COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

11th COUNCIL INAUGURATED OCTOBER, 1956

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1959

THIRD SESSION

6th October, 1959, to 13th October, 1959

List of Members of the Legislative Council

Speaker:

THE HON. SIR FERDINAND CAVENDISH-BENTINCK, K.B.E., C.M.G., M.C.

Chairman of Committees:

*THE HON. D. W. CONROY, O.B.E., T.D., Q.C.

Ministers:

THE CHIEF SECRETARY (THE HON. W. F. COUTTS, C.M.G., M.B.E.).
THE MINISTER FOR LEGAL AFFAIRS (THE HON. E. N. GRIFFITH-JONES, C.M.G., Q.C.).
‡THE MINISTER FOR FINANCE AND DEVELOPMENT (THE HON. E. A. VASEY, C.M.G.).
THE MINISTER FOR AFRICAN AFFAIRS (THE HON. C. M. JOHNSTON, C.M.G.).
THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.)
THE MINISTER FOR INTERNAL SECURITY AND DEFENCE (THE HON. A. C. C. SWAN, C.M.G., O.B.E.)
THE MINISTER FOR LOCAL GOVERNMENT, HEALTH AND TOWN PLANNING (THE HON. W. B. HAVELOCK).
THE MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. W. A. C. MATHIESON, C.M.G., M.B.E.).
THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. D. L. BLUNT, C.M.G.).
THE MINISTER FOR COMMERCE AND INDUSTRY (THE HON. A. HOPE-JONES, C.M.G.).
THE MINISTER FOR WORKS (THE HON. I. E. NATHOO).
THE EUROPEAN MINISTER WITHOUT PORTFOLIO (THE HON. N. F. HARRIS).
THE ASIAN MINISTER WITHOUT PORTFOLIO (THE HON. C. B. MADAN, Q.C.).
THE MINISTER FOR TOURISM AND COMMON SERVICES (THE HON. W. E. CROSSKILL).
THE MINISTER FOR HOUSING (THE HON. M. S. AMALEMBA).

Assistant Ministers:

THE ASSISTANT MINISTER FOR EDUCATION, LABOUR AND LANDS (THE HON. WANYUTU WAWERU, M.B.E.).
THE ASSISTANT MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (THE HON. SHEIKH MOHAMED ALI SAID EL-MANDRY).

Constituency Elected Members:

European—

THE HON. R. S. ALEXANDER (Nairobi West).
THE HON. SIR CHARLES MARKHAM, BT. (Ukamba).
THE HON. F. W. G. BOMPAS, E.D. (Kiambu).
GROUP CAPT. THE HON. L. R. BRIGGS (Mount Kenya).
THE HON. S. V. COOKE (Coast).
†THE HON. W. E. CROSSKILL (Mau).
MAJOR THE HON. F. W. J. DAY (Aberdare).
†THE HON. N. F. HARRIS (Nairobi South).
AIR COMMODORE THE HON. E. L. HOWARD-WILLIAMS, M.C. (Nairobi North).
THE HON. MRS. E. D. HUGHES, M.B.E. (Uasin Gishu).
THE HON. J. R. MAXWELL, C.M.G. (Trans Nzoia).
MAJOR THE HON. B. P. ROBERTS (Rift Valley).
THE HON. MRS. A. R. SHAW (Nyanza).
THE HON. C. G. USHER, M.C. (Mombasa).

African—

THE HON. F. J. KIAMISI (Mombasa Area).
THE HON. D. J. KIAMBA (Machakos).
THE HON. J. G. KIANO, Ph.D. (Central Province South).
THE HON. B. MATE (Central Province North).
THE HON. T. J. MBOYA (Nairobi Area).
THE HON. D. T. ARAP MOI (North Rift).
THE HON. J. N. MUIMI (Kitui).
THE HON. M. MULIRO (Nyanza North).
THE HON. R. G. NGALA (Coast Rural).
THE HON. J. J. M. NYAGAH (Nyeri and Embu).
THE HON. A. OGINGA-ODINGA (Nyanza Central).
THE HON. L. G. OGUDA (Nyanza South).
THE HON. J. K. OLE TIPIS (Central Rift).
THE HON. T. TOWETT (Southern Area).

Asian—

THE HON. S. G. HASSAN, M.B.E. (East Electoral Area).
THE HON. A. B. JAMIDAR (Central Electoral Area).
THE HON. J. C. M. NAZARETH, Q.C. (Western Electoral Area).
THE HON. A. J. PANDYA (Eastern Electoral Area).
THE HON. K. D. TRAVADI (Central Electoral Area).
THE HON. ZAFRUD DEEN (West Electoral Area).

Arab—

THE HON. SHEIKH MAHFOOD S. MACKAWI, O.B.E.
THE HON. SHARIFF M. A. SHATRY.

Specially Elected Members:

†THE HON. M. BLUNDELL, M.B.E.
†THE HON. W. B. HAVELOCK.
LT.-COL. THE HON. B. R. MCKENZIE, D.S.O., D.F.C.
THE HON. H. SLADE.
†THE HON. M. S. AMALEMBA.
THE HON. J. M. MUCHURA.
THE HON. N. G. NGOME.
†THE HON. WANYUTU WAWERU, M.B.E.
†THE HON. SHEIKH MOHAMED ALI SAID EL-MANDRY.
†THE HON. I. E. NATHOO.
†THE HON. C. B. MADAN, Q.C.
THE HON. N. S. MANGAT, Q.C.

Nominated Members:

THE HON. K. V. ADALJA.
THE HON. K. BECHGAARD.
†THE HON. D. L. BLUNT, C.M.G.
THE HON. L. H. BROWN. (Acting Director of Agriculture).
THE HON. T. C. COLCHESTER, C.M.G.
*THE HON. D. W. CONROY, O.B.E., T.D., Q.C. (Solicitor-General).
THE HON. M. H. COWIE, E.D. (Director of the Royal National Parks).
THE HON. AHMED FARAH, B.E.M. (Northern Province).
THE HON. MRS. J. T. GECAGA.
COMMANDER THE HON. A. B. GOORD, D.S.C., R.I.N. (Rtd.).
CAPTAIN THE HON. C. W. A. G. HAMLEY, O.B.E., R.N.
THE HON. H. G. S. HARRISON, M.B.E.
THE HON. SHEIKH MBARAK ALI HINAWY, O.B.E.
THE HON. A. W. HUNTER.
THE HON. A. H. ISMAIL, M.R.C.S.

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

Nominated Members—(Contd.)

COLONEL THE HON. H. R. JACKMAN.
THE HON. E. T. JONES.
THE HON. J. K. KEBASO.
THE HON. J. A. R. KING, A.F.C.
THE HON. J. A. LUSENO.
THE HON. K. W. S. MACKENZIE, C.M.G. (Secretary to the Treasury).
THE HON. D. S. MILLER, C.B.E. (Director of Education).
THE HON. BALDEV SAHAI MOHINDRA, O.B.E.
THE HON. W. OLE NTIMAMA.
THE HON. ABDUL HUSSEIN NURMOHAMED.
THE HON. JONATHAN NZIOKA
THE HON. SIR EBOO PIRBHAI, O.B.E.
THE HON. P. J. ROGERS, C.B.E.
THE HON. C. W. RUDIA.
THE HON. KIRPAL SINGH SAGOO.
THE HON. SHERIFF A. SALIM.
THE HON. P. H. SMITH.
THE HON. G. A. TYSON, C.M.G.
†THE HON. E. A. VASEY, C.M.G.
THE HON. A. M. F. WEBB.
THE HON. A. J. WALKER, M.D., M.R.C.P. (Director of Medical Services).

THE HON. THE EARL OF PORTSMOUTH.
THE HON. SIR ALFRED VINCENT.

Acting Clerk of the Council:
J. R. NIMMO, M.C.

Clerk Assistant:
H. THOMAS

Sergeant-at-Arms:
MAJOR M. G. ELIOT

Assistant Sergeant-at-Arms:
J. H. KIRK

Reporters:
D. BUCK
MISS J. M. ATKINS
MISS M. P. GUNTER

Hansard Editor:
MRS. J. FRYER

*Deputy Speaker and Chairman of Committees.
†Also included in the list of Ministers or list of Assistant Ministers.

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

ELEVENTH COUNCIL

THIRD SESSION

Tuesday, 6th October, 1959

The House met at thirty minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

COMMUNICATION FROM THE CHAIR

ASSENT TO BILLS

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Hon. Members I have to inform you that His Excellency the Governor has assented to the following Bills:—

No.		Passed 3rd Reading	Date of Assent
29.	The Registration of Documents (Photostatic Copies) (Repeal) Ordinance, 1959	23-7-59	15-8-59
30.	The African Courts (Amendment) Ordinance, 1959	23-7-59	15-8-59
31.	The Protected Areas (Amendment) Ordinance, 1959	23-7-59	15-8-59
32.	The Price Control (Amendment) Ordinance, 1959	23-7-59	15-8-59
33.	The Cereals Finance Corporation (Amendment) Ordinance, 1959	23-7-59	15-8-59
34.	The Loans (United Kingdom Government) Ordinance, 1959	23-7-59	15-8-59
35.	The Rent Restriction Ordinance, 1959	29-7-59	24-8-59
36.	The Money-lenders (Amendment) Ordinance, 1959	29-7-59	24-8-59
37.	The Municipalities (Amendment and Miscellaneous Provisions) Ordinance, 1959	29-7-59	24-8-59

I further have to inform you that Her Majesty the Queen has been pleased to assent to the Native Lands Registration Ordinance, 1959, which was passed by the Legislative Council in April, 1959.

PAPERS LAID

The following Papers were laid on the Table:—

Immigration Department Annual Report, 1958.

E.A. Posts and Telegraphs Annual Report, 1958.

Annual Trade Report of Kenya, Uganda and Tanganyika for the year ended 31st December, 1958.

(BY THE CHIEF SECRETARY (Mr. Coutts))

Registrar-General Annual Report, 1958.

(BY MR. CONROY, on behalf of The Minister for Legal Affairs.)

Price Control (Maize and Maizemeal) (No. 2) (Amendment) (No. 2) Order, 1959.

Price Control (Maize and Maizemeal) (Isiolo) (Amendment) Order, 1959.

Price Control (Sugar) (Amendment) (No. 4) Order, 1959.

(BY THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey))

Ministry of Community Development Annual Report, 1958.

Colony and Protectorate of Kenya Annual Report—Transport Licensing Board, 1958.

Personal Tax Rules, 1959.

African Courts—(Fees and Fines) (Amendment) Rules, 1959.

(BY THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston))

Medical Department Annual Report, 1958.

Municipal Election (Amendment) Rules, 1959.

Municipal Election (Amendment) (No. 2) Rules, 1959.

(BY THE MINISTER FOR AFRICAN AFFAIRS (Mr Johnston) on behalf of the Minister for Local Government, Health and Town Planning (Mr Havelock))

Kenya Government Flax Fund Income and Expenditure Account for the year ended 30th June, 1959.

Veterinary Department Annual Report, 1958.

Sessional Paper No. 9 of 1958/59: The Pyrethrum Industry: Proposals to amend existing Legislation.

Marketing of African Produce (Central Province Marketing Board) Regulations, 1959.

Marketing of African Produce (Central Province Marketing Board) (Movement of Regulated Produce) Rules, 1959.

Maize Marketing Regulations, 1959.

Crown Lands (Itembe Land Use) (Amendment) Rules, 1959.

Crop Production and Livestock (Livestock and Controlled Areas) (Amendment) (No. 2) Rules, 1959.

Fencing Rules, 1959.

(BY THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie))

Lands Department Annual Report, 1958.

Examinations (Local Entry Fees) (Amendment) (No. 2) Regulations, 1959.

African Teachers Service (Employment) (Amendment) Regulations, 1959.

(BY THE MINISTER FOR EDUCATION, LABOUR AND LANDS)

Report on Kenya Fisheries, 1958.

Forest Department Annual Report, 1958.

(BY THE MINISTER FOR FOREST DEVELOPMENT, GAME AND FISHERIES (Mr. Blunt))

Registrar of Co-operative Societies Annual Report, 1958.

Nairobi Airport Annual Report, 1958.

Mines and Geological Department Annual Report, 1958.

Scrap Metal Rules, 1959.

(BY THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones))

Road Authority Annual Report, 1957-58.

(BY THE MINISTER FOR WORKS (Mr. Nathoo))

NOTICES OF MOTION

MR. ARAP MOI (North Rift): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

In view of the serious and unpleasant situation which arises from large numbers of African children being turned out after their fourth year at school, this Council urges Government to abolish the Common Entrance Examination and provide education for all African children to the end of intermediate stage without interruption.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to give notice of the following Motion:—

That this Council approves the proposals set out in Sessional Paper No. 9 of 1958/59 entitled "The Pyrethrum Industry: Proposals to Amend Existing Legislation."

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir E. A. Vasey): Mr. Speaker, I beg to give notice of the following Motion:—

That this Council approves that the subsistence, travelling and attendance allowance paid to the chairman, the deputy chairman and the members of the Council of State shall be exempt from income tax.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir E. A. Vasey): Mr. Speaker, I beg to give notice of the following Motion:—

That this Council approves that interest at the rate of 6½ per cent on a loan of £250,000 to be made by Sceptre Trust Limited to the Government for the purpose of Government staff housing, and repaid over a period of 20 years, shall be exempted from income tax in the hands of the said Sceptre Trust Limited.

MR. MULIRO (Nyanza North): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council, being aware that the present African Teachers Service Regulations are discriminatory against African teachers, urges the Government to unify the terms of appointment for all teachers in the Colony.

MR. NGALA (Coast Rural): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council being aware of the progress made by Africans in business, urges Government to grant to Africans who have or intend building permanent shops in all African markets and trading centres in rural and urban areas, a 33-year hold lease so that their property is mortgageable to banks or local loan authorities. This will enable the Africans to get loans on long-term basis to carry on their business effectively.

MR. MUCHURA (Specially Elected Member): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council urges the Government to introduce, as soon as possible, legislation by which Africans would be enabled to make wills.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, I beg to give notice of the following Motion:—

THAT this Council approves the draft—the Transfer of Powers (Variation) (No. 3) Order, 1959, and the Transfer of Powers (Variation) (No. 4) Order, 1959.

ORAL ANSWERS TO QUESTIONS

QUESTION NO. 162

COMMANDER GOORD (Nominated Member) asked the Minister for African Affairs:—

(1) What are the estimated figures of population for—

(*a*) Kenya;

(*b*) the Kikuyu people,

in respect of the years 1910, 1935, 1960 and 1985?

(2) What are the current rates of increase in each case, and how do these compare with those of U.K., U.S.A. and New Zealand?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): It is regretted that estimated figures of population for the series of years 1910, 1935, 1960 and 1985 are not available. No complete census of the African population of Kenya was taken until 1948. No information at all is available for 1910 and the estimates for 1935 are not on a comparable basis with those for 1948. The East African Statistical Department has estimates of the total population of Kenya for the year 1958, but is not prepared in the absence of a census to make estimates for individual tribal groups. Forecasts for 1985 would not be of any value whatsoever in the absence of suitable fertility and mortality rates. Until a census has been taken in 1961 no satisfactory forecasts of the population of Kenya can be made.

In the absence of data, no reply can be given to the second part of the Question.

MR. MBOYA (Nairobi Area): Mr. Speaker, arising out of the question, is the Minister aware of the secret operation implied or concealed by the question?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): No, Sir.

COMMANDER GOORD: Mr. Speaker, in view of the unsatisfactory nature of the reply and, the obvious lack of sociological data in the country will the Government indicate its intentions with regard to the regularity of future census counts.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): The remarks made by the hon. Member will be taken into consideration when the arrangements are made for the census in 1961.

QUESTION NO. 167

MR. SLADE (Specially Elected Member) asked the Minister for Education, Labour and Lands what provision is made by Government at present for the education of boys and girls of mixed blood?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): There is one Government Primary Day School in Nairobi, specifically for children of mixed blood.

There are also seven schools in Kenya aided by Government which regularly admit children of such blood.

MR. SLADE: Arising out of that reply, Sir, is the Government satisfied that these schools are adequate to provide for all the boys and girls of mixed blood now needing education in the Colony?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): No child, Mr. Speaker, has ever been turned away from such a school for lack of space or lack of money.

MR. MBOYA: Arising out of the original question, Mr. Speaker, will the Minister state whether children of this category are allowed admission to European, Asian or African schools.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, there are numbers of children of mixed blood in Government European schools who have been admitted with the agreement of the school committee concerned.

MRS. HUGHES (Uasin Gishu): Can the Minister tell us whether there is any boarding accommodation visualized in Nairobi for these children?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Not without notice, Sir.

QUESTION NO. 173

MR. TRAVADI (Central Electoral Area) asked the Minister for Agriculture, Animal Husbandry and Water Resources the position of land in the White Highlands as at the date of the promulgation of the Kenya (Highlands) Order in Council, 1939, and now, with regard to the following:—

(*a*) The numbers of occupied and unoccupied agricultural holdings.
(*b*) The area alienated.
(*c*) The area occupied.
(*d*) the area under cultivation.
(*e*) The area of pasture land.
(*f*) The area of other land.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): I am unable to provide the information sought as no relevant statistics are available in respect of the year 1939 when the Kenya (Highlands) Order in Council was proclaimed, and the statistics available as a result of the 1958 non-African Agricultural Census are in respect of the non-African farming areas as a whole, and therefore include certain farms outside the Highlands.

I have however certain statistics taken from the 1938 Agricultural Census (European Areas) and the 1958 non-African Agricultural Census which may be of interest to the hon. Member for the Central Electoral Area and I am sending them to the hon. Member in writing.

QUESTION NO. 178

MR. ARAP MOI asked the Minister for Education, Labour and Lands what is the intake number of teacher-trainees in Teacher Training Colleges in 1960 as compared with 1958 and 1959 in—

(*a*) Nyanza Province;
(*b*) Central Province;
(*c*) Coast Province;
(*d*) Rift Province?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I beg to reply as follows:—

The intake numbers expected in 1960 as compared with the known numbers in 1958 and 1959 are as follows:—

Nyanza Province: 925 compared with 734 and 825 respectively.
Central Province: 900 compared with 610 and 763 respectively.
Coast Province: 159 compared with 147 and 117 respectively.
Rift Valley Province: 212 compared with 172 and 212 respectively.

MR. MBOYA: Mr. Speaker, would the Minister state whether all the teachers qualifying from these courses will be given employment after completing their courses?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, in our present state of a shortage of qualified teachers there is a vacancy for every teacher who comes out qualified from a teacher training college. However, teachers need not expect necessarily to be employed in the Province in which they trained or from which they have come.

MR. ARAP MOI: Mr. Speaker, arising out of the Minister's reply, would he tell us how many students were turned out from being admitted to the Teachers Training Colleges in the Rift Valley?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Not without notice, Sir.

QUESTION NO. 179

MR. ARAP MOI asked the Minister for Education, Labour and Lands how much money was allocated to Regional and District Education Boards in the form of Subvention in 1959/60 as against 1958/59?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, the amount allocated for subventions to Regional Education Boards in 1959/60 is £1,044,000 as against £843,700 in 1958/59.

District Education Boards keep their accounts by the calendar year and in African areas they receive the subventions from African district councils which also keep their accounts by the calendar year. For this reason it is not practical to give figures for the Government financial years, as requested in the question. The total of subventions to District Education Boards for 1959 is expected to be £1,902,075 as against £1,718,961 in 1958.

MR. ARAP MOI: Mr. Speaker, is the Minister aware that the local authorities under the Paper "Government Financial Relations with Local Authorities" can only grant two-thirds of the money allocated to educational expansion? Is he also aware that the local authorities are only allowed to spend not more than 50 per cent of their revenue on education? What is Government doing in areas such as the Nyanza Province, or the Central Province where they are not allowed?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I hesitate to initiate a debate on quite such a broad subject arising out of the question. I am aware that the Government subsidizes the expenditure of African district councils on education to the extent of two-thirds. I am also aware that as a general rule we attempt to restrict expenditure of African district councils on education to a reasonable percentage of their total free revenue.

QUESTION NO. 183

MR. TRAVADI asked the Minister for Education, Labour and Lands:—

(1) How many new places in primary and secondary courses (grammar, technical and modern) in the 1957/60 Asian Education Plan—

(*a*) have been created in the first two years ending June, 1959; and
(*b*) are expected to be provided for the 1959/60 period?

(2) What is the amount of money already spent and to be spent on each individual item out of the total capital expenditure of £614,862 for the Plan?

(3) If underspent, what are the reasons therefor and what has happened to it?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): (1) Nearly 4,000 places have been provided and we hope to provide more than 6,000 places during this financial year. (2) £203,827 were spent in 1957/59 and a special plan has been drawn up and is being implemented to spend over £411,000 in this financial year. (3) No significant underspending is expected unless, of course, building costs decline.

I will send more detailed figures to the hon. Member in writing.

QUESTION NO. 185

MR. NOALA asked the Minister for Education, Labour and Lands what direct benefit (between 1960 and 1963) will the African Teaching Colleges derive from the Commonwealth Education Conference held recently at Oxford?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): In considering how best to develop Commonwealth co-operation in teacher training, the Conference was obliged to recognize that at the present time teacher training facilities in all Commonwealth countries are seriously strained to meet domestic needs. It was therefore decided that the more developed countries should, as a first step, expand their own facilities, with the special object of offering help to others. This help would take the form of advanced courses for the staff of existing teacher training colleges in the countries requesting aid and also the loan of specialist staff for short periods from the countries giving aid. Both forms of assistance for African Teacher Training Colleges in Kenya will be actively

[The Minister for Education, Labour and Lands]

sought, when the machinery for receiving requests and examining them has been set up on the lines determined by the Conference. But it is too early to say how much assistance will actually be obtained in the period 1960 to 1963.

MR. NGALA: Mr. Speaker, Sir, can the Minister state within what period this machinery can be set up?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, this machinery should come into effect during the year 1960. Thereafter it will be necessary to see what facilities are by that time available for assistance to countries like Kenya.

QUESTION NO. 189

MR. ALEXANDER (Nairobi West) asked the Minister for Education, Labour and Lands what is the estimated total current cost and the number of teachers required to provide a primary school education for every child in Kenya?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): A little over £10,000,000 a year and about 34,300 teachers.

MR. TRAVADI: Arising out of the reply, is the Minister in a position to give the racial breakdown of the figures?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): To some extent on a specific question.

MR. ALEXANDER: Mr. Speaker, could the Minister say on what standards the figure of £10,000,000 has been assessed, whether it is the highest standard prevailing or the lowest standard.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I am not quite clear what the hon. Member means by the "lowest standards". The figure has been computed on the assumption that standards in the system of separate racial schools will remain as at present and that the cost per pupil will not be affected by the increases in numbers.

MR. ALEXANDER: Mr. Speaker, Sir, of this figure of 34,300 additional teachers, how long does the Minister consider it will take to recruit them?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I would like to correct a misapprehension on the part of the hon. Member. He asked me for the estimated total number of teachers: these are not additional teachers. The present number of teachers is 16,025 and the additional number would be 18,303.

I believe that the hon. Member's supplementary question related to the balance as between the different groups of schools, leading to a figure of 34,000. The total number in service will be 330 for European schools, 1,484 for Asian schools, 32,291 for African schools, and 223 for Arab schools.

MR. ALEXANDER: Mr. Speaker, of the additional 18,000 teachers, approximately, required, how long is it estimated to train them locally or recruit them?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I would hesitate to give such an estimate without due reflection.

DR. KIANO (Central Province South): (Inaudible).

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, the basis on which these figures were calculated was that seven years is a normal period of elementary education for non-Africans at present and eight years for African children. But the adoption of a 7-year course for Africans, for which there is a certain amount to be said, would not significantly affect either the total cost or the number of teachers.

MR. COOKE (Coast): Mr. Speaker, I know that difficulties exist, but could not consideration be given to compulsory education in urban areas only? How much money would then be required?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, if separate figures for urban areas are required I should have to recompute them at some length.

MR. MBOYA: Mr. Speaker, would the Minister state how long the Government intends to continue with this separate racial education as otherwise his calculations are misleading and unrealistic.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I have already answered the question and do not wish to be drawn into speculation on a broader subject.

QUESTION NO. 190

MR. ALEXANDER asked the Minister for Finance and Development what progress has been made on the examination announced in Legislative Council on 9th June, 1959, concerning the monthly allowance for civil servants who choose to spend their long leave in Kenya.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): After consultation between the Government and the Staff Side of Whitley Council the monthly allowance has been placed on a new basis designed to give further assistance to officers who for one reason or another do not wish to proceed on vacation or sabbatical leave, while ensuring that they do not add to the expense to the taxpayer. The new rates of allowance will be £16 a month for an officer earning a basic salary of over £825, £16 a month for his wife, and £8 a month for each child up to a maximum of two. An officer earning a basic salary of less than £825 per annum will receive £10 a month, £10 for his wife, and £5 for each child up to a maximum of two. The maximum allowance for a married man with two or more children will, therefore, be £48 a month as compared with £31 10s. a month under the old arrangements.

MR. ALEXANDER: Mr. Speaker, Sir, the Minister having stated that there would be no additional cost to Government, does he agree that a saving to Government would be welcome, and does he realize that with a maximum of £48 a month there is little inducement for civil servants to spend their leave in Kenya, and does he agree that Government would save considerably if they were prepared to share these passage costs more liberally with the civil servant?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): The hon. Member's question varies in extent and calls for a number of opinions. We did not say "expense to Government", Sir, but we said "to the taxpayer".

I would point out that the beginning of the sentence reads: "After consultation between the Government and the Staff Side of Whitley Council. . . ." These levels have been arrived at after consultation between the two sides concerned and the views of both sides were taken into consideration.

MR. SLADE: Mr. Speaker, did the consultation between the Government and the Staff Side of Whitley Council result in agreement by the Staff Side?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Mr. Vasey): I think, Sir, it could be stated that the circular which has gone out assumes, and I think correctly, that the Staff Side has agreed with this particular decision.

BILLS

FIRST READINGS

The Crown Lands (Amendment and Miscellaneous Provisions) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Entertainments Tax (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Courts (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Evidence (Bankers' Books) (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Industrial Training Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Land and Agricultural Bank (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow

The Mtwapa Bridge Bill

Order for First Reading Read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Provisional Collection of Taxes and Duties Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Wheat Industry (Amendment) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Estate Duty (Abolition) Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Hindu Marriage and Divorce Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

The Variation of Trusts Bill

Order for First Reading read—Read the First Time—Ordered to be read the Second Time tomorrow.

MOTIONS

East Africa Bag and Cordage Company Limited

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to move that this Council approves that the arrangements with respect to the East Africa Bag & Cordage Company Ltd., set forth in Sessional Paper No. 91 of 1956/57 be continued for a further period to 31st March, 1960.

Mr. Speaker, as hon. Members realize this is a formal motion, the original having been debated in April, 1957, and although the agreement can run for five years it is reviewed each year by Government. The main reason for a review is that this arrangement could not continue to be a success unless we had full co-operation from the other two territories, namely Tanganyika and Uganda, and I would like to take this opportunity, Mr. Speaker, in thanking the Tanganyika Government and the Uganda Government for the full co-operation that they have given us on this arrangement.

I feel that I need say no more, Mr. Speaker, other than to beg to move.

THE CHIEF SECRETARY (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

Transfer of Powers (Agriculture) Order, 1959

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to move that this Council approves the Draft Transfer of Powers (Agriculture) Order, 1959.

Mr. Speaker, as members know this matter has been before the Council for some time, and they have had considerable time to study it, and it is in accordance with the general principles of government that the system will move to a ministerial system, which has already been applied to other aspects of the ministry. But I would, Sir, like to take the opportunity, as I am sure Members of the House would like to know more of what the actual powers are which are being transferred to myself, and with your permission, Mr. Speaker, I would like to read out what they are.

(1) Sir, describes the specific designation under which any particular kind of agricultural produce may be exported and to find each such kind of produce.

(2) Describes the percentage of impurity and the maximum amount of moisture which may be presented in different kinds of grain for export.

(3) Describes the standards of composition and fix the maximum percentage of moisture, salt, preservative or other substitutes in milk products margarine and butter substitutes intended for export, and prohibit the export of any such articles in which the prescribed requirements are not maintained.

(4) Prohibit the export of agricultural produce which is being so treated as to give it the appearance of an article of different commercial value. This was brought to the notice, Mr. Speaker, of the Council of Ministers when we wished to increase the

[The Minister for Agriculture, Animal Husbandry and Water Resources]

moisture content of our export maize from 12½ per cent to 13 per cent to fall into line with other countries. This had to go before the Council of Ministers and then the Governor himself had to sign a proclamation. As will be seen from this, Sir, it is not a matter which I think the House would wish me to take up too much time especially as it is a technical matter, and I beg to move.

THE CHIEF SECRETARY (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

BILL

Second Reading

The Evidence (Amendment) Bill

Order for Second Reading read.

THE TEMPORARY MINISTER FOR LEGAL AFFAIRS (Mr. Conroy): Mr. Speaker, Sir, I beg to move that the Evidence (Amendment) Bill be now read a Second Time.

Sir, the Indian Evidence Act, 1872, subject to certain modifications applies in Kenya. We have not got our own legislation. Sections 25 and 26 of that Act in their original and unamended form although they might have been suitable in India 77 years ago, but in view of the government are not suitable for present conditions of Kenya.

Sir, section 25 provides that no confession made to a police officer should be proved as against a person accused of any offence. Section 26 provides that no confession which is made by any person whilst he is in the custody of a police officer, unless it be made in the presence of a magistrate, shall be proved as against such person.

Sir, in 1952 this Council amended those two sections (in their application to Kenya) by providing that in respect of section 25, which relates to confessions made to a police officer, that if such confessions were made to a police officer of or above the rank of Assistant Superintendent, or if such police officer were an administrative officer holding first or second class magisterial powers, acting in the capacity of a police officer then the confessions were provable in evidence. The 1952 Ordinance amended section 26 by providing that no confession made by any person while in the custody of a police officer, unless it be made in the presence of a magistrate or administrative officer holding first or second class magisterial powers, or a police officer of or above the rank of Assistant Superintendent, should be proved as against such person. Sir, in practice, it was discovered that these restrictions were too great, and in 1954 by Emergency Regulations both sections were amended. Section 25 provides that confessions made to an officer of or above the rank of Assistant Inspector shall be admissible in evidence, and section 26 allows confessions if made in custody to be proved if made before any magistrate or an Assistant Inspector. Sir, that has been the law for the last five years so we are in the position to apply the empiric test, deciding whether in practice they have worked fairly or whether in practice they have worked injustice.

Sir, I might, perhaps, at this stage, explain to hon. Members who are not familiar with criminal law, that there are two entirely different systems applicable under English law or applicable under Indian law relating to the admissibility of confessions. In India under the old Indian law, under the 1872 Indian law, no confessions are admissible if made to a police officer or if made in custody of a police officer unless made to a magistrate. Even if those confessions are true, even if those confessions are made completely freely by the person in custody or by the person confessing to a police officer they are still inadmissible. Sir, let us take an example. A man freely confesses that he has done a murder. If he confesses that under the Indian system to a police officer and there is no other evidence he has to be allowed to go free to commit another murder if necessary.

Now, under the English system the principle is entirely different. The general rule is that no confessions, and it does not matter to whom they are made, that no confessions are admissible, subject to this exception, that if the prosecution can prove that the confession was freely and voluntarily made—that is

[Mr. Conroy]

to say, that it was not made as the result of any threats or inducements—if the prosecution can positively prove that, then the court can admit the confession.

Now, Sir, as one judge said in England, "If the confession proceeds from remorse or a desire to make reparation for a crime, it is admissible. If it flows from hope, or fear, excited by a person in authority, it is inadmissible".

In 1912, the Home Secretary asked the judges in England to draw up a series of rules which police officers should follow in questioning persons who were in police custody. And those are very precise and practical rules. Now, Sir, they do not have the force of law, but I am sure all hon. Members who are accustomed to practice in the Criminal Courts would agree with me that it is in fact virtually impossible to get a confession admitted which has been made in breach of the Judges' Rules. So there is the additional safeguard under English law (which also applies in Kenya) that judges will not admit a confession if it has been made in breach of the rules laid down in 1912, and added to since then, which are designed to protect the legitimate interests of the persons in custody.

Now, Sir, this Bill does not seek to introduce either the whole of the Indian system or the whole of the English system. It is, I would submit, a fair compromise in the circumstances of Kenya. It may have been necessary, Sir, 77 years ago to say in India that no confessions to a police officer should be admitted. It may be desirable in England today to say that if the Prosecution can prove that a confession was made completely voluntarily that then it can be admitted no matter to whom it was made and whether the person was in custody or not. The proposal in this Bill is that the law in Kenya should be that if the Prosecution can prove that the confession was made voluntarily and if it was made to a person of, or above the rank of, an Assistant Inspector that then the court may admit it.

Sir, in those circumstances I do submit to all hon. Members that this is a reasonable compromise to work justice between both sides.

Sir, the Law Society does not agree with this Bill. I have had the opportunity of discussions with them. They have put their case up. Sir, they would rather go back to the system which was introduced in India in 1872. They would rather go back and repeal the amendments which were enacted by this Council in 1952. Sir, I can understand their point of view. When I myself was in private practice, I must say I always felt it was a bit unfair of Government to introduce any amendment to the law which made it easier for the Crown to prove that a guilty person was guilty.

Now, Sir, that I have had some little experience on the other side of the fence, prosecuting rather than defending, I take what I like to think is a more balanced view. I would not submit that the law should be weighed either one way or the other. I think it should be in the centre of the line and that is what I think and suggest that this amendment contained in this Bill will introduce.

Sir, I agree with the Lord Chief Justice of England who comparatively recently said this "It is too often nowadays thought, or seems to be thought, that the interests of justice mean only the interests of the prisoner". Sir, I will leave that thought in hon. Members' minds and beg to move that this Bill be now read a Second Time.

MR. WEBB seconded.

Question proposed.

MR. MANGAT (Specially Elected Member): Mr. Speaker, Sir, with profound respect to the hon. Member, I cannot persuade myself to agree with him that this Bill is necessary. Indeed, it is not desirable at all. The hon. Members must have heard the hon. Mover start off by saying that the law in India 87 years ago—although he said 77, but I think it is 87 years ago—might have been quite good for that country but it is not good for this country. I do not know whether he meant it as a compliment to or as a condemnation of the police or the population of India in those days. However, when he is promoting and is advocating the promotion of all sorts of people to higher ranks in the police, you will be able to realize

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how dangerous it is that even Assistant Inspectors of Police will be able to record confessions.

I am against this Bill as far as the substitution of the words "Assistant Superintendent" by the words "Assistant Inspectors" is concerned. Now, the Law Society in April last passed four resolutions on this topic which were forwarded to the learned Solicitor-General and I will read only one of these, that is, Resolution No. 3.

3. "That the Society records its belief that in their operation the amendments effected to section 25 of the Indian Evidence Act by Ordinance No. 39 of 1952 and the Defence Regulations do not tend to ensure the safe and proper administration of justice, have tended to lower the prestige of the police force as a whole and to much waste of time and public money by the considerable protraction of criminal trials."

There are three other equally forceful. "Protraction of criminal trials." Of course, this is referred to because in many cases a confession is retracted and then there is a trial within a trial to find out and to judge whether a particular confession was a voluntary confession. I do not suppose many hon. Members have had the opportunity of witnessing a trial within a trial concerning a confession, but it is not a good reflection on either the police or on the witnesses when the accused coming into the witness box is compelled to make all sorts of accusations against the police which may or may not be proved.

Now, Mr. Speaker, every practising lawyer would necessarily support the resolutions of the Law Society. The hon. and learned Mover said that the Law Society had perhaps had to pass those resolutions because they are on the Defence side and that they do not wish the Prosecution to have a ready made piece of evidence which is perhaps uncontrovertible. If I did not know him so well I would have said that that sort of remark is not consistent either with the dignity of a man who is at the head of the profession or with the profession itself because I cannot imagine any lawyer, if he finds that a confession is true, ever will advise his client to retract it. I will go further and say that if the lawyer in criminal practice finds that his client is actually guilty, he will not dare to put that client in the witness box as a truthful witness. So, broadly, that remark was uncalled for and I am sure the learned Mover did not mean what he said because the profession as a whole is anxious to help in the administration of justice and I am sure that he will bear me out that the profession itself helps the Crown Law Officers in coming to a just decision in all cases.

Now, if I might say a word on the desirability of confessions in criminal trials; what I am going to say is not meant for the learned Mover or his legal colleagues because they know all this and much more but what I am going to say is meant for my lay colleagues. Now several learned authors have expressed their views on this aspect of the law of evidence and I will quote just a few. I have found them in the Evidence Act. "The grounds for which confessions are received as evidence is the presumption that no person will voluntarily make a statement which is against his interest unless it be true. But the force of the confession depends upon its voluntary nature." And again, "The principle on which the confession is excluded from evidence is that it is under certain conditions testimonially untrustworthy. Moreover, the admission of such evidence would naturally lead to the agents of the police while seeking to obtain a character for activity and zeal to harrass and oppress prisoners in the hope of wringing from them a reluctant confession". Just one more quotation: "Confessions in this country are often obtained by undue influence, especially by the police, and this fact has been the subject of frequent public and judicial comments. The reports show that many confessions are induced by improper means and that innocent people often accuse themselves falsely is known to the reader of any book on evidence."

Now, these are extracts from the Indian Evidence Act and the hon. Members may get the impression that this might be happening only in India and not in England and perhaps not under the English system of law in this country. I will quote just one expression of opinion by a learned Judge of England. It is in the case of *Rex v. Thompson*

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1893, 2 Q.B. 12 at page 18, Cave J. said this: "I will add that for my part I always suspect these confessions which are supposed to be the offspring of penitence and remorse and which, nevertheless, are repudiated by the person at the trial. It is remarkable that it is a very rare occurrence for evidence of a confession to be given when the proof of the prisoner's guilt is otherwise clear and satisfactory. But when it is not clear and satisfactory the prisoner is not infrequently alleged to have been seized with a desire of penitence or remorse to supplement it with a confession, a desire which vanishes as soon as he appears in a court of justice."

Now, as confessions go, there are many confessions which never come to the courts; which are never disclosed or found out because after the man has confessed probably he does not plead "Not guilty" and so on a plea of "Guilty" he is sentenced. So we are not even aware of how many confessions are taken, recorded, and merely under the threat of those confessions the accused person is obliged to plead "Guilty" and go to prison. And from those confessions which come to court—my learned friend the hon. Mover would know better than I do how many retractions are made actually in court at the hearing of the case and then that trial within a trial is bound to follow and the judge has to investigate and be satisfied that the confession was nothing but voluntary before he can admit it in evidence and that itself necessitates a fair amount of time and probably both the prosecution and the defence cases suffer in those preliminary conflicts.

Now, with the sort of accused in the African population which, with due respect to the population, I would say is not much better than what the Indian population was 87 years ago, I do not think it is safe to say that they can take care of themselves; that they are sensible enough really to realize their rights as accused persons which they do possess under the law.

Now, Sir, is it really necessary that an Assistant Inspector be authorized to receive confessions? In 1952, as the learned Mover has said, we relaxed the stringent provisions of sections 25 and 26 and then later in 1954 we relaxed them still further. Now we wish to make them permanent. I do admit that in the case of a national emergency perhaps it was necessary that we should have relaxed those provisions but to make them permanent would certainly be disturbing a well-established rule of evidence law which judges in England and in this country have been anxious to safeguard.

Now, the main reason given for the amendment is contained in the Memorandum of Objects and Reasons. I will read the first few lines: "By sections 25 and 26 of the Indian Evidence Act of 1872 as applied to the Colony, confessions made to police officers of the rank lower than that of Assistant Superintendent are rendered inadmissible in evidence. Experience in recent years has shown that officers of that rank are not sufficiently numerous or widely distributed to render them available or readily accessible to record voluntary confessions."

Now, Sir, I hope the hon. Members will have noted the words "readily accessible". Now, in law what do those words really imply? To any lay man, they mean that as soon as a prisoner is arrested, brought into the cell, due to some reason or other, even in the hope of getting a release on bond, at once he will say, "All right, I will confess this guilt". Then the police officer and, in this case, the promoters of this law, are anxious that a man must be readily accessible before whom this prisoner can be taken so that he does not change his mind. If that is not the intention, I think the words are not properly used.

And now let us see the number of people who are competent to receive confessions in this country. The number of Assistant Superintendents in our force is 135. There are other police officers of higher rank and they are competent to receive voluntary confessions who number 80. Besides these police officers, there are 442 magistrates, commissioners, district commissioners, district officers, making a total of 657 people competent to receive confessions. And if you calculate that, it comes to one confession recorder to every 35 miles square in the country.

Now, under section 32 of the Criminal Procedure Code we have a provision that any man arrested without a warrant

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must be produced before a magistrate or before a police officer in charge of a police station with all expediency, with all haste. And in practice all such persons are produced before competent courts within 48 hours unless a holiday intervenes or something exceptional happens. Now, Sir, if any ordinary person arrested by the police without a warrant has to be produced before a magistrate in 48 hours, cannot that man if he wishes to confess still make his confession before the magistrate who has jurisdiction over his case and before whom he has been produced within those two days? Do the promoters of this Bill wish that whether this man is produced before the magistrate or not within 48 hours that there must be a man readily accessible before whom he can make his confession at once so that it can be recorded? I must admit, Sir, that that is something that should never be allowed to be introduced into the laws of this country. I say particularly the laws of this Colony because the African population is suffering already from the undue and overbearing exercise of the powers with which the police has been invested. We see examples every day when a man walking the street is arrested for a very slight offence and whisked away without information to his employer who may be anxious to get him back by payment of his fine and we only hear of his offence and his punishment after he has actually undergone the term of imprisonment. India 87 years ago might be anything, but Africa today is in a state where the police officer must not have powers which he can exercise without due reference to court. And the confession of an accused person is something which even if offered to a police officer in this country should not be accepted. I should have thought that the law would have gone the reverse way, that conditions prevalent in this country are such that we cannot risk the accusation against the police that undue influence was exercised in extracting a confession. Why does the Government invite this chance of accusations against the police and does it really believe that a mere Assistant Inspector is competent to receive a confession pertaining to all offences, including murder? It would be a disgraceful state of affairs if this was incorporated in the Laws of the Colony.

The law of evidence of India has been approved by the highest judicial tribunals in the British Commonwealth of Nations. When India was within the jurisdiction of the Privy Council its Evidence Act was worked upon by the Judicial Committee of the Privy Council. And since the proposal for this Bill comes from a person at the head of my own profession, I do not wish to use very strong words. But I would ask the hon. Members of this Council not to approve this Bill. If I were using a humerous term, I might say that one day they might find that they themselves are actually suffering from the effects of this Bill. A confession of any sort is a most dangerous thing. Before magistrates probably even a retracted confession has already made its impression and even though theoretically courts are to disabuse their minds of those things which are excluded from evidence but when a confession is discussed for the purpose of its being admitted in evidence it comes before the mind of the tribunal and it is possible that it may taint that mind. Therefore, the provisions of the Evidence Act under sections 25 and 26 which before they were adulterated in 1952 by our own amendments, should be gone back to. The Law Society of Kenya is composed of about 300 or more members of the legal profession. I am sure the Crown Law Office gives the Society the respect it deserves and if that Society at its Extraordinary General Meeting opposes those changes in law which were only justified by conditions of Emergency, I should have thought the learned Mover would have given more consideration to those resolutions and not dismissed them by saying that perhaps it was in the interests of the Law Society that they should have weaker Crown cases . . . .

MR. CONROY: I am grateful to the hon. Member for the giving way but I never said anything of the kind.

MR. MANGAT: It is too common that lawyers never agree, even on the interpretation of very apparent clauses!

I still maintain that if the Members of the Law Society unanimously in their General Meeting should have passed a resolution condemning those amendments, that should have been sufficient for the Crown Law Office and those recommendations should not have been over-ruled so lightly.

[Mr. Mangat]

Now, this is a matter, Mr. Speaker, which is contained only in two clauses but it goes to the root of the principles of a fair trial. It is possible that the Government Benches would be led by their legal advisors and simply vote for the Bill. That has happened before and it may happen now. But if 350 lawyers of this country are against this Bill and most of the official members also have respect for those lawyers, I would seriously urge upon them to tell their legal advisors, their official legal advisors, to hold their hand. If 650 people of this country competent to receive confessions are not quite enough, must there be 1,150 more. For as soon as the Assistant Inspectors have been declared competent to receive confessions there will be 1,150 people more competent to receive those confessions. Imagine the state of this country when every third policeman is anxious to get a confession to prove his case and probably then quote it as one of the recommendations for his promotion.

Mr. Speaker, I strongly oppose this Bill. Not only I, but I am sure that every lawyer in this House would do likewise and I would urge upon every Member of the House, whether official or unofficial, to see that this Bill does not go forward. I beg to oppose.

MR. MOLIRO: Mr. Speaker, Sir, I also rise to oppose this amendment very, very seriously because I do not think this stage would be the best stage for the Kenya Government to try and bring in this amendment. When the amendment was first made in 1952, that was the time of the Emergency. And even during that time of the Emergency, the Kenya Legislative Council or Kenya Government, at that time because of this feeling probably just according to them that would have been roused, never deemed it necessary to legislate that Assistant Inspectors of Police could receive confessions.

Now, at that time when it was very bad; in fact, when it was possible to pass whatever Emergency measures the Government wanted, at that time they never introduced a measure of this kind. I do not see the reason why at this time of the state of conditions in Kenya that the Kenya Government should now move an amendment of this kind.

The Africans have been very worried in the past that many of the Emergency Regulations were going to be retained in substantive laws. And now, not only that but we have come to know that it is not only the Emergency Regulations which are going to be retained but in fact even the Emergency measures are going to be more stringent because I do not think an Assistant Inspector of Police would be the right person, even an Inspector of Police of a given station for that matter, who has arrested people and then that same person goes to the same officer of the police to make a confession. That is most unwise and most unfair. What the Prosecution does all the time is to prove that its case is right and the officer in the given station who files the case against the given culprit will try to prove his case right. Now, if that same person is going to be the Prosecutor of the culprit and the same person actually gets a confession from that person, would that be fair at all to the accused? I do not feel, Mr. Speaker, that this is the time to allow any serious miscarriage of justice of this kind to be imposed any more in Kenya. Although the Minister for Legal Affairs says that someone in Kenya, according to the Indian Evidence Act, if he makes a confession that he actually committed murder, that the murderer would be left alone for years until he has committed his second murder, probably, before he could be arrested, I do not think that such analogies should be produced in this case.

The Africans, in this country, for instance, have been very worried that magistrates' powers being conferred upon certain district officers because a district officer although he is an administrator at the same time also holds magisterial power and people like that getting confessions would not be at all wise. Therefore the African public and the African Elected Members of this Council will oppose this completely and I think even the people on the Government side will side with us on this occasion and reject this amendment by the Government.

I beg to oppose.

MR. MUCHURA: Mr. Speaker, Sir, I must congratulate my hon. friend in front of me on the most explicit manner in which he explained the case for this side of the House. I will not probably go to the same length because firstly I am

[Mr. Muchura]

not legally trained and secondly I can only go to a lawyer for advice. But I do remember some time ago, when in the Supreme Court somebody appealed against a confession and the Supreme Court more or less described it as very unfair that a person arrested by a certain person should be tried by the same person and not another person. In this case it was implied that the administrative officer was the prosecuting officer and at the same time he was the trial judge.

I would like to draw another analogy from the Civil Service and that is the delegation of powers. At one time the Government decided to delegate its powers to the heads of departments and from the heads of departments down to some district and provincial officers. As soon as that started there was what we believed to be injustice in the Civil Service. It was a matter of discipline, a matter of orders, but as soon as the powers were delegated there was injustice in the lower strata. We heard of cases in the Emergency concerning first-class inspectors. All sorts of things have happened which should not have happened and there were injustices. Mr. Speaker, I think we ought to plead with the Government Benches to see the point of view being put across from this side and to make a compromise.

I beg to oppose.

MR. KHAMISI (Mombasa Area): Mr. Speaker, I also rise to oppose the Motion before the House because I feel that this is going to be very dangerous to the poor Africans. It will be impossible for a poor man who has been arrested to go before a magistrate and tell him and make a magistrate accept his word that he voluntarily made the confession before this particular junior officer in the police. Most probably if this person was arrested he was told, "If you make a confession I shall let you go off free". That can easily happen and it is for that reason that it would be far better that the law should remain as it is at present, that a confession can only be made to an assistant superintendent, because in most cases these superintendents are not out to arrest people. It would be far more preferable if these confessions were restricted only to the magistrates because they would be impartial in dealing with the persons, when they have had nothing to do with the arrest or detention in the police cells, or anything of that sort. Therefore, I do feel, Sir, that by accepting this Bill we shall be committing a grave mistake and we shall be perpetuating injustices which in many cases do occur to the ordinary poor man. While it may be all right for an educated man, who can call in a lawyer to aid him, to an ordinary man in the street it will be extremely difficult and this amendment will cause considerable hardship to very many Africans, in particular. Not only that, Sir, but I feel that the principle behind it is trying to perpetuate the Emergency powers which existed for the purposes of the Emergency. Now, as the Emergency is receding, I feel that such powers are no longer essential during these times.

For those reasons, Sir, I feel that I must strongly oppose this Bill which is at present before the House.

MR. TRAVADI: Mr. Speaker, I also rise to oppose this Bill.

My hon. learned friend has very ably given reasons for opposing this Bill, Sir, and I would not like to go into the legal side of that, but as everybody is aware, Sir, Kenya today has a very bad name outside its own borders, and to perpetuate such legislation, which in India was meant to prevent torture on the persons in the docks and in the custody of police and to prevent people below certain rank taking confessions of guilt, is surely not wise. To perpetuate legislation of this kind in Kenya at this time will make matters go from bad to worse. I would say that the Law Society, and that of Mombasa and Nyanza and others, have unanimously condemned this legislation, and I feel that the experience of these legal practitioners is much more valuable than an ordinary opinion of a man here or there.

I beg to oppose the Bill.

MR. NGALA: Mr. Speaker, I also rise to oppose this amendment.

However, I must first of all congratulate the Law Society for condemning this amendment. I feel that the Law Society are more informed of the difficulties of the people throughout the country, and they are probably more knowledgeable than the Government. I think they must have felt the necessity

[Mr. Ngala]

for not having this law in the present situation in the country. I feel, Sir, that the police must be kept on their business of maintaining law and order, and probably arresting, but they should not be given any such responsibility for confessions. I think it will only confuse the cases of the mass of people—Asians, Africans and Europeans—in this country; and it will create hardship and danger if people are made to confess to an assistant inspector of police first. So, I feel to avoid the confusion and probably to avoid unnecessary interference with the procedure of any subsequent cases, this amendment should be dropped at once in the interests of the people of the country.

With these few words, Sir, I beg to oppose the amendment.

MR. CONROY: Sir, it is clear from the views expressed by hon. Members opposite that they feel anxiety about this Bill and, therefore, if I deal with the difficulties expressed by them at some length, perhaps I might be forgiven, because it is a matter on which people obviously feel very strongly.

If I might start with the last Member first, the hon. Member for Coast Rural said that this amendment would create confusion. It has not created confusion in English courts over the centuries and it has not, so far as I am aware, created confusion in Kenya during the last five years during which it has been the law. I shall come back to the practical aspects of the objections which have been raised from the other side in a moment.

Then the hon. and learned Member for the Central Electoral Area said that he would rather accept the opinion of the entire profession against one man's opinion. Sir, this is not solely my opinion but it is also the opinion of English judges and English common law.

Then, Sir, the hon. Member for Mombasa Area said this: "How can a poor accused man show that his statement was not voluntarily made." I am very glad he raised this point because it does show that there is honest concern in the hon. Member's mind on this point The law is not that an accused can have his confession excluded by showing that he did not make it voluntarily, the law is the other way round. The law is that no statement can be admitted unless the prosecution can positively prove that it was made voluntarily. Then, Sir, an example of that was a point raised by the hon. Member for Nyanza North, when he said how unfortunate it was that the same officer may be the prosecuting officer and also the officer who received the confession from the accused. Sir, the Court of Appeal for Eastern Africa has said so in so many words; they have said that it is very undesirable, and I have known cases in which a confession has been excluded on that very ground, because the courts have said that where the prosecutor and the recipient of the confession are the same person then "I am not satisfied", says the judge, "that this confession was made voluntarily, and therefore I will exclude it". I hope that will help to meet the point in the mind of the hon. Member for Nyanza North when he reads HANSARD tomorrow morning as I see he has not waited for my reply to the question which he asked.

Then, Sir, he went on to say, "Look, in 1952, when you could have introduced any kind of Emergency Regulation, the Government did not do so; they only amended the Indian Evidence Act to render confessions made to an assistant superintendent or above permissible." He is a little wrong there, Sir, because this Ordinance was enacted before the Emergency was proclaimed and not after, as he suggested.

Then, Sir, the hon and learned Specially Elected Member, my hon. friend Mr. Mangat, said that I had brushed off—I think that was his implication—the points made by the Law Society in their resolutions, that I did not pay sufficient attention to them. He went on to say that it was wrong for someone to disregard views expressed unanimously by all the lawyers in private practice in Kenya. I hope that I did not give that impression in my speech in moving the Second Reading of this Bill, because, of course, the position is very different from that suggested by the hon. Member, Sir, the position is this: that on 11th April the Law Society had a meeting at which they passed four resolutions. The first was that from the professional experience of its members the Law Society of Kenya is convinced

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of the wisdom and justice of section 25 of the Indian Evidence Act in its original form under which confessions of guilt made to police officers could not, as such, be proved against an accused person. That, Sir, is a statement of fact: that from the professional experience of the members of the Law Society they were convinced of this.

Their second resolution was also a statement of fact, that from the course of the practice of its members the Law Society has found nothing to justify the maintenance of the principle of confessions of guilt by accused persons to police officers above the rank of assistant superintendent to be admitted in evidence, much less that the principle should be extended so as to include officers below that rank. Again, Sir, that is a statement of fact, that from the course of the practice of its members the Law Society has found nothing to justify the amendment. Then, Sir, the third resolution was that the Society records its belief that in their operation the amendments effected to section 25 of the Indian Evidence Act by Ordinance No. 39 of 1952 and the Defence Regulations—I think they mean the Emergency Regulations, not the Defence Regulations—do not tend to ensure safe and proper administration of justice, have tended to lower the prestige of the police force as a whole and have led to much waste of time and public money by the protraction of criminal trials. Sir, if the court is enquiring into any matter of gravity, any matter of importance in the trial of a criminal case, then there is no waste of time and no waste of public money. Of course, even the most trivial case must be tried properly. It is only when frivolous points are raised by the defence that waste of time and public money can occur, and it seemed to me, as I read this resolution, odd on the part of the Law Society that they should take this point: and, Sir, we shall come back to this in a minute because we find that in Tanganyika the old Indian Evidence Act, unadulterated, if I can use that expression, prevails, and there, I gather, just as much time is taken up—I will not use the word wasted—in contesting the admissibility of retracted confessions. In Uganda, Sir, they go much further than we are seeking to go in this Bill. They have the English system without any strings or conditions attached to it. Then, Sir, under the fourth resolution, the Law Society refers to confessions made in the presence of magistrates which I do not think is really relevant to the present issue as raised by the other side in this debate today.

Now, Sir, the Law Society having done me the courtesy of sending me a copy of their resolutions, I hope I have reciprocated their courtesy by replying to them as follows. I am sorry that I have got to read this at length, but I have been accused of treating the Law Society in a cavalier fashion, and because I have such great respect for that body, of which I am a member—(and I have paid my subscription I should like to tell the hon. and learned member)—I shall read in full what I wrote to them. "Thank you for your letter. The Bill was published on 24th February and therefore becomes ripe with its introduction into Legislative Council on 4th April. I now understand that the general meeting of the Law Society is due to take place on 11th April and I have arranged that the First Reading of the Bill will not be taken before 5th May;" so I was meeting the Law Society there to allow them to consider this matter. "This will allow you to discuss the Bill at your general meeting and to let me have your views on it. You say that there is strong feeling in the profession as a whole that the admission of confessions made to police officers has in practice done more harm than good but I am sure you will agree with me that the Government cannot act on broad generalizations such as this." As I pause there, Sir, we will remember the resolutions which made three statements of fact that as a result of their practices the members of the Law Society had come to certain conclusions. "I understand that for some time past the law of Uganda has contained similar provisions to that now proposed in Kenya and I cannot accept that the Kenya police are in any way inferior to the Uganda police. To the best of my knowledge the law has worked adequately and has not given rise to any misgivings in Uganda. If, therefore, you wish to put up a case to the Government for either amending the Bill or not proceeding with it would you please give

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specific cases on which the profession bases the strong feeling that the admission of confessions to police officers has done more harm than good. I would suggest that the true protection of the citizen lies not in the rank of the officer to whom confessions are made, provided his rank is sufficient to ensure an adequate standard of education and responsibility for the proper recording of confessions, but in the Judges' Rules and in the burden which rests on the Crown of proving that confessions have been made voluntarily. As the Bill was published on 24th February and in view of the pressure of the Legislative Council programme I should be obliged if you could let me have this information by 30th April", that is to say, some three and a half weeks ahead.

As a result of writing that letter a deputation of three senior and responsible private practitioners called on me and we discussed the whole problem. I made a record of the interview and it reads as follows: "The three gentlemen represented that it was the Law Society's considered view that the law of Kenya should revert to that of India in 1872 (that is, Sir, that the 1952 Ordinance should be repealed). One of the practitioners produced a cutting from the London *Observer* and alleged that there was considerable feeling in England that legislation on the lines of the 1872 Act should be introduced here." I said, "I was not prepared to agree either that the views put forward by the *Observer* were necessarily right or that those views represented the broad concensus of opinion in England. On reading the extract which was handed to me I pointed out two basic fallacies, one of law and one of fact, and I said that I was prepared to place no reliance whatsoever on the arguments contained in the extract shown to me from the *Observer*." Now, Sir, the position we have there is that the Law Society have said that from their members' experience they have come to this conclusion. I have replied to them, saying, "Please give me the facts on which you base that opinion." Sir, these three gentlemen come along and they produce to me a piece of newspaper cut out of the London *Observer* and then, Sir, they go on to say that they think it would be a very good thing if we went back to the 1872 Act. I said that I could not agree with this. The interests of justice included the interests of the prosecution as well as the interests of the defence. It would be quite wrong if a wholly voluntary and true confession of guilt were to be excluded merely because of the rank of the officer to whom it was made, thus allowing an admittedly guilty person to escape his punishment on a technicality. I also pointed out that the views of the Law Society might possibly be coloured by the fact that their practice was almost invariably for the defence and not for the prosecution.

The members of the Law Society then asked me whether I would take the views of the judiciary and as that was their specific request I did so. The Chief Justice, who has sat as a judge in Tanganyika, where they have the Indian Act completely applied without amendments, and who has sat as Vice-President of the Court of Appeal, and therefore has experience of Uganda law which applies the English principle and who of course has had experience here in many criminal trials as Chief Justice, said that in his view it was not in the interests of justice to exclude all confessions made to police officers, he said that he considered that the true protection of the public lies in the Judges' Rules and the burden which rests on the Crown of proving that the confessions have been made voluntarily. "In my experience in Tanganyika (where no confessions to police officers are admissible) just as much time was spent contesting the admissibility of confessions made to magistrates." I am sorry, Sir, if I have taken some little time to deal with that but the hon. Member did suggest that I had been less than courteous to the Law Society and I have been at pains to show that I have given them every opportunity to support their case by the production of the facts, but they have been unable to do so.

Now, Sir, he raised other points, too. First of all he quoted a case in 1893 in which Mr. Justice Cave said that he always suspects confessions. That is quite right, Sir; that is the English law. The English law is that you do not accept confessions unless it is positively proved that they were freely made, and therefore it is the duty of every judge to

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suspect every confession. If there is any suspicion about it after the matter has been gone into it must be excluded; and that is the law which this Bill seeks to introduce here.

Then, Sir, we were given some statistics which show, I think, that, if this Bill became law, 1,150 officers in Kenya would be able to receive confessions. It may be some consolation to the hon. Member that if the Metropolitan Police were up to strength there would be 19,000 in London able to accept confessions, and the populations statistics of Kenya and London are not very different.

Then, Sir, he said that the law of evidence in India had been approved by the highest judicial tribunal, the Privy Council. Well, Sir, that may have given a wrong impression to hon. Members. The Judicial Committee is an appellate tribunal and they have to try appeals in accordance with the law in the place where the trial was held. If the trial was held under Indian law then they had to apply Indian law. They were not allowed to express approval or disapproval and either accept or reject it but they were bound to apply the law enacted in the place from which the appeal lay. I might equally well have argued, had I wished to do so, that the Judicial Committee had also expressed approval of the English system of law in appeals which lay from both/parts of the Commonwealth where the English system prevailed. I do not think the hon. Member therefore produces a very cogent argument under that head.

Now, Sir, we have all talked here at some length and this issue, like most issues, can be boiled down to one very simple small question. That question is this: if a man charged with an offence makes a voluntary confession of guilt then is it in the interests of the public that he should be convicted or not? He is a guilty person who voluntarily and truly confesses his guilt.

MR. COOKE: You are assuming the confession is voluntary.

MR. CONROY: That is the Law of England. If the prosecution can prove positively to the satisfaction of the court that he made a voluntary confession then should it not be admissible? Or, and this is the other side of the coin, should we say that, because the person to whom the confession was made had certain badges of rank on his shoulder or his sleeve, that confession, even though true, even though genuine, should be excluded, and that guilty person should be acquitted on a technicality? That is the very simple issue involved.

SIR CHARLES MARKHAM (Ukamba): He can always plead guilty in court.

MR. CONROY: Sir, the hon. Member says that he can always plead guilty in court. Experience often shows that after a man has been in jail, where he has possibly been awaiting trial, and after he has had an opportunity of talking, for example, to people in prison who may be old recidivists, then he considers that he will, although guilty, not confess.

Sir, there is a very simple issue here and I have posed it very simply for hon. Members. In those circumstances they may wish that a guilty man should be convicted or they may wish that he should be acquitted on a technicality. That is the issue.

Sir, I beg to move.

DIVISION

The question was put and Council divided.

The question was agreed to by 37 votes to 25.

AYES.—Messrs. Amalemba, Bechgaard, Blunt, Colchester, Conroy, Coutts, Crosskill, Sheikh El-Mandry, Mr. Farah, Mrs. Gecaga, Commander Goord, Capt. Hamley, Messrs. Harrison, Hope-Jones, Hunter, Dr. Ismail, Col. Jackman, Messrs. Johnston, Jones, Kebaso, King, Luseno, Mackenzie, Mathieson, Lt.-Col. McKenzie, Messrs. Mohindra, Nathoo, Ntimama, Nzioka, Nurmohamed, Rubia, Sagoo, Smith, Swann, Sir Ernest Vasey, Messrs. Waweru and Webb.

NOES.—Messrs. Alexander, Bompas, Cooke, Hassan, Khamisi, Dr. Kiano, Mr. Mangat, Sir Charles Markham, Messrs. Mate, Mboya, Moi, Muchura, Muimi, Muliro, Ngala, Ngome, Odinga, Pandya, Shatry, Mrs. Shaw, Messrs. Tipis, Towett, Travadi, Usher and Zafrud-Deen.

The Bill was read the Second Time and committed to Committee of the whole Council tomorrow.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair]

The Companies Bill

Clause 2

MR. WEBB: Mr. Chairman, before I move the amendment of which I have given notice on clause 2, I should just like to say what has happened with regard to this Bill since it was given its Second Reading. A number of bodies of professional men have been considering the Bill, and I have been in touch certainly with the Law Society, the Accountants and the Chambers of Commerce, and they have all accepted, I believe, the principle that this Bill should pass virtually in the form in which it is now, with certain minor amendments, but that the major matters of policy which they wish to be considered should be sent to the Government and then considered with the Governments and interested bodies in the other two Territories with a view to agreeing amendments. As hon. Members will have heard in the course of the current election campaign in Great Britain, it looks as though the Companies Act, 1948, will be examined there, and since all our legislation is based on the U.K. legislation it may be that we shall derive some assistance from any investigations into the working of the Act which come from England. It may be also that we will take the opportunity of making representations ourselves about points on which we have found difficulty when trying to operate similar legislation. I hope, therefore, Sir, that everybody will feel satisfied that we are doing our best both to meet their justifiable points of principle and at the same time try and get some legislation enacted and into force which I know the commercial community wants.

With those few remarks, Sir, I beg to move the amendment which I have given notice of to clause 2 which is by adding after the words "the registrar of companies", which appear in the definition of "registrar" in subsection (1), the words ", the deputy registrar". This is a purely formal amendment, Sir. In clause 382, which provides for the appointment of a registrar and a deputy registrar and assistant registrars, there is also provision that the deputy registrar may exercise any powers of the registrar, but nevertheless it seems desirable that he should, for an abundance of caution, be included in this definition.

I beg to move.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Chairman, I wish under Standing Order No. 12 to draw your attention to the fact that we are not a quorum.

THE CHAIRMAN (Mr. Conroy): Under Standing Order 15, which provides as follows: "If at any time after the business of Council has commenced or when the Council is in Committee the attention of Mr. Speaker or the Chairman of the Committee is drawn to the fact that there is not a quorum present, Mr. Speaker or the Chairman shall count the Council or Committee as the case may be. If on the first count a quorum does not appear to be present, Mr. Speaker or the Chairman shall cause the divisional bell to be rung as on a division, and if no quorum be present after the expiration of three minutes he shall, after the lapse of such further time as he may think reasonable, announce to the Council or Committee, etc." It is therefore my duty to take a count. Ten excluding myself. The quorum is laid down in Standing Order 14 which provides that a quorum of the Council or Committee of the whole Council shall be 12 Members excluding the Member in the Chair. We have not got a quorum and so would you please ring the Divisional Bell for three minutes. There is now a quorum present and I shall propose the question which has been moved.

Question proposed.

The question was put and carried.

Clause 2 as amended agreed to.

Clauses 3, 4, 5, 6, 7, 8, 9 and 10 agreed to.

Clauses 11, 12, 13, 14, 15, 16, 17, 18, 19 and 20 agreed to.

Clauses 21, 22, 23, 24, 25, 26, 27, 28, 29 and 30 agreed to.

Clauses 31, 32, 33, 34, 35, 36, 37 and 38 agreed to.

Clauses 39, 40, 41, 42 and 43 agreed to.

Clause 44

MR. WEBB: Mr. Chairman, I beg to move that clause 44 be amended by deleting all the words after the words "a private company" where they first appear in subsection (2). I am afraid my amendment simply said "which appear" —they appear twice and I intended the first time.

Mr. Chairman, this amendment is related to an amendment which I shall also be moving in due course to clauses 111 and 130. In this Bill these three clauses all differ from the equivalent sections of the U.K. Act, and one purpose of this amendment is to bring them back into line with the U.K. Act. Sir, this clause relates to the statutory meeting which every company except a private company is required by clause 130 to hold. It is required to hold that statutory meeting within a period of not less than one month "or more than three months from the date on which the company is entitled to commence business. Clause 111 provides when a company is entitled to commence business, a private company on the date of its incorporation and a public company in accordance with the provisions of that clause. A difficulty arises where a private company becomes a public company. Now, that is a very common thing. A group of people who want to start a business very frequently form a small private company to start with and later convert it into a public company, but the requirements of the law in relation to private companies are not the same as those in relation to public companies, and the private company will already have been able to commence business without having had a statutory meeting. It is therefore impossible for this clause to be complied with in relation to a private company which converts to a public company, and I therefore beg to move.

Question proposed.

Question that the words to be left out be left out put and carried.

Clause 44 as amended agreed to.

Clauses 45, 46, 47, 48, 49, 50, 51, 52, 53, 54 and 55 agreed to.

Clause 56

MR. WEBB: Mr. Chairman, I have no amendment to move on this clause, but my hon. and learned friend, Mr. Bechgaard criticized the clause in the course of the debate on the Second Reading, and I have been examining it with a view to seeing whether anything can be done about it. Mr. Bechgaard criticized the clause on the ground that it penalized, in effect, certain ordinary and perfectly proper commercial transactions. Sir, I think this criticism is fully justified. Mr. Bechgaard went on to suggest two possible remedies, but the Registrar of Companies and I having considered them very carefully have decided that they are both really quite impracticable in practice. As Mr. Bechgaard said, Sir, when he criticized this clause, it is not new in this Bill. Indeed, it was enacted shortly after the first World War to deal with a difficulty which then arose. The only justification for this clause, Sir, is that it works in practice although it is more honoured in the breach than the observance. I am in consultation with my opposite numbers in the other two Territories about this clause, and I think that my learned and hon. friend would be the first to admit that it may be very difficult to draft a provision which both remedies the mischief and yet is not an unreasonable curb on ordinary business transactions. I say this, Sir, to reassure him that we are trying to do something about what is really a very difficult problem. The mischief was a form of takover bid that became prevalent after the first World War, and in all the circumstances which have been happening recently in England I am sure the matter will be considered in the light of any examination of the 1948 Act there.

Question proposed.

The question was put and carried.

Clause 56 agreed to.

