COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

Second Series — Volume I

1937

2nd MARCH to 20th APRIL

1937
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LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—(Contd.)

Indian Elected Members:

HON. N. S. MANGAT
HON. SHAMSUD-DEEN
DR. THE HON. A. C. L. DE SOUSA
DR. THE HON. S. D. KARVE (Acting) (12)
HON. A. N. MAINI (Acting) (13)

Arab Elected Member:

HON. SHERIFF ABDULLA BIN SALIM

Nominated Unofficial Members Representing the Interests of the African Community:

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

Nominated Unofficial Member Representing the Interests of the Arab Community:

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

Clerk to the Legislative Council:

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

Reporter:

MR. A. H. EDWARDS

(1) Took office on 6th April, 1937.
(2) Reverted to Colonial Secretary from Acting Governor on 6th April, 1937.
(3) *Vice* Mr. W. Harragin, K.C., on leave from 26th April, 1937.
(4) *Vice* Mr. G. Walsh, C.B.E., on leave from 14th April, 1937.
(5) Reverted to Commissioner for Local Government, Lands and Settlement from Acting Colonial Secretary on 6th April, 1937.
(6) *Vice* Mr. H. B. Waters, on leave from 14th April, 1937.
(7) *Vice* Mr. J. C. Stronach, on leave from 3rd April, 1937.
(8) Reverted to Commissioner of Mines from Commissioner for Local Government on 6th April, 1937.
(9) *Vice* Mr. H. C. Willan, M.C., Acting Attorney General.
(10) *Vice* Lt.-Col. Lord Francis Scott, D.S.O., absent from the Colony.
(11) *Vice* Capt. H. E. Schwartze, absent from the Colony.
(12) *Vice* Mr. J. B. Pandya, absent from the Colony.
(13) *Vice* Mr. Isher Dass, absent from the Colony.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

8th March, 1937:
THE HON. ELECTED MEMBER FOR THE COAST.
DR. THE HON. S. D. KARVE.

9th March, 1937:
DR. THE HON. S. D. KARVE.

10th March, 1937:
THE HON. THE DIRECTOR OF MEDICAL SERVICES.
THE HON. S. H. FAZAN, C.B.E.
THE HON. ELECTED MEMBER FOR UASIN GISHU.
THE HON. ELECTED MEMBER FOR ABERDARE.
THE HON. ELECTED MEMBER FOR THE COAST.
DR. THE HON. S. D. KARVE.
HON. A. N. MAINI.

8th April, 1937:
HIS EXCELLENCY THE GOVERNOR.
THE HON. THE COMMISSIONER OF CUSTOMS.
THE HON. G. H. C. BOULDERSON.
THE HON. S. H. LA FONTAINE, D.S.O., O.B.E., M.C.
THE HON. S. H. FAZAN, C.B.E.
THE HON. ELECTED MEMBER FOR MOMBASA.
THE HON. MEMBER FOR NYANZA.
THE HON. ELECTED MEMBER FOR UASIN GISHU.
THE HON. ELECTED MEMBER FOR ABERDARE.
THE HON. ELECTED MEMBER FOR THE COAST.
DR. THE HON. S. D. KARVE.
THE HON. ARAB ELECTED MEMBER.
THE HON. SIR ALI BIN SALIM, K.B.E., C.M.G.

19th April, 1937:
DR. THE HON. C. J. WILSON, M.C.

COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1937

Tuesday, 2nd March, 1937

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Tuesday, the 2nd March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning Council was read.

ADMINISTRATION OF OATH.

The Oath was administered to:—

Temporary Nominated Official Member:

M. R. R. Vidal, Esq., Officer in Charge, Masai District.

Acting Indian Elected Members:

Dr. S. D. Karve,

A. N. Maini, Esq.

MINUTES.

The minutes of the meeting of the 5th January, 1937, were confirmed.

PAPERS LAID ON THE TABLE.

The following papers were laid on the table:—

BY THE ACTING COLONIAL SECRETARY (MR. W. M. LOGAN):

Report on Co-ordination of Transport in Kenya, Uganda and the Tanganyika Territory (Brigadier-General Sir H. Osborne Mance).

Report of Standing Finance Committee on Schedule of Additional Provision No. 3 of 1936.

Statement required under section 150 of the Electric Power Ordinance for the year ended 31st December, 1936.

BY THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT (MR. E. B. HOSKING):

Return of Land Grants under the Crown Lands Ordinance, October to December, 1936.

BY THE DIRECTOR OF EDUCATION (MR. E. G. MORRIS):

Report of Select Committee on the Kenya Regiment (Territorial Force) Bill.

Report of Select Committee on the Kenya Auxiliary Force Bill.

BILLS.

FIRST READINGS.

On the motion of the Attorney General (Mr. W. Harragin), seconded by the Treasurer (Mr. G. Walsh), the following Bills were read a first time:—

The Income Tax Bill.

The Passion Fruit Bill.

The Mining (Amendment) Bill.

The State Railway Provident Fund (Amendment) Bill.

The Stamp (Amendment) Bill.

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

ADJOURNMENT.

Council adjourned till 10 a.m. on Wednesday, 3rd March, 1937.

Wednesday, 3rd March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 3rd March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 2nd March, 1937, were confirmed.

INCOME TAX BILL.

SECOND READING.

THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Income Tax Bill be read a second time.

It is not my intention in introducing this Bill to enter into details with regard to the general principles of income tax, for, as you are well aware, they were debated a few weeks ago, and it would merely be reiteration to go over those arguments again. I will confine myself to the principles of income tax as they appear in the Bill before us to-day.

I should first like to deal with the history of the Bill. I suppose one may say that the grandfather of the Bill was born in London in 1922, when a very strong committee sat in London and drafted a model Bill for introduction into the various Crown Colonies of the Empire. That Bill was never actually introduced or used in Kenya at all until 1933, when my predecessor and a gentleman called Mr. Surfleet—who, you will remember, was sent out specially from the Income Tax Office at home—collaborated together and produced the 1933 Bill. That Bill was considered by Executive Council and by a select committee of Executive Council and various amendments were made, and later it was introduced into this Council, and again a select committee was appointed and again various amendments were made to the Bill.

In 1936, when it was again decided to introduce income tax into this country, the Bill which had passed the second reading and had been amended by a select committee of this Council in 1933, was again placed before the public with a view to its introduction.

Of the more recent history of this matter you are well aware.

As a result of the deliberations of the Standing Finance Committee that Bill was returned to me by the Governor with instructions that I was to revise and re-draft it, and that I was to have the assistance of various knowledgeable members of the public, and of this Council in particular, to assist me in that task. You will remember, Sir, that I had more or less three instructions with regard to the new Bill: The first definite instruction was that instead of drafting the Bill to produce £86,000 I was to draft the Bill to produce £43,000—£43,500, I think, was the exact amount. The second task was to make the Bill as simple as possible, and the third task was to follow as far as possible the Ordinance at present in force in Southern Rhodesia.

Now, Sir, those are three very simple things to direct, but they are not always very easy things to carry out. In the first place, if we may take them one by one, I am asked to produce a Bill which will produce £43,000, and everyone will admit that when introducing an entirely new measure such as this the Treasurer, whose duty it is to advise in these matters, must be guided to a great extent by guesswork. It is true that we have had in force in this Colony during the last three years a graduated non-native poll tax, but that is a very different measure from the one now before you. As an example of the difficulty, I might mention one thing alone, namely, companies. As you know, under the graduated non-native poll tax there was no tax on companies, so that one has to guess as to what we shall receive from them as a result of this Bill we are now introducing. You may suggest that it is quite easy to calculate; that all companies publish balance-sheets and that these can be looked up and the amount discovered from them. But you must remember this: that although you may say that a public company makes a profit, of any amount you like, £50,000 let us say, and it was the original idea that Sh. 2 in the £ would be deducted at the source and handed over to Government, but no one can say exactly how much of that will remain in the coffers of Government because, assuming for the

[Attorney General]

purposes of argument that all the dividend holders were poor people who did not get more than £350, the whole of that money would have to be returned to them and not one single cent would go into the pocket of Government. So that everyone must realize that it is extremely difficult to estimate with regard to public companies, and that with regard to private companies it is even more difficult, because, as you know, such companies do not have to send in any balance-sheets to the Registrar, so that one does not know exactly what they make over a period of years. So much for the question of the amount.

The second point was simplicity, and I can assure you, Sir, and everybody in this Council that it is the ambition of every Attorney General and every member of every committee which sits on a Bill to make the Bill as simple as possible. But the moment you get down to detail you find that as you start to be simple so you lay the way open to evasion, and much as I should have liked to put up a simple Bill it has been found impossible, I say without hesitation it has been found impossible in every country which has attempted to introduce income tax, and we found it quite impossible here. But I do say this: I suggest that the Bill you have now to consider is probably as simple as you will find anywhere else in the Empire, and as a result of the work of the committee it is a great deal more simple than it was six months ago.

The last direction, which was to follow the Southern Rhodesian Ordinance, of course added another small difficulty, because there are two ways in which income tax can be imposed. One way is by permitting large allowances, and the other way is by starting to tax smaller incomes at a very small rate. One very knowledgeable witness who came before us suggested that the present form of this Bill was entirely wrong, and that what we should aim at doing was starting far lower down the scale, let us say, any figure you like to mention, 3d. in the £, on everything over £200 and work up gradually. As that was not the system in vogue in Southern Rhodesia, which we were told to follow, for one reason, we were able to dismiss that suggestion at once, and the second reason is, of course, the enormous expense of collection, because the moment you started bringing in practically every non-native in the Colony into the scope of an Income Tax Bill you would have to have an enormous staff to deal with the numerous returns, notices, and so on. For that reason we have adopted the method you see reflected in this Bill.

