of the proposed alternative means of identification, whilst the European Elected Members nearly all supported this same proposal with such phrases as 'perfectly feasible' and 'honest attempt to solve the problem' and 'the European can readily be identified by those who administer the law, and the African is not identifiable'."

MR. HAVELOCK: More please.

THE CHIEF SECRETARY:—

"Finally, Sir, the Press, in reporting the debate and in announcing the result, clearly gave the public the impression that the next step would be the automatic introduction of the alternative means of identification recommended in the Report. (Hear, hear.) I, myself, will continue to hope that justice will be done, and in that particular respect the Ordinance will stand as enacted in 1947; but at the present time this possibility is not apparent to the public—(hear, hear)—and I must pursue the course from which I have never deviated and which has now led me to resign from Legislative Council."

I hope that all those "hear, hears" mean that we should do what the hon. writer of the letter has suggested.

MR. SALTER: It means that he would not accept the explanation, Sir.

THE CHIEF SECRETARY: He accepted the explanation.

MR. HAVELOCK: He means that Government did not make it clear to the public nor to this Council.

THE CHIEF SECRETARY: If it was misrepresented by any one—the fault must lie with the hon. Members opposite who are the representatives of the public in this Council. (Applause.)

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I now come, Sir, to deal with the allegation made by the hon. Member for Rift Valley that the Government has been guilty of indecision. It is often good tactics to take the initiative and to take the wind out of the sails of your opponents by accusing them of your own misdeeds. The Government has not wobbled. It has had a policy. It has pursued that policy consistently throughout to the best of its ability. The policy was, as I have explained, that the law was a good one and the Government saw no reason to amend it. It saw no reason to take the initiative in doing so. The reasons why it was forced to accept the situation that arose I have explained. It was faced with the unanimous demand and had no alternative but to accept it. If it had not done that, there would have been a major constitutional issue. The Government accepted what it believed was a reasonable compromise to resolve the controversy. No one on this side of the Council is ashamed of that. We believe that it was the right thing to do. When it was found, contrary to expectations, that it did not resolve the controversy but, to the contrary, would have heightened it, the Government maintained its original attitude. I think that action is right, the Government is prepared to defend it, it is prepared to accept the decision of this Council and of the country on it.

Now, Sir, the hon. Member for Rift Valley has had strong words to say about the Government taking a line and sticking courageously to it. Let us examine the record of the hon. Members opposite. In the same way, they all accepted the Bill when it was passed, no one had any objections to raise to it when the principles were debated during the Second Reading, least of all the hon. Member for Rift Valley.

MR. BLUNDELL: I think I was at the beginning.

MR. HAVELOCK: Acting.

THE CHIEF SECRETARY: At the beginning—I said during the Second Reading. I will give the hon. Member an opportunity of making up his own mind —of taking a line.

MR. BLUNDELL: Mr. Chairman, I was not present when the actual passing of the Registration of Persons Ordinance was passed.

THE SPEAKER: In 1947, were you a Member of the Council?

MR. BLUNDELL: I was only an Acting Member at the initial period of these discussions.

THE CHIEF SECRETARY: I said not at the initial period, when the Second Reading was discussed.

MAJOR KEYSER: On a point of order, Sir, did it not go to a Select Committee then?

THE CHIEF SECRETARY: After the Second Reading when the principles had been decided.

MR. HAVILOCK: Was fingerprinting one of the principles? (Cries of "Yes")

THE CHIEF SECRETARY: Well, Sir, apparently, the hon. Member does admit that he was present.

MAJOR KEYSER: So was I.

THE CHIEF SECRETARY: They all supported the Second Reading, no one raised any objection to that particular aspect of the Bill. Now, Sir, hon. Members have had a lot to say about "wobbling and shilly shallying" and all the rest. It seems to me surprising that when it came to taking a decision as to whether you should stand courageously on the line you had taken, the hon. Member for Rift Valley did not leap up in support of his contention. When was it hon. Members opposite felt this jelly-like feeling creeping over them? (Laughter.) Who began the wobbling? Who suggested that the Government should abandon its line and do something else? The hon. Mover of this motion, supported, Sir, by his "wobbler-in-chief" from the Rift Valley.

MR. HAVELOCK: Asked for an inquiry only.

THE CHIEF SECRETARY: My contention has been, Sir, that there was no doubt in the minds of the hon. Members as to what that inquiry was intended to do.

MR. HAVELOCK: To establish the facts.

THE CHIEF SECRETARY: Now Sir, we come to deal with the allegations regarding insincerity and bad faith on the part of Government officers on this side, whose duty it is to take these decisions and to support them in this Council. While certain excuses can be made for the hon. Member for Nairobi South on account of his inexperience in this Coun-

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cil, I feel that we all deplore—hon. Members opposite as well as those on this side of the Council—that he felt compelled to introduce personalities into this debate and to cast sneering aspersions on the integrity and character of Members of the Government.

MR. SALTER: I never did anything of the kind, Sir. I must take exception to that on a point of explanation. My report must show—what I am reading now, Sir—exactly what I did say. What I did say was they were placed in an embarrassing position—people I know personally—they were in an embarrassing position—"hon. Members opposite have been placed in an incredibly embarassing position by introducing an amendment in the way they have done in this Bill". Later I said what the public was thinking. I was called to order on that and then I said if I was out of order I would withdraw it, but it would not stop people thinking it. It is on the last page of the report which I have not yet amended. I said—"By manifesting their intention to this part of the Report, the disregard of that part of the recommendations of the Glancy Report which deal with the alternative to fingerprinting, there is hardly a person in this country (this is what I am reported to have said) who will not regard members of the Government with disrespect. They have lost their prestige, and I can assure you they will be a matter—however regretfully it may be—of contempt. It is bitter for me to say this, and I refuse to believe that many of the hon. Members opposite"——

THE CHIEF SECRETARY: I refuse to believe——

MR. SALTER: "It is bitter for me to say this, and I refuse to believe that many of the hon. Members opposite are honest in their conciences". Then I was interrupted but I said "It would not stop people thinking it".

THE CHIEF SECRETARY: I do not think there is any doubt as to what the hon. Member said.

MR. BLUNDELL: None.

THE CHIEF SECRETARY: May I read it out again. He said: "It is bitter for me to say this and I refuse to believe that many of the hon. Members opposite are honest in their consciences".

MR. SALTER: My point, Sir, is this: that they were being imposed upon in having to introduce measures which they themselves did not want to do. That is my point.

THE CHIEF SECRETARY: That, Sir is absolutely untrue, and may I categorically say, here and now, that there were no directions brought upon hon. Members to influence them in coming to this decision. In the first place, Sir, the remarks of the hon. Member, even on the construction that he has now placed upon them, offend against Standing Rule and Order No. 43 (10) (a).

MR. BLUNDELL: Would you read it?

THE CHIEF SECRETARY: Yes.

MR. HAVELOCK: On a point of order, the hon. Member for Nairobi South did say "If I am out of order, I will withdraw it". Does this particular arise?

THE SPEAKER: I think that if there is to be point of order raised made in a speech, it should be raised at the time—(hear, hear)—not afterwards. You may call attention to it and refute it, but to make a point of order and ask me to rule upon it now after it is all over is rather difficult. I shall have to have the Hansard before me and so forth.

THE CHIEF SECRETARY: Mr. Speaker, if you will allow me to go on, I was not asking you to act upon it, I was merely drawing attention to the fact that it was out of order.

MR. SALTER: Would you also draw attention to the fact that I withdrew it if it was out of order but said it could not stop the public thinking it.

THE SPEAKER: Order, order. I think we will leave this matter and proceed to something else.

THE CHIEF SECRETARY: The hon. Member said it and then withdrew it.

MR. BLUNDELL: He actually did withdraw it.

THE CHIEF SECRETARY: Well, Sir, I am glad to hear that he did withdraw it. I still maintain that his earlier remarks were also out of order and offensive. Sir, the matter itself is not of great importance. What he said or what he did not say does not concern us very much. What is of much greater importance is that here in this Council, we are attempting to build up a Parliamentary practice and procedure based on the best British

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tradition, in which we can discuss matters of public interest objectively, without introducing personalities or casting slurs upon the character of the persons concerned. (Hear, hear.) And I hope that hon. Member himself will come to believe that there is some importance in that practice.

I was about, Sir, to deny categorically that any Member on this side was influenced in his decision by being bulldozed by a higher authority, and I hope that the hon. Member can say the same.

MR. SALTER: Could I have an explanation as to under what higher authority I am influenced?

THE CHIEF SECRETARY: You accused us of being bulldozed by a higher authority. I said we are not being bulldozed by a higher authority and I hope he is not either.

MR. SALTER: It makes no sense to me.

THE CHIEF SECRETARY: Now, Sir, I have maintained that there is neither a constitutional issue involved in this nor a flouting of the Council, that the Government has maintained an attitude which is right and can be defended. I would only say, in conclusion, as has been said so often, inside this Council and without, that in this Colony we are engaged in a joint enterprise. It is no good your having one law for the rich and another for the poor, or one law for the literate and another for the illiterate. There are some of us who claim to be leaders and I would suggest that now in order to end this unhappy controversy, the time has come to give a lead, and it must be an enlightened lead. But any creed in which the leaders seek to set themselves apart to live in a rarefied atmosphere away from the common herd is foredoomed to failure. (Hear, hear.)

Sir, may I end by suggesting that the time has come to close this controversy, to stop the recriminations and accusations, and, as the hon. Member for Rift Valley has suggested, for the Government to take a line and to stick to it, and for all hon. Members to support that line—(hear, hear)—whether they agree with it or whether they do not—(hear, hear)—because that is the only way in which you can work things in a democratic way.

Sir, I beg to oppose. (Applause.)

MAJOR KEYSER: Mr. Speaker, I will deal with the speech made by the hon. Chief Secretary first as I have not got the advantage of a Hansard record of his speech.

Sir, I am glad to hear that the hon. Member agrees with the first part of my speech, and I hope perhaps that I might, before I sit down, convince him that perhaps he will agree with me further and perhaps vote for my motion. Sir, I am grateful to him also for his appreciation of the manner in which I made my speech. But, Sir, I would like at the same time to point out that any gratification that I might have received from that appreciation of his was detracted from by what I consider an unwarrantable attack on two of my colleagues. Having done that, Sir, I must also say with regret that I think that the hon. Member proceeded to make a speech which, in my own opinion, was offensive in parts.

Now, Sir, the hon. Member reiterated at several periods in his speech that there was no constitutional issue, and he said that he agreed with the hon. Mr. Patel that there was no constitutional issue. Now, Mr. Patel's argument about there being no constitutional issue is based on the following words: "There is another thing which I would like to mention, Sir, that, after the passing of that motion in this Council, if Government had taken any action in promulgating any law or regulation by their executive authority against the motion which was adopted by this Council, then they would have justification in saying that the Government had ignored and flouted the wishes of this Council, but in this case the Government comes before this Council again with a Bill and says 'Now, we want this Council to disapprove it or amend it'". Now, Sir, as I understand that, what the hon. Mr. Patel was referring to was the amending Bill which this Council will debate in a few days' time. That amending Bill allows for insertion of clauses allowing for the continuation of the voluntary record of service, but it includes no clauses which provide for an alternative to fingerprinting. Had that amending Bill included clauses providing for an alternative to fingerprinting, then I think there might have been something

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in the contention of the hon. Mr. Patel and something in the contention of the hon. Chief Secretary that there is no constitutional issue. Because, Sir, while it might be quite competent for an hon. Member on this side of the Council to move an amendment by which clauses dealing with an alternative to fingerprinting should be included in the Bill, nevertheless the hon. Chief Secretary is quite aware that that would involve an increase in expenditure and must receive the special permission of His Excellency the Governor before it can be introduced. So, Sir, I maintain that there is a very definite constitutional issue there, and that the argument put forward by the hon. Mr. Patel is not really—I do not quite know what the word is—valid.

THE CHIEF SECRETARY: On a point of explanation, Sir, the money for operating the law is in the Estimates.

MR. HAVELOCK: The present law?

MR. BLUNDELL: That is worse still, then, you have not even carried the Estimates out!

MAJOR KEYSER: Is it for the present law or for the amendments, including the fingerprinting, because we were, Sir, in the debate told that the alternative to fingerprinting would cost more money and, in fact, we were also told that the estimate of Sir Bertrand Glancy was an under-estimate and it would possibly cost considerably more than he had estimated. So whether the hon. Member is speaking from memory, just as I am, I do not know; it seems to me to be a battle of memories, but——

THE CHIEF SECRETARY: Sir, it is a battle of memories; so far as I am aware—the estimates, as all hon. Members know, are drawn up very early in the year—the estimates are sufficient to provide for either.

MAJOR KEYSER: Well, Sir, I am one of those who does like decisive action and not wobbling. I am going to ask the hon. Chief Secretary, Sir, do I gather from the remarks that he has just made that he would support a request to His Excellency the Governor that the necessary finance would be provided should that amendment be introduced into this Council and should it be passed? Do I gather that he will put no obstruction in the way of that amendment being introduced into this Council? That is a plain, straightforward question, Sir.

THE CHIEF SECRETARY: And I will give you a plain, straightforward answer. The answer is that if the amendment is introduced and passed in this Council, then naturally financial provision will be made available.

MAJOR KEYSER: I understand, Mr. Speaker, that according to our Standing Rules and Orders, no measure may be introduced into this Council which involves an increase in expenditure by an Unofficial without the sanction of His Excellency the Governor. Now, Sir, what I am asking the hon. Chief Secretary is will he give us an undertaking that if we introduce the amendment that I have referred to he will use his influence to get that sanction from His Excellency the Governor, for us to introduce the thing?

THE CHIEF SECRETARY: The answer is "yes".

MAJOR KEYSER: Thank you, Sir, That does, Sir, remove one doubt about the matter, but I still maintain, Sir, that until the hon. Member got up and said "yes" that there was a very definite constitutional issue, quite apart from the question of constitutional propriety. (Hear, hear.)

Now, Sir, there are two points that I would like to refer to, which have been brought up by several hon. Members on the other side. That is, first of all, the security questions that have arisen owing to the international situation. I say security measures have arisen—perhaps I am guessing again—because if my memory serves me right, no hon. Member on the other side explained to the Council what the implications of the international situation were. We know perfectly well that you cannot fight with fingerprints, but, Sir, I presume that the only implication is one of security. Now, Sir, I have always supported in this Council and outside the Council security measures for the defence of the Colony; and I yield to no one in the Colony in that matter. (Hear, hear.) And if, Sir, I could have been convinced by some arguments put up on the other side that this international situation had made the vast difference over the matter of fingerprinting or an alternative to fingerprinting the question is not whether we are

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going to have fingerprinting at all, the question is whether we are going to have an alternative to fingerprinting, and we are asked to believe that this alternative to fingerprinting, which in my opinion would only be used by very few people and which in a few years' time we should have been able to say is not wanted by anybody, we are asked to believe, Sir, that that alternative to fingerprinting is going to have a very great influence on the international situation, or on the security situation of this Colony. We are one of three territories that come under the High Commission. Our boundaries with the other two territories are wide open. Ingress into this Colony from the other two territories is easy, the other two territories have no Registration Ordinance whatsoever. Are the hon. Members opposite telling us in all solemnity that with that situation on two sides of us that the security situation or the international situation in this Colony is going to be seriously impaired? Because, Sir, if they do believe that I will say I cannot believe it just at present. I would need far more convincing than that, so I really cannot.

THE ATTORNEY GENERAL: Mr. Speaker, may I remind the Council that when I was talking upon the merits of fingerprinting a point of order was raised against me from the other side and it was alleged that that was irrelevant, and although you ruled, Sir in my favour, I promised to curtail my remarks upon that point.

MAJOR KEYSER: Sir, I am astounded! (Hear, hear.) (Laughter.) Frankly, I am astounded. Anybody who heard my speech yesterday, anybody who would read my speech to-day, will find that—I think I am right in saying—that in no case did I refer to the controversy of fingerprinting, yet what happened from the other side? The hon. Deputy Chief Secretary got up and for some considerable time he spoke about nothing but the fingerprint issue and the hon. Attorney General got up and for a very considerable time spoke about the initial history of the fingerprinting and was called up on a point of order about it. He got away with it. (Laughter.) We decided to be very patient with him, and I thought we were very patient with him. Now, Sir, when I answer his question on fingerprinting I hardly think it is gracious of him to object to my referring to fingerprints.

THE ATTORNEY GENERAL: Sir, I have no objection to the hon. Member referring to fingerprints, he is following my example which I set. I merely point out that it was his side which objected to me referring to it, and I therefore curtailed my remarks.

MR. HAVELOCK: We had to be patient now you have got to be.

MAJOR KEYSER: Anyhow, over this particular issue I will continue to say I am not again making an issue of fingerprinting, I am making an issue on the suggestion that has come from the other side, that the international situation is altered to such an extent that the alternative to fingerprinting may not be now allowed, and that, Sir, is the reason that is given, I presume, as to why the alternatives to fingerprinting have not been included in the Bill that is to come before this Council in a few days time.

I think, Sir, I have made a very strong point there. I regret, as a matter of fact, that no hon. Member may speak after me, because I would very much have liked to have heard the answer to the argument I have put up, because I do not think there is one.

Now Sir, the other question that arises I did also read out the constitutional point from Sir Erskine May's "Parliamentary Practice". I presume, Sir, that as the hon. Member for Law and Order did not reply to it, I must presume that he agreed with me that it was a constitutional point. I cannot believe, Sir, knowing him very well, that he would be so ungracious as completely to ignore a point to which I attached some importance. Either, Sir, he did not reply to it and I must therefore conclude that he did agree with the arguments I put up over that, so, Sir, there is a constitutional issue in that case——

THE ATTORNEY GENERAL: On a point of explanation, I agree with the extract which the hon. Member read from Erskine May, but it did not seem to me to be in the slightest degree relevant to the argument which was before this Council, therefore I did not specifically reply to it, but I spent a considerable time—I am sorry if it was too long—in asseverating again and again what I

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maintain—that there is no constitutional point. Now, is that quite clear?

MAJOR KEYSER: No, Sir. It is perfectly easy, Sir, to get up and say the sun is not shining, or the moon will not be up. We know it is not so. All the hon. Member has done is to get up and reiterate that there is no constitutional issue, but he has given no arguments as to why there is no constitutional issue. Over that point, Sir, I made one definite point, and I said—I cannot remember what the reference was, but anyhow I did say that according to Erskine May the motion passed by Legislative Council in adopting the recommendations of Sir Bertrand Glancy showed the opinion and the purpose of this Council. Their opinion was that the recommendations were good and that their purpose was that they should be made law, but the hon. Member did not see fit to argue that point.

Now Sir, the hon. Chief Secretary, and I think other Members, expressed the view that because all hon. Members on this side of the Council supported the setting up of the Glancy Commission, knowing full well that fingerprinting was the law and therefore Sir Bertrand Glancy could only recommend an alternative or that the law should continue, they knew what they were doing and I agree with him; and the hon. Deputy Chief Secretary used that argument and the hon. Member for Agriculture and Natural Resources used that argument, and I supported it yesterday, but I also continued to say that so did the hon. Members on the other side know that. Surely, Sir, there was no monopoly of understanding of the implications of the setting up of the Glancy Commission. Surely the hon. Members on the other side realized the implications just as well as anybody else did. But, Sir, we are being asked constantly here to forget that there are hon. Members on the other side who forget that these implications apply to them just as to anybody else; to forget that they have a vote that counts; and I cannot believe that the hon. Chief Secretary really wants the country to believe that what was really done was only on the other side.

When I referred to a chat between the hon. Chief Secretary and the hon. Attorney General with the European Elected Members over the question of a draft amendment, and when the hon. Chief Secretary asked me for our record of it, I knew perfectly well, of course, what was in the record, and I was not afraid of the arguments that were coming up. I knew that the hon. Chief Secretary would bring up the arguments he did to-day, and I was not afraid of the arguments that were coming up. I knew that the hon. Chief Secretary would bring up the arguments he did to-day, and I was not afraid of them, Sir, because I should have let him have the copy in any case whether I was afraid of them or not, but I was not afraid of them, Sir, because the feeling of hon. Members here now, looking back, on the debates that have taken place on this whole sorry matter—the feeling that we had on this side was that Government was indecisive—that Government never could make up its mind, and that minute, Sir, surely shows that. At the beginning of the meeting the hon. Chief Secretary and the hon. Attorney General were prepared to recommend to us that we should support an amendment to the Bill rather than to ask for a Commission. At the end they say that they are perfectly satisfied with the law as it is. If they are perfectly satisfied, why recommend to us to accept an amendment? They cannot tell us whether they are going to support the motion or not.

THE ATTORNEY GENERAL: Your motion was down.

MAJOR KEYSER: My motion was down, yes, but we were asked to support the amendment instead of the motion.

THE CHIEF SECRETARY: May I ask the hon. Member if he would read the first part, I think that would give the Council the answer.

MAJOR KEYSER: "The Chief Secretary outlined the reasons why the Government Members had asked to meet the European Members and to discuss the question before Major Keyser's motion was taken. He stated that Government felt that by having a Commission of Inquiry the whole argument for and against fingerprinting would be opened again, and Government thought that it might be better to bring in an amendment straight away." As I say, Government thought it would be better to bring

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in an amendment straight away, but towards the end, you see, it says: "He emphasized that Government felt this was a good law and saw no reason to alter it". Now, Sir, if that is not contradictory, what is? I submit, Sir, that at that time they really did not know what was in their own minds. They did not know whether they wanted a Commission or an amendment—what they were going to do—whether they were going to support the motion or not. Our contention on this side of the Council is that all through these debates there was indecision and vacillation and shilly shally on the part of hon. Members on the other side.

THE CHIEF SECRETARY: What about the Elected Members?

MAJOR KEYSER: I will deal with that later. Now, Sir, I would like to deal with the letter of the ex-hon. Member for Nairobi South, and at the same time I would like to express my sympathy with that gentleman for the way in which his name and his thoughts and his letters have been bandied about from one side of this Council to the other. (Hear, hear.) I first referred to the feelings of that gentleman, Sir, in the following terms—if I can find it. Now, Sir, the impression left on the country at the end of that debate because of the indecisive terms, the vague terms in which the hon. Acting Chief Secretary had spoken—at the end of his speech the impression left on the country was that Government was going to implement the recommendations of Sir Bertrand Glancy, and that, Sir, was the impression that not only did the country have but the Press had. But above all, Sir, it was the impression that was left on the then hon. Member for Nairobi South, Mr. Erskine, and Government allowed Mr. Erskine to continue under that impression, and Government allowed that hon. Member to resign from Legislative Council on a principle, because Government allowed him to think they were going to implement fully the recommendations of Sir Bertrand Glancy, and the Chief Secretary interposed at that moment "No, that is not so, as you know".

Well, Sir, we heard the letter of the hon. Deputy Chief Secretary to Mr. Erskine read this morning, and we heard the reply from Mr. Erskine dated two days later, and the final paragraph in Mr. Erskine's letter is:—

"Finally, Sir, the Press, in reporting the debate and in announcing the result, clearly gave the public the impression that the next step would be the automatic introduction of the alternative means of identification recommended in the Report. I, myself, will continue to hope that justice will be done, and in that particular respect the Ordinance will stand as enacted in 1947; but at the present time this possibility is not apparent to the public, and I must pursue the course from which I have never deviated and which has now led me to resign from Legislative Council."

Now, Sir, I am going to suggest that had the hon. Deputy Chief Secretary, who was then the hon. Acting Chief Secretary, had he in his letter of the 2fst August said to Mr. Erskine, "We are definitely not going to introduce legislation to enact the recommendations of the Glancy Report dealing with an alternative to fingerprinting" that that hon. Member would not have resigned. Now, Sir, that is my contention.

THE DEPUTY CHIEF SECRETARY: We had not so decided. The decision had not been taken. It could not possibly have been stated in the letter.

MAJOR KEYSER: In August?

THE DEPUTY CHIEF SECRETARY: Certainly, in August.

MAJOR KEYSER: But, Sir, we had debated the adoption of the Glancy Report. I am referring to the impression that Government left at the end of that debate. The impression that Government left at the end of that debate on Mr. Erskine was that Government would implement the alternative.

THE DEPUTY CHIEF SECRETARY: No, Sir. To get that perfectly clear might I just read out one sentence of that letter: "I am grateful to you for reiterating what you clearly implied in your final speech, that Government was not bound to adopt the whole or any of the recommendations in the Glancy Report." That was as far as the Government had got. It had not taken a decision one way or the other, therefore it could not have informed Mr. Erskine of any decision.

MAJOR KEYSER: Sir, he says, "I am grateful to you for reiterating what you clearly implied in your final speech, that Government was not bound to adopt the whole or any of the recommendations in the Glancy Report", and I say, Sir, that

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the final paragraph of that letter of his is, in other words saying to you, "Although you do reiterate, nevertheless I don't believe it".

THE DEPUTY CHIEF SECRETARY: No.

MAJOR KEYSER: That is how I read it.

THE DEPUTY CHIEF SECRETARY: It is a most extraordinary interpretation.

MAJOR KEYSER: I say, had the hon. Deputy Chief Secretary, in his letter, said to Mr. Erskine, "We are not going to implement the alternative to the fingerprint recommendations" that Mr. Erskine would not have resigned.

THE DEPUTY CHIEF SECRETARY: We had not decided not to implement them.

MAJOR KEYSER: He says in the bottom part of his letter in the last paragraph, "I must pursue the course from which I have never deviated and which has now led me to resign from Legislative Council". The hon. Chief Secretary, also suffering a little bit from the wobbling that I have described yesterday, then proceeded to liken our behaviour here over the whole of the fingerprint issue to that of a jelly. He did not say a fruit jelly, or a fruity jelly, but a jelly, and his argument was based on the fact that we all supported the Bill for the Registration of Persons Ordinance when it first came in; and there is no question about it, we did, and I was here and I voted for it. And there was a very good reason, also, why both my colleagues and I voted for it, and that was that in the initial stages, when the whole suggestion of registration was mooted, some of us did not like it and were rather opposed to it. But, after a considerable amount of argument about the matter with Government, we then asked whether Government would agree that a clause should be inserted in the Bill which would allow the central register to be used for all purposes of good government, whether that would include using the central register for the collection of revenue, by the police in the suppression of crime, by the Immigration Department and by any department that required the register for better government. And Government agreed to insert that clause and I cannot quite remember what the wording of the clause is, but I think it gives the Governor powers to delegate the power to use the central register to a head of a department. I am only speaking again from memory, but apparently no hon. Member on the other side can refute it, so my memory wins this time! (Laughter.)

Now, Sir, that was why, because in those circumstances——

THE CHIEF SECRETARY: There was no such clause.

MAJOR KEYSER: I say there is! Now where are we—I say there is such a clause. But anyhow, Sir, the central register can now be used for all purposes of good government. It can be used for raising revenue, it can be used by the Immigration Department, and when it first came before the country that power did not exist. Section 5 (2): "Any officer in the service of the Government duly authorized by the Governor inscribing in that behalf may in the exercise of his official duties inspect such register and make extracts therefrom". (Applause.)

THE CHIEF SECRETARY: Sir, that was always in the Bill.

MR. BLUNDELL: You said there was no such clause!

THE CHIEF SECRETARY: Introduced!

MR. BLUNDELL: You cannot say that now!

MAJOR KEYSER: I say that in the initial stages of the discussions on the Registration of Persons Ordinance there was no such suggestion, and that the suggestion came from the Elected Members and that because of those suggestions this clause was inserted in the Ordinance, and there it is. After you telling me that it was not there it is not too bad a memory, I think, going back many years, you see! And one thing it proves, that parts of my body may be jelly-like, but apparently my head is not! (Laughter.)

Now, Sir, the next step was that there was another clause in the Bill which empowered His Excellency the Governor to state a date on which this Bill would be enforced, and I admit that during that intervening period the European community did not realize what had happened. They did not realize the full implications of the Bill. But, Sir, it was not only the Unofficial community of this Colony who did not realize the full implications, because I do know of at least one very high officer in this Colony who also did not realize that the use of a photograph on the certificate that had to be carried was not a complete alternative to fingerprinting. Now, I know that

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that is a fact, and I know that that error existed in the minds of many people, Official and Unofficial, at that time in the Colony. When it was realized what the full implication was, and one must accept that the European community must accept the blame for not having realized it and, if there was any blame on the European Elected Members, for not having made that perfectly clear, then they also must be blamed for it, but that, Sir, does not warrant them being called "jellies" for it. You see, they thought that the matter was understood. Now, Sir, when the country realized what the real issue was there was a considerable amount of agitation and at that time, and I still do, I regretted that things were said that should not have been said, and which I disapproved of and which the European Elected Members disapproved of. (Hear, hear.) And then, Sir, we took a stand which no jelly could have taken, and that was we said to the country, "This is the law; we are going to insist that the law should be carried out. This is no time for amending or repealing the law". Now, there is a record of that. I said it myself at a conference of the Elector's Union in this hall, and that was published in the Press. There was an implication in that that when the time did arrive that the European Elected Members would take some steps to deal with the objections that the country had then expressed to that law. We got somewhere around August, 1949, when things happened which rather forced our hand. Anyhow, the country had got quite over that issue. I therefore gave notice then, after a very great deal of discussion in the constituencies and with the European Elected Members, as to the best steps which should be taken to meet the situation which had arisen. We then decided to table a motion for the appointment of a commission. Now, Sir, where is there indecision in all that? At the time that decision was most necessary, at the time when this country was disturbed over the thing I say that the European Elected Members took a very decisive action over the particular point and that they dealt with a difficult situation in a very decisive manner, and eased the situation in the Colony.

There is nothing indecisive or jelly-like in that attitude. And, Sir, having taken the decisions we did, having given the undertakings that we did, and having realized the implications of moving that the Commission should be appointed, having supported it, surely, Sir, the obviously decisive action for us to take—when there were only two alternatives to Sir Bertrand Glancy's recommendations, one to recommend that the present law should stand and the other that there should be an alternative—surely there was no other decisive action to take than to support the recommendations of Sir Bertrand Glancy, which we did. All I ask, Sir, is that the Government should use the English language to the full extent and say exactly what they think. My accusation is that they never did make it certain exactly what they meant. Every utterance that I have referred to there could have two meanings, evidently, though I can only see one! (Laughter.)

When I referred to the letter that I wrote to the hon. Chief Secretary referring to a memorandum which he handed to me "the debate shall be further continued at the August sitting when Government's support of the motion should remain unchanged". What does that mean, Sir? It seems to me that is quite plain English when "Government's support of the motion should remain unchanged". The quality of that support must remain unchanged, and my accusation is, Sir, that the quality of that support did not remain unchanged, and that when it did change it was in such an indecisive and vague manner that not only did hon. Members on this side of the Council not know what it meant but nor did the public or the Press, or the hon. Member for Nairobi South at that time know what it meant. What is more, Sir, I understood the hon. Member for Law and Order this morning to say that Government had only decided on the present action of not including the present alternative to fingerprinting after that debate, so that evidently Government themselves did not know what the right meaning was.

THE DEPUTY CHIEF SECRETARY: We said we were going to decide our policy after the debate. If you would be good enough to read my winding-up speech I said there as clearly as anybody could have said that we were going in the future to decide our policy in the light

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of the views expressed in the debate, and we made it perfectly clear in the debate that we had not reached a decision.

MAJOR KEYSER: "But we are not, as a result of this debate committed, in any way as to the provisions which will be put into that Bill." Well, Sir, looking back on it to-day knowing what Government's attitude to-day is to those amendments, it is easy to know what was meant there, but I say that at that time no hon. Members on this side of the Council knew what that meant. If it meant what it means to-day, then I submit that the hon. Member should have said, "but it is not our intention to implement the alternatives to fingerprinting in subsequent legislation". If that was what they intended, then that is what they should have said, and my accusation is that everything was left too vague for the country to understand.

Now, Sir, I think that that finally disposes of the hon. Chief Secretary. (Laughter.)

Now, Sir, to deal with the hon. Member for Law and Order much of what I have said answers the points that he raised. I would like to make one thing clear. I did refer in my speech yesterday to a Draft Bill, and I merely referred to it, I did not go into explanations about it, because I did not think they were relevant to the argument. But the hon. Member did explain all about that Bill, how it arose and what it contained and I would like to express my appreciation of the accuracy of the details that he gave to us. (Applause.)

Now, Sir, there is only one point about that Bill, and I said that the mere fact that Government did have a Draft Bill showed that they were prepared to amend the law at that stage. That is really all I have said, and I am sure the hon. Member for Law and Order does not contest that. Surely, the drafting of an Amending Bill shows a willingness on the part of Government to amend the law, and that is all really that I have said. Now, then, I continue to say that as they were prepared to amend the law it was not quite accurate to say at that time that they were perfectly satisfied with the law and did not see any reason for amending the law. Having produced a Draft Ordinance they must have been prepared to amend the law. I do not know, it seems common sense to me, Sir.

Now, Sir, I must go back to the letter that I wrote to the hon. Chief Secretary on the 22nd May, and the last sentence "the Government attitude to any amending Bill into Legislative Council as the result of the adoption of a motion should be considered in the light of the voting on the motion". And we are asked to believe that that means in the light of the voting on the Unofficial side of Legislative Council. No argument used on the other side could possibly convince me that it meant that. If it meant that, again, Sir, why not use the English language and say so. Why not say that "the Government attitude to any amending Bill introduced into Legislative Council as the result of the adoption of the motion should be considered in the light of the voting on the motion on the Unofficial side of Legislative Council". That is perfectly clear. But when it is put in the manner in which it is put here, it can only have one meaning and that meaning is the voting on the motion of the whole Council.

Now, Sir, a lot has been said about Government—I cannot remember what the expression was—taking a line.

MR. HAVELOCK: Shooting a line!

MAJOR KEYSER: Shooting—no, that is not it! (Laughter.) Sir, I regret the influence that has been put on my colleague from close association in this debate with hon. Members opposite that he should even put words in my mouth. But, Sir, about Government taking a line and quite honestly the suggestion has been that that is a bad thing. Sir, I would far sooner that Government took a line, even a line that I was definitely opposed to, and stick to it rather than wobble and vacillate in the way that they have done all through this business of fingerprinting. We know where we are then. And I would like to advocate that in the future. We know, Sir, all the disadvantages of a minority Government, and the hon. Deputy Chief Secretary asked me if I knew of any precedent of Government being in a minority, and quite frankly I do not, not that I know a lot about it——

THE SPEAKER: It is now a quarter to one. Council will adjourn until 10.00 a.m. on Tuesday.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 10 a.m. on Tuesday, the 20th February, 1951.

Tuesday, 20th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Tuesday, the 20th February, 1951.

Mr. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of the 16th February, 1951, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE HON. FINANCIAL SECRETARY:

(*a*) Report by the Director of Audit on the Accounts of the Colony and Protectorate of Kenya for the year 1949.

(*b*) Certificate of the Director of Audit on the Accounts of the Colony and Protectorate of Kenya for the year 1949.

MOTION DEPLORING ACTION OF GOVERNMENT—(*Contd.*)

MAJOR KEYSER: Mr. Speaker, I think that most of the points put up by hon. Members on the other side of the Council in their defence has been adequately answered by me. There is one more point that I should like to deal with before I get on to a few general remarks.

In the last paragraph of his speech in this debate, the hon. Deputy Chief Secretary said: "I can only say now in conclusion that I would like to submit to the hon. Members that in introducing the Registration of Persons (Amendment) Bill, this Government, Sir, in omitting Sir Bertrand Glancy's first recommendation has correctly interpreted the wishes of the majority of this Council and has acted in accordance with the wishes of a great majority of the people in this country and that in so doing it has acted fully in conformity with the spirit of our constitution".

Sir Bertrand Glancy, Sir, toured the country to find out what the opinion of the people of this country was with regard to an alternative to fingerprinting, and the conclusions that he arrived at were embodied in his Report and were the subject of the debate in this Council, is the debate on the adoption of the Report the hon. Deputy Chief Secretary finished up his speech by saying: "In conclusion, Sir, I would express the hope that those hon. Members who will be speaking in the course of this debate will keep in mind the essential facts that before submitting these recommendations the Commissioner has had the opportunity which they have not of hearing evidence at first hand from the lips and from the pens of persons of all races in this Colony who were sufficiently interested in this matter to bring their views before him".

The hon. Member, Sir, took the precaution of answering his own point brought up a few months before he made it. But, Sir, he also goes on to say: "and that in so doing it has acted fully is conformity with the spirit of our constitution". Surely, Sir, the spirit of our constitution is that a decision is arrived at in this Council by vote of the whole Council. Now, Sir, the main points of defence of hon. Members opposite is that we must not in this particular case accept the decision of the Council on the vote of the whole Council because, Sir, they had entered a caveat; that is their defence.

So, Sir, we must at this stage consider the manner in which this Council reaches a decision on a motion, and the hon. Member, Sir, in winding up his reply to the debate in August, 1950, said: "I will try and explain what that means". That was in answer to Mr. Erskine's question: "Explain what that means". He said, "I will try and explain what that means. If this Report is accepted by this Council it is for Government then to consider the next step".

Now, the important thing, as I say, is to know, because it is the defence of hon. Members opposite, is to have a ruling on how this Council—in what manner it shows that it has accepted a Report or has accepted a motion, and I would, Sir, like to ask you if you would be kind enough to give this Council a ruling on how the Council arrives at a decision on a motion.

THE SPEAKER: There is no point there at all. The thing speaks for itself.

MAJOR KEYSER: I thought so, too, Sir, but the hon. Members opposite do not. I say, Sir, it is on a vote of the whole Council, but hon. Members opposite say

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"No". Am I right, Sir? That is what I am asking.

THE SPEAKER: You are trying to ask me to say once a Council has voted in favour of a particular thing it is never able to go away from that particular thing. That, I cannot agree to.

MAJOR KEYSER: No, Sir. I say this Council can, by a motion, reverse a decision that was made previously, but what I am asking, Sir, is how does this Council arrive at a decision on a report or on a motion. By a vote?

THE SPEAKER: Always. That is the decision at the time.

MAJOR KEYSER: That is the point, Sir, but the hon. Members opposite argued that that was not so—that because they had entered a caveat that the decision was not by the votes of the whole Council.

ATTORNEY GENERAL: Sir, on a point of explanation, that has never been the suggestion from this side. There was a decision by the votes of the whole Council on a motion, Government reserved its position with regard to the legislation which it would bring forward, and has brought forward legislation in due course. It has never been suggested from this side of the Council that the Council cannot express its opinion by a motion. What is suggested is that that motion is not irrevocable and that Government is perfectly entitled to come back to this Council, without any disrespect or flouting, and ask the Council to reconsider its decision upon the motion.

MAJOR KEYSER: Mr. Speaker, I agree with the hon. Member opposite, but Government has not come back to this Council to reconsider its decision. He has now admitted that Government did make a decision on that day, but Government has not come back. Had Government come back with a motion that the decision on the 16th August, 1950, with regard to the adoption of the Report of the Glancy Commission should be reconsidered, then I would say they were acting in a constitutional manner but Government has failed to do that, and that is the gravamen of our charge against them. (Hear, hear.) And, Sir, with regard to the caveat that has been made so much of on the other side, it is again in the last paragraph of the hon. Acting Chief Secretary's speech in August, 1950, I will read the whole paragraph. He said: "I will try and explain what that means. If this report is accepted by this Council, it is for Government then to consider the next stage. The next stage is the preparation of legislation which would have to be brought before this Council under the terms of our constitution, before the Registration of Persons Ordinance could be amended."

"Is that clear? As soon as we can we shall come forward with a Bill for consideration in that Council but we are not as a result of this debate committed in any way as to the provisions which will be put into that Bill."

Now, Sir, I have apparently read it correctly.

THE CHIEF SECRETARY:—At last! (Laughter.)

MAJOR KEYSER: Well, Sir; may I continue? The point about that is, Sir, the hon. the Deputy Chief Secretary expressed surprise that if I did not hold the views expressed by this debate that I did not jump up and call him to order immediately. Now, Sir, I maintain that when he says we are not as a result of this debate committed in any way to the provisions that be put into that Bill knowing from the debate that the motion for the adoption was going to be accepted by this Council, it was quite obvious it was going to be accepted, there is only one interpretation that can be placed on that caveat by Members of this Council, that was that the reference to provisions referred not to principles but to details. And that is the interpretation that was put on it, not only by Members on this side of the Council but by the Press and the country and the then hon. Member for Nairobi South.

THE DEPUTY CHIEF SECRETARY: Would the hon. Member be good enough to say what he thinks in the English language the words "entirely free" mean? Can they mean anything but that the Government was not committed in any way as to principle or to detail?

MR. BLUNDELL: Certainly, it means to shilly shally and quibble and waffle—that is all.

THE CHIEF SECRETARY: You should know.

MAJOR KEYSER: What he said was "but we are not as a result of this debate committed in any way as to the provisions of the Bill". I maintain those provisions dealt with the details, not the principles.

Now, if Government is acting on the supposition that those provisions there also refer to principles, then I say, they are acting in an unconstitutional manner, because they already accepted the recommendations of the Glancy Commission and that, Sir, is our charge of unconstitutional action.

THE ATTORNEY GENERAL: Sir, on this point of constitutional propriety, on which I understand you have been asked to rule, are we to understand that it has come down to this, that the charge against Government is this, that instead of coming forward with a motion to reconsider a previous motion, they did what they said they were going to do and came forward with a Bill? That seems to me now, what all this has boiled down to.

MAJOR KEYSER: Yes, Sir. The point about that is that it is surely not the responsibility of Members on this side of the Council to see that the full recommendations of the Glancy Report, which were adopted by this Council, are brought before the Council in the form of an amendment, because it is the responsibility of the hon. Member, who has just spoken of the Bill that is coming before this Council, to see that it should have included all the recommendations of the Glancy Report, and by not including the whole of the recommendations, again I say Government has acted in an unconstitutional manner.

MR. HAVELOCK: Put the responsibility on us.

MAJOR KEYSER: Sir, I opened my speech in moving the motion—I opened by saying that I hoped that this motion would not be construed as being a re-opening of the whole fingerprinting issue, because this was not a fingerprinting issue, but it was a matter of principle involving the reputation and manner in which the affairs of this Council were conducted. On Friday last, Sir, when I was speaking, I asked the hon. Chief Secretary whether he would endeavour to get the approval of His Excellency the Governor to the introduction by Members on this side of the Council to the parts of the Glancy Report recommendations which had not been included in the amending Bill, and the hon. Member said he would. Therefore, Sir, that particular question of fingerprints is coming in the form of an amendment, and is therefore removed completely and utterly from this debate by that, and this motion therefore, Sir, reverts to where I wished it to be at the beginning—merely on the question of principle.

In his speech, the hon. Mr. Mathu suggested that it would be a good sign of leadership on my part if I withdrew my motion.

MR. MATHU: Yes, Sir.

MAJOR KEYSER: Yes, Sir, he made that suggestion. Now, Sir, I would like to say that in my view to adopt that ignoble course would be for hon. Members on this side to lose sight of the responsibilities they have to the country to ensure the proper conduct of affairs of this Council. (Hear, hear.) It is therefore, Sir, my intention that if it is necessary to force this motion to a division, my colleagues and I are quite prepared, Sir, to face a defeat on that motion, in the knowledge that we have already gained a moral victory. (Laughter.) Because we have not only made our points on the constitutional issue very successfully but, Sir, we will also have the whole of this debate on record for future generations in this country to refer to.

Mr. Speaker, I beg to move. (Applause.)

The question was put and, on a division, negatived by 24 votes to 11. Ayes: Messrs. Blundell, Cooke, Lt.-Col. Gherste, Messrs. Havelock, Hopkins, Major Keyser, Messrs. Maconochie-Welwood, Preston, Salter, Lady Shaw and Mr. Usher, 11. Noes: Messrs. Adams, Anderson, Carpenter, Cavendish-Bentinck, Chemallan, Davies, Gillett, Hartwell, Hobson, Jeremiah, Matthews, Madan, Mathu, Mortimer, O'Connor, Ohanga, Padley, Patel, Pritam, Rankine, Rhodes, Salim, Thornley and Vasey, 24. Did not vote: Dr. Rana, 1. Absent: Messrs. Nathoo and Shatry, 2.

INCOME TAX (NON-RESIDENTS ALLOWANCES) (AMENDMENT) RULES, 1951

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: Be it resolved that the Income Tax (Non-Residents Allowances) (Amendment) Rules, 1951, shall come into operation with effect from the 1st January, 1950.

Sir, if any hon. Member wishes to follow this, I advise him to listen extremely carefully because this, like every income tax matter, is extremely complicated, and I personally cannot guarantee to be able to repeat what I am about to say.

Now, the position in this matter is that, under section 25 of the Income Tax Ordinance, the Governor in Council is empowered to make rules for determining in respect of non-residents in the Colony: (*a*) what deductions may be allowed from the incomes of such individuals; and (*b*) the individual, or class of individuals, to which any such deduction should apply. Where the Governor in Council makes such rules they have to be laid upon the table of this Council, and the day on which they come into force is to be provided for by a resolution of this Council.

Now, Sir, in pursuance of those powers, the Governor in Council first made rules to govern this matter in 1945. The general principle is that, in respect of non-residents living in the United Kingdom, the deductions and allowances are so fixed as to make the amount of income tax chargeable upon any income at any level below that which would be chargeable under United Kingdom Income Tax Rules. Of course, under the double income tax relief arrangements, the individual concerned pays only the higher of the two taxes, that is to say, the United Kingdom tax. It follows from this, Sir, that every time the United Kingdom adjusts its allowances and deductions and, indeed, rates, it is necessary for us to amend these Rules. And, moreover, to preserve the relationship between the deductions and allowances permitted in respect of non-residents living in the United Kingdom and those non-residents who are not living in the United Kingdom, it is necessary simultaneously to make a corresponding amendment to the Rules in respect of the latter class of persons, living outside the United Kingdom. Such amendments were last made in 1947, and since that time His Majesty's Government in the United Kingdom has again modified the allowances and deductions applicable to that country. It therefore becomes necessary for us again to amend these Rules.

The reason why the Council is asked to resolve that the amendments should come into force from the 1st January, 1950, is the United Kingdom adjustments take effect from that year and it is necessary for our own amendments to cover the corresponding period.

Mr. Speaker, I beg to move.

THE SECRETARY TO THE TREASURY seconded.

The question was put and carried.

BILLS

SECOND READING—(*Continued*)

The Water Bill

THE SPEAKER: The Water Bill. I think when we adjourned the debate on that, the hon. Member for Agriculture and Natural Resources was speaking.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, on Wednesday when Council adjourned, I was still engaged in replying to a number of points that had been raised by hon. Members on the second reading of the Water Bill. Sir, I was replying to certain matters which arose out of the speech made by the hon. Member for Rift Valley and on Wednesday last, I was unable to reply to a point he made on clause 11 of the Bill which is before Council in which he asked whether it would not be possible to avoid mentioning in clause 11, The Land Acquisition Act of India, 1894. I have since had an opportunity of discussing this with the hon. Member for Law and Order who suggested that we might possibly include in that clause instead of "within the meaning of the Land Acquisition Act, 1894, of India" some such words as "under any law for the time being in force relating to the compulsory acquisition of land", and I think if that was so amended, it would meet the point made by the hon. Member for Rift Valley and by other hon. Members who spoke.

Turning, Sir, now, to clause 133, the hon. Member suggested that in providing

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powers to the Member on behalf of the Crown "to enter upon, used, order the use of, maintain, vary, destroy, or remove abandoned works" there should be some provision for compensation, as the hon. Member pointed out that there might be a lot of piping or stone or other valuable material which would represent money which had been invested by the original constructor of those abandoned works. That, I think, is a matter for the Select Committee. It does raise a point of principle and that is why I am alluding to it in my reply.

In clause 142, which is a very important clause, provision for appeals, a clause which was referred to specifically by a number of speakers because the whole basis of this new Bill has been changed in the matter of providing appeals, appeals which do not exist incidentally in the present Ordinance we were working under, the hon. Member did not like the Water Appeal Board and he said that he felt that at any rate, in a great number of cases, appeals should lie with the courts and not with, what he called, an amateur body specifically created for the purpose of hearing appeals. Now, Sir, that raises a very important issue indeed, and I say that my hon. and learned friend, the Member for Law and Order, also, to some extent at any rate, shares the view expressed by the hon. Members opposite in this regard, and I would suggest, Sir, that the only advantages—and they are considerable—that lie in appeals under certain conditions to a specific body is the time factor, and I would suggest that this Council asks the Select Committee particularly to go through all the different clauses in this Bill providing powers against which appeals lie, and to give advice to Council as to whether there would be any use in maintaining, as provided under the existing draft Ordinance, a Water Appeal Board to hear certain classes of appeal and possibly providing appeals to the courts—to ordinary courts of justice on other matters, not only on questions of law but also on questions of law and fact. The hon. Member did mention various clauses—we can refer those to a Select Committee.

Under clause 169, the hon. Member suggested that the powers given to the Member to declare a catchment area in a protected area and under this Ordinance introduced special measures for the protection of such a catchment area were, perhaps, rather stronger than is necessary, and the same point was raised by the hon. Mr. Mathu on this section. Well, Sir, I have been looking at this section and again I would like to refer this matter to the Select Committee, but I am myself now in some doubt as to whether the particular provisions provided under section 169 in this Ordinance should really come under this Ordinance at all—whether it might not be more suitable to deal with this particular problem under the Land and Water Preservation Ordinance or some other existing Ordinance in the Colony, but, Sir, that I would like to go into with the help of the Select Committee.

Now, Sir, clause 182 was referred to by several speakers and I think some speakers were in favour of removing this clause and I think Mr. Mathu suggested that this clause did provide a major of elasticity and certain advantages and should possibly be retained. I am afraid I did mean to speak about this clause in introducing the second reading of this Bill and I am afraid I forgot to do so—it slipped my memory—but this clause does provide complete exemption, from the provisions of this Ordinance, any area of land or any person or class of persons, and the argument put up quite strongly is that the minute you have a clause of this kind in an Ordinance, especially designed to control water on lines, that everybody is treated alike, it may lead or give the temptation that when people get into difficulties—any person or class of persons or area—to use this clause unnecessarily and not treat them in the same way as other people are treated. Also, it may, to some extent, nullify the purposes for which this Bill is introduced. Well, Sir, I think I would refer that to the Select Committee and I must say in introducing this Bill, it was my intention to suggest that on the advice—I have been given fairly universal advice—there might be great advantages in removing this clause from the Ordinance.

The hon. Member for Uasin Gishu asked again about the interpretation of

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the word "water" and he says that the existing Bill—on which we work—and the interpretation of "water" or "body of water" was not entirely satisfactory and he took me up when I said that, of course, this Bill in no way interfered with the rights of access to water for the purpose, for instance, of fishing or other purposes of that kind by pointing out that in the rule-making powers, actually, protection of fish and fish food appears under (x) of 186 (1)—and I must admit that this is a good point which had escaped me but I can again give him the assurance that this Bill would in no way interfere with the rights of owners or others to do certain things in water or on water but I would refer that to the Select Committee and make quite sure that is clear in the Ordinance when it appears before Council.

Clause 21—he mentioned, why when we exercised emergency powers we had to give notice of anything that was being done for the East African Railways and Harbours whereas everybody else was rather overlooked and the hon. Member suggested that as point of principle we should naturally treat district councils and roads authorities, for instance, or urban authorities with, at any rate, the same courtesy with which we treated the East African Railways and Harbours. Of course, the reason for putting that special clause in, as I pointed out I think, is that we cannot risk holding up the main transportation services of the Colony—however, I will put this point to the Select Committee and see if that proviso could be widened.

The other points he raised were on clause 28 and clause 88, sub-clause (2), was the very important question of principle as to whether rights or sanctions as regards the extraction of water were inherited through land as passed to an individual. If you sold your land or someone inherited it, whether that was inherited with the rights that had been given to it. That, I am afraid, is a legal matter. I see his point and I personally agree with his idea on the subject entirely and I will make sure that that again is clarified when this Bill reappears before Council.

The hon. Member also disagreed with what I said as regards the responsibility of the owner of land for any misdemeanours committed by, for instance, resident native labourers on that land. I am afraid this again must go to Select Committee, but as far as the principle is concerned I am afraid I still strongly hold the view that, normally speaking, the landowner must be held responsible for the people who he allows and encourages to come on to this land. If, of course, a disgruntled resident labourer went stealthily behind and cut a pipe with a saw, then that is another matter, but, normally speaking, I think the landholder must be held responsible.

The hon. Member for Kiambu raised two or three points of principle. He mentioned that local government should be brought into the picture in various sections. That is a matter I will refer to the Select Committee and I agree with him in principle. He also mentioned a point about compensation. If an operator was interfered with too long a time to make it difficult for him to carry out an undertaking, that, I think, would be referred to the Select Committee, but he did raise quite an important point under section 130, saying there was to be no expropriation until the operator had been given every opportunity of developing works himself. I would again give the assurance, which I think I gave in introducing this Bill, that this section in no way means to convey the power of the Member of expropriating works, really rather regardless of the interests of the operator. What we must ensure is that, in the event of an operator who, for instance, is supplying an open area of water, getting himself into difficulties of any sort or kind which might prevent that open area from getting its supplies of water, then I think everyone will agree we must give the Member powers to intervene and ensure that supply is maintained. Thereafter, whether one can put the operator into a position of developing works more satisfactorily or whether one must take away his works and give him compensation, I think that is a matter which can be considered later and I think possibly this clause is a little bit too loosely worded and does give people the impression that, in principle, we are adopting something that is not actually quite fair and I will see that

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that clause more clearly conveys the meaning.

He raised a point about the word "dwelling", but I would refer him to the proviso about dwelling. That again is a Select Committee point.

I have, Sir, one other point under section 178. Now 178 in the original draft Bill, I do not say it was the same number but there was a clause corresponding to 178 in the original Bill which protected all the civil servants of any sort, kind or description against action, and this as I explained has been considerably changed in this Bill and the only persons protected now are the Member, the Water Resources Authority, the Water Apportionment Board or a Regional Water Board. Other persons are not protected, but this is a considerable change in principle from the Bill originally produced. But the hon. Member wanted to know what was happening about the new legislation, he was under the impression was being produced for dealing with this subject generally on the line which it was being dealt with in the United Kingdom. I have the hon. Member for Law and Order's authority to say that it is still under consideration but it has raised complications and will or may see the light of day in due course.

Lastly, Sir, the hon. Member wanted me to give him an assurance that exemption of all underground water—the policy of exempting all underground water from any form of control under this Ordinance would be left for decision by the Select Committee despite the fact that it was a matter of major principle. Well, Sir, I am afraid I cannot agree to that. I am quite prepared to put it to the Select Committee and let them hear the expert evidence which we are prepared to put before them, but on behalf of Government I am afraid I cannot possibly agree of allowing a major principle of that nature to be left to the Select Committee. In my opinion the supply of underground water is just as important as surface water. I think those are the main principles which arose during this debate. I would, in conclusion, apologize to the Council for the length of time I have taken. I only had two alternatives. One was to produce this enormous document and say, "here is the Water Bill", I am going to a Select Committee who will hear all the points you raise, that would have saved a lot of time, but the excuse is that this is a highly contentious piece of legislation and is in fact the second edition of its kind. The first one never ever having come as far as this Council and in view of the back history of this Bill I felt it was better, Sir, for me to deal with it in considerable detail, which was why I did.

Sir, I beg to move the second reading of the Water Ordinance, 1950.

The question was put and carried.

REFERENCE TO A SELECT COMMITTEE

THE ATTORNEY GENERAL: Sir, I beg to move that the Water Bill be referred to a Select Committee.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

BILLS

THIRD READING

Regulation of Wages and General Conditions of Employment Bill

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move that the Regulation of Wages and General Conditions of Employment Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

BILLS

FIRST READING

On the motion of the Attorney General, seconded by the Solicitor General, the following Bills were read a first time:—

The Public Trustee (Amendment) Bill.

The Survey Bill.

The Wakf Commissioners Bill.

The Increase of Rent (Restriction) (Amendment) Bill.

The Wild Animals Protection Bill.

The Income Tax (Amendment) Bill.

Notice was given that all subsequent stages of the Bills read for a first time would be taken during the present sitting.

BILLS

SECOND READING

The Native Courts Bill

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, I beg to move that the Bill entitled "An Ordinance to make better provision for the administration of justice in Native Courts and for matters incidental thereto and connected therewith" be read a second time.

Mr. Speaker, before proceeding to go into this Bill in any detail, I should like to sketch in roughly the background of the Bill and the more recent history of the native courts in Kenya. These originally existed under the provisions of the Native Courts Ordinance of 1907. Those sections of it which related to the native tribunals and their duties and activities were revised and the Native Tribunals Ordinance of 1930 was introduced and passed. The present native courts are administered under and established by that Ordinance, the Native Tribunals Ordinance, 1930. Now the main features of that Ordinance were the extension of the jurisdiction of the courts to all natives within the areas in which the courts had jurisdiction rather than to confine the jurisdiction to the tribes which composed the actual members of the court. Also that Ordinance excluded advocates from all native tribunals and from appeal native courts and also from appearing before appeals taken to district commissioners, district officers or Provincial Commissioners; finally a system of appeal was set up whereby the appeals were taken first from the original court of jurisdiction to the native court of appeal, thence to a district officer, thence to a Provincial Commissioner. Formely appeals had been made from native courts to the subordinate court and then, of course, to the Supreme Court. Now the Native Tribunals Ordinance of 1930 also laid down provision whereby an appeal might be made in certain cases to the Supreme Court by a case stated.

That, Mr. Speaker, is the present position and there are now some 120 of these tribunals now at work. They vary enormously in constitution, in procedure, in the circumstances and background in which they work. Now, much has happened since they were first set up, now 21 years ago. You might see very little change in some of the more remote districts but it would be difficult, I think, to recognize some of the courts now sitting in the larger and more advanced districts, courts of small benches, of elders sitting robed, dignified on their dais in permanent buildings with the paraphernalia of western courts around them, clerks, account books, witness boxes, docks and so on. It would be difficult, I think, to recognize those as those far more informal courts composed of very many more members sitting under a tree and far more informal, members being far more numerous than they are now and usually members being members of a panel only who have sat for two or three weeks at a time and then they are away for two or three months perhaps, while others took their place. Now the main features upon which these courts have developed I think are first, the separation of the judiciary from the executive and secondly the development of small bodies of elders, five or six or perhaps eight, who sit permanently, well paid, and who really form a bench of magistrates. Some idea of the amount of work that these tribunals are now carrying out can be gauged from the returns for 1950. They heard during that year over 64,000 criminal cases, nearly 46,000 civil cases and the native appeal courts heard some 4,500 appeals. This is some measure of the service which is being given by the Presidents and members of these courts with their clerks and their staff and I should like to pay a tribute here to the extremely valuable work that those people are doing. (Applause.)

Now as these tribunals grew and developed and their work and functions obviously affected by the changing conditions around them, it became necessary to take stock of the position to see where their strength and weakness lay and to formulate some sort of design for their future development based upon general principles. That work was done by Mr. Arthur Phillips in 1943 and 1944 and he produced in 1944 this extremely interesting and valuable report and it is upon the contents of that report that this new Bill is very largely based.

A judicial adviser, who later became a native courts officer, was then appointed. Now his task is not only to advise and supervise the tribunals in the Colony but also to see that as the con-

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ditions change around them—social, economic and political conditions change—the courts shall adapt themselves to those changing conditions.

As a result of the report, far more supervision has been given to the tribunals and in particular, there has been a great improvement in the standard of the court clerks, African court clerks, and the beginning has been made to form these tribunals into courts of record. At the same time, the elasticity has, I think, been kept which is needed to preserve their character as courts where unwritten and customary law is daily administered and where 90 per cent of the civil litigation in which Africans are parties, actually takes place.

That, Mr. Speaker, is the background to the Bill.

The Bill itself incorporates a good many of the provisions of the 1930 Ordinance which it is designed to replace. It has been drafted after most careful consideration, I think, by all concerned and with the close consultation and co-operation of my hon. friend opposite, Mr. Muthu.

Mr. Speaker, I should like to pay a tribute also to the tremendous amount of hard work and thought that has gone into the framing of the Bill now before this Council, which was done by Mr. O'Hagan when he was native courts officer here.

The Draft Bill has also been examined by the Law Advisory Panel to the Secretary of State, who commented very favourably upon it and they have made a few suggestions which have been incorporated into the Bill.

Before commenting on the Bill in any detail, I would like to say that it is Government's intention that the Bill should be sent to a Select Committee.

Hon. Members will note that the Bill has been divided into parts for the sake of convenience and the Memorandum of Objects and Reasons sets out in considerable detail the provisions of the various parts so that I do not wish to comment upon parts of the Bill which are merely reiteration of the old Bill, but to comment merely upon a few of the new provisions.

Now, in the first instance, the first part of the Bill provides for the appointment of a native courts officer and provincial native courts officers, under section 3, with duties to advise and supervise the native courts. It also establishes under section 4, a court of review. That court of review is composed of "a Chairman to be appointed by the Governor on the advice of the Chief Justice and who shall be a person who has held high judicial office"; secondly the Chief Native Commissioner and thirdly the native courts officer. The court of review will provide an appellate tribunal versed in native law and presided over, as you see, by a chairman with judicial experience. This will take the place of the present system whereby in exceptional cases a case which has been before the Provincial Commissioner may go to the Supreme Court in the form of the case stated, otherwise in other cases, the present finding of the Provincial Commissioner is final.

Clause 44 of the Bill sets out the conditions under which a case may be submitted to the court of review and it is proposed to introduce an amendment at the committee stage, which I think has been circulated to Members, under clause 44, that clause 44 be amended in the following respects by substituting for the words, "that for any other reason it is", where they occur in sub-clause (1), the words, "if he has varied or set aside the order of a district officer, liwali or mudir and is of the opinion that the case is". The purpose of this is to lay down that if an aggrieved party wishes to appeal from the finding of a Provincial Commissioner, it lays down that not only must a point of law be at issue, but also the Provincial Commissioner must, in his judgment, have varied the findings of a district officer or liwali or mudir from which the appeal came up to him, before it is mandatory on him to grant a certificate forwarding the appeal.

Another new provision in Part II deals with the civil jurisdiction of the native courts in section 12. The existing Ordinance lays down that no African can commence any civil proceedings relating to immovable property in any court by the native court having jurisdiction in any area in which that immovable property is situated.

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Now section 13 of the new Bill, on the one hand extends this principle to insisting that civil proceedings by an African in respect of native customary marriage and inheritance must also be started in the native court having jurisdiction, while on the other hand, it allows this principle to be waived both in cases involving native customary marriage or inheritance or cases in which immovable property is the subject matter, provided that the district officer so directs.

I would mention clause 12, sub-section (3), notwithstanding the provisions of the Partnership Ordinance whereby cases involving partnership normally go to the Supreme Court, where it is laid down that, "notwithstanding the provisions of that Ordinance, proceedings in respect of partnership in which the sum involved does not exceed two thousand shillings and parties are Africans may be commenced in a Native Court". It is not intended, Sir, to extend the powers of native courts in regard to the law which may be administered and these powers will be laid down by orders as at present but in Part III of the Bill additional powers are granted to enable a court to execute its orders, arrest offenders and recover compensation.

I should like to mention section 23 of the new Bill, sub-section (1), which lays down that "A native court, in any civil case, shall have power to make any of the following orders", which are rather more than they have at present, "an order for the payment of compensation or costs or both; an order for the restitution of property; an order for the specific performance of a contract; and any other order which the justice of the case may require". And sub-section (4) refers to "attachable property" which may be attached where an order has been made for compensation and the compensation is not paid. "Attachable property" is limited by this sub-section (4) and there are certain articles, for instance, of wearing apparel, tools of artisans and so on, and certain salaries to a large extent that are not attachable.

Section 26, sub-section (3), I think is worthy of mention, "where a native court considers that . . . the evidence of a person not subject to the jurisdiction of a native court should be obtained, the court may apply to the district officer for evidence of such a person to be taken before a magistrate and the district officer may, in a proper case, request a magistrate to record the evidence of such person in the presence of the parties to the case if any such party wishes to be present and any such party shall have the right to question any person whose evidence is being recorded as aforesaid".

Section 29 refers to the appearance of advocates in these courts and hon. Members will see that advocates may appear before the court of review with the consent of the court.

I do not propose to comment on Parts IV, V and VI of the Bill which set out offences against the administration of justice, the transfer of proceedings and the additional powers which have now been given to these courts in respect of search warrants and injunctions.

Part VII, on page 11, deals with appeals, and I have already mentioned section 44, where it is proposed to introduce an amendment at the committee stage. The other sections in Part VII deal with appeals to district officers and Provincial Commissioners and certain limitations have been made which are actually stronger than the present limitations affecting appeals from the native courts of appeal to the district officer and to the Provincial Commissioner.

Clause 43, for instance, provides that no appeal shall lie to the Provincial Commissioner without his leave, "in any civil case in which a district officer, liwali or mudir as the case may be, has confirmed without substantial variation the order or decision of the native court of appeal" from which the appeal came and the original court of jurisdiction.

The object of these limitations, Mr. Speaker, is not to prevent the litigant from having access to a higher court but to reduce the number of frivolous appeals. I myself, am quite convinced the only way to reduce these appeals is to improve the standard of the original courts and of the native courts of appeal, so that appeal from them onwards becomes a rarity.

Clause 46 allows for the native courts of appeal, a mudir, liwali or district officer, a

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Provincial Commissioner and court of review to call for assessors to assist them in their judgments.

I would mention only, I think, beyond that, clause 49, which I think is important, which states that, "whenever it appears to any court that any civil case before the court is a case more properly cognizable by a native court, the court may order" its transfer to a native court.

This Bill, hon. Members, is an important Bill, it provides for the quick and efficient settling of matters not only of the criminal and civil matters which are common to us all, but also for the settling of matters which may appear small, the subject matter may be of little value in terms of cash, but which are of everyday importance and vital importance to the African man, woman and sometimes, child.

It is an important Bill, and as I said, I shall be moving shortly that it goes to Select Committee if this Council assents.

Mr. Speaker, I commend this Bill to hon. Members and I beg to move.

The Solicitor General seconded reserving his right to speak later in the debate.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

MR. MATHU: Mr. Speaker, I rise to support the Second Reading of this Bill and in doing so, I should like to make some few remarks which I should like to ask those who will be serving on the Select Committee to take note of.

As the hon. Mover has said, I think this piece of legislation is definitely a step forward in the administration of justice in the African areas and I feel that very strongly and that is why I want to support this, the Second Reading, almost unreservedly. There is one point, Sir, in the history of the native courts that the hon. Mover has mentioned. He mentioned that after the 1907 Native Courts Bill or Law, the separation of judicial from the executive functions of chiefs came in the law that is existing now in 1930, and this Bill from the start to the finish, as far as it affects non-Africans who are to administer that law, that separation is not visualized. This is a pet subject of mine, Sir. I have taken advantage of repeating this every time I have an opportunity, and I should like to see, Sir, we should move forward—step gradually—to the separation of the two powers, because you will note under clause 39 the Provincial Commissioner and the district officer have power to look into and to supervise the native courts from the bottom to the top, particularly, of course, when the appeals lie in the District Officer's Court, or in the Provincial Commissioner's Court, and I suggest, Sir, that if we laid down a progressive programme of separating the executive functions of these officers from the judicial officers by appointing—as is provided for in section 3—court officers in every district to deal with court cases only, I think we shall be moving again a step forward. The hon. mover will agree with me that in every district today, at any rate in large districts, District Officer I has special responsibilities in dealing with native court cases, and I do not think that financially we shall be failing to fulfil our duty if we specified that this officer should have nothing to do with executive functions, but should deal only with court cases.

Now in the definitions and in section 3 of this Bill, we are proposing when we appear before the Select Committee to suggest that where the Governor has power under section 3 to appoint a native courts officer and as many provincial courts officers as possible, we should not only appoint a native court officer but two native courts officers in the Secretariat, one of whom will always be an African. We feel that this would be a very important point, because we think that a European officer dealing with native law and custom could learn a great deal from an African who knows his subject, and vice versa, and I think it is a partnership we would like to suggest for favourable consideration. Similarly, where there is appointed a provincial native courts officer we are suggesting there should be two in every province, one of whom shall be an African, for the same reasons, because we feel in the administration of justice there should be left no opportunity of doubt as to the meaning of what is happening. We also think that this will be important, because it will perhaps set a move towards the future appointment of

[Mr. Mathu]

African magistrates. The report that the hon. Mover mentioned—the report on Native Tribunals by Arthur Phillips, who was then Crown Counsel, published in 1945, did make a specific recommendation on page 196, section 583. He said: "I recommend that the question be left open for the present and that, while a close watch is kept upon the course of development, no step be taken which would prejudice the unfettered consideration of the matter in the future in the light of the needs and circumstances of each area". That is when he is making observations on the appointment of African magistrates.

I would like to say, Sir, that when we suggested that there should be closer cooperation between the European officers and the African officers in the administration of justice in the way we are suggesting, this is not at all implied to mean that there have been shortcomings on the part of the European officers who have been administering the 1930 Ordinance, and in my view have been doing it most admirably. I should like to make that point clear, because I do not want to have any misunderstanding in that matter. I do feel associating Africans in the administration level of the judiciary in this way would be a step in the right direction.

Now, Sir, clause 4 lays down the appointment of a court of review. This will be the fifth rung in the hierarchy of African courts. Some of us think that there have been too many to put this top one there. Our original suggestion was to revert to the early forties, where certain cases could be referred, not by means of transfer as provided for in the present Bill, but as they used to be in the early 'forties of this century. But things being as they are, and we are not opposing that this top one be created, but we want to suggest most strongly that the composition of the court of review be reviewed by putting in the membership that a certain African or Africans be appointed in the court of review, because we feel that the officers who are provided for under sub-section (2) would benefit by the services of such an African.

Section 5, Sir, provides that when a Provincial Commissioner has created a native court by means of a warrant, that copies of those warrants under section 6 (4) should be transmitted to the native courts officer, and we would like provision made in either clause 5 or clause 6 that a copy of such a warrant should be deposited in the native court concerned, so that all members who come there would know that that is a court that has been set up legally in that way.

Now clause 7 has created some disturbance in certain quarters, particularly by the members of the bench who are in the field, when they know that they can be suspended by the District Commissioner and can also be dismissed by the Provincial Commissioner, and we would like the Select Committee to consider whether it would not be impossible to make provision that these people can be suspended or dismissed with or without notice, because as it is left there it seems that any high-handed person might do certain things which might be very distasteful.

Clause 10, Sir, has a principle which we would like to query. It is incidentally included in the present 1930 Ordinance, but we would like to see that something is done to reform this, because the native court in fact, under the proviso to clause 10 is in fact told "you are not very competent to deal with a certain section of the 'community which has committed some crime and those people who have offended can choose where to be tried". We do not think that is proper. If they have particularly committed an offence in an African area and against African customary law, we feel very strongly that such an offender should be dealt with by the native court, because it is against African customary law, and we do not see why they should be given the option to be tried elsewhere. Anyone can of course, if he chooses, under section 40—if he is a defendant, he can request that his case may be removed to another court. I am not questioning the provision of section 40, but section 10. I certainly do not like the proviso to section 10.

Now the Mover dealt with section 12 and all we would like to suggest is that certain cases, particularly if they are cases involving non-Africans as parties, and Africans as the other party, relating to African customary law, that they should have the right to be started in any other court, so that all parties can feel that they have been very justly treated.

[Mr. Mathu]

I want to make a comment on section 29—that is where the important principle arises. Section 29 (1) prohibits advocates appearing in African courts. It reads: "No advocate may appear or act for any party—(*a*) before a native court;" Mr. Phillips dealt with that point, Sir, if I may be allowed to quote just one sentence in this matter—he was commenting on the present section 24 of the 1930 Ordinance, and in paragraph 684 of that Report he says, "The view taken by many administrative officers is that it is not in the interests of Africans that they should be encouraged or even allowed to waste their money in engaging the services of advocates in matters in which those services cannot possibly be of any real value to them". Well, I say that that is a matter of opinion, Sir, when we know that Africans have recourse to advocates in places which are brought in the subordinate courts of the country and in the Supreme Court, and the money is wasted there, but what we would like is that the African in all courts should have the right to seek legal advice if he wishes, because we do not think that it is right and proper that the African, if he chooses to seek legal advice, should be debarred. We are not suggesting, Sir, that advocates should be engaged in the first or even in the second court, where the whole bench consists of Africans, but we think that it would be quite fair for any African who wishes to engage the services of a lawyer to do so when the case is up for appeal in a district officer's court or in the provincial commissioner's court. You can make as strong limitations as possible as to what cases can be allowed an advocate to plead for a party, I am not objecting to that. All I am objecting to is to close the door completely for Africans if they wish to avail themselves of legal advice. I think it is not fair.

Section 29, sub-section (3), provides that nothing in sub-section (1) of this section shall operate to prevent an advocate appearing in any case before the court of review, and the condition is interesting: "If such court grants leave to an advocate so to do". In other words, the court may grant leave for an advocate to come forward in a court of review. In other words, my submission even there is not met, and we would like to represent, Sir, very strongly, that even where that provision is made as in sub-section (3) of 29 it should be like any other court. It is not the court which decides whether it is going to accept an advocate or not—it is the parties concerned who accept advocates. I would not like that provision to appear there. Say "the advocate can appear". We know at least in one court in the whole hierarchy we can have recourse to legal advice.

To sum up, then, as far as section 29 is concerned, our recommendations are these: that it should be made legal for parties, if they so wish, to engage the services of the advocates in the District Officers' courts and in the Provincial Commissioners' courts and in the court of review.

It has been suggested by some that actually it was the view held by a number of people in 1943 and 1944, when Mr. Phillips was compiling his very able report, that this would mean that all advocates in these main towns would flock into native areas and would hold up work, because they would go on advocating points of law until nothing was done. It could not be true, because the Chief Justice in the Supreme Court seems to be getting on very well. All cases are being heard, and I do not think that there would be any exception to that when it refers to Africans and we would like to suggest that this point be considered by the Select Committee.

I do not think I have other very important points to comment on in the rest of the Bill, because it is really as it stands today, and we have nothing very much to complain about.

Sir, I beg to support.

MR. USHER: Mr. Speaker, I should like also to rise and support this Bill and to congratulate those who made it. We have not been very abundantly blessed with the gentle rain from heaven here, but we have had an abundant rain of Bills so that, personally, I have had to adopt a technique of skimming the objects and reasons in some cases. But I always look first to the last sentence on the last page of the objects and reasons and take great comfort when I see those blessed words—"It is not expected that any additional expenditure, etc.". Therefore, I suppose that in the administration

[Mr. Usher]

of this Bill, the district courts officers—of course, we rather fear, some of us, that they may become members of the provincial teams, or the district teams, but we do hope that those who do get their colours will be fellows already in the provincial administration. We hope also that the distinguished chairman of the court of review will be giving his services to the country without any charge.

Now, Sir, there are one or two matters of jurisdiction to which, I think, the Select Committee might perhaps pay attention. Perhaps the hon. Mover will be able to relieve my anxiety about them. He will know, as I know, from practical experience that a great deal of time is wasted over matrimonial causes, for instance, as between, one might say, a part of Nyanza and a native tribunal operating in Nairobi or even in Mombasa —I mean a native court. The trouble is that it is often found that these causes are vexatious and it is not easy, or even sometimes possible, for the district officer who endorses the process to be fully alive to that fact. That, I feel, is a thing that might be looked into by the Select Committee.

Another matter of jurisdiction which has provided difficulty in the past is that which arises in towns where there is the question of jurisdiction as between the native court and the subordinate court or courts in the town; particularly is that the case in Nairobi. Perhaps, again, the hon. Mover will be able to relieve my anxiety about that or to agree that we should go rather carefully into it—it could be gone into rather carefully by the Select Committee.

A further point, Sir, was made by my hon. friend, Mr. Mathu, and he feels that the number of courts is still excessive and I shall agree with him over that. I am just wondering, even now, whether the Provincial Commissioner should come into it at all in his capacity to try appeals. It is the case, as we all know, that most Provincial Commissioners find they have not the time to give to this work and, in one case in particular I know, a Provincial Commissioner for years and years has always relied on someone going round to clear up all his appeals—(THE SOLICITOR GENERAL: Shame.)—for him—it is.

The last point, Sir, I have to make is a small one, it concerns the propriety of leaving rule-making powers—it is in clause 56, especially under (*b*) and (*d*)—as they stand and whether those matters should not be dealt with by Executive Council and perhaps tabled.

Sir, I beg to support.

MR. HOPKINS: Mr. Speaker, this Bill seems to visualize no fundamental departure from the system which operates at the present and that is one of the reasons why I intend to support it because experience has shown that it is unwise to move too fast in trying to lead native tribunals to work on sound lines and in accordance with our own ideals of British justice. The present tribunal system, imperfect though it may be in a number of respects, is the outcome of the endeavours of innumerable administrative officers over a long period of time, to work out some system for the administration of justice in native courts which would embody the ideals of British justice and, at the same time, simplify and adapt procedure so as to make it understandable and acceptable to those who have been brought up against a very different background of customs and laws to our own.

I welcome the provisions in the Bill for the appointment of a court of review and I like the proposed composition of that court because I think it combines both administrative experience and expert legal advice. I welcome also the proposal for the establishment of provincial native courts officers. I am, however, very disappointed to find that it will still be possible for litigants in native cases to appeal to the Provincial Commissioner as I think that this appeal to the Provincial Commissioner is one of the weak points in the present system and, for the following reasons, I am sorry to see that it is proposed to perpetuate it. Firstly, Provincial Commissioners are so busy that they can really ill afford the time to go round and try cases in all the various districts of their provinces. Secondly, their preoccupation is sometimes so considerable that it is not uncommon for cases of appeal to their courts to have to wait over a year and it is quite clear that this delay in an already cumbersome system is most undesirable. Thirdly, while it is not very

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often that Provincial Commissioners upset the judgment of a district commissioner, I think it is undesirable that they should even be put in a position of having to do so. Fourthly, Sir, most African tribes are litigious by nature and I think it is undesirable that we should provide them with so many facilities for indulging this propensity. Take for example the district of Kiambu—to which Mr. Mathu belongs. There, two people, having an argument, would take their case, in the first instance, to the division tribunal and from the judgment of that tribunal there would almost certainly be an appeal to the central appeal tribunal which sits in Kiambu Boma. From that court, there is an appeal to the district officer or the district commissioner; from the judgment of the district commissioner, in a number of cases, there is an appeal to the Provincial Commissioner; from the court of the Provincial Commissioner, it will now be possible for a man to apply for a review of his case by this new court of review. Sir, I feel that there are far too many courts in which an African not only may, but has really got to, waste both time and money before finality can be achieved and I am quite sure that anybody who has seen the cumbersome, long drawn out system which operates in the native reserves would welcome any method whereby it could be, reduced and finality reached more expeditiously. I am convinced that while Provincial Commissioners should retain the other powers and functions conferred upon them by this Bill and which are indeed conferred upon them by the present law, the opportunity should now be taken to relieve them of trying appeal cases in all the various districts of their province. I would suggest that the possibility of relieving them of this work would be to substitute an appeal court of the provincial native courts officer for the appeal court held by the Provincial Commissioner. I should like to make it clear, Sir, that while I do not like the hearing of appeals by Provincial Commissioners, I think it is most important that district commissioners and their district officers should continue to hear appeals from native courts because I believe that one of the best ways which an administrative officer has of keeping his finger on the pulse of the district is to keep in touch with what is going on in the native tribunals.

Sir, in regard to clauses 32 and 33, which deal with the acceptance by tribunal elders of rewards, gratuities, consideration, etc., I think it is necessary for hon. Members to know something of what native courts have sprung from in order to appreciate the significance of these clauses. Some thirty odd years ago, when I first started to interest myself in the work of native tribunals, one of the first things that it was obvious that I should do was to try and bring some order to the various payments which were made to tribunal elders and the method by which they were remunerated. Now in the days of which I speak, it was customary for both parties to a case to pay full fees and this was because in the original native courts, it was customary for each party to pay remuneration to the tribunal elders for the time they spent on their cases—the payments were made in beer, goats, tobacco, honey and things like that—but it was not only customary for them to pay these fees to the tribunal generally, it was customary also for each party to engage one or more of the tribunal elders to advocate their cases and, to this end, it was customary that they should pay these people remuneration. It was quite a recognized thing that one of the tribunal elders, or more, should advocate the case of, each party. Now, in those days, I found it was quite impossible to get the tribunals to agree to one party only paying fees. Their argument—which was put up by both the tribunal elders and by the people generally in the various places that I tried it—was that people would obviously be prejudiced in favour of the man who paid fees as opposed to the man who apparently wanted to get something for nothing. Later on in the same district, it was possible—while still leaving the system of payment by both parties—to get them to agree that the winning party should be able to claim back his fees from the loser. It was very much later that payment by the complainant only was agreed to and later still that remuneration to tribunal elders was put on a proper basis. Belief in the original system, however, to which I have referred,

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whereby payments were made to specific elders to advocate your case, is still so strong, Sir, that it is quite inevitable that we still have to contend with this payment of remuneration to a specific elder of a tribunal. Many Africans—one might almost say, most Africans—be they litigants or elders, so firmly believe that this is the right system and much better than our own system that hon. Members will realize the difficulty in stopping the practice, but they will also realize how essential it is that we should stop it if we are going to develop courts on the lines of British justice and integrity.

Sir, there is another form of abuse which is taking place in native tribunals and it has been taking place for a very long time. Now, under native law and custom, murder, manslaughter, killing a man for some reason or another is not a capital offence. It is, however, very definitely a criminal offence and I say it is a criminal offence because in quite a number of tribes, it is the only circumstances in which you can deprive a man and his family of their lands, that is, if they fail to pay blood money, they can be deprived of their lands. Now when a case has been before the High Court and a sentence of something less than death is imposed, sooner or later, but quite inevitably, a case follows in the native tribunal in which the relations of the deceased claim blood money from the relations of the prisoner or, if they leave it long enough, from the man who committed the offence himself. Native tribunals are very sympathetic towards these cases and invariably allow blood money. Blood money is an arbitrary award if a man his killed another man in most tribes that I have worked with. Now the result of this is that the offender has not only got to serve the sentence imposed upon him by the High Court, he has also to suffer, and so have his relations, impoverishment owing to the fact that the full sentence under native law and custom is passed upon him.

Now I reiterate, blood money is not a civil case, but it is under the guise of civil cases that people manage to get these two sentences, in spite of the fact that under section 13, I think it is, it is said that they may not try any case in which a person is charged with an offence in which death is said to have occurred or which is punishable under any law with death or with imprisonment in excess of seven years. But this is what is actually happening and I do think that the Select Committee will have to look into the matter and see how they can prevent it in some way—tie up the loose ends which allow these abuses to take place. An even worse, or at any rate more insidious form of abuse is occurring, and I think that to draw attention to this it would probably be easiest for me to give a brief outline of an actual case which I have had reason to investigate myself quite recently.

"A" and "B" were at a party; both were rather drunk; "A" pushed "B" who was an oldish man, and he fell down and hurt himself, not very seriously. The evidence showed that "A" did not wish "B" to hurt himself, nor did he push him maliciously, but I must state that under native law, intent counts for very little indeed. If you do not intend to kill a man but succeed in doing so, almost invariably is full blood money payable. "B" apparently recovered completely, but a month or two later he was admitted to hospital very ill. He never came out of hospital—he died. No case was taken against this man for assault or murder or manslaughter, but some two years later the relations of "B" filed a case in the tribunal for blood money against "A". The result of this was that "A" who was habitually employed—you will have guessed probably that he was an employee of mine—he was in employment and was called down a number of times for summons before the tribunal. The relations of "B", being unable to establish any proof that "A" had actually caused the death of "B", did what so often happens in this sort of case—they asked the tribunal that "A" should be instructed to take the very solemn oath of *Ringa Nihenge*, and this oath, if taken by a man who says that he had nothing to do with the death of a man, when in point of fact he had something to do with it—it is firmly believed it will result in his own death or in the death of his relations. "A" was so convinced in this case that he was not responsible that he was quite willing to take the oath, but his relations were not going to risk their lives on the assumption that he might possibly be guilty, and they persuaded him he must not take the oath. In default

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of taking the oath the tribunal gave judgment for full blood money against this man. I thought this was so typical of so many a case I have seen, that it was time that I intervened. I came down and with the permission of the district officer I went into the reserve and I found the case was as I have described it. I came back to the district officer and said I thought there was something quite wrong. In the first place, a tribunal had no right to try a case like this as no blood money case is a civil case under native law, but the obvious way of finding out whether the man was indeed killed by "A", or whether "A" did contribute towards his death, would be to call for the hospital records—the hospital in which he had died happened to be in the *boma*. The records were clear and they affirmed that the man died of pneumonia. On that the district officer set aside the judgment of the tribunal, but not before "A" had been put to a lot of expense and worry and upset on his own part and on the part of his relatives.

Now, Sir, I have drawn attention to three forms of abuse, including acceptance of bribes, because I think it is so important they should be given publicity, otherwise they will never be stopped. I am convinced that, if we do not do something now, after I am dead—and I hope that will not be for a long time—not until, this case will be brought up again against "A" and "B's" relations. I do think, as I said before, we should do something now to tie up the loose ends in the law which permit of such abuses. Also that we should do our best to cut down the number of appeals. There are, as I have pointed out, five courts to which a native now has to go, and I do commend to the Select Committee the necessity for going into these points.

Sir, I beg to support.

MR. OHANGA: Mr. Speaker, speaking after my hon. colleague there are not very many points that I can really comment on; but one or two matters of principle still stand untouched, which I should like to bring before the notice of this Council.

First, the name of the Ordinance. I think it would sound a lot better and even more correct if it was African Courts Bill, and subsequently African Courts Ordinance. On the one hand it is a little vague, "native" does not necessarily mean African, and since some people have felt it is a little of an offence to use the word "native" in reference to them, we might avoid it by calling it an African Courts Ordinance, unless there are strong objections.

Secondly, the relation between the operation of the native courts at present and the district councils. We do hope that nothing contained or implied by the provisions in this Bill will do anything to alter the present position by which funds accrue to the revenues of the African district councils from these courts.

Thirdly, and this I should say has already been mentioned by my hon. colleague, and I just want to emphasize it because it is so important, the separation of the judiciary from the executive. While in the 1930 Ordinance opportunity was taken to separate those two functions, in the case of African chiefs or headmen, we regret to say that even that Ordinance did not see fit to continue that separation to the Provincial Commissioner level and the present Bill, Sir, although it does intensify the position of the courts very much and makes everything rather more elaborate, still does not specifically provide that these functions will be separated. Although provision is made for a provincial courts officer, the Provincial Commissioner as the executive office of the province still has a good deal to say directly on judicial matters of the African courts, and so is the case with the district officer. Already it has been submitted that from the financial point of view there would be no financial extra burden, because these officers are in those particular departments already and are paid and it is only setting them aside clearly for these functions only, and not mixing up executive and judiciary at the same time.

The other point, Sir, which actually is a detail I must submit, is the appeals which have now been provided. The 1930 Ordinance provided for appeals to go up to the Supreme Court from the court of the Provincial Commissioner, but at the same time it made it very clear that in the case of the land, no land cases could go forward from that court to any higher court. Now at present we know

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that a court of review is to be set up, but it is not at all clear whether the Provincial Commissioner would still be allowed to consider land cases as those for which he would exercise his judgment to allow them to go forward or not. The African view has always been that land cases, like any other cases, ought to lie beyond the provincial jurisdiction, and I should very much like to see the Bill make that point clear, that land cases would also have an opportunity of being heard before the court of review.

The next point, Sir, has already been commented about in principle by my hon. colleague and I shall not try to elaborate it except on one small point. I refer to section 29, which provides that no legal assistance of any kind would be made available to an African litigant. Now, our feeling on this one, Sir, is that while we agree that some money is saved for some Africans, nevertheless it is true that those of them who have access to courts other than native tribunals still pay excessive sums of money but at the same time continue to lose the cases for which they pay so much, and since the use of legal assistance is voluntary to everybody I do not see why it is not possible to allow those who want to make use of legal assistance, particularly where the case lies beyond what would be properly called an African court—I refer to those benches which are under the jurisdiction of African presidents only. When it comes to the district court or to the provincial courts the African is dealing with a trained mind, a fellow trained in law, and although he may have a perfect case his chances of convincing this trained mind that he really has a strong case are small. That, of course, is no reflection on the integrity of the district and the Provincial Commissioners, who have the responsibility of deciding these. But we do submit, Sir, that it would be useful if African litigants could have available for them, if they chose to, legal assistance from any properly licensed legal practitioners. Now, that is in the case of the High Courts, but even if we went lower down to the level of the African courts proper, what are at present called the tribunals and the appeal tribunals, even there, Sir, we do feel that a great deal of work and even of these appeals which go forward would be very much reduced if certain individuals among Africans who are known to know something about customary law and so on would be authorized in one way or another, so that they can appear on behalf of their more simple-minded neighbours. I have noticed in one section here that a wife or a husband or child or etc. and so on could appear on behalf of an African. But I do not really think that a husband or a wife is necessarily qualified to appear on behalf of somebody simply because of their natural relationship. The case of this gentleman would be much better served if he was able to call to his assistance somebody whom he knew had superior knowledge of the workings of the native courts and native custom. I should like to be a little more specific on that, Sir. The Coast people, I understand, in working the Mohammedan law have a system of licensing certain people called Vakils. I hear they are experts on Muslim law and so on. That, I think, could perhaps be extended with advantage to tribes up-country who would also make use of them with the same discretion exercised by the people in the courts, and I am quite sure it would be helpful to all.

Mr. Speaker, that is the end of my comments and I should like to say that I support the second reading. (Applause.)

MR. HAVELOCK: Mr. Speaker, there is only one point I would like to ask the hon. Mover. It seems to me that this Bill restricts the powers of native courts, according to the policy of Government, quite rightly, but clause 14 allows the Governor, "by Order published in the Gazette, to confer upon native courts generally or upon any specified native court jurisdiction under the provisions of any Ordinance specified in such Order". Does that not, Sir, mean that the Governor is given powers to extend the provisions of this Ordinance or this Bill? "by Order in the Gazette" only, and on principle I would suggest that when this Council passes an Ordinance of this sort that it should not be varied by an order by the Governor, but if any amendment is necessary that it should come back here.

The other point I would like to bring up is on the same lines, and that is the matter of making rules: in clause 56 it seems to me peculiar that the Governor could make rules "regulating the pro-

[Mr. Havelock]

cedure for the arrest, remand in custody and grant of bail to, accused persons", I would have thought that that was so important that the procedure for the arrest, etc., should be laid down by the Ordinance—that should not be left to rule-making powers only.

I also would like to suggest, for the consideration of the Select Committee, that, as following our usual procedure—this has been a request of this side of the Council for some time now—that rules made by the Governor should in any case be laid on the table of this Council.

Sir, I beg to support.

MR. JEREMIAH: Mr. Speaker, I welcome the Bill in principle, and as my hon. friends have spoken already, there is only very little left for me to say. It goes, Sir, without dispute that the maintenance of African laws and customs is necessary under the present transitional period, provided, Sir, that such laws and customs are not repugnant to justice. It is, however, Sir, of great importance in my view that African district councils should be encouraged to try and have their laws and customs recorded, because I do not believe, Sir, that such unwritten laws have usually been carried satisfactorily. We have had members of the African courts in some cases who decided cases according to their whims and according to their social standing with the person concerned. In saying this, Sir, I do so not with the intention of casting an aspersion on members of native tribunals, some of whom have done excellent work, but human nature being as it is, the possibility of the temptation for one to be on good terms with another cannot be easily dismissed. Throughout the civilized world, Sir, the laws have been written down and the judges have been guided by such laws. I believe Africans are not better qualified to be left to their devices of administering law simply by memory. It should also not be forgotten that many of the Africans who are growing up at present are growing away from their country and a lot of their traditions are lost in them. Those are the Africans who are going to take the administration of the African laws and customs. Now, Sir, I do not think they will be properly qualified to do so unless something is put down on record.

So I submit, Sir, that the Select Committee should give this most sympathetic consideration.

Now, Sir, what is customary law and custom? In my understanding African laws and customs are laws and customs which have been in existence prior to the immigration of Europeans and their civilization into this country. Such laws and customs have been practised in various ways; nowadays, in some cases they have been practised almost as they were a hundred years ago, but in others they have changed considerably. Now, Sir, this being so it is in my opinion a fallacy to accept as a principle the provisions of clause 12, where Africans are prohibited from commencing their civil proceedings in any court other than a native court, with special regard to marriage or inheritance and the immovable property situate within their African land unit. With regard to the dowry, a prerequisite to marriage, things have changed considerably. The amount of the dowry in some places has changed, and in some others it has taken a new form from what can be said to be native customs. The same with land. Now, Sir, many Africans recognize the necessity nowadays of providing for their future by way of making up a will. But if we are going to insist that native laws and customs should be strictly adhered to in this case, such encouragement, which in my view is necessary, of encouraging Africans to provide for their future will not be taken into serious consideration by native laws and customs. At present we find many Africans trying to arrange the means by which, once it becomes necessary for them to depart from this world, they leave their relatives in a good position. Many Africans now realize, Sir, the importance of women, whereas African law and customs usually do not. In African laws and customs a woman is not supposed to own any property, and such things, Sir, I submit ought to be considered and remedied. African laws and customs have not always been the best and I think in such cases as this we should be allowed to get justice from the people who have been trained to give it and who have got the way of dealing with justice in black and white.

Another point, Sir, which has been mentioned and which I wish to mention,

[Mr. Jeremiah]

is with regard to advocates. My hon. friends who have spoken have agreed that advocates should not be allowed to appear in native courts, the first two; that is, the native court and the native appeal court. May I submit, Sir, for the consideration of the Select Committee, that advocates should not be allowed to appear in those courts, especially when native customary law is concerned; but I do not think, Sir, that in those courts it will only be those laws which are going to be discussed. We have the administrative laws, which have usually been sent to the tribunal, sent there by African district councils or under the Native Authority Ordinances. In such cases, Sir, I do not think it would be unfair to allow advocates also to appear and act on behalf of the parties concerned. In the district officers and Provincial Commissioners, as well as the native court of review, I submit that it is very essential that anyone who wished to employ legal assistance should be free to do so.

The Bill is entitled "An Ordinance to make better Provision for the Administration of Justice in Native Courts". It is my earnest hope that when the Bill comes back from the Select Committee it will be a Bill better entitled "An Ordinance to Make Better Provision for the Administration of Justice in Native Courts".

Sir, I beg to support. (Applause.)

THE CHIEF SECRETARY: Mr. Speaker, I would like to just say a few words on the question of the admission of advocates to the African courts. I should like to make a plea against the admission of advocates. (Hear, hear.) In the British system of justice, persons trained in the law play a very useful and appropriate part, and in making my plea against their admission into the African courts I would like to make it quite clear that I have nothing against the advocates as such in their proper sphere.

The first reason that I would advance against it is this. Our system of justice, which has become known as the British system, is, we believe, an excellent one. Many of us think that it is the best in the world, but we would all agree that it is not perfect. It has certain disadvantages. One of the disadvantages is that it is extremely costly. It is often very costly to get justice, and even if you win your case you do not always recover the total cost. If advocates were allowed to practise in the African courts I think there is no doubt that every party to the case would feel that, if he really wanted to be successful, it would be almost essential to employ an advocate. Certainly if one party employed one the other party would think that it was at a great disadvantage if it did not, and I feel that the admission and employment of advocates would add to the cost, even, as I have said, in the case of the successful party.

The second reason I would advance is that, good as our own system is, it is extremely complex and almost every day becomes more complex. As soon as you admit advocates, it is inevitable that the system will become more and more complicated and I think that at any rate at the present and in the early stages of the African tribunals we should aim to try and make the law and the procedure as simple as possible, that we should carefully refrain from complicating it where that is not absolutely necessary.

The third reason I would advance, Sir, is that in these courts or tribunals, whatever you may call them, the courts will be administering African law and custom, not English law and custom, but African law and custom, and that persons trained in another system will not really be able to assist the courts. There is nobody who ought to know better and, in fact, will know better, what the customary law is in the courts than those persons who are administering it—the African tribunals themselves and the parties.

Those are the reasons, Sir, why I suggest that it would be a pity to admit advocates, at any rate in the lower tribunals. I do not suggest that there may not be special cases where on appeal it may be of advantage to have legal assistance, especially if the case is a complicated one.

Finally, Sir, I would say that I am always extremely loath in this Council and in this Colony to advocate measures based on experience gained elsewhere, but I have seen the system in other countries, especially in the West Coast, where in the subordinate courts advocates are admitted. I have sat on the

[The Chief Secretary]

Bench while a case was being tried—I think it was a private prosecution for the theft of a chicken. The value was 1s. 6d. Advocates were employed on both sides, and a long and complicated argument ensued. Neither of the parties to the case had any idea of what it was all about at all, and at the end of it all the accused had not the faintest idea of what had been happening. But it cost him a great deal of money, Sir.

MR. MATHU: Did he get the chicken? (Laughter.)

THE CHIEF SECRETARY: I do not know who got the chicken, I do not think it really mattered who got the chicken, because that only cost 1s. 6d., but it cost both the parties a great many pounds, and as I have said neither of them really understood what it was all about.

MR. HAVELOCK: Prestige.

THE CHIEF SECRETARY: Sir, I would suggest that at the early stages it would be important not to admit advocates. (Applause.)

ADJOURNMENT

Council rose at 12.50 p.m. and adjourned until 9.30 a.m. on Wednesday, 21st February, 1951.

Wednesday, 21st February, 1951

Council assembled in the Memorial Hall, Nairobi, on Wednesday, 21st February, 1951.

Mr. Speaker took the Chair at 9.35 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 20th February, 1951, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

BY THE CHIEF SECRETARY:

Proceedings of the East Africa Central Legislative Assembly—Third Session, 1950-51, Third Meeting.

NOTICE OF MOTION

MR. BLUNDELL gave notice of the following motion:

That the Report of the Director of Audit on the accounts of the Colony for 1949 be referred to the Public Accounts Committee.

ORAL ANSWERS TO QUESTIONS

QUESTION NO. 6

MR. BLUNDELL:

Will Government state what action is being taken on the Hiley Report?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The Forest Advisory Committee which is charged with the responsibility of advising the Member on matters of policy, has considered the Hiley Report and has submitted recommendations.

In addition, a Government Committee representing the Members of Government concerned has examined certain consequential aspects which will have to be taken into account should the Hiley report recommendations be accepted in whole or in part, and has submitted recommendations.

These recommendations are now available, but it is felt that before Government's proposals are presented to Council the new Conservator of Forests should be consulted since he will be

[The Member for Agriculture and Natural Resources]

responsible for implementing in an executive capacity any plans which may be approved.

The officer who has been appointed to fill the post of Conservator of Forests is on his way out to Kenya and it is expected that he will take up his duties in March.

MR. BLUNDELL: Mr. Speaker, arising out of that answer, when the hon. Member says "it is felt that before Government's proposals are submitted to Council, etc.", does he mean that after the whole matter has been examined with the new Conservator of Forests, the report will be debated in Council, together with its recommendations?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Government has not decided definitely to do that, but I think it is obvious what Government will do is to make up its mind what proposals it wishes to recommend—(laughter)—and submit them to this Council.

QUESTION NO. 10

LIEUT.-COL. GUERSHI:

Having regard to the statement made by the Member for Agriculture, Animal Husbandry and Natural Resources during the recent Budget Debate, when he stated that the question of silo storage for grain was under active examination by a consulting engineer, will Government please state, what further progress has been made in this connexion, and the position to date?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The report of the consulting engineers is not now expected before the end of April owing to unexpected difficulties encountered in obtaining the special equipment needed to investigate the somewhat abnormal geological formations encountered at Nakuru. Until this report is received it is not possible to estimate with any accuracy the cost of the installations which will, it is hoped, include the most up-to-date machinery for the bulk handling of grain, and conditioning plant.

When the recommendations of the consulting engineers are received they will, owing to the heavy expenditure involved, require very careful consideration.

2. The question of financial provision for silo storage has also to be considered. It is hoped that it will be possible to share the burden of capital expenditure, which may reach three-quarters of a million pounds. Discussions on this subject have been in progress for some time, but finality in these necessarily complicated financial discussions cannot be reached until firm estimates of capital cost are available as a result of the investigations by the consulting engineers.

MR. COOKE (Coast): Arising out of that answer, would not the installation have cost very much less if it had been carried out many years ago, as advocated on this side of the Council?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: It is a matter of opinion, Sir. It was not advocated by that side of the Council. It may have been advocated by an individual Member.

MR. COOKE: Does Government intend to take any action against those who are guilty of the almost criminal neglect in not having built these silos?

BILLS

SECOND READINGS—(*Contd.*)

THE SPEAKER: Bills for second reading. We were debating yesterday the Native Courts Bill, and no Member was speaking at the time that we adjourned. If no other Member wishes to continue the debate, I will ask the hon. Mover to reply. I am not quite sure no one else wishes to rise.

The Native Courts Bill—(Contd.)

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, as I said yesterday Government will move that this Bill shall be referred to a Select Committee, and no doubt many of the points raised by hon. Members yesterday will be discussed by that Committee. I will, however, try to go through them and give answers as I can.

First of all the hon. Mr. Ohanga referred to the title of the Bill and asked that the word "native" should be changed and "African" substituted for it. When the title of the Bill was framed, this matter was discussed and thought of and the opinion seemed to be that when the word "native" was an adjective there

[The Chief Native Commissioner]

was no objection to it, but that the objection arose when the word was used as a noun. Hence, whenever the word "native" appeared as a noun in the Ordinance, it was taken out and "African" was substituted. There is of course, no objection whatever to changing this adjective in the title and calling it the African Courts Bill.

Section 3. The hon. Mr. Mathu asked that there might be an African native courts officer and African provincial native courts officers. Now, these are posts to which Africans should, and I hope will, aspire, and certainly in due course I very much hope that these posts will be filled by Africans. I would point out, however, that these posts have got to be filled by qualified men. You have got to have second-class magistrates, and I hope that in due course the posts may be filled by Africans. At present there are no such men qualified to do so.

Section 4. The hon. Mr. Mathu also raised the point as to whether there should not be African members of the court of review. This is a point on which I very much sympathize and I think perhaps the Select Committee in their deliberations might consider the possibility of making selected presidents of African—native—appeal courts full members of the court of review when the court goes to their areas to hear cases in those areas. Assessors, of course, are provided for.

Section 6. The hon. Mr. Mathu asked that arrangements should be made, or that provision should be made, in the Bill for a copy of the warrant of the court to be deposited with the relevant African court. At present the practice followed is for the original warrant to be sent to the district commissioner of the district involved, and is usually kept by him for safe custody. There is no reason whatever why a copy should not be sent to the court itself for custody there.

The hon. Mr. Mathu also suggested that notice should be given to a member or president of a native court who was dismissed or suspended under the provisions of section 7. I think the answer to that really is that it is absolutely essential that powers of suspension, and immediate suspension, should be held by the district commissioner because you do unfortunately get cases where presidents, or members of these courts, may be liable to criminal prosecutions in some cases, or a member may appear in court under the influence of liquor, in such a case, it is manifest that suspension must take place at once without notice. Normally, dismissal would follow suspension, and so the suspension itself is in fact notice. But where a district commissioner advised the Provincial Commissioner that owing, perhaps to continued absence, he thought it best that a member, or president, of the court should be dismissed, then I think certainly the member, or president, of the court so involved should be told so at the time, that the notice went to the Provincial Commissioner.

Now, section 10. The hon. Mr. Mathu suggested again that where a matter of native customary law was involved between two parties, one of whom was not an African, whatever the race of that non-African he or she should have to come before the African court for the settlement of the case. I think that in most of these cases—and in most of them I think we know are cases of bride price really—I think in most of these cases although bride price may be paid, I am very doubtful whether it is true bride price within the African conception of it—to both parties, and I think that these are border-line cases as far as native customary law goes, and provision does exist for their proper settlement in the subordinate courts. No doubt the Select Committee will go into this matter. My opinion is that they are best dealt with by the subordinate courts.