Clauses 57, 58, 59, 60, 61, 62, 63, 64, 65, 66 and 67 agreed to.

Clauses 68, 69 and 70 agreed to.

Clauses 71, 72, 73, 74, 75, 76, 77, 78 and 79 agreed to.

Clauses 80, 81, 82, 83, 84, 85, 86, 87, 88 and 89 agreed to.

Clauses 90, 91, 92, 93, 94 and 95 agreed to.

Clause 96

MR. WEBB: Mr. Chairman, I beg to move that clause 96 be amended by leaving out the proviso to subsection (7) and by inserting in place thereof a new proviso as follows: "Provided that, where more than one issue is made of debentures in the series, there shall be delivered to the registrar for registration within 42 days after the date of its issue particulars of the date and amount of each issue, but an omission to do this shall not affect the validity of the debentures issued."

The purpose of this amendment, Sir, is to supply an omission where there has been a series of debentures created in the form of several issues. Subsection (1) of clause 96 requires every issue of debentures to be reported to the registrar within 42 days after the date of its creation. There is no such similar provision in the proviso where the debentures come out in a series, and the purpose of this amendment is to supply that omission.

Question proposed.

Question that the words to be left out be left out put and carried.

Question that the words to be inserted be inserted put and carried.

MR. BOMPAS (Kiambu): I am not concerned particularly with an amendment of any sort, Sir, but there is a difficulty which presents itself to my mind. Where a registration of a Charge which involves immovable property, whether there should not be some provision in cases where delay in registration at the hand of the Registrar of Titles is concerned resulting in the company secretary, or the solicitors for the company, not being in possession of the registered documents registered in the Registry of Titles in time to register with the Registrar of Companies. It is not unusual, Sir, for documents to take upwards of three weeks for registration in the Registry of Titles, and should it be the case that the mortgage or charge created, is one which requires consent of the Land Control Board, it is possible, at least, that the period might be longer than 42 days, and I would ask Government, Sir, to address themselves to that possible difficulty. It may be a little far fetched, but I can visualize it could arise in certain circumstances.

MR. WEBB: The hon. Member's comment is valid, but I do not think the Registrar of Companies has ever proved difficult about it when told the reason. The remedy in many cases is that it is possible to register with the Registrar of Companies before going to the Registrar of Titles, but nevertheless it is a matter to which Government will give attention.

Clause 96 as amended agreed to.

Clause 97

MR. WEBB: Mr. Chairman, I beg to move that clause 97 be amended by substituting the word "deliver" for the word "send" in subsections (1) and (3). Perhaps I could take it in two bites: that subsection (1) of clause 97 be amended by substituting the word "deliver" for the word "send". This is purely a drafting amendment, Sir. The word "deliver" has been used as far as possible throughout this whole Bill for causing things to get to the registrar, and in particular it has just been used in clause 96, and this amendment is simply designed to bring the language into accord.

Question proposed.

Question that the word to be left out be left out put and carried.

Question that the word to be inserted be inserted put and carried.

MR. WEBB: Sir, for the same reasons precisely I beg to move that the word "send" in subsection (3) of clause 97, the first word of the third line, be deleted and the word "deliver" substituted therefor.

Question proposed.

Question that the word to be left out be left out put and carried.

Question that the word to be inserted be inserted put and carried.

Clause 97 as amended agreed to.

Clauses 98, 99, 100, 101, 102, 103, 104, 105 and 106 agreed to.

Clauses 107, 108, 109 and 110 agreed to.

Clause 111

MR. WEBB: Mr. Chairman, I beg to move that clause 111 be amended by deleting all the words after the words "a private company" where they first appear in subsection (7). The reason for this, Sir, is the same as that which I gave in moving the amendment to clause 44. A private company will already almost certainly have legally commenced business and may indeed have exercised its borrowing powers before it converts to a public company, and therefore this subsection would be incapable of compliance.

Question proposed.

Question that the words to be left out be left out put and carried.

Clause 111 as amended agreed to.

Clauses 112, 113, 114, 115, 116, 117, 118, 119 and 120 agreed to.

Clauses 121, 122, 123, 124, 125 and 126 agreed to.

Clause 127

MR. WEBB: Mr. Chairman, I beg to move that clause 127 be amended by substituting the word "deliver" for the word "forward" in subsection (1). This again, Sir, is purely a drafting amendment for the sake of similarity of language.

Question proposed.

Question that the word to be left out be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

Clause 127 agreed to.

Clauses 128 and 129 agreed to.

Clause 130

MR. WEBB: Mr. Chairman, I beg to move that clause 130 be amended by deleting all the words after the words "a private company" where they first appear in subsection (10). This is the third of the related amendments, Mr. Chairman. This is the clause which deals with the statutory meeting which a private company is not required to hold and therefore where a private company converts into a public company it could not comply with this provision.

Question that the words to be left out be left out, put and carried.

Clause 130 agreed to.

Clauses 131 and 132 agreed to.

Clause 133

MR. BOMPAS: Mr. Chairman, for my sins I have been dealing with company affairs for 35 years, and in this country it is a sad fact that it on occasions is incredibly difficult to give 21 days' notice of a meeting. I am speaking now, Sir, in respect of private companies, not public companies. I think it will be found that many private companies whose articles were framed to give something in the nature of 21 days' notice, or who adopted the old Table A of the Ordinance, did in fact take the first opportunity to amend their articles to reduce the period of notice required to something as low as seven days on occasions. I do not propose to burden the Council with the reasons why it is so difficult for some private companies to give 21 days' notice, but it is a fact that has emerged in practice, and I would like to put it to Government that either private companies should be completely exempt from this particular section 133, allowing them to give the shorter notice as prescribed in their articles, which they have already taken the pains to amend; or alternatively, if Government feels that seven days' notice is very low, they might possibly accept a minimum of 14 days notice for a private company. I would ask Government to think about this point and see whether they are able to meet this in the legislation.

MR. SLADE: I would like to support the hon. Member on that point, Sir. I have been associated with companies for a number of years both as a lawyer and as a company director; and it is a fact, as my hon. friend says, that the great majority of private companies provide by their articles for general meetings on seven days' notice except, of course, Sir, where special resolutions are involved, or have later found it desirable to amend their articles so as to hold meetings at short notice; and I cannot remember any case of a member of a private company complaining of injustice at the short notice of general meetings. (Inaudible.)

MR. WEBB: I can only say that the points that both hon. Members have mentioned are in fact wholly met by

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subsection (3) of this section which provides that shorter notice can in fact be ratified; particularly is this the case of private companies, where the number of shareholders is normally very small and the difficulties in meeting the requirements in paragraph (*b*) of subsection (3) can always be met. Nevertheless, Sir, the point will be noted and we will consider it and if necessary consult them as to what might best be done.

MR. SLADE: The point made by the hon. Member I do not think really meets the case because that subsection requires the company on every occasion when it wants a meeting on shorter notice to get the consent of every member to so convene on short notice which would be a fairly cumbersome affair, and what we urge is that private companies should be allowed to abide by their articles if all members so desire so that meetings can always be called on seven days' notice.

MR. BOMPAS: I would like to agree with the hon. Specially Elected Member because I do not think that subsection (3) does in fact meet the situation. It would be very onerous on the company secretary to get consent from 95 per cent of the shareholders if there are 12, 15 or 20 of them.

One point I want to make clear is that my reference to shorter notice than 21 days was for ordinary annual general meetings and not for meetings for the purpose of considering special resolutions. I do not think anyone would have an objection to 21 days' notice when the meeting is concerned with considering a special resolution.

Clause 133 agreed to.

Clauses 134 to 146 agreed to.

Clause 147.

MR. WEBB: Mr. Chairman, I beg to move that clause 147 be amended by leaving out subsection (3) and by inserting a new subsection as follows—"(3) (*a*) The books of account shall be kept at the registered office of the company or, subject to the provisions of paragraph (*b*) of this subsection, at such other place as the directors think fit, and shall at all times be open to inspection by the directors. (*b*) The books of account shall only be kept at a place outside the Colony with the consent of the registrar and subject to such conditions as he may impose, and if the books of account are kept at a place outside the Colony there shall be sent to, and kept at a place in, the Colony, and be at all times open to inspection by the directors, such accounts and returns with respect to the business dealt with in the books of account so kept as will, disclose with reasonable accuracy the financial position of that business at intervals not exceeding six months."

Sir, subsection (3) as it appeared in the Bill was very much more restrictive and required the books of account of a company to be kept in the Colony and there was no escape. Representations were made during the Second Reading debate, and by other means to me, that this was a very severe restriction of the affairs of the company particularly in the case of those companies which have a head company in Nairobi and subsidiaries in the other Territories and also, of course, in the case of those big international companies which operate throughout the world and have their head office in Bermuda, Tangier or New York.

The reason why the subsection was drafted in the way it was, was in order to protect the commercial community as creditors. Hon. Members will appreciate that if a company is allowed to keep its books in say, the Hadhramut, over which we have no control, and it then does not in fact keep up its books at all, and if the company then goes into liquidation, the creditors of the company are going to be in very great difficulty in making up the books at all in the first place. And it was for that reason that this rather narrow clause was drafted.

As a result of an interview which I had with the representatives of the Law Society, who appreciated the force of this argument, the clause I have now moved was agreed, because it enables a company to keep its books anywhere in Kenya without any obstacle at all, and of course frequently the books of account are not kept at the registered office, but with the accountants or the secretaries, and to be kept outside Kenya with the agreement of the registrar. In the cases of companies which are respectable there will be no difficulty about that at all, but in the case of certain, and particularly small private companies,

[Mr. Webb]

there are very good reasons for ensuring that their books are, in the interests of the commercial community, kept in Kenya or, if they are kept outside that they are more closely controlled than otherwise they could be.

Question that the words to be left out be left out, put and carried.

Question that the words to be inserted in place thereof, be inserted, put and carried.

CAPTAIN HAMLEY (Nominated Member): On a point of explanation, Mr. Chairman, it mentions "outside the Colony". Can the hon. Member tell me how we stand in the Protectorate?

MR. WEBB: For this purpose you are in the Colony.

Clause 147 agreed to.

Clauses 148 to 160 agreed to.

Clause 161

MR. WEBB: Mr. Chairman, I beg to move that clause 161 be amended by adding to paragraph (*b*) in subsection (1) the words "as having before 26th May, 1959, been appointed and acted as auditor of an existing company".

The purpose of this amendment, Sir, is slightly to strengthen the control over existing auditors. I do not think, Sir, I need emphasize the importance of properly audited accounts to the general public, to the commercial community and to shareholders, and this clause, of course, which requires basically that all companies' accounts shall be audited by professionally qualified men, is new. There has, however, to be a relaxation in favour of those who have been auditing accounts of companies before the 26th May, which was the date upon which this Bill was published, and in relation to accountants that relaxation was subject to being authorized by the registrar. The relaxation in favour of auditors was rather wider and it is considered preferable to bring accountants and auditors into line in this matter. The shareholders of a company are not always placed in the best position to judge whether a person is really competent to audit the company's accounts, and it is thought that it is preferable that the registrar should exercise a measure of control. It does not go as far as I think the auditing and accounting professions would like. We have got, I think, to make some provision for those who have been doing this in the past and also have some regard for the intolerable burden that would be thrown on the profession if they were suddenly required, perforce, to audit the accounts of all the companies in the country.

Question proposed.

Question that the words to be added, put and carried.

MR. WEBB: Consequentially, I beg to move that paragraph (c) in subsection (1) of clause 161 be deleted.

Question proposed.

Question that the words to be left out, be left out, put and carried.

Clause 161 agreed to.

Clauses 162 to 282 agreed to.

Clause 283

MR. WEBB: Sir, I beg to move that clause 283 be amended by substituting the word "deliver" for the word "send" in subsection (3).

This, Sir, is also purely a verbal amendment in order to make the language the same.

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word proposed to be inserted in place thereof, be inserted, put and carried.

MR. WEBB: Mr. Chairman, there is a further amendment to which the Clerk Assistant drew my attention; that is, that in the fourth line of subsection (3) of clause 283, the word "delivered" should be substituted for the word "sent".

I beg to move that the word "delivered" be substituted for the word "sent".

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word proposed to be inserted in place thereof, be inserted, put and carried.

Clause 283 agreed to.

Clauses 284 to 293 agreed to.

Clause 294

MR. WEBB: Sir, I beg to move that clause 294 be amended first by substituting the word "fourteen" for the word "seven" in subsection (3)

That is the second word of that subsection, and the purpose of this amendment is to bring this clause into line with clause 283 (3) which requires a liquidator within fourteen days after a meeting to send certain particulars to the registrar, and there seems to be no reason why the period in this clause, which deals with a very similar matter, should be different.

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

MR. WEBB: Then there are, in fact, two more of these purely verbal amendments, the first of which is that the word "deliver" should be substituted for the word "send" in the third line, and subsequently "delivered" for "sent" in the sixth line.

I beg to move that clause 294 be amended by subsituting the word "deliver" for the word "send" in the third line of subsection (3).

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word proposed to be inserted in place thereof, be inserted, put and carried.

MR. WEBB: Finally, Sir, I beg to move that clause 294 be amended by substituting the word "delivered" for the word "sent" in the sixth line of subsection (3).

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

Clause 294 agreed to.

Clauses 295 to 332 agreed to.

Clause 333

MR. WEBB: Mr. Chairman, again a purely formal verbal agreement.

I move that clause 333 be amended by substituting the word "deliver" for the word "send" in subsection (1).

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

Clause 333 agreed to.

Clause 334

MR. WEBB: Mr. Chairman, I beg to move that clause 334 be amended by substituting the word "delivered" for the word "sent" in subsection (1).

This is consequential upon the amendment of clause 333.

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

Clause 334 agreed to.

Clauses 335 to 349 agreed to.

Clause 350

MR. SLADE: Mr. Chairman, I just have a question to ask on this clause. It provides that the court may, on application by a liquidator of a company, by order fix the amount to be paid by way of remuneration to any receiver or manager. Sir, I wanted to ask for an assurance that that means, taken by itself or in conjunction with the Civil Procedure Rules, that the application by the liquidator to have a receiver's or manager's remuneration fixed, will normally be heard in chambers and not in open court. These matters are sometimes better not ventilated in public. It is, I know, the practice in England that similar fees are fixed by masters in chancery, in the privacy of chambers, and of course if you take the analogy of lawyers and their costs, they are fixed by a taxing master quietly in his own chamber.

I think here, Sir, there is a risk that if an application of this kind by a liquidator inevitably involves a lot of publicity, it may enable him to wield rather too heavy a stick by way of threatening application to a court against a receiver or manager who thinks his charges are perfectly reasonable, but is not anxious to face publicity or criticism in open court.

MR. WEBB: Sir, this is, of course, no new provision, which appears in the existing Ordinance. I am not aware that there has been any difficulties of the sort to which my hon. friend refers. While I cannot, of course, prejudice any decision which the Court or Rules Committee might come to in this matter, I have no doubt that they will follow the English practice in this case as they do in so many others connected with company law.

MR. ALEXANDER: Mr. Chairman, on this clause 350, may we have it explained why only the liquidator can apply to have the receiver's fees fixed? There are circumstances often where a receiver is appointed and the company does not necessarily go into liquidation. There are circumstances as well where the receiver may find that he has got nobody to negotiate with in connexion with his fees.

In this particular town at the moment there is to my knowledge a well-known business that has had a receiver appointed but not a liquidator. Now, how is that particular receiver to have his fees assessed if there is nobody to go to the court. I do suggest that at least the receiver himself should be allowed to go to the court. And I do urge upon the Crown Law Office that at any rate in here be inserted the words "liquidator or receiver" so that it is the liquidator or the receiver who can go to the court.

MR. WEBB: Where a receiver is appointed by the court, then his fee, his remuneration, is fixed by the court. Where the court does not come into it, because a receiver is appointed otherwise than by the court, the normal practice is for the receiver's fee to be agreed as a matter of contract between him and the person appointing him; that should be the normal practice.

MR. ALEXANDER: I beg to differ. In fact, every debenture deed of the bank makes no provision at all for the fixing of the receiver's fees by those who appoint him and in fact the receiver is left entirely in the hands of the company. And that is the standard printed document of every bank to my personal knowledge.

MR. WEBB: A debenture deed, Sir, is not that under which the particular receiver is in fact appointed. That merely provides for the appointment of a receiver in certain circumstances. If circumstances arise, that the debenture holder has to take action to appoint a receiver, he then approaches Mr. X and says, "Will you act on my behalf in this matter", and Mr. X naturally says, "What is my fee to be?" The agreement is made at that point.

MR. ALEXANDER: Mr. Chairman, if I may beg to differ rather vigorously again, in all these deeds, and they are universal to the leading British banks, the receiver is made deliberately the agent of the company. The debenture holder relieves himself of any responsibility in respect of the remuneration of the receiver, and my point is this, Mr. Chairman, that if under this clause the receiver is left entirely in the hands of the liquidator he is left at times in a complete vacuum and at other times in a completely impossible position. The debenture deed does not provide in the case of banks—and they are the usual appointers of receivers—for any provision for receivers' fees.

MR. WEBB: Although I do not altogether accept entirely the statement of facts made by the hon. Member, we will consider this matter and if necessary amend the Bill at an appropriate time

Clause 350 agreed to.

Clauses 351 to 360 agreed to.

Clauses 361 to 366 agreed to.

Clause 367

MR. WEBB: Mr. Chairman, Sir, I beg to move that clause 367 be left out of the Bill and that a new clause be inserted in place thereof as follows:—

Certificate of registration and power to hold land.

367. (1) Where a foreign company has delivered to the registrar the documents and particulars mentioned in section 366 of this Ordinance, the registrar shall, if such documents and particulars are so delivered after the appointed day, certify under his hand that the company has complied with the provisions of the said section; and such certificate, and any certificate given by the registrar of companies before the appointed day that a foreign company has delivered to

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him the documents and particulars required by any provision of any of the repealed Ordinances corresponding to the said section and to the like effect, shall be conclusive evidence that the company is registered as a foreign company for the purposes of this Ordinance.

(2) Where a foreign company has, after the appointed day, delivered to the registrar the documents and particulars mentioned in section 366 of this Ordinance, it shall have the same power to hold land in the Colony as if it were a company incorporated under this Ordinance.

(3) Where a foreign company has, before the appointed day, delivered to the registrar of companies the documents and particulars required by any provision of any of the repealed Ordinances corresponding to section 366 of this Ordinance and to the like effect, it shall, subject to the provisions of that one of the repealed Ordinances in accordance with which such documents and particulars were so delivered and of this Ordinance, have the same power to hold land in the Colony as if it were a company incorporated under this Ordinance.

This amendment, Sir, arises from a suggestion of the Law Society that the clause as drafted possibly does not deal properly with those foreign companies which have established places of business and are operating in Kenya before this Ordinance comes into effect, that is, the appointed day. Although clause 365 begins by saying that sections 366 to 375 of this Ordinance shall apply to all foreign companies, nevertheless clause 377 as drafted rather leaves the position of foreign companies in existence and trading in Kenya before the appointed day uncertain as regards to their power to hold land. A further complication arises from the fact that this provision about the registration of foreign companies is new in this Bill as depending merely upon the delivery of certain documents to the Registrar and the clause of which I gave notice in the Order Paper will, it is hoped, make it perfectly clear what the position is of foreign companies both before and after the appointed day and both in relation to their registration and their power to hold land.

Question proposed.

Question that the words to be left out be left out put and carried.

Question that the words to be inserted be inserted put and carried.

Clause 367 as amended agreed to.

Clauses 368 to 370 agreed to.

Clauses 371 to 380 agreed to.

Clauses 381 to 385 agreed to.

Clause 386.

MR. BOMPAS: Mr. Chairman, Sir, I had wanted to move an amendment to this clause but I gather that I am out of time and therefore out of order with it. Despite that, I would like to make the point in particular which was, that in section 386 subsection (i) it was my intention to move, Sir, that the words "an insurance company or" should be deleted.

I believe that those words, or some action on those lines, has already been taken in respect of the Tanganyika Ordinance. Sir, My principal reasons—and there are two—for suggesting that insurance companies should not come into the Companies Act in this section are these. First of all, Government has already announced its intention to introduce insurance legislation and, I believe, has already made quite considerable progress. That being so, I think it is very unwieldy and untidy, if I may say so, to have insurance companies controlled under two entirely different Ordinances.

The second difficulty, Sir, is a practical one and here I must refer to the Ninth Schedule to the Ordinance which is the form required to be filed twice a year by an insurance company; that is to say, a foreign insurance company having a place of business in the Colony under this section 386. Sir, the Ninth Schedule requires the Company in filing its bi-annual return to state, the assets of the company on that day were Government securities (it is stated).

Now, the particular insurance company that I happen to have in mind, and there must be many, many, British insurance companies in the same category, this particular company has Government securities in no less than 70 countries. In addition there are probably an average of anything like 10 or 12 different types of Government securities held in each of

[Mr. Bompas]

those 70 countries. That being so, Sir, this return does require the company twice a year and within only one week over a month—because it is the first Monday in the month following the 1st of January or the 1st of July—to file a return which could involve something like a list of 840 different Government securities. To me, Sir, it seems quite impractical to require an insurance company to do that; and, as I said earlier I cannot move an amendment, Sir, but I would ask the Government to examine this particular point and to have discussions with other Governments—to take a line possibly from Tanganyika which, as I have said, I believe has already removed it from the Ordinance.

MR. WEBB: Mr. Chairman, this matter is already under examination in the context of the Insurance Companies Bill. We have been in correspondence with the Fire Assurance Association of East Africa who mentioned this particular point amongst others. We said to them that it would be more appropriate to consider this point in the context of the Bill particularly relating to insurance companies and I have no doubt that that particular provision will be amended in that Bill.

It is not appropriate to do so at the moment because at the moment there is no legislation dealing with insurance companies and that is the way we propose to deal with the matter.

Clause 386 agreed to.

Clause 387 to 403 agreed to.

Clause 404

MR. WEBB: Mr. Chairman, I beg to move, I hope for the last time, that clause 404 be amended by leaving out subsection (4) and by inserting in place thereof a new subsection as follows: "(4) In addition to the powers conferred by this section, the Minister may make regulations in respect of any matters which by this Ordinance are to be or may be appointed or prescribed (other than matters which are to be or may be appointed or prescribed by any other person under any provision of this Ordinance) or which are to be or may be provided for by the Minister."

This is purely a drafting amendment, Sir, because there are certain provisions of the Ordinance which confer power on other authorities, notably to make rules of court and the registrar in certain cases, and the subsection as drafted appear to confer all those powers on the Minister whereas it is, of course, appropriate that they should be exercised in certain particular cases, where they are specified, by other particular people.

Question proposed.

Question that the words to be left out be left out put and carried.

Question that the words to be inserted be inserted put and carried.

Clause 404 as amended agreed to.

Clauses 405 and 406 agreed to.

First, Second, Third, Fourth, Fifth, Sixth, Seventh, Eighth, Ninth and Tenth Schedules agreed to.

Title agreed to.

Clause 1 agreed to.

THE CHIEF SECRETARY (Mr. Coutts): I beg to move that the Committee report to Council that the Companies Ordinance has been considered by a Committee of the Whole House with amendments.

Bill to be reported with amendments.

The question was put and carried.

Council resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

REPORT

The Companies Bill

MR. CONROY: Mr. Speaker, Sir, I beg to report that a Committee of the Whole Council has been through the Companies Bill clause by clause and has approved the same with amendments.

Report ordered to be considered tomorrow.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The time for the suspension of business having been reached, I therefore adjourn Council until 9.30 a.m. tomorrow, the 7th October.

The House rose at fifteen minutes past Six o'clock.

[Mr. Webb]

him the documents and particulars required by any provision of any of the repealed Ordinances corresponding to the said section and to the like effect, shall be conclusive evidence that the company is registered as a foreign company for the purposes of this Ordinance.

(2) Where a foreign company has, after the appointed day, delivered to the registrar the documents and particulars mentioned in section 366 of this Ordinance, it shall have the same power to hold land in the Colony as if it were a company incorporated under this Ordinance.

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ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): The time for the suspension of business having been reached, I therefore adjourn Council until 9.30 a.m. tomorrow, the 7th October.

The House rose at fifteen minutes past Six o'clock.

Wednesday, 7th October, 1959

The House met at thirty minutes past Nine o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

COMMITTEE OF WAYS AND MEANS

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

(D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair)

MOTION

SCEPTRE TRUST LIMITED LOANS: EXEMPTION FROM INCOME TAX

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, I beg to move that this Council approves that interest at the rate of 6½ per cent on a loan of £250,000 to be made by Sceptre Trust Limited to the Government for the purpose of Government staff housing, and repaid over a period of 20 years, shall be exempted from income tax in the hands of the said Sceptre Trust Limited.

Sir, at the time of the original negotiations with this company in London it was agreed with the London company that if pension funds were used which would be exempt in the United Kingdom, as far as income is concerned, from income tax and that the same position would apply here. A little later it was found that the source of the funds would be the Sceptre Trust Limited, which has its headquarters in the Bahamas, and as is our custom with all non-residents who make loans, subscriptions to loans on the London market, and as we have done in several cases with indirect loans, it was decided that in this case too the interest should be free of tax. The Legislative Council was informed in November, 1958, in Development Supplementary Estimate No. 1 of 1958/59 that the Government had arranged to obtain a mortgage of £250,000 from an insurance company for this respect, and that the houses built with this money would be offered for sale to civil servants.

There is, I think, little more I need say, Sir, except that during my recent visit to London I was able to obtain from this company another £250,000 which will be directed towards the Government staff housing, particularly, I hope, for the police section.

Sir, I beg to move.

Question proposed.

MR. ALEXANDER: Mr. Chairman, I understood from what the Minister said that loans directed into our public sector from overseas are exempt from income tax, and that this particularly merely follows the examples of others. May we know whether, in fact, this does apply to all loans into all public sectors in the Colony? For example, does it apply to loans of this nature to local authorities? Secondly, perhaps we could be told, Mr. Chairman, what the effective rate of interest is as a result of this exemption? For example, we have been told in this House before that in respect of exemption on the highest taxed individuals it amounts to an effective rate of some 12 per cent, and we have been told that that, of course, is far too expensive a method of financing Government. It would be interesting to know what the effective rate is here. I imagine that what these people will save is Sh. 5/6 in the pound on the interest in Kenya.

Thirdly, I think it would be useful, Mr. Chairman, now we are on this subject, if the Minister would agree to let us know some time—not today—I appreciate he cannot carry these things in his head—but to let us have a list of the types of loans at the moment exempted from Kenya income tax. For example, I remember that at one time I think we passed a similar resolution in respect of the pension funds of the East African Power and Lighting Co. Ltd.

Fourthly, it would be useful for us to be informed whether the origin of the funds of this nature is always checked. The purpose of that remark, Mr. Chairman, is that, of course, it would be very easy for a company to be earning in Kenya and directing the money elsewhere and bringing it back in this particular form and obtaining exemption.

And I am just wondering whether there is not the possibility or room for abuse

[Mr. Alexander]

in this particular way. I am quite sure the Minister will be able to tell us that he watches these funds very carefully and is able to assure us that in fact it is new money. That is the importance of this, if it is new money to Kenya, because if it is not new money to Kenya—if it is our own money coming back in a different way—then indeed we are loosing very substantially.

Mr. Chairman, I beg to support.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, I thank the hon. Member for Nairobi West. If I might deal with the last point first, the question of the origin of funds, I can say that in this case it is certainly new money. That is something which I can say. In some other cases, it would be difficult always to say that it was new money. There is no doubt about it, that there is from time to time an abuse that creeps up in this regard, but as we in our particular position cannot act as say, can the South African Government or the United Kingdom Government under a very strict exchange control or Treasury movement of capital, there is indeed nothing to stop a company from moving money from inside Kenya to London and then reinvesting it, indeed any more than there is for a large number of our wealthy and private individuals to do so. And I would suggest that any attempt to cure this by putting on a measure of control of capital movement would only create a worse position for the country than does the occasional abuse which we know does exist in this regard. But I would say that that abuse is very small indeed in my opinion.

Now, Sir, the position with regard to the precedent that this one sets or to other companies. Whenever Kenya or any other Colony issues a loan on the London market it is stated in the prospectus that interest will be paid free of tax to non-residents. That is one of the things that one has to do if one wants to attract money into the territory. And if this company subscribed money on the general loan basis, which they probably would not be prepared to do, they would have been able to invest it in a Kenya loan raised in London on a basis of being free from tax. In that particular case, one would have been faced with the same position, that the money sent into the country on a general loan basis would have been free of interest. And I think, Sir, we must face this particular fact if ever we wish to raise loans on the London market or to raise loans externally to assist us in our development.

The actual rate—the hon. Member for Nairobi West I think rather anticipated the answer. If the income reaches a certain state then it would be subject to non-resident tax which, I think I am right in saying, is not Sh. 5/- in the £. Speaking from memory, Sir, I think it is much lower. The hon. Member, with his experience in this matter will know, but I think it is probably about Sh. 2; so that is the rate which we will really pay for this money in this regard. But of course, Sir, that applies to any public loan issue. It does not apply to local government authorities who, in fact, with the exception of Nairobi have not been able, I think, to raise money except with Government guarantees and internally, and Nairobi, of course, has got its free access to the London market where it can offer its own terms. In so far as the list is concerned I shall be delighted to recommend to my successor that the hon. Member should be supplied with this particular list. It does cover bodies like the Colonial Development Corporation, pensions funds of the type the hon. Member has mentioned, but it is not a very long list.

Perhaps, Sir, I may now be thoroughly out of order, having been able to drag the name of my successor in at this particular moment, in expressing my own personal satisfaction at seeing the hon. Mr. Mackenzie appointed to succeed me and express my opinion that he will give this House and this country distinguished service.

I beg to move.

MR. ALEXANDER: Mr. Chairman, there is just one point I would like finally cleared up. If this concession applies to Government borrowing is it not reasonable that it should also apply to any local government borrowing now or in the future? He is quite right when he tells us that at the moment it is only the Nairobi City Council who are able to borrow direct from overseas but that may not always apply, and particularly in their respect is it not only fair that they should be put on the same basis as a

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local government authority as the Central Government?

May I also, Mr. Chairman, as you have granted the liberty to the Minister, to say from this side of the House how very much we also welcome the appointment of Mr. Mackenzie as his successor, and I am sure that he is going to give us a very excellent and thorough job.

MR. BOMPAS: Mr. Chairman, at first sight the figure of 6½ per cent interest without payment of local income tax struck one as being a very high price to pay, having regard to local conditions, but remembering that the Tanganyika Government has just been forced to pay 6½ per cent for a stock issue at par, which overseas investors can subscribe to without paying income tax, as the hon. Minister has said, one realizes that the rate is not in fact excessive under prevailing conditions. But the Minister made one remark which puzzles me, and I wonder whether he could attempt to explain why this should be so. My own feeling, Sir, is that it would be in every way preferable to try to get our capital in recognized negotiable loans rather than these specific loans for a specific purpose. The Minister did say, Sir, that it was unlikely that although he had succeeded in getting £250,000 from the Sceptre Trust on these conditions, it was unlikely that they would have been prepared to subscribe to a loan, a public loan bearing the same interest rate, the same tax privileges; and it seems to me most peculiar that organizations should be prepared to lend specifically, and not generally; and I would be interested, Sir, and I am sure the House would also be interested, to know what light the Minister can throw on that particular aspect.

SIR CHARLES MARKHAM: Sir, I have one small query which I would like to ask the Minister to explain. He may remember that in this House in the past there have been suggestions made by the noble earl, the Corporate Member for Agriculture, about trying to have a loan free of income tax at a low rate of interest for residents of Kenya; in other words, development money like this.

I am wondering, Sir—of course, I am not opposing this Motion because I think it is very favourable to us—whether the Minister would give the House any views. He did say he would examine that problem of development loans at, say, 4 or 4½ per cent, which would be free of income tax for Kenya residents, which might attract some of the money of the higher income groups, a lot of which is leaving the country for investments like war loan, which are free of income tax if left in England.

Sir, that is a very brief point, but it has been raised and I know that if the noble earl were here he would probably raise it himself.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, to deal first of all with the point raised by the hon. Member for Nairobi West, he will, I think, realize that I cannot commit my successor by expressing an opinion of my own on this particular point. The question of whether local government authorities should be given exactly the same terms as the Government is one that needs a great deal of thought. Let me point out that in the case of all the local government loans that are received or made through the Local Government Loans Authority, the local government body that borrows from the Local Government Loans Authority does, indeed, receive the benefit of this in the passing on of the rate of interest that they are charged by the Government through the Local Government Loans Authority.

Sir, the hon. Member for Ukamba raised the point of this tax-free loan. I think, Sir, I must be a little careful of my words here. It must be remembered, Sir, that this is not only a Kenya exercise; there are composite factors in this. One has to look to our main source of capital, which will be the United Kingdom Government and, I hope, if it is brought into being, the International Development Association.

In that regard, and particularly whilst we have been in a position of receiving Emergency assistance, we have had to pay attention to external factors. I am trying to put this in diplomatic language. Now, it may be that my hon. friend, my successor, will find himself, as we all hope, in a somewhat different position than the situation in which I have been during my 7½ years as Minister for Finance of this country, having to look overseas for large slices of assistance in

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order to keep the taxation level at even its present rate. It may be, Sir, that even then my hon. friend may well consider that one cannot pay the price involved.

But we have taken two steps. We have had the tax-free tax reserve certificates at 3½ per cent—and I think the level of those at the present moment stands at about £1,300,000. We have the Post Office Savings-Bank at 2½ per cent and we have placed that on a tax-free basis. We have now introduced a savings bond which gives the equivalent—over a period, if the money is left for a long period of time—of 5 per cent tax free, and it will be interesting to see the response to those particular groups, even though we know that they have a certain limitation by the amount that any one person can place into those particular channels.

That, I think, is the best thing that I can say to the hon. Member for Ukamba which will, I think, give to him some indication of the difficulties and make him also realize that we have gone quite a long way along this path within the possibilities that have been open to us.

Now, Sir, the final point was by my hon. friend, Mr. Bompas, who asked me to explain my point about people being willing to invest in a special loan of this kind and not to invest in a general loan. It has been a very distressing factor of not only Kenya but all Colonies in so far as development finance can be concerned over the past four years, that it has been absolutely impossible to get on to the London market in an open or general loan. This affects, indeed, not only the Colonies but even the newly emerging dependent territories. It is because of this, that as a result of representations made by Colonies like Kenya over the past two or three years, the United Kingdom has agreed to the Exchequer loan system. In addition to that, the International Development Association has been suggested by the United States Government to the World Bank and supported by Great Britain and most of the other countries concerned. That inability—the unwillingness of underwriters to take the risk, the unwillingness of institutions to put money into countries whose future—as far as they are concerned, politically—may offer some doubt, has been a very disturbing and hampering factor over the years, but we in Kenya have been fortunate in this respect, that we hit upon the idea of offering to certain institutions in the London market—and I think we were about the first ones to do it as a Colony—the offer of mortgage of property. Now, the distinguishing feature of this type of loan—as, indeed, in the loan for the legal offices—is that it is not dependent upon the general revenue of the country; the lender has an actual property as an asset, and should there be a default—and heaven knows one cannot imagine there ever would be with the Colony—but should there be a default, at least they can turn round to their shareholders and the people concerned in their business and say, "We have this as an asset." They have been prepared, in the light of the arguments we have put forward, to accept this type of mortgage finance whereas they have not been prepared in the light of their investments in the colonial territories in the past, to put forward their investment portfolio at the disposal of colonial territories.

I hope, Sir, that that is an explanation which, although technical, I know, to some extent, I am sure the hon. Member for Kiambu understands.

MR. BOMPAS: Mr. Chairman, I thank the Minister for his exposition. I do realize and do follow what he is getting at very clearly. I am still mystified as to why the investing public should think that your offices, Sir, should constitute better security for lending than the total income or revenues of the Colony. In fact, I am almost in tears at the thought that you and your associates might one day be homeless if you cannot pay the rent.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Sir, the hon. Member himself is associated with a body that lends money out on profit, and he himself will know the very big difference inside the terms of his own company of lending money to a general public investment, and in lending money and being able to say to his shareholders and people on his board "I have an asset". One justifies the loan and the other in the opinion of the lender does not at the present moment. That is the plain situation.

The question was put and carried.

MOTION

COUNCIL OF STATE ALLOWANCES: EXEMPTION FROM INCOME TAX

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, I beg to move that this Council approves that the subsistence, travelling and attendance allowance paid to the chairman, the deputy chairman and the Members of the Council of State shall be exempt from income tax.

Sir, this would make Members of the Council of State in the same position as Members of this Legislative Council in this respect, I do not think, Sir, it calls for any more information on my part.

Question proposed.

MR. ALEXANDER: Mr. Chairman, the Minister has said that this will place Members of the Council of State in the same position as Members of this Council, but we pay income tax on attendance allowance.

AN HON. MEMBER: (Inaudible).

MR. ALEXANDER: My good friend has taken words out of my mouth. I presume from this very moment that none of us pay income tax on attendance allowance in this Council.

The other question I wish to raise, Mr. Chairman, is that in respect of subsistence and travelling it has always been understood and accepted that this is a type of refundable expenditure, and in fact, nobody anywhere, not even Members of this Council are expected to pay income tax on travelling and subsistence. Why, then, has a special Resolution been necessary for Members of the Council of State? It does suggest to my mind that there is something more behind this perhaps than is evident from the wording of this Resolution, and I would ask the Minister to explain to us whether, in fact, there is in normal income tax legislation and practice to be a departure in respect of refundable expenditure for subsistence and for travelling?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, the optimism of the hon. Member for Ukamba and the hon. Member for Nairobi West is unlikely to be justified in this regard. The position in so far as this Resolution is concerned is that the exemption will be effective under section 12 (2) of the East African Income Tax Management Act. The idea of the Resolution and the advice we have received is that in order to make the position perfectly clear all the allowances should be stated in the Resolution before the Legislative Council. That will now mean, Sir, that the Governor will be empowered to place the Members of the Council of State on exactly the same basis as the Members of Legislative Council. If, indeed, the Members of the Council of State receive an honorarium and not attendance allowances, then the honorarium alone could be exempt from income tax. If they receive attendance allowances and not an honorarium, then the attendance allowances will be exempt from income tax. I do not think they will have any chance of getting it, as I think the hon. Member for Ukamba is hoping, both ways, any more than I think the Members of this Council are going to get it both ways.

On the point raised by the hon. Member for Nairobi West, I do not think there is anything sinister behind this at all. I am almost as puzzled as he is, I think as to why it is necessary to state this, except that it is probably the best way of doing this to make perfectly certain that all allowances are recognized by the Legislative Council as being free of tax, but I can assure him that there is no intention to change the situation in so far as the ordinary taxpayer is concerned.

MR. ALEXANDER: Can we get this quite clear? The Minister has again said that this is to put as Members of the Council of State on the same basis as ourselves. As I understand it, we, in this Council have three types of allowances—travelling allowance—a subsistence allowance when Council is sitting, and that is in respect of up-country Members £2 a night and for Nairobi Members £1 a night—and thirdly, an attendance allowance—I believe it is of £4 a day for each day that Council is sitting. Now that attendance allowance is taxable.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Sir, I must interrupt the hon. gentleman by reading to him the Notice made, No. 93 of 1957 under the East African Income Tax Management Act. (1) This order is

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the Exemption of Tax Members of Legislative Council Allowances Order 1957. (2) The allowances—just simply "the allowances"—the allowances paid to Members of Legislative Council of Kenya by virtue of the provisions of the Members of Legislative Council Salaries and Allowances Ordinance, 1956, shall be exempt from tax. So that, Sir, I am surprised that the hon. Member for Nairobi West, who is after all a professional in this particular business could be foolish enough to pay income tax upon his attendance allowance in the light of the clear exemption set out in this particular notice. The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Chairman, I beg to move that the Committee do report to Council its consideration of the Motions on the Order Paper and its adoption thereof without amendment.

Question proposed.

The question was put and carried.

The House resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

REPORTS

SCEPTRE TRUST LIMITED LOAN: EXEMPTION FROM INCOME TAX

MR. CONROY: Mr. Speaker, Sir, I have to report that the Committee of Ways and Means has considered the Motions that this Council approves that interest at the rate of 6¼ per cent on a loan of £250,000 to be made by Sceptre Trust Limited to the Government for the purpose of Government staff housing, and repaid over a period of 20 years, shall be exempted from income tax in the hands of the said Sceptre Trust Limited and approved the same without amendment.

Question proposed.

The question was put and carried.

Council of State Allowances: Exemption from Income Tax

MR. CONROY: Mr. Speaker, Sir I beg to report that a Committe of Ways and Means has considered the Motion that this Council approves that the subsistence, travelling and attendance allowance paid to the chairman, the deputy chairman and the members of the Council of State shall be exempt from income tax and approved the same without amendment.

Question proposed.

The question was put and carried.

MOTION

TRANSFER OF POWERS (VARIATION NOS. 3 AND 4) DRAFT ORDERS, 1959

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, I beg to move that this Council approves the draft Transfer of Powers (Variation) (No. 3) Order, 1959, and the Transfer of Powers (Variation), (No. 4) Order, 1959.

Sir, in respect of Variation Order (No. 3), the power to make rules under section 16 of the Probation of Offenders Ordinance was delegated by the Governor in Council of Ministers to the Minister for Community Development. Now that the Ministry of Community Development is in suspension, it is necessary to allow the powers to be administered by the Minister for the time being responsible for the Ministry of Community Development and the Variation Order (No. 3) will affect this.

As regards Variation Order (No. 4), the Governor's powers under section 1 to section 15 (1) *(a)* and section 15 (1) *(b)* and section 15 (2) of the Probation of Offenders Ordinance were delegated by the Governor in Council of Ministers to the Minister for Community Development, and for the reasons that I have already given in respect of Variation Order (No. 3) it is necessary to allow the powers to be administered by the Minister for the time being responsible for Community Development and the Variation Order (No. 4) will affect this.

I beg to move, Sir.

THE CHIEF SECRETARY (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

BILLS

SECOND READINGS

The Crown Land (Amendment and Miscellaneous Provisions) Bill

Order for Second Reading read.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I beg to move that the Crown Lands (Amendment and Miscellaneous Provisions) Bill be now read a Second Time.

This, Sir, is frankly a tidying-up Bill. Whatever any Member might think of the land policy expressed in the Crown Lands Ordinance, there is nothing in this Bill which would legitimately entitle him to express controversial feelings. Before long there may be cause for us in this Council to consider more radical amendments to the law governing the administration of the public estate. At this time we are concerned only with the convenience of those charged with the administration of long established policy.

Land law is intricate and a happy hunting ground for the specialist. From time to time these practitioners find some inconvenience in the statutes which is not simply occasioned by the difficulty of evading their requirements but derives from some genuine imperfections not foreseen by the learned draftsman of the epoch in question. Changes also occur in related legislation.

Hon. Members who remained in the Chamber may recall the series of Bills over which I invoked the indulgence of the Council a few months ago relating to the Registration of Titles, the Land Titles Ordinance and the Photostatic Copies Ordinance and other mysteries of the Land Registry and of the legal fraternity who sustain themselves by such fecondite exercises. We wanted to make life easier for them and therefore we modernized our laws with the ample blessing of this Council.

We must now adapt that to the Crown Lands Ordinance to conform. In the last few years, Mr. Speaker, by consent of this Council, various adjustments have been made in the boundaries of the lands defined in the Schedules to the Ordinance now to be amended. These alterations have been designed in the main to add to areas for African occupation and have been effective when approved by this Council; but they have not been automatically reflected in amendments to the relevant Schedule to this Ordinance. We now propose to provide that this will happen in the future.

I have, Mr. Speaker, searched this Bill to find something of substance to present to the Council. The major provision in this category, I think, is clause 35. Under this provision, we hope, the Government will be enabled to check the growing proclivity of citizens to discard unwanted vehicles and other distasteful objects on unoccupied Crown land and it will make it an offence, without the approval of the Commissioner of Lands, to deposit such articles in unregarded corners of the Crown Estate.

The only other provision of interest which I will identify is to be found in clause 38. In the description of the boundary of the Highlands we at present refer to the Kamakoiwa River. This stream is, in fact, generally known as the Keptesang River, and it has suffered the indignity of misappellation for some years. No one has been inconvenienced by this error but we feel it should be rectified.

Since the purpose of this Bill, Mr. Speaker, is largely technical, I feel I can best deal with any particular discontents at the Committee stage. It is inspired by a desire to be precise and tidy in our Land legislation. I trust that this purpose will attract the blessing of this Council.

Sir, I beg to move.

MR. WEBB seconded.

Question proposed.

MR. TOWETT (Southern Area): Mr. Speaker, the Minister has said something about two rivers. I do not wish to speak a lot. I would like to ask him to describe to us where the Kamokoiwa River is and where the Kaptesang River is, and what was the omission in the past made to necessitate the alteration now?

My other point, Sir, is in connexion with clause 35, where it says that nobody can deposit rubbish on Crown land. I really do not understand what is meant by the word "rubbish". If by Crown land we include our town areas then I think we should say that no unnecessary

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deposit of rubbish should be made on the Crown land and rubbish should only be put on some parts of the towns. I think that this is really a bad one. If we put that into our laws it will spoil many other things like when you clean your shop and then go and deposit what is considered to be rubbish you will be contravening some section of the law. So I feel that there should be no unnecessary deposit of unnecessary rubbish on Crown land.

Mr. Speaker, with those few points, hoping that somebody else will get up and speak then I beg to ask the Minister, before I will support the Bill, to explain to me what I have said so far about the two rivers.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, so far as the hon. Member's first point is concerned, this river is situated where the Kavirondo Native Land Unit joins the Highlands at Swain's Farm which, for the information of the hon. Member, has a number in the Land Register of 6439/2, and I am sure he will be given every facility to inspect the land map at the Land Office if he wishes to identify this precisely. At this point, Sir, the surveyed and demarcated boundary comes down to the intersection of this particular Land Unit with the Keptesang River and thence downstream to the confluence of that river with the Kamakoiwa River. Unfortunately, Sir, at the time when the survey was made the surveyor thought that the Keptesang River, which is the upstream branch, was in fact the Kamakoiwa River in its upper reaches and consequently he names it as such. For this reason the description of both the Highlands boundary and the Native Land Unit boundary was inaccurate and we are simply remedying an inaccuracy in nomenclature. We are not in any way changing the boundary.

As regards the second point raised by the hon. Member, Sir, I should have thought that rubbish was by its own definition unnecessary. Anything which merits the description of rubbish must be regarded as unnecessary and unwanted and undesirable, and I think we can effectively leave it to the courts to determine whether any article, the presence of which the Commissioner of Lands objects to, is, or is not, rubbish, for the purpose of this Ordinance.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Entertainments Tax (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, Sir, I beg to move that the Entertainments Tax (Amendment) Bill be now read a Second Time.

Sir, this Bill follows up the rates of adjustment in entertainment tax which were passed by this Council and which have been put into effect by administrative action as from 1st July of this year. Hon. Members will recollect that in the Budget Speech proposals were made for an import duty on films being increased and for adjustments at a later stage to be made to the Entertainments Tax Bill in order to prevent there being a dual burden to an undue extent placed upon exhibitors in Kenya.

I think there is only one other point I would like to mention, Sir, and that is that it was recognized at the time this Bill was being drafted that there was an innovation in that there was one cinema in this country now being erected which will be using the 70 mm. films, what I think is now known as the Todd A-O machinery of projection. This film goes through the projector at approximately twice the rate of the ordinary 35 mm. film, which means that twice the length of film is necessary for the same period of time of exhibition showing. It was impossible to take account of this in the Bill because it was one special case and there is the fact that a film being used for this particular type of machinery can only be used at one point of exhibition in the whole of East Africa. It will therefore be necessary, I think, in the light of the economic circumstances, for us to make some ex gratia payment or refund on some agreed basis with regard to this particular type of 70 mm. type of film. That will be dealt with by the Treasury and the customs people in the normal course of administration. I

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thought I would like to point out to the Council at this stage that it was liable to happen with regard to this particular type of machinery.

Sir, I beg to move.

MR. MACKENZIE seconded.

Question proposed.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Courts (Amendment) Bill

Order for Second Reading read.

MR. WEBB: Mr. Speaker, I beg to move that the Courts (Amendment) Bill be now read a Second Time.

In 1955, Sir, certain events necessitated a review of the jurisdiction exercised by administrative officers in their capacity as magistrates. The law then in force, the Courts Ordinance, was enacted in 1931 and although it proved satisfactory in rather more leisurely days, it was somewhat inappropriate in the circumstances of the Emergency. In the old days the District Officer (Cadet) had no magisterial functions until he became a District Officer and he could not become a District Officer until he had passed his law examinations and had spent some time sitting on the bench with other magistrates, and thus had acquired some experience. The enormous expansion of the Administration in the Emergency resulted in a great number of officers, whom it was quite impossible to give proper legal training, becoming magistrates by virtue of their office. This did not always result in a proper exercise of magisterial functions and, I hasten to say, I say this not in any criticism of the officers concerned, whom I am quite sure were doing their best in very difficult circumstances, but it is just the ineluctable fact. In 1955, therefore, it became necessary to amend the law by Emergency Regulations to tighten up the jurisdiction, or rather the grounds of jurisdiction. These amendments have proved very beneficial in practice, because it has meant that there has been far more control upon the nature of persons who have been exercising magisterial functions. The position now is that magisterial powers are enjoyed *ex-officio* only by trained officers who have experience although there is provision for the conferment of jurisdiction on individuals by name where they have for some reason or other the particular necessary attributes. This Bill therefore really only re-enacts those provisions which experience has proved to be valuable.

The opportunity has been taken to make certain other amendments which have been necessitated by the creation of the post of senior resident magistrate which did not exist in 1931, nor even in 1955, and certain other improvements have been incorporated as a result of these amendments.

Mr. Speaker, I beg to move.

MR. MACKENZIE seconded.

Question proposed.

MR. TOWETT: Mr. Speaker, Sir, I rise to point out a few points which I do not think are right in this amendment Bill. When you say the following persons shall by virtue of their office be magistrates and shall have power to hold courts as shown by virtue of their offices, that is not how it should be done, from my point of view anyway. If today we appoint a district commissioner in the Northern Frontier District because there is nobody else there and that district commissioner happens to be a junior man, then by virtue of his office he will automatically be empowered to hold subordinate courts of the first class. I do not actually feel that by virtue of their office alone will be satisfactory under the present circumstances. I feel that we could say "by virtue of their office which is supported by long experience". I think the Government should really be realistic in this case. Sometimes when we do not have people who have had experience in any matters like this then you appoint somebody to act and those acting will automatically by virtue of their offices be empowered to hold courts as shown here. I do not like that very much, Mr. Speaker, and I hope the Government will look into it.

This idea of *ex-officio* powers does not sound very logical to me, but my other point and that which is more painful than the first one and which concerns the reasons given under the Memorandum of Objects and Reasons, I thought that the Emergency laws or Regulations

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were different from other laws and regulations made in peacetime. I do not like this idea of the Government trying to perpetuate, as is given here, the Emergency amendment laws which were made in 1955. It is not correct if any time when we make our laws we try to base them on the Regulations and the amendment laws which were made during the Emergency. I do not like the idea of Emergency to be put or incorporated in the way in which we make our laws now. The Emergency will end as it is bound to end and when that ends we do not like to remember when we read our laws that such and such section of the law was the result of the Emergency Amendment Laws and Regulations.

So, Mr. Speaker, Sir, I feel that the Government from today onwards should be more realistic in their attitude and should not base any laws we make in this country on Emergency regulations. We should forget all the Emergency regulations and then start afresh. It is no use trying to carry forward what was done in 1952 and 1955 up to the present and into the future, Mr. Speaker. The Government should, I hope, not base in future any of our laws or sections of the laws on what happened during the Emergency.

With those very few remarks, Mr. Speaker, I beg to oppose this Bill.

MR. MULIRO: I also oppose this amending Bill, Mr. Speaker, on very well founded grounds, and that is that the indiscriminate issuing out of magisterial powers to district officers is most unrealistic, because a district officer is an administrator, and as an administrator he should not at the same time also be a magistrate. Now, particularly in African areas one finds that a district officer of a given division also happens to hold magisterial powers—a first class magistrate and so on; he will, when he orders anything to be done in the division and people do not comply with this, he will get them into court and he happens to be the district officer in the area and he is also at the same time a magistrate. I do not think the administrator can at the same time be the Judge of a case which he himself takes before his own court. This is a serious abuse of justice, and one finds that by doing so a miscarriage of justice is being carried on in many African areas, particularly when one finds that a number of these district officers are young district officers. Now, in African areas, you find multiples of divisions everywhere and you find that quite a number of district officers are quite young, and when he is given charge of a given station he becomes a district officer and eventually, by virtue of his office, he is the magistrate in that area and therefore all cases are taken before him.

I think the Government, if it is interested at all in the well-being of the citizens in this country, should appoint more magistrates who are qualified magistrates, rather than rely on the administrators at the same time to carry out justice.

This is so, particularly in African areas, and in the settled areas people who hold the power of magistrates are sometimes local farmers, and a lot of farmers like that who also have magisterial powers will, whenever one of his labourers or a labourer of his colleague on a neighbouring farm misbehaves, he takes him before his own court and he imposes quite heavy fines and penalties on these people. I think that is a very serious miscarriage of justice in this country, and the way in which the Government is indiscriminately converting the former Emergency regulations into laws in Kenya now is being regarded by Africans in a most serious way. What we are now finding is that the Government tells us they are relaxing Emergency regulations and they want the Emergency to come to an end, but yet the powers of the Emergency are being extended day by day and in fact the laws of Kenya are being made worse than they were during the height of the Emergency.

Therefore on these grounds, Mr. Speaker, I oppose this Bill very strongly.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no other Member wishes to speak, I will call on the hon. Mover to reply.

MR. WEBB: Mr. Speaker, I think some of the remarks which the two hon. Members have made have shown a slight misunderstanding of the position. The hon. Member for the Southern Area envisaged the situation of a district commissioner being appointed in the Northern Province when he happens to be a junior man. That, of course, Sir, is what

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the object of this Bill is to prevent. In fact, it is impossible. Nobody would be appointed as a district commissioner in the Northern Province, or anywhere else, who was a junior man and who did not already have considerable experience, magisterial and otherwise.

The whole purpose of this Bill is to limit the number of district officers and district commissioners who acquire magisterial functions, and if this Bill were not to be enacted the position would be that far more, and far more junior, officers would have magisterial functions.

Sir, it is quite clear that many of the regulations made in the Emergency cannot and will not be perpetuated, but not everything that was done in the Emergency was solely directed to the Emergency or is for that reason bad. This was a thing which it so happened occurred in the Emergency, but fundamentally, Sir, I suggest it is a very beneficial move.

Sir, the hon. Member for North Nyanza suggested that administrators should not also be magistrates. This, Sir, is entirely in accordance with Government's policy. It has always been Government's policy and Government's belief that it is a bad thing in principle that administrators should be magistrates. It is Government's intention to move from that position, and to create a magistracy quite divorced from the Administration, as soon as it can, but there are two major difficulties. One is money and the other is that of getting people to fill the posts. There is very great difficulty in achieving both those necessities before we can achieve what we want.

I, Sir, deny the allegations which the hon. Member made that as a result of the present position injustices and miscarriages of justice are taking place, but that is not to say that the position is in fact a good one.

Sir, I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Evidence (Bankers' Books) (Amendment) Bill

Order for Second Reading read.

MR. CONROY: Mr. Speaker, Sir, I beg to move that the Evidence (Bankers' Books) (Amendment) Bill be now read a second time.

Sir, in order properly to investigate criminal cases it is sometimes necessary to have power to inspect bank accounts. The obvious example is a bad case of fraud. But there are two conflicting interests which arise in relation to such a power. The first is that there should be security of confidence between a banker and his client and in so far as it is possible to do so, the secrecy of that account should be kept inviolable. On the other hand it is in the public interest that people who commit crimes should be caught, prosecuted, convicted and punished for those crimes, to encourage other people not to follow their example. Therefore, we have to try to work out some system which is a compromise between preserving the secrecy of a bank account and not unduly hampering the police in the legitimate investigation of criminal offences.

Sir, there are some powers already in existence which allow inspection of a bank account and I might, for the convenience of Members, just mention one or two of them.

The first is that under the Evidence (Bankers' Books) Ordinance it is possible for a court to make an order for the inspection of a bank account. They can only do so if the case has started. Now, as hon. Members will at once realize, it would be very unfair to start a case just for the sake of inspecting an account, because the inspection of the account might well prove that the suspected person is innocent. Therefore, in certain circumstances, it is desirable to have the power to inspect an account before one institutes criminal or civil proceedings.

The second method of obtaining access to a bank account which at present exists, is to go to a magistrate and get a search warrant, but if you do that it means that you have to seize the books, take them out of the bank, take them away to the magistrate and hand them over to the magistrate, which is very inconvenient for the bank, for the client and for the other clients whose accounts may be in the same book, so clearly that is an undesirable method to follow.

There is a third method (which I seem to remember causing some hard speaking

[Mr. Conroy]

in this Council when it was introduced, I think in 1955), is under the Prevention of Corruption Ordinance, and that was section 10. That section gives power to the Attorney-General and Solicitor-General, when the circumstances warrant it, to authorize a named police officer to inspect an account. But that course also has certain disadvantages. The first is that the Law officers are extremely reluctant to use that power—and have only used it, I think, once; they only use it when all other methods have failed and it is absolutely essential that it should be used. They would much prefer that in the normal case—and this Bill deals with the normal case of criminal investigation—that the discretion to decide whether an account should be searched or not should be placed upon the shoulders of a magistrate or Judge and not upon the shoulders of an officer who, after all, is part of the Administration and not part of the Judiciary. In any event, of course, the Prevention of Corruption Ordinance only gives powers to search where it is suspected that the crime committed has been a crime of corruption against the provisions of that Ordinance.

We therefore thought that the best compromise in this particular case is to give the court power, where they are satisfied on oath that it is necessary or desirable to do so, to issue a warrant to inspect a bank account, and the power is co-extensive with the power which they at present have to issue a search warrant to enter a house, enter premises, seize goods and so on, and we therefore have effected a compromise between the confidence of a client's account and the legitimate interests of the public to investigate criminal offences by placing the jurisdiction to decide whether a search warrant should be issued upon the shoulders of the Judiciary.

Mr. Speaker, I do not think there is any necessity for me to say more at this stage, but if there are any questions which hon. Members wish to ask, then I shall be pleased to do my best to answer them.

I accordingly beg to move that this Bill be now read a Second Time.

MR. WEBB seconded.

Question proposed.

MR. TOWETT: Mr. Speaker, Sir, I find it hard to believe and accept the reasons given by the Minister about this Evidence (Bankers' Books) (Amendment) Bill. I should have thought, Sir, that the right course to follow would have been to make up a law asking the banker himself to give a written statement on oath that the amount of money or the statement in his books about any person's money was correct or was as it should be. I would not accept, if I were a banker, Sir, to have police officers coming probably every morning and every afternoon and asking me to produce books to show how Mr. Y. and Mr. X. stand as far as their accounts are concerned. It will cause unnecessary inconvenience. I do not say in all cases or in all banks, but in some places and at certain times it would be difficult for the bankers to work systematically with police interruptions and warrants coming in.

Down here it says that "any person who fails to produce any such banker's book to the police officer" will be fined. How much is the fine? A sum of money not exceeding Sh. 2,000 or imprisonment for a term not exceeding one year, or both such fine and imprisonment.

Sir, there would be occasions, if I were a banker—I am putting myself in the banker's place at the moment—if I were a banker and the police came in the afternoon when I was checking my books and they said, "Produce this book", and took the account and examined it, it would actually obstruct my work. I do not know if the Minister will agree with me that such books should be produced out of office hours so as not to hamper or oppose or obstruct the work of the banks.

Sir, I am keen that something should be done to stop criminals going and pretending that they have got money when they have not got money and borrowing money or trying to cheat other people, but I do not think that this is the correct procedure. I should say the Minister should take back this Bill, review it and probably replace it by producing another one asking the bankers to produce statements of account for any person suspected, and that statement to

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be produced when the banker has taken an oath to say it is the correct statement.

With those very few points, Mr. Speaker, I beg to oppose this Bill as it is and wait until it is redrafted and changed.

MR. NGOME (Specially Elected Member): Mr. Speaker, I would agree with the last speaker, but I would correct him in saying that the proper way to have the bankers would be in any particular case where some records are wanted from the banks, it would be reasonable for an officer of the bank or a banker to have a witness summoned to produce a record of a particular depositor to show the court in relation to the offence committed, rather than to have a police officer to search the bank records as regards a particular depositor. I think it would be very fair if a banker could be summoned to the court to give details for the particular depositor concerning a particular case, rather than the police officer going round to the bank and making a search. He may, of course, see the particular case he is after or he may see some other records. He might indirectly interfere with the working of the bank, there is no doubt about it.

But to support the Bill I think, Mr. Speaker, the submission that a banker should be summoned is the proper method in law in this particular Bill.

I support the Bill.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no other Member wishes to speak, I will call on Mr. Conroy to reply.

MR. CONROY: Mr. Speaker, Sir, the same point has been raised by the two hon. Members opposite who have spoken. Mr. Ngome, the Specially Elected Member, says would it not be sufficient to allow the court to summons the banker to produce the bank record? The hon. Member for the Southern Area made much the same point. The answer to that is that, in fact, in the law that provision already exists, but you see one can only issue a summons to produce the book where the case is actually going on; where it has started; and it may well be that you want to look at the book before you decide whether you are going to start a case or not, because the book may prove, when you inspect it, that the man you suspect of committing the crime has not committed the crime, and how very unfair it would be if you had to prosecute him, have him arrested, charged, brought into court, get your summons out to the bank and produce his book, and when you produce his book—you see it for the first time—you see you have accused the wrong man.

That is why we have introduced this Bill here. I hope that convinces the two hon. Members that we have given consideration to that point.

Then, Sir, the hon. Member for Southern Area said could we not make a law asking the banker to give a written statement as to the amount in the account. That does not meet your point, very often. Let me give you an example of a particular case of which I know. A man was employed and cheques that were coming into his employer had vanished. Now the police wanted to go along and look at the employee's account to see whether at the time each cheque disappeared a sum of money had been paid into this man's account. So you want to see the transactions that have gone through the account and not the final balance on any particular day, and for that reason it is just in the case of fraud and dishonesty, I suggest, that the police should—provided a magistrate makes an order to do so—be allowed to go and inspect that individual account—no other account, only just that one—to see the transactions that have taken place on that account. It may help to prove the man guilty; it may help to prove him innocent.

Now, Sir, I omitted to state in my opening speech that we did consult the bankers about this Bill, and you see the bankers want some protection too. If I were a banker the last thing I want to do is to give my client the impression that I am disclosing his secrets freely to any policeman who comes along. The banker wants the protection of an order made by the court, which is asked for on oath by a witness—and facts have to be proved to show that it is necessary and desirable to make the order for the search warrant—and therefore we did send this Bill to the principal bankers and asked for their views on it

[Mr. Conroy]
at a very early stage. They suggested various amendments which we either discussed and they agreed were unnecessary, or we discussed and we agreed were necessary and they have now been incorporated into the Bill.

I should have said that earlier on, and I apologize for not doing so. I think that may help to meet the point raised by the hon. Members.

Then the hon. Member for Southern Area said a banker does not want a police officer coming into his bank every morning and afternoon and upsetting his business, and I entirely agree with the hon. Member. I am sure banks do not want that. Nor do I envisage this happening. This kind of thing is done by a fairly senior officer in the Criminal Investigation Department, the kind of person who is experienced in dealing with frauds. It is not some young, inexperienced officer who has just joined the police force. The way we do it is you go to the magistrate; you swear on oath facts of which you know; the magistrate then decides whether he should grant the warrant or not; if it is granted the police officer then goes to see the bank manager and says: "When would it be convenient for me to come and see this account?" and the manager says: "You come down at half-past two this afternoon and we will have it ready for you in a private office."

The Bank does not want a policeman riding up to the front door on a white charger and hammering on the door and saying, "Open in the name of the Law!" That is very bad for their business and so we do it by private arrangement with them.

Sir, then the question of the punishment was raised, Mr. Ngome raised one other point, that was that he thought it was a dangerous state that a policeman could see other records. I think if the hon. Member looks at the Bill which says, in the new proposed section 7A, that a Judge or magistrate may by warrant authorize a police officer or other person named therein to investigate the account of any *specified* person in any banker's book. Therefore the warrant would authorize the named person to inspect Mr. John Smith's or Mr. William Brown's account only. He could not go and look at Mr. Ngome's account or Mr. Conroy's account unless, of course, they were the person named in the warrant.

Sir, I accordingly beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Industrial Training Bill

Order for Second Reading read.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I beg to move that the Industrial Training Bill, 1959, be now read a Second Time.

The purpose of this Bill, Mr. Speaker, is to provide a framework within which effective training of artisans can be carried out by industry. I would like to make it clear right from the start that the Bill contains no provision compelling either young men to enter into training or for industry to give it. The Bill will, however, attempt to ensure that, once training is undertaken under contract, it is given thoroughly and systematically.

Hon. Members will, I think, agree that the training of skilled workers in Kenya has hitherto presented great difficulties and has made rather slow progress, but that there is urgent need in this country for an adequate body of really well-trained artisans cannot be disputed. Equally urgent is the problem of finding occupational opportunities for the increasing number of young men leaving school. Many of these young men whose standard of education is steadily being raised will be eminently suitable for training in the skilled trades. In all the more highly developed countries in the world indenture apprenticeship within industry has been found to be the most satisfactory method of training skilled workers. Such training, however, can only be carried out successfully if there is available a body of skilled artisans competent and willing to participate in such training and also a readiness on the part of employers to operate apprenticeship schemes backed by facilities for technical education.

To some extent all these requirements have hitherto been lacking in Kenya. The stage has, however, now been

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reached when the requirements seem likely to be sufficiently met, if not immediately at least quite soon, to enable industry to develop properly regulated apprenticeship. Here, Sir, I would like to emphasize that it is a basic principle of Government policy that industry itself must undertake the main responsibility for the training of skilled workers. The Government appreciates that assistance is needed in the provision of facilities for theoretical training and work is in hand to provide a suitable technical institute in Nairobi. It can also assist by accepting responsibility in co-operation with industry for the setting up of training schemes and by establishing and showing recognition of adequate standards of training and achievement. These are the matters with which this Bill is particularly concerned.

Against that general background, Sir, I would like to turn now to some of the more detailed provisions of the Bill. These are based on recommendations made by the Advisory Council on Technical Education and Vocational Training and also on the recommendations of a conference held in Nairobi in 1957 on "Training on the Job". In the Bill two types of indenture are provided for. The first is the apprentice who will generally serve for a period of four years or more. The second type of indenture is that of the indentured learner who will serve for less than four years. The qualifications for entering into these two types of indenture are set out in clauses 8 and 10 of the Bill.

Broadly speaking, any person who has reached the age of 15, who has completed any period of compulsory education required by law, and is medically fit, will be allowed to enter into a contract. Learnership training, which would be given in the same trades as full apprenticeship but to a somewhat lower or less comprehensive level, has been introduced only as a temporary measure. At present, the country lacks sufficient fully-trained craftsmen to undertake all the full apprenticeship training needed. As it would obviously be wrong to lower the generally accepted standards for the apprentice, the second category, the indentured learner, has been introduced to make use for the time being of a large body of working artisans who, while they are not perhaps as highly qualified as the craftsman who has served his apprenticeship, nevertheless are quite capable of giving valuable training to a lower standard. This, as I said, Sir, is designed as a temporary measure. The time it will last will depend upon the amount of full apprenticeship training given by industry and the willingness of the Colony's young men to take advantage of such training.

In order to encourage and also regulate the type of training envisaged under this Bill, we propose to provide for the appointment of an advisory body. This body will be called the Apprenticeship Board and there will also be appointed an officer who will be responsible for the day-to-day administration of apprenticeship schemes who is to be called the Controller of Apprenticeship.

In pursuance of these objects, clause 4 establishes the Apprenticeship Board and clause 5 lays down its duties. The Board is advisory to the Labour Commissioner on all matters concerning industrial training, either those matters which it may wish to raise of its own volition or matters which are specifically referred to it by the Labour Commissioner.

Clause 5 also provides for the Board to conciliate in disputes arising over apprenticeships, and clauses 6, 7, 11 and 13 provide that the Board must be consulted by the Labour Commissioner in the determination of appeals from decisions of the Controller. It is the intention of the Government that the majority of the members of the Board will be drawn from industry and those members will be representative of both the employers and employees.

Clause 3 provides for the appointment of the Controller of Apprenticeship and Assistant Controllers. In order to enable the Controller to carry out his main function, which, in effect, Sir, will be that of executive officer in respect of industrial training in Kenya, he is vested with certain powers and duties. Under clauses 6 and 7 he must be satisfied that an employer can give proper training before he authorizes employment by that employer of apprentices or indentured learners.

Clause 11 establishes a system of registration of contracts of apprenticeship or learnership and clauses 12 and 13

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provide for their transfer or termination in certain circumstances.