So much for the general form the Bill takes. I should like to mention now one or two of the difficulties with which the committee was faced.

The first thing we realized was that we were introducing the Bill at a time when the Colony was just recovering from the worst depression that it had ever been through, and it was imperative that we should so draft the Bill as not to cripple those in industry and trade. For that reason you will find the most generous allowances have been made all through the Bill to both traders and farmers. I know full well that purists in income tax will be able to attack us on the ground that we may have strayed a little from the usual rules with regard to capital and income, that we have also allowed in the Bill certain items which, as a rule, are treated as income, to be treated as capital. But I feel that we are justified. The fact that it is not done elsewhere does not prove conclusively that it is wrong, or right, and under the peculiar circumstances existing in Kenya at the present moment the committee, and afterwards Government, with their eyes perfectly wide open, have allowed the deductions which I will refer to in detail later. It may be necessary, Sir, when the country has rehabilitated itself in a few years to reconsider these particular provisions, but we can leave the future to look after itself.

Now, Sir, if I may take one or two examples, they will explain what I mean when I say that income on occasions has been used as capital. Before I do that, I would just like to mention that, as a result of our deductions and allowances, the position of the ordinary man in the country is this: Assuming he is a man with a wife and one child, and he has, let us say, 5 per cent of insurance, he will be

[Attorney General]
exempt on the first £647 of his income. Secondly, let us assume that a man has four children dependent on him and insurance up to £200, with other permissible deductions he will be entitled to a remission of £1,055. I think that if hon. members consider that they will have to agree that we have at least allowed a living wage, so to speak, for every man in this country before we have started taxing his income.

The next difficulty we were faced with was with regard to private companies. As hon. members know, there are in this country an enormous number of these companies, far greater, I should imagine, than most members in this Council think. There are, in fact, over 400 private companies, many of them consisting of ten persons and under, a great many of them consisting of five and under. These companies have been formed for various reasons, probably the most important reason being that they obtained the protection of the Companies Ordinance, and, secondly, that they were formed among members of a family or neighbours and who wished to co-operate together in planting, or whatever happened to be their occupations. It was represented to the committee very strongly that it would be a great shame if we permitted these small companies—and we were not thinking of companies with incomes of £50,000—to be taxed at Sh. 2 in the £ so that it would not be competent for them to build up reserves, a thing I think everyone will agree is essential for every small private company to build up if it is to weather the storms of the financial world. In order to meet them, the first reduction we made right away was to say: "We will treat you exactly as if you were an ordinary private person, and if you happen to be a company of five persons you will be taxed as if you were a private person."

I am afraid the drafting of that particular section—and I will go into it in a moment—has led to some misapprehension, for one reason, and one reason only, and that is that an ordinary person does not realize that the word "person" in its legal sense in the Interpretation Ordinance includes a company, and therefore where we refer in that section to the person being taxed, it automatically means a company, and the proviso you find at the end of the section is merely inserted to make sure that companies, for the reason to be given later on, on no account at any time would have to pay more than Sh. 2 in the £. I mention this at this stage because I understand there are some who imagine that companies are exempt up to £1,200, because that is the amount mentioned in the proviso to that section, the fact being that up to £1,200 they pay exactly the same as a private person and over that £1,200 pay Sh. 2 in the £, but never more than Sh. 2 in the £, as in the case of a private person with an income of £2,700.

The next point that was raised was with regard to losses, and in the Bill as it then read only half losses were to be carried forward. In the first place, none of us could understand the logic of why only half losses were to be carried forward, and we very soon decided that the only logical thing to do was that if we were going to attempt to allow for losses was to allow all losses, and so provision was made for that. The next point which arose—and this, I think, is probably the most imoprtant concession we have given in the whole of the Bill—was, from when should these losses count? In the old Bill there was a suggestion, or it was laid down, that only losses for 1935 and 1936 should count, and it was represented to us very strongly that that was a most unfair thing to do, because in 1936, for the first time for many years, traders and farmers were starting to make a profit, and what we were in fact doing was waiting until the taxpayers had just started to make a profit again and were immediately clapping on income tax. In order to meet that objection we permit the taxpayer to count his losses from 1933 up to 1936.

A very easy example will show you what we mean. If in 1933 a trader loses £500, in 1934 £500, in 1935 £500, and in 1936 makes £1,000, he is permitted to carry forward a loss of £500, and he is permitted to carry that loss over the next five years if it is necessary for him to do so in order to liquidate that loss. I think

[Attorney General]
Council will agree that that was a tremendous concession to make and should remove at once the point made against this Bill, namely, that we were waiting until the rise of the tide in order to introduce this tax.

The next important point in which we made an amendment was with regard to replacing machinery and rotation planting. It is a matter of common knowledge that during the last four or five years, at any rate up to 1936, people in this country have been unable either to replace their machinery as they should, nor, for various reasons—take sisal, for example—have they been able to indulge in the very necessary agricultural task of rotation replanting, with the result that, let us say, when the depression ceased the position was this: most people who work with machinery had old, worn out machinery, and sisal plantations, for example, had been sadly neglected because there had been no rotation planting. What we have done with regard to that is this: We are allowing as a deduction what is paid out of income to replace that machinery or the sisal, as the case may be. When I say sisal, please do not misunderstand me; if there are any other crops in the same position it applies equally to them.

I should explain at this stage that there is another clause of the Bill which deals with wear and tear, and if you have been receiving wear and tear from year to year on behalf of your machinery you could hardly expect to receive that and also receive the whole cost of replacement when the time came for replacing. But what we have done to meet the taxpayer at the moment is: We have said that no deduction on account of wear and tear shall be made during the year 1937 when the assessment is being made. The effect of that is that if in 1936 you happen to have replaced your machinery you are able to charge up that whole amount, whatever it is, against the income you have made during that year. Of course, as time goes on, and if instead of replacing it in 1936 when you submit your returns you put in a certain amount for wear and tear, the next year, if you replace it, you will only be allowed the cost of replacing minus the amount allowed in past years for wear and tear, and also deduct any small amount you might get for selling the machinery in question. I think that should go a long way towards permitting the planting community to rehabilitate themselves with regard to machinery and to replant their derelict land.

These are the main points that occur to me in dealing generally with the new Bill which is now being presented. I know quite well that in committee we may have to make various amendments with regard to detail, but I do submit that the Bill as it now stands goes as near to following the directions which we have received as it is possible to do. As I have said, the purists may attack us that we have forsaken well-known principles of income tax laws, but I hope that I have already justified some of them, and will do even more so in a minute or two when I deal with the Bill clause by clause. But I think we have at least solved the sum that you set us, Sir, which was to produce an income tax which should produce £43,500.

I think this would be a suitable time, Sir, if I expressed my own personal thanks to the committee which sat with me over this extremely difficult task. I think few people realize the enormous amount of time taken up by these unofficial members when dealing with a matter of this description, and I can say this without the slightest hesitation, that I have never had a committee that worked with greater co-operation or harder or more efficiently than the committee that sat with me over this task. (Hear, hear.) We started to sit somewhere at the beginning of January, and sat as often as possible until I submitted the Bill about three weeks ago. When I say as often as possible, we were a little bit unlucky, because one or other happened to be ill from time to time, and there was pressure of business which delayed us. But I think I can say with absolute safety that, having advertised in the Press that we were willing to hear any witness who cared to appear before us to assist us and to consider any memoranda sent in, we interviewed innumerable most knowledgeable witnesses, many of them on more

[Attorney General]
than one occasion, and examined I do not know how many memoranda in detail day after day, and I again express my sincerest thanks to those who worked with me.

My thanks do not end there, because there are two other members of this community who took the greatest trouble, although they were not members of the committee, not only to appear to give evidence before us on two or three occasions, each of them, explaining ours and their difficulties—and, when I say explaining difficulties, they were not appearing in any way to grind their own axes, but came to assist us to put a workmanlike article among the Ordinances of this Colony. I refer particularly to, and thank publicly, Major Freddy Ward, and Mr. Robson, who devoted hours of their time to this matter. (Applause.)

I now come to a detailed examination of this Bill clause by clause. I will apologize at once to you, Sir, and to the Council for the time which I may take over it, but I think you will agree with me that it is necessary.

The first part of the Bill may be dismissed very lightly, as it consists of the usual clauses with the usual definitions which you will find in any income tax ordinance. It provides for the appointment by the Governor of the various officials necessary under the Ordinance for the due administration of the Ordinance, and clause 4 provides for the official secrecy which is so important if the Ordinance is to be properly administered. In this connection I have only one point to make, and that is that we have increased the penalty, not that we expect that there will be many infringements, but we took so serious a view of this offence that we thought a greater penalty was necessary. I should like to make it clear that not only will these provisions apply to actual income tax officials but to any other people who happen to glean information through their duties, such as the Auditor.