Under section 12 the hon. Mr. Jeremiah commented adversely on this section and raised the point that as custom changed and Africans began to make wills, in those cases—cases of inheritance following wills—they should not be heard by the African courts. There is provision in the African District Councils Ordinance for by-laws to be made whereby wills can be made by Africans under the jurisdiction of the African District Council. I think that if a case arose in a district where these by-laws had been made, and wills followed, that it probably would be better for such cases to be heard in the subordinate courts. That is a matter of opinion, because it might be that the

[The Chief Native Commissioner]

provincial native courts officer and the district commissioner had advised the courts and explained to the courts the nature of wills, so that they could, in fact, deal with them properly and not by native customary law. But in any case there is of course wide provision for appeal—in fact wider than some, I think, would like to see. The hon. Mr. Jeremiah also said that he hoped that customary law would be written down. Well, that has been going on for some time, but I would refer to the hon. Mr. Jeremiah's own remarks that customary law was changing—and of course is changing fast—and I would emphasize that a code of customary law is certainly not a thing that is desirable.

Now, sections 13 and 14 were raised by the hon. Mr. Havelock, the hon. Member for Kiambu, and if I may say so with respect I think that his point was a very pertinent one. The intention of those sections—and I am not at all sure that we have really got that intention clearly stated as the sections stand at the moment—the intention was that certain cases, serious cases—homicide, arson, robbery, and so on—that the power to allow African courts to hear those cases should rest with this Council and nobody else, and that apart from those cases—and you would see in section 3 cases in connexion with marriage law other than marriage contracted in accordance with native law—those sorts of cases, too, the power to allow African courts to hear those kinds of cases should rest, as I say, with this Council and nobody else. Beyond that, section 14 allows the Governor to make orders empowering the native courts to hear other cases—that is the intention of the Ordinance—and I suggest that both those sections require further study, which I am sure the Select Committee will give, and I would suggest that anyhow section 14 should be prefaced by some such words as "Subject to the provisions of section 13".

The next section, I think, that was raised was section 29—the powers of advocates. Now, on this question my hon. friend the Chief Secretary has very clearly emphasized the objection to allow advocates more opportunities to appear in the native courts than are already allowed under this Bill. The hon. Mr. Ohanga suggested that Vakils should be allowed in the native courts of original and appellate jurisdiction. Now I would consider that this has the same disadvantages that the hon. Chief Secretary enumerated when he was discussing advocates appearing in the other courts—that is, disadvantages of cost, of adding to the complexity of the cases, and I would say that it might also lead to real abuse. What I believe the normal African litigant in these native courts wants is a court in which he can appear and be able to state his own case with not too strict a procedure, to a number of respected men whom he knows are well versed in his own law and custom, with as quick a dispatch as possible, as little cost and as little interference by other parties as may be.

The hon. Mr. Ohanga and the hon. Mr. Mathu both stressed the importance of dividing—separating—the judiciary from the executive offices in these courts. Now I entirely agree with this principle, as both the hon. Mr. Mathu and I have said a good many times in the last year. But I would remind him of the difficulties experienced, particularly by district commissioners who attempted to put this principle into practice in native courts in 1930. There was a good deal of opposition to it because it is not, as I said before, it is not an African concept; it is something quite foreign. The hon. Mr. Ohanga suggested that D.O.I—if I might call them so, Sir—should take on judiciary work only and have no executive functions as D.O.s. Now I wish that hon. Members opposite would come forward joyfully to vote funds to enable this ideal to be realized. In some of the bigger districts, of course, it is almost a reality, but with the staff available we must be able to call upon those D.O.s for executive as well as judiciary work.

Now I would like to say a few words about the provincial commissioners' appeal courts. The suggestion have been raised that these courts are not necessary. Several Members, I think, yesterday made that suggestion. Africans—many Africans—are litigious, and it has been suggested that they should not be provided with more opportunities than are absolutely essential to exercise this particular characteristic. I think that you have got to have some court at a higher level beyond the district officer's court

[The Chief Native Commissioner]

to which difficult cases may be brought. If you exclude the provincial commissioner's court this means that large numbers of cases will come to the court of review, and that, I submit, Sir, would be most undesirable. The court of review is intended to decide—hear and decide—difficult points of law, or cases where previous judgments have been in conflict, or where injustice has manifestly occurred, and some provision between the district officer's court and the court of review is absolutely necessary. My hon. friend, the Member for Aberdares, I think, suggested that the provincial commissioners' courts should become the provincial native courts officers' courts. Provision is made in the Bill for the Provincial Commissioners to delegate their powers to provincial native courts officers to hear appeals, I entirely agree that most Provincial Commissioners are really too busy to hear the number of appeals that come up. I was talking to one a few days ago and he told me that he had been to one of the districts in Nyanza and had heard 37 appeals, and there were as many remaining unheard when he left. My own opinion is that it is a good thing for Provincial Commissioners occasionally to hear these appeals. My hon. friend, the Member for Aberdare, was talking about the necessity for district officers to hear these cases in order to keep their fingers on the pulse. Well, I think that it is just as necessary for a Provincial Commissioner occasionally to hear such cases in order to keep his feet on the ground, because thereby his head may emerge from the clouds.

Most of the work, I think, in these courts, Sir, will be done by provincial native courts officers, with the Provincial Commissioner hearing an occasional one, and if that happens I suggest that you will build up too a small body of provincial native courts officers, who will get a lot of experience in their provinces of hearing these cases; that I think is an advantage. It should also make for speed, which is a point my hon. friend, the Member for Aberdare, made yesterday.

Now, the hon. Mr. Ohanga asked whether appeals from the provincial commissioners' courts to the court of review would be allowed in land cases, which are at present confined to the Provincial Commissioner's jurisdiction. The answer is "yes", provided that an important point of law is in issue and provided that the finding of the Provincial Commissioner in his appeal has conflicted with the finding by the district officer, the liwali or the mudir from whose court the appeal has come up to the Provincial Commissioner. The hon. Mr. Ohanga also stated that he hoped that a Bill would not affect the present position whereby fees to native courts and fines inflicted by them are paid to African district council funds and, in turn, those African district council funds pay for the costs of the courts. This Bill in no way modifies that arrangement.

The hon. Member for Mombasa asked whether provincial native courts officers would be in the present provincial administrative establishment or not. The answer, Sir, is yes, they will. Other points raised by the hon. Member will, no doubt, be looked into by the Select Committee.

The matter of the suitability of a case for blood money to lie, in addition to an action, in the criminal courts for murder or manslaughter is a matter which the Select Committee may care to discuss.

On one other matter, the matter of oaths. This is a very tricky question which was referred to yesterday by the hon. Member for Aberdare. I would only say that the Government does not encourage the settlement of cases by ordeal, but I would point out that any party not wishing to take an oath of this kind can always appeal to the many, many courts which exist above him which are provided for that purpose.

I am advised by my hon. friend the Member for Law and Order that the suggestion that I made that section 13 of the Ordinance might be prefaced by the words "Subject to the provisions of section 137 would not, repeat not, achieve the object which I think both sides of the Council wish to make, and no doubt the Select Committee will go into that and will find out the words that will achieve our object.

Mr. Speaker I think I have covered most of the points. I beg to move.

The question was put and carried.

REFERENCE TO A SELECT COMMITTEE

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, may I move here that the Native Courts Bill be referred to a Select Committee?

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Public Roads (Amendment) Bill

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move: That the Public Roads (Amendment) Bill be read a second time.

The Council will remember, Sir, that this Bill really arises from representations made by hon. Members opposite that people, who had been refused by district boards a road of access, could find no right of appeal. I think it is correct to say, Sir, that the Council were agreed upon the principle of an appeal against the refusal to make an order, but were a little disturbed about the process by which that appeal should be dealt with. The Select Committee, which was appointed by the Council, met, heard evidence from representatives of district councils and reported to this Council. Before the report could be debated, the Council was prorogued and it was decided that the best method of procedure was to submit direct a Bill containing the recommendations of the Select Committee. The Select Committee, in going through the Bill, had also found one or two drafting improvements and other matters which it felt should be altered and recommended that those, too, should be dealt with. I should like to express the thanks of the Committee, Sir, to my hon. friend the Solicitor General who did so much of the work in this report.

Having conceded, Sir, that the principle of a right of appeal against the refusal to make an order should be conceded, the Committee proceeded to make recommendations. It felt that the appeal should certainly lie to a court rather than to any other place. It felt, however, that this was the type of case on which local knowledge would prove very important and it therefore recommended that assessors should assist the magistrate in arriving at his conclusions. It provided that where the court does not conform to the opinion of those assessors, then the matter should be placed on record and the reasons for not conforming thereto. Some evidence that was placed before the Committee felt that arbitrators were probably the better way, but the Committee gave due consideration to that opinion and came down unanimously on the side of an appeal to a subordinate court of the first class. That I think, Sir, is the main principle embodied in this Bill.

The study of the Bill showed that, far from being indeed a "Public" Roads Bill, this Bill really deals with what might be called Private Roads and Roads of Access and that public roads appeared but little in the Bill. The Committee, therefore, recommended that the title should be altered to read "The Public Roads and Roads of Access Ordinance", The Road Authority has now been formed, Sir, and I understand that legislation dealing with public roads will be placed before that Road Authority for consideration before long and, finally, of course, before this Council for its consideration and possible approval. Because of that, Sir, we have felt it wise to recommend an amendment, which will be moved in the Committee stage, to clause 7 of the present Bill. The reason why I refer to that, Sir, is that I think that something in the nature of principle may be regarded as being involved by hon. Members opposite. Clause 7 on page 2 of the amending Bill would have added the following new sub-section to the present section 8 of the principal Ordinance—"an appeal from any order made under the provisions of sub-section (1) of this section shall lie, within thirty days of the making of such order, to the Governor in Council". Now, Sir, section 8 covers lines of public travel, their establishment, their alteration, and their cancellation. It is felt, and I think it must be agreed, that it would be undesirable at a time when public roads legislation is under general consideration to bring in an amendment of that kind. Its withdrawal from this Bill does not, of course, alter the position or commit any Member in so far as the new legislation is concerned, though it will, I think, be obvious from an administrative point of view that to have an appeal against any establishment, alteration or cancellation of any line of public travel would be to place the road work administration of this country in a very difficult position.

[The Member for Education, Health and Local Government]

That, I think, covers all the principles in this Ordinance, Sir. The other items are really items of details except for the principle that the Member shall take action necessary to administer this Ordinance instead of the Governor in Council, a principle which has, I think, been conceded in most of our recent legislation.

Sir, I beg to move.

THE SOLICITOR GENERAL: Mr. Speaker, I beg to second and with your leave I will reserve my right to speak.

MR. HAVELOCK: Mr. Speaker, may I ask the hon. Member in his reply, if he would consider some small amendments to make it quite clear that, under clause 3 of this Ordinance, in the interpretation of the word "board", that where a district council exists, that the district road board shall be a district council or sub-committee thereof. It would seem to us that it would be rather ridiculous to set up a separate committee or board when we have a statutory authority like a district council in existence. It is realized, of course, that in some parts of the country, there are no district councils, and, in that case, a separate board or committee will no doubt have to be set up.

The matter of the public road legislation, to which the hon. Member referred, does put me into some confusion as to how and where the present Road Authority will be brought in, especially as regards the alteration to section 6. Clause 6 of the amending Bill says that—"section 6 of the principal Ordinance is amended by substituting the word 'Member' for the words 'Director of Public Works for transmission to the Chief Secretary'"—and on the face of it, it seems to hon. Members on this side of the Council that, in view of the setting up of the Road Authority, the original section 6 of the original Ordinance might read—"District Boards shall cause direct minutes of all meetings to be kept and a copy thereof shall be submitted forthwith to the Road Authority for transmission to the Chief Secretary"—and I would be grateful if the hon. Member would deal with that point in his reply. If he believes that the new public roads legislation, which Government is now considering, will cover that point so there is no need for an amendment, then of course we will accept it, but I would like the actual matter cleared up.

Now, Sir, I would ask the hon. the learned Member on the other side of the Council to explain to me how the new amendment to Clause 7 ties up with the present legislation as regards acquisition of land for public lines of travel or public roads. It is my understanding that if a road crosses freehold land, the Government or the Road Authority may merely enter and construct on that freehold land the roads required. They do not take possession of that land—they merely enter and construct and, in fact, the land within the road reserve which is not being used for actual works still belongs to the freeholder and may be used by him. Now, Sir, I do not know how this amending clause ties in with the position as I understand it at present.

If it is particularly complicated, Sir, any question that I ask—I am sure the hon. Member will be able to answer me—but if there is any complication, I would ask that this matter might be referred to a Select Committee.

Sir, I beg to support.

MR. PRESTON: Mr. Speaker, in rising to support the Bill, I should just like to say how very glad I am it has been brought in. It has removed a position which was untenable in the past when a man could be arbitrarily refused a road of access and have yet no right of appeal.

Sir, I would like the hon. Member in his reply to clear up two points. One is clause 9 of the Bill. What is the actual meaning of the amended section 15 (6) (c) and does not the award of costs always follow the hearing of an appeal? Does section 15 (5) (a) of the new Ordinance give power to the court to rescind or to cancel an order granting a road of access already made by a district road board or the district council. Those, Sir, are the only points I would like clarified.

THE SOLICITOR GENERAL: Mr. Speaker, to deal first of all with the points made by my hon. friend, the Member for Kiambu, I do not think the definition of "board" really affects the point which he raised. That definition

[The Solicitor General]

was put in, Sir, because while we were drafting this Bill we noticed that in the present Ordinance there were sometimes references to "boards", sometimes to district boards and various other references meant to apply to boards, and we have therefore sought by clause 12 of the Bill to make the matter uniform. Clause 12 reads "save in sub-section (2) of section 3 of the principal Ordinance there shall be substituted—(a) for the word 'board' and for the words 'district road board' and 'district board' respectively wherever they appear in the principal Ordinance the word 'board'"; that is the only purpose of that definition.

Now, Sir, as I understood my hon. friend, he made the point that, where there are district councils, that those district councils should automatically be "district road boards" without the need for any appointment by the Member as it now will be. Sir, if that is to be the policy, it will require an amendment to clause 3 of the Bill. That may be made in the Committee stage if my hon. friend, the Member for Health and Local Government desires that to be done.

With regard to the question of clause 6 which seeks to amend section 6 of the Bill, I think that I will ask my hon. friend, the Member for Education, Health and Local Government to answer that point. It is really a point of policy.

Now, Sir, clause 7. We redrafted section 8 of the Ordinance because there is a most definite hiatus in that section as it is now drafted. It reads as follows: "Whenever it is made to appear to the Governor that requirements exist for the establishment, alteration or cancellation of a line of public travel, or for the conversion of a road of access into a line of public travel, the Governor may by order, published in the Gazette, dedicate a line of public travel", but that apparently is all that he can do. He can't alter a line of public travel or cancel it and that is the only purpose that there has been a redraft of this section so as to fill this hiatus and to make it clearer exactly what this section means.

As I understand my hon. friend, he is rather anxious about the new sub-clause (3) which reads "where an order under this section dedicates a line of public travel or converts a road of access into a line of public travel such line of public travel shall be absolutely dedicated to the public as a public road". Now, Sir, that already exists in the present legislation.

MR. HAVELOCK: If sub-clause (3) is taken with sub-clause (2) I think there is a difference in that sub-clause (2) says "In every order made under this section the line of public travel to be established, altered or cancelled or the road of access to be converted into a line of public travel shall be clearly described and the width of any such line of public travel shall be specified".

THE SPEAKER: We have not got this amendment yet moved. We can't really discuss this amendment if it is not moved. It can't be moved in Council. It must be moved in Committee when Council goes into Committee on the Bill. We are really interpolating a debate which should take place at the proper time and proper place.

THE SOLICITOR GENERAL: I think I follow now what is in the mind of my hon. friend. We can discuss that before the Committee stage is reached.

Now, Sir, my hon. friend the hon. Member for Nyanza asked some questions with regard to clause 9 and the new section 15. I think the first of those was that he asked for some explanation of sub-section (6) with regard to costs. Now, Sir, sub-section (6) (c) merely lays it down that the amount of such costs shall be fixed by the court, that is the actual amount to be paid in shillings and cents by one of the litigants, the unsuccessful litigant it may be or the litigant who has to pay the costs. Paragraph (a) of that section merely lays it down that "The costs of every such appeal shall follow the event unless the Court shall for good reason, otherwise order". That gives the court the right to say that the costs shall not follow the event of this particular case but there must be good reason for doing it. I do not know whether that clears up the doubt in the mind of my hon. friend.

With regard to his other point as to whether the court would have power to reverse the decision of a board, that power is, I think, inherent in every appeal, but if there is any doubt about it

[The Solicitor General]

we would be quite prepared, Sir, to put into that section an additional paragraph in the Committee stage.

I think, Sir, that that answers all the points which have been raised with which I can usefully deal.

MR. PRESTON: On a point of explanation, what I was really asking was, does the new section 15 (5) (a) of the new Ordinance give power to the court to rescind or to cancel an order granting a road of access, that is to say, an order that is already in existence?

THE SOLICITOR GENERAL: The answer to that is, where an appeal is filed against the order granting a road of access, that in my view the court would have that power but I do not think it is specifically stated in sub-section (5) and it might be well perhaps I think to put in a paragraph making it quite plain, but in my opinion all courts of appeal have inherent power to rescind the judgment of courts below.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, the hon. Member for Kiambu raised the point of district councils being district boards. It is correct to say that it is at present the practice that where the district council exists it is almost automatic that it becomes the district board and I would suggest, Sir, that it is better to leave it to custom and practice rather than to tie the matter up in the strict form of this legislation. However, Sir, I think I can give him the assurance that the present practice will be followed and if it is found necessary to alter that practice then I will certainly see that the hon. Members opposite are consulted.

On the question of clause 6, Sir, which I did not refer to because I felt it was mainly a matter of detail, I think it is clear, Sir, from what has been said and what is said in the Bill that the district boards will indeed deal with roads of access. They are as near to "private streets", if I may so say, as is possible in a rural area, and I cannot think that those will come within the purview of the Road Authority. Because of that, Sir, I think that it is better that the Member who is responsible for the administration of the roads of access legislation should be the person to whom the minutes are transmitted. I think in practice wherever a district road board had to deal with a line of public travel by special request as laid down in section 8 of the principal Ordinance, then obviously the minutes would be transmitted to the Road Authority.

With regard to clause 7, Sir, that is a matter which I think we shall deal with in committee and endeavour to meet the hon. Member as far as possible. I think that covers every point, Sir, that was raised in the debate.

If I may, with your permission, Sir—it has been pointed out to me that in fact in clause 60 of the Local Government (District Councils) Ordinance it states: "From and after the date upon which any district council is constituted for any district under this Ordinance, such council shall, within such district, exercise all or any of the powers and carry out the duties prescribed for district road boards by sections 8 to 15 inclusive of the Public Roads Ordinance".

MR. HAVELOCK: Thank you, Sir.

The question was put and carried.

The Hotel-keepers Bill

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, I beg to move that the Hotel-keepers Bill be read a second time.

Sir, in November, 1949, the then hon. Member for Nairobi North asked a question in this Council concerning the uncertainty of the legal position as to whether the Innkeepers' Liability Act of 1863 and the Innkeepers Act of 1878 of the United Kingdom apply in this Colony and asked that the Government should take steps to clarify the position. An undertaking was given that, after consultation with the appropriate authorities, a draft Bill would be introduced into this Council.

Sir, the consultation has taken place with the East African Hotel-keepers Association and with representatives of the insurance companies and this Bill is now introduced.

There is, Sir, I think only one point in it on which there has not been agreement with the authorities who have been consulted, and that is that in clause 3 of the Bill the hotel-keeper's liability is stated to be limited to a sum of two thousand shillings. Now, Sir, it is a fact

[The Secretary for Commerce and Industry]

that in the United Kingdom Act of 1863 the figure is specified as being thirty pounds, but, Sir, this has been very carefully considered and it is felt that this legislation not only serves to define the liability of the hotel-keepers but also has a purpose in relation to the rights of the general public. It is considered, Sir, that few people would dispute that what you could buy for thirty pounds in 1863 would be a very different amount of goods to what you could purchase to-day when, in fact, thirty pounds would barely cover the price of a new suit at current prices, and who can tell whether in a few months' time it will even cover that. For that reason, Sir, the Government has taken the view that the figure should be substantially more than thirty pounds and the sum of two thousand shillings has been included accordingly.

The other points covered by the Bill are, I think, self explanatory and are dealt with in the Memorandum of Objects and Reasons.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. USHER: Mr. Speaker, Sir, I am still in some doubt as to who it was that promoted this Bill, whether it was the hotel-keepers or the insurance people or who, I should not have been at all surprised to learn that it had been the Law Society.

MR. HAVELOCK: The Member for Nairobi North.

MR. USHER: Because it seems to me that there is a considerable fog over part of it and if that fog is not dissipated, it will prove a fruitful source of income to underemployed advocates—(Shame.)—The part to which—

THE SPEAKER: There are some limits of relevancy.

MR. USHER: The part to which I refer is clause 2, the definition of "hotel". "Hotel", if I may read, Sir, means, "any hotel, inn or boarding house the keeper of which is responsible in law for the goods and property of his guests". It is the words "responsible in law" which I find difficult. I believe they are capable of explanation but it does seem to me and to others a pity to embark on this new legislation and to beg the whole question in that definition.

We are told in the statement of Objects and Reasons that whether the Act of 1863 applies here—and that is the important one as I take it—is in doubt. If we want the law of 1863 to apply here, can we not make it apply here, otherwise can we not so define the word "hotel" as to leave nobody in doubt as to what the law really is, without it being tested?

I do hope that if the matter cannot be cleared up here and now and possibly amended in the committee stage the Bill could go to a short Select Committee for consideration of that point.

Sir, I beg to support.

LT.-COL. GHERSIE: Mr. Speaker, whilst I welcome the Bill, I am opposing the proposed amount of liability to the hotel-keeper as provided in clause 3.

Now, Sir, I fully realize that this Bill is related to the Innkeepers' Liability Act of 1863 and the Innkeepers Act of 1878 and it has been argued that the value of money to-day taken in relation to that period is infinitely less, but Sir, it should be appreciated that similar legislation operates in the United Kingdom and it has not been considered necessary to increase the amount of liability. Therefore, Sir, unless Government can see fit to reduce this amount I propose, at the Committee stage, to move an amendment to that effect.

Now, Sir, if this amount is insisted upon and adopted it will merely mean that the hotel-keeper will increase his insurance policy, the cost of which he will wish to pass on to his clientele, thereby increasing the cost of accommodation to the individual, and I submit that if we refer to the Objects and Reasons, paragraph 2, "It is undesirable that hotel-keepers and their guests in the Colony should be left in doubt as to their rights and liabilities. This Bill will, accordingly, make statutory provisions similar to those provided in the United Kingdom by the above-mentioned Acts of Parliament". I suggest to bring the Bill into line with the existing Act in the United Kingdom, we should retain the same amount of liability.

There are one or two other points which I think require clarification.

[Lieut.-Col. Ghersie]

In section 5, it provides in sub-section (a) that no sale may be made till after the said goods, etc. have been for six weeks in such charge or custody or in or upon such premises without such debt having been paid or satisfied. Sub-section (c) reads, "that at least one month before any such sale is effected the hotel-keeper shall cause to be inserted in one newspaper" "an advertisement containing notice of such intended sale" of goods. As I interpret that, it means the hotel-keeper would be legally entitled to advertise the goods for sale at least two weeks after they had been left there and perhaps earlier.

Now, assuming that the guest then offers to liquidate his liability after the advertisement had taken place, would the hotel-keeper be entitled to recover any additional cost incurred during that period, in particular, the cost of the advertisement, and if the guest refuses, Sir, would the sale proceed?

Then in paragraph (2), "Where any goods," etc., "have been sold pursuant to sub-section (1) of this section the hotel-keeper shall, out of the proceeds of sale, after paying himself the amount of his debt and the cost and expenses of the sale, on demand pay to the person" "any surplus money remaining thereafter". If no demand was made on the hotel-keeper, the person perhaps cannot be traced and has no agent in the Colony, to whom, Sir, are the surplus funds paid? Are they paid to the court or to the Public Trustee?

There is one other point, Sir, finally, that again refers to clause 5. Has the hotel-keeper the right to assume that the goods deposited with him or left in the hotel are fully owned by guests and that any claims by any other persons or firm on that property, whether on loan or on a hire-purchase agreement would take second place in respect of the lien of the hotel-keeper? Subject to those remarks, Sir, I support the Bill.

THE ATTORNEY GENERAL: Mr. Speaker, the reason for the form of the definition of "hotel" is to make it clear that the Bill does not extend liability to anyone who would not already have in law a responsibility for the goods and property of his guests.

The expression "responsible in law" refers to the responsibility at common law. The hon. Member for Mombasa said that the definition begged the question. I understood his argument to be that it was in doubt whether the 1863 Act applied to this Colony and that, therefore, it was not much use talking about "responsibility in law". But there is no doubt that *common* law applies in this Colony and the responsibility arises under that. The position at common law is that an innkeeper is liable for the goods under his charge and within the protection of the inn, and he is as insurer of his guests' goods against loss. The 1863 Act and this Ordinance do not increase that liability: they limit it. I hope that I have made myself plain. It is in order that there should be, no doubt that the limit applies here that we are introducing this Ordinance.

Now, as I have said, this Bill will modify and limit the liability which would rest on a common innkeeper at common law. Before, however, that liability can attach, the person concerned must be a common innkeeper, that is he must hold out that he will receive all travellers who are willing to pay a price adequate to the sort of accommodation provided and who come in a condition, a situation, in which they are fit to be received. That is, subject to a reasonable excuse for refusal to accommodate them. I do not want to enter upon a disquisition of the law on this subject, but, Sir, a certain amount of interest has been aroused on the point of who is liable and who is not, and who must undertake this liability and what excuses there may be for avoiding it. It has been held that it is a reasonable excuse to refuse admission to a traveller, that the inn is full. There is also a case in the books, where in 1899, a lady arrived in what was then described as "rational dress" and the innkeeper took one look at her and said he would not serve her in the coffee room but he would in the privacy of the bar parlour. (Laughter.) Now there are numerous other cases of what is and what is not a reasonable excuse, and I will not go into that, but it has been held that a boarding-house does not generally come within this definition of common inn, and in fact I think that there are not many establishments in Kenya which would come within this

[The Attorney General]

common law liability at all. A boarding-house might conceivably come within it; but I think it would be very difficult for it to do so.

With regard to the limit of £100, or two thousand shillings, the reason for choosing that sum is, as explained by the hon. Mover, that that is considered a reasonable limit. Remember that the liability is unlimited unless we limit it somehow; and it is considered to be fair that the limit should be placed at two thousand shillings. When I say the liability is unlimited, I mean the liability, where it attaches, is unlimited.

Government would have no objection to the appointment of a Select Committee if that is the wish of hon. Members opposite. I think, if I may say so, that the points raised by the hon. Member for Nairobi North are really more points to be dealt with in the committee stage rather than in the discussion on principle which we are now undertaking, and I would suggest therefore that they be dealt with either in committee stage or in Select Committee if it is the wish of the Council that this Bill should go to Select Committee. If it reassures hon. Members opposite at all I myself would support that suggestion.

Sir, I beg to support.

MR. GHERSIE: On a point of information, do I understand that these points do really require clarification. The points raised, I do not think they are provided for in this Bill.

THE ATTORNEY GENERAL: I am not quite certain that I got the hon. Member's first point correctly, Sir. With regard to the second point he made—when any goods, chattels and so on, are sold by the hotel-keeper to defray expenses, who has a right to that money, if it is not demanded—I suppose that the position is the same in that case as in any other similar case that the hotel-keeper has a right to keep the money until it is demanded, but he is always liable to pay it on demand and, if he wishes to rid himself of that liability, he can, of course, pay that money into court. I do not think the Public Trustee would come into the matter at all. The other matters which were raised by the hon. Member are matters which I suggest can be discussed in the Committee stage when the particular clause is reached or in Select Committee. It is probable that they would receive more careful consideration and certainly more time would be spent on them if the Bill went to Select Committee and I have already said that there would be no objection to that.

MR. HAVELOCK: May I express the opinion of the majority of Unofficial Members that this Bill should be sent to Select Committee?

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, I think that my hon. and learned friend has dealt with all the points raised by hon. Members opposite in his remarks and it has been agreed that this Bill should be referred to a Select Committee.

I would only, Sir, wish to refer to one matter raised by the hon. Member for Nairobi North on the subject of this two thousand shillings limit of liability.

It is true, Sir, that insurance companies will, no doubt, require to increase the premiums paid by hotels in order to cover this liability as I believe at the present time they operate on the assumption that the liability is £30. But, from the information which I have been able to obtain, this increase is not, in fact going to a very large item when it comes to talking of passing the cost on to the guest or user of the hotel or premises in question. I understand, Sir, that the present rate of all-risks policies covering risks of this type is Sh. 14/6d. per single bedroom. That covers liabilities in addition to liability for loss of property, such matters as food poisoning and other evils that can befall the traveller. Now, Sir, I have not been able to get an accurate breakdown, but I am told that about Sh. 10 would be a fair assessment of the amount of this premium which is due in respect of the matters dealt with in this Bill. If it was necessary to increase that Sh. 10 *pro rata* to cover the difference in liability, I do submit that when you are talking in terms of passing it on to the guest or user of the hotel, the amount is trifling. The hon. Member, Sir, mentioned that in view of the fact that the 1863 Act in the United Kingdom had not been amended, the Government might well follow the procedure of that Act and retain or include

[The Secretary for Commerce and Industry]

in this legislation the figure of £30. Well Sir, I submit that in view of what has been said, there may be a very good argument for the Government of the United Kingdom to amend its legislation but I see no reason why this Government should necessarily adopt the same figure.

Sir, I beg to move.

The question was put and carried.

MR. HAVELOCK: Mr. Speaker, I beg to move: That the Hotel-keepers Bill be sent to a Select Committee of this Council.

The Attorney General seconded.

The question was put and carried.

The Local Authorities (Recovery of Possession of Property) Bill

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move: That the Local Authorities (Recovery of Possession of Property) Bill be read a second time.

This Bill, Sir, has been introduced at the instance mainly of municipal councils and municipal boards in this country. Its necessity arises from the fact that those local government authorities have embarked, with Government assistance, upon programmes of providing subeconomic and non-profit-making housing accommodation for the poorer part of the population. They are finding, as it was found in the United Kingdom, that to try and evict tenants who are a nuisance—who do not pay their rents, etc.—through the ordinary process of the law is a very long delaying process which, indeed, adds to the cost of the scheme; because if it takes a local government authority some three or four months to remove a tenant, a tenant from whom you know you cannot possibly recover the amount of rent he has not paid, then that cost must eventually be added to the rent level to be charged to the other people. There is also to be remembered, Sir, that there is, in addition to the cash subsidy that is shown, a hidden subsidy inasmuch as even in the case of economic housing the Government has always invariably in this country given a free grant of land for the purpose of the erection of housing, and the cost of that land is not included in the rent cost of the scheme. It was, therefore, felt necessary, Sir, to follow the example of the United Kingdom many years ago and work out a procedure which would allow a quicker recovery.

I do not, Sir, propose to go into the procedure in detail because I think that is more a matter for the committee stage. It is the principle that we are dealing with, that local government authorities should have a quicker means of the eviction of unsatisfactory tenants than that provided by the normal process of the law.

There is, however, one point, Sir, that I would like to deal with, so that it will be understood that there is reasonable protection for the tenant who may be regarded as unjustly treated by any action, and that is in the fact that, as is mentioned in the Objects and Reasons that if the local authority had not at the time of obtaining the warrant a lawful right to the possession of the premises the mere obtaining of the warrant shall be a trespass, and the tenant may, upon entering into a bond to bring an action against the local authority and to pay the costs if unsuccessful, secure that the execution of the warrant is delayed until judgment in the action has been given. It is also provided that the bond shall be entered into at the cost of the local authority. I think it may be shown, therefore, that at the same time as introducing this very necessary principle, if local government authorities are to be encouraged to proceed with the development of sub-economic and non-profit-making housing the Government has also provided that any mistake on their part shall be dealt with in a manner that ensures that the unjusted tenant shall be able to obtain justice and that the fact that he has not the finance to cover the bond shall not be a hindrance to him in taking action.

Sir, I beg to move.

THE SOLICITOR GENERAL: Sir, I beg to second, reserving my right to speak.

MR. JEREMIAH: Mr. Speaker, I only stand, Sir, just for a little clarification with regard to clause 3. What I want to know, Sir, from the hon. Mover is when actually does an interest of a tenant expire if he lives in the local authorities' houses. As far as I know there are no agreements provided by which a tenant, if he breaks them, it can be regarded that his interest with the authority has

[Mr. Jeremiah]

expired, and I would like the hon. Member to consider whether agreements should not be provided for the people living in the local authority quarters.

Another point, Sir, I should like to know is whether quarters specifically provided for the municipal councils' employees or the municipal boards' employees, once the employee leaves the service, he is to be evicted automatically? In the towns, Sir, the municipalities have undertaken to provide for the housing of the employees of various firms, not only their employees, and any tenant occupying some of the local authorities' houses, I think, should have the right to retain it provided he did not break the law, as long as he pays the rent, even if he is not employed by the same authority which provided him with the house when he entered into that house.

Now, Sir, as far as I know, in this town especially where I have lived for several years, I have seen that the local authorities have been dealing with the general public in a very sympathetic way and I wish to pay tribute to the work done by the officers concerned with allocating houses, to Africans especially. (Applause.) But, Sir, in supporting the Bill I hope that their sympathetic attitude will still be continued and no hardship will be caused to anyone by the passing of the Bill.

Sir, I beg to support.

Council adjourned at 11 a.m.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, the hon. Member for African Interests, Mr. Jeremiah, has raised two points. The question, Sir, of the interest of the tenant of any premises. Tenancy for a term expires at the end of that term. A tenancy at will expires at will, but reasonable notice obviously should be given which, in respect of rent paid monthly, would be tied to the period of one month, and, in the case of rent paid weekly, obviously for the period of one week. I think it is wise to say, Sir, that this Government could not interfere with the local government authority's direction of its affairs to the extent of insisting upon agreements. The hon. Mr. Jeremiah stated, and I think very correctly, that this question of the control of sub-economic housing had been dealt with very sympathetically by the local government authorities in the past and I see no reason to doubt their good intent for the future.

He raised also, Sir, a point which I think is rather outside the scope of this Bill, the question of the housing by the employer, the local government authority, of the employee, and the need to quit when the employment ceases. That, Sir, I speak from memory, I think is referred to and recognized in Rent Control legislation, and I think, Sir, that we will have to hold that where a local government authority had spent the ratepayers' money on specifically providing accommodation for its own staff, it is entitled to hold that accommodation for its own employees. That, I think, Sir, covers the point raised in the debate.

I beg to move.

The question was put and carried.

The Customs and Excise Duties (Provisional Collection) (Amendment) Bill

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move: That the Customs and Excise Duties (Provisional Collection) (Amendment) Bill, 1950, be read a second time.

Hon. Members appreciate that where it is proposed to vary a customs or excise duty, there must be provision to bring that variation into force immediately such a proposal is made public by the publication of a Bill designed to give effect to the proposed change. The provision for such action is made, Sir, in the Customs and Excise Duties (Provisional Collection) Ordinance. That Ordinance empowers the Governor in Council to issue an order to the Commissioner of Customs to charge immediately the new rate of customs or excise duty which the Bill proposes to enforce. Unfortunately, the existing Customs and Excise Duties (Provisional Collection) Ordinance only enables the Governor in Council to issue such an order when the existing duty is to be *varied*. It makes no provision for the case when the duty is to be abolished. The wording of the amending Bill now before the Council remedies this omission.

[The Secretary to the Treasury]

Hon. Members will note, Sir, that the Bill is entitled "The Customs and Excise Duties (Provisional Collection) (Amendment) Ordinance, 1950", inasmuch as it is now 1951, a small amendment will be moved in committee changing 1950 to 1951.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The African District Councils (Amendment) Bill

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move: That the African District Councils (Amendment) Bill be read a second time.

This, Sir, is the first step in the process of tidying up, as a result of experience, the Ordinance which was passed last year. The first point raised in the Bill is, I think, really a matter of administrative detail and that is that the district councils concerned shall furnish the Provincial Commissioner with a copy of its proceedings for transmission to the Member and, as the Member is responsible for the administration of the Ordinance, it is obviously a wise administrative provision.

The second point, Sir, is the question of special taxation to deal with the special needs of an area or sub-area of the African district council concerned. That, Sir, I think is something which is the beginning of minor local government authorities. Obviously, small areas within the jurisdiction of an African district council will ask for services and standards of service rather higher than those which the finance of the main body can provide for the African district council area as a whole, and provision is now made in this Bill, as was recently made in the District Council Ordinance for the settled areas, for special rating to enable allocation or, if I may say so, a "sub-area" to obtain a higher standard of service provided they are prepared to tax themselves accordingly.

The next point, Sir, is one which is really the question of, again, tidying up. Under the principal Ordinance all resolutions of local native councils in force at the date of the coming into operation of the Ordinance were to continue to be of full force and effect within the areas to which they apply until revoked and replaced by by-laws under the provision of the principal Ordinance. It was felt, Sir, that it was better that these resolutions should be replaced by by-laws which would have to go through the machinery of approval of the Standing Committee for Local Government in African Areas, but as it stood a local native council, as it then was, could have left its resolution in force and it had no need to come to the Standing Committee for approval through the machinery of by-laws. It was, therefore, thought advisable to put in this present amendment wherein, if in the opinion of the Member it is desirable in the interests of the inhabitants of any area or district that a resolution shall be revoked in order that the machinery of going through by-laws and the Standing Committee shall be brought into action, he should have that power. I need hardly say, Sir, that it is unlikely that this particular power would be applied except after consultation with the Standing Committee for Local Government in African Areas. That, I think, Sir, covers the main provisions of the Bill.

I beg to move.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Kenya Regiment (Territorial Force) (Amendment) Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Kenya Regiment (Territorial Force) (Amendment) Bill be read a second time.

This Bill, Sir, is, I think, a non-controversial piece of legislation. Clauses 2, 3, 5, 6 and 8 of the Bill remove from the principal Ordinance all reference to the Special Reserve which was abolished by section 2 of the Kenya Regiment (Territorial Force) (Amendment) Ordinance, 1949, and are, therefore, to this extent, consequential upon the enactment of that Ordinance.

Clause 5, in addition, applies to the proceedings of courts martial under the principal Ordinance, the rules of procedure under the Army which was the intention of section 25 of the principal Ordinance, in precisely the same way and for the same reasons as was done when the King's African Rifles (Amendment) Ordinance was enacted last year in respect of the King's African Rifles.

[The Deputy Chief Secretary]

Clause 4 of the Bill seeks to amend section 21 of the Ordinance in two respects. First, to make it clear that officers of the Regiment, as well as members, shall be entitled to the allowance for the maintenance of uniforms, and secondly, to enable the court to order the offender to make good any loss resulting from the commission of any offence under sub-sections (4) and (5) of this section in addition to the penalty already provided for such offences.

The new clause 7 is, I think, Sir, self explanatory and the reason for it is fully explained in the Objects and Reasons.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Promissory Oaths (Amendment) Bill

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That this Bill be read a second time.

The Bill will amend the Second Schedule to the Promissory Oaths Ordinance so as to bring it up to date and to bring it into line with the Membership system which now obtains. The Ordinance has not been amended since 1935 and the titles of certain of the executive officers mentioned in the Schedules have since been altered and are now incorrect. There are also some omissions—for instance, the Deputy Chief Secretary and the Member for Agriculture and Natural Resources.

Opportunity has also been taken to add to the Schedule the President, Vice-President and Justice of Appeal of the Court of Appeal for Eastern Africa, and at the committee stage it is my intention to move an amendment—which has been circulated to hon. Members—to move an amendment to the judicial oath which will make that oath applicable to members of that court who have to apply, not only the law of this Territory, but the law of other Eastern African territories.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Criminal Procedure Code (Amendment) Bill

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That this Bill be read a second time.

Council will recall that there was recently enacted an amendment to the Penal Code which inserted certain new sections making certain new offences in connexion with the administration of oaths and also a new offence in connexion with chain letters. As a corollary to that, an amending Ordinance is now necessary to amend the First Schedule to the Criminal Procedure Code so as to give magistrates' courts power to try those new offences, and that is the principal object of this short Bill.

Opportunity has been taken to render persons liable to police supervision after a first conviction for certain specified offences in connexion with the administration of unlawful oaths and offences in connexion with the membership of unlawful societies. It is considered desirable that those persons should be able to be supervized by the police on release after a first sentence.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. MATHU: I would just like to ask a question, Sir, from the hon. Mover why it is necessary to provide with retrospective effect the amendment to the Criminal Procedure Code. I cannot see any reason for it, Sir, and I do not think, unless the hon. Mover can give good reasons for it, that it should be necessary. I think this law should take effect immediately when this Council passes it and the principle of retrospectivity is the one, Sir, I am questioning.

THE ATTORNEY GENERAL: Sir, the reason for making this Bill retrospective is that it would have been desirable to alter the First Schedule to the Criminal Procedure Code at the same time that the offences were created. That would have had the effect of giving magistrates' courts power to try the offences from the start. That was not done and there has been a certain time lag. The result is that during that period the only court having power to try those offences is the Supreme Court. It is not considered that it would be in the interests either of the accused or of the rapid administration of justice that offences which may

[The Attorney General]

have occurred before the passing of this present Bill should not be able to be tried by magistrates' courts. It would take much longer to put them before the Supreme Court and it will probably not be of advantage to the accused. That is the reason why it is suggested that this present Bill be dated back to the date of the passing of the original Ordinance.

MR. MATHU: I would like to know whether then the people to blame are the offenders—it is our system then that is to blame that there had been a time lag. If the offenders were ready to be tried at the time then I think they ought to have been tried.

THE ATTORNEY GENERAL: Sir, no one would be more reluctant to make a penal provision retrospective than I should, but this is not making the offence retrospective. The offence exists. It is merely allowing a certain procedure to be taken which I, personally, think is in the interests of the accused as well as of the speedy administration of justice. I hope that I have made myself plain. I do not think that, in point of fact, it is going to amount to anything because I do not know of prosecutions pending which will be affected by this provision. But if there are any, I think we ought to have the provision.

The question was put and carried.

THE SPEAKER: I have got two Provisional Collection of Taxes Bills—where are they?

THE ATTORNEY GENERAL: The first one is the Customs and Excise Duties (Provisional Collection).

THE SPEAKER: I am sorry, I have not got a copy.

THE ATTORNEY GENERAL: Mr. Speaker, number 4 on the Order Paper is the Customs and Excise Duties, and that is number 9 on the Order Paper.

THE SPEAKER: They had other numbers the other day, you see.

THE ATTORNEY GENERAL: It is confusing.

THE SPEAKER: This is number 9 on the Order Paper.

The Provisional Collection of Taxes Bill

THE SECRETARY TO THE TREASURY: Mr. Speaker, I beg to move: That a Bill entitled the Provisional Collection of Taxes Ordinance, 1951, be read a second time.

I do not think, Sir, that there is very much which I can usefully add in moving the second reading of this Bill, to the exhaustive statement of Objects and Reasons in the printed copies which have been published. The position is that in his Budget speech, the Member for Finance has, of necessity, to disclose his proposals for any change in any taxation. It is clear that if undesirable speculation is to be avoided, provision must exist to bring the new proposed rates into force immediately. Such provision, Sir, already exists in regard to customs and excise duties in the form of the Customs and Excise Duties (Provisional Collection) Ordinance. There is, however, no provision in relation to any other forms of taxation, for example, a consumption tax. This Bill, Sir, seeks to remedy this omission.

The Bill is a standard piece of legislation which should certainly find a place on the Kenya Statute Book. It will be noted that while provision is made to bring any variation in taxation into force immediately notice of such resolution is given, such variation can only remain in force if the resolution is passed with a given time in Committee of Ways and Means. Thereafter, the necessary legislation is enacted again within a time limit.

There is one small amendment, Sir, which will have to be moved in the Committee stage in relation to clause 2 (1) (*d*) and 2 (1) (*e*). These clauses provide that should the proposals under which enhanced taxes or duties are provisionally collected be not finally accepted by the Council, the differences shall be repaid or made good. It is desirable, Sir, to add after these words—"to such an extent as is practicable". It is possible that in certain cases, it would not be practicable to repay or make good to the actual persons who have, in fact, contributed to any increased rate which, in the event, may not be accepted.

Sir, I beg to move.

SIR CHARLES MORTIMER seconded.

The question was put and carried.

The Traders' Licensing Bill

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, I beg to move: That the Traders' Licensing Bill be read a second time.

This Bill has two main objects. The first is to continue to protect the honest trader against exploitation by unscrupulous competitors. The second is to replace a law which was enacted a considerable time ago, and is now out of date in many respects, in the light of developments which have taken place in the Colony since those days. It is, in addition, the intention to revoke control of traders' licensing under the Defence Regulations.

The Bill which is now submitted for the consideration of hon. Members is the outcome of more than three years' deliberation and consultation. The matter was first investigated by the former Trade Advisory Committee and more recently by its successor, the Board of Commerce and Industry. The views of the Provincial Administration, Chambers of Commerce and the appropriate Government departments have been obtained and a very substantial measure of agreement has been secured.

The main differences between the provisions of this Bill and the provisions of the present law are summarized in the Memorandum of Objects and Reasons. I feel that I should draw the attention of hon. Members to the following matters:—

Clause 2 includes a number of new definitions. These are in respect of caterer, indent agent, licensee, local authority, and so on. Under the present law there is no provision for the licensing of caterers and it is considered that this has given caterers an unfair advantage in relation to other types of traders. Provision is now made for them to be licensed. Under the definition of "hawker", Sir, there is an error in the Bill as it stands. In line 20 it should read "a fixed place" and not "a fixed price". I wish to give notice that it is the intention to move an amendment at the Committee stage to rectify this. "Indent agent" has been included to cover the activities of certain traders who, while their business is not precisely that of a commission agent, operate on somewhat similar lines.

Clause 5 introduces the most important new principle in the Bill. It gives recognition to the fact that trading activities should be controlled by local authorities and makes it obligatory that before an applicant can be issued with a licence to trade he must satisfy the licensing officer that he has complied with any relevant by-laws in regard to a shop in a municipality or township, or that where "shops" in Rural Areas Ordinance applies he has a licence under that Ordinance. In the case of shops situated elsewhere he must produce a valid certificate from the district commissioner of the district in which the shop is situated that the premises are suitable and properly sited and that he has complied with the requirements of any by-laws of the local authority relating to the carrying on of the proposed trade.

Clause 7. The scale of fees prescribed are the same as those laid down in the present Ordinance with the following exceptions: an indent agent is required to pay the same fee as a commission agent or a manufacturer's representative; a new provision is made for a hawker to be able to take out a yearly licence at a reduced fee of Sh. 150, as an alternative to the present fee of Sh. 45 per quarter; provision has been included under clause 7 (1) (*d*) for licence fees for caterers—the sum of Sh. 20 *per annum* in respect of premises situated within a municipality or township is included in the Bill, but should read Sh. 25 and I wish to give notice that it is the intention to move an amendment at the committee stage.

The fact that with the above exceptions it is the intention to retain the present scale of fees has proved one of the most controversial matters in regard to this Bill. Some people have argued that the 50 per cent increase in licence fees which was imposed in 1940 and incorporated in the present law by an amending Ordinance in 1947 should be removed. Others have suggested that the values of goods on hand should be altered to take into account the changed value of money. There has been a considerable measure of opinion that there is no necessity to change the scale of fees provided that the commercial community receives adequate services from the Government. Hon. Members who have the recent

[The Secretary for Commerce and Industry]

Budget debate still fresh in their minds will not, I think, consider that this is a time when the Government could reasonably reduce revenue except under most exceptional circumstances. It is obvious that either the reduction of the scale of fees to the level obtaining previously to 1940 or changing fees in relation to the value of stocks on hand must have the effect of reducing revenue, and I would say that I have never received representations myself that the payment of the present fees inflicted hardship on any individual trader. It is, of course, a fact that while the monetary value of goods has increased, it must be remarked that so, too, has the monetary turnover and to a parallel extent.

In so far as services to the commercial community are concerned, I would point out that in recent years a Member for Commerce and Industry with his office has been appointed largely as the result of representations made by organized commerce. The Weights and Measures Department is being expanded. Large sums are spent on enforcing law and order and providing other conditions essential to the development of trade, and a portion of the revenues obtained in this Ordinance must, of course, be devoted to the enforcing of the law. When the matter is considered in the light of these things, Sir, I submit that the Government does give service to the commercial community.

Clause 15 differs from the present law in that if it becomes necessary, under certain circumstances, to determine the value of goods on hand, the licensee is given the option at his own expense of employing a valuer who is licensed under the Brokers Ordinance.

In clause 17 reference to emergency powers has been deleted. Offences against Chapter XXX of the Penal Code, which deals with false pretences, have been inserted. Provision has also been made, and this is a provision on which the commercial community has set considerable store, whereby if any person is convicted of the offences mentioned in the first part of clause 17 he shall, in addition to any penalty to which he may otherwise be liable, have his Trader's Licence endorsed or cancelled at the discretion of the court and be debarred from obtaining another licence for such period as the court may determine. Endorsements must be inserted on renewals issued within a period of two years, and if a licence is endorsed in respect of three offences within that period, it will be cancelled and the licensee may not obtain another licence under the Ordinance for five years. There is a right of appeal provided to the Supreme Court.

Under clause 19 applicants for hawkers' licences have to obtain a certificate from the district commissioner or local authority in a similar way to that dealing with other types of trade under clause 5.

Under clause 20 the exemption from obtaining a hawker's licence at present granted to persons selling goods in a legally established market will be revoked. This is at the request of the Administration, and is designed to provide for better control of markets and to protect shopkeepers in such markets from unreasonable competition.

Mr. Speaker, I am afraid I have taken up the time of the Council in going through this Bill. I have, I hope, shown that, as I stated at the beginning of my speech, the main object of the legislation is to continue to protect the honest trader against unscrupulous competition. The Bill is the product of the most detailed consideration and consultation and I commend it to this Council.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. JEREMIAH: I only rise, Sir, to ask for clarification on a few points in the Bill.

The first, Sir, is with regard to clause 5, about the obtaining of licences. In my reading, Sir, the clause presupposes that anyone who goes to the licensing officers asking for licences must produce a licence beforehand, or a permit. So I am querying, Sir, where would the other permit come from so far? The person may be a new person who has not started a business before. I should like to have some clarification on that.

Also, in clause 15, I find that the usual practice of delegating powers, or giving powers, has been omitted and what is usually mentioned in this case, such as an administrative officer or a police

[Mr. Jeremiah]

officer of certain rank, here it is specifically mentioned a European police officer. That is also, Sir, a point for which I would like the hon. Mover to explain the reason.

Finally, with regard to clause 26, Sir, I believe that it is necessary for the Governor, or the Governor in Council, to allow or to exempt any trade or any person from the operation of this Ordinance. But, Sir, it is stated here that "either generally or in any area". I would like, Sir, if it could be considered, that "either generally or in part" of the Ordinance. In saying that, Sir, I am specifically concerned with the provision of clause 14, whereby it is intended that traders must keep books. Now, Sir, most of the small traders, actually, are illiterate and unless the Government is empowered to exempt them from such operation of the Ordinance it will be in my view actually taking them out from the trade.

So, Sir, I submit that this point should also be considered and I beg to support.

MR. PRESTON: Mr. Speaker, Sir, I would ask the hon. Member in his reply if he would be good enough to define the word "district" in section 19. I think that confusion can quite easily arise as to whether "district" means the entire district under the jurisdiction of the district commissioner, or whether it means certain portions of an area which are generally known as "the district of Nakuru" or "the district of Rongai".

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, in reply to the first point raised by the hon. Member for African Interests, Mr. Jeremiah, he asked as to from where an applicant for a trader's licence would obtain the necessary licence or permit to produce to the licensing officer in accordance with the requirements of clause 5 of the Bill. Well, I think, Sir, that is quite clear. If a trader wishes to start up a shop or some other trading activity requiring a licence under this Ordinance covered by clause 5 he must get the approval of the local authority in regard to the compliance with any by-laws there may be or any local licence that may be required by such local authority in a municipality or township, and in a municipality presumably from the Town Hall. He must comply with the provisions of the Shops in Rural Areas Ordinance, with which I do not propose to weary the Council, but which lays down that shops must be licensed in certain areas in the Colony under that Ordinance and elsewhere he has to produce a valid certificate issued by the district commissioner. That, I think, is quite clear in the law, and if he is starting a new trade he will have to get permission to get his premises approved and to show the licensing officer that he has that permission.

I think the next point that the hon. Member referred to was in regard to the reference to a European police officer, and he stated that this differs from the old law. There is no reason, I think, Sir, why it should have been specified as a European police officer, and if the hon. gentleman wishes to raise the matter at the committee stage it can then be considered.

With regard to the question of keeping books, there are powers under clause 26 of the Bill whereby the Governor in Council could give exemption from that particular provision of the Ordinance to any particular section of the community. It is, however, of course, highly desirable that anyone who is setting up business as a trader should be able to keep books in some form, because if he cannot keep some books of account he is hardly likely to get very far in his commercial practice. (Hear, hear.)

In reply, Sir, to the point raised by the hon. Member for Nyanza, subject to correction by my hon. and learned friend, I would say that "district" where it is referred to in this Ordinance refers to the normal administrative district administered in the Colony by a district commissioner.

Sir, I beg to move.

The question was put and carried.

The Provident Fund Bill

THE DIRECTOR OF ESTABLISHMENTS: Mr. Speaker, I beg to move: That the Provident Fund Bill be read a second time.

Hon. Members will remember that under the new terms of service all permanent European and Asian posts of the public service and a large number of African posts have become permanent and pensionable. There are, however, a

[The Director of Establishments]

considerable number of African posts at the lower levels which are still on a provident fund basis. One of the recommendations of the Salaries Commission was that the existing provident fund arrangements should be examined with a view to ensuring that a provident fund officer receives reasonable benefits on retirement. This examination has now taken place, and one of the main objects of the present Bill is to provide for benefits which are an improvement on those hitherto payable to Africans under the existing Government Staff Provident Fund Ordinance. The other main object of the Bill is to simplify the accounting arrangements, which under the present Ordinance are unnecessarily complicated.

Sir, the Objects and Reasons set out in the memorandum clearly state the main purposes of the Bill, but it is necessary to refer briefly to a few of the main sections.

Dealing first with the improved benefits, clause 7 of the Bill is the relevant one. Under the present arrangements the Government contribution to the fund, which is called the bonus, is the same as the officer's contribution throughout the whole of the officer's service. Under the new arrangements in clause 7 of the Bill the Government will contribute the same as the officer for the first ten years, one and a half times the officer's contribution from the eleventh to the twentieth year, and twice his contribution thereafter. The object of this, of course, is to reward the officer with long service. There was a similar arrangement in the European and Asian Provident Fund Ordinances which became obsolete at the time of salary revision, because almost everyone falling under them became pensionable.

There is also an improvement in the retiring benefits under clause 8 of the Bill, which deals with gratuities. This clause provides for doubling the gratuity at present payable on retirement in the circumstances stated in the Bill to an officer in respect of his service before he became a contributor either to the existing provident fund or to the new fund brought into existence by this Bill. Gratuities payable to non-pensionable officers who are *not* provident fund officers were similarly doubled in the new Pensions Ordinance which was passed in June, 1950. The gratuity will in future be calculated on half a month's salary for each completed year of service instead of one week's salary as hitherto. And, of course those who benefit will benefit most by this arrangement are those who have a long period of service before they become contributors to the provident fund.

It is not possible to give any estimate of the cost of these improved benefits because a large number of the officers who are provident fund officers will in due course become pensionable by promotion to a higher grade; and when they do so become pensionable they are required, both by the Pensions Ordinance and by this Bill, to surrender the contributions made by them and by Government to the provident fund; and, of course, they will receive no benefits under this Bill, although their service does count for pension purposes. It is not, however, expected that the expenditure will be very large.

The second main object of the Bill is to simplify the accounting procedure. Under the existing Provident Fund Ordinance an officer contributes to the fund at the rate of three-fortieths of his salary (that is 7½ per cent) and there is no provision for rounding off the contributions with the result that we get odd cents in the accounts. This procedure has been put right in section 5 of the new Bill; care has, of course, been taken to see that the new arrangement is not in any way detrimental to the officer. Similarly section 6 of the new Bill, which deals with interest, has been simplified. At the committee stage a new section 6 will be substituted for that appearing in the Bill, but no question of principle is involved. It is merely a correction of the accounting procedure.

It is also necessary to refer to section 23 of the new Bill. This amends section 16 of the existing Government Staff Provident Fund Ordinance (before its repeal by section 24 of the new Bill). The amendment will apply the principle of the double gratuity (which is dealt with under section 8) to officers who left the service after January 1946 and are so eligible for the new terms of service.

The proviso to clause 11 of the Bill is necessary on account of the "45-year retirement rule" which is still in force

[The Director of Establishments]

until the end of this year, and may possibly be prolonged after that by resolution of this Council.

Now, Sir, I do not think it is necessary to refer to any of the other sections, but I would like to mention that certain amendments will be moved at the committee stage. I have mentioned that to clause 6 already. There is an amendment to clause 7 which involves no question of principle—it is only one of procedure. There is an amendment to clause 8 which again does not involve any question of principle. There is, however, an amendment to clause 16 which is of some importance. We were aware that certain Members on the other side of the Council did not like the original wording of this clause, particularly in so far as it provided for the credit in the fund of a deceased depositor to be paid to the legal personal representative if the amount exceeded Sh. 1,000. We have examined that provision in consultation with the law officers and the Accountant General and we have come to the conclusion that that is not necessary. The amendment which we will propose at the committee stage brings the clause into line with the arrangements which exist in the present Government Staff Provident Fund Ordinance. The payment of the money will be made to the district commissioner, and he will, as at present, distribute it among the appropriate persons.

It is also necessary to refer to the new clause 23 which is to be introduced. The object of this is to save unnecessary accounting when credits are transferred from the existing fund to the new fund. What it does, in effect, is to provide that at the end of the year one single calculation of interest on deposits made during the year to both the old fund and the new fund may be made. If this were not done it would be necessary to make separate calculations of interest on the current year's deposit to each fund, which would be extremely complicated.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. JEREMIAH: Mr. Speaker, it is with great pleasure that I stand to support the Bill. I particularly welcome the provisions of the Bill in clause 7, where Government's contribution rises with the years of service of a depositor. This is an improvement over the existing Government Staff Provident Fund. It should be remembered, however, Sir, that when the Salaries Commission Report was debated and accepted by this Council, free pension was introduced and applied to many civil servants of all races, and due to what I may call hard-heartedness on the part of this Council at that time, what was accepted as free pension was, in fact, not free to many civil servants of all races. Those who were on free pension by then enjoyed the benefit of it, in fact there was no great change in their case, but those who were contributing to a provident or a pension fund were made to surrender not only their bonus or their interest of that fund, but their actual amount taken out from their pay and that amount, Sir, was included in the general revenue of the country. Now, Sir, it is my firm belief that however that was dealt with, I regard it as a mistake, and now I appeal again to this Council to consider whether it is fair and just that an individual contribution, which was taken out of his own salary earned through his effort, should be taken away from him and included in the revenue of the country. I am sorry to say, Sir, that at present, such happening will only concern Africans. The other races will, in my view, enter directly to pensionable posts once they are engaged in Government service. But Africans, through no fault of theirs, they have got to serve in minor employment on a very low salary and contributing to a provident fund which, when, in case they retire before they are promoted to a pension fund, then they get something to retire on, but if, by their loyalty and efficiency they carry on with their work and they are fit for promotion to higher posts entitling them to pensions, then I am sorry to say that I do not agree that it is just that that part of the money taken out of their own pockets—because that is what it is—should be surrendered.

Therefore, Sir, I hope that the Council will support me in this case that, when one is promoted to pensionable posts, his contribution should be refunded to him. I need not mention that this has been the practice accepted by the two neighbouring territories, and not only that, by the East African Railways and Harbours, It will not be a precedent. The only precedent I can see is that this Council has created a precedent of depriving a person of his earnings and

(Mr. Jeremiah)

taking them and including them in the Government fund. We should not forget, Sir, that those people are also ratepayers, so the money earned, actually I believe for fairness, should remain with them.

That is all that I have got to plead. I hope that this Council will give it sympathetic consideration.

Sir, I beg to support.

THE DIRECTOR OF ESTABLISHMENTS: Mr. Speaker, the point raised by the hon. Mr. Jeremiah is one which was dealt with by the Salaries Commission, who recommended that in the case of all three races, Europeans, Asians and Africans, the officer's own contribution as well as the Government's contribution should be surrendered to revenue, in exchange for which the officer should count the whole of his service, including his provident fund service or his contributory fund service, for pension purposes. That point was fully discussed in this Council at the time when the report was debated, and that particular recommendation was approved. It was incorporated in the Salary Revision Circulars, and it has been recognized in the Pensions Bill, which was passed in this Council last year in June, 1950. Therefore, I submit, Sir, it is an issue which has already been decided by this Council and ought not now to be reopened. I also submit it is a perfectly equitable arrangement, because the officer makes this contribution in order to secure a retiring benefit in respect of the period that he has been a provident fund or contributory fund officer. He does, in fact, secure that benefit because the period counts for pension purposes. In fact, it is more valuable under the Pensions Ordinance than it would be under the Provident Fund or Contributory Pensions Ordinance. Therefore, Sir, I can see no objection at all to the present provisions.

The question was put and carried.

THE CHIEF SECRETARY: Mr. Speaker, there are various reasons why hon. Members would prefer to take some of the remaining Bills on the Order Paper for today—that is No. 12 onwards—at a slightly later stage. Therefore, with your permission, Sir, and with that of the Council, we should now go on to take the Committee stages of the Bills which have already been read a second time.

THE ATTORNEY GENERAL moved: That the Council do resolve itself into Committee of the whole Council to consider the following Bills clause by clause:—

The Public Roads (Amendment) Bill.

The Local Authorities (Recovery of Possession of Property) Bill.

The Customs and Excise Duties (Provisional Collection) (Amendment) Bill.

The African District Councils (Amendment) Bill.

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

The Promissory Oaths (Amendment) Bill.

The Criminal Procedure Code (Amendment) Bill.

The Provisional Collection of Taxes Bill.

The Traders' Licensing Bill.

The Provident Fund Bill.

MR. HAVELOCK seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Public Roads (Amendment) Bill

Clause 1.

THE SOLICITOR GENERAL moved: That the clause be amended by deleting the figures "1950" in the second line and by substituting the figures "1951".

The question was put and carried.

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

Clause 3.

THE SOLICITOR GENERAL moved: That the clause be amended by adding after the words "responsible for" in the second line of the definition of "Member" in the new section 2 of the principal Ordinance, the word and comma "Education,".

MR. HAVELOCK: Speaking on that amendment, Sir, is it necessary to insert the word "Education" here? Does it not tie down the elasticity of the Governor within the portfolio as he wishes amongst Members of Government? If, for instance, in future years the Member for

[Mr. Havelock]

Health and Local Government was not the Member for Education would we not have to have an amendment to this Bill? Is it not the Member for Health and Local Government that has any real influence on this particular Bill, Sir?

THE SOLICITOR GENERAL: I think that if the position arose which my hon. friend has just mentioned that the amendment would have to be made in time in due course.

MR. HAVELOCK: Surely if the hon. Member for Health and Local Government is put in it would make no difference whether he was the Member for Law and Order or had any other office.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Whilst I feel perhaps it does not really matter, nevertheless the fact remains that the Member is responsible for the education, health and local government at the time it is passed, and surely Government should deal with it as it is and any alteration should be dealt with later.

MR. HAVELOCK: It seems to be a waste of the Council's time should policy dictate that there be a switch in any portfolios.

THE CHAIRMAN: Certainly, education does not arise here. Anyway, I will put it to the Committee. (Question put.)

I think the Noes have it! (Laughter.)

THE CHIEF SECRETARY: Government does not call for a division, Sir.

The question was put and negatived.

MR. JEREMIAH moved: That the clause be amended by deleting the word "the" after the word "the" in line 37.

The question was put and carried.

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

Clause 7

THE SOLICITOR GENERAL: Mr. Chairman, in moving the amendment to clause 7 which has, I think been circulated among hon. Members, I propose to delete certain words which appear at the end of new sub-section (2) of the proposed section 8. That deletion, Sir, is made to meet the point made by the hon. Member for Kiambu when he drew our attention to it during the debate on the second reading.

I, therefore, move that clause 7 be amended, that there be substituted for clause 7, the following:—

"7. There shall be substituted for section 8 of the principal Ordinance the following:—

Line of public travel

8. (1) Whenever it is made to appear to the Member that requirements exist for the establishment, alteration or cancellation of a line of public travel or for the conversion of a road of access into a line of public travel, the Member may, by order published in the Gazette, dedicate, alter or cancel such line of public travel or convert such road of access into a line of public travel.

(2) In every order made under this section the line of public travel to be established, altered or cancelled or the road of access to be converted into a line of public travel shall be clearly described.

(3) Where an order under this section dedicates a line of public travel or converts a road of access into a line of public travel, such line of public travel shall be absolutely dedicated to the public as a public road within the meaning of any law now or hereafter in force relating to public roads.

(4) Before making and publishing any order under this section dedicating a line of public travel or converting a road of access into a line of public travel the Member may, where there is a board, call upon such board to investigate and report upon the necessity for, or desirability of, any such line of public travel and to advise as to the best alignment of such a line of public travel.

MR. HAVELOCK: May I, Sir, in supporting the amendment, thank the Government for taking note of my suggestions.

The question was put and carried.

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

Clause 9

THE SOLICITOR GENERAL moved: That there be inserted in sub-clause (5) of the new clause 15 of the principal Ordinance the following new paragraph "*(a)* to determine a matter finally" and that the paragraphs lettered *(a)*, *(b)* and *(c)* in the Bill as printed be re-lettered *(b)*, *(c)* and *(d)*.

THE SPEAKER: One moment.

THE SOLICITOR GENERAL: I am sorry, Sir. I have not been able to give notice of this. It was raised during the debate on the second reading by my hon. friend, the Member for Nyanza, who drew to our notice that there might be some doubt as to whether, under the provisions of sub-section (5) of the new section 15, a court had power to reverse the decision of a Board. So, Sir, to make that quite clear, I beg to move the following amendment.

That paragraphs *(a)*, *(b)* and *(c)* of the new sub-section (5) to section 15 be re-lettered as *(b)*, *(c)* and *(d)* and that the following new paragraph be inserted: *(a)* To determine a matter finally.

That, Sir, I think, will remove any doubt which there may be that the court may reverse the decision of a Board.

The question was put and carried.

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

Clause 12

THE SOLICITOR GENERAL moved: That paragraph *(a)* of the clause be amended by substituting for the word "board" in the first line the word "Board".

The question was declared by the Chair to be carried.

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

THE SPEAKER: Do you propose to take any more to-day?

THE CHIEF SECRETARY: Mr. Chairman, I think that would be a convenient opportunity to adjourn. With your permission, Sir, may I report progress and ask leave to sit again.

The question was put and carried.

Council resumed, progress was reported and leave granted to sit again.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Thursday, the 22nd February, 1951.

Thursday, 22nd February, 1951

Council assembled in the Memorial Hall, Nairobi, on Thursday, 22nd February, 1951.

Mr. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 21st February, 1951, were confirmed.

NOTICE OF MOTION

THE FINANCIAL SECRETARY: I rise to draw specific attention to notice of motion standing in my name, on the cost of living allowances for Government servants, on the Supplementary Order Paper. I also take the opportunity of asking leave to withdraw the motion, notice of which was given by me on the Order Paper of 16th February this year.

THE SPEAKER: Mr. Matthews, I do not wish to be caught unawares or anything, but will this motion have to be taken in Committee of the whole Council?

THE FINANCIAL SECRETARY: No, Sir. It will be debated by the Council as such.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 5

MR. BLUNDELL:

Will Government state—

(a) the number of candidates who have been recommended through the normal channels by Government itself to the Colonial Office for entry into the Administrative Service each year from 1948 onwards;

(b) the number of such candidates who have been rejected, and whether it is a fact that a proportion of such rejections is due to the fact that candidates had not the qualifications of a degree at a recognized university.

THE DEPUTY CHIEF SECRETARY: In reply to the first part of the question, 15 candidates (5 in 1948, 3 in 1949, 6 in 1950 and 1 in 1951) have been recommended to the Colonial Office for appointment to the Colonial Administrative Service from 1st January, 1948, to the present date.

[The Deputy Chief Secretary]

In reply to the second part, 13 of these were selected for appointment, one of whom was rejected but subsequently accepted, one has not yet been interviewed and a decision is outstanding on the remaining one. The candidate originally rejected but later accepted was in possession of a degree at a recognized university.

MR. BLUNDELL: Mr. Speaker, arising out of that answer, will the hon. Member give me an assurance that in selecting candidates for recommendation to the Colonial Office attention will be paid not only to academic qualifications but to general personality?

THE DEPUTY CHIEF SECRETARY: Certainly, Sir. I hope that academic qualifications will always take their right place in assessing the suitability of a candidate for recommendation to the Secretary of State. (Laughter.)

MOTION

MR. BLUNDELL: Mr. Speaker, I beg to move: That the Report of the Director of Audit on the Accounts of the Colony for 1949 be referred to the Public Accounts Committee.

This motion is entirely a formal one and there is no need to say anything except that it is designed to get the Report of the Director of Audit on the Accounts of the Colony for 1949 out of the way and into the hands of the Public Accounts Committee before the May Session so that we can get on with the 1949 Report.

THE SOLICITOR GENERAL seconded.

THE FINANCIAL SECRETARY: On the assumption that the hon. Mover is moving the motion I beg to second.

MR. BLUNDELL: I understood I had a professional seconder in the hon. Solicitor General. (Laughter.)

THE FINANCIAL SECRETARY: Mr. Speaker, I aspire to that status myself.

THE SPEAKER: I will propose the motion or, if the Council wishes, I will put the question.

The question was put and carried.

THE ATTORNEY GENERAL moved: That Council do resolve itself into Committee of the whole Council to consider the following Bills clause by clause:—

The Local Authorities (Recovery of Possession of Property) Bill.

The Customs and Excise Duties (Provisional Collection) (Amendment) Bill.

The African District Councils (Amendment) Bill.

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

The Promissory Oaths (Amendment) Bill.

The Criminal Procedure Code (Amendment) Bill.

The Provisional Collection of Taxes Bill.

The Traders' Licensing Bill.

The Provident Fund Bill.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Local Authorities (Recovery of Possession of Property) Bill

Clause 8

THE ATTORNEY GENERAL moved: That sub-clause (2) of clause 8 be amended by substituting for the figure "3" the figure "4".

The question was put and carried.

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

The Customs and Excise Duties (Provisional Collection) (Amendment) Bill

Clause 1

THE ATTORNEY GENERAL moved: That the figures "1951" be substituted for the figures "1950" in line 3.

The question was put and carried.

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

The African District Councils (Amendment) Bill

Clause 1

THE ATTORNEY GENERAL moved: That the figures "1951" be substituted for the figures "1950" in line 2.

The question was put and carried.

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

The Promissory Oaths (Amendment) Bill

Clause 2

THE ATTORNEY GENERAL moved: That the Bill be amended by renumbering clause 2 as clause 3 and by inserting a new clause 2 as follows:—

Amendment of the First Schedule to the principal Ordinance

2. After the Judicial Oath set out in the First Schedule to the principal Ordinance there shall be inserted the Note following:—

Note.—In the case of the President, the Vice-President or a Justice of Appeal of the Court of Appeal for Eastern Africa, the words "according to law" shall be substituted for the words "after the laws and usages of this Colony and Protectorate".

The question was put and carried.

The question of clause 3 as renumbered was put and carried.

The Provisional Collection of Taxes Bill

Clause 2

THE ATTORNEY GENERAL moved: That the words "to such an extent as is practicable" be inserted after the words "made good" in paragraphs (*d*) and (*e*) respectively of the proviso to subclause (1) of clause 2.

The question was put and carried.

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

The Traders' Licensing Bill

Clause 2

THE ATTORNEY GENERAL moved: That the word "place" be substituted for the word "price" in line 20.

The question was put and carried.

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

Clause 7

THE ATTORNEY GENERAL moved: That the words "twenty-five" be substituted for the word "twenty" in sub-paragraph (i) of paragraph (*d*) of sub-clause (1) of clause 7.

The question was put and carried.

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

Clause 15

THE ATTORNEY GENERAL moved: That the words "police officer of or above the rank of Assistant Inspector" be substituted for the words "European police officer", in clause 15.

The question was put and carried.

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

The Provident Fund Bill

Clause 1

THE ATTORNEY GENERAL moved: That clause 1 be amended by substituting for the word and figures "section 23" the words and figures "sections 23 and 24".

The question was put and carried.

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

Clause 6

THE ATTORNEY GENERAL moved: That there be substituted for sub-clause (1) of clause 6 of the following sub-clause:—

(1) Interest shall be credited on deposits at a rate of not less than three per centum per annum, to be fixed annually by the Member for Finance—

(*a*) on the balance of deposits on hand at the beginning of each year; and

(*b*) on half the total of the deposits made during each year,

and shall begin to accrue from the first day of January in each such year, and, subject to the provisions of this Ordinance such interest shall be calculated to the 31st day of December in each year and shall then, subject to the provisions of sub-section (2) of this section, be added to and become part of the principal and be deemed (for the purposes of this Ordinance to be a deposit.

The question was put and carried.

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

Clause 7

THE ATTORNEY GENERAL moved: That clause 7 be amended in the following respects—

(a) by deleting the words "together with the interest which is added to and becomes part of the principal under

[The Attorney General]

section 6 of this Ordinance" which occur in paragraph (*a*) of sub-clause (1);

(b) by deleting the words "together with the interest thereon up to the end of the month previous to such closure" which occur in paragraph (i) of the proviso to sub-clause (1); and

(c) by adding the following new sub-clause:—

(3) The provisions of section 6 of this Ordinance relating to the crediting and calculation of interest and the addition thereof to the principal shall apply in like manner to all sums provisionally credited under this section to the account of a depositor.

The question was put and carried.

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

Clause 8

THE ATTORNEY GENERAL moved: That the proviso to clause 8 be amended by substituting a semi-colon for the full stop at the end of paragraph (*b*) and by adding the following paragraph:—

(c) in computing the gratuity under paragraph (*a*) of paragraph (*b*) of this section which may be granted to a depositor on his leaving the service no regard shall be had to any period in respect of which payment of any sum has been made from the general revenue of the Colony under section 15 of the Government Staff Provident Fund Ordinance (Cap. 71) (now repealed).

The question was put and carried.

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

Clause 13

MR. JEREMIAH: Mr. Chairman, I beg to move an amendment to clause 13 that clause 13 section (2), paragraph (*a*) be amended by inserting the words—"other than his personal contribution" between the words "Fund" and "and" which occur in the sixth line of the paragraph.

This Sir, if you accept it, will support my contention of yesterday that an individual contribution should be refunded when such an employee becomes pensionable. The hon. Establishment Officer yesterday said that this Council accepted the Salaries Commission Report and I submit that our acceptance of that does not bind us to do what it contains for ever.

Sir, I beg to move.

THE DIRECTOR OF ESTABLISHMENTS: Mr. Chairman, the Government cannot accept this amendment for the reasons I gave yesterday. There is only one thing I ought to add, which is that the reason for our view given by the hon. Mr. Jeremiah is not the only one. There is an additional reason—the contributor makes his contribution in order to secure a retiring benefit in respect of his provident fund service. He does, in fact, receive a retirement benefit in respect of that service, because it counts towards pension under the Pensions Ordinance. Therefore, the Government's view is that there is no unfairness to the contributor.

MR. MATHU: Could the hon. gentleman who has just spoken inform us whether the amendment which is now proposed would give effect to the clause which would bring it into line with what is happening in Tanganyika and Uganda, or are we under a misapprehension that the Uganda Government and the Tanganyika Government do exactly what my hon. friend is trying to do this morning.

THE DIRECTOR OF ESTABLISHMENTS: Yes, Sir, it is correct that Tanganyika and Uganda took a different view from Kenya in this matter, and they did refund the contributor's contribution.

MR. MATHU: In view of the very important question of inter-territorial co-ordination, could we not fall in line?

THE DIRECTOR OF ESTABLISHMENTS: No, Sir.

MR. COOKE: Why is it impossible to do so if Uganda and Tanganyika have done so? Why is it not practicable?

THE DIRECTOR OF ESTABLISHMENTS: The Holmes Commission recommended the particular arrangement which we have adopted. It was fully discussed in front of the Salaries Commission and that is the decision we arrived at, that is the decision Uganda and Tanganyika took an entirely different view.

LADY SHAW: Mr. Chairman, this appears to be one of the occasions when Kenya takes the lead.

MR. JEREMIAH: Mr. Chairman, in moving this amendment, Sir, I quite realize that this is purely non-racial. The only thing is that the minor employees are most affected and considering their salary I think a refund to what they have actually contributed from their salary is quite fair and just. Sir, our rejection of this very important point, I think, will make us be looked upon by our neighbours as very difficult people and people who cannot be trusted by them. I plead with the Council, Sir, to see the moral aspect of it and support the motion.

THE CHIEF SECRETARY: Mr. Chairman, I do not see how any moral aspect arises. We are not being ungenerous to these people. On the contrary we are being extremely generous. Under the old terms, they were entitled to their Provident Fund benefits towards which they contributed. Under the new system, they are entitled to a pension towards which they do not contribute. The whole of their previous service is taken into consideration for the purposes of assessing the pension, although they were not serving in a pensionable capacity. That seems to me a very good *quid pro quo*, and I do not think there was any question of a lack of generosity at all: on the contrary.

As regards co-operation with Tanganyika and Uganda, I do not see how that arises, either. What I think the hon. Member probably meant was co-ordination and this is a matter in which co-ordination is not of very special value.

MR. MATHU: Mr. Chairman, I think I accept the strengthening of my language by the hon. Chief Secretary, but I think co-ordination here is of special value. We have got civil servants working for the High Commission Services who might be liable to be transferred from Kenya to Tanganyika or vice versa, and if all their services are finished at a particular place, how are you going to do that, I feel, Sir, that although we may very often state that we lead and other territories follow, I think the neighbouring territories have led and I think it would be quite dignified in following in this respect because they have moved in a different direction and their people who earn very low salaries feel they have done well. They get their contributions refunded when they become pensionable and they come on exactly the same level as our own civil servants, that is they get retiring benefits throughout. In other words, the neighbouring territories are doubly generous. We are generous, I agree, but I think the others are doubly generous. My hon. friend is only requesting that we should fall into line with the neighbouring territories in this matter.

THE CHIEF SECRETARY: Sir, we are the territory which is following the report (Hear, hear.) We are not the territory which is breaking away. So if, a question of uniformity is desirable, we are setting the lead in the matter of uniformity? It is for the other territories to follow us.

MR. JEREMIAH: Before we consider the other aspect, Sir, I cannot be convinced that the individual contribution which it is intended should go back to the general revenue of the country is reasonable because I take that to be personal property.

Now, Sir, although all the services will be counted towards pension, that will not only apply to the minor employees who will surrender their contributions, it will apply to all the others.

MR. COOKE: Would not the hon. Mr. Jeremiah's best procedure be to bring a motion to ask the Council to reverse the decision or recommendations of the Holmes Report?

THE CHAIRMAN: No, I think he is entitled to move his amendment to the Bill. I cannot see that it will conflict against any known rule.

MR. COOKE: I did not mean, Sir, in that way. I mean his best method now if he wants to gain his point.

THE CHAIRMAN: There is ample opportunity now to debate it as fully as anyone wishes.

MR. BLUNDELL: Mr. Chairman, I think the only issue here really is that where a man has contributed to a provident fund he actually has, when he finishes his service, cash which he can draw and, as I understand it, on a pension, 25 per cent of it can be commuted. In fact, a man on a pensionable status is exactly in the same position. If it is merely a provident fund when a man has ceased

[Mr. Blundell]

his services, I understand he can draw it from the provident fund so that it is transferable, by will, to his descendants. If it is not possible to commute a pension, then there might be something in the arguments advanced on this side, but as it is possible to commute a pension so far can an officer, when he has retired, have a cash amount to leave to his descendants. Therefore, I feel I cannot personally support an amendment.

THE FINANCIAL SECRETARY: Mr. Chairman, on a point of order, if the amendment which the hon. Mover has moved were accepted it would have the effect of a sum of money which would otherwise have accrued to general revenues from the Fund, not so accruing. In those circumstances is it in order for an hon. Member on the opposite side to move such an amendment?

THE CHAIRMAN: At this stage it is impossible to say. It seems to me that the Ordinance will regulate some financial transaction in future, but I cannot understand as yet what you say, that it imposes any charge upon the funds. A charge is something definite. What is prohibited is any motion the effect of which may be to reduce or charge any part of the revenue arising within the Colony.

THE FINANCIAL SECRETARY: I take my stand, Sir, on the word "reduce".

THE CHAIRMAN: "Reduce." Well we have nothing before us to know what amount of money we are dealing with here. We are not in Committee. This seems to me to be an Ordinance for the regulation of a fund to be established. I hesitate to rule the Member out of order unless you can give me some very strong reason. It seems to me rather a long way off before we get to any money stage. (Laughter.) Something that might happen in the future.

THE FINANCIAL SECRETARY: Sir, the position is that the Treasury and the Finance Member have to look a very long way forward. (Laughter.)

THE CHAIRMAN: Are we not rather dealing with what amount shall be credited to a depositors account? That seems to be the amount in question here. If certain events arise then the amount which has been credited to his account in the fund falls into revenue at some future time. The effect of this amendment would be that not all the amount which had been credited to him would fall into revenue. I don't think it can be classed as a charge.

THE FINANCIAL SECRETARY: Sir, I take my stand on the word "reduction".

THE CHAIRMAN: Of course, the effect would be that it might reduce the amount which would fall in effect in certain events if certain events were to arise but it is all dependent on certain events and all this amendment does is to try and substitute some other event. I rule that the amendment is in order.

Anyone else wishing to debate it?

I will put the question.

The question is that line 32 on page 8 of the Bill after the word "fund" to insert the words "other than his personal contribution".

The question was put and on a division negatived by 23 votes to 7.
Ayes: Messrs. Chemallan, Jeremiah, Mathu, Ohanga, Dr. Rana, Messrs. Salim, Shatry, 7. Noes: Messrs. Adams, Anderson, Blundell, Carpenter, Davies, Col. Ghersie, Messrs. Gillett, Hartwell, Havelock, Hobson, Hopkins, Major Keyser, Mr. Matthews, Sir Charles Mortimer, Messrs. O'Connor, Padley, Rankine, Sir Godfrey Rhodes, Mr. Salter, Lady Shaw, Messrs. Thornley, Usher, Vasey, 24. Did not vote: Messrs. Cooke, Patel, Pritam, 3. Absent: Major Cavendish-Bentinck, Messrs. Maconochie-Welwood, Madan, Nathoo, Preston, 4.

Clause 16

THE ATTORNEY GENERAL moved: That there be substituted for clause 16 the following clause:—

16. (1) Subject to the provisions of this Ordinance on the death of a depositor the amount of the deposits credited and of the bonuses provisionally credited to him in the Fund together with any gratuity which might have been granted to him under section 8 of this Ordinance if, instead of dying, he had left the public service in the circumstances described in paragraph (*a*) of section 11 of this Ordinance, shall be paid out of the

[The Attorney General]

Fund to the appropriate district commissioner for payment to be made to the person or persons appearing to such district commissioner to be entitled to receive it:

Provided that—

(i) where in respect of the race or community to which the deceased belonged there is in force any law regulating succession, the moneys referred to in this section shall be distributed in accordance with the provisions of that law;

(ii) the Accountant General may make an immediate payment, not exceeding three hundred shillings in any one case out of the amount of the deposits credited and the bonuses provisionally credited to the account of the depositor in the Fund in order to give immediate relief to the widow or children or other dependants of the deceased if in the opinion of the Accountant General such relief is required.

(2) Any payment made in accordance with the provisions of this section shall be valid and effectual against any demand made upon the Government, the Board, the Accountant General or a district commissioner by any other person in respect of the amount credited or provisionally credited to the depositor.

The question was put and carried.

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

Clauses 23 and 24

THE ATTORNEY GENERAL moved: That clauses 23 and 24 be renumbered as clauses 24 and 25 respectively and that there be inserted next after clause 22 the following new clause:—

Amendment of sections 7 and 8 of the Government Staff Provident Fund Ordinance

23. (1) There shall be substituted for section 7 and 8 of the Government Staff Provident Fund Ordinance (Cap. 71) the following sections—

Bonuses

7. On the day immediately preceding the date of the commencement of the Provident Fund Ordinance, 1951, there shall be paid into the Fund for the provisional credit of the depositor a sum equal to the aggregate of the deposits made by the depositor to the Fund during the period 1st January, 1951, up to and including the day immediately preceding the date of commencement as aforesaid and the sum so paid in shall be called a "bonus".

Interest

8. Interest shall be credit on deposits and bonuses in accordance with the provisions of sections 6 and 7 of the Provident Fund Ordinance, 1951, and such interest shall be a charge on the Provident Fund established under section 3 of that Ordinance.

(2) This section shall be deemed to have come into operation on the 1st January, 1951:

Provided that in respect of a depositor who ceased to be a depositor prior to the date of the commencement of this Ordinance the provisions of sections 7 and 8 of the Government Staff Provident Fund Ordinance (Cap. 71) as they existed prior to their repeal and replacement by this section shall continue to be applicable.

The question was put and carried.

The question of clauses 24 and 25 as renumbered was put and carried.

THE ATTORNEY GENERAL moved: That the Kenya Regiment (Territorial Force) (Amendment) Bill and the Criminal Procedure Code (Amendment) Bill be reported back to Council without amendment and that the Public Roads (Amendment) Bill, the Local Authorities (Recovery of Possession of Property) Bill, the Customs and Excise Duties (Provisional Collection) (Amendment) Bill, the African District Councils (Amendment) Bill, the Promissory Oaths (Amendment) Bill, the Provisional Collection of Taxes Bill, the Traders' Licensing Bill and the Provident Fund Bill be reported back to Council with amendment.

The question was put and carried.

Council resumed and the Member reported accordingly.

The question that the report be adopted was put from the Chair and carried.

BILLS

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Public Roads (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Local Authorities (Recovery of Possession of Property) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Customs and Excise Duties (Provisional Collection) (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the African District Councils (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Kenya Regiment (Territorial Force) (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Promissory Oaths (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Criminal Procedure Code (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Provisional Collection of Taxes Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Traders' Licensing Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Provident Fund Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

BILLS

SECOND READING

The Public Trustee (Amendment) Bill

THE SOLICITOR GENERAL: Mr. Speaker, I beg to move: That the Public Trustee (Amendment) Bill be read a second time.

The purpose of this Bill, Sir, is to amend the Public Trustee Ordinance in two respects: The first of those deals with priority of the Public Trustee's fees and expenses. The Public Trustee charges fees for dealing with estates and these fees together with any court fees and the expenses and other charges incurred by the Public Trustee in collecting the assets of the estate are a debt due from the estate to the Public Trustee. At the moment, Sir, the order in which the debts of an estate are paid is dealt with in two different sections of the Indian Succession Act, but the manner in which the order is dealt with has given rise to some uncertainty. It is thought therefore that there should be some definite provision in the Public Trustee Ordinance in regard to these fees and expenses and that they should rank after funeral expenses and death-bed charges and in priority to all other debts. Clause 2 of the Bill, Sir, deals with that matter.

Clause 3 removes certain words from section 17 of the Public Trustee Ordinance which prevents the Public Trustee

[The Solicitor General]

from administering an estate either known or believed by him to be insolvent. Very often, Sir, no individual will undertake the administration of such an estate and in the public interest it is most desirable that such an estate should be administered. I am assured by the Public Trustee that only small insolvent estates will be administered by him and that therefore there is very little risk of the Crown losing any money, the only real money which might be lost is the Public Trustee's fees and as these are charged on the gross value of an estate, it is not likely to be any great loss if it does occur. I am assured by the Public Trustee it is not his intention to take on the administration of all insolvent estates, that he will only apply when there is no relative of the deceased in the Colony or where there is no one creditor whose debt is large enough to make it worth his while to apply for administration.

Sir, I beg to move.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

The Survey Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Survey Bill be read a second time.

The principal object of this Bill, Sir, is to consolidate and bring up to date the existing law on the subject of surveys and the licensing of surveyors. The object of consolidation is the obvious one of administrative convenience, while the object of amendment is to bring the law up to date with scientific and technical advances since the existing Ordinances to be repealed under this Bill were enacted many years ago and generally to bring the law into line with the realities of present-day administration.

Part I of the Bill contains the interpretation provisions and this part requires no comment from me.

Part II of the Bill provides for the administration of the Ordinance and follows generally the same practice as at present. The Director of Surveys is responsible to the Member for the working of the Survey Department while the Land Surveyors' Board is made responsible for all matters affecting licensed surveyors in private practice. Clause 7 of the Bill sets out the duties of this Board, and clause 8 enables the Member to make rules but restricting his powers on certain matters by the provision that such rules may only be made with the advice and consent of the Board. In general, Sir, the new clauses repeat existing law but are rather more explicit than in the legislation which it is proposed shall be repealed.

Part III of the Bill contains provisions relating to surveys, survey marks and boundary marks and in the main is a consolidation of the existing law.

A principal duty, Sir, of every surveyor is to demarcate the boundaries of land by permanent beacons. The preservation of all those beacons and indeed of every survey mark is of the greatest importance, particularly in a country such as Kenya where fixed boundaries such as hedges and ditches are not so much in evidence as to suffice for this purpose without boundary beacons. The rate of destruction of trigonometrical stations and other survey marks has been so great that we felt it necessary in this part of the Bill to make fuller provision for their protection than exists in the present legislation. A new clause 17 provides a new penalty if the purchaser, lessee or licensee of Crown land and his successors in title fail to report damage or loss of any survey mark which is depicted on his deed plan and it is hoped that this provision will impress upon landowners the very real importance of preserving these valuable marks.

Part IV of the Bill, Sir, dealing with the licensing of surveyors, embodies certain new ideas and provides for a widening of the scope of candidature of persons who may sit for examination for licensed practice without, in the opinion of the Government, endangering the quality of surveys and the sanctity of titles which are by law guaranteed by the Government. Clause 24, for instance, seeks to enable officers on the permanent establishment of the Colonial Survey Service and holders of the qualification of Fellow or Associate of the Royal Institute of Chartered Surveyors to the class of persons who may be registered as licensed surveyors under section 7 of the Land Surveyors' Ordinance. Clauses 25 and 26 add to the classes of persons eligible to take the examina-

[The Deputy Chief Secretary]

tion with a view to becoming licensed surveyors. It must, Sir, be recognized that Government bears a great responsibility in this matter and considers, as it has always done, that it would be wholly contrary to the public interest to allow unsuitable persons to hold a licence to practise as land surveyors.

Before leaving Part IV, of the Bill, Sir, I should inform hon. Members that at the committee stage two amendments will be proposed. The first of these will substitute for the title and sub-title of Part IV the words "The Licensing of Surveyors, Complaints against and Offences by Licensed Surveyors". As it stands, in the Bill before you, the title and sub-title is a printer's error. The words in italics should have been part of the title. The second amendment which will be proposed in the Committee will be a re-wording of clause 34 of the Bill simply intended to correct slips in the drafting. The amendment will not affect the substance of the clause.

Part V of the Bill, Sir, provides for the proper preservation of all official survey plans and for the accuracy of every deed plan presented for registration under the Ordinance for the time being in force relating to the Registration of Land and of Title to Land. The clauses in this part are fully explained in the Objects and Reasons and I do not think that I need add to them.

In conclusion, Sir, I would like to inform hon. Members that the Association of Land Surveyors of Kenya have been consulted all along by the Director of Surveys in the preparation of this legislation and have made valuable suggestions which have been incorporated in the Bill. I should like to take this opportunity of stating publicly my own appreciation of the help which they have given to the Director. I also understand that the Bill in its present form is supported by the Association.

I do not think, Sir, that there is anything more I need add in this introductory speech except to commend this Bill for the support of hon. Members. (Applause.)

THE SOLICITOR GENERAL: Sir, I beg to second and reserve my right to speak.

MR. HAVELOCK: Mr. Speaker, it seems to hon. Members on this side of the Council that the powers of this Board may be rather too much, especially in view of the fact that there is no appeal. In clause 7 where the duties of the Board are laid down I would only refer to sub-paragraph (*c*) "to issue, suspend or withdraw a licence in accordance with the provisions of this Ordinance". I suggest, Sir, it would be very much better if there were an appeal against a decision by the Board on that account. It is, after all, a Board which is almost entirely, shall I say, under the influence of the Director. The Director himself is the Chairman, two Government surveyors being duly licensed, etc. on the nomination of the Director and two licensed surveyors again on the nomination of the Director, so the Director is really, I suggest, the Board.

Now, in clause 8 I feel also that there should be some provision for appeal and this part affects the public. Here the Board or the Member may make rules generally and may make rules for "charges to be made for the making of any survey by the Survey Department", "the charges to be made for the approval by the Director of Plans submitted a by Licensed Surveyor"; "the fees to be paid in respect of any document issued or act done under the authority of this Ordinance or of any rule made thereunder".

Well, Sir, naturally one does not wish to upset the Government machine and make things too difficult to work but I hope that some method of notice can be given or some way can be found whereby this Council, at least, may have the opportunity of making their objection against fees of this sort, which might, if put up to a very high level, make a great deal of difference to the development of this country, both industrial, agricultural and commercial.

I would like to ask the hon. Mover as regards clause 9—I raised this matter of principle, Sir, in another Bill, we were debating the other day—this is this matter of exempting officers of Government from any liability for action or other proceedings in respect of any matter, etc. as in the clause. It was, I think, in the second reading of the Water Bill that this same principle was brought in and I said then, Sir, that I hoped it would not be long before an individual could take action against the Crown as such and therefore until that happened

[Mr. Havelock]

I did not think that this sort of clause should be in a Bill. The public must have some line of action against the Government and if it cannot take it against the Government itself or the Crown, then the public has then to take action against an individual and this clause exempts such individuals.

As regards clause 10, the proviso for (ii) could the hon. Mover tell me how the compensation is to be computed for damage to trees, etc. Now, Sir, this is not a small matter. It is a very important one, especially where the trees concerned are either valuable timber or a crop such as wattle. There have been a great many complaints in the past as to the compensation for trees cut down for survey. I would be grateful if the hon. Member would comment on that aspect.

Clause 16. The hon. Mover did refer to it and said that there has been great destruction of trigonometrical points lately —stations—and therefore this Bill sought to create a more severe control and indeed more severe punishment for people who interfered with them but I would suggest, Sir, that this is not really a criminal act and although I have no objection to a fine of Sh. 400, I do suggest that the imprisonment should only be if the fine cannot be paid. As I read the clause, a man can be put into prison straight away without any option of a fine at all.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

MR. JEREMIAH: Mr. Chairman, I only wish to say a few words, that is in regard to the provisions in clause 10. I wish the hon. Mover to tell us what will be the position when surveyors enter into African land units for survey work. It has been the practice that they just enter without giving notice to anyone and therefore it is possible that the Africans, who do not know what has been put down and perhaps damage them not knowing what they are for, I would suggest, Sir, that the provision "before so entering upon any such land, the Director or surveyor or person authorized as aforesaid shall, whenever possible and practicable, give reasonable notice . . ." I wish that it would be obligatory that they should always give notice especially when they enter African land units. This, I believe, will obviate any trouble or difficulties which take place usually.

Apart from that, I have nothing else except to support the Bill.

MR. MADAN: Mr. Speaker, Sir, if it be in order to raise the matter under this Bill, I should like to suggest to the hon. Mover that the question of actually surveying the land in Nairobi itself should be expedited as much as possible. Let me, Sir, give you an example. Take the case of the High Ridge area where plots that were allocated to applicants as far back——

THE SPEAKER: Well, I do not think this is a question of actual complaints about survey or anything like that.

MR. MADAN: I was not sure myself, Sir. (Laughter.)

THE SPEAKER: That is beyond the scope of this legislation we are dealing with at the moment — not with administration.

MR. MADAN: Thank you, Sir. Then I have nothing more to say, Sir.

MR. USHER: Mr. Speaker, this Bill has come up rather earlier than I expected and I must, therefore, apologize to the hon. Mover for raising points which I would have liked to discuss with him if I had had the time and opportunity.

May I, first of all, refer to clause 8. It appears there that the Member may make rules, which are extremely technical, under sub-clause (2) (*a*) and I am suggesting the propriety of moving that to sub-clause (3) because it does seem to me that it requires the advice and consent of the Board to make these rules. They are, as I say, extremely technical and Government is, in any case, protected because the Board has a majority of Official Members. I think I am right in saying that.

The next matter I should like to raise is under clause 10 and the same matter under clause 16. There has, perhaps, been a little omission—that of Coast Lands, that is land held under the Lands Title Ordinance. I can see no reason for that omission. I imagine it is inadvertence. Perhaps the hon. Mover will address his mind to that point also.

The same thing applies perhaps, to clause 20, and may I, in referring to

[Mr. Usher]

clause 20, inquire why we should not omit "the Crown" altogether. Should not the Director direct surveys for title whatever they may be, whether Crown land or otherwise? I think this is very important and I should like to see that matter also given further consideration.

Now, we come to clause 23, where there is what seems to me, a difficult legal matter. If I have understood the clause, it suggests that the Court might, by its order, override the provisions of certain Ordinances. I refer particularly to the Division of Lands Ordinance, and other Ordinances such as those Local Government Ordinances which require the approval of a local authority to subdivisions and so on. You see the Registrar gets an order from the court and he has to endorse the Register accordingly and there are three sorts of registration. There is registration under the Crown Lands Ordinance, under the Lands Title Ordinance, and there is a third Ordinance, and if these orders inadvertently neglect to observe the provisions of the Ordinances which I have mentioned, very great difficulty is going to arise.

The next point I have to raise is under clause 24 (c). Would the hon. Member perhaps consider including in the category in (c), those officers who have served, say, for ten years in the Colonial Service and have retired.

My last point is connected with clause 31. I beg the pardon of hon. Members. The point has been dealt with in the amendment now proposed and I shall be very happy to support that amendment.

Sir, I beg to support.

MR. PATEL: Mr. Speaker, I support the Bill before the Council.

It was very essential that the Council should pass a Bill of this nature in order to provide for survey matters to be done more efficiently in this Colony. As comments have already been made on various clauses, I do not propose to make any further comments on those clauses, but I would like to make a few observations on clause 24. I strongly support the plea made by the hon. Member for Mombasa in regard to allowing the retired officers, *vide* sub-clause (*c*)— an officer on the permanent establishment of the Colonial Survey Service— to be also licensed so that we may have a larger number of surveyors than what we generally find in this Colony.

In regard to sub-clause (*d*) of clause 24, I would like to suggest that it should be omitted from this section and there should be powers given for making rules enabling licensing of any of the holders of a licence to practise surveying in any of the member countries of the Commonwealth. We suggest now "in the Dominion of Canada or the Dominion of New Zealand, the Commonwealth of Australia, the Union of South Africa". It may be, on investigation, we may find either in other dominions or in Southern Ireland or India certain societies whose members should be allowed to be licensed here. For that purpose I would suggest that sub-clause (*d*) be deleted from this section and powers should be given to make rules to enable licensing of any of the surveyors from any of the dominions or the member countries of the Commonwealth who are proper and fit to be licensed under this Ordinance.

MR. OHANGA: Mr. Speaker, I support the second reading of this Bill and have only very minor observations to make here and they are only small points.

First, I do not find anywhere in the provisions the actual meaning of the word "Member" although "Member" occurs several times in the body of the Bill. I wondered if some definition could be given to that. There are quite a lot of people who do not know what "Member" means.

Secondly, in the definition of "plan", Sir, it seems to me that it has been stretched quite a bit to cover even a picture taken by camera. I was wondering if that is really necessary since a picture would be a picture and a plan would be a plan and how a picture would be made a plan, I should like to know how it would really work.

Thirdly, Sir, Government surveyor. I understand that this would mean an officer of the Survey Department who is authorized by the Director to perform any survey duty under this Ordinance. At the same time, I think I know that there are other surveyors also employed by the Government who are not necessarily under the Survey Department. Are

[Mr. Ohanga]

we going to recognize the position of those people as surveyors as such or what?

The last is with regard to the Board—as in clause 5. I notice that the Board which is the Land Surveyors' Board will be composed entirely of technical officers and I find also that not even the Member is to take part in their deliberations. I was wondering if that is really satisfactory. Would it not be a good idea if we had somebody who is not really part and parcel of the Survey Department but perhaps higher up—the level of a Member—taking part in talks with technically qualified officers who actually do the work.

One other small one is the licensed surveyor. I find in the explanation, the definition here that this would mean a surveyor duly registered and licensed as a surveyor under this Ordinance or under any other Ordinance repealed by this Ordinance, but at the same time, clause 26 does make provision for recognition of certain men qualified outside this Colony, not necessarily under this Ordinance, also to be admitted to things of that kind in the country.

With those small observations, I support.

LADY SHAW: Mr. Speaker, I want to know if, when replying, the hon. Mover will clear up one point for me. In clause number 21 (*b*) are these words—"perform any survey affecting the delineation of the boundaries or the location of survey marks . . . etc.", but if you read this thing between the commas it reads "perform any survey affecting the delineation of the boundaries or the location of survey marks" and this activity is not allowed to any person other than the licensed surveyor. Now it is perfectly obvious to me that if an architect is going to build a house on a town plot, he will have to perform this operation which, technically in this Bill, he is forbidden to do. Now, I feel quite sure it is merely a matter of wording and it could very easily be cleared up, but I would be grateful if the hon. Mover would do so in his reply.

One other small point which I feel could be very easily cleared up which affects old farms, old land which has been surveyed many, many years ago. For I do not know how many years past, a lot of survey marks have been either lost or practically unrecognizable. The old survey marks were very likely little heaps of stones with bits of iron stuck in them, the local inhabitants removed the little bits of iron and the younger inhabitants threw the stones around and it is now extremely difficult to find the survey marks although it is known where they were, and, of course, maps come in. But, reading this Bill, it suggests to me that it is incumbent upon the landowner to report the loss of those marks and possibly to arrange to have them replaced. This would put an enormous burden on the Survey Office and very considerable expenditure upon the landowner and I would very much like to know precisely what the position of the landowner is. Of course, if it is a case of subdivision or selling of land, it is perfectly obvious that the land would have to be surveyed—it has been done frequently—but what is the position of the man holding land when he knows that several of the old marks are difficult to find and rather difficult to recognize. Is it his duty to report that fact and is it his duty to see that the land is re-surveyed? That is one question. The other point is in many cases that, through no fault of his own, survey marks are placed in positions where they were lost due to natural causes—for instance, I know of survey marks which were put in river beds, the river shifts back and the banks cave in and the survey mark goes too. All those sort of things mean that it is extremely difficult to recognize or find some survey marks and in other cases, some have disappeared. What is the position of the landowner in that case. If we could have those two points cleared up I would be very grateful.

I beg to support.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, many points of details, the importance of which I appreciate, have been raised during the course of this debate and I myself make no claim to be a technical expert in these matters. I think therefore that it would probably meet with the wishes of hon. Members that this Bill should be referred to a Select Committee where detailed and proper attention can be given to some of these points. (Applause.)

[The Deputy Chief Secretary]

I will try now just to make some reference to some of those points which have been made.

The hon. Member for Kiambu was inclined to criticize the powers given to the Board in clause 7 of the Bill. Well, Sir, they are certainly important powers, but they are the same powers as are held by the present Board under the existing legislation, and I do not, myself, believe that in matters of this kind you are going to get a Member or anyone who is not really qualified, as members of these boards are, to exercise powers of this kind as well as those technically competent to do so. I am not aware that there have been any complaints from anyone on the exercise of their powers by the present Board and I would suggest that it is really in order that the Board to be set up under this Bill should have these same powers.