[The Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[Mr. Conroy took the Chair]

The Bill, Mr. Deputy Speaker, provides that the Controller may refuse to register a contract or to approve its transfer if he considers it not to be in the interests of the apprentice and he may terminate the contract at the instance of either party to it if he is satisfied after hearing both the parties that it is expedient to do so. As I have already mentioned, there is a right of appeal to the Labour Commissioner who must consult with the Apprenticeship Board on such appeals from the decisions of the Controller. Other powers given to the Controller in clause 20 include the right to extend the term of contract when an apprentice or an indentured learner has been absent from work. In addition, he may when so authorized by the Board reduce the period of any apprenticeship if the person concerned has already undergone the relevant technical training.

These clauses to which I have drawn the attention of Council, Sir, constitute the main framework of the Bill. I would like, however, to turn now to what might be described as the contract clauses and first to draw the attention of the House to two clauses which seek to offer some safeguard to the employer against breach of contractual obligation.

The first of these is clause 9. This clause provides for the deposit of security for the due performance of the contract. The second clause relevant to this matter is clause 13 which lays down penalties for enticing an apprentice from his employer. In this connexion, Sir, I would like to mention that as a result of certain representations I have received on the draft Bill I propose to move an amendment to subclause (1) of clause 9 at the Committee stage. Where a breach of the contract does occur, an employer himself may take immediate action under clause 16 by suspending the apprentice but he must report his action to the Controller but the Controller must investigate the matter and may confirm or set aside the suspension of the apprentice or vary its term. In order that the parties to such a contract may have time to get to know each other and to decide whether they wish to continue with the contract, clause 15 provides for a compulsory probationary period of four months.

Other stipulations relating to contracts are contained in clause 18 which nullifies any term of the contract providing for payment on the basis of work done or requiring an apprentice under 17 to work overtime or of arranging employment for apprentices abroad. Under clause 26 existing contracts must be reduced to writing where this is necessary and registered.

Clause 19 required the employer to give a certificate of apprenticeship to the apprentice on the satisfactory completion of his contract. If the employer should fail to do so the Controller may himself issue a certificate.

The provisions of the Bill which I have so far mentioned add up, I think, to a very comprehensive system for the regulation of individual apprenticeships. As industrial training develops the time will undoubtedly come when it will be desirable to standardize training in particular trades. To this end, clauses 21 and 22 provide for the making of training schemes by the Labour Commissioner with the advice of the Board and require full advance publicity to be given of the intention to make such a scheme. The place must also be stipulated where copies of the draft scheme may be seen, and the procedure for making objections to any draft scheme is laid down in the Bill. I would like to emphasize, Sir, that schemes of this character will only be made after the most careful consideration and preparation. It is fully appreciated that without the support and co-operation of industry, in fact both sides of Industry, such schemes will achieve nothing, and therefore they must be drafted in full consultation with industry itself. I expect that when conditions are such that the introduction of a scheme for a particular trade appears advisable a special subcommittee of the Apprenticeship Board on which the trade concerned will be fully represented will be set up to draft the necessary proposals.

I think I should also invite the attention of the Council to clause 30 of the

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Bill, which enables the Labour Commissioner, with the approval of the Board, to exempt persons from the provisions of the Ordinance, in the case of a particular contract. I am sure hon. Members will appreciate that in legislation of this kind it is very difficult to cater for every possible set of circumstances. The fact that the law is too rigid will mean that hardship can easily result. It is the purpose of this clause to allow a reasonable degree of flexibility in the administration of the Ordinance.

As with all legislation, particularly protective legislation, as this is, Sir, adequate powers for enforcement must be given to the executive. For this purpose clause 23 provides for the appointment of inspectors, and clause 24 specifies their powers. Equally employers by clause 17 are required to keep records in relation to their apprentices and indentured learners, and clauses 28 to 31 deal with offences under the Ordinance and their prosecution. Clause 29 empowers the Minister to make rules for the purposes of the Ordinance.

I think, Sir, that I have outlined in sufficient detail the main provisions of this Bill, but I have also received on it some very useful comments, notably from the Nairobi Chamber of Commerce and also other organizations, and in the light of these observations I would like to comment a little further on some particular provisions.

The first point arises in connexion with the definitions at the outset of the Bill. I refer to clause 2. For the purposes of this legislation it is necessary to define the age of majority since the contracts into which apprentices and learners will enter are of considerable importance, and it is right that they should be judged to have the capacity to enter these contracts fairly and freely. Therefore before a person has attained the age of majority it is deemed right that his assumption of contractual obligations of this kind should be endorsed by a parent or guardian, or equivalent person. The present law on the matter—The Age of Majority Ordinance—defines a European minor as a person who has not yet attained the age of 21 years, and an Asian minor as a person who has not yet attained the age of 18 years. This particular Ordinance is not applicable to Africans. We therefore sought advice on the age at which the African community—itself generally considers that a child has become capable of taking decisions for itself. The age most generally acceptable for this purpose is, I believe, and on the advice I have received, 16 years. We have therefore put these varying ages into this Bill as the ages which seem most generally acceptable to the community in question. It has, however, been suggested, Mr. Deputy Speaker, that this is a harmful differentiating distinction, and the attention of the Council of State has been drawn to this provision of the Bill. The Council has met in Committee to consider the representations made to it, and I had the privilege of being invited to attend that meeting and explain the reasons which have led to the insertion in draft legislation of what appears at first sight to be a differentiating provision, I explained, as I have explained to this Council, that we sought to put in this Bill what was most acceptable to the communities concerned. I suggested that it might indeed have appeared to have been a harmfully differentiating measure if we had chosen an age which was acceptable to one group and simply, for the sake of uniformity, imposed it, perhaps unacceptably, on the other communities. After full deliberation the Council of State decided that the proposal in the Bill was not unfairly discriminating against any one group, and they therefore determined that no further action by the Council was required on this Bill. The Chairman of the Council of State has asked me to make this decision known when presenting the Bill to the Council.

The next point, Sir, on which I have received some comment, concerns clause 9. As I stated earlier, it is my intention to move an amendment at the Committee Stage to this clause. The effect of this amendment will be to make it clear that security will be deposited against the breach of a contract only when both parties to the contract so agree. It is also proposed that the maximum deposit permissible will be raised to Sh. 500, subject to the actual amount being approved by the Labour Commissioner.

Another amendment which I propose to move at the appropriate stage as a result of representations received, is the deletion of subclause 8 of clause 13. I am advised that this particular provision could operate so as to prevent an employer making a payment in all good faith to his apprentice after a contract has been terminated by mutual agreement. In the circumstances, I think it advisable that this provision should be omitted.

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Representations have also been made, Sir, that appeals from a decision of the Controller—for example under clauses 6, 7, 11 and 13—should lie to the Minister rather than to the Labour Commissioner. I think it is a generally accepted principle in our legislation that matters of detail in the administration of an Ordinance should not claim the attention of a Minister if they can be suitably dealt with at the official level. As the Labour Commissioner under the terms of this Bill will not himself be concerned with the day to day administration of the Ordinance, since this is quite clearly the responsibility of the Controller, and as the Bill requires the Commissioner to consult the Apprenticeship Board on the matter of any appeal before making his decision, it is considered that the provisions now in the Bill are adequate to ensure that a fresh mind will be brought to any appeal, and that consequently any departure from the general principle of administration to which I have referred would not be justified. It should always be remembered, I suggest, that the Labour Commissioner when carrying out his functions on appeal under this Ordinance would arrive at decisions along policy lines laid down by the Minister.

Again, some apprehension has been expressed that, when a scheme is made under the provisions of the Ordinance to which I have referred relating to a particular trade, this scheme might then apply to contracts which had already been registered. I can assure hon. Members, Sir, that this will not be the case under the provisions of the Bill. Only contracts which are registered after the scheme has been made will be required to comply with its details.

A similar fear has been expressed with regard to contracts existing at the commencement of the Ordinance, but as I have already suggested, the making of schemes will take some little time, and in practice existing contracts will have been registered long before any scheme is drafted and comes into force.

Another suggestion which been made is that only labour officers should be appointed inspectors for the purposes of the Ordinance. I am afraid that I could not accept that suggestion, Sir, since it is my intention that most of the inspection necessary under the Ordinance should be carried out by the technical officers of the Labour Department, who are not specifically labour officers. By virtue of their particular qualifications and experience they are fully familiar with the problems of industrial training, and are therefore the most suitable people for these duties, but in order to meet the representations which have been made I propose to introduce an amendment at the Committee Stage which will ensure that suitably qualified officers are appointed as inspectors for this purpose. The powers vested in inspectors by clause 24 have also been the occasion for some misgiving. These powers, Sir, are no greater than those already conferred on inspectors of factories by the Factories Ordinance, 1950, which itself follows the practice of the U.K. Factories Act of 1937 and 1948, and virtually the same powers are also given to wages inspectors by Section 20 of the Regulation of Wages and Conditions of Employment Ordinance. I am certainly not aware that the powers conferred under these Ordinances to which I have referred have at any time been abused, and I would hesitate very much to agree that there is really any ground for the fears which have been expressed. In fact, I believe that the powers given by clause 24 to inspectors are essential in protective legislation of this kind. Unless they are adequate for the enforcement of the law there is real danger of it being ineffective, and in any case the good employer has nothing whatsoever to fear.

Having dealt, Sir, with the main provisions of the Bill and with the principal recommendations which have been made to me about it, and having indicated my readiness in a number of cases to meet these representations by moving amendments at the appropriate stage, I would like to conclude by giving some indication of what I believe this Bill can

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achieve. Let me say straight away that I do not suggest that of itself it can produce any startling expansion in industrial training. What the Bill can do is to bring order and standards into industrial training, and therefore stimulate both employers and workers to play their part in the creation of the highly skilled artisan force which the country needs. Legislation for this purpose could adopt one of two courses. It could either provide the foundation on which industry in co-operation with Government can develop a sound system of industrial training. Alternatively, it could seek to compel industry to train its workers. This second alternative is repugnant to Government, and I feel also to hon. Members of this House, and it would create a resistance throughout industry that would defeat its own object. We have therefore adopted the first course I mentiond in introducing this Bill. Here is the machinery. The amount of work it can do will depend ultimately not only on the Apprenticeship Board and Controller, who will, I am sure, do everything in their power to promote training, but fundamentally on both sides of industry, for theirs is the final responsibility, and theirs also is the ultimate benefit.

Mr. Deputy Speaker, Sir, I beg to move that the Industrial Training Bill be now read a Second Time.

MR. WEBB seconded.

Question proposed.

MR. TOWETT: Mr. Deputy Speaker, I do not have much to say on this Bill except to welcome it. I think that this is exactly what we have been waiting for for quite a long time and I am very much pleased that the Government has taken the initiative started by the Advisory Committee on Industrial Training.

I only want to speak on one point here, Sir, on the definition of a minor. The Minister for Education, Labour and Lands has given us some interesting points and has concluded that this is not a discriminating factor. I feel that this idea of an African being a minor at the age of 16 and a non-African being a minor at the age of 18 and a European, I think, without saying something bad to my friends, being a minor at the age of 21 is really awful from the point of view of psychology. It shows, too, that the I.Q. of our European friends is apparently lower. I am not intending to discredit anybody but I am speaking scientifically and psychologically. I think that the Government should go into this really illogical and very unscientific definition of minor, the ages being different. Sir, I know that the African will benefit more than the European. If we take the age of 16 to be that of a minor, Sir, what do we have, what comes of this idea of a minor? An African at the age of 16 may be called to court or at the age of 17 he is considered as an adult and will be answerable to all the legal proceedings, whereas the European at the age of 21 and the non-European at the age of 18 will be still considered as a minor and will receive probably somewhere an attitude of considerable sympathy from magistrates. I feel, Sir, that we have got to have one definition of what we understand by the word "minor". Either we agree to disagree or we agree to agree. We are all Kenya nationals and when you come with different definitions I just do not see where the logic is. Sir, we are aiming all the time to see that we consider things fairly like Kenya nationals and we do not want anything which is discriminatory like what we see here. At the age of 18 the African pays taxes and at the age of 18 the European does not pay any tax at all, and, from the point of view of a man who is married, we have got this compulsory poll tax which an African at the age of 18, who is a minor from my point of view, is forced to pay.

Sir, I hope that the Minister will rectify this query and amend the unscientific definition of the word "minor". I know that he is competent as to the use of words and I hope he will satisfy us all.

Coming, Sir, to clause 8, here it is given that any person who has attained the apparent age of 15 years and has completed any period of compulsory education required by law, and I do not want to go further here, Sir. What do we mean by "compulsory education"? So far as I am aware today there is no stipulation for compulsory education for the African children. These things, the words "compulsory education" are really not warranted and should be out. Compulsory education in that sense does not

[Mr. Towett]

apply to what I call the African community with the higher I.Q., as I said before.

Coming down to clause 8 (3), Sir, it is given that a person who is a minor shall not bind himself as aforesaid except with the consent of a parent or guardian or, if there is no parent or guardian, with the consent of the district officer or the labour officer. Since when have these people been the parents or step parents of our children? I know that a district officer will not be competent to judge the character of a boy from the Chebolungu location in the Kipsigis country. I think the better thing would have been for the Minister to insert the words "chief of the location" in the case of the African children, or "somebody responsible who knows the person who wants to enter into an apprenticeship". A new district officer from the Coast Province does not know much about my area and would not be in a position to say whether the young man was a good young man and should enter into an apprenticeship. There should be somebody who knows or is known to the young man concerned.

I think this idea of the apprentice and the persons entering into a contract of apprenticeship or indentured learnership, this idea of them paying Sh. 100 or something like that, a minimum of Sh. 100 and a maximum of Sh. 200, is actually a great hardship and handicap to some of our children in this country, the young boys and girls in this country. We should either obliterate that altogether or reduce it to about, say, Sh. 25, just a token amount.

Under clause 14, Sir, there is something interesting here. It says, "Any person who induces or attempts to induce an apprentice or indentured learner to quit the service of his employer, or who employs a person who he knows is bound by a contract of apprenticeship or indentured learnership to any other person shall be guilty of an offence and liable to a fine not exceeding Sh. 2,000." If a person is found guilty then all he can say is, "I do not have Sh. 2,000 and I do not have Sh. 2." There is no alternative provision there and I would like to see something inserted there if the Minister can do this.

With those few remarks, Mr. Deputy Speaker, I beg to support the Bill.

MR. MBOYA: Mr. Deputy Speaker, Sir, it is not my intention to raise any major points on the Bill. Some of us have had time to discuss some of the provisions before the Bill was brought here and to look at it in detail. There may be one or two things that we wish to introduce during the Committee stage. However, I think that generally our attitude is one of welcoming the introduction of the Bill and especially the introduction of more regulated facilities for apprenticeship and training. I am a little concerned, however, to hear the Minister make one point regarding some representations that have since been made to him. My hon. friend the Member for the Southern Area has referred to the question of security. Now, I thought I heard the Minister state that it might be the intention in order to meet some of the representations that have been made to raise the maximum to something like Sh. 500, subject to the actual amount being agreed upon. Now, I do want to suggest, Mr. Deputy Speaker, that the actual requirement of some security deposited by the apprentice or prospective apprentice can in fact be a handicap to those wishing to avail themselves of the opportunity provided by the Bill. I think we have here to think especially in terms of the African child or the apprentice who comes from school and whose parents may not be able to afford even the extra Sh. 100 to be deposited for the purposes of security. Now, I am not sure what the intentions of those who made the representations were but it would appear to me that they actually want a large sum of money deposited possibly to cover what they consider to be loss in case the apprenticeship is broken. I do not think, Mr. Deputy Speaker, that it is possible to provide here for any actual security that could cover the loss that might be incurred. I think we have to appreciate and to be realistic enough to appreciate that there are going to be cases where for one reason or another it might be necessary for either party to break the contracts. Now, I do not think that we can approach it from the point of view of the onus being placed on the apprentice to pay or to compensate whatever loss the employer or industry might incur. There is the other side of this and that is that whereas the apprentice is required to put down this security I do not think provision is made for the

[Mr. Mboya]
employer to provide any security, in the event that he should decide for any reason to break the contract. There can be cases where employers, in fact there have been such cases, might use quite a number of arguments in order to get rid of one of the apprentices. I think that generally my attitude seems to be that (a) if we provide a very low sum in terms of security it makes a mockery of the whole idea and if we provide a very high sum in the Bill we might make it very difficult for a number of people who should avail themselves of the opportunity to do so, and I am therefore inclined to feel that a lot here would have to be left on the good faith and the provisions already made for scrutiny of the contract and the compulsory probation period that has already been provided for, takes care of that problem of either incompatibility on the part of the parties to the contract or unsuitability of the apprentice, and so on. The four-month period provided for in the Bill in my view covers the need for any security deposited by the apprentice, and I would earnestly urge the Minister to reconsider what he has already indicated he intends to do and rather than raise the maximum amount to Sh. 500 he should seriously consider in fact eliminating this provision from the Bill because he provided for this compulsory probationary period.

I was also a bit disturbed, and probably I will deal with this in Committee, about the powers of the employer to suspend a contract pending a report to the Controller. Now, there are serious dangers in this and I hope when we come to the Committee stage the Minister will probably tell us a bit more.

Lastly, Sir, I think this whole question of the definition, in so far as age is concerned, might be reviewed again. I am not sure that what is really intended here in so far as defining as a minor a European under the age of 21 and an African under the age of 16 and an Asian under the age of 18. I think there is a strong case here for us to strike a firm age which might be applicable in all cases. I am not sure that the European would lose very much if, for example, the age were brought to an average level of 18, but I do think that in view of some of the responsibility, if I may put it that way, that devolves over a person subject to this definition that it is necessary carefully to examine what this differentiation might mean in relation to the apprentices of the various racial groups.

On the whole, Sir, as I have said, we welcome the introduction of this Bill and especially welcome and hope that industry will co-operate constructively and effectively in making it work.

With those few remarks, Sir, I beg to support.

MR. MUCHURA: Mr. Deputy Speaker, I must join the other hon. Members in welcoming this Bill and more particularly, I think, it will be a great help to those members of the Labour Department who have laboured against odds in the past without such a Bill. There is only one thing I would like to bring to the notice of the Minister. It might be implied or it might have been borne in mind, because it says in section 7 (2) "No permission shall be given under this section unless the person applying therefor satisfies the Controller that his establishment offers reasonable opportunities for the proper training of the indentured learner or the number of indentured learners proposed to be employed by him." I agree, but there is one thing which I think is most important. It is not only the machinery and layout and all the rest of it, but what I think is most important is whether there is a person in the establishment who is capable of not only knowing the work that goes on but of imparting the knowledge and instructing. I think that the whole thing hinges on that. There may be 101 people who are good artisans but are they, at the same time, capable of instructing an apprentice?

Another point, Sir, is this, that there is provision for schemes and, I take it, that there will be a syllabus in the schemes which says that a person starting in a certain firm will start from scratch, sweeping, up to using the tools, whatever they are using. Are there any arrangements for the theoretical part of the training, say, so many hours per day or per week or per month will be spent on theoretical instructions? They have it in other countries and in various other places, and I think it should be laid down by law. I say this from my own practical experience during the days when I was in the Labour Department and where

[Mr. Muchura]
we used to have a lot of quasi apprentices all over the town and the country, where a person could come and say, "He is just a *toto* and we are teaching him", whereas, in fact, nobody actually is teaching him. All that he picks up is from what he can see and whatever he can make out of it. I reckon it would be a good thing if it could be written into the law itself that there will be definite times of theoretical or practical work, and so on. I do not mind what the proportions are but I think they should be written into the law.

Secondly, Sir, there is the question of what is termed in the Bill as "Nobody will be allowed to employ an apprentice without permission in writing from the Controller." In the Employment of Women and Young Persons Ordinance there was also provision that if I was running a small workshop and it was not dangerous then I could employ a juvenile or young person to work there with the written permission of the local labour officer. Will it not still be possible for me to use the other Ordinance and get some young men to work in my place? The machinery may be broken and it may cost something to repair it, but even if the machinery is broken the other Ordinance is cheaper to use. That means that I could go into some agreement with the guardians of the child and tell the child, "You join me and I will teach you to be a mechanic." That will still happen. Is there any means whereby that sort of action could be stopped or can you find means whereby you can put something in this Bill to stop such happenings. I am not talking about the employment of juveniles here. These people say to anyone applying that, "I will take you"—either as a learner or an apprentice—and those are the two in the Bill; but under the Women and Young Persons Ordinance he will say, "No, I am only employing a young person to clean up the garage and nothing else." It may be implied somewhere in the Rules, but what I was thinking was most important was that there must be, besides the fact that the factory has got provision for training apprentices, somebody capable of instructing must be there before a permit is issued.

I do insist, Sir, that an apprentice should have hours during which to attend a technical institute or during which he should be given lectures, even after 4 p.m., by a particular person. The important thing is that the employer should not be able to say that an apprentice is unteachable without having been given time to see whether he is teachable by instruction from somebody who can instruct. Then, of course, we will not have the danger of the contract being cancelled or the apprentice being suspended, or the employer saying, "I cannot have him because he is unteachable."

I think that on the whole, Mr. Deputy Speaker, I welcome the idea of this new Bill but I am very concerned about some of the points that I have raised, and it will be in the interests of most people that some of these points should be clarified, particularly so that the back doors, examples of which I gave, in so far as the apprentices are concerned, should be closed.

MR. TRAVADI: Mr. Deputy Speaker, I rise to welcome and join hands with the other members who have just spoken and welcomed such a type of legislation. The only comment that I have to make is, more particularly on the definition of "minor" to which the Minister has very rightly referred. The Council of State it appears is satisfied that there is nothing discriminatory here but if in any future legislation it continues this past practice, and if it goes on such a line like that, then I think that the future legislation will be perpetuating discrimination. Obviously there should be a time limit so that no such discrimination should be contained in any future legislation.

The other thing which strikes me, Sir, is the compulsory education for Asians. As my hon. friend Mr. Towett has said, the Africans have no compulsory education, and so the case with the Asians except in the towns. It means, or it will mean in actual operation, that those students or those pupils who are outside the scope of these three towns will not have a chance of being enrolled in this scheme.

I welcome this legislation more particularly because the annual output of our Asian children runs not by hundreds but by thousands and my worry only is whether the present industries are sufficient to absorb such an

[Mr. Travadi]

enormous output. Whatever it may be, Sir, the definition of "trade" is given here in the Bill is "skilled manual occupation" and the Bill is entitled "The Industrial Training Bill". I think it sufficiently reflects the name industry but there is no definition of industry at all. Whatever it may be, Sir, I welcome it from the bottom of my heart and I hope that the scope of the Bill will be embracing every child with this inclination, whether European, Asian or African.

MR. OLE TIPIS (Central Rift): Mr. Deputy Speaker, Sir, I rise to say a few words on this very important Bill before the House which I think the Government ought to be congratulated on introducing at this stage, because in the past we have been all clamouring for the introduction of something of this kind which would help us to train and have skilled artisans to do very skilled trades, which are required for the development projects of our country.

Now, Sir, I think the previous speakers have mentioned something about a differentiation in ages. Personally I do not think there is something really discriminatory in the whole thing, but I think it is quite right at this stage to get away from any idea of trying to differentiate the various races who inhabit this country, because I do not see why we cannot make it so uniform, for instance, the difference now between the school-going ages of Africans, Asians and Europeans is so little I do not see why there should be all that difference of an African boy of 16 being regarded as a minor whereas a European youth of 21 is regarded as a minor, too. I should suggest to the Minister and Government as well that we should try to level the age down to somewhere where it will not do any harm to any of the young people concerned.

Now, Mr. Deputy Speaker, I see also under clause 6 (1) (*a*) that an employer must obtain permission to employ an apprentice. That also applies in clause 7 (1) (*a*) in the case of an indentured learner. Now, what worries me in these two clauses, Mr. Deputy Speaker, is that I know it is true that we must aim at achieving the highest standard of training, but we know that in this country there are very very few private and commercial houses which have so willingly taken up the job, of apprentices training. I was wondering whether it was not advisable for the Minister to try and make these two clauses really very very flexible so as not to debar any youngsters who have not reached the required standard of education from availing themselves of opportunities for further technical training. In that case, I mean, we can do with a number of semi-skilled chaps and I do not see where they come in under this Bill.

The other clause is this one—clause 9 —Security. I was a bit perturbed to hear from the Minister that he intends to move an amendment to the Bill raising the amount to be deposited to something in the neighbourhood of Sh. 500. Surely, Mr. Deputy Speaker, this is going to place a number of African children or African youths who are financially broke at a very great disadvantage.

Now, I should suggest and most sincerely to the Minister to leave out altogether the deposit required and failing to waive it all entirely at least to reduce it to something like Sh. 50 and that, of course, should also be tied up with something in the way of a security bond. You may find a child who has no parents or relatives to pay the initial deposit required just behing turned away but if we could get somebody at least to sign a sort of security bond to the sum of, say, Sh. 50, then that boy will take the opportunity and go in for training.

Now, the other thing, Mr. Deputy Speaker, I saw in clause 19 that the employer of an apprentice or indentured learner shall at the request of the apprentice or indentured learner on the satisfactory completion will be required to issue the necessary certificate. Well, I should have thought that the words "at the request" should be struck off. I mean, it is natural and it should be made at least compulsory for the employer to issue such a certificate not entirely at the appreatice's request. And in addition to that, what I should like to ask the Minister to consider and to consider it seriously is that we are all human beings and as such sometimes we have a dislike or a distaste for thing. It happens, even in schools, and you might find a naughty

[Mr. ole Tipis]

boy who at time learns well and like any other school child in the same class but the teacher might simply take a dislike of that boy and I think at this stage on the completion of the four years' training course the Labour Department should also step in and give a sort of a trade test to this man who has undergone and completed his four years' training course satisfactorily and should issue a certificate with regard to his standard of competency to that effect and together with the one issued by the employer surely that will help the young man to get good employment.

Now, Mr. Deputy Speaker, in conclusion, I would really ask the Minister and the Government as a whole to do anything possible, everything in its power, to help and also encourage the few industrial and commercial houses who have through their own initiative taken up this big job of training our future skilled artisans and as such I would even go the extent of suggesting to the Government that for those children those African children, who are qualified and eligible for any apprenticeship and cannot either get somebody to sign the security bond or pay the initial deposit required the Government should help in paying on their behalf the employers the required deposit.

With these few words, Mr. Deputy Speaker, I beg to support the Bill.

MR. ALEXANDER: Mr. Deputy Speaker, I am authorized on behalf of those that briefed me and particularly the Nairobi Chamber of Commerce to place on record their appreciation of the co-operation they have received from the Ministry and also from the officers of the Labour Department in connexion with this particular Bill. They do tell me that practically all their suggestions and requests have been met and they are extremely appreciative.

My remarks concern only two clauses of the Bill, clause 21 subclause (1) and clause 24 subclause (*b*). Clause 21 subclause (1) does say that the Labour Commissioner may make a scheme or schemes for regulating the training of apprentices or indentured learners in any trade. That same clause, at subclause (5) does go on to say that a scheme may be amended by a subsequent scheme or by an order made by the Labour Commissioner on the advice of the Board. When the Minister was speaking to this particular clause, my understanding was that his explanation referred to schemes already in existence, schemes operating before the introduction of this legislation. But the point I wish to make is that it is considered important that the Bill should lay down that once an apprentice or indentured learner has been accepted under a scheme the Labour Commissioner shall not amend the scheme under subsection (5) during the period of the apprenticeship without—and these are the important words—without the consent of the employer. Concerning clause 24, the objection here related to the end part of it which says: "Provided that no one should be required under this section to answer any question or to give any information tending to incriminate himself."

[Mr. Conroy left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) took the Chair]

The whole of clause 24 deals with the powers of inspectors and the objection is that nowhere in the Bill is there an obligation on the part of inspectors to warn those whom they are talking to or those whom they are inspecting that they need not answer questions. This is particularly so, or this opinion is particularly voiced, by the smaller businesses, by the smaller industries, who may not be so well briefed on the detail of this law, who may not have resort all the time to legal advisors and they do feel most strongly that when inspectors do come to see them, rather like policemen, they should warn them that in fact they need not say anything that ineriminates themselves. And I believe if the Minister when he replies would indicate that he is prepared to introduce an amendment to provide for this that it would be most welcome. It is considered to be a reasonable request and I do beg of the Minister to consider it favourably.

I beg to support.

MR. CONROY: Mr. Speaker, Sir, there have been one or two points raised with a legal flavour. Perhaps I might try to do my best to be of assistance to the House on this matter.

[Mr. Conroy]

The first points were raised by the hon. Member for Southern Area who dealt with the differing ages at which differing races ceased to be minors and became adults. That was also mentioned by other hon. Members, but I think the hon. Member for Southern Area managed to get hold of the wrong end of the stick with greater efficiency than other hon. Members who have spoken on this Bill.

The importance of attaining majority in law is this, that when you are a minor —subject to one or two exceptions—you cannot enter into a contract. When you are an adult you can. Now, as I read the Bill, it says, in two places, that no one shall enter into a contract of apprenticeship who is a minor without some one also signing on his behalf and that no one shall amend the contract of apprenticeship who is a minor unless the same safeguard is gone through. And the effect of having an African reaching his majority at the age of 16 is that when he is 17 he can sign a contract on his own behalf but a European cannot. That is the only implication.

The hon. Member for Southern Area raised questions of criminal responsibility and fiscal liability to pay tax and I can assure him that no provision in this Bill alters the age at which a person can be tried for a criminal offence or alters the age at which a person shall pay tax.

Then, Sir, the hon. and learned Member who spoke just now, dealing with clause 8 (1) (*b*) which provides that any person who has completed any period of compulsory education required by law may enter into a contract of apprenticeship, he went on to say that if he has not completed it, if he has not entered into it, then he is excluded from entering into a contract of apprenticeship. I think, Sir, if the hon. Member goes back and reads clause 8 (1) (*b*), he will find that it is not susceptible of the interpretation which he has placed upon it.

Now, Sir, the more difficult point has been raised by the hon. Member for Nairobi West on clause 24 (*b*) and I am not quite sure what the answer to this one is and I would like him to bend his mind to the problem to see whether we cannot reach some solution.

Sir, where you have legislation of this kind I am afraid you have to have inspectors, and if you have to have inspectors they have to have some powers to enforce the legislation and therefore it is only a question of degree between what powers they should have. If an inspector under this clause as I read it, as the clause is drafted now, goes into a factory he can require people to answer questions and to make a statement. But he cannot require a person to incriminate himself.

Now, Sir, let us take the example of an inspector who goes into a factory and he there questions six people. Numbers 1 to 5 are potential witnesses against No. 6 because No. 6 is the person who has broken the provisions of the law and Nos. 1, 2, 3, 4 and 5 are people who can give evidence against him. Now, Nos. 1 to 5 clearly will have to answer the questions because they are in no way incriminating themselves. Sir, their statements which they make and which are written down and which they have to sign are not produceable in evidence at the trial of No. 6. They will have to go into the witness box when No. 6 is tried and they will have to give evidence in court on oath and they will be liable to be cross-examined and questioned not only by the prosecutor but also by the defence and by the magistrate. Therefore, the fact that they have signed the statements is not going to hurt them in any way. Now, with respect to No. 6, if he has signed the statement which incriminates him, or not, he has not signed that statement voluntarily. He has been forced by the provisions of the law to make that statement. Therefore it cannot be proved in evidence against him. And so, the fact that the statement is made without his knowing that he need not answer incriminating questions is not going to hurt him in any prosecution. It will, however, assist the Labour Department in enforcing the operation of the Ordinance by persuasion, by possibly threats that if the same thing happens again that they may have to prosecute by administrative action.

And therefore, Sir, it is desirable that we should not cut down this subsection so much by putting so many safeguards in it that it draws the teeth of the

[Mr. Conroy]

section. Sir, I would be inclined to give thought to a way in which it would be possible to amend this section, this clause, to meet the point that the hon. Member has raised. I wonder, Sir—I am possibly thinking aloud now—I wonder whether we could meet it in this way. Supposing we were to amend the clause to say that any person from whom a statement was taken by an inspector should be warned that his statement might be used in evidence, and just stop there. Because you see a statement might help him to prove himself innocent as well as prove himself guilty, and that is the normal rule under the Judges' Rule that when you take a statement from a person in custody you must warn him that the statement may be used in evidence, full stop—not against him—just in evidence, and I wonder whether the hon. Member would like to think about that and consider whether that would not meet the point, and if so, possibly in discussions outside this Chamber we might be able to reach some agreement on it. But I do want him to remember that it is desirable to retain some teeth in the section. We do not want to draw them all.

Sir, I think that deals with the points which have been raised which have a legal or a quasi-legal flavour, and I accordingly support the Motion.

MR. SAGOO (Nominated Member): Mr. Speaker, Sir, in the Memorandum of Objects and Reasons it is stated that this Bill gives effect to the recommendations of the Advisory Council on Technical Education and Vocational Training. I would like to add, Sir, that those recommendations were the result of the deliberations of the Apprenticeship Committee, which was appointed under the chairmanship of Mr. Harry Brigder, and I would like here, Sir, to record our appreciation of the work that was done by that Committee. It was feared at one time, Sir, that that report was going to be shelved indefinitely, but I am very happy to see that it has turned out, in fact, in the form of this neat little Bill which will go a long way to improve the training of our apprentices.

Mr. Speaker, Sir, I beg to support.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, it is indeed gratifying to hear the wide measure of support on both sides of the Council which is forthcoming for this Bill. Indeed, I feel at this stage there is nothing which I need comment on at any length as regards the principle and purposes of the Bill since they seem to be broadly acceptable to all Members of the Council.

A number of detailed points have been made, and some of them have already been dealt with by my hon. and learned friend in his comments on the legal aspect of certain provisions of the Bill. I do not feel that I can really add very substantially to his comments on the question of the age of majority. As he has pointed out, this affects simply the capacity of an apprentice or indentured learner to enter into a contract. We could hardly in a Bill of this kind enact a provision which is in conflict with the substantive law on the matter which governs the age at which a European and an Asian are regarded as obtaining their majority. If hon. Members feel that this is an unfortunate provision, I think we should have to address ourselves to the amendment of the substantive Ordinance rather than attempt to depart from it in legislation which is directed to another purpose. This really only leaves us with the question of whether the age which we have established in this Bill for an African attaining his majority for the purposes of the Bill should be the same as either the European or the Asian or a wholly different age. Those hon. Members who have commented on this question have not, as far as I can recall, suggested that there is anything wrong in the age of 16, or that, for the purposes of entering into an apprenticeship an African should be debarred from doing so without the consent of parent or guardian until a later age. I therefore feel that the provisions which we have in the Bill, which as I said were regarded as acceptable in the sense that they were not thought to be harmfully differentiating by the Council of State, are the best we can provide.

The hon. Member for the Southern Area suggested it was a little odd that if a parent or guardian were absent the district officer or labour officer should be empowered to take their place, and

[The Minister for Education, Labour and Lands]

I think he suggested that probably the chief of his location was a more appropriate person to be designated for the purpose. I do not imagine that there would be many cases in which a parent, or if the parents were dead, the guardian were absent, and in those cases it seems best that there should be some Government officer who, by taking advice say from the chief of the location or other person who could give that advice, would be able to fulfil the purpose. I therefore do not propose to suggest any amendment to this provision.

Some comment has also been made, Sir, on the provisions which are made in clause 9 for security. As I mentioned in my opening remarks I intend to move an amendment at the Committee Stage to alter this provision. Hon. Members who have noted that point have rather concentrated on what I said about the increase in the maximum limit for the amount to be deposited. I also mentioned that I intended in this amendment, which we can discuss more fully at the Committee Stage, to make it clear that security would only be deposited when both parties to the contract agreed that this should be done. I think that that provision is adequate protection for those who might otherwise feel deterred by the security provision from approaching the question of an apprenticeship.

The hon. Specially Elected Member, Mr. Muchura, referring to clause 7 (2) suggested that it was very important to ensure that in any firm approved as a firm to engage apprentices there should be persons capable of giving instruction. I am quite certain I can give this assurance to the House that the Controller in considering whether any establishment offers reasonable opportunities for the proper training of the indentured learner or the apprentice, as the case may be, will pay particular attention to the adequacy of the instruction likely to be available in that establishment.

The same hon. Member referred to the need in making any scheme (to ensure that not only practical, but theoretical training would be provided. I indeed share his view on this point and clause 21 (2) (*d*) of the Bill provides that in any scheme which is made there may be provision for a specification of the theoretical training which should be given at the expense of the employer for the apprentice or indentured learner. I therefore feel that that point, Sir, is adequately covered.

The hon. Member for Central Rift referred to clauses 6 (*a*) and 7 (1) (*a*), and suggested that these might conceivably be restrictive in relation to the employment of apprentices who had not, perhaps, reached a very high level of initial education. I think that perhaps he was slightly misunderstanding the purposes of these clauses, which are indeed to ensure that the employer of an apprentice is approved by the Controller. That is the important matter. The Controller is satisfied that the employer who is taking on an apprentice is a satisfactory person and is equipped to give the necessary training. These clauses do not in any way limit the person whom such employers may take on as apprentices or indentured learners.

A question was also raised, Sir, on clause 19 as to whether it was desirable that we should maintain in the Bill the provision that a certificate is issued by an employer at the request of the apprentice. I am prepared to consider that further and inform the House at the Committee Stage whether it seems right that any adjustment should be made to this clause in this respect.

I think, Sir, that those remarks cover most of the comments which have been made on the Bill when taken in conjunction with the remarks of my learned friend, and I would just simply like to conclude by thanking those Members who have supported this Bill and saying in response to the remarks of the hon. Member for Nairobi West that we have indeed welcomed the ample co-operation we have had from the Nairobi Chamber of Commerce and the Federation of Kenya Employers in considering this Bill, and also echo the remarks of my hon. friend, Mr. Kirpal Singh, regarding the notable contributions made by the Committee on Apprenticeship, whose work is reflected in full in this Bill. I trust that this measure will, in fact, prove to be the effective measure we all hope it will be.

With these words, Sir, I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The House rose at thirty minutes past Twelve o'clock and resumed at thirty minutes past Two o'clock.

The Land and Agricultural Bank (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, I beg to move that the Land and Agricultural Bank (Amendment) Bill be now read a Second Time.

This Bill, Sir, deals with various points, a very few of them of real principle, but I will touch on the main points even though they may be regarded as details.

The first amendment, Sir, in section 2 is really to enable the Bank to lend from its own funds advances to staff for the purchase of motor vehicles should the Board think this is desirable.

The amendments to section 20 are because it was felt that there should be some tidying up in the wording of this particular section, and that the present was a suitable opportunity.

The amendment in clause 4 to section 23 of the principal Ordinance has been undertaken largely as a result of the Emergency Loan Assistance Fund. Hon. Members may remember, Sir, that in the Budget Speech of 1956 I told the Council that a sum of £250,000 would be placed at the disposal of a special committee which would be set up to receive applications for assistance from European and African farmers who found themselves in economic difficulties as a direct result of the Emergency. From this fund, which was then designated "The Emergency Loan Assistance Fund", interest-free loans have been made both to African and to European farmers. A moratorium on capital repayment was granted for the first five years in each case, after which the loan is to be repaid over a period of 15 years.

Now, Sir, on examination we came to the conclusion that the best body to handle this fund over the 20 years of its lifetime would be the Land and Agricultural Bank, and so it will be a process of handing over to the Land and Agricultural Bank not only the management and administration of the fund, but the repayment of the capital. In this way the capital of the Bank will, over the period from 1957 to 1977, be increased by some £250,000—that being the some—some—being the qualifying adjective because, of course, there may be some people who are not able to repay in that time. There will be need, therefore, to enable the Bank to take over this particular fund and receive this money which will be on a different basis to any other moneys the Bank has been granted. There will be a need some time in the future to table a resolution in this Legislative Council that the funds of the Land and Agricultural Bank be increased from time to time by the transfer to it of the residual cash loans and loan repayments which at present constitute that fund known as "The Emergency Loan Assistance Fund." And I do not imagine that there will be any opposition in this Council to the Bank being called upon to undertake that particular duty.

That, Sir, is the important one, both in deed and in principle.

Sections 5 and 6 remove the limits of £5,000 and £7,500 which was placed on the loans under section 28 (3) and 31 (3) respectively. This is designed to assist the larger farm where the scale of activity is now such that the limit on the loans previously available of £5,000 or £7,500 has proved to be inadequate for them to go forward on the proper lines of development. I must make it perfectly clear, of course, that the removal of these limits does not mean that the Bank will be entitled to lend up to 100 per cent of anybody's security, because the Bank's loans will still remain limited in percentage to 60 per cent of the valuation of the land of the fixed assets concerned.

The raising of the limit from £500 to £1,000 which is shown in clause 7 (*a*) is in respect of temporary advances under section 48 (1). The £500 first appeared in section 3 of the Ordinance No. 4 of 1934 and has proved to be inadequate as a limit for short-term advances in the light of present conditions.

Clause 8 deals largely with the removal of the time restriction imposed under section 61 of the Ordinance. This is required to enable the Bank to take action

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in appropriate cases to realize their security before the demands of other creditors have denuded it to any extent.

The last one, Sir, is the point that is made in the question of the service of the document by post. I think, Sir, that covers all the points that are present in the Bill and I beg to move.

MR. MACKENZIE seconded.

Question proposed.

MR. BOMPAS: Mr. Speaker, Sir, I would like to make it very clear at the outset that anything I may have to say later on should in no way be taken in derogation, or in criticism, of the Board of the Land Bank or of its officers. Quite the contrary, I welcome this opportunity, Sir, of paying a tribute to that Board and to the officers. I believe, Sir, that the European farming community in this country owe a very deep debt of gratitude to those who had the perspicacity to establish the Land Bank Organization in the very first instance and, indeed, to those who have very faithfully served it ever since. The Land Bank, Sir, has been indeed fortunate in the calibre of the men that it has attracted to its service, whether on the Board, as local representatives or as officers.

Sir, these are not mere platitudes, and I do feel that hon. Members will concede that my experience with a very similar organization does qualify me to appraise, with some degree of accuracy, something of the unsung devotion that has gone into the creation of this very successful enterprise.

Sir, turning specifically to the Bill, I would like to preface my remarks with the thought that in these days of curtailed availability of capital, coupled with the almost certainly increased demands upon the funds of the bank, both for European and for African agriculture, it behoves that bank to stretch its funds over as wide a spread as it can possibly do, and make its funds available to as many individuals as it possibly can.

Sir, section 15 of the principal Ordinance gives power to the Board at the moment to grant staff housing loans, and even those colossi the oil companies find it desirable to retain their capital in their own business and to encourage their staff to go elsewhere for private loans for such housing. Section 15 is a *fait accompli* and as it is getting a little bit near home, so far as I am concerned, so possibly I should not pursue it further. But, Sir, section 2 of the Bill proposes to add to the power of the Board the power to lend money for motor vehicle advances. It was only on 23rd April of this year that the Minister for Finance asked Council to approve the guarantee of advances to be made by the United Dominions Corporation Limited direct to civil servants for the purchase of motor vehicles. At that time the Minister commented, and I quote, Sir, "We consider it a better and proper channel for advances of this kind to be met from funds available, from private and commercial organizations." That is the end of the quotation. Now, admittedly in this instance the amount involved is not very great, but would it not accord better, Sir, with the spirit of the times if the proposed amendment conveyed merely the right to the Board of the Land Bank to guarantee loans for the purchase of motor vehicles rather than to make those loans itself, from its own funds.

Sir, before leaving section 2, I notice that the Annual Report of the Land Bank for 1958 reflects as an asset item under "Motor-car Advances Account" the sum of £1,454. It is possible that this may be some transaction with its clients, but it is also possible, and here I think the House would like to be informed, Sir, that the Land Bank has possibly, in error, anticipated the passing of this Bill. If this was so, I can suggest, Sir, that it might have been proper to have said so in the Objects and Reasons, or possibly for the Minister to have informed us when introducing the Bill.

Turning to section 5 (*b*), that section, as the Minister said, seeks to amend section 28 of the principal Ordinance which initially contained a maximum of £3,500, increased very properly in 1953 to £5,000. Similarly, section 6 of this Bill amends section 48 of the principal Ordinance which started with a £5,000 ceiling and was similarly increased in 1953 to £7,500. For the purpose of my argument, Sir, it is convenient to take both those sections together, that is, sections 5 (*b*) and 6, because both of them of course contemplate the complete abolition of

[Mr. Bompas]

any ceiling, except, of course, such ceiling as the Board might itself fix domestically as an exercise in self-discipline. Sir, I suggest that it is undesirable and unfair to leave the onus wholly on the Board, and I would suggest that if the present maxima are insufficient, and I do not contest that they are inadequate as I believe that they do need to be increased, that they be increased by an amount of possibly 50 per cent in each instance, with a rider that further sums could be advanced after review of available funds and a review of unsatisfied applications by some outside censor, such as the Minister for Agriculture or indeed the Council of Ministers. There is a precedent for this suggestion although I would admit that the cases are not completely analogous, and that lies, Sir, in regulation No. 5 (1) of the Building Societies' Regulations, 1956. That Regulation limits the amount which any society can lend in any one loan to £10,000 without the prior consent of the Registrar. Application for such consent requires the submission of a fairly comprehensive report or return of loans made during the previous 12 months, of cash available and of other, outstanding applications. Sir, in the light of recent financial scandals in Britain where the building societies legislation is some 80 years out of date and societies have really had to discipline themselves by associating in the Building Societies' Association and so on, the wisdom of our Government here in introducing modern legislation to control building societies in 1956 is very apparent. Sir, should this wisdom not be extended to the Bill which is now before us? I am not suggesting that the Board is incapable or incompetent of fairly distributing the funds which are at its disposal, but I believe, Sir, that it is wise that there should be some ceiling, some point at which the Board reaches a stop where it is required to take some positive action to have what it proposes to do reviewed.

Finally, Mr. Speaker, I would like to make a suggestion for the amendment of section 64 of the principal Ordinance, and here, Sir, I must seek your direction because I am not quite sure whether I am in order in doing so.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): You are raising the question of an amendment which you suggest should have been considered in this amending Bill. You are quite in order.

MR. BOMPAS: Thank you, Sir.

The section of course does not appear in the Bill which is before us. It lays down that the Director of Audit or an officer deputed by him shall audit the books of the bank at such times as he shall think fit to do so or as he shall be directed to do so by the Governor. Sir, I am informed, how accurately I do not know, that it is not the custom of the Auditor to audit the actual mortgage securities which are held by the Land Bank or at best it is not the custom to do such an audit at more than very infrequent intervals. Certainly it is the case that there is no reflection on the last balance sheet that such an audit was carried out, unless in very general terms. Sir, in sharp distinction we find in section 33, subsection (3), of the Building Societies Ordinance, 1956, that the auditor concerned is specifically required to certify that he has at the audit actually inspected the securities belonging to the society and to state the number of properties with respect to which evidence of title has been produced, to, and actually inspected by him. Sir, I would urge that a similar requirement should be embodied in section 64 and that this Bill provides a very convenient medium for now doing so. I believe, Sir, that the audit of the securities is every whit as important, if not more so, than the audit of actual cash.

Sir, I support this Bill in general terms but I would not find it possible to support it specifically in the lights of the comments I have made. I hope that the Government will accept those remarks as constructive and will itself be prepared to initiate suitable amendments when the Bill comes to the Committee stage.

MR. HASSAN (East Electoral Area): Mr. Speaker, both the Minister and the last speaker said in their speeches that the bank loans were for both European and African agriculturalists.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Sir, on a point of order, I never said that the bank made loans to Europeans. The hon. Member for Kiambu did. The only time I referred to Europeans and Africans was as regards the Emergency Loans

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Assistance Fund which only covered agriculturalists of those two races.

MR. HASSAN: The Minister's statement indicate that bank loans are available to farmers irrespective of their communities in Kenya.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): That is quite right, Sir. The Bank is a non-racial institution and its advances are limited to security and to nothing else.

MR. HASSAN: Thank you, Sir.

I have been reminded that some of the Asian farmers—there are not many in the country—were recommended by me for loans and they were unlucky not to have loans sanctioned for them, and from the speeches, Sir, I thought that probably the bank facilities were confined to races other than Asians.

Now, after that assurance from the Minister that it is open to all farmers of all communities, Sir, I have great pleasure in supporting this Bill.

MR. MATE (Central Province North): Mr. Speaker, in supporting this Bill generally I would like to put the case of the African farmer before the Government and with your permission I would take this opportunity to point out the special difficulties in which the African farmer today finds himself.

Mr. Speaker, the Minister for Finance and Development told us that this Bank is non-racial and that both African and European farmers were given Emergency loans. Sir, this is very true and I know farmers that have benefited in this way from this money. But, Sir, the African farmer specially is in a very difficult position with regard to capital. Taking the Central Province as an example where land consolidation is going on, the farmer has to find money to start work on his new farm and many of them, the majority, are not at all wealthy. They would like to make farming pay but without the capital they cannot. The special committees in the districts which deal with these loans are all the time overwhelmed with applications for these loans, all of which they cannot meet. Yet the farmers are being urged to undertake more and better farming, but without any money. I do not think the Government realizes this and I would like to impress upon the Government that the African farmers, more than any other farmers today, need capital to develop their farms. I would like therefore to make a plea to the Government to consider a great number of African farmers who want these loans as without them they cannot succeed. I know that the Government will turn round and say: "There is not all that money available." They will say that the money is limited. Perhaps they might think that there are too many of these farmers, that they cannot meet the needs of all of them. Mr. Speaker, I would like to impress on the House the importance of the individual African farmer. East farmer is an individual and he is not a member of a group, and when he sends his application to the district agricultural committee and he is told that the money is not available then to him it does not matter whether ten other men have loans because he still cannot develop his farm and he cannot make the contribution that he would like to make to the country's wealth because of his poverty. I would therefore like to appeal both from the angle of the amount of money given to farmers and also the fact that there are many of them, but that they consider themselves as individuals and then we want to see the wealth of this country increase so we must consider each farmer as an individual. I know, Sir, that money is short but I feel most strongly that the Government should make more loans available to the African farmers who have not benefited so much as other farmers from the same bank. I feel without this extra assistance all the good advice given by the Agricultural Department to African farmers will come to nothing as only a few people will be able to manage their farms and the rest will go without the assistance. I feel that by doing more for these farmers we shall be increasing the development of land and these farmers will be able to pay more taxes in future, thereby increasing the revenue of the country and raising the general standard. My point is that the African farmer needs these loans more than perhaps the other farmers who have benefited from this, and without it we could not do better farming. In spite of the large numbers of these farmers I feel the Government

[Mr. Mate]

should consider these farmers as individuals and not as a group of people in a district, and the money should be allocated to the needs of a particular farmer in the country.

Mr. Speaker, Sir, I beg to support.

MR. ARAP MOI: Mr. Speaker, I should like to make very few points indeed. Indeed, Sir, the £260,000 allocated for farmers who suffered during the Emergency was given to European and African farmers, and I would like to ask the Minister whether these funds or loans were issued directly, to the African farmers and European farmers from the Land Bank or whether the African farmers were issued through the African Land Development Board. And further, I should like to request the Minister to say what was the highest figure given to an individual African farmer. As my colleague, Mr. Mate, has expressed the need for more money for African farmers to develop their land I would also add the fact that Government has not yet tightened up loans according to banks and there should be a bank through which all farmers could borrow money and develop their farms instead of trying to find out whether the local authorities could guarantee such loans to African individual farmers.

Mr. Speaker, I beg to support.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): As we are discussing an amending Bill we really ought to confine ourselves to the amendments proposed and not debate the general principle of the principal Ordinance.

MR. OLE TIPIS: Mr. Speaker, Sir, I would just like to make one or two comments on this Bill before us now. I was glad to hear from the Minister that application of the Bill is non-racial, but I still, of course, have my own doubts. We have been told this sort of thing several times, but when we go into it then there is some loophole somewhere, Mr. Speaker, I would like——

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, is the hon. Member casting imputations upon my statement? I stated, Sir, the clear fact that this Bank is non-racial and that it advances loans upon security which is to be seen in the law, and I suggest, Sir, the hon. gentleman either substantiates his imputation or withdraws it.

MR. OLE TIPIS: Well, Mr. Speaker, I am talking in general terms, and I think the hon. Minister would satisfy me when he comes to reply if he could really put in figures the amount the ordinary African farmer has benefited through this Bank compared with what the European farmer has.

Now personally, and I think this is the view of most Africans in this country, I think anything to do with raising the wealth of a country and its people as a whole must be taken into consideration very very carefully. It appears now that some quarters are rather keen on adding some more wealth to those who already have more without regarding or considering very seriously the question of the poor chap who can hardly stand from the wealth so far derived from this country.

Now, Mr. Speaker, I would suggest that as far as the Land and Agricultural Bank is concerned, it is no good trying to have any sort of lending bank or anything to do with loans on anything like a racial basis at all. We must get together all our resources and all our knowledge and put it together, and work and plan out something which will help to raise at least those who are right at the bottom—those who are fully grown and those who claim to have the experience, capital and so on can stand on their own—but the poor chap must be helped to raise his economic standing and that will bring contentment in this country. Without that we cannot prosper when the majority of the people are poverty-stricken and cannot therefore claim that we are working on something beneficial to our country and its inhabitants as a whole.

With these few words, Mr. Speaker, I beg to support.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, Sir, there is one thing which my hon. friend the Member for Kiambu and my hon friend the Member for North Rift and the Member for Central have in common—their failure to understand that we are dealing with a banking organization which must observe certain

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rules of banking if it is to succeed. We are not, Sir, dealing with a building society whose shareholders are private individuals who need protection of the type that the building society legislation of Kenya which is so far ahead, as the hon. Member for Kiambu acknowledged, of the United Kingdom, gives to the private shareholder. The Land Bank over its operations of over a quarter of a century has operated upon sound banking principles, and it is because it has operated upon sound banking principles that it stands in the strong position that it is today, and is able to continue lending.

Now, Sir, against that particular background, let me deal with the points first of all raised by my hon. friend the Member for Kiambu. I will admit his soft impeachment about the loans for motor vehicles and say what probably I should have said at the very beginning, but I forgot, that this is to rectify what has already been done, and that I have already talked with my friend the Chairman of the Land Bank yesterday and today, to ask him whether the same principles of advances could not be applied as has been applied to the Government civil servants.

Now, Sir, the hon. Member then went on to talk about the limits and why should they be lifted. Why should we not place, at any rate a 50 per cent increase, and not leave the onus to the Board. Now, Sir, I would like to put another word instead of "onus"—I would like to say leave the "responsibility" to the Board. Here we have had a Board which over some 25 years, and one member at least has been serving for the whole of that period, has carried this responsibility in fine style, has enabled the agricultural community to weather several storms in that quarter of a century, and has proved itself a capable and a strong Board. Sir, I may differ from the hon. Member for Kiambu, but I believe the thing to do in a case like that is to place the responsibility in the hands of those people who have the management and, therefore, I, personally, welcome the disappearance of the limit and the maintenance of the only limit that matters, which I suggest, Sir, is 60 per cent of the valuation.

Now, Sir, I can remember some considerable time ago having a private meeting with representatives of the farming world, not only individuals but representatives of the Kenya National Farmers' Union amongst them. I remember, Sir, at that particular time I was the Chairman of the Land Bank as well as the Minister for Finance, that the thing they said to me was, "If you cannot advance the whole amount necessary to do a good job, do not land the man in debt without giving him the chance to fulfil the complete operation." And, Sir, that is what this amendment is designed to do. It is designed to allow a board composed of bankers, accountants and businessmen to assess each case according to its merits and decide whether the amount called for can be properly used. Sir, I regret I could not, so far as this is concerned, go back to the old basis. We have just been dealing with an industrial trading Bill, Sir—the Bank has more than served its apprenticeship, and is entitled, therefore, as long as the Ordinance compels it to operate as it does on a banking basis, to carry the responsibility itself.

Now, Sir, on the question of section 64, I must say that that was a fast one because it is not in the amending Bill, and I am certainly not ready with the answer. I will ask the Chairman of the Land Bank to ask his Board to look into this matter, but again, I could not agree that there can be a parallel between legislation of the protective kind which is needed in dealing with building societies who are operating with private money and an institution of this kind, which is dealing with Government money, to which the Director of Audit has free entry at all times, and for which you have a Minister responsible and directly answerable on the floor of the Legislative Council. Sir, surely we do not want to hamstring operations of this kind too much, and if the Director of Audit or the Bank Board fails in its duty at any time you will have a Minister whom you can call to account for this on the Floor of the Council.

Now, Sir, I will deal with my hon. friend the Member for East Electoral Area. I would point out to him that there are a number of Asians who have had advances from the Land Bank. The Land Bank, Sir—and this deals with some of the points raised by my hon. friends the

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Members for the Central Province South, North Rift and Central Rift—the Land Bank Board is compelled by the Ordinance to operate upon a banking basis. That banking basis says that it can only lend 60 per cent of the value of the asset. Now, Sir, how is the value of an asset arrived at? It is arrived at by the computation of the price at which the farm and the assets would sell on an open market, and before you can get at that valuation you have got to have transactions taking place in a recognized manner between a free buyer and a free seller, and on this experience the valuer can place the asset and can say what security the Bank—and I repeat—compelled to operate as a bank under this Ordinance—can advance. Now, Sir, every hon. African Elected Member here knows well enough—and I can claim to have had since 1945, when I was on that side of the House, urged the need for individual African ownership of land, so that there could be this credit assessment —knows that it is only recently that, indeed, there has entered into this operation the individual farmer who can produce anything in the nature of a title to his land, and that there is, as yet, practically no experience or operation of a commercial market in the selling of farms inside the African areas. Until this does take place, no valuer has any basis on which he can assess the value of a farm, and on which he can recommend an advance with any hope that the bank, which must, I again repeat, operate on a banking principle, can recover its money or realize an asset. Now, Sir, until that happens, in fact, the Land Bank will continue to be limited in its value to the African farming community, until this individual ownership, and until this market—this recognized market—in the exchange of land, even if it be inside a province of its own, be established from which a true valuation basis can be taken.

And that, Sir, if the hon. Member for Central Rift and the hon. Member for North Rift will think about it, destroys most of the arguments in so far as the Land Bank is concerned.

But, Sir, of course, I will deal with the other point made by my hon. friend, the Member for North Rift. As you said, Sir, we are not discussing the Emergency Loan Fund an account of which has been laid on the Table of this House and which, we did state, the greater proportion of which had been given to African farmers. I cannot tell him, without referring to figures the greatest amount advanced to any African farmer but I think I am right and I will correct this afterwards if I am wrong that the greatest amount was, I think, about £250 to any individual farmer. But this was paid to the individual farmer from the Emergency Loan Assistance Fund which was dealt with by a special Emergency Assistance Fund Committee set up by Government and it did not go either through the Land Bank or through the African Land Development process.

Now, Sir, I turn to the point made by my hon. friend, the Member for Central Province (South) whose voice I was delighted to hear once more. He spoke, Sir, of the African farmer and his need for capital particularly on an individual basis. Now, Sir, Land Bank capital costs the borrower 6½ per cent and it must have this security basis. This is the handicap in dealing with loans to African farmers on that basis. Because of this we have made in the past a small amount of money available which has been dealt with, I think, rather in the manner described by the hon. Member for North Rift. However, Sir, recognizing all these difficulties and thinking that it would probably be some time before a situation arose in the African areas where an established market of transfer of farm and land would enable true valuation and true security to be assessed, during my visit to Washington late last year and early this year I put forward on behalf of the Government to the World Bank a request for some £1,000,000 for advances to African farmers. This will not have to be dealt with on a Land Bank basis but will have to be dealt with much more, I believe, and the rules are not yet formed, on the integrity of the individual farmer, and that is how it will have to be based because if we attempt to base it on the Land Bank operation of security of assets, it is going to be some considerable time before any loan could be justified in being given.

Now, I hope the hon. African Elected Members will realize that in this we are really trying to help. We have had the World Bank talking to us and we are

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hopeful that this £1,000,000 will be secured. We can give no promises as yet because we have had no promise but we can say that the first discussions have been extremely favourable and we are very hopeful.

Sir, if that does accrue, Sir, then there will be for advance to individual African farmers for capital development subject, of course, to the recommendations probably of the agricultural officer of the district £1,000,000 which will be available for individual farmers. Now, Sir, I think I hear "Not the agricultural officer of the district." That, Sir, is something which when the rules are being drawn up will have to be borne in mind by my hon. friends concerned.

I think, Sir, that has covered all the points. This Bank, I would repeat, is non-racial depends upon security, has done indeed a magnificent job and is, I believe, fully entitled to the responsibility that we now propose that the Board should have. And on the other hand, Sir, the African Elected Members point will be met, I hope, by the new capital which will arrive and which will be dealt with upon a new basis.

Sir, I beg to move.

The question was put and carried.

The Bill was read a Second Time and committed to a Committee of the whole Council tomorrow

Mtwapa Bridge Bill

Order for Second Reading read.

THE MINISTER FOR WORKS (Mr. Nathoo): Mr. Speaker, Sir, I beg to move that the Mtwapa Bridge Bill (Bill No. 57) be read a Second Time.

Sir, this is a Bill to give statutory recognition to the agreement made by the Government and the Bridge Company. Quite a lot of the hon. Members, I am sure, must have travelled on this bridge and would realize that it is an effort to help our tourist industry at the Coast.

Generally speaking, Sir, the Government and the local authority do not favour a toll bridge or a toll road but in this instance, Sir, it was necessary that if we were to have this communication to the North of Mombasa we would have to rely on private enterprise to supply us the bridge which could only be done on the payment of a toll. The road authority, Sir, considered the offer for a number of weeks and months and came to the conclusion that the terms and conditions which the Company insisted upon were fair and agreed to proceed with the scheme. This bridge was open, Sir, to traffic at the end of last year. The Company has a frachise of 20 years and in that time the Government is bound not to open another bridge or give any more ferry rights to any one for that period.

MR. COOKE: In that area?

THE MINISTER FOR WORKS (Mr. Nathoo): In that area. The bridge has to be of the standard which our experts consider necessary for the safety of the public and we have the right to inspect the bridge from time to time to see that the bridge confirms with the standard required. The tolls, Sir, are fixed for a period of five years when they will be reviewed and after that every three years a review will be made of the charges in the light of the revenues and expenditure of the company to see whether the tolls which are charged to the public are justifiable.

In the meantime, Sir, in order to provide a free access of road to people who do not want to use this bridge a hand-operated ferry is provided quite near the bridge and the public who are prepared to spend a little extra time and do not wish to incur the expense of a toll bridge are at liberty to do so. The agreement also, Sir, brings the right to the Government to buy from the company the bridge during this period of franchise and at the end of it for a sum of £77,000 which is just below the price which it has cost this company to build this bridge.

Then, Sir, if the bridge is taken over before the franchise is ended there is a compensatory clause which is reckoned at an average of about £3,000 a year for the unexpired period of the franchise.

The agreement, I submit, Sir, is a reasonable one and has been closely studied by both parties and was recommended by the Road Authority. I see, Sir, a galaxy of the Coastal Members on both sides of the House who are familiar

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with this area and the bridge, the requirements and the pitfalls, and I shall try and answer any questions which may be raised.

Sir, I beg to move.

MR. COLCHESTER seconded.

Question proposed.

MR. HASSAN: First of all, I would like to thank the company who invested such a colossal amount in putting up this bridge for the benefit of the coast people. There is no doubt that the company that invested this money showed greater confidence in the country than our Government. It has been the difficulty experienced by all people at the coast that we wanted some facility for access to the mainland with a view to thin out the congested population of Mombasa and to help and assist the agricultural development so badly needed in the coastal area. It was because of no access to the mainland that the development of the coast has always been extremely slow.

By paying a compliment to the company for investing this money, I would like now to touch upon the charges and the toll for the traffic to go over this bridge. Unfortunately, the specifications given in the toll list leave a lot of decisions to the discretion of the African working on the barrier. I found out once when I had to go to Malindi when instead of taking my touring car which was of the same horse-power as a box body car of my son I took the box body with me and I was called upon to stump up Sh. 5 on that ferry, and because the African said that this box body can carry about six or seven passengers. Well, that is creating hardship for a considerable number of people in that area because a number of people who are trying hard to make their living there do not like to use flashy-looking touring cars. They like to have a box body to carry their African staff and probably a load of maizemeal or something. And all such cars are being charged more than the touring cars, which are in horse-power, size and everything much bigger than the box-body.

I would like the Minister to go into this matter and help and assist the coast people in reducing the charges and at least defining every vehicle in a way so that discretionary powers are not left to the African.

When the bridge was built we were given to understand that there are considerable numbers of poor Africans and Arabs who are growing vegetables and fruit in that area. To market a load of fruit in Mombasa, after paying a toll there and at Nyali it was considered an uneconomic proposition and the Government agreed that to help and assist those people they will be able to have one ferry going for that purpose. The ferry which was being worked in that quarter had a motor boat there. The Government removed the motor boat in the first instance. The ferry was being run by the help and assistance of six or seven boys who used to make a quick job of pulling a lorry from the mainland to the island. The number of those boys, it was reported to me the other day, had been reduced to two. That is causing a great deal of delay. The marketing of vegetables and other fruit is usually in full swing between the hours of six and eight in the vegetable market of Mombasa and due to this delay some of them are losing that market and getting very reduced prices for their vegetables.

I would like to draw the attention of the Minister to this, that if it is not possible to divert a motor boat for that ferry to help and assist vegetable sellers the number of the boys should be increased to at least five so that they should be assisted with a quick getaway.

Finally, I would like to draw the attention of the Minister to this, that although we are grateful to the company that has provided us with a bridge it is the Government who should not forget to help and assist the people in the Coast Province to purchase the bridge when funds are available. I am afraid that the time limit given as 20 years appears to be a little bit excessive. Had it been fixed at ten years it would have been perfectly all right for the company and for the taxpayers on the coast.

With these few words, Sir, I support the Bill.

MR. NGALA: Mr. Speaker, Sir, I would like to join hands with my friend in congratulating the Minister and the Company in bringing into existence the Mtwapa Bridge. I would also like to

[Mr. Ngala]
point out that the question of toll is disturbing very many people who have to use the ferry, either in putting their goods across the bridge or in driving across it. This point has been sufficiently emphasized by my friend who has just sat down and I hope the Minister will bear that in mind.

But I would like seriously to refute the idea of my hon. friend who has just sat down in alleging that it is the Africans there who have been charging these high charges. I feel that that racial emphasis is completely undesirable in a debate of this kind.

I think the point is that any employee who is put there should be supervised properly so that he can serve the public efficiently and well.

The other point, Sir, which I would like to point out is in section 5. Section 5 seems to be giving powers to employees of the Company, similar powers to those of police officers, of arresting. Now, I would like some explanation as to why the Minister has thought this necessary in this Bill. The bridge, Sir, is situated near a police station at Shimo-la-Tewa, about 600 yards away, and secondly, the bridge is about 50 yards from Shimo-la-Tewa prison sentries. And if the Minister wanted some kind of safety I believe that some co-operation with these bodies that are responsible for the maintenance of law and order would work very effectively.

Lastly, Sir, I feel that it is entirely improper for the Minister to give officers of the Company powers of arresting people. I do not know why this has been thought necessary in this Bill.

Lastly, Sir, I would like the Minister to explain exactly how much acreage of land this Company has round about that bridge and also why it has been necessary to give land to this Company other than the actual bridge surface or the road surface that is necessarily required by the Company.

With these few words, Sir, I beg to support the Bill.

MAJOR ROBERTS (Rift Valley): Mr. Speaker, Sir, I support this Bill for the very simple reason that there is not really much purpose in doing anything else because the bridge has been built, presumably by the Mtwapa Bridge Company, vehicles and animals proceed across it daily, tolls are collected by the Mtwapa Bridge Company. Sir, I feel it rather extraordinary that this matter was not brought before this House before the agreement was actually signed. And, Sir, I would like to ask the Minister to explain why it was necessary for this bridge to be built by a private company; why Government could not have raised the money to have built the bridge themselves. I feel that a loan could have easily been raised for such a purpose, and with the tolls collected the interest could have been paid and the capital sum been paid off over a period of years. As it is, now it is possible that Government might have to use taxpayers' money to a minimum extent of £77,000 and a maximum extent of £112,000 to purchase the bridge back from a private company.

Sir, I feel perhaps in this that Government have a fear of creating a precedent in regard to tolls. In fact, my hon. friend said so when he moved this Motion. Sir, many of the people in this country are quite prepared to accept the principle of tolls on certain roads if it is going to provide us with good roads and so save the wear and tear on our vehicles which would be far more costly than having to pay a toll in order to have a good road. Perhaps the Minister would explain if it is completely against Government's policy to introduce a toll system.

Now, Sir, turning to the Bill itself, I notice what may be a simple error, but I would like to bring it to the Minister's notice. In the first paragraph beneath the title of the Bill it refers to the registered office of Mtwapa Bridge Ltd. being in Nairobi. Now, in the agreement in the first paragraph of the agreement it refers to it being in Mombasa. Are these two different companies or is it one and the same company?

And now, Sir, on the question of the table for tolls: a saloon car pays Sh. 2, a station wagon pays Sh. 2/50. Now, Sir, it is very often that a station wagon can be a 10-horsepower car whereas a saloon car would be a 46-horsepower car and about three times as long. I feel that that is something that should be looked into and put right. There is one other point, Sir, which I would like to

[Major Roberts]
bring to the Minister's notice. There seems to be a class of person—or maybe it is a vehicle—using the bridge which is not catered for in the table, but it is on the bridge itself and it is, I think, "Pederastion". Would he explain, Mr. Speaker, what this word means?