We now come to the first important clause, which is clause 5. This is the clause which charges the tax on the income of all people resident in this Colony, and then it proceeds to set out what shall be deemed to be income. Sub-clause (a) deals with gains or protfis from trade, business, a profession or a vocation, and (b) refers to any gains or profits obtained from ordinary employment, such as a salaried man. I should like to point out there that amounts received by way of entertainment allowance or travelling allowance, in fact, amounts over which the taxpayer has no control himself but has to use in a certain specific way by order of his master, will not count towards income. On the other hand, there are two innovations which you will find in the second paragraph, namely, we considered that passage money should count towards income. I know that this has been criticized very severely in certain quarters, but I personally cannot see any logic in the criticism when you realize that it is in fact an emolument in exactly the same way that, if instead of giving a passage at the end of so many years, the amount of the passage was divided into that number of years and handed out by way of income and a person was told that at the end of that time he had to pay his passage home. I submit that it is an emolument, it is a gain or profit from employment, and it is just that it should count towards income. There is some misunderstanding as to when it should count, and the answer is quite simple: it will count when you receive it. If, for instance, you are to receive a passage of a certain class, say £80, at the end of four years, we do not count £20 each year, because you may never actually receive it! But the moment you do receive it, you have in fact received the equivalent of £80, and during the next year you will have to return that as a receipt of income during the year you actually received it. If you go home in one year and return the next, there will be £80 one year and £80 the next, and if you are unlucky enough to go and come in the same year you will have to count it as £160 extra when next making a return. It seems to me that this is quite fair, and on all-fours with house allowance, which we also considered should count towards income. There seems to be no logic in the argument that because a man gets £1,000 a year and no house he is in any different position from the man who gets £900 and

[Attorney General]
a house worth £100. The house is obviously a gain and a profit as a result of his employment. Both of these details are provided for in this clause 5.

The proviso is of interest to the farming community because, there, we lay down exactly what we mean as far as we can by a farm house. A farm house should be exempt, because it is as necessary to have a house on a farm as a plough. But we are not allowing someone to buy a few acres and have three or four cows and build a palace, so that the proviso defines as far as we can exactly what we mean by farm house, namely, a building necessary for that particular person farming on that particular piece of land.

Clause 6 deals with the basis of assessment. Of course, in theory income tax should, as you know, be based on the income you receive in the year you are actually paying, but in practice this is quite impossible, because no one can possibly know what they are going to get in 1937, say in March, when he has to send in a return. Therefore, for the purposes of assessment, the year before the year of assessment shall be the basis: namely, in 1937 the gain or profits made in 1936 will be the basis on which you work.

Clause 7 makes provision for companies, firms, partnerships, or individuals to make up their books at periods other than the 1st January to 31st December. It might be extremely difficult for a large firm in the habit of making up its books from June to June to have to draw up another balance-sheet at great expense in order to produce it to the Income Tax Commissioner in the following March. Provision is therefore made in clause 7 for the Commissioner, if he thinks it right and just, to accept a balance-sheet from any date instead of the statutory January to December. Of course, when that firm or that taxpayer once makes up his mind to send in returns from June to June, if for any financial reasons he would like to change to January to December he will not be permitted to do so.

Clause 8 is the ordinary clause providing for what forms of income are exempt from tax. All are perfectly obvious exceptions, such as the funds of land banks, local authorities, Civil Service Provident Funds, and so on. I might endeavour to make clear the proviso in clause (i). It gives the Governor in Council, subject to such conditions as he may impose, power to exempt from tax any income any local authority derives from trade or business if he is satisfied it is in the public interests. Of course, we put in, as we did in the original Bill, that such persons as municipalities could not enter into trade or competition with traders and escape from the income tax which a trader would have to pay. But where any of these municipalities are carrying on their normal activities, they can rest assured they will get exemption from His Excellency in Council as is provided. I do not think that that particular clause calls for any further comment.

I now come to clause 9 of the Bill, which deals with the Governor's powers to exempt interest on Government loans, which brings to the minds of many that very vexed question: Why cannot we tax the interest on these loans?

First, with regard to the clause itself, it is perfectly obvious that if for any reason we wanted to place a loan on the market and make it attractive, we must give someone power to exempt it from income tax. It may or may not be done, but the power must be there.

But I take this opportunity of explaining our difficulty with regard to the taxation of interest on loans. Of course, Kenya, with these large loan liabilities, would be in a happy position if we could tax the interest, but first, I can tell you, that all the loans raised except two had the provision when floated that they would be free from income tax, so that according to the contract it cannot be done. But there are two loans that might, under certain circumstances, be taxed. This point was referred home, and the reply was, in effect, that it would be in practice impossible to tax them. It was pointed out first that it had been made a trustee security because of its exemption from income tax; secondly, and this is the important one, that the Crown Agents were afraid—and I am not prepared to say whether they are right or wrong, but I presume their lawyers have told them—

[Attorney General]

that they would be liable to pay damages to the public who took up the stock if income tax were imposed; and thirdly, we were referred to Chapter 45 of our Revised Edition of the Laws, in which it is laid down—a peculiar provision I agree —that the King will be advised to disallow any Ordinance which brings undue hardship on any person as a result of taxation with regard to these loans. An answer to this might be: What about the provisions of the law with regard to relief from Empire taxation, this would remove the hardship? That, of course, is perfectly true up to a point, but it certainly might be a hardship on any person who was not liable to either the Empire or United Kingdom tax, if he had taken up this loan on the understanding—and apparently on the distinct understanding —on the market at the time that no income tax would be imposed on the interest on that loan.

For that reason—and with deep regret, because it would have solved many of our difficulties—we were not able to include it in this Bill.

We now come to the next important clause, 10, which deals with the various deductions which are permitted. Speaking generally, this clause is governed by these words: amounts "wholly and exclusively incurred" in the production of income. If you read the details you will see exactly what the draftsman is aiming at in these words. Outgoings used in producing income may be deducted when calculating income. If, for example, you have an estate, and borrow money on it, naturally interest would be paid on that money, and it will be an allowable deduction when you calculate your profit in any year. In the same way, any rent you pay for land, the land being used for producing income, will likewise be allowed.

You then come to a very important sub-clause, (c), which deals with a matter I have referred to earlier, the replacing of plant and machinery. At the risk of boring you, I will repeat the principle behind this deduction. Where a man is the owner of plant and machinery, he is entitled from year to year under clause 12 to deduct a certain amount by way of wear and tear. Let us assume that he is permitted to deduct £100 a year. At the end of five years he finds it necessary to replace this machinery, and he replaces it at a cost of £1,000 and he sells his old machinery for £100. He will be entitled to deduct from income for that year the £1,000 less the amount which he received for five years' wear and tear, namely £500, and the amount he received from the sale of the old machinery, so that in effect he is able to deduct the amount of £400. That is the usual ruling which will apply in future. With regard to the year 1937 we make a special provision, namely, there have been no deductions for wear and tear, which means that a man will get the whole amount, if he has bought new machinery in 1936, as a deduction, less any amount he might sell the old machinery for.

I cannot help feeling that this clause has been misunderstood in certain quarters, because I know that when we go into select committee representations will be made to us with regard to depreciation and wear and tear on buildings. At the moment we say to the owner of a building which is of a permanent structure, "If you use that building for production of income, and if we allow you the amount you pay year by year to keep that building in repair, you can hardly at the same time ask us to allow you wear and tear." It will be interesting if I tell you that I was fortunate enough to see a report of the committee which has been sitting at home for the last 9½ years —they take rather longer than we do!— to consider the consolidation of the income tax laws, and a particular section would apply in this case. They do allow wear and tear, but they say the wear and tear shall be an amount a man would have paid if he had repaired his building, so that the actual amount works out at the same amount as he will get under our particular sub-section here. I may also add, with regard to that point about a building, that it is no innovation in this Bill; it is taken verbatim from Southern Rhodesia, which we were asked to follow.

Sub-clause (e) is the usual clause which deals with bad debts and what happens when they become good debts afterwards.

[Attorney General]

Perhaps some little explanation is necessary with regard to sub-clause (2), which gives the Governor in Council power to make rules regulating the method of calculating deductions. I sincerely trust that it will never be my duty as Attorney General of this Colony to have to draft those rules, and it would probably be the most difficult task anyone could undertake, because the rules would differ in every single place in the Colony that you went to. If a deduction were allowed for corrugated iron at the coast, where it only lasts two years, some entirely different deduction would have to be allowed for the same thing in Nairobi and another deduction for a place like Kisumu.

What we think will happen is that the Commissioner for Income Tax will draw up rough rules, which will be circulated to those interested. Very few taxpayers will have to go into this question, and rules at first may be unnecessary. That is done in England to-day, and I see no reason why it should not work perfectly happily here. It may take a few odd cases before the local committees or courts to settle exactly what should be allowed, but in a very short time there will be working rules, and it will be quite unnecessary for the Governor to try and lay down rules which cannot be altered or varied except by further legislation.

The next clause is merely put in for clarity, I suggest, and lays down perfectly clearly those things which will not be allowed as deductions, namely, domestic and private expenses and so on. The clause takes the opportunity, in sub-clause (f), to make it perfectly clear with regard to premises what will not be allowed, namely, "rent of or cost of repairs to premises or part of premises not paid or incurred for the purpose of producing income". What this means is this: that where you are housing your machinery you are going to be allowed the cost of repairs of that building, but you will not be allowed the cost of repairs on your own private house that you may be living in.

Clause 12 is the clause to which I have referred before, and that sets out that in the ordinary way allowances will be made for wear and tear. The only exception to that rule is with regard to buildings, and I have already explained that.

Now we come to trade losses, and, as I explained before, clause 13 sets out that you will be permitted to deduct all your trade losses and not half of them. It also sets out, as I said before, that you will be permitted to start calculating your trade losses from the year 1933. I have already given an example of how that will work out.

We then come to the deduction for dependants. We are allowing £100 by way of deduction where you are keeping a dependent relative, and the clause sets out exactly who is a dependant. In order to make it clear that you cannot get an allowance both as a dependant and as a child, you will see in sub-clause (2) what happens where a dependant is in fact receiving a child allowance, namely, that the total amount allowed will be £100. We also make it clear that whether there is one or there are three dependants, there will only be allowed £100 for all of them.