The same hon. Member thought that the Member, under clause 8, was taking unto himself again important responsibilities against which there ought perhaps to be some sort of appeal.

MR. HAVELOCK: Mr. Chairman, what I said, Sir, was I did not object to the powers so much, but I suggested that if those powers were given to the Board, there should be some form of appeal.

THE DEPUTY CHIEF SECRETARY: I accept what the hon. Member said and I think that his point would probably be met if an undertaking were given that rules made under this clause were laid on the table of this Council. That would give Members an opportunity of criticizing them in particular if the amount of the fees laid down in them should appear to be excessive, and—I would see no objection to giving that undertaking.

Clause 9—I appreciate the point which the hon. Member has made but this clause does repeat, not verbatim, but in substance a section in the Registration of Titles Ordinance and I do not think that any person who was likely to be aggrieved, with justification, would find the Government ungenerous. I cannot quote cases, but it would always be possible for Government to make some ex gratia payment to any person who might be aggrieved, and who would be debarred under this clause from taking action against any individual and I would make my plea that the clause might be allowed to stand in the Bill.

The hon. Member also referred to clause 10 and asked for information as to how compensation was assessed for damage to trees or crops. The present arrangement is, Sir, that the District Commissioner is consulted and his advice is taken before an assessment is made and I am quite certain that there would be no objection if there was any question of valuable trees being cut to the Conservator of Forests or one of his officers being consulted and I think—in fact, I know—that there have been few if any complaints on the score of compensation which has, in fact, been assessed under this clause.

As regards the penalty of imprisonment for which provision is made under clause 16 (1), I certainly do not feel strongly on this matter and if an amendment should be proposed by the hon. Member for Kiambu that imprisonment should only be awarded in default of payment of a fine, the Government would see no objection and would be prepared to accept it.

The next speaker was the hon. Member for African Interests, Mr. Jeremiah. He asked what the position was when surveyors went into the native land units. I understand that it is invariably the custom for the district commissioner to be informed before a surveyor goes into a native land unit so that he can invite the attention of persons concerned to the fact and explain the nature of the survey to any interested persons.

The hon. Member for the Coast—for Mombasa, I beg his pardon—referred to sub-clause (2) (*a*) of clause 8 and suggested that as it was rather a technical matter, that that sub-clause (*a*) might be removed and placed under sub-clause (3). That, Sir, is a matter which I suggest might be considered in Select Committee. I would not, at the moment, myself see any objection to accepting that suggestion.

Clause 20—he asks why not omit the word "Crown". That, I think, is also a matter which I would like to consider in Select Committee but the wording of this clause is simply a repetition of the provisions in the present existing legislation.

[The Deputy Chief Secretary]

With regard to his comments on clauses 10, 16 (1) and 23, I would prefer—if he will allow me—to have these considered in Select Committee.

I think also that the points made regarding clause 24 (c), can usefully be discussed in Select Committee. I would, myself, see no objection to the suggestion which has been made regarding Members of the Government Survey Department who retire after serving for a period of ten years or so.

The hon. Member for African Interests, Mr. Ohanga, mentioned that "Member" is nowhere defined in this Bill. The reason, Sir, is that it is defined in the Interpretation and General Clauses Ordinance and I understand that it is not necessary in this particular Bill to make any separate definition for that reason.

The hon. Member also suggested—or I rather thought he was inferring—that the Member might like to be a member of the Board. Well, Sir, I think myself that as the powers which are given to the Board under this legislation are generally of a technical kind it would be a waste of my time as Member sitting in on a great deal of the discussion which would take place on technical matters of this kind and, with respect, I do not think that the Board would be strengthened by including what I suppose I can only describe as a layman in these matters.

In reply to the hon. and gracious Lady, the Member for Ukamba—I understand that if an architect merely has to locate survey marks, he is not legally performing a survey. A survey must be performed by a licensed surveyor. I am afraid that I have not had time, since the hon. Lady sat down, to look into the last question on which she made observations regarding the exact position of a landowner who might find marks and beacons difficult to find, but I will look into that matter and I will give an undertaking that if Council agrees that this bill should be referred to a Select Committee, the point will be clarified in the report of that Committee.

Sir, I beg to move.

The question was put and carried.

REFERENCE TO A SELECT COMMITTEE

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I beg to move that the Survey Bill be referred to a Select Committee.

MR. HAVELOCK seconded.

The question was put and carried.

The Wakf Commissioners Bill

THE SOLICITOR GENERAL: Mr. Speaker, I beg to move: That the Wakf Commissioners Bill, 1951, be read a second time.

If this Bill becomes law, Sir, it will have achieved two purposes. It will have recast the present Wakf Commissioners Ordinance, inserting a number of provisions which, having regard to experience, are conceived to be desirable; it will also declare certain wakfs to be valid. By a decision of the Judicial Committee of the Privy Council which was followed by the Court of Appeal for Eastern Africa, wakfs for the maintenance and support of individuals and families where the wakf was of unlimited duration were declared to be invalid. As a result of that a law was passed in India, followed later by a decree in Zanzibar, to declare such wakfs to be valid. The purpose of clause 4 of this Bill is to make such a declaration.

Clause 5 saves rights acquired under final judgments which are pronounced or come into force before this Bill becomes law. But while I am referring to this, Sir, I ought to say that the Wakf Commissioners have asked that an amendment be introduced in the Committee stage saving in a similar manner pending proceedings. It will be realized that the word "heretofore" which appears in clause 4 (1) has the effect that pending proceedings will not be saved. Now, Sir, there are two ways of looking at this matter. One school of thought might say, "Why should the maker of wakf or the beneficiaries under that wakf be adversely affected where a writ has been filed before a certain date?"—that is, the date of the commencement of this Ordinance. But the other school of thought will doubtless contend that if a writ has been filed and the matter has proceeded for a certain way and perhaps the plaintiff was not very far short of getting final judgment, why should he lose the benefit of his action and perhaps have to pay the cost

[The Solicitor General]

of it? I have given this matter a great deal of thought, Sir, and on the whole I have concluded it would be fairer to save pending actions and I propose therefore to move an amendment in the Committee stage for that purpose. The line must be drawn somewhere and that would seem to be a not unfair place in which to draw it. But it will be noticed that the amendment will only save actions which have been filed before 20th February, 1951, so that persons who suddenly realize that this Bill may become law in the not distant future will not do themselves any good by filing writs hurriedly.

Now, Sir, in the present legislation "wakf" is not defined, but in the Bill "wakf Khairi" and "wakf Ahli" have been defined. Briefly, a "wakf Khairi" is a wakf for a religious, charitable or benevolent public purpose, and the "wakf Ahli" is a wakf made for the benefit of a family or for the performance of any rites or ceremonies recognized by Muslim law for the benefit of the soul of an individual or the souls of a family. The Bill constitutes the Wakf Commissioners, and actually appoints the first four commissioners, who will in future be appointed by the Governor. Those four, Sir, are named in clause 6, I think, of the Bill and are at present the serving Wakf Commissioners. The Wakf Commissioners are increased in number from five to eight and the last four will be elected by those appointed in this Bill and eventually appointed by the Governor—or rather, when any of these last four have to be reappointed by the Governor.

Clause 10 of the Bill provides for the keeping of a register and also that all trustees of wakfs must apply to the Wakf Commissioners within two months of the making of the wakf for registration in that register.

Now, Sir, under the present law where there is no properly constituted trustee of a wakf, the property vests in the Commissioners automatically. This Bill will provide that where the trustees of a wakf Khairi or trustees of a wakf Ahli with the consent of the majority of the beneficiaries apply, the Wakf Commissioners may take over the administration of a wakf.

Clause 12, which is one of the new provisions, enables Wakf Commissioners on their own motion in the case of a wakf Khairi, and on the motion of the majority of the beneficiaries in the case of a wakf Ahli to hold an inquiry, and if upon that inquiry it is found that there is no trustee properly appointed for the wakf, or that the wakf is being maladministered, the Commissioners may either take over the administration of the wakf themselves, or they may appoint trustees to carry on the administration.

Clause 14 will enact that no contract to sell the property of a wakf or to lease it for more than one year will be valid without the consent of the Commissioners.

Clause 15 of the Bill will prevent title being acquired to wakf property either by prescription or by adverse possession.

Under clause 16, where the wakf provides for the building of a mosque, the consent of the Commissioners is nevertheless necessary. The purpose of that, Sir, is to ensure that the mosque is not erected in a place where there is no real need for it or where no funds will be available to carry on its administration and its maintenance.

Under clause 17 of the Bill, where wakf property is being administered by the Commissioners, it is enacted that it must be administered in accordance with the intentions of the maker of the wakf, if those intentions are lawful, and can, of course, be ascertained and carried into effect. Where the intention is unlawful or it cannot be ascertained or cannot be carried out, or where there is any surplus revenue left after the intentions are carried out, the wakf property or any surplus which may exist may, in the case of wakf Khairi, be used for benevolent purposes for Muslims generally, and in the case of wakf Ahli for the benefit of the beneficiaries of that wakf as the Commissioners may think fit.

For this purpose, Sir, Commissioners may sell any of the wakf property provided that that property is not land which has been set aside for the purpose of a burial ground or for the purpose of permitting a mosque to be erected on it.

Clause 20 prohibits the use of the property of one wakf for the benefit of another, while there still exists the property of that first wakf; but there is power in the Commissioners where the property of one wakf Khairi is urgently

[The Solicitor General]

needed for expenditure for repairs or anything of that sort, even if there does exist property of that particular wakf Khairi to utilize the revenue of another wakf Khairi, but only if the revenue is not then required by that second wakf Khairi and if it can be repaid out of the revenue of the first wakf within five years without prejudice to the purposes of that wakf. Those, Sir, are the most important clauses of this Bill.

I am aware that some of my hon. friends may have amendments to suggest, but I will ask them to take this course: I will ask them not to apply or not to ask that this Bill should be sent to a Select Committee, but rather to discuss any amendments which they may wish to make with the Government, who can in turn discuss them with the Wakf Commissioners, so that we can endeavour perhaps by postponing the committee stage of the Bill to pass this Bill into law before the end of this sitting, because, Sir, it is a measure which is long overdue. (Applause.)

THE ATTORNEY GENERAL seconded.

DR. RANA: Mr. Speaker, I rise to support the Bill moved by the hon. Solicitor General regarding the Wakf Commissioners and I would also like to take the opportunity to congratulate him for bringing this Bill, which in my opinion bringing in this Bill, which in my opinion has been overdue; and in certain cases has done injustice to certain parties; but, as the English saying is, "it is better to be late than never", and from that point of view I congratulate the Legal Department, Sir, that after all they have thought it wise to bring this measure for the relief of the people who have left certain properties for the Muslim charities or for their children.

I do not intend to go into details, Sir, but there are one or two points which I should like to point out to the hon. Member, so that when it goes into the committee stage, and with the consent of the Wakf Commissioners, I would like that it should be clarified so that there should be no misunderstanding.

One on the first page, Sir, the word "Muslim". The definition of the word "Muslim' means an Arab, a member of the Twelve Tribes, a Baluchi, a Somali, a Comoro Islander, a Malagasy or a native of Africa, of the Muslim faith". That means, Sir, that I am not qualified, although I may call myself President of the Muslim Association, I am a sort of a vague person having no faith in the Muslim religion, I think the word "means" should be changed to "includes", and that should be the proper way, because "Muslim" at the moment means that one day some people in the Council could say "you're not a Muslim".

MR. MATHU: You are not a member of the Twelve Tribes?

DR. RANA: That is one point, and the second on which I would like to suggest to the hon. Member is I would like that after the words "Muslim faith" in the definition of the word "Muslim" "or such section of Muslim faith to whom the Ordinance is applied by declaration in the Gazette". The reason is, Sir, that when originally the Wakf Bill was brought in I understand that the Muslims of Indian origin were consulted and they refused to come under the Wakf Commissioners' jurisdiction. I do not know the reasons, but as there are various sects and various differences they did not like to be compelled under this Bill. But I would like it if the hon. Member, Sir, would put this clause in so that if a future any special section of the Muslim community who may deem fit to put the property under the Wakf Commissioner they should be able to do so by putting it in the Gazette, and the Wakf Commissioner should be good enough to take them in. This will include all the Muslims.

The second point, Sir, is that under clause 5 and the amendment moved by the hon. Member, I would request under the amendment to paragraph (a), in which even the cases which are pending before the courts, should be excluded. The reason, Sir, is that I intended in the beginning even to move that the clause 5 should be completely deleted, but I have been told that, in cases in which the judgments have been given and the properties have been sold under the principle of the law, it would be very difficult to offset it. Now, Sir, there is not the least doubt that those people who were unfortunate when that judgment was given according to the law; they have suffered, but now, the cases which are already pending, I think it would be extra hardship on them to include them.

[Dr. Rana]

and I, personally, have consulted the two Asian Members, out of whom one, as is mentioned on page two, Shariff Abdalla Salim, who is sitting behind me, Sir, is a Wakf Commissioner. I think that unless the Wakf Commissioners who are in Mombasa can show some special reason, I would submit that the pending cases should be excluded, and this Ordinance should be applied to them so that the same injustice, where judgment has already been delivered should not be applied in those cases.

With these few words, Sir, and few remarks, I do not ask of the hon. Member for the Bill to go into Select Committee. I think these are such points that in the committee stage could easily be amended, and with these few words, Sir, I support the Bill which has been moved. (Applause.)

SHARIFF ABDULLA SALIM: Mr. Speaker my hon. friend who has just spoken on this Bill has done so declaring himself as President of the Muslim Association, and as I being a Muslim, I shall have no other alternative but to bow to his wishes and support him on the remarks he has made.

Sir, as has already been said by the hon. Mover that this Bill was long awaited, and we should like to see that this Bill go through all three stages in this session. I strongly support the Bill, Sir, and I should like to make a few references to the points that have been raised by Dr. Rana.

The first is the question of the definition. I think he himself made it quite clear that because some of the Indian sects did not like to come under the Wakf Commissioner that was the mere reason of them being excluded from this definition. But, as he has now suggested, now that they are quite willing to come under the Wakf Commissioner I do not see—I being a member of the Wakf Commission—I see no reason to refuse them.

The second point, Sir, was the question of the legislation and the question of the pending cases in court. But I do not know even if we decide here to give effect to this Bill against these litigations that are pending now, cases which have not yet been considered by the court, I do not know whether in law we can do that, because I know there would be a lot of criticism against that from the Law Societies. People like Mr. Patel, who have already got some actions pending in the Supreme Courts at Mombasa.

MR. PATEL: I have not any!

SHARIFF ABDULLA SALIM: This morning, Sir, before the second reading of the Bill was moved one of my friends on this side of the Council, knowing that the Wakf Commissioners have got certain funds with them, and he is under the impression that, by asking for a loan, the Wakf Commissioner would give him a loan, and one of them wrote me a chit this morning, and he said, "My dear Shariff, I see that you are one of the first Wakf Commissioners of Kenya. Can you get me some Sh. 1,000,000 from the Wakf Commissioners' Fund?"—and that is Mr. Mathu, here, Sir! (laughter). I wrote back to him and I said, "If you can produce security, yes". He wrote back again to me and said "security is my life". I wrote back to him and said, "Supposing you die before you tender any payment for the loan from the Fund? What is going to happen? How will they get the money back?" He said, "I pay you when we meet in Heaven!" (Laughter.) That Fund which the Wakf Commissioner has got is not for giving loans, but it is for the benefit of some charitable institutions.

Sir, I support the motion.

MR. OHANGA: Mr. Speaker, there is actually only one technical point on which I should like some explanation. I refer to section 6. The Establishment of the Wakf Commissioners of Kenya. Here it is provided that four shall be appointed by His Excellency the Governor and four will be appointed by those first four appointed by His Excellency. As the whole Commission is going to be responsible to His Excellency, I was wondering whether it could not have been a very much better idea for the four to nominate and His Excellency to appoint on their nomination the other four, so that they would know that they were equally responsible to His Excellency the Governor. In other words, it seemed to me that half the Commission would feel that they were only responsible to those who appointed them but not responsible to the Governor, and they themselves had only a small part to play.

The proviso to that seems to me a little unusual, Sir, it is not usual that

[Mr. Ohanga]

you put the names of the people in the Ordinances of this kind, and I do not know whether it would not have been better to leave the names out and try to do it otherwise. It is true that it is the same people who will be in the Commission, but is it absolutely desirable that they must be labelled here and now?

MR. MATHU: Mr. Speaker, in supporting this measure, as the hon. Member who is provided for under section 6 (1) as the first Commissioner has referred to my name about this fund, may I clear one point, and it is this, that I support this Bill because I know it is for Muslim charitable Institutions, and not for Individuals. And the joke actually is on his head and not on mine.

I beg to support the motion.

THE SOLICITOR GENERAL: Mr. Speaker, I have listened to the various points raised on the other side of the Council with a great deal of interest. With regard to the suggestions for the amendments to the Bill, they are all questions of policy, Sir, and I will take the very first opportunity of discussing them with my hon. friends and with the Wakf Commissioners, as I said when I moved the second reading of the Bill.

The question was put and carried.

THE INCREASE OF RENT (RESTRICTION) (AMENDMENT) BILL

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, I beg to move that the Increase of Rent (Restriction) (Amendment) Bill be read a second time.

Hon. Members will recollect that, when I moved a motion in this Council last November it retained the present Increase of Rent (Restriction) Ordinance in force for a further period of one year, I stated that the Government appreciated that there was a need to make considerable amendments to the present law. I mentioned that recommendations and advice were being sought from Members of the Rent Control Boards, and that it was hoped, if time permitted, to introduce an amending Bill during this Session of Council. Now, Sir, unfortunately, it has not been possible to present a Bill in the form which we had intended. There have been a very large number of recommendations made concerning many aspects of the existing law, and a number of these have been conflicting. They have been summarized and they are being considered by the Government, but owing to the very wide extent of the proposals and to the very great pressure which has been placed on the Legal Department in preparing the large number of Bills which have been submitted for the consideration of Council at this Session, it has not been possible to present a full amending Bill. I wish to make that, Sir, quite clear in case there is any feeling that the amendments which are now proposed are supposed to cover the scope of the wider amendments in connexion with the existing law. It is, Sir, the intention to obtain the best possible advice on the subject of the detailed amendments necessary in detail to the existing law and it is proposed to prepare a Draft Bill and to seek the advice on it of the Law Society and those most experienced in operating the law. As hon. Members will be aware, Sir, this is exceedingly complicated legislation and before the main Ordinance is materially altered it is necessary to have the most detailed consideration, or there is the danger that possible amendments may lead to controversy similar to that caused by the present Ordinance.

Sir, the Bill which is now submitted for the consideration of hon. Members is designed to deal with certain matters which require urgent amendment in order to expedite the operation of the law and to deal with one major matter of principle which requires rectification.

Clause 2 of the Bill makes some change in the qualifications which the Chairman or the Chairmen of the Central and Coast Boards are required to possess. There has been very considerable difficulty in finding a suitable successor to Sir Charles Belcher as Chairman of those Boards, and this amendment is designed to enable a suitable appointment to be made. In addition, Sir, it is the intention to make provision for a Deputy Chairman of either the two Boards jointly or each of the two Boards separately, who may sit and hear cases in addition to the Chairman and at the same time. It is considered that this will very materially expedite the business of the Boards.

Clause 3 is designed to amend section 5 of the existing law by giving the Central and Coast Boards the power to delegate to an administrative officer, or any other person authorized by them, the power of hearing cases involving dwelling-houses providing the standard rent does not exceed seventy shillings. Under the present legislation the power of delegation is limited to twenty-five holdings and it is understood that a considerable proportion of cases coming up for consideration by the Boards involve property where the rent does not exceed seventy shillings, and it is hoped in this way to expedite the operation of the law.

Section 5 of the Ordinance as it stands refers specifically to dwelling-houses in connection with this power of delegation, and I wish to give notice that it is the intention at the Committee stage to amend this to read "premises" in order that both dwelling-houses and business premises may be covered.

The only other clause, Sir, to which I wish to refer is clause 5 of the Bill. This is designed to rectify what has in the past led to considerable hardship in one or two cases. There is no provision under the law as it stands to enable the landlord, who has let his house furnished and where a statutory tenancy has been created, to recover possession of his furniture. This clause is designed to rectify this. I am aware, Sir, that certain views have been expressed and are very likely to be raised by hon. Members opposite that the one month's notice provided under this clause is too short and that it may be necessary to consider some amendment as the result of this debate or during the Committee stage, but I would press, Sir, that there is a need to give power under the law for a landlord to be able to regain possession of his furniture and not to be debarred from its use for an indefinite period.

Sir, I beg to move.

THE SOLICITOR GENERAL: Mr. Speaker, I beg to second, reserving my right to speak.

LIEUT.-COL. GHERSIE: Mr. Speaker, whilst it is admitted that the Rent (Restriction) Ordinance requires amending I submit, Sir, that the amending Bill before the Council now will act not in the interests of the tenant at all but rather as a hardship, and I refer in particular to clause 23A. Now, Sir, I think the average person who leases a house does so because he is unable to provide the necessary finance with which to build or purchase his own home and I think the same argument might be applied to a person who leases a furnished house. This section provides that the landlord may give notice of removal within one month, and I think it is quite unfair that that class of person should be expected to find a reasonably large sum of money within such a short space of time. Apart from that there is always the difficulty of obtaining the essential furnishings required, and I would submit that the average amount required to furnish a home to-day might be anything between £500 to £1,000, and I should think it would cause undue financial embarrassment to the individual. In addition to that, Sir, I can well imagine the "picnic" that would be created for an unscrupulous landlord. With a certain section of this community one of the biggest factors in their high cost of living is not merely the rent they pay but what they pay by way of "key-money", and I can well imagine an unscrupulous landlord taking full advantage of this position and giving them notice immediately. There would be of course the proviso that if you like to pay additional rent the furniture will remain there, and I submit that we must avoid this at all costs. I submit in order to remedy this position, the landlord should have the right to apply to the Rent Control Board who would then examine the position on its merits, and the Rent Control Board should have the necessary discretionary powers on these matters and they should give an order whether the removal should take place or otherwise.

Subject to that suggestion, Sir, I support.

MR. MADAN: Mr. Speaker, Sir, there are certain difficulties which I foresee which might arise in the operation of this Bill which I should like to bring to the notice of the hon. Member. Dealing first with clauses 2 and 4 of the Bill, while I appreciate the necessity for immediate amendment of the Ordinance, I fail to see the necessity for introducing the measures contained in clauses 3 and 5 of the Bill. I do feel, Sir, that

[Mr. Madan]

those amendments in clauses 3 and 5 might have been left over until the main amendments were introduced, as the hon. Mover has explained. Going back to clause 2 (5), surely, Sir, the hon. Mover must be aware that this clause is going to cause a great deal of difficulty in its operation. He must also be aware that at the moment in Nairobi there are a large number of cases pending before the Board and before the Chairman who took his seat after Sir Charles Belcher left the Colony. I understand as the result of a certain appointment recently, he has been unable to complete those cases, because the Chairman has neither been unable to act nor has been absent from Nairobi, and if the new Chairman is made to go away from Nairobi, or is unable to act owing to illness, I feel those cases will be still pending for some time to come, which is most unfair to litigants. This sub-clause, Sir, might be amended to provide that a Chairman and Deputy Chairman can sit together at the same time. If that provision is made it will also help to expedite dealing with cases, and litigants who have to wait for months now to get a decision from them will feel more satisfied. As you are aware, it was one of the intentions of the Rent (Restriction) Law that matters should be dealt with as quickly and as speedily as possible and that there should be less delay than there is now in the Courts of Law.

Dealing with clause 3 of the Bill, I feel I must sound a note of warning if the figure of seventy shillings is to be substituted for twenty-five shillings. Now, the hon. Mover must be aware that Indians provide a large number of litigants before the Rent Control Board, and I think it is also on the cards that the rent of the rooms they occupy ranges from Sh. 40 to Sh. 80 per month, and in my opinion it would be dangerous to delegate the powers dealing with such cases to one person, leaving them at the mercy of the whim of that person. That being so, I feel it would defeat the whole intention of the Rent (Restriction) Ordinance because the Board, if they think fit, can delegate their power to one person, which in effect, would mean the removal of practically all the cases to the jurisdiction of that one person. I feel Sir, that would be most unsafe, and I would strongly suggest to the hon. Mover that if he at all wants to raise the figure of twenty-five shillings to a higher figure in order to remove the petty work from the Rent Control Board, it might be raised to not more than thirty shillings only, because otherwise the effect of a clause like this would be to remove a good number of cases which could be dealt with only by one person, and that would be most undesirable.

Subject to those remarks, Sir, I beg to support.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I rise to support the Bill including the contentious clause 5. I think it is a peculiarity of this country that furnishing, particularly what are described as soft furnishings, come under the rent restriction at all, and the point of view of the tenant who might be imposed on by the landlord has been very well put up by my hon. friend, Mr. Gheria, but there are other points and other conditions which can exist. I have come across instances of landlords who for months and even years have endeavoured to get their own furniture back out of a house which came under rent restriction, and have suffered great hardship themselves. I cannot understand why furnishings ever came under rent restriction. The object of rent restriction, after all, is to prevent the extreme hardship of people being homeless. The question of furnishings costing a thousand pounds has been quoted. Rent restriction was never intended to defend people who could afford furnishings costing a thousand pounds. For that reason, Mr. Speaker, I strongly support the Bill, including clause 5. (Applause.)

DR. RANA: Sir, I rise to support the Bill moved by the hon. Member for Commerce and Industry, but before I say anything else, I happen to be a landlord in a small way, but I am neither an unscrupulous landlord nor an unscrupulous tenant, which has been used by the hon. Member for Nairobi North. I was one of those unfortunate ones who spent a lot of time when we were drafting this Rent Control Ordinance, and it is a well known fact that there are a lot of anomalies and actually remarks which one can read generally in papers, and even today the Members of this Council have passed a tremendous amount of

[Dr. Rana]

remarks. I merely submit that this thing ought to be revised and brought up to date if the rent control is going to be any good either to tenants or to the landlords.

With these few words, Sir, I hope that the hon. Mover and the legal authorities will devote the time. We have been very kind of bringing in control, but I am sorry to say that our controls have rather done any good to the consumers nor to the people, except those who have been lucky enough to make money both ways. This is one of the first ones.

With these few remarks, I support the Bill, Sir.

LIEUT.-COL. GHERSIE: On a point of information, did the hon. Dr. Rana suggest there were *no* unscrupulous landlords?

DR. RANA: No, Sir, I said I am not one. There may be unscrupulous tenants and landlords, I quite agree.

THE SOLICITOR GENERAL: If this debate has shown one thing, Sir, it is the different opinions which are held by various people about rent control!

MR. HAVELOCK: It depends whether they are landlords or tenants!

THE SOLICITOR GENERAL: I do not think it really depends on whether they are landlords or tenants. In listening to evidence, as I have had to do on behalf of tenants and landlords, you have great difficulty in making up your mind as to exactly what is a fair recommendation, but of course one does not make these recommendations merely on some whim. They are made on representations and on evidence which is brought before one. I refer now, Sir, to the Committee of which I was the Chairman some two years ago, and on which I had the benefit of the advice of my hon. friend the Member for Mombasa, my hon. friend the Member for Education, Health and Local Government, the hon. Dr. Rana, my hon. friend the Member for Commerce and Industry —I cannot remember all the names at the moment—and certainly one very able and, I will say, brilliant lawyer in the person of Mr. Nazareth. But that report has not found universal approval. It all depends on the point of view. Some landlords have damned it to a certain extent, others who have been hit perhaps a bit harder than others and who are more anxious about the state of their pockets than others have taken the gravest possible exception.

Now, Sir, that is merely in passing, but the debate this morning has, I think, shown some of the different views which can be held. With regard to clause 5, that has been introduced as the result of the most grave pleas and representations on the part of landlords. But we have had this morning, as I say, two completely different points of view expressed about it. My own view is—and I am rather inclined to agree with my hon. friend the Member for Uasin Gishu about this—that I am beginning to wonder really whether soft furnishing should come under rent control at all. On the other hand, we have been told that tenants who move into houses are faced with this tremendous expenditure, and no one knows about that more than I do how much it costs when I am transferred from one Colony to another and I have to refurnish a house. But I think we have to consider—I will suggest it to the hon. Mover—whether a month is reasonable notice.

With regard to clause 3, I do think the limit suggested by the hon. Mr. Madan is a little bit on the low side, because we do feel that if the Boards can delegate to somebody else, to one individual officer to perform their functions it will take away a great deal of work from the Board, and will save this tremendous lag of cases which nearly always exists. I think perhaps Sh. 30 is a little on the low side, but if he will discuss the matter with the hon. Mover I am sure he will be very pleased to do so.

It is the intention, Sir, that both the Chairman and the Deputy Chairman should be able to sit. I do not know whether it is perfectly clear in clause 2. If it is not, I am going to suggest an amendment in the Committee stage to make it perfectly clear.

That is all I wish to say, Sir.

MR. PRESTON: Mr. Speaker, Sir, whilst in support of the Bill in general, I would like to point out that if we do not control furnishings you will get a situation arising where unscrupulous landlords will charge for the use of the furniture most exorbitant prices, and people who are desperately in need of a house will very foolishly pay these prices.

With that comment, Sir, I beg to support.

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, I think my hon. and learned friend has dealt with most of the points raised. As he stated, the Government will consider whether it is desirable to alter the period of notice given in relation to landlords obtaining their furniture under clause 5, or whether it may be desirable to leave the making of an order to the discretion of the Rent Board to enable a landlord to recover his furniture. I would say, Sir, in regard to a remark made by the hon. Member for Uasin Gishu, that I do understand it to be quite correct that furnished premises are not controlled under the law in the United Kingdom, at any rate.

The hon. Member for Central Area, Mr. Madan, referred to the need for accelerating the transaction of business by the Boards. Now, Sir, as I hope I made clear in my remarks when moving this motion, one of the main objects of this Bill is to secure the expedition of the working of business and to enable arrears which have accumulated to be removed.

My hon. and learned friend has dealt with the possible need for clarification in regard to both the Chairman and the Deputy Chairman being able to hear cases at the same time. It is our intention that that should be so. It was further the intention to expedite business by raising this level to Sh. 70 in regard to the standard rent of premises which could be heard by an officer under delegated powers, and the original provision which gives such power up to Sh. 25 is very much restricted and was largely included to deal with certain types of property at Mombasa. It is the intention that by raising this figure to Sh. 70 a very much larger range of premises can be dealt with as expeditiously as possible and that the arrears of which the hon. Member complained can be cleared off speedily.

Sir, I beg to move.

The question was put and carried.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Friday, the 23rd February, 1951.

Friday, 23rd February, 1951

Council assembled in the Memorial Hall, Nairobi, on Friday, 23rd February, 1951.

Mr. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 22nd February, 1951, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE FINANCIAL SECRETARY:

Report of the Standing Finance Committee on Schedules of Additional Provision No. 6 of 1949 and No. 1 of 1950.

NOTICE OF MOTION

MR. COOKE gave notice of the following motion:

That this Council while accepting the principle that maize producers should receive a reasonable and economic price for their produce resolves that since maize is the staple food of the majority of the people of this country and consequently its selling price affects the wage structure and with it the whole economy of Kenya, no increase in the price to the producer shall be passed on direct to the consumer; any such increase should be met by the means of a subsidy from general revenue.

ORAL ANSWERS TO QUESTIONS

QUESTION NO. 88 OF 1950

MR. COOKE:

Will the Government state the disposal of the Colony's surplus balances, item by item, on 31st December, 1950.

THE FINANCIAL SECRETARY: As the hon. Member for the Coast is aware, it is not always possible to give an exact figure for the sterling investments held on Kenya's account in the United Kingdom for any one particular date since our surplus balances are invested

[The Financial Secretary]

in a great many securities, the market value of which is not known for any particular day. Subject to the understanding that the figures given for investments are an approximation, the figures for disposable surplus balances as at 31st December, 1950, are as follows:—

Estimated General Revenue Balance as at 31st December, 1950 ..	£6,007,121
Disposable Surplus Balances as at 31st December, 1950—	
	£
In Kenya—	
Local Bank Balances	501,601
Local Investments ..	44,185
In the United Kingdom—	
Deposit in Joint Colonial Fund ..	316,000
Investments in London	1,972,374
	£2,834,160

MR. COOKE: Arising out of that answer, will the hon. gentleman consider withdrawing some portion of this £1,000,000 from London and investing it in productive expenditure in this country, such as silo storage, etc.

THE FINANCIAL SECRETARY: Mr. Speaker, as the hon. gentleman is aware, a very considerable proportion of our surplus balances is at the moment advanced to the Development and Reconstruction Authority for development purposes. The result is that the sums invested in London are what might be termed our "sheet anchor" for the present, and until such time as we recoup our advances from the Development and Reconstruction Authority I doubt if it would be a wise course even to consider what the hon. gentleman suggests. However, when we do get recoupment of these advances, we will take up the matter raised by the hon. Member.

QUESTION NO. 9

MR. BLUNDELL:

Will Government state what action they intend to take on the report of the committee under the chairmanship of Sir Charles Mortimer which was appointed:—

"To examine the provisions for compensation for the use of land and property for public purposes as defined in the Crown Lands Ordinance, 1902 and 1915, the Local Government (District Councils) Ordinance, 1928, and the Native Lands Trust Ordinance, 1938, with especial reference to—

(*a*) the compulsory acquisition of land;

(*b*) the requisitioning of basic materials;

(*c*) camping by public servants or contractors;

(*d*) the necessity or otherwise of reconditioning land from which public highways or railways have been moved;

and to make recommendations for the amendment of these Ordinances where in the opinion of the committee the provisions in these Ordinances for (*a*), (*b*) and (*c*) mentioned above appear onerous or inequitable to the individual land or property owner in the light of the development required for public highways and railways at the present time."

THE DEPUTY CHIEF SECRETARY: The committee submitted its report in October last year.

The recommendations made in the report have required detailed examination by the Members of the Government concerned; this examination has been almost completed, and the intention is to submit the report to the Governor in Council at an early date.

MR. BLUNDELL: Mr. Speaker, arising out of that answer, will the hon. Member give me an assurance that where cases of hardship have arisen during, or just after, the presentation of the report and before the recommendations of Government have been made—that those cases of hardship will be considered in the light of the recommendations which Government will finally decide upon in the light of the report?

THE DEPUTY CHIEF SECRETARY: I can answer the hon. Member. Those cases will be considered.

MR. BLUNDELL: Arising out of that answer, may I have an assurance from the hon. Member that the intention brought forward in this answer will undergo a profound physiological change and crystallize into action?

THE DEPUTY CHIEF SECRETARY: The intention will, I hope, crystallize in the course of the next week or two, and I guarantee before the next sitting of this Council.

THE CHIEF SECRETARY: Arising out of the hon. Member's question, may we have an assurance from the hon. Member that he will keep to his standard of purity of English? (Laughter.)

MR. BLUNDELL: Mr. Speaker, the answer is in the affirmative.

SESSIONAL COMMITTEE REPORT

THE CHIEF SECRETARY: Mr. Speaker, I beg to announce that the Sessional Committee has appointed the following Select Committees:-

The Hotel-keepers' Bill

The Member for Education, Health and Local Government, (*Chairman.*)
The Solicitor General.
The Secretary for Commerce and Industry.
Mr. C. W. Salter.
Mr. C. G. Usher, M.C.
Mr. I. Nathoo.
Mr. Shariff Abdullah Salim.
Mr. B. A. Ohanga.

The Survey Bill.

The Deputy Chief Secretary, (*Chairman.*)
The Solicitor General.
Mr. C. G. Usher, M.C.
Mr. J. G. H. Hopkins, O.B.E.
Mr. C. Madan.
Mr. Shariff Abdullah Salim.
Mr. B. A. Ohanga.

The Native Courts Bill

The Chief Native Commissioner, (*Chairman.*)
The Solicitor General.
Mr. J. G. H. Hopkins, O.B.E.
Mr. C. G. Usher, M.C.
Mr. C. Madan.
Mr. Shariff Abdullah Salim.
Mr. E. W. Mathu.
Mr. B. A. Ohanga.

The Water Bill

The Member for Agriculture and Natural Resources, (*Chairman.*)
The Special Commissioner of Works.
The Director of Agriculture.
Mr. M. Blundell.
Mr. C. W. Salter.
Mr. W. B. Havelock.
Mr. Shariff Abdullah Salim.
Dr. M. A. Rana, O.B.E.
Mr. J. Jeremiah.
Mr. J. J. K. arap Chemallan.

BILLS

SECOND READING

The Income Tax (Amendment) Bill

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Income Tax (Amendment) Bill be read a second time. Sir, on the 13th December last year a Committee of the whole Council, known as the "Committee of Ways and Means", passed a resolution in the following terms: "Be it resolved that, subject to the provisions of an Ordinance to be passed in the present session of the Council, for the year of assessment commencing on the 1st January, 1951, and subsequent years, the tax upon the chargeable income of a person other than an individual should be charged at the rate of Sh. 5 on every pound of chargeable income".

Now, Sir, that resolution was endorsed by this Council when it adopted the report of the Committee of Ways and Means. The Bill now before the Council seeks to give statutory effect to the will of the Council, and as the reasons for the measure have been fully and, indeed, exhaustively given, and as I presume it is not the intention of any Member of Council to flout the will and the authority of the Council by opposing this measure, I do not propose to treat the motion other than as a formal one to give statutory effect to the decision of the Council already reached.

Mr. Speaker, I beg to move.

THE SECRETARY TO THE TREASURY seconded.

MAJOR KEYSER: Mr. Speaker, I rise to oppose this motion and, in doing so, do not feel the slightest bit guilty that I am in any way flouting the authority of this Council, because the hon. Member does not seem to have realized the niceties of constitutional etiquette perhaps, but this motion is being submitted to Council for its approval or rejection.

Sir, I also am not going to give long reasons for the opposing of this motion, because they have all been stated in the past and they are all on record, but I would like to draw this Council's attention to the changed situation that has

[Major Keyser]

arisen in the Colony due to inflation costs and have taken place in the changed international situation, and various other factors. I think, with the motions that are coming up before this Council on the Cost of Living Allowances, the hon. Member for the Coast's motion, the fact that we are possibly going to have to spend far greater sums on defence than we originally considered, it would be foolish of us to believe that all that expenditure can be met by savings in the normal expenditure of the Colony, and I think regrettably that we must consider the ease of an increase in taxation in some parts of the financial structure of the Colony.

Now, I am opposed to this Bill at this stage of affairs not only because of the reasons I gave before which might be changed today, if it was possible for this Council to see the whole picture of the possible financial liabilities of the Colony, and then make a decision on how it is going to meet the whole of those necessities. This is dealing with the matter piece-meal. Now, inasmuch as the Budget presented to this Council in November last year is concerned, the revenue from this increase in Company tax is really not necessary because hon. Members opposite will remember that we were able from this side of the Council to effect a saving of a quarter of a million pounds by rejection of the item dealing with the setting up of revenue reserves, and as I think the estimated revenue from this increase in Company taxation was somewhere in the region of £220,000, there is no need today to impose that tax at the present moment so as to satisfy the requirements of the past Budget, but I do think, Sir, that we should at the end of this session, when we will know better what our financial liabilities are going to be, we shall have the whole picture considered and the whole picture also of the possibilities of where the revenue can meet expenditure that might accrue, can come from. And, therefore, Sir, I am going to suggest to hon. Members opposite that this Bill be withdrawn from this session and the steps that I outlined taken. In other words, a review of what our possible expenditure is going to be in the next year and the sources from which that expenditure can be met.

Now, I do that, Sir, for another reason too, because I think that there is an inclination on this side to increase expenditure rather joyously without consideration of where the money is coming from, and I think that if we did at this moment stop and pause and think where it is coming from it might quite easily affect our deliberations within the next week or two. But I, Sir, would strongly oppose any form of taxation which is going to fall on one part of the community because, while in law there is no doubt about it that this particular tax is non-racial, nevertheless in fact we do know that it falls on one section of the community more heavily than others, and I believe that in the difficult situation that is going to arise in the near future over meeting our increased expenditure, that every section of the community must play its part, and not only one part or one section—or mostly one section.

Sir, I beg to oppose.

MR. MADAN: Can the hon. Member who has just spoken call facts and figures to substantiate his statement that a tax of the kind he was talking about falls upon one section of the community?

MAJOR KEYSER: On a point of order, Sir, I said "mostly".

THE SPEAKER: I am very sorry I have not got my thing tuned in. I understand the hon. Member is rising on a point of order. Will he please state what it is again?

MR. MADAN: To inquire from the hon. Member who has just spoken that he can call upon figures to substantiate that statement.

THE SPEAKER: That is not a point of order. It is a matter which you are entitled to speak about if you rise in the debate, but as you rose and said you were on a point of order I did not call you by name: but if you are rising to speak, please go on.

MR. MADAN: I will remain seated for the time being.

LIEUT.-COL. GHERSIE: During the recent debate on the motion moved by the hon. Member for Trans Nzoia, the hon. Deputy Chief Secretary inferred that the reason for Government's change of attitude in regard to Sir Bertrand Glancy's recommendations was due to

[Lieut.-Col. Ghersie]

the fact that this side of the Council was evenly divided on that issue. Now, Sir, by the same token I suggest that Government should refrain from voting on this motion, because it should be remembered that, during the budget debate, they permitted a small majority of disinterested hon. African Members to exercise a casting vote on the increase in Company Tax.

THE FINANCIAL SECRETARY: Not entirely.

LIEUT.-COL. GHERSIE: Sir, I oppose the Bill.

MR. PATEL: I rise to oppose the Bill before the Council, but I do not necessarily agree with the remarks made by the hon. Member for Trans Nzoia in support of the opposition.

Firstly, Sir, I oppose because it departs from the policy of the rates of income tax which have been adopted in the adjoining territories. The income tax and customs are now under the High Commission, and if we consider the spirit of the arrangement which was made at the time of the acceptance of the Paper No. 210, the question of customs tariff and income tax rates were reserved to each territory largely to meet the wishes of the unofficial community. In law, the Government is entitled to depart from the general policy followed in adjoining territories, but in my view, Sir, when the arrangement was made that each territory should have the right to make different income tax rates, it was decided to do so to see that the wishes of unofficial communities were carried out in that matter. Therefore, Sir, I wish to oppose because the action of the Government in this regard is against the spirit in which the arrangement referred to by me was made though not the letter. And the Indian Members had opposed the motion at the time when it was suggested to increase the Company tax from Sh. 4 to Sh. 5.

Now, Sir, I would like to make a few observations in regard to the remarks made by the hon. Member for Trans Nzoia. I do not agree with him when he says that burden of income tax falls on one section only. In every country the income tax falls on a minority of the population. If that minority happens to be a racial group in this country, it makes no difference. In every country to-day the income tax is paid by those whose incomes enable them to meet the payment of income tax, and because in this country the well-to-do section happens to be a particular racial group, the suggestion that the income tax should not fall on this section or that section, is an erroneous argument. Therefore, Sir, I cannot agree with him when he argues on that line.

Income tax is one of the fairest taxes commenced during the last century, and I hope no reasonable person in the world to-day will suggest that the tax should not be collected from those who are able to pay.

With these observations, Mr. Speaker, I oppose the Bill before the Council.

MR. BLUNDELL: Mr. Speaker, I support the opposition to the Bill which was voiced by the hon. Member for Trans Nzoia. Sir, we do not want to go into all the arguments—in fact, I heard the hon. Financial Secretary say "Good heavens!" just now, when they were being put up again. We do not want to go into all those arguments. I would only say this. We are going to be faced this year with a tremendous rise in expenditure from a whole series of events. That expenditure can only be met in two ways.

First of all, by having a general increase in taxation which will have to be borne generally by the whole community, and secondly, by retrenchment in expenditure. Now that is the factor upon which I think the hon. Member for Trans Nzoia is basing his opposition. We are asking the hon. Financial Secretary to withdraw the Bill at this stage, in order that when he comes forward, he will come forward again with an overall general picture of the widest possible range of taxation increases which will be necessary if the additional expenditure is to be borne fairly by all sections of the community, and secondly with proposals for retrenchment which will undoubtedly be necessary.

Those are the reasons I think why it is reasonable at this stage to ask the hon. Member to withdraw his Bill.

Before I sit down, Sir, I just want to join issue with the hon. Mr. Patel on his general remarks about income tax. This

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Bill is actually dealing with income tax on companies, and therefore its incidence on the individual is not the same as if it was general income tax. Now there is my view in this country one difficulty of income tax—whether other hon. Members like it or not—we have got in this country various standards of living, and it does mean that an income tax on a man with a thousand a year will be more onerous according to the race of the man. There is no question about that. One must be a realist in these matters. I am not arguing whether it is correct that there should be different standards of living, but the European on a thousand a year in Nairobi would not be, in my view, immeasurably——

THE FINANCIAL SECRETARY: On a point of order, Sir, is this relevant?

THE SPEAKER: Even the general financial condition of the country will be relevant.

MR. BLUNDELL: Well, Sir, I do not want the hon. Member to feel that his time is being wasted in this Council. I only wanted to say, in so far as the remarks of the hon. Mr. Patel are to be considered, it is not in my view absolutely true to say that income tax in general falls on everybody, and that no other factors can be considered. That is all. We can join issue with the hon. Mr. Patel at the Budget session on this when the hon. Member will have, willy-nilly, to sit and listen.

I, Mr. Speaker, I oppose the Bill.

MR. MACDONCHIE-WELWOOD: Mr. Speaker, I beg to oppose the Bill, although for different reasons to those already alleged, and I can put it very briefly and simply.

Under the income tax laws in this country, this tax will not fall on the individual, it will fall on ploughed back capital, and I believe that to tax that capital in this way is a very dangerous thing in a young and developing country, and that is, in fact, the sole object of this Bill.

I beg to oppose.

MR. MATHU: Mr. Speaker, I rise to support the measure, because I think it is a very fair Bill.

MR. BLUNDELL: You are not paying, probably!

MR. MATHU: And this increase is so meagre, only a shilling, Sir, over the present figure, and it is most interesting to see how hon. Members on this side fighting as hard as they could over a shilling, Sir, not of an individual, but of a company, and there is no question of hindering development, development will continue whether you put a shilling or two or even three on, it will continue, and I do not think there is any reason to oppose this measure at all. I think the hon. Financial Secretary has done it very well, and I could see no reason whatsoever to oppose it. But what is most interesting, Sir, is that when we sit here and there are proposals to increase poll tax for one section of the community, the facility through which these things go in this Council is most astonishing, but when a shilling is put on the section of the community because of their financial position, the struggle that we see exhibited in such a debate, as I say, is most astonishing.

I think, Sir, the measure is a fair one, and I would like to support it wholeheartedly. It is non-racial. Every person who invests money in the business is affected, there is no racial question about it. It is a fair one.

I support the motion, Sir.

MR. HAVELOCK: Mr. Speaker, development will continue if we put on Sh. 2 and it would continue if we put on Sh. 10. The same thing might apply if we put on Sh. 2 to the African poll tax, they would still live—if we put on Sh. 5 they would still live—but that is not the principle on which we have to discuss a matter of this sort. I would emphasize the remarks which the hon. Member for Trans Nzoia made, there is no doubt we will have to review the resources of our revenue in view of the commitments which are facing us at this moment and it is not the right time, therefore, to put this tax on now. The point is that we may have to face, when we are discussing the whole matter—to find out what we need to pay and where we are going to get it from, we may have to face some rise—even in this tax. Let us, first of all, review the whole position.

I am quite certain when a review takes place later in the year there will be another suggestion, a further rate will be

[Mr. Havelock]

imposed on Company tax in order to find money that we need and because already that tax would have been put up. I believe it is very unfair and I think the Company tax, as the hon. Member for Uasin Gishu said, is one of the last taxes we want to put up to any high level. I therefore support the Member for Trans Nzoia very strongly. Let us pause and think out the whole problem and the whole picture and not do the thing piecemeal as is suggested by this Bill.

Sir, I beg to oppose.

THE FINANCIAL SECRETARY: Mr. Speaker, I must confess that I am weary of getting to my feet to reply to a debate on Company tax! Sir, the hon. Member for Trans Nzoia suggested that we should not go forward with this measure until we have had a further review of our whole financial position and assessed what our financial position is in relation to new expenditure and new measures for raising money.

Now, Sir, what he really is referring to is in fact a Budget. That is precisely what a Budget is for and the Budget that was produced before this Council in October last year set out to give that very review, the most exhaustive review of our financial position that it was in fact possible to give; and if I may say so from almost every Member on the opposite side of this Council, expressions of appreciation came forward as to the wideness of that review and its completeness. What more can the Treasury give and what greater proof could it have given that, having regard to our commitments, the need to raise this further money was there? The hon. Member says—"let us see what our commitments are likely to be", but, surely, Sir, it must be patent to everybody here that there is facing us today, outside the Budget, a very large commitment of expenditure—I refer to the motion before this Council which will be moved later this morning. Surely, if any further proof was wanted, there it exists. (MAJOR KEYSER: I said so.) Sir, the hon. Member can rest assured that the whole field of our expenditure and the whole field of our possible revenue will be most exhaustively examined during the course of this year and the result of that will be placed before this Council in the form of the Budget of 1952.

Sir, the hon. Member for Nairobi North suggested that Government should not vote on this motion. I do not believe, Sir, the hon. Member is really serious and I do not intend to comment on his suggestions. (LIEUT.-COL. GILRAITE: I am serious.) If he *is* serious, Sir, all I can say is this much, that Government intends to use its vote in the best interests of the territory—(hear, hear)—that is its intention and it will always stand by that intention.

The hon. Mr. Patel objected to the Bill because it represented a departure from inter-territorial co-ordination. He admitted, Sir, that when the matter was handed over to the High Commission, sovereignty in regard to rates was reserved to the individual territories. That was a very specific reservation, Sir, and showed quite clearly that the territories concerned wished, if necessary, to vary their rates without necessarily keeping in step. He has raised, Sir, a most important issue, if I may say so. His suggestion is that taxation in the three territories should always be identical, be it customs duty, be it excise duty, be it income tax. Now, Sir, that would be a very comfortable theory and it would be very nice indeed to work it in practice if only one slight condition were there and that condition is this—that the economic problems, fiscal problems, the financial problems of all three territories and their needs arising from those problems were identical at all times. Now, Sir, if the hon. Member is going to tell me that in this year of grace, 1951, the economic, fiscal, and financial problems of the three territories are identical, I should have the greatest pleasure, Sir, in disabusing him because they are very very different and one of the gravest difficulties that faces any Financial Secretary in this country today is the fact that in attempting to raise the money necessary to meet our rapidly increasing expenditure, he is faced with the need based upon the constitution and based upon geographical juxtaposition, he is faced with this need of keeping in step with the other territories even in spite of the fact that their needs and economic demands are very different indeed from our own. This

[The Financial Secretary]

problem, Sir, as I have said before in this Council, is a most urgent one and will have to be given the most serious consideration at a very near date in time.

Sir, the hon. Member for Uasin Gishu raised a point which he had raised, I think, at least four times before and which has been replied to at least four times before, about the effect upon small companies of taxing the undistributed profits. That, as I said before, is an argument against Company tax as such. It is not a specific argument against this small increase. (Cries of "oo!") Sir, that is my view in spite of the "oo's"! Sir, I do not think there is anything further. All the other speakers were enlightened and intimated that they supported the measure and in these circumstances, I will say no more but beg to move.

The question was put and, on a division, carried by 21 votes to 13. Ayes: Messrs. Adams, Anderson, Carpenter, Major Cavendish-Bentinck, Messrs. Chenallan, Cooke, Davies, Gillett, Hartwell, Jeremiah, Matthews, Mathu, Sir Charles Mortimer, Messrs. O'Connor, Ohanga, Padley, Dr. Rana, Mr. Rankine, Sir Godfrey Rhodes, Messrs. Salim, Horsley, 21. Noes: Mr. Blundell, Col. Cherrie, Messrs. Havelock, Hopkins, Major Keyser, Messrs. Maconochie-Welwood, Madan, Patel, Preston, Pritam, Usher, Lady Shaw, Mr. Usher, 13. Tellers: Messrs. Hobson, Nathoo, Shary, Vasey, 4.

THE CHIEF SECRETARY: Mr. Chairman, I understood, Mr. Hopkins was pairing with Mr. Vasey.

THE CHAIRMAN: You can ask for an adjournment of the debate for a quarter of an hour if you are in doubt.

MR. HOPKINS: I made it quite clear, Sir, to Mr. Vasey that if it was a matter of important principle I was not prepared to pair.

MR. COOKE: That shows the impropriety in my opinion of the Member being present when he is pairing. I have drawn attention to that matter before.

THE CHAIRMAN: Both the Members should be absent. There is no pairing.

The motion for second reading is carried by 21 votes to 13.

The Wild Animals Protection Bill

MR. COOKE: Which side were you referring to, Sir?

THE SPEAKER: I was merely quoting the Order paper, it is very opportune.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, it falls to my lot during this session to have to introduce rather a lengthy Bill. This is the second one, but I trust that this Bill is less contentious than either the last one discussed this morning, or my last introduction, which was to the Water Bill.

I should like, Sir, to begin by trying to explain to Council why we are introducing a new Bill under a new title when we have an existing Game Ordinance which is dated 1937 and was amended in 1945 and in 1946. Well, Sir, the existing Bill was a pre-war measure and amendments which were introduced since were very minor ones; on one occasion providing for changes for licence fees and on the second occasion, or vice versa, I think, providing powers for veterinary research.

There have been many changes since 1937. The country has been opened up, there have been very big increases in population, there has been a revolution in transport facilities which enables people to get about the country very much more rapidly than they could and, I am sorry to say, there has been a considerable diminution of the game areas. In other words, Sir, the present existing Bill does not meet the present-day conditions and I would stress that game in this country is an immense asset to this country. It exists, as we know it, here, I think, as nowhere else in the world and is at the moment being exterminated very rapidly indeed. My contention, Sir, is that this Council owes effective protection to what remains of the game to the world and to posterity and perhaps its own economy, that is, the economy of this country.

Now, Sir, I would like just to run through the main differences between the Bill which is now before Council and the existing Ordinance, which I now maintain is out of date. One of the first differences is that the existing Bill only provides for game reserves, which at the moment there are only two, the Northern

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and Southern. Even sanctuaries, local sanctuaries cannot be proclaimed under the existing Ordinance except by a very clumsy method of putting certain birds or animals in certain areas under Schedule 1. I would at once say, Sir, that any expansion or alteration to what is known now as a game reserve can only be done by the Governor in Council with the approval of the Secretary of State and that provision is still contained in the new Ordinance now before Council. Under the new Bill we can not only deal with game reserves, as I have just outlined, but powers exist to proclaim controlled areas and to declare local sanctuaries.

Now, Sir, I would like to explain what is meant by a controlled area and I would also like to say that there are precedents for this system, which we are going to recommend, in other territories. It is not peculiar to Kenya. Now, Sir, there are certain other areas which are becoming more and more limited where game at the moment, and certainly at certain times of the year, is abundant and which are the few areas left for the tourists to go into and to shoot. They also, to some extent, form the hinterland for our game reserves in our national parks. What is happening now, due to the opening up of the country and increased transport facilities, to which I referred just now, is that game is being exterminated in some of these areas in a most ruthless and, I might almost say, disgraceful fashion. It is not unknown that in one small fairly accessible area, beyond Narok, that there are at the same moment twenty-five camps with not less than three guns in any one camp. It is not unusual for some of those camps to contain very many more than three guns, whole families of persons who have licences and you can then imagine that if people are really out to shoot all they can possibly shoot on their licences, be it for meat or for so-called sport, that we are not likely to retain game in this country very much longer. I suggest, therefore, that certain areas, which are probably within the knowledge of many Members of this Council, that in those areas we shall still allow shooting, we shall still allow people to go in and photograph and look at game but we can at least control the ruthless extermination which is going on at the present time. (Applause).

Under this new Bill, Sir, we are proposing, in addition to these controlled areas, to insert powers which I will deal with later to enable the Game Warden or the district officer, to control the export of meat from certain areas because it is not unknown for persons to go into these areas and, in my submission at any rate, shoot a great many more animals than they have permission for on their licence. They probably do away with the heads and other evidence —that has been done—and very large quantities of meat are exported. That has got to be stopped and one of the ways of stopping it is to control the amount of meat that those particular persons can take out of that area.

I will, now, Sir, deal with the other changes under this Ordinance. Under licence fees and fees under the existing Bill there are "residents', visitors' and serving soldiers'" licences. Now under this new Bill, as it is described on page 29, it will be seen that we provide for the type of licence and the fees paid under them, under Classes A and B and the fees for licences under Class A have been reduced because we have reduced the number of animals that can be killed on an "A" licence and we have added to a certain extent, to animals which can only be killed on a special licence. Under the old Ordinance, the existing Ordinance, the fees are statutory. They are laid down in the Ordinance itself. It is now proposed under the new Ordinance to provide fees individually which can be altered under powers given under section 57. I mention that because I believe in matters of detail such as fees charged, there is some anxiety on the part of certain hon. Members opposite that fees may be unreasonable or there may be good cause for altering them. Well, that can be done, whereas under the existing Ordinance it would have to be done by a special amending Bill. Anybody who is refused a licence or feel that they have in any way a grievance about these licences can appeal under section 59 which provides a general appeal on that subject.

A new innovation is under section 47 which provides powers which do not

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exist in the existing Bill for suspension of a licence before actual conviction by a Court and the reason for that is given in the Objects and Reasons which are before you.

Another change we have made in this Bill as compared to the existing Bill, is that we have done away with what is now known as the Governor's permit and we have introduced instead of that a Game Warden's permit. That has been done for this reason, that the Governor's permit—the power to issue a Governor's permit was delegated in any event to the Game Warden and I personally believe that it is high time we tightened up on the so-called Governor's permits. The original intention of a Governor's permit was to provide facilities for persons who were collecting for scientific institutions; that was the main purpose, and I think that should remain the main purpose, though I think it would be unwise to be the purpose; for which a Game Warden's permit could be given, too rigidly in the Ordinance.

As regards photographic permits, again there are slight changes in this Ordinance compared to the existing one, in that we have to some extent eased up on photographic permits and these are now only required if persons wish to go and photograph dangerous game, and for that purpose to approach within 100 yards of dangerous game. Dangerous game is, of course, interpreted in the interpretations. We also lay down that a photographic permit must be endorsed if a person wants to go and photograph in a game reserve and that is, of course, for obvious reasons.

Now, as regards fees, hon. Members may have noticed that special fees can be charged for the special permission that will be required in addition to the ordinary licence for persons who wish to go and shoot in a controlled area. Also provision is made to preserve the Outlying Districts Ordinance, which in any event still exists, but for permission of the district officer to be obtained before a person can go into a native area or into the Northern Frontier Province. There are powers to levy fees to have that permission, that is the district commissioner's permission to go into a native area or into the Northern Frontier Province. Hon. Members opposite may say, this is all very well, but a man has got to get a game licence, then if he wants to shoot in one of the best places in the Colony he has to pay a fee to go into a controlled area and that he may, in addition, have to pay a fee to the district commissioner to go into a controlled area. In other words, three fees. I would like to explain that that is not really the intention at all. It is considered it is quite reasonable that in a controlled area, which would be few in number and the purpose for which I have already explained, that a special fee should be charged. I think people will readily pay it. It will not be exorbitant and I think also it is very reasonable that that fee should be handed over to the local native council concerned, thereby giving them also some interest in such preservation of game—though of course this does not apply to the game reserves—and give them some benefit from the persons who go and shoot and so on in that particular area. As regards the district commissioner's fee, however, it is merely worded in the Ordinance that the "fee, if any", and the only reason could be in my submission for charging a fee would be if any special road or special bridge, or special facilities were, in fact, being kept up in that area to enable tourists, travellers and sportsmen, and so on, to move about in that area. If that is so, I think it is only reasonable that a small fee should be charged and paid to the local native councils for those purposes. I would, nevertheless, add, Sir, that we have been particularly careful not to be too precise in the wording of those sections.

Now, Sir, dealing still with permits, licences and fees—there are some changes, too, in this Bill as compared with the existing Bill. A visitor's permit now can only be issued by the Game Warden himself, and this we hope will give us greater control over assistants, that is so-called white hunters and others who accompany parties.

We also have introduced, Sir, a new form of permit known as a dealer's permit and it has been found under the existing Ordinance that the powers of the Game Warden to deal with the illicit

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transactions, that go on in trophies of game, are quite insufficient and experience has shown that there is a necessity for this dealer's permit.

There are only two other small matters that I would like to refer to before running through the Bill shortly. That is section 21 (5) on page 201 which is a new section and which is really almost a preservation of cruelty to animals section. It is really to prevent the unpleasant habit that there is in some parts, of, for instance, breaking birds' legs, putting out their eyes to attract others, or something like that.

Another matter which arises is section 22 where there is a new provision making it incumbent by law, and under heavy penalties, to report the wounding of dangerous animals. In addition to that, a dangerous animal, if wounded and if it escapes, is deemed to have been killed and this has to be considered as fulfilling your licence. The reason for that is obvious, I think. That is that there is an increasing tendency for persons to wound animals, dangerous animals, and not to follow them up and there is, naturally, as a result—populations increase they are very much increasing—danger of persons being killed by dangerous animals, and I think hon. Members will agree that we have to put in some fairly stringent provisions to deal with that situation.

Now, Sir, dealing with the Ordinance itself, I have tried to explain as shortly as I can the main differences in principle between this Ordinance and the Ordinance under which we are working to-day. Running shortly through the Ordinance —the Ordinance has six parts and a number of rather important schedules. The first part as usual in most Ordinances is the Short Title and Interpretation clause. The Interpretation clause in this new Ordinance is considerably more comprehensive than it was in the existing Bill. There are, I think, 25 interpretations in the new Bill as against about 13 in the old Bill. There are very few changes that I need note; there is a slight change in the interpretation "to hunt" and there is a notable omission, which I expect has not escaped some Members of this Council, in that the word "resident" which appears in the old Ordinance does not appear in the interpretation of the new Ordinance, for obvious reasons, very right reasons, I think. An attempt was made in the existing Ordinance to have some measure of racial discrimination in the interpretation of the word "resident". That has been entirely avoided in the new Bill.

Part II deals with Game Reserves, Royal Game, Sanctuaries, Close Seasons and Controlled Areas. I would mention that under clause 5, "The Member may, by notice in the Gazette, declare that in any specified area" "it shall be an offence to hunt, kill or capture any specified animal" and of course, what we really want to do is to be able to declare certain, especially certain small bodies of water or certain beauty spots or certain breeding places, as sanctuaries, more especially for bird sanctuaries, and no sanctuary can exceed ten square miles, so they would only be small areas. We have power to close seasons under the existing Ordinance. They have been repeated and somewhat modified in the new Ordinance. Controlled Areas, I think I have explained at some length and they are provided for under clause 7. I have also referred to the question of fees for entering into these controlled areas and they will by law, statutorily be paid into African district councils in whose district such controlled area or specified locality is situated, or to such other fund as the Governor may direct.

Part III deals with the hunting, killing, capturing and photographing of animals and I do think they are matters mostly of detail until we come to section 12, where it provides that "a licensing officer may, in his discretion, grant or may refuse without assigning any reason" —"any of the licences mentioned" in the Schedules. I will again repeat that there is an appeal against that but we have found by experience that it is absolutely essential to have those powers of refusing a licence, if it is so desired.

I would mention that under clause 12, sub-section (7), it may be said that under our new system of licences "A" and "B", we have forgotten the serving soldier. I will point out that under sub-section (7) a licence, "B" category, contains provision for its issue to an officer on the Active List of His Majesty's Forces.

Section 18 deals with hunting in native areas or the Northern Province and

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requiring a district commissioner's permit to do so and I think I have already explained the point about 18, sub-section (3).

Section 22 deals with the wounding of dangerous animals and must be tied in, as I said, with the provisions of animals which are deemed to be killed and penalties are very great for a breach of the provisions of section 22. I think I have explained the reason why we have considerably tightened up on this particular form of what we think is an offence, in the new Act.

Section 30. It may be contended that it is almost unreasonable to make it illegal, save with the written permission of the Game Warden to use traps, nets, pits, poison, fire, etc., and it may be said, it has been said, that is why I am referring to it, that that is almost an unreasonable provision in a Colony of this kind. All I would say is that that provision exists verbatim in our existing Ordinance, has always existed in our Game Ordinance and in practice is absolutely an essential provision.

Section 37 provides for the power of the Member to restrict the movement of boats. That is a new provision to which I have already referred in connexion with the controlled areas and I contend it is a very necessary provision.

Section 45 deals with the penalties. Now the penalties in these penalty sections are very severe indeed, and it may be contended that they are almost unreasonable. I would, however, say that they are not so greatly increased, in view of the changed conditions and the changed value of the money, to the existing penalties in the Ordinance under which we are working today. For instance, in sub-clause (1), a fine not exceeding ten thousand shillings and the fine today is not exceeding six thousand shillings. Sub-clause (2) here is exactly the same as in the existing Ordinance. Sub-clause (3) admittedly has gone up to two thousand shillings where it was one thousand shillings; that is at the end of sub-clause (3).

Clause 47 is new. "The Member may suspend any licence or permit" as I have already explained, the reasons for the introduction of that particular provision appears in the Objects and Reasons.

Clause 56 is important, because it does provide powers to specify the qualifications which a person shall possess in order to be granted a licence of any particular type. I think everybody will agree that that is a necessary provision. It also provides powers to direct or specify the type of weapon that shall be used in the hunting any particular form of game. We do not want old muzzle loaders wounding a herd of buffaloes and things of that kind. The other two sub-sections, I think, are self explanatory.

Section 57 provides for the amendment of anything that appears in the Schedules. Of course, not in the First Schedule, which is the demarcation of the Game Reserves. That has to go to the Secretary of State, but in the other Schedules and it is under that clause that we could meet any points raised as regards fees chargeable.

Mr. Speaker, I have endeavoured to go through this new Bill in as explanatory a manner as possible. I hope I have established the case for the necessity for a new Ordinance and I sincerely trust, Sir, that hon. Members will agree to pass the second reading of this Bill. (Applause.)

THE DIRECTOR OF AGRICULTURE seconded.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I rise to support this Bill as briefly as possible.

I feel that it is a Bill that must commend itself to almost everybody on this side of the Council. We have reached in this country a sort of cross roads when we have to decide whether the vanishing wild game of this country shall be preserved or whether it shall go as it has gone in South Africa and as it has gone in America. There are many things in this Bill that people in the country will consider a new infringement of their liberty, the liberty of Africa to roam where you wanted, shoot for meat and to shoot for pleasure, but I would submit to those people that times are changed and if we are to preserve even a certain amount of that pleasure and privilege, we must support even this very drastic legislation. For man, whether he is an African or a European, is the most

[Mr. Maconochie-Welwood]

ruthless and powerful of all animals and nowadays, as the hon. Member has said, communications have put means of the extermination of game in the power of many more people. Game preservation in countries like Europe was always difficult and involved rigid game laws, even when it was entirely on private land and the people who could shoot and hunt were very few in number. To-day that is no longer true.

There is one other argument which I would particularly ask hon. African Members to consider, for I know to them game is often a menace and a danger to their crops and livelihood, and it is this, that game is one of the things that brings people to this country, to spend their money, and without that money the development of Africa is very difficult. Very large sums are brought here by tourists. We have very little to offer the tourist except scenery and game and the one in this country is very different from the other. It is a curious fact that all of us know that a country which was lovely when it was filled with wild animals has lost very largely its charm when the game has disappeared.

Now, there are a few points which I would like to raise for the hon. Member for Agriculture to mention in his reply. One is clause 7 (5). I think that there is an error in the drafting here which affects a principle.

THE SPEAKER: The hon. Member is beginning to raise matters of detail when the second reading debate is limited to matters of principle.

MR. MACONOCHIE-WELWOOD: I apologize, Mr. Speaker, I thought the point was a point of principle because it occurs in the Bill in another form elsewhere.

THE SPEAKER: You can debate a principle without referring to any detail of a section. It sounds to me as if you were going into detail. You have been doing it a good deal lately and I have not stopped anybody, but I do feel in a long Bill like this, it is as well in this debate to keep strictly to principle as the Bill will go into Committee of the whole Council I understand. Even if it goes to Select Committee it will be dealt with there.

MR. MACONOCHIE-WELWOOD: I will therefore raise that matter, Sir, in the committee stage of the Bill.

There are certain points, however, which are not, entirely points of detail, such as the not giving the option to the magistrate of imprisonment or fine. It seems to me there have been one or two cases in the Bill. Imprisonment is laid down as the penalty, not the sole penalty, as the obligatory penalty on the magistrate as well as the fine, and I would prefer it to be permissive rather than mandatory for the magistrate.

The other points that I was going to raise, Sir, would be matters of detail and I think they can easily fit into the debate at the committee stage of the Bill, so I will not mention them now. I will only say this, that the Bill, stringent as it is, is necessary and the flexibility in a Game Ordinance is a first essential and this Bill gives a great deal of flexibility to the Schedules and therefore, my intention of asking for a Select Committee is now unnecessary. I think that all the flexibility that is required exists and for that reason I support the Bill and will raise those other points in the committee stage rather than at present.

I beg to support.

MR. COOKE: Mr. Speaker, after the storms and stresses of the last ten days I think it is very pleasant, Sir, to be able to return to a matter upon which most of us are in full agreement. As, Sir, my hon. friend who has just sat down has indicated, game is a great asset to this country and it is an asset which we are fortunately able to cash in on, if I may use the expression. In a country where there are very few minerals or other assets, it is, as the hon. Mover indicated a revenue-earning department and indeed it is also, fortunately, a dollar earning one. Now, Sir, but for the happy state of affairs in which game finds itself in this country to-day, I think we are very largely indebted to the Game Warden and his enthusiastic assistants and any Member of this Council, Sir, who has followed the wild pachyderm into the desert of the Northern Frontier and the thick bush of the Coast knows what a trying and dangerous game it is and what a call on nerves and on temper.

Mr. Cooke]

Before I sit down, I would like to pay a tribute to the retiring Game Warden, Captain Ritchie. Captain Ritchie by his sensible and tolerant approach to the general public, earned the respect of everyone in this country (hear, hear)—and, Sir, by his enthusiastic interest in game and especially in the establishment of national parks, I think he will have earned the gratitude of posterity.

Sir, I warmly support the Bill.

MR. CHEMALLAN: Mr. Speaker, I entirely agree that it is essential that we should protect and preserve the wild life of this country, because after all we all enjoy visiting the National Parks, or what I may call our national zoos, and admire their habits and their looks.

But it seems to me, Sir, that the provisions of this Bill have to a great extent been made too restrictive. However, I am interested to note that in clause 10 of the Bill a person is permitted to defend himself or any other person in case of attack by any wild game. In clause 11 a person may hunt and kill the wild game which is causing damage to his crop, land or stock. But I am rather in doubt, Sir, here whether, when it is said, "an occupier of land", that interpretation will apply to the African areas, because it is mostly in the African areas where you will find that Africans are disturbed by wild game which invade their homes or their villages and destroy crops and stock. But in these two clauses, Sir, it is stated that the meat or trophies of an animal killed in those circumstances must be the property of the Government. The circumstances under which wild game may be killed, Sir, in this way, and particularly in the African areas, must not be taken lightly, because very often they result in tremendous loss in crops and even to both life and stock, and it happens very often that after all the damage, this animal escapes any punishment. I shall, therefore, suggest, Sir, that any person who may kill these animals in these circumstances should be given the possession of either the meat or the trophies, because, particularly in the African areas, Sir, as we know, Africans have insufficiently strong weapons to defend either themselves or their property and very often if these animals happen to be killed it is after a real struggle. After all, Sir, Government, whom we are now making a legal owner of these animals, will never pay any compensation at all for any loss or damage sustained in this way. Perhaps, Sir, here I should refer in particular to the great damage which in most cases Africans suffer, mostly in the Masai district, due to leopards, lions and cheetahs which invade the manyattas, very often at difficult times, and destroy things and even cause loss of life.

I am interested, Sir, to see that in clause 18 (2), provisions have been made for fees collected from a district commissioner's permit to go into the African district council concerned. It is quite right and proper, Sir, that African district councils, under whose jurisdiction hunters are licensed, should be entitled to a share of fees collected from such licences. There are a good number of districts in this country, Sir, which have a lot of game in their areas. Very often the animals get fed and watered in those districts and quite, at times, at the expense of the domestic animals, and I should suggest to the Government, Sir, that it should not only be that these Councils should be entitled to the fees which are collected from the petty licences given by the district commissioner, but at the same time should be entitled to a share of some amount of the fees collected from the big licences paid by those hunters who are allowed to hunt in those areas.

Subject to those remarks, Sir, I support the Bill.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

MR. JEREMIAH: Mr. Chairman, I stand, Sir, to support the Bill, and, in doing so, I only wish to raise very few points, especially with regard to the closure of land and the declaring of sanctuary places. Sir, I think that consideration should be given when it is found necessary to declare such places as closed or sanctuaries that the interests of Africans—if the places happen to be in an African land unit—should be taken into consideration.

I am very glad, Sir, to hear the remarks of the hon. Mover that the Bill is as non-discriminatory as possible and everything to that effect has been eliminated. There are, however, some few

[Mr. Jeremiah]

points in the Bill which I think will have to be considered in the Committee stage and that is especially with regard to the provision of clause 12, sub-section (7), where in regard to Class B licences Africans or Somalis will not be in a position to go to a licensing officer for a licence unless they get permission from the Game Warden. Well, Sir, I think it is still a point which should be considered and eliminated.

Now, Sir, my hon. friend Mr. Chemallan has mentioned about the damage which is caused to crops and livestock in the African land units and I would suggest for the consideration of the hon. Mover whether some relaxation should not be made with regard to the control of wild animals in African land units. I appreciate, Sir, that if a free hand is given to the Africans in their land units to kill animals and retain the trophies as well as meat, it may perhaps encourage them to kill them, even if it is not for self-protection, but what I would suggest is that licences which have been hitherto restricted to non-Africans should be extended. It is my belief, Sir, that if Africans are given the privileges of licences as other races they will in my view act as a check against their fellow Africans who kill wild animals illegally and indiscriminately.

Sir, with those few remarks I support the Bill.

LADY SHAW: Mr. Chairman, I should like to congratulate the Member for Agriculture in bringing forward this Bill designed to protect our dwindling herds of game and to preserve, through us, to posterity a thing of beauty and of joy.

Blood sports are things which are incomprehensible to quite a lot of people and when one sees the lovely creatures in the evening sunlight one wonders how anyone can shoot them, but there is no doubt about it that the instinct for hunting and destruction still remains very strong in the mind of man. I think it is perfectly obvious that licences must be tightened up and restrictions must be insisted upon in order to prevent the ruthless slaughtering of game which we all know is going on. I am glad at the same time that consideration is being given in the Schedule to the possibility of keeping the actual licences, that is to say, possible to reduce them if necessary. I do not believe for one moment that controlled shooting is the greatest menace to the game in our country. It is the uncontrolled shooting, the licences which are taken out very often in the form of dummy really, so that a tremendous lot of game is destroyed quite improperly and without proper control at all for this really disgraceful meat hunting. But the other thing which is also a great menace to game is poaching, I am thinking more particularly of elephants. I know of places down on the Athi River where I am told on the most excellent authority, that 80 elephants were killed in three months by a few small bands of people armed with poisoned arrows who pursued them down to the water—in very vulnerable places—where they could be caught drinking, and after which they were left to rot in the bush till the birds found them and then they were cut up for meat and their ivory sold. Now, Sir, that is a terrible story and personally I believe that unless something can be done to protect these herds of elephants from this type of menace all the licensing we do and all the care and preservation which we attempt to exercise will be negatived. It is not the controlled shooting that is causing the damage, it is the uncontrolled shooting, and I hope very much, Sir, that when exercising the powers under this Bill the Member will make it clear to the people who will in fact carry out these provisions that he wishes to see both the poacher and the slaughterer of game dealt with in the strongest possible way.

I beg to support.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The hon. Member for Uasin Gishu raised a point about inconsistencies which I will go into. He also raised a fairly major point on the question of this Ordinance containing provisions for compulsory imprisonment for certain offences, and I think, Sir, he mentioned that it would have been wiser to leave the question of imprisonment to the discretion of the Court.

Well, Sir, I would point out to the hon. Member that, actually, the compulsory—shall I call it—imprisonment is contained in two sections in the Bill

[The Member for Agriculture and Natural Resources]

which is now before Council and the same provision exists in the existing Ordinance. Now, the reason for making the law so severe in the case of wounding a dangerous animal, especially a rhinoceros, without reporting it is that it is, in fact, perhaps a more serious offence than people always realize, because that a wounded rhinoceros left unreported, I am sorry to say, in more cases than is generally appreciated, kills very often a human being and that human being is, more often than not, a defenceless African going about his ordinary daily work. In the course of just over a year, no less than six Africans have been killed in the Embu district by wounded rhinoceros and I maintain, Sir, therefore, that if a person goes out hunting and wounds a dangerous animal and just leaves it without reporting it, without informing people of the danger that exists, it is, in fact, a very serious offence indeed. It is almost manslaughter, and, therefore, a very serious penalty is justified. As against that, Sir, there is another clause, that is the clause to which the hon. Member referred, clause 15 in which this penalty is not only for the wounding of rhinoceros, or elephant, or buffalo, without reporting, but is also for dealing in rhino horn. What I think, Sir, I will do is, I will have an amendment prepared—two amendments prepared—one, leaving the question of imprisonment to the discretion of the court; secondly, retaining the provision for compulsory imprisonment for failing to report the wounding of a dangerous animal and leaving out the dealing in rhino horn; and the alternative is to leave the Bill as it stands and I suggest we could argue that out in the committee stage of this Council.

The hon. Mr. Chemallan raised the point under sections 10 and 11 of whether, in defence of life or in defence of property, animals are slaughtered or have to be killed, whether the trophies or the meat could not be retained. Now, Sir, I would explain that the discretion is with the Game Warden and, in most cases, I do not think there is any question raised about meat at all, but when it comes to trophies, there again it is for the discretion of the Game Warden as to what is to be done with them. But we have had quite a number of cases, and I may say this has not specifically referred to Africans—on the contrary, it is more common to other races—in which it is alleged that the defence of property has necessitated the slaughtering of certain animals which we are at the moment trying to protect. For instance, leopards are fast disappearing to the delight of our baboons who do very much more damage, and we want, for instance, to protect leopards. We want it to be more difficult for a person to say: "Oh, a leopard was killing something of mine", when very often that was not the case.

The hon. Member has also raised the question of fees. He was I gather, gratified at the idea of the controlled area fees, and possibly the fees imposed by the district commissioner's permit, should be passed to African district councils but he also felt that some proportion of the general licences might also go to African district councils. Well, Sir, that raises a very difficult issue. We have gone some way to meet the hon. Member and all I can assure the hon. Member is this, that we are desperately anxious to secure the fullest collaboration of the African peoples in the preservation of game to a reasonable extent in areas where game does not conflict too greatly with human interests, and therefore we can only achieve that object if we do try and meet the African in every possible direction that is within reason. I will go into this question with my hon. friend the Member for Finance and the Chief Native Commissioner and that is as far as I can go in the present debate.

The hon. Mr. Jeremiah raised, I think, the same point. He also expressed some fears about sanctuaries. Now, I would like just to clear up to the hon. Member's satisfaction what is meant by "sanctuary". A "sanctuary" is merely a beauty spot or a small lake or something of that kind which, for instance, migratory birds may use at a certain time of the year, or is a well-known breeding place for rare species and we want to keep those sanctuaries really more for scientific purposes than for shooting or anything of that kind. They cannot be more than ten miles in extent and in most cases they would be

[The Member for Agriculture and Natural Resources]

quite small areas. They have sanctuaries in all countries of the world and it is necessary that we have the power to proclaim sanctuaries in this Colony.

As regards the proviso to clause 12 (7), that is a very important point he raised. The proviso is that—a licence of the Class II category can be granted—

"shall be granted only to a person who—

(a) normally resides in the Colony; or

(b) is an officer employed in the public service of the Protectorate of Uganda or the Trust Territory of Tanganyika; or

(c) is an officer on the active list of His Majesty's Armed Forces:

Provided that no African or Somali shall be granted any such licence unless he has obtained the prior permission in writing of the Game Warden."

Now, that is not meant to racially discriminate because we have in this Ordinance, as opposed to the old Ordinance, far greater powers of refusing licences to anybody of any race. We want, for instance, to ensure that the person is capable of going out and shooting game and, if he is not, that he has got a suitable assistant with him, and we ought to make sure that if game has to be shot, it is shot with a weapon, with a suitable weapon for the purpose. But, I see the hon. Member's point and I will discuss the matter with my hon. friend, the Chief Native Commissioner, and see whether we can go some way to meet the Member in regard to that particular clause, because I think what the hon. Member is afraid of is that that enforces the African or Somali to the Game Warden in person, which, of course, is a very great disadvantage, especially for people who live a very long way from the Game Warden's Headquarters. Under section 56, the Member can issue directions for the guidance of licensing officers and I believe that that section probably provides all the safeguards we need and, if I find that that is so, I will be quite willing at the Committee stage to consider the deletion of that clause which the hon. Member has proposed.

I do not think the hon. Member for Ukamba raised anything to which I need reply and, Sir, I would again move the second reading of this Bill.

The question was put and carried.

SUSPENSION OF STANDING RULES AND ORDERS

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That the Standing Rules and Orders of Council be suspended to enable the Pharmacy and Poisons (Amendment) Bill to be read a first time and the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill to be read a first time and taken through all its subsequent stages.

THE SPEAKER: Generally some reasons are stated for the suspension of Standing Rules and Orders. It has been objected to so much before that I hardly like to put the question. I may get a refusal.

THE ATTORNEY GENERAL: Sir, I have reason to hope that it will not be objected to on this occasion. The reason for the motion with regard to the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill is that this has become a matter of some urgency to put right an omission. The Council has already expressed its desire that this Ordinance should be continued and the necessary resolution was passed by Council. By an omission the necessary order by the Governor in Council was not made so that in order to carry out the intention and desire of this Council it is now necessary to introduce this continuing Bill.

THE SPEAKER: The Pharmacy and Poisons?

THE ATTORNEY GENERAL: As regards the Pharmacy and Poisons Bill, which has been pending for a very long time and it lapsed on prorogation and it is now desired to bring it forward again. It is not, I understand, particularly contentious and it would be desirable that it should be taken.

THE CHIEF SECRETARY seconded.

The question was put and carried.

BILLS

FIRST READINGS

On the motion of the Attorney General, seconded by the Chief Secretary, the following Bills were read a first time:—

The Pharmacy and Poisons (Amendment) Bill.

The Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill.

The Attorney General gave notice that it was intended that the Pharmacy and Poisons (Amendment) Bill should be taken through all its stages in the present sitting and that the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill should be taken through all its stages forthwith.

BILLS

SECOND READING

The Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I beg to move: That the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill be read a second time.

Sir, my hon. and learned friend, the Member for Law and Order has explained the reason why this Bill has to come forward and I can only express my regret to hon. Members that this oversight should have occurred at the end of last year. This really and truly was, Sir, an occasion when Government did not immediately carry out the wishes of this Council.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

THE ATTORNEY GENERAL moved: That the Council resolve itself into a Committee of the whole Council to consider the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill clause by clause.

THE CHIEF SECRETARY seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill was considered clause by clause.

THE ATTORNEY GENERAL moved: That the Bill be reported back to Council without amendment.

The question was put and carried.

Council resumed and the Member reported accordingly.

BILLS

THIRD READING

THE ATTORNEY GENERAL moved: That the Voluntarily Unemployed Persons (Provision of Employment) (Continuation) Bill be read a third time and passed.

THE CHIEF SECRETARY seconded.

The question was put and carried and the Bill read accordingly.

MOTIONS

Esageri Native Reserve

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move the following resolution standing in my name:—

Whereas the Governor considers it desirable to set aside the area of Crown land situate in the Highlands and described in the schedule hereto as a native reserve for the purpose of satisfying the economic needs of the Kamasia tribe:

And whereas the consent of the Highlands Board to the setting aside of such land has been given:

Be it resolved that pursuant to the provisions of section 55 of the Crown Lands Ordinance (Cap. 155) this Council approves the setting aside of such land for the aforesaid purpose.

SCHEDULE

A portion of land adjoining the Esageri Native Reserve in the Ravine Administrative District of the Rift Valley Province and known as L.R. Nos. 488, 489, 490, 5249, 5276, 6262, 5641 and 493 (excluding the two areas totalling 20.798 acres covered by Mining Leases Nos. M.R. 132 and 133) comprising approximately 14,722 acres.

As a result, Sir, of the recommendations of the Kenya Land Commission the Esageri Native Reserve was added to the Baringo District for the use and enjoyment of the Kamasia tribe as a native reserve, which I would emphasize is not a native land unit. A portion of this area which is known as Kilombi and

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consists of approximately 13,350 acres is in very poor condition and badly in need of de-stocking.—As part of the scheme for the reconditioning of the Kamasia native land unit, it was proposed in 1943 that the block of farms lying to the east of the Exageri River and known as the Exageri farms, of a total area of approximately 14,743 acres, should be excised from the Highlands for the use of the Kamasia tribe and that the Kilombi area should be handed over in exchange. The Highlands board agreed to this proposal and recommended that the exchange should be submitted for the consideration of the Governor in Council. The Governor thereupon directed that the necessary legal steps should be taken to enable effect to be given to the proposed exchange.

It was at first thought that this exchange could best be effected under section 6 of the Native Lands Trust Ordinance. Government, was, however, later advised by the law officers that the exchange would have to be carried out by a direct adjustment of boundaries under the Crown Lands Ordinance because the Kilombi area, being part of a native reserve which remains Crown land, cannot vest in the Trust Board, and is specifically exempted by the Crown Lands Ordinance from the application of section 6 of the Native Lands Trust Ordinance.

The only way, Sir, therefore that effect can be given to this exchange of land, which has been agreed by all concerned, is by the application of section 54 of the Crown Lands Ordinance under which the Governor may by proclamation alter the boundaries of the native reserves and of section 55 of the same Ordinance under which the Governor, with the approval of the Legislative Council, and in the case of Crown land situate in the Highlands, with the consent also of the Highlands Board, may by proclamation set aside other areas of Crown land as native reserves. It is in accordance with this latter section of the law that this resolution now comes before Council.

I would again emphasize that this is an exchange of land which has already been agreed by the Highlands Board, the Native Lands Trust Board and by the Government.

If, as I trust, this resolution is today accepted by this Council, it will be followed by the issue of the two proclamations required under the two sections of the Ordinance to which I have referred.

Sir, I beg to move.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I beg to second, reserving my right to speak later in the debate.

MAJOR KEYSER: Mr. Speaker, I rise to support the motion, and to say how very gratified I am that the negotiations which have spread over a considerable number of years—I cannot think back how many years—are now reaching finality. There is only one thing, Sir, I think, that perhaps needs a little bit of explanation, and that is that at the bottom, section 55 (1) reads: "... and the provisions of this Part relating to the native reserves or the temporary native reserves, as the case may be, shall thereupon apply to such areas, save that a rent shall be payable for the occupation of such areas, computed on the fair economic value of the land." I cannot remember anything coming out in the Highlands Board or any agreement having been reached as to the rent to be paid, but the section definitely says that it shall be paid. Perhaps that matter could be cleared up at this debate. I am sorry I did not bring it up before, but I had not read the section until this morning.

MR. BLUNDELL: I beg to support. I just wish to ask the hon. Deputy Chief Secretary whether he did not, in reading out his motion, make an error in that he referred to the mining lease as a total of twenty thousand, seven hundred and ninety-eight acres. I think for the purposes of record it should be pointed out that it should be 20.798.

THE DEPUTY CHIEF SECRETARY: Yes, that is right.

Mr. Speaker, I would like to make it clear in replying to the point made by the hon. Member for Trans Nzoia that there is no question of charging any large rent for land which, of course, in this case is simply being exchanged for other land, and I have no doubt that if rent has to be paid that a suitable peppercorn rent will be arranged.

The question was put and carried.

REPORT OF THE SELECT COMMITTEE ON COST OF LIVING ALLOWANCES FOR GOVERNMENT SERVANTS

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move as follows:—

Be it resolved that the Report of the Select Committee on cost of living allowances for Government servants be adopted, with the exception of paragraph 12 thereof, in regard to which it is the opinion of this Council that the segments of salary on which the various percentages shall apply should be the same for officers of all races and should be 20 per cent on the first £300, 10 per cent on the next £350 and 5 per cent on the remainder of the officer's salary subject to a maximum allowance of £150 per annum.

Sir, hon. Members will note that the Report in this case is a Majority Report and not a unanimous one, two members of the Select Committee, the hon. Member for Mombasa and the hon. Member for Nyanza, having submitted a Minority Report. I shall refer to this later, Sir, and in the meantime wish to make it quite clear that this motion for adoption refers only to the Majority Report. The genesis of this Committee was the adoption by this Council of a motion moved by myself on 14th November, 1950, to appoint a Committee with the following terms of reference:—

"Having regard to the existing price levels and the effect of any measures taken by the Government on those levels in relation to the cost of living, to investigate whether relief is required for any class of Government servant and, if so—

(a) what the scheme of relief should be; and

(b) from what date such relief should take effect."

It will be observed, Sir, that in the upshot all members of the Committee found that relief is in fact called for. I would suggest, Sir, that nobody is likely to join issue with that conclusion or to dispute that, with the present level of the cost of living, some relief for Government servants is indeed called for. It is in considering the form which such a scheme of relief should take that differences of opinion have arisen and I would suggest, Sir, that having regard to the great complexity of this problem the arising of a difference of opinion is not surprising.

Now, Sir, in paragraph 7 of the Report, the Committee expresses the view that in determining what rise in the cost of living should form the subject of a scheme of relief the starting point should be in the introduction of the revised salaries. With that expression of view, Sir, the Government is in full agreement, and in this connexion I suggest it is very important to refer at this stage to the relevant paragraphs of the Holmes Commission Report, and with the permission of the Council I propose to read those three short paragraphs. The relevant paragraphs are 152, 153 and 157. Paragraph 152 reads as follows:—

"We now have to consider future policy in regard to these cost-of-living allowances."

Paragraph 153:—

"Three courses present themselves: (*a*) to preserve the present system under which the increase in the cost of living is dealt with by the payment of separate non-pensionable cost of living allowances; (*b*) to incorporate such element of the increase in the cost of living as can safely be regarded as permanent and to leave the remainder to be dealt with by the payment of a non-pensionable allowance which would fluctuate according to the rise or fall of the cost of living above or below 1939 levels; and (*c*) to frame new consolidated salary scales related to the increased cost of living and to abolish all cost of living allowances."

Now, Sir, in the paragraphs following 153 the Commission discussed the relative merits of those three possibilities and finally, having discarded the first two of those three possibilities, in paragraph 157 records as follows:—

"We recommend, therefore, that cost of living allowances and temporary bonuses attributable to the increased cost of living should be withdrawn and that the consolidated salary scales recommended in this report should be introduced."

Sir, it was that recommendation which was accepted by this Council, and in these circumstances, it is the firm view of this Government that the starting point in calculating any rise in the cost of living which should be made a subject of relief

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should be the introduction of those consolidated salary scales. The Committee, starting from that point, found a rise in the cost of living of 17½ per cent. Now, Sir, working on that basis the Committee has produced the scheme of relief which is set out in paragraph 12 of the Report.

I do not propose to repeat in detail what is so clearly set out in that paragraph, but boldly stated the recommendation is that for each of the three racial groups there should be a cost of living allowance calculated at the rate of 20 per cent on a first segment of salary, of 10 per cent on a second segment, and 5 per cent on the remainder, subject to an overall maximum of £150 per annum. Sir, Government is in agreement with the general scheme of relief set out, and in particular with that feature of the scheme which concentrates the higher percentage of relief in the lower ranges of the salary scales. The Committee justified this concentration on the ground that officers on the lower salary scales have less margin with which to absorb rises in the cost of living than officers on the higher ranges. With this sentiment, too, Sir, Government is in full agreement. The Government, however, is not in agreement with the recommendation of the Committee in one important respect. Reference to paragraph 12 of the Report discloses that the segment on which the different percentages are to apply differ in the three racial groups. For instance, the first 20 per cent is to apply up to £72 in the case of the African Government servant, up to £210 in the case of the Asian civil servant and up to £300 in the case of the European Government servant. With this differentiation, Sir, the Government does not find it possible to agree. It is the Government view that the *formula* governing the grants of relief should be the same for all. Accordingly, it is the definite view of the Government that the segments on which the various percentages should apply should not vary. It is because of this view held by the Government that the Council is asked to adopt the Report with the exception set out in the form of the motion now under debate.

Now, Sir, on the question of retroactive effect, it will be seen that the Committee gave this matter extremely careful consideration and concluded that there should be no retroactivity beyond the 1st January, 1951. The relevant paragraph of the Report, that is to say paragraph 9, reads as follows:—

"We have considered the question of retroactivity, and have decided against it. It must be remembered that the Holmes scales were intended to be a permanent settlement and were not to be subject to review on account of increases in the cost of living, although it was recognized at the time the report was debated that if a substantial increase occurred (which has now happened) there would be a case for review. We consider therefore that the scheme which we propose should operate from the 1st January, 1951."

With this paragraph, Government is in agreement and does not therefore propose to recommend that there should be retroactivity beyond the 1st January this year.

The Committee, Sir, has also recommended that the allowances should not vary with every variation in the cost-of-living index. Here again, the Government is in agreement with this proposition. It is true that, as everybody knows, unfortunately, the cost of living is still on the upward trend, but nevertheless, I think we must regard an allowance of this kind as in the nature of an award, and unless there is an abnormal rise in the meantime, such an award must persist for a reasonable period of time. For this reason, Sir, and subject to what I have said about an abnormal rise, the Government is in accord with the Committee's suggestion that the scheme proposed should remain in force until January, 1952, when the matter will again be reviewed.

Now, Sir, I referred earlier to the question of the complexity of this problem, and the likelihood that such complexity would involve differences of opinion. And so, Sir, it has transpired. It is quite clear that there was a difference of opinion among the Members of the Committee dealing with this matter. That difference of opinion centred mainly upon the question of a differentiation according to the marital status and commitments of the officers concerned.

Now, Sir, the Majority Report makes it quite clear that the question of such differentiation was given the most ex-

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tensive and anxious consideration by the Committee. Many arguments were urged for such a differentiation and many arguments against it, but in the upshot the majority of the Committee concluded that, on balance, there should be no such differentiation. The Government itself has also given this matter very serious and careful consideration and has concluded that, on balance, there should be no such differentiation. This conclusion has been reached mainly on the arguments set out in the Report itself and on the grounds of equity and practicability.

Now, Sir, on the question of cost has Members will notice that on the basis set out in the Report the cost is estimated at about three-quarters of a million pounds per annum. Taking into account, however, the change, the exception which the Government has proposed in this motion, the cost will rise to some £830,000 recurrent. This figures covers the Colony, the Development and Reconstruction Authority and the increased contributions which will arise in respect of the High Commission non-self-contained services. The Development and Reconstruction Authority's share of this bill will be some £100,000, leaving a figure of £730,000 as representing the Colony's bill plus the increased contribution to the High Commission non-self-contained services. This figure is, indeed formidable, and I have no doubt that the Council would like a word from me on the question of how this is to be financed.

MR. COOKE: Company tax!

MR. BLUNDELL: Poll tax!

THE FINANCIAL SECRETARY: And why not income tax?

Now, Sir, reference to the financial statement in the sanctioned Estimates for this year, 1951, shows that we budgeted for a surplus of £579,000. It is clear from this that even if there are no more abnormal calls upon our purse the estimated surplus for this year will not meet the Colony bill plus the increased contributions to the High Commission services. It is the intention of the Government, therefore, in the changed circumstances, to cover as much of the short-fall as possible by such economies as can be effected without disrupting existing services. (Applause.) I cannot, however, promise that the full short-fall can be met in this way and it is possible that we may end the year with some deficit. I will make it quite clear, however, that as far as 1952 is concerned the full cost of any allowances which may subsist in that year must be absorbed into the Budget, even if this means a reduction in services or measures to increase the revenue, or a combination of both.

Mr. Speaker, I beg to move.

THE SECRETARY TO THE TREASURY seconded.

MR. HAVELOCK: Mr. Speaker, whilst, Sir, I agree with the hon. Mover that some relief will have to be afforded to the civil servants of this country, I must say that the figures that he has given us today as to the cost of the relief as suggested in the motion have given me rather sour food for thought. My first reaction, Sir, is how on earth are we going to meet this bill? At a previous debate this morning, it was pointed by the hon. Member for Trans Nzoia, that there are other essential commitments; not only this startling sum, but others may be of the same magnitude, or nearly so. I am very pleased to hear, Sir, that the hon. Mover is thinking of immediate economies and also has given us the warning that next year, we may have to have definitely reduced services and it is, of course, and has been for some while the opinion of hon. Members of this side of the Council that economies and, maybe, reductions of services will have to be faced. I feel that we have got to make up our minds to it and we have got from now onwards to think where it is best to make the reductions in services so that the economy of the country is not too vitally affected and where immediately we can make economies in present services.

The other alternative, as the hon. Member has told us, will be for increased taxation. That is a thing that we dislike very much, as everybody does of course, from the personal point of view; but on the other hand, there is no doubt that, in principle, increased and heavy taxation in a young and developing country is not a good thing. We must, as we have said before in other debates, rely so greatly on private capital to develop our country that we must try to attract it in every possible way and increased taxa-

[Mr. Havelock]

tion, of course, does not tend to attract capital.

There is another matter, I think, Sir, that we should face. If we are to have reduced services—we are, of course, as a country facing reduced standards, and applying that to the individual I believe the time has come when we will all have to face reduced standards. I notice that the signatories to the Majority Report have mentioned this fact, and I feel we have got to swallow that bitter pill, and in all walks of life face those reduced standards. We are, of course, at the moment, Sir, only discussing the cost of living of civil servants, but, of course, the general cost of living affects them as it affects everybody else, and I believe, Sir, that the time has arrived—and I am only touching on civil servants at the moment—the time has arrived when we in this country cannot carry the standard of emoluments and the standard of privileges granted to our civil servants for very much longer. We have, Sir, in this country to supply services as best we can, and to supply personnel to implement those services for some five million people, and we have also in this country only some, shall I say, 50,000 people with sufficient incomes to provide revenue from taxation proportionate to a more civilized country. That is the problem that faces us, and I do not see how, by increasing taxation on the particular people who are paying taxes on the same level as other more civilized countries, how those 50,000 or whatever the number may be, can continue to carry on very much further than today. Therefore the answer must be to a great extent reduced services or a cheaper type of servant.

Now, Sir, I believe there are ways in which the Civil Service of this country could be cheapened. The terms could be lowered without great hardship on the persons concerned. In this Council for a number of years I have mentioned my views on the matter of overseas leave. I do not consider, Sir, that this country at this stage can afford to bear the leave privileges which are granted to our civil servants. Other people have realized this, and indeed the City Council, I understand, have extended the length of their tours, especially for their Asian staff, and have been able through doing it to economize in replacements, and indeed to economize in actual payments to their servants. I realize that one can not depart from the present policy all in one minute and that it will have to be gradual, but I feel we must take another step in that direction in the very near future. I myself believe that a number of the more moderately paid civil servants would be quite happy to accept a slightly longer tour, say, from four to five years or up to six years—whatever is considered the first step—and in exchange for that to be given a certain amount more cash in their salary packet. I believe, Sir, that it is a great strain on a number of civil servants of the category to have to go on leave every four years. I realize it is optional, I realize they can opt not to go—I have been told that quite lately, in this Council—but a number of them do not like to take advantage of that option because they feel they are letting their side down, and I believe a number of them would welcome an extended tour and a further cash increment. That is one way in which I feel we might lower the standard of emoluments to some extent and at the same time produce and give them a certain amount of cash relief which is what they require.

There is another point, Sir. The expense of the Civil Service is, of course—one matter of expense and a great matter of expense—is the matter of replacements of officers when they go on leave, and of course that applies very much more to the higher-paid officers than it does to the lower, and there again I believe the City Council of Nairobi has pointed a finger which we might at least consider. I understand that their higher-paid officers are allowed to go on leave every two years—a short leave by aeroplane—rather than to go every four, which although it may in the first instance seem to cost more money does mean that replacements may not be necessary—that the officer's department may be able to carry on without him for a short time without replacing him with another highly paid officer. I may be wrong in saying the City Council have adopted this. It may only be a suggestion, but even if it is only a suggestion I suggest it is one that we might consider very carefully.

[Mr. Havelock]

Before I leave this subject, Sir, I would like to say that I hope the time is getting close when we in this country will have our own local service very much more than we have at the moment, which in itself will be cheaper, and again it will have to be gradual. Those posts which cannot be filled by our own people will have to be filled, admittedly, with those from overseas, but they should be filled by such people on contract terms. That, I believe, is the object and what we should aim for, and in fact to arrive at the stage when we would be more or less on the same lines as Southern Rhodesia.

Now, Sir, I have made some very general points and I have not really dealt with the particulars of this motion, but I am not in agreement with the amendment which the Government has made to the report of the majority of the Committee. I do not think that this is the time to depart from a principle which was laid down, or rather recommended, by the Holmes Commission and then accepted by this Council. I realize, and I know that hon. Members opposite will say, that a cost of living allowance is not the same thing as a salary scale—I quite agree. On the other hand, what happened to the last cost of living allowances? They were most of them brought in and consolidated into the salary scales as recommended by the Holmes Commission. I suggest, Sir, that there will be a demand for a revision of salary scales in the fairly near future and I believe that the time is quite close when we will have to accept such a revision, and at that time I think the whole matter of the A, B and C groups or scales—in fact, of racial discrimination—shall have to be gone into, and before that time, I think we should remain on the same basis as at present.

Now, as far as that is concerned, I suggest that a cost of living allowance is on the same basis as a salary scale in that both are paid according to the market value of the person concerned. The market value of the person concerned must be affected by the standard of living of that person. Now is it true that there is no difference between the standard of living of a European officer on £1,200 a year and an Asian officer on £300 a year and an African officer on £300 a year? Has that been established? I have my doubts, but I would not say one way or the other that it has or has not been established, but I do have my doubts and surely the amendment which has been suggested by the Government to the Majority Report actually means that they, the Government, accept the fact that officers of the three races on one salary scale have the same standard of living. That is how I look at it. As I said, I am not arguing that at the moment, but I do not think it has been gone into sufficiently closely to accept it straight away. That is the principle that this amendment has laid down, and although I think it may be true I should like to see a very much closer investigation before accepting it. After all, who have investigated it? The majority of the Select Committee or the Select Committee themselves investigated it, and the majority of them after investigation recommended different cost of living allowances for different segments. Therefore I suggest that, having investigated that factor, which they must have done, surely, before coming to their conclusions, they have come to the conclusion that there is a difference in the standard of living between these three groups.

I feel, therefore, Sir, as I said before, that this is premature to accept this principle at this time—(hear, hear)—but I reiterate again that I feel that the time is very close when a full investigation of this matter should take place. There is not only a difference between races, there is a difference between male and female. I have had constituents of mine asking why on earth a lady with certain degrees should not be paid the same as a man with the same degrees doing the same work. That was all thrashed out in the Salaries Commission debate, but even so I feel we must think again on these matters. After all, I understand that lady doctors are paid the same as men.

Now, Sir, I feel also that this amendment, as an amendment to the Majority Report, will probably be too generous to some people—not a great number, no doubt, but I think it may be a bit too generous. If it is so then I think it is wrong for this Council, in view of our financial position to vote such allowances which may be too generous. I would have been much happier if the actual allowances had been scaled up and down a bit more than they have been. I believe that just to give 20 per cent of the first £300 is going a bit too far in that direction. I would have been happier if it had been 20 per cent on

[Mr. Havelock]

the first, say, £150 and 15 per cent on the next £150—something of that sort, and I believe it would have been really fairer all the way round both to Government and to the civil servants. Now, Sir, I want to stress that. We in this Council must debate this matter not only from the point of view of the civil servants—not only that—though naturally as servants of Government they must be treated fairly, but we must also discuss it and think of it from the point of view of the country, from the point of view of our budget, from the point of view of the other people in the country, and the effect it is going to have on them, and therefore I believe we have got to be very careful that the award which is given is definitely fair and in no way too generous, because if it does become too generous other employers will be forced to follow that lead, and the whole economy of the country will be unnecessarily stretched.