Mr. Speaker, Sir, I beg to support.

MR. KHAMISI: Mr. Speaker, Sir, I also would like to congratulate the Mtwapa Bridge Company and the Minister for building quite a reasonably good bridge across the Mtwapa. But I would have liked, and I would like to quote the last speaker, to have seen that this bridge was built by Government because I think that the tolls, particularly for this bridge, are very high in comparison with the tolls charged by the other bridges, for instance Nyali. With a small car a man crosses Nyali Bridge at a cost of Sh. 1, whereas it is Sh. 2 at this bridge which is almost half the length of Nyali Bridge. Again at this bridge, the charges for a pedestrian or for an ordinary man crossing is 10 cents, whereas at Nyali Bridge it is 5 cents. I do not see the reason why they are charging so heavily for the use of this bridge.

Of course, the Minister has just said that the bridge was primarily made to cater for the interests of the tourists. I feel that the bridge was essential to the growing number of people who were in the Mombasa north mainland and that it was not primarily put across there for the sake of the tourists. It may be that because the Minister has been thinking of tourists all the time he has put these charges very high because they can afford to pay. But what about the ordinary Africans who are cultivating their *shambas* in that area and whom we have been told and we understand sometimes during certain seasons of the year bring big crops of maize, tomatoes and other vegetables which they want to bring across to the mainland or to the Island for sale. I think the interests of these people have been overlooked altogether.

Now, Sir, next door to this bridge there used to be the old Mtwapa ferry. Now, this ferry has now been reduced to a very poor condition ever since this bridge was built and opened. We used to have a motor-boat and very good service and now we have only one boat which is pulled by chains and the service is very, very poor indeed although in fact this ferry is the one which provides the free crossing for the inhabitants who live in that area. I feel very strongly, Sir, that the Minister should restore the services to this old ferry so that those who cannot afford to use this bridge should be able to use the old bridge. After, all, I think it is Government's duty to provide crossings for people who are the taxpayers in that area and therefore I feel very strongly that the old ferry should be restored to its normal capacity and should be able to do the same services as it used to do before and the bridge should be only left to be used by those who can afford to do so, tourists or those who are wealthy people who want to cross luxuriously over this suspension bridge.

Now, Sir, another thing which surprises me very much in this Bill and which I feel is totally wrong in principle is the provision in the Bill for allowing ordinary citizens to have the power of arresting people.

Now, this provision is included in clause 5, and if we start this principle with this bridge we shall find all those who own land or property employing people to arrest people, so everybody will be a police officer in this country. We feel that this power to arrest should be left alone and particularly in this area the facilities are available, because, as the hon. Member for the Coast Rural has said, we have a police station and we have a prison near the bridge, and I do not see the reason why we should allow ordinary citizens who are employees of the bridge to have powers of arrest.

Now, Sir, with those few words and observations I would like moreover to comment that this bridge seems to have created or rather perpetuated yet another monopoly which is supported by the Government. I feel that this bridge, being a commercial venture, should be allowed to compete with any other commercial enterprise, and if anyone wants to have boats going across then they should be allowed to compete. There should be no monopoly granted to this company because we have learned from experience that monopolies of this nature are

[Mr. Khamisi]

always detrimental and are always imposing hardships on the people who use them.

With those few observations, Sir, I support the Bill.

MR. NURMOHAMED (Nominated Member): Sir, I beg to support the Bill which is before this House this afternoon.

I join hands with the other speakers in congratulating the Government, the Minister for Works and the Mtwapa Company in providing this long-felt need, the bridge, which is already showing signs of increase in the traffic to and from the north mainland.

I think, Sir, that Mombasa Island is always at a disadvantage because if the people there want to go to the southern mainland then they have to pay ferry charges, and if they want to go north they have got to pay at the Nyali Bridge. There is one way which is free and that is Makupa Causeway. I do think that the Government has done a very good thing to allow this company to build this bridge but what I really think is that the sum of £77,000 is not a big sum and I would suggest to the Government in their next Development Plan that they should at least provide this small sum to pay up the money for the bridge and buy out the bridge. Sir, to pay £3,000 a year in return for free services for the Government and the High Commission is not much. Why not pay some more money? Paying £3,000 a year in ten years the Government will have paid £30,000 in addition to the £77,000 if they buy it after ten years. But if they provide money in the next three or five years and pay £77,000 it will be a very encouraging sign and will push the development of the northern part of the coast and it will increase the tourist traffic.

The other thing I want to bring to the notice of the Minister is that there now remains one ferry and that is the Kilifi Ferry. But there is a road which by-passes the creek, and it goes to Kilifi which is about 12 miles from Takaungu. That road is always passable durjng the dry season and many people (go by cars and lorries through that road. If that road could be improved and made serviceable I think we can get rid of this Kilifi Ferry and there will be through traffic from Mombasa to Malindi and that will encourage more development in that area and also will increase the traffic from Mombasa and the surrounding areas to Kilifi, Malindi and Lamu. I think that the Government should give consideration to that point.

Now, as to the tolls which are payable, I think except for this small type of box-body car the prices are not too much, considering the cost of the construction of this bridge which has been invested by the contracting company, and even then I think the Government should consider whether it is possible to make certain adjustments to meet the wishes of the people of Mombasa so that these charges should be made more reasonable.

With these few words, Sir, I beg to support.

MR. COOKE: Mr. Speaker, as one of the Members from the area concerned I should like to thank the Ministry of Works for the great help and assistance they have given from the start.

There have been several complaints that the Government did not find money for the building of this bridge. Well, we tried for years to get the money from the Government, both by cajolery and by threats, and we failed, and it would really have been cutting our nose off to spite our face if we had turned down this, I think, quite generous offer which came from private enterprise.

Now, the hon. Member for the Rift Valley has wondered why the Government could not borrow the funds, but I think he is liable to forget that his own area and his own people up-country have benefited from the fact of this private construction because he and his people would have had to pay it back at some time or another, the redemption on the loan and the interest, in higher taxation. As it is, Sir, the people who are using the bridge most are having to pay for it themselves.

I should like to back up what my friend Dr. Hassan said with regard to the charges. I think it is only fair that these large saloon cars should pay as much as, not less than, a box-body car.

I have not got the Bill with me, Sir, at the moment but there are two points which I noticed when I read the Bill about a fortnight ago. The Minister is mentioned in the Bill but it does not say

[Mr. Cooke]

who the Minister is; we presume that it refers to the Minister for Works.

There is a second small point and that is with regard to the fees for cattle. It does not define what cattle are. I suppose that cattle are any kind of four-legged animals, but it is rather unfair that sheep, for instance, should be charged at the rate of 20 cents, which is as much for a bullock which might weigh ten times as much. I think there should be special provision for sheep—5 or 10 cents a head—as it is very often the poorest people who use the bridge for transport of their sheep.

Now, Sir, I should like to congratulate and thank this Company for their very great enterprise and wish them great luck in everything they are doing at the coast.

MR. NGOME: Mr. Speaker, Sir, I just want to say a few words about the Mtwapa Bridge. It has been said that the powers of the police should not have been given to the employees of this company. I want to make it clear that perhaps there have been misunderstandings and that the control and management of that bridge must have a watchman to watch for disturbances in that bridge by night or by day or at ony other time. Perhaps my friends here misunderstood the position of Mtwapa although they have passed there. The prison and the police station are not near to the bridge. In case of disturbance at any time, or during the night, Sir, it is just like any company employing a night watchman. We have various companies in Nairobi and in Mombasa employing their own night watchmen, and if anything at all unusual happens then it is not for the company to expect the police to come and arrest the disturber but it is for the night watchman to handle the criminal before the policemen arrive. In this case I think it is rightly shown that the control of the bridge must have the *askaris* employed by that company. In that case I think there is no mistaking that the company would not be wrong to employ *askaris* for the control of that bridge. I think that the *askaris* and the police officer at Mtwapa who have control over Kikambala and other places should just remain where they are.

With regard to the building of this bridge, Sir, I think it would have taken a long time for the Government to build that bridge, whereas the company has been very quick to do it. In this regard, Sir, I think I must congratulate the Minister, and although there are complaints that the people are charging so much it is always the case that, where there are people dying there are also people being married; and where the people are dying the children are being born. Therefore, if this bridge helps some people, Sir, I welcome its construction.

I support the Bill.

MRS. SHAW (Nyanza): Mr. Speaker, Sir, I rise to support this Bill, and I should like to join other Members in congratulating the company on their enterprise, I, unlike some other hon. Members in this House, rejoice to see private enterprise going ahead in this Colony, and I think that it is very foresighted of the company in question. However, I sometimes think that the people on the coast want the best of both worlds. They want the bridge but they do not want to pay for it. I would suggest that even though the tolls charged are high the company does not have the monopoly because you can still go by ferry very leisurely and very pleasantly—you have chanting as you are going across—but if you value your time, however, then I would suggest that the sum charged is quite cheap. I still think, however, that the scale of tolls should be changed or revised because I gather that it is not on weight or size of vehicle but on the number of doors each vehicle possesses, because a two-door vehicle goes across for Sh. 2 and a three-door vehicle—that is, with a door at the back—has to pay Sh. 2/6. So I suggest that they might look into their scale of charges.

I should like to say that I think it will be of great benefit to people living in the coast and in that area as well as the tourists.

MR. CONROY: Mr. Speaker, I should just like to deal as briefly as I can with some of the legal points which have been raised.

First of all the hon. Member for the Coast said that in the Bill the word "Minister" was mentioned but the Bill did not define who the Minister was. That is covered by the Interpretation and

[The Temporary Minister for Legal Affairs]

General Provisions Ordinance, 1956 which provides that "the Minister means the Minister for the time being responsible for the matter in question" and in this case it is the Minister for Works.

Then the hon. Member for the Rift Valley asked why did we have a Bill when we had already got the bridge. Sir, he apparently is a follower of Lord Curzon who used to say, "As it is inevitable it is approved." The answer to this question is contained in the Long Title to the Bill and the Preamble. The Long Title starts off "A bill Entitled an Ordinance to Ratify and Provide for Carrying Out an Agreement . . ." whereas the Preamble says "WHEREAS the Government of the Colony and Protectorate of Kenya and Mtwapa Bridge Limited, a limited liability company having its registered office at Nairobi in the said Colony . . . have entered into an agreement . . . subject to ratification by the Legislature of the said Colony and Protectorate" Then, Sir, we were asked about the conflict between the Preamble, which says that the registered office of the company is in Nairobi, and the Preamble to the Agreement which says it is at Mombasa. Sir, to a layman that may constitute a conflict but for a lawyer it creates none at all, because the agreement was entered into on 1st March and the Bill is dated as today, and offices are entitled to be moved from Mombasa to Nairobi or backwards if necessary.

Then, Sir, reverting to why we have the Bill when we have entered into an agreement, it is a very ancient prerogative of the Crown to grant a franchise of pontage. It was one of the methods of raising revenue or of rewarding royal favourites in mediaeval times, and many years ago I think it was the Provincial Commissioner who granted a right to build a toll bridge at Mombasa, the Nyali Bridge, and we were all astonished to learn a few years ago that the House of Lords considered that that was a royal grant of pontage. I am quite sure that the Provincial Commissioner did not consider that he was doing that in those days. We thought, however, that when we granted this right of pontage that it should be properly ratified. We do things better nowadays possibly in some respects than many years ago. It would, of course, have been perfectly open to the Government arbitrarily to have granted this without bringing the matter to the legislature, but, Sir, so reasonable is this Government that although we regard a steamroller as appropriate to building a bridge we do not regard it as appropriate to making an agreement.

Sir, with those few points, which I hope will have dealt with the legal points which were raised, I beg to support this Bill.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, I intervene to deal with one financial matter and to stop other people's feet straying along the unwary and unorthodox path on which my hon. friend the Nominated Member, Mr. Nurmohamed, has seen fit to engage in exercise.

Sir, the first point is the obvious reason why Government did not build this bridge direct is because within the limits of the money available it did not have the priority that other things did have. It did not for instance have priority over schools and £77,000 spent on this from the limited funds which the Government has available would have meant £77,000 less on some other project which I venture to think would have been equally worthy in the eyes of hon. Members opposite. So, how do we go out and build £4,000,000-worth of roads—by contractor finance, for the simple reasons that when you cannot raise money direct by loan issue, if you desire to get on with development you use every channel that is constitutionally and legally open to you, and if you can get private enterprise to step in and fulfil this need on a basis of risk which you as a Government do not need to intervene in then I suggest that Government has done a good job of business.

Now, Sir, my hon. friend Mr. Nurmohamed said, "Why do you pay £3,000 a year?" The fact is that unless you buy the bridge before the end of the period you do not pay the £3,000, but at the end of the 20 years you get the bridge for the £77,000 which it is estimated was what it cost to build the bridge, plus the fact that, unless we are all very wrong, at the end of 20 years' time the amount of revenue from traffic passing over that

[The Minister for Finance and Development]

bridge will have greatly increased and it will indeed be a far better paying proposition if the Government at that date decides to continue tolls than it is today.

Let us now take the other point of fallacy in his argument. Suppose the Government had had £77,000 which it had borrowed to build this bridge. Now, Sir, £77,000 at today's market rate would have been £77,000 at 6½ per cent. Now, my arithmetic may be wrong, but £77,000 at 6½ per cent represents about £4,600 or £4,700 the taxpayer would have been paying in interest—never mind the £3,000 which will be paid if we want to take it over—but, in fact, that would have been paid. That would, admittedly, have been hidden in the Public Debt of this country, but do not let us forget the fact that it would, as the hon. and gracious lady from Nyanza said, have had to be paid by somebody and that somebody would be the taxpayer. Now, I suggest that by getting this bridge on this basis, together with the fact that if you want to take it over £3,000 you can do so, if the tolls show a level that justified it then you have, in fact, done something on a good business basis; and if you had, as you would have had, to have added the sinking fund of, say, 1 per cent in order to repay the loan in some 50-odd years time, you would have had the £4,600, 1 per cent over the next 40 or 50 years, and it would then have cost you infinitely more that way than by doing it this way. I would therefore suggest that, strange as it may seem to some hon. Members opposite, the Government has done an excellent stroke of business on behalf of the country and particularly on behalf of the coast. I regret, Sir, that there has been this dispute over this because we are continually seeking from private enterprise initiative of this kind to replenish our own depleted funds and push forward with development; and it is not a good thing that when a private company steps forward in this respect it should face criticism of this kind from responsible people of the country. I do not mind the attacks on the Government. Those one has become used to over a period of years. But where we do get people who are prepared to put their money down and who are prepared to take the risk of this operation then let us, Sir, be reasonable and recognize that they, just the same as we if we were in that business, demand a reasonable return for their investment, otherwise they will not continue to invest.

Sir, I beg to support.

MR. TOWETT: Mr. Speaker, Sir, I am afraid the Minister who has just sat down has wasted a lot of words because he got up before I spoke.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Regarding the point raised, Sir, I know that I am wasting words when I am talking to the hon. Member.

MR. TOWETT: So far as this bridge is concerned, Mr. Speaker, nobody has yet opposed it. I rise to oppose it. I do not believe, in this world, that we, as a legislature here, can go and tax the ordinary man in the street, the man without money. Instead of giving him money you go and say, "Ten cents for a bridge, the Government has authorized this." I do not accept that. It does not matter how many arguments you advance, how much knowledge of economics you can produce, I can never accept anybody taxing the poor man, the man who has not got one cent, because he wants to go over a bridge. I cannot accept it and I will not accept it.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): On a point of order, Sir, does the hon. Member know that the ferry is free to the poor man?

MR. TOWETT: Thank you for that slight correction.

Here it is put down, Mr. Speaker, that the pedestrian will pay ten cents. If the ferry is working then there is no need to put down the ten cents payment for pedestrians and the 30 cents for the cattle. If the ferry is good for the cattle then there is no need for this bridge, and that is actually a repetition there. There are charges for bicycles, tricycles and so on. If the Minister knows that the ferry is there for the pedestrians and for the cattle and for the bicycles, then why was it put down here? I wish that the Government should learn to be more reasonable when it comes to the poor

[Mr. Towett]
man, the man who has not got money in his pocket. I have gone over that bridge at the coast and it is beautiful to look at. But when it comes to your pocket—your ten-cent piece is more beautiful than the bridge.

Now, Sir, it is always said in the Church, "Repent and you will be forgiven." Now the Government has repented and I think they should be forgiven, but I am opposing this Mtwapa Bridge Bill. Had it been a Private Member's Bill I might have thought otherwise. However, for the Government to come to us with a Bill in order to enter into a contract with a private company, I will not accept it. I attribute all this to the Government's inefficiency. The Government should have known better. The Government should have considered the man in the blanket who wants to cross the bridge. When they have paid the toll they will not have one cent left. The Government should have remembered that. I pay for the car and the petrol and then you authorize some people to come and tax me as well, and all because the Government was too inefficient to raise the necessary money. Why did the Government allow the road to be constructed in that area? Did the Government not know that it would be possible to collect money from the bridge? It is ridiculous. If the Government knew that there would be no money for the bridge then the Government should have abandoned the construction of the road, and before I congratulate the Minister for his inefficient Motion for the first time since I have been here I would wish to point out to him that this is a bad Motion, although it was moved nicely and effectively, but not on my part.

Well, Sir, these are serious things. I have been surprised to hear people who represent constituencies in Mombasa side supporting this Mtwapa Bridge Bill, that the bridge should be constructed by a private company. Do you really want your people to pay taxes to a private company for the benefit of the private company? It is illogical, Mr. Speaker, I am serious, because the arguments given for the construction of the bridge by a private company are not for the good of the ordinary man but for the rich man. I think it is really wrong to bring this Bill here, and I wash my hands out of it.

MR. OGINGA ODINGA (Nyanza Central): Mr. Speaker, Sir, I am sorry that I was not in when the Bill was introduced, but through the speech of the Minister for Finance I heard something which was worrying my mind, and I am glad that he raised it. I would like to give him a bit of advice if I could be considered competent to do so.

I do support the building of the bridge, but I do not support the toll and the levy which is going to be imposed on the ordinary man who is going to use it. The Minister for Finance has just made it clear that if the Government raised by loan the £77,000 and that the interest accruing from it will have to be paid by the taxpayer, it is true it would be paid by the taxpayer but it would be spread throughout the country, and it will not actually be concentrated in one particular area. Therefore, the Government should have considered that either to raise money and let the payment of the interest come from the general revenue funds or let the Government now, if the Company is going to finance the bridge, bear the cost of maintenance and also the cost of paying the interest on money which is being used by the Company in their putting up this bridge. I do think that these people who are going to go through this bridge are entitled to go through it just as freely as any other man in another part of the country because we do not pay generally for going through so many complicated bridges all over the country, and if only one particular area of the country is made to pay, I think that will be most unjust for those people who will be passing through that bridge.

With only these few remarks, Mr. Speaker, I beg to support.

CAPT. HAMLEY: Mr. Speaker, I do not want to take up very much time, but it is illuminating to note that we have spent more time talking about Mtwapa Bridge, when there is nothing to talk about there, than we spent on the whole of the Companies Bill yesterday. The speaker before last, the hon. Member for the Southern Area, was told by the Minister for Finance that he was not talking sense, and yet he persisted.

[Capt. Hamley]
He has not understood that the man in the blanket is *not* being forced to pay unless he wants to. There are other means of crossing that creek, and will they please try to understand that all the tirade he poured forth is quite unnecessary. The man in the blanket who wants to cross that stream can do so freely, and there is *no* compulsion on him to pay ten cents. Would he please just listen to that. All the time he took up, and all the words that he poured forth, were unnecessary.

The other thing is that I do want to tell my hon. ex-Army friend opposite that if he does not indeed understand the meaning of the word he quoted, I will elucidate if he comes to me privately in the dining-room.

MR. COLCHESTER (Temporary Nominated Member): Mr. Speaker, like the last speaker I too, Sir, find great difficulty in understanding the indignation against the construction of this toll bridge. We have made as clear as possible that a free ferry exists for those people who do not wish to pay the toll. The free ferry is carrying 50 vehicles a day—about one-fifth of the total traffic which travels from one side of the creek to the other—and several hundred people. The poor man who cannot get his vegetables to market—the poor man who wants to go from one side of the creek to the other can use the free ferry. Now, Sir, I could have understood the indignation more if it had waxed against the fact that at Nyali and at Likoni there is no such free alternative, and yet, although the public, Sir, has from time to time said what it thinks about the existence of tolls at Likoni and Nyali, in fact, at Mtwapa the public will be better off than the people living on Mombasa Island.

Sir, a question was asked about the land the company had been given. Sir, the company has been given no land. The company has been allowed to lease certain Crown land, sufficient to build houses for its staff, and there is no reason whatsoever why a commercial company should not have the ordinary privileges of a citizen of leasing land for its proper purposes.

Sir, I am very sorry that one of the gentlemen opposite spotted a certain spelling mistake. It has been a long and simple joy to many of us, and it might have remained so. Unfortunately the question having been raised we shall now have to remove the cause of our pleasure.

Sir, on the question of the tolls. The Schedule of tolls will have its imperfections, and it will take some time to shake down. It is, however, a rather more elaborate schedule than already exists for Nyali and Likoni, and I have no doubt we shall be able to remove some of these imperfections which Members have pointed out. We were already fully conscious that a station wagon was paying more than an ordinary car, although it might be a smaller vehicle. There was an obvious motive for having a higher toll for station wagons, which was that station wagons are often taxis in disguise, but I think we will be able to find a way of getting round the difficulty. Similarly, I am sure, Sir, that the question of tolls for cattle can be dealt with.

One Member asked why the tolls were higher at Mtwapa than on Nyali. Sir, the tolls in this schedule are almost identical with those which were first imposed at Nyali nearly 30 years ago, when the pound had much greater value, and the cost of a bridge was, in terms of present day costs, very much less. Nyali tolls have been lowered very substantially since then because the bridge has been a going concern for 30 years, and was built at a time when costs were very much lower. If the hon. Member looks at one of the clauses in the agreement, he will also see that the tolls come down as the traffic increases.

Finally, Sir, the question of police powers. Members expressed horror at the idea of private individuals possessing powers of arrest. Every private individual of course has certain powers of arrest, and there is nothing sinister or which abrogates the ordinary rights of the citizen in the proposal to give employees of the bridge company certain limited powers of arrest. I invite the hon. Members who raised this question to consider what would happen if one car starts from one end of the bridge and another starts from the other and they meet in the middle. Are the bridge authorities to send to the nearest police station to resolve the difficulty, or may they not exercise the ordinary common sense powers of a police officer to order the

[Mr Colchester]
removal of the vehicle, regulate the traffic, and to deal with a situation where immediate and necessary action must be taken. There is nothing more sinister in this clause than that. It is a most unreasonable suggestion to make that you should have to send for the nearest policeman before you can tell a car to stop, to go slower, and to observe the ordinary rules of safety on a narrow bridge.

I beg to support.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, I do not think I would infringe the rights of Members if under Standing Order No. 64 I moved that the Mover be now called upon to reply.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): In accordance with Standing Order 64 I am of the opinion that such a Motion is neither an abuse of the proceedings of Council or any infringement of the rights of Members. I think we have had a very full discussion on this subject, and I will therefore put the question that the Mover be now called upon to reply.

Question proposed.

The question was put and carried.

THE MINISTER FOR WORKS (Mr. Nathoo): Mr. Speaker, Sir, quite a few of the points made by the hon. Members opposite have been answered by some of my hon. friends on this side of the House. I am also thankful to the hon. Specially Elected Member, Mr. Ngome, for explaining some of the points to my other hon. friends opposite, but I think, Sir, there are one or two points I would like to deal with, and the first of them is the remark by the hon. Member for the Eastern Area, Dr. Hassan, when he said that the fact that a company put the money into the bridge showed that they had confidence in the country when the Government had not. I think, Sir, even by a stretch of imagination, I do not think that is a very logical argument, because what would happen is this. If we had put this money, £77,000, in the bridge and not spent that money as we are doing now on schools, hospitals and other things, I think he would have been the first to say "why did we not let some private enterprise do some of the things that they were prepared to do?".

Now, Sir, my hon. friend, the Member for Mombasa Area, Mr. Khamisi, said that nobody should be given a monopoly, but does he realize that unless you agree to give some protection to the bridge company they are not going to put £77,000 into a bridge, and then after about two or three years when somebody else saw that they were doing jolly good business on it, they would come and put up another bridge and there would be competition. Does he really believe a company is going to sink its money without some sort of protection whilst they are doing this work? I am very sorry that the hon. Member has raised an issue which I should have thought would have been elementary common sense.

The other point, Sir, some of the hon. Members have made, and particularly the hon. Member for the Southern Area, is why did we build the road if we could not provide a bridge at the same time? Well, I think it is all very unfair to say that when he visits the country perhaps say once in ten or 15 years. It is all right by him whether he travels in comfort or does not travel at all. It is quite a different story for the people who live at the Coast because they have a necessity for this bridge, and those who have the necessity are prepared to pay some money for travelling on the bridge. Those who are not can travel by the ferry, and it was for that purpose that I made the point that Government generally does not favour a toll system unless it can provide at the same time an alternative route by which they can travel without paying any money.

The other point Sir, to which I would like to draw the attention of the hon. Member, for the Mombasa Area, Mr. Khamisi, is that it is the job of the hon. Minister for Tourism to think of tourists all the time. I am not thinking of tourists all the time. I said primarily it will help our tourist industry, but this bridge has been built for the benefit of the residents, and as my hon. friend, the Secretary for Works, has said, I should have thought a much greater noise would have been made against Nyali and Likoni where there is no alternative route. Here we have tried to do something, and I am sorry that some hon. Members have thought that we have not done what we should have done. In the circumstances, Sir, I am extremely grateful for some

[The Minister for Works]
of the hon. Members, and particularly to the hon. lady for Nyanza when she paid a compliment to the Government for doing what they have done.

Mr. Speaker, I beg to move.

The question was put and carried.

The Bill was accordingly read a Second Time and committed to a Committee of the whole Council tomorrow.

Provisional Collection of Taxes and Duties Bill

Order for Second Reading read.

MR. MACKENZIE (Secretary to the Treasury): Mr. Speaker, Sir, I beg to move that The Provisional Collection of Taxes and Duties Bill be now read a Second Time.

This Bill, Sir, really takes the place of two existing Ordinances. One is the Customs and Excise Duty Provisional Collection Ordinance which gives the power provisionally to collect customs and excise duty at a new or varied rate for a limited period prior to the enactment of substantive legislation. The other is the Provisional Collection of Taxes Ordinance 1951, which purports to give the power generally to impose taxes or duties provisionally, but which I am advised is defective in various ways, and which I understand has never actually been brought into force. It was one of those Ordinances which were to come into force on such date as the Governor should by notice in the *Gazette* appoint, and I am advised that owing to a certain defect in the Ordinance that that has never been done.

[*Mr. Speaker (Sir Ferdinad Cavendish-Bentinck) left the Chair*]

[*Mr. Deputy Speaker (Mr. Conroy) took the Chair*]

It is an extremely complicated Ordinance, Sir, and one of the objects that have been followed in drafting the Bill now before the House has been to make it as simple as possible.

Of course, hon. Members, I am sure, are fully aware of the reason why a Bill of this kind is necessary. It is, in many cases, in imposing taxes, essential that secrecy should be maintained until the moment at which the Government is in a position to announce the tax or duty, and to bring it into force. That is what this Bill does.

There is one difference between this Bill and the previous arrangement, and that is that the period given for allowing the provisional duties to run will, under this Bill, be a maximum of six months, unless the Governor, with the approval of this Council, signifies that some longer period should elapse. The reason for that, Sir, is that the existing period, particularly under the Customs and Excise Ordinance and Provisional Collection Ordinance is insufficiently long. As hon. Members know, a Bill has now to be published 40 days before it can be introduced into this House, and it could be that in order to give time for proper discussion that two months, which is the period given under the existing Customs Ordinance would not be found sufficient, so that the period has been extended to six months, which I think will provide ample time for a full discussion on any measures of this kind. The House will notice that under section 4, provision is given for refunding any money that may have been collected if in the final resort, for one reason or another, the new tax is withdrawn before a substantive Bill is passed.

Hon. Members may wish to know what exactly is meant by the two methods of refund—(*a*) in the manner set out in the first proviso to section 15 of the Exchequer and Audit Ordinance 1955, or (*b*) by being charged on or paid out of the Consolidated Fund. The normal method would, I think, be the first one, Sir, which provides that the receiver of the revenue may deduct such sums as may be required for drawbacks, repayments or discounts before paying the gross revenue into the Exchequer Account. That would cover most cases. There may, however, be the type of case where refunds under this Ordinance may be necessary, although the tax in question has ceased to be in force, and therefore there is no money in the hands of the receiver of revenue to make repayments. In those cases it is proposed that the refund should be made a direct charge on the Consolidated Fund.

I do not think that there are any more points that arise out of this Bill, Sir, and I beg to move.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was read a Second Time and committed to a Committee of the whole Council tomorrow.

The Wheat Industry (Amendment) Bill

Order for Second Reading read.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to move that the Wheat Industry (Amendment) Bill be read a Second Time

The main purpose of this Bill is to revoke section 12 of the Wheat Industry Ordinance, 1952, which provides for appeals against a decision of the Minister in certain matters. I would, Mr. Speaker, like to say straight away that this amendment is moved by the Government with reluctance, and only because the circumstances of the industry make it imperative to do so.

The purpose of the original Ordinance is to regulate the control not only of the wheat industry, but the flour industry, and to this end the Ordinance places considerable powers in the hands of the Minister, including the fundamental powers of approving or rejecting applications for mill licences, millers' licences and for the expansion of the milling capacity of mills. The existing legislation provides for appeal against the Minister's decision to grant a licence or permit under various sections of the Bill. This right of appeal would normally be regarded by the Government as safeguarding the right of the individual against arbitrary exercise of power by allowing an unsuccessful applicant to refer the issue to the court. The court is, Sir, of course, concerned with questions of fact and of law, and where fact and law are the sole consideration I appreciate that then the court is the proper place for these appeals to go to and for the court to decide upon them, but it is here where the difficulty arises in this industry. The determining factor in the decision of the Minister may be the policy of the Government, and the primary aim of which must be the overall interest of the industry and of the benefit of the Colony as a whole. The policy of Government need not necessarily be a matter which the court would concern itself with. The position may therefore quite equally arise where the courts are placed in a position to negative a declared policy of Government. This is obviously undesirable, but it is the position which has already arisen in the wheat industry.

Now, Sir, the Government has recently concluded an interterritorial wheat agreement with Tanganyika. The aspects of this agreement are, I believe, well known to hon. Members, and I do not think I need today go into the details of this agreement, but in order that hon. Members opposite may appreciate the underlying purpose of this Bill, I would like, with your permission, Sir, to briefly explain the principle heads of that agreement. Firstly, Sir, it is that neither Kenya nor Tanganyika shall be permitted any new flour mills to be licensed until the present consumption of flour throughout East Africa has reached 85 per cent of the present total existing milling capacity; secondly, that no increase in the capacity of any mill will be permitted again until the consumption of flour has reached 85 per cent of existing milling capacity; thirdly, that the maximum quantity of wheat which is used at the moment will be entitled to mill annually shall be the existing entitlement; and lastly, Sir, subject to certain conditions and for certain reasons, locally produced wheat both in Kenya and Tanganyika will be used before importations take place.

Now, Sir, one may ask, as far as Kenya is concerned, what is the purpose of entering into this interterritorial agreement? There are two main reasons, Sir. The first was to ensure that locally-grown wheat would be absorbed by the local East African market before importation took place. Secondly, Sir, to prevent uneconomic competition between flour mills which are already in existence, and which would ultimately have an adverse effect on the consumer. Hon. Members opposite may not appreciate it, but at the present time in Kenya and, in fact, throughout East Africa, there is a serious excess of milling capacity over the local demand for flour. In fact, at the present moment, the flour consumption in East Africa is only about 65 per cent of the milling capacity. With your permission, Sir, I would like to give the figures of 1953 and of 1958 to also show

[The Minister for Agriculture, Animal Husbandry and Water Resources]

that the use of flour has, in fact, been declining. In 1953, Mr. Speaker, the consumption was 1,019,802 bags, and in 1958 it had declined to 924,136 bags, which means, Sir, that any increase in milling capacity of any mill or by a new mill coming into operation will mean that the overheads of the other mills in existence would obviously become uneconomically high, and this, Sir, could also lead to an increased price in the retail sale of flour.

[Mr. Deputy Speaker (Mr. Conroy) left the Chair]

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) took the Chair]

The establishment also of any new mill under these circumstances would, of course, aggravate the position.

These, Sir, are very briefly the reasons why we in Kenya entered into this wheat agreement with Tanganyika, and we believe in Government that in doing so we did so not only in the interest of the wheat industry and of wheat producers, but also of flour millers and the Colony in general, but, Sir, just so long as the Wheat Industry Ordinance as it stands provides for appeals against the Minister's refusal to licence new mills or increase milling capacity, it is clear that the Government cannot guarantee to honour its undertakings under the interterritorial agreement. That is, Sir, because at the moment the final decision on these applications rests not with Government, but with the courts. The Tanganyika Government, Sir, has recently enacted legislation in their legislature to enable it to fulfil its obligation under the agreement, and, Sir, this legislation does not provide, that is, the Tanganyika legislation does not provide, any appeal against refusals to grant licences or permits. And now, we, the Kenya Government, feel compelled that we must follow suit. Arguments, Sir, have been advanced that it is undesirable to grant wide powers to Ministers, but I must point out, Sir, in this instance, that the Minister, in refusing applications made under the Ordinance, will not be exercising any discretion in the matter. He will, Sir, be implementing the fact that it is a declared policy of Government. Therefore, Sir, there is no question of any particular individual being unfairly treated or having grounds to believe that his application has been prejudiced in any way. In the event, Sir, of Government being no longer tied to the interterritorial agreement, then I think there are strong arguments against arbitrary powers being vested in the Minister in this instance, and I am prepared, Sir, to give an undertaking that when the situation does arise and the agreement is terminated, we will relook at this Ordinance appertaining to that section of the amendment which deals with appeals.

Sir, I believe that in its application this Bill will cause no hardship to existing millers. Consideration was given originally to saying in this Bill that appeals pending before the courts would lapse. As you will see, Sir, this was rejected, and the removal of right of appeal was rejected.

Sir, two appeals are, in fact, now pending before the courts and these will continue. It is now, Sir, over two months since the publication of this Bill and therefore there has been ample time for application under the Ordinance to be made. One application has indeed been made and dealt with by my Ministry in ample time for the applicant to file an appeal against my decision. I am informed, Sir, that an appeal against this decision has, in fact, been made today. This appeal, Sir, like the other one already pending, will be dealt with in the court under the old legislation or under the existing legislation.

Now, Sir, I think that is all I have to say on the main purpose of the Bill, but we have taken this opportunity, Sir, of putting in other amendments of a non-controversial nature, and with your permission, Sir, I would like to deal with these when I come to them.

I would, Sir, like to now take hon. Members opposite through the Bill clause by clause. Under existing legislation, Sir, it has been provided that millers' licences shall not be transferable. This, Sir, we feel is unduly and unnecessarily restrictive and we therefore propose to amend it, Sir, so that millers' licences can be transferable with the consent of the Minister. Now, Sir,

[The Minister for Agriculture, Animal Husbandry and Water Resources]

the second part of clause 2. Experience has shown that it is desirable that millers' licences should become invalid and should be surrendered in the event of holders of these licences either becoming bankrupt or going into liquidation, and clause 2, Sir, as hon. Members opposite will see, amends accordingly.

Now, Sir, clause 3 will revoke section 12 of the Ordinance. With your permission, Sir, I would just like to read out what section 12 of the original Ordinance said: "Any person aggrieved by the refusal of the member to grant a licence under section 6 or 13 of this Ordinance or to grant any permission required under section 7, 9 or 10 of this Ordinance may within 30 days of the date of such refusal appeal to the Supreme Court." Now, Sir, the licence and the permission referred to in that section were section 6 which dealt with the millers' licence, section 7 which dealt with permission to acquire or control a wheat mill, section 9—permission to expand the capacity of an existing mill, section 10—permission to a licensed miller to acquire or construct additional mills, section 13—a mill licence. Now, Sir, I feel that I have already dealt at some length with the reasons for revoking this section, but, Sir, if I could now pass on to clause 4 (*a*), the Ordinance at present, Sir, reads, "Where the permission of a mill licensed under the provisions of this section ceases to comply in any respect with the provisions of any law relating to public health for the first time being enforced or if required by any such law to be licensed thereunder ceases to be licensed the mill licence relating to the premises of such mill shall on such cessation lapse cease to be of any effect." We have felt, Sir, that this is unduly restrictive and may cause unnecessary hardship and it is therefore proposed to amend the section accordingly.

Then, Sir, clause 4 (*b*). At the moment, Sir, there is no reference in the existing Ordinance to the transfer of mill licences. This, we feel, Sir, is in fact a defect and the proposed amendment as here in 4 (*b*) will bring transfer of mill licences into line with the procedure for transfer of millers' licences.

Clause 4 (*b*), Sir, also brings mill licences into line with the provision proposed for millers' licences in the event of bankruptcy and liquidation.

Now, Sir, 4 (*c*), although this looks a long amendment it is in fact not a long amendment, Sir, because the only alteration, in fact, is the adding of words in paragraph 4 (c) (ii) after the words "respect of such mill" from "within such period of time" to the end of that paragraph ending "of the Minister". What this in fact does, Sir, is that it proposes to empower the Minister to specify the time in which allocations of wheat must be taken up. It also, Sir, proposes to enable the Minister to vary this period in order to avoid hardship to the miller in exceptional circumstances.

Sir, I hope that I have succeeded in removing fears which I have heard outside this House when this Bill was published and I hope that I have been able to convince hon. Members opposite that it is an essential piece of legislature which will benefit not only the wheat industry but the millers and the consumers.

Mr. Speaker, I beg to move.

THE CHIEF SECRETARY (Mr. Coutts) seconded.

Question proposed.

MR. USHER (Mombasa): Mr. Speaker, Sir, I am not a wheat grower, a miller, or to any great extent a consumer, and it is therefore only upon one particular aspect of this Bill that I wish to comment. Before 1952, which was the date of the Ordinance, I think, which this Bill seeks to amend, there was a monopoly of milling in the hands of one firm. The effect of that Bill, in fact, was to give opportunity to a number of millers in the country to pursue their businesses and to supply in some instances special brands of flour specially esteemed by certain sections of the community. Those were advantages, Sir, which were enjoyed by millers although they did not get a very large allocation of wheat for the reasons which the Minister has made perfectly clear to us.

Although they did not get a large allocation of wheat, they did enjoy these advantages. Now, how are the advantages being removed. They are being removed, Sir, as I see the matter, through the

[Mr. Usher]

Government having the effrontery—if I may say so—to enter into and to conclude an agreement with the Tanganyika Territory which removes the advantages to which I have referred and necessitates this Ordinance. I do not know, Sir, whether such action is even constitutional but I do regard it—although I know the Minister is not responsible for this—as in some sense treating this House with disrespect and therefore I must protest against the manner of introducing this legislation and ask the Government most sincerely to consider what I have said about the manner of introducing the Bill and to give, if they can, a guarantee that legislation will not be dealt with in such a manner again.

MR. HASSAN: Sir, first I will congratulate the Minister who has very ably given details of this Bill to us and the amendment now that he proposes to do. Sir, wheat industry law was primarily meant for the protection of the wheat growers, the wheat millers and consumers in this country. Of course, we are not concerned at the moment with the protection of the wheat growers because they are protected under the Wheat Marketing Ordinance. The millers are the next. I think the Minister will agree with me that this Ordinance concerning the milling of the wheat was not equally administered amongst all the millers and there was some favouritism shown in the past in the quotas alloted to these mills.

Unga Limited has done some very useful work in this country and they were the pioneers in milling here and their group was having 8,000 to 9,000 bags per quarter in 1952 and about 40,000 bags taken by about 10 millers, predominently Asians. In 1957, the quota of the Unga Mill Group rose to 337,236 bags and the other 10 millers' quota was increased by only about 33,000 bags. Sir, that 337,000 is milled quarterly by Unga and their three mills. On the other hand, only 74,000 bags are milled per quarter by the other ten mills.

Now, it was the duty of the Government to see when introducing the Wheat Industry Bill that the other millers shall need some expansion with a view to having some economic development of the milling business. And for this purpose the main Ordinance had provided this section 12 so that in case the Minister did not give sanction for the expansion of the mill or an increase in the quota then they would go to the Supreme Court and ask for further justice to be done to their case. They feel very perturbed and very suspicious about it at this stage because two of the millers, I have been informed, did go to the court against the decisions of the Minister and in one case the miller succeeded in getting a decision in his favour and the second miller's appeal is still pending and they feel that this present legislation revoking section No. 12 is merely brought in because this section succeeded in one mill getting the judgment in their favour against the decision of the Minister. And they have deprived the millers in future of having access to the court in case the Minister gives arbitrary decisions not to sanction their application.

Now, Sir, if this amendment was brought in and restrictions for expansion and new mills were introduced before 1957, before this quota was increased tremendously in favour of Unga group, it would have certainly been applicable to all millers, but now the quota having been increased to the absolute maximum for Unga group, this present legislation and amendment appears to me to perpetuate the almost complete monopoly and control of the milling, the quota which is far in excess to others, and it looks great injustice that other mills are not allowed for expansion of their business for economic development and the needs of the increased business in this country, and most of that, something like 75 per cent or 80 per cent wheat milling is now controlled by one group having only three mills to the great loss of the other millers in this country. I would like to ask the Minister, as this was the only remedy for those millers against the decision of the Minister, why they have been deprived of this remedy.

The second point, coming to this Bill: in section 2 (*f*)—I am glad the Minister has said that he is going to amend (*e*) so that milling could be transferred by his permission and consent. But (*f*)—it is quite a well-known fact that a mill is established at a cost of about £60,000 or £70,000 and that nearly all that capital is in machinery and building, and if a man goes bankrupt and his mill and licences and everything is surrendered to the Minister, how on

[Mr. Hassan]
earth is the miller going to get any loan from any bank or any society in future. If the money-lending bank or the society know that if this gentleman goes bankrupt that his mill and his business and his licence will be surrendered to the Minister, I do not think anybody will be lunatic to go and give a loan to that miller. I think, if there are going to be any restrictions for a man who goes bankrupt, it may be that the person who buys it, that he should apply for a licence as usual—for a milling licence instead of the mill and the whole business being surrendered to the Minister and giving a great loss to those to whom that miller is owing money.

This is quite a fact that most of these Indian mills, with the exception of one or two, are engaged in milling and turning out a product which is chiefly consumed by the Asians. Before the Milling Ordinance came into being, and before the wheat was ever grown in Kenya, the wheat and its products were imported from overseas and the Asians were obtaining their requirements, not only in wheat flour, but they used to get as much as they liked of the wheat grain. Ever since the wheat was grown in Kenya, a consumer if he likes to have a bag himself and mill it in his own house, in his own way, which is necessary for the taste of the people, he cannot obtain it. In fact he cannot buy from the mill any wheat grain, and if the miller does agree, he does not sell more than eight or ten pounds and charges his price per pound which is very excessive. Under these circumstances, if small millers who have a very small quota from the wheat board, I would like to know why their quota is restricted in this Bill. They never have any increase at all because the requirements of the Asians have increased considerably and those people should have been given the chance to put in for more quota and 85 per cent quota of the wheat given to Unga—

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): On a point of order, Mr. Speaker, could I have your ruling whether the points being raised by the hon. Member for East Electoral Area are in fact relevant to the amendment before the Council. He is continually talking about quotas which I do not think are relevant to the amendment.

MR. SPEAKER (Sir Ferdinand Cavendish-Bentinck): On strict grounds we are only concerned with the proposed amendments, but I think the hon. Member was trying to develop an argument about quotas, which are referred to in the Bill, and I think I might let him continue.

MR. HASSAN: Thank you, Sir. I wanted to come up to the point where, in case the Minister refused to give quota for the increased amount, that they should have resort to higher authority in the court. If the Supreme Court's permission in section 12 has been withdrawn, there should have been some other resort, either to the Council of Ministers or to the Minister himself or to the Government.

In section 4 (*f*) it is given that the licence shall not be transferable unless with the consent of the Minister, acting on the advice of the Wheat Board. I would like to ask the Minister the composition of that Wheat Board and whether it is composed of persons of all communities here to look after the interests of all.

With these few words, Sir, I support the Government.

MR. PANDYA (Eastern Electoral Area): Mr. Speaker, Sir, I rise to oppose the introduction of this Bill in spite of the very lucid and reasoned speech of the Minister in his introduction of this measure. I feel, Sir, that when the agreement was made with Tanganyika, the terms of the agreement should have been made public and this Council should have had an opportunity of debating the terms of the agreement before the introduction of this legislation. I feel that it perpetuates and indeed strengthens the monopoly which has been existing in this country for some considerable time.

Coming to clause 3 of the Bill, it removes the inherent democratic right of the person aggrieved to seek redress in a court of law. If I may say so, Sir, I think it introduces a type of dictatorship and leaves the decision to one person only without any right of challenge by aggrieved parties. I feel that while I would accept the fact that the Wheat Board would undoubtedly consider the matter thoroughly in its initial stages, before making recommendations to the Minister to take a particular course of action, but surely, Sir, he should not

[Mr. Pandya]
have the final word when there have been instances in the past where even the decision of the Minister has been upset in a court of law. Although he will have acted on the advice of the Wheat Board, it can happen that his decision will be reversed in certain instances. I feel, Sir, that in the shape of things to come and conditions as they are today, there should be a tendency to democratize legislation so that people who are aggrieved by a certain course of action should have the right of appeal, but instead that there should be a movement to impose restrictions looks rather ridiculous and redundant to the conditions as they are today. I feel, Sir, that surely a Judge is more than a competent person to decide, in view of the terms of the interterritorial agreement whether a particular policy is truly against the interests of the country and that if he feels that that is particularly so, he would certainly reject the appeal. I feel that a third party is a competent and better person to use this discretion more than a party who is committed to a certain policy of the Government, and particularly to a policy of enforcement of the interterritorial agreement for he has indeed signed it on behalf of his Government.

I feel very strongly, Sir, on this point and I would like the Minister to consider this matter and indeed to withdraw the introduction of clause 3 which in effect repeals the power of appeal that has been given by section 12 of the Wheat Ordinance of 1952.

With those few words, Mr. Speaker, I particularly oppose to clause 3 of this Bill.

MR. SLADE: Mr. Speaker, I support this Motion. The hon. Mover has pointed out that the amendments now proposed arise primarily from the agreement recently concluded between the Governments of Kenya and Tanganyika concerning the wheat industry, and in spite of what has been said by other hon. Members, I should like to congratulate our Government very warmly on having concluded that agreement. It is manifestly in the best interest of the wheat growers, millers and consumers, that there should not be unlimited uneconomic competition between millers. As one hon. Member remarked just now, the installation of a wheat mill costs a great deal of money. He mentioned £60,000 or £70,000, but I know of some wheat mills in East Africa that have cost upwards of £500,000.

Now, Mr. Speaker, if there is to be a free for all and millers are to be allowed or even encouraged to go on developing mills with such heavy capital outlay and no certainty of having enough throughput of flour to give them a return on that capital outlay, one of two things is bound to happen. Either some of them go to the wall because they cannot produce the income that will cover their overheads, or they have to increase their charges so much to get back their money that the consumer suffers.

Now, the only way of avoiding both of those undesirable results is by some sort of control of the number of mills in operation. It was with that in view, of course, that the original Ordinance was brought into force. It is that view that we must keep before us, Sir, and that is the view that the two Governments have had when they laid down that there are to be no further licences for flour millers, nor increases of existing capacity of flour mills, until the local consumption of flour reaches 85 per cent of existing capacity. Now, how anyone can argue against that policy, I simply cannot see; because the extent to which mills are going to be used is obviously dependent on the extent of local consumption, and if you are going to allow the development of mills so that their total capacity is say, 200 per cent of local consumption, you are going to get these disasters to which I have referred; and I would go further, Sir, and point out that it was very necessary that there should be agreement, not only in Kenya in this matter, but between Kenya and Tanganyika because this is a matter which we have very much in common between the two territories—the competition and the need of flour is common to both territories, and to some extent both territories are producing wheat; there is local pride in the development of mills. There has been, naturally, in Tanganyika some criticism of the extent to which Tanganyika has been dependent upon flour millers in Kenya. There had to be agreement between the two territories, if there

[Mr. Slade]

was not to be cut-throat competition which would damage both territories.

Now, Mr. Speaker, coming to the next point on which several hon. Members have spoken and with which the hon. Mover dealt at some length, and that is clause 3 which removes the right of appeal to the Supreme Court. The hon. Mover has pointed out that it was quite inconsistent with the agreement to which I have referred that this right of appeal should stay, because it might cut across the obligations to which the Government has committed itself. That may or may not be so, Mr. Speaker. But I would go further and say that in any event, quite regardless of the agreement that has now been made between the two Governments, I support the deletion of this right of appeal to the Supreme Court. That may seem curious thing, coming from the mouth of one of my profession who are supposed to be concerned that the right of the citizen to resort to the courts for preservation of his liberties and freedoms should be preserved in all circumstances, but Mr. Speaker, the fact is that these provisions in statutes of this kind, when you are considering primarily the exercise of administrative discretion, these provisions that those exercises of administrative discretion should eventually come under the scrutiny of a court of law, are to a very great extent illusory and meaningless. It is, Sir, as if you were trying to fuse two dimensions. It is as if you were trying to apply two completely different tests to a single problem: it is as if you were saying well, "Let the Minister and the Wheat Board see whether this particular case will stand up on its own feet on dry land, then if they say it will, throw it in the water and see if it will float, and a Judge of the Supreme Court will be the judge of that; and then, if the Judge of the Supreme Court says it will not float, that means it will not stand on dry land." It is as different as that, Sir. To put it another way—supposing in his wisdom the Minister, advised by the Wheat Board, thinks that it is in the best political interests of the country that a licence should be granted, then there is an appeal to the Supreme Court. What is the position of the Supreme Court on that appeal? Are they to review the whole case and all the political considerations of the case? Are they, as an hon. Member said just now, to decide what is the best policy for the country? Mr. Speaker, if the Supreme Court is expected to do that, it is being asked to go right beyond the functions of any judiciary and to usurp the functions of the legislature and the executive Government. Apart from making a constitutional nonsense—if I may say so—that would be placing an utterly unfair burden on the Judges of the Supreme Court, which I know they would be the first to repudiate.

The only alternative is, on an appeal of this kind, that the Supreme Court takes the view that indeed "it is none of our business to make the law or to administer the policies of the law; our business is to say what the law is and apply it". If the Judge takes that view, all he can do on an appeal of this kind is to see whether the Minister and the Wheat Board have observed the ordinary natural rules of justice in considering the matter before them. If the court takes the view that the Minister is in a quasi-judicial capacity on this occasion, then it is very right that the court should consider whether he has observed the natural principles of justice such as giving the licence a fair hearing, giving any objector to the licence a fair hearing, making sure that each party knows what has been heard on behalf of the other—all those ordinary principles of justice.

Well, Mr. Speaker, one does not need an express statutory right of appeal to the Supreme Court in order to enable the court to exercise that power. That power of the Supreme Court to examine the activities of any quasi-judicial tribunal is always there. It can always be brought into action by prerogative writ, *mandamus* or *certiorari* or what you will. Even now on removing this right of appeal, that right of resort to the Supreme Court to complain of the way in which the Minister or any other quasi-judicial tribunal has acted, still remains, and I do not see, Mr. Speaker, that if that right still remains you are really taking away anything from the citizen by removing this right of appeal that I have described as an illusory right, if it is supposed to go any further than the prerogative writ would go.

[Mr. Slade]

Mr. Speaker, I have dealt at some length with that because I think it is an important principle that arises in all these statutes dealing with discretionary control of industries. We have met it in several other Bills before us, and I hold very strongly to the view that we must get away from this idea that there should be a right of appeal to a court from what is, basically, the exercise of an administrative discretion.

Mr. Speaker, I have only two other points to make. One is with reference to the amendment of section 13 by clause 4 (*c*) of the Bill. Clause 4 (*c*) lays down —really in repetition of the existing Ordinance—that a mill licence shall entitle the holder of a miller's licence, in respect of the mill to which the licence relates, to be allocated by the Minister a quantity of wheat to be milled in such mill. That raises the issue with which my hon. friend, the Member for Eastern Electoral Area, was dealing —the issue of quotas. With due respect, Mr. Speaker, I suggest it was quite in order for him to do so, because it was in my mind when I read this. It is all very well to say that a mill is to be entitled to an allocation—to a quantity of wheat—but is that allocation to be entirely arbitrary, or is it to be according to some regular formula which will be fairly applied to all mills?

Now, Mr. Speaker, I am aware that in the existing Ordinance, in another part which is not being amended by this Bill, and by regulations made under the Ordinance, there is provision for the method of calculating the quota of allocation by the Minister to each mill. I think I am right in saying, Mr. Speaker, that the Minister in the past has most scrupulously adhered to that formula, in this Colony anyhow, in allocating quotas of wheat to mills. I should like, Mr. Speaker, confirmation from the Minister that that is so, because of the suggestion that has been made today that one particular milling company—the oldest established in this Colony—has received undue preference in the matter of allocation of quotas. To the best of my information, the allocation to that company has been based on exactly the same formula as the allocation to all other mills. I think if that is so, it ought to be said in this Council.

For the rest, Mr. Speaker, I only ask the Minister for confirmation that I am right in thinking that this amendment of the Ordinance now proposed is not going to interfere in any way with the statutory formula for allocation of available wheat to the various mills in the future.

My last point, Mr. Speaker, is with reference to clause 2 (*f*), in which I wish to support the hon. Member for the Eastern Electoral Area. He complained of this new provision, the effect of which is that a miller's licence will automatically become invalid and be surrendered in the event of the licensee being adjudicated bankrupt or the business going into liquidation. I would suggest, Mr. Speaker, that that is much too drastic and quite unnecessary. It may be right to provide—in fact I would support a provision—that the miller's licence may, at the discretion of the Minister, be revoked in the unfortunate event of bankruptcy or liquidation of the licensee, but surely, Mr. Speaker, there may be many occasions on which the Minister himself sees that the mill is a perfectly good mill, that it is being operated perfectly well, that the miller's misfortunes are due to some outside causes—lack of original capital, possibly gambling in other enterprises—and that it would be the last thing anybody would want to make his desperate position even more desperate by taking away from him his one asset that offers hope for his future, and still more unfair to his creditors, because in bankruptcy and liquidation it is the creditors even more than the bankrupt or liquidated company with whom the law should be concerned. If you are going to take away the licence automatically from this mill, representing many many thousands of pounds of capital, you are in one stroke, without anybody having any discretion, going to make the future of the bankrupt even more hopeless than it is already and remove the greatest hope of his creditors ever being repaid.

Subject to that, I beg to support.

MR. BOMPAS: Mr. Speaker, Sir, we hear a lot about coast and sanity, and this afternoon it was very refreshing to hear from my hon. colleague from Mombasa and also from the hon. Members for the East Electoral Area and the Eastern Electoral Area, what I regard as a breath of sanity. I was indeed glad,

[Mr. Bompas]

Sir, to hear from the hon. and learned Specially Elected Member who has just sat down his comments on clause 2 (*f*). Sir, it might be argued by Government in relation to the surrender or forfeiture of a milling licence in the event of bankruptcy, that there is some sort of parallel in the case of, shall we say, a liquor licence, which is personal to an individual. But in practice there is no comparison whatsoever, Sir, because the liquor licence to the individual does not involve any highly specialized organization, equipment and so on, but in the case of a mill, as has been pointed out, one can get mills costing upwards of £500,000. It is entirely a specialized industry. The whole of the equipment is entirely specialized; it cannot be used for anything else and, Sir, I suggest it is quite disastrous for Government to pursue the thought that automatically the licence must be surrendered in the event of bankruptcy, Sir. I do urge Government that they should leave the discretion in the hands of the Minister, who has power to transfer mill licences, and it should be automatic that he should transfer that mill licence in the event of a company failing or an individual going bankrupt to the receiver or to the liquidator, who in turn could transfer it to some reputable purchaser in the discretion of the Minister.

MR. WEBB: Although, Sir, the hon. and learned Specially Elected Member, Mr. Slade, has said practically everything that I intended to say—and said it very much better than I would have said it—there is one point of a more fundamental nature upon which he did not touch, which was specifically raised by the hon. Member for Mombasa and, I think, by implication by the hon. Member for the Eastern Electoral Area. They, Sir, suggested that Government was in some way acting with impropriety in introducing this Bill, clause 3 of which is designed to give effect to certain obligations resulting from an agreement entered into with Tanganyika, and the suggestion was, Sir, that that agreement should have been brought to and debated in this House.

Sir, from a constitutional point of view, that is wholly wrong. The making of treaties or agreements is a matter for the executive and not a matter for the legislature. This is the legislature and if the Government chooses to bring a treaty before this House which it has made for ratification, that is a completely different matter. Hon. Members will be aware that when the British Government makes a treaty, it does so without consulting the House of Commons. It subsequently brings that treaty to the House of Commons with an Act in order to ratify it, but nobody would ever for one moment suggest that in making the treaty or entering into the commitment it was acting unconstitutionally. Quite the opposite.

Now, Sir, from that it follows that, Government having made a policy decision, and entered into a treaty the courts cannot possibly adjudicate upon the matter since it is a question of policy. Policy is a matter which is contained in the minds of Ministers, individually and collectively, and if Ministers do something wrong, then, Sir, they are answerable to this House on the Floor of the House. It is the duty, as the learned and Specially Elected Member, Mr. Slade, said, of the courts to apply the law to facts adduced by evidence. Policy can never be adduced from evidence in that way, and it would therefore be quite improper and impracticable, as my hon. friend, the Minister, said in moving this Motion, for the courts to try and adjudicate upon questions of policy.

I therefore support this Motion.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no other Member wishes to speak, I call on the hon. Mover to reply.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Colonel McKenzie): Mr. Speaker, I would like to take the opportunity of thanking the three hon. Members—the hon. Member for the East Electoral Area, the hon. Member for Kiambu and my friend, the hon. and learned Specially Elected Member, Mr. Humphrey Slade, for bringing forward the points, Sir, under 2 (*f*). I would like to reconsider this overnight, Sir, and perhaps consider bringing forward an amendment at the Committee stage.

Sir, if I may refer to the address of the hon. Member for Mombasa first, I feel that I answered his first question in putting forward the amendment to this

[The Minister for Agriculture, Animal Husbandry and Water Resources]

Bill. That was, Sir, that this inter-territorial agreement is advantageous to all; the millers, the producers and the consumers of this Colony. The other part of his question, Sir, was answered by my hon. and learned friend behind me.

If I may move, Sir, to a point brought up by the hon. Specially Elected Member, there is no idea and no intention whatsoever of disturbing the present wheat formula which allocates the quota to the millers. Section 4 (*c*) (iii), Sir, which is the portion which is amended, is getting at the miller when he has his quota under the present formula, does not take up a quarter of his quota within that quarter. Sometimes there are reasons why the miller concerned cannot take up that portion of his allocation at that time, and this will empower the Minister either to allow it to go into his next quarter, if so wished, or to tell the miller that he must take up his allocated amount in that quarter.

There is no reference, Sir, whatsoever to the present system of the formula as it stands under the Ordinance.

I would also like to take the opportunity of thanking the hon. Specially Elected Member for his kind words, Sir, and the clear picture which he gave the House of the advantages of these amendments.

Sir, I think I have covered the point which was raised by the hon. Member for Kiambu, and returning to the point raised by the hon. Member for East Electoral Area, I, Sir, know of no favouritism in any allocation or quota whatsoever. I also, Sir, know of no favouritism which may have taken place in years gone by before I was Minister. But, Sir, again I would like to explain to him that these amendments make no alteration nor tamper with the present quotas as laid down under the Ordinance whatsoever.

Now, Sir, he also raised a point under section 4 (*f*), I think it was, Sir, asking me what the composition of the Board was. Well, section 4 of the Ordinance tells one that the Board has a chairman and six other members who will be appointed by the Minister, of which not less than four shall be wheat growers. Well, four, Sir, are wheat growers and there are two millers on the Board, one miller being an Asian. So there are two millers on this Board and four wheat producers.

Sir, I feel that the points raised by my friend, the hon. Member for Eastern Electoral Area, have been fully covered by my learned friend behind me and by the Specially Elected Member opposite. I do not think there are any other points which were raised which have not been answered by this side of the House.

I therefore beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Estate Duty (Abolition) Bill

Order for Second Reading read.

MR. CONROY: Mr. Speaker, Sir, I beg to move that the Estate Duty (Abolition) Bill be now read a Second Time.

Sir, the long Title of this Bill is "A Bill Entitled an Ordinance to Abolish the Exaction of Estate Duty." I do not really think it is necessary for me to say a nymore, Sir. The hon. Minister for Finance did, on 29th April, give all the reasons for this proposed abolition with great clarity and care. I think all hon. Members, with possibly one or two minor exceptions, debated the matter—if not with great clarity and care, at least with great thoroughness—and there is no need for me to dilate upon the subject any longer.

I therefore beg to move that this Bill be now read a Second Time.

MR. WEBB seconded.

Question proposed.

MR. ALEXANDER: Mr. Speaker, Sir, when the abolition of death duties in Kenya was announced by the Minister for Finance during the Budget, it was proclaimed as being a measure that would attract capital to Kenya. In fact I remember at the time in such an influential newspaper as the London *Daily Telegraph* that Kenya received a very favourable news story with excellent headlines on this particular subject. As a result of that, I am sure, and the good publicity by our own Government, there was an immediate flow of enquiries from the United Kingdom to this country in

[Mr. Alexander]

respect of capital that could be transferred here and which would not attract death duties. Unfortunately one important type of investment has run into serious difficulties, and I refer to the investment by United Kingdom residents in mortgages. A mortgage debt under English law is held to be moveable property, and this presumption would apply to a foreign mortgage unless it can be shown that by the law of the land in which the mortgage is situated it was, in fact, immoveable property.

Now, Sir, it would be exceedingly helpful if, in conjunction with this Bill, Government had introduced a Bill relating to the Transfer of Property Act, which would make it clear beyond any doubt whatsoever that mortgages in Kenya are regarded as immoveable property.

The attitude, I believe, of the Government is that they cannot see why any amendment to the law is required, as no difficulty should arise. I can assure the Government that the advice that is being given to potential investors in the United Kingdom on this subject is that unless there is a clear declaration in this country that this is immoveable property here, investors from Britain will not be attracted. They are not prepared to rely just on the present interpretation in the Transfer of Property Act in Kenya. They do want from our Government, so that it can be produced to the authorities in the United Kingdom, a perfectly clear exposition that mortgages in this country are immoveable property, and it would be most helpful if, in replying to this, the hon. Attorney-General could put something on record that would go down in our HANSARD that might help in this problem and might help Kenya to take advantage of the very excellent wisdom that is shown by this present Bill in front of this House.

Mr. Speaker, I beg to support.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no other hon. Member wishes to speak, I will call on the hon. Mover to reply.

MR. CONROY: Mr. Speaker, I gladly welcome the opportunity to deal with the point raised by the hon. Member for Nairobi West. Sir, the position is as follows. Prior to 1956 there was no authoritative declaration on the Statute Book of the status of a mortgage, as to whether it was moveable or immoveable property. In that year, Sir, we enacted in this legislature the Interpretation and General Provisions Ordinance, which specifically dealt with this point. It repealed and replaced the old Interpretation and General Provisions Ordinance, which was vague on this point, and it contained the two following specific statements of the law: "Moveable property means property of every description except immoveable property." Sir, I cannot think what is funny about it; I never find real property at all amusing, especially at about a quarter to six on a rather long day. Then it contains this provision, Sir, which I think will help the hon. Member. "Immoveable property includes land, whether covered by water or not, any estate, right, interest or easement in or over land and things attached to the earth or permanently passing through anything attached to the earth."

Now, Sir, immoveable property includes "any estate, right, interest in or over land", therefore a mortgage must be immoveable property. There can be no possible doubt about it under that definition in the Interpretation Ordinance.

Sir, as I understand it, the English law on the subject is this: that under section 28 (2) of the Finance Act, 1949, property on which estate duty is leviable under English law does not include property situated outside Great Britain of (*a*) the proper law regulating the devolution of property or the disposition under which it passes is neither English law nor Scottish law, and (*b*) the property is, by the law of the property in which it is situated, immoveable property.

By our Interpretation Ordinance, and General Provisions 1956, it is immoveable property and therefore it complies with the second part of subsection (2) of section 28 of the Finance Act, 1949, and I am glad of the opportunity to give the widest possible publicity to this provision in our Interpretation Ordinance.

Sir, I think the difficulty which I know exists in the minds of many practitioners is that prior to 1956 they had obtained opinions from real property lawyers in

[Mr. Conroy]

England which, of course, were based upon our old and rather vague law, and the only opinion which could be given by the real property lawyer in England was: "I am not sure"; but I am quite certain that under the new law which was enacted in 1956 there can be no doubt about the matter.

Sir, I beg to move.

The question was put and carried.

The Bill was read the Second Time and committed to a Committee of the whole Council tomorrow.

The Variation of Trusts Bill

Order for Second Reading read.

MR. WEBB: Mr. Speaker, Sir, I beg to move that The Variation of Trusts Bill be now read a Second Time. I would commiserate with hon. Members that at the end of such a very long day we should embark upon a dull and technical, but I hope entirely uncontroversial, measure. It is, nevertheless, a matter of importance. This Bill stems from a recommendation of the Law Reform Committee, that in this matter we should follow what has been done in England to meet a difficulty. That difficulty, Sir, arose from a decision of the House of Lords in the case of *Chapman* v. *Chapman* in 1954. Before that decision it was thought that beneficiaries under a trust could go to the court and ask the court to vary the terms of the trust in the interests of the beneficiaries. If the beneficiaries are all "*sui juris*", that is, roughly speaking, grown up and sane, the court can vary the trust to accord with prevailing circumstances. But if some of the beneficiaries were children, or if there were unborn children who, if and when they were born, would become beneficiaries, then it was believed, before that case, that the court could still vary the trust, provided it was satisfied that it was in the interest of these children or possible children. What *Chapman* v. *Chapman* decided was that the courts had not got that power. The Law Reform Committee in England considered the matter, and made recommendations which resulted in the enactment of the Variations of Trusts Act, 1958, on which this Bill is based.

Sir, many trusts are created in favour of children, and in favour of persons yet unborn. Marriage settlements are one obvious example, and the trusts created by a testator in his will. Now, Sir, although the case to which I have referred was the decision of the House of Lords in England, it would not actually be binding upon the courts in this country, yet it must be supposed that it would have very great persuasive authority, and it is right that we should assume that the courts of this country would follow such authority and refuse to intervene on behalf of infants or unborn beneficiaries. It is, therefore, I think, Sir, quite proper that we should introduce this Bill, which has the blessing of both the President of the Court of Appeal and the Chief Justice, in order to put the matter beyond doubt.

Sir, this Bill will enable the court to approve any arrangement varying or revoking all or any of the trusts, or enlarging the powers of the trustees to manage or administer any of the property the subject of the trust, on behalf of infant or even not yet existing beneficiaries. The underlying object of the Bill is to put beneficiaries who are infants or under a disability in the same position, as nearly as may be, as beneficiaries who are of full age and capacity.

The Bill, Sir, will add to the jurisdiction of the court, but it does not confer in this regard as wide a jurisdiction as the court has under some other statutory provisions, since it cannot, as it can, for instance, under the Matrimonial Causes Ordinance, vary the trust of a settlement where adult beneficiaries even oppose the variation. This Bill does no more than to confer a power upon the court to assent on behalf of those who cannot themselves assent because they are either not of age or do not exist.

Now, Sir, there is one other aspect of this matter, which although it is not immediately relevant, is very closely connected to it, and will, I know, be of interest to a number of hon. Members, and that is the question of the investment of trust funds and the scope of trustee investments. There is, Sir, something rather satisfactory about chaos because once it supervenes something has got to be done about it, and in regard to the investment of a trust fund the state of affairs is chaotic. All hon. Members who have had anything to do

[Mr. Webb]

with trusts, either as lawyers creating them or as trustees administering them, will agree on this matter, and I have a recollection, Sir, that it has been ventilated in this House already. Sir, hon. Members may remember that the Lord Chancellor recently announced in the House of Lords that the Government in England intended shortly to introduce comprehensive legislation dealing with the investment of trust funds, and in particular with regard to charitable investments. Sir, we are watching very closely what is proposed in England, and I have no doubt that we will in due course bring before this House proposals based upon whatever has been suggested in England but having regard to the circumstances in Kenya. One suggestion that has been made is that trustees should be allowed to invest up to half the trust fund in equities, with a maximum of 5 per cent in any one investment, and confined to companies with at least £1,000,000 issued ordinary capital, on which a dividend of at least 5 per cent has been paid for the last ten years. Well, that may or may not be acceptable in England, and even if it was accepted in England it might or might not be appropriate in the circumstances of Kenya.