Clause 15 permits £350 to be deducted from the income of every taxpayer resident in the Colony; and clause 16 provides a deduction of £150 for every taxpayer resident outside the Colony. That is in conformity with usual practice. There is an allowance under clause 17 for a wife. Many think she is worth more, but we were only able to allow £150, and a deduction is made for children in clause 18, starting at £75 for the first child and £60 each for the next three, so that if four children are dependent on a man at one time the total deduction is £255.

Clause 19 needs, I may tell you right away, an amendment. It should refer as previous clauses do to persons resident in the Colony. That amendment will be made in select committee, and I regret the error. The clause provides a deduction for insurance up to one-sixth of the taxable income; or £200, whichever is the less.

Clause 20 merely deals with the form of proof, and sets out the way claims for allowances will have to be made under this part of the Ordinance.

We now come to the real taxing portion of the Bill. The tax on the first £700, that

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is after all the deductions have been made, will be at the rate of Sh. 1 in the £; on the next £500, which makes £1,200, at the rate of Sh. 1/50; for every £ of the next £1,500, Sh. 2; and thereafter Sh. 2/50. I have already explained to you the meaning of the proviso which affects companies, and if it is necessary in select committee to make it even clearer I can see no objection to so doing.

There may be some argument as to why we have fixed the rate for companies at Sh. 2, and allowed them to be treated as ordinary persons up to Sh. 2. The reason is this: You always think of companies as people who are taxed most heavily, but actually it is a misconception. Companies in England are in fact taxed at the lowest amount any person is taxed, at the fixed rate of 4s. 9d., no matter what their profits may be, and when you consider, as you will in a moment, the provisions with regard to a refund of the tax from England, where there is double taxation, you will find a proviso that with regard to the United Kingdom the latter will only repay up to half the tax to which she is entitled, namely, 2s. 4½d., the tax on companies in England being at the fixed rate of 4s. 9d. Therefore the first thing essentially necessary to avoid double taxation was that our tax here should be less than 2s. 4½d., and it was suggested by those who know most about these things, and, in fact, it was suggested from home, that a reasonable amount to fix would be Sh. 2, as we should always be on the safe side if the English rate were varied 3d. one way or the other.

We now proceed to the clause which has caused the greatest misunderstanding, I suppose, in the whole Bill, and that is with regard to deductions of tax from dividends of companies. To begin with, I should like to impress on everybody the difference between dividend interest and debenture interest, because there is all the difference in the world. Dividend is a profit, and a debenture is in the shape of a mortgage, which I feel everybody is more used to understanding, and is a definite deduction, as it is something which has been borrowed, and instead of calling it a mortgage, in companies it is called as a rule a debenture.

The first thing we say in clause 22 with regard to dividends is that a company, when paying out a dividend, may deduct income tax at source. The reason why the word "may" and not "shall" was used is because we do not mind whether they do it or not, because they are going to be taxed in any event. If a company chooses to hand out all its profits by way of dividend then we will call on them for the tax. I can assure you that there is no necessity to put in "shall" because, for their own protection, they must do it, but if for any reason a company wishes to give their dividends to their shareholders tax free they are entitled to do so under the Ordinance, because they will be paying the tax for the individual.

The next principle I should like you to get clearly into your mind is this: There is no question of double taxation, of taxing the company, which is the property of the shareholders, and also the shareholders, but all we are doing is that we are making the company our agent in collecting the tax, and after the tax is collected we then decide how much of the tax we are entitled to hold on to. Assume, for example, that a company makes a profit of £20,000. They immediately pay out the proper tax on that £20,000 to the Commissioner for Income Tax, and then proceed to hand out to the shareholders their share of those profits. Each share will be accompanied by a certificate to the effect that "I have paid on your account to the Commissioner of Income Tax the sum of (whatever it is)," £20 say. On receipt of that certificate the taxpayer proceeds in due course to make up his return for the Commissioner. He sets out all his income, and has to put on the credit side the dividends he receives from his company, plus the amount which was paid on his behalf to the Commissioner. Let us say that, having made all his deductions, he finds he owes £21. The moment the Commissioner asks for that £21, the taxpayer says, "I have a receipt from my company showing that they have paid on my account to you £20 already," and all the Commissioner will be able to receive from him then will be an amount of £1. I go even further, and say that if it is shown he only owes the Commissioner £10, on

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his returns being submitted to the Commissioner he will receive a refund of £10 overpaid on his behalf.

Council adjourned for the usual interval.

On resuming:

THE ATTORNEY GENERAL: Your Excellency, when we adjourned I was just endeavouring to explain the difference between dividends and debenture interest. I had shown that whereas in the case of dividends we do not mind whether a company elects to pay the tax from the dividends or not, because they would have to pay in any event, in the case of debentures it was absolutely necessary, because debentures were a deduction and not a profit. I had also referred indirectly to the clause which follows—the clause which deals with set-off, and what I said with regard to calculating a taxpayer's tax in regard to dividends is equally true with regard to deductions in respect of debenture interest, except in one case he has a certificate for the appropriate tax, whatever that may be, from the company and, in the case of debentures, it will be charged at a flat rate of Sh. 2, but the Commissioner will have to refund if necessary in the same way.

Of course, the difficulty with regard to clause 23 which everyone will recognize is this: that where you are dealing with tax deductable at source it is quite easy, after the Bill has been an Ordinance for a year, but we have to deal with 1937, and no company has been able to deduct either dividends or debentures at source for 1936, the year on which incomes will be assessed. The way in which we have endeavoured to get over that difficulty is as follows: We say with regard to dividends that the company is, in fact, the property of the shareholders, and, therefore, we will tax the company on its profits, and we will treat the dividend holders as if the company had paid the proper tax on their behalf. We go further, and say the dividend holders will be in actually the same position as if it had actually happened in 1936, namely, they may go to the Commissioner with their certificates and get a refund, or at any rate get credit for what the company has paid in their behalf.

We could not do the same thing with debenture holders because that is an unfortunate debt owed by the company and not a profit and they have had no opportunity of deducting at source. We therefore say, with regard to the debenture holders who received debentures in 1936, that we will count it as if the company had paid the tax, but will not say that they will be entitled to any refund from the Commissioner. A small example will show you what I mean. Assuming that the dividend taxes paid by the company were £20, and the taxpayers to whom those dividends were paid were only due £10 in 1937. The Commissioner would have to refund them £10 each. But were that same amount debenture interest, we say "No," as we never got the tax at all; we will only treat these debentures as if in fact they had paid the correct tax but will give no refund because we never actually received the tax. In the case of the dividends we shall actually get the tax from the company. Now, assuming we could tax debentures paid in 1936, you must realize that the debenture holder would have to pay tax twice in one year, as it will certainly be deducted at source this year.

Clause 24 says exactly the same thing with regard to mortgages as is said about debentures, but it only deals with mortgagees not resident in the Colony. There was no necessity, as every mortgagee is registered here, to make every mortgagor deduct the tax on behalf of the Commissioner, because we are always safe in getting the tax from the persons resident in the Colony, but we had to make it incumbent on the mortgagor, where money is going overseas to non-residents, to deduct it at source. There are exactly the same provisions with regard to 1937.

Clause 25 is the usual clause regarding temporary residence, and says in effect that a person who resides less than six months, in other words a visitor to this Colony, and has no intention of residing here permanently, shall not be called on to pay the tax.

Clause 28 is a much-abused clause, because it provides that the incomes of a man and wife shall be treated as one. Many arguments have been raised on this subject. It has been pointed out that in

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England a woman is no longer treated as an incapacitated person, she is allowed under the Married Women's Property Act to hold property of her own, and that the general trend in legislation recently is to make her entirely independent of her husband. But it is interesting to note that in that same report to which I referred earlier, they say that for various reasons they regret they are unable to recommend that the income of a man and wife should be treated separately. I can only say that it is common practice all over England and the Empire to treat a man and his wife's incomes as one. In effect, it taxes really the household, and not each one separately in the household.

We now come to various formal provisions.

The first, in clause 27, makes trustees of incapacitated persons liable in exactly the same way as the incapacitated persons themselves. If you look at the definition you will see what incapacitated persons are; roughly, unfortunate people who have lost their senses, infants, and people of that description. Therefore, it is of course necessary to make someone responsible for sending in returns on their behalf, and trustees are made responsible by clause 27.

Clause 28 proceeds to make a non-resident liable for assessment through his trustee or agent. I should like you to note particularly in this clause that whereas certain people, such as a factor, an agent, a receiver, branch, or manager, are responsible for the moneys which they should receive on his behalf, in the case of a trustee, curator, guardian, etc., they are only responsible as far as the money which actually comes into their hands is concerned. The reason for this differentiation is obvious. If you were to allow an agent to only pay on sums which he actually received, he would naturally take great care to receive as little as possible here and to send directly overseas, whereas, in the case of a trustee, he has nothing to gain; he is merely performing a legal duty, and naturally has to collect all the money he possibly can. It is really to prevent evasion that that is done.

Sub-clause (2) is enacted for exactly the same reason, to prevent—the word "dummying" describes it. Namely, you have a man resident here who is in fact trading on behalf of a non-resident and not himself at all, and this clause permits the Commissioner, where he suspects that dummying is going on, to proceed to assess the non-resident as if he were a resident, and to assess him through the resident who is acting as his agent in this Colony. It also gives the Commissioner power to call on the resident here who is acting in any of the capacities we have mentioned to send in returns for and on behalf of non-residents. It is impossible, you will see, to get in touch with the man overseas, and he would take no notice anyhow of requests, and so we pin someone in the Colony down to perform the duties required under the Ordinance, in exactly the same way as we pin a trustee down to send in returns on behalf of an incapacitated person.