Sir, I have given my views as to why I do not like this motion as it stands. I hope that later in this debate some hon. Member will move an amendment which will coincide and agree with my views.

Meanwhile, Sir, I beg to oppose.

Mr. Preston: Mr. Speaker, in rising to oppose the motion before this Council, I would first like to clear up any possible misunderstanding as to what the task of the Select Committee was. Now, Sir, it was a Select Committee to consider cost of living allowances, and to decide whether any particular class of Government servant required relief, and if so what form that relief should take. Now, Sir, these terms of reference will have made it perfectly clear to hon. Members that the Select Committee was in no way concerned with salaries' revision.

The Committee was asked to consider a cost of living allowance, which is an emergency measure designed to meet a situation which has arisen. Therefore, the suggestion that an officer should receive pay according to his merit, which is perfectly correct, has nothing to do with the cost of living allowance. The officer is already receiving salary according to his merit, but any cost of living allowance that might be granted will be in addition to his salary and to meet a temporary need. Our terms of reference clearly state we must investigate whether or not relief is needed for any class of Government servant, which presupposes we must decide which class of Government servant is hardest hit by this sudden rise in the cost of living. Now, Sir, there can be no shadow of doubt whatsoever that the class of Government servant who has been the hardest hit is the married man with children. I have seen written evidence, I have talked with Government officials of many grades, also with people outside Government service, and I have come to the very definite conclusion that should we ignore family commitments when deciding in what form the relief must be given we should, Sir, not only be failing in our duty to the civil servant of the Colony, but also in our duty to the taxpayer. For if we disregard the outstanding needs of a family man, and decide upon a uniform increase for all, then either the single man or woman is going to receive far more than their actual requirement, or the increase is going to be insufficient to meet the needs of the family man. And I must stress the fact that unwarranted relief beyond the actual requirements of any person is not only unfair to the taxpayer of this Colony, but will have a very marked effect upon the cost of living throughout the entire Colony, because it might easily encourage extravagance and create yet another upward movement on that spiral, which we are all so desperately trying to keep down, and that, Sir, is the last thing that any one of us in this Council would wish.

Now, Sir, if we do not wish to dissipate our hard-earned revenue in paying too much to some people, and if we do not want to make it impossible for a man to marry and to have a family without suffering hardship beyond the normal sacrifices which any parent is expected to make in order that he may lead the proper family life, which is his right, if we are going to avoid both these things I do submit that this Council cannot ignore family commitments, nor can we ignore marriage as a factor. It will, no doubt, be argued that a wife could very easily be turned into an asset rather than a liability by sending her out to work.

The Financial Secretary: Question! (Laughter.)

Mr. Preston: But I do submit, Sir, that that is not the way to build up a staple family unit, nor is it the way to create a well-cared for home and well-

[Mr. Preston]

cared for children. There are, I have no doubt, many cases where a wife goes out to work for choice, but there are very many cases, particularly amongst the lower income group, where a wife goes out to work from necessity and not from choice. Now this, Sir, I submit, is an undesirable situation which we have got to rectify, and if hon. Members do not agree with me, then I commend their attention to the Majority Report which I am now opposing. I am fully aware that there are some administrative difficulties which make allowances for family commitments unpopular in certain circles, but I do not believe that these could not be overcome if the desire to overcome them was there. I am also fully aware that certain associations have expressed dislike to family allowances, but I am not yet convinced that these associations have not confused a cost of living allowance with a salaries revision, nor, Sir, am I convinced that they have had the advantage of evidence from all the members of their associations, particularly from those members residing up-country, because from all the evidence I have received by talking with officials up-country I have learned that there is a distinct preference for family allowances.

Now, it must be very fully appreciated that the very urgency of the situation made an early decision very necessary, which in my opinion did not permit the Committee to hear as much evidence as I personally should have liked. For instance, I should have welcomed representatives from the East Africa Women's League, if they could have come and given evidence. I would have liked to have gone more fully into the consideration of station allowances for more expensive areas. I should have welcomed more discussion on a relief through education grants or allowances even from increased income tax allowances. But time, Sir, was very short and the situation so urgent as to warrant every attempt being made to give immediate relief. It was this situation which led my hon. and gallant friend, the Member for Mombasa, and myself to sign a Minority Report which is attached to the Report of this Select Committee.

Now, Sir, I think this would be a very appropriate moment to pay a tribute to the hon. Director of Establishments for his chairmanship of the Committee, which, by very virtue of the subject-matter under discussion, might easily have proved a very difficult one. (Applause.) However, under his guidance, it was, Sir, not only a very happy Committee but a very tolerant one.

Now, Sir, regarding the implications of the Majority Report, it is not so much the amount of money which will be required to implement its recommendations which is exercising my mind, but it is the way in which this money is to be distributed. For surely, Sir, if we are going to spend £700,000 on providing relief from a situation which has arisen surely we must be quite certain in our own minds that we are giving the relief in the direction where it is most needed, and we must also be perfectly clear in our own minds and our own consciences, that we are not giving too much relief to some and not enough to others.

Regarding the motion now before this Council, which seeks to alter the original recommendations, it is my considered opinion that this amendment brings with it financial implications which are far beyond the present resources of this country, and I could never agree to such a heavy demand being made upon the public purse. Furthermore, I feel that the expenditure of what amounts to very nearly £1,000,000 and the suggested way in which it should be expended, is not going to fulfil the purpose for which we, as a Committee, sat. As has been said before to-day, I do not know how we are going to find this very large sum of money which is required unless we are going to take recourse to the axe. I think, perhaps, that is one of the ways in which we might deal with this problem.

The Speaker: It is now quarter to one by my watch, anyway.

Council will now stand adjourned till Tuesday, 27th February.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 10 a.m. on Tuesday, 27th February, 1951.

Tuesday, 27th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Tuesday, 27th February, 1951.

Mr. Speaker took the Chair at 10 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 23rd February, 1951, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES:

The Hide and Skin Trade (Imposition of Cess) (Amendment) Rules, 1951.

BY THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT:

The Government Chemist's Department Annual Report for 1949.

ORAL ANSWERS TO QUESTIONS

QUESTION NO. 8

MR. COOKE:

1. Is Government aware that on the 7th August last—a Bank Holiday—the Government medical practitioner in charge of Malindi and District absented himself from his duties and left that town in order to drive a friend to Mombasa?
2. And that during his day's absence one of his private patients—Mrs. Menezes, had a relapse and became seriously ill?
3. And that the husband's employers, the Sindbad Hotel, observing how seriously ill the woman was and on the advice of two trained nurses, decided, in the absence of the doctor, to charter a plane and send her to Mombasa where the unfortunate lady died next day?
4. And has Government refused to recognize this humane and neighbourly act in that they refuse to refund to the proprietors of the hotel the cost of the charter?
5. If so, will they reconsider that decision or at least refer the matter to the Standing Finance Committee for decision?

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT:

1. Government is aware that on the 7th August, 1950, a Bank Holiday, the Government medical practitioner at Malindi was absent from the district on a visit to Mombasa.

2. Yes.

3. Yes.

4. Government fully recognizes the humane and neighbourly act performed by the proprietor of the hotel, but cannot admit any liability to pay the cost of the aeroplane. The responsibility for conveying a patient (other than a Government servant) to hospital by air or other means is not that of the Government, but of the patient or his or her relatives. The Government is therefore unable to agree that the cost of hiring the aeroplane used in this particular case should be met from public funds.

5. Government has given very careful consideration to this matter, but must reply to this request in the negative. Dr. Randhawa had correctly diagnosed the case as one of salpingitis. At the time of his departure from Malindi on 7th August the patient's condition had improved and her temperature was normal. The Government's medical advisers have carefully considered all the facts of the case, and consider it was quite reasonable for Dr. Randhawa to leave the patient for one day. In these circumstances the Government regrets that it cannot agree that compensation should be paid to the Sindbad Hotel. It is of the opinion that the matter is not one that should be referred to the Standing Finance Committee.

MR. COOKE: On account of the matter of principle involved and the unsatisfactory nature of the reply, I shall move a motion on the matter later on.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Government takes notice of that fact, Sir.

QUESTION NO. 14

LIEUT.-COL. GHERSIE:

Having regard to the fact that the area at present occupied by the Infectious

[Lt.-Col. Ghersie]

Diseases Hospital is urgently required as an industrial centre, and that the continuous occupation of this area by the Infectious Diseases Hospital is impeding both railway and commercial development, will Government please state when it is expected that the area will be vacated by the Hospital concerned?

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: This Government fully appreciates the need for moving the Infectious Diseases Hospital, but this move cannot take place until the new Infectious Diseases Hospital has been built. A site for the new Hospital has been selected and working drawings are being made. It is hoped to start building the new Hospital late this year or early in 1952, and to complete it by September, 1952.

NOTICE OF MOTION

THE CHIEF SECRETARY gave notice of the following motion—

Be it resolved that this Council approves of the construction as soon as possible of a Legislative Council Building, at an approximate total cost of £150,000.

SCHEDULES OF ADDITIONAL PROVISION

REPORT OF STANDING FINANCE COMMITTEE

THE FINANCIAL SECRETARY: Mr. Speaker, I beg to move: That the Report of the Standing Finance Committee on Schedules of Additional Provision Nos. 6 of 1949 and 3 of 1950 be adopted.

THE SECRETARY TO THE TREASURY seconded.

The question was put and carried.

REPORT OF THE SELECT COMMITTEE ON COST OF LIVING ALLOWANCES FOR GOVERNMENT SERVANTS—(*Contd.*)

THE SPEAKER: The next motion is before Council. Mr. Preston was speaking.

MR. PRESTON: Mr. Speaker, if I remember rightly at the time of the adjournment on Friday I was advocating the use of the axe. Perhaps in these more effete times, as being too brutal, any reference to cold steel might be disliked but I do think we have got to consider the whole question of retrenchment very carefully.

Now, I think I understood the hon. Member for Finance to say that Government also approved of economy and retrenchment, but when he spoke on this subject he said something about not interfering with existing services. I do trust this does not mean the whole of existing civil services is not going to be subject to a little necessary pruning. Perhaps, Sir, the hon. Member can give us a little more information on this matter when he replies.

Now, Sir, having stated some of my reasons for opposing the motion, I would like to make it perfectly clear that the measures suggested in the Minority Report should be regarded as a purely temporary measure to meet an emergency. Now, it will undoubtedly be appreciated that a Committee which met eight times could not hope to achieve what it took the Cost of Living Commission two years to attempt, and the measures suggested in the Minority Report are designed on a purely temporary basis to give Government a breathing space in which to find other methods of solving the problem of how to reduce the cost of living throughout the Colony, we must bear in mind that the rising cost of living does not only affect civil servants. It affects every man, woman and child in this Colony. The last thing I think that any of us would wish to do is to create a class of person who is entirely sheltered from the economic blast, I would, therefore, Sir, suggest that Government direct its most earnest attention to the following:—Better public transport facilities, the provision of State or Municipal canteens or restaurants, stricter price control, a ruthless campaign against the black market—by ruthless, Sir, I mean ruthless—every endeavour should be made to encourage the building of flats and to encourage both Municipality and private enterprise in this direction.

THE CHIEF SECRETARY: On a point of explanation, Sir, perhaps the hon. Member would explain how the Government should provide Municipal canteens.

MR. PRESTON: The suggestion was that they should be encouraged, Sir.

Consideration should be given towards further income tax relief and possibly grants towards school fees. Customs duties should be reviewed as it is more than possible that a portion of the relief required could be met by a reduction in certain duties. The position of the present allowances for customs duties, as far as concerns the traders' margin of profit, could be overhauled.

Now, Sir, I was very surprised that the hon. Member for Finance, in his speech last Friday, made no suggestions as to how Government proposed to tackle the cost of living in this Colony, other than by cash increases to the civil servants.

THE FINANCIAL SECRETARY: Mr. Speaker, I would suggest that that subject is not within the purview of the motion before the Council.

MR. PRESTON: Sir, I feel that the problem is of such a nature that, of very necessity, one must discuss the cost of living as affecting the whole Colony, which affects the amount of money which is required to meet the bill. (Hear, hear.)

Now, Sir, so much was said about the cost of living during the Budget debate, and so little has so far been achieved. Now, Sir, I would urge Government to tackle this most urgent problem wholeheartedly and without fear of difficulties —administrative or otherwise—which will undoubtedly arise. Doubtless it is very much easier to meet this problem by direct increase of salary, but I am convinced that nothing less than a more practical approach to this problem is going to achieve any permanent result or to do anything to check the inflation which faces us today.

It is my very sincere hope that the women of Kenya will take a hand in this matter, and redouble their efforts to bring down the cost of living. There has been far too much discussion and far too little achieved. The present situation will not be solved by mere cash increases to any one section of the community, and we must not be influenced by suggestions as to what is purely a cost of living allowance designed to meet urgent and immediate needs—will in future be tied to any salaries revision. That, Sir, is another matter and far beyond the terms of reference of the Committee that sat.

Now, Sir, it is a matter of surprise to me that Government should have chosen to amend a Majority Report which was signed by two senior Government officials and the representatives of three different communities, and by virtue of their having signed a majority report, it must be concluded they were satisfied with the fairness of the proposals contained therein, and yet Government has proposed to increase the burden on the taxpayer of this Colony by yet another £80,000. Why was this done? Was Government tender the feelings of the Civil Service Associations, or what happened? Much as I dislike the Majority Report, for the reasons I have already stated, it at least had the merit of endeavouring to give the maximum relief to those in the lower income groups. Now, the effect of this amendment will be to give the maximum relief to practically all civil servants of two communities.

THE CHIEF SECRETARY: Lower income groups.

MR. PRESTON: Not necessarily, Sir. There are lower income groups in each category—if you choose to apply the matter to salaries and salaries groups. Then I think that is the reason for looking at this differently—while another community is only going to get relief as far as the very, very bottom income groups. Now, I do not think this is equity, Sir, it has been suggested that this motion is both equitable and practicable—I disagree, Sir.

Sir, I have now outlined the reasons why I oppose the motion which is before this Council, and I most earnestly hope that this Council will reject the motion which I regard as not only unethical, but extravagant.

Sir, I beg to oppose.

MR. MADAN (Central Area): Mr. Speaker, I rise to support the motion before the Council now, and I would like to begin by congratulating the hon. Mover for taking a bold step in introducing the amendment which he has to remove racial discrimination from the Majority Report, which in my opinion was quite unnecessary and uncalled for.

[Mr. Madan]

Sir, the effect of this amendment will be to bring the allowances for the cost of living in line with the wishes of the European, African and Asian Civil Servants Associations, who have said in no uncertain terms that they cannot accept the proposal that a particular salary should attract a different percentage of relief according to the race of the recipient. I do not know, Sir, if there was any pressure in the matter. As far as I am aware there was a majority of European members but for a change they must have seen good sense. Sir, the amendment introduces the same ceilings for the three races, and it must be emphasized that in fixing the same ceiling for all communities it does—and that must be the only object—it does aim at giving relief to lower income groups. If we accept that the cost of living has increased, then surely, Sir, we must also accept that the cost of living has increased for all races. It will be illogical, as my submission, to say that the cost of living has increased more for Europeans and not so much for Asians and Africans. The Asians and Africans are also human beings and they must have food to eat and accommodation to live in.

Now, we know, Sir, that high prices for food and high rentals are two of the main causes for the tremendous increase in the cost of living. Now, I am aware, Sir, the hon. Member for Kiambu and the hon. Mr. Preston have opposed the same ceilings for all races. We note, and we mark it with deep regret, that whenever a progressive measure is——

MR. PRESTON: May I ask, Sir, has the hon. Member studied the Minority Report?

MR. MADAN: I have, Sir, not only studied the Minority Report, I have had the privilege of discussing it with the hon. Member also, but he failed to convince me.

I was trying to say, Sir, that the Asian Members note and mark it with deep regret that whenever a progressive measure is introduced, which is non-racial in character, the European Elected Members are generally opposed to it. The argument that is put forward is that the standards of living are different. Well, of course the standards of living are different. What else can you expect when you have iniquitous rules such as the three-fifths salary scale? What else can you expect when you have limited scope for Asians and Africans in matters of commerce and industry? and what else can you expect, Sir, when you have——

THE SPEAKER: I do not think it would be relevant in the discussion of this motion to raise other aspects of the racial question, other than the one which is within the terms of the motion—that is, the cost of living allowance.

MR. MADAN: Well, Sir, the question of a standard of living has been referred to and I take it that I would be in order in commenting upon that.

The standard of living is lower, but I think nobody would deny, Sir, that it should be improved, not only in the interests of those people whose standards are lower, but in the interests of everybody concerned in this country.

This Report, Sir, with the amendment that has been introduced, is opposed by hon. Members on my right for three main reasons, if I understand the position correctly.

The first is, Sir, that extra money to the tune of three-quarters of a million pounds, or a little more, would have to be found to meet the bill. Now, in connexion with that, it is suggested that that increased money will come out of the pockets of about 50,000 inhabitants of this Colony only by way of taxation although the name or race of the 50,000 inhabitants was not mentioned, but I think, Sir, it is quite safe to say that the hon. Member for Kiambu meant the European community.

MR. HAVELOCK: May I remind the hon. Member that there are not 50,000 Europeans in this country? There are certainly not 50,000 European taxpayers. I included the taxpayers of the Asian community as well.

MR. MADAN: I am glad, Sir, at last recognition is being given to the fact that there are also Asian taxpayers. I have never admitted the statement, Sir, and I am not prepared to admit it at any stage in the future, that Asians are not prepared to contribute and pay their fair shares of the taxes. If the money has to be found—and it has to be found, of course—then I submit that it will come out of the pockets all those

[Mr. Madan]

taxpayers who are liable to pay taxes in accordance with the law. We must not forget, Sir, the argument put forward by my hon. friend Mr. Patel the other day so eloquently when he submitted that it is always only a section of the community in every country who pay income tax, because of their ability to meet such taxes. And I am not, Sir, prepared to restrict the effect of the increase in the form of taxation to 50,000 inhabitants only.

The second reason for which this Report is opposed, Sir, is the effect it would have on other institutions which are non-Government. Well, even private enterprise, Sir, has recognized that if they are to maintain efficiency, and if they are to keep their employees working for them with satisfaction, and also be able to live reasonably decently, then they have to pay an increased cost of living. I think, Sir, it is about time it were realized that we have marched away from the old idea of economy in this country. We have, Sir, in the recent few years made tremendous progress. I submit to you, Sir, that in the days when you could give an African houseboy Sh. 10 or an Indian £5 or £7 10s per month—those days have gone—and I am glad to say, Sir, they have gone for good. The economy—or the conception of economy—of the country has changed. It is no longer a poor conception of economy where people live miserably—where people live in slums. I am glad, Sir, that we are making progress—that we are making towards better health conditions, towards better medical facilities, and that we will be able to provide decent food at reasonable prices for all. And if we are to maintain those standards then I submit that the people are entitled to reasonable salaries to meet their expenses.

I entirely agree, Sir, that whatever allowances you make, you give, to meet the increased cost of living, those allowances must not be too generous, so as to lead to extravagance. No one will question that statement, Sir. But I fail to see that an increase of 20 per cent for all lower income groups is too much. I fail to see, Sir, that this increase can lead to extravagance on the part of the civil servants. In fact, as far as I know, the opinion of the Civil Servants' Associations—all three of them—is that it would be hardly enough to enable them to make both ends meet. I feel that one must agree with the hon. Member—I do not know his area, Sir—the hon. Mr. Preston—the hon. Member for Nyanza.

THE SPEAKER: It is out of order to refer to him as "Mr. Preston".

MR. MADAN: Thank you, Sir. I only did that because I forgot his area.

I feel, Sir, that one must support the hon. Member for Nyanza when he asks that other matters must be found to reduce the cost of living. I entirely agree, Sir, that cheaper public transport is one of the methods whereby we can effect a reduction in the cost of living. I was surprised to learn the other day, Sir, that young Government officers are able to buy cars straight away—new cars, no sooner than they have joined the Government Service—and Government in its generosity advances them loans. Well, it may be a good thing for a person to have a car of his own, but I feel that these young officers start of their careers saddled with heavy liability, and perhaps they take years to pay it off. Add to that, Sir, the cost of petrol and tyres, which does not seem to stop—it keeps on rising higher and higher—and the only result is, of course, an increase in the cost of living.

Of course Government cannot—I do not suppose Government can compel local authorities to accelerate their housing programmes, but, Sir, with your permission I would like to quote the example of Nairobi, and it is a matter in which the Government may take interest. It is amazing to learn that the City Council have a sum of about £150,000 reserved for the Asian housing scheme, and that some has been brought forward . . . .

THE SPEAKER: Can the hon. Member explain how all this is relevant to the motion?

MR. MADAN: I am only trying to suggest, Sir, a way out of this difficulty—how the cost of living can be reduced by providing cheaper houses.

THE SPEAKER: The motion has nothing to do with the cost of living in general, but with certain allowances proposed to be paid to civil servants.

[The Speaker]

and can the hon. Member please confine himself to that subject?

MR. MADAN: Very good, Sir. Thank you.

But there is one method which I feel might make it unnecessary to continue paying the cost of these allowances to alleviate the distress of civil servants. I should, Sir, seriously like to suggest that the time has come when Government should consider introducing the system of credit. I feel, Sir, that is the only way, to remove the credit system in this Colony. I feel, Sir, because people are able to get credit, they never bother to balance their budgets. They never even try to think about the matter till about the third week or the last week in the month, and there prevails a sense of irresponsibility at the moment. Therefore, I should very seriously like to suggest, Sir, that Government should consider introducing that system.

THE FINANCIAL SECRETARY: It is already introduced.

MR. MADAN: I can't hear you, Sir. It may be, Sir, that the cost of introducing that system will be heavy, but perhaps it will be cheaper than paying three-quarters of a million pounds in allowances.

Sir, with those remarks, I beg to support.

MR. OHANDA: Mr. Speaker, to begin with, I should like to associate myself with the hon. Member for Central Area in congratulating the Mover for the very bold step which he has taken in amending the report before taking it before this Council in order to remove a point of racial discrimination. As for the report itself, Sir, I should further like also to congratulate the Committee and its Chairman for the quick work they put in to produce this brief and very precise report which does not really tax people so much in reading and studying as most other reports on matters of equal importance usually do.

My comments will be directly on the report, Sir, and most of the matters perhaps will have been those upon which other speakers will have remarked before. I should like to begin on page 3, paragraph 8, where it is stated—"we are satisfied by these facts; and by the other evidence which we have received, that some form of relief is necessary especially in the lower levels of the service", and then later on, they went on to elaborate and to say that the correct form of relief in their opinion would be in cash allowances and not in other forms. Mr. Speaker, I fully agree with the conclusions to which the Committee arrived that the lower levels are the greatest sufferers so far as the burden of cost of living is concerned, but I do not really follow them as far as they went with all other matters connected to that one because as soon as they started to try and construct on that theme, there are certain points on which I think justice—proper justice—has not really been done to the lowest, and I repeat lowest, paid officers. As has already been said, the general hardship which is felt in the matter of cost of living is felt by all people, be they highly paid or lowly paid officers, but the greatest sufferers, by far the greatest sufferers, are the people who form the lowest paid group, and following on that, the recommendations which have now been quite correctly amended by the hon. Mover provide that 20 per cent allowance be permitted on salaries between £0 and £300 a year, and that would be varied over and above, to a lower degree, by making it 10 per cent on figures beginning £350 upwards. Now, my feeling, Mr. Speaker, is that the gap between 0 and 300 is very wide and is so wide that perhaps it would have been better to give consideration to allowing another percentage, a little higher, in order to meet the principle that the lowest paid are the greatest sufferers. 0 and 300 is a very very wide range. It goes right down to the people who receive only £1 a month and right up to the people who receive Sh. 500 a month. Now between that and that maximum, there seems to be plenty of room for a variation from which this lowest paid and the greatest sufferers would benefit and thereby be relieved. When I first thought of it, it seemed to me that it might be useful to move an amendment, but on consultation and second thoughts, I found that perhaps it might be useful only to comment as I have done and to urge that the hon. Mover and the Government generally be asked to consider that, if not now, in the immediate future, in order that relief

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may be accorded to these people who suffer the most.

THE FINANCIAL SECRETARY: On a point of explanation, could the hon. Member kindly reiterate what he is asking the Government to consider?

MR. OHANGA: My point, Mr. Speaker, is that I consider that there is room for allowing 25 per cent between nought and, say, £150 a year and then, over and above that, 20 per cent, and the purpose of that would be to give greater relief to those lowest-paid groups who suffer most. That is the point I am trying to make, Mr. Speaker.

The second one is on paragraph 9 which has to do with retroactivity. The last sentence but one in that paragraph states—"it must be remembered that the Holmes scales were intended to be a permanent settlement and were not to be subject to review on account of increases in the cost of living although it was recognized at the time the report was debated that if a substantial increase occurred"—which has now happened—"there would be a case for review". The important words, in my comment, Sir, are—"substantial increase when the time occurred", and it has now occurred and the point I want to make is this—when did it occur? When did the case for substantial increase occur? The Majority Report has suggested that any relief that is to be given will not be allowed any amount of retroactivity except from the 1st January, 1951, and I should like very much to be advised by the hon. Mover if they are absolutely sure that that is the time when the time really occurred for a review to be made. In my own thinking, Sir, it seemed to me that suffering has gone on for a long time—much beyond the 1st January this year—and I am really sorry that it was not possible for the Committee to go into that a little more fully. No attempt, of course, in this Report has been made to explain why it should be that in January, 1951, and that is why my mind is still confused otherwise I would have received some enlightenment. In that connexion, Mr. Speaker, I should like to state that if this principle of retroactivity is not going to be treated generously, the lowest-paid officers—particularly those living in large townships—will continue to suffer and even suffer more for the following reasons, that for a large number of lowest-paid groups of Africans, the only way to exist at the moment with the present market prices, is to borrow and borrow as generously as they can on a very high percentage as a matter of necessity in order to live, and already because of the continued hardship which started, I admit, before January 1st, 1951, they are heavily in debt at the moment and it appeared to me that the only way of relieving sufferers of this kind would be to allow some amount of retroactivity in order that they may dispose of their present difficulties as regards debts, and if that does not happen, the amount of relief which they will get will not really be satisfactory. Many of them will continue to be sufferers.

From that one, I move on to paragraph 10 in the Report. This is the point which has to do with the time when a review of the present proposals might be considered necessary. It is recommended by the Committee in paragraph 10 that they do not consider it necessary that review should be made until next year.

I have my doubts on this one because the present rate at which things increase inclusive prices is so great that ten months between now and January 1st next year is quite a time and anything may happen. At the same time I must agree with the view principally of the Committee that frequent reviews and revisions in matters of this kind would be unworkable and would cost a great deal but I should have thought that a six-monthly review would not be too much for the Government side nor should it really cost the country an enormous sum of money, and I should like to suggest that some consideration be given to this particular one that a review should be allowed after some months. I do not suggest that the scales should necessarily be revised but that a review should be made with a view to ascertaining whether or not the scales should be changed. But to shut the door completely so that nothing can be done up to next year would be a little too tight.

My next one is on paragraph 11. That has to do with the family question. As a family man myself, I have a great deal of sympathy with the suggestion that families should be taken into account when consideration is being given to cost of living allowances. But at the same

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time, I must admit that it is irrational and absolutely out of the way if officers are paid according to qualifications and according to certain scales for which they qualify. I do not see how the cost of living, which is already based on an officer's salary could be again stretched to cover the family qualification. I believe that the Majority Report is decidedly right in confining itself to salaries of officers regardless of what families they hold. In that juncture, Sir, I should like to disagree with the hon. Member for Nyanza and my neighbour when he asserts that the people who are hardest hit by the rising costs are the married men. I believe that cannot be absolutely correct. I suggest that the correct view is that the hardest hit person is the lowest paid person regardless of marriage or not. I take it for granted that all are free to marry whether lower grade or higher grade. That being so, marriage alone could not really be a criterion in matters of this kind. If marriage is going to be an extra burden, I am quite sure it is a voluntary luxury which people can do with or do without. I do not think Government can be justified in tying scales of this kind to the marriage factor. I believe on that particular point the Majority Report, to which reference has already been made, Mr. Speaker is a little bit confusing.

Paragraph 12, Sir—I have already commented on this one—that is the principle of tying the allowance to the salary of the officer. I believe, as I have already said, that it is the correct way to do it, but if I may, I should like to comment on the question of basic salaries generally. At the moment we are aware that the people who suffer most are those who are the lowest paid, and in this I think it will be agreed that they are the Africans who form the bulk of the lowest paid officers who are the greatest sufferers. Although these cost of living allowances are only a temporary relief, I believe some consideration should have been given to, as I have already said, and I should like to suggest again giving them an increased percentage at a lower level so that they benefited a little more than the people who receive higher basic salaries than themselves. But whether now or at another time, it could not be lost sight of that the wage levels for the labourers or the manual workers in this country are absolutely uneconomic and they cannot go on as they are for a long time. Just now we are only considering allowances, but I think the time must come when this Council will have to consider doing something to raise the basic wages of all African manual workers whose lives are quite a burden to themselves as regards costs. Steps should be taken in the near future to overhaul completely what are the wage scales for farm labourers now, and I should at this juncture like to disagree a little with my friend the hon. Member for Kiambu when he suggested that salaries reflect the standards of living. I should have thought the opposite was a little more correct. Standards of living reflect the salaries which people earn and if you are going to argue in the way you do, I think it will be more than a vicious circle which will never take you anywhere. You could not raise your standard of living without the means to do so and if the means is to be denied to you, because your standard was not high you have a complete vicious circle, you are not going to get out of the mess. Our own idea is that where possible there should be equal pay for equal work and this I think we shall have to repeat until it is recognized as the only rational basis of dealing with matters of this kind.

That now brings me into the last paragraph I should like to deal with, Mr. Speaker, before I sit down. I now refer to paragraph 14 on page 5 regarding unskilled manual labourers, and I should like to record my strong protest that the Majority Report should have treated the matter as they have done here. I note with dismay that these people will not be considered for any cost of living allowances at all. Furthermore, the arguments brought forward are, to me absolutely unconvincing. I should like to read the particular paragraph so that people may follow the way my mind is working. In the last section of paragraph 14 "the allowances should not in our opinion apply to unskilled manual labourers and other temporary staff who are paid at current market rates. These rates will vary according to the cost of living in the area in which the man is employed and are subject to the prescribed minimum

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wage for the area, if any. We do not therefore consider that the cost of living allowance would be justified for that type of employee". Sir, I should have liked an alternative to the cost of living. If it were regarding that these people should not receive any cost of living then a very definite proposal should have been made that their wages would be adjusted according to the local conditions, but there is no such specific suggestion here and it seems to me that they have been left high and dry without any provision. But I do not think that anyone would really contend that they were not suffering to the same degree that other people were.

MR. MATHU: Mr. Speaker, could I refer the hon. Member to the *East African Standard* of to-day where the minimum wages have been increased from Sh. 2 to Sh. 5 in certain areas.

MR. OHANGA: I am grateful for the information. I have not looked at the *Standard*. But I do not think even if I looked at the *Standard* my view would have been affected in the least because what I said is exactly what I expected would happen. (Laughter.) It is only a question of a gesture of an increase now, something which would fall far short of the correct cost of living allowances which have been given. This Council or anybody else is not really in a position to decide what increase those people would get and how far they should go. It is left to individual or to one section of a firm or a firm to decide what to give its officers but that is exactly what I do not want. I should have liked a general proposal here to be made that these people should have their wages raised to this. That would be subject to revision at such and such a time. But such a proposal is absent and these people are now left to the feelings of the people who employ them, who can do just what they like with them. That is exactly what I do not want. I want something specific which we can look at and make quite sure what it will be, and that is why the explanation that I have had appearing in the *Standard* does not really impress me to the point of making me alter my view. I consider that wage adjustments should have been advocated and that the correct scale for each area set down. In that connexion I suggest that these people, being the manual workers, they are indispensable to the industry and we cannot do the country justice by ignoring their case. They are as important as anybody else, because you do not run the machinery of any kind in this country without their help.

Subject to those remarks, Mr. Speaker, I beg to support.

Council adjourned at 11 a.m. and resumed at 11.20 a.m.

MR. USHER: I shall have to speak at some length because I am later going to move an amendment which will have the effect of requesting that the Minority Report, or the principles in it, be accepted, and the table at the end.

May I, before going any further, say that I too, was sensible of the excellent atmosphere which pervaded the proceedings of the Committee and I should like to pay a tribute not only to the Chairman but to the other Official Member, the Secretary to the Treasury, for the great help he gave us.

Now, Sir, it has been said that all differences of opinion are theological, but for the sake of those who do not like that word, I think, perhaps, they would accept the word "ethical" instead, and it is indeed upon an ethical basis that the Minority Report is built.

I think there has been some misunderstanding as to what it is, so perhaps I had better explain that it means this, that all employers, whether public or private, should offer a wage or salary which is sufficient for a married man with children because it must be recognized as a natural right that a man should have those adjuncts.

I heard one hon. Member refer to a wife as a luxury. Indeed, it is rather common practice to refer to wives in terms of comestibles. Personally, I prefer to regard my wife as a friend and a delicacy.

That principle must be sustained and recognized in all walks of life. I am not suggesting at all that a man who has a family should not be prepared to make sacrifices, of course he must, but the salary should be based upon that consideration. Now then, I do not for a moment suppose that the hon. Mover is rejecting my assumption, but I think he

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must find himself impaled, rather painfully upon the horns of a dilemma, and the dilemma is this. If he is giving enough by the cost of living allowance which he is now proposing for a man with a wife and children then he is being extravagant in giving the same to the bachelor, and wasting public money that we cannot possibly afford. I hope he will address his mind to that argument, because I do not know what is the answer to it. He must remember, Sir, that the suggestions in the Minority Report are suggestions to meet a temporary emergency. Whether family allowances, if accepted, should be later incorporated in main salaries, or whether we should follow the customs of the fighting services and have marriage and children's allowances, as such, I do not know. I do not think it is necessary to go into that at this time and in any case I feel it is not long before we shall be involved in a salary revision.

Now, Sir, I think I had perhaps better go now to the table of allowances which forms the appendix to the Minority Report and just describe its main features briefly. What we do really is to give allowances to everybody with a ceiling of £80 a year to single people and a maximum of £175 to married people, that is to say, married people with two children or more. I have also to call attention to the method we have adopted to relieve the lower paid. It is really in fact up to £150 an allowance of 25 per cent and the reason my hon. friend the Member for Nyanza and I came to that conclusion was that we studied the family budgets and we found that in fact the African who is left, say, on a hundred and fifty shillings a month with a wife and family is not getting enough to enable him to run his house and to dress himself and his family in the way that we should like. While on the subject of the Africans, perhaps I should explain the differentiation, because I see that a certain person is reported in the Press as having said that a disgraceful attempt at racial discrimination has been made. I am not conscious of any disgrace at all. The reason we differentiate in the case of Africans is that we want to help them and if we did not adopt the policy of marriage allowances in a social system which is potentially still polygamous and has no registration of births, the would-be beneficiaries could not prove to the Government their entitlement to the allowances we are suggesting. That was the sole reason. But, in point of fact, it does also in our view accord with certain conditions which the Africans enjoy and which other races, I think, do not. We have in this Report referred to those matters. Briefly, they are that an African bachelor is always paying out money, or generally paying out money for bride price, and so is at a disadvantage financially. When he gets married, he has the services of his wife to help him and he is therefore better off, and later on, of course, he gets return through his offspring.

MR. MATHU: Wives of European civil servants work and earn money, some of them.

MR. USHER: What my hon. friend, Mr. Mathu, says is very correct, they do, indeed. We note that fact without approbation.

MR. COOKE: Why does not the African work as well?

MR. USHER: The position is really this, that there is a market for this kind of work. Women stenographers are called for on all hands and while that market exists, women will go out into it, some because they must, and others merely because they want to make more money, more money than is necessary, and in the Minority Report we have freely indicated our view that it is not a desirable state of affairs and that some women who are out at work would be better and more happily employed in looking after the economy of the home—an old-fashioned view, which I dare say will cause some resentment. Nevertheless, it is ours.

Now, Sir, I must briefly go over the objections. The hon. Mover did not at all press the arguments. He referred to the passage of the main report in which the objections to marriage allowances are set out. He did not press them and I am not going to press them, but I must refer to them. The first one is that those who signed the Minority Report seeking to vary the allowances according to size of family. I must say we have arbitrarily restricted it to two children. Why I cannot say, but you must draw the line somewhere and the income tax law does not, as you know. It is not quite

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correct to say we do vary the allowance according to the size of family. Secondly, they suggested that what we are proposing is an allowance related accurately to the officer's needs and in consequence entails an inquiry into each officer's circumstances. Now, Sir, nowhere did we at all suggest anything like a means test, and, as we have said in the Report, if an officer is fortunate enough to have a private income we wish him joy of it. The third point that was made we have already covered, that the wife may be a salary earner. Sir, I do not think that that has any real bearing whatever upon the argument. As I have already said, some wives go out to work because they must and others because they wish to increase the family income. The fourth point made in the Majority Report was this. That there were other cases which were cases of hardship, particularly the case of the man who deliberately refrains from marriage because he is supporting aged parents. That is a hard case, but really if the hon. Mover will consider this matter and reflect upon the way in which this is regarded in, say, the income tax law, he will realize that one is justified in saying that hard cases make bad laws, and that there are not many of these cases, and that if, in fact, it is desired to give the man who has dependants, other than his immediate family, more help, then that should await an amendment of the income tax law.

It does seem, Sir, that there has been a flight from reason in all this, and I feel very much that the Select Committee and the Government have been influenced by matters that were not strictly germane to the argument. It was very well known to us that when we started our investigation, other bodies had already gone much further than we had. They had, as it were, come to the result. There was the High Commission Services, and there were the other territories. Now, it was quite well known to us that they had rejected the proposal for family allowances, and I admit that it is very difficult when that attitude has been taken up by others, by the neighbouring Governments and by the High Commission, it would have been very difficult to evolve a scheme so different as the one that we have proposed. Nevertheless, I have constantly felt that Kenya must, as far as is possible, have its own economy and that we are not to be bullied by these influences.

THE FINANCIAL SECRETARY: There is no question of bullying.

MR. USHER: Well, Sir, affecting.

Now another influence that was brought to bear upon our investigations was the attitude of the civil servants, or the so-called attitude of the civil servants, because I am going to say here and now that as far as the Europeans are concerned, I do not consider that the Civil Servants' Association is representative. Also it contains members who are not merely servants of the Kenya Government. We were influenced by them first of all by a memorandum, which is very properly annexed to the Majority Report and which is a well-reasoned memorandum which all of us had to reject. Now, there was another sort of influence brought to bear. About a week ago there was a meeting held at the Patel Brotherhood which was described by the Chairman of that meeting as unprecedented. I have been very proud to be a member of the civil service and I hope that such a meeting will never, never, be held again. Those words, Sir, if I may be allowed to read, were used at that meeting. "It is my duty tonight, as Chairman of this unprecedented meeting, emphatically to warn Members of the Legislative Council that proposals of the type we are considering now are likely to drive large sections of the civil service of this country, of all races, in the direction of indifference, and, what is worse, in the direction of bribery and corruption." That is a nice thing from a service of which I have myself been proud, and it is this meeting which asks for the Majority Report to be amended in the direction which is now accepted by the Government. Now, Sir, what did they say about the difficulty that families are experiencing? May I please read again? "They all felt considerable sympathy for the person with a number of children whose hardship was greater than that of the single man, but even on that basis the Minority Report was 'quite ridiculous', the differentials were based on no set system and were quite arbitrary." And in another place, "we

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deliberately avoid dealing with the difficult question of marriage allowances—ich carry the most . . . implications, and are only attractive because we are ——the print is blurred and I cannot read it. What is the use of sympathy unless it is to take some practical form. We have found, Sir, throughout that our arguments have always been answered by some such expression as, "you are paid for the job, not for the family—you cannot put a premium on fertility". We are not trying to do so. And again "We have had all this out before when the Holmes Report was debated". Yes, we did, and that is why some Members have tied themselves up. Hon. Members should try to forget the past and follow a reasonable line. I am appealing to them to do that. I am also appealing to the hon. Mover to remember how he has over and over again stated that he is trying to find ways of economizing. I can only say, "And yet can you inconsistently stand on your head: do you think at your age it is right?"

THE FINANCIAL SECRETARY: Mr. Speaker, on a point of explanation, the cost of the Minority Report will be far in excess of the cost of the proposal before this Council.

MR. USHER: I entirely deny that, Sir, I have worked it out for myself. The hon. Mover has not got the information —nor have I, but it will not be far in excess, I deny that absolutely. It will be far less.

THE SPEAKER: Hon. Members must remember to address the Chair. (laughter.)

MR. USHER: I ask hon. Members who are in any doubt on this matter to support my amendment because they will be doing a fair thing. They will be doing a thing which the majority, I believe, of civil servants desire. Now, I have been for the last two week-ends down in my own constituency, and the opinions expressed at that meeting at the Patel Brotherhood are certainly not the opinions of the European civil servants in Mombasa. They refer to it as a "disgusting exhibition", and with that I agree.

I beg, Sir, to move the following amendment to the motion: That the motion be amended by omitting all words after the word "that" in the first line and by substituting the following words therefor "relief be granted to the persons proposed in the Report of the Select Committee on Cost of Living Allowances to Government Servants in the manner set out in the scale appended to the minority report and that, as may be deemed necessary or expedient, the said scale be altered by motion in this Council".

Sir, I commend my amendment to hon. Members. I am afraid I shall not get the votes of the Government side but I have always the hope, Sir, that later on they may change their minds and execute a perfect back somersault.

Sir, I beg to move.

LADY SHAW: Mr. Speaker, I beg to second.

Now, Sir, I am seconding this motion not because I necessarily support all the figures or all the scales attached to the Minority Report, but I do so because I firmly believe that family allowances —allowances to families up to a certain number, with possibly two children, are the fairest and best way of dealing with an emergency. May I emphasize that word "emergency". I would not for one moment accept the principle of a job attracting a salary for anything except the value of the job itself, but this is not a question of a salary or a consolidated cost of living allowance. It is cost of living allowance as such, and cost of living allowance alone, and in my view it should be paid to the people who most need it, those on the lowest income scales, and also to the people with the biggest commitments in the sense of having families to look after. Whether a wife can be described as a delicacy, a luxury, an asset or a liability—I have heard all those terms used—whether or not, there is no doubt about it that she is likely to be an expense and so are her children. It is always a matter of regret to me, Sir, that in dealing with cost of living allowances we should be dealing with Civil Service cost of living allowances alone. So many people in this country on small fixed incomes, such as small pensions and small savings, are just as hard hit, or possibly very much more hardly hit than civil servants, or than the majority of civil servants. Sir, we all know that in these allowances quite a

[Lady Shaw]

number of people who are reasonably well paid will benefit, but in the case of the private person who has no Civil Service advantages, no cost of living allowance will be paid, certainly not anyhow to the person on a small fixed income, not to the low wage earner. However, the Government has got a certain responsibility to its servants, and because of that responsibility the country has got to face this enormous bill in order to deal with an emergency which I hope—and I think probably hope without very much prospect of its coming true—that this emergency may not be very long. However, I think that is unlikely, and I agree with the hon. Member for Mombasa that we are likely to have to face a review of salaries again. But, Sir, one of the greatest arguments which is used against the question of family allowances is the bitterness which was produced at the time of the last consolidation of salaries, at the time of the Holmes Report. Now it is perfectly true that there was intense bitterness among the people who had been receiving family allowance for two or three children and whose consolidated pay was not as great as allowances which they had been receiving, though they did not, in fact, lose money—we all know that—but the thing which made that enormous bitterness was the question of retroactivity. People who had been receiving the high allowances, or the larger allowances on account of their families, got no retroactive pay, and a great number of people in the higher salary grades without any children received very large sums of money. It was the retroactivity which caused the great bitterness and not the review of the salaries. I think the whole question of retroactivity is one to be avoided in the future. There are such a number of words which I could use to describe that past performance of retroactivity, but I feel that I might be wiser not to use them. I do feel, Sir, that the argument used by people against family allowances and the bitterness that they cause at the time of the consolidation of pay is not necessarily a good one. There is no question—I repeat it—that the great bitterness was caused by the retroactive payments and not by the consolidation of salaries, and as long as retroactivity is avoided that bitterness will not be caused again. So believing as I do that the suggestions made by the Minority Report as regards family allowances would best provide for those who most need help in the emergency I beg to second this motion.

MR. COOKE: Mr. Speaker, I rise to oppose the amendment and I shall be very short—because I anticipate that the amendment will be defeated—and I will speak at more length when the original motion again becomes a substantive motion.

Now, Sir, there are one or two points made by my hon. friend, the Member for Mombasa, with which I cannot agree. I agree entirely with him that married people—and this is only logical—with children deserve more help from Government than a single man but I do regard this C.O.L.A. payment as a cash payment and, if anything, a minimum to which the bachelors in Government service are entitled. I think the relief for married people—and I am going to support this when I make my speech on the motion—I think relief for married people should come indirectly through income tax allowances, through, perhaps, remission of school fees, or the lessening of school fees, and through various other means which I will later on propose.

Sir, I am sorry my hon. friend—I am sure he did not really mean it quite in the way he put it—makes such severe criticisms of the Civil Service Association because, although that Civil Service Association represents a lot of senior officials I think it is representative also, on the whole, of the civil servants of this country, and I think it has done a tremendous amount of good in the past by bringing to the attention of Government the grievances under which civil servants have suffered. Now, the fact that the other gentlemen, the senior gentlemen on the other side of the Council, are not members of the Civil Service Association is in many ways, in my point of view, deplorable. My hon. friend—I can only refer to him as my hon. friend Sir Charles Mortimer because I do not know in what capacity he sits except as "alderman"—used to be Chairman of this Civil Service Association and although lots of senior officials did not join that Association, they were very glad to accept the measures of relief

[Mr. Cooke]

which that Association in the past battled for and gained, and therefore, I think my hon. friend—really I do not think he meant to be quite so severe as he was—I do not know whether I am out of order—in a speech which he referred to, at a meeting which I attended though I was not present when that particular remark which he quoted from was made, but I think what the Chairman of the meeting meant was that by civil servants getting into financial difficulties, it was opening the way to bribery; and I personally think that that was a very fair warning to give because my hon. friend and I, I think, are very susceptible, very jealous of the standing of civil servants, both having been, in the past, administrative officers; and I cannot help feeling that it was a timely warning that the Chairman gave. Sir, in opposing the amendment, I think I have the right to speak again.

THE SPEAKER: You are speaking only to the amendment?

MR. COOKE: Yes, Sir.

MR. MATHU: Mr. Speaker, I rise to oppose the amendment moved by my hon. friend the Member for Mombasa.

My first reason is that the Select Committee could not get any support at all from the Civil Servants Associations who came forward to give evidence before the Committee and, incidentally, may I say that the Select Committee, as a whole, did not reject the memorandum *in toto* which was forwarded by the European Civil Service Association and limited to the report of the majority. At any rate, it did not reject that part of it which deals with family allowances because the Majority Report has not recommended that cost of living allowances should be based on family commitments. Now, if I may be allowed, Sir, to quote a few sentences from that memorandum, in paragraph 9 we have this—"Our opinion on the principle of family allowances as part of a salary is clearly defined and unambiguous", and then they go on to say—"in a time of general crisis, in a depression, in a war, where sacrifice is necessary, the sacrifice must be borne by those best able to carry it, and these are seldom the men with families, but in ordinary and reasonably prosperous times, we believe that family allowances are a pernicious practice which lead to all sorts of anomalies and difficulties within a Department", and then they suggest that, agreeing with the Holmes Commission on this point, they think that the differential treatment, which is in practice already in regard to income tax allowances, should continue. They say—"the Government, of course, already distinguishes between single men and men with families in their income tax allowances", and may I say, in mentioning only one of the anomalies, that those members of the Civil Service who do not come within the income tax level and they have families, do not get any allowances from the taxes that they pay to the Government and so already an anomaly exists under these arrangements. Now, that is, Sir, one very important point which I want to make in opposing this amendment and in hoping that this Council will reject the amendment in the end, when the voting comes, because the anomalies are very great, if we allow this to be a principle to be accepted by this Government.

Another point is this, that the hon. Financial Secretary interjected when the hon. Member for Mombasa was speaking and said that he considers that this scheme now proposed to this Council, that of a scale of allowances based on the table by the Minority Report would cost the country more than that of the Majority and the hon. Member for Mombasa said—"of course, it cannot be true, because, in any case, the hon. Member for Finance has not got any information about this"—neither has the Mover of the amendment himself. Sir, how then can there be any logic in proposing a scheme like this without the full facts. How many children are owned by the whole set of the civil servants in this country? The hon. Mover of the amendment does not know—so it may cost the country packets of money—I see the hon. Member wants me to sit down. I have not caught his eye—yes, here he comes.

MR. USHER: May I explain, Sir, that my argument was that if the amount which the hon. Mover was proposing to pay was sufficient for the family, it was too much for the single man and that is where the extravagance arose.

MR. MATHU: I agree—I accept his explanation, but I do not agree with it,

[Mr. Mathu]

and he knows I do not because we discussed that very point in the meetings of the Committee. That difference exists to-day. The single man who is an assistant secretary in the Secretariat and the family man holding the same position, the difficulty is already there. He earns £x a year, he has no children. The other man earns the same £x a year with three or four children. Now, Sir, the single man there is overpaid and if we take that argument to its logical conclusion the scales of salaries then will have to be laid down according to the number of children members of the service possess and they will be in a muddle, Sir, if we attempt that and I think we will be the only country in the world that attempts that.

LADY SHAW: On a point of explanation, Mr. Speaker, no suggestion was made that salaries should be judged on children, should be based on the number of children—purely C.O.L.A.—nothing to do with salaries at all.

MR. MATHU: Sir, I go on and say that the other difficulty which confronts me in ever thinking to accept the principle now proposed is that this country, being what it is—not a very rich one—we cannot face the bill if we accept the principle proposed by the Minority Report. You have to treble or quadruple your income tax rates. The African, of course, will have perhaps to go without anything because every penny he has will have to go into poll tax and so on. Now, I do not think, Sir, we can afford it even if it were desirable and ethically desirable as the hon. Mover wishes us to believe. So on the grounds of expense, Sir, on the grounds of the cost of accepting this principle, I suggest, Sir, that it cannot be accepted. The hon. and gracious lady for Ukamba mentioned we are discussing C.O.L.A. and the question of salaries does not arise. I entirely agree with her, but can she tell me that once we accept whatever percentage we accept now and when the salary commission is appointed as the members of the Minority Report suggest, that we shall waive those percentages and go into the basic salaries, I suggest that that is not possible they will have somehow these cost of living allowances to take permanent position in the salary structure of this country. That is what I think will happen and it happened when the Holmes Commission came. The cost of living allowances which were paid under the Mundy formula before 1947 were consolidated in the salary structure of to-day and that is why we have a higher bill as far as the salaries are concerned than we had before the Holmes Commission—one of the reasons, not all the reasons. That is another reason, Sir, I suggest that on the grounds of expense the principle must not be accepted.

There is another reason, Sir, which the hon. Mover would like to brush aside very lightly and that is the question of putting a premium on marriage. Well it has been argued, I think, in some countries, because I remember, Sir, in Germany when Hitler was writing his "Mein Kampf"—and any person who wishes to refer to "Mein Kampf" can do it—did put a premium on marriage and any couple that had sons were paid so much a year and you can see the struggle that went through all the families to try to produce sons and where did Hitler lead us when he had so many sons he had paid for? It landed us in war. Surely the hon. gentleman would not want that. (Laughter.) That, I think, Sir, is another reason. I think they are agreed with that—that would be an undesirable business for this country to be landed in.

There is another reason I think why I disagree with this amendment; now, the hon. Mover referred to reasons why they had to recommend a flat percentage of allowance to the African civil servants. One reason is that, you see, most of these gentlemen are polygamous—too many wives, and consequently too many children—and he could not face that, because if you accept the principle of family allowance I suggest, Sir, even if I had 10 wives and 90 children, I am still a family man! (Laughter.) And I must be provided with allowances.

MR. USHER: What I said, Sir, if I may explain, is that they would not be able to prove their entitlement where potential polygamy exists, and where there is no registration of births.

MR. MATHU: Sir, I disagree entirely with that. I would like to refer this to the hon. Member for Law and Order, who enacts the law for African Customary Tribunals, and we have had all which is now sent before a Select Committee, and in African customs we know who is our wife, even if we had two and all we want to do is to tell the hon. Member for Law and Order to enact a law to prove that there are ten wives and they are our wives according to African custom, not according to English law; and my hon. friend, the Member for Eastern Area, Dr. Rana, has just helped me out here, he tells me that the Muslims can marry as many as four without any trouble! (Laughter.) I cannot see the point, Sir, of the Minority Report on this one in paragraph 9, "We do not advocate the application of the principle of family allowances to African members of the service". It goes on to say that they have no registration of births and birth certificates, and you cannot prove—I am suggesting to you, Sir, that with African custom a piece of paper from a Registrar of Marriages does not give us a wife; so many heads of cattle and a wife is at once, and it is true that it is legal! (Laughter.) It is legal, and that is why my hon. friend, the Member for African Interests, Mr. Ohanga, was suggesting in a earlier debate here that there should be a codification of the African law so that we know then what points we can follow if there were any code, as it was found to produce in Natal, as far as the Africans were concerned. I can produce chapter and verse for the hon. Member in Mombasa that we can prove that the wives are ours, there is no question about that, and so if he wishes to be logical I suggest that he should ask this Council to accept a principle which will apply to all families, irrespective of the number of wives they have and the number of children—it does not worry him, because they have said "only two children". The question is this, what about the relief of the other 10 if I have 12? It must be brought into the picture, Sir, because I have to clothe them all the same.

Now, Sir, I say there is no argument that Africans cannot prove that they have families in accordance with the African customary law, they can, and these wives and these children are legal and legitimate, and if you want us to accept this principle—which, incidentally, if you did not agree with me I would not be able to support—you would have to take all the families of the civil servants who happen to be in the civil service into account.

Now, Sir, the other point, which I want to advance against this amendment, is this, that if we accepted it, it would also mean one very big thing, and it is this, that the senior officers of Government and heads of departments, careful and anxious as they are to keep down public expenditure, they would make a point when applications come for the jobs to see whether the man is, say, single or married. Now, let us see what will happen if they look at their qualifications. They see Mr. X—single. Qualifications: same as Y. Y is married; qualifications: same as X. Now this would mean that the salary would be the same, so much a year, but this man has three children, so they will have to pay for allowances for two children. To this gentleman (X) they will only have to pay basic salary. Now, their department must not be questioned by the head of the Government, during the Estimates, why they are spending too much money, so they will take the single man. Now, do you not think that there is a possible discrimination there, Sir, and would that be advisable? Would that be to the interests of the objectives which the hon. Mover's amendment has? I suggest it will not. So, Sir, in view of all these reasons which I have tried to briefly outline, I must vote against the amendment before this Council.

Sir, I beg to oppose.

MR. PATEL: Mr. Speaker, I rise to oppose the amendment moved by the hon. Member for Mombasa. Mr. Speaker, before I proceed further, I would like to reserve my speech on the main motion.

THE SPEAKER: You have no need to reserve it, you will have the right to speak again when the debate is resumed on the main motion.

MR. PATEL: We are considering, Sir, the question of giving relief to civil servants, and when the representative Associations of the civil servants in this country oppose the recommendations of

[Mr. Patel]

the Minority Report I do not see any alternative but to reject it. Now, Sir, it is very well to say whether a particular Civil Service Association represents civil servants or not, but as far as I understand these Civil Service Associations, either European, Asian or African, are consulted on many matters, and they make representations on behalf of the Service, and they have done so in the past, and to lightly ignore their views is not justifiable. If there are very strong reasons for overruling these Civil Service Associations, then one can do so, but I have not, Sir, this morning heard any strong grounds why the opinions of the Civil Service Associations should be rejected. Moreover, Sir, it may be that the hon. Member for Mombasa has worked out the figures of the cost which is likely to result arising out of the Minority Report, but with common sense I could say that it is likely to cost much more than £830,000.

Now, the hon. Member for Mombasa referred to the joint meeting of the European, Asian and African Civil Service Associations in very strong terms. I personally would say that there were no grounds for using the language that he did against that meeting which was called under the joint auspices of the three Civil Service Associations. As a matter of fact, any person who has the welfare of this country at heart should welcome that these three Civil Service Associations took an opportunity of meeting together. That is what we have been always preaching, that the three races in this country should make an effort to understand each other, to come closer and as far as possible to co-ordinate their views; and if, for the first time in the history of this Colony, the three Civil Service Associations met together in a public meeting and attempted to express their views on the cost of living allowance, to treat them with contempt is in my opinion a retrograde and very reactionary step. Whatever may be the private views of some of the European civil servants in Mombasa or the private views of the other civil servants in the Colony, it should be admitted that the only reliable method of ascertaining the views of any group of people is to do it through their representative association. When it suits me, if I say that the

11 European Elected Members do ... represent the European community ... not be a proper thing to do.

MAJOR KEYSER: It would not be ...

MR. PATEL: In the same way, if it ... somebody to say that a certain Civil S... vice Association does not represent the views of the civil servants of his com... munity he may say so, but it is ... my view, a proper course to ... Moreover, Sir, the Minority Re... ignores the family responsibilities of ... African civil servants, and therefore ... is an additional ground why I ... inclined to oppose the amendment mo... this morning.

THE FINANCIAL SECRETARY: M... Speaker, I rise to make it clear that ... Government does not accept this amend... ment.

Sir, in moving the original motion ... made it clear that the Government ha... given the question of a marriage differen... tial very careful and anxious consider... tion. It is admitted that there are so... arguments in favour of such a differen... tial. There are, however, very powerf... arguments against it, and the Govern... ment concluded that on balance the ad... vantage was in having no such differen... tial. That is why, Sir, the original motion ... was moved in the terms that it ... moved. I am also extremely doubtful, S... whether in fact this motion for ... amendment is in order. It is true th... the calculation of the cost of the scheme ... as set out in the appendix to the Minori... Report is a very difficult and complica... business, but I will say this, Sir, that ... the segments in which it is possible ... compare the cost, in each such case th... cost is higher than in the scheme which ... forms part of the original motion before ... this Council.

Sir, in these circumstances the Gover... ment finds it impossible to accept th... amendment and therefore opposes it.

The question that the words propo... to be deleted stand part of the motion ... was put and carried.

MR. MACONOCHIE-WELWOOD: M... Speaker, I rise to propose another ... amendment to the motion before ... that all the words after the words "... adopted" be deleted; that it should no... read, "Be it resolved that the Report of ... the Select Committee on cost of living ... allowances for Government Servants b... adopted".

[Mr. Maconochie-Welwood]

... Sir, my reasons for moving this ... amendment I can put very briefly. They ... in the first place, that I consider that ... the consideration of the cost of living ... civil servants we should not set the ... of overriding the Salaries ... Commission Report which,—in my ... we should be doing. The last ... I wish to do is to start a racial ... in this matter, because I do not ... that at this stage it should in any ... be a racial debate. The point is ... this: do we adhere to the Salaries ... Commission Report, or do we not? And ... that we must, before we break ... from the system of grading laid ... in the Salaries Commission Report, ... the matter thoroughly as a ... issue. I would say one of the ... for these scales being adopted, ... never seems to occur to either the ... or African Members, is this: that ... the main the grading of salaries is a ... to the African from Asian ... competition and to the Asian from ... competition. If, in fact, it is ... desire of Africans and Asians to get ... scale and abolish the scales laid ... by the Salaries Commission they ... be warned that in doing so they ... giving up a measure of protection to ... themselves, and if they wish to do it I ... would not strongly oppose it.

There is another point that arises in ... second half of the resolution which ... inclined to debate, and that is the ... implication that the cost of living rises ... for all races. In fact, wealth or ... poverty must always be largely relative ... the community in which the individual ... If you live in a poor quarter of ... £500 a year is wealth; if you ... a rich quarter of London it well ... be poverty; and one of the reasons ... the Select Committee's report, I ... is that they differentiate between ... salary scales because the groups are ... among their own groups and ... and poverty are perforce relative.

There is a point in the main report ... I would like to touch on briefly, ... seems to me illogical that in fact all ... of living increases are denied after ... salary of £1,750 a year. I may be ... an unusual and perhaps un... view on this side of the Council, ... I do not think it is quite logical to ... at this point.

THE FINANCIAL SECRETARY: On a point of explanation, it is not true that after £1,750 there are no cost of living allowances. At that point the ceiling of £150 per annum is reached, and thereafter it remains constant.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I am afraid I put the matter badly. The point is that there should be no increase between £1,750 and £2,500. To my way of thinking this levelling down system is wrong and for the reason I have mentioned already—relative riches and relative poverty. I consider that there should be 2½ per cent extra on £1,750 to the higher scales. I can see no good purpose in reducing gradually the level between the bottom and the top, because on the top grade people the efficiency of the service must largely depend; but that is perhaps a digression from this amendment.

I think that the standard of living which is being discussed in this debate can only be maintained in one way, and that is by a greater output *per capita*, which probably means a certain amount of retrenchment of personnel—(hear, hear)—but that, I think, must be faced. Until people realize both in this country and elsewhere that money is merely a token in terms of work our standards of living will go down, our salaries will rise and the salary rise will not help us, and that fact I commend to the notice of the hon. Financial Secretary—in fact work can, in some cases, be done by a lesser number of personnel to whom I for one would not grudge the added salary. I certainly consider that the Civil Service are due for an increase of salary for all races, and I think there has been hardship, and I would be the last to oppose it. But I hope that when that is given the fact will be borne in mind, that people must work harder to get over the difficult period that we are in at the present time.

Mr. Speaker, I beg to move.

MR. HOPKINS: Mr. Speaker, in seconding this amendment I will try to make myself clear and give as briefly as possible my reasons for doing so. In the debate on the revision of salaries which took place in 1948 this Council accepted the principle that the standard of living between the three groups, Europeans, Asians and Africans, differed

(Mr. Hopkins)

materially one from the other, and the salary scales which now operate in Kenya, Uganda and Tanganyika are based on this conclusion, a conclusion which I believe to be no less correct now than when that debate took place. As nothing has happened to make me alter my belief I must support the view of the Majority Report that the cost of living allowances which they propose of 20 per cent, 10 per cent and 5 per cent should not apply to the same amount of salary in each of the groups but, to the comparable segment in the salary structure of each group.

Sir, to save time I am not going to refer specifically to Indians' salaries because they lie between those of the Africans and the Europeans, and my arguments will therefore apply to them in a lesser or greater degree. Now, Sir, application of these allowances to all three racial groups on the same basis as is proposed for Europeans would mean that virtually every African would receive an increase of 20 per cent on the whole of his salary, whereas only the very lowest paid European would receive such generous treatment. It would also be tantamount to an admission that the salary scales of Africans were inadequate and unfair as compared with those of the other two racial groups, and this, Sir, most emphatically I do not believe. The arguments which we have heard, that cost of living allowances and salaries are two entirely different things, and that cost of living allowances are merely an emergency measure to deal with an exceptional state of affairs are, of course, quite fallacious, and only go to emphasize the difference, which is without distinction. History shows, Sir, not only in regard to this country but in other territories as well, that in this world of ever-rising costs sooner or later, but quite inevitably, cost of living allowances have to be embodied in substantive salaries. Sir, I regret that I am unable to take much comfort from the hon. Member for Finance's statement that the cost of these allowances would be found, so far as possible, from economies in existing votes rather than by asking for a special provision, and the reason for my misgivings is that during the debate on salaries revision, to which I have already referred, time after time Government speakers got up and agreed that the increased salaries bill at that time would have to be met by pruning non-essential services, by cutting out non-essential posts, by asking for more work from fewer but better paid civil servants, and finally, by cutting out dead wood wherever it existed. Now all that has happened, Sir, since that debate is that these non-essential services have not only gone on but in many cases they have been increased, just as non-essential posts have been increased, and in this connexion I have already spoken on another occasion about the number of non-essential posts which have been brought about by the provincial team system. Now, Sir, this increase in the personnel which has taken place has resulted not only in the accumulation than in the elimination of dead wood.

Finally, Sir, if I consider that in equity we should accept the principle that all Africans should receive an increase of 20 per cent on the whole of their salaries, then I would not quibble at the cost, but as I do not hold these views I think that I should be lacking in my duty towards those whom I represent if I did not oppose a proposal which will add another £180,000 to the burden of the taxpayer over and above what the Majority Report is going to cost. Sir, the Tanganyika Government plan to grant a cost of living allowance amounting to 10 per cent on a man's salary up to a total of £150 irrespective of the man's rank is, I think, a very rational one. It is simple and it does not cut across any of the principles on which the present salary scales are based. As, however, the Tanganyika plan is somewhat less generous to the lower paid people than would be the recommendation of the Majority Report, I intend to support the amendment put up by the hon. Member for Uasin Gishu.

DR. RANA: Mr. Speaker, Sir, I rise to oppose the amendment moved just now by the hon. Member on my right.

Sir, I hate to create more heat or to discuss the racial bickering which is prevalent in this country, but in this case I am really surprised that a person of the magnitude of the hon. Mover of the amendment has thought fit to bring it. The first and most pressing question which the Cost of Living Committee had to consider—and it has been emphasized that it is only a temporary measure in order to meet the difficulties and the hardships which the civil servants of all races were undergoing—it is not a permanent measure, it is not a measure where it is going to be a permanent issue as far as the future of the human race is concerned. (Question.) There is no question, it is perfectly clear. If you want to question, you can do so.

Now, Sir, may I ask the hon. Mover—and I must take the opportunity of congratulating the Majority Report and the Government for moving this amendment in which this racial question, which unfortunately was already tied down, has been removed. Now, I would like to ask the hon. Mover—perhaps I may be wrong—is there any difference in the basic calorific values in the food which people take in the world. Number 2, the butter, the milk, the meat, the vegetables and everything which we are buying—is it being sold any differently for Asians? I am sure the hon. Leader of the European Elected Members, who is a very big producer of butter, would not give me any reduction on butter simply because I happen to be an Asian. So the position is, Sir, that the measure, which is purely temporary and a measure which is purely to tidy up the present position—I am going to agree with him that this Cost of Living which may be temporary is going to create a lot of troubles in the future, it is going to have a very great adverse effect on the unofficial side of this Colony, but at the same time, we have to take a sensible view and adjust things before tremendous mischief is created. Then the question of basic needs and salary will come up and I submit, Sir, that we are never certain—even on that occasion we opposed it—not only that but only last year, at the time of the Budget when the question of a certain professional post was considered, I pleaded on their behalf that they should be brought to a reasonable level, and I think if I am not wrong, the hon. Member for Rift Valley was of the opinion that the time will come when the professional people should be given a reasonable remuneration in order to help in the development of this country.

MR. BLUNDELL: Mr. Speaker, is not the hon. Member putting words in my mouth?

DR. RANA: Well, Sir, I was just giving an instance that things are moving so very slowly that when in a future time, all this bickering has gone out and the people who have made this country their home, these services and their salaries will be based on the merits of the people. That is all I wanted to convey, Sir, but with these few words, I hope that the hon. Mover of this amendment will seriously consider either that he should bring in another amendment and give us reduced prices for all the food and the other things for which we are paying equally with others, or should give us a share in the finance so that we can grow them ourselves perhaps. I personally do not know in what other way we can go on making the distinction in a temporary allowance for the various races, Sir, and with these few words I would request him that it would be better instead of wasting the time of this Legislative Council over the cost of living allowance—this thing is going to take three days, and God only knows, Sir, we are in the third week now, and I feel if we go at this speed, how many weeks shall we have to sit? We have still got very bad motions coming on this week—(laughter)—and if that is the spirit, I think Government is perfectly justified when they are asking for a majority on their side so that they can move the machine and keep us quiet all the time. Under the circumstances, Sir, I would submit that I oppose this amendment which has been moved by the hon. Member.

THE FINANCIAL SECRETARY: Mr. Speaker, the Government does not accept the amendment.

Sir, the hon. Mover of this amendment objected to the exception to the Report which finds place in the original motion on the grounds that it departed from the principle of the Holmes salary structure. By implication, I suppose the hon. Mover wishes us to understand that, in his view, the Report, as it stands in relation to the segments on which the cost of living allowance should be calculated, does, in fact, conform to the principle. But, Sir, that is not so, that is not so at all. Even the Report as it stands does not conform to that principle and so in

[The Financial Secretary]

moving this amendment, he still does not make his main point, that we should conform and continue conforming to the Holmes principle. Now, Sir, what is more, I dispute that in having the same segments for the calculating of cost of living allowance, we are, in fact, departing from the Holmes structure. It must be recognized that the salaries remain as they were stated by the Holmes Commission and accepted by this Council. The scheme of relief is superimposed upon that structure so that the intrinsic amounts of cost of living allowance which individual Government servants get are related to their individual salaries which, in turn, are related to the Holmes principles. In those circumstances, the Government cannot accept that the principle set out in the main motion is, in fact, a departure from the principle of the Holmes structure. What the Government objected to was an attempt to superimpose a *double* application of the Holmes structure upon Government servants, which is what would happen if each of the segments were calculated in accordance with the minima or average of the salary scales.

Sir, I think the hon. Member for the Aberdares, in seconding this motion of amendment, expressed apprehension to this effect that, if and when we have a salaries revision, the amounts of allowances now calculated would automatically be absorbed into any new salary structure. Sir, he has no possible ground for making that assumption. The Government would not accept that, because allowances of this magnitude exist today that in any revision they would automatically be absorbed into new salary scales. The Government would not accept that the method of calculating the allowances is an argument in favour of such an absorption. I want the hon. Member to be quite clear that if and when there is a salary revision the circumstances at the time, and at that time alone, will determine what the salary structure will be.

Sir, with these words I oppose the amendment.

MR. BLUNDELL: Mr. Speaker, I simply rise to ask the hon. Member, the Director of Establishments, to now speak in favour of the Majority Report which he signed.

MR. COOKE: Mr. Speaker, I rise to oppose the motion and I want to reinforce what has been said by my hon. friend, the Financial Secretary.

Sir, I want to refute right away the very dangerous suggestions of my hon. friend, the Member for Uasin Gishu, that there is the slightest parallel between equal salary scales and equal C.O.L.A. segments. There is none whatever, by accepting the equal C.O.L.A. segments which have been suggested by my hon. friend, I and others are not in any way bound to equal salary scales.

Now, Sir, the reason I am opposing this amendment is this: if you take, for instance, an Indian or an African who has worked from a small salary scale up to, say £300 a year after—it might be 15 or 20 years' of work and he is receiving £300 a year, I refuse to believe that that man's standard of living—by which I mean the expenditure to which he is bound—is less than that of a young European schoolboy who enters perhaps from one of the schools of Kenya on the lowest scale of £300 a year. I believe that the Indian or the African who has, after 20 years, with wife and family, risen to the salary of £300 a year has just as big a cost of living as the young boy who enters first on a £300 a year salary.

For that reason, Sir, I am opposing the amendment and shall in due course support the motion.

THE CHIEF SECRETARY: Mr. Speaker, in speaking against the amendment, I have only two points to make.

The first one is in reply to the hon. Member for Rift Valley when he was kind enough just now to invite the Director of Establishments to speak on this question. Now, Sir, it is obvious that when matters of this kind are under consideration by the Government, all Members of the Government give their advice and consideration on the matter honestly and sincerely. That advice and those arguments are put forward in the proper way. In due course, the Government naturally considers them and it will be clear when a decision is reached that the conclusion may not be shared by everyone who has taken his part in reaching it. But, nevertheless, when it is reached, it is by the nature of things that every Member should accept it.

MR. BLUNDELL: Mr. Speaker, I would like to ask the hon. Member to give way. Naturally, I was not questioning that decision and I only asked whether the Director of Establishments could speak because, from my past experience, I knew how very well he could put the case. The hon. Member was not rise too quickly to the fly!

THE CHIEF SECRETARY: In that case, Sir, I accept the explanation given by the hon. Member. I will go on to the second point.

The second point was that it is suggested that the amendment made by the Government to the Majority Report implies a departure from the Holmes' salary structure. My hon. friend, the Member for Finance, I think, has dealt adequately with that. All I would say in addition, is that that salary structure was accepted after very careful consideration and debate in this Council. There are some people who do not agree with it; there are others who do. Nevertheless, for the time being, it is the accepted basis for the salaries of civil servants. This suggestion now before the Council does not depart from that structure. The present suggestion contains a formula for calculating the cost of living allowances. That formula is applied to the salary structure, and a simple sum gives one the answer in the amount of cost of living allowance. That allowance has a direct relationship to the salary structure. I suggest, therefore, Sir, that there is no departure from the salary structure and that the cost of living allowances now proposed are based on the Holmes' salary structure.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Wednesday, 28th February, 1951.

Wednesday, 28th February, 1951

Council assembled in the Memorial Hall, Nairobi, on Wednesday, 28th February, 1951.

Mr. Speaker took the Chair at 9.35 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 27th February, 1951, were confirmed.

NOTICE OF MOTION

MR. BLUNDELL: Mr. Speaker I wish to withdraw the motion standing in my name and to substitute the following:

That this Council is unable to accept the refusal of the E.A.R. & H. to provide the necessary funds for the construction of a bitumen road from Elmenteita to Mereroni as requested by this Council as an amendment to the motion moved by the hon. Chief Secretary on the Boyd Committee Report and recommends the Government to place the matter again before the High Commission for a reversal of this decision.

It further requests the Government to inquire into the carrying out of the recommendations in the Report with reference to *(a)* telephone communications, *(b)* stock routes; and *(c)* water points throughout the areas of Elmenteita and Eburru which are affected by the re-alignment.

MOTION

LEGISLATIVE COUNCIL BUILDING

THE CHIEF SECRETARY: Mr. Speaker, I beg to move:

Be it resolved that this Council approves of the construction as soon as possible of a Legislative Council building, at an approximate total cost of £150,000.

Hon. Members will recollect that some time ago a Select Committee was appointed to consider the question of constructing a Legislative Council building. The Committee came to the conclusion that accommodation in this hall was completely inadequate for the development of proper parliamentary institutions on the British model, and that some

[The Chief Secretary]

alternative accommodation was essential. At the time, however, the Committee ran into difficulties in the way of finding a permanent home for the Council, and was forced to recommend that a building to serve a comparatively—temporary purpose should be constructed.

The Report of the Select Committee was debated in this Council in October, 1949, but no final decision was reached at that time, it being decided to explore other possibilities.

Meanwhile, Sir, some hon. Members of this Council, being perhaps more enlightened and far-sighted than others—(Question.)—Mr. Speaker, I am extremely surprised to hear that there is any question about that. Anyway they came to the conclusion that it would be a mistaken and short-sighted policy not to build a permanent home straight away. As time went on other Members came to that same opinion, and finally, at a meeting held in June last year attended by nearly all the Unofficial Members of the Council, it was decided to build a home containing a chamber and ancillary offices and facilities straight away. The plans for the new building are now nearing completion. A Committee of this Council has supervised their drawing and we are almost ready to let a contract for the foundations.

I will not take up the time of Council by going into the details of those plans. As I have said, their drawing has been supervised by a Building Committee of this Council, and the details are I believe already familiar to hon. Members. The only question which I understand the Council wishes to decide this morning is whether a suitable permanent home for the Council should be built and now is the time to do it.

As I have pointed out, Sir, these premises here in this hall are hopelessly inadequate; not only for the proper conduct of public business by Members of this Council, but also in respect of the facilities offered for the Press and for the public. I am sure there will be no dispute about the desirability of surrounding the work of the legislature of the Colony with proper dignity. (Hear, hear.) It is obvious that in all three communities the prestige of Parliament should be assisted and enhanced by a suitable setting which will create and maintain proper respect.

I suggest, therefore, Sir, that the sooner adequate premises are provided in which the proceedings of the Council can be conducted with efficiency and dignity, on the lines of British parliamentary institutions, the better. I believe that that view will be shared by all hon. Members (with one possible exception) and, therefore, Sir, I commend this resolution to the Council in full confidence that it will have the support of the Council.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. HAVELOCK: Mr. Speaker, I believe I am speaking on behalf of the great majority of Unofficial Members when I support this motion. The only doubt that has been in the minds of Members—and it is naturally a great doubt—is, the actual cost of the building as shown in this motion. When the matter was first discussed, I think the cost was reckoned to be very much lower than the figure that appears today; and therefore some Members have had their doubts as to whether we should increase the expenditure on this very essential work. But as I said, Sir, I think I am speaking on behalf of the majority of Members when I say that we feel, in spite of extra costs, the advantages which will accrue to the Council and of course through the Council to the Colony, will be worth the extra cost.

Also I understand that the total of £150,000 need not be spent immediately, especially as regards furniture furnishings—we may be able to spread that cost over some period. There is, of course, the other aspect, that we do not occupy this hall free of charge, and we will save the rents from that.

There is also the possibility—I do not know if I can say probability—possibility anyway that other Councils or Assemblies will be able to use the Legislative Council building at a charge. So therefore it will not be even in actual cash completely without return. So, Sir, although we did have our doubts about the actual cost, I believe quite sincerely that it will be well worth

[Mr. Havelock]

spending up to £150,000 to provide the requisite dignified premises which this Council deserves.

Sir, I beg to support.

LADY SHAW: Mr. Speaker, I beg to oppose. I think I am in a minority of one, but when I urged that this matter should be brought before this Council, rather than go to Standing Finance Committee, I did not do so merely to give myself an opportunity of opposing this motion, but because ever since I have been on this Council I have had very strong feelings about these large increases on original sanctioned Estimates going to the Standing Finance Committee. I think it is a responsibility which it should not be prepared to take, and should not be asked to take. Over and over again we accept Estimates and they are very greatly increased before the eventual building is put up.

In this case, the original figure that we were given was £70,000. The present figure is £150,000, and that is more than double. Now, Sir, I have to admit that I opposed the building of this Council Chamber when it was estimated at £70,000, and still more do I oppose it now when it is going to cost £150,000. As we have the advantage of having these extra offices now I feel our needs are not as urgent and not as great as they were.

I strongly disapprove of this proposal which, I think, is untimely when there is a great deal of building going on and when we are facing a large number of unavoidable expenses.

Sir, I beg to oppose.

MR. BLUNDELL: Mr. Speaker, the hon. and gracious Lady, when she prognosticated that she was in a minority of one, when opposing this motion, was unduly pessimistic. I am unable to support the motion as it is now worded. I should very briefly just like to give my views to the Council. I was originally one of those who, strangely enough, was enlightened and far-sighted in that I urged the hon. Chief Secretary to bring the matter again before Standing Finance Committee, with a view to approaching this Council after we had toyed with the idea of being the tenants of the Nairobi Municipal Council.

MR. HAVELOCK: City.

MR. BLUNDELL: Council—the Nairobi Municipal City Council. (Laughter.)

Now, Sir, my reason for wishing to support the motion is that I, apart from the reasons which the hon. Chief Secretary has given, I do feel very strongly that we on this side of the Council want somewhere where we can meet all hon. Members for meals and discussions, et. Therefore, Sir, my support for a building is still there, but my support for a building costing £150,000 is not. The original motion—original suggestion was £70,000. I might have agreed to £80,000 or thereabouts, but I do consider, knowing the financial situation of the Colony, all the demands which are being made, for instance through such as a body as the Planning Committee, all the demands which are being made for further buildings for every service, I find it very hard now to justify £150,000.

I would like to recall to hon. Members the words of the Financial Secretary. He said in so many words—you can have a Legislative Council building but you must accept the fact that it can only be at the expense of something else. I would be prepared to spend £80,000 for it for the benefits which I think would accrue, but I am of the opinion that £150,000 is an extravagance we can not afford and, that being so, Sir, I have no alternative but to oppose the motion.

LIEUT.-COL. GHERSIE: Mr. Speaker, I am afraid I am also going to oppose the motion. I appreciate the desirability of having the Legislative Council building erected, but, Sir, when you consider the lack of accommodation, the lack of office accommodation for the Civil service, the lack of housing accommodation, the demands being made in various ways, such as cost of living and various other commitments which will appear before this Council before long, I think the expenditure of £150,000 is not justified. I also feel we will be accused, Sir, of increasing taxation in order to create a rather pleasant building for the business of Legislative Council, and I oppose the motion.

MR. MACONOCHIE-WELWOOD: I rise to oppose the motion for very much the same reasons as those given by the other speakers.

[Mr. Maconochie-Welwood]

At this time, if we are to have a Legislative Chamber, I think every method of building it on an austerity plan should be considered, and I am not satisfied that £150,000 is a figure which would represent a building on austerity lines; further, I am not satisfied that the country can afford it. We have said repeatedly in this Council that we should take first things first, and I do not consider that at this very difficult juncture in this country's history—and, indeed, in the world's history—that we are justified in this enormous increase in expenditure on a building which we have done without for a great number of years, and we can surely do without for a few more.

I beg to oppose.

MR. HOPKINS: Sir, I also would like to oppose this motion for reasons which have already been covered by other speakers, I will not, therefore, waste the time of the Council in mentioning them again.

MR. COOKE: I beg to support the motion (Laughter.) This, Sir, is a typical example of the proclivity towards *bado kidogo* which this Council sometimes shows.

Now, there is another way of looking at this matter. The hon. Member for Rift Valley and the hon. gracious lady both said if we had undertaken this work (when some of us advocated it), Sir, several years ago, it probably would have cost only £75,000 or £80,000; but by this unconscionable delay it may now cost as much as £150,000.

Now, Sir, I believe it would not only add to the dignity of this Council, but would add to its efficiency, and that is one of the reasons why I support this motion. It is quite impossible to carry on in a Council like this and to produce really efficient work under the present conditions, and I think—far from what my hon. friend the Member for Nairobi North said—it would lead to extra efficiency if you had Members of this Council—and we are responsible for the extra expenditure—working under better conditions. We would bring to these problems a much more even and more temperate outlook.

The same argument was used, I remember—I was not in Legislative Council then—over 20 years ago when Sir Edward Grigg, the then Governor assisted, and rightly insisted, on building that magnificent building the Supreme Court, and in building the Prince of Wales School. Now, if there had been any hesitation at that time, Sir, it would have cost us many millions of pounds to put up those two buildings, which at that time, I think, were erected for half a million pounds.

I am always in favour of taking quick action and of going ahead and showing that we in this country have enough confidence in the growth of this country—that we will be able to bear easily the expenditure which is contemplated.

Sir, I beg to support.

MR. MATHU: Just a few words in support of the motion, because I think it has come as a surprise to some of us that there has been some opposition from hon. Members on this side of the Council.

I think it is in the English language "procrastination is the thief of time", and I do not think the hon. gentlemen who have opposed this motion would disagree with that very wise saying of the English people. Why should we allow this to drag on like this? It is true that we must watch expenditure, and keep it as down as possible, but this, I think, is a very vital expenditure, and even if it means pruning one way and pruning in another way to get the £150,000, I feel very strongly that we should go ahead as quickly as possible with the building of this Chamber.

Now, the hon. Mover did mention that we must, as far as possible, continue to maintain the dignity of the House of Commons of the United Kingdom. I do not think this hall, although it has served the country well for the last years, would continue to enable hon. Members to keep that dignity, and I think it is time now, in spite of the international situation or anything, that we should make up our minds and take a line—a firm line—and get this building going.

Sir, I support the motion.

THE CHIEF SECRETARY: Mr. Speaker, I can only say that I am rather surprised at the slightly mixed reception that this motion has received. With one possible exception, I thought that the principle of building a suitable chamber with the necessary offices and other facilities was accepted. The only doubt was how much the building should cost.

Now, Sir, it is quite correct that there are a very large number of needs in this Colony today. A short time ago, in a different debate, I was trying to make that point clear when some hon. Members seemed to suggest that there was no need for additional money.

I should be the last to suggest that, if this building is constructed, it will not mean that some other need will have to be eliminated. I have always made it quite clear in this Council that our needs are legion and that our pocket is extremely limited. There is no doubt that we have little hope of carrying out all the things that we would like to do. One of the reasons why, at the present time, the list is so long in comparison with the means of fulfilling it is the policy which was taken in the twenties and thirties when there was a campaign towards economy at all costs and for retrenchment. The result of that has been, Sir, that we have inherited a legacy of buildings to be done, many of which ought to have been built in the past. But I do suggest that a suitable Legislative Council Chamber in which, as we have said, the proceedings of the Council can be conducted with efficiency and dignity, is one of the first needs and one which we ought to do now.

Now, Sir, I can appreciate the misgivings of hon. Members who have seen the estimate increasing, but, as hon. Members know, the first estimate was not, in fact, an estimate at all. It was merely a figure which was given and it was not until we began to prepare plans that we were able to arrive at a reasonably accurate estimate of cost.

Now, it is true, as Members have pointed out, that the figure has increased from something in the region of £75,000 to £150,000, but I would point out that the scheme has been drawn up by a committee of this Council which has gone into the question very carefully and which has recommended what accommodation should be provided. I would also point out that if we are going to spend £80,000 in providing a permanent home for this Council, that it seems to be essential to provide a proper home while we are doing it, not a home which may be inadequate in a few years, but a home which will last for a reasonable length of time. This estimate, Sir, has been drawn to give a figure which, I believe, is a comprehensive figure in order that there should be no doubt at all as to what we are doing, because I think it would be wrong to decide the issue on a figure of £75,000 or a figure of £100,000 which would lead us into an expenditure in the long run of about £150,000. That would be misleading the Council and misleading the public.

Sir, as I have said, I do not think there is any doubt in the minds—possibly with one exception—of any hon. Member that we ought to provide a proper home, and that we ought to do it now. I would suggest also, Sir, that if we are going to do it, it would be a great pity to spoil the ship for a halfpennyworth of tar.

Sir, I beg to move.

The question was put and carried.

REPORT OF THE SELECT COMMITTEE ON COST OF LIVING ALLOWANCES FOR GOVERNMENT SERVANTS

(Continued)

THE SPEAKER: We were debating the amendment moved by the hon. Member for Uasin Gishu when the Council adjourned, and Mr. Patel, I think, was speaking.

MR. HAVELOCK: With your permission, Sir, and Mr. Patel's permission, Sir, may I intervene?

On the debate which has taken place both on the motion by the Government and this amendment—because they are very much interlocked—it seems that there is a certain amount of misunderstanding between hon. Members on this side—or, shall I say, amongst hon. Members on this side—as to the real reason for the amendment which has been put forward. I suggest, Sir, that, as the hon. Member for the Coast put it, he is entitled to his opinion with which I do not agree, but he put it very clearly, if the same cost of living allowance is given to an Asian, African or European on £300 a year, then it must be supposed that Government, who are suggesting that, that Government accept the

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fact that the standard of living of that Asian, African or European is the same. Now, Sir, that is the point that I made when I was speaking before on the main debate. I said then I was not prepared to say one way or the other whether it is the same or not the same, but neither am I prepared to accept, one way or the other, that at this present moment. In fact the suggestion of the Majority Report which, of course, is what is in this amendment now, was that there should be a differentiation that should be recognized—in other words, that that Select Committee did not consider that the standard of living of persons of the three races on the same salary were the same. They must have meant that by suggestion in the Report. Now, when I spoke before, Sir, and other hon. Members have taken me up and suggested I am being racial and all the rest of it, I merely said that this matter is a very important principle and is one that should be decided after a full and proper investigation and not on a snap vote, and on an amendment which has been brought forward at very short notice, to a Majority Report, by Government. I, therefore, ask, Sir, Government if they would give this assurance that they do not lay down by putting forward this amendment to the Majority Report, they are not confirming or not stating for all time that it is their opinion that the standard of living of persons of different races drawing the same salary is the same. Now, Sir, if that assurance can be brought from Government benches, I believe that the hon. Member for Ussin Gishu would be prepared to withdraw his amendment. I do hope I have made it clear. It is that principle which we do not think should be accepted without very close examination and the mere fact of bringing forward this amendment to the Minority Report seems to establish that principle and if Government does not mean to establish that principle, will they please give an assurance to that effect, in which case I am sure the hon. Member will withdraw his amendment.

THE FINANCIAL SECRETARY: Mr. Speaker, the——

THE SPEAKER: The hon. Member has already spoken to the amendment and I am afraid that he cannot speak again until something else is proposed—except, of course, by leave of the Council if they like to hear you, I have no objection. The rule of debate is that you have already spoken to this amendment once and you are not entitled to speak again.

THE FINANCIAL SECRETARY: I bow to your ruling, Sir.

MAJOR KEYSER: May I ask, Sir, that the hon. Member be allowed to reply to the question put by the hon. Member for Kiambu.

THE SPEAKER: Is there any objection by any Member?

MR. COOKE: Can we consent without amending Standing Rules and Orders?

THE SPEAKER: I think in the case of a quasi-minister, that is the usual practice.

THE FINANCIAL SECRETARY: Mr. Speaker, the question posed by the hon. Member for Kiambu bristles with difficulties. This question of standard of living is a very nebulous and elusive thing, but I will say this that whatever may be the answer to the question put, it is the Government's view that the scheme of relief put forward does not of itself involve the supposition of identity of living standards. I made that clear yesterday. The intrinsic amounts of allowances are based ultimately upon the salary structure which embodies the differential. What the Government is in fact saying is this that if you take, shall we say, an Asian doctor on £500 a year, then his cost of living commitments, with a similar rise—in fact the identical rise in the cost of living, are of the same order as a European on the same salary.

MR. PATEL: I rise to oppose the amendment but as far as I can understand, the hon. Mover advanced three reasons in support of his amendment.

The first reason he advanced was that there were no segments of salaries for the three races in giving cost of living allowances and he thought that by doing so the Government was not following the Salaries' Commission Report. Now, Sir, the Uganda Government and the Tanganyika Government adopted the Salaries' Commission Report and the principles laid down therein and they have also thought proper not to have

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different segments for the three different races, and thereby I do not think that those Governments have in any way departed from the principles laid down by the Salaries Commission. The three Civil Service Associations also advocated that there should not be different segments for the three different races in giving a cost of living allowance. Moreover, if we see the Minority Report put forward by the two European Elected Members, we notice that they have not even indicated different segments for the three different races. This is purely a question of giving relief in the lower income groups, and I do not see anything in it which differs from the salaries structure laid down by the Salaries' Commission Report.

Now, Sir, the question of the standard of living has been mixed up with this question of cost of living allowances. One can argue for an hour in favour and against this question of the standard of living but it is irrelevant to the present issue before the Council. However, Sir, when it has been put forward by so many Members on this side of the Council, one thing one would certainly like to say is that there could be no permanent divisions and lines drawn for this purpose. Anyone who has the intelligence to watch the development in this country could see that the standard of living of the Asian community for instance has certainly gone much higher during the last 25 years and it is largely a question of the income of a person and the opportunities which he can have, and therefore nobody could consider to have permanent divisions and permanent lines laid down for this purpose. But more than important for a thing like this is to make an effort to see that the standard of living at the lower end should rise, and the standard of living which in my view is too high at the high end considering our national income, should be controlled, and for these reasons I believe that the arguments raised in regard to standard of living are not valid. The hon. Mover gave a warning to the Asians and African Members that by doing this the Asians will invite the competition of the Europeans, and the Africans will invite opposition from the Asians and it will be against the interests of Asians and Africans to accept a thing like this. The only thing I can say, Sir, is that we have heard that argument very often from certain Members and I can only say, "save us from our friends".

The question that the words proposed to be deleted stand part of the motion was put and, on a division, carried by 27 votes to 6. Ayes: Messrs. Adams, Anderson, Carpenter, Major Cavendish-Bentinck, Messrs. Chemallan, Cooke, Davies, Col. Ghersie, Messrs. Gillett, Hartwell, Hobson, Jeremiah, Madan, Matthews, Mathu, Sir Charles Mortimer, Messrs. Ohanga, Padley, Patel, Pritam, Dr. Rana, Mr. Rankine, Sir Godfrey Rhodes, Messrs. Salter, Shatry, Thornley, Vasey. 27. Noes: Messrs. Blundell, Havelock, Hopkins, Keyser, Maconochie-Welwood, Lady Shaw, 6. Did not vote: Messrs. Preston, Usher, 2. Absent: Messrs. Nathoo, O'Connor, Salim, 3.

LIEUT.-COL. GHERSIE: Mr. Speaker, I rise to support the motion. It may come as a surprise to certain hon. Members and in particular to hon. Member for Central Area who was a little premature in making comments on the opinions that were expressed by Members on his right, and, Sir, if my memory serves me correctly he made some reference to the fact that the Majority Report savoured of racial discrimination. Now, Sir, it was only a few years ago that this expression "racial discrimination" has entered into this Council and I suggest that it is most regrettable that certain intelligent and responsible people on every possible occasion should endeavour to interpret some racial intention behind genuine and well considered proposals.

Now, Sir, if we look at the Report of the Majority Committee we find that there are five signatories, three of whom are non-European and two European, and the latter two Sir, are hon. Members on the opposite side of the Council. How then, Sir, can the question of racial discrimination arise on this particular case? I submit, Sir, it is these ill-considered statements which do untold harm to racial relations in this Colony. (Hear, hear.)

Now, Sir, I do intend to support this motion but I do so, and I wish to make it perfectly clear that I regard this relief as a temporary measure and I regard it

[Lieut.-Col. Ghersie]

as a Cost of Living Allowance only and not a measure intended as a means to increase or stabilize salaries. Well, Sir, I would have subscribed to the family allowances as recommended—in the Minority Report, but it appears from the evidence submitted to the Select Committee that the Civil Service Associations themselves did not subscribe to this point of view.

Now, I can fully appreciate the argument against the principle that "segments of salary on which the various percentages shall apply shall be the same for officers of all races". But, Sir, I believe in equity that principle should be applied in particular to officers in the lower income groups and I have in mind the average Asian or African earning something between £200 and £300 a year, *vis-à-vis* the European in the same income group, and I submit, Sir, that the African or Asian of that particular income group is a mature person with a family and with it the associated financial responsibility, whereas the average European is a young fellow who may be employed as an apprentice in workshops or alternatively as a young clerk, living possibly with his parents, and, therefore, his commitments are infinitely less.

Now, Sir, it has been stated by the hon. Mover and certain other hon. speakers, that it is Government's intention to inquire into the whole position. They feel that in order to implement these recommendations it will be necessary to effect economy in the Civil Service and I would suggest, Sir, that when this investigation takes place that they might even consider increasing the emoluments of certain individuals who are prepared to undertake additional duties. It may be, Sir, that there are two such individuals for instance who could perform the duties of three or more present officers and I do believe that economies could be effected in the Civil Service without unduly affecting the efficiency. Now, Sir, there is one other aspect which I think is very important in this connection, and I have reason to believe that the Civil Service is not a very happy and contented organization and I think if an inquiry is to be undertaken that aspect of the case should also be considered, because we will never obtain satisfaction in this Colony if these two factors remain, the financial embarrassment and discontent. The blocking of promotion created by the retention of certain officers long beyond their period of retirement, bitterness which is created by the employment of personnel from the United Kingdom on far more attractive rates of pay than those applied to employees in the Civil Service who have many years in the Civil Service behind them.

THE SPEAKER: The hon. Member seems to be going rather far from the terms of the motion.

LIEUT.-COL. GHERSIE: I beg your pardon, Sir, I was merely making these statements on the understanding that there was to be an inquiry.

Sir, when this position is examined, as other hon. Members have recommended I hope the Government will also consider the reduction of customs duty in conjunction with or as opposed to any further increase in a Cost of Living Allowance and I would like to say a little more about that, but apparently I am out of order.

I think it was the hon. Member for African Affairs who stated that even a man he had ten wives or ninety children he would still recognize them.

MR. MATHU: Yes, I think I said that. I would like them to be given a Cost of Living Allowance if the principle of family allowances were accepted.

THE SPEAKER: What I am trying to get at is that there is a distinct rule which it is my duty to enforce, Standing Order 43, sub-rule 5. The last line of that is "the debate must be relevant to the last question proposed until it has been disposed of". Now there have been debates on amendments but you have no right to take up any matter which was raised in the debate on the amendment in order to make a speech about it now on the motion. If you will look at 43, sub-rule 5 you will appreciate the point at once.

LIEUT.-COL. GHERSIE: Thank you, Sir.

I wish to support the motion. (Laughter.)

MR. BLUNDELL: Mr. Speaker, I beg to support the motion.

There are just a few remarks I wish to make on it. I do not think that anybody can deny that in the present stage

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of the lower grades of civil servants there is a necessity for some such measure of this sort. I am not at all sure that in making the rather sweeping suggestions which we are asked to adopt, we are not going against the terms of reference of the Committee in that they were asked to consider the question of hardship. I think that owing to the speed with which we have had to make a decision in this matter, we are accepting proposals which rather eliminate that.

THE DIRECTOR OF ESTABLISHMENTS: Mr. Speaker, the terms of reference of the Committee did not make any reference at all to hardship.

MR. BLUNDELL: I beg your pardon. The eloquent hon. Movers of the Minority Report convinced me the whole matter was on hardship.

MR. USHER: Mr. Speaker, please may I make it clear that—and I have just read the account of the speech I made yesterday—the word "hardship" was not mentioned by me at all or intended to be mentioned. I believe it was also not mentioned by the hon. Member for Nyanza.

MR. BLUNDELL: I accept the hon. Member's explanation but somehow the matter of hardship is indelibly fixed in my mind.

Mr. Speaker, I shall have to start again.

I rise to support the motion. I am of the opinion that for the lower grades of civil servants at any rate there is most urgent necessity for some such measure of this sort. I am a little confused now, Sir, on the question of relevancy but as the report was laid with the memorandum by the civil servants attached—I would like to make one comment on the memorandum. It is this. It is a fallacy in my view to take as absolute the standard for the assessment of Civil Service salaries, the purchasing power of the pound in 1939. I just want to make that point so that when we have to review, as we may have to in the future, the whole question again, that particular point will be left on one side. In my view the period from 1930 to 1939 was characterized by an unusually high value in purchasing power of the pound which caused amongst many people on fixed salaries the idea that their salary was worth a great deal more than in effect it really was.

THE FINANCIAL SECRETARY: Mr. Speaker, on a point of explanation, I think it was made quite clear in the opening speech introducing the motion that the starting point in calculating what rise in the cost of living should be made, the subject of a scheme of relief, was the introduction of the revised salaries in 1948.

MR. BLUNDELL: Mr. Speaker, that was made quite clear but nevertheless it was made completely clear in the memorandum which was attached to the Report which is placed before this Council, that some civil servant was of the opinion that the starting point should be the purchasing value of the pound in 1939, and I was merely trying to reinforce the view of the hon. gentleman opposite, that was all.

Now, Sir, this in my view is a short term policy and I just want to say what I consider are one or two dangers which may arise. One of the things I fear the most from this proposal which is going to cost us £800,000 is that the cost of the Service may become excessive to the economy of the Colony. Now, if that happens there are only two things that can follow. Either we shall have to do with a smaller Service or we will have to have a deterioration in the standard of the Service. It is that latter point to which I just want to draw the attention of hon. Members. There is a great danger, if salary scales in an initial step as the cost of living allowances rise, there is a great danger that we may be forced to accept the deterioration in the quality of officers. That can come about by various means, but I would draw hon. Members' attention to the progressive declining of the standard of the Civil Service in a country such as France where you have a progressive decline equally in the purchasing power of the franc. Because of that, I would wish just to ask the hon. Member for Finance when he replies, to give us an assurance that he will examine the long-term implications of the recent economic set-up in the world in regard to the Civil Service.

The hon. Member for Nyanza in speaking to his Minority Report touched upon matters which, I think, are very pertinent and the sort of thing I have

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in mind are this. I do not wish to commit myself now, because I personally, am against the question of subsidies, but it does occur to me that instead of having a bill of £830,000 on cost of living allowances, it might be possible to have exactly the same effect by subsidy on transport, for instance, to allow a better public service within the capital town here, and if necessary, other towns. I would like to reinforce what the hon. Member for Kiambu said, which is that the cost of the Service in terms of leave should be examined, not, I stress, to reduce anybody's entitlement to leave, but to see whether it cannot be made in a form that would cost us less in actual cash. And, thirdly, I would like consideration given to whether our whole set-up of the Civil Service, of giving them a plot of land and a house which may not be constructed on labour-saving lines, which automatically forces the officer concerned to employ a gardener in the case of Europeans at any rate, whether all those policies are correct. In short, what I am asking the hon. Member for Finance, when he replies, is not merely to say, "Accept the £800,000, grin and bear it", I am asking him to give us a constructive approach to this problem on a long-term basis and I wish to go back to what I said originally, which was this. Unless we can make the cost of the Civil Service cheaper only two things can happen. Either we have less of the Civil Service, which means less service to the public, or we must face in my view, a constant deterioration in standard.

Now, in either case, I regard those measures as possible calamities and I think it is incumbent upon us not to accept £830,000 politely as a matter of course, that people must have it, but to examine other methods which will eventually eliminate this charge, because, make no mistake about it, this charge will go up year by year until there is a readjustment really of the salaries scale.

With these words, I support the motion.

MR. COOKE: Mr. Speaker, I think civil servants should be grateful to Government for taking prompt action —and I am sure they are grateful—following the Select Committee Report and I hope they will receive in the right spirit these suggestions, recognizing at any rate that they are all subject to adjustment this year.

Now, Sir, when I congratulate Government for bringing this in so promptly, I think the general public would also congratulate Government if it had discussed in this Council what I may call, the Vasey Report on the Cost of Living, which had some very—I won't say valuable suggestions, they may and may not have been valuable suggestions—but had some original suggestions concerning the cost of living I think it has shown certain amount of flouting of the authority of this Council that in the three months that have passed, this very valuable cost of living report has not yet been discussed. (Hear, hear.)

Now, Sir, the position I take with regard to this report is that these are cash payments and we must, by some other means, find alleviation for married people and I suggested yesterday, in one of the amendments, certain ways of relieving married people, but I would just put three or four points this morning.

I agree with the hon. Member for Nyanza that there should be a reduction in school fees. I think that is one of the direct ways of helping people with children. I think we should look into income tax allowances again to see if we can help the married people. I think, Sir, it has been suggested at the Women's League meeting that we should have some kind of introduction in this country of utility clothing, especially utility clothing for children, and finally the matter of subsidization of foods, but I am not going to deal with that now, because I am bringing a motion later on in this session with regard to subsidization of foodstuffs, with special regard to maize.

Now, Sir, before I sit down, I am going to move one very small amendment and that is to add to the present motion that is before the Council, "and that these payments shall back-date to 1st November, 1950".

Now, Sir, the reason I am advocating this retroactivity is this. Unless you acknowledge the principle of retroactivity, I think you are pushing on the loyalty of civil servants who bring in

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progress to Government for the increase in the cost of living allowance, and Government for some reason or other, perhaps to pressure of business or perhaps to unwillingness of someone or other, do not press on with that question and I think that civil servants are unfairly penalized when that happens.

Now, I note that the civil servants will probably make a good case to November, 1949, following the devaluation of the pound, but I am not going to suggest that this morning, but I am suggesting this amendment, that it should back-date to 1st November, 1950. It would only mean retroactivity of two months, but it is something.

Sir, I beg to move.

THE FINANCIAL SECRETARY: Mr. Speaker, may I have your ruling, Sir, as to whether this amendment, coming from the opposite side of the Council, is in order.

THE SPEAKER: There is not yet a motion.

MR. MADAN: Sir, I will second that and reserve my right to speak.

THE SPEAKER: You have already spoken to the motion.

MR. MADAN: With respect, Sir, this is an amendment.

THE SPEAKER: There is no amendment yet proposed. You have spoken once to the motion and you are not entitled to rise and second this amendment.

MR. PRITAM: I will second it, Sir.

THE SPEAKER: You must continue if you want to go on.

MR. PRITAM: I reserve my right to speak.

THE SPEAKER: You cannot reserve. You must go on if you want to go on.