Now, although this Bill, which we are discussing, Sir, is not primarily related to this particular aspect of the matter, it does provide a partial remedy for the situation because it will enable applications to be made to the court, in those cases to which the Bill applies, for approval to increase the powers of a trustee. This power will extend, and has been held in the courts of England to extend since the enactment of the English Act, even to enabling the court to substitute a narrow and rather Victorian trust investment clause by a very modern and very wide investment clause, and I believe that the courts here will take the same line. There have been other cases, too, where the objects of the trust are, in human terms, incapable of fulfilment, as for instance, where a married couple create a settlement on marriage and then unhappily prove childless, and the court will be able to rewrite the trust, the settlement, taking regard of that fact, and enable the trust to be varied in terms more suitable to the actual circumstances.

It must be remembered, however, that the scope of this Bill is limited to the cases where there are infants, or possibly unborn beneficiaries interested. Nevertheless, it is, Sir, I think, a step in the right direction, and I commend it to the House and move accordingly.

MR. CONROY seconded.

Question proposed.

MR. SLADE: Mr. Speaker, Sir, I only rise to welcome this Bill and to congratulate the hon. Mover on his detailed exposition of its effect, and to thank him for going into such detail. I think I should also thank the Law Reform Committee for their vigilance in matters of this kind. It may seem a very dull subject, but I am quite certain this legislation is going to be of considerable advantage to quite a large number of people.

I beg to support, Sir.

The question was put and carried.

The Bill was accordingly read a Second Time and committed to a Committee of the whole Council tomorrow.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, in view of the time, Sir, and the fact that the next business on the order paper is a Motion which has had several amendments to it and a number of Members are not present, and the question of the desirability of proceeding with this Motion at this time of the evening, I would respectfully suggest that under Standing Order 9 (4) Sir, you should consider the deferment of all the business upon the order paper, and that the Council do now adjourn.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Well, I have a certain latitude with regard to such matters under Standing Orders. The next item is a complicated Motion which has been left in the air over several weeks and I think it is just as well if we do not leave it in the air again. So I propose, subject to the House agreeing, that we adjourn a little earlier than usual. I take it that nobody objects? That being the case, I adjourn Council until 2.30 p.m., tomorrow, 8th October.

The House rose at Six o'clock.

Thursday, 8th October, 1959

The House met at thirty minutes past Two o'clock.

[MR. SPEAKER (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

ORAL ANSWERS TO QUESTIONS

QUESTION NO. 177

MR. ARAP-MOI asked the Minister for Education, Labour and Lands:—

(*a*) Whether he has considered the Travers Report on African Education in the Settled areas?

(*b*) Whether that report can be circulated to the Members of this Council?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Sir, I beg to reply. This report, which is still under consideration, was called for as an internal departmental report to the Director of Education by one of his officers. As it was not drawn up with publication in mind I do not propose to circulate it as suggested.

MR. ARAP MOI: Mr. Speaker, Sir, arising out of the Minister's reply, when is Government going to make a statement on the report, whether it is confidential or not?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): The purpose of the report, Mr. Speaker, is to assist us in planning the development of African education in the Settled areas and I will certainly make a statement on our proposals in this regard at the first suitable opportunity.

SIR CHARLES MARKHAM: Which year?

MR. MBOYA: Mr. Speaker, Sir, would not the Minister agree that this is most important and urgent and that the Government should give some indication as to when they intend to make this statement?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I cannot say at the moment, Mr. Speaker, when a suitable opportunity will present itself.

MR. SLADE: Mr. Speaker, I hope the Minister can assure us that he is fully aware of the great importance that all members of the public, whatever their race, attach to this particular question?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I can give that assurance!

QUESTION NO. 184

MR. TRAVADI asked the Minister for Finance and Development will the Government take actuarial advice with a view to abolishing the disparity of five years existing in the periods of contributions of European and Asian Civil Servants towards their respective Widows' and Orphans' Funds made on retirement or on reappointment?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): The Government is already taking actuarial advice in this matter.

MR. TRAVADI: Thank you.

QUESTION NO. 191

MR. SLADE asked the Minister for African Affairs, with reference to the recent debate in this Council on the subject of the establishment of Probation Services—

(*a*) has Government reconsidered that Establishment, as requested by this Council? And, if so—

(*b*) what is the result?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, I beg to reply. As regards the first part of the question I confirm that the Government has reconsidered the establishment of the Probation Services. In the result, five additional posts for Probation Assistants have been included in the Emergency Estimates, making a total of ten posts in the Emergency Estimates in addition to 35 posts in this grade included in the Colony Estimates.

MR. SLADE: Mr. Speaker, will the Minister explain why the additional posts are only included in Emergency Estimates and are not part of the permanent establishment.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, for the time being funds only exist in the Emergency Estimates.

MR. SLADE: Mr. Speaker, can we have an assurance when it becomes possible to make it a permanent appointment that will be so?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): I will certainly do my best to see that is done.

MR. SLADE: May I ask, Mr. Speaker, whether there is to be any further reconsideration of the establishment with a view to possible further replacement of appointments that have been abolished during the last two years?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Not at the moment Sir, but in connexion with the 1960/61 Estimates we hope to make further proposals.

MR. MATE: Mr. Speaker, is the Minister aware of the great need for this kind of service in the country?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, I am well aware of the need for this kind of service, but we have, in fact, nine vacancies in the present establishment.

QUESTION No. 196

MR. TRAVADI asked the Minister for Finance and Development:—

(*a*) Will the Government give sympathetic consideration to giving an option to the reappointed Asian civil servants who are contributors under the Asiatic Widows' and Orphans' Pensions Scheme, Cap. 74 of the 1948 Revised Edition to join the Asian Officers' Family Pensions' Scheme?

(*b*) Will the Government explain why they were not given an option to join the Asian Officers' Family Pensions Scheme, Cap. 75?

(*c*) How many such cases are there who have contributed up to the age of 55?

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey):—

(*a*) Yes, Sir, the Government will give sympathetic consideration in this matter.

(*b*) In view of the answer to (*a*) above it is assumed that a reply to this question is not necessary.

(*c*) 26.

MR. TRAVADI: Thank you.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[Sir Ferdinand Cavendish-Bentinck, K.B.E., C.M.G., M.C., in the Chair]

THE CHAIRMAN (Sir Ferdinand Cavendish Bentinck): For the information of the House I propose to take (*a*) (*b*) and (*c*), the first three Bills through the Committee stage, and then report back to Council, and then I will hand over to Mr. Conroy.

The Evidence (Amendment) Bill

Clause 2

MR. MULIRO: Mr. Chairman, I would like this section to be deleted as the question of assistant inspectors being the persons to receive confessions from the Africans is definitely a serious miscarriage of justice, and while the whole opposition during the second stage of this Bill opposed and voted against the Government, I think this will be the first time the Government should have some sense that whenever the opposition as a whole stands together they should think. Therefore, Sir, I propose that the second clause be amended by deleting the words "assistant inspector" and inserting in place thereof the words "professional magistrate".

Question proposed.

SIR CHARLES MARKHAM: Mr. Chairman, I am somewhat confused by this amendment because I do not know what the words "professional magistrate" mean. All this side of the Council, I think, opposed the Bill in question because of the dangers expressed by our hon. friend the Specially Elected Member Mr. Mangat. I do not like this amendment, Sir, because I do not like the words "professional magistrate" because all magistrates are magistrates in the eyes of the court and we can differentiate between the various grades, although the Memorandum of Objects and Reasons does give various reasons and section 3 does describe the various classes of magistrate.

Sir, what I would like to suggest is—I do not know how I stand with regard to procedure—that this section be deleted

[Sir Charles Markham]

altogether. We heard, Sir, the speech of the hon. Specially Elected Member and also that of the Temporary Minister for Legal Affairs. We have heard, Sir, no good reason why this should remain in and I am asking your guidance, Mr. Chairman, as to what I should now do. Do I wait for this amendment to be accepted or rejected or do I move an amendment to an amendment?

THE CHAIRMAN (Sir Ferdinand Cavendish Bentinck): You cannot move a new amendment to a clause because I have had no notice of it, but you can move an amendment to an amendment of which notice has been given.

SIR CHARLES MARKHAM: I move an amendment to an amendment, Sir, that clause 2 be deleted.

THE CHAIRMAN (Sir Ferdinand Cavendish-Bentinck): Under the circumstances I will accept that.

Question proposed.

MR. MBOYA: Mr. Chairman, we would accept the deletion of the section instead of the amendment originally proposed by my hon. friend the Member for Nyanza North.

While discussing this Bill on the Second Reading arguments were advanced against the extension of these powers to assistant superintendents and fears have been expressed, Mr. Chairman, which are real, real in terms of experience and in terms especially of the experience of the ordinary man in this country where he has come into contact with police officers in this country.

The Attorney-General advanced arguments by trying to relate parts of this Bill to the practice in the United Kingdom. Now, is he aware, as I believe all of us are, that whereas some junior officers in the British police force may be given certain powers and responsibilities there is a vast difference between their attitude and the manner in which they interpret the law, or implement or use these powers, and the manner in which the Kenya Police have used them in the past. We are, Mr. Chairman, quite prepared, as the attitude of the police in Kenya improves and the standard improves, to consider certain changes that might bring practices here in line with those in the United Kingdom, but we are submitting very strongly, and on the basis of evidence and experience in the past, that the Government cannot overlook the fact that there could be serious miscarriages of justice if some of the responsibilities today in the hands of the policeman in Britain were given to the policeman in Kenya. We are therefore asking the Government to reconsider this situation and, since the deletion would mean that assistant superintendents would still have the power, the Government is fully covered.

MR. SLADE: Mr. Chairman, on a point of order, I am wondering whether a Motion to amend any clause of the Bill in such a way as to destroy the whole effect of the Bill is really in order. I must say I am in full agreement with those who opposed this Bill on the Second Reading, and if anybody moves for an amendment of the Motion for Third Reading I shall be with them. But the question arises whether, since the Bill has passed its Second Reading, it is now right to discuss the principle of the Bill in Committee.

THE CHAIRMAN (Sir Ferdinand Cavendish-Bentinck): I do not think we are destroying the Bill or altering the principle of the Bill. We have heard a good many arguments during the Second Reading about the rank of the person who could take the confessions and if this section were to be deleted, as I understand it, subject to correction by the legal officers of the Crown, the law would remain as it is, that an assistant superintendent could still take a confession.

MR. CONROY: Sir, as I understand it, the first amendment which I understand has now been withdrawn, I find it a little hard to see how we can have an amendment to an amendment which has been withdrawn.

THE CHAIRMAN (Sir Ferdinand Cavendish-Bentinck): I have not yet agreed to its being withdrawn, nor has the Mover, Mr. Muliro asked to withdraw it.

MR. CONROY: Then I might deal with it. If hon. Members will turn to the second page of the Bill there they will see sections 25 and 26 of the Indian

[Mr. Conroy]
Evidence Act as amended by the 1952 Ordinance. It is proposed to amend that section on the back of the Bill by taking out the words "Assistant Superintendent" and putting in the words "Assistant Inspector". It is now proposed to put in the words "Professional Magistrate". If we do so, Sir, I would like hon. Members to read with me, *sotto voce*, the new section as it will be amended. "25. No confession made to a police officer shall be proved as against a person accused of any offence unless—(*a*) such police officer is of or above the rank of, or a rank equivalent to, Professional Magistrate; or (*b*) such police officer be an administrative officer holding first or Second Class magisterial powers and acting in the capacity of a police officer." Now, Sir, that of course, makes nonsense of the section. Had it only been a question of the words I am quite sure that the hon. Member for Nyanza and I could have got together and worked out the appropriate words to put this matter right. But this, Sir, is not a matter of words; it is a matter which goes to the very roots of the Bill. The principal object of this Bill is to amend section 25 of the Indian Evidence Act by substituting for the words "Assistant Superintendent" the words "Assistant Inspector", and if, Sir, we were to agree in this Council to the amendment moved by the hon. Baronet we would find that we had destroyed the whole principle of this Bill, which was that the law should be amended to allow an assistant inspector of police to take a confession. Sir, that again possibly is a slightly technical point and therefore I hasten to get on to the meat of this matter.

Sir, the Government cannot accept this amendment. The reason is that if we did so we would alter the law so that genuine voluntary confessions could be excluded on a technicality, Sir, that might produce a miscarriage of justice. Sir, I have tried to make clear, and it is my fault if hon. Members opposite did not understand me, that the true protection of an innocent person is that the prosecution has to prove that the confession is made voluntarily and if they do not then the confession cannot be admitted. Sir, that is the protection.

The hon. Member for Nairobi Area has said that the fears expressed by him and his colleagues on the Second Reading of this Bill were real in terms of past experience. Sir, I would challenge that. The Law Society were given the opportunity of many weeks, nay months, to produce factual evidence that there had been a miscarriage of justice.

MR. COOKE: How can they possibly do that?

MR. CONROY: The hon. Member for the Coast has said "How can they possibly?" If they cannot, then who can? Sir, this has been the law of Kenya for the last five years and if there have been cases where the prosecution have tried to introduce confessions which were not voluntary then surely the members of the legal profession would know about it. They were given the opportunity to produce this factual evidence and had they done so then I would have given it most careful consideration and I might well have not proceeded with this Bill. The Law Society I felt, Sir, were making a genuine but wide generalization. We cannot act on generalizations; we act on facts. They made a statement of fact and I asked them to support it. They were unable to do so. Sir, I have since the Second Reading of this Bill had an opportunity to speak to the hon. and learned Specially Elected Member, Mr. Slade, who expressed to me his grave misgivings about this Bill. I am able now to give him this crumb of comfort that it is the intention of the Government, as soon as the legal draftsmen can be taken off the various jobs which constantly present themselves, to introduce into this Council a comprehensive Evidence Bill which will repeal and replace the Indian Evidence Act. Sir, in my view that is not a good Act for Kenya. I know that some of my professional brethren agree with it and that some of them do not. In some ways it helps the prosecution too much and in some ways it helps the defence too much, and I think that we could do with a modern definitive Evidence Ordinance setting out the whole of the law of evidence for Kenya. That Bill unfortunately cannot be drafted before some time next year and it is our intention to bring it here. Sir, the whole of the law of evidence can then be looked at in proper perspective and I would suggest

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that if hon. Members continue to feel misgivings about the provisions contained in the Bill we are now considering then they may be able to bring forward factual evidence to support any arguments on the full Bill which we propose to bring before this Legislative Council in due course.

For those reasons, Sir, I am unable to accept this amendment and must vote against it.

MR. MANGAT: Mr. Chairman, I will speak on only two of the points which have been made by the Minister for Legal Affairs. To take the last one first, it is no crumb of comfort which he promises; in my view it is a sop and a sooty sop at that. If we are to reconsider the deletion of this section again in a year's time then what is the hurry about it? Is it not a fact, Mr. Chairman, that since 1954 he has actually been acting on the very section which he is now trying to put in the Bill?

On the second point he has been rubbing it in by saying that the Law Society did not produce any proof. Now, if I can indulge in the same impertinence as he indulged in, may I ask him if he will prove when he says that experience in recent years has shown that officers of this rank are not sufficiently numerous or widely distributed or sufficiently accessible to receive voluntary confessions. I call upon him to give proof of this. What does he mean by "recent years"? Is 1954 beyond the definition of "recent years"? Does he mean that from 1955 to 1959 he has been experiencing difficulty in locating confessionals where police inspectors would have been taking confessions? It sounds as though he were appointing 1,150 midwives throughout the country to be accessible at the time of premature deliveries. Is he in such a hurry? Mr. Chairman, I am not cynical but I am merely speaking from experience. I know policemen. The same policeman who in his office roars like a lion is docile like a lamb when he appears in the witness box. He gives the impression to the Judge that he is the best man in the world, the fairest man you could have in the police. It is not so. The attitude of the policeman when he is making enquiries is quite different from his attitude in the witness box. I will discuss more of it when there is a Motion at the Third Reading. I would not now go into the principles of the Bill but I cannot countenance the assertion that the Law Society should have produced proof.

I know that men of my profession are stubborn people but it is a rare sight to see an Attorney-General being stubborn.

MR. CONROY: Might I first of all deal with the allegation of impertinence which has been made against me. The hon. Member has said that it is the experience of 300 legal practitioners. They said so, Sir, in their Motion; they said that it was "our experience" and, Sir, if it is an impertinence then I apologize, but I wrote back and said that I should be glad of some cases which you can quote to me on which you base this allegation of experience. Sir, not one single case has been quoted to me.

Now, Sir, the hon. Member then goes on to talk about confessions to midwives. There is nothing in the Indian Evidence Act, nor in any other Act of which I know, nor indeed in common law, which excludes confessions made to midwives, unless of course they are not voluntary. Sir, he then goes on to ask me to substantiate the fact which is alleged in the Memorandum of Objects and Reasons that experience in recent years, which if he reads the Memorandum of Objects and Reasons he will see is up to 1954, has shown that officers of that rank are not sufficiently numerous and widely distributed.

Sir, we dealt with this on the Second Reading and we are just going over the same ground again as on the Second Reading, that is to say, the principles of the Bill. The reason is this, that when a man wishes to make a confession it is desirable that his confession should be taken immediately. If he mixes with other prisoners, then he is persuaded not to—that is practical experience—and I told the hon. Member that the other day. And, Sir, it is therefore desirable in the interests of justice that if a man wishes to make a confession that his confession should be taken down without any undue delay. And that is the reason, Sir, why we want to have officers freely available for this purpose. Sir, I do not see that any further factual argument is necessary on this point. There it is, Sir. I do

[Mr. Conroy]

not think there was anything else important raised by the hon. Member to which I need reply, Sir.

SIR CHARLES MARKHAM: Sir, before we get involved in an argument between two learned, may one unlearned Member have another chance? Sir, could we be serious for a moment, Sir? We do not want to get too much liberty into the debate in this Committee but there are certain fears in this side which I can assure the Minister for Legal Affairs are genuine.

The first, Sir, is if this confession which is so red-hot that there is some danger that the prisoner might retract when he gets into a remand home or elsewhere be so important, Sir, I would have thought there are enough district officers or district commissioners or magistrates who could take this evidence beforehand.

Sir, I remember personally as an example a friend of mine in England who was asked by an inspector in a London police station after a regimental dinner to confess that he had done certain things and he was told by the police officer that if he confessed he would guarantee, the police officer, that the prisoner would get a lighter sentence.

Well, we need not go into the unhappy circumstances that happened later on. But, Sir, it is a well-known thing, Sir, and I say this from my own personal experience during the Emergency, that police officers do often say that same thing, "tell me something and if you will tell us what happened we will try and get you a smaller sentence."

Now, I see no harm in that, Sir, if the prisoner is guilty but quite often there are the cases which we know where the fright or the circumstances make that prisoner say something when if he went to a court normally he might be found not guilty by the magistrate or the judge as the case may be. Now, Sir, I have heard the explanation by the Minister for Legal Affairs and I accept that explanation. But in view of his remarks that there is coming before this House next year, which after all is not a very far time ahead, a new Evidence Bill, would he not agree to withdraw this particular clause for the next two or three months? Not, Sir, because of what is in the Memorandum of Objects and Reasons but because of the genuine fears expressed by some people that this clause may be abused.

Now, I know, Sir, there are the Judges' Rules which protect the prisoner from any practice which may not qualify to be admissible in evidence, but if you look at the clause, Sir, with respects to the Minister for Legal Affairs, there are so many people who join the Kenya Police Force and qualify immediately in the rank of Assistant Inspector. If, Sir, the Minister would amend it himself —and I have no right to under our Standing Orders now, Sir, because the time limit has expired—to amend that to a grade of inspector, so that at least we know the individual has some experience, then, Sir, the case is a little stronger on behalf of the Government. But as it stands at the moment a person with literally a week's experience in the Kenya Police could under this new amending Bill, be qualified to take a confession. I personally, Sir, deprecate such a move.

Finally, Sir, my final point is this. We know, Sir, that the Minister is anxious that the criminal who confesses that he has committed this crime and may retract because he goes to gaol should not be allowed to go free, Sir, I can say this to him, and I say this to him again based on listening to certain evidence in a court, that if by chance your prisoner sitting in the police station or a police cell of any station confessed to an Assistant Inspector inside that police cell that he committed murder, I doubt if any judge would allow that to be used as evidence. And therefore, Sir, what is he trying to achieve by this particular clause? I listened to the debate yesterday; I heard the fears expressed by my hon. legal friend on my right; and I would urge upon him, Sir, in the interests of all people to either amend this clause himself or alternatively wait until next year because, it is undesirable that the whole of this side of the Council should divide on an issue of principle of justice. There are strong feelings expressed by all Members and I would ask him, Sir, in all sincerity to withdraw this clause to avoid another division which, I can assure you, Mr. Chairman, will take place on this clause.

MR. MBOYA: Mr. Chairman, the Member for Ukamba has made one of the points I was going to make but there is an additional point which I think ought to be taken into account,

In addition to the possibility of an inexperienced inspector of police being charged with such responsibilities we have to take into account the fact that the majority of the people we deal with in this country are either illiterate or unaware of their rights to a large extent when questioned by a policeman or when brought into a police station and are asked to say certain things or to confess and so on, find themselves sometimes so puzzled that they might say things which an Assistant Inspector claims to be a confession but which may not in fact be a confession.

Now, the Minister for Legal Affairs says here that the Law Society has failed to bring forward any evidence. I would find it very difficult to bring forward evidence of certain things which I know have happened and which on the basis of the Minister's present attitude would require some legal or technical proof and so on but which we know are happening in this country. Now, I think it is begging the question, Sir, for anyone to suggest that he is not aware of the suspicious relationships that exist between the majority of the public in this country and the police of this country. The unhappy relationships that exist here have a long way to go before they can be improved to the point where there is enough confidence for all our people to treat the policeman as a friend and not as an enemy. Today most of them look upon him as someone they should never meet anywhere, on the streets during the day or during the night. Now, a frightened man who is taken to a police station some odd time at night, illiterate, ignorant of his own rights, and unaware that he can say No to a policeman because he has never done it or because some of his friends have suffered when they have done it, is likely to be brought before a court with some claim that he confessed to have committed a crime when in fact he had not done so.

Now, I do not know how many Assistant Superintendents of Police we have in the country at the moment, but I get the impression that since 1954 the number has increased. Now, if in 1954 the Government considered the number sufficient, with the increase in the number of Assistant Superintendents of Police I think the Government should be much happier.

Lastly, Mr. Chairman, we must appeal to the Government, and I am sure that it has not been suggested by the Minister, that the intention of this Bill is to secure as many convictions as possible, because it is sort of implied that, I am afraid to say so, that the Minister is here looking for easy convictions, of people who will confess, readily confess, before someone who is readily available, so that a conviction may be immediately possible.

Sir, it is the task of the Prosecution, and in this case the Government, to prove beyond doubt that a person is guilty. It is not a question and I hope it is not the intention—because this is the fear we are beginning to gather—it is not a question of getting the easiest possible conviction or trying to find the easiest possible way of ensuring a conviction because if that were so the Minister would in fact be committing what he has told us not to commit and that is to find the easiest way to circumvent the need for the Prosecution to prove beyond doubt that a person was guilty. It might be a difficult task; it might mean a lot of laborious work for the police and Prosecution; but in the interests of justice that is something this Government must accept and we appeal to the Government especially in view of what the Minister has stated, that some legislation is coming up next year—comprehensive legislation, in his own words —then I think this should be one aspect that could be considered in its proper perspective when we have the comprehensive legislation.

I see no urgency in the situation. We have had this for the last four years and I am sure we can continue in this form for the next six months without very much harm to the Government or to the country.

MR. COOKE: Mr. Chairman, surely the fallacy, Sir, in the Minister's remarks is that he assumes that the prisoner wishes to make a confession. But he forgets, I think, Sir, that the prisoner is

[Mr. Cooke]

alone with the policeman and he may be easily cajoled or frightened into giving a confession. So you cannot assume that that confession is voluntarily given.

My hon. friend says, of course it has to be proved in court. But how can you prove it in court with the policeman's word against the other man's word.

Now, there has been a case in Australia which has only been reported within the last two or three days where an aboriginee was convicted of murder on a confession he made to the police and the police and the High Court were obstinate—as my hon. friend is today—and it was only because a Sydney paper took up this matter that this man's sentence to death has been commuted to prison for life.

Those of us who do have experience as magistrates—I was a magistrate for many years myself—we do know that we have to watch with the greatest suspicion any confession made to the police and therefore we would like to restrict as much as possible to as few people as possible to whom confession can be made.

MR. CONROY: Sir, I hope the hon. Member does not really think I am obstinate, Sir. I do not know what his definition of obstinate is, perhaps it is someone who does not agree with him, Sir. Perhaps he is being just as obstinate as me. I do not know.

Sir, I am not an obstinate man! I am a reasonable man. And as I have been listening to hon. Members opposite expressing what are quite obviously genuine and sincere fears (although misguided fears) I have been trying to think of some kind of way in which we can delay this Committee stage, which has really turned into a Second Reading this afternoon.

Sir, the difficulty is that we are getting towards the end of this Rump Session. If we were to report progress and ask leave to sit again on this Committee stage, tomorrow is Private Members' Day and then if the Bill came back again after discussion on Tuesday we would be in this difficulty, that if any amendments were made we would not be able to finish it without sitting again on Wednesday. Another alternative, of course, would be to take it through the Committee stage in its present form today and then argue this matter (as I suggest it should have been argued, as it is a matter of principle which has been brought up by the other side) on the Report stage, on the Third Reading. And we could do that on Tuesday which would give us the weekend to discuss and to see whether we could not meet hon. Members on the other side.

Sir, I see hon. Members wagging their heads over there. Sir, I do not want to be obstinate with hon. Members opposite, I want to meet them as much as I can because it is quite clear that their feelings are sincere about this matter and that they are widespread. I must oppose this amendment because it destroys completely the principle of the Bill. Sir, if we adjourn this Committee stage we then get into difficulties. If we complete the Committee stage, then we can only hammer this one out on the Third Reading. It is a matter of principle, then. Either we have the Bill or we do not. It is no question of an amendment. We either scrap it or pass it, either way, Sir. I therefore, Sir, think I will formally say I will oppose the amendment and if we can complete the Committee stage today on the Bill as amended it will give us the opportunity either to pass it or defeat it on the Third Reading.

SIR CHARLES MARKHAM: Sir, having heard the generous, unobstinate remarks of my friend the Temporary Minister for Legal Affairs and knowing we have got the weekend to discuss this again and not withdraw any of our arguments, I feel, Sir, it would be a waste of time pressing this amendment because we have this assurance. In the circumstances, I would like to withdraw it, with the reservation that I am going to come back again on the Third Reading.

THE CHAIRMAN (Sir Ferdinand Cavendish-Bentinck): There is another amendment, Mr. Muliro has an amendment, too.

MR. MULIRO: I feel very uneasy, but since my colleagues on this side say we are going to raise the matter up again on the Third Reading of this Bill I will withdraw that and during the Third Reading we will raise the matter up.

THE CHAIRMAN (Sir Ferdinand Cavendish-Bentinck): I take it then that the two amendments to section 2 have been withdrawn and, therefore, I put the question that clause 2 stand part of the Bill.

Amendment by leave withdrawn.

Clause 2 agreed to.

Clause 3 agreed to.

Title agreed to.

Clause 1 agreed to.

The Evidence (Bankers' Books) (Amendment) Bill

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

The Estate Duty (Abolition) Bill

Clause 2 agreed to.

Title agreed to.

Clause 1 agreed to.

MR. CONROY: Mr. Chairman, Sir, I wish to move that the Committee do report to Council its consideration of the Evidence (Amendment) Bill, the Evidence (Bankers' Books) (Amendment) Bill and the Estate Duty (Abolition) Bill, and their approval of each of those Bills without amendment.

The question was put and carried.

Bill to be reported.

The House resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

REPORT

The Evidence (Amendment) Bill

MR. CONROY: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has considered and approved the Evidence (Amendment) Bill without amendment.

Question put and carried.

REPORTS AND THIRD READINGS

The Evidence (Bankers' Books) (Amendment) Bill

MR. CONROY: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Evidence (Bankers' Books) (Amendment) Bill, clause by clause, and approved the same without amendment.

The question was put and carried.

MR. CONROY: Mr. Speaker, I beg to move that the Evidence (Bankers' Books) (Amendment) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Estate Duty (Abolition) Bill

MR. CONROY: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has considered the Estate Duty (Abolition) Bill and approved the same without amendment.

The question was put and carried.

MR. CONROY: Mr. Speaker, I beg to move that the Estate Duty (Abolition) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

COMMITTEE OF THE WHOLE COUNCIL

Order for Committee read. Mr. Speaker left the Chair.

IN THE COMMITTEE

[D. W. Conroy, Esq., O.B.E., T.D., Q.C., in the Chair]

The Courts (Amendment) Bill

Clause 2

MR. MULIRO: Mr. Chairman, I am afraid of this clause regarding the junior administrative officers like some district officers and some District Assistants being *ex-officio* magistrates because what we find now is that we are getting more and more of these inexperienced young people joining the ranks of administration. If these young people without any

[Mr. Muliro]

real experience, some of them might have passed some legal examinations and some of them might not have passed, but are working for them. When they are given powers of magistrates to hold certain courts what we find is that Africans in many African areas are now encountering more and more problems as a result of these young people who are being given the powers of magistrates, and I think with the increase of trained magistrates, throughout the country the district officers or district assistants should not be given these powers. It is understandable to find a district commissioner given that power. Probably there might be only one practising magistrate in that area, and the district commissioner can be the second, but if these powers are given to junior officers sometimes it becomes too much. An administrator is an administrator, and at the same time he should never be given the powers of a magistrate, and therefore, Mr. Chairman, I move that in the second clause (*a*), we delete all words after "district commissioner" in that section, I do not know whether we should dispose of (*a*) first?

THE CHAIRMAN (Mr. Conroy): I think (*a*) first, Mr. Muliro. It makes it simpler.

MR. WEBB: Mr. Chairman, I am afraid I cannot accept this amendment, and indeed it would seem that the hon. Member for Nyanza North neither listened to me yesterday, nor has he read this Bill. He has been at pains, Sir, in moving this amendment to talk about giving magisterial powers to assistant administrative officers and district assistants. This Bill does nothing of the sort. Neither of those categories are given magisterial powers either *ex-officio*, or even *ad personam*. This Bill merely confers magisterial powers on district officers down to the rank of District Officer (Cadet), who becomes a magistrate of the third class.

Now, Sir, as I was at pains to point out yesterday, the whole purpose of this Bill is to restrict the present very wide *ex-officio* exercise of magisterial powers by reducing the number of people who exercise those powers to people who will have had some training and experience, and District Officer (Cadets) nowadays, before they are appointed to that rank, have a year's training which includes training in law. I think, Sir, therefore, that the hon. Member has perhaps to some extent misunderstood the purpose of this Bill, but in any event I cannot accept the amendment.

In passing, Sir, I would point out that this amendment seeks apparently also to abolish with a stroke of the pen the Liwalis', Kadis' and Mudirs' courts, all of which are words following the words "District Commissioner" in that subsection, but as you, Sir, said on a previous occasion, if it was merely a question of wording I am sure we would be able to meet him. The matter is, Sir, more fundamental, and I cannot accept it.

MR. MULIRO: I think the Member for Legal Affairs actually does not take it very seriously. The district officer cadets may have one year's training, but that cannot equip a person—a school certificate young man—to exercise the powers of a magistrate, as an *ex-officio* magistrate. If you were an African you would experience more and more of what we are seeing. Africans are complaining that when the district officer orders something to be done, and if anyone does not do it, this particular person goes forward to sue the person in his own court. He sits as a Judge at the same time and imposes fines over these people. There have been cases where a district officer has asked the headman to call a meeting of the people in the area, and if the people fail to come or the notice is too short, still they call the people to the court of the district officer and fines are imposed over them. We have just opposed one Bill here, and now here is another one. It seems that Government is completely interested in creating or making it very easy for the prosecution of the Africans in this country through and through, and therefore I still maintain that this should be deleted.

MR. NGALA: Mr. Chairman, I would support the hon. Member for Nyanza North in the deletion. The Attorney-General, perhaps, has very little experience of the sort of things that Africans come up against in this matter. A district officer cadet is an officer who is very much inexperienced in the work as an administrator, and also in the legal affairs, and I feel it would be entirely wrong to allow a person with that kind of experience and legal experience to act

[Mr. Ngala]

as a Judge in these matters. I think it would be even better to allow the chiefs who have longer experience, and who have wider knowledge of African affairs to judge rather than giving such powers to a cadet officer.

In these few words, Sir, I would very much support the Member for Nyanza North.

MR. MUIMI (Kitui): Mr. Chairman, unless Government intends to use the African as a guinea pig to be experimented upon, I think the fact must be faced that many of these cadets, many of these district officers, in the first place have no experience of the African law and custom, and the only experience that they have is university experience or high school experience of English law. I think that these people who deal with the Africans should first of all be very experienced before they can be entrusted with the execution of law where the African is concerned, as my hon. friend, the Member for Nyanza North, has pointed out. Now, these officers do two types of work, or they do a double sort of work. In the first place as administrators, and in the second place as magistrates. Well, we have argued in this House that we cannot have people in the civil service who perform a double kind of job, more especially in dealing with most important matters, such as the law. I feel, like my friend, that these young people, or these inexperienced people, should not be vested with the prowess as laid down in this Ordinance, and therefore, Mr. Chairman, I support my friend, the Member for Nyanza North, that this clause should be deleted.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Sir, first of all, if I may deal, Mr. Chairman, with the point about cadets. District officers when they come out here as cadets, as has been said by my hon. and learned friend, Mr. Webb, have had some experience and training in the law. When they are made third class magistrates here any sentence that they pass is subject to review by the district commissioner, which I think is a very important safeguard. That is the first point, Mr. Chairman, I would like to make.

The second point is that the third class magistrate, in any case has extremely restricted powers, and they can be found in paragraph 9, section 9 of the Criminal Procedure Code, "Imprisonment for a term not exceeding three months—a fine not exceeding Sh. 500, and corporal punishment on juveniles only." As I said, Mr. Chairman, at the start, their sentences are subject to revision by their seniors.

I believe that the hon. Member for Nyanza North said that young men of school certificate standard were being given magisterial powers. Perhaps he would be so kind one day as to just check whether that is so in his own constituency of North Nyanza. I think he would find that the administrative officers who are performing the work of magistrates are of a considerably higher scale of academic education than school certificate.

Finally, Sir, the hon. Member for Kitui, mentioned the question of African law and custom, and I think he said, subject to correction, that young and inexperienced cadets could have no knowledge of African law and custom. That is perfectly true, but on the other hand, as third class magistrates they do not, of course, have anything to do with African law and custom. They are administering the Penal Code.

MR. MULIRO: Mr. Chairman, my friends on the opposite side argue that cadets are men of some experience in law, or men of some training in law. Well, merely having gone through training for a year in law does not equip anyone sufficiently enough to have the powers of a magistrate. What one sees is this, Mr. Chairman, that with administration we get all these people, the cadets, district assistants or district officer cadets are in charge of small divisions and subdivisions now throughout the country, so that is the main reason why they want to make it easier for them to act as magistrates everywhere. What has to be borne in mind is this. These people are administrators, and yesterday, when the Member for Legal Affairs, the Acting—Solicitor-General, argued here that we welcome magistrates to work as magistrates and not district administrators. This should be borne in mind. The Government of this country must make it very clear that administrators are administrators, and Judges and administrators should as much as possible

[Mr. Muliro]
stop to work as magistrates, and therefore if in the districts we could only have the district commissioners it would be much better.

The Minister for African Affairs argues that they have restricted powers, these district officers, and that they can only impose a three months sentence or Sh. 500 fine, but one must realize that Sh. 500 is a lot of money to poor Africans, and many of them are being heavily fined by district officers. Now that is the main reason why I want the deletion.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): On a point of order, Mr. Chairman, perhaps the hon. Member for Nyanza North would also quote me as saying that those sentences were subject to revision by a senior officer.

MR. MULIRO: Well and good. A senior officer is a district commissioner in the area. Now a district commissioner, in fact, does not very much want to change what his district officer has done because by so doing he removes the confidence of the people in the district officer, and you will find it very difficult for a district commissioner to reverse the judgment of the district officer. The district commissioner will always say "*Bwana amehuita shauri hii sawa, sawa.*" Now that is what we get when we have complaints from people. I urge the Government to delete this rather than have anyone else here, and I only wish Government Ministers who are opposing this would only change skins for one night and see what we are suffering. Therefore I still maintain that we oppose this.

THE CHAIRMAN (Mr. Conroy): I would remind Members that it is contrary to our Standing Orders to repeat constantly the same arguments. If you have any fresh arguments, by all means bring them, but if they are the same arguments, then you are precluded by our Standing Orders from repeating them.

MR. MUIMI: Mr. Chairman, I just want to make a correction on the statement made by the Minister for African Affairs, when he said that these cadets do not deal with the African law and custom, but they only deal with the Penal Code.

During our tour of the Land Consolidation in the Central Province we have had cases where these district officers had presided over the African courts on land matters and had made decisions, and their decisions had been taken as true. Well, I do not, Mr. Chairman, think that land matters have anything to do with the Penal Code. I think that such matters as land are surely African custom and law, and as I said when I spoke first, these officers intend to use the Africans as guinea pigs to experiment on them, and I think the Minister may not be very much aware of how the law is applied by these officers and what he thinks these officers should do in the African areas is not precisely what they are doing. But in actual fact they are doing the contrary. They want promotions in most cases and they want to prove that they can be good magistrates by overlapping what is in the law and by doing what is not in the law, and that is why we feel that unless they are very much experienced they should not be given such power of magistrates in as far as the law is concerned.

Question that the words be left out be left out put and negatived.

Clause 2 agreed to.

Clause 3

MR. MULIRO: For the reasons which I have already given, Sir, I would move the deletion of clause 3.

THE CHAIRMAN (Mr. Conroy): Mr. Muliro, I think we are at cross purposes here. You want to delete the new subsection (2) of the new section 3?

MR. MULIRO: Yes.

THE CHAIRMAN (Mr. Conroy): You do not want to delete the new clause 3?

MR. MULIRO: No.

THE CHAIRMAN (Mr. Conroy): This is clause 2, then.

MR. MULIRO: Yes.

The main reason is that district officers are people appointed. That is what we have advanced against already, that these people should not have those powers——

MR. BECHGAARD (Nominated Member): On a point of order, Mr. Chairman, we have just passed clause 2, have we not?

THE CHAIRMAN (Mr. Conroy): Yes, we have, indeed. But as I understand it, this amendment is consequently upon the first amendment.

You see, Mr. Muliro, we have already voted that clause 2 stand part of the Bill. The only way in which we can go back is at the Report stage.

MR. MULIRO: (Inaudible.)

THE CHAIRMAN (Mr. Conroy): Well, I gave an opportunity to all hon. Members to move any amendments they wanted to move. The only course open to you now, if you wish to do so, is to move at the Report stage before Mr. Speaker, that the Bill be recommitted.

Clauses 3, 4, 5, 6, 7 and 8 agreed to.

New Clause

MR. WEBB: Mr. Chairman, I beg to move that a new clause be added to the Bill as follows:—

Validation of Certain Grants of Increased Civil Jurisdiction

"It is hereby declared, for the avoidance of doubt, that any grant of increased civil jurisdiction to a senior resident magistrate or to an acting senior resident magistrate made before the commencement of this Ordinance shall be deemed to be, and always to have been, of full force and effect."

The purpose of this new clause, Sir, is to put beyond doubt certain grants of increased civil jurisdiction which have been made to senior resident magistrates and to acting senior resident magistrates by virtue of section 4 of the Ordinance and in the terms of the Schedule to the Ordinance. The difficult has arisen that the Schedule only refers to "resident magistrates" and although the greater might be deemed to include the less, it is possibly arguable that the converse is not true. Certain grants of increased jurisdiction have been made in the past and in order that there may be no doubt that a senior resident magistrate can certainly do what a resident magistrate could be empowered to do I move this clause.

Question proposed.

New clause read a First Time.

The question that the new clause be read a Second Time was put and carried.

The question that the new clause be added to the Bill was put and carried.

Title

MR. WEBB: Mr. Chairman, consequent upon the amendment which has just been approved by the Committee, I beg to move that the Title to the Bill be amended by adding thereto the words "AND TO VALIDATE CERTAIN GRANTS OF INCREASED CIVIL JURISDICTION."

Question proposed.

Question that the words proposed to be added, be added, put and carried.

Title as amended agreed to.

Clause 1

MR. WEBB: Mr. Chairman, I beg to move that clause 1 be amended by inserting after the word "Amendment" the words "and Validation". This is a change consequential upon the new clause.

Question proposed.

Question that the words to be added, be added, put and carried.

Clause 1, as amended, agreed to.

The Variation of Trusts Bill

Clause 2

MR. WEBB: Mr. Chairman, I beg to move that clause 2 be amended by leaving out subsection (2) of clause 2 and by inserting in place thereof a new subsection as follows:—

"(2) In subsection (1) of this section "protective trusts" means trusts specified in paragraphs (i) and (ii) of subsection (1) of section 34 of the Trustees Ordinance, or any like trusts; "the principal beneficiary" has the same meaning as in subsection (1) of the said section 34; and "discretionary interest" means an interest arising under the trust specified in paragraph (ii) of subsection (1) of the said section 34 or any like trust."

Sir, the amendments which are included in the subsection which I have just read, as compared with that which appears in the printed Bill, are simply to clarify two references in the printed subsection to "the said subsection (1)". There are two references in the subsection to subsection (1), one of them being to subsection (1) of this section and the other to subsection (1)

[Mr. Webb]

of section 34 of the Trustees Ordinance. Although I do not think that any possible doubt could arise as to the meaning of the references to the "said subsection (1)", yet the Law Society has suggested, and I willingly accede to their suggestion, that the matter could be made perfectly clear, and I hope that this amendment achieves that object.

I beg to move.

Question proposed.

Question that the words to be left out, be left out, put and carried.

Question that the words to be inserted in place thereof, be inserted, put and carried.

Clause 2, as amended, agreed to.

Title agreed to.

Clause 1 agreed to.

The Crown Lands (Amendment and Miscellaneous Provisions) Bill

Clauses 2-36 agreed to.

Clause 37

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move an amendment to clause 37 of which notice has been given. The amendment is that under the heading (10) in this clause the expression 101° 52' 51" should be deleted and that there should be inserted in place thereof the expression 281° 52' 51". The reason for this is that in drawing up the Bill there was an error in transcription of this bearing which it is desired to correct.

Question proposed.

Question that the words to be left out, be left out, put and carried.

Question that the words to be inserted in place thereof, be inserted, put and carried.

Clause 37, as amended, agreed to.

Clauses 38, 39, 40, 41 and 42 agreed to.

New Clause

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I beg to move that a new clause be added to the Bill. The new clause is as follows:—

Saving in regard to existing actions

Nothing contained in section 22 or section 31 of this Ordinance shall affect any action, suit or proceedings instituted before the commencement of this Ordinance.

The reason why it is desirable to add this new clause, Mr. Chairman, is that clauses 22 and 31 of the Bill make certain new provisions regarding debentures and charges and also regarding the registration of caveats which, if they were to take effect, might have a deleterious effect on certain actions in these matters which are at present before the courts. In these circumstances, Sir, we feel that this should be prevented by the insertion of this saving clause.

New Clause read a First Time.

The question that the new clause be read a Second Time was put and carried.

The question that the new clause be added to the Bill was put and carried.

Title agreed to.

Clause 1 agreed to.

The Entertainments Tax (Amendment) Bill

Clauses 2 and 3 agreed to.

Title agreed to.

Clause 1 agreed to.

The Industrial Training Bill

Clauses 2, 3, 4, 5, 6, 7 and 8 agreed to.

Clause 9

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move a number of amendments to subsection (1) of clause 9. Notice has been given of most of these amendments. The first is that the words "where the Labour Commission so directs" be deleted from the clause and in place of those words should be inserted, "where the parties to the contract so agree." The object of this amendment is to meet an undertaking which I gave during the Second Reading that the deposit of security would be made dependent on the agreement of both parties.

Question proposed.

Question that the words to be left out, be left out, put and carried.

Question that the words to be inserted in place thereof, be inserted, put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, the second amendment I would wish to move to this subsection, Sir, derives from some remarks made yesterday in the course of debate by the hon. Member for the Nairobi Area in which he said it might be a hardship for this deposit to be made in all cases in cash. I therefore propose that the words "in cash" be left out of this subsection.

Question proposed.

Question that the words to be left out, be left out, put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move that subsection (1) of clause 9 be further amended by leaving out the word "two" and inserting in its place the word "five".

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move that subsection (1) of clause 9 be further amended by leaving out the word "specify" and by inserting in place thereof the word "approve".

Question proposed.

Question that the word to be left out, be left out, put and carried.

Question that the word to be inserted in place thereof, be inserted, put and carried.

Clause 9, as amended, agreed to.

Clauses 10, 11 and 12 agreed to.

Clause 13

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, for the reasons which I explained during the Second Reading debate yesterday I beg to move that subsection (8) of clause 13 be omitted from the Bill.

Question proposed.

Question that the subsection to be left out, be left out, put and carried.

Clauses 14, 15, 16, 17, 18, 19 and 20 agreed to.

Clause 21

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move two amendments to clause 21. The first of these is that in subsection (1) of clause 21 there be added a proviso as follows:—

Provided that no scheme shall revoke or vary any term of any contract of apprenticeship or indentured learnership registered before the date of making of such scheme.

Some anxiety has been expressed, Sir, lest the making of a scheme might govern such contracts which had been entered into before the making of the scheme. I am advised that in fact the Bill would not have this effect but to avoid any doubt whatsoever I propose that this proviso be added.

Question proposed.

The question that the words to be added, be added, put and carried.

THE CHAIRMAN (Mr. Conroy): You have no other amendment to this clause?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): No.

Clause 21, as amended, agreed to.

Clause 22 agreed to.

Clause 23

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, I beg to move that clause 23 be left out of the Bill and there be inserted in place thereof a new clause as follows:—

23. The Minister may appoint any labour officer, or any person appointed to the public service as an Inspector of Factories, a Trade Testing Officer or a Labour Inspector, to be an inspector for all or any of the purposes of this Ordinance.

The purpose of this amendment, Sir, is to meet the suggestion that the text of clause 23 as at present drafted gave too great latitude for the possible appointment of officers who are not qualified properly to carry out these tasks. The amendment is designed to remove this possibility.

Question proposed.

The question that the words to be left out be left out, put and carried.

The question that the words to be added, be added, put and carried.

Clause 23, as amended, agreed to.

Clause 24

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, it was at this stage that I had two amendments to move.

The first is to paragraph (*b*) in subsection (1) of clause 24 and the proposal is that the following words be left out: "and to sign a declaration of the truth of the matters respecting which he is so examined". The object of this amendment, Sir, is to meet some anxiety expressed during the Second Reading of the Bill by the hon. Member for Nairobi West who suggested that if, indeed, these inspectors were going to take statements from the persons they questioned they should be obliged by the law to warn those persons that such statements might be introduced in evidence. Having re-examined the question, we are satisfied that inspectors, who are, after all, only conducting a preliminary investigation to see whether there is any breach of the Ordinance or breach of contract, need not at that time get signed statements from those from whom they ask questions. Therefore, it is proposed to omit those words from the Bill.

Question proposed.

The question that the words to be left out be left out put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Chairman, the second amendment that I wish to move to this clause is to add the following new subsection thereto which would be subsection (3): "Any inspector exercising, or seeking to exercise, any of the powers specified in subsection (1) of this section shall, on being required to do so, produce written evidence of his appointment."

In legislation of this kind, Mr. Chairman, where powers are given to inspectors it is proper that they should be equally obliged to show proof of their status when they are carrying out their duties if they are asked to do so. That is the purpose of this new subsection.

Question proposed.

The question that the words to be added be added put and carried.

Clause 24, as amended, agreed to.

Clauses 25 to 35 agreed to.

Title agreed to.

Clause 1 agreed to.

The Land and Agricultural Bank (Amendment) Bill

Clauses 2 to 8 agreed to.

Title agreed to.

Clause 1 agreed to.

The Mtwapa Bridge Bill

Clauses 2 to 10 agreed to.

Schedule agreed to.

Preamble agreed to.

Title agreed to.

Clause 1 agreed to.

The Provisional Collection of Taxes and Duties Bill

Clauses 2 to 5 agreed to.

Title agreed to.

Clause 1 agreed to.

The Wheat Industry (Amendment) Bill

Clause 2

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Chairman, because of the good arguments and reasons put forward by hon. Members opposite yesterday, I beg to move that clause 2 be amended by the deletion of paragraph (*f*) of clause 2.

Question proposed.

The question that the words to be left out be left out put and carried.

Clause 2, as amended, agreed to.

Clause 3 agreed to.

Clause 4

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Chairman, I beg to move that the Bill be amended by deleting the words "and shall become invalid and be surrendered to the Minister if the holder thereof is adjudicated bankrupt or if the milling

[The Minister for Agriculture, Animal Husbandry and Water Resources] business carried on by the holder thereof goes into liquidation" which appear in paragraph (*b*) of clause 4 thereof.

Question proposed.

The question that the words to be left out be left out put and carried.

Clause 4 as amended agreed to.

Title agreed to.

Clause 1 agreed to.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Chairman, I beg to move that the Committee rise and that it be reported to Council that a Committee of the whole House has considered the Entertainments Tax (Amendment) Bill, the Land and Agricultural Bank (Amendment) Bill, the Mtwapa Bridge Bill and the Provisional Collection of Taxes and Duties Bill and approved these Bills without amendment; and that it also report that a Committee of the whole House has considered the Courts (Amendment) Bill, the Variation of Trusts Bill, the Crown Lands (Amendment and Miscellaneous Provisions) Bill, the Industrial Training Bill and the Wheat Industry Bill and approved these Bills with amendments.

Question proposed.

The question was put and carried.

The House resumed.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck in the Chair]

REPORTS

The Courts (Amendment) Bill

MR. CONROY: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Courts (Amendment) Bill clause by clause and made amendments thereto.

Report ordered to be considered tomorrow.

The Variation of Trusts Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Variation of Trusts Bill and has approved the same with amendments.

Report ordered to be considered tomorrow.

The Crown Lands (Amendment and Miscellaneous Provisions) Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Crown Lands (Amendment and Miscellaneous Provisions) Bill and has made amendments thereto.

Report ordered to be considered tomorrow.

REPORT AND THIRD READING

The Entertainments Tax (Amendment) Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Entertainments Tax (Amendment) Bill and approved the same without amendment.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, Sir, I beg to move that the Entertainments Tax (Amendment) Bill be now read a Third Time.

THE CHIEF SECRETARY (Mr. Coutts): seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

REPORT

The Industrial Training Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Industrial Training Bill and made amendments thereto.

Report ordered to be considered tomorrow.

REPORTS AND THIRD READINGS

The Land and Agricultural Bank (Amendment) Bill

MR. CONROY: Mr. Speaker, Sir, I have to report that the Committee of the whole Council has considered the Land and Agricultural Bank (Amendment) Bill and has approved the same without amendment.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Sir, I beg to move that the land and Agricultural Bank (Amendment) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read the Third Time and passed.

The Mtwapa Bridge Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Mtwapa Bridge Bill and has approved the same without amendment.

The question was put and carried.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, I beg to move that the Mtwapa Bridge Bill be now read a Third Time.

THE CHIEF SECRETARY (Mr. Coutts) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Provisional Collection of Taxes and Duties Bill

MR. CONROY: Mr. Speaker, I have to report that a Committee of the whole Council has considered the Provisional Collection of Taxes and Duties Bill and has approved the same without amendment.

The question was put and carried.

MR. MACKENZIE: Mr. Speaker, I beg to move that the Provisional Collection of Taxes and Duties Bill be now read a Third Time.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey) seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

REPORT

The Wheat Industry (Amendment) Bill

MR. CONROY: Mr. Speaker, I beg to report that a Committee of the whole Council has considered the Wheat Industry (Amendment) Bill and made amendments thereto.

Report ordered to be considered tomorrow.

MOTION

COASTAL LAND FOR AFRICANS

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Ngala, I have the HANSARD before me of 19th June from which, as far as I can follow, Mr. Johnston was still speaking and still had a good deal to say.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): That is so, Sir!

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If that is so, Mr. Johnston, would you kindly proceed?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, when the House adjourned on 19th June I had reviewed the extent of Crown land available and had pointed out how little was in fact suitable at present for agricultural purposes. I turn now, Sir, to the alienated land which I gave earlier on as 623 square miles.

The Coast freeholds constitute some 409 square miles. Such holdings constitute the major part of land alienated for agricultural purposes at the Coast. They cannot lawfully and fairly be resumed except by purchase. Crown land, which has been alienated, consists of three square miles for industrial, commercial and residential purposes and 211 square miles for agricultural purposes. This includes the 156 square miles originally leased to the East African Estates. The Crown, Sir, can terminate the lease if conditions inserted in it at the time of the original grant have not been observed, but otherwise titles must be respected, and it is only on a willing seller basis that the Crown or anyone else can acquire interest in leasehold land, used or unused, unless, of course, the latter use is a breach of a condition in the lease. When land comes on to the market, it is naturally open to the

[The Minister for African Affairs]

Government to consider in the light of its available resources and the potential uses of such land whether it should enter the market, either on its own behalf or on behalf of other bodies for approved purposes who have not the resources immediately available. Government, Sir, is now giving consideration as to whether to arrange the purchase of a reversion of the lease of part of the land put on to the market recently by the East African Estates. It is, however, certainly not true to say, as has been said in the course of this debate, Sir, that the land leased by the East African Estates was originally Digo land. Paragraphs 1289 and 1290 of the Land Commission give the history of this lease.

Sir, I was very glad to hear the hon. Member for the Mombasa Area say that the motive behind this Motion was not to deprive anybody of his rightful property, nor to drive away any particular race from any particular area. I very much welcome this statement, and I hope that both he and the hon. Mover will repeat it to their constituents.

In view, Sir, of what I have said in the course of this debate, I think I have clearly shown that Government has, in fact, constantly taken into consideration the growth of population in the Coast land unit, and the difficulties of providing water in certain areas, and that where it considers that there is sufficient justification for the purchase of land, it has done so. But as I said, Sir, Crown land is limited, and Government does not propose to embark on a series of further purchases when there are such places as the Shimba Hills settlement still awaiting settlement.

Hon. Members will recall that the Government accepted on 19th June a Motion as amended to make an examination of all unalienated Crown land so as to intensify efforts to make land available for suitable agricultural development and settlement schemes, and I believe that that acceptance of the Government covers, to some extent, the Motion we are now debating. For this, Sir, and for other reasons which I have given in the course of my speech, both today and on 19th June, Government cannot accept this Motion as it stands.

I beg to oppose.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If I might just explain, Mr. Ngala proposed this Motion, Mr. Khamisi seconded it. Mr. Johnston was speaking on 19th June, and when we interrupted the debate Mr. Johnston had not finished his contribution, but he has now completed his contribution. So far, these are the only speakers in this debate. The question is before the House.

MR. BROWN (Acting Director of Agriculture): Mr. Speaker, Sir, there are a couple of general points from the agricultural point which are relevant to this Motion.

The first is that the basic facts of the climate and ecology are not to be escaped. No amount of wishful thinking will alter this fact. In the Coast Province, Sir, you have to make the choice between either very poor soil or inadequate rainfall, and on the coastal strip the soil is very sandy and easily beached, and as a result infertile for most agricultural purposes. In the hinterland, Sir, the rainfall falls off and the soil is more fertile. People who live in the hinterland in general in a year of good rainfall get better crops than those people living in the coastal strip. Agriculturalists, Sir, have to accept the limitations of the soil and ecology and this applies to the Coast Province as well as elsewhere. The sensible thing to do Sir, is to resign oneself, as the Member for the Coast Rural put it, to the fact that one is born in the wrong place. This applies to large numbers of people who live in other parts of the world as well as the Coast Province. Nevertheless, it is not necessarily so that nothing can be done in the Coast Province. A great deal can be done, in fact, to improve the conditions of people living in the Coast Province. The conditions, agriculturally, in the Coast Province are suitable for tree crops, in the coastal strip particularly, and the right thing to do for any sensible agriculturalist is to accept that fact and make use of the large variety of tree crops which can bring in a cash income to the producer.

The second general point I would like to make, Sir, is that agriculturalists cannot indefinitely be called upon to provide for the increased population. The point must be reached at some stage where the aver-

[Mr. Brown]

age size of holding available is so small that a man and his family cannot make a decent living from it. Now, Sir, that point has not been reached in Kenya Colony in general, and it has certainly not been reached in the Coast Province. There is no doubt at all, Sir, that African families in the Coast Province and any other races who are farming there could make a decent living out of the holding which they now have. There are limitations, but they are not limitations because of the size of the holdings. Such practices as fragmentation render it impossible to make the best of the land that a man holds. On our research stations, Sir, we have attained yields which are at least three times the average yield in the Coast Province, and these yields we do not obtain by the use of any form of magic, but simply by the application of a few simple principles, such as early planting or timely weeding or proper spacing, things which are within the reach of anybody who chooses to apply them. These simple practices are not in general practice in the Coast Province among African farmers, and as a result it is true to say that the majority —the enormous majority of African farmers in the Coast Province—are not making the best use of the land they now have. These simple practices could very easily be applied by anybody, and I do not think it would be justifiable for anyone to complain that he had not enough land when he was not carrying out a few simple things that are within the reach of anybody with very limited ability.

There are one or two other specific points raised in the speeches, Sir, of the Mover and Seconder of the Motion. One of these was the shortage of irrigation water. Irrigation schemes have to be developed in such a way as to pay for themselves, and unfortunately, Sir, in the Coast Province this is not at all easy. The irrigation water lies in the Tana River and also to some extent in the Athi, but irrigation schemes cannot be developed on the basis of the ordinary peasant crops. They have to be worked on the basis of high priced cash crops, and we have not reached the stage yet when irrigation schemes can be developed on a large scale. Nevertheless, Sir, we have done what we can to develop small irrigation schemes in some parts of the Coast Province. In the Taita district, for instance, at least £13,000 has been spent in the last two or three years developing small irrigation schemes, for which the users are charged nothing, and which Government does not expect to see anything back except for a small proportion of loan money.

I noted also, Sir, that the hon. Mover said Africans would be willing to live on holdings on Crown land under the supervision of agricultural officers. This, Sir, is something new. At the Gedi settlement there are about 540 settlers, of whom only about 20 are really making much of their land, and I shall take him up very strongly on this point, Sir, and hope that, in fact, people who do settle on any piece of land that may be allocated to them, either on Gedi settlement or anywhere else, will be prepared to listen to advice given to them to make better use of their land.

Sir, the hon. Seconder said that no bold plan had been provided for the Coast Province. The Swynnerton Plan, as it applied to the Coast Province, was considerably more lavish in terms of staff and money per head of population than it was for any other province in the country, and, in fact, people in the Coast Province, as the Member for African Affairs said, make a better cash income per head of population than anybody else, except for the Central Province. I do not therefore accept, Sir, that no bold plan has been put forward. It is unfortunately true to say that the inhabitants of the Coast Province in general have not made use of the agricultural advice which was available to them.

The hon. Seconder also said, Sir, that he would like to have a team of experts sent down to the Coast Province to find out what should be done. Well, Sir, we have had capable teams of experts in the Coast Province for the last ten years at least, and I can state quite confidently that the research results which have been obtained are far in advance of general practice in the Coast. As I said earlier, Sir, we could very easily treble the yield of most crops grown by Africans in the coast, and as a very simple example I would mention the case of cotton. If the entire acreage under cotton in the Coast Province were to produce at the level which we obtain on our coastal research station, there would be an extra 6,000

[Mr. Brown]

bales of cotton available for export, which would be worth cash of the order of £200,000 or £250,000.

Now, Sir, these remarks will perhaps indicate that from the agricultural point of view I do not think that there really is a very acute shortage of land amongst Africans in the Coast Province, and with those words, Sir, I beg to oppose.

MR. MATE: Mr. Speaker, Sir, while listening to the previous speaker on this Motion, there is one point he seems to me to have in common with the hon. Mover of this Motion, the Member for the Coast Rural. On his side he accuses the people of the Coast of not taking Government advice on how to farm properly and make the best use of their land. That perhaps may be true—a portion of it. The hon. Mover is making the same point in a different way, that there is a problem in the Coast, a shortage of water and shortage of good arable land. Now, Sir, if Government accuses the people of not taking advice, and the people complain that there is something wrong, I feel that Government have a duty to try and do more to find out what they could do to help the people to make the best use of this land, or alternatively, as the Motion says, provide them with unused land if the funds at the disposal of the Government are not enough to help them to make better use of the land they occupy now. Meantime, they must do all they can to rehabilitate that land and so make more land available to the people of the Coast.

I have not travelled widely in the Coast Province but the little I have seen of it I think something is needed in the way of special development and here, I would like the Government to elaborate on what they call the unwillingness of the coast people to take advice on how to treat their land. I feel these people could be advised, and I feel that perhaps the fault lies with the Department of Agriculture because that Department seems to think that by simply having someone around telling people things they will be able to do it and get good crops. The people must do as they are told and get something profitable out of it before they can accept the advice as good. I feel that the Government have not done enough to show those people that the land can be used in one way or another to better advantage.

Mr. Speaker, I feel that it is important for the Department, that has the scientists and the experts in these fields, to take a much more serious view. I believe that there are things like grazing, planting of fruit trees—again coconut trees—and many other things that could be amplified. All they want is their poor country to come up. They should at least make an effort to improve the agriculture at the coast so that they convince the people that their advice and services are good. But at the same time, there seems to me the need for better land is obvious because Government accepts that there is something wrong there as the hon. Member puts it in the Motion, and I support the Member for the Coast Rural that any used land should be made available to the people.

At the same time, I would like to raise another point. If we take the acreage available in the coast per head of population, how much land is available to the African today? We are told of schemes for consolidation of land and land titles and title deeds. Are we going to assume that just because the African people there today cannot farm properly we just wait and hope that one day they will be able to do so? I think the question of population per head should be considered by appropriating unused land along the Coast. I think this is a problem which should be borne in mind by the Government when they think of portions or quotas that they make available for different groups and communities especially for farming purposes.

At the same time, I would like to add that the people at the Coast do feel that most of the land is theirs and much of it is not in their hands and if there is unused land it should go back to their hands. Mr. Speaker, I beg to support the Motion.

MR. COOKE: I was not here all the time that the Minister for African Affairs was speaking, but I understood him to say, just before he sat down, that Government were considering the purchase of land which used to belong to the East African Estates and which was sold some time ago. Well, if that is so, I think it is a pity that Government did not buy up the land when it was originally sold as advocated from this side of

[Mr. Cooke]

the Council because now, of course, they will have to pay more for it than they would have paid when it was sold by the East African Estates a few months ago. I do not think that there are any great agricultural possibilities in that particular part of land, but it might easily be divided into ten- or five-acre plots which could be purchased by Africans living in Mombasa, earning a fair salary, and they would have a place on the mainland to which they could go back at weekends or even reside there and cultivate a few cash or subsistence crops.

There are other areas such as Mackinnon Road where there is a vast expanse of land of about 200,000 acres. I think you, Sir, knew of this when you were Minister for Agriculture—which now, with the existence of the Mzima Springs could be made available. The only argument against using that land in the past was that it was waterless, but now there would be no difficulty at all in tapping the Mzima Springs and leasing or assigning some of that land to the nomadic people of this country. They could then produce sheep, goats, some cattle which would furnish food and meat for the markets in Mombasa.

There are other portions of land, for instance in the Lamu hinterland—which I think are subject to Arab leasehold claims—but at the present moment they are absolutely going to waste and no use is being made of them. We were told in the past that it was impossible to use the land near the Tana, lower Tana for irrigation purposes, but when detainees were sent down to the place which used to be known as Hola they did find a way of irrigating that land and I feel that the scheme may well prove a great success. I mention that merely because for years the Government said nothing could be done, but when the necessity arose they did do something which proves that they have not really in the past taken a great interest in the coast agricultural development.

As I said before, I quite realize that a great deal of the area is unsuitable—I think my hon. friend, and may I congratulate him on his excellent maiden speech—also said, that agricultural prospects are not good. That may be, but they should not stop us from doing what we can, especially for the landless Africans at the Coast.

MR. HASSAN: I support the Mover that there are reasons which are felt very acutely by the Africans in the Coast Province particularly in the Kilifi and Kwale Districts, that due to lack of water they are forced to leave the hinterland and settle in to areas which do not belong to them. It is the order of the day whenever a small piece of land for residential or agricultural purposes is allotted to non-Africans complaints are received that there are squatters living on the land. That is all due to the fact that the hinterland is lacking water.

With a view to helping and assisting the Africans in those areas, a hinterland scheme was started in the year 1959 and 100 square miles in the Kwale District was fitted with dams, bush was cleared and it was a great help, and there was also a scheme for ranching stock in that area. At that time it was laid down that this scheme will be continued further into areas in the Kilifi District where there is a large area of land under bush and the land devoid of water will be made habitable for the small population of the two districts. As far as I know, that scheme has been discontinued for reasons not known to me because I did not enquire into it.

Now, Sir, there is no doubt that the land on the coast is good enough for tree plantations and most of those areas are alienated lands and very small pieces of Crown land are left there, particularly all those pieces of Crown land are nothing but coral and it is not possible for Africans to be expected to have tree crops there because that land does not belong to them. When the hinterland scheme was started, steps were taken to stimulate cultivation of cashew nuts and seeds were dished out to the Africans and they were called upon to plant them in their *shambas*. A certain amount of work was done by them and a cashew-nut factory was established at Kilifi and is still working under crops purchased from the Africans in that area.

Now, I would like to know what are the intentions of the Government to help and assist the coast hinterlands which are devoid of water. There are still very large tracts of areas where Africans cannot go near because they cannot get water there

[Mr. Hassan]

and it is fly-ridden and used by the game at the moment.

With regard to the East African Estates, and other estates mentioned by the Mover, it is rather unfortunate that a big chunk of their land was sold by auction because when they wanted to make some capital out of it by subdividing they found out that the new settlement conditions for residential purposes demanded a colossal amount to be used for the purpose of water and other sanitary requirements and they found it was more economic to sell it at the price they could get in the auction instead of putting it out for residential purposes. That land—about 600 or 700 acres, I think there are patches in that land even now where still Africans are living on that land.

It is true that the Carter Lands Commission laid down in their report that it never belonged to the Wadigos. That is a matter of opinion, but I feel when all along the coast there are Arab owners along that area, it is very difficult for one to believe that all these tracts of hundreds of thousands of acres were devoid of any population. There must have been somebody there and because of the Africans still squatting in certain parts of it is an indication that this land may not have been the property of the Digos but they were making use of it, and with a view to prevent any further demand for the areas already alienated to others, I feel it is essential for the Government to develop the hinterland which is devoid of water because water is the chief difficulty. No scheme has been laid down by which that area could possibly be provided with water.

The Gedi Settlement Scheme—I have supervised part of the stock-keeping there for the best part of seven years—and made quite a success of stock-keeping in a fly belt. A small herd increased to about 60 or 70 head of cattle. What happened to that stock I do not know, but now I find that the whole of that part which was cleared of bush for that purpose is now again under bush and the greatest difficulty in that area is the shortage of water. It was not possible for me to get water for the small herd I had there and a lorry had to be sent into Malindi to bring water for them for some part of the year. Water difficulties have always been one of the reasons for the failure of success which we expected to achieve in the Gedi area.

I fully realize that it would cost a lot of money before that area could possibly be provided with permanent water, but one thing the Government will have to think very seriously about is the Sabaki River which is running into the Indian Ocean and no use is being made of it. It is a big river and if some experts were to examine it, it may be that a part of it could be diverted to this dry area which would rid us of all these difficulties of waterless tracks in that part of the country.

With these few words, Sir, I support the Motion.

MR. MULIRO: Mr. Speaker, I rise to support this Motion and I think that the Government will accept this for the first time because I do not see how the Crown land which is having water should be left without being cultivated by these African coastal tribes.

Now, when the Africans in this country asked for the opening of the Highlands the Government said that for the time being the Africans will not be allowed to get at that land. Now, when there is Crown land which is alienated but which is not being used by anybody at all, the Africans want to use the same land, again they are evicted from that land. I would like to know the reasons why the Government wishes to see these Africans suffering while land is just lying fallow and not being used. The same Government want these Africans to pay taxes and yet they know very well that the Africans who live on the arid coastal area have not got anywhere where they can get the money. These people go to work these lands which are lying fallow because it has got water, and they do that because they have to live, and unless they do that this very Government is not going to provide them with food, and unless they get crops, this very Government is going to prosecute them for not paying taxes, and they would probably wish to see them go to jail. Now getting people to go to jail is not the best policy of any Government, because whenever people who fail to pay taxes because they have no crops to sell to get money go to

[Mr. Muliro]

jail, these people use the money which other taxpayers have paid—they consume that money in prison, therefore the rest of the people suffer. I think the Government should be wise now, and would be well advised to allow the Africans from the Coast Province to go and cultivate on this land.