Sub-clauses (4) and (5) are merely explanatory, and sub-clause (6) is very necessary, because in certain cases it might be quite impossible for a resident person to give exact details of the profits with regard to his principal overseas. This sub-clause provides that he may go to the Commissioner and ask the Commissioner to assess the non-resident on what he would call "reasonable profits" on the business done. If later on the accounts of the overseas man come to hand, the Commissioner will have to refund, or vice versa, but this is to permit the resident here to carry out the provisions of the law, which may be impossible if it is insisted that the accounts should be produced from home, accounts which the non-resident may refuse to send!

Clause 29 again deals with trustees acting on behalf of incapacitated persons, and makes it clear that trustees stand in every way in the same position as those they are answering for would have been if not incapacitated.

Clause 30 makes it incumbent on the representative or agent of any person who receives money for another for any reason whatever, if called upon by the Commissioner, to put in a return of that money. There is no liability attached, but if you receive money on behalf of X, Y, or Z, and the Commissioner sends and

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asks you to let him know the amount, you have to send in a true statement of income and the name of the person on whose account you received it.

Clause 31 makes the manager or the principal officer in a firm, or corporate body, responsible for sending in various returns necessary under the Ordinance on behalf of that corporate body.

Clause 32 indemnifies those persons whom we have already mentioned who take money belonging to another to pay to the Income Tax Commissioner, the man who pays the Sh. 2 in the £ which is due to an overseas mortgagee, and the same applies to debenture and dividend interests where the company deducts the tax at source.

Clause 33 is, I think, a cumbersome clause, and I intend in select committee to clarify it. The whole point is with regard to deceased persons. If a person dies within the year of assessment, whenever that may be, it will be necessary for the personal representative to send in a return and pay out of the funds collected from the estate the income tax due thereon. The first three lines, I think, make it unnecessarily complicated, and I can assure you it will be made much clearer before you see the clause again.

The next clause merely sets out that trustees are jointly and severally liable.

Clause 35 is quite simple. It deals with partnerships, which are taxed on the profits received out of the partnership by each partner, and again sets out who is the responsible partner for sending in the returns required. We have defined who that partner is at some length, calling him the "precedent partner", for we have to make sure that somebody is responsible for carrying out the duties assigned under the Ordinance.

We now come to clause 36, which deals with agriculture, and this will be of particular interest. We seek first to deal with what we call "immature areas". You see the definition there:—

> "'Immature area' means an estate or part of an estate, first planted in any one year, in which the trees planted in that year are not fully mature, or not in full bearing."

That is very clear. And we go on to explain that a man must first put in a separate return with regard to these immature areas, that the initial cost of clearing and planting such areas, being capital, cannot be charged against income, but after that initial cost, if perchance because the trees are not in full bearing or in bearing at all during that particular year he suffers a loss, as he obviously will on that particular immature area, he will be allowed to count that loss in with the whole estate and deduct it from the income he receives from the other parts of the estate.

We then follow that up with clause 37, which I have already indirectly referred to, when I stated that we proposed to permit capital on certain occasions to count as income. I refer, of course, to the special deduction which we have permitted here, namely, a deduction where a man puts in a dipping tank, the deduction for new fencing, deduction for rotation planting of sisal, and a deduction for measures for the prevention of soil erosion. There, I submit, we have taken the long-range view. If there are four things in this Colony which are necessary and which the farmers of this Colony must go in for before very much later if the Colony is going to continue as an agricultural colony, they are those four things, and all we have done is to say, "If you put in a dipping tank we will allow that as a deduction," and similarly with the other things mentioned.

I should like to point out that, under certain conditions, those unfortunate people may be made to put up fencing. There is, as you know, a Dipping and Fencing Ordinance which may, under certain circumstances, be brought into force at any moment. Let us assume that the farmers of a particular district wish to have fencing enforced in their district and the Ordinance brought into force, so some unfortunate taxpayer will have to put it up willynilly and will think it a great hardship if he is not allowed to have that by way of deduction in the year that he puts it up.

We then come to the farmers' option clause. In the old Bill, you will remember, the clause there read to this effect—I will try and give a simple example.

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Assuming a stock farmer at the beginning of the year had 1,000 head of cattle. It naturally increased by the end of the year to 1,500 head. The Income Tax Commissioner would assess him on the income, 500, for whatever they happened to be worth. It was pointed out that this might be a great hardship, because the unfortunate farmer might have been in quarantine the whole of the year and have not sold a single animal, so that instead of what looked like a good thing on paper he would have had an extremely bad year. In order to get over that, we went to the Nyasaland Ordinance, and found what was called an "option" clause, which says that a farmer may state the method he wants to be assessed on—on the actual cash profit made during the year, or in the way I have already mentioned, taking into account the increase in the cattle. Of course, we imagine he will choose the first in every case, but if he does not want to he need not. I know it works well in Nyasaland, and I am confident it will work well here. The clause is lengthy because we had to put in sub-clause (7) and onwards to show exactly how cattle would be valued in the event of a farmer choosing the old method of assessment.

Clause 39 deals with the profits of non-residents. That means, in effect, this: that the profit on produce grown here and sold abroad will be deemed to be profit arising here. That is simple enough, because most transactions of a man living abroad arise from an estate here. He has the produce of his estate sent over, and the actual profits from moneys received, wherever he happens to sell it, will be deemed to be profits accruing from Kenya. That is the first thing. We had to make a further provision, because although produce may go out from this Colony in one form it may be treated at home and converted into something else, so that in arriving at the amount of profit made by those non-resident taxpayers we had to take into account anything they spent in converting the raw produce that went out into whatever commercial produce it happened to be converted for sale at home. In order to assess what the value of produce was when it left here, you take the market value at the time it is sold, if sold in the open market. That also applies to the man who does not sell it at all. If he owns teashops in England and has a tea estate here, all his tea is exported directly to him, and he never sells it outright, but it is put into pots and sold indirectly to customers by giving them cups of tea. To assess the profits made, we merely assume that the tea when it went home was sold to the best possible advantage at that time by reference to the market values of that particular grade of tea at the time it came on the market. Of course, this is treated as wholesale and not retail prices.

We now come to a somewhat difficult clause to understand. It deals with the assessment of insurance companies. To begin with, insurance companies are assessed differently in that life insurance companies have a little clause of their own, sub-clause (*a*). Put very shortly, the profits of an insurance company are deemed to be as follows: You take the gross premiums which are received in the Colony, you take off the reserve which that insurance company has for unexpired risks at the end—let us take 1936 as an example—at the end of 1936. You then add on the amount they set aside at the beginning of 1936. Let us take the reserve for risks at the end of 1936 at £3,000 and the reserve set aside at the beginning of 1936 from the 1935 accounts at £2,000, and the difference would be £1,000. You take off that amount, which is set aside, and you also take off the actual claims paid, naturally, and those outstanding, and you also take off the office expenses, the usual costs of the head office, and so on, and the net result is the profit that the company will be deemed to be receiving in this Colony.

With regard to life insurance companies an entirely different method is adopted. Of course, if we were only dealing with companies that operate in this Colony and nowhere else it would be comparatively easy, because all we would do would be to take the investment income, deduct management expenses and so on, and that would be the profit accruing in this country. But, unfortunately, we are dealing with companies operating all over the world, so there had to be some scheme

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devised to discover how much of that profit could fairly be attributed to what came out of each place where a company was operating. We take the total investment income. We then take the premiums received in the Colony and place that over the total premiums received from everywhere, and the Kenya income is deemed to be the proportion of the investment income that Kenya premiums bear to the total premiums less running expenses. That sounds very involved, and I do not know if I have made it clear, but to my mind it is simple, if reduced to figures.

You have a big company operating all over the world, and it makes a million pounds. When I say makes, I am not referring to premiums, but to income from its investments. You then say, taking any one year, taking of course the year of assessment, "What did you receive from Kenya by way of premia?" And they say they received so much. You then say, "How much was received by way of premia from the world?" That will be another sum, and the Kenya income will be Kenya's premia over the total premia of £1,000,000, and from that you naturally deduct the usual office expenses and so on.

We do somewhat the same thing under the next clause with regard to shipping. Again, of course, we are dealing with shipping operating all over the world, and so all we do is to take the balance-sheet when it comes out, take the total income received from Kenya, put the Kenya income over the total income received from everywhere else, and that gives us the proportion of the profits which will be deemed to arise in Kenya. I think that is a very simple working way of doing it. This is not an innovation of the committee's, but both the insurance and shipping sections are in common form all over the Empire, so that as far as I am concerned it will be quite impossible for us to alter it without upsetting the tax operations everywhere, as this is what is adopted in every other colony, so it presumably works fairly on the whole.

In order to assist in arriving at the amounts, in sub-clause (3) we provide that the certificate of an income tax authority will be accepted. That merely means that if, for instance, the head office is in South Africa, England, or anywhere else, if the Commissioner there accepts the fact that the company made a profit of £100,000, having gone into the books, we do not go into them again here; we accept his certificate when it is sent out here. It may happen on occasions that it is difficult to arrive at these figures, which may be complicated, in the time allowed under the Ordinance, and in (4) you will see that a fair assessment may be made, on what it is thought the profits would be, having regard to the business done here. That amount is paid, and if at any time in the next six years it is proved to be a mistake one way or the other it will be adjusted. Provision is made for casual shipping, which need not be taxed if the Commissioner believes the ship to be making a casual voyage. The master of the ship is made liable in the event of a ship coming into port and whether it is chartered by a resident or non-resident.

Clause 42 provides that where a ship belonging to any company is in port and that company has not paid tax due for a period of three months, the vessel may be detained.