MR. PRITAM: Mr. Speaker, as I am one of the signatories of the Majority Report, so naturally I can claim to know something about the evidence that we have before us. No doubt, for various reasons, it was decided by the majority that there should be no retroactivity and the cost of living allowance should be paid from 1st January, 1951, but knowing, as I do, and some other Members do, that some civil servants are in dire distress, by payment of this allowance, naturally they will be able to make ends meet, but any debts they have already incurred will continue to stand against them. By paying them two months' allowance from November I do not think Government will be incurring very heavy expenditure and this good gesture will go largely to satisfy our civil servants, no doubt, who have been agitating for a rise in their salary for 14 months, and it is only now that they have been able to awaken Government to their responsibility.

I need not say much about it, although enough has been said about cost of living, standard of living, and so on and so forth. I would speak with authority so far as Asians are concerned. Very little is known about the Asians—how do they manage to pay for their foodstuffs and how do they manage to live? All these things go a long way to increase the cost of living. With all these controls, Sir, we have got so many still in existence, Asians and Africans are compelled to buy their foodstuffs from the black market. I could mention, for instance, ghee, rice, even butter and sugar they must obtain. We have got controls, if you go to the Controller, he does not help us. As for housing, those lucky servants who have got Government houses, well and good, but those who have not got, Sir, they have still got to pay key money. All these things make life very uncomfortable.

With these few words, Sir, I support the amendment.

THE SPEAKER: A point of order has been raised that this amendment will not be in order as it will increase the charge or alter an existing charge and no such amendment can be proposed except with the consent of the Governor. I would ask the hon. Mover whether he has obtained that consent.

MR. COOKE: No, Sir, but I informed my hon. friend the Financial Secretary I was bringing this amendment and I should have thought that out of courtesy he would have informed me that he was taking up this line. I should have thought that out of ordinary courtesy he would have informed me he was taking the line that he is taking now. If that is the position he is taking up, of course, I have nothing further to say.

THE SPEAKER: I am afraid I must rule that amendment out of order. The debate on the motion will continue.

THE SECRETARY FOR COMMERCE AND INDUSTRY: Mr. Speaker, in rising to support the motion, I merely want to refer to a remark made by the last speaker, the hon. Member for Western Area. He stated that the cost of living of Asians and Africans was very greatly influenced by the fact that they were obliged to deal on the black market. He also implied, Sir, that the controllers responsible for dealing with the black market sat back and did nothing. Now, Sir——

THE SPEAKER: It is not possible for me, especially with the acoustics of this building to interrupt every Member on every irrelevancy, but there is no necessity to reply to irrelevant matters which have been raised in the course of the debate.

MR. MATHU: Mr. Speaker, in rising to support the motion before the Council and to congratulate the Government on the action that they have taken to introduce this motion before the Council, there is one point I would like to explain.

As a member of the Select Committee, it has been hinted to me directly or indirectly, that it would be improper for me to support this motion because it departs from the recommendations of the report which I signed.

Now, Sir, I do not think that that is quite a true position, because the members of the Committee know that we discussed every aspect of this problem in the Committee and we even had an idea of a scheme such as the one which the Government has put forward. But as we wanted to do something quickly we hated to see the possibility of three Minority Reports, or even four Minority Reports. It would have been impossible to debate them and in order that we could come to some agreement, we thought that the scheme we put forward was quite satisfactory. So, I do not think there is anything embarrassing to us because the motion is, in spirit, actually what we had in mind, and in that way, Sir, I think it clearly fits in with our understanding.

I beg to support.

THE DIRECTOR OF ESTABLISHMENTS: Mr. Speaker, I hoped, that when I [illegible] that the Member for Finance was going to move this motion, that it would be unnecessary for me to speak on it. However, there are a few points which have been raised by Members on the other side which I have been asked to deal with.

The Member for Kiambu made three suggestions regarding conditions of service. They were, firstly, that the [illegible] should be extended (I think he suggested six years) and that some pay adjustment should be made in compensation for that. The second was that leave should be more frequent and that it should be shorter; for that reason he thought that replacements would be needed. The third suggestion was that at some future date recruitment from outside Kenya should be confined to a small number of posts; that the expatriate officers should be on an agreement; and that the bulk of the service should be recruited from locally domiciled people. I am not going to discuss those suggestions in detail because, as the Council knows, the present conditions of service were discussed very fully at the time we debated the report of the Holmes Commission in September, 1948. If there is to be any fundamental alteration in the conditions of service which were then agreed by this Council, I think that a similar full and careful consideration by some similar body to the Holmes Commission would be necessary. But, Sir, it is necessary to say something in regard to the third suggestion. Of course it is quite a normal development in all Colonial territories that little by little recruitment from outside the territory is confined to a small number of posts and the bulk of the service is recruited from domiciled people. My own opinion, Sir, is that it will be a very long time before it is possible in Kenya to find suitable people for all grades from locally domiciled communities.

MR. COOKE: They are not coming forward even now.

THE DIRECTOR OF ESTABLISHMENTS: Now, Sir, another point which was raised by the hon. Member for Kiambu was the question of the remuneration of women; I think he suggested that they should be paid the same scales as men doing the same work, and I believe he

[The Director of Establishments] referred to the fact that female doctors at the present time get the same pay as men. There again, Sir, this was very fully discussed at the time of the salaries revision and we decided, for reasons which I think are very cogent reasons, that women should be paid four-fifths of the corresponding scale for men. I personally believe that there are very strong arguments in favour of continuing that arrangement.

The hon. Member for Kiambu also referred to the standard of living, and suggested that members of the public service will have to draw in their horns, and accustom themselves to a more austere way of life. I can assure him from my own personal experience and from my knowledge of other people in the public service that that process has already begun and has gone a very long way. I think all public servants, unless they happen to be lucky enough to have a private income, have in fact very considerably modified the way of life that they had formerly become accustomed to during the last few years.

The hon. Mr. Ohanga, Sir, referred to paragraph 14 of the Majority Report, particularly the latter part of it in which the majority of the Committee said that the allowance should not, in their opinion, apply to unskilled manual labourers and other temporary staff who are paid at current market rates. Now, Sir, I regard it as absolutely essential on practical grounds that the present practice whereby a large number of temporary employees (who may be manual labourers) are paid at the current market rate for the area in which they work should be retained; that arrangement must, in my opinion, be continued. It would be quite impracticable for the Government to attempt to fix the rate of pay for all these people in the various parts of the Colony. The remuneration of these people is not left entirely to the free play of ordinary economic forces, because in some urban areas, a minimum wage is fixed, and of course that has repercussions on labourers in the immediate vicinity of the areas where the minimum wage applies. Secondly, one of these temporary employees (whether he is a manual labourer or not) after he has completed a year's service can (under the arrangements which were approved by this Council at the time of the Salaries Revision) become what is called a minor employee; in that event he comes on to a regular scale and will qualify for cost of living allowance.

Two Members on the other side referred to the meeting which the civil servants held following the tabling and publication of these Reports. I personally, Sir, agree with Mr. Patel, the hon. Member for Eastern Area, that we should welcome the collaboration which has occurred on this occasion between the three associations. So far as I personally am concerned, I do welcome it, because I am sure it will facilitate and expedite the negotiations which are always taking place between the Government on the one side and the Services on the other. Some reference was made to the language which was used at the meeting of the associations. I suggest that in the heat and passion of rhetoric people do use extravagant language which they might not use in cooler moments. I have even heard it from Members of the other side of the Council, but nobody takes it very seriously. I suggest we should extend the same tolerance to the civil servants.

The hon. Mr. Mathu explained why he saw nothing wrong in agreeing to this amendment, which is a little more generous as far as the lower grades of service are concerned than the Majority Report. It is, of course, true, Sir, that there were a great many differences between the Members of this Committee. A lot of compromise was necessary. People had to make concessions. This was necessary to get this Report signed by five Members. It is, however, true that we all agreed on two essential points, which were: firstly, that *some* relief was necessary; and secondly, that it was urgently necessary that some settlement should be made soon. It was for that reason that certain Members who signed this Report had to make concessions, in order that it could be signed. I think Mr. Mathu's explanation is a perfectly satisfactory one.

Sir, I beg to support the motion. (Applause.)

Council adjourned at 11 a.m. and resumed at 11.15 a.m.

THE FINANCIAL SECRETARY: Mr. Speaker, I have the impression that this

[The Financial Secretary]

Council, having most exhaustively debated and discussed this very complex problem, is not anxious for an undue prolongation of the debate. I, therefore, intend to be brief.

To summarize the outcome of the debate, I think it can be said that there is unanimous agreement to the proposition that there must be some relief for Government servants, some monetary relief, and, as I anticipated in my opening speech, the main differences of opinion have centred on what kind of scheme should provide that relief. The two main differences were in relation to a marital differential, that is to say, a system of marriage allowances, and number 2, the question of the segments on which the percentages of relief should be calculated. Those two main points were made the subject of amendments to the main motion. Now, Sir, both these amendments were lost after very considerable debate and I do not, therefore, Sir, intend to deal with them further. There are, however, a number of ancillary points and, in winding up this debate and to the extent that these points have not been referred to by other Government speakers, I shall make some reference to them.

Now, Sir, in relation to the intrinsic problems before us, perhaps the two outstanding remaining points are the question of retroactivity and the question of the future—that is to say, the question of a review.

On the question of retroactivity, some Members have suggested that, inasmuch as the cost of living has been rising steadily since the Holmes Commission Report was adopted, some retroactivity ought to be granted to cover the period prior to January 1st, 1951. Now, Sir, the Report of the Select Committee dealt very carefully with this point and the Government agrees with its conclusions. I will again draw attention to the conclusions reached by the Holmes Commission which was to the effect that the new scales should be a permanent settlement and were not to be subject to review on account of an increase in the cost of living. It is during the debate on that Report that the principle of review, after a substantial increase had occurred, was accepted. The Government, and indeed this Council, have accepted that such a substantial increase has, in fact, occurred; but in the debate to which I have referred, there was no suggestion of any retroactivity to cover the pe… during which the cost of living was in fact rising to that substantial increa… I would also point out to hon. Memb… that although the Select Committee whose report is now under debate found an increase in the cost of living of 17½ per cent, the percentage recommended on the lowest segments is 20 per cent. The increase above the absolute percentage representing the increase in the cost of living must be regarded, as to some extent offsetting the claim for retroactivity and I must make it clear that beyond this offset, the Government does not feel justified in going.

Now, Sir, in regard to the question of the future and the question of a periodic review, some hon. Members have suggested that there should be an automatic review every six months. I would refer those hon. Members in question to the remarks I made in opening the debate. I said—"it is true that, as everybody knows, unfortunately the cost of living is still on the upward trend but, nevertheless, I think we must regard an allowance of this kind as in the nature of an award and *unless there is an abnormal rise in the meantime*, such an award must persist for a reasonable period of time". The important words in this behalf are—"unless there is an abnormal rise in the meantime".

Mr. Cooke: Who is going to define that abnormality?

The Financial Secretary: If the hon. Member will let me enlarge upon that I think he will be satisfied.

By these words Government has made it quite clear that should such an abnormal rise occur there would be an immediate review. Now, Sir, on the question of what would be considered to be an abnormal rise, the question is one of some difficulty, but I would suggest that as a yard-stick a ten-point rise in the Retail Price Index would justify a review of the kind I have in mind. I hope, Sir, a yard-stick of this kind, an assurance of this kind, will reassure those hon. Members who have doubts upon this subject.

Now, Sir, certain hon. Members have, I think, quite rightly, pointed out the

[The Financial Secretary]

…creased emoluments is not the best way of solving the cost of living problem. With those sentiments, Sir, I agree, and I think everybody will agree with me, that, while we must do everything we can to retard the rise in the cost of living, it is too much to expect that, with the world inflationary forces arrayed against us, we can altogether arrest that upward rise. This being so, Sir, it seems to me inevitable that we must recognize that Government servants must have relief in regard to that upward rise in the cost of living which all our efforts have been unable to prevent. I think it was the hon. Member for Nyanza who exhorted the Government to examine ways and means of reducing the cost of living via the tariff structure. Now, Sir, I think hon. Members will recall that during the Budget very considerable attention was paid to this method of solving this cost of living problem and, as far as I remember, the very hon. Member who now is exhorting the Government to do this was not altogether in favour of that system of solution. I can, however, assure him, Sir, that this aspect of the problem is under the most constant review. Superficially it is temptingly easy to produce a reduction in the cost of living in this way. It may seem easy to solve the problem by some such reduction as this, but I must make it quite clear to this Council that reductions of this kind, although they may contribute to the special problem before us, often bring very much more difficult problems in their train and the question of the balance of advantage is a very delicate one indeed. That point must be fully appreciated by hon. Members opposite before they lightheartedly suggest that we should alter the tariff in order to produce a drop in the cost of living.

I think it was also the same hon. Member, backed by other hon. Members, who pressed that price control should be rigorously enforced. I can assure him, Sir, that price control *is* being rigorously enforced. I must remind him that up to, about, September of last year, 1950, the policy of the country, backed by this Council, was to run down the organization of price control and, as a result of that policy, a very considerable proportion of the trained staff constituting that control was dispersed. It is no easy matter, in the short time that has elapsed since then, to build up again an organization to the same strength, but I may say that every effort is being made to restore an efficient organization. Perhaps the hon. Members who made this point are unaware of the fact that, since we changed our policy, a very large proportion of the goods which enter into the economic well-being of this country, have again been brought under control, and, moreover, measures are under way to extend that control to everything of real importance to this country. Moreover, active measures to increase the powers and to increase the enforcement staff of the control are also under way and I can assure the hon. Members concerned that it is the intention of the Government to make this control an effective weapon in the fight against the cost of living.

The hon. Member may also be unaware that public opinion is being organized by the formation of Cost of Living Vigilance Committees. A start has been made in Nairobi and it is intended, if this experiment proves a success, to extend this system to other appropriate parts of the country. Moreover, it is our intention to press that persons convicted of black marketing offences and other crimes against the State shall be rigorously punished. (Applause.) Once again, however, I must appeal to the public for its co-operation because, without the public opinion and the moral fibre necessary to produce that opinion, the effectiveness of the control must be very much reduced.

Now, finally, Sir, certain hon. Members have expressed apprehension about the cost and how that cost will be met. I have already expressed the determination of the Government to close as much of the gap in 1951 as is possible by economies without disrupting existing services. As for 1952, I have made it clear that the cost must be entirely absorbed into the Budget even if this means a reduction in services or increased taxation or a combination of both. The country, must, however, fully appreciate precisely what is meant by a decrease in services and I can assure hon. Members that this is not an exercise to be lightly undertaken.

[The Financial Secretary]

With regard, Sir, to the remarks which have been made about the standard of living, it is quite obvious that everybody in the world today, if he wishes to maintain his standard, has got to put forward that extra effort to maintain it. As far as Government servants are concerned, it is quite clear that if we maintain existing services notwithstanding economies, then Government servants, in common with everybody else earning his own living, has got to work that much harder in order to maintain that standard.

Mr. Speaker, I beg to move.

The question was put and carried.

BILLS

SECOND READING

The Registration of Persons (Amendment) Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Registration of Persons (Amendment) Bill be read a second time.

This Bill, Sir, comes before Council in accordance with the undertaking given by myself as Acting Chief Secretary in August last year at the conclusion of the debate on the Glancy Report. The Government has, Sir, as it then undertook to do, very carefully considered the views expressed during that debate and the voting which was recorded on the division and the policy which it has decided to recommend to Council is contained in the provisions of this Bill. I said then, Sir, during the course of that debate, *Inter alia*, as follows: "I want also to make it absolutely clear in case there should be any possibility of misunderstanding, that Government will consider itself as entirely free in framing the policy which will have to be passed into law to give effect to any of the recommendations in this Report". The more I read those and other words, Sir, which I uttered on that occasion, the clearer and more unambiguous they seem to me to be. (Laughter.) I repeat it—the clearer and more unambiguous they seem to me to be. I am underlining them once again to-day, Sir, because hon. Members opposite have persisted that they did not understand what they patently mean.

It has also been said that people in the country were left in doubt as to the intentions of the Government in this matter at that time. Sir, I am very sorry if—and I am not going to say that it was not there—there was any doubt in the minds of people in the country as the attitude of the Government at that time. But here again, I cannot accept responsibility for this state of affairs on the part of the Government. In a report of the debate last August in the issue of the *East African Standard* dated 17th August these words appear in the summary of the proceedings of the last day of the debate: "The Acting Chief Secretary, Mr. C. H. Thornley, told Council that Government was not committed in any way as to the provisions to be included in that Bill". Later on in the same report were these words: "Mr. Thornley then went on to explain why the motion had been put forward. Government had believed that it was complying with the wishes of all Unofficial Members, all of whom had been in agreement with the appointment of a Commission. Government now proposed that the motion should be put to the vote and Government Members would support it. Mr Thornley added that if the motion were passed, Government would consider itself entirely free in framing the amending legislation. The amending Bill would be put forward as soon as possible". And that, Sir, is a perfectly clear and, if I may say so, a fair report of what I said in my speech at the conclusion of the debate, and it seems to me to be quite clear and completely unambiguous.

In order, however, to lay emphasis on the position of the Government over this matter—I imagine this was the reason for it—the *East African Standard* later in the same month put certain questions——

MR. HAVELOCK: On a point of order, Mr. Speaker, is the hon. Member in order in repeating what we have discussed in a previous motion about three days ago?

THE DEPUTY CHIEF SECRETARY: On that point, I am trying to explain why, Sir, this Bill, the second reading of which I am moving, is coming forward.

MR. COOKE: I think, Sir, order or not in order, I think it would be desirable that these matters should be cleared up by the hon. Member.

THE SPEAKER: I do not wish unduly to restrict debates at all. This is a highly controversial matter and I think the greatest possible freedom should be allowed to both sides of the Council to discuss it. There is, of course, the principles of the Bill that are the proper subject for the debate. There is always the opportunity for any Member if he has any personal explanation to make to make it without raising any debate upon it. That is under another rule. I do not want to rule you out of order. All I ask is that we do confine it as far as possible to the Bill.

THE DEPUTY CHIEF SECRETARY: Well, Sir, I have no desire to weary hon. Members with a recital of the publicity which was given to this matter at the time but I was anxious to make it clear, as I do not think has been made clear, that not only the Hansard report of the debate but the reports which have appeared in the Press did make the Government's position quite clear. I will not, as I had intended, Sir, read out the notes which I gave to the questions asked by the *East African Standard* as I had intended, but I would just like to say that they are there verbatim and in full in the edition of the newspaper dated Friday, August 25th last year in considerable length and I do submit that if—and again let me say, I very much regret—if there was any misunderstanding of the Government's attitude then in the country, then I do not think that the Government can be held responsible. It must have been clear to anybody who had read the reports of the debate and the reports in the newspapers what we were going to do . . .

MR. BLUNDELL: Mr. Speaker, I am very hon. Members on this side of the Council do not wish to prevent the hon. Member from stating his case as fully and fairly as he thinks necessary. I would not like the hon. Member to feel that he was prevented from saying what he felt was really necessary for the presentation of his case.

THE SPEAKER: If there is a matter purely personal to yourself, you can make it under the guise of personal explanation not raised during the debate. If you are allowed by me to raise the matter on the principles in the course of the debate, then, of course, I cannot rule other people out of order if they take it up.

THE DEPUTY CHIEF SECRETARY: I have said all that I wish to say and I am sorry if it has wearied hon. Members and I am grateful to the hon. Member for Rift Valley for what he has just said.

Turning to the provisions of this Bill, there is no provision in it regarding an alternative method of identification to fingerprints and I do not propose to mention this. There is, however, provision in the Bill for a Voluntary Record of Employment for employees, and hon. Members will remember that that was the second of the principal recommendations in the Report.

Clause 4 of the Bill introduces the necessary provisions to give effect to that decision. Now I know, Sir, that the decision to include this provision is not in accord with the wishes expressed by hon. Members representing African interests opposite, and I would like to assure them that their views on this matter were given very careful consideration by Government before this decision was reached, but the fact remains that there are very many people, very many Africans in the farming areas and in the reserves, whom we believe want to be able to have such continuous records of employment. I am informed that something like three-quarters of a million have retained their old *Kipandes* which Government can only take to mean that they have some value to them. The confusion resulting from the 1947 Ordinance over this matter so aptly described last May by the hon. Member for Rift Valley, of whose words we were reminded by my hon. friend, the Member for Law and Order, a fortnight ago, still exists. It is the intention of the Government, Sir, to remove this confusion by the legislation now before the Council. My hon. friend, Mr. Mathu, last year expressed a fear that although he recognized the voluntary nature of that particular recommendation in Sir Bertrand Glancy's Report, he expressed the fear that it would in fact become compulsory because employers would be inclined to take the line that

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they preferred to employ the employee who could produce such a record. Well, Sir, I can only say on that point that that probably would be so if in fact large numbers of Africans elected to have these voluntary records, and if large numbers of people do so elect; then, Sir, the Government view is that that would be proof positive of the value of those records to those people, and ample justification for the provision which has been put in this Bill. On the other hand, if the numbers so electing are few, then employers would have no alternative but to give employment to persons who have no such continuous record, and I would emphasize once again that the provisions in this Bill regarding this voluntary record seek to compel no one to possess one. The provisions simply will allow an employee who wants it to have a voluntary record of his employment, and, Sir, the Government has felt unable to agree that an employee who desires such a record should be prevented by legislation from having it. That, Sir, is the reason why this recommendation now comes before the Council.

The other clauses in this Bill, Sir, 2, 3, 4, 5, 6 and 7, are fully explained in the Objects and Reasons, and require, I think, no comment from me.

Sir, I beg to move.

THE SOLICITOR * GENERAL: Mr. Speaker, I beg to second, reserving my right to speak later.

MR. SALTER: Mr. Speaker, when the recommendations of the Glancy Report were adopted by this Council on the 16th August, 1950, everyone—at least everyone outside Government—thought that a solution had been found which they believed would put an end once and for all to the bitter controversy over fingerprinting. The Bill now before this Council, by its omission to make any reference whatsoever to that part of the Glancy Report which recommends an alternative to fingerprinting, again throws into the arena the whole of that fingerprinting issue. I do not believe for one moment that I am at all exaggerating when I say that there are thousands of people in this Colony who regard that issue as vital to the future progress and harmony of this Colony. It is truly astounding, Sir, that, for such slender reasons as appear from the Memorandum of Objects and Reasons to this Bill, the Government should, especially at the time when surely there was never a greater need for unity in this Colony, have thought it right to disregard the recommendations of that part of the Report, to treat as of no account the resolution of this Council adopting them, and to run the risk of again reviving hostility and bitter dissension in this country, and inflaming more than ever before the feelings of the people in it.

Now it is with the object, if possible, even at this eleventh hour, of preventing Government from igniting that explosive material that I now give notice that I shall move in the Committee stage of this Bill the amendments to it which have been tabled, and which give effect to that part of the recommendations of the Glancy Report which provide a method of establishing the identity of an individual with a sufficiently close approach to uncertainty by means other than fingerprints.

I do not at this stage wish to deal with the rather tedious arguments as to why Government claim their freedom of action in this matter. It seems to me far more relevant and more important, Sir, to consider the reasons given in the Memorandum of Objects and Reasons why they have omitted this material part of the Report, rather than to discuss the reasons why they claim they are entitled to do so. Now, if one looks at the Memorandum of Objects and Reasons, it would appear that there are three main reasons why Government seek to explain—I cannot call it excuse—this vital omission. The first is the views expressed in Legislative Council, the second is the voting on the motion for the adoption of the Report; and the third is the changed situation since the Report was published; and connected with that is the introduction of the Bill for National Service, where it is said that the most efficient system of national registration will be essential.

May I, Sir, with great brevity, refer to each of those reasons in turn. Now, if one deals with the first one—the views expressed in Legislative Council. I do not propose to refer to all the views expressed, but I will take, if I may, a kind of cross-section, and I would like

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refer first of all to the hon. Member for Eastern Area, Mr. Patel, who on the 15th May is reported in Hansard, column 162, to have summarized his reasons for opposing the motion as follows: "Firstly because I am against any form of registration, and secondly because once we accept the principle of national registration the only method of doing it efficiently is by finger-printing"; in other words, no national registration, but if you are going to have it, fingerprints. The hon. Member for Eastern Area, Dr. Rana, in column 167 of the same debate appeared to confine his reasons to two things: first, sponsors, and secondly, photographs. So far as sponsors are concerned, he appeared to express the fear that he might at one time or another be put into the position of making a false declaration, and so suffer the penalties of imprisonment. So far as photographs are concerned, his chief argument seemed to be that photographs would get lost. It is not insignificant to remark that in that hon. Member's speech he attached no importance either to the question of a signature or the question of literacy. He said, "Now on the question of the signature, if it was only the signature, that would not matter, nor the question of literacy and knowing the English language, but what I am afraid of is the matter of sponsors". Now, the hon. Member for African Interests, Mr. Mathu, appeared to give more than one reason, and they can be summarized shortly. He considered that the recommendations for an alternative to fingerprinting would be a set-back to the progress of this country, and particularly would they be detrimental to the relationship between the races of this land. He seemed to think that literacy was a matter which would cause class discrimination, because all those people who can speak and write English will be exempt, and those who cannot will have to dirty their fingers with fingerprinting. I think he was the only hon. Member who made the suggestion that literacy would promote class discrimination. But it is very difficult to follow his reason when, in the same speech, at column 157, he says: "All the Africans throughout the country want to have English teaching so that they can be exempted from this law". It is a little difficult to follow the second passage when compared with the first.

I do not think anybody except that hon. Member would seek to place the question of fingerprinting on that basis. Certainly none of the hon. Members opposite did so, and certainly none of the hon. Members, the European Members, on this side. It is a little difficult, as I say, to follow. It is difficult to know why people who have reached a certain standard should not be entitled to the privileges of that standard, which they have achieved by industry and experience, and so on. I do not suppose my hon. friend, Mr. Mathu, who made those remarks and who, I believe, has in the past had some experience himself of teaching, would suggest that the people he taught, when they take their examinations, would be right in demanding that he should join them and pass the same tests. I do not suppose he would think that the new boy at school should expect to have the same privileges as his seniors, but if any new boy did that, I feel perfectly sure that the rather painful process of correcting him would be applied.

Well now, so far as the Europeans' views are concerned, except for one hon. Member at that time, there is no doubt that those views entirely supported the views put forward by the hon. Members opposite. What therefore, so far as the views of this Council are concerned, were the reactions of Government? They are to be found summarized again in the speech of the then hon. Acting Chief Secretary, on 16th August, and dealing with them again in the same order, he said that so far as the hon. Member for Eastern Area's remarks were concerned, Mr. Patel, he said that he of course was the only one who seemed a little doubtful about a national register; and he goes on to say—and it is rather important—"On the question of a second best", that is, an alternative to fingerprinting, in column 43 of the debate, "I would only say that Sir Bertrand Glancy has put forward this alternative suggestion as something which, in his view, is perfectly practicable. That was what he was asked to do". And then, so far as the hon. Dr. Rana is concerned, he dealt with the question of the sponsors in a somewhat light-hearted way, which I am sure the

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hon. Member would like, and I am sure he succeeded in comforting him that he would not have to undergo penalties, if he were careful about the manner in which he sponsored applications. So far as the hon. Member for African Interests, Mr. Mathu, is concerned, he is reported at column 42 of the Hansard Report of that debate as saying this: "The hon. Mr. Mathu, looking fearsomely at me, as I then was Member for Education, said 'All Africans throughout the country want to have English teaching so that they can be exempted from this law'. Well, he may think that I need more English teaching, but I have no intention of seeking exemption from that law, and on this point those Africans who either would not want or would be unable to avail themselves of this alternative method of registration which has been suggested would be no worse off, they would be in precisely and exactly the same position as they are under the law as it now stands". So that it was quite clear that, so far as the views of Legislative Council were concerned, the hon. Members opposite were unimpressed, shall we say, at that time by those which had been expressed by the non-European Members on this side of Council. And, indeed, if corroboration of that were needed, it is to be found in the fact that every single one of them supported the motion with his vote.

Coming to voting, which is the second reason for this omission, I would say that it is necessary to be a sort of mental acrobat, well trained in mental somersaults, to follow Government's reasoning in this matter of voting. Let us see what happened. First of all, the hon. Members opposite all voted for the motion. Secondly, the motion was carried by 25 votes to 10. So far, then, we are agreed, I think, that so far as voting is concerned this part of the recommendations should have been included. But notwithstanding that, it seems that hon. Members were perhaps disappointed with the result, and so they said, "Well, we won't count our votes, we will see what the voting on the Unofficial side of this Council amounted to". Well, the voting on this side of Council was exactly even, 10 votes for and 10 votes against. So hon. Members opposite said, "Well, now, wait a minute. The European vote of 10 supports our motion on the fingerprinting issue alternative, so I do not think we will have it; we will discard that; we have discarded ours, and they agree with us, so we will not count the European vote, or, shall we say, we discount it"; and so the first somersault. "We will adopt the non-European vote (with one exception)"—the votes of those people whose support they had been quite unable to obtain. Why? If they thought that that vote was more important than the European vote—for some reason or other which I would not know—if they thought that, why? Why should it be more important than the votes of those people whose support they had enlisted? That is the first somersault. Now we get to the second one. Having done that, they come to that part of the Glancy Report which deals with the *kipandi*, and which forms—or should I call it the Voluntary Record of Employment—which forms part of the Bill, or forms the Bill before this Council to-day. Now, having rejected the European vote on the principle, they say, "Well, I suppose we must not give it all to the non-European vote on the Unofficial side, so on this occasion we will reject their vote". In other words, on the one hand they have accepted the European vote in respect of the *kipandi* and on the other they accepted the non-European vote on the fingerprinting issue. Well, now, it is difficult to believe, it really is difficult to believe, that in making those mental somersaults Government, as the hon. Member for Finance said in a recent debate, "were using, and will always use, their vote in the best interests of this territory", because if that is not a manipulation of the vote, then honestly I do not know what is.

Well, let us come to the third reason, the changed situation. The Report was published in February, 1950. It was adopted in August, 1950, so that I think that we may take our date for any change not as from the time when the Report was published, but from the time when it was adopted in this Council in August, 1950. I would be very interested to know, and indeed I would challenge hon. Members opposite to tell us, what change has happened since August, 1950,

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and the introduction of this Bill. It is, of course, suggested that because it has been found desirable to introduce a Compulsory National Service Bill that that is the reason. But surely, Sir, that can hardly carry any great weight. It is, no doubt, desirable that in any such system of registration the best possible, the most infallible method should, as a counsel of perfection, be adopted. But let us see just for a moment what Sir Bertrand Glancy himself says in paragraph 14 of his Report, page 4. He says this: "of all practicable methods of identification yet devised finger-printing is the most infallible. There is no contesting the truth of this, at least as an abstract proposition; the practical validity of the argument would seem, however, to depend on whether any alternative can be discovered which is capable, at least within prescribed limits, of establishing with a sufficiently close approach to certainty the identity of the individual concerned. If such a method can be found, the Ordinance may be said to be capable of achieving its object without compulsory universal fingerprinting". In other words, Sir, surely the test is not one of infallibility, but of reasonable certainty. I do not suppose anybody would challenge the fact that there are thousands and thousands of people in this country, and I presume every person in this Council to-day, whose identity could be established perfectly, easily with complete certainty by means other than finger-printing. It would not be necessary to apply the test of infallibility at all, and surely, Sir, that is the whole root of the matter, and if a man cannot satisfy a registration officer—and this is the test—and cannot prove his identity by means other than finger-printing, then the answer is simple, and it is that he is finger-printed. That is the only thing; it is merely an alternative. It is not a question of infallibility, it is a question of reasonable certainty.

Now, Sir, I have said that Government's reasons for omitting this part of the Report have aroused very strong feelings, feelings of anger and indignation in this country. (Question!) It is, therefore, desirable, most desirable, when feelings are so aroused, that we should examine the facts dispassionately and reasonably, without overstatement—(hear, hear)—I am glad to see that hon. Members opposite will do so, and I hope that an examination of the amendments to the Bill which have been tabled and which I will move at the appropriate stage will impress upon hon. Members, both on this side and on the other side of the Council, the need to support the recommendations which they contain, because I sincerely believe, Sir, that it is only by such support that we can restore harmony and confidence in this country.

It is, therefore, Sir, with the object of moving these amendments and with these remarks that I beg to support the motion.

MR. COOKE: On a point of order, Mr. Speaker, I know you will be probably disinclined to give an order on suppositious matter, but will the hon. Member who has just spoken be in order in moving the amendment in Committee? It is a matter of principle.

THE SPEAKER: On what ground will he not be in order?

MR. COOKE: We usually deal only with detail in Committee and not with principles, but his amendment seems to me to involve a principle. I am not saying I am opposing his amendment, because I am in favour of it, but I would like to know what your ruling is.

THE SPEAKER: The scope of the Bill is definitely an amending Bill, and I do not see how it would be out of order to move an amendment in the form which has been put on the paper already. The thing that I am most concerned about as a matter of order is this—I will read you the passage in May—"Reference to debates of the current session is discouraged even if such reference is not irrelevant, as it tends to reopen matters already decided". There are some exceptions to that, and one of those is "Upon a motion which practically rescinded a resolution of the House, reference was permitted to the debate upon that resolution". But the same result of trying to reduce these references, the learned author states, is often obtained by indirect methods. One of the indirect methods that I am trying is to appeal to the good sense of Members and not to repeat everything that has been in the debate on the motion of censure.

MR. OHANGA: Mr. Speaker, I have a few things I should like to say on the second reading of this particular Bill we have before us and I should like to make it clear, from the beginning, that I shall be confining my few remarks to the business before Council and will not do anything to try and get into the finger-print debate again, which has gone before, because I know that volumes have already been said and there has been quite a lot of feeling over that one and, in any case, it is something that has been decided.

With regard to this Bill, Mr. Speaker, I should like to declare right at the outset my entire opposition to the whole principle of voluntary records of employment. As you know, Mr. Speaker, the *kipande* which Africans have been tolerating for very many years in this country, was not removed at the request of anybody else but their own, and the removal of that *kipande* was no light task to anybody. A lot of meetings were held, many resolutions passed, some of them bitter and distasteful, and when the end came we thought that was the end and the end for good, but as soon as the new legislation came into operation, certain reliefs which we had expected to accrue to us under the new legislation were either being minimized or taken away and replaced with certain disguises, and I should like to say that the present amending Bill which we have now is trying to reinstate the *kipande* in a different form. I should like the hon. Members of this Council to be under no illusions whatsoever that the Africans in this country will have nothing to do with the *kipande*—they have had enough of it. (Hear, hear.) It may be a question of paper that people want to save. It may be a question of testimonials which people do not want to write, but I do not think that we should be made responsible for anything of that kind. As we are all aware, and the hon. Mover has already stated it, it is not on our specific request that the present amending Bill has been brought forward. Much to the contrary, it has come from that section of the community which had not a single say in the removal of the *kipande*, but to the contrary, the retention of it, and as you can see, naturally there is going to be a lot of suspicion in any honest mind in the country as to the real honesty in the whole matter. But with that, we are not concerned. We are only concerned with our own affairs and that is, we shall have nothing to do with the *kipande*—in other words, in the disguise in which it is now brought forward. The present law provides very adequately for records of employment, and if these records of employment are to our disadvantage—by that I mean the people who lived under the *kipande* system and suffered from it—they will be the first to come forward and say so. But we are not going to take it from anybody that the *kipande* is good, that if you lose the *kipande*, you are losing valuable records, because we are sure that if a thing is good, good for us, surely we will be able to see it also and we will say so. That is one matter of principle, Sir, that I want to make clear at the beginning.

The second—as stated in the Memorandum of Objects and Reasons, it is not intended that this law should be a law that can be enforced, but rather that it should be a sort of voluntary legislation only, enabling certain sections of Africans who want to to retain that portion of their *kipande* as a voluntary record, and it seems to me that to enabling authority is rather a waste of public money and time, to enact laws which nobody has any intention of enforcing. Why there are so many situations which we would like to control and for which no laws exist, and why this Council should be detained and public money wasted in enacting laws of this kind which will not be enforced, I do not very easily see.

The Bill itself is a very short one, Sir, and I do not want to say unnecessary words. But already, this Government has been accused of very many different things. They have been called shilly-shallying and wobbling and all that kind of thing. I do not want to add anything to that. All that I want to say is this, that it is my general feeling that it can only be under a feeling that because the departure has been made in one direction from the recommendations of the Commissioner who produced the finger-printing alternative, that this other part should be enforced. I suggest that we should have no obligations of that kind. This part of the voluntary employment

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is definitely an African half and is supposed to give us support and to help us in keeping our records and we say we do not want it. We are the people who will benefit and if we do not want it, of course there cannot be any reason for forcing it. For the other people, the matter is decided, and I should like, with these words, to oppose the motion most strongly and the enactment of this law.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I rise to support the Bill, and like my hon. friend, the Member for Nairobi South, to regret the omission of any reference in the Objects and Reasons to the second part of the Glancy Report. I regret this most particularly, as I believe that in this matter Government has lost much dignity and much respect from the European community of this country. I think it is a most sorry thing that a breach should be created, as it has been created, deliberately by Government—(Question.)—between the leaders of Government and the Europeans of this country.

THE CHIEF SECRETARY: Mr. Speaker, I must protest on a point of order to that allegation.

THE SPEAKER: On what ground?

THE CHIEF SECRETARY: He suggested that Government deliberately created a breach.

THE SPEAKER: There is nothing unparliamentary in the words, unless you can point to some rule by which you may not criticize the Government.

THE CHIEF SECRETARY: It is imputing an improper motive.

THE SPEAKER: "A Member must not impute improper motives to any other Member", Personalities, etc. I do not think there is anything personal intended.

MR. MACONOCHIE-WELWOOD: Perhaps it will satisfy the hon. Member if I say Government deliberately took certain action and that action did create that effect. In the beginning of this unfortunate controversy, many Europeans did believe in universal fingerprinting—that I fully admit—as the only means of getting a secure registration. Well, all I can say is that now there are fewer Europeans as certain of that as there were before. I think Government has succeeded in convincing them by their actions that, far from Sir Bertrand Glancy having been wrong in his Report, he was right. Unfortunately, Government took the view that they knew the better than the exhaustive survey of the country's opinions made by Sir Bertrand Glancy. Sir Bertrand Glancy made it perfectly clear that his object in finding an alternative to fingerprinting was to make a division not between races, but between the achievement of a standard of civilization. I know that this is reiterative, but it cannot be said too often, because it seems to me of vital importance that where in this country an opportunity is given to this Government to make a difference not between races but between achievement, if they like to cast that aside they are betraying a very important trust and a very important matter for the future of this country. (Hear, hear.)

The hon. Chief Secretary spoke in an earlier debate and mentioned the words "that the rulers of the people should not live in a rarefied atmosphere apart from the ruled". May I suggest that the atmosphere in which he lives must be very rarefied indeed if he is unaware of the very genuine and quiet indignation of the Europeans of this Colony on the subject of his rejection of the Glancy Report. Again, the spirit of democracy was mentioned in a most unfortunate context by the hon. Deputy Chief Secretary. May I remind him that the system of British democracy has been based most particularly on the respecting of the just rights of the minority by the ruling majority, and in this matter Government have entirely disregarded the just rights of a minority of this Colony. The other reason given has been dealt with already several times—the reason for leaving out this particular recommendation of Sir Bertrand Glancy, to wit, the international situation, but if I may briefly refer to it again, I would say that it seems to me completely hopeless to attempt to create an isolated island of fingerprinted and registered males in the immensity of Africa to add to the security of one territory. Even if it was of value in this territory, despite its surroundings, it would still not have any complete value unless you register the female population as well. The idea

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appears to be that this registration is necessary for security. Well, I have yet to learn that women can never be dangerous. (Laughter.) Furthermore, what Government are doing by this omission is another stage in the dreary modern process, not of levelling up but of levelling down, and it seems to me that they had their opportunity of levelling up—they had their opportunity of letting the African community come up gradually to this alternative system of registration, and they have deliberately adopted this dismal policy, so popular in Great Britain to-day, of levelling down instead of levelling up. But perhaps the most important thing of all is that they have forfeited the good will of people who previously supported them. During the original controversy about this matter in the country European Elected Members on this side of the Council supported Government and held meetings, often very angry meetings, with their constituents in support of the law. They asked for a Commission and the Commission was granted and made certain findings. Now let me honestly assure them that they have lost the support, not of the 50 per cent who did not support fingerprints originally, but the remainder who were prepared to support the law for lack of an alternative suggestion.

Unofficial Europeans in this country have been trying for some years to foster a liberal and non-racial attitude in this Colony. I hate to mention the word "racialism", it is always bandied about in this Council, but sometimes we must face reality, and if racial issues are raised—and there are racialists in all communities—I do believe that gradually, at any rate in the European community, a more and more liberal attitude was gaining ground, and that the Europeans of this country wanted to see the African raised more and more. I am not talking of Elected Members, I think they always had the sense to want this, but there were people in this country who were not sure. But by this deliberate disregard of the wishes of the Europeans in this Colony, Government has succeeded in destroying much of the work that we have done, and it is going to be far more difficult for us to foster that liberal attitude which everybody in this Council wishes to see in this country.

As regards the Bill itself, I support it because half a loaf is better than no bread. It would be farcical to reject a portion of the Glancy Report which has been accepted merely because another portion has been repudiated by Government. For that reason I support the Bill.

I have listened to the words of the hon. Mr. Ohanga with some surprise. How he can say that this is a return to the *kipande* I fail to understand. The reason for the rejection of the *kipande*, which matter I understand was first brought up in Geneva, I think, was the abolition of penal sanctions. What penal sanction is contained in this Bill? The objection of the African Members to the *kipande* was the fact that they had to carry it and produce it at a moment's notice, which led to every sort of abuse and a good deal, I am afraid, of bad practice, and I for one would never for one moment have supported the continuation of that penal sanction. But if a man wishes to carry a record of employment voluntarily, I fail to see how that has anything to do with the subject. Indeed, if it were so, it would be an infringement of the liberties of the subject for him to carry about any reference, and that I personally fail entirely to understand.

MR. MATHU: Would the hon. Member propose a legislation similar to this for references that should be enacted?

MR. MACONOCHIE-WELWOOD: I rather fail to understand why legislation is necessary with regard to references. The legislation is necessary because certain Africans wish to retain the voluntary record of employment on their *kipandes* and there seems no reason why a man should not do a thing voluntarily.

Mr. Speaker, I think I have said enough to show that I wholeheartedly will support the amendment when it is put in the Committee stage, and at this stage of the Bill I beg to support it also. (Applause.)

MR. MATHU: Mr. Speaker, I just rise to endorse every word that my hon. colleague has said on this measure. We have been, I think, consistent since the days of agitation over fingerprinting when the law which we want to amend [illegible] into the statute book. That is, that the law should stand as it is, and my hon. friend the Member for Law and Order I think in a previous debate, if I may be allowed to refer to that, said that the voting on the Unofficial side, he has suggested that the *status quo* should be maintained. Now, we stand by that, and the *status quo* means leave the National Registration Ordidance, 1947, as it is, and it is on those grounds, Sir, that we are opposing the measure. If you do not legislate for everything that you want people to have voluntarily, we cannot be convinced that there is any reason whatever of making legislation of this kind for Africans to have documents with them voluntarily. If you are not going to do that with all the other people who want to carry references, on what grounds, Sir, can you support that this is necessary? It has been said by previous speakers that Africans throughout the country have asked for this. I do not know where these Africans are but I live with them, and that is not the views they hold. Where this information of three-quarters of a million Africans have elected to keep the *kipandes* with them and, therefore, because they want to keep the *kipandes* with them Government as a Government says we must legislate that they carry it voluntarily, and there are no penal sanctions attached to it, where it has come from I do not know. How are you going to enforce the law? The employers are going to enforce the law, they are the people who are to say so, and if there is a question of references, for goodness sake leave the African alone. Let him have no salaries, no wages, if wages are going to be given by a piece of paper being carried in an African's pocket. I submit there is no demand from the African community for this, and there is no one on the Government or the Unofficial side who can convince me by even quoting figures. I think this is really monstrous—to quote the hon. Member for the Coast. The Africans were told "No *kipandes*" and here is another *kipande*, though there is no penal sanction attached to it; and we representing the Africans, we suggest to this Council that the Africans have been deceived in this matter in this country. They have been told there were no *kipandes*, but this is a *kipande* in another form. There was an attempt also in regard to domestic servants, and later it was tried and said that the red book was an advantage. There was a lot of bickering with employers' testimonials, bad records, and all the rest of it. It had to be referred to the Labour Advisory Board. Who can tell me that the employment labour returns which are used by the Labour Department are not sufficient? I do not think that anybody can convince me on that point, and we feel most strongly, Sir, that this matter may have to be put back in this way, and although some sections of the community think that they are indignant about the fingerprint business, the African is all the more indignant as a result of imposing upon him on a voluntary basis something that he does not want.

So, Sir, we shall at the appropriate stage, when it comes to the Committee stage, move some amendments in clause 4, and we shall move that the clause 4 be deleted.

MR. BLUNDELL: Will the hon. Member explain how you impose something on a voluntary basis?

MR. MATHU: You do so by putting it in the statute book. There is no law, Sir, which is in the statute book to say that I should put on a blue suit as I have put it on to-day. It is voluntary. I put on a blue one, I put on a khaki one, a brown one, any one I like and if you want me to put on a blue one and put it in the legislation, what sense is there? Now, there is no law also to say I must have a cup of coffee in the morning, which I always do, Sir. Does the hon. Member for Rift Valley suggest that we should legislate that I should have a cup of coffee in the morning? It is voluntary; I take it or I do not take it, and that is exactly the argument I am using and unless there is something which is not stated in the law, which we maintain there is, for the interests of the employer or the suppression of wages, there could be no other logic in putting this thing in the statute book. That is our submission, Sir, and we say unless it is for the protection of the employers only, the Africans have not elected to have the *kipande* in this form.

In the debate on the Glancy Report, we made our position clear as regards

[Mr. Mathu]

the voluntary Record of Employment and we said that we were opposed to it and we maintain that position, and we know that we are representing a cross-section of the views of the African people in this land.

There is one point, Sir, I would like just to refer to which was quoted against me by the hon. Member for Nairobi South. He quoted me when discussing the Glancy Report as having said that the Africans all over the country wanted to learn English. But he did not quote the whole thing. He left out what was the major part of my suggestion there. It was to bring to the notice of the then hon. Member for Education that he should go to the Member for Finance and make sure that he gets double the amount voted for African education, because I do not think that the financial position would meet it and I said, Sir, in that regard—"I want to make it clear that Government will have to do something"—to do something—and the implication there was financial. The large majority of the people are illiterate, and this will be put in for the Member for Education very shortly, for proposals that we should have double the schools, double the number of teachers and, as I say, double the money voted for education, for African education, to cope with it. That was the implication in that context.

Now, Sir, I oppose the motion.

THE LABOUR COMMISSIONER: Mr. Speaker, I would like to take up some of the points made by hon. Members for African Interests.

In 1949, Sir, we embarked on a scheme of *kipande* cutting. For this purpose, a large number of Africans were specially trained and district officers, labour officers, were counselled as to the best way of doing this. We were under the impression, Sir, that all Africans in the Colony would avail themselves of this particular portion of that Ordinance passed in 1947. Now, Sir, one of the areas we tackled earliest was, perhaps, the large recruiting area in the Colony down in the South Nyanza. With your permission, Sir, I would like to read to this Council two letters from the District Commissioner of South Nyanza. The first one was written on 26th May. He writes as follows:—

"I have to report the cutting of registration certificates commenced on Tuesday, 17th May, and that today the staff of the District Office, the Local Native Council and most of the departments have been interviewed on successive occasions and the relevant provisions of the Ordinance fully explained to them. Without exception all persons interviewed have elected to have their *kipande* cut, and in general considerable satisfaction has been expressed at the provisions of the Ordinance."

Now, Sir, that was at the beginning of the campaign. On 5th August, a letter was received from the same District Commissioner in the following terms:—

"It is proposed that the cutting shall be done in district headquarters only in South Nyanza. The speed at which it will be done is likely to be very slow as there is no interest evinced in the locations in the provisions of the Ordinance. I will arrange for the chiefs to be informed."

Now, Sir, that is from an area where we get a lot of labour in Kenya. The turnover of labour on the nearby tea estates is very great indeed and it is not because those persons in the locations were not used to the *kipande*. In fact, the same story can be told as to the action taken in the tea industry areas amongst the employees there. We had, I suppose, something under 0.5 per cent of people coming forward when the officers concerned were ready to cut the *kipande*. Eventually, the campaign was called off. It was obvious that it was going to be a waste of public money. Since then, Sir, I do not think in the past year, outside Nairobi, there has been a single cutting of any *kipande*. I was surprised not to hear the hon. Member for African Interests, Mr. Ohanga, make no comment on the three-quarters of a million persons who we are satisfied are still in possession of their old *kipande*. This was not raised by Mr. Ohanga. It is a fact that in this Colony there are at least three-quarters of a million persons who have not had a new certificate, who have not had their *kipandes* cut, and my hon. friend, the Deputy Chief Secretary,

[The Labour Commissioner]

has said that we cannot attribute anything else except the motive that they want to keep it and they find its record useful.

MR. MATHU: They lost them!

THE LABOUR COMMISSIONER: In fact, in my various tours throughout those areas, I have had Africans come to me and ask for an explanation as to what it was about, and I have been able to tell them that as far as we are concerned at the moment, he could keep his *kipande* record.

Now, the hon. Member for African Interests, Mr. Mathu, made the point that if it is a voluntary system, why not leave it as it is; but that is not quite so. Under the Ordinance at the moment, the employer is bound by law to offer and keep the buff card, and at the moment, the buff card is the legal document.

ADJOURNMENT

THE SPEAKER: It is now quarter to one and Council will adjourn until 9.30 tomorrow morning.

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Thursday, 1st March, 1951.

Thursday, 1st March, 1951

Council assembled in the Memorial Hall, Nairobi, on Thursday, 1st March, 1951.

Mr. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 28th February, 1951, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT:

The Medical Department Annual Report, 1949.

BY THE HON. CHIEF NATIVE COMMISSIONER:

The Native Affairs Annual Report, 1949.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 7

MR. COOKE:

1. Will Government state the approximate cost to date of the work on the Mackinnon Road—Mombasa Road?

2. What mileage has been opened to public traffic and what mileage remains to be opened?

3. Is Government aware that much of the opened road, especially that between Mazeras and Kwa Jomvu, is seriously deteriorating?

4. And if so what measures they propose to take to save the surface before it is too late?

THE CHIEF SECRETARY: The approximate expenditure to the end of January, 1951, amounts to £406,000.

2. 23½ miles are open to public traffic, and 25 miles remain to be opened.

3. The Government is aware that the temporary surfacing laid between Mazeras and Kwa Jomvu is seriously deteriorating, and this was expected with the type of material available.

4. Maintenance of the present temporary surface will be undertaken to prevent further deterioration. This will be followed by a gravelling programme

[Mr. Cooke]

which is planned to be undertaken during the second half of the year. The gravel available in this area is, however, of too poor a nature to provide a permanent smooth-riding surface.

LIEUT.-COL. GHERSIE: Arising out of that answer, is the answer an admission by Government that they have in fact wasted £400,000?

THE CHIEF SECRETARY: No, Sir.

MR. COOKE: Arising out of the answer to No. 3, why did Government proceed with the work if admittedly the material was not the correct type? Why was the work proceeded with until the proper material was obtainable?

THE SPECIAL COMMISSIONER FOR WORKS: Mr. Speaker, perhaps I could answer that question. It is well known to hon. Members that that is a particularly difficult area to build through. There are a lot of shale, a lot of very poor gravels and sands that are not easily used for road making. However, a beginning must be made and, while we do not hold out any hope of a final, permanent surface that will be satisfactory, until we put down a bitumen surface, the present process must be gone through, and when the ground is adequately settled and stabilized, and if money is then available, the proper final surface should be put on.

MR. BLUNDELL: Arising out of that answer, does the hon. Member mean that if a bitumen cannot be provided, the £400,000 are wasted?

THE SPECIAL COMMISSIONER FOR WORKS: The figure of £406,000 which has been given to you this morning is not for a bitumen surface at all. We are only proposing to put a gravel surface on that road at the present time.

MR. BLUNDELL: Mr. Speaker, I don't think the hon. Member answered my question. I asked, if the money for the bitumen surface was not available, is it his opinion that the £400,000 will be wasted?

THE SPECIAL COMMISSIONER FOR WORKS: No, Sir. The road can be maintained to a gravel standard. My point is that it will never be a really first class standard as long as gravel alone is used. The traffic on that road is not as heavy as on some other roads, and a gravel standard is reasonably satisfactory to keep that road going until it can be bituminized.

MR. COOKE: Can the hon. gentleman say whether the Railway, with which the hon. gentleman had such a distinguished record, have got over the handicap of shale in that particular area?

THE SPECIAL COMMISSIONER FOR WORKS: The Railway had difficulty I think two to three years ago when one of their banks—the spiral, practically collapsed. They had, at that time great difficulty in keeping that line open. They have since taken further steps to protect that bank, and I imagine they will be fairly safe, unless they get a really bad season. But that area does continually give trouble and has to be dealt with from time to time as circumstances demand. The banks do gradually get better and improve, as better material is built into them, and the same process will apply to the road.

MR. COOKE: I am indebted to the hon. gentleman. Would he just answer one more? With regard to item 4, could you give us any idea as to how much the completion of the road will cost—£406,000 has already been spent. How much will it be necessary to spend before the road is completely opened up?

THE SPECIAL COMMISSIONER FOR WORKS: If my memory serves me correctly, I think the final figure is £460,000—to a gravel standard. That includes two bridges which are now under construction, after which the road will be open throughout the full route.

QUESTION No. 16

MR. BLUNDELL:

Will Government state what is the correct relationship between the accredited representative of a Dominion or Republic within the Commonwealth and the people of the country to whom the representative is credited and whether an undue insistence on political issues and contacts by the accredited representative is desirable?

THE CHIEF SECRETARY: Two types of representatives are exchanged between the various Governments of the Commonwealth: firstly High Commissioners exchanged by fully self-governing members of the Commonwealth and based only at the seat of Metropolitan Governments, whose functions are roughly similar to those of an Ambassador; and secondly, Commissioners are accredited in dependent territories of the Commonwealth. The functions of a Commissioner are generally speaking confined to the following—

(a) discharging on behalf of his own Government duties analogous to those of a consular representative in a foreign country;

(b) promoting friendly relations between his Government and the Government of the territory in which he is stationed, and whenever necessary explaining to that Government the point of view of citizens of his own country who are not permanently resident there;

(c) looking after the commercial interests of his Government;

(d) keeping his own Government informed of the policy and actions of the Government of the territory in which he is stationed.

It would, of course, be improper for an official representative of any Government, whatever his title or status, to interfere in the internal political affairs of another country.

MR. BLUNDELL: Arising out of that answer, would the hon. Member state whether Government is satisfied that all accredited representatives fully understand their terms of reference?

THE CHIEF SECRETARY: Yes, Sir.

MR. BLUNDELL: Arising out of that answer, Mr. Speaker, will the Government use its influence to see that opportunities for the opening of schools, and the placing of national flags on football and hockey fields are made available to all accredited representatives?

THE CHIEF SECRETARY: I should require notice of that, Sir.

QUESTION No. 18

MR. BLUNDELL:

Will Government state what action is being taken on the report of the East Africa Customs Tariff Anomaly Committee which it is believed was submitted to the High Commission for consideration by the East African Territories in July, 1950.

THE FINANCIAL SECRETARY: The report is still under the consideration of the Government.

MR. BLUNDELL: Mr. Speaker, arising out of that extremely unsatisfactory answer, will the hon. Member please give the reasons for the long delay that it is taking for him to consider the report.

THE FINANCIAL SECRETARY: Mr. Speaker, as the hon. Member is aware, the adoption of this Report and the acceptance of its recommendations would involve a relinquishment of revenue.

Now, Sir, it may be easy to press for the relinquishment of revenue, but I find since I have had the honour to occupy this office, that whereas a relinquishment of revenue is only too easy, its increase or reimbursement is a matter of extreme difficulty, and I think hon. Members will appreciate that at this particular juncture I must view proposals for the relinquishment of revenue with considerable diffidence and hesitation.

MR. BLUNDELL: Arising out of that answer, may I ask the hon. Member whether he will consider taking what I believe is called *ad hoc* action on the question of the tractor tyres which occurred in the report to which he has made reference?

THE FINANCIAL SECRETARY: Mr. Speaker, I am quite prepared to *consider* taking *ad hoc* action.

MR. BLUNDELL: May I ask the hon. Member, is the consideration going to be of the type we have already had with a seven months' gestation period with the effect possibly of a two-year elephant in the end.

THE FINANCIAL SECRETARY: Mr. Speaker, in considering this, the same considerations which apply to any relinquishment of revenue would have to be taken into consideration!

BILLS

SECOND READINGS CONTINUED

The Registration of Persons (Amendment) Bill

THE LABOUR COMMISSIONER: Sir, when I broke off yesterday I was dealing with the contention of the hon. Member for African Interests that it was foolish

[The Labour Commissioner]

to bring in legislation to perpetuate something which was in fact voluntary.

Now, Sir, he gave the example that it was silly to pass a law saying that he could wear a blue coat with grey trousers or a pink shirt, or words to that effect, when in fact nobody could stop him doing so. The hon. Member, however, in making these remarks I think showed he did not appreciate what the proposed amendments in this Bill set out to do. I would also remind him, Sir, that this Ordinance—this Bill—before the Council must be taken in conjunction with the amendment to the Employment Ordinance which my hon. friend the Deputy Chief Secretary will move in due course. The amendments to both those Bills in effect carry out the intention behind.

Now, Sir, this legislation, as I say, taken together with the amendment to the Employment Ordinance, makes it compulsory on the employer to fill in the proper details on a voluntary record of employment, should it be presented instead of a buff card or, alternatively, on the lower half of his old *kipande*, should he still be in possession of that document. The employer would not then have to fill in a buff card and offer it to the employee. It happens also that under the present Ordinance that the bottom half of the *kipande* in many cases was marked "cancelled", and quite a large number of persons are going round with the bottom half so marked, and this legislation, too, gives the opportunity to that sort of person to recover a document in the shape of a voluntary record of employment, upon which he can have recorded consecutively his records of employment.

I think, therefore, Sir, that the hon. Member will agree that in some respects the basis of his argument is incorrect, and I feel certain that he will now give further consideration to the subject before he continues his present course of condemning the voluntary record of employment out of hand. Both hon. Members for African Interests, Sir, made a statement that this voluntary record of employment was, in fact, reviving the *kipande*. Now, I cannot understand how they are able to place such a statement on record. The *kipande* was a document which served a dual purpose. It served the purpose of a certificate of identity and, at the same time, provided space for details of employment to be recorded on it by the employer. The main grievance against this document, Sir, was always that it had to be carried everywhere and, as the hon. Member for Uasin Gishu said, it carried a penal sanction with it if this was not done, and when this penal element was removed from the original Registration Ordinance, 1946, I think that there was a certain lack of interest in doing away with the old document. In fact, the voluntary record of employment, Sir—the card—is in no sense an identity card. It need not be produced to anybody.

In my view I think that the buff card will continue to be popular in urban areas, and I think the voluntary record of employment will undoubtedly find favour in rural areas—to start with, at any rate. I would appeal to the hon. Members for African Interests to consider those large numbers of Africans who do in fact appreciate a card upon which they can have consecutive details recorded.

Mr. Ohanga, Sir, the hon. Member accused the Government of trying to reinstate the *kipande* in a different form. The Government is doing no such thing. It only wants to make legal something for which a very large body of Africans already has indicated its preference by retaining the old document, with its full details on it. In this connexion, Sir, I would ask your indulgence to read from the local paper this morning, the *Daily Chronicle*, where it alleges that the Deputy Chief Secretary and the Labour Commissioner say that there were 75,000 Africans who have chosen to retain the voluntary employment record voluntarily. I do not know whether that is deliberate misrepresentation, but the intention may well be: The figure "75,000" should be "750,000"—the words were "three-quarters of a million"—given both by myself and the hon. Deputy Chief Secretary.

The hon. Member Mr. Ohanga went on to say there is going to be a lot of suspicion in everybody's mind if this new voluntary record of employment is introduced. Well, so long as seeds of suspicion are not sewn by Members for African interests and other responsible persons, I am quite certain there will be no suspicion.

Sir, I beg to support.

Mr. Jeremiah: Mr. Speaker, I also rise to support the remarks made by my two colleagues, Mr. Ohanga and Mr. Mathu. Whatever they say, Sir, on the other side we Africans specially look at this so-called voluntary record of employment as a *kipande* in another form. It has been alleged, Sir, I say alleged, that about a quarter of a million Africans are still retaining their *kipande* which shows that they like it, but my reply to that, Sir, is that what was done when the *kipande* was introduced has not been done as yet, and that is when the *kipande* was introduced everyone was asked to go and have a *kipande*.

In this case no compulsion has been taken as yet and people are allowed to go and get their identity cards through their own will, and besides that, Sir, I do not think that arrangements for providing all the Africans with a new identity card is sufficient yet. Not only that—some people are put to trouble for they have to travel far before they can reach the registration place.

Now Sir, it is alleged, or stated, that this is purely voluntary, but we do not accept that because, if it is intended to be voluntary, we do not see why it should be first passed as a law and then in the Statute Book. Furthermore, it is not only Africans in this country who are employed. Almost all of us are employed, and very few of them are employers; and if this is good, why do the other races not have it? This is one of the things which I think if Government deprive us of it and give it to the non-Africans, we shall not accuse them at all of being selfish.

So, Sir, we strongly object to the introduction of the *kipande*.

I beg to oppose.

Lady Shaw: Mr. Speaker, I believe that I can speak on behalf of quite a number of Africans who do wish to retain their *kipande*, and I have got what you might call, pretty first-hand evidence of that fact, because the people to whom I am referring did not even retain their *kipandes*. They had them cut before they understood what had happened, and brought them all back to me and asked me to stick them together again: and those *kipandes* in very, very many cases contain a very fine record of work, of which the men were very proud—and rightly proud—and several people working on our farm, apart from other places, had records of employment which included one name put on in 1921. It has never been taken off, and that man is very proud of it. He has worked all those years. He has a sense of dignity and a sense of responsibility and a very great respect given to him by his employer for his record of work, and when he thought he was going to be deprived of that, he resented that deprivation—and rightly resented it.

All I can say is this: whether the bulk of the Africans dislike the *kipande* or not, or whether there are certain of them that have never brought their *kipandes* in to have them changed because they are too idle to do so—that may be so—but I can only tell you that a certain number of them brought them back to have them stuck together again—which, after all, takes a certain amount of energy, I suppose.

The other point Mr. Jeremiah raised a moment ago was this question of a record of employment belonging to other races. Quite obviously, the suggestion made by the hon. Mr. Mathu and implied by the hon. Mr. Jeremiah, was that references could always be obtained for all races. Now, it is perfectly easy to obtain a reference for a European who is well known and very easily found and has an easily recognizable postal address, and so on, but if I wanted a reference for a large number of the people who come in doing daily work on daily tickets, and that kind of thing, it would be perfectly impossible to obtain it, and the man himself would be at an enormous disadvantage because he could not obtain it. It seems to me it is one of those measures—I remember another one, the Curfew Bill—which is designed to an enormous extent for the protection of the law-abiding, decent worker—for the man who has nothing to hide and has a great deal to be proud of; and personally, Sir, I support this Bill strongly.

[The Attorney General]

opposed it and five who expressed no view on recommendation No. 2. It is difficult to say what the voting would have been on recommendation No. 2 because the voting was, of course, taken on both recommendations together, so it is very difficult to divide it; but hon. Members can take it that there is no doubt the 14 Members on this side would have been in favour of recommendation No. 2. Even if you leave that out, there is a majority of the people who actually expressed views in the debate in favour of recommendation No. 2. So that I say again that Government has correctly interpreted the view of this Council expressed in that debate in bringing forward legislation to put into effect Sir Bertrand Glancy's recommendation No. 2, and if I am wrong in this and, if I am wrong in what I put forward previously, we shall very soon see.

If Government is wrong as to the first recommendation, no doubt the hon. Member's amendment will be carried. If Government is wrong upon the second recommendation, no doubt this Bill will be thrown out by this Council. The proof of the pudding will be in the eating.

MR. HAVELOCK: Are you going to vote?

THE ATTORNEY GENERAL: Certainly, yes.

MR. HAVELOCK: Why?

THE ATTORNEY GENERAL: I say that on analysis it proves that there is nothing in the argument of inconsistency and, like certain of the other charges levelled against Government in the debate on this matter, it will not bear five minutes' factual examination.

I am asked whether Government is going to vote on this motion. Government is going to vote on this motion. It is going to take a line and, I hope, stick to it.

MR. SALTER: May we ask if it is a test vote, Sir?

THE ATTORNEY GENERAL: Now, I have finished with that point, Sir, and I would like to go on to another.

"It is", as the hon. Member for Nairobi South says, "it is difficult to follow . . ." (At least if I have recorded him correctly, I haven't seen a Hansard of what he said yet.) "It is difficult to follow why persons who have achieved that standard", that is that standard of education, "should not have those privileges." I shall have to deal with that at more length at the Committee stage, but the short answer is this: If you have more photographs than 10,000, you seriously impair the efficacy of the register because they cannot be catalogued and categorized. Therefore, if the object is an efficient national register, you must keep any alternative to fingerprinting very closely restricted. Now, an impairment may be tolerated in peace-time, but in my submission it cannot, and should not, be tolerated, if there is a risk of war or national emergency. I propose to deal with this further in the Committee stage and to deal with the international situation.

The hon. Member for Uasin Gishu said that Government deliberately took an action which created a breach with European opinion. Government has taken this action after very serious consideration, but I ask hon. Members to ponder, has the breach with European opinion been created so much by the action of Government, for which I admit there are very good reasons, has it been created so much by the action of Government as by the way in which that action has been represented to the country? Again, I hoped that we had finished with this; but, as this has been said, I must reply to it. And every time these allegations are made they will be replied to. I hope that I can be short.

Now, does the hon. Member think that the feeling which has arisen would have arisen, or at any rate, would have arisen in anything like such intensity, if more care had been taken to ascertain the facts and the law before certain accusations were levelled at the Government? (Hear, hear.) Would this feeling have arisen in the country if the country had been told that Government had not misrepresented the position in the statement which was made in the *East African Standard* about the time when this Bill was published? And if the country had been told that, at the time, on the day before the first Glancy debate, that European Elected Members were told that Government considered

[The Attorney General]

as a good law and saw no reason for altering it, and that that was recorded after only one minutes? Would the feeling have arisen, or have reached such intensity, if the country had been told that there was no constitutional impropriety in a Government coming back to this Council with a Bill which it would be in the power of this Council to reject or amend as it thought fit? Would the feeling have arisen, or have acquired any intensity, if the allegation had not been made, on no evidence whatever, that Government had been bull-dozed by some higher authority and had no conscience and no honesty? Would the feeling have arisen, if the country had been told that Government had stated, in the debate and in the Press at the time, that they were not committed in any way as to the legislation they would bring forward? A passage was read out by my hon. friend, the Deputy Chief Secretary, yesterday. It appears on the very front page in large type of the *East African Standard* of Thursday, 17th August, 1950. "The next move will be the submission to Legislative Council as soon as possible of an amending Bill and the Acting Chief Secretary, Mr. C. H. Thornley, told Council that Government was not committed in any way as to the provisions to be included in the Bill." I repeat "*in any way* as to the provisions to be included in the Bill". Again, would such feeling have been engendered, if the country had not been told that Government had allowed the hon. Mr. Erskine to resign under a misapprehension?

There are the facts and they are apparent in my submission to any fair-minded person who reads the Hansard of the debate on the censure motion. (Hear, hear.) Now, if that is so, I would have it to the judgment of the Council or of any fair-minded person, as I have said, whether the responsibility for the deplorable situation which the hon. Member for Uasin Gishu has said exists, rests upon the Government or upon the persons who have represented the actions of Government to the country.

Finally, with regard to another statement which he made, with regard to "levelling down". I am a strong opponent of levelling down. No such motive has ever actuated me in anything I have ever recommended; but I am in favour of maintaining an efficient register; I am in favour, in times of emergency or difficulty, of leaders sharing in what may be indignities as well as privileges.

Now I may have said some "grievous things", to use the phrase of the hon. Member who previously represented Nairobi North. But I think—I trust—that hon. Members will acquit me of being anti-European or anti-Unofficial. I have spent the greater part of my working life as an Unofficial European. But I have said these things because I believe it is emphatically necessary that there should, particularly at this time, be no split between Government and European feeling in the country, and I do trust that these matters will be put forward and that this attitude of suspicion will, so far as possible, be removed.

Sir, in the Committee stage I will deal with the security situation, which, to my mind, is a very important aspect of this matter.

I am afraid I have been rather long. I am buoyed up throughout these very long debates by the thought that it will be all the same in a hundred years; and if the debate is still then continuing—(laughter)—at least I shall not be here. I am further hoping that when that time comes perhaps I may be found "having one" at the "Bar of Heaven" with the hon. Member for Mombasa—(laughter)—and, if so, perhaps we shall both be leaving our fingerprints upon the glasses. (Laughter.)

Sir, I beg to support the Bill. (Applause.)

MR. USHER: Mr. Speaker, I rise to intervene briefly upon a point that I think was brought into his speech by my friend, the hon. Mr. Mathu. He referred, I think, in slighting terms to what is known as the "Red book", this is the domestic service register, and I think it is just as well to recall the fact that the offices of the Registry were picketed and that possessors of the "Red book" were informed by the pickets that they must surrender them. My own head boy, whom I have had for very many years, suffered in this manner and was told that he must give up his red book, and he did so. It

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the motion in deference to the wishes of the *Unofficial Members' side* of the Council".

Now, Sir, would Members please take note of that expression because I will come back to it.

He went on "when the Commissioner's Report was received the Government had to decide what action to take regarding it: and in making its decision had to bear in mind, firstly, the circumstances in which the Commission was appointed, and, secondly, the fact that the Government does not enjoy a majority in the Legislature. The Government had no means of knowing precisely what was the attitude to the report of all the Members on the other side of the Council and could only ascertain this by the introduction of a motion. . . . Now that the motion has been adopted, the Government will consider its policy in the light of the views expressed during the debate and the voting on the division. When these decisions have been taken, they will be reflected in draft legislation which will then be introduced into the Legislative Council for debate".

Now, Sir, I contend that whether people want to believe it or not, which is an entirely different matter, the position was made absolutely plain—(hear, hear)—and that nobody, either in this Council or outside, has the slightest excuse for saying that he was in any doubt whatever.

I will go further, Sir, and say that if anybody is under any misapprehension; if anyone did, in fact, believe that the Government was committed to bringing in the alternative, then it was only somebody who wanted to believe that and who deluded himself into it and who deluded others into the same view. (Hear, hear.)

Now, Sir, I will go further still and I will contend and in all seriousness, that there was no misunderstanding amongst, at least, a large number of people throughout the country. I have reason to believe that the Electors Union itself did not know, at that time, what the Government proposed to do. If there was any misunderstanding, Sir, in view of these clear statements made both in this Council and outside it, then certainly, the Government cannot be blamed, whoever may be to blame.

As I have said, if anyone did believe that that alternative was to be adopted, I am afraid it must have been a case of wishful thinking and that he deluded himself and that he deluded others too. If there was such a misunderstanding, Sir, the people concerned, who in spite of the clear statements which have been made, persisted in suggesting that the Government was committed, have a very heavy responsibility to bear.

Now, Sir, the hon. Member for Nairobi South said, if I got him correctly, that the Government had very slender reasons for rejecting the recommendation made regarding an alternative method and ran the risk of again reviving hostility and bitter dissension and inflaming the feelings of the people. That, in my view, is clearly begging the question and conveniently ignores the true facts. As we have explained in this Council time after time, the Government was prepared to accept this recommendation although it thought the law was a good one and there was no reason to alter it, *if the solution would resolve the bitter controversy which had arisen.* I would make this point, Sir, in reply to the hon. Member for Rift Valley. He has asked why the Government proposed this motion and voted for it. I have explained many times——

MR. BLUNDELL: Not proposed, voted.

THE CHIEF SECRETARY: Voted, I said. I explained in the last debate, Sir, that at the time the Commission was appointed, no one who is being frank could say that he did not know what it was proposed to do. I think all people recognize that. The Government had made its position clear. I saw no reason to alter the law, but, in deference to a unanimous request from the other side of the Council, it accepted the Commission, knowing, as I say, what it was expected to do, and it was prepared to accept the recommendation *if it would resolve this controversy*, although we recognized that it would detract from the value of the register. But the debate proved, and proved quite conclusively, that it would not do this. On the contrary, instead of resolving the controversy, it would, if anything, aggravate it. Therefore, Sir, there was no point in

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keeping it. The Government had made its position clear from the start and it must stand on that position, and that position cannot, in my view, be misrepresented. It is misleading, therefore, to suggest that in refusing to accept the recommendation, the Government was deliberately doing something which would prevent a resolution of the controversy which would avoid a return to peace and harmony, which would relieve the feelings of the people.

MR. BLUNDELL: Would the hon. Member give way. The point that I was trying to make was this. When the hon. Member for Law and Order was speaking he said that even at the time the Report was moved Government was of the opinion that the law should stand and the question I asked was, in that event, why in the final analysis did the Government vote. The hon. Member has not even now said why they voted in favour of the Report. Why did not one abstain? Why did not the hon. Member's supporters abstain from voting or vote against it?

THE CHIEF SECRETARY: I am prepared to agree with the hon. Member that in certain circumstances, now that we can see exactly what has happened, there might have been an advantage in the Government abstaining, but the Government had given the hon. Leader of the European Members an undertaking that I would not do that.

MR. BLUNDELL: So, in other words, although you gave the hon. Leader of the European Members an undertaking you voted, knowing you were deceiving us.

THE CHIEF SECRETARY: Nothing of the kind. We had made the position quite clear to him from the very beginning and as I have said, it is recorded in your own minutes that we *did* make the position quite clear.

Now, Sir, the hon. Member for Uasin Gishu has said that Government took an action deliberately which resulted in causing a breach between the leaders of the Europeans and the Government. That statement is quite untrue. The Government was prepared to amend a law, which, as I have said *ad nauseam*, it considered was perfectly good, even though by doing it it would detract from the value of the register, *if it would resolve the controversy*. I am afraid we have repeated that a number of times, but it does not seem to sink in. When it was demonstrated beyond all doubt that it would not resolve the controversy, that on the contrary it would aggravate it, that it would do more harm than good, then, of course, there was no point in going any further with it. What the hon. Member really complains about is that the Government refused to alter a law which it thought was a good law because one group demanded it, when all the others were against it.

Now, Sir, I will not say any more about the question of deliberately taking an action which created a breach, because I think my hon. friend the Attorney General has answered that conclusively.

The same hon. Member said, if I have got his words right, and I took a note of them at the time, "that the British system of democracy was based on respecting the rights of the minority". Now, Sir, I would suggest that that is a slight exaggeration. There is a little more in it than that, because that is clearly a contradiction in terms. How can a system of democracy be based on the rights of the minority?

MR. MACONOCHIE-WELWOOD: On a point of explanation, Sir, what I said was that the system of British democracy was based on the idea that the majority should respect the just rights of the minority. (Applause.)

THE CHIEF SECRETARY: Sir, I accept his explanation.

I was going to suggest myself that that is what I thought he meant.

MR. BLUNDELL: Clever boy!

THE CHIEF SECRETARY: Thank you! The system of democracy, or our system of democracy, pays due regard to the rights of the minority, but that does not mean that the views of the minority should prevail when they conflict with the views of the majority, because that was what the hon. Member is suggesting ought to happen in this case.

He also referred to a statement I made in my speech and I do not think he got it quite right because he attributed to me the words that the "rulers of the people

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should not live in a rarefied atmosphere and depart from the rule". He went on to say that I lived in a rarefied atmosphere. If I do, Sir, all I can say is, that that atmosphere appears to be pretty thick, judging by the brick-bats and other missiles that are flying about from time to time. I would suggest too, Sir, that when the shouting and tumult has died, and when posterity has had an opportunity of judging who was right it may be found that my feet were as close to the ground as his are. I hope that we are both fairly close to the ground.

Now, Sir, what I did say was that "those who claim to be leaders should not seek to set themselves apart and live in a rarefied atmosphere". That is true in every walk of life. In the army, I do not think the troops would think much of officers who set themselves apart and were not prepared to share the hardships and the dangers as well as the triumphs, or the bad things as well as the good things. And I can well imagine that they would take a pretty poor view of officers who said that we are not prepared to share any hardships that may be going, because of some dogma about levelling up and not levelling down.

He went on, Sir, to say that he was unconvinced as to the need for a register because it did not make provision for women, and I think he suggested that women were just as dangerous as men. With all due respect to him, and I have a very high regard for him, Sir, I would say that that statement appears to me to be particularly irrelevant and illogical, because if women are just as dangerous as men, it is not an argument for weakening the register, it is an argument for strengthening it. I should have expected him to put forward his argument in favour of the best system of registration that we could get.

Finally, Sir, he said that the European Unofficial Members had been trying to foster a liberal attitude. I am very glad to hear it, and I would take this opportunity of congratulating them if that is so.

MAJOR KEYSER: Do you doubt it?

THE CHIEF SECRETARY: If there ever was, and still is, an opportunity, *par excellence*, of showing a liberal attitude, this particular business is the one. Sir, it is a wonderful opportunity for the European Members, and for every other European citizen of this territory, to show by supporting the Government in this business, and by willingly accepting themselves, a universal system of identification, that they are out not only to show a liberal attitude, but to heal any breaches that there may be between either the Government leaders and their leaders or between anyone else.

I made a plea, Sir, at the end of my speech on the former occasion that we should do that now. I suggest that this is a heaven-sent opportunity. Let us grasp it with both hands.

I beg to support.

Council adjourned at 11 *a.m. and resumed at* 11.35 *a.m.*

MR. HAVELOCK: Mr. Speaker, I do not wish to take very long, Sir, on this debate—in fact, what has surprised me is what I feel is the irrelevancy of the debate up to this present time. It seems to me, Sir, that hon. Members opposite, who should always—and always do I think—look to economy and shortening proceedings so that the expenses of this Council do not bear too heavily on the country—they, Sir, have introduced a number of irrelevancies into this debate. I suggest that this debate should just be as regards the pros and cons of the voluntary registration certificates—or whatever it is called—and the pros and cons as to the amendments, which have been tabled, of fingerprinting or no. I believe that it shows that hon. Members opposite felt, with the hon. Member for Trans Nzoia, that they did suffer a moral defeat in the debate on the censure motion, because they are taking a second chance to try to come back and regain what grounds they obviously must have lost.

THE CHIEF SECRETARY: What is the hon. Member doing himself? (Laughter.)

MR. HAVELOCK: Perhaps the hon. Member will wait until he hears what I have to say then he will know what I am doing myself. I am merely going to say, Sir, that as the matter has been raised by hon. Members opposite as to whether they were right or wrong or we were right or wrong in the debate on the Glancy Report and the debate on the censure motion, all I would say, Sir, is this—we must agree to differ as to

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whether Government made themselves right at the end of the debate on the Glancy motion and I also should like to say I believe it was completely wrong whether Government made themselves right or no, that they should have taken some action that they had at a later date. I do not believe that that is the right procedure for this Council. That is all I have to say on this particular matter.

The details, Sir, of discussions as regards fingerprinting will come into Committee and I do not want to waste time on it.

Only one point that the hon. Chief Secretary raised on which I would like to comment. He was appealing to hon. Members on this side of the Council, especially European Members, to consider themselves as the same as officers in the Army who shared the trials and tribulations with their troops and, therefore presumably, that we should advocate that everybody should be fingerprinted so that we would share such trials and tribulations. It is curious, Sir, that he should take that particular example, because I understand—I think I am right in saying—that in the East African Forces during the last war, troops were fingerprinted, officers were not.

Sir, on the matter of voluntary registration, I would like to say only this—that, as I see it, this Bill provides, or seeks to provide, the machinery to provide the Africans with such certificates should they so want them and I cannot see the logic of the arguments of the hon. African Members against the Bill. They need not use it if they do not wish. With such machinery the numbers, even if it were only 75,000 people who require this particular certificate, the Government surely is helping even only 75,000 by arranging to help them to have such certificates—it was not 75,000, it was three-quarters of a million and it is three-quarters of a million who are being helped.

That is all I wish to say at this stage, and I beg to support.

MAJOR KEYSER: Mr. Speaker, this debate seems to turn, Sir, from a debate on the amendment as suggested by the hon. Member for Nairobi South to answering the debate on the vote of censure, and it was not my intention to refer to the points that had been made before, but as they have been brought up by hon. Members and there are, I am glad to say, a few points that must be replied to, because the hon. Members' points opposite will go on record and it is essential that they should be replied to from this side so that the replies should also go on record.

Now, Sir, the hon. Member for Law and Order referred to the speech of the hon. Member for Nairobi South in which the hon. Member had mentioned the Government accepting the support of the European Elected Members to the recommendation that the *kipande*, the lower half of the *kipande*, should be reintroduced, but they are now rejecting the support of the European Elected Members to the alternative to fingerprinting. The hon. Member for Law and Order went on to say that, in analysing the voting, "there were 15 Official votes whose spokesman had showed that Government were satisfied with the law and saw no reason to alter it". Now, Sir, when the hon. Member, the Acting Chief Secretary, made that statement at the opening of the debate, he referred to both the amendments, both the recommendations of the Glancy Commission and not to one only, so, Sir, that the argument of the hon. Member for Law and Order completely falls to the ground, because that warning, if you like to call it so, applied to both. Yet Government is carrying out one of the recommendations and their suggestion is not to carry out the other. But, Sir, are we also to believe, following on the point made by the hon. Member for Law and Order, that when the hon. Acting Chief Secretary said, "I know that strong views are held on this matter, but whether right or wrong, the Government feels that having entrusted this inquiry to a distinguished and experienced Commissioner at the unanimous wish of Unofficial Members of the Council and having before us, as we now have, such clear evidence of the thorough investigation which he has made into those particular provisions of the 1947 Ordinance on which different views are held, the right thing to do now is to advise this Council to adopt the recommendations which have been made". Are we

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to believe, Sir, that the hon. Acting Chief Secretary then was not sincere when he made that suggestion? Are we to believe that he was not really trying to induce this Council to accept that view, because I do not think we can possibly believe that.

THE ATTORNEY GENERAL: On a point of explanation, there is nothing in the speech which I made which could possibly give ground for any such assumption. The hon. Acting Chief Secretary has told the Council again and again that he was at that stage trying to persuade Council to adopt this recommendation because he was under the impression it was the wish of the Council to have it. When it became evident it was not the wish of the Council, that was when he changed it.

MAJOR KEYSER: The hon. Chief Secretary, Sir, then read an extract which had been referred to by the hon. Deputy Chief Secretary out of the *East African Standard* of 25th August and he said, "How could anybody doubt what Government's intentions over this matter were" and he referred to the statement made at the end of the speech of the Acting Chief Secretary in replying to the debate on 16th August, 1950, and the last paragraph of the hon. Acting Chief Secretary's speech was, "But we are not as a result of this debate committed in any way as to the provisions which will be put into that Bill". Now, Sir, I maintain that the important word in that statement is "provisions" and that there it was thought that those provisions applied to details and not to the principles and that the principles would be included but not the details. He now says that the *East African Standard* had no doubt at all about what Government's intentions were. In other words——

THE CHIEF SECRETARY: On a point of explanation, Sir, I said nothing of the kind. I did not say that the *East African Standard* had no doubt at all. I merely said it was made quite clear in the *East African Standard* that the Government were not committed to carry out this particular recommendation.

MAJOR KEYSER: Well, Sir, I say that the impression left on the *East African Standard* and on the country was that Government were committed to it as I will tell you why. Because, Sir, in the interview given to the hon. Chief Secretary, one of the questions asked by the representative of the *East African Standard* was—"Can you say when the amending legislation will be introduced?" "The amending legislation will be introduced as soon as possible," was the reply. Then the *East African Standard* representative goes on to say "Can people who have had their fingerprints taken, now have their fingerprints expunged if they so desire?" Why should he ask that question if he had no doubt what the intentions of Government were if he thought that Government were not going to carry out the recommendations with regard to the fingerprint alternatives? Why should he ask if they were going to be allowed to have their fingerprints expunged?

THE CHIEF SECRETARY: Because, Sir, it was left quite open to do the one thing or the other.

MAJOR KEYSER: In other words, the country was left in doubt?

THE CHIEF SECRETARY: Yes, Sir.

MAJOR KEYSER: That is the first time that you have admitted the country was left in doubt. It has brought out a point we have not had before. I am glad, Sir, I intervened in this debate.

THE ATTORNEY GENERAL: If the hon. Member will give way for one moment. The country was left in doubt as to what the Government would eventually do. The Government had not yet made up its mind but the country was left in no doubt that, that was the position, that the Government was not committed. (Hear, hear.)

MAJOR KEYSER: Sir, when hon. Members opposite—and I want to give them every chance because I think that when people are placed in the awkward position that they are in, that every opportunity should be given to them in making their case. I think, Sir, that it is quite obvious that they should now admit that they left the country in doubt at the end of the debate as to whether the recommendations of the Glancy Commission were going to be carried out or not. But anybody, Sir, reading the speech of the hon. Acting Chief Secretary before the great "let out", as I called it before, had been pronounced had no doubt at all what his intentions were and they were

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among the country with no doubt and according that doubt with what the Acting Chief Secretary said before, Sir, that the country was left in no doubt themselves as to what the Government was going to do. I say that government say they left the country in doubt, they did not make the position clear, but associating the fact that the position was not made clear—with what the Acting Chief Secretary had said, the country considered that the recommendations of the Glancy Report were going to be implemented *in toto*. Now, Sir, the hon. Acting Chief Secretary in his speech referred to the remarks made by the hon. Member for Uasin Gishu over the liberal attitude which has developed in the European community in Kenya and the manner in which the hon. Chief Secretary referred to that left me with the impression that he doubted that that liberal attitude existed. Having done that, he then proceeded to say that he thought that a better feeling should exist between the Government side and the European Elected Members. I hardly think, Sir, that he paved the way for that happy feeling by the doubt that he obviously felt over a matter of that sort.

THE CHIEF SECRETARY: I expressed no doubt, Sir—merely a hope.

MAJOR KEYSER: Well, to express it as a hope after it had been stated that that was the case by the hon. Member for Uasin Gishu, I do not think paved the way for better feeling, but, Sir, he then went on to say that this was the time at which we had an opportunity—we, the European Elected Members and the European community of Kenya, had a marvellous chance of showing a liberal outlook. Now, what is the position really, Sir? The position is this, that the existing law is that every male person must register by fingerprinting. Sir Bertrand Glancy recommended an alternative, and he recommended that alternative because there had been objections to fingerprinting by certain people in the Colony. Now, Sir, I myself have no objection to fingerprinting and I was one of the first to be registered by fingerprinting, and at the time that agitation took place I myself did feel that it was possibly unnecessary, but on investigating it I found, Sir, that there were a very large number of citizens of this Colony who had served their King and country in various capacities in the most honourable way, who had ended up with distinction, who had those sort of feelings, and I believe that conscientious feelings of that sort require respect. That is why I felt that an alternative to fingerprinting was necessary although, as far as I myself was concerned, I had no qualms about fingerprinting and I supported the alternative because of those very distinguished men who had made the protest. Now, Sir, I am told that in order to be liberal I must prevent those men from having an alternative in spite of the fact that there is a practical alternative. I say, Sir, that those who do not support Sir Bertrand Glancy's recommendation are going to be no worse off if his recommendations were accepted. They can still, just as I am going to, continue to register by fingerprinting. But why it should be considered illiberal to concede to those who have an objection to fingerprinting, I cannot for the life of me think. Surely the liberal thing would be to say, these people have some reason of conscience for not wanting to put their fingerprints—why should we not concede it to them. That would be the liberal way to take.

MR. MATHU: On a point of order, Sir, I wondered whether the hon. gentleman was in order in not addressing the Chair.

THE SPEAKER: I understood him to be addressing the Chair myself. Some time ago he was inclined not to, but the latter part of his speech has been directed to the Bill and to the Chair.

MAJOR KEYSER: I am sorry about the interruption, Sir, because I shall have to repeat that point again now, just in case it did not sink in, but I do contend the hon. Member's argument is diametrically opposite to what the real position is, that the liberal action there would be for those people who do not mind fingerprinting to say to those people who do, "All right, we will provide you with an alternative if you do not want to give your fingerprints", and those people who support fingerprinting would be no worse off at all, and I believe, Sir, that is the attitude in which this amendment should be considered when it comes up.

Sir, I beg to oppose.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I have copious notes. I have been listening for well over a day now to this debate and I could certainly, without the slightest difficulty, go on batting and be not out at the luncheon interval.

MAJOR KEYSER: You would not score.

THE DEPUTY CHIEF SECRETARY: I do not intend to do this and if it had not been for the remarks of the hon. Member for Trans Nzoia I should have been back in my seat almost as soon as I was on my feet. Indeed, even so I am not going to discuss his remarks at any length, because I am absolutely convinced now that even if statements which have been made and published were chalked up in letters a foot high on a blackboard, the hon. Member still would not understand them; so I have no intention of reading out all these previous statements again, I am going to be quite content by placing on record—and I am, Sir, the last person who can speak in this particular debate—the fact that this Government has no doubt whatever that it made its position abundantly clear last year both in this Council and to the country, and to anybody who has taken the trouble to read the debates or read the newspapers. I shall say nothing more at all at this stage on that.

The hon. Member for Kiambu suggested that Government had introduced a lot of irrelevancies into this debate. That is a suggestion that I must immediately counter. What Government has done was to answer points that were made by the hon. Member for Nairobi South and points which are made in a debate are always, Sir, subject to your correction, points which can be discussed and should be discussed during the course of that debate. We most certainly did not deal with those points yet again in this debate because we had no doubt in our minds about this queer claim to a moral victory which has been put forward by hon. Members on the other side—

MR. BLUNDELL: You do not appreciate it.

THE DEPUTY CHIEF SECRETARY: No, I do not.

THE CHIEF SECRETARY: Nobody does.

THE DEPUTY CHIEF SECRETARY: I heard the hon. Member for Trans Nzoia suggest, I think, that Government was in an awkward position. I do not myself feel in an awkward position at all, Sir, and I have not noticed that any of my hon. colleagues on this side have looked at all embarrassed during the course of this debate, I can assure hon. Members that they have felt no embarrassment.

THE SPEAKER: Hon. Members must try to restrain themselves. There is, no doubt, an eve of holiday sort of feeling abroad, but they must remember that though apt interjections may be said to be the salt of the debate, a continuous running of guttural interjections when a Member is speaking is entirely out of order.

THE DEPUTY CHIEF SECRETARY: Well, Sir, I am not going to tempt hon. Members any more. We shall be discussing the detailed reasons why we have omitted making provision for recommendation number one in the report on this Bill very shortly, in Committee. I recognize that there are certain people who have got conscientious objections to putting their fingerprints down—I know that that is so—but on the other hand I know also that there are occasions when hard cases make bad law, and I am going to remind hon. Members of an appeal which my hon. and learned friend, the Attorney General, made towards the end of his speech a fortnight ago, which I regret did not receive the prominence that I personally would have liked to have seen it given in the newspapers. It is all on record in Hansard, and I do hope that hon. Members, before we get into Committee, will perhaps just have a look at it and see whether or not there is not a very powerful appeal in it in regard to the attitude to this Bill.

If, when I sit down, as I am going to do in a moment, there are any points which any hon. Member feels I ought to have replied to, I will do so in Committee, but it seems to me that we have now talked and wrangled and argued over so many points for such an unconscionable time that it is unnecessary for me to say any more, I beg to move that the Bill be read a second time.

The question was put and carried.

THE ATTORNEY GENERAL: Mr. Speaker, I am about to move that this Council go into Committee of the whole Council to consider this Bill.

Before I do so I should like to make another motion which will remove, I think, any doubt that there may be in hon. Members' minds regarding the point raised by the hon. Member for the Coast at the beginning of this debate, as to whether these amendments could be considered in Committee. Sir, it is my opinion that they can—I understand that hon. are disposed to rule to that effect—and I suggest that we might put the matter beyond all doubt by asking this Council to give an instruction to the Committee to consider them.

I therefore, beg to move that Council do instruct the Committee to consider the amendments which are to be moved by the hon. Member for Nairobi South.

THE CHIEF SECRETARY: Mr. Speaker, I beg to second, and in doing so I should like to repeat the statement which I made on one time ago, that should an amendment to the Bill be passed, the Government will provide the necessary finance to implement it.

MAJOR KEYSER: Mr. Speaker, I should like to express my gratitude to hon. Members opposite for putting beyond all doubt the question of whether the amendments can come before this Council or not.

THE SPEAKER: I will put the question. The question is that it be a special instruction to the Committee to consider the amendments which have been tabled by the hon. Member for Nairobi South.

The question was put and carried.

THE ATTORNEY GENERAL moved: That Council do resolve itself into Committee of the whole Council to consider the Registration of Persons (Amendment) Bill clause by clause.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

Clause 2.

THE CHAIRMAN: Before we proceed, is there any other amendments?

(An amendment handed in by Mr. Pandya.)

I have asked for the last three years for amendments to be tabled.

Clause 3.

MR. SALTER: Mr. Chairman, I have to move the amendments which have been tabled to this clause. With your permission, Sir, I would ask that I might move the sub-paragraph (iv) under clause 3—that amendment which deals with the renumbering of sub-section (2) as set out. The reason for that, Sir, is this: that the amendments suggested in sub-paragraphs (1), (2) and (3) and indeed the other amendments tabled to the other clauses of the Bill, are consequential upon sub-paragraph (iv). If that were convenient, Sir, I would deal with that paragraph.

THE CHAIRMAN: I will agree to that.

MR. SALTER: I am much obliged, Sir.

After line 24 of page 1 of the Bill, add a new paragraph (c) as follows—

(c) by re-numbering sub-section (2) of section 3 of the principal Ordinance—

THE CHAIRMAN: Is it not section 5?

MR. SALTER: Yes, Sir.

—as sub-section (3) and by inserting a new sub-section (2) as follows:—

"(2) Notwithstanding the provisions of paragraph (*b*) of sub-section (1) of this section, no registration officer shall require finger and thumb impressions from any person, except an alien, to whom this Ordinance applies for the purpose of the said register or for any other purpose if such person—

(*a*) appears personally before such registration officer, accompanied by a sponsor acceptable to that officer, who vouches for the identity of such person and certifies that the particulars, other than finger and thumb impressions, required to be entered in the register under sub-section (1) of this section are correct to the best of such sponsor's knowledge and belief;

(*b*) completes in the English language, without assistance, such form as may be prescribed containing such particulars as are required under paragraphs (*a*) to (*g*) and (*i*) to (*j*) inclusive of sub-section (1) of this section and signs his name thereto;

(*c*) supplies two copies of his photograph of such size and type and taken within such time as may be prescribed which photograph

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shall be renewed at the expiration of every ten years from the taking thereof;

(d) informs the Principal Registrar or his nominee of any change of his name of place of permanent residence."

Now, Sir, hon. Members will see that the amendments under that new clause contain a proposal that a new sub-section should be added to the principal Ordinance and the amendments exactly correspond with the recommendations, although the wording is not identical, with the recommendations of Sir Bertrand Glancy in paragraph 18, sub-paragraphs (1), (2), (3) and (4) on pages 5 and 6 of his report. It might, with your permission, Sir, be suitable if I refer briefly to those paragraphs as follows: on page 5, sub-paragraph (1) under paragraph 18 of the report reads—I had better read the paragraph before 18 (1):—

"18. After prolonged discussions with a wide variety of witnesses of all communities it appears that a form of alternative, satisfactory for practical purposes and generally acceptable to the public, would be provided if a man, preferring a method of identification other than by fingerprinting, were able and willing to fulfil the following requirements—

(1) He should appear personally before a registering officer and should be accompanied by a sponsor acceptable to that officer and ready to vouch for the identity of the individual concerned and to certify that the particulars stated are, to the best of the sponsor's knowledge and belief, correct.

(2) He should not only sign his name but fill up in English, without assistance, a form giving such particulars regarding his national status, age, place of residence, etc., as are mentioned in section 5 of the Ordinance sub-section (1) *(b)* to *(j)*.

(3) He should supply two copies of his photograph renewable after ten years.

(4) He should be required to inform the registration authorities of any change of his name or place of permanent residence."

Now I do not propose, Sir, to deal with the actual details of those requirements, but rather would I say that in moving this amendment which corresponds to the four paragraphs which I have read, I would like to adopt all the reasons which prompted Sir Bertrand Glancy to make those recommendations, and I would like to remind you, Sir, and hon. Members of the words of the then hon. Acting Chief Secretary when he moved the adoption of this report on 17th May, 1950, which are reported in the last paragraph of column 151 of the Hansard Report of that date and I hope that hon. Members will bear those words in mind throughout the consideration of these amendments. The then hon. Acting Chief Secretary said: "In conclusion, Sir, I would express the hope that those hon. Members who will be speaking in the course of this debate, will keep in mind the essential fact that before submitting his recommendations, the Commissioner has had the opportunity, which they have not, of hearing evidence at first hand from the lips and from the pens of persons of all races in this Colony who were sufficiently interested in the matter to bring their views before him. I would like to go further than that, Sir, and (without necessarily repeating arguments which have been advanced during the motion on the second reading of the Bill) I would like to emphasize the following points, taking them from the report.

The first point I would like to emphasize is this, that the protests—and it appears on page 3 paragraph 12 of the report that protests against fingerprinting as the sole and compulsory system of registration—and please mark the words, "sole and compulsory"—were by no means confined to any one community. They were expressed by representatives of all communities concerned.

And secondly, that if an alternative to fingerprinting is forthcoming, it must be open to all communities alike; and thirdly, that the alternative system of registration recommended was put to a large number of witnesses, including representatives of all communities, and that from the majority, both unofficial and official, it met with approval. That is stated on page 6 of the report, at paragraph 20.

[Mr. Salter]

Now, from the above, Sir, it must surely be clear beyond any controversy that the distinguished Commissioner, having heard the evidence and seen the witnesses themselves and heard their views at first hand, and considered all the memoranda in front of him, was of the opinion, first of all that all communities concerned protested against the sole and compulsory system of registration by means of fingerprinting, secondly that the alternative was open to all communities, and thirdly that the great majority of all communities, official and unofficial, approved that alternative. I think, therefore, we can accept, Sir, that the alternative is therefore completely non-racial, impartial and just to every man alike, whatever his race or creed may be. And, indeed, the Member for Commerce and Industry in his speech to this Council on the 18th May, 1950, reported in columns 180 and 184 of the Hansard Report of that date, when he was supporting—and strongly supporting—the motion to adopt the report, said: "I want to make it quite clear in this instance that my advice in this matter has been that this motion should be fully supported by Government, and should be put and carried. Now, Sir, my motive in saying this is to make it clear that I have not given this advice on racial grounds. If this were a racial matter I personally would find it extremely difficult indeed to support the motion but I would remind hon. Members who have made this question into a racial issue that there are certain tests and standards which are open to everybody to meet". I would therefore like, Sir, at this point, to deal if I may with the criticisms of the hon. Member for African Interests, Mr. Mathu, who appeared to seek to introduce into this issue the suggestion that literacy would promote class discrimination, and I do not think that I could do better in the first place than again refer to the words used by Sir Bertrand Glancy on page 4 of his report, at paragraph 15, when he says this:—

"The only other argument put forward against the provision of an alternative system has taken the line that it would in some way be unfair to those whose attainments permit of no option being extended to them if an alternative in the matter of registration were provided in the case of others more fortunately situated. It is difficult to see, however, what hardship or injustice could be involved in this behalf, nor has any satisfactory answer been given to this question when it has been propounded. Those who are unable to pass the required test will not be in anyway affected by the introduction of an alternative. They will stand in the same position that they were in before, and there can be no question of their being 'down-graded'. In the case of the man who is definitely illiterate a fingerprint is recognized, not in Kenya alone but all over the world, as the only satisfactory substitute for a signature. This is borne out by the practice adopted in the normal course of events on such occasions as withdrawals from the Savings Bank, the receipt of wages, the acknowledgment of agreements and the issue of licences. Before the repeal of the Native Registration Ordinance there were widespread complaints that the *kipande* system led to various abuses. But there appears to have been no complaint that the act of fingerprinting in itself led to any abuse, nor, so far as is known, has there been any suggestion that former abuses in respect of the *kipande* have not been effectively removed. There was no complaint put forward to the Commission by illiterate witnesses. In the matter of fingerprinting. And there appears no reason to suppose that an illiterate man, if allowed to exercise his own judgment, will be imbued with any sense of grievance in this regard."

That, Sir, I do submit, completely answers the suggestion put by the hon. Member that literacy or a test which involves illiteracy, would promote class discrimination.

Well, when the hon. Member opposed the motion on the second reading yesterday he said that I did not fully quote the passage to which I referred in his speech on the 17th of May, in column 157 of the Hansard Report. I did not refer to the full paragraph in his speech, because frankly, Sir, I did not think it relevant. But if he wishes me to do so, I will again remind hon. Members of the passage concerned at column 157. The full paragraph reads as follows:—

"With regard to the educational test in English, you will see that the

[Mr. Salter]

Mover of this motion was the Member for Education. All the Africans throughout the country want to have English teaching so that they can be exempted from this law."

At that point, Sir, I paused. To read on, the passage which the hon. Member has referred to is as follows:—

"I want to make it clear that Government will have to do something, because it is only through the lack of educational facilities that the larger majority of the people are illiterate, and this will be put in for the Member for Education very shortly, as soon as this thing goes through."

Now, if I understand the arguments of the hon. Member correctly, it was seen that he was seeking to use the argument that all Africans wanted to have English teaching and so on, not so much in order that they might become exempted from this law, if an alternative to fingerprinting is in fact approved, but rather as an urge to Government to increase educational facilities, a matter which in my submission was not then the main subject of that debate. But I do not think the hon. Member can have any complaint concerning the efforts which Government, in conjunction with the European community, has made to improve the standard of the education of the illiterate members of the community, and I am sure those efforts will be maintained, and I assume that as and when Africans attain the necessary standard of literacy, they will, in accordance with the remarks of the hon. Member which are quoted, claim exemption from this method of registration. There seems therefore to be no conflict between myself and the hon. Member Mr. Mathu, it would appear merely that he is dissatisfied with the number of people who have attained a standard of literacy which would enable them to claim such exemption.

On the other hand, his remarks that an alternative to fingerprinting would be detrimental to the progress of this country, and particularly to the relationship between races of this land, require further thought. At first sight they suggested that the hon. Member, unlike the rest of hon. Members of this Council and, indeed, the Commissioner himself, is seeking to force a racial issue where none exists. The hon. Member may not know the difference between North and South of Nairobi, but I hope he knows the difference between East and Western Africa! Surely the issue involved is not one between race and race, but whether those who have attained certain standards, through industry and the ordinary march of civilization, should be allowed to retain those privileges attached to them. This was recognized many years and many centuries ago, if one has to speak of it in terms of history. But nevertheless, although I am very reluctant to say this, if the hon. Member or anybody else at all——

THE CHAIRMAN: The hon. Member is rather tending to address Mr. Mathu directly, and this is not permitted in debate.

MR. SALTER: Sir, I must humbly beg your pardon.

If, Sir, the hon. Member or anybody else at all persists in making this a racial issue, then, Sir, let that issue be plainly stated and as plainly joined. There can never be any question of a debasement of standards, but only an uplifting of standards. And I say if—if—the object, Sir, of this measure is to bring down the literate European or Asian or anybody else to the levels of the primitive and illiterate, then I for one would never for one moment submit to it, and there are thousands like me. I would advise Sir, those people who think that to remember that it is the constant care and concern of those who are more fortunately situated in this country to raise up the standard of those who are less fortunate and ignorant, and so in the fullness of time and with their assistance—which has always been readily extended, Sir—the highest and not the lowest level can be reached in all sections of the community, and the full development of the country achieved. (Hear, hear.)