If, as the hon. Member for Eastern Electoral Area has said already, the Government wishes to irrigate the arid dry land which has hardly any water, it will be very, very expensive for the Government of this country, and therefore it would be much better for our Government to allow these Africans to go and utilize the land which is well watered.

With these few remarks, Mr. Speaker, I beg to support.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no other Member wishes to speak, I will call on the Mover to reply.

MR. NGALA: Mr. Speaker, Sir, since I last moved this Motion in June, the Minister for African Affairs has visited my area and the Acting Director of Agriculture has also visited my area, and I had hoped that they had familiarized themselves with the area to such an extent as to enable them to appreciate the necessity of accepting such a Motion. But I am very much disappointed indeed that the position is exactly to the contrary. First, the Minister argues that the Crown land along the coastal strip is not good enough for agriculture.

I would like to reiterate, Sir, that from the beginning of the Motion I said that these people had drifted from their native land units, due to lack of water, on to the coastal strip, where they found better rainfall and where they found better soil and where they could grow something for their subsistence agriculture. They do not want to carry on farming on any large scale, but they would like to carry on agriculture for subsistence along the coast. This shows very clearly, Sir, that the people themselves find the coastal Crown land much better agriculturally than their own native land units. Therefore the question of the Minister determining which place is better for the people, is out of the question. The people themselves appreciate that the Crown land is better than their own native land units, for the reasons I have given.

I was waiting to hear the Minister give me any assurance that they would do something about the provision of water in the native land units so that people do not have to drift on to these Crown lands any more. That assurance has not been given so I think there has not been any answer on this hardship.

The Acting Director of Agriculture, I think, is not very familiar with the facts in the Coast Province, and I think I would like to put him right on some points. The first thing is: he said that there is no shortage of land in the Coast. The Acting Director of Agriculture will remember his recent visit to the Coast. I went to see him at a place called Mtwapa, where the Agricultural Department has taken on about three square miles of land and have had to evict about 72 African farmers. Now, I put this difficulty to him and he said he appreciated the difficulty. He appears to have changed his tone now that he is back in Legislative Council, but I would like to ask him—if there is no shortage of land, what has happened to the 72 African farmers who have just been evicted from Mtwapa Crown land—a place where they were born and where they have been for over 40 years, but they are now evicted from that place. There is a serious shortage of land in these places.

Now, as far as the Gedi settlement is concerned, I am glad to see that there are now over 500 settlers at Gedi, and it is my hope that if places and plots are provided they will increase. Now I have visited this place recently and have seen that the settlers are having at least better security agriculturally than people who have to be evicted from a place. In my view they were using the plots well. If, in the view of the Acting Director of Agriculture, they were not using the plots well, that reflects how little the agricultural instructors and agricultural officers are doing in the settlement, but the people have willingly taken the plots that they have been given. It is up to the Ministry of Agriculture to see that their officers and their instructors work better.

The other distasteful aspect of the settlement, Sir, is the new settlement rulings that require a very high annual rent on all these settlers and the new conditions that have been imposed on these

[Mr. Ngala]

settlements. These conditions have made such settlements most unattractive to the African settlers.

Another thing, Sir, is the question of the Swynnerton Plan. I said, during the original Motion, that I very much appreciated the little work that has been done in the Taita Hills, for example at Msau, Mwanda and Mgeno in Taita District, but I also emphasized that the coast wanted any agricultural loans or any Swynnerton money to go into the pockets of the farmers themselves so that they can improve their farms. This question of having so many instructors of agriculture without giving the money to the farmer himself so that he can improve his farm, is quite out of place.

Another point which I would like to make is that of lack of water. Now the Acting Director of Agriculture said that the coast people have failed to follow the agricultural advice. I would like to give him one very specific example: between Mariakani and my own home there are some progressive farmers. One of them has been so progressive as to be lent a little money from the African district council. Due to lack of water he has lost all the money; he has sold eight head of cattle and lost the money also; and just last week before I came here he saw me and said that his agricultural efforts are very much discouraged by lack of water. This farmer is called John Kinga. This is just one example, but many farmers who would like to try have been very much disappointed due to lack of water in the coastal area. I know that probably the whole province may not be so progressive as other provinces agriculturally, but I also know that a few farmers who have tried have been greatly disappointed due to lack of water, and Government—the Agriculture Department—has done very little to provide the water required by the people.

Another point I would like to mention is the growth of fruit trees. My people, I think, grow more fruit trees than any other part of the Colony. The argument in the original debate was to try and get some land on the Crown Land for people who would like to grow their food crops. Now when we are told that this land is not suitable for growing good crops, we are surprised, because just next door to this land which is said to be unsuitable we find the so-called private land where people are growing food crops. Why is it said that the Crown Land, which is adjacent to the private land which is growing food crops, is unsuitable for growing the food crops of the people? The people would like to grow maize and would like to grow some other things.

Now I also emphasized during the original debate that the coastal strip will remain a bone of contention for many years to come in the Coast Province, because the way that it was alienated by the Government was completely unfair and the people were not told. Now the Minister for African Affairs may quote any commissions on land in the past, but he can never satisfy the attitude of the coast Africans when he says that this land does not belong to the Africans. I think the Africans regard it as their own land quite fairly and rightly, and when the opportunity comes they will take it quite fairly and rightly.

Sir, I am very much worried about the East Africa Estate land, because, as pointed out by my hon. friend, Mr. Cooke, the Government lost a very wonderful chance when this land was put up for public sale in June, and during that time I appropriately approached the Minister for African Affairs and I also approached the Minister for Finance, and I told them that it was the right time that the land should be bought so that it could be returned to the Wadigo themselves. I also approached the Provincial Commissioner and His Excellency the Governor on this point, but nothing was done. The land, Sir, was bought at Sh. 3/90 cents an acre. Now I do not think that the Kenya Government is so bankrupt as not to be able to afford Sh. 3/90 an acre. I also pointed out that the Government had earned a rent of about Sh. 8,000 a year for 30 years on that land. I also made it quite clear that Mr. Ebrahim, who has just bought the land, is quite ready to be approached for fresh negotiations on buying the land, so that it is returned back to the people.

Now, Sir, some people go on saying, "Why not go to Shimba Hills." Shimba Hill was created in 1951. Now these people who are in danger of being evicted because the land has been sold

[Mr. Ngala]

have been living in the place for over 40 years. They have established themselves—grown coconut trees and orange trees. Now is it really a sensible idea that it should be suggested to them that all their property should be pulled down and they should go to a place which is new and was started only in 1951? I feel very seriously that this action and this mentality shown to us by Government will have very serious repercussions in Kwale district, particularly if Government does not attend to this very serious hardship on the people.

I very much appreciate the efforts that have been made by the different African district councils in their meagre financial positions. The Kwale African District Council, for example, has indicated some interest in buying back a piece of land at Mbungo, but although the local government has shown some interest, the Government has come forward with an empty hand. Now during the original speech the Director of Agriculture told me that the coast people were not prepared to help themselves, I would like to say that these African district councils have shown a very simple example of wanting to help themselves, but it is the Government which has shown gross negligence on this matter.

I feel, Sir, that all these people in Kwale district—at Ukanda, at Kilelje, at Mwabungo and Waa—will feel very much embittered if they have got to be evicted from places where they have lived for 40 years and go and start afresh elsewhere and lose so much property which is already established.

I would like to support the idea of my friend, Mr. Muliro, when he said that these people are demanded to pay tax. Now imagine a person who has established his place for 40 years, having to be evicted, going to another place, and at the same time Government following him for what they call personal tax. It is very frustrating and I hope the Minister concerned will bear this seriously in mind.

Sir, I have seen in some places in Taita District, the direction, "National Park". Africans there have no place for grazing; they have no grass; but the wild game has plenty of grass and most of the wild game does not need so much grass. I emphasized during my original Motion that the boundary should be readjusted towards Tsavo so that there can be more room for the people round about the Taitas to get more grazing space. For similar reasons I emphasized the need for people round about Mwatate and Bura and Maktau, towards Taveta, to be given more land for grazing purposes and for agricultural purposes instead of leaving that land vacant and only occupied by the wild animals. It looks as if the Government of Kenya values game life more than human beings, because I have seen very many people suffering from shortage of land at Bura and Mwatate and they have plots that do not produce enough for their families, but they cannot move an inch across the game area; if they do so they are heavily penalized. I think it is time that the Government considered this matter very seriously.

The question of Mackinnon Road has already been touched on by the hon. Member for the Coast, and I only want to endorse his words.

The question of Crown land: Government has always given us the excuse that we have a settlement here and there. Now we are not asking here for a fresh settlement in the sense that plenty of water has got to be provided and plenty of money has got to be spent and probably settlement officers have got to be employed. We are not asking for that. We are asking for Africans to ge given permits to cultivate on Crown land so that they can get some subsistence. If Government gets money in future to provide the water and make proper settlements, that will be another thing, but now it is urgent that these people who are cultivating on the Crown land should be given a chance to continue to cultivate on Crown land. I have known of several cases this year, Sir, of people who have actually been imprisoned for cultivating on Crown land. Now it is such people that I am speaking for that the House should have sympathy with so that they can get a place where they can cultivate. I was gratified to hear the Minister for African Affairs say that he would go into the question of Crown lands and see what arrangements could be made. I hope he will also go into the question of water provision for the hinterland, for agricultural purposes as well as drinking purposes. I made it quite clear that in the hinterland of the Kwale District and Kilifi District women are still going 20 miles, single way, to get some drinking water during the drought seasons, and I feel that something should be seriously done.

Yesterday the Minister for Finance indicated that there could be a possibility of possibly some money being available to help farmers. I hope the coast will not be forgotten in this amount and that, although we may not get people who can borrow big sums, I hope a proper proportion will be made available to the coast as a whole to improve these very dry and arid places.

I would like the Council not to get away with the impression that the coast people are refusing the advice of the agricultural officers or the Agricultural Department. We are far from that, but we find ourselves in very difficult circumstances due to lack of water, and we will find ourselves largely neglected by the Agricultural Department in the provision of water and proper conditions for good farming.

With these few words, Sir, I would like to move the Motion.

DIVISION

The question was put and Council divided.

The question was negatived by 32 votes to 17.

AYES: Messrs. Cooke, Hassan, Khamisi, Kiamba, Dr. Kiano, Messrs. Mangat, Mate, Mboya, arap Moi, Muchura, Muimi, Muliro, Ngala, Oginga Odinga, Oguda, Tipis, Travadi.

NOES: Dr. Adalja, Messrs. Amalemba, Bechgaard, Blunt, Brown, Conroy, Coutts, Farah, Commander Goord, Capt. Hamley, Messrs. Harrison, Hope-Jones, Hunter, Col. Jackman, Messrs. Johnston, Jones, Kebaso, King, Luseno, Mackenzie, Mathieson, McKenzie, Mohindra, Ole Ntimama, Chief Nzioka, Messrs. Nurmohamed, Smith, Swann, Sir Ernest Vasey, Dr. Walker, Messrs. Waweru, Webb.

MOTION

ABOLITION OF COMMUNAL LABOUR

MR. MATE: Mr. Speaker, Sir, I beg to move that this Council urges that communal labour as provided for under paragraph (k) of section 10 of the Native Authority Ordinance (Cap. 97) be abolished.

Mr. Speaker, Sir, from the very beginning I should like to make it very clear to the House that this Motion is not meant to deprecate what efforts have been made in the way of the communal labour efforts in improving the general condition of life in the African areas, but rather to improve things. For the benefit of those Members who are not aware of the implications of the communal labour as far as the African population of Kenya is concerned—if I may quote, Mr. Speaker, with your permission—the so called "communal labour" is defined under chapter 112, section 2, paragraph (d) of the compulsory labour regulations as "minor communal services of a kind which is to be performed by members of the community in the direct interest of the said community, and therefore be considered as the normal obligations incumbent upon the members of the community provided that the members of the community or the direct representatives have the right to be consulted in regard to the need for such service". It sounds very well, Mr. Speaker, but one can see this applies only to one community in Kenya, the African community. The types of this kind of labour are contained in the Native Authority Ordinance, whereby the African people are defined by the word "native" and are supposed to be a section to be directed as to what is good for them and their community. This aspect of the matter, Mr. Speaker, is very relevant because in any area it is not applied to the other races, and therefore I would most particularly appeal to the members of the other races in Kenya to try and understand why the African does not like communal labour as it is termed here, and the reasons are these. Most of the projects aim at such things as building more roads, sometimes bridges, sometimes schools and many other such duties which a headman, or a chief, or a district officer might feel necessary and also other measures like soil conservation where people are required to work together to do any job. In the Central Province, for example, there are two sides to it. There is the ordinary communal labour which you find in many other parts of Kenya.

[Mr. Mate]

but there is also the special communal labour which is part of the Emergency regulations. The reason why we Africans do not want or like communal labour as it is today, is that although it is meant to improve things it is very discriminating. For example, Mr. Speaker, the law says "all inhabitants of an area, excluding women and those who are not well enough are liable for communal labour projects", but the system as it is today has outgrown the law and a man like myself can never, never do communal labour. The law says I must, but I cannot. Like a chief, or a teacher or a rich man. It is only the ordinary man who is called out and goes to do the particular project. It is thought by the chief or district officer or headman that I am too busy to be bothered with such things, although the law says I must do it. Some are too busy to be bothered, and the poor farmer is too busy to be bothered, so that we find that the very poor men who are not so influential are having to go down and do the roads whenever the district officer or chief think that a communal job exists. In this way it is very discriminatory but the reason for this is obvious. People who are too busy are found to be doing something worthwhile, but at the same time why should some section of the African people be subject to this habitual kind of treatment when in fact every member of the community should be benefiting from this kind of thing.

The other thing is the question of charging in court for what is properly communal labour. This exists with headmen, chiefs, district officers, and so on. If the headman thinks that the people are getting very rude all he does is to go to the citizens and ask them to come to a communal labour porject; if people do not come they are told, "You failed to come to the work" and then they are accused. I have got evidence to substantiate this kind of thing, Mr. Speaker, and if the Government wishes me to do so I can give some very good examples.

At the same time, Sir, why should people who do not want the roads be forced to make them? It is only the rich men who have motor-cars, lorries and so on, Government included. It is the ordinary man who makes the roads for these motors. Why should they do it. It is specified that able-bodied men should do this. Why should the women do it? If anybody raises a cry that the women are not included the chief calls them *fitina*, in other words, trouble-maker. The law makes it very clear that it is only able-bodied males who are supposed to do this kind of thing, but the women do it, the excuse being made that it is a minor communal job. It is not left, according to the Native Authority Ordinance, to the man to make up his mind.

Mr. Speaker, long ago the Africans used to have the spirit of self-help. When a man was farming a piece of land he called to his friends to come and help him, and they were all quite happy because it was a communal project. I know that there are groups today, like church groups, who do their own building quite happily. I know farmers, for example in my own district in Meru, who are opening up roads for themselves as individuals and not as a community because they have a need for a road. I know of groups who are already practising this self-help and they do not want to be bothered by another man coming to tell them, "You do this." Sometimes it is important. In the African community today, Mr. Speaker, there are many professional men—teachers, and so on—who are too busy contributing their time for the good of this country to be bothered with communal labour, and at the same time the ordinary man who cannot argue for himself should be given equal rights with other citizens to do communal labour, or not to do it, as he chooses. They should be treated the same.

Mr. Speaker, communal labour is meant for people to help themselves. Why does the Government not appeal to the sensible element in the citizens of a particular area in suggesting to them that they need a school or a bridge or a road and let them make up their own minds whether to do it or not? Instead of that regulations are made requiring Africans to undertake communal labour in their own areas. We are told that it is the Africans and not the Government who do this but, Mr. Speaker, that is not so, because in the Ordinance it is stated that the district commissioner is in agreement and the Minister for African Affairs is in agreement, and then at the lower level the headman argues that they have this from the district

[Mr. Mate]

commissioner and that therefore this must be done. Then the African district council find themselves in a most difficult position and they are blamed. And the blame, I think, belongs to the provincial administration, because the African district councils come under the provincial administration and today I have seen it again, Mr. Speaker. Two years ago, I said the provincial administration had veto powers in these matters. They will urge these councils to start this kind of measure and if I am wrong I believe there are other Members from other parts of the country who know that it is only too true.

But, Mr. Speaker, my question is this, why should it be necessary to force, as it were. The words used in various places by the citizens are: "*Kaziva lazima*", or sometimes in Kikuyu: "*Gitati*" where people are urged and forced to go and do it. Why are they not left to devise their own ways of doing it? After all, if I may say so, if the citizens of a particular area feel that if they do not build a particular school that then they are going to suffer they come along and tell the headman: "We want to build a school." I have seen this happen. Why not let them have a chance of making up their own minds as to what is the priority so far as communal jobs are concerned?

At the same time, today so many Africans are becoming individual farmers or traders and they have no time to waste. They are called up by a headman and they go to a particular project in a very low, poor state. They are what used to be called malingerers. They malinger around and as long as the chiefs do not see them, well, they just sit.

Now, why should we let this kind of thing go on, at this stage anyway, in the African progress? I know Government will answer and say that some parts of Kenya are not so progressive. Some must be made to do something for themselves. I agree, but why not appeal to them to see the need for it and encourage and teach that it is for them to do it.

I believe, Mr. Speaker, that Kenya will never attain that state of nationalism when the ordinary man in his location is not allowed to have a say in the building of small roads or schools or a *shamba* and given the responsibility to make up his own mind, when the headman is no more intelligent than the other citizens or even the chief or even the district officer and they have to go from their *shambas* or from their shops to go and do this kind of thing just because he thinks it is right. I feel, Sir, that we are too far away from that stage that we like to think of when Kenya shall be a grown-up country and I feel, Sir, that Government should give this matter—and the whole House—very serious consideration because the idea of self-help is no new idea to African people in Kenya and if given a chance I believe that in this area you will find people who are prepared to organize something and to be able to do these particular jobs. Already you have provision for emergencies like fires or floods where the citizens can be called up to deal with such an emergency. But these are the minor jobs. When people are called from their shops, they go from their shops to go and do a very minor thing and it is a waste of time, Mr. Speaker.

Mr. Speaker, I said at the beginning that the idea of my Motion is not to deprecate the good that has been done so far in this or that neighbourhood but perhaps to change things for the better. My submission is this, that we have now location councils throughout the African areas, these could collect some money from the citizens—tax-paying citizens—and employ people who are supervisable—who can be supervised—to do these minor things. We have African district councils too who could help with greater funds to employ people in the particular areas to help out with these minor roads. After all, today the so-called minor roads formally have become major as a result of progress and the minor roads are roads going into people's *shambas* and nobody is prepared to go and make a road into another man's *shamba* and that is why many a man has to make a road into his own *shamba* himself. It has reached the stage today where the locational council takes communal responsibility and the citizens support the locational councils by paying 10 cents or 15 cents or so much and if at the time of the estimate the money is not enough I am

[Mr. Mate]

sure they would be prepared to do something more. And were they were not to pay this money, I believe it would be practical for the citizens on the job to themselves. But give them the opportunity to choose what they shall do, even if the citizens become lazy. I am no believer in the idea that you make people work and work without really knowing what they are supposed to do and making progress. It is not true. I believe in making people realize that it is up to them to do something about their gardens or their roads and if they do not do it they will be the ones who suffer and they will realize. But, give them a chance.

The other idea, Mr. Speaker, is kindling the spirit of self-help in particular locations. I know, as an example, in Meru where people in such areas as are in great need of water and when they were asked to do something about it, about the shortage of water, they were prepared to pay a small amount to the African district council's assistant so as to get the thing done. I do not believe that there is any part of Kenya where Africans, given this opportunity to help themselves, would refuse to take it. It does not matter about the different improvements but the principle is so important.

Mr. Speaker, it is at this stage that I would like Government to consider the question of revising this law and making communal labour something different from what it is today.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Have you more to say, Mr. Mate?

MR. MATE: Yes, Sir.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Then I think perhaps this is the right time to adjourn Council. I therefore adjourn Council until tomorrow, Friday, 9th October, at 9.30 a.m.

The House rose at fifteen minutes past Six o'clock.

Friday, 9th October, 1959

The Council met at thirty minutes past Nine o'clock.

[MR. SPEAKER (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

RULING BY MR. SPEAKER

EVIDENCE (AMENDMENT) BILL

SIR CHARLES MARKHAM: Mr. Speaker, I rise to ask your guidance, Sir, and assistance. Under Standing Order No. 93, it is laid down the procedure for recommittal of a Bill and when yesterday, Sir, we were discussing the Evidence (Amendment) Act we were given an assurance by the Solicitor-General that the matter would be reconsidered.

Unfortunately, Sir, I think from this side we made an error in not requesting the recommittal of the Bill on the Report stage. Well, that went through, Sir, and now I believe we are unable to do that and perhaps, Sir, could you give us some assistance whether it is possible to recommit this Bill. We have got ourselves in a procedural mess on this side.

MR. CONROY: Mr. Speaker, it certainly is the intention of Government that this Bill should be recommitted in order to allow us to see whether we cannot compromise over our difficulties and I think that what the hon. Member referred to as "a procedural mess" has probably been contributed to by my failure to ask that the Bill should be recommitted yesterday.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Yes, the position now is at the Report stage, the Bill was reported back to the House without amendment and that Report was agreed and accepted. The next stage of that, will, of course, be the Third Reading. The only thing that can normally be done under those conditions is that the Third Reading can be opposed first as a Second Reading can be opposed by moving that the word "now" be omitted and the words "this day six months" be added. And that, of course, if passed really means the death of the Bill.

[The Speaker]

Well, under the circumstances, I suggest that if the House is agreeable—I would not like this procedure repeated—but I did suggest yesterday, that the Bill might be recommitted, that the House should again take the Report stage of the Bill now, and if the House is agreeable to that course and if Members so wish they can move the recommittal of the Bill as regards clause 2—in respect of clause 2. And if the House passes that I will take that as what should have happened yesterday being done today. I only would permit this concession in view of the fact that we are a little immature in these matters.

MR. MANGAT: Mr. Speaker, I for one cannot agree even to the initiation of such a procedure, that is to say of the repetition of such a procedure. The Bill must reach the Third Reading stage and if the Government has to withdraw it, let them withdraw it. It would be fortuitous and probably it is only natural justice that it should die and unless, I would submit, the whole House agrees to this procedure, and I am not one of those who is going to agree, I would request that we should not do it.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, I should like to point out, Sir, that quite apart from it dying, if they insist on this, it would be passed.

MR. MANGAT: There is another remedy—if it is passed—there can be a petition to Her Majesty to disallow it.

MR. SLADE: Mr. Speaker, Sir, I feel that my hon. friend is right about this. We have been fighting this Bill all the way along on the principle of the Bill, and it does not seem right to me that it should be referred back to Committee to consider possible modifications of the detailed wording which will not affect the principle. If we still want to fight the principle, as you point out, Sir, it is on the Third Reading that we should continue the fight.

MR. CONROY: Sir, with regard to what the hon. Specially Elected Member who has just spoken has said, of course, if this Bill were recommitted for reconsideration in Committee, that would not prevent further consideration of the principle of the Bill at the Third Reading.

MR. COOKE: Surely, Sir, if we move that the Third Reading on this Bill be read in six months' time, that is killing the Bill and that is what we all want to do at the moment. I thought we had agreed to do that yesterday.

MR. SPEAKER (Sir Ferdinand Cavendish-Bentinck): Well, I am in the hands of the House and if there are certain Members who wish to abide by the procedure laid down in Standing Orders carried out yesterday I think we had better let it rest there. I think we had better proceed with the next Order.

NOTICE OF MOTION

EAST AFRICA HIGH COMMISSION ORDER IN COUNCIL

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, I beg to give notice of the following Motion:—

THAT this Council prays Her Majesty be pleased to amend the East Africa (High Commission) Order in Council, 1947, so as to provide for the continuance in operation of Parts III and IV of the said Order (which relate to the East African Central Legislative Assembly and to legislation and legislative procedure) for a further period of four years beyond 31st December, 1959.

MOTION

ABOLITION OF COMMUNAL LABOUR

Resumption of debate interrupted on 8th October, 1959.

MR. MATE: Mr. Speaker, Sir, yesterday before the House adjourned I was making the point that the African is capable of self help and that people could make up their minds what they felt should be done in particular areas, and I gave the example of the Mutuati water scheme in Meru, where the people themselves contributed some money towards the scheme. We have other examples in different parts of the country where the people themselves have shown that they are ready to help themselves like the Chavakali secondary school in North Nyanza, the Kishamba intermediate school in Taita and the coffee societies in many areas where through their committees and their staff they are able to help themselves. Sir, I do not see why the locational councils with their A.D.C.s

[Mr. Mate]

could not have the same plan where they consult each other and do not have to depend on just single individuals.

Mr. Speaker, the idea of communal labour as we know it today in the African areas is a primitive way of getting people to help themselves. Today the African advance in general warrants a change in the method and in the way it is done. I agree that at the beginning when the Africans were not aware of what schools were and roads were and other projects of common benefit were, it was necessary to have this kind of direction, but today, Sir, I feel things have changed. In many areas there are intelligent citizens who appreciate the importance of this kind of thing, and they should be more associated with deciding what should be done how it should be done rather than be dictated to about it. Mr. Speaker, there is a contradiction. It can be said that already the African is free to do that—that the Africans in district councils make the resolutions on communal labour themselves, but, Sir, the majority of the African councils today are very definitely in the hands of the provincial administration in a general direction. Their representatives are not mainly elected by the people themselves so that they may have an independent view. We have many nominated members in these councils. They may be good men, but it is very difficult for them to feel free and act freely in this matter.

The Native Authority Ordinance makes it lawful for them to pass resolutions to this effect, and at the same time we have, as was said yesterday, the provincial administration which through the district officers, the headman and the provincial commissioners, orders requiring these bodies to make this; and it is here where I feel that it is a contradiction. The freedom that is claimed for these councils is quite a difficult thing to understand. Mr. Speaker, a revolution is required in this respect. It is very well known that in many African areas the idea of communal labour has become a psychological weakness or disease with many people. Many good men, however, go round and do this particular job because they see the need for it, but for the ordinary man and woman it has become a nightmare because of the way it is done and has been done, and I feel it is time the change came so that the general population could look at it as a healthy thing because they are not told how and where it is done. The methods have been responsible, and it has been done by force in most cases. I feel that the African people in any location must be given a responsibility for making up their own minds about this.

Again, Sir, the capacity of such people is different from what it was before. The Central Government have taken over some of the projects. The people pay the general rates and taxes and they pay more rates and taxes to the locational councils. These are the proper bodies to take over these responsibilities and the citizens come in freely in other countries, like Britain, and that is what should happen. In towns in Kenya things have happened like that and I think that it is a great mistake to underestimate the intelligence and the ability of the rural African that this should continue. The rural African is no more backward in his thinking and appreciation of what is good for him than the townsman. Mr. Speaker, I feel that it would create a better relationship between the ordinary African man and Government were this change to come and I sincerely hope that the Government will see a need for this kind of change, particularly in the Central Province where it is confusing because we have two types of communal labour there, the ordinary communal labour which is applicable to all other African areas, and the Emergency type of communal labour which is supposed to be for discipline and other Emergency reasons.

At the beginning of the Emergency, Mr. Speaker, it may have been necessary for the Government to give themselves extra powers in order that certain jobs should be done, but today, Sir, is it necessary for the Government to retain these extra powers in the Central Province? I submit, Sir, that it is not necessary and it is time that the Emergency type of communal labour was removed from the Central Province. I say this most sincerely because I know that the Government is wanting to give the people a chance to see what they can do. I do not believe that this is the way we can make progress in the Central Province, by clamping people down, and

[Mr. Mate]

also having these difficult measures that run counter to ordinary progress, which interfere with the farming, trading and the good progress of the country. Even this type of communal labour should, as has been mentioned, go, as the other Emergency measures have been going, and I am sure that we are pleased about it in the Central Province. It seems that amongst other things the Emergency Regulations for communal labour should go along with the ordinary type of communal labour that is done all over Kenya, and here, Sir, I feel that instead of Government inciting a feeling of diffidence they should appeal to the good sense of the citizens of Kenya. I am sure it will take some time before the change-over comes and there will be difficulties in the way. Some of the Government officers who are so used to ordering people about will meet argumentative people, people who want to be convinced why they should do something, but I believe that these argumentative people are not at all odd or different from any other section of humanity. Their arguments should not be a cause for wanting extra power. They should be a challenge to the Government to have proper officers—men of ability—who can deal with these problems; I know this is true because I have met such men in the Government service who can face the people, either through an argument in fairness and firmness, and personally I would have no time for people who depend on temporary extra power in order to bring about prosperity in the country.

Mr. Speaker, I do not see why it should be difficult for Government to accept this Motion, because I believe the aim is the general improvement in African areas, and if we are to move forward we must give the citizen the responsibility of judging for himself and being prepared to do what he knows to be right and correct for his good.

Mr. Speaker, I beg to move.

MR. NGALA: Mr. Speaker, Sir, I beg to second this Motion. Now, Mr. Speaker, Sir, I hope that the Minister concerned and the Government generally has appreciated the very constructive manner in which the hon. Mover has moved the Motion. I strongly believe that his constructive manner has been appreciated by everybody in this House.

The time for ending this kind of communal labour is well overdue and I think these by-laws should be removed by the Minister concerned.

Now, Sir, I would like to touch on two evils of communal work as practised in the African areas. The first evil, Sir, is where the chiefs concerned order people—who need to work every day for the upkeeping of their families—to go and work free of payment for a week or two or over. Now, Sir, these poor people who are ordered to work have got to do it by force. Their families have not got anything to eat during the time that they work on communal labour. Their children suffer very much from hunger and also from lack of many other things. It has already been pointed out by the hon. Mover that the well-to-do people in locations are usually not forced to go and work on this communal labour system. It is the very poor African who is put on this type of hardship, and very unnecessary hardship, and as a result his children and his family suffers quite a lot. I believe, Sir, that the Government will appreciate this thing and remove this Ordinance so that the people are relieved in this sense.

The second thing—I think whoever has had a little to do with the Africans must have understood that the Africans themselves traditionally have a way of communal work, but it is necessary that the communal work should not be done before the community itself appreciates the work that is going to be done, and when the African community does appreciate itself the value of the work they voluntarily turn up and do the work. It has already been pointed out by the Mover that schools have been built, bridges have been built and even a secondary school has been built in North Nyanza by their own communal work. Now, this goes very far to show that the African himself is prepared to work on a project that he appreciates without any kind of compulsion or any kind of force.

Now, in our experience, Sir, we have seen that when the chief imposes these powers, he does not even consult the locational councils; he does not even consult the leaders of the *mbari* or the

[Mr. Ngala]

location, so he does it on his own, and this is why there is such friction between the chiefs and the people. So we feel very strongly that communal labour should be done away with in the African locations. It has also been emphasized that the communal labour started many years ago and is completely out of date now. The African today is contributing in monetary form at the locational level; he pays up to about Sh. 12 a year in many locational council rates, and also at the African district council level he is contributing a rate, and all these rates have been increased recently in many locations and many African district councils, apart from the personal tax itself going so high from last year. We feel very strongly, Sir, that the rural people should be put at the same level as the urban people in this matter, because it is something that is very discriminatory indeed, even within the African races apart from other races.

With these few words, Sir, I would like to second the Motion.

Question proposed.

MR. NGONE: I rise to oppose the Motion, Sir. The Native Authority Ordinance, as far as I am aware, has worked for many years and it is for the interests of the African that the Native Authority Ordinance be put into practice; it does much progress in the native reserves. If the Government is going to approve this Motion it is going to put the native areas into the backward condition.

I must say here that the Minister for Works is always attacked in this House to have the roads repaired, and if the communal work on the roads in the reserves is not put right by the Africans themselves we will not expect the Minister for Works to come in the native reserves and do the job which the natives themselves do not want to do. If this is the case, where a big stone has rolled into the main road and a car comes, nobody could go there until we have asked the district commissioner to bring his labour and do the job there, whereas there is house is just close to the road, but the chiefs are not allowed to bring people in the area where there is difficulty, to get rid of the difficulty.

I do not think, Sir, this is the right and correct method to come here and say, "We want the Native Authority Ordinance to be abolished", when I think that in the native reserves it does very well if the law is practised in the proper way. What I would not agree is to see women and children brought in and this law should not be applied to them but where practicable I think it does no harm at all if this law goes on as it did before.

I have seen it in my own place, in my own location, where perhaps a big coconut tree has fallen on the main road, obstructing the motor road and there is a car there and unless the people nearby remove that big log, who is going to do the job? I know the hon. Members are travelling all over the country to see their people and if the roads are done well by the people on the spot who is going to repair that road? And where will the motor-cars pass if the roads are blocked by the heavy rain sometimes? If the roads are blocked by rain, do we wait there and ask the Minister for Works to come and do the job. I think it is ridiculous, Mr. Speaker. This law must remain there as it has worked favourably for many years. That is my experience. I did not find any difficulty with the Native Authority Ordinance working in the native reserves. It is strange to see here that the African Members rise up to say that they do not want the Native Authority Ordinance to stand or to operate in the country. I myself have done communal work, Mr. Speaker, and although I do not want to boast about that, in my own location when I see things that are wrong on the main road or on the footpath I go and do the job myself with the other people. And it is these people who dress in suits and wear ties and who, even when they see a little stone on the road, do not want to have to go and pick it up and throw it out, they are the ones who expect somebody else to come and do it. That is the whole idea. Otherwise, I do not find anything wrong with the Native Authority Ordinance. It is quite a good law; it does good in the native reserves; I do not find anything wrong with it. I do not mind what other Members may feel about it, but I am sure this is quite all right. As I have said, it may be abused. I would not be surprised at that. It may be abused by youngsters being

[Mr. Ngome]

asked to do the job, or women; that I would agree. But ordinary people must do the job and there should be no trouble about it.

I oppose the Motion.

MR. MUIMI: Mr. Speaker, Sir, I am surprised that the last speaker does not understand the implications of this Ordinance. I do not want to repeat precisely what has been said by my hon. friend, Mr. Speaker; I would like to confine myself to two aspects of the Ordinance. And I would like to confine myself to these two aspects in order to show the abuse that is brought about in the application of this Ordinance in the African areas. Mr. Speaker, it is very clear under Chapter 97, section (*k*) that chiefs are empowered to "require "able-bodied adult male Africans". If you read the rest of that section or this paragraph you find that there is no mention whatsoever of the chief or anybody else being empowered to require women, juveniles, male juveniles or girls, to perform any communal work. But what is the fact? The fact is that today under this Ordinance chiefs require women, juvenile males and young girls, to work under this Ordinance. I only question the wisdom of the application of this law when it is stated very clearly and categorically that only male Africans may be required to perform any kind of work under this Ordinance.

Now, that is one point. The next thing, Mr. Speaker, is this. Now, what is that that we call minor communal work? I would like to mention three kinds of what is called communal work done by these people and then the House will be able to judge whether these three kinds of work fall within the meaning of *minor* communal work.

In the first place these women, these young girls, and young boys, and in some cases adult male Africans are required to work on roads. They are also required to work on the construction of dams and again they are required to work on bush clearing. It is a pity that it is not in many areas in this country where you have to do this kind of work, but it especially applies in the drier areas of this country.

Now, what happens? Let us take, for example, the construction of roads. If a road is to be constructed for a stretch of say ten miles, let us say, in a location, people are asked first of all to go and clear the ground where the road will be and then they are required to do the actual digging of the road. How long will it take them to do the ten-mile strip? And this is where I come to my next point. Now, the Ordinance makes it very clear that in the last three lines of section 24, subsection (*m*) it says this: "provided that no person shall be required to perform any service for more than six days in any one quarter". In other words, one is required to do two days work a month or six days work in three months or 24 days in a year. If the people in any location work for two days a month on the construction of a ten-mile strip of road, I wonder whether that road will ever be completed?

We then come to the question of building dams. Some dams are very large and instead of applying machinery to the construction of these dams people are supposed to work on them under the Ordinance two days a month. But is it possible? I must submit, Mr. Speaker, that this is impossible and the practice today is this, that people are taken on the roads, they are taken on the dams, they are taken on the bush clearing, and they are made to work for months. If the Minister would like me to give him examples, I have two very good examples.

In August of this year I went to a place where road construction was going on. I found people who were conscripted, I must say by the chiefs, by the headmen with the direction of the chief, and the district commissioner for that matter, to work on the road from April and they had been working from April until August. I wonder whether these people who continued working from April to August were working within the meaning of this law.

Again, Sir, during the same month I went to another place where dam construction was going on. I found a young girl there, and I asked her when she came to work there. She said she did not know. All that she knew was that when she came there she was immature but then she was mature. I do not know how long she had been working on the dam if she went there when she was immature

[Dr. Kiano]

hands of lower rank administrative officers. Now here we have a law which gives power to the lowest administrative officers to induce people to go to work on somewhat vaguely defined types of projects. Now, Sir, whether the Minister likes us to say so or not, there is a great amount of inefficiency and incompetence in the administrative system of this country, and when that is the case—whose fault that is I am not going to say—but when that is the case we must be very careful as to whom we give power, particularly power to force people to work; because the distinction between legalized communal labour and forced labour is very-very small indeed. There is hardly any distinction between communal labour and forced labour, and we argue against forced labour, but this communal labour is supposed to be a legal matter in this country. Well, Sir, in practice the two are one. I think my friends have indicated very clearly that in the actual carrying out of this law there has been a lot of abuse of power and there has also been force, not only to the males but also to the women and children.

Now, Sir, I would also point out that when he was moving this motion my friend, the Member for Central Province North, indicated that it is not only the communal labour as certified in the Ordinance in question, that should be removed, but also the communal labour that continues to hang around the Central Province under the pretext of security and the Emergency. That type of communal labour does not come under this Ordinance, and with the permission of the Mover it should be made clear that it is communal labour that we are against no matter what Ordinance or regulations it comes under. Communal labour, whether it is under this Ordinance or communal labour under Emergency regulations we are requesting the Minister to take a stand and write it off from the books because we feel that it lead first to abuse of power and secondly it becomes forced labour and thirdly it is a carry-on of this tendency to give too much power to the lower ranks of administrative officers.

Lastly, Sir, I might point out that we are trying to modernize the system of providing services to the rural African areas. This system of forced labour is not, I repeat, a way of modernizing what is going on, I mean the social services we should give the people. In the first place we find that the local government system operating outside the African areas is responsible for carrying out or performing some or most of the duties that are expected to be performed in the African areas under this Ordinance of communal labour. Now, Sir, if this is because our local government institutions in the African rural areas are not able to do the work then, Sir, the answer does not lie in forcing the people to do the work; the solution lies in finding what is wrong in the local government system, what is wrong with the financial administration, what is wrong with the availability of experts for them. The solution lies there; it does not lie in forcing the ordinary person to do the work which a lot of local government institutions are apparently unable to do and which needs to be done. Communal labour for purely self-help purposes does not require legislation to be carried. That is purely a matter for the local people, if they want to do it. Often they have shown great willingness to do this. If anybody requires legislation in order to help himself, then that person is not a good citizen whatsoever and any argument that he needs self-help, that he needs a law for it, must be rejected on the basis that self-help must remain a personal and not a matter for the Government to decide.

Now, Sir, when you look at the way communal labour has actually been administered in the African rural areas you find two things. First, there have been abuses of which the Minister, I am afraid, is aware of, and if he is not aware of them then he ought to be better informed. There have been many abuses of communal labour, not only in the getting of the wrong people to do the work but also as to the relegating or allowing some people in the administration to have work done which benefits them as individuals rather than as a community as a whole. This can be shown in Kiambu, Fort Hall and in other places, not only is the road which is needed for the public use cleared but also some other work is done for the particular officer who is supposed to be administering this Ordinance.

[Mr. Muimi]
and she was mature at the time I went there. She must have worked for quite a long time. I wonder, Mr. Speaker, if that is the interpretation of the law?

Now what is worrying the African is this. Should he follow what the law says, or should the law follow what it thinks the African should do? When I spoke on this subject at another debate I said to the Minister that the greatest service he could do for the African community before he retires, As I understand he is, is to see to it that this law is abolished immediately, because in my submission, Mr. Speaker, I do not think any law has done so much damage to the African community as the communal law on labour has.

Mr. Speaker, much has been said by my friends of the efforts made by the African in self-help. Now there is no question about this. Let us take, for example, what is happening in the constituency where I am a Member, or for that matter, Machakos, where I was also a Member. Now people have organized themselves to deal with matters such as the conservation of soil. There is no need for a chief or any officer to require people in any of the two districts I have mentioned to go and work communally on soil conservation. The people have organized themselves, and they are doing this work very well indeed. Not only this, I remember when His Excellency visited my constituency some time this year he spoke very well of the work that the people are doing themselves without being required under this Ordinance to do in the construction of dams, and in actual fact, I remember he remarked that the work done by these people was much better than some of the work done by machinery, although this I am not prepared to subscribe. But I am only mentioning this, Mr. Speaker, to show that the African is prepared to help himself, and he need not be told to do this or that by any officer.

Now, Mr. Speaker, what is more terrifying? The chiefs, the headman and the people under them are using this Ordinance in order to make capital out of it, in order to molest the people, in order to make people suffer, and I am saying this with great repugnance and very much concern.

Mr. Speaker, if the Minister will be patient enough I shall just bring this to his notice with the greatest respect, that only last month one of the chiefs in my constituency was stabbed to death by one of his people in an effort to enforce the communal law of labour on them. Now I question this House: How many people must be killed before the Government is awakened and before the Government takes notice of what we tell them?

Mr. Speaker, I have said in this House that the African is not the primitive African of the early nineteens. The African can see things and understand things, and he is prepared to do the right thing, but the law of force can only be applied to somebody who does not understand or somebody who is not willing to do what is required to be done, and I believe, and I submit, Mr. Speaker, that the African is not that primitive. He is not unwilling to work. He is quite willing to do what is required of him, and the greatest service that any Government can do is to free the people and to give them the freedom to choose what they want to do.

Mr. Speaker, with these few points I beg to support the Motion.

DR. KIANO: Mr. Speaker, Sir, I only have about four points which I want to bring to the attention of the Minister concerned.

In the first place I am a bit surprised that some supporters of this Bill, I mean of the law which we seek to eliminate, feel that it is necessary to force people by law to do work which obviously need not be done. I heard somebody say that if a tree falls across the road we need a law to induce the citizens around to remove it so that the vehicles may pass. Now, Sir, that, of course, is unnecessary and misinformed. The point is that even prior to the coming of the Europeans into this country our people had already developed a system of voluntary self-help on a group basis. This was not part of the law, and I do not think that we require to make it law under the so called modern type of government.

The second thing, Sir, is that there is a tendency in this country, as we said yesterday in this Evidence Bill, and as we see in the constant resistance to our desire to remove this law, there is a tendency to place too much power in the

[Dr. Kiano]
hands of lower rank administrative officers. Now here we have a law which gives power to the lowest administrative officers to induce people to go to work on somewhat vaguely defined types of projects. Now, Sir, whether the Minister likes us to say so or not, there is a great amount of inefficiency and incompetence in the administrative system of this country, and when that is the case—whose fault that is I am not going to say—but when that is the case we must be very careful as to whom we give power, particularly power to force people to work, because the distinction between legalized communal labour and forced labour is very very small indeed. There is hardly any distinction between communal labour and forced labour, and we argue against forced labour, but this communal labour is supposed to be a legal matter in this country. Well, Sir, in practice the two are one. I think my friends have indicated very clearly that in the actual carrying out of this law there has been a lot of abuse of power and there has also been force, not only to the males but also to the women and children.

Now, Sir, I would also point out that when he was moving this motion my friend, the Member for Central Province North, indicated that it is not only the communal labour as certified in the Ordinance in question, that should be removed, but also the communal labour that continues to hang around the Central Province under the pretext of security and the Emergency. That type of communal labour does not come under this Ordinance, and with the permission of the Mover it should be made clear that it is communal labour that we are against no matter what Ordinance or regulations it comes under. Communal labour, whether it is under this Ordinance or communal labour under Emergency regulations we are requesting the Minister to take a stand and write it off from the books because we feel that it lead first to abuse of power and secondly it becomes forced labour and thirdly it is a carry-on of this tendency to give too much power to the lower ranks of administrative officers.

Lastly, Sir, I might point out that we are trying to modernize the system of providing services to the rural African areas. This system of forced labour is not, I repeat, a way of modernizing what is going on, I mean the social services we should give the people. In the first place we find that the local government system operating outside the African areas is responsible for carrying out or performing some or most of the duties that are expected to be performed in the African areas under this Ordinance of communal labour. Now, Sir, if this is because our local government institutions in the African rural areas are not able to do the work then, Sir, the answer does not lie in forcing the people to do the work; the solution lies in finding what is wrong in the local government system, what is wrong with the financial administration, what is wrong with the availability of experts for them. The solution lies there; it does not lie in forcing the ordinary person to do the work which a lot of local government institutions are apparently unable to do and which needs to be done. Communal labour for purely self-help purposes does not require legislation to be carried. That is purely a matter for the local people, if they want to do it. Often they have shown great willingness to do this. If anybody requires legislation in order to help himself, then that person is not a good citizen whatsoever and any argument that he needs self-help, that he needs a law for it, must be rejected on the basis that self-help must remain a personal and not a matter for the Government to decide.

Now, Sir, when you look at the way communal labour has actually been administered in the African rural areas you find two things. First, there have been abuses of which the Minister, I am afraid, is aware of, and if he is not aware of them then he ought to be better informed. There have been many abuses of communal labour, not only in the getting of the wrong people to do the work but also as to the relegating or allowing some people in the administration to have work done which benefits them as individuals rather than as a community as a whole. This can be shown in Kiambu, Fort Hall and in other places, not only is the road which is needed for the public use cleared but also some other work is done for the particular officer who is supposed to be administering this Ordinance.

[Dr. Kiano]

Secondly, in terms of communal labour that has to do with the Emergency, what we find is that in addition to forcing people to work we find also that on the days of communal labour we lose a lot of money in terms of closing shops, closing down the trade. In fact, if you go to Kiambu on a Thursday you would think that a funeral was taking place because there is nobody on the streets at all. The shops are closed, and after everybody has gone to work the lorries are not running about the town, and everybody else is out of sight. In some areas they are told to go to their own *shambas* to clear up, although you do not need a law or regulations to force people to cultivate their own garden, and in other places they are forced to do other things to keep them busy until the day is over. It is one of the most unnecessary wastes that I have ever seen in such busy places as Kiambu and Fort Hall; and the rest of the country, where there is unemployment, surely, if there is work to be done and there are people to do it then why should we have the work done free under this system, which is essentially forced labour, when perhaps we could think of a way of employing these people to do this work which is now being done for free and as such trying to combat unemployment in those areas where it is rampant.

Now, Sir, I will be told that that will require money. This Government is always saying "Money, money, money." Now, if it required money then surely the local government authorities could sit down together and look at their budgets and see by which method they could find the necessary funds because I believe when there is work and there are people unemployed it is most unfair for those unemployed men to have to work on forced labour, which is not paid, when they are told, "There is no job; you have got to starve a little longer." I think, Sir, that the day has come for us to try to modernize our local government services by having most of this work done through paid personnel rather than voluntary, forced and communal labour; and secondly, that we must stop this tendency of giving too much power to low administrative officers; and on this basis, Mr. Speaker, I am entirely opposed to this Ordinance and I fully support this Motion.

MR. LUSENO (Nominated Member): Mr. Speaker, I do not know whether the views expressed by the hon. Members on the other side of the House are true or not—I do not know how this communal labour is carried on in other parts of the country. I know that we carry it on in Nyanza. We have found it very useful, very beneficial to the people. Our African district councils and locational councils are not rich. They have no funds to carry out all the services which are required and which are necessary. I do not know whether the hon. Members think that it is the Government who requires this section of the Native Authority Ordinance which they seek to abolish. I would say that it is not the Government but local people.

There are some lazy people in our communities who do not want to work and we want this section to legalize the labour so that we are enabled to carry it out. I have personally helped to build a minor bridge, and to construct a water spring on a communal labour basis, and I did not hear anybody complaining or forcing us to construct our own water spring. I did not hear anybody forcing us to construct our own small bridge. Other people have helped to construct terraces in order to conserve their own soil. I saw nobody complain. We just want this section of the law to remain so that if we found anybody not co-operating in his own community or working lazily then we can take him to the African court where, if found guilty he pays a Sh. 10 or Sh. 15 fine. Otherwise, Sir, if we left it unlegalized we would find it impossible even to construct minor roads and water springs.

Mr. Speaker, I think that this Motion ought to have been moved perhaps in an African district council or in one of the locational councils where if people feel that they are satisfied to carry on their own services, if they have the funds, without communal labour they can do so. There would be no objection then. But where people still feel that they do not have funds enough to carry out these services then communal labour is still very necessary. Provided that people are not forced to do it.

[Mr. Luseno]

Mr. Speaker, the Mover of this Motion said that the small men in the country were being compelled to do this communal labour. If I had done it myself I do not know whether I am one of those small men. He also said that people like teachers did not take part in this communal labour. Teachers sometimes pay a little money—from 50 cents to Sh. 3—to construct things such as bridges. They have done it and I have seen personally that they have not refused to do it.

Therefore, Sir, I feel that this sort of Motion should not be moved in this House but rather in the African district councils and in the locational councils.

I therefore oppose the Motion very strongly.

MR. SLADE: Mr. Speaker, Sir, I support this Motion in spite of the vigorous speech made by my colleague and friend the hon. Specially Elected Member Mr. Ngome, and the speech we have just heard.

Sir, there is more than just a question of expedience involved here, there is a principle, too.

Sir, in a debate not very long ago I spoke on this subject and I would only just like to repeat very briefly the few points I tried to make then. Everybody has got to recognize, I think, that in a primitive society communal, compulsory labour, is probably not only desirable but inevitable if you are going to develop that society at all, because the members of the society have nothing else to offer except their work. Moreover, Sir, they probably live at a very low standard of living and have quite a lot of leisure time, partly on that account and partly on account of the necessary ingredients for their modest standard of living being forthcoming easily. But, Mr. Speaker, times change, and times have changed very much in this country. We have now reached the point where every citizen who has employment or property is in a position to pay money instead of having to give services. We have reached the point where life is much more competitive, and where many people, particularly the poorer elements, those most likely to be called on for this kind of free service, need every day of their working lives to work for themselves, in order to maintain the rather higher standard of living which are coming their way and to compete with the higher prices which they are having to face all the time. I do suggest, Mr. Speaker, that we have now reached the stage where we should come away from the idea of compulsory demand for free labour from anybody, and come over to the basis that people pay more towards a local authority in order to pay for these services. I am sure that all who are urging the abolition of communal labour will appreciate that those who do not want to give their services free will have to be prepared to pay rather more in the way of rates or taxes in its place, but that is the right development and let us have it that way.

Again, Sir, I do not think anybody would oppose the idea that chiefs or local authorities should be entitled to call upon particular individuals for work of a public nature, but it should be on terms of payment. You must in an emergency be able to say to those nearest at hand, as my hon. friend said: "Come out and see us through on this one"; but only for payment. Then you have, I suggest, got over two great difficulties, or possibly three. The first difficulty is that this is to some extent a matter of dignity. People talk an awful lot of rubbish, I think, about dignity, but here those who are moving this Motion have a true point, that it is not a very dignified state of society when people are compelled to come out and give their services free. Voluntary communal effort is quite a different matter, of course.

Secondly, it is very true that this sort of thing gives immense scope for abuse. No one would suggest that every chief or every local authority does abuse his powers, but there is very great opportunity for abuse in obvious ways, and when there is opportunity there must be fear that those abuses will occur. But if everybody who can be asked to work has to be paid for it, then that danger of abuse is greatly reduced.

Thirdly, you will get the position, Sir, that it must fall fairly on all, because all will pay their quota towards the cost of any labour that is needed and all who work will be paid a fair wage.

For those reasons, Sir, I do support this Motion.

MR. HASSAN: I rise to support this Motion, Sir, and I fully associate myself with everything which the previous speaker, the Specially Elected Member, has said. It is a fact, Sir, that communal labour against the wishes of the people is never resorted to unless by a dictator Government, and I do not think democratic Governments will be very happy and pleased to resort to this way.

That it is usually done for the benefit of the community themselves is a fact, but today this sort of measure—as the previous speaker has said—is liable to be abused, and with a view to making a sort of competitive function of communal labour the Government should think very seriously about creating conditions and methods by which the community could compete with each other to share in communal labour. That system can be created by providing funds, either for the particular work, the funds to be collected from the community or from the general fund, so that the persons responsible in a particular locality who want to have particular work done for the benefit of the community should state that they want to pay for this work to be done, and the members of the community should try to compete to be selected for that work.

As the previous speaker has said, the cost of living has increased considerably, and I do not agree with the Nominated Member who said that locational councils are poor. If they are so poor as to have certain work carried on in their locations without any payment whatsoever, I really do not know why the locational councils should consider that the members who are called upon to provide the labour are so rich as to do that job free for them. I feel, Sir, that this system is entirely wrong. There was a time in cases of emergency, in cases where it was necessary for members of the community to realize that certain work was for their benefit and they must come out and do it; if they do not want to do it they were liable to be called upon under the Ordinance to do it. Those things have changed today and I think some system should be devised, Sir, by which the community themselves should carry on the work in their own area which is chiefly meant for their own benefit.

In the villages in Pakistan it is usually arranged by a village that they want to carry on some work—dig a well or repair the roads there. The whole village gets together and says, "We are, going to have a day of feast." The country will be called in and have a big feast and the whole village will work on that project and complete it within a day or two days. That is an occasion of the greatest pleasure and happiness for the community of that village to do this sort of work. If some such system were introduced, I believe the villages here would be able to carry on a considerable amount of work by co-operation with each other.

With these few words, Sir, I have great pleasure in supporting the Motion.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I would draw the attention of hon. Members to Standing Order No. 71. This is becoming a rather repetitive debate.

MR. MULIRO: Mr. Speaker, Sir, I get up to support this Motion before Council, and I think it is very proper that the Government should abolish this particular section of the Native Authority Ordinance. In fact the whole Ordinance has outlived its purpose and usefulness, but the Member for Central Province North did not ask for the repeal or the abolition of the whole Ordinance, as such, except this particular section.

This particular section is a very primitive approach towards the African. It was enacted at that time when the African did not value some of these social services, and it was proper, probably, for the Government at that time to force him to do such. Now when we are talking of responsibility—the African should have more and more responsibility—it is completely improper for the same Government to try and maintain this primitive approach towards the African.

When one looks at the African district council rates they are rates paid by the people to carry on these various minor social services in the district. Properly one cannot even look upon the African district council as the only source of doing that. It is the duty of the Government to see that they give every district sufficient Government subvention to carry on these duties and not to look

[Mr. Muliro]

upon the Africans to do them by forced labour if they cannot raise up funds. The communal labour law actually affects the African very radically. Now one might find that there are areas in Kenya where Africans do more work than is stipulated by this Ordinance. You find almost four days or five days a week someone is taken to do this free labour. In my own constituency you find, early in the morning, the sub-headmen with whistles blowing, calling people to go and do communal labour. Now if people do not answer to such whistles they are taken before the African courts and are prosecuted for it and fines are imposed. If one cannot pay the fine, one goes to jail.

Now that is what we are getting now as a result of this antiquated law. The hon. Member, Mr. Ngome, argues very well that he wants this to go on. It is very nice indeed—probably because he does not do communal labour himself, or probably he has been an officer of the court and he has been getting work by getting these people who do communal labour coming before him for prosecution.

Now in Central Province particularly, the communal labour was most used during the Emergency. Now this should be abolished, in fact stopped, right now, and I think Central Province would be the last place in Kenya where the Government could call upon such powers, because what I know is that people in Central Province are very hard-working people and they appreciate doing work on their own far much more than being forced to do some work where it is not required, even, to be done. They have hardly any land. For instance, in Nyanza Province one would say the people are forced to make terraces or contours to stop water. Now in Central Province with their very small gardens you do not need to insist that he does allow soil erosion in his garden, and therefore a place like this would be the last place for the Kenya Government to continue this communal labour.

Also, in very many parts communal labour is being abused. Some district officers and some chiefs call it *kazi yaumoja*, but this *kazi yaumoja* is not actually the *kazi yaumoja* that the African is used to. In the past, when any African wanted his work to be done, he brewed some beer and people went to work for him and after that they had a feast of beer. But nowadays, when there is this *kazi yaumoja*, you find an askari standing behind you. If it is really *kazi yaumoja* it should be voluntary by the people themselves, free of their own accord. Once there is a Government officer standing behind the people, ordering the people to do some work, it is no longer free and voluntary upon the people.

This Government maintains that the African should be trained to be responsible. Unfortunately many of them have never been school teachers, but those of us who have been teachers know very well that to train a child you give him a good task and he does it himself. By holding the cane behind him you will never manage him. Therefore the Government, by training the African through forced labour through and through, all the time is training the African to be highly irresponsible. In fact, this Government is creating problems which will be insurmountable when we come to govern this country in the near future.

With these few remarks, Mr. Speaker, I beg to support the Motion.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, if I may just read out the terms of this Motion again—that this Council urges that communal labour as provided for under paragraph (*k*) of section 10 of the Native Authority Ordinance (Cap. 97) be abolished.

Sir, my contention is, in fact, that section 10 (*k*) of the Native Authority Ordinance does not provide for communal labour. In my view, Sir, it is quite clear how communal labour is provided for, and with your permission, Sir, I will read out subparagraph 18 of paragraph 36 of the African District Councils Ordinance. "A council may, from time to time, make by-laws in respect of all such matters as are necessary or desirable for the maintenance of health, safety and well-being or for the good rule and government of the area, and more especially for all or any of the following purposes"—and one of the purposes, Sir, under subparagraph 18 is this: "requiring able-bodied adult male Africans to work for not more than 24 days in any one

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year, either without payment or for such payment as may be determined by the council, on minor communal services of a kind which, being performed by members of the community in the direct interest of such community, can therefore be considered as normal civic obligations incumbent on the members of the community" and declaring what shall be minor communal services within the meaning of this paragraph.

Now, Sir, to my mind that quite clearly leaves the onus of imposing or not imposing by-laws in respect of communal labour fairly and squarely upon the shoulders of the African district council. The particular section quoted in the Motion here, Sir, section 10 (*k*) of the Native Authority Ordinance as amended in 1952, reads as follows, if I may quote, Sir, with your permission: "Section 10 (*k*)—Subject to the provisions of any by-law made under section 22 of the African District Councils Ordinance, 1950"—that section has subsequently been amended, Sir—"requiring any able-bodied adult male African to work for any services declared by such by-law to be minor communal services for not more than six days in any quarter". I have quoted the actual subparagraph, Sir, but it is governed, of course, by the introduction in the main paragraph which says that chiefs may call out adult able-bodied persons for particular purposes, and this, Sir, is one of them, but it is quite clearly subject to the provisions of any by-law made under the African District Councils Ordinance.

Now, Sir, if I may very briefly summarize what appear to me to be the main objections which have been levied at this particular Ordinance: first of all the hon. Mover and a number of his colleagues in the House have, I think realized that African district councils hold the power to pass these particular by-laws, but they have argued that in fact the African district councils are obliged to pass these by-laws, presumably because such African district councils normally have as a chairman the district commissioner. Now, Sir, I have no doubt that the hon. Mover and his friend, the hon. Seconder, know that a certain number of African district councils have not, of course, passed this by-law, despite the fact that they have a district commissioner in the chair. For example, may I quote, Sir, the case of the Baringo African District Council. I am sorry that my hon. friend, the Member for North Rift, is not here, but the Baringo African District Council have not passed this communal by-law; nor has the Taita/Taveta Council; nor has the Samburu Council; and there are others, Sir. Therefore my first point is that there has been no undue pressure brought by administrative officers upon councils to pass such by-laws.

My second point, Sir, is this. Almost every African district council in these enlightened days has an elected majority —not a nominated majority, an elected one—and the representatives of the people, being in a majority and being elected, can, I am sure, Sir, exercise their right, if they so wish, not to pass a by-law of this nature. The hon. Mover was, in fact, until quite recently, a member of his African district council. He took part in the recent elections there. He was perfectly satisfied, as he told me in person, that the elections were conducted in a scrupulously fair manner, and that council did, in fact, return an elected majority. So, Sir, my contention is that the first head that has been argued by hon. Members opposite has no substance. I contend that African district councils are not, and have not been obliged in any particular, to pass this particular by-law or Resolution imposing communal labour.

Now, Sir, the second objection made to the communal labour by-laws was that the communal projects were left to the discretion of the district officer or the chief or the headman. Now, Sir, the district councils who have passed this communal labour by-law have selected very carefully the particular communal services that they wish undertaken in their area, and may I, perhaps, for the benefit—I will not say the education—of some of the hon. Members opposite, but the benefit of them, just name one or two? First of all is the maintenance and construction of water supplies and dams. That has been passed by a very large number of councils. Another one is the protection and prevention of gullies and the construction and maintenance and repair of terraces, contour banks and other protective works. Another particular project is the improvement of pasture

[The Minister for African Affairs]

land and bush clearing, and of course a further one is the building and construction of schools. There is quite a long list here, Sir, of various projects which African district councils have asked should be applied, and that the communal labour resolution should be passed in respect of these particular services.

And I would also add, Sir, that, for instance in the constituency of the hon. Member for Kitui the district council there, particularly for the prevention of that disease of Kala-azar, has permitted houses to be erected in the area where Kala-azar is present for the particular purpose of housing those persons who have to be brought from afar to a central point to be cured of this particular disease. Those houses are *bandas* were erected by communal labour.

Now, Sir, a third objection and one which was brought out very strongly in the eloquent speech, if I may say so, of the hon. Mover, was that these by-laws when passed by an African district council were discriminatory. And he gave instances. He said that he himself as a Member of the legislature was not required to take part in communal labour. He instanced the fact that chiefs and Government servants were also exempt and he hinted that particular rich and important people were also not required to work on communal projects.

Well, now, Sir, I do not say that perhaps there is not something in this argument, but when these communal labour by-laws are passed, Sir, there is usually—although not always—a clause saying that these by-laws shall not apply to certain persons. And in case the hon. Mover does not know, perhaps I could quote the sort of exemptions that have occurred in the by-laws passed by the Central Nyanza African District Council —and the relevant paragraph is (5)— "The provisions of the by-law shall not apply to any person under the age of 18 years or over the age of 46; any teacher or student of any school registered under section 54 of the Education Ordinance; any person employed on a contract of service which is for a period of more than one month; any person expressly exempted therefrom by a provincial commissioner, district commissioner or district officer." So, Sir, in fact in these by-laws specific provision is made in a number of cases for people upon whom the by-laws in respect of a communal labour would fall hardly.

There is, therefore, discrimination but it is a discrimination which has been approved by the African district council concerned.

Now, Sir, a fourth criticism that was made in respect of these by-laws was that able-bodied men—fair enough, let them work—but that women were also required to work. Now, Sir, as hon. Members know, in the Central Province there is an Emergency regulation still in force imposing communal services and I know that the hon. Mover comes from the Central Province. And in these regulations, there is no distinction made between a man or a woman and it is perfectly legal under the regulations as they stand for a district commissioner to call out the whole or any part of the inhabitants of the district for communal work. This is an Emergency regulation; it only applies to areas in the Central Province. In fact it only enforces communal labour for a period of 40 days.

MR. MUIMI: Mr. Speaker, will the Minister give way? On a point of explanation, Mr. Speaker, when I said, for example, that women are employed on this communal work, I had in mind the Emergency regulations but they have been employed even long before the Emergency and I am sure they will continue to be employed after the Emergency.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, I thank the hon. Member for Kitui for his explanation. In point of fact I was not referring to what he said at all. I was referring to what the hon. Mover had said in his opening address about the employment of women and I was endeavouring to explain to him that under the Emergency regulations so far as the Central Province was concerned that that was perfectly legal.

In so far as the question of the employment of women in other areas not covered by the Emergency regulations, there have been a number of allegations that such women are employed. May I remind hon. Members that the law on the subject is quite specific here. It is able-bodied adult male Africans who are required to work and no doubt the hon.

[The Minister for African Affairs]

Member for Kitui or any other hon. Member, when he knows that the regulations are not being complied with, he will no doubt take it up with his district commissioner or with his provincial commissioner. I myself have indeed been given cases by the hon. Member for Kitui. I have taken them up; I have found that certainly in two cases that this was not communal labour under these particular by-laws—it was what the hon. Member for Kitui and others opposite have praised so highly, namely Mwethya which is a species of self-help and in the particular instance where there was a dam there it was in fact a Mwethya group working on the self-help system. But, as I said——

[The Speaker (Sir Ferdinand Cavendish-Bentinck) left the Chair]

[The Deputy Speaker (Mr. Conroy) took the Chair]

MR. MUIMI: Mr. Deputy Speaker, the Minister is not quoting the truth. I would like to give him an example——

THE DEPUTY SPEAKER (Mr. Conroy): The hon. Member can, if he wishes to do so, if the Minister or who ever is on the floor gives way to him, explain anything which he has said which he thinks is possibly misunderstood or being misrepresented. He cannot make a new speech.

MR. MUIMI: Mr. Deputy Speaker, what I am saying is that I am being misquoted and this is what I would like to correct. The case that I referred to the Minister, was a case that happened at a place called Mutomo. According to the Kamba custom you cannot expect somebody to work under the Mwethya arrangement for a period exceeding 24 hours. In this case, which I referred to the Minister, the women had been working there for more than a month and in the course of my speech, Mr. Deputy Speaker, when I mentioned that I went to one of the places where I found women who had been working from April to August, it was this particular case I was referring to and that is why, Mr. Deputy Speaker, I wanted to correct the Minister when he said that this was a Mwethya case. It was not, in fact, at all.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): I am grateful to the hon. Member for his explanation but certainly so far as my enquiries went this was a Mwethya group and although I am quite certain that the hon. Member is perfectly correct in saying that Mwethya groups do not work more than 24 hours in any day, this possibly did so. It only shows perhaps that Kamba tribal custom and usage is not quite the same as it was in the olden days.

Now, Sir, those, I think, were the principal objections that have been raised in this debate against communal labour. And I would like, Mr. Deputy Speaker, just to make it quite clear again that the particular section of the Native Authority Ordinance 10 (*k*) being subject to the provisions of a by-law made under the African District Councils Ordinance is merely an enabling clause so that when the council has passed its by-law or resolution some person is charged with its implementation. And as the African district councils have no staff of their own in an executive capacity of this nature, it falls upon the chief to do this particular work. Now, Sir, I am no particular supporter of the system of communal labour; I personally believe that it is on its way out with consolidation in the Central Province and enclosure in the Nyanza Province and that the need for communal labour—compulsory, so to speak—under African district By-laws will certainly disappear and I am all for it. And I entirely support what has been said about voluntary self-help groups. There is not the slightest doubt, even in Nyanza which was very backward in this particular way of self-help, even in Nyanza there has been a tremendous realization, Mr. Deputy Speaker, of the good that can be done by these self-help groups and I was delighted to see, in the constituency of the hon. Member for Central Nyanza, what progress they had made there in a purely voluntary manner.

Sir, if I may just take up one or two individual points. The hon. Member for Coast (Rural) did say that people were forced to go out to work in his area and that women and children suffered from hunger while the man was away, the suggestion being, Sir, I presume, that normally a person was away for some considerable time, if he was doing labour

[The Minister for African Affairs]

under the minor communal services by-law. The hon. Member, I know, will realize that this does not apply to one of the districts in his constituency which is Taita/Taveta. Normally in the other districts of his constituency a man goes away for a day at a time and under the provisions of subparagraph 18 of paragraph 36 he is not required to do more than 24 days in any one year.

I hope that the hon. Member for Kitui will be kind enough to give me perhaps certain specific cases in respect to his district. He has criticized the number of days worked on roads, dams and bush clearing and perhaps if I can have some more specific information about where this happened I should be very happy to go into it and discuss it with him later.

I was extremely interested in what the hon. and learned Specially Elected Member, Mr. Slade, had to say about this, and I am very much in agreement with what he does say. Times have changed, there is no doubt about it, and I would personally like to see some sort of system as indeed has started in the constituency of the hon. Mover of this Motion, whereby the communal services can be commuted for payment, and thereby we can employ gangs, if I may put it that way, of persons who will do the work that the minor communal services do at the moment. I think it is a very good suggestion; I know that my hon. friend, the Minister for Local Government, whose "hat" I am wearing today, is greatly in favour of this particular proposal, and we hope that it may be introduced into the African District Councils Ordinance at an early date. I am sure that it will make for considerable contentment among the African population if we could do so.

The hon. Member for Nyanza North made some remarks about headmen calling out people by whistle, but I could not quite follow the contents of his arguments, and indeed, my hon. friend, the Nominated Member, Mr. Luseno, who comes from the same constituency, seemed to give a very detailed and lucid account of how exactly communal labour was called out, and, of course, as hon. Members will have noticed, he did in fact, say that he himself had been a member of a communal labour gang on a number of occasions. He supported the fact that communal labour should continue.

Sir, I am afraid that I have rambled at some length over this particular Motion. I hope that I have made it clear to hon. Members of the House that personally I would welcome some variation in the terms under which communal labour is imposed. I am sympathetic to that idea, Sir, but as the law stands at the moment, and in view of the pressing needs which must be undertaken in the African areas, I regret that the Government cannot accept the Motion as it stands, Sir.