Clause 43 provides that the profits of air transport shall be treated in exactly the same way as sea transport.

I now come to two of the most difficult clauses in the whole of the Bill, clauses 44 and 45. They deal with relief in cases of double taxation. Without a blackboard and a piece of chalk it is perfectly impossible for me to explain to hon. members in detail exactly how these details work out, but you can take it from me that in no case, whether it be in the United Kingdom or any part of the Empire which reciprocates with us, will taxpayers ever have to pay more than the highest tax in either colony.

I will give you a simple example: Take the United Kingdom first. Assuming you receive money from the United Kingdom here on which 4s. 9d. in the £ has been paid, it has been deducted in England, and assume that when you receive the money here the Commissioner assesses you eventually at Sh. 1 in the £ on that amount. On getting that certificate from him, you will then apply to the Income

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Tax Commissioner in England for a refund of 5h. 1 in the £, so that in fact you will have paid at the end of all these complicated transactions 3s. 9d. in England and Sh. 1 in Kenya.

There is one proviso that I must add here; that is, that the United Kingdom says that on no account will she at any time pay back by way of remission to a colony more than half the amount of the tax charged. Assuming that a taxpayer here had been assessed at Sh. 2/50, which he paid, he will not get back from England more than 2s. 4½d., which will be half the 4s. 9d. paid there. Beyond that I cannot tell you, but if anyone is sufficiently interested to work out the various little examples which I can hand to them, they will see that that is how it works. If it is not, then there is something wrong with the Ordinance. But I can tell you this, that these conditions are exactly the same as those which obtain in every other part of the Empire where income tax exists, and that has been the result everywhere else, so that I do not think people here need be worried. Exactly the same principles apply in the case of Empire tax, except that it is even more difficult to understand, and the reason is that in wording the clause we have to word it so that we know which is the colony which has the greater income tax, because it depends on that where you get the refund from. In wording it, what may be true of this Colony and Nyasaland may not be true of Nyasaland and Southern Rhodesia, and that is the reason for all these complicated provisions. But I again assure you that it will only mean at the end of it all that the taxpayers here will pay the greatest income in whatever place that happens to be. The rest of the wording is merely deciding as between governments how they will split the money up, so I really suggest that if taxpayers are sure of that we need not worry any further about it.

Clause 46 merely states that in calculating income you must add dividend interest or debenture interest. As already explained, you eventually get the deduction from the Income Tax Commissioner, so naturally you have got to add it in as if you had received it in full.

Clause 47 is perfectly straightforward, and merely says that any sum you realize under insurance against loss of profits must be taken into consideration in computing profits, because you have insured against loss.

Clause 48 deals with clubs, and that in effect provides that every bona fide club is exempt and, bona fide, in the terms of the clause means a club where at least three-quarters of the profits come from actual members.

Clause 49 gives the Income Tax Commissioner certain powers, and very important powers, with regard to small companies. It is conceivable that a small company of five and under by not distributing the profits by way of dividend would be able to avoid just taxation, and this gives the Commissioner power, where he is satisfied that the transaction is not bona fide and that the amount set aside say for reserve is not genuine, to say that a certain amount ought to have been distributed by way of dividend to the various members and they will pay tax on that as if it had been. It is merely a precautionary clause to prevent people evading just taxation.

In the same way, the next clause deals with artificial and fictitious transactions, again with the object of avoiding sending in proper returns. Naturally, this clause is guarded by the usual clause with regard to appeals and so on, so that hon. members may rest assured that it will not be abused.

We now come to Part VI, which deals with the manner in which the tax will be collected.

The first duty placed on the taxpayer is that he must send in his return; in the ordinary year it must be before the end of March, and in this particular year before the end of June. The next thing that happens is that, having sent in this notice, what will in fact happen in practice is that the Commissioner will send you a return which you will have to fill up. The time in which one has to fill it in and send it in are set out. When the return arrives back, the Commissioner will proceed to assess the taxpayer. If, in order to do so, it is necessary that

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he should have a further and better return, he can call for them under clause 52, and in clause 53 he can go still further, if he wants to check it up, by calling for any books, documents, and so on.

Clause 54 is very necessary in the case of people who sign returns, or people who get others to make a return for them, and the clause says in effect that when you sign a return you are deemed to know what is in it. It is no good coming when in trouble and saying that your clerk put £1,000 instead of £10,000! The burden of proof remains on you that you did not know or could not know.

Clause 55 provides for proper books of account to be kept, and gives the Commissioner certain powers to dictate how those accounts shall be kept.

Clause 56 makes it incumbent on all Government officials and members of the Kenya and Uganda Railways and Harbours to give any information that comes to hand in their official duties at the request of the Income Tax Commissioner, and clause 57 makes it incumbent, if he is called on, for every employer to send in details of his employee's income.

Clause 58 is a general clause, which makes it incumbent on anyone who receives money on behalf of another, if called upon by the Commissioner, to submit a return of the money so acquired, and also to give the names and addresses of the person to whom the sum belongs. The same provision applies to occupiers of land, who may be asked to give details of improvements, rents paid and to whom paid.

Clause 60 provides that the Commissioner may ask for the names of all lodgers who have resided in a hotel for over three months. That is necessary to check up on persons who have been in the Colony six months.

Clause 61 is entirely formal, and states that the Commissioner or officer duly appointed by him shall sign all notices, and clause 62 states that those notices shall be served personally or through the registered post.

We now come to the actual assessments; that is, we have got to the stage where you have sent in your notice that you are liable to tax and have received a form from the Commissioner for you to fill up. When you first fill in that return and send it in the Commissioner may accept it, and immediately proceed to assess you on that basis. On the other hand, you remember he has already power to call for books and so on if he requires them, he may then refuse to accept your return, and assess you on what he himself thinks to be the actual amount of your income, or thirdly, if you fail to send in a return at all, he may assess you arbitrarily, and it is up to you to prove later that he is wrong.

Clause 64 says that additional assessments may be made at any time within six years. In a later clause you will see that any taxpayer who pays an amount in excess of what is due will be entitled to recover it within six years, so that this is merely a corollary to that. As soon as the assessment has been made, it is the duty of the Commissioner to get out a list of persons assessed and the amount of the tax.

Clause 66 takes you to the next step. It says that as soon as the Commissioner makes the assessment he shall send notice of that assessment to the taxpayer. Now we come to the series of forms of appeal. We have got as far as the taxpayer being told what he owes to Government by way of income tax—£x. The first thing he may do under clause 66 (2) is to ask the Commissioner to reconsider it and send in his reasons. That will cost him nothing. The Commissioner will then proceed to reconsider it and may even go so far, as you see in sub-clause (3), to call in a person who thinks he can give useful evidence or he may call for further books and so on and may examine any person on oath. There is a proviso to say, of course, that he cannot call a man's confidential clerk to give evidence on oath against his employer, but the Commissioner can call any other independent person. Having done that, the Commissioner may either reduce the assessment or stick to the original assessment, or make any assessment he thinks just.

Clause 67 makes it clear that formal errors in assessment, such as a name spelt

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wrongly, or any other similar error, will not vitiate the notice or document.

We have got as far as the Commissioner having made, as far as he is concerned the final assessment. After the taxpayer has appealed to him against his assessment, and got a reply from the Commissioner, we now come to the various courses that the taxpayer may take, and clause 68 is somewhat of an innovation, though it is copied in part from the law of the United Kingdom. We set up what we call local committees, which will consist of four persons. They will not necessarily be people of legal knowledge, but just responsible gentlemen, though naturally if you can get an old retired legal man it will be helpful—and not necessarily old! (Laughter.) If there is any taxpayer aggrieved by the assessment he can appeal to a local committee. The object of the committee is to avoid in the first instance the cost of going to court. These committees—how many there will be it is impossible to say at the moment—will be sitting in various centres. Taxpayers will be able to appear before that committee, either himself or through any agent he likes. There will be none of the formality of the courts attached to these committees.

You can well understand the type of case that will come before them, such as the Commissioner not allowing the correct amount, in the mind of the taxpayer, with regard to wear and tear. He will appear before such a body, who will decide the amount. I must make it clear that if there is any point of law involved, and a taxpayer knows perfectly well that he is eventually going to fight his case in the courts, there is no obligation on him to go to a local committee, but he may go straight to the court. If he is dissatisfied with the decision of the local committee he may appeal to the court, and in the same way the Income Tax Commissioner may do the same thing. Having got to the court and a decision made there, he can only appeal from the court to the court of appeal on a point of law or on a point of mixed fact and law. That is a common practice all over the Empire, as it would be perfectly absurd to go to Privy Council on the amount of wear and tear allowed on some bit of machinery. The court, when a taxpayer gets there eventually, will have the power of reducing or adding to the assessment. It will hear the case in camera, and their decision if not appealed against within the time allowed will be final.

Clause 71 makes it perfectly clear that if no objection or appeal is lodged within the proper time after you obtain your assessment notice, such notice shall be deemed to be final. Of course, there is a proviso that if you can show good cause why you did not appeal within the proper time, the time will be extended. There is also a proviso that the Commissioner may make a refund even if there is no appeal if he is satisfied that he charged too much. The Rules Committee is given the task of making rules which will govern these appeals before the courts.

Part IX need frighten no one, even though it looks terrifying, as it only deals with persons about to leave the Colony permanently, and it is in order to permit the Commissioner to jump two or three steps at once where he knows a person will soon be out of the Colony and that he will be unable to get any tax from him. The usual provisions with regard to appeals are made, and if the Commissioner were to abuse his powers under that clause he could be pulled up by the courts.