I do not intend, Sir, to reiterate the comments which I made on the second motion on the reading of this Bill concerning the Government's reasons for omitting this vital part of the Report, except to say that, paying all due attention to the observations which hon. Members opposite have advanced, the reasons do still appear to be inconsistent

[Mr. Salter]

and, to some thinking men, wholly unconvincing.

But there is another aspect, Sir, and it is this—The hon. Chief Secretary has said that Government was satisfied that this was a good law, and the hon. Deputy Chief Secretary in a recent debate said that if it was a bad law they would amend it. If I understood the hon. Chief Secretary to-day correctly, he said that Government were always willing to amend the law if it would solve the controversy.

THE CHAIRMAN: I do not wish to interrupt you unduly, but I must remind you that we are in Committee, and not a Council, and in Committee strict relevance is necessary. You must not take the opportunity in moving a proposed amendment to a clause to make a speech in general, it is not allowed.

MR. SALTER: I am obliged, Mr. Chairman. I only want to say this, that——

THE CHAIRMAN: I want to make it further clear. It is not permissible to take up points in other debates which have been discussed outside of Committee in Council and answered. That debate was concluded by the question of the second reading being passed, and that ends that.

MR. SALTER: I am much obliged, Sir, I am sorry.

THE CHAIRMAN: I quite appreciate that there are strong feelings in this matter, but I must take the course that I am bound to take.

MR. SALTER: Then, Sir, may I say that the details of this amendment which I have moved would in my submission provide a complete solution to that controversy. That would in fact conform to the principles of peace, order and good government. They would not in my submission offend against any principles of security, because there is ample provision here for showing that a person who can be identified with reasonable certainty can be registered by that means in accordance with the provisions of this amendment. I do hope, Sir, that in order to put an end to this controversy a reasonable and reasoned attitude will be taken to the amendment which has been tabled, and I commend it accordingly to this Committee.

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I rise to oppose the amendment which has been proposed. I do so, Sir, for this reason. The Bill in its present form has come up after consideration has been given to the views of hon. Members on the Report of Sir Bertrand Glancy. The Government came to the conclusion, after very anxious consideration, that it would be in the best interests of the country to omit this particular provision from the law and, Sir, we feel that we must stand on that decision. What in fact we are being asked to do by the proposer of this motion is to accept an alternative to universal fingerprinting, which has been accepted by everybody as not so infallible, a method of identification as universal fingerprinting. I made that perfectly clear when introducing my motion last May. I then said; "I would interject here, Sir, that hon. Members should understand from this quotation that any alternative to fingerprinting as a means of identification is a second best, whatever may be the views of individuals in this matter, and cannot be expected to be as nearly infallible as a means of identification as fingerprints". Not only that, Sir, but even if we were prepared to accept this second best, it would cost the country more. It would cost the country more to have something less valuable in the national register which will emerge than we shall get if we stick to the provisions of the law on this matter as they now stand. A third point, if we were to accept this amendment we should be doing something which we know quite well would be received very badly by large numbers of people in this country. Those are the three main objections the Government sees to accepting the amendment which has been proposed.

The hon. proposer, the hon. Member for Nairobi South, has appealed to the Government to accept this motion as a means to ending this controversy. But, Sir, I am sure he knows as well as I do that if we accepted the motion that has been introduced, it would do no such thing. The controversy would, I have no doubt, continue to rage. We should

[Deputy Chief Secretary]

merely be exchanging the objections seen by one group of people to the law as it stands for objections seen by other groups to the proposed amendment, and it would not, in the view of the Government, end this controversy if we were to accept this amendment.—All that we are doing in producing this Bill is to suggest to hon. Members that the law on this subject should be allowed to stand as it is. Certainly, it was made clear in Sir Bertrand Glancy's Report that certain persons who were sufficiently interested came forward to give evidence, and it has been indirectly suggested that no consideration should be given to persons who were not sufficiently interested to come forward who held different views, but, Sir, one can say precisely and exactly the same thing about everybody when the Registration of Persons Ordinance was under discussion in this Council in 1947. Then, there was general acceptance, as has been made clear in earlier debates to what was in the law. There it is, and when I hear talk about the rights of certain communities and certain individuals, I cannot help wondering what these particular rights can be. You certainly cannot create a right by appointing a commission of inquiry, and all we are doing, Sir, is to suggest that the law on this particular question of identification shall continue to contain the same provisions as were agreed by this Council in 1947.

It is necessary, in replying to this proposed amendment, Sir, that detailed information shall be forthcoming from the Government as to the reasons why as everybody is agreed, any alternative to fingerprinting as a means of identification is a second best; when I have concluded what I have to say, my hon. friend, the Labour Commissioner, will explain exactly what is meant by that, and why when it comes to administering the law, and when it comes to preparing the national register, this is so. He will explain the technique when fingerprints are used, and the more difficult technique if any other alternative were used.

My hon. and learned friend the Member for Law and Order will also explain in detail to hon. Members why it is important, from the security point of view, to insist upon the most infallible method of identification being used. Notwithstanding what these hon. Members will say—and, I would repeat that the situation now is rather different from the situation which existed last May and August—I would still say that notwithstanding the points that they will make, we still in May and August last year would have been prepared, if only it would have met with general acceptance, to put up with those difficulties if in doing so we had succeeded in solving this controversy. I was perfectly sincere, Mr. Chairman, in everything which I said during that debate, and I would, if I could have persuaded hon. Members to bury this hatchet, have willingly—

THE CHAIRMAN: I have already called the Mover to order; I do not wish to go on calling Members to order on these references to the past. We are in Committee, and we are confined to the consideration of the clauses and the amendments to those clauses. Reference, as I said, references to past debates are always much to be deprecated, and even when they are relevant they are not strictly permissible.

THE DEPUTY CHIEF SECRETARY: I am sorry, Sir, I must ask to be excused as I find it difficult to draw the dividing line. But I am not going to add anything more. I think it is infinitely more important that my hon. friends on this side of the Council shall deal with the two particular aspects of this matter which are of their concern. It is largely because of what they will say in the course of this debate in Committee that the Government must stand firm and oppose this amendment.

THE LABOUR COMMISSIONER: I rise, Sir, to oppose the amendment, and to provide Members of Council at this stage with information of a technical nature. It may help hon. Members before they speak themselves.

I hope the hon. Member for Nairobi South will regard the information as providing more than a slender reason for not adhering to Sir Bertrand Glancy's proposals. I can assure him that the reasons have nothing whatever to do with lowering standards. I would like to say at the outset that I have no quarrel whatever with Sir Bertrand Glancy's contention that an identity can be established by many persons with reasonable

[The Labour Commissioner]

accuracy by means other than fingerprinting. There is no argument about that at all. What I hope to show is that the process, the process of establishing the identity and the process of translating that fact on to a national register, are two very different issues. I repeat, there may be an alternative, an alternative of identifying a person, but as formeg part of a system of registration in this Colony, most emphatically this method is not a good one. My hon. friend the Member for Law and Order will say more on this matter.

I think I had better start by outlining the working of the system as it is at present, and comparing it with one which would have to be introduced to implement the amendment before this Council.

First of all, under the present Ordinance, there exists a Register which is based on the fingerprints, a catalogue, an index of fingerprints themselves, and these fingerprints have been taken at the time of registration. Secondly, there is another index, another catalogue composed serially and by numbers, of the "B" Certificates, and these certificates constitute the personal history sheet and reflect the details on the original Identity Certificate as to name, address, occupation, etc. This catalogue, I repeat, is numbered serially. The system works this way: If an inquiry is made in regard to a person whom we may call "X. Y. Smith"—

MR. HAVELOCK: Girl in Blue!

THE LABOUR COMMISSIONER: And whose number may be, for example, "ID/12345/NBI" (Nairobi), this number is then looked up in the serially numbered catalogue, and his history will be found there. On that card index, also there will be reference to the fingerprint group. That is to say, that the number is tied to the name "X. Y. Smith". Therefore, if this gentleman would call himself "Johns" but gave a number that I have just referred to, he would be found out at once. If he could not produce any satisfactory record or account of himself, he would then be fingerprinted, and recourse would be had to that part of the record which is concerned only with fingerprints. Or it may well be that it would be discovered that he had not registered at all.

Now, Sir, in 1949, it was decided to see how an alphabetical register would work, as an independent means of record, making use of those names—those persons—who voluntarily registered under this Ordinance. Early on, Sir, a number of difficulties were encountered. At present this register is kept in two parts—a European section and an Asian section, and the reasons for this will be apparent as I go on. So far, Sir, the total number that we have attempted to catalogue alphabetically in this way is in the region of 30,000 Europeans and Asians. There has been, as yet, no attempt at a similar alphabetical register for the African.

Now, Sir, if the present amendment were adopted, the fingerprint catalogue in respect of those 30,000 would have to be done away with. The alphabetical register would, therefore, have to stand alone instead. That is to say, a man would then be registered by name, number and photograph. He would have his name and number recorded on the alphabetical card index. It might be asked by somebody why this register could not be numerical instead of alphabetical. The answer is that if a person were to forget his number or lose his Identity Card, we could not check him in the numerical register—at least he could not forget his name. His photograph, under the recommendation of Sir Bertrand Glancy, would have to go on the "B" Certificate (orginally part of his Identity Certificate), and this, as I have said before, would be based on serial numbers.

This method, however, Sir, if used without the backing of a register for fingerprints has considerable drawbacks. There would be many difficulties in maintaining an accurate record. When you are dealing with peoples whose custom it is to use the same name for large numbers of them—such as Alibhai Patel, John Smith, Adul Aziz, Tajinder Singh and Njeroge wa Kamau—to use an alphabetical list, presents great administrative difficulties and will inevitably result in long delays and inaccuracies in tracing records.

Now, Sir, among the 30,000 names that we have collected so far there are no less than over 3,000 "Singhs". This

[The Labour Commissioner]

attempted to use another method and to use one of the other names or combination of names, and this we have discovered is slightly better, but even then, Sir, we have over 450 "Abduls", and here they are, and to search through 450 cards every time an "Abdul Hamid" or an "Abdul Said" was concerned would take a very long time, and it is quite likely we should not get the right person then. Moreover, Sir, there would be nothing to prevent a person registering a number of times giving different addresses and producing his same photograph, because without the passing of the fingerprint record there is no means of indexing or cataloguing the photograph and therefore you have to rely on this register of all the "Abduls" and all the other names which the chap has registered under, and you could not possibly say whether there was any mistake or not. The fact that he has registered as I said before a number of times could not be checked by any other system than tie it to fingerprints. The only common factor in those illegal registrations would be the photograph, and as I said before there is no means of indexing a photograph. Sir, the alphabetical method of record is used already by a number of Government departments. They will be able to tell us their difficulties in trying to contact individual members of the public, particularly, Sir, if they happen to have the fortune or the misfortune to bear a common kind of name. Members of such departments would have the advantage under the present Ordinance of making checks. Indeed, Sir, they have indeed so. I have records here for last year which show that departments have had recourse to confirm identities in the case of 1,178 persons, and this is outside a figure of 3,513 persons where police have asked for the tribe and particulars in regard to the various persons who come into their ken. In addition to that, the Post Office has asked us to confirm no less than 11,788 questions on persons applying for savings banks withdrawals. Now, Sir, none of those things could be done—we could have given no help to any of those departments without the register of fingerprints. The alphabetical list we could not have attempted at all. Even now under the system we are having to ask the Post Office if they will help us in some way with extra staff to cope with this very large volume of work. The tracing of these individuals may only take two or three minutes—

THE CHAIRMAN: Order, order. It is now a quarter to one. Will someone move that the Committee report progress and ask leave to sit again.

THE CHIEF SECRETARY: Mr. Chairman, I beg to move that the Committee report progress and ask leave to sit again.

MR. HAVELOCK seconded.

The question was put and carried.

Council resumed.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 10 a.m. on Tuesday, 6th March, 1951.

Tuesday, 6th March, 1951

Council assembled in the Memorial Hall, Nairobi, on Tuesday, 6th March, 1951.

Mr. Speaker took the Chair at 10 a.m. The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 1st March, 1951, were confirmed.

NOTICE OF MOTION

MR. HAVELOCK gave notice of the following motion:

"That this Council objects to the Hide and Skin Trade (Imposition of Cess) (Amendment) Rules, 1951, which were laid on the table on 27th February, 1951, and resolves that these rules should be rescinded."

ORAL ANSWERS TO QUESTIONS

QUESTION No. 15

MR. COOKE:

1. Will Government state whether the report of the Cost of Living Commission which was published last November will be debated during the February sitting of Legislative Council?

2. If not, why not?

3. And will an assurance be given that no rise in the controlled prices of primary food products will be permitted until the report is fully discussed in the Council?

THE FINANCIAL SECRETARY: (1) No. (2) The Government has not yet completed its examination of the report. (3) As the future of production costs cannot be predicted in the present fluid state of world conditions such an assurance cannot be given.

MR. COOKE: Sir, with regard to No. 2, will Government expedite consideration of their Report?

THE FINANCIAL SECRETARY: Mr. Speaker, as the hon. Member is aware, the recommendations of the Cost of Living Commission were multiple and a considerable proportion of the recommendations were in fact anticipated by the 1951 Budget and debated by this Council. These recommendations included the three in respect of which the Commission recommended immediate steps. The residue of the recommendations covers such matters as export taxes and railway freights, matters which are highly contentious and complex. However, these matters are being given very careful consideration. We note the hon. Member's wish and it is aimed to bring forward the Report for debate in the May sitting of the Council.

MR. MATHU: Arising out of the reply to part 3, Sir, is the hon. Member implying that the prices of these primary products should have free rein until we can project production costs? (Hear, hear.)

THE FINANCIAL SECRETARY: No, Sir, I am implying nothing which is not contained in the reply.

MR. COOKE: Arising out of that reply, is not the recommendations with regard to subsidization of food products of primary products is it not very relevant to this issue?

THE FINANCIAL SECRETARY: Sir, it is relevant to the price to the consumer, but the hon. Member's question referred to the price to the producer. (Laughter.)

MR. COOKE: My supplementary question arose out of the answer to the hon. Mr. Mathu's, which concerns the consumer.

QUESTION No. 17

MR. MATHU:

Is Government aware that the Nyongara River near its source in the Ondiri Swamp has dried up as a result of the excessive extraction of water particularly to supply the Nairobi City?

If the answer is in the affirmative, will Government please supply water to the Africans who have lost their water supply in this area either by a borehole or by some other means?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Government is aware that the Nyongara River near its source is at present dry. The drying up of this part of the river during prolonged periods of drought is not unusual and the occurrence has been previously recorded on a number of occasions. The fall in the water level

[The Member for Agriculture and Natural Resources]

in this river cannot, however, be attributed to the extraction of water by the Nairobi City Council. The Nairobi City Council has extracted no water from this river since 1948 when their sanction lapsed and was not renewed.

The Railway Administration have acquired a water sanction to extract 53,000 gallons a day from the Ondiri Swamp for use at Kikuyu Station, and are consuming about 50,000 gallons a day. It is estimated that this extraction would lower the level of the swamp by about one inch a month if there was no rainfall to recharge the swamp.

The District Commissioner recently toured this area and reported that although African families were walking considerable distances to obtain water there was no severe hardship, neither were conditions exceptional having regard to the extent of the drought. A further investigation is being made immediately by the local administration and if it is confirmed that there are cases of severe hardship, suitable steps to alleviate the position will be undertaken.

MR. MATHU: Arising from that reply, Sir, could the hon. Member tell us any year other than 1950 when the Nyongara River was completely dry at the source as it is to-day? Secondly, would the hon. Member tell us where the pipe, the very big pipe which is leading into the Ondiri Swamp leading to Nairobi is supplying water to, and if it is not supplying water to the Nairobi City Council, what about the expense of such a big pipe running all that distance?

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: The first part of the hon. Member's supplementary question, Sir, I would like to have notice of and I will give the hon. Member a reply. The second part, I think he will find that is the old pipe which existed many years ago and is now out of use.

COUNCIL RESUMED IN COMMITTEE

Council resumed in Committee consideration of the Registration of Persons (Amendment) Bill clause by clause.

THE LABOUR COMMISSIONER: Mr. Chairman, I would like to resume my speech by repeating what I said very early on on the last occasion. I said this, Sir, "I would like to say at the outset that I have no quarrel whatever with Sir Bertrand Glancy's contention that an identity can be established by many persons with reasonable accuracy by means other than fingerprints. There is no argument about that at all. What I hope to show is that the process of establishing the identity and the process of translating that fact on to a national register are two very different issues". I finished my speech before the session closed, Sir, by telling the Council of the help the Registration Department had given to many Government departments. I made the point that Government departments had made great use of the registration system and I made it clear that this use could not have been made if the system had been based on any other system than fingerprints. I would like to inform the Council also of the number of inquiries which were made by the Poll Tax Registry of the Commissioner of Inland Revenue's department. From June the 1st, 1950, to the 28th of February of this year no less than 54,351 inquiries were made. These inquiries entailed the verification of identity in respect of those who had paid tax and claimed to pay tax and so on, and this identity could not have been established except for the fact that we had a fingerprint register. I asked the Executive Officer to let me know what difficulties he experienced in setting up this Central Registry and the particular point I would wish to make is in regard to the alphabetical list which he attempted to operate at the start.

With your permission, Sir, I will quote what he says, "The alphabetical list which we intended to operate I decided to abandon completely because I found that in the first place there are very many Africans of precisely the same name and furthermore the number of cases where the names recorded on a receipt were spelt in precisely the same way as those in the tax register was very few. There occurred variations in the spelling of the same person's name, because it was clear to a person who understood African names that it was the same name; on the other hand, one cannot be sure that because one name sounds like another it belongs to the same person. The difficulty there was that the spelling of names varied with the clerk who wrote them. A clerk collecting tax often has to write the tax-payer's name as it sounds to him [The Labour Commissioner] The spelling of that name will vary according to the type of the clerk. These were some of the reasons why I decided against my operating the alphabetical list".

Now, Sir, during the last war it was a fact that many persons registered for the purposes of obtaining extra rations cards under different names and giving different addresses. Such conduct would be unlikely to be risked again if the ration cards were endorsed, as it certainly would be, with the registration number, which in turn was tied to fingerprints. Of that I am quite certain and I think, Sir, that in this sphere alone the national register would appear to be quite necessary. In times of war when commodities are short, it is essential that we have a system which will prevent any person from taking undue advantage of another. The recording of the identity and number tied to fingerprints will effectively stop that.

Much has been made of the British method of registration, where fingerprinting is not an ingredient. Now, Sir, the British system of identification and registration is carried out by means of allotting to each area a block of numbers and letters. This group of letters and numbers indicates the locality from which the person who has registered comes. These are based and tied to addresses, as opposed in our case to fingerprints. Now, Sir, this country has very few people in it who have in fact addresses as we know them in Great Britain. There are a large number of Post Office box numbers, that sort of address, but they cannot be identified by an address such as No. 5 Clarendon Street and the like. Almost every African is unable to provide an address of that sort. A large number of Asians are similarly placed and even in the case of the European where in these days of short housing people change their addresses, hotels, boarding houses and the like, every few weeks, it would be equally difficult. The English system, Sir, also requires a large number of local registration offices, and it is largely because of this large number of offices that the system can operate successfully, because the man who lives in that particular area is well known and can identify himself quite easily and quite quickly possibly by even a telephone call to the registry office and establish his identity. He might have to go to the office itself, but this would not be any inconvenience because he probably lives near it.

I think, Sir, I have shown that the system based on the amendment before us to-day would be but second best. It would be, I repeat, quite impossible for me to state that this register which is based on alphabetical order could be efficient. It would also be my duty to warn this Council that the degree of inefficiency would be likely to be increased should this register rise in number. At present, Sir, we have some 4,000 Europeans already registered. We have some 26,000 Asians already registered. I have shown you the difficulties we are experiencing with regard to such an alphabetical register. These figures, Sir, are likely to rise to 10,000 in respect of Europeans, 35,000 in respect of Asians and during the first year I estimate that some 20,000 Africans would avail themselves of the privilege of the alternative. It is likely that this figure will grow proportionately, the longer it is kept in being and that in time we shall have a register composed almost entirely of alphabetical names, and by that time, Sir, due to its inefficiency, I maintain it would not be worth the keeping.

Sir, I beg to oppose.

MR. HAVELOCK: Mr. Chairman, the hon. Labour Commissioner has made a number of detailed points attempting to prove the inefficiency of a register based on the acceptance of the amendment, and I would like to comment on one or two of the points that he made. He suggests, Sir, that for an alphabetical register that it would be exceedingly inefficient, in fact his words I believe were when he was speaking on Thursday: "Now, Sir, if the present amendment were adopted the fingerprint catalogue in respect of those 30,000 would have to be done away with".

Sir, may I ask why he considers that that is going to be the case? This is merely an optional amendment. He has given us figures just before he sat down, Sir, that he considers that 10,000 Europeans, 35,000 Asians and 20,000 Africans may avail themselves of this exemption. I was under the impression

[Mr. Havelock]
that one of the reasons why Government was opposing this amendment was that they considered that such a very small number of people required the amendment. The figures that have been given to us seem to show that there is quite a large number that may require the amendment. I do not see that Government can have it both ways. If there are such a large number of people who require the amendment, is it not right and proper that their wishes should be respected by Government.

As regards the alphabetical register, Sir, naturally it is difficult for Members on this side of the Council to argue on matters of detail with the hon. Labour Commissioner, who is responsible for the register, but it did strike me that when he spoke about the number of people of the same names and on the difficulty of tracing them if they had not been fingerprinted, I would have thought that an alphabetical register could have been sub-indexed, even within that large group of names. For instance, if there are 800 Jones or Singhs or whoever they may be, would it not be possible to sub-index those 800 into age groups which in itself would be fairly simple. I suggest it is fairly simple to tell the age of a man approximately and it would therefore cut out a lot of the work in having to go through all the names. They would only have to go through those names in the age group into which this man fell. That is merely a suggestion but I bring that forward because I quite sincerely believe that the hon. Member is making rather a fuss about nothing and in fact presenting the difficulties to us as rather more insuperable than they are.

Now, Sir, the hon. Member made a point about this matter of people being able under the exemption to register more than once. There is a clause in the main Ordinance to the effect that officers of the Government are able to study the register and make extracts therefrom which we have been told in the past is to entitle people like the police and indeed the tax authorities to study the register and use it for their own ends. Well, if that is the case and that is one of the main reasons why the national register is required and why it has been supported by hon. Members on this side of the Council, if that is the reason then, Sir, it would seem to me that if a man registered himself four times, he would make himself liable to have four times his income tax assessment or poll tax or whatever it may be, it would seem to me rather ridiculous and very unprofitable and very unlikely that people would take advantage of that if they knew that they would have to be faced with assessments of that sort.

The hon. Member tied this matter to ration cards. It may be that in the near future—we hope not—we may have to face such a type of rationing. I think it was a good point the hon. Member made, but even so, surely it would be more profitable for a man who had a crooked turn of mind which obviously he would have if he wished to be registered more than once, it would be more profitable for him to buy ration cards from his pals or, as happened in the last war, I understand, in some way or other get them of people who had died, etc. It is much easier to do it that way, or even to forge a ration card or identity card rather than to lay himself open to taxation four times over. I do not honestly think that the argument the hon. Member brought forward in that respect carries a great deal of weight.

The hon. Member, Sir, this morning then went on to elaborate the help that the register has given to the different Government departments in the past, and presumably will in the future, and that if this exemption and this amendment were accepted that the register would break down and the help then would not be forthcoming. Now, Sir, during his description of all the help that has been given and all the remarks that he made about the difficulty that there would be in tracing people and identifying people should his amendment be accepted, he never once mentioned the suggestion in the amendment of sponsors. Now, it is laid down, Sir, in the amendment very conclusively that the sponsor should be a person acceptable to the registering officer. If that is the case, and if that is followed and the registering officer does his job properly, I suggest that this amendment would not be the cause of a breaking down of the register, it should tie the man's identity absolutely and completely. I have switched now from the matter of the register to the matter of identity

[Mr. Havelock]
...d on both the hon. Member has cast ...ght.

As regards the argument brought forward, Sir, by the hon. Member as regards tax receipts, especially as far as the Africans are concerned, surely that is purely a matter of administration. If a man has an identity card, on whatever basis it may be made out, would it not be right and proper that the tax officers should ask and in fact demand the identity card from the taxpayer so that on that tax receipt the number of the identity card and his proper name spelt rightly should be placed.

Surely that is just a small matter of administration that could be got over very quickly. I cannot see any real grounds for argument against the amendment on that.

Now, Sir, if I may turn to the hon. Deputy Chief Secretary when he spoke before the adjournment. I understood him to say that the three main objections that Government has to the amendment were that the infallibility of the system would break down if the amendment were accepted. It would cost more and the third point was, "if we were to accept this amendment, we would be doing something which we know quite well would be received very badly by large numbers of people in this country". Well, Sir, to deal with the first point, I suggest that the argument of infallibility in principle is not one that should be used against an amendment of this sort. I believe we get into very deep water if Government, or anyone else, says that just because a certain system may not be infallible administratively, then we are not going to accept it. Sir, I suggest that that is not in line with the ideas and ideals of Government of the Western States. I suggest that infallibility is what Hitler aimed at and indeed what Stalin is aiming at, and it is quite impossible to achieve when there is a Government who has human and humane thoughts and a humane basis to their policy.

THE CHIEF SECRETARY: Does the hon. Member suggest that Government should aim at inefficiency?

MR. HAVELOCK: Perhaps the hon. Member does not know the difference between the word "efficiency" and the word "infallibility". I am discussing "infallibility".

I would merely wind up on that point, Sir, and say I believe that grasping at infallibility at the expense of the freedom of the people is fundamentally against the whole Western ideals and I, therefore, believe that that argument must fall to the ground when it is properly and really examined.

As far as costing more is concerned, I think that is tied up with what I have just said. I would be quite prepared to see a system cost a little more provided that the freedom of the peoples were attained.

Now, Sir, to the third point of the hon. Deputy Chief Secretary, I would repeat again his words, if I may, "if we were to accept this amendment we would be doing something which we know quite well would be received very badly by large numbers of people in the country". It seems to me, Sir, that those words are very different from the words that we heard at another time. I do not want to be ruled out of order, Sir, as referring to other debates, but we have been given to understand, I believe, that the Commissioner, Sir Bertrand Glancy, was given every possible opportunity to interview people and receive evidence from people on this particular subject and, indeed, we were given to understand after his tour of the country and his real investigation of the problem, he—*he*, Sir—was in a position to judge better than we as to the actual requirements and wishes of the people. Now, these words brought out by the hon. Member, I suggest, show a very different line of thought. So I would ask what right has the hon. Member to say this? Has he got any information that this Council has not got—in effect, large numbers of people in this country would not like it, would receive it very badly? What information has he that we have not been given?

THE CHIEF SECRETARY: Speeches in this Council.

MR. HAVELOCK: Speeches in this Council? Who by?

Now, I would like to ask also what about the other large numbers of people and surely 65,000 is quite a large number

[Mr. Havelock]

of persons—which the hon. Labour Commissioner has just told us—the people who would wish to take this exemption—to take advantage of this amendment? What about those people? Are their wishes not going to be respected too? And the hon. Member went on in his speech—the controversy would, I have no doubt, continue to rage if this amendment were accepted. We would merely be exchanging the objections seen by one group of people to the law as it stands for objections seen by other groups to the proposed amendment". And what are the objections of the one group who oppose the amendment, who oppose the opportunity of an exemption to fingerprinting? What are the objections of that group? I suggest, Sir, the objections are merely "dog in the manger", that if we are to give our fingerprints, so has everybody else. They would still, as has been pointed out before, be in exactly the same position as they are to-day. They would be no worse off. (Question.) On the other hand, those who require the exemption—and there are many of them—their wishes are being completely ignored. That, Sir, is, I think, the reason given by the hon. Deputy Chief Secretary for opposing this amendment and I feel it is fundamentally unsound and fundamentally unfair. I would also like to remind the hon. Member that I did ask—would he substantiate and how can he substantiate the fact that there are large numbers of people in this country who would receive this amendment very badly.

THE CHIEF SECRETARY: Ask their representatives.

MR. MACONOCHIE-WELWOOD: Mr. Chairman, I rise to support this amendment and, in doing so, the last thing I wish to do is unduly to prolong this incredibly dreary debate.

There is only one point I wish to make and it seems to me the fundamental point which runs through this whole difference of opinion between the people on our side of this Council—I should, perhaps, say the Europeans on this side of Council—and Government, and that deep principle has been stated before and I shall briefly state it once more. It is this, that we believe that once you get involved in a situation where you accept a position where the people who are literate and the people who have achieved civilization shall be put down to the level of people who are primitive and illiterate then you are making a tremendous [illegible] take and you are setting a precedent which may be very dangerous in the future. Government does not accept that principle and that is the dividing line between us. It has often been said before that the British people have an extraordinary instinct of what is right and what is wrong in politics and in Government and that when the bulk of the British people take the view that the Government is making a cardinal error on a matter of principle, then the people are almost invariably right and the Government is almost invariably wrong. I believe this is just such a case and I think Government will live to regret the rejection of this amendment, which I have no doubt they are going to do. No further argument seems, to me, possible or necessary. We have gone over this repeatedly, in detail, in principle and in every possible way and, having said that, Mr. Chairman, I beg to support the amendment.

MR. COOKE: Mr. Chairman, I beg to support the amendment and, Sir, I am supporting the amendment for one reason, because I think it puts the issue fair and square to Government that they must either govern now or—I will not say get out, because they cannot get out—or not.

Now, Sir, from the beginning to the end of this squalid controversy, few of us, I think, have tried to make our position clear. I, Sir, from beginning to end have been in favour of fingerprinting because I think it is the only infallible method—not the most infallible method, as Sir Bertrand Glancy said with a fine disregard of the English language—but, Sir, when it was suggested to me—strange as it may seem—that I was not infallible, I agreed to the suggestion of a Commission and I agreed that it was only reasonable that Sir Bertrand Glancy or some other Commissioner should be asked to investigate the matter to find out if there was any alternative to fingerprinting. Now, Sir, speaking for myself, when I agreed to that Commission I agreed morally, at any rate, agreed to accept the finding of that Commission for I felt that although it might not be a finding with which I personally agreed, it at any rate

[Mr. Cooke]

was a finding of an impartial arbitrator who had all the facts and figures before him, and I felt, at any rate it was my duty to ask that his suggestions should be given a trial. Now, I do not think, to be fair to Government, that it was their duty to do any such thing because Government from beginning to end of this controversy, have always said that they thought fingerprinting was the only method—(hear, hear)—and I think I am correct in saying that they reluctantly accepted the Glancy Commission—(hear, hear)—and I think also I should make it clear—and I am speaking now entirely for myself and not for any other Member on this side of the Council—that it was made clear to me, at any rate when Government brought in the motion on the Glancy Report, the line they were going to take, so I must take the fullest responsibility, personally, for that. It was made abundantly clear to me on, at least, two or three occasions, Now, Sir, I have always disliked the wobbling of Government and I have been a very severe critic of Government and a critic of wobbling Members on this side as well. I consistently opposed Government when it made up its mind to do a thing and did not do it. I was a very severe critic of Government over its launching of the Wakamba Reclamation Scheme and who then dropped a good deal of their recommendations on account of a clamour from certain pressure groups. I was a critic of Government over its wobbling on the question of the Teita Concessions because there was a certain clamour.

THE CHAIRMAN: I would like the hon. Member to explain how all these references to past oppositions to Government are relevant to the subject matter of this amendment?

MR. COOKE: I was trying to make clear, Sir, why I was taking the Government line when it was being firm and trying to give the suggestion that I was hoping Government would at last be firm and trying to suggest that in the past I had been quite consistent on this side always when I found Government firm; when it made up its mind on a particular subject. It was the same on the Woods Report when Government accepted the report and there was a pressure group on this side of the House and they withdrew their motion—

THE CHAIRMAN: I hope the hon. Member realizes when he raises all these points, that it is open to every other Member to take him up, controvert him and matters of that sort. I do ask him in this debate on an amendment in Committee to keep strictly to the amendment.

MR. COOKE: Now, Sir, it is open to an individual to change his mind—I am not going to mention any further points—it is open to an individual to change his mind otherwise he will probably be accused of being obstinate, but I do think, Sir, that a Government, having made up its mind, ought not to change it except after the most careful consideration. It has been said, Sir, that a Government should doubt to the last and then act as though it had never doubted; and while I am supporting this amendment, I just wanted to make those points clear, that now it is up to Government to make one decision or the other so that this squalid and long-drawn out controversy will be ended once and for all.

MR. PATEL: Mr. Chairman, I rise to oppose the amendment.

I did not intend to take the time of the Council and intervene in this debate but certain remarks made by the hon. Member for Kiambu obliged me to do it. He said that those who are opposing this amendment are following the dog in the manger policy, Now, Sir, I would like to deny that. From the very beginning I opposed even the system of national registration, but I maintain that if we accept the principles of registration, fingerprinting is the only method of doing it efficiently and there is no question of my opposing any system of an alternative, merely for the sake of opposing it.

Now, Sir, there is one point which has been overlooked by everyone in this Council, that when the African community was persuaded to accept the system of national registration; they were given to understand, and I say it with confidence, Sir, because I was one of the members of the sub-committee, they were given to understand that the method of national registration would be based on a non-racial system and indeed, it was also made very clear that the fingerprinting would be applied to all people

[Mr. Patel]

in this country. Whatever happened later on, this was made very clear to the African community.

MAJOR KEYSER: May I ask the hon. Member, Sir, what sub-committee he was referring to that he was on.

MR. PATEL: The Sub-Committee of the Labour Advisory Board which took evidence in the country from all the communities before it submitted a report from which Registration of Persons Ordinance, resulted.

MAJOR KEYSER: Sir, did not that sub-committee sit and report long before the Registration of Persons Ordinance came before this Legislative Council? So how could that committee, or Government or anybody else have given an assurance to the African population. It could not have.

MR. MATHU: May I explain, Sir, also, that, after the second reading of the Bill, the Labour Department sent teams all over the country explaining the very point the hon. Member for Eastern Area is establishing.

MR. PATEL: Well Sir, I may go further and say that in support of the fingerprinting, were mentioned several instances, of America and other countries, saying that there is fingerprinting in other parts of the world and what objection could we have for giving fingerprints. We were told all sorts of things in support of fingerprints.

Now, Sir, there is an argument put forward that by not opposing the alternative method, we were levelling the literate people to the level of the illiterate people. Now, Sir, I would rather say that there is a false sense of prestige with certain people which is prompting them to oppose the fingerprinting. I oppose the amendment.

MR. MATHU: Mr. Chairman, I rise to oppose the amendment and I would like to say very sincerely it was not my intention to intervene in this debate at all because Government have put their case very ably and they have got very substantial support on this side of the Council, and I was only waiting, Sir, for the voting to take place, but the speech of the hon. Member for Kiambu and that of the hon. Member for Uasin Gishu should not go on the record without being challenged.

Firstly, the hon. Member for Kiambu says that the majority of the people in this country are opposed to it, I say that that is incorrect. The majority of the people are five or six million Africans. They are not objecting to fingerprinting. What is the majority in this country? The Europeans are in the minority; the Indians are in the minority. We are the majority in this country, so there is no question of other majority in this country. He also suggests, Sir, that those who want fingerprinting want to draw, to drag other people inside, so that they too should come into this unpalatable or alleged unpalatable business of fingerprinting.

MAJOR KEYSER: Sir, is the hon. Member in order saying that the hon. Member for Kiambu said the majority of the people were opposed to it, when the hon. Member for Kiambu never said it?

THE CHAIRMAN: I do not recollect the hon. Member using such words myself but I thought that possibly the hon. Member for Kiambu would rise himself.

MR. HAVELOCK: I was waiting, Sir, to hear what other allegations I had to answer. I do not think that any of the words quoted came from me. I did not say the majority were opposed to fingerprinting, by any means.

THE CHAIRMAN: Will the hon. Members—I have had to say this to many other Members—who rise to speak in this debate try and keep to the strict relevance of the amendment and not to go off into general matters of principle here in Committee.

MR. MATHU: Mr. Chairman, I have made that point. The other point was that the hon. Member for Uasin Gishu said that the civilized people are being brought down to the level of the primitive and illiterate. Well, I should say this. That if fingerprinting becomes the law of the land, and I hope it does——

THE CHAIRMAN: It is already.

MR. MATHU: Well, thank you, Sir. That is if the amendment is lost and therefore there is no question of the law——

THE CHAIRMAN: What I am complaining about to hon. Members is that they are getting rhetorical and forgetting the fact that it is the law of the land at the moment.

MR. MATHU: I say, Sir, if this amendment is lost, as I hope it will, and therefore the law of the land is maintained, the civilized people can go in one door of the separate house, separate office and the illiterate and primitive people can go in another door. They will not be hurt, they will still continue with their civilization in special rooms, and the reasons that have been given by the hon. Member for Law and Order about the necessity for fingerprinting cannot be challenged. I do not think, therefore, Sir——

THE CHAIRMAN: Again the hon. Member is referring to a past debate and I must ask him not to do so.

MR. MATHU: I am not going to do it, Sir. I was coming actually to my point and I will sit down and say that I oppose the amendment.

THE ATTORNEY GENERAL: Mr. Chairman, I rise to oppose this amendment which would introduce an alternative to fingerprinting as a means of compiling a national register. I do not propose to go into the question of the necessity of a national register. It is not raised by this amendment and I understand that there is no doubt that the great majority of the Council is in favour of national registration. The question is: an alternative to fingerprinting or not.

I must oppose the proposed amendment, which would introduce that alternative, on the ground that it would impair the efficacy of the register. It is admitted on all sides that fingerprinting is the only infallible, or almost infallible, system, firstly, of identifying persons, and, secondly, of recording and cataloguing the identifications. The second of those matters is, upon this issue, the more important; and it is the one to which the Commissioner gave far less attention than he gave to the first one.

Why are photographs, and signatures, and addresses, and an alphabetical register, and anything else you can think of, not so good as fingerprinting, first, for identifying the person and, secondly, for recording that identification? People have often said to me, "Why are not photographs as good or better? If you have a photograph you can look at it and you can look at the man and you can see in a moment whether they are the same or not". Well, it does not by any means follow that you can tell whether they are the same or not. Photographs get out of date, people's facial appearance changes and persons who are anxious, for their own reasons, to remain unidentified very frequently assist that process of changing their facial appearance, and it is extremely difficult, if not impossible, to be certain of identity from a photograph.

As an illustration of how misleading photographs can be, if hon. Members care to avail of this offer, I can show them three photographs which misled Scotland Yard experts into thinking they were photographs of one and the same person: but the fingerprints reproduced underneath the photographs show in one moment that they are the photographs of three different persons. Now, how much more is that so in a multi-racial community where it is notoriously more difficult for members of one race to identify members of another race. I am not saying that you cannot have identifiers of the same race, but it is all the more difficult.

People have said to me, "Why can't you compare a photograph with the individual and then see at once?" Well, I have given one answer, and another answer is this: you very often do not have the photograph and the individual to compare. Quite often you have only got one. Now, suppose you have the man and you want to establish who he is and whether he is who he says he is or whether he has changed his identity. Now, if he has a fingerprint registration you can take his fingerprints and you can establish who he is in a few minutes.

MR. HAVELOCK: Would the hon. Member tell me under what law you are able to take the man's fingerprints if he has not been criminally convicted?

THE ATTORNEY GENERAL: There are various occasions on which you can take his fingerprints. For instance, if he is wanting something like immigration into the country, that is one case. Very often people are voluntarily quite willing to give their fingerprints in order to establish their identity. I will cite two cases in a moment. Now, if he is charged with a criminal offence or suspected of a criminal offence you can also take his fingerprints in certain circumstances. But

[The Attorney General]

with photographs you cannot clear up the matter. It may take days to examine even 500 photographs, and then you cannot be absolutely certain of the result. I am told that more than 10,000 persons registered by an alphabetical register and by photographs would seriously impair the efficacy of the register. The hon. Labour Commissioner has told you the difficulties with regard to catologuing by name in this country, where Asians and African names at least do not render themselves easily able to be catalogued. There may be a great number of people of the same name, and there is a habit of reversing names, of spelling names differently, and signatures of semi-literate persons are of very little guide, because they are apt to sign differently on each occasion. In any case, you cannot catalogue them.

The hon. Labour Commissioner has also told you that conditions here are not the same as in England, where there is a homogeneous community, a common language and, above all, people have addresses. Very many Africans in this country have not what you could call permanent addresses and there are numerous Asians also, some living in tenements, and moving frequently, who cannot be said to have permanent addresses. Many of those are literate and would be able to pass the test suggested by the Commissioner. Fingerprinting is the only certain method of compiling a national register here, and to be really effective fingerprinting should be universal.

Now until recently, I took the view that an alternative could be allowed provided it was made so expensive or difficult that not more than ten thousand persons would use it, so that the efficacy of the Register would not be impaired. I did always suggest and stipulate that aliens should be fingerprinted; and I did desire that restrictive conditions such as a high fee or other restrictive conditions should be imposed, which would have the effect of reducing the number who would adopt an alternative method. I will not go into the details, for my recommendations were not accepted. But what would the present amendment do? The point as to aliens is met. But the only other requirements are the production of a sponsor acceptable to the registration officer, a supply of two copies of a photograph and completion a form in English. No fee, no categorization of sponsors, and the test is merely ability to complete a form in English. That is not very restrictive. Still, for the sake of settling the controversy I would, last May, have given that a trial provided that an indication was clearly given, as it was given in the debate, that if it was found unsatisfactory a reversion could be made to universal fingerprinting. Now, that was in May, 1950, and these amendments would have been accepted in May, 1950, if there was general agreement that they should be. I do not want to go over again the ground which we covered in the previous debate, but I will merely point out that there was not general agreement and that, therefore, the matter fell to the ground; it remained open as to the legislation which Government would introduce. Now, that was in May and in August last. It has been stated that the international situation has changed since August, and more particularly since May, when the decision to support the motion if there was general agreement was taken. In my view the international situation has changed. One could then hope that it would improve. It has not improved. A menacing situation has blown up and continued during these months. During that period the United States has decided that it must rearm. It has 250,000 men fighting in Korea. The United Kingdom has decided that it must rearm, and has undertaken steps which must seriously interfere with its recovery and involve great hardships and difficulties. I suggest that we must put our house in order here too, and we are doing so in many respects. We all hope that nothing is going to happen, but we must be prepared. It will be increasingly necessary to see that we get ready for any eventuality as thoroughly and completely as we can. And what would these amendments do? The objections to them, I suggest, are all heightened by the international situation. These amendments would immediately, it cannot be denied, would immediately make the register less efficient. May be that that could be ignored in time of peace. But is it wise to plump for a second-best when there is any risk of war? The amendments

[The Attorney General]

however, would do more. The deterioration of the register would not stop. The register would progressively deteriorate. As more people become literate year by year more people would be enabled to pass this test, to complete this form, and the number of people registered by the alternative method would increase. The point that we are most interested in from a security point of view are illiterated persons who would adopt the alternative method. I am told that in a year or two, there might be 20,000 persons, there are already thousands of persons, and there are a number of Europeans who could adopt this alternative method. So that instead of improving the register, it would progressively deteriorate.

Now, I have to give some security reasons for advocating this universal fingerprinting. I am not going to give them all. In the first place, entitlement to be in the country. Applicants for registration will be asked to produce evidence of entitlement to be in the country, and, eventually, it is hoped that there will be a tie-up, and persons will have their immigration coding stamped on their identity card and the identity card serial number will be stamped on the document.

THE CHAIRMAN: I think we had better take the interval now.

Council adjourned at 11.05 a.m. and resumed at 11.25 p.m.

THE ATTORNEY GENERAL: Mr. Chairman, before the adjournment I was mentioning—the question of the use of registration by fingerprinting for testing a person's entitlement to be in the country and I was explaining that there would eventually be a tie-up between the national register and the travel document.

Now, Sir, to take an example, let us say that there is a man who is suspected of subversive activities and he is found with a passport and identity card of let us say, X. Singh. I do not want to take a real name lest it might be thought to be referring to any particular individual, and I take a Sikh because they are bearded and that makes identification by photograph more difficult, and because there are so many Singhs. Now, he has a passport photograph and it looks as if it could be X. Singh or it could be a similar bearded Sikh. It is impossible to tell with certainty from his photograph whether he is X. Singh, or whether he is not. Now, in matters of this kind, I might mention in passing, sponsors obviously can be squared, and need not necessarily be thought to be infallible. The man can be asked to put down his fingerprints and if he does, it can immediately be discovered whether he is in fact X. Singh who has an identification card and a fingerprint registration in the national register. It can also be discovered, if he is not X. Singh, who, in fact, he is, if he has a fingerprint registration, and if he has not, then he can be asked how he comes to be entitled to be in the country at all. If he were registered by a method other than fingerprinting, and it were eventually decided to get rid of him, to deport him, he could come back again with a new identity, a new photograph and register himself again by sponsor and photograph, and it would never be discovered, or almost certainly never be discovered that he had been here before at all. That has been done.

Malaya started with identification cards and photographs and has had to go over to fingerprinting. I am informed that the Germans in occupied Europe tried all kinds and systems of identification, including identification cards and photographs, to deal with resistance movements without being successful. Identity cards and photographs were systematically forged: many of our own prisoners escaped by that means, as will not be beyond the knowledge of hon. Members. They could not employ fingerprinting for two reasons: first, that they wanted results quickly and it would have taken too long to build up an efficient register; and secondly, that the number of people concerned made it very much less practical than it would be in this country. If you get beyond the limit, I am told, of about fifteen million, the time taken to find any particular individual with fingerprint becomes so long as to destroy to a great extent the practicability of the register.

I have given one very simple example. I have said that I am not going to give others all that I might; but even in peace-time universal fingerprinting, to the extent that we have it, has been proved useful. For instance, this dependants racket that goes on with immigration—these bearded schoolboys who

[The Attorney General]

come in as dependants. I quote one case, a case of two dependants who left the country or were sent out. They changed their identity and they arrived back with beautiful new travel documents and new photographs. Unfortunately for them they had been registered and fingerprinted while they were here. The authorities got some information and asked for their fingerprints again. The fingerprints were checked and, in five minutes, it was found who they were, that they had been here before, and they were refused permission and prosecuted. Now, it is the only certain way—I am not going to weary the Council with continual examples—it is the only certain way of establishing the identity, whether of an illegal immigrant, a criminal, a dead person, a tax dodger, a spy whoever he may be, and I do not agree with the hon. Mover that, in all circumstances, reasonable certainty is enough. One wants complete certainty.

Is the fingerprint registry useful to the various departments? The Labour Commissioner has told you that last year he dealt with over 3,800 Police inquiries. There were nearly 300 from the C.I.D., 400 from the Prisons. He also dealt with Post Office inquiries, people who wished to establish their identity for the sake of getting postal packets and withdrawing savings deposits. It is often very beneficial to be able to establish with certainty one's identity quickly and without trouble. I could cite a case of a European who was held up, not in this Colony, but in a neighbouring territory, because he was thought to be a man who was wanted by the Police in this Colony. His facial resemblance was striking, he had an identity card with his fingerprints on it and he himself suggested that he should put his fingerprints down, which he did and in about two minutes it was established that he was not the man that the Police wanted, and he was allowed to go on his way instead of spending, possibly, a night under detention. Now he considers that his identity card is a very useful document, and he has written to the national registry saying so and giving them his latest change of address. Now it may be thought that I am being fanciful about persons changing identity, but people do continually seek to change their names. One gentleman applied for licences in three separate names and was spotted by the registry. That can be very important in a time of emergency when commodity distribution is controlled. Also if three businesses are run, ostensibly by three separate persons and actually by one, he, of course, would pay tax on the profits of each business separately and not on the aggregate of three which might be at a much higher rate. There was even an actual case of two enterprising people who, by arrangement between themselves—they were of the same name—were paying one income tax on one income tax assessment. It was then proved by taking their fingerprints that they were not one, but in fact two. There is a case known of an African who tried nine times to change his identity and each time was spotted by the registry.

In favour of this universal fingerprinting in time of emergency are the departments which have to deal with this kind of thing—the police, the C.I.D., the Special Branch, the Immigration and the Labour Departments. In war time all these) matters would acquire a greatly enhanced importance. In war time it is quite probable that there would be Defence Regulations tying employment to national registration so that when persons entered employment or changed their employment, the employer and the employee would inform the national registry, and by checking the fingerprints it would be almost impossible for anyone to remain hidden for any length of time, unless he kept out of employment. It is, I suggest, of the greatest possible use in times of emergency for checking entitlement to be in the country, entitlement to rations, to commodities, and even for screening Government servants and other persons employed on work of national importance.

Now for myself, if I may give my own views for one moment, for myself, I was willing to give a trial to an alternative system to settle a controversy, and I think that Government was quite willing to sacrifice infallibility to settle a controversy and to meet the views of an important minority, but I do believe that the situation has changed. I was prepared to do that in May last. I am not prepared to do it now, if there is a risk of war.

[The Attorney General]

and Council, if it adopts these amendments it may do, if it adopts these amendments will do so against my advice as Member for Law and Order. I suggest, Sir, that what we ought to do now is not to be content with a second-best but to begin to build up a really efficient register now—as efficient as we can.

As regards national service, I will only say that it is plain that the fingerprint system of registration must be adopted for the vast majority of African conscripts, and there are advantages in adopting it for all persons called on to serve. In the first place, you will prevent persons evading conscription by sheltering under other persons' identities. You will avoid traffic in identity cards and exemption certificates. And I myself think that there is something in the second point—that you will give your fellow soldiers of His Majesty, if it should come to that, a feeling that they are not in any sense being discriminated against, and I do believe that that may help morale, and I am profoundly convinced that in war, morale is of the first importance. I do suggest, therefore, that it would be a gracious and a liberal act for the Europeans and the other literate members of this country not to stand upon their dignities or not even on their rights—if they consider it is a matter of right, which I personally do not—but to show an example which the whole country, I believe, if it were put to them properly, would admire and follow. (Hear, hear.)

Sir, I beg to oppose.

MR. BLUNDELL: Mr. Chairman, I beg to support the amendment which is before the Committee. When the hon. Member for Uasin Gishu was speaking, he said that this whole matter was intolerably—I think the words he used were—intolerably long-drawn out and dreary and there were numerous hear hears from the other side of the Council. Well, Sir, I feel if I have to see Jupiter coming down the road seated on a steam roller, nothing is going to prevent me shouting my defiance at him even if I am going to be steam-rolled, and that being so, I wish to say very shortly a few words to this amendment.

When hon. Members on this side of the Council voted for the Glancy Report, they voted, in my view, for arbitration—it was not the technical use of the word arbitration—and it was supported by hon. Members on this side when the report came back—

THE CHAIRMAN: We have debated the Glancy Report *ad nauseam* and it is time that every Member realized we are dealing now with what is alleged to be a practical proposition on the one hand and an impractical proposition on the other in Committee.

MR. BLUNDELL: Mr. Chairman, the amendment before us is, in effect, the first recommendation of the Glancy Report.

THE CHAIRMAN: Everybody knows it.

MR. BLUNDELL: That recommendation was made by Sir Bertrand Glancy and it is now before us as an amendment and I am supporting it for that reason. Sir Bertrand Glancy said it was possible and I think it must be.

I want to ask the hon. Labour Commissioner a question. It is this—did his predecessor, the former hon. Labour Commissioner, give evidence before Sir Bertrand Glancy or not?

THE LABOUR COMMISSIONER: The answer is yes, Sir.

MR. BLUNDELL: Well in that case much of the evidence which the hon. Labour Commissioner put forward must have been already examined by the Commissioner, and yet, after having heard that evidence, he nevertheless stated in his opinion that the amendment which we are now moving was possible. I am unable to agree with the numbers which were put before us—it is my belief that there are not a great many people who do actually object to fingerprinting but those who do object, object to it very sincerely. When I consider the trouble to which one has to go in order to get the facilities put forward in the amendment, I believe that very few people will do it, but those people believing this sincerely, I am sure have the right to do it if they wish. I am unable to accept these figures and I would suggest, if it is necessary to prove them, the proper way to prove them, having had the evidence rejected by the

[Mr. Blundell]
Commissioner originally, is to try out the recommendations put forward in this amendment first.

I wish to stress one other point which I do not think has been sufficiently stressed. It is this. Like the hon. Member for the Coast, I have never myself objected to fingerprints a great deal and the people in my area do not but what has convinced me to support this amendment is the sincerity of those who do. There are in my area some persons, past middle age now, who have already fought in His Majesty's Forces in two wars, have lost their legs, have even lost one set of fingerprints, and yet those people—their services were gladly accepted without fingerprints and they do now say that after thirty years of service in His Majesty's Forces, sometimes carrying the King's Commission, is it necessary now in the latter days of their life to be fingerprinted? That is a tremendously sincere point of view and I do put it forward to hon. Members opposite. As far as I am concerned, I do not care tuppence—

The Chairman: The hon. Member is quite out of order on this amendment. He is advocating something which requires a vastly different amendment, which requires an amendment in different terms altogether.

The Chief Secretary: Why did he not think of that before he voted for the original Bill.

Mr. Blundell: I did not vote for the original Bill. You look in your Hansard. I was not a Member of this Council when the original Bill was passed. I was not acting—

The Chief Secretary: I can prove it.

Mr. Blundell: I was not the person here. The person for whom I acted had already returned to this Council. I feel inclined to have a bet on that.

The Chief Secretary: I bet the hon. Member was here for the second reading—will he take it up to £10? (Laughter.)

The Chairman: I must say I have heard from various sides references to the dignity of this Council—I think the present argument across the floor is most undignified. It is the duty of every Member to address his speech to the Chair and rise only to interrupt in accordance with the rules.

The Chief Secretary: I beg to apologize.

Mr. Blundell: Mr. Chairman, arising out of your ruling, I thought, Sir, that in supporting this amendment I was able to put forward the reasons why I supported it and one of the reasons, Sir, is that these elderly men who have served for so long will be able to avail themselves of this amendment which is not——

The Chairman: If they are old enough, the law will not apply to them at all—65, you are free.

Mr. Blundell: Still, Sir, it would be perfectly possible to have served in both the last two wars and not yet be 65.

Sir, there is one other point I wish to make arising out of a speech which was made earlier. I have said already I do not myself consider that to be illiterate or to be primitive is a matter of scorn at all. It is nothing of the kind. It is nobody's fault and there are hundreds of decent, honest Africans who will not be able to use this amendment, but because they cannot use it is no reason why it should be denied to others.

Lastly, Sir, the points made by the hon. Member for Law and Order on security. I should like to ask him a question. It is this. Were those security points put forward to the Commissioner, Sir Bertrand Glancy?

The Attorney General: To which security points does the hon. Member refer, Sir? The general gist of the points were put before Sir Bertrand Glancy when he kindly came to see me on the subject. The particular examples and so on, the details, into which I have gone, were not put.

Mr. Blundell: Sir, the hon. Member has answered my question. In effect, the general gist was put before the Commissioner and he assessed that and yet was able to recommend substantially the amendments which we are moving.

Lastly, Sir, I would like to ask the hon.——

The Attorney General: May I remind the hon. Member that the Report appeared in February of last year and I have endeavoured to explain again and again that I have changed my view with the changing international situation.

Mr. Blundell: Nevertheless, Sir, the hon. Member when moving his opposition to the amendment, raised many points not connected with the international situation.

I have a further question I would like to ask him—if after this amendment has been passed or not, is he then going to communicate with the Governments of Uganda and Tanganyika to press similar legislation upon them on the lines of an earlier point which has been made in this Council?

The Attorney General: Sir, it would be no part of my duty to suggest legislation to the Governments of Tanganyika and Uganda, but I venture to think, Sir, that this is a matter in which Kenya leads, and that those Governments will very probably find that, if something does occur, they will follow our lead.

Mr. Blundell: Well, Mr. Chairman, I do suggest that if the arguments which the hon. Member adduced against the amendment are, in fact, pertinent, it is his duty to urge the other territories to initiate similar legislation. (The Attorney General rose to his feet.) I shall not give way again!

Lastly, Sir, a small point. It is true that National Registration Certificates, photos, etc., without fingerprints, can be forged but it is also true that where fingerprinting legislation is enforced strongly, there is traffic in the alteration of fingerprints by the grafting of skin and operations—that is a point which must be borne in mind. Fingerprints are, if the wicked desire it, no more infallible than photographs.

One point before I sit down is this. The hon. Member said it would be a gracious act. I do submit to him, in view of the very sincere feelings of many of the men that I have mentioned, it would be an equally gracious act to allow them, bearing in mind what I said about my belief of the numbers who would use this amendment, it would be a gracious act to allow them the privilege of using the ordinary identity card and not fingerprints, as I have put forward.

Mr. Chairman, I beg to support the amendment.

The Attorney General: Mr. Chairman, on a point of explanation, nothing would give me greater personal pleasure that to be able conscientiously to advise that the persons to whom the hon. Member has referred, who have given signal services to His Majesty, should have an alternative method; but, unfortunately, it cannot be confined to them and it brings in so many other people and that is the reason why I personally am unable to recommend it. I still believe that if the matter is put to those people in the light that it is yet one other sacrifice which they are asked, out of their loyalty, to perform, there is scarcely one of them who would not respond to that.

The Chief Secretary: Mr. Chairman, on a point of explanation, the hon. Member said he was not present when the second reading of the Bill was put and carried.

Mr. Blundell: No!

The Chief Secretary: You admit you were?

Mr. Blundell: Mr. Chairman, on this point of explanation, I did not answer for the reason which you so courteously gave to us, but the hon. Member said why did I vote—as I understood it—for the third reading. The point I was trying to make, Sir, was I understood him to say the passing of the Bill and I was not in the Council; I was not present when the Bill was passed.

The Chief Secretary: I said second reading, Sir, when the principles were discussed.

Mr. Blundell: When the hon. Member interjected, he did not say the second reading—he added it afterwards.

Lt.-Col. Ghersie: Mr. Chairman, I rise to support the amendment and I, like the hon. Member for African Interests, the hon. Mr. Mathu, had no intention of intervening in this debate at all, but I rise, Sir, to refer to a certain statement made by the hon. Member for the Coast. When he was addressing Council this morning he said that, as far as he was concerned, it was his own personal opinion that Government had made their position perfectly clear as far as he was concerned, but, Sir, it should be remembered that the hon. Member for the Coast gave many years of loyal service to Government and therefore perhaps he is more conversant

[Lieut.-Col. Ghersie]

with the queer methods some hon. Members on the other side use when endeavouring to express themselves. (Laughter.) Now——

THE CHAIRMAN: If I remember rightly this morning—I have risen so many times that my memory may be wrong—but I think I interrupted the hon. Member for the Coast and ruled him out of order on the ground that a lot of things he was saying were irrelevant. There is, therefore, no need to take up this debate on this particular amendment to a Bill and we are in Committee and I must insist that Members do regard that rule.

LT.-COL. GHERSIE: Thank you, Sir. I was only going to try and establish the point that although he may have been convinced, we on this side of the Council were not.

THE CHAIRMAN: Has that not been sufficiently obvious by a vote of censure. Really this is a great waste of the Committee's time.

LT.-COL. GHERSIE: Sir, I wish to support the amendment.

MAJOR KEYSER: Mr. Chairman, I also rise to support the amendment. Sir, it does seem to me that we have really got away from the main point of this debate in more ways than one.

THE CHAIRMAN: It is not my fault if you have.

MAJOR KEYSER: The point, Sir, is whether there should be an amendment which will allow of an alternative to fingerprinting. Now hon. Members from the other side, by the manner in which they have spoken, have spoken as though this was an amendment to repeal the original Ordinance, which it certainly is not. Well, I say, from the manner in which they have spoken. Then, of course, as they are always in doubt as to what they mean, perhaps they did not quite know this time, but, Sir, anybody listening to this debate would get that impression. A lot has been said about the value of fingerprinting as opposed to any other method, and in my own mind there is no question that fingerprinting is a more efficient method of identification than anything else, and I do not believe there is anybody else in this Council who does believe there is a more efficient method than fingerprinting yet invented, and I do not know that anybody has said so. All, Sir, that we are asking, is that this amendment should be accepted in order to allow of the few people who have conscientious objections to putting their fingerprints on paper to adopt some alternative method, and, Sir, I maintain that had Government, right from the beginning, accepted what we now suggest after the Report of the Glancy Commission, and had they introduced in the Bill that is before the Council the amendment which we now suggest, without having all this frightful argument and these innumerable debates on the subject, I believe, Sir, that there would not have been a hundred people in the country who would have gone for the alternative, but I believe to-day, Sir, owing to the enormous amount of argument that has taken place that there will be a very considerable number who now object to fingerprinting. We very often hear the expression "tolerance" used, and we are asked to be tolerant and liberal. Don't we exercise those qualities on some occasions? We are a community here of many religions and although there are certain practices and beliefs in other religions which are totally unacceptable to me and in many cases seem quite puerile, yet one exercises tolerance and does not mention them, and nor does one try and stop the people who follow those religious beliefs from exercising those particular cults.

THE CHIEF SECRETARY: Why object to fingerprinting?

MR. BLUNDELL: You have not been listening.

MAJOR KEYSER: Yet, Sir, what I am asking those people who have different religions and who keep on asking for tolerance—and the hon. Chief Secretary in particular—is to be tolerant in the particular case and concede something to those who have a conscientious objection to putting down their fingerprints.

The hon. Deputy Chief Secretary told us, I thought, that he had three reasons why he was opposing this amendment. One was that it cost more; the second was infallibility; and the third, security. Well, I cannot remember his having made out any case at all for it costing more. I presume it meant that the amendment, if carried out, would cost more than the law as it stands to-day, but I cannot remember, nor reading through his speech can I notice, that he gave as

[Major Keyser]

very good reasons why it was going cost more. As far as infallibility is concerned, of course the hon. Member Rift Valley struck the real point with regard to that. A bad hat who wants to avoid the law will have his prints taken and will subsequently deface his fingers somehow by burning or some other method, and it might be said that it was a ridiculous thing, but I seem to remember a French saying *"Il faut souffrire pour être belle"*. I also think a "stiff" would suffer a certain amount in order to keep out of jail. The hon. Member for Law and Order did tell us of one convert to fingerprints who spent one night in a jail, who was converted and was really enthusiastic.

THE ATTORNEY GENERAL: On a point of explanation, Mr. Speaker, he was saved from spending a night in jail.

MAJOR KEYSER: He was saved from spending a night in jail and was thereafter a convert to fingerprinting. I was wondering if there was any connexion between that reason and hon. Members on the other side of the Council being fingerprint enthusiasts. (Laughter.)

Sir, with regard to security, I am afraid the hon. Member for Law and Order has left me completely and utterly unconvinced. He talked, Sir, a lot about the changed situation, and the danger of war and a lot of dismal thoughts, which most of us cannot get away from. Now, Sir, if fingerprints could kill, I would have all my fingerprints and my toeprints and other prints taken daily, Sir, in order to help the situation—(laughter)—so would everybody else in the Colony, but surely, Sir, how on earth is this fingerprinting going to affect the international situation or a war? He says it is a matter of security. Well, with open boundaries, Sir, as we have all around us, with no countries on our borders, adopting a system of fingerprinting, surely we are open to intrusion from the other territories of non-fingerprinting persons who have gained admittance into those countries. Also, Sir, I know the matter has been ridiculed, but females are not fingerprinted for certain reasons, and surely the hon. Member for Law and Order has read wonderful stories about beautiful women spies—the best ones as far as I can remember—so, Sir, I really do not believe there is an awful lot, except as a debating point, in this matter of security.

The hon. Commissioner for Labour, Sir, did tell us how very useful this Ordinance could be, and had already been, over the registration system in assistance to other departments, and he told us, I think, that some 11,000 applications had been received from the Post Office. Before you call me to order, Sir, I am going to say quickly that I will remember that when we are discussing the High Commission Estimates. The implication I think, is obvious. (No!) But I would also like to know how it is that the Post Office is being used to that extent, but seems to function quite efficiently in Uganda and Tanganyika, or is the hon. Member inferring that it is not functioning properly in the other two territories?

Sir, there is one more point made by the hon. Member for Law and Order about the man who might run three businesses, but of course fingerprinting will not stop that, because we know that already there is another practice in vogue by which he can get round the fingerprinting, and that is having a dummy in each business who really owns nothing of it, and is dummy for the real owner, and I believe that is being done to quite a big extent in the Colony already.

Sir, I beg to support the amendment.

MR. PATEL: Mr. Chairman, I move that the question be put now.

The question that the question be now put was put and carried.

The question of the amendment was put and on a division negatived by 22 votes to 8. (Ayes: Messrs. Blundell, Cooke, Col. Ghersie, Messrs. Havelock, Hopkins, Major Keyser, Mr. Preston, Lady Shaw, 8; Noes: Messrs. Adams, Anderson, Carpenter, Chemallan, Davies, Hartwell, Hobson, Hope-Jones, Jeremiah, Madan, Matthews, Mathu, O'Connor, Ohanga, Padley, Patel, Pritam, Rankine, Sir Godfrey Rhodes, Messrs. Shatry, Thornley, Vasey, 22; Absent: Sir Charles Mortimer, Mr. Nathoo, Dr. Rana, Messrs. Salim, Saker, Usher, 6. Major Cavendish-Bentinck paired with Mr. Maconochie-Welwood.)

The question that clause 3 stand part of the Bill was put and carried.

MR. BLUNDELL: Mr. Chairman, on a point of order, as we have no doors in this Council which are locked during the counting of a division, is the hon. Member for Uasin Gishu entitled to vote as he comes in?

MR. MACONOCHIE-WELWOOD: Mr. Chairman, I paired with the Member for Agriculture and Natural Resources.

Clause 4.

MR. JEREMIAH: Mr. Chairman, it was our intention, Sir, that we should move the deletion of clause 4, which provides for the reintroduction of the *kipande* in a new form. I have, however, been informed that such amendment is out of order. Now, Sir, our objection to that has already been stated, and I do not think it is necessary for me to take the time of the Council in reiterating them. However, Sir, the arguments put forward for reintroducing the *kipande* in a new form is that the employees of this country, most of whom are regarded as illiterate, should be protected and to some extent we are accused that we are not trying to protect the interest of our people. Now, Sir, such an argument in my view is not convincing. The first thing it presupposes is that all the employees of this country are ignorant and that without the protection of such kind they are going to be deprived of their right. In other words, Sir, it means to say that all the employers in this country are to some extent either robbers or people who are going to ill-treat these people, or deprive them of their due. I do not agree to this argument, Sir. Beside that, even if one was to agree with them, we have already been provided against such an eventuality. We have the Labour Department, which is solely responsible for looking after the welfare of the labour as well as the welfare of the employers. Now, Sir, we have, as well as a record of employment, that buff card which has been used and which in our view we think would be quite satisfactory.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Chairman, I would like to ask, Sir, for a ruling. Is the hon. Member in order? We are now presumably embarking again on a debate on the principle which we covered in the second reading, and not on any detail of the Bill that I can gather.

THE CHAIRMAN: I did not like to interrupt you right away. I thought you were developing your argument as to why you oppose the particular section but you must confine it as closely as you can and not deal with the main principles, which have already been decided both in the principal Ordinance and which have been agreed to in the second reading debate.

MR. JEREMIAH: Thank you, Sir. I accept your ruling. My only reason for trying to repeat that is because we are not allowed to move a rejection of the clause.

Therefore, Sir, I beg to oppose the clause.

MR. MATHU: Mr. Chairman, sub-clause (*a*) to clause 4 enables the holder of the native registration certificate issued under the Native Registration Ordinance now repealed to keep it *in toto*, but the words "Voluntary Record of Employment—to be filled in only at the request of the employee" endorsed on it. Sub-clause (*b*) of clause 4 provides that that portion of the *kipande* which contains a record of his employment also could be endorsed with the words "Voluntary Record of Employment—to be filled in only at the request of the employee", but could be detached from the part of the *kipande* which has his particulars. So we have, in those two sub-clauses, all that I think is necessary. The first part keeps the form, the *kipande* form, as we know it. The second part, (*b*), keeps that part of the two parts of the *kipande*, two halves, the top half for identification and the bottom half for the employment record. My suggestion, Sir, is that in view of that I do not see the use of sub-clause (*c*). You have the Principal Registrar given powers to fill in as many particulars as he wishes on the bottom part of the *kipande*, that is the part which has the employment record. He can put such particulars as may be determined by himself and shall be inscribed on the other portion of the *kipande* the words "Voluntary Record of Employment"—etc., on it. What I am suggesting, Sir, is that if Government want to keep the *kipande*—they have it in the first part and in the second part. They have it in two halves. They want

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[Mr. Mathu]

the registration officer to put in as many particulars as he likes, and these particulars—we do not know what they are. Can they not be prescribed so that we know exactly what these particulars will be? They are all open. If it is not out of order and if it is not negativing the thing, I would propose an amendment that sub-clause (*c*) be omitted. Sub-clause (*c*) of clause 4 be omitted.

THE LABOUR COMMISSIONER: On a point of explanation, Sir, clause (*c*) gives power to the registrar to put on the bottom half of the certificate which has been attached under (*a*) (ii) such particulars as he may determine. Particulars of name and identity, that is all.

MR. MATHU: I would prefer—why not put them all in the clause so that we know what they are? You may put particulars that Africans may object to on very reasonable grounds.

I move that sub-clause (*c*) of clause 4 be omitted.

THE CHAIRMAN: You are against this sub-section?

MR. MATHU: Yes, Sir.

THE CHAIRMAN: All right. I will propose the amendment. As far as I understand it—I do not know that I am right in so doing, but clause (*b*) of this section, the amendment is that it be struck out, that sub-clause (*b*) of clause 4 be struck out.

MR. MATHU: Sub-clause (*c*), Sir.

THE CHAIRMAN: There is no sub-clause (*c*) of clause 4. Sub-clause (*c*) is a sub-clause of the new sub-section 5. I can only put the whole thing. If you are against the whole thing, have it out.

The question was put and negatived.

MR. HAVELOCK: On a point of order, Sir, when the amendment was proposed, there was very little time given for debate, Sir, on the amendment. I think hon. Members on this side did not really understand what was happening before you put the question. I would be grateful for a little more time.

THE CHAIRMAN: I cannot reopen it now.

MR. MATHU: But does that not show that the Unofficial Members who said "not voting" were not in favour of supplying Voluntary Record of Employment to their employees?

The question that clause 4 stand part of the Bill was put and on a division carried by 14 votes to 4. (Ayes: Messrs. Adams, Anderson, Carpenter, Major Cavendish-Bentinck, Messrs. Davies, Hartwell, Hobson, Matthews, O'Connor, Padley, Rankine, Sir Godfrey Rhodes, Messrs. Thornley, Vasey, 14. Noes: Messrs. Chemallan, Jeremiah, Mathu, Ohanga, 4. Did not vote: Messrs. Blundell, Cooke, Lieut-Col. Ghersie, Messrs. Havelock, Hopkins, Major Keyser, Messrs. Maconochie-Welwood, Madan, Patel, Pritam, Shatry, Lady Shaw, 12. Absent: Mr. Hope-Jones, Sir Charles Mortimer, Messrs. Nathoo, Preston, Dr. Rana, Messrs. Salim, Salter, Usher, 8.)

THE ATTORNEY GENERAL moved: That the Registration of Persons (Amendment) Bill be reported back to Council without amendment.

The question was put and carried.

Council resumed and the Member reported accordingly.

BILLS

THIRD READING

The Registration of Persons (Amendment) Bill

THE ATTORNEY GENERAL moved: That the Registration of Persons (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

MAJOR KEYSER: Mr. Speaker, I beg to move: That the Bill be recommitted, and I am doing that, Sir, because of the omission of the clauses that were proposed, as an amendment, in the Committee stage. In that Committee stage, Sir, considerable points were put up on this side of the Council as to why that amendment should be supported, and Government did not reply to some of those points in support of the question, presumably because they had no reply to the points put up on this side.

I beg to move, Sir.

MR. HAVELOCK: I beg to second.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I rise to oppose this motion. Certainly in the Committee stage the question was put and no further reply

[The Deputy Chief Secretary]

to certain points, which were raised for the fourth, fifth or even more times, was given. But, Sir, we on this side of the Council were not disposed to object to the question being put because we felt that we had made our case for this Bill over and over again, and that any further speech by any hon. Member on this side could have done no more than repeat statements already made time and time again. I would only like to say now, and I certainly should not have said any more than this had the question not been put when it was put, that on the question of cost, which the hon. Member for Trans Nzoia put to me, I can certainly assure him that the cost to this country of accepting that amendment would have been greater than the cost of operating the Ordinance as it stands. I am not going to weary hon. Members with details now, but I will be glad to give those details to any hon. Member who likes to ask me for them.

The hon. Member for Kiambu asked me what my authority was for saying that large numbers of people in the country would not have liked acceptance of the amendment proposed by the hon. Member for Nairobi South. I simply reply to that, Sir, the views expressed during the debates last year by one or more representatives of every single group of Unofficial Members opposite. I have no doubt and my conscience is perfectly clear on this—that that statement was a true statement. I certainly believe it to be so.

Another point that I would then have made, Sir, though it had previously been replied to by the hon. Member for Law and Order, would have been to refer to the remarks made by the hon. Member for Rift Valley about those persons whom he says really do object on conscientious grounds . . .

THE SPEAKER: I do not know whether the hon. Member is aware that he is speaking when no motion has yet been proposed from the Chair. You rose very quickly and I did not know quite what you were going to do, and was taken rather by surprise by the motion moved by the hon. Member for Trans Nzoia, but I take it that the hon. Member for Trans Nzoia is moving under Standing Rule and Order 83?

MAJOR KEYSER: That is right, Sir.

THE SPEAKER: What is the fresh provision which you wish to introduce?

MAJOR KEYSER: The alternative to fingerprinting.

THE SPEAKER: That is a matter which has already been disposed of in Committee and is not—

MAJOR KEYSER: That was in another debate, Sir. I want it brought in in this debate.

THE SPEAKER: I am afraid that the motion is entirely out of order, and as I cannot put it from the Chair, there can be no debate on it. You can move the rejection of the Bill if you wish.

MAJOR KEYSER: No, Sir, we do not want to move the rejection of the Bill.

THE SPEAKER: No, that is just the point. I now propose the question on the only motion which I have before me, which is that the Bill be now read a third time and passed. That is open to debate, of course.

The question that the Bill be read a third time was put and carried and the Bill was read a third time and passed accordingly.

BILL

SECOND READING

The Employment (Amendment) Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I think that the Order Paper is incorrect in inferring that we had reached the Committee stage on this Bill. I think, Sir, subject to your correction, that the next stage is to move that the Bill be read a second time. I therefore beg to move: That the Employment (Amendment) Bill be read a second time.

We have already travelled, Sir, over the substance of this Bill because it overlaps with the Bill which has just now been read a third time and passed, and I do not propose to take up the time of Members further by explaining its terms. What each clause does in this new Bill is fully explained in the Objects and Reasons, and I would only repeat now what I said in the debate on the earlier Bill, that there is no compulsion in this Bill on anybody at all to take out a voluntary record of employment. If my hon. friends the Members representing African Interests are correct when they state that nobody wants this

[The Deputy Chief Secretary]

regular record, then obviously nobody will apply to have one. Nobody can be prosecuted or any such nonsense if he does not apply to have a voluntary record of employment. It is all purely voluntary.

Sir, I beg to move that the Bill be read a second time.

THE SOLICITOR GENERAL seconded.

MR. JEREMIAH: Mr. Speaker, I rise to oppose the second reading of the Bill and as I have seen the futility of our opposition in this Council I am rising only to express the hope that the Bill as it is is going to be purely voluntary. I hope that Government will keep that in mind, and that the employers also of people will have that in mind, that it is purely voluntary, and that unless the employee introduces it to the employer and asks him to record it, the employer should not ask for it. It is a *kipande*, Sir, and we do not like it, but we are forced to have it, as it is voluntary.

MR. OHANGA: Mr. Speaker, I merely rise to record my opposition, and disapproval to anything that would in any way further force the burden of a *kipande* upon the African community of this country whether voluntary or not. As we have said before, this is a *kipande* and we shall have nothing to do with it.

I beg to register my very strong opposition to this Bill.

MR. CHEMALLAN: Mr. Speaker, I also wish to record my opposition to this Bill. Actually, I do not see why the employers' community should really support anything like this. After all, it is entirely to their disadvantage. Besides showing only the wages and rations which, say, an employee got from the previous employer, it never in any way indicates whether the fellow is hard-working, efficient or even lazy. I do not see why they should support it at all.

Sir, I entirely oppose it.

MR. MATHU: Mr. Speaker, I rise also to oppose this measure, because we think it is entirely unnecessary. It neither helps the employee nor does it help the employer. It is only, if I may say so, a waste of public money, by printing papers in this form, and I think, Sir, that we shall continue to oppose this because, as I say, it is entirely uncalled for from the African community's point of view. If you look at the schedule to this Ordinance, Sir, where the employer is required to fill in quite a number of things—"Employers are advised to check the identity number recorded above with the identity certificate produced under the provisions of the Ordinance"—I think they will have to employ twenty clerks to do this, particularly large employers, to fill in all those particulars of employment which have been provided. It is all unnecessary, Sir. Clause 4 also deals with the returning of the *kipande* entirely in its present form, and if you study the particulars which are shown in that schedule they are the same particulars as you have in the present *kipande*, and the illiterate Africans—and the majority of them are illiterate—will find no difference in this from their present *kipande*. As I say, all we can do at this moment is to register a very sincere protest against this measure, and I oppose its second reading.

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, I would like to get up and say here that I believe most firmly that a large number of Africans do in fact want this. If they want it I suggest they should be able to have it, and if they do not want it they need not have it. I believe that this gives them a good useful practical alternative to large numbers of buff cards which they simply lose, and, as I said before, if they do not want it they need not have it. It is a voluntary thing, it will remain a voluntary thing, and I think it is a good thing, and I ask the Council to vote for it.

THE DEPUTY CHIEF SECRETARY: I do not think, Sir, that I need add to what has already been said over and over again about this matter, except to endorse very strongly the remarks just made by my hon. friend the Chief Native Commissioner.

The question was put and carried.

THE ATTORNEY GENERAL moved: That the Council resolve itself into Committee of the whole Council to consider the Employment (Amendment) Bill clause by clause.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Bill was considered clause by clause.

Clause 5.

THE ATTORNEY GENERAL moved: That the Schedule to be added to the principal Ordinance by clause 5 be amended by the substitution of the following headings on the reverse of the Voluntary Record of Employment provided for under clause 2, for the headings printed in the Bill:—

Name (Block Capitals) and Postal Address, Nature of Work, Date of Engagement, Date of Discharge, Basic Wage, Rate of Wages (On Engagement, On Discharge), Whether Rationed or not and value thereof, Ration Allowance, Whether Housed or Not and value thereof, Signature of Employer.

The question of the amendment was put and carried.

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

THE ATTORNEY GENERAL moved: That the Employment (Amendment) Bill be reported back to Council with amendment.

The question was put and carried.

Council resumed and the Member reported accordingly.

BILLS

THIRD READING

The Employment (Amendment) Bill

THE ATTORNEY GENERAL moved: That the Employment (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

MR. MATHU: Mr. Speaker, I beg to move under Standing Rule and Order 84 this Bill be rejected. There has been nothing coovincing in the arguments from the other side, or from those who support this measure, to us, and we are of the opinion that it should not go into the Statute Book.

I move that it be rejected.

THE SPEAKER: If you wanted to do that you should have risen immediately before the question was proposed from the Chair. I was not aware that you were going to move the rejection, and as you did not do so—I am wrong, you are in order.

MR. OHANGA: Mr. Speaker, I beg to second the rejection proposed by my hon. friend. I had particularly little to say myself on the second reading of this Bill, because naturally I am not an employer of a very large number of people, like most people, and I was waiting to hear too, particularly from the distinguished representatives of those who employ, some cogent and convincing arguments why this Bill should be put through, and nobody put forward anything which seemed to me really to support for a law of this kind to be in the Statute Book of the country.

I beg to support the rejection of the Bill.

THE SPEAKER: Before I put that question, I would point out that it is past a quarter to one and unless Council wishes to go on sitting and debating it, it would be better to adjourn until to-morrow morning at nine-thirty.

ADJOURNMENT

Council rose at 12.50 p.m. and adjourned until 9.30 a.m. on Wednesday, 7th March, 1951.

Wednesday, 7th March, 1951

Council assembled in the Memorial Hall, Nairobi, on Wednesday, 7th March, 1951.

MR. Speaker took the Chair at 9.30 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 6th March, 1951, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

BY THE DEPUTY CHIEF SECRETARY:

The Report of the Select Committee on the Survey Bill.

BILLS

THIRD READINGS—(*Continued*)

The Employment (Amendment) Bill

THE SPEAKER: When we met last we were debating a motion by the hon. Mr. Mathu that the Employment (Amendment) Bill be rejected.

MR. JEREMIAH: Mr. Speaker, I rise to support the motion for the rejection of the Employment (Amendment) Bill. Sir, it is possible that while we spend all the days here arguing on this point, we do not seem to understand each other.

Now, Sir, I will try and be a bit frank why actually we are objecting to this Bill —the reintroduction of the *kipande*. The main reasons I express, which are personal, is that the *kipande*—or the record of employment—is always not in my view fair for the employee. The employee might have worked in a place where he does not agree with his employer, and therefore he leaves his work after two or three months. Now, to another employer it would look as if the employee concerned was not a proper person, or a hard-working person, whereas, in fact, it was the employer who was impossible.

Another point, Sir, we regard this as a suppression of wages because an employer, after seeing what salary an employee was getting from his previous employer, he tends to pay almost the same, but, as it is in some cases, the employee may find a place where he gets better employment for some time, and when he leaves he is likely to be employed on a lower salary. In that case, Sir, when he goes again to another place, he would not like to show his previous employment where he was getting a lower salary. He would prefer to show where he was getting a higher salary, and that is why he prefers the buff card—because they are for each employer, and therefore he can show which he chooses.

But with regard to this *kipande* which records the employment continuously, there is that danger of depriving the employee of the right of a better salary.

Those are our views, Sir, and I think it would be better for us if we could be told why the employer or the Government is actually insistent on this.

Furthermore, it is, I think, only in this country where it is found that records of employment in some form are necessary, whereas in other places the recognized means of a record of employment is a testimonial which, I think, is far better than the only record of employment provided in the *kipande*.

Another point, Sir, is that if an employee is not satisfied with his employer and he wants to leave the service, unless the employer agrees to let him go and signs him off in his *kipande*, then he will have no chance of getting employment in another place because he will be regarded as a deserter. That is also a disadvantage to the employee.

There are various other reasons, we have had the *kipande*, and we know what it is and for that reason, Sir, I strongly oppose the introduction of the *kipande*.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, it was said yesterday by my hon. friend Mr. Mathu, the Member for African Interests, that the Government had put forward no reasons for the introduction of this legislation.

MR. MATHU: Sir, on a point of explanation, I did not say the Government had put no reasons, I said that they had put reasons which have not convinced me.

THE DEPUTY CHIEF SECRETARY: I accept the hon. Member's explanation, Sir, but I explained during the Second Reading debate on the previous Bill

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which we passed yesterday, and when the Bill was being considered in Committee why this amendment is being introduced, and I would like to have put on the record to-day this passage from Sir Bertrand Glancy's Report:

"Inquiries made from a variety of witnesses leave no doubt whatever that the *kipande* record of employment is definitely prized by a high proportion of employees, particularly in rural areas—men with commendable records are extremely reluctant to part with them, and they are frankly bewildered by orders which have been passed, which appear to them more designed to benefit unsatisfactory workmen than the honest labourer."

That, Sir, is a very frank statement about the views expressed to the Commissioner when he was undertaking this inquiry, and we believe from other evidence also that there are large numbers of Africans who do definitely desire some form of continuous record of their employment.

We heard the other day from the hon. and gracious Lady, the Member for Ukamba, of her own experience with a number of employees who were thoroughly proud of this record, and such persons would, I think, have a very justifiable grouse if this Council were to take no notice of their desire to keep and preserve such records.

The hon. Mr. Jeremiah said that this is not fair to the employee. Well, Sir, the employee who takes that view need not have a voluntary record of employment. There is absolutely no compulsion on anybody to have the record, so that anybody who takes that view simply stands by the law which requires the employer to give him a completed buff card.

The hon. Member also objected that the effect on an employee producing a voluntary record of employment would be that he would of necessity have to accept the same wage as he was receiving from his previous employer. Well, Sir, supposing he has no such record, and he has been a good worker and has had a high wage—supposing he goes along without this continuous record of service to a new employer—I suggest to the hon. Member it is just as likely that in some new employment he will be offered a lower wage than would be the case if he were able to produce a record of his past services. Anyhow, if he does not take that view then there is no need for him to have a voluntary record.

If he once has a voluntary record, and at any time in the future he wishes to dispense with it, then he can tear it up and have nothing more to do with it. I cannot understand, Sir, the objection to allowing a man to have such a record who particularly wants to have one, and that is all we seek to do in this Bill. We are simply enabling the good employee who wishes to have this continuous record to have it, and we are requiring under this Bill that employers shall fill in such a voluntary record if—and only if—the employee asks for it. Sir, I suggest that far from the reasons for bringing forward this legislation being unconvincing, the opposition which has been put forward by hon. Members representing African interests, is really without any substance whatsoever.

I beg to oppose.

MR. COOKE: Mr. Speaker, I wish to support what the hon. Member has just said. It appears to me, Sir, that this motion is doing a disservice to the Africans themselves. Now, I, for instance discharged a *shamba* boy the other day, and after I had discharged him he came along and asked for a reference. As it was, he was a good boy, but I had to sit down and write out a reference for him. Supposing that boy had, say, a dozen employers during the course of two or three years, he would have a dozen references to carry about in his very exiguous clothing. Surely it is much better that Government should provide him with a sheet of stiff paper on which to record his services?

With all due respect to my hon. friend, the Member for African Interests, Mr. Jeremiah, what he really advocated was in a way putting a premium on dishonesty, because if an employee is only going to produce references which show only the high wages which he got, and not the lowest wages—the latter of which may be subsequent to the other—I think he is deceiving his employer. Surely it is much better—so long as sanctions against the employer are rigorously enforced I think that it is absolutely without question—I think it is much better

[Mr. Cooke]

for the African to have this record in a convenient form.

Therefore, Sir, I oppose this motion.

The question that the Bill be rejected was put and negatived.

The question of the Third Reading was put and carried and the Bill read a third time and passed accordingly.

MOTION

SEGREGATION CLAUSES IN COVENANTS CONCERNING LAND IN TOWNSHIPS

MR. PATEL: Mr. Speaker, I beg to move:

WHEREAS racial segregation for commercial or residential purposes in townships in Kenya is contrary to the policy declared by His Majesty's Government in the United Kingdom embodied in the White Paper of July 1923 AND WHEREAS such segregation is contrary to the principles and provisions of the United Nations Charter and the Declaration of Human Rights to which His Majesty's Government is a party AND WHEREBY His Majesty's Government is pledged to promote "Universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion". AND WHEREAS such segregation is inconsistent with the present non-racial character of the Commonwealth of which three Non-European countries namely India, Pakistan and Ceylon are members and equal partners;

AND WHEREAS any covenants incorporated in any instruments concerning land in Townships in Kenya prohibiting ownership or occupation by any person on the ground of his race or colour are contrary to the ideals for which the Commonwealth stands and therefore must be considered against Public Policy;

This Council therefore recommends to the Government to appoint a Select Committee of this Council with the following terms of reference:—

1. To investigate and report as to the extent of commercial or residential segregation practised to-day in the Townships of Kenya in pursuance of covenants incorporated in Instruments concerning land whether granted by the Crown or by Private Treaty;

2. To suggest ways and means for rendering all such covenants and restrictions as null and void.

Mr. Speaker, in moving this motion I am reflecting the genuine feelings of the Asian community and I earnestly hope that the hon. Members of this Council will try to understand the other man's point of view whether in the end they agree or disagree with me. I was told by a leading European that I had selected this time to move this motion when constitutional changes were under consideration, in order to embarrass the European community. Sir, such political tactics by political parties are not unknown in democratic communities such as the United States of America or the United Kingdom, but as far as I am concerned, the allegation is further from truth. This question had been exercising in the minds of the Indian Elected Members for a long time and we had the opportunity and occasion to make representations to His Excellency the Governor in April, 1950, in connexion with certain plots occupied by Indians at Eldoret. The facts in connexion with this which were represented to His Excellency the Governor were fully set out by us in a memorandum which we submitted to the Governor in April, 1950, and I will read those facts from the memorandum:—

"Messrs. Hasham Lalji, Juma Haji and Juma Mohamed, Ismaili Khojas, of Eldoret, approached the Indian Elected Members about a fortnight back and acquainted them about the question which has arisen in regard to their respective residential buildings now in their occupation. They purchased their respective buildings more than four years ago and spent a great deal of money in improvement and extension of these buildings in order to make the same suitable for their respective use. The extension plans were approved by the Eldoret Municipality knowing that these houses were to be occupied by the owners who are Asians. They have been occupying these houses now for more than four years.

All the said three parties have now been served with a notice by the Special Commissioner and Acting Commissioner for Lands that a lessee's covenant in their respective leases has been broken by each of them as there is a failure to

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observe and perform the condition as to European occupation required by the covenant in the leases, and each of them has been notified by virtue of the provisions of section No. 18 of the Crown Lands Ordinance, 1902, that the Commissioner of Lands intends to commence an action in the Supreme Court for the recovery of the said three pieces of land and for a declaration that the leases in respect thereof be forfeited.

The Indian Elected Members having heard the said three parties carefully reviewed the general position in regard to segregation existing in certain areas in some of the townships in Kenya. They understand that (1) in regard to business areas there is restriction as to European occupation only in the properties situated in one street in Eldoret and at no other place and (2) in regard to residential plots the restriction as to European occupation only exists in regard to certain areas in many townships including Mombasa, Nairobi and Eldoret wherein plots were allotted with such restrictions prior to July, 1923, and also wherein certain European owners of freehold or leasehold properties have restricted use to Europeans only whilst transferring subdivisions thereof to transferees.

So it will be seen, Sir, that the Indian Elected Members had made representations to the Government as early as April, 1950, when the question of the constitution changes was not in the air.

Sir, I may say that on account of the representations which were then made by the Indian Elected Members to the Government no legal proceedings were instituted against these three Indians as was threatened, but they are expected now to go out of their present buildings and put up their buildings elsewhere where they are offered plots for the purpose at a much larger premium and annual rent than they are paying today for the land of which they are in occupation. I may inform this Council that last year I visited Eldoret and reviewed very carefully the situation of these buildings, and I can say from my own personal visit that the occupation of these buildings by these Asians could not in any manner whatsoever interfere with the occupation of the Europeans of the neighbouring area. The most annoying part of the whole thing is that these three Indians are now offered land only a hundred feet away from their present buildings. There is no objection by the Government if they can build only a hundred feet away from these present sites and transfer their residence to those places. That is what they are asked to do by the Land Department today. I may also inform the Council that these three Indians are Ismaili Khojas, the followers of His Highness, the Aga Khan, who, under the guidance of their spiritual leader, have adopted East Africa as their mother country, have been loyal to this country, do not look forward to any other country as their own, and have adopted western standards of living and, after visiting their premises last year, I can say that their standard of living is in no way inferior to any of the Europeans in Eldoret. They have now been asked to leave these premises and to go a hundred feet away from the present sites.

Sir, for the information of those who have been lately alleging that there are no difference of opinion between the Moslems and the Europeans in this country, I would like to tell them that all these three Indians are Moslems. And I may also inform this Council that though the Indian Members have differences of opinion on the matter of representation on this Council, immigration and one or two other matters, they are of the same view on all important problems which arise in this country and are discussed in this Council. Though my hon. colleagues, Dr. Rana and Mr. Ebrahim are unavoidably detained elsewhere, I have the authority to state on their behalf that they agree with the terms of this motion. This is one of the most important questions on which there is no difference of opinion as far as the Indian Members are concerned.

Another instance I can give to this Council is of a proposal to alienate a hotel site at Mombasa to an Indian syndicate. It has been proposed to this Indian syndicate that it cannot be alienated to them unless there was a clause in the lease that it could not be occupied by Asians and Africans except as domestic servants.

[Mr. Patel]

...ver, Sir, there is no such clause existing to the best of my knowledge in any ...f the other sites for hotels on the Coast. ...e Government, as far as I am informed by the Indian syndicate is willing ...o allocate this site to that Indian syndi...ate but a difficulty has arisen on ac...ount of the question of this restrictive ...ovenant. Now, Sir, I have seen that site ...nd it is a corner plot far away from any ...f the present sites occupied by the ...European residents and I do not think it ...ill disturb in any manner whatsoever ...ose European residents who are living ...n that neighbourhood. Sir, it may be ...lso I think of interest to those who so ...many times refer to the difference ...except the Indians that this is a ...Moslem syndicate.

Now, Sir, I would like to mention another instance also which has arisen in Nyeri. An Indian purchased at an auction a plot for Sh. 56,000. The auctioneer mentioned that there was no commercial segregation in Nyeri and therefore he could build there and have his trade on the site. The Indian spent about Sh. 80,000 for putting up a building. There is a 100-foot road passing in front of this building. Across the road there are Indian traders trading, but this Indian is not given a trading licence because it is stated that there is a covenant that the site could be occupied only by Europeans. Now, Sir, others, I think, can multiply instances, but I think this is sufficient to show that there are very good grounds why the Indian Elected Members should come before this Council and ventilate the grievances of the Indian community in this respect. I would like to mention the present position as far as I understand it. As far as I have been able to ascertain the commercial segregation existing in this country to-day in one street in Eldoret, and this plot in Nyeri, I am not aware of any other area in any other township where there is commercial segregation in existence.

In regard to residential segregation, I think it can be divided into three parts. First, the plots alienated by the Crown before July, 1923. Secondly, plots alienated by the Crown after July, 1923, and thirdly the restrictive covenants introduced by the private owners, while transferring subdivisions to other people, and I shall deal later on with all these three matters separately. But I would like to mention at this stage that whenever a township was extended or brought into existence it would have to get the agricultural land from the Highlands occupied by the Europeans and, therefore, the Europeans had the opportunity of subdividing such agricultural land, changing the user into residential sites, and then introducing private covenants restricting occupation and ownership as they may like, and thus they have the advantage of this situation.

Now, Sir, I would like also to refer to how segregation came into existence. As far as I am able to ascertain, there was a demand for commercial and residential segregation by the European community of this country prior to 1911 and one, Professor Simpson, submitted a report in 1911 advocating such segregation. However, the Indian community, at no time, accepted that position and always strongly opposed it. During the heated controversy between the Indian and European community between the period of 1919 and 1923, the question of segregation was one of the most important questions which were submitted to His Majesty's Government for final decision and His Majesty's Government issued a White Paper in July, 1923, in which the following statement in regard to segregation appears:—

"Following upon Professor Simpson's Report, the policy of segregation was adopted in principle and it was proposed by Lord Milner to retain this policy both on sanitary and social grounds. In so far as commercial segregation is concerned, it has already been generally agreed that this should be discontinued, but with regard to residential segregation, matters have been in suspense for some time and all sales of township plots have been held up pending a final decision on the question of principle involved."

Now, at this stage, I would like to make a remark that on account of the opposition of the Indian community to such a policy of segregation, the sale of all plots in the townships were then held up.

"It is now the view of the competent medical authorities that as a sanitation measure, segregation of Europeans and Asiatics is not

[Mr. Patel]

absolutely essential to the preservation of the health of the community; a rigid enforcement of sanitary, police and building regulations, without any racial discrimination by Colonial and Municipal authorities will suffice. It may well prove in practice that different races will by natural affinity keep together in separate quarters, but to effect such separation by legislative enactment except on the strongest sanitary grounds would not in the opinion of His Majesty's Government be justifiable. They have therefore decided that the policy of segregation between Europeans and Asiatics in townships must be abandoned, but for the present, at any rate, it is considered advisable, as in other native dependencies, to keep the residential quarters for natives, so far as practicable, separate from those of immigrant races. In the case of individual natives, such as servants, strict segregation is unworkable but it is important when areas have been fixed in townships for native residence that those areas be regarded as definitely set aside for the use of natives and no encroachment thereon for non-African races be permitted."

Now, that was a statement made by His Majesty's Government in July, 1923. They abandoned segregation completely between Asians and Europeans. In the circumstances of this country, it only meant that the non-Africans should not occupy any areas occupied by the Africans. On that point, Sir, I would like to explain the stand the Indian community has always taken. I, myself, appeared as a witness before the Joint Parliament Committee in 1931 and submitted a memorandum and gave evidence. I supported that stand which has been the policy of the Indian community always in regard to African lands. Sir, the stand of the Indian community has always been that whatever land, either agricultural or otherwise, which is held or occupied by the Africans, should be exclusively occupied by them, but in regard to the balance of the land, the occupation and ownership should be free to all including the Africans if they can fulfil the conditions which may be laid down by the municipal or other authorities. That has been the stand of the Indian community always, that in regard to agricultural land or any other land, the lands occupied and held by the Africans should be in their exclusive occupation, but the balance of the land should be free for ownership and occupation for all races including the Africans. And, in my view, that is the correct policy which should be followed in view of the statement made by His Majesty's Government in July, 1923.

But, Sir, after the issue of the White Paper, the Uganda Government followed this policy of non-segregation and ignored all restrictive covenants which were then existing in Uganda. They ignored these restrictive covenants which were included in the various instruments before the White Paper, but the Kenya Government followed another course. They not only wanted to insist upon observance of the covenants which were existing in July, 1923, but went further and said that in the areas where such plots were alienated, further plots which may be alienated should also have restricted covenants attached to these plots. That is what the Kenya Government did. A very different policy followed from the one which was followed by the Uganda Government. Now, Sir, on account of that, the Indian community made various representations and the reasons which were given in the House of Commons supporting the Kenya Government's view and also the reasons given in this Legislative Council I would put forward because that represents the point of view of the Government.

Firstly, Sir, there was a reply given in the House of Commons on the 10th June, 1926, in answer to a question by Colonel Wedgewood which reads:—

"It should be borne in mind that the transition from the policy of segregation to one of non-segregation involved some difficulty and it was pointed out by the Government concerned that in certain cases the land was legally subject to restrictive covenants entered into under the former system. After careful consideration it was decided that where it was not possible to waive such covenants without incurring legal proceedings entailing the probability

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of an injunction against the Government it would be necessary to retain the restrictions."

And there was a reply given here in the Legislative Council to a question put forward by the late Hon. Mr. J. B. Pandya. That was in 1927:—

"The Hon. Member is no doubt aware that the declaration of the White Paper of 1923 against residential segregation as between Europeans and Indians cannot in practice be applied without qualification in areas governed by covenants made before 1923 when segregation was, under Imperial Sanction, part of the settled policy of the Colony. In such areas the policy of the Declaration of 1923 is limited in application by the facts of the situation, since Government can neither unmake covenants entered into before 1923 nor accept the liability involved in ignoring them. The question whether or not a particular area comes under this limitation must depend upon the legal opinion as to whether sales without restrictions would adversely affect existing interests or render Government liable to claims from holders of existing titles in the area. Government has advised that in the Mombasa area to which the hon. Member's question refers unrestricted sale would affect existing interests and could expose Government to claims from existing holders. The course taken by the Government is, therefore, the only course possible, if the plots in question are not to be withheld indefinitely from residential occupation."

These answers represented the Government point of view that they were liable to action if they did not observe the policy of segregation in the area in which plots with restrictive covenants were alienated before July, 1923. Now, Sir, whatever may be the position in this regard before the last world war, I think circumstances have now so radically altered as to demand a review of the whole position. We are to-day living in a different world and with a different line of approach to the various problems which confront us. Now, before referring to the circumstances which have been created by the birth of the United Nations Declaration of Human Rights and the three non-European Commonwealth countries, namely India, Pakistan and Ceylon, I would like to refer to certain statements made by a judge of the Supreme Court of Canada in regard to the effect on a public policy by the coming into existence of the United Nations Charter and other international documents.

Sir, in that case in Canada the covenant was that the land was not to be sold to Jews or persons of objectionable nationality and the matter was considered at some length and the covenant was held to have no effect as it was deemed contrary to public policy as it tended to create or deepen division between religious and ethnic groups. As I believe that those statements are very relevant to my motion and also to the arguments which I propose to put forward I would like to refer to those statements before I proceed further. Sir, there is one very important quotation taken from another judge which is also very relevant on this matter. It is in regard to "The Growth of Law", "Existing rules and principles can give us our present location, our bearings, our latitude and longitude. The inn that shelters for the night is not the journey's end. The law, like the traveller, must be ready for the morrow. It must have a principle of growth". Now, Sir, why I am quoting this is that the answers which were given in 1926 and 1927 about the commitments of Government, I shall contend are not valid in the world of to-day. The law must grow. Those answers, in my opinion, were not final. Now, further, the learned judge says "It is a well-recognised rule that courts may look at various Dominion and Provincial Acts and public law as an aid in determining principles relative to public policy. First and of profound significance is the recent San Francisco Charter, to which Canada was a signatory, and which the Dominion Parliament has now ratified. The preamble to this charter reads in part as follows:—

"We, the peoples of the United Nations, determined to save succeeding generations from the scourge of war, which twice in our lifetime has brought untold sorrow to mankind, and to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of

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nations large and small . . . and for these ends to practise tolerance and live together in peace with one another as good neighbours. . . .

Under articles 1 and 55 of this Charter, Canada is pledged to promote 'universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language or religion'".

The learned judge here is taking the United Nations Charter and the fact that Canada had given its assent to it as a factor in deciding the whole matter.

He further on, in the course of the judgment, Sir, said "If the common law of treason encompasses the stirring up of hatred between different classes of His Majesty's subjects, the common law of public policy is surely adequate to void the restrictive covenant which is here attacked".

"My conclusion therefore is that the covenant is void because offensive to the public policy of this jurisdiction. This conclusion is reinforced, if reinforcement is necessary, by the wide official acceptance of International policies and declarations frowning on the type of discrimination which the covenant would seem to perpetuate."

Now that applies, Mr. Speaker, equally to us as the United Kingdom has been a signatory to the United Nations Charter. "It may not be inexpedient or improper to refer to a few declarations made by outstanding leaders under circumstances that arrest the attention and demand consideration of mankind. I first quote the late President Roosevelt." Now, Sir, the learned judge in this case deciding on ground of public policy against the clause which prevented the Jews and people of objectionable nationality from buying land, took into consideration even the statements made by very prominent leaders of the world, he quotes President Roosevelt, "Citizens, regardless of religious allegiance, will share in the sorrow of our Jewish fellow-citizens over the savagery of the Nazis against their helpless victims". I will not take the time of the Council by quoting the whole, but he says further, "I express the confident hope that the Atlantic Charter and the just World Order to be made possible by the triumph of the United Nations will bring the Jews and oppressed in all lands the four freedoms which Christian and Jewish teachings have largely inspired". And then he quotes a statement from the hon. Winston Churchill. He also quotes a statement from General Charles de Gaulle. All these statements of public leaders of the world have been quoted in regard to this matter before we decided the question of public policy in regard to a covenant of the nature which I am attacking to-day.

He also quotes a resolution. "The resolution passed by the representatives of over 60,000,000 organized workers at the World Trade Union Congress recently held at London that 'every form of political, economic, or social discrimination based on race, creed, or sex shall be eliminated'."

The resolution against discrimination adopted unanimously by the Latin American nations and the United States in Mexico City on the 6th March, 1945, at the time of the Act of Chapultec, is that the governments of these nations shall "prevent with all the means in their power all that may provoke discrimination among individuals because of racial and religious reasons".

Mr. Speaker, I have quoted at length, in order to show that we have before us not only the statement of His Majesty's Government of July, 1923, but the United Nations Charter which was assented to by His Majesty's Government in 1945. But it may be found of very great interest that this application before the Supreme Court in Canada was filed in May, 1945, while the Charter was signed in June, 1945, after the application was filed and the judgment was given in October, 1945, and the learned judge took into consideration the provisions of the Charter which came into existence after the application was made by the person attacking that restrictive covenant. But the Declaration of Human Rights was not in existence when this judgment was given in Canada. The Declaration of Human Rights was accepted by various nations of the world only in 1948. So in my view my case is stronger to-day than the case of the person who went before the Supreme Court of Canada in 1945.