MR. ODINGA: Mr. Deputy Speaker, Sir, I have waited very long for the Minister to stand and oppose the Motion, and I am glad that he has just now finished his explanation of some of the points which we wanted to know from him. I am most surprised, Mr. Deputy Speaker, to find that the Minister is contending that the Government and particularly the district commissioners have not got the pressure over the African district councils. Well, I will say, Mr. Deputy Speaker, that I have got a personal example to give, and that is in Central Nyanza. I remember that in 1958 the African District Council of Central Nyanza passed a vote against the communal labour, and they did away with communal labour against the district commissioner's wish, and that has been taken as a ground which later on resulted recently in the dissolution of the African District Council of Central Nyanza, and the direct election which was going on in Central Nyanza was also abolished, and now it is only the nomination of members through the locational councils to the district council. Therefore, if we have got such concrete examples, how can we believe the Minister when he contends that the district commissioners and the Government has not got pressure to bear on the African district councils. It is definite, and now the District Council of Central Nyanza—all those points which he has read to us—all those points passed are passed by the chiefs with their nominated people from the locations, who are supporting. It is not a district council which is supported by the people in the country, and I know that even at

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the present moment the district commissioner himself in Central Nyanza is trying to canvass for the return of the communal labour in Central Nyanza, and I am sure with the present composition of the district council he will probably pass it through, which he could not do when the properly constituted council was there, which was representative of the voice of the ordinary man in the country, and, therefore, Mr. Deputy Speaker, I will say that it is the Government, and it is the Government wish to continue with this communal labour, which we say is really not necessary at the present stage of the African people in this country. It is not only that it is not legally right, but it is also morally wrong indeed, because only recently when the personal taxation was being introduced into this country we were told it was being brought on an equal footing throughout the country. We want to treat all citizens equally, and let the taxation also be equal. Well, if the taxation is equal, why treat other people differently from the Africans? They are all equal citizens. If you introduce the communal labour, it should be communal labour throughout the country, not only for some particular people in the country.

Mr. Deputy Speaker, I would say that the Minister went on to explain that it is up to the African district councils to introduce the communal labour for particular jobs in their respective districts, and he went on further to enumerate some of the examples, like the building of dams and the filling of gullies and bush clearing. Well, Mr. Deputy Speaker, it is quite true that the African, even before the British Government came to this country, they had dams in this country, in those days, and they used to build or dig those dams voluntarily and quite happily and they used to do all sorts of things themselves. They did not need any legislation to be passed, or any punishment to put them there. It had only to be explained to them, and they knew it was quite necessary, that they should do it. I do not think even at the present moment we need any legislation to push these people to go to do it. If it is necessary they will judge by themselves and they will do it themselves.

Well, on the question of gullies, the fact that I happen to be a neighbour of a person whose land has got a lot of gullies, does not entitle me that I should be the man to help him fill those gullies. If those gullies are filled and that man's gullies produce better crops, the better crops will only be to the benefit of the whole country. It will not be to the benefit of me as the neighbour of that man, and therefore if the man himself cannot fill the gullies, and Government considers that he needs the help, it is not I, as a man who is his neighbour who should help him. It is up to the Government to devise a means of helping him, because this man's land is useful to the whole country and not only to me as the direct neighbour. We are not the only ones who depend on the land, the shopkeepers depend on the land and the Government itself depends on the land, and everyone depends on the land, and when one cannot actually do the filling of the gullies in his own land by himself, if he needs help, it is up to the Government to devise a means of helping that man to fill the gullies in his land, and not to ask his neighbour, simply because he happens to be the neighbour of that man to go and give free service. It is something which must be distributed throughout the country. The Government should also explain to us that if the gullies which grow up in the African areas are being done by free labour, what about the gullies all over the country? How are they being filled? What are the methods which are used? Those methods should also be applied in those areas—the African areas—because now the taxation is put on the same footing throughout.

Now, Mr. Deputy Speaker, I cannot agree with the Minister when he explained the things which he does not understand very well—things like *Mwethia* in Ukambani; things like *Saga* among the Luo. They will always misinterpret them because they do not understand them. Those words are institutions which the Africans used in the olden days and they knew how they were using them; it was just like a joke. If I were to call or request the people for a *Mwethia* or *Saga*, I would have to move all over the country asking them to come to my help to do a bit of work in my garden. Of course

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we only do it for a day, not 24 hours as my friend on this side said, but it is only for a day, and I would have also to prepare food and prepare other drinks for them. It is not the type of thing which the Government should depend on. These people came to my aid and it was my duty to prepare food, for these people came willingly to do the work, and it was not something which has to be forced by the Government.

Now, Mr. Deputy Speaker, I understood from one of the speakers on the opposite side that the African district councils have no money and that the African district councils are poor. Well, when does he think the African district councils will not be poor? They will always be poor. And when will this Government be rich? We are all the time told that there is no money, and if you think that I shall go on each year giving free service, until there is money to pay for these services, when will there be money, that I shall end doing it. I need also to educate my children, I need also to struggle to fill my tummy and the tummies of my children for the Government, and at the same time I pay the same taxation which anybody is paying. It is most unfair to ask me to do 24 days' work freely. Well, Sir, 24 days, that is about Sh. 5 a day. How much money is that? Sh. 120 you ask me to pay as extra taxation. Is that really right? Is that what you are asking the ordinary man, the ordinary African in the country to do? Are you prepared to do it yourself? You also ought to do this communal labour. And when you ask them that they should make a bridge it is you that go over that bridge in your car. It is better that you and I should have paid for it, because we are the people, not the ordinary man in the country. We should not unnecessarily exploit the ordinary man in the country.

Now, Mr. Deputy Speaker, I would only ask the Government that it is time —these are the things that Government generally ignore because they regard them to be small—but it is very, very important to the ordinary man in the country, because I remember when the African District Council for Central Nyanza voted against the communal labour before that I never knew myself, I never realized that it was so important to the ordinary man in the country. Later on I went to a market and of course these people thought that it was probably I who had removed the communal labour from them. Everyone came rushing to me saying: "The communal labour has gone." They said to me: "We think that you have realized our suffering" and indeed, Sir, they had been suffering greatly. Before that time I had never realized that the ordinary women, children, and everyone, were suffering from communal labour. Even at the present moment I know that the Government is cooking something simply because they are going to use the African district councils in the same way in which they have steamrolled recently some other by-laws. The people are now just suspiciously waiting to see whether the communal labour which is detested is brought back again and I know for certain of the trouble that will come in the country from it.

Mr. Deputy Speaker, with these few remarks, I beg to support the Motion.

MR. MBOYA: Mr. Deputy Speaker, I have been rather caught while trying to prepare something.

A lot has been said about the Motion and I am personally disturbed that the Government should have left the debate to go on for so long before a Minister spoke and replied to it, which tended to extend the period of debate rather unnecessarily.

It is regrettable that the Government has decided to oppose this Motion and I think if anyone had provided us with ammunition it is the Minister for African Affairs when he said that in fact the by-laws under which communal labour is made possible is passed by the African district councils. In other words, Mr. Deputy Speaker, the present law is redundant. It is not necessary, unless it is suggested that this law is necessary in order either to facilitate either the passing of the by-laws or to prod the district councils into passing the by-laws or to empower the district commissioner and district officers, to urge the councils to pass by-laws, or in a way to provide a pretext for the district commissioner to go round canvassing communal labour. There must be some reason why we must have this law on the statute books. If in fact this law is not being

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used then I see no serious difficulty why the Government cannot now agree that this law is redundant. It was made during some primitive period, probably for a primitive purpose, and as the Specially Elected Member Mr. Slade has already stated the times are long gone when such legislation was necessary. Let us then be left with a situation in which we face squarely the district councils as the initiators or originators of any such by-laws or laws or ideas that lead to communal labour. As it stands, Mr. Deputy Speaker, it is rather begging the question that the Minister should seek to hide behind this provision in the African district council by-laws.

The second point which seems to me rather curious is the fact, Sir, that the Minister tried to prove his point by citing a number of district councils which have not resorted to any communal labour by-laws, and yet at the same time I thought when he stated this he spoke of the exemptions of those persons who may be exempted from doing communal work, a point to which my friend referred rather with a great deal of emphasis. He said that this could be done, on exemption by the Provincial Commissioners, the district commissioners and the district officers. Now, I did not seem to hear him say that this intention would also be carried out by the African district councils. It does seem to me that there is some confusion both in terms of the context under which communal labour may be applied and also in terms of the authority behind which it is in fact implemented. It does seem to me that there is a strong case here that the existence of this legislation in paragraph (*k*) of section 10 is lending some weight or some support or some strength to the initiative that may be taken by the administration rather than just the African district councils in the various areas and therefore creating the circumstances in which communal labour might be applied. I was sorry that the Minister was out when my friend the Member for Nyanza Central was speaking because the Minister should think have stayed in to hear him say that because of a difference in opinion between the African district councils and the administration the Central Nyanza African District Council was dissolved. Now, if he comes here and tries to convince us that because there is an African chairman on the African district council therefore they have passed from the stage where they do not or are not subject to the influence of the administration he is surely trying to shut his eyes to the fact that the Government only a few brief months ago had seen fit not only to dissolve an African district council but also to put an end to the system of direct and free elections for members of that district council, Sir, in Central Nyanza. Now, if that is not interfering with the freedom of expression of the people in that area so that their directly and freely elected representatives may decide whether or not they want this or that policy then the Minister should tell us what it is. Now, it is not good enough merely to suggest that some district councils have not seen fit to pass this legislation and yet I thought when there are certain sorts of project on which communal labour is used, there are a number of things like those which my hon. friend the Member for Central Nyanza asked regarding the feeling locally. There must be a lot of gullies in Taita/Taveta District. I am wondering who is filling them. Is it a question, Sir, that in some districts public funds may be used to do this job and that in other districts some people, because of certain influences, may see fit to introduce communal labour in order not to use the public funds which are available? If this is the case, Mr. Deputy Speaker, does not this situation call for some uniformity in the system throughout all the district so that at least whatever might be deemed to be within the definition of communal labour in terms of specific projects of advantage to the community —I thought the Minister referred to the words "normal civic obligations" and "minor communal work" but the interpretation of what is normal civil obligations and what is minor communal work may differ from place to place according to the personalities involved. Now, if that difference, according to personalities involved or certain attitudes, might cause a situation such as we have already got where some people emphasize certain things despite the existence, probably, of funds to pay normally for such services, and some people like those in the Taita/Taveta District say that they do not

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want to impose communal labour on the citizens in that area, then does it not call for central Government intervention at least to ensure that there is some uniformity in the practice. When the central Government deemed fit to have this legislation it is quite certain that they thought then that the conditions prevailing in the country demanded the existence of certain powers within which they could have acted in certain situations. Those conditions, Mr. Deputy Speaker, the Minister now concedes no longer exist. In the circumstances, if this matter is to be left entirely as a local matter under the African district councils, then let it be a uniform question under all African district councils, and let the definition be more specific than at present.

Now, the hon. Specially Elected Member on this side of the House made certain remarks that I though were quite curious and rather irrelevant. He went on to say things like, this, Sir, that supposing a tree fell across the road then would we want that tree to remain there without anyone doing the job of taking it away? Now, that is not what is involved in this debate at all. Supposing a tree fell in front of Mr. Coutts' house. Supposing Mr. Coutts took the tree out of the road, is he performing a communal labour under this law or under the African district council by-laws? Of course he is not; here is merely doing what is reasonable, what is fairly expected of any citizen anywhere. But that does not mean that the question of the communal labour legislation would be involved, nor do I think that Mr. Coutts would refuse to handle the tree because he is not requested or required to so by legislation. The issue is completely irrelevant.

I am wondering, Mr. Deputy Speaker, whether I could at this point move an amendment to this Motion. I was caught in the process of writing an amendment down in order that it should be given to to the Chair.

THE DEPUTY SPEAKER (Mr. Conroy): Standing Orders provide that before moving an amendment you should write it down and give it into the Clerk, signed. I am sure that Members will agree if I give you a few minutes to write it down.

MR. MBOYA: Mr. Deputy Speaker, I thank you and the Council for your indulgence.

The amendment which I wish to move now is that we delete all the words after "That" and substitute this with ". . . this Council urges the Government to review the provisions of communal labour as provided for under paragraph (*k*) of section 10 of the Native Authority Ordinance (Cap. 97) and its relations to African district council by-laws relating to communal labour with a view to creating a uniform approach throughout the country and write in those aspects which have caused serious frustration among the Africans."

Mr. Deputy Sepaker, I feel that in fact there is room for the review of this legislation and also that in the terms of the explanation made by the Minister there is a lot that should be reviewed or examined in terms of application both from district to district and also on a country-wide basis.

Mr. Deputy Speaker, I beg to move.

MR. KIAMBA: In seconding the amendment, Mr. Deputy Speaker, I would say that the idea of communal labour was not new to the African tribes and it has only become very difficult when the idea was forced on them by the African district councils when they made by-laws, when they were also being asked by the Central Government to make these by-laws, I do do not feel that it is the right thing for the Central Government to force the local government bodies to make these by-laws if they knew that the people were ready to help themselves.

We have already heard from several speakers that there was what was called the Mwethya system, especially in Machakos, because people were willing to do the job for themselves and no persuasion was used at all. Now, Sir, it was ridiculous if there was going to be another law which was going to force the people to help themselves if they were willing to do it for themselves. Then again, Sir, it has not been urged successfully that this law was discriminatory and some hon. Members have suggested that those who did not want to go should be able to pay something for the job to be done.

[Mr. Kiamba]

What we ask in the amendment, Sir, is that this should be legalized so that the African district councils should be required to say that something should be paid instead of having to do the work together, instead of having the by-law which asks all people to go and help themselves and also having groups of people who are willing to help themselves.

With these few words, Sir, I beg to second the amendment.

Question proposed.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Deputy Speaker, Sir, I would like to make one or two points in this debate, really following on the speech made by the Member for Central Nyanza and the Member for Nairobi.

The Member for Central Nyanza really reduced the debate, in a way in which he has a habit of doing, from the general to the particular, and argued in the debate from facts which actually at the moment occur in Central Nyanza only. He said amongst other things that the Government brought pressure to bear on the African district councils in order to pass resolutions of this nature despite the fact that the Minister pointed out in the first place that it is only and entirely in the hands of an African district council as to whether they will pass the resolution or not. It is entirely in the hands of an African district council as to whether they will put in specific provisions or not, and despite the fact that the Minister also said that certain African district councils had chosen not to do so and despite the fact that all African district councils have got an elected majority with the single exception of that Council referred to by the hon. Member.

If I may digress for a moment on that particular point, Sir, I would like to remind the hon. Member of a fact which is often forgotten in this country, and that is that all local authorities derive their ultimate power from the Government and when they have power it is power given to them by the Government. If that particular authority—whether, if I may say so, it is an authority in Eldoret or an authority in Central Nyanza—abuses these powers, then it is up to the Government to do something in order to prevent it going on abusing these powers. There is a case at the present moment in Central Nyanza where it has been necessary for the Government to step in and make other arrangements; there it is the fault of that particular Council and the people concerned.

But reverting to the point about Government bringing pressure to bear, Sir, I would like to point out to the hon. Member that the rules which are in existence in Central Nyanza were passed in 1956 by an African District Council which had an elected majority and which therefore had the right to decide to do what they wanted.

Going on from there, and picking up the points made by the hon. Member for Nairobi, I would like to point out that this is nothing more or less than enabling legislation. All the Government has done is to say, "Here is a piece of legislation which you can use if you like, or not." The hon. Member, in what I thought was an entirely unconvincing speech, is now telling the Government, "You must impose conditions on members of African district councils and the people of their district to be entirely uniform," entirely disregarding first of all the finances of that particular African district council or, secondly, apparently, the wishes of the people, and yet the hon. Member himself argues that we were disregarding the wishes of the people. If, in fact, we are going to make the whole thing uniform, Sir, then what are we doing? We are imposing our will upon the African district councils of this country, and what we have done as a Government is not to impose our will but to create a situation where each African district council, bearing in mind the conditions in their own particular districts, can in fact do exactly as they wish. That is a situation, Sir, which I feel should continue.

You heard the hon. Minister say that the question of the continuance or the non-continuance of communal labour is not a matter on which he holds strong views. I do not hold strong views either on this subject, I believe, as the hon. Minister has pointed out, that conditions will change and with that change so will the conditions of communal labour also change. In fact, Sir, communal labour

[The Chief Secretary]

will ultimately disappear. But I do feel very strongly; particularly in so far as this amendment is concerned, that it would be entirely wrong of this Government to take any action which would make matters uniform for everyone throughout the country irrespective of their wishes and irrespective of the wishes of the elected majority of these councils.

I beg to oppose.

MR. ODINGA: Mr. Deputy Speaker, I think I rise again because as usual the Government have indicated that they are not going to accept the amended Motion.

But I should again make perfectly clear to the Government that if they think that everything that is proposed from this side is always wrong and that they have no idea of all the things which are happening in the African areas, they will not actually find that there would be any progress with the Africans in the country.

You say, here is a case, a very clear case, where one African district council has been responsible and has voted against the communal labour. The Government has taken a ruthless step against it and deposed it. Well, on that matter alone, what can——

MR. DEPUTY SPEAKER (Mr. Conroy): Order, order! Mr. Odinga, we are now speaking to the amendment; we are not speaking to the Motion. Will you please sit down when I rise. Mr. Odinga, will you please sit down when the member presiding rises! We are speaking to the amendment now, not to the Motion. I would remind hon. Members of that.

MR. ODINGA: Thank you, Mr. Deputy Speaker. I was just trying to reply to the last speaker and I will not probably repeat what I had already said and I will say that I support the amendment and it was quite reasonable that the Government should have made an attempt to try to define what they mean by the "minor services" which they actually support the African district councils to pass in the by-laws. And certainly they should have also tried to define what they mean by the civic responsibility which they would also like them to carry out because we are aware that these interpretations always come when it is left so vaguely like that. It is only left for the interpretation of a district commissioner to put his own interpretation on it and probably to misuse the people in the country——

THE CHIEF SECRETARY (Mr. Coutts): I take exception to that! I take exception to the remark that a district commissioner will always do what he wishes in order to misuse the people of the country.

MR. DEPUTY SPEAKER (Mr. Conroy): Mr. Odinga, nothing that you have so far said has related to the amendment. I would advise that you should restrict your remarks to the amendment. You have already had your full time to make a speech on the Motion and we are now dealing with the amendment moved by Mr. Mboya.

MR. ODINGA: Thank you very much. I had just finished when he interrupted me.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): In speaking to the amendment, Mr. Deputy Speaker, I would like to point out to the hon. Member for Central Nyanza why there is a very good reason that the Government cannot accept the amendment in the form in which it has been put forward. The essence of the amendment as I understand it is that the Central Government should impose in this matter a uniformity as between the various local authorities which operate in this field. I am slightly surprised that the hon. Member for Nairobi Area should in fact introduce such an amendment in view of his knowledge of the International Labour Conventions which cover these matters.

The question of forced or compelled labour is covered by Convention No. 29 and Article 2 of that Convention exempts from its application minor communal services of a kind which being performed by the members of the community in the direct interest of the said community can therefore be considered as normal civic obligations incumbent upon the members of the community provided that the members of the community and their direct representatives shall have the right to be consulted in regard to the need for such services.

In the interpretation of this Convention, Mr. Deputy Speaker, and the examination of the annual reports which the Government of Kenya—like all other Governments which have accepted it—make to the International Labour

[The Minister for Education, Labour and Lands]

Organization, the term "community" in this context has been established to mean the unit within which such work is organized, in this case the unit being an African district council area. And therefore this Government would be in breach of its obligations under Convention No. 29 if we were to attempt to impose a uniform observance of the requirements or exercise of the enabling powers in this Ordinance by all African district councils. The choice, Sir, must be left to each individual council to make for itself.

MR. MATE: Mr. Deputy Speaker, Sir, on this last point the Government are challenging my hon. friend for Nairobi Area for wanting uniformity where uniformity is not required. I think the Government themselves are making the same mistake. We have now a uniform law of all countries irrespective of how progressive or backward an area is. This law is in the books and the amendment is seeking to change that particular law so that a better law is applied to the whole country. And, Mr. Deputy Speaker, I feel that the question of using the word "uniform" as Government are putting it, is not inclined to clear up the issue. Surely, if any law is applied to the whole country or to all districts in Kenya it must be one law and the fact that it applies to all, is in a way uniform although in details of application it would be different. So I do not think that the word "uniform" is enough for Government to wish to refuse to consider the amendment more seriously. A common law to all districts is uniform but in application it would be different and my hon. friend, the Member for Nairobi Area, is only asking for a review of this law. He is not saying that it must be uniform. He is asking for a review because today the practice as it is, is different. He is demanding a review and the question of the word "uniform" is not so important. You know that the African district councils derive their power from central Government, as the Chief Secretary has said, and that is why we are putting their case to central Government. It is they who are to see the difficulties in the way. And, Sir, I feel that the question of the word "uniform" is less important than the word "review" which would be made on the part of the Government and that this is misrepresentation of the facts of the case.

Mr. Deputy Speaker, I beg to support.

DR. KIANO: Mr. Deputy Speaker, Sir, it is a bit disappointing that once more Government is looking for excuses to avoid even undertaking a simple job which is to bring up to date an Ordinance which was passed some time ago. And not only that, the Ordinance was passed under conditions which have entirely ceased to exist.

Now, it is actually a very, very weak, and, I should say, not a very hard task to ask Government to try and do one single thing, and that is to review a situation in order to bring into line with the modern conditions of Kenya. That is all that we are asking for. We have a law which was passed in this country at a time when perhaps the local government institutions were not so organized, when their financial system was not so well organized as to enable those institutions to carry out the various duties that were necessary.

Now, the conditions have changed. What we have today is a very anomalous situation whereby in the first place the law applied to one community and not to another and secondly even within the community where it applies—the African community—you have some situations where communal labour is not applied and in other places it is applied. And all we are saying in this matter is that the situation has got so much out of hand that to the people to claim justice and fairness not only between the communities but also between the various areas—among the various areas within the African community—that a review is necessary to see that uniformity and equity are achieved.

Now, when we ask for a review, of course the review is not simply for the Minister to study the situation and do nothing. He is to study the situation, bearing in mind that if injustices are being committed that although the areas which are even financially weak have been able to afford doing away with this kind of by-law whereas some other areas which seem to be financially better off are still carrying on with this communal labour. We are asking for a review and if Government cannot review the situation——

THE CHIEF SECRETARY (Mr. Coutts): I thank the hon. gentleman for giving way. On a point of information, Sir, we have not refused a review. What we are refusing is a review in the terms of this amendment for the reasons given both by myself and the Minister for Education, Labour and Lands.

DR. KIANO: On a point of explanation, Mr. Deputy Speaker, to the Chief Secretary, we consider that it is a rejection of a review and that the circumstances that he has explained have not been fully justified. And, therefore, we refuse to accept the excuses given because the terms given there imply that there is dissatisfaction among the various communities and among the African community with reference to the exercise of the powers given under this Ordinance.

[*Mr. Deputy Speaker (Mr. Conroy) left the Chair*]

[*Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) took the Chair*]

And also, it would also call for the review not only of communal labour under the present Ordinance but also under the Emergency regulations.

And with those arguments, Mr. Speaker, I would request Government to reconsider the opposition instead of hiding behind the phraseology of the amendment given and give a general look-into-this-situation-and-perhaps-not give us another amendment to the amendment but suggest in further debate just what they are prepared to do in order to correct a situation which is obviously an unhealthy situation at present.

I support the amendment.

MR. KHAMISI: Mr. Speaker, I have heard a lot of arguments and many things have already been said about this Motion and I feel that as this situation is felt very strongly by the Africans and by this side of the House, I would like, with your permission, Sir, to move an amendment to the amendment.

My amendment would read to delete all words after the third and that the Motion should then read: "That this Council urges the Government to consider an early review of the provisions of communal labour as provided for under paragraph (*k*) of section 10 of the Native Authority Ordinance."

Sir, the main object of the amendment, if it is carried, would be that instead of the Motion being thrown out by Government, the Motion would have achieved some sort of success by the fact that the Government would be able to give an early review which means that they would be able to keep this matter under constant review at the earliest possible time so as to find out how best they could deal with this matter which is now a matter which is very pressing.

We feel, Sir, that there is a lot in the Ordinance about this regulation which should not now apply. It may be that this particular law was necessary some time ago but in view of the changing circumstances and the progress of the people as a whole, there is some case for revising these powers which Government have and which have been passed over to the local authorities.

I hope, therefore, that Government will be able to accept this amendment to the amendment.

I beg to move.

MR. OGUDA: Mr. Speaker, I rise to second the amendment to the amendment. Always in this House, Mr. Speaker, it has been most disappointing to the African Elected Members that the Government always sees fit to oppose any Motion that is brought forward by them in this House to try to better African conditions. Much has always been said in this House against communal labour and I do not think, Mr. Speaker that the grievances that we air in this Council are particularly our own. At most of the public meetings that we address outside most of the questions that people raise are in connexion with communal labour, and it is the people themselves who would like to see communal labour go, and go as soon as possible.

In view of the fact, Mr. Speaker, that communal labour is practised in various districts in different ways—I mean the law as applied in different districts or in different localities—there is really an immediate need for an early review, and indeed a very early review, of the provisions of communal labour as provided

[Mr. Oguda]
for under paragraph (k) of section 10 of the Native Authority Ordinance. I do not wish to bore the House, Mr. Speaker, by repeating what has been said, but we feel very strongly about this question of communal labour, and it is high time Government gave it some very serious consideration, and all we are asking at this time is for them to consider an early review, and no more. I hope this time some of the words we have said will pierce them. This is a very funny Government. No words ever pierce them. It does not matter in what terms you put them. I hope this time they will change their attitude and try, at least, to give very serious consideration to this matter, as now amended. I beg to second.

THE CHIEF SECRETARY (Mr. Coutts): The Government does not wish to appear to be "appierced".

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): There is a further amendment to the amendment that is now before the House which reads as as follows: "That this Council urges the Government to consider an early review of the provisions of communal labour as provided for under paragraph (k) of section 10 of the Native Authority Ordinance (Cap. 97)." That is the latest amendment and is now before the House.

Question proposed.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir the Government is prepared to accept the amendment before the House, and that is all I have got to say, Sir.

MR. MBOYA: Mr. Speaker, Sir, it is at least good that the Government is pierced for the first time, and that they have accepted this amendment. We who submitted the original amendment do accept this amendment, and it is our hope that the words "early review" will mean "early review", and not the usual early reviews that we have here of ten years. We also hope that review in this case means taking into account the progressive development of the country and the changed circumstances, and not some of the arguments that have been advanced today. I was particularly surprised at one advanced by the Minister for Labour.

MR. CONROY: When the hon. Member spoke of the "usual ten-year delay" I presume he was speaking from hearsay and not practical experience.

Question that the words proposed to be left out, be left out, put and carried.

Question that the words proposed to be added, be added, be inserted, put and carried.

MR. MATE: Mr. Speaker, Sir, I must express my gratitude for the interest the House has taken in this Motion, and particularly that Government have seen fit to accept the Motion in a half-way form, but I hope that a review is going to lead to the thing requested in the first Motion. At the same time I would like to thank my friend on the right for his very good support of this Motion and for the appreciation of the difficulty of the African people, but I deprecate the remarks of the Special Member for the Coast and the Nominated Member for Nyanza who, being Africans themselves, seem to deprive themselves of the truth. I felt their arguments were quite off the point as far as the Motion goes, and Mr. Speaker, I also would like to point out that there is apparent division of responsibility between the Central Government and the African councils. There is a kind of contradiction when the Chief Secretary says that the Central Government gives local governments their powers. I suppose he meant through the district commissioners, through the district officers, through the chiefs——

AN HON. MEMBER: Through them all.

MR. MATE: Through them all?

THE CHIEF SECRETARY (Mr. Coutts): Through the law.

MR. MATE: Through the law.

I think there is influence, the district commissioners, on the African district councils, the chiefs on the locational councils. In the county council areas we do not want all this confusion, and I believe the time will come when the locational councils will feel that they are responsible people and that they are all officers, not Government chiefs. Mr. Speaker, I feel this is a very normal development, and this is why even the communal labour by-law becomes necessary because the tutor cannot realize that the child has grown, and the tutorage

[Mr. Mate]
of the provincial system of the African District councils and the locational councils must come to an end.

Mr. Speaker, I hope Government, the Minister for African Affairs and the Chief Secretary mean what they say, and that as a result, this rather unhappy situation will right itself in a very short time.

Mr. Speaker, I beg to support the latest amendment.

The question was put and carried.

MOTION

THE RURAL AND SEMI-URBAN MINIMUM WAGES LEGISLATION

MR. OLE TIPIS: Mr. Speaker, Sir, I beg to move that this Council urges the Government to introduce legislation for the fixation of minimum wages for all rural and semi-urban areas, so as to avoid the exploitation of African workers.

Mr. Speaker, Sir, in my opinion, and in the opinion of all the Members, I should say, on this side of the House, this Motion is easy and self-explanatory, for the simple reason that it is non-racial. We know that in this country Asians, Europeans and Africans as well are employers of labour, and as such it is essential that we should do everything possible to protect our employed population from exploitation from whatever race that exploitation might come from.

Now, Mr. Speaker, I would earnestly request all hon. Members to consider this Motion very, very seriously because its acceptance will do a lot of good to both the employers and the employees and to the country as a whole, not, of course, in any manner which might be considered as racial or anything of that kind, but will, I believe, create that essential human and industrial labour relationship which is of vital importance to a developing country such as ours.

Now, Mr. Speaker, Sir, as we all know, statutory minimum wages have been fixed and have been in operation in all the big towns in Kenya for some time now, but I regret to say that nothing has so far been done by the Government to introduce minimum wages fixation for rural and semi-urban areas where the majority of our country's employed population are employed.

Now, Mr. Speaker, the present labour situation is even worse, in that when you have the labour supply in excess of the demand, which, in other words, a large number of unemployed persons who have no other means of earning their livelihood, and where no representative machinery is in existence in these areas for both consultation and negotiation purposes between employers and employees, as to whether wages and conditions of employment are fair and adequate, and also in view of the hostility of most employers of agricultural workers to the establishment of agricultural workers' trade unions, and the Government has not intervened in this serious situation which compels the African worker to accept whatever little he is offered in order, in a very small way, to enable him to meet—but I doubt whether he actually does meet—the bare necessities of life. This has created a very strong and justifiable feeling in the African worker's mind that he has been neglected by the Government and left at the mercy of the employers. Well, Mr. Speaker, Sir, I see the time is almost over, and I beg leave to continue when we next sit.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I would take this opportunity of informing Members that the Motion now before the House is for the fixation of minimum wages, and the next Motion is the Labour Laws. We do not want to take two debates on the same subject, so I shall be rather strict in confining the debate to the fixation of wages on this Motion, and deal with general labour laws on the next one.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I will now adjourn Council until 2.30 p.m. on Tuesday next, the 13th October, and I would add that I think it is generally agreed that it might be in the interests of most Members if we endeavoured to adjourn Council on Tuesday at 6 p.m. instead of 6.15 p.m., due to the fact that we have another semi-official engagement later.

The House rose at thirty minutes past Twelve o'clock.

Tuesday, 13th October, 1959

The House met at thirty minutes past Two o'clock.

[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

PRAYERS

PAPERS LAID

The following Papers were laid on the Table:—

Sessional Paper No. 10 of 1958/59—Land Tenure and Control Outside the Native Lands.

The Factories (Woodworking Machinery) Rules, 1959.

(BY THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson))

Printing and Stationery Annual Report, 1958-59.

(BY THE MINISTER FOR TOURISM AND COMMON SERVICES (Mr. Crosskill))

NOTICE OF MOTION

DEATH PENALTY

MR. NYAGAH: Mr. Speaker, Sir, I beg to move:—

THAT this Council urges the Government to make an early review of the death penalty as capital punishment, with a view to instituting another form of deterrent more humane and Christian.

ORAL ANSWERS TO QUESTIONS

QUESTION No. 170

MR. ALEXANDER asked the Chief Secretary what progress has been made with the study of the Immigration Ordinance, 1956, with the object of introducing amending legislation to place the Ordinance on a non-racial basis, and particularly concerning the discriminatory legislation on Re-Entry Permits?

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, I beg to reply. Considerable progress has been made in the study of amendments to the Immigration Ordinance, 1956, and some tentative draft amendments have been prepared, but the legal and administrative complexities of the problem are such that it has not been possible, owing to the pressure during recent months of matters of more immediate urgency, to complete the examination of this subject or the preparation of an amending Bill. It is hoped, however, that it will be possible to introduce amendments fairly early in the new Session to effect such alterations to the existing Ordinance as are found to be both desirable and practicable.

MR. ALEXANDER: Mr. Speaker, Sir, in this review has it been accepted by Government that the anomaly in this question arises because there is a distinction between what are regarded as immigrants and what are regarded as indigenous people.

THE CHIEF SECRETARY (Mr. Coutts): This has been considered, Sir, but I would like to remind the hon. gentleman that it may be almost impracticable and it may also be disproportionately expensive to apply the Ordinance and regulations to everyone, but it is under consideration.

MR. MBOYA: Mr. Speaker, Sir, would not the Minister agree that there are many more urgent anomalies?

THE CHIEF SECRETARY (Mr. Coutts): There are many more, but I have tried to explain to the hon. Member that there are a number of urgent matters which we have to consider and this must take its place in these priorities.

QUESTION No. 192

MR. TRAVADI asked the Minister for Local Government, Health and Town Planning to state the reasons why a number of applications for remission of rates under Section 33 of the Local Government (Valuation and Rating) Ordinance, 1956, made by various registered societies and organizations of their properties used for religious, educational, charitable, cultural, sports and other similar purposes have now been refused by local government authorities?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, on behalf of the Minister for Local Government, Health and Town Planning, I beg to reply. Under subsection (1) of section 33 of the Local Government (Valuation and Rating) Ordinance, 1956, the power to reduce or remit rates on areas of land occupied by the types of premises referred to in this question is vested in the

[The Minister for African Affairs]

local authority concerned. If the hon. Member would send me details mentioning the local authority and the type of premises in respect of which applications have been refused, I shall be pleased to look into the matter.

MR. TRAVADI: Arising out of the reply, would the Minister be prepared to receive details now, this very moment?

QUESTION No. 164

MR. NAZARETH asked the Minister for Education, Labour and Lands what, if any steps does the Government intend to take to put an end to the continued operation of racial restrictions on the ownership or occupation of land in townships and municipalities, including the City of Nairobi?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): The steps which Government intends to take are set out in paragraphs 63 and 65 of Sessional Paper No. 10 of 1958/59 which I have laid before Council this afternoon.

QUESTION No. 175

MR. ARAP MOI asked the Minister for Commerce and Industry whether he is aware of the public outcry and of the petitions in favour of *cheap air fares* offered by the British air lines?

If so, is he in a position to make a statement on this very important matter in the interest of our communities?

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): Yes, Sir. The Government is aware of the public interest and the petitions in favour of cheap air fares.

In reply to the second part of the Question, I would first refer the hon. gentleman to my reply to Question No. 109 of 1959. The applications are being considered by the Air Authority in East Africa and by Her Majesty's Government in the United Kingdom. It will be appreciated that such applications have to be considered in relation to the United Kingdom commitments to the International Air Transport Association. A meeting of this body is now taking place and cheaper air fares are being discussed. The results of this discussion will no doubt have an important bearing on the attitude of Her Majesty's Government.

MR. ARAP MOI: Mr. Speaker, Sir, arising out of that reply, what would the attitude of the Kenya Government be if the United Kingdom Government agreed.

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): Mr. Speaker, I have already referred the hon. gentleman to Question No. 109 of 1959 which I imagine that he has studied, but to refresh his memory I will read out my reply to that question, with your permission. My reply, Sir, was "Yes, Sir, provided that the safeguards so admirably set out in the statement issued by the European Elected Members Organization of 24th February, 1959, are preserved." Further to inform the hon. Member I will read out that statement. The statement made by the European Elected Members Organization on 24th February, 1959, was as follows: "The European Elected Members Organization wish to support the application for scheduled services at cheap fares to and from Europe provided the present scheduled services are not disrupted and the interests of the general public are safeguarded by (*a*) the continuity of such cheap fare services throughout the year be guaranteed, (*b*) a high standard of operation be maintained, (*c*) our own national airline, the East African Airways Corporation, be granted an equal opportunity to participate in such cheap fare services." Mr. Speaker, I would suggest that the reply I gave to question No. 109, together with the statement I have just read out, defines the position.

MR. MBOYA: Mr. Speaker, does not the Minister agree that the entry into the services of the jet air liners is a relevant point?

QUESTION No. 186

MR. NGALA asked the Minister for Education, Labour and Lands what progress has been made towards removing the disparities which exist between the salary scales of African and Asian K.T.I.s?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I am afraid I cannot report anything that the hon. Member would regard as progress on this difficult problem.

Tuesday, 13th October, 1959

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[Mr. Speaker (Sir Ferdinand Cavendish-Bentinck) in the Chair]

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THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I am afraid I cannot report anything that the hon. Member would regard as progress on this difficult problem.

MR. NGALA: Arising from the reply, why cannot the Minister report any progress?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): The reason why no progress can be reported on this, Sir, is that the disparity which was confirmed in a sense by the Report of the Lidbury Commission, as accepted by the Government, is so wide, and it also affects the educational services in other territories, that the problem of approximating the two starting salaries, one to the other, is of extreme difficulty and is not susceptible to any easy solution.

MR. MBOYA: Mr. Speaker, is the Government suggesting that they are paid regardless of the fact whether they are brown, yellow, red or green?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I am not quite aware of what I have to acknowledge, whether it is the educational spectrum or the difference which now exists, but if one starts with a salary for African teachers which is geared to the market value of such teachers at the time when it was established, then we have a starting salary of £295. Similarly the starting salary for Asian teachers trained to the equivalent level was, again on the basis of market value and necessity to recruit such teachers, £471. This disparity is great and it is admitted, but it is not easy either with the revenues of the Government of Kenya being in the state they are to raise the starting salary of all African K.T.I's to £471, nor is it easy to induce serving teachers or those intending to enter the Asian schools to accept a starting salary of £295. I would ask the hon. Member to realize that this is a difficult problem. The Government admits the disparity and we are doing what we can to reduce it.

MR. MULIRO: Mr. Speaker, arising out of the Minister's reply, would the Minister tell us what the Kenya Government is doing to induce other Governments to do the same thing?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): This does not arise out of the original question which was purely factual.

MR. MBOYA: Mr. Speaker, would the Minister therefore now agree that the Kenya Government is in fact discriminating against the African school teachers.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I would certainly not agree, Sir.

MR. NGALA: Mr. Speaker, does the Minister remember telling the House some time ago that he was actually taking this up with the Minister in Uganda and the Minister of Education in Tanganyika? If that was true then could he not report briefly what happened, what the reactions of those two Ministers were?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): I certainly agree, Sir, that I did report to the House that I did discuss this difficult question with my colleagues in the other territories. I can only report that we have so discussed it and that none of us sees any similar or easy solution to the problem.

QUESTION NO. 187

MR. NGALA asked the Minister for Education, Labour and Lands:—

(*a*) Why the Minister has deemed it necessary to abolish supervisory teams for African education?

(*b*) What alternative personnel is the Minister introducing to ensure closer professional inspection among aided-private or D.E.B. schools?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): It has been apparent for some time that supervisory teams have found their growing task beyond their capacity and many of the duties originally assigned to them have had to be assumed in practice by education officers. A Committee of the Advisory Council on African Education has recommended their gradual elimination and it has been agreed with the voluntary agencies concerned that this process will be completed over a period of five years. The field staff of the Education Department is being increased to undertake all necessary work of supervision and inspection.

MR. NGALA: Mr. Speaker, Sir, arising from the reply, I understand that this scheme had started in the Coast Province. Would the Minister explain how

[Mr. Ngala]

the personnel difficulties will be overcome in Kwale District particularly?

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I cannot, without notice, deal with particular problems related to particular districts, but we have started with this innovation in the Coast Province because our experience indicates that that Province responds most readily to innovation.

QUESTION NO. 193

GROUP CAPT. BRIGGS asked the Minister for Works if the Minister will publish the Traffic Census average figure covering the years 1956, 1957 and 1959 in respect of the following roads:—

Makuyu—Sagana.

Makuyu—Fort Hall.

Mackinnon Road—Mariakani.

THE MINISTER FOR WORKS, (Mr. Nathoo): As the details are too long for a verbal reply I hope it will meet the hon. Member's purposes if I provide a written schedule of traffic counts at different times and places on these roads which can be included in the record of proceedings.

DETAILS OF TRAFFIC COUNTS

(*Reference Legislative Council Question No. 193 of 1959*)

Road Name and Number	Position of Traffic Count	1956 Month	Light Vehicle	Heavy Vehicle	Total	1957 Month	L.V.	H.V.	Total
Makuyu-Sagana B.16/2	East of Junction with Makuyu to Fort Hall Rd.—C.167/1	Jan.	172	76	248	Nov.	97	78	175
	Tana River Bridge	Dec.	88	61	159				
	Just South of Sagana	July	159	84	243	Jan.	165	111	276
		Sept.	127	53	190	Mar.	137	33	170
							147	48	195
Makuyu-Fort Hall C.167/1	North of Junction with Makuyu to Sagana Road—B.16/2					July	157	50	207
	Just South of Maragua					Dec.	208	61	267
	Just South of Fort Hall								
Mackinnon Road—Mariakani A.109/2	East of Mackinnon Road	May	71	37	108				
	N.W. of Mariakani	April	97	63	160	Feb.	98	63	161

Road Name and Number	Position of Traffic Count	1958 Month	Light Vehicle	Heavy Vehicle	Total	1959 Month	L.V.	H.V.	Total
Makuyu-Sagana B.16/2	East of Junction with Makuyu to Fort Hall Rd.—C.167/1	July	242	111	353				
	Tana River Bridge	Aug.	257	63	320				
	Just South of Sagana	May	94	50	144	July	160	46	206
		Dec.	165	61	226				
Makuyu-Fort Hall C.167/1	North of Junction with Makuyu to Sagana Road—B.16/2	July	163	152	315	April	128	205	333
	Just South of Maragua					April	185	243	428
	Just South of Fort Hall					April	378	210	588
Mackinnon Road—Mariakani A.109/2	East of Mackinnon Road	Sept.	115	35	150				
	N.W. of Mariakani	Sept.	152	58	210	June	90	51	141

[The Minister for Works]

I might also mention that these schedules are laid in the Library of the House for the information of all hon. Members.

GROUP CAPT. BRIGGS: Mr. Speaker, arising out of the reply, I would like to ask the Minister whether the decision of the Road Authority about the road via Fort Hall was based on the average figures over a period of years or whether it was based on a short term, what I might term, a temporary tendency.

THE MINISTER FOR WORKS (Mr. Nathoo): Apart from the necessity which I have mentioned, Sir, I have every confidence in the decision of the Road Authority with regard to this decision. The decision was not only based on traffic counts over a number of years because those counts are not available, but in the light of the available information I am quite satisfied that the Road Authority has come to the right decision.

GROUP CAPT. BRIGGS: Is the Minister aware that there are a great many people in the country who are dissatisfied as to this decision taken by the Road Authority, and will he consider the aspect that the only fair way to decide the routing of roads is on a basis of traffic density over a period of time? Also, will he reconsider the matter?

THE MINISTER FOR WORKS (Mr. Nathoo): I would also mention to the hon. Member that many more people would be dissatisfied if we did not proceed with the construction of the road to Fort Hall.

The other thing I would like to mention, Sir, is that I am in the process of making sure that we have over a number of months accurate traffic counts and of this the hon. Member is aware that this is on the list, but that much will depend on the priority of other roads.

SIR CHARLES MARKHAM: Is the Minister not aware, Sir, that the road to Fort Hall was included in this scheme? All we are asking for, Sir, is that the other scheme should go ahead, too.

THE MINISTER FOR WORKS (Mr. Nathoo): Mr. Speaker——

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): These supplementary questions are getting away entirely from the original question which was entirely a factual question.

DR. KIANO: (Inaudible.)

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That does not arise out of the question at all.

QUESTION No. 195

GROUP CAPT. BRIGGS asked the Minister for Works what delay is like to be incurred in completing the bituminization of the Makuyu—Nyeri road as the result of the decision to route it through Fort Hall?

THE MINISTER FOR WORKS (Mr. Nathoo): Six weeks to two months.

SIR CHARLES MARKHAM: Mr. Speaker, would the Minister tell the House how he can give us such a figure when his own department has not yet completed the survey of the necessary improvements to be made to the road?

THE MINISTER FOR WORKS (Mr. Nathoo): I am basing my figures on the fact that approximately £100,000-worth of work is being done each month. The difference between these two figures is about £84,000, so to be on the safe side I have said that the delay will take from about six to eight weeks.

SIR CHARLES MARKHAM: In view of the disquiet expressed in previous questions on this subject, Sir, would the Minister agree to defer this important decision until the House has had a chance to discuss the matter?

THE MINISTER FOR WORKS (Mr. Nathoo): The hon. Member is aware that so far as the other road is concerned, Sir, the decision has already been made by the Road Authority and I do not propose to revoke it.

SIR CHARLES MARKHAM: We would like a more satisfactory answer, Sir, otherwise we may see fit to raise the matter on the adjournment.

QUESTION No. 197

MR. KHAMISI asked the Minister for African Affairs what steps have been, or are being, taken to collect Personal Tax from unemployed women of all races in Kenya, other than Africans?

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): In accordance with the provisions of the Personal Tax Ordinance whenever it appears to a collector that a person of any race whatever is liable to tax, a demand is made for payment. Thereafter it is the responsibility of the individual concerned either to pay the tax or satisfy the collector that no tax is due. Subsection 19 (1) (*b*) exempts every woman whose personal income does not exceed £60 per annum, and subsection 19 (1) (c) every married woman living with her husband.

MR. KHAMISI: Mr. Speaker, Sir, arising out of that reply, is the Minister aware that widespread sweeps are made in my constituency with regard to unemployed women being virtually forced by the Government to pay taxes whereas women of other races are left to go free.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, I was asked a specific question. May I read it out? It reads: "What steps have been, or are being, taken to collect Personal Tax from unemployed women of all races in Kenya, other than Africans?" I think that I have already replied to that question.

MR. KHAMISI: Mr. Speaker, I am not satisfied that the Minister has replied as to what steps are being taken to collect taxes from other women.

THE MINISTER FOR AFRICAN AFFAIRS (Mr. Johnston): Mr. Speaker, Sir, as I have already said in my original reply, a demand is made by the collector and it is then up to the individual to satisfy the collector as to whether he or she has the means to pay if he or she is not exempt from paying it.

SPEAKER'S RULING ON ADJOURNMENT

SIR CHARLES MARKHAM: Mr. Speaker, before we come to the next item, Sir, I wonder if I could ask for your guidance? This is the last afternoon of this session. We had a very unsatisfactory reply from the Minister for Works. Are we entitled to ask for an adjournment tonight, Sir? We do not think that we want to, but there are obvious reasons which may force us to do so.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): There are two types of debate on a Motion for adjournment, the first under Standing Order 12, where an adjournment debate can take place in the middle of the day's sitting, but for that, amongst other things, I have to rule that the matter is one of extreme urgency and of public importance, a ruling which I would not give on this occasion.

The other type of Motion for the adjournment can be moved under section 9 (4) in which case the debate takes place on the conclusion of the day's business, but here again you are supposed to give me notice in writing and it is the Speaker who allots the day.

In this case, as it is the last day of the Rump Session it would, in my opinion, be wrong to have an adjournment debate this evening. Moreover in any event the provisions of Standing Orders 10-2 would not have been complied with. You could however no doubt find a way of raising the matter on the adjournment early during the next session should you wish to do so.

VALEDICTORY: SIR ERNEST VASEY

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Before proceeding with the business of the day, that is Order No. 5, I propose to call on Mr. Coutts who wishes to refer to the imminent departure from this House of one of our oldest Members. I suggested that Mr. Coutts might wish to do so at this time rather than at the end of the sitting as this is the last day of the session and we might end the sitting with a very empty House.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, I think it would be wrong for this House to rise without my making some remarks about the impending departure both from the Government Front Bench and also from this House of Sir Ernest Vasey.

Sir Ernest Vasey, as everyone knows, has been associated with this House for many years. I believe I am right in saying that he was first in that part of the House which is opposite to me now, but for many years now he has been on the Government side, first of all as a Member and later as a Minister. I

[The Chief Secretary]

would like to say two things about him. The first is his undoubted brilliance as a Minister for Finance in Kenya and the enormous amount of work that he has put in in the difficult period which has confronted Kenya during the last six or seven years.

Sir, I was a person who had the misfortune in another part of the world to try to administer a Colony which was Treasury-controlled.

I say this because it is normally the practice of the British Treasury if it gives money to a Colony to exert the tightest possible control on that Colony. One of Sir Ernest Vasey's greatest contributions to Kenya in my view is the fact that despite the fact that during these difficult years Her Majesty's Government in a most generous way was able to assist us, nevertheless he was able to convince them that it was not in the best interests of Kenya that British Treasury control should be imposed on it. And I think, Sir, as a Colony we owe him a great debt of gratitude for that.

We also owe him a great debt of gratitude for the fact that he has in a most extraordinary way—certainly extraordinary to me—been able to prise money out of the most unsuspected and unsuspecting sources. How he does it I just do not know, but he obviously must have a small wand or something in his left-hand pocket which he is able to wave and mesmerize those who generally speaking are not particularly willing to lend money. But in so doing, he has been able to allow the Colony of Kenya to go on with a development programme which has been of vital necessity to the Colony at this particular time when it is recovering from the effects of the *Mau Mau* rebellion. That, Sir, I believe, is his greatest contribution, but I think we as Members of this House should be grateful to him for the enormous amount of time he has taken to master the Parliamentary procedure which we have and the way in which he has taught us all many of the proper lines of the Mother of Parliaments. And I had reason to say at the Sessional Committee the other evening that we should be most grateful to him for his enormous sagacity and his help in many affairs in dealing with this House.

Therefore, Sir, on behalf of the Government Front Bench and on behalf of the House as a whole I would wish him and Lady Vasey the very best of luck in whatever sphere he wishes now to enter.

MR. COOKE: Mr. Speaker, on behalf of my European colleagues on this side of the House, I would like to join with my hon. friend in what he has said this afternoon. My old Budget antagonist, Sir Ernest Vasey, is a fine Parliamentarian, probably—with the exception of yourself, Sir—the greatest that this young Parliament has yet produced. He had also all the qualities of a House of Commons man, a finely modulated voice, clear and lucid diction, a great moral courage, and a real love of the cut and thrust of debate. But perhaps above all, Sir, he had that priceless gift, shared by most successful Members of Parliament and by all lawyers, the ability to argue a case with the vehemence and seeming conviction which he had employed in arguing the exact opposite a few months before! I am sure my hon. friend will take no exception to my remarks about his ability to do this.

Well, in wishing my hon. friend farewell, I feel, Sir, that it is not really farewell; it is merely *Ave et salve*, hail and farewell, because I think most of us expect and hope that he will be back perhaps on this side of the Council before very long. In fact, Sir, there are rumours that he is thinking of joining one of the warring parties on this side of the House and I heard even today suggested that he might join the party of my gallant friend, Group-Captain Briggs! But whatever party he does join, Sir, I think we will all agree in wishing himself and Lady Vasey and their children the best of good luck and good fortune.

MR. HASSAN: I was given to understand today that Mr. Cooke, being the most senior Member of the Opposition Benches, that he would be standing up to speak for the whole House in the Opposition. But I was surprised to hear just a minute ago that when he stood up he spoke only for the European Members.

MR. COOKE: Sorry. My mistake.

MR. HASSAN: And I think I would like to take this opportunity to speak a few words myself.

[Mr. Hassan]

The Chief Secretary has said all that is necessary about the most efficient and capable way in which the Minister has performed his duties for this House. I need not add anything more except to associate myself with what the Chief Secretary said. But, Sir, one thing, I believe, my colleagues on this side would agree with me in, is that we always looked upon the Minister for Finance as one of our greatest friends. He has not only been very, very friendly with us in giving us friendly advice whenever we needed some help in our most difficult problems but at the same time he never hesitated to help and assist in affairs regarding finance and financial problems in so far as it concerned our people. And we feel that to us it is going to be one of the greatest losses when he retires from the Ministership. But we hope, Sir, that he will join our ranks and strengthen our Opposition to fight the battle we are fighting for the good of all groups.

With these few words, Sir, I would like to wish him the best of times to him and Lady Vasey and for all the good wishes and the friendly relations that he had with us all.

MR. MULIRO: Mr. Speaker, Sir, on behalf of the Kenya National Party and the whole of this side, I must say that we listened very attentively to the Chief Secretary telling us about how Sir Ernest Vasey has carried us through all these different problems and it was a great pity that the senior Member on our side, Mr. Cooke, got up to speak as a European Elected Member and the speaker who has just spoken, spoke as an Independent. So now I would like to say, on behalf of the African Elected Members of this House and the whole side that we wish Sir Ernest Vasey a very nice rest and if he makes up his mind to join the United Party on this side we shall very much welcome him on this side.

With these remarks, I associate myself very much with what the Chief Secretary has said.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I also wish wholeheartedly to associate myself with what has been said, Sir Ernest Vasey is one of my oldest colleagues in the Council. We have worked together for very many years.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, I would like very much indeed to thank you personally, Sir, for the very nice things that you have said about me. You and I, Sir, have had the privilege of working together for very many years and I think, Sir, we have come to know and respect each other over the period of years even when we did not agree with each other. And I would like to say now, Sir, how much I appreciate my association with you.

Sir, it is 14 years this month since I was first elected as a European Elected Member to serve in this Council. It has been a privilege to serve Kenya in the position to which I was eventually called. It has been a pleasure to serve this Council. I have enjoyed every moment of it, the conflicts, the successes and the defeats, because they have all taught one something during that period.

Sir, I can only conclude by saying to all my friends, "Thank you very much indeed". Although I shall be outside the Council, I trust that we shall still remain friends. I would only say that in so far as Kenya, the Government and the Council are concerned I have tried to do my best for all communities and for my country.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Mr. Odinga, you can have two minutes.

MR. ODINGA: Thank you very much, Mr. Speaker. I thought, Mr. Speaker, on this very important occasion when we pay tribute to one of the leading members of this country that I should not go without saying something on behalf of the African community. We understand that it is always very difficult to pay tribute and really a very fitting tribute to a member of the Government Front Bench, but I think this would be the special occasion when we have to do it because we believe that Sir Ernest Vasey has been exceptionally good—as the Chief Secretary has just said—in trying to get the money for this country. And I hope that his example will be the example for all those people who will come after him.

[Mr. Odinga]

He has been a friend of nearly everyone and very considerate to people's problems and people's difficulties and as such I think that he was most ideal as Minister for this country and as such, Mr. Speaker, I thank him awfully on behalf of the African community and my colleagues here for what he has done.

MOTION

EAST AFRICA HIGH COMMISSION —ORDER IN COUNCIL

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, I beg to move that this Council prays that Her Majesty be pleased to amend the East Africa (High Commission) Order in Council, 1947, so as to provide for the continuance in operation of Parts III and IV of the said Order (which related to the East Africa Central Legislative Assembly and to legislation and legislative procedure) for a further period of four years beyond 31st December, 1959.

Sir, a similar Motion was passed in May, 1951, and again in November, 1955. I would like to draw hon. Members' attention to the HANSARD report of 1st November, 1955, when this particular Motion was last debated. I think all Members will find there the arguments—because it was a very full debate—the arguments of both sides of the House, as far as I remember, in favour at that time of prolonging the life of the Central Legislative Assembly.

There are one or two points, however, in moving this Motion that I would like to make; that is, that as regards the constitutional position of the Central Legislative Assembly, it was established in 1947 by an Order in Council which brought the East Africa High Commission into being. Now, the East Africa High Commission at that time was established on a permanent basis but the Central Legislative Assembly's initial life was for four years only on the understanding that the Order in Council would be amended if the territories so wished. As I said, the life of the Central Legislative Assembly has been prolonged twice, and we are now nearing the end of this third period. If we wish to preserve the Central Legislative Assembly we must make provision for a fourth period. Uganda passed a motion very much in similar terms to that which I have just moved on 21st September of this year, and they have agreed that the life of the Central Legislative Assembly should be prolonged for a further period of four years.

The High Commission, as everyone knows is the executive part of the machinery which is set up by this Order in Council to administer what, in fact, are the East African common services, and for that reason the Central Legislative Assembly has been called the "parliament of the common services". It is an interterritorial legislature which deals with limited subjects brought by common agreement within the ambit of the High Commission. It provides for representation of territorial legislatures. It is a body to which the principal officers of the High Commission are answerable and which establishes the budget of the High Commission, and it is a forum for debate, compromise and settlement of disagreements by the vote of representatives of our participating territories. All these functions have to be carried out, and there is general agreement that they should be carried out by an assembly which stands for the High Commission in a relation similar to that in which a territorial legislature stands to a territorial government. There may be differences of views from time to time as to what is the best composition of that assembly, and there may also today, or at any other, time, be differences of views as to the length of time for which its life should be assured by the Order in Council, but at the present moment, the Kenya Government is prepared to discuss these questions with other territories, but does not wish to initiate any changes, and therefore, this Motion is only for the continuation of the Assembly for a further conditionally established period of four years. As I said at the beginning, Sir, I think all the arguments in its favour have been adequately set out in previous debates on this matter, and I do not wish to take up more of the time of the Council today, and therefore I beg to move.

MR. CONROY seconded.

Question proposed.

MR. ALEXANDER: Mr. Speaker, Sir, from time to time there is directed at

[Mr. Alexander]

Kenya from the other East African territories considerable criticism about our role, not only with the High Commission, but in the Central Legislative Assembly, but within the economic affairs of these territories. I believe that much of this criticism is the result of misunderstanding. Now I do believe, Sir, that if only the territories would provide an economic focus a great deal of this misunderstanding could be removed. There is in commerce and industry a clear conception that economically the territories are bound together, and commerce is doing its utmost to make that quite evident.

The problem is the problem of uplifting some 20,000,000 people and the problem of co-ordinating all our resources in all the territories to do so. The focus—that I believe—the economic focus I believe Government could bring to bear on this would have an immediate effect of showing our complementary nature one to the other, would be the transfer as a High Commission service, as a matter for debate in the Central Legislative Assembly, of the Currency Board of East Africa from London to these territories. I believe that that perhaps, more than any economic focus that could be generated by Government would do more to solidify our economic interdependence; I say, this Mr. Speaker, because it is quite clear that throughout the British Commonwealth perhaps after the common language, the greatest influence in showing our interdependence is the whole system of the sterling area. It is because we know in business and economically that we have got to channel through one financial system that tends to bring us closer and closer together, and if I may just draw on that illustration, and bring it closer to home here, I believe that the transfer of the Currency Board could do the same, in a way, for East Africa, and I do urge upon the Minister when he replies to tell us what progress has been made in this particular matter, because I do believe in these times when there are signs of disintegration in the Central Assembly and the High Commission services, that a dramatic impact of this nature needs to be made in order to redeem the position.

One other point, Mr. Speaker, and it is to ask what arrangements are being made within this Motion by our Government to be certain that if there is any withdrawal of support by any of the other territories, then Kenya, itself, will not be left with a burden which would be quite intolerable for us. For example, I take the case of the research centre at Mugugu. That is supported by all the territorial governments. If there was any withdrawal of support, undoubtedly Kenya, because the physical assets are here, would be expected to make certain that those services were continued, and certainly would have a very great obligation to the personnel to whom the territories are committed, and I would like the Minister to tell us what arrangements are being made so that the responsibility of the other territories does continue a long time, after any withdrawal of financial responsibilities that may take place, so that Kenya, if this worst should happen, and having given earlier on my idea of how to prevent the worst happening, but if the worst should happen that Kenya will not find itself with an intolerable financial burden.

Mr. Speaker, I beg to support.

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): Mr. Speaker, I do not propose to detain the House at length, but there were one or two points which the hon. Member for Nairbi West raised, to which I felt that as a Member of the Central Assembly, one who has been a Member for sometime, I could best attempt to reply.

I found myself in almost complete agreement with what he said about the economic affairs of East Africa moving together within a common focus of economic law. Notwithstanding the very natural friction which develops between the three territories that in many respects have a degree of sovereignty—a sovereignty—which is not, in any way, shared by the High Commission—it is natural that there should from time to time be friction—nevertheless, it is my profound belief that economic forces are such that, what to me is a self evident self interest within the three territories will promote greater union.

On the point my hon. friend raised about the Currency Board, I believe the Minister for Finance did express certain

[The Minister for Commerce and Industry]

views about this some time ago. I am quite sure that with his usual energy he has followed up the matter. I agree that the transfer of the Board might have a propaganda effect of considerable value. Nevertheless, I would make this observation, that the question of its revenue within the East African territories might, in itself, promote the kind of friction to which I have referred.

MR. ALEXANDER: (Inaudible.)

THE MINISTER FOR COMMERCE AND INDUSTRY (Mr. Hope-Jones): Some such thought had flashed through my mind, as it has flashed through that of the hon. Member. I think too that the analogy he drew with the sterling area was most interesting.

On the question of the possible withdrawal of support, I would refer my hon. friend to the debate that took place in the Central Legislative Assembly when we met in Dar es Salaam a matter of four or five weeks ago. It had to do with the Lake Victoria Fisheries Service, which was a High Commission service which has now been disbanded. The first principle agreed was that all contractual obligations should be honoured in full. That is being done in respect of the staff. The second consideration was that those territories which felt that a service was necessary would offer to take staff over. There was no tendency whatsoever on the part of any of the three governments whether they wished the service to continue as an interterritorial service or not, in any way to try to go back on their obligations financial or otherwise. I think it is very important that this point is made if only because any lack of confidence on the part of any High Commission staff would have a most unfortunate effect. I do therefore want to re-emphasize that there was no question because a service changed its character of any attempt to minimize obligations contractual or otherwise.

Now, Sir, I do not think it is necessary for me to say any more as I have noted that my hon. friend supported the Motion.

MR. TYSON: Arising out of the comments which were made by the hon. Member for Nairobi West, I think there are other items outside the Currency Board question which he has raised which merit far more serious consideration.

Experience ever since the establishment of the Central Assembly and the High Commission, from a commercial point of view, has shown how many mistakes were made when Paper 191 was abandoned in favour of Paper 210. This country particularly has suffered considerably, and I think the other territories as well, for that matter, by the deletion of certain items from the scheduled services which were transferred to the respective territories. We have been discussing this session the Companies Ordinance, for example. Originally, when Paper 191 was published, commercial legislation was to be what we called a "scheduled service"—an interterritorial service. That was deleted when Paper 210 was published, with the result that we have the position today where each territory has been legislating separately in respect of company legislation, and the same situation has arisen, for example, in regard to road transport, where we have run into all sorts of difficulties which would have been avoided had the original idea of including road transport as one of the scheduled services been adopted. Experience, I would suggest, Sir, has proved quite conclusively the necessity of extending the life of the Central Assembly and the High Commission for a further period of four years.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, I do not think there is much I need say. There were two main points made by the hon. Member for Nairobi West which were adequately dealt with by my colleague, the Minister for Commerce and Industry, and in answer to the hon. Nominated Member who has just spoken. I would merely say this, that in extending the life of the C.L.A. at this stage I have no doubt that there will be considerable discussion as to the various functions which it takes within the ambit of its present constitution, and I have no doubt that the various points which he has made now can be discussed during the next two or three years. I have nothing else to add, Sir, and I beg to move.

The question was put and carried.

BILL

THIRD READING

The Evidence (Amendment) Bill

MR. CONROY: Mr. Speaker, Sir, I propose to follow a slightly unusual course in speaking to this Motion. Sir, this Bill, as you will recall, had a very full consideration in the Committee and on the Second Reading, and as I understand it two objections were raised on the other side.

One was the objection of principle that no confessions to any police officer, irrespective of his rank, irrespective of whether they were voluntary and true, should be admitted in evidence. If a criminal wished to confess to the Inspector-General of Colonial Police that confession should not be provable in evidence. Sir, that was the view expressed opposite the other day by some hon. and learned Members, and that view, because it is illogical and because it is technical and because it might allow guilty people to escape on a technicality, could not commend itself to the Government. Other hon. Members, however, raised a rather more practical objection, and that is the second one to which I wish to come, and that is they said there is a certain amount of danger in allowing too junior an officer to take confessions. And, Sir, on that second point Government was prepared, as the Chief Secretary said in connexion with another Motion a few moments ago, to "debate, compromise and settle."

Sir, unfortunately owing to the course which events took on Friday, the hon. and learned Specially Elected Member, Mr. Mangat, objected to the matter being recommitted, and having exercised his power of veto, then there was no authority in the Council to recommit the Bill at that stage. Therefore, Sir, I regret there is only one course left to me. I had hoped to be able to reach some reasonable form of compromise with hon. Members opposite, but the door was slammed in my face, and there is only one course open to me, therefore, and that is to move that the Bill be now read a Third Time.

MR. WEBB seconded.

MR. MANGAT: Mr. Speaker, Sir, I beg to move the following amendment to the Motion before the House. That the word "now" be deleted and the words "upon this day six months" be added to the end thereof.

Sir, this amendment affords the Government an opportunity to extricate itself gratefully from the precarious position in which it has chosen to entrench itself. It is no credit to this legislature while it professes to act under the rule of law to adopt a measure of this nature. In moving the amendment my whole purpose is that the Government should not play the Japanese fool and commit hara-kiri for the sake of saving its face. In any event, Sir, the unofficial side does not wish to encourage it in that happy dispatch.

You will remember, Sir, that last Friday the suggestion was made that the Bill be recommitted to a Committee of the whole Council. The learned Minister for Legal Affairs has told us that he intended to move a compromise, and the compromise was that he wanted to substitute the words "assistant inspector" with the words "cadet inspector".

MR. CONROY: I am sure the hon. Member will give way. I did not say anything of the kind, Sir. It was never my intention, and I am sure the hon. Member does not wish to misrepresent me.

MR. MANGAT: Not in the least, Mr. Speaker. That was what I was told by the learned Minister himself. That if the Bill comes back to the Council that he wanted to substitute "cadets". He says it is not the "cadet" then probably it would be somebody else, yet below the rank of assistant superintendent, otherwise a compromise would not be needed. Whatever he intended, all that could happen was that he would still be retaining 158 chief inspectors, and 540 inspectors Grade I, and 178 inspectors Grade II, and one cadet inspector. If we retain these, certainly we would be retaining about 600 people who would still be competent to receive confessions under this Bill. I hope when the Minister replies he will tell me how he would reduce that figure if it was a compromise.

Now the Opposition did not accept that suggestion because it felt that on a matter of principle there could not be any compromise, and probably you will

[Mr. Mangat]

also recollect, Sir, that in the fetaliation the Chief Secretary stood up and said this: "Mr. Speaker, I would like to point out, Sir, that quite apart from it dying, if they insist on this it will be passed." Now that was the attitude of the Government to this Bill. That utterance of the Chief Secretary reminded me of that scene in Beaumont and Fletcher's "Sea Voyage" where Juletta frowns upon the stout captain and his crew and says, "Why, slaves, 'tis in our power to hang ye." And the captain replies, "Very likely. 'Tis in our powers, then, to be hanged and scorn ye." Now that is the attitude, Mr. Speaker, in which the Government has forced the Opposition. Very well, proceed with it, and we will have this passed through the Third Reading under those conditions in which the captain was willing to be hanged. The official majority can force this Bill through the Third Reading, but let it not forget that by doing so it will stand before the public of Kenya naked, with the word "decree" tattooed on its hairy chest, because it is not a rule of law that is being promoted, it is a decree, and let them have it.

A moment ago, Sir, I mentioned Juletta. I am sure that in her rational moments that is when she was not threatening defiant captains and crews with her gibbet she was just as sweet and charming as our Chief Secretary is when he is not threatening the Opposition with his steamroller; but circumstances alter faces. I have a very happy recollection of an incident, which occurred in much more modest surroundings than these. It was some 20 years ago. I was pleading in a criminal case before a handsome young magistrate in a small courthouse, I think at Kiambu. The result of the case is of no consequence, but I remember that I was deeply impressed with the intelligent comprehension of the magistrate of all points of law, and I remember saying to myself "this young man will go very far". The name of the magistrate was "Walter Coutts". Now, Sir, when I heard him say those words on Friday last, it made me think that perhaps one is able to understand and appreciate the rule of law better when one sits on the wooden bench of a small court than when one sits astride the threshold of a Government House. It is the altitude of administrative summits which warp the minds of men of discernment.

Now, Sir, coming to the Bill itself, I might say at this moment Sir, that I intend to speak for about 20 minutes, but if I feel that I am sustaining the attention of hon. Members I may take five or ten minutes more.

The learned Mover has reiterated as many times as he stood up to speak after he proposed the Bill in the Second Reading, that the English law of evidence was much more suitable to this country than the Indian law, and the "Judges' Rules" were a panacea for all the ills which afflict the procedures in the Evidence Act. I thought the Minister was going to stand up and probably say something, but he did not say anything, and I am glad he kept quiet.