With regard to the collection of the tax, the first provision is in clause 74, which provides that the collection of the tax shall be in abeyance while an appeal is pending. Of course, that is only a matter of common-sense, but in the ordinary way, by clause 75 the tax shall be paid by the 30th September, or 90 days after notice of assessment is received, whichever date is the later. I want to impress that on you, because it was represented to us quite early that it was unfair to call on people to pay the tax too early in the year, that they had many other taxes to pay in January and March and so on. Therefore in order to meet that grievance, we have fixed the date of payment for the 30th September, or 90 days after receiving notice of the assessment.

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Why I have called attention to that is that later on there is a provision in which there is a penalty for non-payment of the tax, and I want to point out here that a taxpayer will have had nine months or more in which to pay the tax, so that the penalty, I submit, is perfectly justified.

We have in clause 75 made special provision for those leaving the Colony before the 30th September. What we say is that if they leave before that date they will have 90 days after their return if they have by the time of their departure been assessed, but if they have not been assessed by the 30th September they will have 90 days after they return from the date on which they receive the assessment.

Power is given, you will notice in clause 76, to the Commissioner to remit any penalty he considers harsh or inequitable.

Clause 77 provides that after notification of the result of appeal the taxpayer will be called on to pay within 30 days, or the 30th September, whichever is the later.

Clause 78 provides for the set off of poll tax which will have been paid in the early part of the year, and clause 79 gives the Commissioner power to appear in any court at his own discretion.

Clause 80 I referred to earlier when I mentioned that at any time within six years a taxpayer would be able to obtain repayment of tax if in excess, and clause 81 provides that income tax letters and so on shall be post free.

Part XII deals entirely with penalties, such as failure to send in returns, fraud, and so on. The only clause I think I need call attention to is clause 85, under which the Commissioner may compound any offence where he thinks it right and just to do so.

That, Sir, in detail is the correct interpretation of the various clauses of this Bill. I submit that as a Bill it is as moderate and equitable as any Income Tax Bill that can be found in any other part of the British Empire.

Before I sit down I should like to make one personal matter clear. I understand there is a rumour—I have seen it in the papers—that Government intends to rush this Bill through, for the very flattering reason given in the paper, namely, that I was anxious to get away on leave. I can assure Council that, although we intend to get the Bill through as soon as is reasonably possible, the fact that I am going on leave will not influence Government in any way whatsoever. The saying "The king is dead, long live the king", is true of Attorneys-General, and certainly there will be someone just as able to take my place if I go on leave. It will also be realized that I am an ordinary public servant, and if circumstances demand it I should certainly have to stay, so that Council can rest assured that on my account nothing will be hastened through this Council. (Applause.)

THE TREASURER seconded.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, the 4th March, 1937.

Thursday, 4th March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, the 4th March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 3rd March, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 2.—MOMBASA WATER WORKS.

MR. F. A. BEMISTER: Your Excellency, I beg leave to ask Question No. 2 standing in my name, but in doing so may I ask why two words are left out of the last line? I understood that I wrote, "What did Mombasa Water Works cost Government?" Might I be allowed to alter the question now?

HIS EXCELLENCY: With the permission of the Council, I will agree to that.

MR. BEMISTER asked:—

"1. Page 48, Colonial Loans, 1925-1934, Cost of Mombasa Water Works, £228,623. Page 51, Colonial Loans, 1925-1934, Cost of Mombasa Water Works, £228,623, plus £7,474—£306,864. Appendix O, page 115, Expenditure Estimates, 1937, Capital Account, £306,864.

"2. What *did* Mombasa Water Works cost?"

THE DIRECTOR OF PUBLIC WORKS (MR. J. C. STRONACH): Expenditure on the Mombasa Water Supply has been found from three sources—Loan, Renewals Fund, and Current Revenue. From Loan Funds the sums of (*a*) £92,287 from the 1921 Loan and (*b*) £166,769 from the 1930 Loan have been spent. From Renewals Fund the sum of £61,854 has been spent. From annual revenue from 1911 to 1937 the sum of £47,708 has been spent.

Disregarding therefore expenditure from Renewals Fund, the total sum of £306,764 has been spent on the Mombasa Water Supply.

The Loan Report from which the hon. member has quoted dealt only with expenditure during the period of years to which it related, viz. 1925 to 1934.

No. 3.—MEDICAL LABORATORY EXAMINATIONS.

MR. BEMISTER asked:—

"Will the hon. the Director of Medical Services give the following information:

1. The number of examinations of European patients made in 1936 (i.e. total number of tests)?

2. The revenue derived from—
(*a*) examination fees?
(*b*) sale of sera and vaccine?

3. The number of tests made for European Government Servants?

4. The number of tests made for non-official Europeans?"

THE DIRECTOR OF MEDICAL SERVICES (DR. A. R. PATERSON): 1. The number of examinations carried out for European patients in 1936 in the Medical Research Laboratory was 7,623.

The Mombasa Laboratory carried out 611 examinations for the European Hospital, but no details are available in this Laboratory in Nairobi of private or Government patients examined.

In Kisumu 494 specimens were examined for the Government European Hospital, but again no details are available.

2. The revenue derived from—
(*a*) Examination fees was Sh. 18,009.
(*b*) Sale of sera, Sh. 1,192/50.
(*c*) Sale of vaccines, Sh. 53,948.

This does not include sera to the value of Sh. 855/50 sold to Eldoret Municipality last year and paid for in January of this year.

In this connexion the hon. member may be interested to learn that a reduced scale of fees for certain bacteriological examinations has been approved, with effect from the 23rd February, and will be published in an early issue of the Official Gazette.

3. It is impossible to give direct answers to Nos. 3 and 4, for the following reasons:—

(*a*) A large number of Government officials and their dependants attend private practitioners.

(*b*) A large number of private patients attend Government doctors and some are admitted to the Government European Hospitals. Laboratory examinations are included in the hospital fees.

(*c*) A large number of laboratory forms are received with an identification number but not the name of the patient, so it is not always possible to state whether the patient is an official or a non-official.

(*d*) All examinations for the Government schools are treated as Government work.

The information available shows that the number of tests carried out on European patients at the request of Government doctors was 4,842, and the number of tests carried out on European patients at the request of private practitioners was 2,781.

MR. CONWAY HARVEY: Your Excellency, in the light of the answer, may I ask whether the hon. gentleman will consider making arrangements for the supply of slides and containers to those who apply for them, with a view to getting a more accurate survey of the incidence of malaria and to assist people living in unhealthy regions to combat that disease?

THE DIRECTOR OF MEDICAL SERVICES: I shall be glad to supply them if anyone wishes them.

No. 4.—GROUPED HOSPITAL, NAIROBI.

CAPT. H. E. SCHWARTZE asked:—

"1. When do Government anticipate that the plans for the new grouped hospital will be finally approved and work started on the buildings?

"2. Is Government aware of the urgent need for expedition in this matter and of the strong public feeling that matters have already been far too long delayed?"

THE DIRECTOR OF MEDICAL SERVICES: Government is not yet in a position to state when the plans will be finally approved and when work on the buildings will be commenced.

The hon. member is referred to the reply given in November last to Question No. 55. The preliminary plans of the scheme referred to in that reply were discussed at a meeting attended by two unofficial medical practitioners in December, when it was considered that the general lines of the scheme were not unduly generous, and indeed that the African accommodation should be increased if possible. After further consultation, the Government Architect and myself have formed the opinion that for the sum of £78,500, which is the amount provisionally recommended by the Loan Works Committee for the scheme, only an African hospital can be built. This view and its effect upon the plan for a system of grouped hospitals is the subject of a report which is about to be submitted to Government. This report will be considered without delay.

Government realizes that the general public is deeply interested in this matter, and that there is a natural desire for expedition. Large sums of money are, however, involved, and it is important that the Committee which advises Government on loan expenditure should be very fully acquainted with the possible alternatives before giving its final advice to Government.

LORD FRANCIS SCOTT: Arising out of that answer, Sir, can the hon. member explain why these estimates are so completely at variance with the estimates we had originally?

THE DIRECTOR OF MEDICAL SERVICES: Your Excellency, the original estimates were prepared without any detailed plans, before Government, and I think the Director of Public Works will confirm the fact that without detailed plans no estimate could possibly have been given. The standard of this scheme is very considerably in advance, I think, of anything that was envisaged a long time ago, and I personally have always said that I did not think the hospital could be built for that sum. One could do no more until detailed plans had been produced.

LORD FRANCIS SCOTT: Arising out of that answer, is it not a fact that the reason why the plans are so much in

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advance of those originally conceived is because the Director is aiming at idealistic objects which are incapable of achievement with the money at the disposal of this Government?

MAJOR E. S. GROGAN: Are we to understand it is the practice of Government to submit estimates based on nothing?

No. 6.—Mombasa Municipal Board.

MR. BEMISTER asked:—

"Has the hon. the Commissioner for Local Government, Lands and Settlement received a copy of a resolution passed by the Mombasa Municipal Board asking that the Europeans of Mombasa be granted the same privileges as Indians in respect of the election of members of the Board?

"If the reply is in the affirmative, what steps are being taken to give effect to the resolution?"

THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT: The reply to the first part of the question is in the affirmative.

With regard to the second part, the Mombasa Municipal Board's request will be submitted to the Standing Committee for Local Government for its recommendations.

MR. BEMISTER: When is it likely that committee will sit, Sir?

THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT: In the near future. (Laughter.)

PERSONAL EXPLANATION.

MAJOR GROGAN: May I pray, Sir, that Council will allow me to make a short personal statement?