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Now, Sir, I believe that the birth of the United Nations Charter, the Declaration of Human Rights, and the three Commonwealth non-European countries have certainly raised very important matters for our consideration and for the consideration of public policy in regard to these restrictive covenants. But before making my observations in this regard, Sir, it is necessary for me to refer to certain quotations in regard to the United Nations Charter and the Declaration of Human Rights, because they are very relevant to the consideration, whether we should continue these restrictive covenants or the time has come for reviewing the whole position.

Firstly, Sir, I would refer to the clause which appears in the Declaration of Human Rights which has been assented to by His Majesty's Government in the United Kingdom. Article 2 of the Declaration of Human Rights reads: "Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status".

Now, that is the most important article in the Declaration of Human Rights. And, Sir, the Secretary General of the United Nations, Mr. Trygve Lie submitted a memorandum to all the nations of the world, including the United Kingdom on this matter in June, 1950, and I would like to read a relevant portion from that memorandum. He has put forward several points and the eighth point is "the continued and vigorous development of the work of the United Nations for wider observance and respect for human rights and fundamental freedom throughout the world"; and point nine "is the use of the United Nations to promote, by peaceful means instead of by force, the advancement of dependent, colonial or semi-colonial peoples toward a place of equality in the world".

Now, Sir, my point is that as we are in the British Commonwealth and we are also in this country part of what is known United Kingdom and Colonies and as the United Kingdom has assented to all those statements it is our duty to review the position as regards segregation in the light of international obligations.

I would refer to one more quotation, Sir, of the Secretary General in regard to the letter which he has addressed to all the Nations of the World in November, 1950. "The ninth point is the use of the United Nations to promote, by peaceful means instead of by force, the advancement of dependent, colonial or semi-colonial peoples toward a place of equality in the world."

"I firmly believe that such great changes as have been taking place since the end of the war—fundamental changes in the relationships of whole peoples and even continents—can be prevented from tearing the world apart only by using the universal framework of the United Nations to contain them within peaceful bounds.".

Now, Sir, having submitted those I would also like to read a quotation from the concluding paragraph of the report of the President Truman's Committee on Civil Rights. It says: "As the Committee concludes this report, we would remind ourselves that the future of our Nation depends upon the character, the vision, the high principle of our people. Democracy, brotherhood, human rights, these are practical expressions of eternal worth of every child of God. With His guidance and help, we can move forward towards a nobler social order in which there will be an equal opportunity for all". Recent events have shown that the United States is meting out justice to the negroes and other non-Europeans who are now offered high responsible positions, not only in cultural but in diplomatic spheres in the country. The ideal has been set and the Americans now look forward for eventual elimination of colour feeling from American life.

Now, Sir, all this tends to show that what was valid 25 years back is not, and cannot, be valid today. There is a complete revolution in the approach by the nations and the peoples of the world to problems of this nature, and it must necessarily affect the question of public policy in approaching a problem of this kind under discussion this morning.

It may be argued, Sir, that changes of this nature cannot take place overnight.

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It must be allowed to grow. I would like to state, Sir, in reply to that, that the spirit which evolved the British Constitution and the social order in the United Kingdom, that is to say, the spirit which allowed the growth and allowed the evolutionary processes to act which made it possible for the great reforms of the 1832 grant of franchise to women and made it possible for the Labour Government to come into power, had been operating in this country, one can patiently and confidently wait for some time. But, I am afraid, Mr. Speaker, what I have noticed in my stay of 25 years is that there is a greater tendency to maintain *status quo* and to oppose any change which circumstances demand. That is where the difficulty arises. If there could have been the spirit among the people who are placed in the privileged positions in this country to allow the changes to take place as the circumstances may alter, I for one would not feel impatient and demand changes to happen immediately. But, my own view after making representations, not only on this problem, but other problems also, is that there is a greater spirit abroad here for maintaining *status quo* and sticking to the privileged position by those who have been fortunate in having them.

Now, Sir, whatever may be said in regard to this, my view is that those three factors, namely, the birth of the United Nations Charter, the Declaration of Human Rights and the three non-European countries becoming equal members of the British Commonwealth, demand at least that we must appoint a committee to review the position which was taken up in the year 1923. I think one can reasonably expect at least that a committee be appointed to take into consideration the factors which have arisen after July, 1923, and see if these factors demand any review of the position or not. If anybody can argue that that is not necessary, I would say that that is the spirit of maintaining *status quo* under any circumstances and that has in other parts of the world often created very bitter controversy and on occasions explosions.

Sir, in this connexion, I would also like to mention the practical effect of residential segregation. I am putting forward approximate figures, and I am subject to correction, I am informed that on account of these reasons, in Nairobi today, there are 11,000 acres of land available for occupation by 15,000 Europeans, while there are only 3,000 acres of land available for occupation by 45,000 Asians. And, it has also the effect that an Asian, because they are 45,000 for 3,000 acres have to pay three times the price for an equal piece of land to one paid by the European who has 11,000 acres for 15,000 people.

MR. MATHU: How many acres are reserved for African occupation in Nairobi?

MR. PATEL: I have not got the figures with me, but I will be very happy if my hon. friend Mr. Mathu could quote those figures.

Now, Sir, it has also the effect of the Asian paying a higher municipal rate to that paid by a European for an equal piece of land in Nairobi. These are the practical effects of this policy.

Now, it is very easy for a supporter of a policy of this nature to explain away all these things and advance all sorts of fallacious arguments, but I would only appeal to such a person to put himself in the position of an Asian and review the whole situation and then tell me how he feels about it.

Mr. Speaker, on the 25th June, 1950, the very day the Communists invaded South Africa—(laughter)—South Korea. Well, Sir, in a matter of this nature South Africa is foremost in my mind—(laughter)—the very day the Communists invaded South Korea, some of the finest minds of the Western World met in Berlin to deliberate the central problems facing mankind of to-day, mainly, the fate of freedom, and out of their intense discussions, these intellectual fighters of liberty fashioned a world-wide movement, namely, a Congress of Cultural Freedom. But its executive Committee, amongst other questions, was repeatedly asked: "How can we pretend to defend freedom while the Western World is rife with social injustice, political corruption and racial discrimination". And, the answer was, "We do not pretend that our democracies are in any way approaching an ideal state. We are defending our relative freedoms against a total unfreedom of a dictatorial regime".

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Now, Sir, the United Nations and the British Commonwealth are engaged upon a very worthy task of continuously improving these relative freedoms in order to meet the threat from that total unfreedom of the Communist bloc. And as a part of the British Commonwealth, I should be our privilege to take steps to improve that relative freedom and go on continuously improving that relative freedom and in that spirit, Mr. Speaker, I move this motion this morning, and in that spirit I request hon. Members to accept this motion with a view to examining the situation, taking into consideration the circumstances which have arisen during the last twenty-eight years.

MR. SHATRY: Mr. Speaker, I beg to second and reserve my right to speak.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I think it will be for the convenience of Members if I explain, at this stage of the debate, the general attitude of the Government towards the subject of this motion, and the reasons for that attitude.

It is perfectly correct, as the hon. Mover has said, that since 1923 it has been the policy of the Government, wherever possible, to avoid the imposition of any restrictions in townships which would result in enforcing segregation as between Europeans and Asians. Prior to 1923, however, certain zones had been established within townships known as "restricted zones" in which ownership, residence, and occupation of the land and of the buildings thereon was subject to restrictive covenants. During the period 1913 to 1923, leases for plots within such areas issued by the Government contained these restrictive covenants. The legal implications of the abandonment of the policy of segregation, therefore, required consideration: It was finally decided that where a contractual obligation of this kind had been entered into and embodied in a Crown title rights had been created for individuals which ought to be respected. In other areas, even where by administrative practice such restriction as regards ownership and occupation had been enforced, restriction was abandoned. As I have said, Sir, no new restrictive zones were to be created, but future leases within blocks where existing leases contained restrictive covenants would have to contain similar restrictive covenants, as the Government considered itself to be under a legal obligation to persons who had already bought land in these zones on the understanding that the whole area would be confined to European occupation. The restrictive covenants in Crown leases were confined to residence and occupation, and did not extend to ownership. In addition, Sir, to the restrictive covenants in Crown leases which cover comparatively small areas, there are many estates which were subdivided by private owners and which are now within township boundaries where the titles to individual plots contain prohibitions against ownership, residence and occupation by non-Europeans. The attitude, Sir, of the Government towards such covenants is that they are matters for the persons concerned, and, in any case, constitute contractual obligations enforceable at law.

So far as these areas are concerned, it would, I think, be appropriate that I should underline one sentence of the paragraph in the White Paper which the hon. Mover has already quoted. It reads as follows:—

> "It may well prove that in practice the different races will by a natural affinity keep together in separate quarters. . . ."

That, Sir, is the policy which has been followed by the Government since 1923, but I should make it clear that if all the parties to the rights and obligations which exist are desirous of abolishing them, then, of course, the Government has not in the past, and certainly would not in the future, stand in the way. I should also perhaps make it clear at this stage, though this point too has been mentioned by the hon. Mover, that the 1923 White Paper recorded the view that when areas had been fixed in townships for African residence, those areas should be regarded as definitely set aside for the use of Africans, and no encroachment thereon by non-African races should be permitted. This, Sir, is still the Government's view. Indeed, the Government regards it as absolutely essential for the protection of African interests that the sanctity of these locations shall be preserved. As to the several premises contained in the recitals to this motion, it is the contention of the hon. Mover that the restrictive covenants, to which

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he and I have referred, are void for repugnancy to public policy. If that is so, Sir, they can be set aside by a court and anyone who considers himself aggrieved can seek his remedy in the courts. They appear to be matters for determination by the court. Indeed, as the hon. Member is already aware, this very matter will probably shortly be raised in the courts. In these circumstances, it would clearly be inappropriate at the present time for the Government to express any opinion on this contention, and, in the view of the Government, it would be equally inappropriate for this Council to seek any such expression of opinion from a select committee.

As regards, Sir, the suggestion that a select committee should be appointed to investigate and report as to the extent of commercial or residential segregation practised to-day in the townships of Kenya in pursuance of covenants incorporated in Instruments concerning land, whether granted by the Crown or by private treaty, the position is that all this information is available in the records of the Lands Department and can be assembled without much difficulty. The Government does not consider that a task of this kind either is appropriate for a select committee, but if it would serve any useful purpose, and if it is the wish of Council, the Government is prepared to consider having the information extracted from the official records and made available to the Council.

For these reasons, Sir, the Government cannot accept this motion.

MR. MADAN: Mr. Speaker, on the whole not only do I feel sorry but disappointed that the hon. Deputy Chief Secretary has indicated that Government is unable to accept this motion. I should have thought, Sir, that the hon. Member for Eastern Area had provided us all here this morning with an opportunity, an opportunity for those people who have the privilege of sitting in this august assembly, not only on behalf of the Government of the Colony but also representing the common citizens in this country, to show that we can take cognizance of the march of events, and if necessary, we are willing to abolish laws which are unjust and which are aimed at discrimination between citizen and citizen. I should have thought, Sir, that would be an enlightened manner in which to view things, a manner which is aimed at providing equality of opportunity for all citizens. I cannot help feeling, Sir, that if this motion should be accepted this morning, it would be an epoch-making event. It would be a debate which would be remembered by the generations to come. It would be a debate which would go down in history, and it is a debate, Sir, and the motion, which if accepted by the hon. Members opposite, would show to the whole world that in countries which are placed under British guidance and rule citizens are not placed at a disadvantage because of their colour or creed, and that as long as one has the privilege of being a British subject, a British citizen, he is entitled to enjoy all the privileges, all the rights, like any other citizen in the country. On the other hand, Sir, I feel that if we fail to accept this motion this morning, not only will it give us a reputation for not being able to accept justice and fair play, I feel, Sir, it will also create a slur against the good name of the Government in the United Kingdom, and her capacity to exert moral pressure in issues of this kind in places such as Lake Success and wherever else international organizations of that nature will meet, will be considerably decreased. Sir, I think the Constitution of this country makes an effort to model itself on the Constitution of the United Kingdom, and as I look at the world to-day—I say this in all sincerity—as I look at the world to-day, I cannot see any better model for the Constitution of this country. Now, the Constitution of the United Kingdom is based on democratic principles. Under a democratic system, all citizens are entitled to equality of rights and equality of opportunity. I do not think, Sir, any hon. Member on the opposite side or even on this side will deny that. But there cannot be true democracy if a section of the people are debarred from enjoying privileges because they are not in power or because they belong to an immigrant race or because the colour of the skin is different from other immigrant races. One of the many tests of true democracy is the abolition of all discriminatory measures and to grant equal rights to all those who are accepted as citizens. Proceeding

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on this basis, Sir, I cannot see any reasons for segregation, not only in townships but in any document related to any piece of land in this Colony, and to those who say, whether in public or in the correspondence columns of the Press, that each group should have separate areas reserved for itself, I submit for their consideration that they have failed to take into account the effect of the march of events, the effect of the changed conditions. With all due respect to them, I would say that they are short-sighted in this policy. It may be, Sir, that in practice—as the hon. Deputy Chief Secretary has quoted from the White Paper—that in practice the races will gravitate towards their own members, but it is the sting of segregation that one cannot tolerate. It is the bitterness which arises in consequence of this policy in our hearts that we bring it before you and this hon. Council for redress, and I say, Sir, that we are entitled to seek redress here, unless it can be justified whether morally or even according to natural justice that such a policy is right. If such a policy is right, Sir, then the Government in the United Kingdom first of all must cease its membership of the United Nations, it must also denounce its signature to the Charter of Human Rights, but such a policy, Sir, cannot be right. It cannot possibly be right, Sir, I submit because it is opposed to natural justice.

Council adjourned at 11.02 a.m. and resumed at 11.20 a.m.

MR. MADAN: Just before the adjournment, Sir, I was trying to submit that such a policy of discrimination and the maintenance of restrictive covenants imposes unjust disabilities on the Asians and the answer that we have got from the hon. Deputy Chief Secretary is that it is a matter of legal obligations and in so far it is a question of policy, it should be fought out in the Law Courts of the Colony if I have got him right, Sir. Well, take the first point, Sir, the question of legal obligations. Is it the intention of the Government to tell us that this Council or Government has never undone something that it had done in the past.

Take the second point, Sir, we are told to go and fight it out in the Law Courts to determine what the public policy is. Now, is not Government itself responsible for framing public policy, Sir? Is it not the duty of the Government to lead the Colony in the framing of that policy? Is it not their job to give an indication to people outside this Council as to what the intention of the Government is in matters of this nature? It is said that if it is contrary to the public policy the courts will consider it and adjudicate upon the matter and that Government cannot enter into a breach of its obligations entered into years, many years, ago, Sir, and, I submit, based upon an archaic conception of ideas. Are the laws of this Colony, Sir, like the laws of the Medes and the Persians, that they are unchangeable? If people can be fingerprinted in this Colony it is possible to pass any laws. I, Sir, cannot see any defensible reasons for introducing discrimination in a matter of this kind, and I believe that measures of this nature were introduced before 1923 into documents conferring titles upon people, titles relating to land, and they are still being introduced by private people under titles which they create themselves because they suffer—because the European community suffers—from the colour obsession. I believe, Sir, they have got the colour complex. They are scared still, but absolutely unjustifiably, that if they were to climb down from their high pedestal, the high and privileged pedestal, and come down to reality that in fair competition they might lose a lot of ground; but it is a complex, Sir, which has already created a great deal of trouble in the world; it is a complex which is one of the causes for the introduction of a certain ideology which we all dislike, both on this side of the Council and the hon. Members opposite, and I therefore feel, Sir, it rests with the European community themselves to come forward and to try and remove disabilities of this kind. I think, Sir, it is about time the European community realized that nothing can put the clock back and that nothing can stay the emergence, and happily it still continues, of the colour races through the process of education and experience. What the colour races are demanding from you is this, that when a child has grown up to be a man he is entitled to be treated as a man, he is entitled to the

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same privileges as we afford to others, unless, of course, you can prove and satisfy us it was at least justifiable, even morally, Sir, that the denial of such privileges is right, but I submit it is impossible to prove that.

It is a question, Sir, which is closely connected with the progress of civilization and I feel the only way that civilization can justify itself in East Africa—and I will go further—not only justify itself, but even magnify itself, not only in East Africa but in the whole continent of Africa, is to realize that civilized people who are not born white must be accepted as full citizens without having discrimination. Sir, I submit it is fantastic, I submit, Sir, it is absurd, it is completely devoid of logic that legal and social privileges should depend upon the mere accident of being born into a particular colour. The only true test should be, of course, the natural rights of man. It is the only test which can be applied justly and truly. Consider, Sir, how this test is applied in this Colony and, in saying what I am going to say, I would like to assure hon. Members all around and even opposite me that I do not speak from any racial attitude in this matter. I am trying to outline the facts as I see them.

You are aware, Sir, that only five or six years ago, we had the second world war. You are also aware, and I understand this to be the position in law, that while a German may buy a piece of land in any part of the Colony, an Asian may not do so. While a German may occupy such piece of land, an Asian may not do so—a German who even if he was an enemy of the British people and fought against them only as recently as the last world war—then, Sir, it would appear to us that a premium is placed upon enmity and not upon loyalty.

My hon. colleague, Sir, the hon. Member for Eastern Area, has given you many examples as to how the restrictive covenants work in various parts of the Colony. Take, I repeat, the example of Nyeri township, Sir, where an Asian was allowed to buy a piece of land at a heavy price. He was allowed to build upon it and yet he may not trade there. I have not, so far, heard of one good convincing logical reason which would satisfy me that occupation of a particular trading shop by an Asian deteriorates the value of that shop. The idea does, of course, exist in the minds of people who suffer from the colour complex to which I have already referred, but such an idea cannot be right, Sir. If it is right, then institutions such as the United Kenya Club, the Kenya Citizens Association, must be regarded as camouflage for faint sincerity. But I refuse to believe that—I am not prepared to believe that, knowing, as I do, some of the gallant members who take part in the deliberations of those two institutions, I am not prepared to believe that because I have got faith in the natural honesty, the natural integrity of man.

What is the inevitable result of such a policy? It places the Asian community at a disadvantage in matters of commerce and I say they are unable to enjoy the privilege of free competition. It also places them in a position where they are unable to get enough land for residential purposes. Figures have been quoted to you, Sir—if they are wrong, no one may be more pleased to hear that Asians have greater land than the figure we have quoted—but if my learned and hon. friend might have been out by a few paltry acres, you will find that the figures he has quoted are substantially correct. And that is the reason, Sir, why you see mostly hopeless masses of drab houses where the Asian community resides. Because of the lack of land, they get into all sorts of nooks and corners, kitchens, stores, for residential purposes. It is not because their standard of living is low or because they will not spend money—it is because they have not got the opportunity to spend money with a view to improving their standard of living. If the residential accommodation which they occupy and the sites and the area were to expand—they have not got those things, Sir.

I must also, Sir, take up the question of the British Commonwealth of Nations. Surely, Sir, this sort of policy is against the spirit of the Commonwealth and the Government of the United Kingdom has thought fit to accept European countries to equal partnership. Now, I believe, Sir, the British Commonwealth of Nations is a unique institution in history. I believe, Sir—and

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ean I say this in all sincerity—it is a great tribute to the British political aders, statesmen, that they have olved what we call the British Comnwealth of Nations. It is an idea ich perhaps only the British people uld develop and put into practice. But ly, Sir, even an idea like that stands a danger of collapse if the members will t treat each other equally, and I say, use because I consider it is the duty a State to ensure progressive welfare r all its citizens.

Let me, Sir, with your permission, ote you the words of a South African rnalist; "It is a deep conviction hind somewhere in our nature not to e eradicated, that man is a great and portant thing; that the right of himself d his existence is the incontestable operty of all man and that, above all, e conviction that not only we have a ght and are bound to preserve it for rselves, but that where we come into ntact with others, we are bound to plement or preserve it for them". If is motion is not approved, Sir, if this otion is not accepted by this hon. uncil, then we would be perpetuating a injustice. Sir, every morning before u commence the business of the uncil you read to us, happily for us, prayer. Let me take a few words from at pious prayer, when you say, "that e are gathered here to advance the ace and prosperity of the Colony and rotectorate of Kenya and of those hose interests God has been pleased to ommit to our charge". I submit, Sir, his is one of those matters which affect he peace and prosperity of the Colony, t affects the interests of those whose interests have been committed to our harge. If we vote for this motion, we would only be voting for what we meet here to do. On the other hand, Sir, if his motion is not approved, I will be irresistibly reminded of the words of an English song—of an English love song—and when I quote you the words, of ourse I have changed the facts to meet he situation, and when I quote you hose words, Sir, I do so in the same pirit of affection and devotion in which he song must have been composed. It goes something like this, Sir, "You may not want us now, but we will get along somehow, but some day you will want us to want you".

Sir, I beg to support.

MR. COOKE: Mr. Speaker, apart altogether from the ethics of this controversy, I am wondering myself if these restrictions were not really to the ultimate good of the Africans and Indians because they attract that British enterprise which otherwise might not have been attracted to this town and to this country and we might have found Nairobi and Kisumu and other towns springing up into unrestricted bazaars. But, Sir, while these last two speakers were speaking, there flashed across my mind the old saying that "two wrongs do not make one right", and assuming, Sir, assuming that the restrictions are wrong, can that wrong be redressed by doing another wrong and that is by doing away with the sanctity of a contract.

Now my hon. friends have talked a good deal about ethics, but surely, Sir, it would be quite unethical and quite wrong in order to redress one wrong to —as I said before—to abolish the sanctity of contracts and to do away with these contractual obligations? I unhesitatingly say it would be wrong. For instance, my hon. friend quoted democracy in England, but surely democracy, Sir, is founded very largely on the sanctity of contract and we would have no democracy in this country as we know it if contracts are to be treated so lightly as all that. It is for that reason, Sir, that whatever the rights or wrongs of the past policy may be, I think it would be more wrong still to abolish the existing contracts and to do away with existing contractual obligations.

Therefore, Sir, I oppose the motion.

MR. MATHU: Mr. Speaker, I find myself in a difficulty in speaking on this motion as it stands and so I am proposing an amendment to it, Sir. I beg to move that the motion before Council be amended by adding at the end of the motion the following proviso:—

"Provided that the *status quo* in regard to land reserved for African use and occupation either in urban or rural areas will be maintained."

Sir, the hon. Mover in the substantive motion did indicate that as a result of the 1923 policy of the United Kingdom

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in regard to this matter, the Indian community would not oppose an amendment of this kind. The hon. Deputy Chief Secretary, I think, indicated the same, but I would like to say, Sir, that the reason for my inclusion of this amendment is that, should the motion be accepted the terms of reference should include this proviso, not because of racial grounds or sanitary grounds or social grounds, but for economic grounds. The hon. Member for Central Area in his speech on the substantive motion said that he wanted segregation to be removed from any piece of land and from townships, and I would like to suggest to him, Sir, that if that happened, as the Indian community is one of the richest communities we have in this country and if they were so inclined, they would buy all the land reserved for African occupation in Nairobi easily—like that. Well, is that what the hon. Member for Central Area is desiring? If that is so, well it does not tally with the policy of the Indian community as enunciated by the hon. Mover.

MR. MADAN: On a point of explanation, Sir, I assure the hon. Member that the Indian community has no such designs to which he is referring.

THE ATTORNEY GENERAL: Why not—it is quite logical. Quite a lot of them have.

MR. MATHU: Discussing on a matter of principle, I cannot see how you can arrest the principle. If the principle enunciated is accepted and, indeed, Sir, he was very fond of using logic. If logically, his statement can be taken, how can that be prevented? It is clear—simple logic. (Hear, hear.) On that ground, Sir, I feel that it is most desirable that this amendment be considered.

In 1923, Sir, the British policy did make this reservation and when the Carter Land Commission reported in 1933—if I may quote only a few sentences—in Chapter 17 they have this —in section 583:—

"Having regard to the widely different standards of living observed by natives in Nairobi as compared with other races, we are convinced that considerations of health as well as of social amenities demand separate areas."

Well, this was written in 1933. If Sir Morris Carter who was appointed a Commissioner were to review this situation to-day, and not the Select Committee of this Council, I do not think he would put down the words that I have just quoted. And as far as the question of residential segregation is concerned, this sentence was written:—

"We are, therefore, satisfied that special residential areas for natives are needed in which they should be required to reside unless exempted."

And then they go on to say, paragraph 584:—

"It is something of a moot point whether special exemption should be granted to more advanced natives on the grounds that their higher standard of life qualifies them to live in any residential part of Nairobi which they prefer or can afford."

Now you see they were far-sighted, also not as short-sighted, as the hon. Member for Central Area would like us to believe that it is a short-sighted policy if we allow any amount of segregation on the grounds that I am advocating—that is, on economic grounds, in Nairobi to-day. The general by-laws of Nairobi Municipality, 1948, by-law No. 544 says this: "No person other than a native or an officer of the Council or a police officer shall reside in any native location and any other person found therein except for reasonable or sufficient cause shall be guilty of an offence". I do not like reading that; it does not sound very well. On the other hand, on economic grounds, I think there is a case for that, and incidentally may I say that the City Council of Nairobi should bring these by-laws up to date and not use the word "native" because the General Interpretation Ordinance has "African", but I will continue to use the word "native" as used in this book by the Nairobi City Council. The schedule to General Notice No. 105 of 15th December, 1931, Proclamations, Rules and Regulations of 1932, did set aside portions of land in the municipal boundaries of Nairobi for the exclusive use and occupation of the African people, and in 1948 again, Sir—and I understand these are still the by-laws—you have a let-out in this confinement of Africans to a particular area by by-law No. 541, which reads: "The

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Council with the approval of His Excellency the Governor may by notice published in the Official Gazette declare any area in the Municipality of Nairobi to be an area in which natives other than domestic servants housed by their employers and their wives and children shall not reside except with the written permission of the Town Clerk or other person authorized on his behalf". But there is certainly one weakness in the by-laws that I have read out, and given to most parts of the words that I have read out from the Carter Commission Report and it is this: that none of the comments that I have read visualized the possibility of Africans owning land, that is, buying land within the municipal boundaries or within any other township. He was already regarded as a person who can lease land, and at the moment, as you know, the leases which the Africans have in Nairobi and in other townships, for that matter, are very temporary. I know that the Nairobi City Council had a scheme for leasing land in accordance with by-law No. 547, only recently, in the Bahati area, and the by-law reads: "The Council may at their discretion issue a lease of a stand in the native location to any native or employer of natives for the use of his employees for any term not exceeding forty years". And as I say, as far as I know they are just moving in that direction. For residential purposes, therefore, Sir, I say that this question of getting special permission in writing from the Town Clerk or even under by-law No. 544, the Governor declaring that an area should not be resided by Africans other than servants, I think it is behind the times, and should be revised, because if an African—there are very few of them who can—owns land elsewhere, I do not see the need of them getting permission in writing from anybody. Now I am dealing with the part of the resolution which deals with the residential problem only, and to take Nairobi example alone—these figures incidentally are estimates from the City Council—there is an estimate of African population in Nairobi of 80,000. The housing available is only for 72,000, and the other 8,000 go without housing. Now if we have complicated matters by throwing open land in the African areas in Nairobi, then you can see the difficulties that we can land ourselves in. There are the 80,000 Africans—and incidentally these exclude domestic servants, people who are housed, you see. The acreage under African use now, as far as housing is concerned, which the hon. Mover wanted me to tell him, is 520 acres. That is, as I say, for 80,000 Africans—a very small acreage as you will see—and there is an estimate of available land for future housing of 1,800 acres. There again, I think, you will see the inadequacy of the amount in relation to the number of population, and so, Sir, as far as the residential part of this motion is concerned, and if a committee is appointed, I would suggest that the present reservations of African land—the present reservation of land for African use and occupation in Nairobi and other townships should not be disturbed.

Now that also will, I think, again—arising from the phrase of the hon. Member for Central Area, Mr. Madan, that there should be no segregation regarding any piece of land—I would like to say that I could not imagine the African land units being thrown open for occupation by people who can buy us out completely. We will have to sink in the Indian Ocean, Sir, because I think they can do that, and I would also like to put a caveat to that.

The question of commercial plots. The Carter Commission, Sir—reading a passage from paragraph 583—said that "a native who owns a shop in the business area would naturally be allowed to live in it, provided that the building conforms with the requirements necessary to qualify it to be used for residential purposes". Well, there again, Sir, in 1923 the people did not visualize—

THE SPEAKER: In order that you should not mislead yourself and be able to take advantage and speak to the motion which you are now doing, I want to say that I consider the proposed amendment to be out of order, Standing Rule and Order No. 36, sub-order (1) "An amendment must be relevant to the question to which it is proposed". You will observe, if you read the first term of reference, that the investigation is limited to "commercial or residential segregation practised"—and these are the important

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words—"in pursuance of covenants incorporated in instruments concerning land". Now, as far as I have been able to follow what you have said about African land in townships, that is not reserved in pursuance of covenants incorporated in instruments. It is a matter either of administrative action or possibly of the law of the land in some other form, but it does not relate to what is called restrictive covenants, either imposed by the Government on an individual or imposed by a person who settles land in that form, that is, with a restrictive covenant attached, which is a mutual obligation and is contractual. This is nothing to do with contractual obligations, I think, therefore, that the amendment as I see it now—I ought not to put it. It would be contrary to rule 36 (1), but pray continue to speak to the motion.

MR. MATHU: Do I understand, Sir, that I can continue to speak to the motion?

THE SPEAKER: I hope I have not given you a lot of undue labour, but I could not tell it from the words of the amendment as written down until I heard you speak.

MR. MATHU: Sir, I accept your ruling, and therefore continue to speak on the motion as proposed by the hon. Member for Eastern Area, and therefore withdraw my intention of moving an amendment.

THE ATTORNEY GENERAL: On a point of order, if I might intervene for a moment, Sir, I should not like it to be thought that there are not instruments with covenants in them restricting the occupation of persons of non-European origin.

THE SPEAKER: I am well aware of the nature of these restrictive covenants, but I do not see how these restrictive covenants come within this particular amendment. The restricting covenants usually are in the form that persons of non-European race are not to reside on the land. That is to put it shortly; and with regard to land set aside in the municipalities for African occupation, which Mr. Mathu is referring to and which position he wants to safeguard, I do not see that it is necessary to safeguard it at all, with his amendment, because such a matter does not come within the terms of reference in this motion.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: On a point of order, Sir, I think it is correct to say that there are grants of land by the Crown to local government authorities which restrict the occupation of that land to Africans only, and that, Sir, I think may well be covered by the words "instruments concerning land whether granted by the Crown or by private treaty".

THE SPEAKER: That, if I may say so, is a restriction the other way round, it is not a grant to a European which prevents him from passing it on to an Asian or prevents him from allowing an African to occupy, it is a reservation of land purposely for the occupation of Africans. That is how it seems to me. But I am open to correction. I have raised the point myself because it struck me.

SIR CHARLES MORTIMER: Mr. Speaker, perhaps I may explain with some authority the precise terms of the leases to local authorities of the land occupied by native locations. There is invariably in those leases a restrictive covenant or condition prescribing that the land shall be used for the purpose of a native location only. I leave you, Sir, to consider the effect of that upon the resolution before us.

THE SPEAKER: If land is set aside under an instrument for occupation of Africans only I think myself that is a different matter altogether to what is set out in paragraph 1 of the motion. I cannot for the life of me at the moment see—perhaps it will be explained to me—how any Select Committee is going to investigate matters under paragraph 1 and at the same time bring in these other matters. It will be outside of the terms of reference altogether.

THE ATTORNEY GENERAL: With great respect, Sir, the words are "residential segregation practised to-day in the townships of Kenya in pursuance of covenants incorporated in instruments concerning land whether granted by the Crown or by private treaty". If there is a covenant in a lease granted by the Crown requiring occupation by Africans, is that not residential segregation in an instrument granted by the Crown? It

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might be in favour of—possibly in favour of—the Government if this matter were ruled out of order, Sir, but I feel bound to point out to you, Sir, what is the position.

THE SPEAKER: In interpreting the words in the terms of reference I am to some extent bound by what the hon. Member for Eastern Area opened in his motion, and I never conceived it possible that it would refer to such a case. But in order to be on the safest possible side, if you feel under any difficulty, when the amendment is eventually seconded I will withdraw my own personal objection to it being unnecessary and put it to the Council. Please carry on.

MR. MATHU: Well, thank you, Sir, for allowing me to carry on in the way of amendment and to Government Members who are definitely better qualified than I am about these technicalities—I did not know whether it was an instrument of Scientists or what. (Laughter.)

I was, Sir, going on to discuss the fact, what effect the acceptance of this motion by the hon. Member for Eastern Area would have to land set aside for Africans for commercial purposes, and I was going to say that there is—giving Nairobi as an example—a by-law which I was about to read, by-law 558, which does reserve certain plots for trading purposes for Africans. It reads like this: "The Council may set aside"——

THE SPEAKER: If we are going to have this amendment, then we must have the debate strictly relevant to it. The by-laws are certainly not Instruments in which there is a restrictive covenant. They may repeat something else, but they are not Instruments. If you are only going to save yourself against Instruments, then speak to that.

MR. MATHU: Well, I will save myself from Instruments, Sir! (Laughter.)

THE SPEAKER: We can get these debates going far away from anything which is really going before the Council.

MR. MATHU: All I was trying to show, Sir, is that there has been land which has been reserved for African use and occupation relating to plots for trading purposes. That, Sir, I think you will agree, is within my amendment. I was going to suggest, Sir, that if there was no restriction as to the persons who can take leases for these trading plots in African locations throughout the country the possibilities are the Africans will be ousted, because the hon. Member for Central Area talked about free competition. If there were free competition between the African and the Asian traders for buying plots by public auction, now what chance has the African to compete with an Indian *duka-wallah* who has been heaping up money for generations. He has no chance, and it is for those reasons, Sir, that I have suggested to the Land Department—I believe for the last seven years—that instead of public auctioning for trading plots they should be granted directly by a representative committee of a particular town, who can peruse the application for trading plots and grant those plots to people who are in greater need than others. I know that the Land Office is experimenting along those lines, but there is still restriction about that in major municipal townships like Nairobi, Nakuru and Eldoret and so on, and there they are still public auctions, and the African cannot afford it at the moment, Sir, on economic grounds, and it is, I think, important that he should also be given a fair and square deal, and the equality of opportunity that my hon. friend Mr. Madan is suggesting, which I entirely agree with him, even if the equality is given in this case he will know definitely the direction towards which the wind will blow and the African, as I say, in that particular case would—does the hon. Member wish to interrupt me? I can sit down.

MR. MADAN: All I said, Sir, was that I would not mind that opportunity.

MR. MATHU: Exactly, he would not mind that opportunity—exactly! (Laughter.) He would not mind that opportunity because his community has plenty of money to oust every African, that is exactly what I am driving at, and that is exactly the safeguard for the moment I wish to make on behalf of the African community. Now, there is no disagreement, Sir, between the hon. Members who have spoken in favour of the substantive motion on the question of segregation on a basis of racial discrimination which I am opposed to, but I think it would be inexpedient at the moment, Sir, for the sake of principles, to refuse the details which would put

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some of the citizens of this country into a great disadvantage; and for these reasons, Sir, I would like to say that should a Select Committee be appointed, that my amendment should be one of the terms of reference, and that they, should they start to go as far as the reservation of African lands either in the urban or in the rural areas, the *status quo* shall be maintained.

Sir, I beg to move the amendment.

MR. OHANGA: Sir, I beg to second, reserving my right to speak.

THE SPEAKER: You cannot reserve your right to speak on a dilatory motion or amendment, only a substantive motion.

MR. OHANGA: I will forfeit it.

THE ATTORNEY GENERAL: Mr. Speaker, I should like to explain Government's attitude towards this amendment. Government will vote against the main motion because it considers it to be premature and for the other reasons given by the hon. Deputy Chief Secretary. But Government has explained that its policy includes the maintenance intact of the African areas and, therefore, it would accept this amendment, but not the main motion, against which it will vote whether the amendment is carried or not.

I merely wish to point out, however, speaking to the amendment, that the view that the African areas should be maintained intact, to which the hon. Mover of the motion gave his support and which, I understand, also had the support of the hon. Mr. Madan, blows sky high the arguments in favour of equal opportunity for all British subjects which were made by the hon. Mr. Madan. For, if there is to be equal opportunity for all British subjects then why should British subjects be restrained from entering and exploiting the African areas? Sir, the hon. Mr. Madan's argument reminds me of the old saying about equality for everyone, "'Everyone for himself and God for all', as the elephant said as he danced among the chickens"—(laughter).

Sir, there is one other point . . . . No, I do not think it arises strictly on the amendment, so I will not speak on it now.

I simply wish to make Government's attitude plain, that it would accept this amendment, entirely without prejudice to the fact that it intends, for the reasons given by the hon. Deputy Chief Secretary, to vote against the motion, whether the amendment is carried or not.

MR. PATEL: Mr. Speaker, when I moved my motion and read the extract from the White Paper of July 1923 I had stated what the policy of the Indian community was during all these years in regard to lands, either agricultural or otherwise, occupied by the Africans. I made it then absolutely clear that the policy of the Indian community has always been that the lands, either agricultural or otherwise, held and occupied by the Africans should not be disturbed, and that in the other areas there should be no discrimination in regard to use and occupation by anyone, which included even the Africans. Well, the statement which my friend the hon. Mr. Mathu read from the Carter Commission supports my contention that when an African is ready to go out of the African land and live in any part of Nairobi or any other town, he should be allowed to do so, provided he fulfilled the conditions which are imposed in regard to that land. Sir, that I had made very clear at the time when I moved my motion, and it was absolutely clear from the manner I had moved the motion that I wanted no discrimination in regard to townships, where the Indian, African or European should be free to use, to own and occupy any piece of land excepting those held and occupied by the Africans. And from that point of view, Sir, I have no hesitation whatsoever in accepting the amendment which has been moved by the hon. Mr. Mathu, because it confirms completely the policy which has been pursued in this country by the Indian community during the last 30 years or more.

Sir, when it was made so clear I was very sorry that my friend the hon. Mr. Mathu could not see what the policy of the Indian community was. I would further say that, as the hon. Mr. Mathu says, for the time being—and I would have no objection not only for the time being, but for a long time to come—the policy of this country will have to be in regard to agricultural land and otherwise that the land used and occupied by the Africans will remain undisturbed with them. But outside that, the principle of ownership and occupation by a civilized

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person on the same basis will have to be accepted and that was accepted by His Majesty's Government in 1923. I am basing my whole case on the conclusions which His Majesty's Government had announced in July, 1923, and then I said that the circumstances are so altered that the review of the position has become necessary.

Well, Sir, I accept the amendment moved by the hon. Mr. Mathu.

LADY SHAW: Mr. Speaker, I am very puzzled at the moment by Government's attitude to this amendment. This amendment begins, I think, with the words "Provided that". Government say that they will oppose the motion but will support the amendment. How you can support an amendment by itself which begins "Provided that", I really cannot see. Also, if there were no amendment and no motion, the whole of this question of native lands would remain as it is now, therefore no amendment is necessary. I fail to understand quite what it all means, and I would be very glad if someone would explain it to me. No doubt I am dense, but it does seem extraordinary.

THE SPEAKER: Perhaps the explanation is that I waived my opinion.

THE ATTORNEY GENERAL: On a point of explanation, may I explain what is meant? The position is this: that Government is against the motion for the reasons given by the Deputy Chief Secretary, but part of the Government's policy is to preserve the African areas intact. Therefore, if this motion were to be carried, the Government would have no objection to this amendment being in it, which would have that effect. Do I make myself plain? But Government has no intention, so far as this side is concerned, of allowing the motion to be carried if its vote will prevent that.

MR. PRESTON: Mr. Speaker, now that we have got the tail successfully tied to the dog and we know where we are—I was getting a bit worried myself as to whether we were going to argue over a tailless dog—I am in entire sympathy with the amendment, but I do hope after the speeches we have heard here this morning, it is the last we will ever hear of racial discrimination in this Council.

I beg to support.

SIR CHARLES MORTIMER: Mr. Speaker, I have listened with close attention and great interest to the debate on this motion, as I have been for thirty years closely associated with the administration of the law and practice on this subject. There is very little I wish to add to what has been so well expressed by my hon. friend the Deputy Chief Secretary, but there are one or two points that have emerged in the debate on which I think some comment might appropriately be made. When the White Paper of 1923 was published and adopted as the policy of His Majesty's Government and this Government, we were in the Colony in a certain definite situation and we had to recognize that fact with a sense of realism. I am reminded of the story of the visitor to London who was residing in a hotel near St. Paul's Cathedral. He was trying to get back to his hotel but he found himself hopelessly lost and wandering aimlessly around one of the suburbs. He asked a person he met there if he could direct him to St. Paul's Cathedral. The person of whom the inquiry was made considered for a few moments and then said, "Well, you know, if I wanted to get to St. Paul's Cathedral I would not start from here". (Laughter.) Well, it is not a bit of good trying to adopt that sort of policy in relation to this matter, and thinking that we can start from some place that we have imagined and that has a place only in our imagination, and our hopes and visions. We must start from where we stand and when the White Paper was promulgated there were certain incontrovertible facts in existence in this Colony. The Crown had entered into covenants with private individuals who had purchased land, covenants that required that on those particular portions of land no non-Europeans should reside or be in occupation.

MR. PATEL: Except as domestic servants.

SIR CHARLES MORTIMER: Except domestic servants. Now that had to be recognized, and whilst the White Paper itself was quite definite in its statement of principle, the matter was taken up with the Secretary of State who readily agreed, as he must have done, that where the Crown had entered into legal commitments those commitments must be observed and maintained. That has

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remained the policy of this Government ever since.

Now, on the outskirts of Nairobi township, as it then was, there were certain areas which had been alienated as farm land which had been subdivided into residential plots by their owners. Those plots had been sold with racial covenants embodied in the title deeds, covenants precluding ownership and/or occupation and residence by non-Europeans other than domestic servants. Those areas, as an outcome of the Local Government Commission's Report in 1927 were subsequently brought within the Municipality of Nairobi. Protracted discussion took place between the Government representatives and inhabitants of those areas when the proposal was under review. A good deal of misgiving was felt by the European owners and occupiers of those lands as to what the effect would be of their lands being brought within the Municipality. An assurance was given on the part of the Government—the only statement that could possibly have been made—that inclusion within the Municipality would in no wise affect the validity of the covenants that had been entered into. On the basis of that assurance the inhabitants of those outside areas agreed to their lands being brought within the Municipality. It would be regarded as a gross breach of faith if Government on its own initiative took unilateral action to break those covenants and to declare them null and void.

Now reference has been made to the public policy aspect of this question of racial segregation. I am not at all convinced that public policy in general is not best served by preserving the present system. After all, I think there is a lot to be said for the statement made in the White Paper of 1923, which my hon. friend read. It may well prove that in practice the different races will by a natural affinity keep together in the same quarters, and that has largely been the case. As my hon. friend, Mr. Patel knows full well, a very great portion of the old town of Nairobi is now in Indian occupation—the whole of the Parklands area and practically the whole of the northern side of the old township. He has made some play with figures of acreage and population. I have no reason to dispute the accuracy of those figures. They are doubtless approximately correct. I deplore as much as any hon. Member does the terrific increase in land values and prices in the areas occupied by non-Europeans. Those values are out of all proportion to any real values, but what is the cause? Not that Europeans have occupied so much land. Let us view this with a sense of realism. I draw the hon. Member's attention to the fact that there are hundreds of acres of land in this town owned by Asians, available for subdivision. Indeed some are already subdivided. But the owners are holding out for a price, and that is one reason for the excessively high values that have been realized in the areas already occupied. The Government has meticulously carried out the principle of the White Paper interpreted in the light of what I have said about the maintenance of the legal commitments, but wherever owners of land in a particular group of plots have requested the Government to waive the covenants against occupation by non-Europeans, the Government has readily acquiesced and will continue to do so. But private covenants will stand unless and until they are upset in a court of law and declared to be null and void; the Government could not possibly take the initiative in trying to disturb those covenants.

Just a word with reference to what my hon. friend Mr. Mathu has said about African areas. I strongly approve of his attitude towards that question, but I would draw attention to the fact of which he is I am sure, well aware. There is on the Statute Book an African Exemption Ordinance, which permits the Governor in Council to grant certificates of exemption to Africans on application and on the support of the local district commissioner, giving exemption from certain restrictions imposed on the rank and file of Africans. That is as to documents to be carried, place of residence and other restrictive laws and by-laws. Many Africans have taken advantage of that privilege when they have reached a sufficient educational standard and level of culture to justify their exemption from these restrictions.

I support my hon. friend the Deputy Chief Secretary in saying that there is no

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objection whatever to having the investigation required by the first part of the motion. It is not, however, a matter for a Select Committee. The facts are clearly on record and it is merely a question of someone spending a few weeks in collecting those facts and presenting them in the form of a Report. (Applause.)

THE CHIEF SECRETARY: Mr. Speaker, the policy of the Government, as regards segregation in townships was set out in the White Paper to which reference has been made, and has been carefully explained this morning by my hon. friends the Deputy Chief Secretary and Sir Charles Mortimer. That is still the policy and I have nothing to add beyond this, that it has been contended that rights and obligations which were in existence at the time that policy was adopted should be abolished. Now, Sir, a good deal has been said this morning by hon. Members about the sanctity of rights and the obligations of human beings. I can hardly think that it would be suggested that rights and obligations which exist or which existed should be abolished by a stroke of the pen without compensation. I think any reasonable person would suggest that if those rights are abolished they ought to be compensated. But now, if those rights and obligations were appropriated, the bill would be immense. That is no exaggeration. It would be immense. Who is going to meet the bill, which would be quite beyond the resources of this Colony?

Now, Sir, as regards the argument—or as regards the legal arguments that have been made, that the covenants are void, as the hon. Mover himself knows, that is about to be tested in the Courts. As has been explained, in those circumstances it would be quite inappropriate for the Government to express any view on that subject at this stage. (Applause.)

MR. HAVELOCK: Mr. Speaker, I have listened to this debate with great interest, and I think it is right to say that there is a general view of the European Members that the line that Government is taking this time is one that shall be supported! (Laughter.)

I only wish to add one more thing, Sir, and that is that hon. Asian Members have referred not only to land in townships but to land outside townships in the speeches they have made to this motion. I would like it to go on record that I believe that such references were completely extraneous to the motion and I have no intention of dealing with the arguments on that side on this motion, but I want it to go on record that there are very, very many good reasons for the situation that pertains as regards agricultural land at the moment, but it is not my intention to start that argument, and I believe, Sir, that hon. Asian Members should never have brought the matter in at all.

Therefore, Sir, we will support Government and oppose the motion.

MR. PATEL: Mr. Speaker, the case of those who oppose me is so weak that they have conveniently omitted to answer many of the points which were very relevant to this motion. I have stated that such restrictive covenants were introduced in Uganda and in this country and soon after the publication of the White Paper in July, 1923, the Uganda Government ignored such covenants and did not introduce new covenants in the lands which were sold after that period in the areas in which such restrictive covenants had existed. There is no answer to that, and it only means that the Kenya Government and this country are more racially minded than the neighbouring territory. (Shame!) It is really a shame that we are more racially minded.

Now, Sir, the hon. Deputy Chief Secretary in answer said that if it is a matter of public policy the matter should be taken up with the courts. It is true that a matter of public policy in regard to private covenants can be taken to the courts and I hope Asian Members will be in a position to take up such covenants to the court as early as possible and that advice will certainly be taken very seriously and we will take the earliest opportunity to test this matter in court. But there is such a thing as public policy in regard to a Government or a country where political matters do suggest that we should follow a certain course of conduct publicly on public questions, and I had hoped that an answer would have come forth whether on a public question of this nature this Government and this country should not now revise its attitude.

[Mr. Patel]

Sir, the hon. Member for the Coast referred to the sanctity of contracts and so on. I do understand what is the sanctity of contracts. But it should not be overlooked that these covenants were introduced in the teeth of strong opposition from the Asian community before 1923, and it should not also be overlooked that it had become difficult to sell further plots in all these areas when there was a controversy between the Asian community and the European community in regard to this policy. A few sales were made at a time when the matter was under discussion. The Government of those days had taken an opportunity of introducing covenants which were opposed very strongly by the Asian community. Sir, therefore there is no question of any sanctity in these matters. Those covenants were introduced merely by the force of political power and merely on account of the pressure which was brought to bear by the European community in this country in the teeth of opposition by others.

Sir, it is also stated that there are restricted zones for all. If I have misunderstood I may be corrected. It is still on account of these restrictive covenants say—in Nairobi alone—11,000 acres are provided for 15,000 people. There is a restrictive zone for Africans it is true, and that we accept. But there is no restrictive zone for the Asians. The 3,000 acres now available for Asians are open to Africans, Europeans and Asians, for occupation where 45,000 Asians are supposed to live. Sir, there is one factor which is overlooked. That, whenever—as the hon. Member, Sir Charles Mortimer, rightly pointed out—a municipality extends its boundaries the adjoining agricultural land which is to be taken in the township, and these agricultural lands are mostly in the European Highlands and therefore the Europeans are in a position when those lands are brought within the boundaries of the municipalities to include any covenants they like and that is a point which I had referred to in my arguments about the great injustice which could be done in this matter. When an agricultural land is brought within the municipality, then the Government should take care to see that the change of user could be allowed only on condition that no restrictive covenants are applied once the land comes within a township area.

Now, Sir, it is stated that such contracts are not interfered with. Well, I am not sure about it, Sir. What is all this Land Control Board, whereby the private rights are disturbed, even though the freehold lands may be concerned. Such law attaches many conditions, given power to acquire compulsorily certain lands for other things, and there are enactments in the United Kingdom and other places where the private rights are disturbed for many things. A person is not allowed, for example, to make a trust in perpetuity of his own freehold land. Enactments have been passed in the modern civilized world to do justice, to introduce justice in the social order and that is not unknown, I believe, to the hon. Members of this Council.

Sir, first I will refer to the matter raised by the hon. Member, Sir Charles Mortimer, in regard to the high prices in the area which is occupied by the Indians. Now, Sir, there is such a thing as supply and demand. If you confine 45,000 people in an area of 3,000 acres there is likelihood of the prices going high, because there is a greater demand and less supply, and there is no scope for the expansion.

Now, Sir, the hon. Chief Secretary referred to the question of compensation. Well, I have moved this motion with a view to getting a Select Committee appointed to examine the whole question and submit the report to the Government as to what should be done in regard to these covenants. Now, if the Select Committee finds that the compensation will have to be paid for removal of these restrictive covenants then the bill will be beyond the capacity of this country, then one can, Sir, certainly revise his views. But at present what the Government and the European Elected Members are doing is that they desire to maintain *status quo* without examination of the question. What I had suspected when I moved the motion, that there is a spirit of maintaining *status quo* and privileged position at any cost abroad in this country, is fully proved.

THE ATTORNEY GENERAL: Question.

MR. PATEL: The hon. Member for Law and Order raises a question. The very thing that the Government is not even prepared to examine the question proves that there is a strong desire to maintaining the *status quo*.

Sir, the hon. Member for Kiambu says that I had referred to agricultural land outside the townships. I certainly did refer to it, because for my purpose I had to show that these agricultural lands outside the townships are owned by Europeans and when these agricultural lands are taken within the townships by extension of the municipal areas the other races are put at a great disadvantage in acquiring these lands, because before they come in the municipal areas somehow or other the owners manage to introduce restrictive covenants so that other people cannot acquire any piece of land from those agricultural lands which were meant for agriculture, but later on, by change of user, are turned either as lands for commercial purposes or residential purposes.

Sir, I have not heard this morning any valid reason why the whole question should not be examined in the light of the circumstances which have taken place during the last 28 years. They have harped upon what has been done in 1923. They have harped upon the legal position arising out of what was done before July, 1923, but I have not heard one argument against my request for examination of the question in light of the circumstances which have arisen during the last 28 years.

THE SPEAKER: I take it you will be some time. We will adjourn now.

ADJOURNMENT

Council rose at 12.45 p.m. and adjourned until 9.30 a.m. on Thursday, 8th March, 1951.

Thursday, 8th March, 1951

Council assembled in the Memorial Hall, Nairobi, on Thursday, 8th March, 1951.

Mr. Speaker took the Chair at 9.45 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 7th March, 1951, were confirmed.

NOTICE OF MOTION

THE ATTORNEY GENERAL gave notice of the following motion:

"That the Wakf Commissioners Bill be referred to a Select Committee and that the Select Committee be instructed to consider in particular whether the definition of Muslim in clause 2 of the Bill should or should not be extended."

MOTIONS

SEGREGATION CLAUSES IN COVENANTS REGARDING LAND IN TOWNSHIPS—(*Contd.*)

MR. PATEL: The opposition to my motion had, like a drowning man catching any straws which came across him, clung very tenaciously only to two points—one of compensation payable in case the contracts are disturbed; and the other the sanctity of contracts. Sir, I briefly referred to these two points yesterday, but I would like to reply on these two points at greater length to-day.

Sir, it would be noticed in any country that whenever, for public purposes or for doing any social justice, the vested interests or private contracts are disturbed, the payment of compensation is resorted to. But, Sir, in this case my experience suggests that whenever a restrictive covenant has been removed by consent of the parties, the value of the land has gone up—it has never gone down—and therefore I venture to suggest that the question of compensation—of which a great deal was made out by the hon. Chief Secretary—is, in my opinion, not important because the amount of compensation payable will be practically negligible.

Now, Sir, the question of sanctity of contracts was raised not only by the Government benches, but also from the

[Mr. Patel]

side of the European Elected Members. Now, Sir, modern civilization has realized the necessity, time and again, of interference with vested interests and existing contracts, for the purpose of serving the public good and for the purpose of avoiding social injustice. If I may give only one instance from our own Legislative Council; Rent Control Ordinance disturbed the vested interests and also interfered with the existing contracts between landlords and tenants, such as right to gain vacant possession by the landlords. It is then wrong to say that the contracts are never disturbed by the passing of legislation. Sir, one can find innumerable instances in the legislation of this country, and in the legislation of the United Kingdom, whereby the vested rights and existing contracts are disturbed for the common good and for social justice.

In my view, Sir, these two points of compensation and sanctity of contracts were put forward merely as a shelter behind which the opposition wanted to oppose the motion, and to refuse to examine the situation. Now, Sir, the hon. Member for Coast said that two wrongs do not make one right. I do not know whether he genuinely wanted to accept that there was one wrong done, because nobody from the opposition has said that it was wrong or right. They have merely based their opposition on the ground of compensation and sanctity of contracts.

MR. COOKE: On a point of explanation, I said *assuming* a wrong had been done, just for the sake of argument. I did not admit a wrong had been done.

MR. PATEL: It is the point, Sir, which I wish to make—that the opposition had not been bold enough to say that the covenants that were introduced in these instruments were right. They were not even bold enough to say that they were wrong. They simply wanted to base their case on the question of sanctity of contracts. If there is a case for sanctity of contracts, why cannot they agree, for instance, to say that in future whenever any agricultural land is admitted in the Municipal boundary, the owners of such land will not henceforth be allowed to introduce such restrictive covenants. One can certainly examine that position. There is no question of sanctity of contracts arising in it. The necessity for examination of the situation arises for future covenants, if not the past ones. Now, the only conclusion which I can come to from hearing the opposition is that it is difficult to persuade people who have acquired certain privileges to relinquish them willingly and very lightly. Perhaps it has never happened elsewhere also. Then we have to wait until dynamic progressive forces arise among all races of this country, to beat down the opposition of those who want to cling to privileged position. Sir, in spite of the desire of those who want to maintain the *status quo* and oppose the operation of the evolutionary forces to adjust things as they are required, I move this motion in the full confidence that the future is on my side, and that dynamic international forces and also the dynamic progressive forces which will arise in this country, will compel this Legislative Council one day to adopt another attitude in time to come.

The question was put and on a division negatived by 22 votes to 8. (Ayes: Messrs. Chemallan, Jeremiah, Madan, Mathu, Ohanga, Patel, Pritam, Shatry, 8; Noes: Messrs. Adams, Anderson, Blundell, Carpenter, Cavendish-Bentinck, Cooke, Davies, Ghersie, Hartwell, Havelock, Hobson, Hope-Jones, Maconochie-Welwood, Matthews, O'Connor, Padley, Rankine, Sir Godfrey Rhodes, Lady Shaw, Messrs. Thornley, Usher, Vasey, 22; Absent: Messrs. Hopkins, Keyser, Sir Charles Mortimer, Messrs. Nathoo, Preston, Dr. Rana, Messrs. Salter, Salim, 8.)

SUSPENSION OF STANDING RULES AND ORDERS

THE ATTORNEY GENERAL moved: That Standing Rules and Orders be suspended to enable the Deportation (Aliens) (Amendment) Bill to be read a first time.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

BILLS

FIRST READING

The Deportation (Aliens) (Amendment) Bill

On the motion of the Attorney General, seconded by the Solicitor General, the Deportation (Aliens) (Amendment) Bill was read a first time.

BILLS

SECOND READING

The Pharmacy and Poisons (Amendment) Bill

THE DIRECTOR OF MEDICAL SERVICES: Mr. Speaker, I beg to move that the Pharmacy and Poisons (Amendment) Bill be read a second time.

This Bill is introduced to implement the recommendations of the Pharmacy and Poisons Board which that Board has had under consideration for the last year or so.

The Bill contains three main innovations. The first of these is contained in clause 3 which deals with the possession of poisons listed in Part I of the poisons list. Now under the existing law possession of a Part I poison is no offence, and it is known that certain traders in this country, mostly of the lesser sort, do in fact hold quite large stocks of certain Part I poisons which it is suspected, with good reason, have come into their possession illegally. As the law now stands, it is difficult or impossible to take any action in these cases because it is difficult, or impossible as a rule, to prove that a sale has taken place. Now if this Bill becomes law, it will be illegal for such people to be in possession of a drug on the Part I poisons list, and one of the main ways in which black market traffic in drugs is carried on in this country will be stopped.

Now, Sir, I would like to explain that this black market traffic in drugs is a most pernicious and dangerous thing, because many of the newer remedies which have been introduced for the treatment of specific diseases have the property when given in small doses of rendering the infecting organism drug fast. Now drugs which are sold on the black market are costly and consequently they are nearly always administered or taken in insufficient doses. That means that the infecting organism very quickly becomes drug fast and when subsequently that patient is treated with adequate quantities of the same drug, he is not cured by it. Furthermore, these drug-fast infecting organisms may be passed from person to person while still retaining their drug-fast properties and this means that you may get a whole population infected with an organism which it is impossible to cure by the drug which was originally introduced for that purpose.

The second new provision in the Bill is contained in clause 4, and this prohibits the sale of certain Part I poisons—not all of them but only certain poisons included in the Part I poisons list which are used for veterinary purposes, unless they are purchased on a prescription. Now, hitherto, it has been possible to purchase articles which include Part I poisons under section 25 (1) of the principal Ordinance, which lays down that certain articles which include, as I say, Part I poisons may be sold for agricultural purposes. Now this has led to a certain amount of abuse because people who do not know how to use these drugs properly have administered them in insufficient quantities and this phenomenon of drug fastness, which I have described in connexion with humans, has also caused a good deal of harm in veterinary practice. So that if this Bill becomes law it will be impossible to obtain certain drugs which will be prescribed by rule unless the purchaser is in possession of a prescription which has been given by a duly qualified veterinary officer. Now it might seem at first sight that this would inflict some hardship on the farming community, but I do not think that in practice this will be the case. I am assured by the Director of Veterinary Services that he has circularized all the members of his profession in the country and that they are all agreed to give every assistance to farmers provided they are satisfied that the farmer knows how to use the drug for which the prescription will be given. So that to the bona fide farmer, who has treated his stock for a number of years and knows how to do it, this amending clause should make no difference to him at all. On the other hand, it must be recognized that the term farmer has a very wide application in this country and covers people of all races including some who have little or no knowledge of how to use these potent drugs which are now obtainable, so that, for people who are not so skilled, this provision will be a definite safeguard in that when a prescription for a certain drug is given to them instructions will also be given at the same time by the veterinary surgeon as to exactly how it should be used.

[The Director of Medical Services]

—Now clause 5 of the Bill makes a small innovation which is introduced to reinforce the operation of clause 3, and authorizes any European police officer of or above the rank of Assistant Inspector to enter premises in which he has good cause to suspect that the breach of the law in relation to the sale of drugs has been committed".

That is introduced to reinforce the provisions of section 22A included in clause 3 and to make the law more workable in practice.

The third main innovation which is introduced in this Bill is contained in clause 6 and is introduced to prevent the publication of advertisements for preparations for the treatment of certain diseases which are listed in paragraph 33A, sub-paragraph (1) of clause 6 and which include Bright's disease, cataract, diabetes and so on. Now all of the diseases which are listed here are incapable of home treatment by proprietary medicines and this clause has really been introduced for the protection of the general public against worthless medicines. It is also introduced to bring our legislation into line with the 1941 Pharmacy and Medicines Act of the United Kingdom which contains precisely similar provisions.

A further clause 33B makes it illegal to publish an advertisement for any substance calculated to lead to the procuring of miscarriage of women. That again is included in the legislation at home.

A further section, clause 6, paragraph 33D, requires that the composition of proprietary preparations should be disclosed and should be marked distinctly on the label. It also provides that the ingredients used should also be clearly shown. This again is introduced for the protection of the public and is modelled on the legislation in the United Kingdom.

Hon. Members will notice, that in clause 2 the date on which this legislation will be enforced relating to advertisements in para. (c) (iii) under clause 2 is left blank. It is intended in the Committee stage to insert here the date the 1st March, 1952. This will give the vendors of these proprietary preparations sufficient time, practically a year, in which to make the necessary alterations to their labels.

Another small clause, which will be introduced in the Committee stage, will be inserted in clause 3, A new para. (c) will be introduced. Now, the reason for this is that under the amending Bill section 22A, it will become illegal for a person to be in possession of a Part 1 poison, and as the amending Bill reads at the moment, that will have the effect that, if a person goes into a chemist's shop with a prescription and purchases a prescription perfectly legally, as soon as he has purchased it he will be in illegal possession, so that this clause is introduced to safeguard people who have purchased a Part 1 poison legally.

The other small amendment which will be introduced in the Committee stage is in clause 6, which will delete the words "registered pharmacist". The reason for this is that the section reads at the moment:

"Registered pharmacists and authorized or licensed sellers of poisons"

both of which are practically the same term, "Registered pharmacist" is therefore redundant.

Finally, I should like to assure hon. Members that this amending Bill is not introduced with the object of interfering with any legitimate interests. It is introduced to ensure that potent drugs are not misused and to prevent the public from being misled into buying worthless preparations.

Mr. Speaker, I beg to move.

THE SOLICITOR GENERAL: Mr. Speaker, I beg to second and reserve my right to speak.

LIEUT.-COL. GHERSIE: Mr. Speaker, I rise to support the Bill, but I am just wondering if there is really sufficient protection for the public and I refer specifically to clause 6.

Now, Sir, we are aware that there are many instances of advertisements appearing in the vernacular Press which are very misleading and I know that publishers do on many occasions insist on altering the advertisement in order to protect the public and in particular the African. The same applies to labels on certain bottles of medicine and I have a case in point where a certain bottle, a small bottle in a large package on which it states "a cure for all", and it includes plague, snake-bite and madness—

[Lieut.-Col. Ghersie]

laughter)—these medicines exist in this country, Sir.

MR. BLUNDELL (Rift Valley): Very necessary.

MR. GHERSIE: I was wondering if the hon. Mover really feels there is sufficient protection in this Ordinance to cover that particular case.

There is one other point, Sir, in clause 6. Should not V.D. be added to the list of diseases and possibly pernicious anemia? That is a detail I admit, Sir, but my main point is the protection of the public. I do not think they are being protected adequately at the moment.

I beg to support.

MR. BLUNDELL: Mr. Speaker, I beg to support the Bill.

There are one or two questions with which I would like to deal. It has been rather difficult in finding out how this Bill will affect farmers in that there is no poisons list readily available, and I also think—I regret rather, that those paragraphs in the Bill which are being amended are not, as far as I can see, included, as they generally are, from the old Bill so that we can see what the changes are. That being so, I must ask the hon. Member one or two questions. They are these. Farmers are particularly interested in certain drugs and the drugs are these—and I would like him in his reply to say whether they will come under the provisions of this Bill: sulphanamides, including sulphaguanadine, and M. & B. pessaries, penicillin, sex hormones, phenamadine, and accaprin. I have been unable to discover, although the hon. Member was good enough to give me this list—being a layman—whether the ordinary names under which we know the drugs are included in the list which he showed me. Perhaps, in his reply, he would be good enough to tell us.

There is one major principle here and that is the provision by which farmers have to apply to a vet before being able to use these drugs. I am quite happy now to accept the point of view put forward by the hon. Mover but I would like to ask the hon. Member for Agriculture and Natural Resources to give us an assurance that if the provisions in this Bill appear onerous to farmers for a reason which I will give in a minute, he will move an amendment at a later date—an amending Bill designed to ease the position. It is true that, of course, farmers can apply to veterinary surgeons for these prescriptions. A point the hon. Mover might answer is this—is it the intention that a farmer can apply to a vet for the drug and keep it in stock, or is it the intention that he must apply when he wishes to use such a drug to the vet and get it for each specific case, because in many parts of the country farmers will be 40 to 60 miles from vets and, in my submission, it would be impossible unless it is very freely and openly allowed, it will be impossible for them to get a drug and yet use it because of the time factor involved. An animal may well be dead before the drug arrives. The hon. Member, in moving, said that farmers administered drugs sometimes improperly. I think one is prepared to accept that, but sometimes if the animal looks like dying anyway, it is better to have a shot and put in the drug on the principle of what you lose on the swings you gain on the roundabouts. That is all, Sir. I would just like to have an assurance from the hon. Member for Agriculture.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, I only want to ask one question of the hon. Mover, if he can give it in his reply, and it is really an amplification of what my hon. friend the Member for Rift Valley has just said—that is, what does Part 1 of the poisons list consist of? Whether it is only the antibiotics or whether in fact it contains other poisons used in commerce and on farms and are readily obtained in the United Kingdom by signing the poison book. I am sorry to display ignorance in the matter but I do feel the presentation of this Bill is wrong inasmuch as this Council is asked to pass a law without the foggiest idea of what they are passing.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, I rise to support this Bill very strongly indeed for reasons which have been largely given by the hon. Member who moved its introduction.

There has been some most improper use of drugs of which I think hon. Members opposite are aware, and people frequently go round the country administering drugs which they know full well are

[The Member for Agriculture and Natural Resources]

in insufficient quantities and so are doing a very great deal of harm and I think, in fact, are creating a very dangerous position. As far as I am aware, Sir, the idea is that any stock farmer who is capable—recognized indeed as an efficient stock farmer, will be given by the veterinary officers the necessary prescriptions to enable him to keep, as he does to-day, the drugs he requires for his normal day to day possible requirements. If, as the hon. Member has suggested, it is found that this provision is onerous and does not work, and if I am satisfied that that is the case, I will most certainly, in consultation with my hon. friend the Director of Medical Services, bring in the necessary amendment.

THE DIRECTOR OF MEDICAL SERVICES: Mr. Speaker, I would like to deal first with the question asked by the hon. Member for Nairobi North, who asked, I think, whether this list of diseases was wide enough. Well, the reason why we have limited the list of diseases to those named is to bring it into line with the law at home and we have, in fact, copied the list of diseases in the Ordinance of the United Kingdom.

With regard to V.D., we are adequately covered because section 55 of the Public Health Ordinance lays down that "no person shall publish any advertisement or statement intended to promote the sale of any medicine, etc. . . . for the alleviation or cure of venereal disease". If it becomes necessary later to widen the terms of this clause in the Bill, this might be done later, but at the moment, I think we have got what we want in bringing our legislation into line with the United Kingdom. There are certain other powers under the Ordinance which can be used for the control of remedies which are considered harmful. Under section 34 of the principal Ordinance, "the Governor, on the recommendation of the Board"—that is to say the Pharmacy and Poisons Board—"may, by order, prohibit or control the importation, manufacture or sale of any secret, patent, proprietary or homeopathic medicine or preparation". So that fairly wide powers exist for the control of medicines which are considered to be harmful.

LT.-COL. GHERSIE: On a point of explanation, Sir, the medicine I referred to was not necessarily harmful because, although it professes to cure snake bite, madness, and what have you, it is a small bottle containing coloured water. I consider it is insufficient protection to an inexperienced public.

THE DIRECTOR OF MEDICAL SERVICES: Yes, Sir, this section which I have just quoted does, in fact, cover that. It does not make any reference to the medicine being harmful. It merely says the Governor, on the recommendation of the Board, may prohibit the sale of any medicine.

The hon. Member for Rift Valley asked what drugs it was proposed to control. It is proposed to list certain drugs and to publish them under rules under this Ordinance. The list is a fairly short one and of the drugs which he mentioned, there is only one which it is intended to include in this schedule and that is penicillin. All the antibiotics are included and this includes aureomycin, chloromycetin, penicillin, and streptomycin, except when incorporated in a base and packed in collapsible tubes or jars for use in the treatment of udder diseases or for external application.

The hon. Member for Rift Valley also asked whether it was the intention to ask farmers to get a prescription on every occasion when a drug would be needed. Now, Sir, I understand that this is not the intention of the Director of Veterinary Services or his officers. It is their intention when they are satisfied that a farmer knows how to use the drug for which a prescription is given, that the prescription should be given. The farmer should be able to buy the drug and to keep it in stock against an emergency. That, I understand, is his intention.

The hon. Member for Uasin Gishu asked whether it was possible for certain poisons to be bought, as before, for agricultural purposes. Well I understood him to refer to certain poisons such as weedkillers and things like that which are listed in Part 2 of the poisons list and not Part 1. I do not know whether I misunderstood him, but it will be possible, as before, to buy any poison in the Part 2 list from a licensed seller, of Part 2 poisons as before. I am not quite sure whether that is the question he asked.

MR. MACONOCHIE-WELWOOD: On a point of explanation, Sir, that is precisely what I meant. I was referring to poisons such as arsenic, strychnine and others which are used for poisoning vermin which are always obtainable on signing the book. The point of my question was whether Part 1 contained almost solely antibiotics and drugs of that description.

THE DIRECTOR OF MEDICAL SERVICES: As a matter of fact, Sir, the two poisons which my hon. friend has mentioned are on this list—arsenic and its preparations, except those preparations of arsenic used in dipping fluids and insecticides. I think that is the answer to his question. With regard to strychnine, this is included in the list which it is proposed to control and that it will, in future, only be possible to buy strychnine and its preparations on a prescription, but I have not the slightest doubt that if a veterinary officer is satisfied that strychnine is needed by a farmer, that the preparation will be made readily available.

The question was put and carried.

The Municipalities and Townships (Private Streets) Bill

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, I beg to move: That the Municipalities and Townships (Private Streets) Bill be read a second time.

This Council has, Sir, as far back as 1924, accepted the principle of the Private Streets Bill. The present Bill merely takes up that legislation and introduces one or two new minor principles.

The first one is the alteration, and I think I may say, widening of the grounds for objection against the apportionment of cost by the municipality or township to the frontager.

The second is to enable the frontager to pay by instalments, so that the local government authority can ease the burden upon the individual concerned. There is also a suggested widening in that instead of the municipality being compelled to charge six per cent as a rate of interest, it now has a measure of flexibility in that a rate not exceeding six per cent may be charged.

The third new principle, Sir, is that a local authority may with the approval of the Member raise loans for the purpose of carrying out these works and in that way enable itself to carry the instalment system.

That, I think, Sir, covers the three new principles in the Bill.

The Private Streets Ordinance is at the present moment applied to all six municipalities in Kenya.

There is, however, one point, Sir, which I would like to cover in this stage in order to clarify the relationships between municipalities and Government.

Under the definition of "owner", the Crown is indeed removed from the operations of this Ordinance. I have, however, Sir, the authority of Government to state that in so far as the Private Streets Bill is concerned, it will accept its obligation as a landowner. It reserves, of course, its right to objection to the making up of any private street to a local authority standard on exactly the same basis as any other landowner, and it must always have regard to the financial resources available to Government at the time that the work is to be done. This, Sir, is an obvious and needed reservation inasmuch as the private owner, when called upon to pay expenses as a frontager for the making up of streets, has property which he can mortgage and he is in control of his own expenditure, whereas Government cannot use such sources as mortgage of individual plots to raise money for payment, Government finance too has to be dealt with on a Colony-wide basis and all expenditure undertaken with regard to the authority of this Council. With that financial reservation, Sir, which I think will be fully appreciated by hon. Members on the opposite side, Government acknowledges its obligation as a landowner with the same rights as any other landowner to object.

There are, Sir, two amendments which will be moved in the Committee stage, they deal, I think, Sir, with matters of detail rather than the principle of private streets work construction.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. USHER: Mr. Speaker, I rise to support this Bill which is a comfort to me as one who belongs to a body which has to determine these matters from time to time; and I should like to refer to one clause, to sub-clause 2 (3). Very difficult

[Mr. Usher]

cases arise from time to time, such for example as the case of a private street leading from the interior of an island to the shore through a residential area, shall we say. It is very difficult to know precisely how to apportion in such a case and I am wondering whether the hon. Mover could not consider whether an accumulation of cases of this kind could not provide rather more instructive principle than appear at present. I believe this sub-clause is a reproduction of the existing law or very nearly so, but I find it a little unsatisfactory as it stands, and if the sub-clause could be so expanded to give more guidance based upon experience of such allocations, I should personally welcome it very much.

Sir, I beg to support.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, answering the point raised by my hon. friend the Member for Mombasa, the clause as amended does indeed go a long way towards meeting the point he has outlined. This particular difficult point that is (3) (*b*) which has now brought in the greater or lesser degree of benefit to be derived by any lands from any private street works so undertaken, was brought in to make the authority give a measure of flexibility. It was based, after long discussion with local government officers on English practice. It takes into consideration the policy that a corner plot, for instance, might have no access to the street which was being made up. It obviously would be inequitable for the owner to have to pay according to the length of his frontage. That type of incident occurred very frequently in the United Kingdom and this clause, which makes an authority to base its charge on a greater or less degree of benefit brought in flexibility to that extent and is a great widening of the previous authority given to a local government body. I trust Sir, that meets the point raised by my hon. friend.

THE ATTORNEY GENERAL: Mr. Speaker, before moving for the Committee stage, I would like, with your permission, to give notice, which I forgot to give before, that the Deportation (Aliens) (Amendment) Bill will be taken through all its stages at the present sitting of the Council.

THE ATTORNEY GENERAL moved: That Council resolve itself into Committee of the whole Council to consider the following Bills clause by clause:—

The Pharmacy and Poisons (Amendment) Bill.

The Municipalities and Townships (Private Streets) Bill.

The Public Trustee (Amendment) Bill.

The Increase of Rent (Restriction) (Amendment) Bill.

The Wild Animals Protection Bill.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Bills were considered clause by clause.

The Pharmacy and Poisons (Amendment) Bill

Clause 2

THE SOLICITOR GENERAL moved: That paragraph (*c*) of clause 2 be amended by substituting for the words "the . . . day of . . ., 19. .," which occur in paragraph (iii) of the definition of "substance recommended as a medicine", which clause 2 will insert into section 2 of the principal Ordinance the words "the first day of March, 1952".

The question was put and carried.

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

Clause 3

THE SOLICITOR GENERAL moved: That clause 3 be amended by substituting for paragraph (*c*) of sub-section (2) of section 22A which the clause will insert into the principal Ordinance the following paragraph:—

(*c*) a person to whom under the provisions of paragraph (*c*) of sub-section (1) of section 21 a poison listed in Part I of the Poisons List may be sold;

The question was put and carried.

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

Clause 6

THE SOLICITOR GENERAL moved: That paragraph (*f*) of sub-section (2) of section 33A which clause 6 will insert into

[The Solicitor General]

the principal Ordinance be amended by inserting the words "registered pharmacist and".

The question was put and carried.

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

The Municipalities and Townships (Private Streets) Bill

Clause 1

THE ATTORNEY GENERAL moved: That the figures "1951" be substituted for the figures "1950" in clause 1.

The question was put and carried.

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

Clause 8

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT moved: That clause 8 be amended by adding thereto the following new sub-clause:—

(7) In determining, for the purposes of sub-section (2) of this section, the total estimated cost of any private street works the local authority may add to the estimated expenses of executing such private street works an amount representing not more than 10 per centum of such estimated expenses in respect of expenses of administration.

I think, Sir, this clause is self-explanatory. The local authority officers prepare the specifications to do surveying and preparation of these schemes and it is only right that the authority should be able to charge a portion of the expenses of the administration to that scheme. It is a principle, Sir, which has been accepted in this Council with the Development and Reconstruction Authority vote.

The question was put and carried.

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

Clause 11

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT moved:

(2) If any such sum is not paid within six months of becoming payable the local authority may charge interest thereon at such rate, not exceeding six per centum per annum, as the local authority may fix and such interest shall in like manner as the principal sum be a charge against the land.

The reason for this alteration, Sir, is that whereas the original clause tied the interest up directly to a loan, the system of borrowing by local government authorities could not ensure that the cost of a particular work was borne by a particular loan. There might be a question of varying rates of interest being paid on loans raised by the authority to do various groups of work. It is the opinion of the local authorities, Sir, in which I concur, that this would lead to great complication and that a simple and straightforward clause such as the one now proposed is more likely to meet the case. I therefore beg to propose.

MR. HAVELOCK: I would just like to ask a question, Sir, I think the hon. Member proposed that a new clause should be substituted for sub-clause (2). Does that also mean the proviso is now deleted or not?

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Yes, Sir, that would mean that the proviso would be deleted and the flexibility left in the hands of the local authority where, I suggest, when it is a local government matter, the authority should rest. If, however, the hon. Member has any deep feelings about this matter and feels that the Member should be in a position to restrain local government authorities in this matter, I have another amendment prepared, Sir, which I would be prepared to submit for your consideration.

MR. HAVELOCK: I would be grateful, Sir, if the hon. Member would tell me what the other amendment may be.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: With your permission, Sir, I will read out what I suggest if the Council is not prepared to accept that the local government authority should have complete discretion in this matter and that some restriction should take place.

"If any such sum is not paid within six months of becoming payable the local authority may charge interest thereon at such rate, not exceeding six per centum per annum, as the local authority, with the approval of the Member, may fix and such interest shall in like manner as the principal sum be a charge against the land."

[The Member for Education, Health and Local Government]

That would mean that the local authority could not, in fact, fix the charge of interest rate without the approval of the Member.

MR. HAVELOCK: Mr. Chairman, I am not quite certain of this Ordinance. I presume that will mean that the local authority will act entirely on its own accord, nothing will come to the Member's office or the Standing Committee on this subject if the amendment suggested by the hon. Member is accepted as it stands—the first amendment. The hon. Member nods his head.

I feel, Sir, that it would be wiser to accept the second amendment suggested by the hon. Member and that some authority should still be vested in the Member for Local Government.

THE CHAIRMAN: Will you move as an amendment to the amendment which I have proposed that the words "with the approval of the Member" be inserted after the words "local authority". Will you move that?

MR. HAVELOCK moved: That the amendment be amended by the insertion of the words "with the approval of the Member" after the words "local authority".

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: I would like to say as far as Government is concerned, we accept this amendment, but to express an opinion, that where a local authority which is largely a self-governing body is carrying out work at its own cost and under its own finances, for private street owners, my own opinion is that they should be left free to exercise the greatest possible control over their own affairs and that if there is a conflict, the conflict should be settled between the members of that Council and its electors. However, Sir, if the hon. Member for Kiambu wishes to press this, Government is quite prepared to accept it.

MR. HAVELOCK: Mr. Chairman, on that I would say, Sir, in principle I would accept what the hon. Member has said, but having had some experience of sitting on the Standing Committee for Local Government in municipalities, I found there that in that Committee the Member's advice was extremely useful to a number of local authorities, who really have not yet not got on to their feet.

Anyway for the time being, I believe this particular amendment should be accepted. However, Sir, the best thing to do would be to test the feeling of this side, Sir, and leave it to the vote.

The question of the amendment to the amendment was put and carried.

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

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

The Committee adjourned at 11 a.m. and resumed at 11.20 a.m.

The Increase of Rent (Restriction) (Amendment) Bill

THE SOLICITOR GENERAL: With your permission, Sir, and that of the Council, I will ask that the Committee stage of this Bill be deferred until to-morrow. The reason for that is that during the adjournment I have been approached by one of my hon. friends on the other side of the Council with regard to the matter of an amendment which he proposes to move. That, Sir, requires consideration by the Government, and I therefore ask that this matter be deferred.

Consideration of the Increase of Rent (Restriction) (Amendment) Bill was by leave of the Committee deferred.

The Wild Animals Protection Bill

Clause 12

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Chairman, I beg to move that with regard to clause 12 that sub-clause (7) of clause 12 be amended by substituting a full stop for the colon at the end of paragraph (c) and by deleting the proviso thereto, the proviso thereto being that "provided that no African or Somali be granted any such licence unless he has obtained the prior permission in writing of the Game Warden".

I would, Sir, in moving this amendment however point out that the same provisions more or less apply under sub-clause (8) to the granting of a full licence to Class "A" Category: but as there is some discrimination there, Sir, I think it would be wiser if we removed that sub-clause. There are powers, however, I feel I should point out in 31, 56 and

[The Member for Agriculture and Natural Resources]

clause 13 for dealing with any situation that might arise in regard to "B" licences or any person.

The question was put and carried.

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

Clause 45

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: I beg to move: That sub-clause (1) of clause 45 be amended by substituting for the words "shall upon conviction be imprisoned for a period not exceeding six months and in addition shall be liable to a fine not exceeding ten thousand shillings, and where the offence relates to more than one rhinoceros in addition to such imprisonment and fine shall be liable" the words "shall be liable to a fine not exceeding ten thousand shillings or to imprisonment for a period not exceeding six months or to both such fine and imprisonment, and where the offence relates to more than one rhinoceros shall be liable in addition".

Sir, I think the reasons for this amendment were discussed in the debate on the second reading under the law as it stands to-day, and under the law as it was proposed to enforce under this new Ordinance if a person is convicted of certain offences referred to under section 45, imprisonment was obligatory on the magistrate or judge, and, Sir, I think the Members of this Council feel that it would be wiser to leave the question of imprisonment or a fine to the discretion of the adjudicating authority.

The question was put and carried.

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

First Schedule

THE MEMBER FOR AGRICULTURE: I beg to move: That there be substituted for the words "Department of Lands, Mines and Surveys, Nairobi", where they occur in the last paragraph of the First Schedule, the words "Survey of Kenya, Nairobi".

The question was put and carried.

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

Second Schedule

MR. HOPKINS: Sir, I wish to move an amendment. Sir, I beg to move that in the Second Schedule, Part II, item 2, Greater Kudu Males, the words "and Meru District of the Central Province" be deleted. My reason, Sir, for wishing to move this amendment, and another similar controversial one which I shall move in respect of the Third Schedule, is that greater kudu occur only in a very small area in the Meru District—that is, in the Northern sphere of the Gembi or Munyeni hills. For a great many years, successive district officers have refrained from publishing the fact that greater kudu existed there because they wanted to protect them and the reason why they did not want to publish the fact there is that they are in an area which is a very small one, it is very easy of access and the number of animals is strictly limited and, moreover, the Ukembi natives themselves do not hunt this kudu and they do not, in fact, even depasture their stock in the area because it is virtually waterless, these animals are very much tamer, less nocturnal and easier to find than they are in other places where they occur. In practically every other case where greater kudu occur in this country, they are accorded a measure of protection by the fact that they live in a most inaccessible country, and it seems clear therefore, Sir, that the throwing open of this area to the shooting of greater kudu would result very rapidly in the extermination of this small and interesting little herd. Sir, if the amendment is accepted, as I hope it will be, I would like to suggest that, at a later date, the Member should give consideration to declaring this area either a local sanctuary under clause 5 of the Ordinance or a controlled area under clause 7.

Sir, I beg to move.

The amendment was put.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Sir, Government accepts that amendment.

I should, however, point out that under section 57—I am merely pointing this out because it may possibly save time—these Schedules, apart from the First Schedule Schedules, apart from the First Schedule are capable of being altered and naturally if any hon. Member has good cause for suggesting minor alterations, I will be only too glad to endeavour to meet the

[The Member for Agriculture and Natural Resources]

hon. Member in that respect or, indeed, members of the public. As far as the Meru district of the Central Province is concerned in regard to greater kudu males, Government accepts the amendment.

The question of the amendment was put and carried.

The question that the Schedule as amended was put and carried.

Third Schedule

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES moved: That there be substituted for the word "One" which appears in the fifth column of the Third Schedule opposite item 8 which refers to wildebeest the word "None".

The question was put and carried.

MR. HOPKINS: Sir, I wish to move a consequential amendment: That in the Third Schedule, Part II, Item 16, Greater Kudu (males only), the words "and Meru District" be deleted.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Chairman, for the reasons I have just given, Government accepts the amendment to the Third Schedule which has just been proposed.

There is also a further amendment, Sir, which I wish to propose. By accident or by misprint, a wildebeest got under the bird licence. I therefore, Sir, will move: That there be substituted for the word "One" which appears in the fifth column of the Third Schedule, opposite item 8 which refers to wildebeest the word "None".

THE CHAIRMAN: I will put the question first: Delete the word "One" and substitute the word "None" in the fifth column.

The question was put and carried.

THE CHAIRMAN: And in item 16, I put the question: to delete the words "and Meru District".

The question was put and carried.

The question that the Schedule as amended was put and carried.

Fourth Schedule

LADY SHAW: Mr. Chairman, I do not wish to move an amendment but I would like to ask the hon. Member for Agriculture and Natural Resources for an assurance on the subject of these very high licences for elephant.

I realize the reasons for their having been imposed, and I do know as they are under a Schedule, they are capable of alteration, but I wish to ask him at the same time, to keep under constant review the question of this heavy licence for first and second elephant with a view to the fact that there is a certain class of person who lives in this country who is probably—certainly anxious to do a certain amount of elephant hunting. The object of these high licences, I believe, is to reserve the big tusker for the tourist—it is an obvious attraction for the tourist—but I would request the Member to keep his eye on the whole matter of these licences so that they are not kept so unduly high, that it means that local people find it quite impossible to hunt them except at enormous expense.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Chairman, I will certainly give that assurance. The first elephant, it is now proposed to go up from £50 to £75, the second elephant remains the same, the rhinoceros goes up from £10 to £15 and the giraffe licence remains the same, but I will bear the hon. and gracious Lady the Member for Ukamba's suggestion in mind and perhaps I could discuss the question with her and the Game Warden at a later stage.

THE ATTORNEY GENERAL moved: That the Public Trustee (Amendment) Bill be reported back to Council without amendment and the Pharmacy and Poisons (Amendment) Bill, the Municipalities and Townships (Private Streets) Bill, the Wild Animals Protection Bill be reported back to Council with amendment.

The question was put and carried. Council resumed and the hon. Member reported accordingly.

The question that the report be adopted was put from the Chair and carried.

BILLS

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Pharmacy and Poisons Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read a third time and passed accordingly.

THE ATTORNEY GENERAL moved: That the Municipalities and Townships (Private Streets) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read a third time and passed accordingly.

THE ATTORNEY GENERAL moved: That the Public Trustee (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read a third time and passed accordingly.

THE ATTORNEY GENERAL moved: That the Wild Animals Protection Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read a third time and passed accordingly.

SUBSIDIZATION OF MAIZE PRICES

THE SPEAKER: Have you revised this motion? I have been looking at it and been puzzled about it. There is a difficulty about rule 32. Have you got a new formula? If not, I can soon put it. If you take out the word "resolves" and put "is of opinion" and then after the semi-colon after "consumer" put in the word "recommends".

MR. COOKE: I hope to show in the course of my speech that it will not add anything.

Sir, I beg to propose: "That this Council while accepting the principle that maize producers should receive a reasonable and economic price for their produce is of opinion that since maize is the staple food of the majority of the people in this country and consequently its selling price affects the wage structure and with it the whole economy of Kenya, no increase in the price to the producer shall be passed on direct to the consumer and recommends for the consideration of Government that any such increase should be met by the means of a subsidy from general revenue".

Sir, you and the Council will recollect that in March, 1948, a motion was brought in this Council suggesting that, as prices were reigning very high throughout the country, Government should take action to control the price of foodstuffs. And, Sir, later on in August of the same year, another motion was brought, which the then Mover described as a motion with more teeth in it, that Government should take appropriate action. In consequence, Sir, of that second motion, a Select Committee was appointed with the terms of reference which are well known to Members of this Council. Now, Sir, I mention those two motions as showing the fact that an anxiety was felt throughout the country with regard to the ever-increasing rise in prices. Now, Sir, that Committee took rather an unconscionable time to report, but it did report in 1950, and its report was submitted to Government in November of that year.

Now, Sir, I think that I would not have needed to have brought this motion to-day had Government considered that report and brought a motion into this Council either accepting or rejecting it. We heard a lot last week about the flouting of this Council and I think, Sir, that Government has flouted this Council. When a Select Committee has reported, and a Select Committee on a subject of such great importance, immediate attention should be paid to it. There is an old saying "first things first"; and I think, Sir, that anything that concerns 99 per cent of the population of this country so vitally should be considered a first thing.

Now, Sir, this idea of a subsidy in Kenya is nothing new. There is no precedent whatever being created. As we all know, something like £140,000 has appeared in this year's estimates to deal with the price factors of mechanization of farming, specially of maize and cereal farming, and, Sir, those who were in this country in 1943 and 1944 well know that in consequence of the food shortage, specially the cereal shortage, cereals had to be imported from abroad and this Council voted a very large sum of money towards a subsidy for cereals during those two years. Therefore, Sir, I contend that there is no question of a precedent in the proposal—there is no precedent in the question of not being a precedent in the proposal that I am making to-day.

[Mr. Cooke]

Now, Sir, I would emphasize that in 1943 and 1944 those large sums of money were paid outside this country, and therefore our national income was affected, but I am coming to that point later on. But it is very important to realize this, that now, if we pay money from our exchequer to stabilize the price of food, it will be only an internal movement of that money.

Now, Sir, when this Committee reported, of which my hon. and distinguished friend the Member for Health was the Chairman, they made some quite revolutionary suggestions, but I will not go into those suggestions now. But they did suggest by a majority—and there was only a minority of one against this suggestion—that there should be subsidization of food; and they mentioned maize in particular with regard to that subsidization. I know the hon. gentleman to my right did put in a caveat about subsidization, but he seemed to overcome that caveat to a certain extent by being in favour of the stabilization of food prices. I am not quite sufficient an economist to tell the difference between stabilization and subsidization—to me it would seem a distinction without a difference—but perhaps when the report is eventually discussed in this Council he will be able to answer those points.

Now, Sir, there seems to me to be a certain confusion of thought with regard to subsidization, as to who pays. It is perfectly true that, at first sight, the consumer pays, but my contention, Sir, is in the end the taxpayer must pay. It must, in the end, come on the national income of this country no matter how you consider it. For instance, supposing, as indeed has happened recently, the price of maize goes up to the consumer something like 3 cents a lb. for *posho*, well, big Government employers of labour, such as the Public Works Department, will have to ask for increased votes, that money will have to come from the Treasury and the taxpayers will have to pay that amount back into the Treasury by one means or another. Or for instance the big plantations, or the big producers, or the employers of labour such as the docks and the shipping companies in Mombasa, they will have to pay more to their labourers—indeed, we have seen it the other day in the minimum wage awards—and they subsequently are the taxpayers of this country and it is six of one and half a dozen of the other whether they pay in the form of tax, in the form of subsidy, or whether they pay it directly for the purchase of maize. Therefore, I think we have got to consider that whatever way you do it, if you put up the price of maize, the taxpayer eventually pays, and it seems to me a much easier procedure and much more simple and one that will not upset the economy of this Colony if the taxpayer pays through taxation into the Treasury and from the Treasury a fund is formed to subsidize maize. That seems to my simple way of thinking to be much the better way of doing it.

Now, I would emphasize, Sir, that not only is the economy of this country upset but there is a very real danger, especially where Africans are concerned, that where wages are raised and the time of deflation follows, the African, and indeed a great many Europeans, will not see any reason for reducing wages again and you may have a deflationary period here and these high wages still prevailing. That would be prevented, Sir, if the maize was subsidized and was pegged at its old level.

Now, Sir, it is said that it is all wrong that a big and prosperous commercial or farming establishment, like sisal or coffee, should be let off lightly in the way of price if maize was pegged by a subsidy, and that they could well afford to pay a high price for maize. Well, that is absolutely true, but in this life you cannot get away from anomalies in that respect. In England, of course, the same thing happens. You have the Ritz Hotel and the poor widow in Battersea paying the same price for potatoes; it is just too bad. When you have these rules and regulations, these anomalies must exist. Indeed, you have it in this country, because one of the reasons for the high price of maize is to keep the sub-economic farmer on the land and in order to keep him on the land, the producer of 10 and 12 bags of maize is making a very nice sum of money indeed on the sale of his maize. So you have the same anomaly prevailing in this country.

I mentioned the sub-marginal farmer and rightly or wrongly, it is the policy of Government, which we must accept, to keep the sub-marginal farmer on the land.

[Mr. Cooke]

It is regarded as a national necessity because, in the case of a crisis, we will probably need all the maize that can be produced.

I am not saying whether I agree with that policy or whether I do not agree with it, but it is the policy and it is held at home and everywhere else that all should contribute when it is a question of national interest. If I may, Sir, I will read briefly what the economic historian, Lipson, says on this question. He says, "The best method of assisting an infant industry or any other industry whose maintenance is considered necessary for national reasons is the payment of a subsidy from general taxation, since the burden ought to fall on the community as a whole and not on the section which consumes a particular product". I think that that view is generally held by economists. (Question.) I did not see any answering nod from my distinguished friend, so perhaps I am wrong!

Now, Sir, when we consider the effect of this rise in price on the African family it is very considerable. The African man and wife with an average family of three will find their cost of living raised something like Sh. 4/50 a month. You, Sir, as a member of the Minimum Wages Board—(THE SPEAKER: I have nothing to do with it these days.)—know what these repercussions are, and I understand from the Kitale and up-country farmers that they are, perhaps quite rightly, going to press for another rise in price, in which case it would be quite possible within a year that there would be a rise of something like Sh. 10 per family in the cost of living. Now, that is a very considerable sum of money, and it may, Sir, it does, upset the economy of this country, because it means the readjustment of wages. It means that even the African on a farm seeing the town African is getting more money—although he is fed by the farmer himself—unreasonably asks that he also should get that rise in wages. He is not capable of seeing what the repercussions really are. Now it was notified in Kitale township the other day, which is a bit of poetic justice, that the rise would be Sh. 4/50 per month—the minimum wage went up by that amount—so that what the farmers of Kitale had won on the swings the townspeople of Kitale had lost on the roundabouts.

Now, Sir, what I want to emphasize especially, as I hinted at the beginning of my speech is that any subsidy, being an internal payment, has no adverse influence on the national economy of this country. You are merely taking money from one section of the community and transferring it to another. It is what the economists call, I think, an internal transfer of money. It does not in any way adversely affect the balance of trade between this country and outside this country. It is entirely an internal payment, and it affects the national income only in this respect: it transfers the purchasing power from one community in this country to another community in this country, but there is no loss to the national income of the country. It is for that reason, Sir, that I urge that a subsidy should be paid, because, as I said at the start, whoever pays at first, eventually the taxpayer is going to be pumped; and it is much easier to raise a sum by direct or indirect taxation to build up a fund every year to pay this subsidy than to upset the whole economy of this country by continuous wage adjustments. It is for that reason, Sir, I move this motion, with every confidence that it will be accepted.

I beg to move.

MR. USHER: Mr. Speaker, I beg to second. There is a growing body of opinion in favour of the principle which we are seeking to establish by this motion. Trade and commerce have spoken, I think—certainly in my part of the world—fairly firmly on the subject, because they realize that all production is going to be increased in cost, and particularly in a port town, that all the handling charges are going to go up. But not only is the result of this increase in the cost of maize felt in those spheres, it is felt, of course, also by the private employer of African labour, even by the domestic employer. Our hearts have been wrung recently by the stories of families who cannot make ends meet. They are now going to have to pay another Sh. 15 a month probably to help out their domestic staff. Now what of the principal consumer—the African himself? I can assure this hon. Chamber, Sir, that the African does not desire these increases in wages. He is coming to realize that for

[Mr. Usher]

him the best possible thing would be to have the essentials of life for him pegged. (Hear, hear.) I am no lover, Sir, of subsidies in principle, but I do say this; that if a subsidy is to be recommended in the case of any commodity at all, it is to be recommended in the case of maize. I feel that it is rather unfortunate that the minimum wage should have been raised recently, the principal reason being the rise in the cost of maize, when notice of this particular motion had already been given —(hear, hear)—and as my hon. friend the Mover has already said, when the debate on the Cost of Living Report has still to take place.

Sir, we do not know what is round the corner. We are subject to impacts of unpleasantness of every kind from outside, and those unpleasantnesses we cannot control. First it is tyres, then it is woollen suits, then wildebeeste get into aviaries, and every kind of impossible and unpleasant situation is arising, and many of us feel that it is necessary now to have a searching review of our whole fiscal structure. This motion, if passed, cannot, Sir, of itself effect what we recommend, and therefore I appeal to the Government very strongly not to reject it, but to accept it with such reservations as they may think fit. I do ask that most earnestly.

I beg to support.

MR. MACONOCHIE-WELWOOD: Mr. Speaker, much as I dislike opposing a motion on this side of the Council, this is one of those motions that one cannot pass by without opposing. Hitherto in this country maize and wheat, or rather their growers, have performed the task of subsidizing foodstuffs for the rest of the community. Now a change is gradually taking place, and my hon. friend the Member for the Coast suggests that this should be done out of general revenue. Now in the last few weeks we have passed the cost of living increase to the Civil Service, and particularly we raised it very highly to the people most interested in maize—the Africans—and in fact an amendment was moved based on a Civil Service suggestion that the lower-paid groups should receive their increment at the same rate as the higher-paid groups; and yet my hon. friend the Member for Mombasa declares he regrets the fact that the minimum wage has been raised although he voted for that particular section—the amendment—in fact, the raising for the lower-paid civil servants of the cost of living allowance which has been granted. Now, Sir, I submit——

MR. USHER: I only wished to say that I objected to it being raised at this stage, and when this motion was already tabled, Sir.

MR. MACONOCHIE-WELWOOD: Well, Sir, if you are going to have a subsidy on food you must inevitably endeavour to keep wages down and not grant a cost of living allowance. You cannot have it both ways, and we have done one, and we have agreed, I think, everybody here to-day, with the exception perhaps of the hon. Mover, agrees with the fact that in a world of inflation we here cannot sit down without allowing a measure of inflation to take place. Food subsidies would be a temporary alleviation and would simply cripple the rest of the country. If you are going to have food subsidies you have to have one of two things. Either you have to have an industry or industries as a major part of your economy to pay for the food subsidies, or, like certain other countries, you must have a major export of foodstuffs when you can sell your foodstuffs at a lower price in the country and at a higher price for export, a condition, in fact, which I believe appertains in places like Australia and New Zealand. We in this country are not in that position. The bulk of the basic foodstuffs, particularly maize, are consumed here and it is maize that we are discussing at the moment.

Now the rise in the price of maize, as the hon. Mover has said, affects chiefly the urban African, who suffers particularly as regards his family. Well, Sir, that is a very small proportion of the people of this country. The bulk of the Africans of this country are producers of maize and therefore the people who pay the enhanced price are the employers of labour, and the people who are not affected at all are the bulk of the African population. I repeat it. The bulk of them are producers and are unaffected by the major rise in the price of maize. The others are employed, and

[Mr. Maconochie-Welwood]

the whole cost of the maize rise then falls upon the employer of the African and not upon the African. The trouble about this maize question is largely brought about, I think, by the black market which is no part of this resolution, but if the hon. Member for the Coast had asked for a tightening up of control on that black market I think that would help the situation a great deal. Maize prices have become a sort of bugbear in the minds of people in this country, but it is not the cost of maize that has caused our inflation. It is entirely the imported article. I do not believe for one moment that in the family budget of the African the increased cost of maize is nearly as important as the cost of clothing. We go on about this maize factor; continually worrying about it, and it is not the major point. The major point is things over which we have no control.

MR. COOKE: On a point of explanation, I did not say it was the major point. I am saying it is one factor, and I want to control that factor.

MR. MACONOCHIE-WELWOOD: Sir, if we subsidize maize it will necessitate exceedingly high taxation to do it, and that taxation will go to the benefit of industries well capable of paying the enhanced price of maize, and a very small section of the community who are really deserving will benefit, and I submit that they are better benefited by a wage increase than by the subsidization of a crop which would cost this country an enormous amount of money and would, in my view, retard the developmental programme of the Government which is so near to the heart of the hon. Member for the Coast. I believe if you subsidize maize you would have far less money available for other purposes. I may be overstating the case, but I do not think that any subsidization short of several shillings a bag would be any use in this matter, and several shillings a bag would amount to a burden which would seriously interfere with taxation raised for other purposes.

Mr. Speaker, I beg to oppose.

MR. PRESTON: Mr. Speaker, Sir, I rise to oppose this motion. Now Sir, my hon. friend the Member for the Coast has said that the reason for the increased price of maize was to keep sub-marginal farmers going. I must join issue with him here. The real reason is this: over a great many years the maize farmer, the cereal farmer, has been subsidizing this Colony. He has been selling his produce at well below world prices. At the same time he has been forced to buy all those things he requires to continue his farming operations at world prices. Now Sir, it is nearly always said, whenever there is any question of a rise in price on anything that is produced by the farmers, "Here are the wicked farmers exploiting the public of the Colony once again!"

MR. COOKE: On a point of explanation, if the hon. gentleman would read the first part of the motion he would see it says ". . . while accepting the principle that maize producers should receive a reasonable and economic price". It is not disputing that fact.

MR. PRESTON: Neither, Sir, am I disputing the terms of the motion. I was merely drawing attention to the fact that the hon. Member stated that the reason for the subsidy was to keep sub-marginal farmers going. I am trying to point out that it is not so. Now Sir, I think that this motion in any case is somewhat late in the day. We have just had a cost of living allowance about to be paid to civil servants. We have just had in nearly all the towns the minimum wages raised, and perhaps it is rather a case of shutting the stable doors after the horse has left. (Hear, hear.) Now Sir, to my mind it is just as logical to say that the price of motor tyres is rising very rapidly, therefore we must have a subsidy on tyres. There is no end to these subsidies once you start them. It has been tried out in England and I do not think the results have been altogether happy. There is no question, Sir, that the costs of production of practically everything that is produced from the land to-day have risen and I do not think it is unreasonable to expect the consumer to bear a portion of these rises.

Sir, I beg to oppose.

THE FINANCIAL SECRETARY: Mr. Speaker, inasmuch as the inception of maize meal subsidies coincided with my own assumption of office, and since in fact the two Budgets which I have had the honour to present to this Council saw the first financial provision for such subsidies, certain hon. Members might think

[The Financial Secretary]

it slightly inconsistent of me if I rise to oppose this motion. (Hear, hear.) Sir, all applause is sweet, even when it is ironical!—but I will remind hon. Members that at the time we were discussing this question of subsidies in those two Budgets I did make it quite clear that subsidies of this kind *could* prove to be a very slippery slope. (Hear, hear.) It was all a question of the balance of advantage and at that time, having regard to the comparatively small sums of money involved, the balance of advantage most definitely was on the side of making those subsidies. The sums of money which were involved in those two Budgets were £70,000 and £140,000 respectively, and those sums were necessary to peg the price of maize meal to a maize price equivalent of Sh. 21 per bag. (Hear, hear.) Now, Sir, we are to-day faced with a very rapid and a very substantial increase in the price of maize, and consequently if we attempted to maintain or peg the price at the old level the amount of money necessary would be correspondingly increased. Indeed, if we attempted to hold the price at the original 15 cents per pound as opposed to the existing 18 cents a pound, the cost in money on the Budget would be £500,000. Now, Sir, even that very large sum might be worth it if we could be sure that by spending it we could in fact peg the price of maize meal. Unfortunately, Sir, we just cannot say this. With the rise in the cost of production in almost everything, it seems likely that we shall have to face even further increases in the cost of maize, and in these circumstances any subsidy would have to be correspondingly increased. I must say at once, Sir, that I cannot advise that this country should assume such a continuous and a rising commitment against its Budget. We might have adopted such a policy in days of rapidly-expanding revenue and contracting expenditure, but it is quite obvious that if you accept a commitment of this kind and you are faced with a recession and fall in revenue, it might become absolutely essential to off-load that subsidy directly upon the consumer. Now such an off-loading, Sir, could, at the juncture of off-loading, have a most serious and disrupting effect upon the economy of the country.