Now, Sir, what are these "Judges' Rules" which have been repeated so often in this House and simply because they came from the Minister for Legal Affairs perhaps the hon. Members have presumed that there must be something very good which could satisfy our needs. I do not wish to go through them all, but I wish to show the hon. Members in a very condensed form what they are. Sir, I am reading from the Journal of the International Commission of Jurists, from the report which they made after their conference at New Delhi in January this year. It is on page 31 of Volume 2, No. 1 of that journal. I quote:—"In the English Report on the Rule of Law submitted to the International Commission particular importance is attached to what are known as the "Judges' Rules". According to the report these rules are rules of practice, and of no binding authority, although the judge has a descretion to exclude any confession obtained contrary to their spirit. The effect of the rules is as follows. (1) the police officer may question a suspect; (2) once he has decided to charge a person he should caution him; (3) persons in custody should not be cross-examined but merely questioned after caution if that is proper and necessary in the circumstances; (4) no question should be put to a person making a full statement save for the purpose of clarifying ambiguity; (5) persons in custody should not be confronted with each other

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or informed by the police of each other's statements. The copies of their statements should be given to them without comment." That, in short, is what is meant by the "Judges' Rules". For the benefit of those gentlemen who wish to go into them more fully I may say that they are laid down on page 422 of Archbold Criminal Procedure Evidence and Practice, Edition 34.

Now in the commentary, Sir, I will just read one very small extract. At page 424, the learned authors say:—"In as much as the "Judges' Rules" are not rules of law, but only rules for the guidance of the police, the fact that a prisoner's statement is made by him in reply to a question put to him by a police constable after he has been taken into custody without the usual caution being first administered, does not, of itself, render the statement inadmissable in evidence." Sir, that is one of the extreme cases. There are cases supporting that view coming up to very late, even 1951, but at the same time at page 425 it is said that the practice has, however, been strongly condemned. That is in many other cases, but the conclusion we come to is this. It is always within the discretion of the judge to exclude a statement in certain circumstances.

Now when the hon. Members examine the "Judges' Rules", and also not the very wide discretion that a judge has of either admitting or excluding confessions, then they will appreciate what a tremendous amount of responsibility rests on the policemen who take those confessions and produce evidence before the court.

Now, Sir, in as far as the law itself is concerned, what sort of law is requisite? It is stated in the same journal, which I quoted before, at page 13, under the heading "Certaining of Criminal Law". "It is always important that the definition and interpretation of the law should be as certain as possible, and this is of particular importance in the case of the criminal law where the citizen's life or liberty may be at stake". Again, Sir, at page 14 of the same journal, under the heading, "Examination of the Accused", it says, "No one should be compelled to incriminate himself. No accused person or witness should be subject to physical or psychological pressure, including any thing calculated to impair his will or violate his dignity as a human being." The last extract I wish to read from this journal is at page 32 which cites the opinions and remarks of Lord Macdermott, Lord Chief Justice of Northern Ireland. It says this: "The discovery and punishment of crime are functions which produce a dramatic preponderance on the part of the State. Against the wealth and resources of the prosecution the accused stands relatively poor and alone and more often than not his case and his personal problems arouse little general interest or concern. In such circumstances the urge to get at the truth and to convict the guilty which excites most prosecutors may be armed with a great variety of weapons. The choice of these is important for it cannot but throw light on the nature of the system to which it belongs, on the extent to which the system recognises the dignity and worth of man and on the place which it accords to the Rule of Law."

Now, Sir, let us examine for a moment how certain and exact is the English Law of Evidence. Now, quoting from the Report of the select committee which drafted the Evidence Act of 1872, that select committee was presided over by the hon. Mr. James Stephen, in those days, but I suspect from his initials that he is the same person who became Sir James Fitzjaines Stephen, one of the greatest authorities on the law of evidence. He was assisted by seven other members, jurists of eminence and all of them Britishers. Now, this is what they say, and I am quoting from page 1240 of the third edition of *Monir on Indian Evidence*, The Commission said this: "The English law of Evidence appears to us to be totally destitute of arrangement. This arises partly from the circumstances that its leading terms are continually used in different senses and partly from the circumstances that the law of evidence was formed by degrees out of various elements and in particular out of the English system of pleading and the habitual practice of the Courts of Common Law."

Now, when this report went before the Viceroy and his Executive the hon. Mr. Stephen spoke thus on this draft. I read from page 1254 of the same book. He said, "I suppose that I may assume as generally admitted the necessity which

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exists for legislation on the subject of evidence in British India. It would be exceedingly difficult to say precisely what at the present moment the law on the subject certainly is. To some extent the English law of evidence appears to be in force in British India. Whatever may be the theory it both is and will continue to be so in practice for if the English law of evidence has not been introduced into this country English lawyers and quasi-lawyers have and they have been directed to decide according to the law of justice, equity and good conscience. Practically speaking these attractive words mean little more than the imperfect understanding of imperfect collections of not very recent editions of English text books. It is difficult to imagine anything much less satisfactory than such a state of law as this. A good deal may be said for an elaborate legal system well understood and strictly administered. A good deal may be said for unaided mother wit and natural shrewdness, but a half and half system with a vast body of half understood law, totally destitute of arrangement, and of uncertain authority, maintains a dead-alive existence, is a state of things which it is by no means easy to praise." In the same submission, further on, he says this, at page 1259. "So far I have tried to prove the proposition that the English rules of evidence are of real solid value, and that they are not a mere collection of arbitrary subtleties which shackle, instead of guiding, natural sagacity. I pass now to the next proposition, which is, that these rules are expressed in a form so confused, intricate and lengthy, that it is hardly possible for anyone to learn their true meaning otherwise than by practice, an inconvenience which may be altogether avoided by a careful and systematic distribution. For the proof of this proposition, if indeed it is disputed, I can only refer in general to the English text-books on the subject. They form a mass of confusion which no one can understand until, by the aid of long practice, he learns the intention of the different rules of which they heap together innumerable and often incoherent illustrations. I am far from wishing to impute this as a fault to the industrious, and in many cases, distinguished, authors of these compilations. They, like all other hand-books are intended for immediate practical purposes, and are mere collections of enormous masses of isolated rulings generally relating to some very minute point. It was necessary, therefore, that they should be arranged, father with reference to vague catch-words, with which the ears of lawyers are familiar, than with reference to theoretical principles which it has never been worth any lawyer's while to investigate."

"The condition of the law of evidence, as well as the condition of many other branches of the law of England, affords continual illustrations of the extraordinary intricacy and difficulty which arises from the combination of the very greatest practical sagacity which an absence of sound theory, or, what is still worse, with the presence of unsound theory. No one who has not seen it could possibly imagine how obscure the meaning of a clever man may become when he is forced to squeeze it into the terms of a theory which does not fit it and is not true."

Mr. Speaker, the hon. Members, after hearing all this, I am sure will be convinced that it would be ridiculous to think that a policeman, an assistant superintendent, or even the Inspector-General of the Colonial Police, would be able to understand the intricacies of the law of evidence of England, and especially when that law is going to affect unsophisticated Africans who will probably be under the charge of police who have to consider whether to make a charge or not. It is certainly impossible that this protection can be extended to them by the "Judges' Rules", which are not law, which are to be interpreted by the particular policeman, and then by a Judge with due discretion, to see for himself whether a particular confession is to be admitted or not.

I hope, Mr. Speaker, I have said enough to convince hon. Members that it would not be wise to adopt this procedure. Indeed, Sir, it was a mistake to have allowed assistant superintendents, or even policemen of higher rank, to receive confessions when the law was brought into force in the middle of 1952.

Now, Sir, the hon. Minister for Legal Affairs, when he was mentioning the Evidence Act of 1872, mentioned it as if it were something reprehensible which

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had just occurred. That Act, as I said before, was carefully arranged by a select committee composed of eminent jurists and it worked for 25 years before it was adopted in Kenya by the East Africa Order in Council of 1897. That Order in Council was repealed later by another one of 1902, but the application of Indian enactments was retained therein except for the replacement of those enactments to any extent by Ordinances of our own. I think that this Legislative Council was established in 1906 and until one or two sections out of a total of 167 sections of the Indian Evidence Act were amended in 1952, for full 50 years the Evidence Act of India worked in this country. Then, probably just before the Emergency, Sir, when the amendment came into force, the Government might have felt that they wanted to have the relaxation of that law, and in the Emergency Regulations of 1954 they extended that privilege to assistant inspectors, and that is sought to be made substantive in our law now. So, Mr. Speaker, I fail to understand how it can be contended by the Government that although they have been working under the present law for the past five years they still find difficulty in getting inspectors, police officers, "easily accessible" for the purpose of getting confessions. I should have thought that the Government would have repealed that amendment which they brought forth in 1952.

Now, Sir, if the Government must force this Third Reading through, then I would ask them at least to advise the Governor to reserve this measure for the ratification of Her Majesty, and if the Governor decides to put his signature on the Bill as a token of the assent of Her Majesty, then I will say that it may happen that there will be a petition for its disallowance.

Now, Sir, I cannot sit down without expressing my deep regret that a conflict has arisen between the Law Society of Kenya and the Attorney-General. It was absolutely unnecessary; it could have been avoided; and it can be avoided now if only the Minister for Legal Affairs will refrain from opening his Pandora's box.

Lastly, Sir, I would suggest that, as this Bill is not a financial measure, nor is it a major measure of Government policy, the Chief Secretary should withdraw his official whip so that intelligent men can act intelligently.

Sir, I beg to move this amendment.

MR. SLADE: Mr. Speaker, Sir, I beg to second this amendment.

Sir, it is clearly common ground with all Members of this Council that no confession of an accused person should ever be admitted in evidence unless it is voluntary. The only point on which we are arguing is whether a confession to a police officer is likely to be voluntary or not. Now, from the side of the Minister for Legal Affairs it is urged that that can always be tested by ordinary examination of the court and it is quite possible that a court may be satisfied that a confession to a police officer has been voluntary and can therefore be admitted. On this side of the Council the worry of most of us is that we have in our minds, and in the minds of the body which represents the whole of the legal profession, and in the minds of a great many members of the public, a very deep-rooted conviction that confessions to police officers are most unlikely to be voluntary in the sense of not induced by any hope or any fear; so unlikely that it is the greater danger to allow them in evidence at all, rather than risking perhaps that a few guilty men may escape. That outlook, Mr. Speaker, on confessions to police officers, was the basis of the Indian Evidence Act, one section which excluded altogether confessions to police officers. I would remind hon. Members that that Indian Evidence Act was not a concoction of local pundits with special views on conditions in India, but it was, as my hon. friend pointed out, the result of deliberations of very distinguished English jurists who, despite the English rules, thought that this statute, prohibiting altogether the admissions of confessions to police officers, was an improvement on those rules; and that has been the law of this country until it was changed in 1952, when the principle was abandoned by allowing confessions to police officers of and above a certain rank. Now, we say, Mr. Speaker, and we have tried to say, all through the Second Reading and the Committee stage, that although the principle may have been changed to allow certain confessions to

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police officers, it must not be changed any further; in fact, it should not have been changed at all, and the whole question must be reviewed when we come to consider the new law of evidence which the Minister for Legal Affairs has promised to us, and pending that consideration we cannot possibly, as a matter of principle, concede any extension of the present law, which allows any confessions to any police officers to be given in evidence.

Now, Sir, I only have three fairly short points to make. The first is with regard to the statement of the Law Society that in their experience the confessions to police officers being admitted in evidence tended to work injustice, or words to that effect. That was, Sir, the express unanimous opinion of a general meeting of the Law Society. The Minister for Legal Affairs has questioned its value, on the ground that members of the Law Society were not thereafter able to come to him with specific cases of injustice arising from confessions to police officers. Now, Mr. Speaker, I do contend that that is a false argument: In the first place one can imagine lawyers are not very anxious to dig up particular facts of past cases in which they have been concerned, and which their clients may not like to be done. In the second place it is extremely difficult to prove that a confession to a police officer has not been a voluntary confession, particularly if a court of law thought it was; but there may be, all the same, a very deep-rooted suspicion, there might be almost a certainty, that it was not voluntary. I suggest, Mr. Speaker, that it is that sort of experience that members of the Law Society have in their minds. What they are speaking of, Sir, is the general experience of people in practice—of any profession—which leads to certain instincts amounting at times to conviction, and that is not special pleading because I suggest it is exactly that conviction that arises from general experience that has caused another rule of evidence, and that is the rule that the evidence of an accomplice should not be accepted without corroboration. I should imagine it would be very hard to prove that the evidence of an accomplice is untrue simply because it is not corroborated, but I suggest with the utmost confidence that the reason for this strong rule of law is a certainty in the minds of those who practice the law that accomplices, by the nature of their circumstances, are likely to be unreliable in their evidence, Sir, with regard to matters in which they have been involved. Now, that is exactly the kind of thought that is in our minds with regard to police officers. We are not saying of course that police officers are dishonest men; we are not saying that they would deliberately even try to extract a confession which was not voluntary, but we do say, and we do think in our own minds, that because of the nature of their job, the duty they have to perform, it is against human nature that many confessions made to them will be entirely voluntary, and we do not think the risk is worth taking, any more than we think the risk of uncorroborated evidence of an accomplice is worth taking.

My next point here is that the Minister for Legal Affairs has urged very eloquently that you must take a balanced view in these matters, and that you must not raise technicalities in such a way that you are going to allow guilty men to escape justice. That is very right, Sir, but I would remind my hon. and learned friend that in considering the balance in these matters as between risking that a guilty man escapes and risking that an innocent man is punished, our principle has been that it is better than ten guilty men should escape than that one innocent man should be punished. Now, if we are going to adhere to that principle, Sir, it is not enough for the Minister for Legal Affairs to satisfy us even that the odds are nine to one in favour of a confession to a police officer being voluntary; the odds should be better than that, if we are going to have regard to that principle.

The Minister for Legal Affairs has pointed out that we already have this law allowing confessions to assistant inspectors, a law in the form of an Emergency regulation. That is true, Sir; but I have said in this Council before, and I say it again, that Emergency legislation is something very different from substantive legislation. I have said in this Council that that principle of preferring ten guilty men to escape, against one innocent man being punished is one of

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the principles that has to be suspended during a State of Emergency. That is the nature of a State of Emergency. You have to set aside your fine principles, until you can restore the position to such stability that the principles can be reapplied. But we are supposed to be coming out of a State of Emergency, Mr. Speaker, and with it we must go away from these regulations which are justified by a State of Emergency but not otherwise.

Lastly, Sir—and this is most important of all—is the question of the weight of public opinion in this matter. Mr. Speaker, I do not contend that on every occasion the Government has to bow to the unanimous expression of opinion from this side of the Council, although I think they would be wise to do it rather more often than they do; but in matters such as this, in matters of essential justice, the administration of justice, particularly criminal justice, that is something in which every subject is deeply and personally involved, then, Mr. Speaker, I do urge that Government must bow to public opinion. We here on this side of the Council are the representatives of public opinion and we speak with one voice, saying that the public have a deep-rooted suspicion of confessions to police officers. There is a presumption in our minds that they will not be voluntary; so strong a presumption that you must not allow them at all. Now, that presumption, Mr. Speaker, may be right and it may be wrong, but it is there, and in this question of legislation for the administration of criminal justice the Government must carry public opinion with it. It is fatal to try to do otherwise. Sir, for that reason above all other reasons I do urge Government, even at this stage, to let the matter rest, let it rest, if you will, on the Emergency regulations, justified so long as they can be by the continued State of Emergency; let it rest until we can review the whole of the law of evidence, as we are told we shall very soon, at which time I hope, Mr. Speaker, that we shall see that provision of the Indian Evidence Act restored and confessions to police officers completely barred.

I beg to support.

Question proposed.

MR. NAZARETH: Mr. Speaker, Sir, I should like very warmly and strongly to support all that has been said by the hon. and learned Specially Elected Member who has just spoken. I unfortunately was not able to attend on the occasion of the Second Reading of this Bill and I am very glad indeed to have this opportunity of making clear my entire support for the opposition that has manifested itself in this House against this Bill. The case against this Bill has been argued so strongly in regard to this particular clause, so fully and ably, by my learned and hon. friends that there is very little that I can usefully add to what they have already pointed out. However, I would like specially to stress the argument that has been put forward by my hon. friend Mr. Slade when he pointed out that there is so much public opposition to this Bill, that we are the representatives of the public, and that this Bill has the strongest opposition from the Law Society. Well, these are the persons who are in most intimate contact with the law and it is surprising indeed that against that unanimous opposition the person to hold the office of Attorney-General has still thought it wise and right to proceed with a Bill of this nature.

One consideration which has been referred to by my hon. friend Mr. Slade is that the Indian Evidence Act is not the work of Indian lawyers, it is the work of the ablest of English lawyers, and it was a law which was produced in India to meet the circumstances of that country which are much nearer the circumstances of Kenya than are the circumstances of England; and they thought it right to alter the law of evidence as it was in England to meet the circumstances of India which, as I say, are nearer to the circumstances of Kenya. I should like to point out two considerations. Why should you now reproduce the law of England when you have much better legislation available for your purpose? There is one other consideration which, so far as I know, has not yet been referred to, and that is that passing a law of this nature as a permanent part of the legislation of this country is likely to bring the police force under suspicion, likely to weaken the police force, its calibre, the respect in which it is held, and it is also likely to weaken the administration of justice. The moment it is felt among the public that

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convictions have been entered against persons whose guilt is doubtful you have a situation in which the courts of justice lose weight and respect and authority, and when a conviction rests upon a confession you have that situation if there is a doubt that the confession was voluntary. My learned friend Mr. Slade has pointed out that that is the very issue, the doubt whether the confession is voluntary. It is assumed in the argument of the Solicitor-General that the confession is voluntary and we should not therefore lose the advantage of a confession of that nature. This is the question involved. I do suggest to the Attorney-General—he is also the Minister for Legal Affairs but he also holds the office of Attorney-General—that this is not a measure which he should advise the Government to introduce into this Council, to support, and to carry through all its stages in spite of the opposition of all the Members on this side of the House. I do appeal to him, even at this stage, this late stage, that this is a measure which should not disfigure the statute books of Kenya as a permanent part of legislation and that he would be well advised to withdraw this Bill even at this late stage.

I do most strongly support the hon. Member's amendment.

MR. TRAVADI: Mr. Speaker, Sir, I do rise to second the amendment moved by my hon. and learned friend the Specially Elected Member, Mr. Mangat, and supported by Mr. Humphrey Slade and Mr. Nazareth. One of them is a Q.C., and the other is a Specially Elected Member. It was originally my intention to move such an amendment but I was told, while I was in this House that Mr. Mangat was moving an amendment and I kept quiet; but I take this opportunity to protest against the introduction and enactment of this type of legislation leaving the recording of confessions of guilt in the hands of persons below the rank of assistant superintendent. If I may be allowed to say in the mildest possible form of language, I should say that it would be most inadvisable on the part of the Legal Department to advise His Excellency the Governor to assent to such a contentious Bill that the whole Colony including the unofficials representing practically all races on this side of the House, oppose it.

I would only in three words, that it would be undesirable on the part of the Government to do it. It would be more or less irritating—or perhaps I should say, provocative—and if eventually this Bill takes the form of law I say that it would be against all canons of British justice.

I beg to support the amendment.

MR. CONROY: Mr. Speaker, I am in some difficulty and I should be glad of some guidance on this because eventually I shall have to reply to these speeches. As I understand Erskine May, he says that on a Third Reading the debate is confined strictly to the contents of the Bill and cannot wander far afield as on a Second Reading. On page 578, he says, "It is more restricted, being limited to the matters contained in the Bill."

Sir, I have not interrupted any Member's speech, but it is somewhat difficult to answer what in effect is a Second Reading again if we are going to go over the whole field of the whole Indian Evidence Act each time.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Yes, I agree with Mr. Conroy that generally speaking any debate should be more circumscribed on a Third Reading than on a Second Reading. But this Bill only has only two clauses, that matter I think I am right in saying, and most of the reasons for opposition seem to have reference to the third clause of the Bill. I would ask Members to confine their remarks to this one clause.

MR. MANGAT: On a point of order, Mr. Speaker, our Standing Order 96 authorizes us to do at the time of the Third Reading whether we can do at the time of the Second Reading and Standing Order 86 deals with Second Readings and I beg to submit that there is no difference whatsoever as long as the Motion remains the same, that this Bill be read six months hence.

MR. CONROY: I am not objecting to the hon. Mover's Motion. What I am objecting to—asking guidance on—is how widely we can range over the general field of evidence.

SIR CHARLES MARKHAM: Withdraw the Bill and there will be no more fuss!

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I think in answer to Mr. Mangat I must rule that there is a difference. We are told that on the Opposition Third Reading the procedure is just the same as on the Second Reading, but that refers, I think, to 86 (2): "No amendment may be moved to the question 'That the . . . Bill be now read a Second Time', other than an amendment to leave out the word 'now' and to add, at the end of the question, the words 'upon this day six months.'" That is the procedure for opposing the Third Reading.

So far I have not interrupted anybody and the hon. Mover has not even objected. I would ask Members to confine themselves to the precise reason why they wish to oppose this very short Bill and that is really the contents of section 2. We are not talking about the whole of the old Indian Evidence Act.

MR. COOKE: Mr. Speaker, I did not rise during the Second Reading of this Bill because I thought that such good arguments had been marshalled on this side of the House that there was no use in adding any further arguments. But now as it seems that the Government is obstinately determined to go on with this Bill against the united front of this side of the House, I feel that it is my duty to speak. And I think if I may say so a monstrous position of affairs that a Motion such as this will inevitably be carried by—I will not say "stooges" because I know that they object to such a term—by yes-men on the other side of this House.

I appeal to those yes-men at any rate to abstain from voting because it will be a very difficult situation that will arise if against the united opposition of the representatives of the people the Bill is carried.

Now, we know that the Nominated Members have really no responsibility. They are responsible to nobody. And really their position will be in what the late Lord Baldwin called "power without responsibility". I will not go on and finish the quotation, but I do say to them that from their own point of view they are taking an extremely big risk because when the next constitution is framed—as a new constitution will inevitably be framed—this will be one of the arguments which we will bring up—at least, I certainly will bring it up—against having Nominated Members in future.

Sir, I support the amendment.

MR. MBOYA: Mr. Speaker, Sir, I opposed the Bill in the Second Reading and already today a number of my colleagues have dealt with some of the more technical arguments that we on this side of the House wanted to put forward. I do feel, Mr. Speaker, that the point cannot be over-emphasized, that already an Emergency law or regulation exists which empowers the Government to apply measures such as are proposed today in this Bill. It would therefore appear that what is really happening now is the attempt by Government to transform Emergency regulations into substantive law. And the question that must be justified, I think, is how far normal conditions prevailing in this country would justify the application of whatever regulations the Government might have seen fit to apply during a State of Emergency. My submission is that during the State of Emergency there may have been reasons—good reasons—for using some of these regulations. But if indeed it is true, as the Government has from time to time told us, that the country is reverting to a normal and peaceful situation, then one would require a very strong and convincing argument for the retention of any piece of the Emergency regulations.

It is my submission, Mr. Speaker, that this Government is putting us in a position where we cannot but charge them with trying to create in this country a Police State and trying to retain regulations formally temporary regulations required during the State of Emergency for the normal administration of this country, and even to the extent of completely ignoring the basic principles inherent in British justice.

The Minister for Legal Affairs a few minutes ago said—he tried to use this argument during the Second Reading—the question of the possibility of criminals being allowed to go free because when they confessed their crime the person to whom they confessed was not of the status that would be acceptable in a court of law. What we are really

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being told, Mr. Speaker, is that the Minister is trying to create a situation where as many criminals as possible should be convicted and nobody would quarrel with this. But when he goes on to suggest that the Government should go out of its way to create a situation in which some possibly innocent person may be convicted as a result of misunderstanding, as a result of a lack of appreciation of their rights or knowledge of their rights, or as a result of dealing with inexperienced assistant inspectors or as a result, as we already indeed know, of the existence of a large body of illiterate persons in this country who might misunderstand not only their own rights but the powers that the police officers have, then, Mr. Speaker, I submit the Government is indeed trying to throw away completely one of the most important principles in the administration of justice, namely that the benefit of the doubt is normally given to acquit, a person when it cannot be proven beyond doubt that he is guilty. The Government is trying to create a situation in which even where doubtful cases may exist a conviction may be possible just because someone in the opinion of an assistant police inspector confesses to having committed a crime.

Mr. Speaker, this is a matter that cannot be regarded with anything but the most serious consideration because of the nature of the country with which we are dealing. A large body of people are today frightened to approach a policeman on the street because they regard him as an enemy and not a friend; the relations between the police and our people are so bad that in some areas and in some cases they are completely frightened when a policeman appears at the street corner.

Now, it is our submission from this side of the House that when people have more confidence in the police some powers may be considered. Whether this is one of them is still very doubtful, in view of the many arguments that have been submitted already by my friends on this side of the House. But let me say this, with the strongest possible emphasis, that the Government is today embarking upon what I think we were told about a few months ago, a process of transforming Emergency regulations into the substantive law. If this is going to be applied generally, this Government is trying to exploit a situation which existed in 1952 but which no longer exists in order to create in this country what I charge them with—a Police State.

I beg to support the amendment.

MR. MULIRO: Mr. Speaker, I fully endorse what my colleagues on this side have said already on this Bill. The dangers inherent in the powers now which the Government seeks to give the assistant inspectors of police are indeed great. One need not go very far to find that out. Over the week-end, I became more and more convinced that I must oppose this Bill to the very last minutes. We are worried about giving powers to assistant inspectors of police. But over the week-end the man who meted out very serious injustice to me was a police officer in charge of a station at Kimilili. Now, during the course of the day someone who was supposed to address a meeting with me, Mr. Speaker, was picked up and taken to a lock-up. When I went to investigate this issue, the man was still there in the cell. When I tried to speak to the officer in charge of the station, he ordered me to get out of the place and what he was saying was, *"Mimi hwana kuhwa; mimi hwana kuhwa hapa."* "Get out of here!" Now, those are the remarks the Africans in this country get. This humiliated me to a very serious degree. I felt like blowing him up, but unfortunately I was in the area of that policeman, therefore I told him, "You are a public servant and you should know how to behave before the public as a public servant."

Now this is only one of the few instances, and I think many of them like that take place every day to the Africans in this country. If the behaviour of an officer in charge of a station can be like that, how much more could we trust an an assistant inspector of police?

Mr. Speaker, also it is the tradition of British justice that the interests of the accused are to be safeguarded. Now, if the accused is very panicky coming before a police officer, trembling in his boots, and is told that if he makes a confession probably he will be released, these illiterate, ignorant Africans are going to give confessions. They do not know whether those confessions are

[Mr. Muliro]

going to be used against them for convictions. They no doubt think, "When I make a confession of that nature, I will probably be let off." But they do not know and nobody is there to go around all the African areas explaining that if any African makes a confession, or anybody for that matter, makes a confession before the police, that confession is going to be used during the case.

The Minister for Legal Affairs urges us—and very well, too—that we are trying to bring this on par with what is happening in Britain. He forgets that Kenya is Kenya and not Britain. He forgets that Kenya is still a Colonial country. He forgets that in Britain you have the jury system which will put to task the prosecution when the case comes before the court. In Kenya we have not got the jury system applied to Africans in this country, or to non-Europeans for that matter in Kenya. We should try very much to safeguard the interests of the accused before he gets to court. He should always be free to that in case he brings a lawyer, the lawyer will help him in framing up his arguments. But the lawyer who defends the accused is left completely helpless because whatever the accused confessed will not be with the lawyer and when the lawyer urges the case he will be shown, "Here is a document. This man confessed. Do you want him to go off without being punished?" That is, I think, the main human and fundamental reason why the lawyers of the Law Society in Kenya have to a very high degree rejected this.

The Minister for Legal Affairs also argued during the Second Reading that in due course his department would be drawing up a document—a comprehensive document—which will be the Kenya Law of Evidence. Now, Pending that, why are the Government in such a hurry to pass this through now? They have not proved beyond any doubt that there is any interest being promoted by pushing forward a law like this. And if they are going to use the Government majority to pass this through, what we shall say is this, that this country, Mr. Speaker, is being governed by people who are panicky and who are afraid and are making whatever legislation which has been used during the Emergency a permanent law in this country. We are not going to surrender to a Government which is panicky like the present Kenya Government.

With this, Mr. Speaker, I beg to support this very strongly.

THE CHIEF SECRETARY (Mr. Coutts): Mr. Speaker, Sir, in rising to speak to this Third Reading I would like to say straight away that the Government is not in the least panicky; and what is more, will not become panicky merely because of what the hon. Member has just said.

There are one or two points I would like to answer in this debate, Sir, though I am going to leave most of the legal part of this debate to my learned friend, the Minister for Legal Affairs. I would like to remind the hon. Specially Elected Member, Mr. Mangat, that the Government did recognize that there was complete unanimity on the part of the Members of the opposite Benches regarding this Bill, and having sensed that, we did suggest on this side that we should recommit this Bill for further consideration. You, Sir, were prepared to rule that we could do so despite the fact that on the face of it Standing Orders would not permit it. It was the hon. Member himself who said that he was not prepared to agree to this despite the fact that the Government was willing to do so. The hon. Member used these words: "If the Government has to withdraw it, let them withdraw it. If it is better justice, it is better that it should die."

Well, Sir, although he has accused me of leaping to my feet and saying that rather than the Bill dying it would be passed by the Government, I would like to make this point, Sir, that it was the hon. Member's own attitude in saying that we would go to the Third Reading without recommitting the Bill at all to Committee that has really produced the present state of affairs.

Now, Sir, there are two or three points that I want to answer in this particular debate. The hon. Member for the Western Electoral Area said that it is probable that this Bill would bring the police force under suspicion. Now, what I would like to suggest is that what the hon. Members have been arguing from is that they are suspicious of the police force. Now, Sir, I resent that very con-

[The Chief Secretary]
siderably. What, in fact, they are saying is that they imply a lack of strict attention to duty by the police force in taking confessions. And indeed, they go further than that, because they imply that when these people have taken these confessions they will go into the witness box and swear that they were voluntary when they were not voluntary which, Sir, I resent to a very great degree, and on the behalf of the police force of this country would like to say publicly that I consider that an extremely provocative *innendo*.

Furthermore, the hon. Specially Elected Member said that there was a strong certainty that this was so. Despite the fact that this has been the law of the country for five years, when asked to bring forward proof he was unable to do so.

Now, Sir, the majority of those who have spoken against this Bill on the other side are people who have in the course of their profession been concerned with defending people, and they have talked about the principles of British justice. This particular principle, the one of the admission of confessions, is part and parcel of British justice. And whereas the other side of the House may wish to argue that it is absolutely necessary that these confessions must be voluntary—and I agree with them—we must also remember that it is the duty of the Government when prosecuting to see that a criminal is prosecuted to the limit and if necessary—if the man is guilty—that he should bear the penalty that is attached to it. Therefore, Sir, I submit that there are two very different views in this case, the view which has been stated by so many of the other side, but there is also the view of the Government which is that it is its duty to see that criminals are brought to justice and all we are seeking to do in this Bill, despite what has been said by many Members of the other side, is to preserve the *status quo* until such time as we can have a full Evidence Act.

For these reasons, Sir, I beg to support the Third Reading and I beg to *oppose* the amendment.

SIR CHARLES MARKHAM: Mr. Speaker, Sir, when I heard the Chief Secretary say that he was supporting the amendment, I thought the Government had at last relaxed. I am very grateful, Sir, to the Chief Secretary for defending the honour of all the assistant inspectors of the Kenya Police.

Sir, I do think that he was protesting a little too much. Sir, I am not a lawyer —I was going to say "Thank goodness" —but at least, Sir, I have a logic on this particular aspect on this Bill which I said at the Second Reading causes me concern.

Sir, the Chief Secretary in justifying the actions of the Government talked about British justice. If, Sir, the Chief Secretary imagines in his heart of hearts that what goes on in England is suitable for Kenya, I wish, Sir, that he were right. There is nothing I would like more, Sir, than British justice with all we know of the village policeman right the way up all the higher ranks of police and with that method in the administration of justice and for us in Kenya to have a similar system; but, unfortunately, Sir, we have not got it and we know it all too well.

I cannot agree, Sir, with all the arguments used by my hon. friend, the Specially Elected Member. His were particularly legal arguments. That is one of the reasons, Sir, why I wanted the Bill to be recommitted because my fears were on the rank—concerning the Assistant Inspector. But nevertheless, Sir, as we got ourselves into the difficulty of being unable to agree to the recommittal, I would urge the Government to allow this Bill to drop until the Evidence Act or this Bill is brought before us; not so much, Sir, because I do not want to see the criminal convicted—we all want to do that—but because if this Bill goes through there are so many people who are eligible to take confessions, some of whom are very junior indeed in service in the Kenya Police. I would urge the Government, Sir, to drop this Bill for the time being.

Now, there is one point, Sir, my friend the Member for the Coast accused the Back Benchers and Middle Benchers for that matter, of being yes-men. I am sorry, I do not agree with him in that contention because I believe a lot of them—Sir, the hon. Member for the Coast says that I am one myself. His only chance, Sir, of being back in this House is being on that side after the next election. Sir,

[Sir Charles Markham]
I do not think that we can accuse the Government Middle Benchers and Back Benchers of this particular complaint because I know they have great fears on this subject and I would suggest, Sir, that when the Division bell does ring, they disappear quietly off and have a cup of tea, or alternatively, Sir, avoid my friend who looks so similar to that tyrant from Cyprus, the junior Government Whip, in giving them discipline. I know, Sir, there are fears on the Government Benches behind the Chief Secretary—I know that—and if his side of the Council is frightened about the proposals contained in this Bill, then, Sir, that is all the more reason why we should be frightened on this side. I do hope, therefore, Sir, that although quite likely, Sir, my friend the Solicitor-General is quite right, I have only given the fears of a layman I hope that under those circumstances because we did not recommit and we have now got the stage where we can only accept Assistant Inspectors and above that the Government will withdraw this Bill and bring it forward again in their new proposals when we get the new Evidence Bill early in the coming Session. I hope therefore, Sir, the Government will do that and I must under the circumstances support the amendment.

MR. KIRPAL SINGH SAGOO: Mr. Speaker, Sir, I feel I ought to make a confession. When the learned Mover and the Seconder introduced this amendment I felt to a certain extent sympathy with them. But when the hon. Member from the Coast got up and spoke, I must confess, Sir, that my sympathy evaporated, in fact vanished, into thin air.

Sir, I take very strong exception at being labelled as a "stooge" or a "yes-man" and, what is worse, being told that I have no responsibility. Well, Sir, the hon. Member from Ukamba has already refuted that point and I am grateful to him. But I would like to stress this from the Floor of the House that we the Nominated Members know our duty and know our responsibility to the community and to the country. And, Sir, undignified expressions of that nature are not going to bully me or other Nominated Members in succumbing to such a talk. I therefore regret, Sir, that I am put in a very awkward spot. I am left with no alternative but to oppose the amendment.

MR. HASSAN: I regret, Sir, that the Minister is bent upon forcing this Bill through because of the most provocative speeches—which he feels are provocative —because of the loss of dignity if this Bill is not passed through all its stages. I would like to assure the Minister on one point particularly, and that is that we on this side of the House have no hate or spite about Assistant Inspectors of Police in the Force. They are the youth of our communities and we know more about our youth and Assistant Inspectors of Police than the highest officials in the Government. We know that when they join the police they are usually very anxious to get promotion, and distinguish themselves by working in a most efficient manner, and in order to get as many convictions as possible to their credit, and to bring their efficiency to the notice of the highest officers, they are tempted—possibly because of their inexperience—to persuade offenders to confess to a crime so that these young officers may thereby obtain a conviction when the accused appears in court, and considers credit to themselves for their efficiency in bringing the criminal to justice. Sir, this side of the House has said all against this Evidence Act, and one thing I feel is that we do not mind to be opposed from the Government Benches. We do not feel to be outvoted from the Government Benches. We do not mind being steamrollered from the Government Benches, but what we do not like, Sir, is to be bulldozed, and with these few words, Sir, I support the amendment.

MR. CONROY: Mr. Speaker, Sir, if I might just deal with the specific matters which have been raised in the debate on the amendment, and not deal with general principles. Sir, remembering that this is a debate on a Third Reading I do not propose to embark upon the debate which has opened up in the panorama of a police state, the matter of principle of making Emergency regulations permanent, the Constitutional Conference and the constitutional position of Back Benchers. None of those seems to me to arise in any specific clause of this Bill, and therefore they seem to me very irrelevant to the matter which we are

[Mr. Conroy]
now debating, which is the Third Reading.

Now, Sir, if I can deal with the specific items. The hon Member for Ukamba said he "was not a lawyer, thank goodness", and to that I say, "Hear, hear".

Then, Sir, the hon. Member for Nairobi Area and one of his colleagues said that it was that we were ignoring the basic principles of British justice, Sir. That is precisely what we are not doing. We are trying to make the law of Kenya similar to the law of Britain, and there may be arguments that the law of Britain is not suitable for Kenya, and I have listened to those arguments, and I hope to deal with them in due course, but we cannot be accused of ignoring the basic principles of British justice.

Then, Sir, the hon. Member went on to say that the benefit to the doubt was being taken away, Sir. The "benefit of the benefits" has got precisely nothing to do with this subject, Sir. The benefit of doubt is something entirely different, and therefore I may be forgiven if I do not enlarge upon it as it is not relevant to this Bill.

Then, Sir, the hon. Member for the Western Electoral Area said that the Law Society support unanimously the opposition to this Bill (and I cannot think that they can support it unanimously, because I am a member of the Law Society). If the Law Society support unanimously opposition to his Bill, then it should be dropped. Well, Sir, constitutionally that is rather a large order, and I do not think the hon. Member was here on the Second Reading when I did refer to the fact that as a result of a request from the Law Society I had referred this Bill to the judiciary, and the judiciary expressed the view that the true protection of the person charged was in the necessity for proving positively that the confession is voluntary before it is admitted. So it is not only the Law Society which is involved, there is also the general public, and there is also the judiciary, and coming along very far behind in the opinion, I think of the hon. and learned Specially Elected Member, Mr. Mangat, are the Law Officers.

And then, Sir, the hon. Member for the Coast said that it was a monstrous position of affairs and Government was obstinately determined to do something or other. Sir, the Chief Secretary has drawn attention to the fact that we did offer the hand of compromise, but, Sir, what happened? It was spurned (the hon. Member, is if I may use the word "chortling" over there), and that is the true position.

And then, Sir, the hon. and Specially Elected Member, Mr. Slade, as usual, put his finger on the point. And he said the point is, can a confession to a police officer ever be voluntary? Now, Sir, the suggestion there is that no confession to any police officer, whatever his rank, should ever be admitted. Sir, that is not part of the British system of justice. The hon. Member says over there "that is true". It is not. It is a most illogical suggestion. What you have to decide is whether the confession is voluntary or not. There is your protection. And then, Sir, he went on to deal with the "deep-rooted suspicion" that confessions are not voluntary. The suggestion there is that when a police officer goes into the witness box to prove that a confession is voluntary, before the court will admit it, the police officer will be giving false evidence. The hon. Members cannot run away from that. That is the position of their argument, and if they accept that, then, Sir, where do we come to? No police officer should ever give evidence in any case. That is the position they take up, and Sir, then where do we come to? A policeman stops Bill Sykes on the street, and he says, "Where were you on Thursday night?" and Bill Skyes says, "All right, governor, it is a fair cop. I cracked the crib and you will find the swag under the floor in my bedroom." Now if hon. Members opposite had their way, that confession should not be admitted, and Bill Sykes should be allowed to go free to continue his depredations. I would not say I hope on their houses, but certainly I hope not on mine. Then, Sir, let us pursue this position a little further, and see where their argument logically leads us. The police officer, having found the swag from the burglary under Bill Sykes' floor, should he be able to give evidence about that? Because if he is not to be believed on oath, and that is the reason you must not admit his confessions, then he should not be believed on oath about finding

[Mr. Conroy]
the swag under the floor. Then, Sir, supposing he enters the witness box and says, "On this gold half-hunter watch, I found Bill Sykes' finger-prints, and I have compared them with the finger-prints on the Central Registry, and there are 17 points of similarity, etc., etc." I can see the hon. and learned Member smiling there, he has obviously heard the same kind of evidence that I have. Now, Sir, should a policeman be entitled to give evidence as to finger-prints? Because, if the hon. Members opposite are right, the policeman is not to be believed on oath, and therefore he should not give that evidence. Hon. Members opposite cannot run away from this position, it is the logical consequence of the arguments they are putting forward in support of this amendment.

Then, Sir, one of the hon. Elected Members—I am afraid I have not got his name down—said that the protection in England against wrongful confessions was the jury system. Sir, juries do not try the admissibility of confessions—the Judges alone try it—Judges, magistrates— and it is one of the things that a jury is not entitled to try. And, in fact, when they so frequently have a trial within a trial, as to the admissibility of confessions, the jury is sent outside because they must not listen to it. Therefore that argument also fails.

Then, Sir, the hon. Specially Elected Member, Mr. Slade, said that it was a rule of law that accomplice evidence should not be accepted unless corroborated. Sir, I hope I have misreported him in my note here, because that it not my understanding of the law, and indeed section 133 of the Indian Evidence Act is very different on that.

Now, Sir, coming at last—I think it is last—to the hon. Specially Elected Member who moved this amendment. He said the purpose of this was to kill the Bill, and he said that when we had tried to reach some kind of reasonable settlement with hon. Members on the other side, the suggestion was that we should substitute "cadet inspector". Sir, that certainly was never in my mind, and I am quite certain that I never said it.

AN HON. MEMBER: Did you confess?

MR. CONROY: No, and no one can prove that I did, Sir.

Now, the hon. Member then went on to say—I think he was slightly misquoting me—that I had reiterated the Judges' Rules as protection for the public. Sir, I have referred to the Judges' Rules, and I hope that the Member will go away and look at what I said—I think it was as long ago as last Thursday when we had the first Second Reading of this Bill—but I said there that the Judges' Rules were rules of practice —which is what the hon. Member said today, and I said that in my experience it was very rare indeed for a Judge to admit a confession which had been taken in breach of the Judges' Rules. Sir, I understand him to say very much the same thing today, so I cannot really think why he took me up on it.

Then, Sir, we had, I think it was page 1252, and it seemed like several other pages as well from Munir on evidence from the hon. and learned Member in which Sir James Fitzjames Stephens pointed out what a splendid Bill his own Bill was. Well, now, Sir, when Sir James Fitzjames Stephens praises his own Bill, he is liberal. When Mr. Conroy does it he is "stubborn and impertinent", Sir. I, funnily enough, rather think my own Bill is a good Bill, just as Sir James Fitzjames Stephens thought his Bill was a good Bill. I have never said, Sir, that his was a bad Bill, but what I have said is that was very suitable for India in 1872. I am not convinced that it is suitable for Kenya today. I am not convinced that the English rule, which is that a confession to a constable is entirely suitable for Kenya today, and what I do think is suitable, and I do put it to hon. Members, is the compromise that is contained in this Bill, and therefore, Sir, I do support my own Bill, and in that I follow Sir James Fitzjames Stephens.

Sir, it is also relevant to notice that many of the hon. Members who have spoken, in particular the hon. and learned Mr. Mangat, was brought up on the Indian Evidence Act, Sir. I was brought up on the English system, and we each think our own systems are splendid and not to be bettered by the other. Sir, that is not unnatural, but, I hope, a compromise suggested in our Bill is a reasonable one. I think it is. I have given the Law Society every opportunity to put forward what arguments they wished to put forward in support of their case. Sir,

[Mr. Conroy]

I have delayed the Second Reading of this Bill for months to enable them to do so. Sir, I have seen the Law Society's representatives, and I have discussed the matter with them. I have written to the Law Society, Sir, and have awaited their reply to see whether they can produce any potent arguments to suggest why this Bill logically is bad.

Now, Sir, finally, I think, the hon. learned and Specially Elected Member, Mr. Mangat, started quoting Beaumont and Fletcher at me. Well, Sir, I would quote Charles Dickens back at him. "Professionally, he declines and falls, and as a friend he drops in poetry." Sir, I hope it is not considered inappropriate when I tell the hon. Member that that is a quotation of Mr. Boffin. Sir, I beg to oppose the amendment.

DIVISION

The question that the word to be left out, be left out, was put and Council divided.

The question was negatived by 41 votes to 27.

AYES.—Messrs. Alexander, Bompas, Cooke, Hassan, Howard-Williams, Jamidar, Khamisi, Kiano, Mangat, Markham, Maxwell, Mboya, Arap Moi, Muchura, Muimi, Muliro, Nazareth, Ngala, Ngome, Odinga, Pandya, Roberts, Slade, Tipis, Towett, Travadi, Zafrud-Deen.

NOES.—Messrs. Adalja, Amalemba, Bechgaard, Blunt, Brown, Colchester, Conroy, Coutts, Croskill, Farah, Mrs. Gecaga, Messrs. Goord, Hamley, Harrison, Hope-Jones, Mrs. Hughes, Messrs. Hunter, Ismail, Jackman, Jones, Kebaso, King, Luseno, Mackenzie, Mathieson, McKenzie, Miller, Mohindra, Nathoo, Ntimama, Nurmohamed, Sagoo, Salim, Mrs. Shaw, Messrs. Smith, Swann, Tyson, Vasey, Walker, Waweru, Webb.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): Under those circumstances there is no further debate and I therefore propose to put the original Motion.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

REPORTS AND THIRD READINGS

The Crown Lands (Amendment and Miscellaneous Provisions) Bill

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Crown Lands (Amendment and Miscellaneous Provisions) Bill and approved the same with amendments.

The question was put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I beg to move that the Crown Lands (Amendment and Miscellaneous Provisions) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Courts (Amendment) Bill

MR. WEBB: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Courts (Amendment) Bill and approved the same with amendments.

The question was put and carried.

MR. WEBB: Mr. Speaker, I beg to move that the Courts (Amendment) Bill be now read a Third Time.

MR. CONROY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Industrial Training Bill

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Industrial Training Bill and approved the same with amendment.

The question was put and carried.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, I beg to move that the Industrial Training Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Wheat Industry (Amendment) Bill

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Wheat Industry (Amendment) Bill and approved the same with amendment.

The question was put and carried.

THE MINISTER FOR AGRICULTURE, ANIMAL HUSBANDRY AND WATER RESOURCES (Lt.-Col. McKenzie): Mr. Speaker, I beg to move that the Wheat Industry (Amendment) Bill be now read a Third Time.

MR. WEBB seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Variation of Trusts Bill

MR. WEBB: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Variation of Trusts Bill and approved the same with amendment.

The question was put and carried.

MR. WEBB: Mr. Speaker, I beg to move that the Variation of Trusts Bill be now read a Third Time.

MR. CONROY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

The Companies Bill

MR. WEBB: Mr. Speaker, Sir, I beg to report that a Committee of the whole Council has been through the Companies Bill and approved the same with amendment.

The question was put and carried.

MR. WEBB: Mr. Speaker, I beg to move that the Companies Bill be now read a Third Time.

MR. CONROY seconded.

Question proposed.

The question was put and carried.

The Bill was accordingly read a Third Time and passed.

MR. COOKE: Mr. Speaker, may I rise on a point of order before the Motion, and enquire what the position will be if the hour of six arrives and there has been no decision on the Motion. If it dies, will the Mover have to make his opening speech all over again, or what is the position?

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): If no decision is taken on the Motion, the Motion will die with this Session. There is nothing to prevent the hon. Member reopening the question in the next Session. If, however, we took a decision on it today then, of course, we cannot take it again for six months.

MR. COOKE: I can imagine a Bill dying which is on the Order Paper, but I think it is rather discourteous to the Member, after he has taken the trouble of moving the Motion, it dies and he has to start all over again. I should have thought we would have resumed again tomorrow.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): That is a decision for the Sessional Committee, but it must be remembered in nearly all Houses of Parliaments there is a time limit set for all business, and one has to adhere to it. In the course of that procedure some people never get their Motions on the Order Paper. In this particular case, if we do not approve this Motion and take no decision on it, there is no reason why it should not be reopened, as a fresh Motion of course, in the new Session.

MOTION

RURAL AND SEMI-URBAN MINIMUM WAGES LEGISLATION

MR. OLE TIPIS: Mr. Speaker, Sir, I would first of all like to have your ruling over the Motion before the House, because it is a Motion of such great importance and I know that there are quite a number of speakers who are interested and who would like to speak on it. Now what is worrying me is, according to what you have said a few minutes ago, if the Motion is dropped it will mean me bringing it up again in

[Mr. ole Tipis]
six months' time. I would like your leave to suspend the Motion and bring it as early as possible when we next sit.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I did not say "in six months' time". I said if you continued the debate and the hour of six arrives and we had to terminate business, I am powerless to continue tomorrow or the next day. It is entirely in the hands of the Government and the Sessional Committee. But you could give fresh notice of your Motion when the new Session opens, which I anticipate will be more likely in three weeks' time than six months. I said six months if we took a decision on your Motion—then you cannot reopen it for six months.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): Mr. Speaker, might I suggest to the hon. Member the thing to do would be to ask leave of the House to withdraw the Motion now, in order not to continue to expose all his arguments, and ask the Government to secure an early place for it in the next Session. That, I think, Sir, would get over the difficulties on both sides.

MR. COOKE: The Sessional Committee has been very blameworthy in this matter, to allow this to arise.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): With all due respect to the hon. Member, I would not like that my last words in Council should be to disagree with him. The Sessional Committee sat over this for a very long time. What the Sessional Committee did not anticipate—nor, I imagine, did anyone else—was that the business of reaching this Motion should be so long delayed.

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): My advice would be to withdraw it, and as far as it rests with me I would ask the Members of Government to try and secure you an opportunity for an early resumption of this debate as a new Motion. You will then have to start your speech again—you have already had five minutes next Session.

MR. OLE TIPIS: Thank you, Mr. Speaker. I entirely agree to withdraw the Motion and ask for it to be included during the next Session as early as possible.

THE MINISTER FOR EDUCATION, LABOUR AND LANDS (Mr. Mathieson): Mr. Speaker, Sir, I think I would like to say that I would welcome an opportunity of debating this Motion, which I think raises a matter of considerable importance, and it would be valuable for the House to debate it. As far as the Government is concerned, we will do everything we can to give it early and ample time in the next Session.

Motion, by leave, withdrawn.

MOTION

REVISION OF LABOUR LAWS

MR. KHAMISI: The same argument applies to this as was given by Mr. ole Tipis, as I intend to deal with this Motion very extensively, and I would like to withdraw it until the next sitting.

Motion, by leave, withdrawn.

THE MINISTER FOR FINANCE AND DEVELOPMENT (Sir Ernest Vasey): On a point of order, obviously the same difficulty is going to arise with all these Motions. Hon. Members will not wish to start them at this late hour and, as it were, give all their explanations and arguments and then be faced with the Adjournment. I wonder, Sir, whether, with your agreement and the agreement of the House, it would be in order for me to move that this House do adjourn?

THE SPEAKER (Sir Ferdinand Cavendish Bentinck): If I am satisfied that it is in the interests of the Members and in the interests of the House, I have certain latitude under Standing Orders in regard to sittings and time of sittings, but I cannot exercise my power without some suggestion that it is the wish of the House. I will therefore put it to the House that the House do now adjourn.

Question proposed.

The question was put and carried.

ADJOURNMENT

THE SPEAKER (Sir Ferdinand Cavendish-Bentinck): I shall now adjourn the House, having satisfied myself that it is in the interests of and conforms to the wish of the Members. That being the case, I adjourn Council *sine die*.

The House rose at forty-five minutes past Five o'clock.

ANSWER TO WRITTEN QUESTION

No. 181

MR. COOKE (Coast) to ask the Minister for Finance and Development:—

(*a*) The names of the Ministers who proceeded overseas between 1st July, 1958, and 30th June, 1959?

(*b*) The length of their absences from Kenya?

(*c*) The reasons for their absences?

(*d*) The cost to Government of their passages together with that of their dependants, if any?

(*e*) The amounts drawn by each, apart from salaries, in the form of allowances such as travelling, subsistence etc.?

REPLY: THE ACTING CHIEF SECRETARY

The names of the Ministers who proceeded overseas between 1st July, 1958 and 30th June, 1959	The length of their absence from Kenya	The reasons for their absence	The cost to Govt. of their passages together with that of their dependants, if any	The amounts drawn by each, apart from salaries, in the form of allowances such as travelling, subsistence, etc.
Hon. W. F. Coutts, C.M.G., M.B.E.	(NOTE (A)) 4 days	Vacation leave	(NOTE (B)) £420	Nil
Hon. E. M. Griffith-Jones, C.M.G., Q.C.	32 days	Official duty	£280	£158-3-83 cts.
Hon. E. A. Vasey, K.B.E., C.M.G.	116 days	Official duty with leave combined: one visit to London and Canada, two visits to London.	£1,999-10-00 cts.	£214-0-25 cts.
Hon. M. Blundell, M.B.E.	43 days	Official duty and leave.	£356-11-00 cts.	£70
Hon. B. L. Blunt, C.M.G.	(NOTE (C)) 13 days	Official duty combined with vacation leave.	(NOTE (B)) £140	Nil
Hon. A. Hope-Jones, C.M.G.	141 days	Official duty and leave combined: two visits to the U.K. and one to the U.K. and Italy.	(NOTE (D)) £923-16-00 cts.	£428-8-00 cts.
Hon. I. E. Nathoo	(NOTE (E)) 19 days	Vacation leave	£910	Nil
Hon. C. B. Madan, Q.C.	61 days	Vacation leave	(NOTE (F)) £490	Nil
Hon. M. S. Amalemba	2 days	Official duty	(NOTE (B)) £140	£10

NOTES.—(A) Left Kenya on 26th June, 1959, returned on 24th September, 1959.
(B) Homeward passage(s) only.
(C) Left Kenya on 17th June, 1959, and returned on 17th August, 1959.
(D) Of which £280 was accounted for in the previous financial year and included in the reply to Legislative Council Question No. 178 of 1958.
(E) Left Kenya on 11th June, 1959 and returned on 14th September, 1959.
(F) Return passage only as he left Kenya on 26th June, 1958.
(G) Left Kenya on 28th June, 1959 and returned on 6th August, 1959.

ANSWERS TO WRITTEN QUESTIONS

No. 172

MR. TRAVADI (Central Electoral Area) asked the Minister for Education, Labour and Lands:—

(*a*) The number and names of grant-in-aid Asian and European schools?

(*b*) Their respective school population?

(*c*) Up to what standard taught?

(*d*) The number of teachers (male and female), with their qualifications into trained and untrained?

(*e*) Their racial breakdown, and

(*f*) Their total emoluments per annum?

REPLY: By the Minister for Education, Labour and Lands

The answer is set out in the attached table.

ANSWER TO LEGISLATIVE COUNCIL QUESTION No. 172

ASIAN AND EUROPEAN GRANT-AIDED SCHOOLS IN KENYA IN 1959

ASIAN

GENERAL NOTE.—Schools have been included in the list if they are specifically for Asian or European children and if they receive any recurrent grant-in-aid at all. The number of pupils shown is the number in the schools in the second term of 1959 unless otherwise stated. The recorded emoluments per annum are those paid and due to be paid during 1959 to the teachers by the Managements; they do not indicate the amount of Government aid.

No.	Name of School	No. of Pupils	Up to what Standard Taught	No. of Trained Teachers				No. of Untrained Teachers				Total Emoluments per annum (to the nearest £)	Remarks
				European		Asian		European		Asian			
				M.	F.	M.	F.	M.	F.	M.	F.		
1	Aga Khan Girls' High, Nombasa	886	Form IV	2	2	—	5	—	—	1	14	6,643	
2	Aga Khan Boys, Mombasa	688	Form IV	—	—	2	8	—	—	9	6	15,443	
3	Ismaili Boys, Mombasa	434	Form I	—	—	—	—	—	—	9	9	16,508	
4	Aga Khan Girls' Secondary, Nairobi	360	Form IV	—	6	1	3	—	—	7	3	7,156	
5	Arya Girls' Senior, Nairobi	1,894	Form IV	—	—	—	17	—	—	4	46	31,478	Includes £2,880 salary for four full-time and two part-time Asian teachers for 193 pupils in Forms III and IV classes.
6	Khalsa Boys' and Girls', Nairobi	1,938	Form I	—	—	1	16	—	—	—	47	27,234	Includes £1,686 salary of three unaided teachers for 70 pupils in Form 4 which is not aided.
7	Muslim Girls' School, Nairobi	1,166	Form I	—	—	—	22	—	—	—	21	21,962	Includes £355 salary for one unaided teacher for 14 pupils in Form 1 which is not aided.
8	Mailnd Asian School, Mailnd	102	Std. VII	—	—	—	—	—	—	—	2	1,238	
9	Kisumu Asian School, Kisumu	721	Std. VI	—	—	—	—	—	—	—	18	765	
10	M. M. Shah Jain Primary, Mombasa	498	Std. VI	—	—	—	—	—	—	—	8	6,272	
11	Khoja Shia Athna-ashere Education Board, Mombasa	363	Std. VII	—	—	—	—	—	—	—	6	6,216	
12	Sir Ali Bin Salim, Mombasa	212	Std. VIII	—	—	—	—	—	—	—	—	3,384	
13	Kalolenji Asian School, Kaloleni	219	Std. VIII	—	—	—	—	—	—	—	1	1,284	
14	Voi Asian School, Voi	114	Std. VIII	—	—	—	—	—	—	—	1	684	
15	Taveta Asian School, Taveta	84	Std. VIII	—	—	—	—	—	—	—	1	684	
16	Isiolo Asian School, Isiolo	46	Std. VIII	—	—	—	—	—	—	—	1	1,412	
17	The Indian School, Karatina	156	Std. VII	—	—	—	—	—	—	—	2	429	
18	Nanyuki Indian School, Nanyuki	29	Std. VI	—	—	—	—	—	—	—	1	387	
19	Naraguta Indian School, Naraguta	29	Std. VI	—	—	—	—	—	—	—	1	1,466	
20	Meru Indian School, Meru	102	Std. VII	—	—	—	—	—	—	—	4	5,168	
21	Nanyuki Indian School, Nanyuki	102	Std. VII	—	—	—	—	—	—	—	3	3,608	
22	Indian Primary School, Nyeri	271	Std. VII	—	—	—	—	—	—	—	4		

ASIAN AND EUROPEAN GRANT-AIDED SCHOOLS IN KENYA IN 1959—ASIAN—(*Contd.*)

No.	Name of School	No. of Pupils	Up to what Standard Taught	No. of Trained Teachers				No. of Untrained Teachers				Total Emoluments per annum (to the nearest £)	Remarks
				European		Asian		European		Asian			
				M.	F.	M.	F.	M.	F.	M.	F.		
												£	
23	The Indian School, Saba Saba ..	21	Std. IV	—	—	—	—	—	—	1	—	492	
24	Aga Khan School, Asembo Bay ..	15	Std. VI	—	—	—	—	—	—	1	—	330	
25	Broderick Falls Primary School, Broderick Falls.	49	Std. VI	—	—	—	—	—	—	1	1	552	
26	Aga Khan School, Bungoma ..	50	Std. VI	—	—	—	—	—	—	2	—	670	
27	Butere Indian School, Butere ..	19	Std. V	—	—	—	—	—	—	1	1	429	
28	Aga Khan School, Homa Bay ..	11	Std. V	—	—	—	—	—	—	—	2	429	
29	The Indian School, Kakamega ..	171	Std. VII	—	—	—	—	—	—	6	2	3,624	
30	Aga Khan School, Kimilili	85	Std. VI	—	—	—	—	—	—	—	2	429	
31	Kisii Primary School, Kisii ..	178	Std. VII	—	1	1	—	—	—	4	2	2,564	
32	Aga Khan School, Kisumu	233	Std. VII	—	6	—	4	—	—	—	3	7,292	
33	Arya Girls' School, Kisumu ..	50	Std. VII	—	—	1	2	—	—	1	—	1,264	
34	M. M. Shah Gujarati Girls' School, Kisumu.	582	Std. VII	—	—	1	3	—	—	4	11	8,676	
35	Muslim Girls' School, Kisumu ..	114	Std. VI	—	—	—	—	—	1	—	4	1,587	
36	Siri Guru Singh Sabha Girls' School, Kisumu.	123	Std. VII	—	—	1	1	—	—	—	2	2,304	
37	Letein Indian School, Letein ..	22	Std. V	—	—	—	—	—	—	1	—	429	
38	The Indian Public School, Luanda ..	27	Std. V	—	—	—	—	—	—	1	—	290	
39	The Indian School, Lumbwa	21	Std. V	—	—	—	—	—	—	1	—	471	
40	The Indian Public School, Malakisi	11	Std. IV	—	—	—	—	—	—	1	—	187	Figures for pupils are for April, 1959, whereafter returns have not been received.
41	The Indian Public School, Maragoli	31	Std. V	—	—	—	—	—	—	1	—	366	Number of pupils is for first term, 1959.
42	Inder Singh Kala Singh, Miwani ..	17	Std. VII	—	—	—	—	—	—	1	—	208	
43	Miwani Sugar Estate Asian School, Miwani.	193	Std. VII	—	—	3	—	—	—	1	3	2,516	
44	Aga Khan School, Oyugis	18	Std. VI	—	—	—	—	—	—	1	—	429	
45	Sotik (Chemegal) Indian School ..	74	Std. VII	—	—	—	—	—	—	2	—	1,038	
46	The Highland Indian Sotik (Bomet)	27	Std. IV	—	—	—	—	—	—	1	—	387	
47	Ladharam Indian School, Yala ..	35	Std. V	—	—	—	—	—	—	2	—	366	
48	Indian Public School, Yala (Ndere)	25	Std. V	—	—	—	—	—	—	1	—	331	
49	Indian School, Elburgon	41	Std. VI	—	—	1	—	—	—	1	—	924	
50	Gilgil Indian School, Gilgil ..	105	Std. VII	—	—	2	—	—	—	2	—	2,096	
51	Kijabe Indian School, Kijabe ..	15	Std. VI	—	—	—	—	—	—	1	—	187	
52	Londiani Indian School, Londiani ..	15	Std. IV	—	—	—	—	—	—	1	—	345	
53	Molo Indian School, Molo ..	70	Std. VII	—	—	—	—	—	—	2	1	1,020	

ASIAN AND EUROPEAN GRANT-AIDED SCHOOLS IN KENYA IN 1959—ASIAN—(*Contd.*)

No.	Name of School	No. of Pupils	Up to what Standard Taught	No. of Trained Teachers				No. of Untrained Teachers				Total Emoluments per annum (to the nearest £)	Remarks
				European		Asian		European		Asian			
				M.	F.	M.	F.	M.	F.	M.	F.		
												£	
54	Eldama Ravine Asian Primary School.	22	Std. V	—	—	—	—	—	—	1	—	450	
55	Naivasha Asian School, Naivasha ..	97	Std. VII	—	—	—	—	—	—	1	1	1,212	
56	Sikh Girls' School, Nakuru ..	99	Std. V	—	—	1	—	—	—	—	2	1,140	
57	Ol' Kalou Indian School, Ol' Kalou	20	Std. VI	—	—	—	—	—	—	1	—	198	
58	Thompson's Falls Indian School ..	134	Std. VII	—	—	—	—	—	—	3	3	2,864	
59	Aga Khan Mixed Primary, Nairobi	561	Std. V	—	3	—	11	—	2	—	5	12,068	
60	Arya Girls' Parklands, Nairobi ..	254	Form II	—	—	1	1	—	—	1	11	6,439	Includes £2,407 salary for six unaided teachers for 119 pupils Forms I and II which are not aided.
61	The Bohra Primary School, Nairobi	34	Std. III	—	—	—	—	—	—	1	—	366	
62	C.G.H. Union School, Duke St., Nairobi.	1,062	Std. VII	—	—	—	—	—	—	6	30	16,362	
63	Smt. Parvatiben H. N. Shah C.G.H.U. Primary School, Nairobi	445	Std. VII	—	—	—	2	—	—	—	19	6,962	
64	Kangindu Indian School, Kangundu	39	Std. VI	—	—	—	—	—	—	2	—	744	
65	Indian School, Kiambu	83	Std. VI	—	—	—	—	—	—	1	1	768	
66	Indian School, Kikuyu	23	Std. VI	—	—	—	—	—	—	1	—	624	
67	The Indian School, Limuru	73	Std. VII	—	—	1	—	—	—	1	1	1,596	Number of children as in first term.
68	Magadi Asian School, Magadi ..	71	Std. V	—	—	—	—	—	—	2	1	960	
69	Narok Asian Primary School, Narok	36	Std. VII	—	—	—	—	—	—	1	—	222	
70	Ruiru Indian School, Ruiru ..	116	Std. VII	—	—	—	—	—	—	2	2	1,356	
71	Visa Oshwal Primary School, Nairobi	898	Form I	—	—	—	3	—	—	3	30	11,864	Includes £1,680 for three unaided teachers for 51 pupils in Form I which is not aided.
72	S.S.D. Girls' School, Nairobi ..	422	Std. VII	—	—	2	6	—	—	2	11	7,532	

EUROPEAN GRANT-AIDED SCHOOLS

No.	Name of School	No. of Pupils	Up to what Standard Taught	No. of Trained Teachers				No. of Untrained Teachers				Total Emoluments per annum (to the nearest £)	Remarks
				European		Asian		European		Asian			
				M.	F.	M.	F.	M.	F.	M.	F.	£	
73	Limuru Girls' Secondary	161	Higher Sc. Cert.		11				1			14,230	Aid reduced in proportion to number of extra-territorial pupils.
74	Wellands Kindergarten	29	Std. II		1				1			1,020	Aid reduced in proportion to number of pupils under six.
75	Kiutuni	54	Std. IV		3				1			2,061	—ditto—
76	E.A.W.L. Muthaiga K.G.	53	Std. II		2				2			1,320	Number of pupils under six years reduced in proportion to number granted *per capita* of Sh. 50 per qtr.
77	Ruiru Day	21	Std. III		1				1			735	—ditto—
78	Tigoni Day	78	Std. VII		4				1			4,254	Aid reduced in proportion to number of pupils under six and extra-territorial pupils.
79	Thomson's Falls	96	Std. VII		3				1			5,822	—ditto—
80	Greenfield's	95	Std. VII		4				1			4,185	—ditto—
81	St. Andrew's	185	Std. VIII		5				1			9,333	—ditto—
82	Kapsigat	114	Std. VIII		3				1			6,398	—ditto—
83	Van Rensse	74	Std. VII		2				1			6,140	—ditto—
84	Wanjohi	100	Std. VIII		3				1			7,108	—ditto—
85	Rift Valley Correspondence Course	105	Std. III									2,109	Teachers paid per term vary with the number of pupils per teacher.
86	St. Nicholas (Special for backward children).	22	Std. VII		1				1			2,630	Aid reduced in proportion to the number of extra-territorial pupils and those under six.

*One part-time.

No. 182

MR. HARRISON (Nominated Member) to ask the Minister for Internal Security and Defence:—

(*a*) What sums of money, if any, are lying on deposit with the Government of the unpaid wages belonging to African ex-servicemen who died during both first and second World Wars and whose relatives could not be traced?

(*b*) If the answer to (*a*) is in the affirmative, is this money accruing any interest and how much is it all at date?

(*c*) Will Government consider allocating this money proportionately to the Provinces to whom deceaseds belong for the general benefit and uplift of the Africans in their respective areas?

REPLY: By The Minister for Internal Security and Defence:

There are no sums of money lying on deposit with this Government for unpaid wages belonging to ex-servicemen who died during the two World Wars. Parts (*b*) and (*c*) of the Question do not therefore arise.

From 1940 onwards, the local military forces were under the control of the War Office, who maintained the pay accounts of African soldiers. When a soldier died, any balance of his account became due to his next-of-kin. If the next-of-kin could not be traced, the balance remained on the soldier's account. The balance was not placed on deposit and attracts no interest and is in effect a contingent liability of the War Office.

It is believed that the position regarding the first World War is similar but, due to the destruction of local records, it has not yet been possible to establish this with certainty. Further enquiries are however being made and I will write to the hon. Member if any additional information becomes available.

No. 157

MRS. SHAW (Member for Nyanza) to ask the Minister for Internal Security and Defence:—

(*a*) How many Kikuyu Loyalists are still being held in prison or under detention orders for offences committed against *Mau Mau* adherents?

(*b*) Has any committee been appointed to examine revision of these people's sentences, such as that which I understand has recently reviewed the sentences now being served by *Mau Mau* detainees?

(*c*) If not, why not?

REPLY: By The Minister for Internal Security and Defence:

Five Kikuyu Loyalists are at present in prison. No Loyalist has ever been detained under Emergency Regulations for offences against *Mau Mau* adherents.

In view of the small number of prisoners involved, it has not been found necessary to appoint a special committee in their regard.

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11th Council—Third Session (Continued) **VOLUME LXXXII**

6th October, 1959, to 13th October, 1959

Explanation of Abbreviations

Notice of Motion=Nom; Question=Qn; Bills: Read First, Second or Third Time=1R, 2R, 3R; In Committee=IC; Report=R; Consideration of Report=Cons.R; Referred to Select Committee=SC; Select Committee Report=SCR: Recommitted to Council=Re.C; Withdrawn=Wdn.

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