Hon. Members are aware that in the United Kingdom the system of food subsidies, from a modest start at a comparatively low cost and a very high balance of advantage, that country has gone step by step to a position where today the cost of these food subsidies is in the neighbourhood of £400,000,000.

MR. COOKE: All external payments—mostly.

THE FINANCIAL SECRETARY: Sir, the hon. Member is taking advantage of my drinking water to interrupt! (Laughter.)

Now, Sir, with the increasing need for expenditure in almost every other direction, that country is finding this enormous sum in subsidies an increasing—and ever-increasing—embarrassment, and succeeding Chancellors of Exchequer have sought around for methods of getting rid of it. They have, however, been forced to the conclusion that they just cannot off-load that on to the consuming public without risking the greatest repercussions upon the economy of that country. Consequently, Sir, that burden has to be carried like a millstone round the country's neck. I believe, Sir, that it has become so embarrassing that in the case of certain foodstuffs which have now become in virtually free supply it is quite impossible to de-ration those foodstuffs because with the de-rationing there would be an upward swing in the level of consumption and a corresponding upward swing in the amount of subsidy necessary to peg that price. And that, the country just cannot afford.

Now, Sir, I would also like to repeat the point which has been made by the hon. Member for Uasin Gishu, that it would be quite impossible for this country to carry subsidies of the magnitude envisaged by the motion without substantially increased taxation. £500,000, for instance, represents the equivalent of an extra two shillings on Company tax or, shall we say, another ten shillings on poll tax.

Now, Sir, I am extremely dubious whether in a young developing country of this kind taxation of that magnitude *for that purpose* is justified. (Hear, hear.) What is the alternative? If we do not go for taxation and do not absorb this subsidy into the Budget we would be faced with a deficit Budget, and I think the hon. Member for Coast would agree

[The Financial Secretary]

with me that in the present circumstances there is no more inflationary factor in any country than a deficit budget.

Consequently, Sir, having regard to our present financial position, to our foreseeable financial position and to the effect upon our finances that such a system would involve, I am afraid that the Government must oppose this motion.

Sir, I beg to oppose.

LT.-COL. GHERSIE: Mr. Speaker, I rise to support the motion, and in doing so I would first like to make this qualification, that as a general principle I am opposed to subsidies. (Hear, hear.) But, Sir, as the exception so often proves the rule, I believe that in the selling price of maize there is a very good case for a subsidy. Now, Sir, the basic food of this country for the majority of people is maize, and if the increased selling price is passed on directly to the consumer it immediately tends to create further inflation. Now, Sir, let us examine the effects, and having regard the headache — the present headache — the Government have in the continual rise in the cost of living, every employer of labour is affected, be it the housewife, local industry, or the producers of other crops. And, Sir, there is another feature which may be considered even more important, that is the extent to which maize plays its part in the feeding of various types of livestock. I have in mind in particular pigs, poultry and cattle. Now, Sir, if production costs are increased to the producers of those particular products they will quite naturally demand a further increase in the selling price of their crops, and you will then find a further rise in cost of living and before very long the award that you have made will be completely consumed by the increased cost of essential commodities.

Now, Sir, there is another factor. An increase in the price of maize may affect increase in port charges and railway charges. It will most certainly affect such costs as garage charges, repairs of implements, etc. It will also affect manufactured articles of local industry, such as blankets, timber, sisal, etc., which will ultimately react adversely on the farmer and the increase he has received in the price of maize will ultimately be absorbed in his costs, and then we shall immediately be confronted with a further demand for a further increase in the price of maize, so this upward tendency in the vicious spiral of costs goes on *ad infinitum*.

I appreciate the argument that the increased costs in this country are mainly due to the rising cost of the imported article, but that is no reason why we should not attempt to regulate and control our own internal economy, and I suggest, Sir, on the contrary it is a very good reason why we should endeavour to encourage local industry by assisting them in keeping down their costs in order that they can compete with imported articles.

The obvious question arises, if subsidies are accepted, from where are the funds to be derived? My reply to that, Sir, is this. From where have the funds for the present increased cost of living allowance been derived? Sir, unless we at this stage attempt to peg a commodity such as maize—peg its selling price—which in turn would have the effect of pegging the selling price of other essential items in the family budget in the not too distant future, we shall again be confronted with the demand for cost of living allowances, or possibly increased salaries—where, Sir, will those funds come from? General revenue. And, finally, I do believe, Sir, that it is psychologically wrong to pass on any increased selling price in maize direct to the consumer—more particularly when it is realized the increases we have had in other commodities quite recently.

LADY SHAW: Mr. Speaker, I do not wish to delay the Council very long, but a great deal of play is being made at the moment. Each speaker in turn talks about the consumer having to pay. I want to know where general revenue comes from. It always sounds as though "general revenue" is one of those wonderful things which happens quite by chance. What more inflationary or expensive thing could happen to the producer than to have to pay a large extra quantity of taxation which obviously he would have to pass on? What would also happen to the consumer? He would have to pay, simply because that extra taxation would be handed on. We hear a good deal about extra costs handed on, but

[Lady Shaw]

surely Sir, extra tax will also be handed on. It does seem to me that people who look at this whole question look at it from one angle only, and that is the angle they wish to look at it from. It passes my understanding how it is believed that ultimately the extra revenue that is raised and the extra taxation that is imposed in order to pay subsidies will not eventually be handed on to the consumer, however much he may have subsidies on his food.

MR. COOKE: Of course it will!

LADY SHAW: I agree with you! Of course it will! I would like to know which is the worse alternative.

I beg to oppose.

MR. COOKE: Well, Sir, there is not a great deal to reply to. The hon. gentleman did not make much attempt to meet my arguments. My arguments from start to finish coincide with those of the hon. and gracious lady, that is, whoever pays at first in the end it is the taxpayer who pays, no matter which way you do it, and no one has controverted that argument. Even if you have a subsidization, the taxpayer pays. If you pass it to the consumer the taxpayer eventually pays. If the producer gets a high price, the taxpayer is the man who eventually pays. And I entirely agree with the hon. and gracious lady there.

Now, my hon. friend the Member for Finance as usual—I will not say as usual, it is not fair!—(laughter)—drew a complete red herring over the track. There is no exact analogy between Great Britain and Kenya. I tried to make that out in my speech, but obviously I was too incoherent or too illogical. England is an importing country mostly for its foodstuffs, and therefore its balance of trade is adversely affected by money which has to be paid for the importation of food. Therefore the national income suffers, because England is exporting payments and importing food. Now, in this country it is the very opposite. Our national income is not affected in the very slightest. It is, as I pointed out, merely a transfer of purchasing power from one community inside Kenya to another community inside Kenya. In England it is a transfer of purchasing power from people in Great Britain to people outside—in North America, Canada, New Zealand and other places. Even if I was not sure of the truth and the justice of my motion, I would be completely fortified by the fact that such countries as New Zealand, Australia, South Africa and Southern Rhodesia have all had to subsidize food prices in their own countries. New Zealand the other day pegged the price of food; definitely pegged the price of food by taking a very strong action and by—I think—establishing an export tax on such products as wool and meat—mutton—and other products of that nature which were getting a lot of money in the world market.

Now, I did not purposely touch on the question of export tax here because I thought it might be more properly discussed when the motion on the Cost of Living Report comes up next May. Therefore I purposely did not attempt to deal with that point.

Now, Sir, with regard to—I think one or two people talked about inflation—I am not quite certain, but of course to transfer money spending power from one section of the community to another section of the community within the same country cannot possibly cause inflation. So that bogy, I hope, is put down.

Now, Sir others talked about black market—

THE FINANCIAL SECRETARY: Mr. Speaker, on a point of explanation, Sir, the hon. Member is doubtless aware that if one item in a family budget is heavily subsidized, the amount of purchasing power available for the rest of the items is that much increased, and therefore so is the money pressure on those other goods increased.

MR. COOKE: Of course it is, but at the same time you are taking the purchasing power away from the taxpayer in order to pay for your subsidies. You may cause inflation with that particular family, certainly, but you are taking money from the taxpayer and stopping inflation there. And that is the point I have been making. I am glad my hon. friend agrees.

Now, Sir, with regard to extra taxation, even if it did come to the sum of £500,000, as I have tried to say it is not that extra taxation, which has got to be paid by this country in any case. Whether you put it directly on the community or

[Mr. Cooke]

take £500,000 from their pockets, you are doing exactly the same thing. If the Public Works Department comes along and says "We want £50,000 extra this year, we have got to pay a higher price for maize", then the Public Works Department have got to have that £50,000 from the Treasury, so it is six of one and half a dozen of the other. If the final man says "I have got to pay higher wages to my people", it means that he might as well pay that extra amount in taxation as pay it directly to his labourers.

THE FINANCIAL SECRETARY: Mr. Speaker, on a point of explanation, has the hon. Mover ever attempted to get an extra taxation motion across this Council?

MR. COOKE: That is a different matter altogether. As the hon. Member will very well know, I subscribed to his suggestion for the Company tax and I have never on this side of the Council, or never in public articles I have written to the public Press have I objected to taxation—I have always said that higher taxation to this country is one of the necessary evils we must face; and I was speaking to two leading industrialists of Kenya yesterday at Nairobi Club, over a drink—(laughter)—and they said how completely they agreed with the proposition that I was putting up, that in any case the taxpayer has got to pay.

Now, I do not think there is anything else that I have got to answer, and of course it is obvious now by the feeling on the other side of the Council that we are going to lose this motion. But it may have a boomerang effect; and I would not be a bit surprised in six months' time if there was a different look on the countenances of hon. gentlemen on this side of the Council. I have known a lot about Wage Tribunals and I warn hon. gentlemen on this side of the Council that they are taking a very great risk.

I think that is all. It was suggested that I am a bit late in the day—that is an important point. I acknowledge it is late in the day that this motion has been brought; but that is not my fault. I put in this motion—I submitted this motion—I should think three or four weeks ago, and I also put in my question about the Report on the Cost of Living—Mr. Vasey's Report—I should think at least six weeks ago. I agree I think it is unfortunate that the cost of living allowance to civil servants and the minimum wage have been raised without the consideration of that Report first. And that is the reason that I have started by laying the blame on Government on a matter of this importance for not having given priority to the discussion of that Report.

Mr. Chairman, I move the motion. (Applause.)

The question was put and on a division negatived by 23 votes to 8. (Ayes: Messrs. Chemallan, Cooke, Ghersie, Jeremiah, Mathu, Ohanga, Shatry, Usher, 8. Noes: Messrs. Adams, Anderson, Blundell, Carpenter, Cavendith-Bentinck, Davies, Hartwell, Havelock, Hobson, Hope-Jones, Hopkins, Maconochie-Welwood, Matthews, O'Connor, Padley, Patel, Preston, Pritam, Rankine, Sir Godfrey Rhodes, Lady Shaw, Messrs. Thornley, Vasey, 23. Absent: Major Keyser, Mr. Madan, Sir Charles Mortimer, Mr. Nathoo, Dr. Rana, Messrs. Salim, Salter, 7.)

THE SPEAKER: Mr. Blundell, do you wish to move your motion now—you have only five minutes.

MR. BLUNDELL: Mr. Speaker, I am entirely in the hands of the Council. I do not think I can dispose of it in under five minutes anyway.

THE SPEAKER: Will it be on the Order Paper for to-morrow?

THE CHIEF SECRETARY: Yes, Sir.

THE SPEAKER: In that case, we might just as well adjourn now.

ADJOURNMENT

Council rose at 12.40 p.m. and adjourned until 9.30 a.m. on Friday, 9th March, 1951.

Friday, 9th March, 1951

Council assembled in the Memorial Hall, Nairobi, on Friday, 9th March, 1951.

Mr. Speaker took the Chair at 9.40 a.m.

The proceedings were opened with prayer.

MINUTES

The minutes of the meeting of 8th March, 1951, were confirmed.

MOTIONS

Construction of a Bitumen Road from Elmentelta to Mereroni

MR. BLUNDELL: Mr. Speaker, as the motion is rather long I will not read it again, as it is on the Order Paper. In moving this motion I shall not take a very long time, but I wish to speak of it in two parts.

The first part—the initial one dealing with the position arising from the East African Railways and Harbours' refusal to supply additional funds—and then the small points which I added at the end of the motion.

This motion arises from the fact that when the acceptance of the Boyd Committee Report was moved by the hon. Chief Secretary, with certain adjustments in the recommendations, I spoke against it, and the amendment was carried unanimously in this Council, referring the matter back to the East African Railways and Harbours, and asking them to supply additional funds for the bituminization from Elmentelta to Mereroni. The East African Railways and Harbours have refused the request of this Council, and it is arising out of that refusal that I am now bringing this motion again.

I wish to say very little upon it. The salient facts are these: In the initial dispatch in which the then Secretary of State, Mr. Malcolm MacDonald, refused the suggestion that cash compensation should be paid to those landowners and trading persons who were affected by the realignment—in that original dispatch these words appeared: He stated that the persons concerned in the matters—such as this—should be treated with all possible generosity. I must ask the leniency of the hon. Chief Secretary if I am not exactly accurate in that wording, but unfortunately the whole of my file containing these papers has been mislaid, and therefore I am speaking from memory.

But the salient point is that the Secretary of State said that the persons concerned should be treated with all possible generosity in the matter of such things as communications, telephonic apparatus, etc. That is the first point.

The second point is that the beneficiaries of this realignment are primarily the Railways, and only indirectly the individual persons of any one Colony. It is obvious, I think, that just as the costs of everything in the Colony have risen, so has the cost of constructing roads, and any moneys which were agreed as provision for the construction of these roads—any such moneys will not to-day go as far as they would have done even a short time ago. And equally it is obvious, I think, that the profit to the Railways in the saving of costs per ton-mile must also enormously have risen as a result of moving the alignment and shortening the road by fourteen miles. When I use the word "profit", I do not mean in the sense of business profit. I mean that the advantage to the Railways has also enormously risen as a result of the rising costs, in that every ton-mile must be more expensive to move to-day, and therefore the fourteen miles will make a larger saving.

On those grounds alone, I think, it is reasonable to ask the Railways to increase their contribution towards these roads.

Thirdly, on this point of all possible generosity, is it intended that all possible generosity shall be reflected merely as a provision of an adequate system of communications which, in effect, is no better—or will be no better—than that provided under the normal district council system within that area. The hon. Special Commissioner for Works has, in my opinion, with the money at his disposal, done the best that he could in providing these communications, but I think he will agree with me that, bearing in mind the conditions in the Rift Valley—of extreme dryness, especially in that area—that a stone road, or a murram road as he has called it, will inevitably deteriorate very quickly.

[Mr. Blundell]

It is my contention that these people are entitled to a bitumen road from Mereroni to Elmentelta as a symbol of the words "all possible generosity", and I am putting this again forward to the Railways through the hon. Member opposite, on the grounds of equity. I wish to stress that, in my view, these people have not been treated with equity, and it is on the moral claim that they have to a better provision than the normal standards that I am asking the hon. Member opposite to approach the Railways.

There is one further point on this part of the motion. It is this. When the hon. Chief Secretary approached the Railways to try and finalize this matter, he was good enough to ask me to accompany his delegation. I made it clear at the time that my view was that the provision for bituminization should be carried out, but the hon. Chief Secretary—as he was perfectly entitled to do, and perfectly properly—accepted the settlement with the Railways as a final one on our behalf.

Now, I am submitting to this Council that the hon. Member was correct in so doing, as the executive head of Government which is responsible to this Council, but that does not prevent us from rejecting the settlement which was made and asking him to reopen it on the very strong grounds, in my view, which I hope this Council will endorse unanimously, that all possible generosity has not been carried out, and there is a moral claim to provide a better standard in the communications concerned for these people than the normal standards of the district.

The second part of the motion, Mr. Speaker, is a much smaller matter, and I apologize to the Council for boring them with it, but my reason for so doing is that during the process of realignment the Posts and Telegraphs were transferred to the High Commission, and it has been less easy for the people there to get the provisions of the Boyd Report, which were accepted in that regard by this Council when the original motion was moved by the hon. Chief Secretary. It has been less easy to get the High Commission to carry out the telephonic recommendations. Especially I would draw the hon. Members' attention to one slight hardship that has fallen upon these people. Owing to the system under which the Posts and Telegraphs is operated, anyone who wishes to telephone to the station on the railway—and for which the telephones were recommended, as the railway had removed itself 14 miles—any such person has to put his call through Nakuru, and thence to the station concerned, resulting in a trunk charge. I think that is a matter that needs investigation, because there again I do not think really that the intentions of the Boyd Report have been faitly carried out.

In regard to the water points and the stock routes, I am quite happy to leave that, Sir, to the integrity of the hon. Member opposite, whom I know will examine the position, and if the stock routes and the water points which were recommended have not been carried out, and it is the wish of the people concerned to have those stock routes, I am sure that the hon. Member will give me an undertaking to see that they are put in. This may involve us in a slight—small—extra expenditure, which might, Mr. Speaker, put my motion out of order, but I would ask this Council if it is necessary for the provision of extra water points and stock routes as recommended in the Boyd Report, and which for one reason or another have not been considered necessary, if the local people require it, then I ask this Council to be generous and allow that extra money to be found.

—Mr. Speaker, I move my motion.

MR. PRESTON: Mr. Speaker, I beg to second, and in seconding, Sir, I would like to say the reasons for so doing are twofold.

The first reason is on ethical grounds, because I do feel the people who are affected by the removal of this railway were definitely under the impression they were going to get a really first-class bitumen road. Now, Sir, there is a tendency

THE CHIEF SECRETARY: Did the hon. Member say road or roads? Plural or singular?

MR. PRESTON: Singular.

Now, Sir, there is, as I was saying, somewhat of a tendency in these modern

[Mr. Preston]

days to allow people to get an impression that something is going to be done, and not to correct that impression till it is too late, and I do feel myself that as these people felt they were going to get proper facilities, that they must be supported in their claim now. I am quite certain, had they thought they were going to be fobbed off with the present road system, they would have carried their fight on very much longer.

Now, the second reason, Sir, is a reason of practicability. I happen to know that part of the world very well indeed, and I do not myself consider that any road which has not got a bituminized surface is likely to stand up to the heavy traffic which will be required for the removal of produce in that area.

Sir, I beg to second.

MR. PATEL: Mr. Speaker, I am entirely in agreement with the terms of the motion, and the reasons given by the hon. Member for Rift Valley in support of the motion. But I wish to move an amendment by adding the following words at the end of the motion:—

"and also with reference to grant of new alternative trading sites to traders affected by such realignment".

Now, Sir, my reasons for moving this amendment are that certain traders at the Escarpment and at Elmenteita were affected by this realignment. I am aware, Sir, that after the recommendations of the Boyd Report, Government had taken steps to give a new alternative site to certain traders, and I am also conscious, Sir, that the Government will not be in a position to reply to my amendment without referring to their records. I had not the time to inquire from all the traders, but I have been able to ascertain from one trader in the Escarpment who is still there and is willing to shift from that place if he gets an alternative site in that area. Sir, at present he is still at Escarpment and according to my information there is no road or telephone communication or police protection at the place, and it is very difficult now for him to carry on business at that place. But he thinks that if he is given an alternative site in this area, and not somewhere far away in Kisumu and so on, he will be in a position to start a business afresh in a new site. I am only giving this instance to show that the recommendations of the Boyd Report in this connexion are not still fully carried out.

For these reasons, Sir, I move this amendment in the hope that the Government will be in a position to inquire into this matter, and if necessary give the Indian Members an opportunity of putting up the case of those Indian traders who have not yet been given an alternative site.

MR. BLUNDELL: Mr. Speaker, I am quite happy to accept the amendment as part of the original motion, with the agreement of my seconder.

MR. PRESTON: I accept the amendment, Sir.

MR. SPEAKER: Both the hon. Members have already spoken on the motion, and are not entitled to rise to speak again.

MR. PRITAM: Mr. Speaker, I rise to second the amendment, Sir.

Sir, it was some time I think during 1947 that the Troughton Committee and thereafter the Boyd Committee had reported—both these Committees made more or less similar recommendations in regard to the rehabilitation of the displaced traders. I will first take the case of Escarpment, Sir. There were only four Indian traders there, Sir. First they were promised that an alternative trading centre would be created for them. They were given all sorts of hopes for well nigh 15 months, and then they were quietly told as there was opposition from the Africans, Mathathia would not be created as an Indian trading centre, with the result we had to begin things anew. Thereafter, some lengthy negotiations were carried on with Sir Charles Mortimer, who said that as an alternative it would perhaps be possible for the Government to ask the Railways to build a road between Mathathia and the Escarpment trading centre, and also arrangements would be made to give traders at Escarpment telephone connexion. Somehow some sort of road was made, but as no one looked after it, it deteriorated. It does not exist any longer as a road, Sir.

Thereafter, it was decided that instead of giving all these facilities it was agreed to provide a trading centre at Uplands. we had several interviews with

[Mr. Pritam]

Sir Charles and then after some months we were informed there was no land. The Africans did not agree to have a trading centre near that place and nothing could be done, with the result that one Indian shifted to Nakuru on the assurance that the Government would give him a plot. He had to wait a good 15 months at Nakuru before we could move the Land Office to do something in the matter, and it was only the timely intervention of the hon. Mr. Hartwell, who was Acting Deputy Chief Secretary, that something was done.

There are two traders still there. The trouble is that unlike a road, Sir, money has not to be found, but only a site has to be found. People have to wait months and months and the only letter they get is to say that there is no surveyor available, but in the course of next few months something will be done. Again we remind; again an assurance is given that something will be done and this game has been going on for quite a long time—right up to 1951.

As for Elmenteita, Sir, there are still three Indian traders who have got practically no business, apart from one big trader, Mr. Moulraj. The others like to shift, but the trouble is, despite the good offices of the Deputy Chief Secretary, who used his influence in the Lands Department, somehow we did not get satisfaction from the Land Office. That is our trouble, Sir. One man is quite prepared to move to Thomson's Falls, and after 10 or 12 months he has been allowed a plot, but with such conditions that he is not very willing to move, and the conditions are such as if the man had been given something for nothing. So I think it is the duty of this Council, which has adopted both of these Committee Reports in their entirety, I feel it is only fair that that particular part which concerns the Indian community, more especially the Indian traders, should be fully implemented. It does not cost Government much to find an alternative site, it is only a matter of giving some sympathetic consideration.

I beg to second.

THE CHIEF SECRETARY: Mr. Speaker, speaking at this stage only to the amendment, I would like to say on behalf of the Government that it has no objection to the amendment as an amendment. By that I mean that if the motion is carried, the Government naturally will be happy to make these inquiries.

Now, Sir, the hon. Mover of the amendment and the seconder have referred to the question of alternative sites being given to the Indian traders who were on stations which ceased to be stations when the realignment was carried out. Unfortunately the hon. Member only gave me notice of this amendment a few minutes before Council resumed this morning and for that reason I have had no opportunity at all of making any inquiries and therefore I must speak entirely from memory. But, so far as I am aware, all the traders concerned have been offered alternative sites if they wanted them and the traders who have stayed at the Escarpment have stayed there because they preferred to do so.

In any case, Sir, as I have said, we shall be glad to make inquiries and ascertain what has actually happened.

The hon. Mr. Pritam went on to refer to the making of roads in that area. That does not appear to me to come within the terms of the motion and, in any case, I would remind him that when the original motion was moved in which this Council approved the roads to be constructed, it was made quite clear that that road could not be included; and indeed it was not recommended in the original recommendations.

The question of the amendment was put and carried.

THE CHIEF SECRETARY: Mr. Speaker, the motion asks the Government in the first part to place the matter again before the High Commission for a reversal of the decision that funds cannot be provided to bituminize the road from Elmenteita to Mereroni. This subject has formed the subject matter of considerable debate and I would like to make it clear that I cannot see that any useful purpose at all is to be served by raising this matter once again with the Railway authorities.

The hon. mover has referred to the fact that by invitation he was present at the time when the settlement was negotiated with the Railway authorities. We were very grateful to him for his assistance in that matter and I should like to take this opportunity of thanking

[The Chief Secretary]

him for coming to that meeting and lending us his assistance. As he himself pointed out, the Railway authorities offered the sum, or rather when they made the offer of the sum of £71,000, they made it quite clear that that must be regarded as a full and final settlement, and the hon. Member himself is aware of that.

To go back a little earlier, as hon. Members will recollect, the Troughton Committee recommended a system of roads which were estimated to cost £38,000. The Boyd Committee recommended a very similar system which was estimated to cost approximately double that figure. The Railway authorities accepted the Troughton Committee recommendations and stated they were willing to provide the £38,000. Later on they offered almost double that sum.

Now, Sir, I would suggest that that was a very reasonable offer and I would suggest that it can be interpreted as dealing with the persons concerned in that area reasonably generously, as the hon. Member has suggested they ought to be dealt with. As I have said, when the offer of £71,000 was made, it was stated at the time that it must be regarded as full and final settlement. Later, as a result of the motion moved in this Council, we went back to the Railway authorities and asked them to reconsider that matter. They have done so, and they replied to us that "this matter was the subject of a discussion of the meeting of the Transport Advisory Council held on the 14th April, 1950, when Council considered the question of roads of access and recommended that the payment of a sum of £71,000 should be made to the Kenya Government in full and final settlement. Members of Council expressed surprise that the settlement which had already been negotiated with the Government of Kenya had not been accepted as full and final settlement and pointed out that in their opinion the Transport Administration had carried out the whole of its obligations in the matter. Council recommended that no further payment in addition to the £71,000 already negotiated as final settlement should be made to the Kenya Government".

Now, Sir, in view of that reply and the fact that we have already been back once, I can really see no point at all in making any further representations, and for that reason the Government is unable to accept the first part of the motion, but the Government has no objection at all to the second part and, as I have already stated, it will be happy to make the investigations for which the hon. Member has asked. Therefore my hon. friend on my right will move an amendment to the motion to strike out the first part. If that is struck out we shall be happy to carry out the second.

The only other thing which has been mentioned in this debate is the question of telephone and postal services. The Mover did say that he had not his papers with him and therefore he may not be quite accurate. So far as I know, the question of generosity was intended to apply to the question of roads. As far as I know, also without having had an opportunity of making a complete investigation, the recommendations with regard to the telephones have been carried out or are being carried out. The Mover did refer to the question of calls to these stations. So far as I have been able to ascertain, the position is this. An exchange has been established in Elmenteita, as was recommended and the farmers have been connected or are being connected with that exchange. But Mereroni and Mbarak Stations are on the Nakuru exchange, and therefore naturally if you want to ring any subscriber on another exchange, you have to get the call put through that exchange. For instance, I might be on the boundary of the exchange between Nairobi and Kiambu. The two houses which may be on the boundary, if they want to telephone each other, still have to go through Nairobi and Kiambu exchanges.

MR. HAVELOCK: It takes four hours.

THE CHIEF SECRETARY: But there may be a case for making some adjustment in the rates charged and I have asked the Postmaster General if he would go into that question, and he has undertaken to do so.

THE FINANCIAL SECRETARY: Mr. Speaker, in consequence of what my hon. colleague has said, I beg to move the following amendment to the motion before the Council. The amendment is in these terms, Sir, that the words beginning "is unable" in the first paragraph down to the word "further" in the second paragraph be deleted.

[The Financial Secretary]

Now, Sir, my hon. friend has indicated precisely the reasons why the Government seeks to move this amendment and has intimated that, if the hon. Mover of the main motion will accept this amendment, the amended motion will not be opposed by the Government. I think, Sir, there is nothing further I need say in justifying or seeking to support this amendment.

Sir, I beg to move.

THE ATTORNEY GENERAL: Sir, I beg to second.

MR. BLUNDELL: Mr. Speaker, before I decide what action I shall take upon this amendment, I should like to have one point made quite clear. Has the hon. Financial Secretary had the temerity to threaten me on these lines that if I do not agree to accepting this amendment, then his colleagues on the other side of the Council will oppose the latter part because that is indeed the wording in which he moved his amendment, quite contrary to the spirit in which the hon. Chief Secretary spoke? So, before I speak to the amendment, Sir, would you allow me to put that as a question?

THE SPEAKER: We really cannot have a question. You must speak to the question which is now before Council—that all those words should be cut out.

THE CHIEF SECRETARY: On a point of explanation, I would like to make it clear that the Government will be happy to carry out the second part of the motion if it should be carried.

MR. BLUNDELL: Mr. Speaker, I should like to thank the hon. Member for his explanation.

Mr. Speaker, I am opposing the amendment. I do not wish to speak long to it.

If hon. Members would look back in the Hansard on the original debate when the Boyd Report was moved, they can see very clearly everything that I personally felt upon this matter and which was obviously reflected by hon. Members on this side in that an amendment was carried which suggested that hon. Members on this side were dissatisfied with the provisions which had been made for the carrying out of the Boyd Report. I am, therefore, opposing this amendment.

I have only two comments to make. They are these. Whatever may have been the decision of the Railway, this Council has the absolute right to express its dissatisfaction of the terms in which the Railway has carried out its part of this arrangement. I am unable to accept that because the Railway has refused once, there is no profit in going back. I believe that if this Council sincerely agrees with me, as they must have done or they would not have originally moved an amendment which was carried unanimously in the Council, for the matter to be referred back to the Railway—if this Council agrees with me that the Railway are not carrying out properly its side of the arrangements, then, in my submission, there is no reason why we should not still express our dissatisfaction. I believe if the Railway was wise, they would examine the position anew and try and eliminate the engendering of dissatisfaction between this Council and themselves.

One final point is this. The hon. Chief Secretary, when speaking to the original motion and his words were in the amendment moved by the hon. Financial Secretary, accepted as one of the reasons for his moving an amendment which is my reason for referring to it, said that, in his opinion, the Railway has increased their contribution from £33,000 to £61,000 arising out of the changing conditions from the time of the Troughton Report to that of the Boyd Report. He considered that that was a generous matter—I consider nothing of the sort. That rise in the amount of money was solely due to the progressive depreciation of the purchasing value of money and, indeed, it would have been impossible to carry out any recommendations at all on the original £33,000, so there can be no question that £61,000 was a generous offer. It was nothing of the sort. It was merely the meeting of the barest provisions under the Boyd Report.

Mr. Speaker, this is a matter which the Council, to my knowledge, has been debating for ten years and there is nothing I can do if moral principles cannot govern the Council except to oppose the amendment vigorously.

MR. COOKE: Surely the hon. Member is choosing no loaf to half a loaf, and would he not be doing a better service

[Mr. Cooke]
to his constituents if now he accepted the amendment and later on, in six months time, brought in the motion again?

MR. BLUNDELL: On a point of explanation, Sir, I understand that the second part of my original motion will stand if this amendment goes through. So, I will still get my half loaf.

The question of the amendment was put and, on a division, carried by 14 votes to 8.

Ayes: Mr. Adams, Dr. Anderson, Mr. Carpenter, Major Cavendish-Bentinck, Messrs. Davies, Hobson, Hope-Jones, Matthews, O'Connor, Padley, Rankine, Sir Godfrey Rhodes, Messrs. Thornley, Vasey, 14. Noes: Mr. Blundell, Lieut.-Colonel Ghersie, Messrs. Havelock, Patel, Preston, Pritam, Lady Shaw, Mr. Usher, 8. Did not vote: Messrs. Cooke, Hartwell, Jeremiah, Mathu, Ohanga, 5. Absent: Messrs. Chemallan, Hopkins, Major Keyser, Messrs. Maconochie-Welwood, Madan, Sir Charles Mortimer, Mr. Nathoo, Dr. Rana, Messrs. Salim, Salter, Shatry, 11.

MR. BLUNDELL: There are just two points, Mr. Speaker, to which I wish to refer. I should like to thank the hon. Chief Secretary for the action which he has taken on the telephone charges which he did of course accept and understood what I meant, if in his description of what is happening is correct, if those charges could be reduced in some way, I think it would be more in keeping with the spirit of the Report.

There is one other point. I hope the hon. Member for the Coast will support the motion as now amended and will not refrain from voting as, in the original debate on the Boyd Report, he clearly said that if the Railway refused to meet their obligations as put forward in the amendment, he would have pleasure in asking this Council to accept the obligations themselves.

Mr. Speaker, I move my motion.

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

REFERENCE TO A SELECT COMMITTEE

The Wakf Commissioners Bill

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That the Wakf Commissioners Bill be referred to a Select Committee and that the Select Committee be instructed to consider in particular whether the definition of "Muslim" in clause 2 of the Bill should or should not be extended.

The reason for moving this motion is that a difference of opinion has arisen among leading Muslims at the Coast with regard to the definition of "Muslim" in clause 2 as to whether or not that definition should be amended. I think that hon. Members will agree with me that it is most desirable that time should be given on a matter of that kind for agreement to be reached, if possible, and time has, in fact, been asked for. I should like it, however, to be understood that, as certain criticism has been levelled at Government for delay in bringing forward this measure that the delay which will be caused by the reference to a Select Committee is not, on this occasion, the fault of the Government, but the delay is desired by the persons concerned.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

SESSIONAL COMMITTEE REPORT

THE CHIEF SECRETARY: Mr. Speaker, with your permission, Sir, may I take this opportunity to report that the Sessional Committee has appointed the members of the Select Committee on the Wakf Commissioners Bill, as follows:—

The Solicitor General, *Chairman.*
The Chief Native Commissioner.
Mr. C. G. Usher, M.C.
Mr. S. V. Cooke.
Dr. M. A. Rana, O.B.E.
Mr. S. M. Shatry.
Mr. J. Jeremiah.

Objection to Hide and Skin Cess

MR. HAVELOCK: Mr. Speaker, may I make a small alteration in this motion—the date 23rd February should read 27th.

Mr. Speaker, I beg to move: That this Council objects to the Hide and Skin Trade (Imposition of Cess) (Amendment) Rules, 1951, which were laid on the table

[Mr. Havelock]
on the 27th February, 1951, and resolves that these Rules should be rescinded.

Sir, according to estimates, if the cess assessed in these Rules were imposed, it would probably mean a revenue of some £271,000. This seems to hon. Members on this side of the Council to be a very large and, indeed, much too heavy a burden to impose on this industry and the producers of hides and skins, and before I go on, Sir, I would like to say that the hon. Member for Trans Nzoia would have given notice and would have been moving this motion if he had been able to be present, and indeed he feels very strongly on this matter and brought it to the attention of the European Elected Members.

Sir, there must be a balance between the advantages which may be gained from research and control of the production of hides and the amount which has to be paid by the producer as a cess. I believe, up to the present time and using the cess which is pertaining up to now, the producers have been given a lot of very good advice and help by the Hides and Skins Improvement Service and they have improved their quality and thereby gained a higher price for their hides and altogether the cess up to now has worked very well to the advantage of the producers, but if a cess, as visualized in these Rules is imposed, I do suggest that the advantage to be gained out of any further investigation and control, it will very probably be less than the money which they have to pay out in cess.

Now, Sir, if the hides and skins industry were based similarly to other industries under the control of a board of its own, then I would see little objection to a cess of this sort, if the board, being representative of the industry, agree to it, but that is not the case as I understand it, and until that is the case we believe that this cess should not be at the rate which is visualized in these Rules.

There is one difficulty, I understand that the trading section who are particularly concerned with hides and skins may feel that a high export cess may be a very good thing in that the higher the export cess the lower actual cash return to the producer for hides to be exported, and therefore the more likely it is that the local buyers of hides and skins, the local tanners can purchase at a lower price. Well, Sir, it is of course an advantage to Kenya, the Colony, that hides and skins should be sold to local tanners at low prices, on the grounds of the cost of living. We naturally wish the shoes made in this country and sold to the inhabitants of this country to be as cheap as possible, but on the other hand I suggest that this is not the right method of obtaining that object.

I suggest, Sir, that the right method would be again through an organized industry on the lines of the Coffee Board and through Government representations to that industry. I am quite certain that they would make available to the local market their products at a lower price than they export, that is what has happened with coffee and I am sure that with proper negotiations carried on by the Members opposite that the hides and skins industry, if it were organized on those lines, would do exactly the same thing and that Sir, I suggest is the way the local market and local consumer should be helped.

I understand, Sir, there is some trouble about the same cess being applied to the three East African territories, and I can quite understand that if there is a different cess, there would be difficulties, probably from smuggling and so on, over the borders of Tanganyika and Uganda, and Kenya, but even so, I feel that the suggested cess is so high that it is really certainly not to the benefit of the producers of hides and skins that it should remain at the present level, and therefore, Sir, I beg to move.

MR. PRESTON: Mr. Speaker, I beg to second, and wish to reserve my right to speak.

MR. USHER: Mr. Speaker, Sir, I dislike opposing motions from my own colleagues, but I must do so on this occasion. I still more dislike it when I am largely in sympathy with the reason which has been advanced for the motion. Nevertheless, as has been indicated by my hon. friend in moving the motion, there would be confusion if his motion were adopted. It is of the utmost importance that there should be uniformity in the three territories concerned, not only

[Mr. Usher]

on account of the smuggling which would take place, as he has also indicated, but because the hides and skins in question come down to Mombasa, and go into a general pool, and the confusion, nay, chaos that would result would raise an impossible situation. I hope it might be possible, perhaps, to reduce the amount of the cess, as has been suggested, but in the meantime, I must put in the strongest possible plea for uniformity.

On those grounds, I must oppose.

MR. COOKE: Mr. Speaker, I rise simply to associate myself with what has been said by the hon. Member for Mombasa.

MR. BLUNDELL: Mr. Speaker, I rise to support the motion. There are only two points I wish to make.

In the memorandum, which the hon. Member for Agriculture and Natural Resources circulated on this matter, it appeared to me that a certain amount of the schemes to which this money might be devoted were not a proper charge on the cess. (Hear, hear.) For instance, there seemed to be more schemes concerned with livestock improvement centres, etc., and I am firmly of the belief that a cess on hides and skins can only really be properly used for the propose of improving the hides and skins themselves, not for the purpose of improving the carcass of the animal carrying the hide and skin, when it is still alive, so that it will have a finer gloss on it. That is a livestock matter, I think the hon. Member realizes exactly what I mean.

The other point, Sir, is this: I believe that we are allowing ourselves to take a sum of money from the industry which is quite unreasonable. Of course, the £270,000 is calculated at the present high values on hides and skins and it might be reduced. If, as the hon. Mover said, it is to be considered by a Statutory Board and this is agreed to, I would have nothing more to say, but over a quarter of a million pounds, which is not far off the approximate total vote for European education, to be taken from producers in form of a cess, is in my opinion completely wrong.

MR. MATHU: Mr. Speaker, if I understand the Mover's point clearly, he is not objecting to the principle of a cess as such, what he is worrying about is these very high figures which have been laid down in the Rules under discussion. And in particular, I think, if I heard him right, that these high rates affect the producer.

I know that most of the African producers, and I think they are the largest producers in the country, are very worried about this, and in fact, they have approached us; I think from December last year. We have had meetings with them and they feel that they are at a tremendous disadvantage because they are actually paying this cess. It is not the exporters' group who are paying the cess at all, it is the producers' group and I do not think that, even with the expenditure for the improvement of the industry from the producer's end, it is fair that you should encourage the producer to improve the standard of quality of these commodities and then on the other hand, you deny them the full price of that commodity which has been produced at that high price. So I, personally, am inclined, on the understanding that some small cess could be imposed, but not this very high one, I am inclined to support this motion, but if the motion suggests that these Rules be rescinded and does not suggest that there should be other Rules with lower rates for cess, now where do we stand?

MR. HAVELOCK: If these Rules were rescinded, Mr. Speaker, the present Rules would remain in force. 4 per cent basic or 20 per cent on the difference between 1949 and 1951 prices. Perhaps the hon. Member for Agriculture could tell me.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: 4 per cent in 1949 on the last cess passed by this Council last November.

MR. MATHU: In other words, the cess would be that laid on the table of this Council on the 23rd October, 1950, that is Sh. 31 per hundred pounds of hides dried, hides wet and salted, Sh. 15, cured skins, Sh. 40 per hundred pounds and sheepskins, Sh. 18. If that be the case, Sir, I would like to support the motion moved by the hon. Member for Kiambu for the reasons that the producer should not pay this heavy cess as suggested in these Rules.

THE MEMBER FOR COMMERCE AND INDUSTRY: Mr. Speaker, I only wish to deal with one point raised by my friend

[The Member for Commerce and Industry]

the hon. Member for Kiambu. I cannot feel that he has displayed his usual clarity in this one particular and that is that I was a little puzzled about his reference as to the local boot and shoe industry. I would like to ask him one question which perhaps he will deal with when he replies. Is he quite satisfied when he advocates the replacement of systems outlined in the scheme under consideration by voluntary agreements with the producers? Is he quite satisfied that such a plan will meet with the general approval of what is a very important industry in this territory?

Secondly, I would like to deal with the point as to whether he thinks the sole consideration involved is the cost of living consideration, important though that is. Surely, there is another consideration in regard to the provision of hides and skins for local industries; that is in regard to the improvement of quality. As, I think, the hon. Member well knows, in view of certain activities carried on in his constituency, there have been difficulties in regard to the regular provision of hides and skins of the requisite quality, and I, personally, have my doubts as to whether the scheme proposed by him in this particular, which is the only point I am dealing with, would in fact be satisfactory for reasons not only interested and private to the industry, but for reasons which are in the general interest of the Colony and its sound industrial development.

THE MEMBER FOR AGRICULTURE AND NATURAL RESOURCES: Mr. Speaker, naturally as I have been responsible for laying the proposed Rules on the table, I feel that I must oppose this motion. At the same time, Sir, I feel there is a great deal in what hon. Members opposite have said and, indeed, in the course of conversations with them on this subject, I think they are aware, some of them at any rate, of my views.

Sir, I think it is necessary just to consider the history of this cess and the objects for which it was imposed. For years past we have discussed the desirability of improving African hides and skins. For many years past we have exported, as all hon. Members are aware, very large quantities of hides and skins and, equally for many years, the quality of those hides and skins has been lower than probably the quality of any other exporting country. There is no reason for this and, therefore, for some years past discussions have taken place as to how we could effectively take measures to improve the quality of this potentially very valuable export. Well, various efforts were made—not very effective ones—until a few years ago when we had interterritorial discussions with a view to arranging for the setting up of an Interterritorial Hides and Skins Bureau. We managed to secure the services of an officer to advise us in our plans generally, an officer who, I think, has done a most remarkable job of work in the three territories. I am referring, of course, to Dr. French.

In addition to that, Sir, we hoped we would be able to secure interterritorial agreement for similar legislation controlling the industry to some extent, ensuring incidentally that the producer should get a fairer price than he got in the past and exercising also, some control on the buyers and dealers of hides and skins, who in some cases were more anxious to export in quantity, shall I say, than in good quality, and whose methods one could certainly criticize.

Well, Sir, with those purposes in view, we endeavoured to negotiate a system whereby in all three territories a cess should be imposed and placed in a special fund and part of that cess from each territory would go to the expenses of the interterritorial bureau and part would be expended territorially. What we had in view was a comparatively small charge on the value of the hide and skin and the charge which we suggested in 1949 was 4 per cent of the then value.

Well, Sir, since that time the activities of the hides and skins specialized organization, shall I call it, I think can be said to have been most effective and in the memorandum which I circulated to hon. Members, it will be seen that until within the last few months, East African exporters were forced to accept a price of at least 2d. a pound less than the corresponding Nigerian grades, and now the East African product leads its Nigerian counterpart by no less than 5d. a pound. Well, I suggest, Sir, that so far,

[The Member for Commerce and Industry]

I think that result amply justifies the expenditure of the cess which we have taken from the industry. They have profited enormously by it. But, Sir, the price of hides and skins has risen to a phenomenal extent and hon. Members may not be aware that this is the third set of Rules that I have laid on the table of this Council within the last year; because we came to an agreement, the three territories came to an agreement that they would enforce an increased cess of 20 per cent of the price increase as between 1949 and to-day, and nobody could foresee when that agreement was reached that the price would reach the astronomical level they have reached to-day, with the result that if prices remain as they are for a full year, we might find ourselves with £270,000 in the fund collected by the cess.

Now, Sir, I agree that when you start on a scheme in which you think you are going to spend something in the neighbourhood of £30,000 or £40,000 a year, a sum that you can very profitably expend, and I can assure you has been profitably expended, when you suddenly find you are getting £271,000, making it probably too high a figure, it might even encourage one to go into certain lines of expenditure which are not, strictly speaking, necessary. I do not, however, admit, Sir, that one should not lay aside, while the prices are good and times are good, a reserve to carry on work on the improvement of the industry during the next few years. Therefore I feel, Sir, we ought to try and reach a happy medium between getting what may be an embarrassing amount and may even do some harm to the producer, and arrive at a reasonable amount, plus a certain amount for the setting aside of the reserve.

The hon. Member also mentioned that he was particularly worried because there was no Statutory Board (I think two Members mentioned this) to deal with this cess and expenditure thereof. Well, Sir, there is a Board, but I admit frankly that I am not satisfied with it and I think hon. Members opposite, equally, are not happy about it, because that Board is largely composed of Government officers, who are, of course, very interested in the improvement of the industry from a producer point of view more than an exporter's. The difficulty about getting a Statutory Board, as suggested by the hon. Member for Kiambu, he said, I think, rather on the lines of the Coffee Board or something of that kind, is that no doubt hon. Members will appreciate that the bulk of the hides come from Africans and from Africans very often in the more remote parts and it is not easy to get a Statutory Board representative of those interests on the lines, for instance, of the Coffee or Pyrethrum Boards. Nevertheless, as I think hon. Members are aware, we are trying very hard to create a Statutory Board for this industry and I hope that in the course of this year, proposals will be laid before this Council for a board of that kind.

Now, Sir, the hon. Member for Mombasa and the hon. Member for the Coast stressed the necessity for maintaining uniformity between the three territories and I stressed that necessity very strongly indeed in the memorandum which I have circulated. I am not satisfied myself with the existing formula on which these constantly rising prices provide constantly rising rates of cess. Another difficulty that has arisen, although earlier on all three territories decided that they would impose a cess in exactly the same way, is that during the march of time the three territories, although abiding by the same rates, have imposed their cesses, in, shall we call them, rather different ways. In Uganda, the cess goes into general revenue and is paid back to the industry more or less in full, here it goes into a special fund and in Tanganyika it takes the form of part cess and part export tax. Now that alone is not very satisfactory, and I would therefore suggest, and, indeed, I would press very hard, to ask hon. Members opposite if they would consider possibly delaying pressing this motion, so as to give me time on behalf of the Government to negotiate with the other two Governments and see whether they would agree in the first instance to adjust this cess on the basis of some formula, which will give us about the sum, plus a small reserve, that we think is necessary for the purpose of improving the hides industry and not running the risk of getting too big a sum, and at the same time reconsidering the formula on which the cess is at the moment levied. And I think it would be

[The Member for Commerce and Industry]

possibly unfair, or at any rate unwise, if we suddenly were to refuse to pass these Rules, when the other two territories have passed theirs. Indeed, it would not entirely react to the advantage of this country.

If hon. Members feel there is anything in my suggestion, I will certainly undertake to bring this matter up again within two or three months, giving an account to Members of this Council of what is proposed on the lines I have indicated.

MR. HAVELOCK: Mr. Speaker, I have not very much to say, I merely wish to reply to the hon. Member for Commerce and Industry that I, personally, would be quite satisfied if a Statutory Board were set up, something that the tanners, somebody that the tanners would be able to negotiate with, so that their supplies would be very much more regular.

I also believe that agreement should be reached in the matter of prices. The hon. Member for Agriculture and Natural Resources has met nearly all the points that have been raised on this side. It is merely now, as I see it, that he is asking for a few months to negotiate with the other territories to see if they could come to some agreement and obviously it would be to the great advantage of this country if he could do so. Therefore, Sir, in the view of the assurance that the hon. Member has given, I would ask your leave, and that of the Council, to withdraw this motion.

THE SPEAKER: Does anyone object to it being withdrawn? It is withdrawn.

SELECT COMMITTEE REPORT

The Survey Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Report of the Select Committee on the Survey Bill be adopted.

We have dealt, Sir, in our Committee, fully with the majority of the points which were made during the second reading debate on this Bill and I think it is only necessary for me to deal very briefly with this particular Report, concentrating on the more important amendments which we suggest.

The amendment proposed to clause 5 is simply recommended because we did not feel that the Member should be so completely restricted in his choice of two licensed surveyors for appointment to the Board and we have, therefore, omitted the words "on the nomination of the Director", but I would like hon. Members to know that I certainly, and I am quite certain any other Member in general charge of this Department, would, as a matter of course, consult the Director of Surveys and the Land Surveyors Association before making these appointments. We had considerable discussion, Sir, on clause 8 and decided to make the recommendation that a new sub-clause (4) should be added in order to meet the point made by the hon. Member for Kiambu in the second reading debate, that as the powers given to the Board were extensive and important powers, this Council should have an opportunity of considering any rules made under this section.

We also considered at length the suggestion that there should be a right of appeal against decisions of the Board, particularly in cases involving suspension or withdrawal of a licence. We thought, Sir, that such full provision has been included in clauses 32 and 33 regulating such matters and in particular, having regard to the fact that any person who might be proceeded against under these sections could be represented by an advocate, and having regard, also, to the fact that matters of this kind are highly technical, that it would be more appropriate to leave the provision in the Bill as it stands without making any special provision for appeal to a Court. We also, Sir, were advised that if any person felt himself seriously aggrieved by any decision by the Board in the exercise of these powers, that person has the ordinary right of any citizen to appeal to the Court on a writ of certiorari. If any hon. Member would like to have it explained in detail what that means, I have no doubt my hon. and learned friend the Solicitor General will comply. We also, Sir, had considerable discussion on the suggestion made by the hon. Member for Mombasa that sub-clause (2) (a) of that clause might be transferred to sub-clause (3), but, for the reasons given in this Report, that Government, having the responsibility of guaranteeing titles, ought to have the right to decide how

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surveys should be conducted, we considered that that particular power ought to remain vested in the Member.

The amendment proposed to clause 9, Sir, is to meet a point made by the hon. Member for Kiambu during the second reading debate. We considered that if a surveyor should be culpably negligent, there was no reason why he should get clean away with it.

Paragraph 5 of the Report, dealing with the amendments proposed to clause 10, is also important, Sir, and we were obliged in particular to the hon. Member for Mombasa for the thoroughness of his examination of the Bill which prevented the omission to which I will now refer. The purpose of the recommendation in (*a*) and (*b*) is to meet the point which the hon. Member made in the second reading debate that, as at present drafted, the Ordinance did not make provision for the Coast lands or, indeed, for any land held under the Land Titles Ordinance. These recommendations correct that omission.

The recommendation in paragraph (*c*) is to make certain that careful consideration will be given to every case where compensation for damage to trees or crops has to be assessed.

The effect of the amendment proposed to clause 13 is to delete the reference in the clause as originally drafted to Crown lands. As, Sir, this clause can only refer to future plans attached to documents for registration, we thought that there was advantage in making it general and comprehensive.

The amendment proposed to clause 14 is designed to include, amongst those on whom this duty shall lie, persons holding certificates of ownership issued under the Land Titles Ordinance. The amendments proposed in paragraph 8 are consequential on this amendment.

The effect of the recommendations in paragraph 9 (*a*) and (*b*) is to bring within the provisions of clause 16 certificates of title to land held under the Land Titles Ordinance.

Paragraph 9 (*c*) makes the alteration suggested by the hon. Member for Kiambu in the second reading debate that it would be sufficient for any sentence of imprisonment under this clause to be in default of the payment of a fine.

Paragraph 10 against makes reparation for the omission in clause 17 of reference to land held under the Land Titles Ordinance and we have tried to show, Sir, in the note on page 5 of our Report that the anxiety expressed by the hon. and gracious Lady, the Member for Ukamba in the second reading debate is unfounded because in the circumstances which the hon. Lady mentioned, all that an occupier or owner of land would have to do if he could not find any particular survey mark on his property would be to report that fact to the Director. The fact only that he could not find it would not get him into any trouble. He reports the fact to the Director and the Director then takes steps to clarify the position for him.

LADY SHAW: At his expense, Sir.

THE DEPUTY CHIEF SECRETARY: He pays a sum of money on deposit. If the marks are not ascertainable, he reports the fact to the Director; and, if, when the Director goes and makes his inquiry, he finds that the marks have in fact become obliterated the deposit will be refunded to him.

Clause 20, as redrafted, again includes provision for land held under the Land Titles Ordinance.

Clause 23, we propose, should be amended, again accepting the importance of a point made by the hon. Member for Mombasa, in the manner and for the reason explained on page 8 of our Report.

It is proposed that sub-clause (*c*) to clause 24 shall be amended to include "an officer who has retired from the Colonial Survey Service after not less than ten years on the permanent establishment of that service" amongst those entitled to registration to meet the views expressed by more than one hon. Member during the second reading debate.

The new clause 34 is necessary to effect certain small drafting alterations and is of no significance.

This Report, Sir, is submitted unanimously by the members of your Committee and I recommend it to hon. Members for adoption.

MR. USHER seconded.

MR. HAVELOCK: Mr. Speaker, there are two points I would like to have clarification on.

Section 10 of the report referring to clause 17 of the Bill—this is a matter of the owner of the land reporting the loss of a survey mark. It is the practice in certain parts of the country that survey marks, especially for agricutural holdings, should be buried in order that they may be protected from the depredations of neighbours or anybody else, and I am not quite clear if the amendment which is suggested by the Committee covers that point, that if this survey mark is buried and the owner obviously cannot see it as he goes round his farm and having been buried it is removed, in what position is the owner? Has he got to check up every so often and dig round and see if it is still there or what? And if he has not reported this matter that the survey mark was removed merely because knowing that it had been buried, he did not bother to dig round it, would he be liable to the provisions of this section which is a fine not exceeding one hundred shillings, I believe. I think, Sir, that the amendment suggested by the committee does cover this difficulty a little bit better than the original clause, but I would like the hon. Mover to give me his opinion on it—anyway, to give me an assurance that it is not the intention that a man should be convicted and fined when it really is not his fault owing to this practice of burying survey marks.

Now, Sir, the other matter that worries me is section 12 of the report referring to clause 23 of the Bill. It is the practice, owing to the shortage of surveyors in this country, for landowners when they are selling land to somebody else—usually a subdivision to somebody else—to do so on a Deed of Sale, so that some money can pass before the actual survey is completed and the new title drawn up. Now, Sir, does clause 23 prevent a landowner following the present practice and I would say here that I understand the present practice is that when the Deed of Sale is drawn up, a plan drawn up only by the landowners themselves is attached to that Deed of Sale and, of course, the acreage is subject to the survey later and usually the sale takes the form of a hundred acres or whatever it may be above or below. But it does allow for some money to be transferred from the buyer to the seller during the very long period that has to be awaited until a proper surveyor is available and the title is transferred, and if this would prevent such a practice, I think it would be quite a hardship on the landowners who wish to sell their land and, indeed, might affect the development of the country to some extent, and with those two points, Sir, I beg to support.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, dealing with the two points made by the hon. Member for Kiambu, I understand that in regard to marks which are customarily buried, these are not essential boundary marks or bench marks of the kind to which the Ordinance refers. They are ancillary to such marks; and I understand that it is customary always to arrange for such boundary marks as are specifically referred to in the Ordinance to be visible.

On the other question regarding clause 23, it is certainly the case that in the circumstances explained by the hon. Member that before any such sale could be registered for title, then the survey would have to be conducted and the plans approved in accordance with the provisions of the Ordinance, but I think I am right in saying that there are occasions when plans are prepared and attached to documents in connexion with land transactions which do not necessarily have to be registered for title; but it is certainly the position that under the Ordinance a title can only be registered if the provisions of this Ordinance are complied with, and that is something which the Government has to insist on, having regard to its responsibility as a guarantor of all titles so registered.

The question was put and carried.

Grants-In-Aid Hospital Services Scheme

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, hon. Members may have noticed there is a slight error in the reproduction of the motion and, with your permission, Sir, I will read the motion as originally proposed:—

"WHEREAS—

(*a*) by resolutions dated 17th March, 1948, and 26th January, 1950, this Council approved of loans to

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the European Hospital Authority in the sums of £100,000 and £70,000 respectively for the purpose of incurring certain capital expenditure; and

(b) by resolution dated 25th January, 1950, this Council adopted the Report of the Select Committee appointed to review the working of the Hospital Services Scheme;

BE IT RESOLVED THEREFORE, in accordance with the recommendation contained in the Report of the Select Committee appointed to Review the working of the Hospital Services Scheme that the Scheme should not be called upon to meet capital expenditure, that to supplement capital sums already raised by community effort, the loans totalling £170,000 be appropriated as grants-in-aid of capital expenditure on hospital services where need and proven ability to maintain has been recognized in accordance with the terms of paragraph 13 of the said Select Committee Report."

This motion, Sir, therefore gives effect to recommendation 2 of that Select Committee Report to some extent. I would like, Sir, to read the original statement of principle in this matter which was contained in paragraph 12 of the Select Committee Report which was accepted by this Council.

"We had to bear in mind the reason for the institution of a scheme of this kind which covered the European community only. After investigation we believe that the initiation of the European Hospital Services Scheme was due to a desire on the part of the European community to gain a standard of hospital treatment and a social service in that respect beyond the capacity of the general revenue to provide for all races, and for this reason the European community accepted the additional financial burden. We have had to recognize that those laws of finance which can be applied to social services in a homogeneous community cannot always be adhered to in this Colony at the present stage of social and economic development; otherwise, in the opinion of some Members of the Committee, the progress of social schemes of this kind might in the case of the more advanced communities be delayed beyond the time when those communities are ready to accept such responsibilities. Those Members believe that such delay should be avoided, not only in the interests of any community which has reached the point where it is prepared to accept such schemes with their accompanying financial and moral obligations, but also because any achievement of progress by the part must tend to inspire the whole to greater effort."

That, Sir, was followed by recommendation 2 which said: "That any such fund (that is the Hospital Treatment Relief Fund) should not be called upon to meet capital expenditure" and "That this freedom from liability in respect of capital expenditure should have effect retrospectively from 1st January, 1946".

In view of the general financial position, it is, of course, important that paragraph 13 should be borne in mind:—

"We appreciate that if recommendation 2 (i) is accepted capital expenditure will have to be found from some other source. Such capital expenditure we believe must be a matter for *ad hoc* consideration by the Government which, we suggest, should have regard—

(i) to the needs of the people concerned; and

(ii) to their ability to maintain the service for which provision is desired.

We recognize that in endeavouring to make any capital provision for this purpose, the Government will have to pay due regard to the resources of the Colony as a whole."

That, Sir, laid down, what may be called, a skeleton outline for the development of a sphere of social services in this country. It accepted indeed the principle that it would be possible for the general revenue only to provide a basic or humanitarian standard in the curative services having regard to the rate of progress of the communities concerned, whilst the something better, to which eventually all communities will aspire, will have to be met by voluntary and local effort. The supplementing of capital sums already raised by community effort

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will be carried into practical effect by the Government either on the equivalent or pound for pound method or some other basis according to the proven need and the proven ability to maintain, though Government, as indicated in paragraph 13, will continue "to pay due regard to the resources of the Colony as a whole".

In the May session of this Council, Sir, I hope to lay before the Council the European Hospital Treatment Relief Fund Bill which, if carried, will make that fund an insurance type fund to alleviate the maintenance costs to individual patients but to have nothing to do with the actual running or maintenance of hospitals.

That, Sir, covers the main principle which has indeed already been accepted by this Council. The Council will see, therefore, that although this £170,000 is mentioned at the present moment, it will be more than likely that Government will have to come back to the Council for (a) the process of winding up the commitment which the European Hospital Authority accepted on this assistance basis after the 1st January, 1946, and (b) to place before the Council whatever claims for assistance, having regard to the principle enunciated and accepted, are made from any community, having regard again always to the financial resources of the Colony as a whole—and a point that cannot be repeated too often—the need for such a service and the proven ability to maintain, because, of course, by the development of this principle, I think one can state, with confidence, by the end of the year, Government's only liability in regard to European hospitalization will be (a) its contribution to the Hospital Treatment Relief Fund, and (b) the European Hospital at Kisumu where already a Committee has been appointed to go into the possibility of it being taken over by local efforts. The reason for the £170,000 is that that is the sum which, at the present moment, can be crystallized as having to be dealt with on this basis, and the great majority of that is, of course, covered by the Government's pound for pound contribution to the new Nairobi project of which there is some £104,000 to be transferred to that Association as and when the European community raises the equivalent sum.

I think, Sir, that is all that I need say on this motion; Council has already once accepted this in principle and I feel sure that they will recognize that the result of the acceptance of this principle has been a tremendous drive forward by the community concerned to provide itself with that higher standard of services than general revenue can provide and so implement and develop the policy accepted.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. PATEL: Mr. Speaker, I have consistently expressed my dislike of the approach in a sectional manner to the problem of hospital facilities in this country, but my strongest criticism of the Government in this matter is that, when they are very ready and prompt in bringing matters of this nature before this Council, they have not taken steps to do anything in regard to the Report of the Asian Hospitals Committee, where the Asian community showed its willingness and readiness to undertake the scheme, provided they were placed in the same position in regard to the hospital buildings as the European community was placed before the European community undertook the responsibility.

But keeping that apart, Sir, on this motion I was very glad when the hon. Mover said that the effort of each community will be supported if the finances of the Colony will permit and if the scheme is proved to be—I do not remember the exact words—but a proper scheme, or a scheme which is run in an efficient manner. Now, Sir, I take that to mean that the funds will be provided as much as it could be done for the European scheme and, if there is money left, probably the other communities will receive a share. No steps so far have been taken in pursuance of the Asian Hospital Committee Report; but I can say one thing, Sir, that if the hon. Mover really means to support the community effort of each section, then already in this Council he has mentioned that the Pandya Memorial Clinic, started by the private effort of the Indian community, is doing very good work, and he can certainly start with giving a pound for pound grant to that Institution, which Institution is going to spend £50,000 as

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capital expenditure. Then, Sir, I certainly can believe that the intention of the Government is to encourage and assist community effort of each section of the population of this country. I would like to have an answer, Sir, from the hon. Mover if he is prepared to consider the present case of the Pandya Memorial Clinic and also any future case which may arise in regard to the Asian community.

THE MEMBER FOR EDUCATION, HEALTH AND LOCAL GOVERNMENT: Mr. Speaker, dealing with the comments of the hon. Member for Eastern Area, Mr. Patel, if I may deal first of all with the question of the Asian Hospital Committee Report. I am sure the hon. Member, Sir, will remember that that particular Committee stated that it was prepared to accept the principle of an Asian Hospital Treatment Relief Fund when hospital facilities had reached a certain stage. Since I have occupied this position, Sir, I have gone into this matter fairly carefully, and I believe that they have a very good case for making that particular request. The foundation of the Asian Hospital in Nairobi should be, I think, laid at any moment now. Tenders have been called for and the position is that construction is ready to commence. The Asian Hospital at Mombasa will, I hope, be begun either at the end of this year or early next year, and at that point the number of beds asked for in the Asian Hospital Committee Report will have been more than reached, and I will hope that the Asian community will then be ready to accept an Asian Hospital Treatment Relief Fund on the same basis as the European community has done.

With regard to the Pandya Memorial Clinic, Sir, I have already paid tribute to this effort more than once in this Council, and I have no hesitation in saying that the Government will of course consider any scheme of this kind for assistance. The hon. Member is aware that so far they have only applied for a loan and we did our best, I think, to grant them loan facilities as quickly as possible. But if they put up a case for a grant, then I can assure the hon. Member that the case will certainly be considered. These matters will be considered not on the basis of any race but on the basis which has been laid down in that Report, the need for such a service and the proven ability to maintain.

I trust, Sir, that my reply has satisfied the hon. Member. There was, I think, no other point with which I was asked to deal.

The question was put and carried.

BILLS

SECOND READING

The Deportation (Aliens) (Amendment) Bill

THE ATTORNEY GENERAL: Mr. Speaker, I beg to move: That the Deportation (Aliens) (Amendment) Bill be read a second time.

The reason for this Bill is explained in the Memorandum of Objects and Reasons, and is merely to correct a drafting error in sub-section (5) of section 13 of the Deportation (Aliens) Ordinance. The sub-section starts off by giving certain powers to the Member and then, by a drafting error, continues with a reference to the Governor in Council. This it is now desired to correct.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

The Compulsory National Service Bill

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, I beg to move: That the Compulsory National Service Bill be read a second time.

This Bill, Sir, is largely a consolidation of the Compulsory National Service Ordinance, 1943, which expired shortly after the last war and Defence Regulations, which were made during the last war. It comes forward at this particular time because it is felt that having regard to the international situation generally, it would be a wise measure to have an Ordinance of this kind on the Statute Book. It is not—as is clear from clause 2 of the Bill—intended that the Ordinance if passed shall come into operation immediately. It is the present intention that only those sections in it which will help in the manpower review now being undertaken and those relating to the declaration of essential undertakings shall be brought into operation immediately.

[The Deputy Chief Secretary]

The main principles in this Bill, Sir, are that it provides for the call-up for military service of male British subjects between the ages of 18 and 45 and for other forms of national service and civil defence of male British subjects up to 65 years of age and female British subjects between the ages of 18 and 45. It also makes provision for the appointment of a Director of Manpower and a Central Manpower Committee, defining the functions of both.

It provides for the appointment of a Central Wages Board under clause 6 and sets out the duties and functions of that Board in clauses 15 to 18. And I should explain regarding these particular provisions that it is the intention of the Government that the personnel who will be appointed to this Board shall, so far as possible, be the same personnel as will be appointed to the Wages Advisory Board under the Wages and General Conditions of Service Ordinance which we passed earlier in this session. There will be proposed, when we go into Committee to consider the Bill clause by clause, an amendment which has been circulated to hon. Members which will make it clear that notwithstanding the intention to have identical personnel on these Boards, if in an emergency there should be any clash between recommendations of the two Boards, then the recommendations of the Board set up under this Bill shall prevail.

Provision is also made for the setting up of local manpower committees and their duties are defined—and of a National Service Medical Board to lay down standards of physical fitness to be required of persons called up for national service under the provisions of this Bill. There is provision for the Governor to establish a Civil Defence Force. There is provision—similar to that which existed during the last war—enabling the Governor to arrange for the management—with the consent of the persons concerned—of businesses and farms where the owners of those businesses and farms have been called up. But I would emphasize that those arrangements will be made with the consent of the owner in *all* cases.

There is also provision for the appointment of Inspectors to supervise the work of any persons put in to manage either businesses or farms. Provision is included also under clauses 29, 30 and 31 for the establishment of local exemption tribunals, provincial exemption tribunals, and a central exemption tribunal and an amendment—which will be proposed in committee to clause 30—I think it is—will substitute "Member" for "Director of Manpower" as the person responsible for setting up the provincial tribunal.

Clauses 35 and 36 contain rule-making powers which are necessary for the proper operation and administration of the Ordinance. Certain amendments will be proposed in the committee stage, also, Sir, to make one or two additions to the Schedule to the Ordinance. These have been circulated.

I think, Sir, that I have briefly covered the main principles embodied in this Bill, and that I will best be serving the interests of hon. Members if I now sit down. I will do my best to answer any questions that they may raise on these principles when I come to wind up the debate later on.

I do trust, Sir, that hon. Members will give this Bill a second reading to-day. We are not at this moment facing a national emergency of a kind which would require that this Bill be brought into operation *in toto* immediately, but I think hon. Members will agree that it is not impossible that such an emergency might descend upon us at not too distant a date. The Government believes, Sir, that having regard to that possibility, it is important that this Bill shall be passed to-day and placed on the Statute Book now.

Sir, I beg to move.

THE SOLICITOR GENERAL seconded.

MR. JEREMIAH: Mr. Speaker, Sir, I stand to support the Bill as I believe everyone will support it.

My only reason for standing, Sir, is to ask for clarification on one point and one only, and that is with regard to the Interpretation. Sir, in clause 3, Interpretation, I find that "habituation centre" means a centre established under the provisions of this Ordinance at which an African directed to compulsory military service may be accommodated and receive, before being enrolled, such preliminary care and instruction as may

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be prescribed by rules under this Ordinance;". Now, Sir, my question is whether it will be only Africans who will be directed for military service. If not—and I think it is not, as according to clause 4 all are supposed to be directed to any national service—what will be the position with regard to the other communities? That is what I would like clarification on from the hon. Mover.

I beg to support.

MR. BLUNDELL: Mr. Speaker, there are certain small matters of principle to which I wish to refer. First of all I welcome this Bill, as I think every hon. Member will—(hear, hear)—and we are delighted that it has come forward so that there can be no question of confusion if the necessity for compulsory national service arises. The one point I would like to confirm with the hon. Member who moved the Bill is that in the case of youths being called up for training—if there are youths who will be called up for training—I think it is reasonable they should have a decision as soon as possible so that it does not affect their civil occupation.

THE DEPUTY CHIEF SECRETARY: Sir, might I explain, perhaps, that possibly the hon. Member may be confusing this particular Bill with the consideration which, as he knows, Government has been giving to a plan for peace-time conscription of European youths. The two, Sir, have nothing to do with each other. This Bill is to deal with a possible national emergency.

MR. BLUNDELL: I thank the hon. Member for his explanation. It is a matter which has caused a certain amount of confusion in the country.

Sir, the three matters of principle to which I wish to refer are these. Under clause 11, the calling up for national service—in other words, the policy of allowing a standstill order—stops short at persons earning less than Sh. 50 a month. Now I am of the opinion that the power in the Bill should apply to everybody. The Bill is merely an enabling Bill, and I consider in any national effort in war time, such tasks as that of food production, etc., which depend very largely upon the less highly paid persons, are equally as important as other parts of national service, and I believe that this principle should apply right through, and I intend therefore to move an amendment at a later date to bring that in.

A second principle to which I wish to refer is one that appears to me to go directly *contra* to the experience we had in the last war under clause 16. Where persons have been directed to an undertaking to work, then they will fall under the auspices of the Central Wages Board, and, if there are persons in the same undertaking who have been voluntarily engaged, their wages are adjusted similarly. Now that was not so in the last period in which we were engaged in hostilities. It is obvious, I think, that what one might call nationally directed service—in other words, an old-fashioned conscription—it is obvious, I think, that very often one has to make more attractive terms or one has to lay down conditions for that service, because it is compulsorily enforced, whereas there are many persons working voluntarily who are happy to work on their existing terms because of the fact that their work is voluntary. Now I think it is a mistake to cause an adjustment of the voluntary workers to those of what I shall call the conscript workers. Here again, Sir, I shall, unless the hon. Member has some more and reasonable explanations, move an amendment.

Lastly, Sir, a direct question. Would the hon. Member explain to us under the Schedule—sections 2 and 28 is the heading—on the last page of the Bill, what exactly will be the position of such persons as Indians—that is to say, inhabitants of the Republic of India within the Commonwealth, inhabitants of the Republic of Ireland, and inhabitants of Pakistan? Now for the benefit of anyone who comes from those great Commonwealths or Republics—I do not say this in any way as a tail twister—but I think not only we, but the persons themselves would like to know exactly what is meant by section 9 in the Schedule starting "Any person who is, under the provisions of any Act in force in a dominion," etc.

With these words, Mr. Speaker, I beg to support the motion.

MR. PRESTON: Mr. Speaker, Sir, while rising to support the motion, there is one portion about which I am a little unhappy and that is in paragraph 4. I

[Mr. Preston]

quite fail, Sir, to see the necessity for calling up all married women into a uniformed service, as I feel that, as indeed happened in the last war, a great many of these women would be more usefully employed in running their homes, or their farms, or working as civilian employees. But if you are going to put them into a women's unit there are complications which, indeed, occurred during the last war. (Laughter.) People have the greatest difficulty in getting out of the said Service, and also there is considerable difficulty, if for any reason their husband is transferred back to Kenya, for the husband and wife to be allowed to live together, and that seems to me to be a bit unreasonable. I very much hope, Sir, that the hon. Mover will be able to give me some reassurance on this matter, or else to alter the wording. If, Sir, he does not feel inclined to do so, I would like to give notice of an amendment to be moved in the Committee stage.

I beg to support.

MR. PATEL: Mr. Speaker, I support the Bill before the Council.

It was very essential, in the present international situation, that we should provide the machinery to enable this country to play a proper part in the case of an emergency arising. Sir, I am very glad that this Bill embraces the whole population of Kenya for the purpose of national service, but at the same time I would like to make one observation: that if we really intend that all the people in this country should play their proper part in time of emergency, in peace time also the Asians should be made defence conscious and they should be given training which will enable them to play their part properly. Unfortunately, Sir, the Government in this country, in spite of various requests from the Asian community, do not allow them to play a proper part in peace time which will enable them to be useful citizens during the time of emergency, and I hope that the Government, by making defence schemes in peace time, will take the Asian community into consideration, so that they will be able to play their part in time of emergency.

LADY SHAW: Mr. Speaker, on this question of clause 4, as amended by the hon. Member for Nyanza, as I read it, I never thought of it as being in any other sense than being an enabling measure. It does not mean you are going to conscript all women into a uniformed service, but it gives you the power to do so. I would support this if it means what I believe it to mean. If it did not mean that I cannot support it, but I cannot conceive that it does not mean that. I am quite sure it is only an enabling measure.

THE CHIEF NATIVE COMMISSIONER: Mr. Speaker, the hon. Mr. Jeremiah raised questions with regard to section 3 of the Bill under the definition "habituation centre", which means "a centre established under the provisions of this Ordinance at which an African directed to compulsory military service may be accommodated". He asked two things. First he asked whether it was the intention to conscript anyone other than Africans for compulsory military service. The answer of course is, yes. He also asked whether only Africans would go to habitation centres. The answer to that is, it is intended to have habitation centres only for Africans because they are designed particularly only for the benefit of Africans to acclimatize them to the change between their mode of life, and the conditions, restrictions and so on which pertain to military service.

THE DEPUTY CHIEF SECRETARY: Mr. Speaker, there are only a few points that I need reply to. The first made by the hon. Mr. Jeremiah has been dealt with by my hon. friend the Chief Native Commissioner. The next point was raised by the hon. Member for the Rift Valley regarding the limitation of the powers of the Director of Manpower under clause 11 (1) to persons employed at a rate of wages of Sh. 50 or more a month. I think, Sir, that he may agree, if he reads clause 12, that this point is very largely met. Under clause 12 the Director of Manpower can issue a standstill order during the first three months of an emergency, which covers everybody irrespective of the rate of wages which they draw, and notwithstanding clause 11, who is engaged in an essential undertaking. I think that he may agree that that goes some way to meet the objections which he has raised to clause 11 (1).

MR. BLUNDELL: Only for three months.

THE DEPUTY CHIEF SECRETARY: Well, those three months are a very important three months, and the important people are going to be the people who are employed in these essential undertakings.

The hon. Member did not like the provisions of clause 16 and thought that there was something to be said for different conditions being applied to persons who were compelled to work in a particular undertaking as compared with the persons voluntarily working in those undertakings. Well, Sir, I think that is a matter of opinion. I myself feel that the advantages of having persons employed on similar conditions in the same industry or undertaking outweigh the disadvantages, and the present view of the Government is that the clause ought to stand as it is drafted.

The hon. Member asked me what will be the effect on certain individuals of item 9 under the Schedule. That, Sir, is a question which I am not at present able to answer fully. This particular item in the Schedule—the wording of it—has been copied from the same item which was included in the Schedule to the 1943 Ordinance, but as hon. Members know there have been constitutional changes within the Commonwealth since that date, the effect of which on certain individuals is at present not entirely clear, and which is still under consideration.

MR. BLUNDELL: Is the hon. Member implying then, in effect that he is moving a Bill in Council the effect of which he has no knowledge of certain conditions?

THE DEPUTY CHIEF SECRETARY: I hope I am not doing that, but I am trying to explain that although the effect of item 9 on a great many people is perfectly clear, there are certain individuals whose status as a result of the constitutional changes to which I have referred is not absolutely clear, and their status is a matter of further consideration. It may well be necessary when that issue has been cleared up to come back to this Council suggesting a possible amendment to the Schedule.

MR. HAVELOCK: Will the hon. Member, Sir, confirm that this doubt does not exist as regards the Dominion of Pakistan which was mentioned by the hon. Member for Rift Valley?

THE DEPUTY CHIEF SECRETARY: I can say there is no doubt concerning the Dominion of Pakistan.

The hon. Member for Nyanza has been largely answered by the hon. and gracious Lady, the Member for Ukamba. This is, of course, simply an enabling Bill and it is not, I think, necessary for me to add to what the hon and gracious Lady has said, except to invite the hon. Member's attention to sub-clause (*d*) of the same clause, which provides that these particular ladies can be called up for any form of national service.

I do not think any other points were raised, Sir, which require any specific reply but I would add that I do appreciate, as I said when dealing with the Military Estimates a few months ago—I do appreciate the point made by my hon. friend the Member for Eastern Area and I should welcome—as I indicated when moving the Military Estimates—a discussion on this particular matter with him and his colleagues on this Council.

I do not think Sir, that any further points were raised.

I beg to move that the Bill be read a second time.

THE ATTORNEY GENERAL moved: That Council do resolve itself into Committee of the whole Council to consider the following Bills clause by clause:—

The Deportation (Aliens) (Amendment) Bill.

The Compulsory National Service Bill.

The Increase of Rent (Restriction) (Amendment) Bill.

THE SOLICITOR GENERAL seconded.

The question was put and carried.

COUNCIL IN COMMITTEE

The Bills were considered clause by clause.

The Compulsory National Service Bill

Clause 3.

MR. JEREMIAH: Mr. Chairman, I beg to move: That clause 3 be amended by substituting the words "a person" for the words "an African" which occur on the second line of page 2 "habituation centre".

Now, Sir, this, I believe, will remove any doubt which may exist in our minds

[Mr. Jeremiah]

as to the actual meaning of it, and at the same time it will serve the same purpose; whether you send an African into a habituation centre it will be for a person instead of for an African specifically.

THE DEPUTY CHIEF SECRETARY: The amendment, Mr. Chairman, is acceptable to the Government.

The question was put and carried.

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

Clause 4.

MR. PRESTON: Mr. Chairman, Sir, I wish to move the following amendment to clause 4, paragraph (*b*). After the word "if" of the first line, delete the word "a" and substitute the words "an unmarried" before "female" and after the words in the same line "British subject or" delete the word "a" and substitute the words "an unmarried" before the word "female".

Now, my reasons for moving this amendment are that I cannot see the necessity for calling up married women into Women's Territorial Armies. They can do a very useful job without being in uniform and without having to spend a lot of time marching around the square. I quite realize that it is quite possible that a great many of them will not be called up, but I am perfectly convinced that if you keep on a voluntary basis in this particular scheme you will get a great number of married women who will volunteer. Nevertheless, I feel there is ample provision in the rest of this Bill which will ensure that every woman is doing a useful job of work, should the occasion arise.

LADY SHAW: Mr. Speaker, I beg to oppose the amendment. (Applause.)

I think it is quite absurd really that a married woman should be given exclusion in the Bill itself. It is perfectly obvious that the tribunals and manpower committees will give her proper exemption if that exemption is necessary. People forget that very often married women like going off and doing a job of work, just as much as anybody else, and sometimes they have excellent reasons for doing so! (Laughter.) However, Sir, I am not pressing—I do not wish the hon. Member for Nyanza to think, however, that all married women are all happy to be called up and put into a uniformed service. I entirely agree with him that there may be many places where a married woman, and certainly an unmarried woman, can be doing most useful jobs without wearing uniform, but I do not see that there is any reason for taking it out of the Bill which is purely an enabling Bill.

I beg to oppose.

THE DEPUTY CHIEF SECRETARY: I should just say how the Government whole-heartedly supports the remarks which were made by the hon. and gracious Lady who has just sat down. There is no necessity for married women to be called up. That is the point I want to make.

MR. PRESTON: In the light of the remarks made by the hon. and gracious Lady, I would like to withdraw the amendment.

The amendment was by leave withdrawn.

Clause 5

THE ATTORNEY GENERAL moved: That clause 5 be amended by inserting after the words "His Majesty's Forces which" in line 9 the words "or any part of which".

The question was put and carried.

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

Clause 11.

MR. BLUNDELL: Mr. Chairman, I beg to move an amendment in line 9—the deletion of the words "at a salary of not less than fifty shillings a month".

My object, Mr. Chairman, in moving this amendment, is that I think the hon. Member who is moving the Bill will accept it, because I think it is tidier and more logical. It is true that under clause 12 you have a substantive order for three months, but after that, as I read it, persons earning the wage of less than Sh. 50 a month will not be under that order. Now, as in any case the Director of Manpower should have as his province the apportionment of labour here, there and everywhere, presumably that will have been covered. It is my contention that the agricultural industry and persons engaged in it in a war are a national necessity, as are those, for instance, in the armed forces, and if the agricultural industry is using more

[Mr. Blundell]

persons than it should there is provision in the Bill for arranging that matter. Thus I do think it is logical to have everybody, whatever their wage rate, included under section 11. It does not alter the hon. Member's powers, but it does mean that everybody is on the same basis.

THE LABOUR COMMISSIONER: In answering this question, Sir, I would like to say that we very closely considered this particular point, and the Sh. 50 mark was put in because it was thought that above Sh. 50 you would cater for almost every person whom anyone could say was skilled or semi-skilled. Those who were under Sh. 50 would be likely to fall in the category of unskilled, or at least be fairly easily replaceable. During the last war we in fact did not have this provision in. Where there was a shortage of labour, particularly in agricultural areas, the Director of Manpower could in fact conscript labour to those farms. In point of fact if an African left his farm and went elsewhere he could immediately be directed to some other occupation. It seems by having this limit of Sh. 50 you will also obviate the possibility under sub-clause 3 of many thousands of persons asking to be considered by local exemptions tribunals. I think, Sir, from that point of view we should not agree. I think I have answered the hon. Member's point.

MR. BLUNDELL: Mr. Chairman, I regret I must press my amendment. I think the hon. Commissioner for Labour does not thoroughly understand the position. For instance, there are many tractor drivers in the agricultural industry who would fall under the Sh. 50 mark and who might completely paralyse the agricultural industry by leaving. Now secondly, I do not believe that thousands of persons will apply under sub-section (3) to local exemptions tribunals, and it is my submission it is essential that the whole matter should be considered as one, and there should not be exemptions. I consider it a most extraordinarily illogical idea to allow a great outflow from the agricultural industry, and then call many conscripted people from another area and fill up the vacuum again. It is a most complicated and unnecessary measure.

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I appreciate the point which the hon. Member has made. My principal concern concerning this matter is that you might get, as has been mentioned by the hon. Labour Commissioner, enormous numbers of people under sub-clause (3) making an order under sub-clause (1) an issue before the local exemption tribunals. It is purely a matter of administration, but the hon. Member clearly feels strongly about it, and in the circumstances I do not see that there is any vital reason why we could not accept this amendment and we will be prepared to try it out.

The question of the amendment was put and carried.

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

Clause 15

THE ATTORNEY GENERAL moved: That paragraph (*b*) of sub-clause (1) of clause 15 be amended by substituting for the words "in East Africa" the words "in the Colony".

The question was put and carried.

THE ATTORNEY GENERAL moved: That a new sub-clause (4) be inserted in clause 15 as follows:—

"(4) Where any minimum rate of wages or other condition of employment fixed under this section is at variance with a rate of wages or a condition of employment fixed under the Wages and General Conditions of Employment Ordinance, 1951, in relation to the same employment or to employment of the same type, the minimum rate of wages or other condition of employment fixed under this section shall prevail."

The question was put and carried.

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

Clause 16

MR. BLUNDELL: Mr. Chairman, I beg to move the following amendment to clause 16 (1). To delete the word "not" being the fourth word in line 57 on page 5 of the Bill and by deleting the words "but also to voluntarily engaged persons working for the same employer on the same or a similar class of work" in lines 59 to 61 of page 5 of the Bill and by inserting a full stop after the word "Ordinance" in line 59.

[Mr. Blundell]

The effect of that amendment is—in effect it means that those persons in an undertaking such as a farm who are voluntarily engaged would remain on terms of service which would also voluntarily be arranged between the employer and themselves. Those who were conscripted to the undertaking would come under the Wages Tribunal award.

Now, Sir, I am quite happy to listen to the point of the hon. Member opposite. In the last war we did not get a great deal of confusion in the working together of voluntarily employed persons and conscripted persons. What I fear here is that very often the voluntarily employed person regards in his terms of service any other conditions which are intangible—the temperament and type of his employer, the locality, the altitude, the possibility of outside food supplies, etc. In effect, as the agricultural industry would presumably be controlled under price regulations it will not affect the economy of the agricultural industry, but I remember in the last war that voluntarily employed persons on an estate worked perfectly happily on the same estate on their old terms of service in close proximity to those who were conscripted, and the voluntarily employed person was happy to do that by reason of his voluntary status.

THE CHAIRMAN: Will your amendment which you now propose really conflict with the amendment which has already been carried, adding sub-clause (4) to the Bill? I am taken rather by surprise, of course, not having had the advantage of studying it in detail. I was not expecting it to-day, but if the rates under the Central Wages Board under the Bill are to prevail over any other rate, then it does not seem to me necessary to move your amendment.

MR. BLUNDELL: Well, Sir, I do not think it would apply, because the amendment which the hon. Member for Law and Order has just moved would apply, I think, to scheduled industries under the Wages Tribunal Board, would it not?

THE CHAIRMAN: Perhaps the Labour Commissioner will clarify the point.

THE LABOUR COMMISSIONER: I think the point is any wage order made by this Central Wages Board would nullify any order made by the Wages Advisory Board under the peace-time Ordinance. In this particular case it is felt that the Central Wages Board—their order would be in relation to minimum rates of wages, as indeed they were at the end of the last war; the rates fixed for conscripted labour were, as far as I am aware, and I was in Nakuru at the time, in relation to the signing-on rates in the particular area concerned, but it was made quite clear that the ration scales and so on were laid down.

As far as I am aware there was not a very great difference of pay between the one and the other. I feel sure to-day if there were a very great difference it would lead to nothing but trouble, and I think the gap in any case between the present current minimum wage, the signing-on wage, and the sort of rate of pay a Central Wages Board would impose, would be very small. I think it would be a pity to amend it that way.

MR. BLUNDELL: Mr. Chairman, I would like to ask the hon. Labour Commissioner, is he not under some confusion in that minimum wages at the present time do not apply to the agricultural industry?

THE DEPUTY CHIEF SECRETARY: As far as wages are concerned, this clause only refers to minimum wages.

THE LABOUR COMMISSIONER: It refers, Sir, to persons who have been directed to work, and in the case of persons directed to work it is incumbent upon the Central Wages Board to lay down minimum rates of wages, whatever the industry, whether it is the agricultural industry or anything else.

MR. BLUNDELL: Might I make my point clear. The hon. Labour Commissioner has completely pointed out what I am getting at. In effect this clause here applies the minimum rates of wages and conditions to the agricultural industry—it is no good the hon. Director of Establishments shaking his head—it applies it to the agricultural industry, because if the agricultural industry calls upon conscripted labour, then the voluntary men in the industry's wages under this regulation have to rise to the other, and it is in effect a roundabout way of applying the Minimum Wages Ordinance to the agricultural industry, and that is why I am objecting to it.

LADY SHAW: Mr. Speaker, I support this amendment very strongly. I think it would be the greatest pity to bring, particularly to the agricultural industry, this whole question of planning, as it were. If a man, because he was producing the necessary foodstuffs, has to avail himself of conscript labour, it would probably, in any case to some extent, upset his labour, but in the cases of farms where labour is old-established and very often privileged, I think it would be a terrible pity to interfere between the employer and his voluntary labourer in any way. It is perfectly obvious if the voluntary labourer wants the wages or the conditions which are laid down for conscripted labourers he will insist upon having them or he will go off and cease to be voluntary. The mere fact of being voluntary to my mind—the fact that he is a voluntary labourer should keep the relationship between himself and his employer on a voluntary basis.

I wish to support the amendment.

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I think myself that there may well be confusion and unnecessary difficulties arising as a result of the amendment which has been proposed by the hon. Member. But, here again, I do not think that the objection which I see to it is so strong that Government need stand firmly on the clause as at present drafted. It is a question which will be perfectly proper for consideration by the Wages Advisory Board to be set up under the Wages and General Conditions of Employment Ordinance which we passed earlier in this session, and, subject to the understanding that we may well find it necessary to come back to this Council for reconsideration of that matter, Government is prepared to accept the amendment.

The question was put and carried.

The question of clause as amended was put and carried.

Clause 24

THE ATTORNEY GENERAL moved: That sub-clause (6) of clause 24 be amended by substituting the word "him" for the word "it" in line 14 on page 8 of the Bill and the word "his" for the word "its" in line 16 and 20 on page 8 of the Bill.

The question was put and carried.

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

Clause 28

THE ATTORNEY GENERAL moved: That sub-clause (1) of clause 28 be amended by substituting the figures "10" for the figure "9" in line 18 of page 9 of the Bill.

The question was put and carried.

MR. HAVELOCK moved: That the word "of" be substituted for the word "or" in line 20 of page 9 of the Bill.

The question was put and carried.

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

Clause 30

THE ATTORNEY GENERAL moved: That sub-clause (1) of clause 30 be amended by substituting for the words "Director of Manpower" the word "Member".

The question was put and carried.

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

Clause 35

THE ATTORNEY GENERAL moved: That paragraph (*h*) of clause 35 be amended by substituting the word "certificates" for the word "cards".

The question was put and carried.

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

Clause 36

THE ATTORNEY GENERAL moved: That clause 36 be amended by substituting for the words "Director of Manpower" the word "Member".

The question was put and carried.

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

Schedule

THE ATTORNEY GENERAL moved: That the Schedule be amended by inserting after sub-paragraph (*d*) of paragraph (1) the following new sub-paragraph:—

"(e) civilians engaged in the United Kingdom and serving with any of His Majesty's Forces in the Colony."

MR. HAVELOCK: Mr. Chairman, I have a further amendment, do you want to take them all at once?

THE CHAIRMAN: I will take this one first.

MR. BLUNDELL: I just want to ask the hon. Member for Law and Order—this, of course, will not apply to the wives of the civilian employer. If the wives were out here and the husbands were serving in His Majesty's Forces, then I take it the wives would come under this Bill?

THE ATTORNEY GENERAL: Mr. Chairman, this will only apply to civilians, whether male or female, married or single, who are engaged in the United Kingdom and serving—not to their husbands or wives.

The question was put and carried.

MR. HAVELOCK: Mr. Chairman, paragraph 8 of the Schedule, I wish to move the following amendment. In paragraph 8 of the Schedule to insert after the word "Officers" the words "who have served with the Kenya Government for four years or more".

My reason for that, Sir, is that I feel the Director of Manpower should have power over cadets and officers newly joined in the administrative service who, in his opinion, might be used better in another capacity. I quite understand the reason for exempting administrative officers in general, and that is the reason why I have given four years' period which is really one tour. I suggest, Sir, that in the last war, a number of administrative officers were used in other capacities and that the Director of Manpower should be enabled to direct the junior ones, who have not had the experience and therefore will not be so necessary in the administration, to other employment if he so wishes.

THE DEPUTY CHIEF SECRETARY: Mr. Chairman, I appreciate the point which has been made by the hon. Member for Kiambu and he did give me notice of—but not the precise terms of his amendment—but of the point which he was going to make. I would ask him, Sir, whether he would reconsider the terms of that amendment so as not necessarily to exclude all officers of less than four years standing if Government agreed to accept an amendment somewhat on these lines:—"Subject to express directions to the contrary by the Chief Secretary in the case of administrative officers and the Chief Justice in the case of resident magistrates". Government would, wherever possible, in the case of junior officers, be ready to exclude these juniors from the Schedule, but I think we would find it difficult to accept the suggestion that all those officers who had not served for any specific period would be excluded. I believe that the purpose which the hon. Member has in mind would be served if an amendment on these lines was accepted.

MR. HAVELOCK: Mr. Chairman, I have not mentioned the matter of resident magistrates. I believe that their role is one which should be exempted in any case and also I know there is some feeling about this. I think, Sir, that the suggestion put by the hon. Member would be acceptable. Would you want the hon. Member to put an amendment if I withdraw mine, Sir?

THE CHAIRMAN: I must have the words in some form.

THE ATTORNEY GENERAL: Mr. Chairman, I do not know whether the hon. Member for Kiambu would accept an amendment in this form. To delete item 8 and substitute for it "resident magistrates and, subject to express directions to the contrary by the Chief Secretary, administrative officers".

MR. HAVELOCK: Sir, I would like to withdraw my amendment on the understanding that the hon. Member will propose that.

The motion was by leave withdrawn.

THE ATTORNEY GENERAL moved: That paragraph 8 of the Schedule be deleted and the following new paragraph 8 be substituted:—

"8. Resident Magistrates and, subject to express directions to the contrary by the Chief Secretary, Administrative Officers."

The question was put and carried.

THE ATTORNEY GENERAL moved: That the Schedule be amended by renumbering paragraphs 6, 7, 8 and 9 as paragraphs 7, 8, 9 and 10 and by inserting the following new paragraph:—

"6. The United Kingdom Trade Commissioner in East Africa and the United Kingdom Assistant Trade Commissioner in East Africa."

[The Attorney General]

The question was put and carried.

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

The Increase of Rent (Restriction) (Amendment) Bill

Clause 2

THE SOLICITOR GENERAL moved: That clause 2 be amended by adding at the end of paragraph (*b*) thereof the following new sub-section to section 4 of the principal Ordinance:—

"(6) A quorum of the Central Board or of the Coast Board presided over by the Deputy Chairman thereof may exercise all the powers and functions of any such Board notwithstanding that another quorum thereof presided over by the Chairman is at the same time exercising those powers and functions."

The question was put and carried.

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

Clause 3

THE SOLICITOR GENERAL moved: That there be substituted for clause 3 the following:—

"(3) Sub-section (3) of section 5 of the principal Ordinance is amended in the following respects—

(*a*) by substituting for the words "dwelling-houses" and "dwelling-house" respectively where such words occur the word "premises";

(*b*) by substituting for the words "twenty-five shillings" the words "seventy shillings".

The question was put and carried.

The question that the new clause stand part of the Bill was put and carried.

Clause 5

THE SOLICITOR GENERAL: Mr. Chairman, I take it, Sir, that you have had the new amendment to clause 5 which was circulated this morning. It reads as follows: That there be substituted for clause 5——

MR. HAVELOCK: Mr. Chairman, could the hon. Member be excused reading the whole amendment? We all have it tabled in front of us.

THE SOLICITOR GENERAL: Perhaps I ought to say this about it, that this amendment has been moved by Government by reason of a suggestion made by the hon. Member for Nairobi North yesterday. The Government accepted that suggestion and I therefore move this amendment.

The purpose of this, Sir, is that the Board—where a landlord wishes to remove his furniture, he must apply to the Board for permission to do so, and the Board will fix the terms of notice and also make a deduction on the rent which is a consequence of the removal of the furniture.

[The full text of the amendment moved by the Solicitor General reads as follows:—

Clause 5

THE SOLICITOR GENERAL moved: That there be substituted for clause 5 the following:—

"5. There shall be inserted next after section 23 of the principal Ordinance the following new section—

Removal of Furniture by landlord

23A. (1) Where a landlord of any furnished premises wishes to remove the furniture or soft furnishings, or any of them, with which such premises were let, he may apply to the Board for permission so to do.

(2) Upon any application being made under sub-section (1) of this section, the Board may, in its discretion, grant the application upon such terms and subject to such conditions as to the Board may seem reasonable, or may refuse the application.

(3) Where an application under sub-section (1) of this section has been granted and the furniture or the soft furnishings or any part thereof with which such premises were let is or are removed by the landlord the standard rent of the premises shall be reduced—

(i) if the whole of the furniture or the soft furnishings, or both, are removed, by the percentage or by the respective percentages of the value thereof which was or were added to the standard rent in accordance with paragraph (*b*) of the definition of "standard rent" in section 2 of this Ordinance;

(ii) if part only of the furniture or the soft furnishings or of both is removed, by such proportion as the Board may think reasonable of the percentage or of the respective percentages of the value thereof as was added to the standard rent in accordance with the aforesaid paragraph.

(4) In this section the expression "soft furnishings" shall be deemed to include linen, cutlery, kitchen utensils, glassware and crockery, if any."]

The question was put and carried.

The question that the new clause stand part of the Bill was put and carried.

THE ATTORNEY GENERAL moved: That the Deportation (Aliens) (Amendment) Bill be reported back to Council without amendment and the Compulsory National Service Bill and the Increase of Rent (Restriction) (Amendment) Bill be reported back to Council with amendment.

The question was put and carried.

Council resumed, and the Member reported accordingly.

BILLS

THIRD READINGS

THE ATTORNEY GENERAL moved: That the Deportation (Aliens) (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Compulsory National Service Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Increase of Rent (Restriction) (Amendment) Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

THE ATTORNEY GENERAL moved: That the Survey Bill be read a third time and passed.

THE SOLICITOR GENERAL seconded.

The question was put and carried and the Bill read accordingly.

ADJOURNMENT

THE SPEAKER: What date do you propose for the adjournment?

THE CHIEF SECRETARY: May the 8th, Sir.

THE SPEAKER: It falls directly after a Bank Holiday, I was wondering if that had been considered. It falls immediately after Whit Monday—I do not know whether that is a public holiday or not.

MR. HAVELOCK: Not in Kenya, Sir.

VALEDICTORY

TRANSFER OF MR. K. K. O'CONNOR, K.C., M.C.

THE CHIEF SECRETARY: Mr. Speaker, before the Council adjourns, may I crave your indulgence to say a few words. As hon. Members know, by the time the Council meets again, it is probable that my hon. and learned friend the Attorney General will have left us on transfer.

On behalf of the Government, I should like to take this opportunity of congratulating him on his well-deserved promotion—(hear, hear and applause)—and of wishing him and his family all good things in Jamaica. (Hear, hear.) We hope that he will find his new home congenial, and his new post perhaps a little less strenuous and exacting than his present one.

But Jamaica's gain in this matter is Kenya's loss. (Hear, hear.) By his departure, this Colony will lose an officer who has served here with outstanding ability and with single-minded devotion, who has never spared himself even to the detriment of his own health. (Applause.)

The other day, when the hon. Member for Nairobi North was speaking and suggesting that perhaps some civil servants might do double work for double pay, I could not help thinking that as

[The Chief Secretary]

any rate there was at least one amongst us who for a long time has carried out the first part of his suggestion. (Hear, hear.)

This Council will lose a Member whose clear and lucid speaking, whose great courtesy at all times, and whose wit have added very greatly to our deliberations, and we, Sir, on this side of the Council will lose an esteemed friend and a very great colleague.

May I conclude by expressing the hope that, at some time in the future, the Attorney General and Mrs. O'Connor will return to renew the many friendships which they have made in this Colony. (Applause.)

MR. HAVELOCK: Mr. Speaker, the hon. Chief Secretary has covered almost everything that anyone can say, but I am speaking on behalf of all Unofficial Members, when I say that everything he has said is fully and completely supported by hon. Members on this side of the Council. I apologize, Sir, that there are many seats vacant to-day, just when this particular matter has come before us, but I can say that those Members who are not present to-day have asked me to associate themselves with everything that I say and therefore with what the hon. Chief Secretary has already said.

Sir, the hon. Member for Law and Order came to this country after a long and distinguished career elsewhere, where, I suggest, he certainly did do double work and he came, hoping, I think for a slightly easier time in Kenya. As it happens, unfortunately during his stay here, there have been very many great problems which he has had to deal with and which we know and appreciate here, he has dealt with integrity, firmness and courage, and we could not ask for a better Member that Mr. O'Connor. (Hear, hear.) (Applause.) I do not know, Sir, whether it is true, but I am told that it may be because of our altitude that the hon. Member is going to higher spheres. That may be a contradiction in terms but also I would like to associate myself especially with the remarks that the hon. Chief Secretary made that we do want to see him again. We do not only think of him as the Member for Law and Order, Sir, we will always think of him as a great friend to ourselves and a great friend to Kenya.

We believe that he, during his stay here, has learned to love this country as we all do, and we hope, therefore, to see him back here with Mrs. O'Connor.

Sir, on behalf of the Unofficial Members, I wish Mr. and Mrs. O'Connor a very happy and successful career and speedy return to Kenya. (Applause.)

THE SPEAKER: I should like, on behalf of myself and of the staff, to join in the tribute which is being paid to the hon. Member for Law and Order—(applause)—and I would like also to go on record my personal debt to him for his support and advice throughout the time he has been in that office. I regret his going, perhaps as much as anybody else and perhaps more, because I have had the pleasure of knowing him a much longer time than you others have had, because I knew him in Malaya years ago. I feel sure that not only will the regret be felt in this Council but to all who have come in contact with Mr. O'Connor during his stay in the country, except, of course, those who break the law, they probably will enjoy his going.

With those few words, I wish him and his good lady all good wishes in their new post. (Applause.)

THE ATTORNEY GENERAL: Mr. Speaker, I confess I feel rather tongue-tied, which my wife would tell you is an almost unprecedented condition for me. (Laughter.) I do not know how to thank you, Sir, and the hon. Chief Secretary and the Member for Kiambu for all you have said, and I do not know how to answer, or to realize that this is probably the last time that I shall address this Council.

Before coming here I was told that Kenya Legislative Council was difficult. I was given to understand, in Malaya, that I might be lucky if I escaped with my life. But, Sir, I have not found it so. From the very first moment when I had to address the Council, about two days after I arrived in the Colony—it was the introduction of the Police Estimates in the Budget Debate, and I came to the Council bursting with undigested facts which had been crammed into me by the hon. Solicitor General, and may I say that no man ever had a more loyal and

[The Attorney General]

self-effacing colleague than he is—(applause)—from that moment, Sir, I have found nothing but help, co-operation and kindness from every Member of this Council. That Opposition, which seemed so formidable then, I have since learned to know individually and to value as personal friends.

The job of Attorney General and Member for Law and Order in Kenya was the one job in the whole Legal Service that I wanted and I am very sorry to be relinquishing it now. It is mainly on health reasons, of which hon. Members are aware, that I am doing so. It will be an immense encouragement to me in my new job to know that I take with me your so very kind good wishes.

May I express my thanks to the Chief Secretary, to the leader of this side, whose kind help and guidance and co-operation has made my task so much easier?

I do rejoice to think that although, as the hon. Member for Kiambu has said, I have had some difficult times to go through, the internal security situation is, to-day, incomparably better than it was a year ago. (Hear, hear.) (Applause.) The credit for that, of course, is not due to me but due to the administrative officers, the police officers and everybody concerned, and not least to the Secretary for Law and Order, Mr. Cusack.

I hope that, as the hon. Member for Kiambu suggested, I may come back again. I certainly would like to, whether in Government service or otherwise. Perhaps somebody may die and leave me a ground-nut in their will and, if so, I shall come back and select a piece of sub-marginal land, as dry as possible, plant it and expect to live happily on the proceeds ever afterwards. (Laughter.)

Sir, if I might choose an epitaph for myself before departing to the shady and unsubstantial realms of ex-M.L.C's., it would be this, "He sometimes made them laugh". And, on this occasion, Sir, "If I laugh, t'is only that I may not cry". I thank you all. (Applause.)

—THE SPEAKER: Council will now adjourn until the eighth day of May at the hour of 10 o'clock in the forenoon.

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