Unfortunately, on the 5th January last, I was late in attending Council owing to a mistake in the newspaper of the time, and I did not hear the speech made, but on reference to Hansard I find that the hon. and gallant Member for Rift Valley (Lord Francis Scott) made the following statement:—

"When I got home, on my first interview with the Secretary of State, I had to spend about two days smoothing his ruffled feathers, because my friend the hon. and gallant Member for the Coast had told him a few months previously that he knew nothing about economics at all. That did make my case a little bit more difficult! (Laughter.)"

Of course, Sir, that is very flattering to me to imagine that an alleged impertinence on my part would have upset the Secretary of State for two days. But all I wanted, as this is on record in Hansard, is to put on record that there is not one single vestige of truth in the allegation. I never said one word, directly or indirectly, that could possibly, on the only two occasions we sat at public seances with the Secretary of State, have been interpreted as a suggestion that he knew nothing about economics at all.

LORD FRANCIS SCOTT: Sir, on a point of explanation, naturally I do not wish to ascribe any words to the hon. member which he did not say, nor did I intend it to be taken to ascribe particular words to him. All I know is the effect it had on the Secretary of State, Sir Philip Cunliffe-Lister at the time, that he was very upset by apparently a discussion on economics which took place about four or five months before I went home, and the first thing he did was to raise this question at very great length.

I am sorry if I have done any injustice to my hon. friend, and that what I said may be read as accusing him of using words of impertinence or otherwise to the Secretary of State. I did not intend that. All I know is the effect on the Secretary of State.

MAJOR GROGAN: On those two occasions the whole proceedings were minuted. I was one of four persons sent home from Kenya to interview the Secretary of State. We are the only four people in this country who have not had the opportunity of having access to those minutes. They were never sent to us to confirm, and not one single one of us has any idea of what they contain. But if there was anything of the kind in those minutes as is alleged, obviously they should have been sent to us for acceptance first.

INCOME TAX BILL.

Second Reading: Debate Resumed.

The debate was resumed on the second reading.

MAJOR F. W. CAVENDISH-BENTINCK: Your Excellency, in introducing this Bill yesterday the Attorney General prefaced his remarks in his very masterly and excellent interpretation of the provisions of this draft Ordinance with certain remarks of a general and historical character. I would crave your indulgence to do likewise, Sir, very shortly, more especially as I was not present when the debate which originated this Bill took place last session. In other words, I want to take this opportunity of making my position and attitude with regard to this measure clear, while at the same time avoiding, as the hon. member did yesterday, embarking in any way on a dissertation as to the pros and cons of income tax or any form of direct taxation as opposed to indirect taxation.

In the first place, although I bitterly opposed on the last occasion the attempt that was made to bring in income tax, chiefly because people were sent out here to administer the tax before the Bill had ever been before this Council or before we knew anything about the engagement of such persons, I personally—I believe in common with many of those who live out here, if not the majority—am not opposed to income tax in principle. Indeed, I have always visualized that, as the country progressed, a change in our fiscal system would in due course probably be found to be necessary. What I did visualize, however, and what I have always asked for, was that any such change should be preceded by a comprehensive and careful inquiry into our fiscal system, an inquiry which would embrace to some extent all three territories, an inquiry which would not be hurried, and which would not be embarked upon until conditions had returned to normality for a reasonable period of time.

Unfortunately, no such procedure has been adopted. On the contrary, a somewhat hurried measure has been thrust upon us, at what I wish to record in my opinion is the most inopportune time possible, just as we are emerging from the worst depression in history, when everybody's resources are exhausted, and before there has been any proper inquiry into our fiscal system as a whole.

The fact that such a course has been adopted has complicated the Bill in no small degree, as I shall substantiate in a few minutes, when I come to deal with its detailed provisions. Secondly, Sir, I wish to record that in my opinion neither this Bill nor any income tax measure will be found in practice to operate equitably, if indeed it is found to operate at all, so long as it only affects Kenya alone. (Hear, hear.) It is all very well for neighbouring governments to state that they will legislate to prevent evasion of obligations. In practice they cannot do it. Trade, commerce and interests in all three territories have now become too interlocked. Thirdly, Sir, I wish to nail down on behalf of all of us on this side of the Council a falsehood which has been assiduously disseminated, which is that by accepting this Bill the elected members of Kenya are trying to drag in the neighbouring territories. This measure, whether for good reasons or not, has been thrust upon us. When we were told that it was the intention of the Imperial Government to enforce a reciprocal income tax measure on us this year, we asked whether we might at least have time to discuss this new position with our neighbours, not because we wanted to draw them into the net but because we knew the introduction of any such measure here would affect them. We wanted to ascertain their views as to what effect the introduction of income tax into Kenya would have on the territories as a whole in that it entailed alteration to the fiscal system of one community which, as far as commerce, Customs and other interests are concerned, was only one partner of a triple partnership. This request was refused, so whatever may be the effect of the introduction of this Bill we are debating to-day on other territories, no responsibility rests on the shoulders of the members on this side of the Council. (Hear, hear.)

Lastly, to come to the question of control. I had always visualized that

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when such a measure as this was introduced some further measure of control would be granted to those who had to find the money. In this regard, I believe, and have every reason to hope, we shall not be entirely disappointed. In the meantime, I trust Government will bear in mind that the Bill is designed to bring in some £40,000 or £50,000. The rates must not be altered without careful consideration, without our agreement, and possibly without a free vote in this Council, and if after a year's trial the revenue brought in is found to exceed the sum agreed on, in equity we must have reductions in the incidence of the tax, or, by agreement, alleviations in other directions.

Having said so much, Sir, it may be asked whether I am speaking in favour of the Bill or against it! It is my intention to vote for it, or at any rate not to oppose it, and my reasons for doing so are these. As the hon. member opposite reminded us yesterday, this is the third occasion on which an income tax measure has been produced. On each occasion it has proved a most contentious subject. I am satisfied that it is the firm intention of the Imperial Government that their policy of enforcing reciprocal income tax throughout the British Empire is going to be enforced. This means that if this Bill were successfully opposed once again, next year, or the year after, another attempt will be made to introduce it, and all the hurly-burly, commotion, trouble, and outcry will occur again. Furthermore, although I think the manner in which this measure was produced was indescribably tactless and ill-timed, I nevertheless have grounds for believing that, taking the long view, the Colony may benefit to no small extent by recovering considerable sums of money which are at present swallowed up by the English Treasury, and this at no cost to those interested. This factor will, of course, increase in our favour as time goes on.

My inquiries in London did not lead me to believe, as some allege, that the introduction of a small income tax on such lines as are embodied in this Bill will either keep out new enterprise, new money, or new settlers. Indeed, already I think we can begin to say that it has already been shown that this is not going to be the case. Furthermore, such sense of proportion as I possess does not lead me to regard the introduction or rebuttal of a very modest income tax as a matter of most fundamental import worth disturbing the whole country about again, nor do I believe that the majority of the country are profoundly and bitterly opposed to it. There are many more important matters to be dealt with, and quickly, if we are going to reap the benefit of the turn of the tide, such matters as the formulation of a long-range agricultural policy, the establishment of new industries, helping other industries in a bad way, increased settlement, proper marketing, land and water conservation, etc., all of which can only be retarded by protracted squabbling over something which, in comparison to such problems, I consider not so important.

I feel myself on this particular occasion, at this particular moment, for reasons and circumstances which need not be gone into in detail now, that our acceptance of what we may not all like but of what is part of an Imperial policy and will not I believe do us any real harm, may open the door, if not the broad highway, to proper co-operation in the development of our Colony, and to the unofficial community becoming associated with what I hope will be a more progressive government, and playing that part and bearing that responsibility in at long last getting things done which their experience undoubtedly entitles them to.

This is the point of view I hold, which I expressed from London as long ago as September or October last, and I hold by it, and I thank you for giving me this opportunity of expressing it.

I now beg to put forward some of a large number of points which have been brought to my notice since the drafting committee finished its work. Some of the points have been raised during the last few days. In putting them forward, if I do so at great length, I must apologize in advance, but it may save time in the long run.

The first point I wish to bring forward refers to clause 5 (c) of the Bill. I am bringing up points that may not seem

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important as well as others that obviously are. In some quarters doubt is expressed as to whether this sub-clause can be made to refer to Government houses which are not really rent free or inhabited "for gain". I know it is intended that the sub-clause should do so, even though it can be held that such houses are not inhabited for "the purposes of gain or profit". What I think is meant is that profit comprises your income, and therefore it will be included. Perhaps in replying to the debate the Attorney General will give us some assurance on that point.

The next point is in the same clause, (e). We have been told in this Council that pensions are sterling London commitments payable to officers of Government who are sent back to London at the end of their service, are engaged in London, and are paid their pensions in London. Here we are proposing to tax them at the source. We went into this in the drafting committee, and were told we had a right to do this. Doubts have been raised, and I should like that point cleared up if possible when the time comes.

The next point arises in clause 7. According to clause 75, the tax is payable 90 days after assessment, or by the 30th September, whichever is the later date. To me it seems fairly clear that under this clause a company or person can, with the leave of the Commissioner, make up his annual accounts either as from and to the 31st April, the 30th June, or even in October or November, as it suits them, and there are adequate reasons for asking permission to do so. But doubts have been expressed as to whether it is possible under this clause for a man to make up his accounts from and to a date later than June, that is, three months before the 30th September.

In clause 8 (b) we have under the exemptions the income of the Kenya and Uganda Railways and Harbours services. On this point it is considered by many that if this exemption is given, then before the Railway is permitted to put aside very large profits it should at least consider whether it should not pay a dividend to the two partners concerned and who really own the railway. (Hear, hear.)

My next point is in the same clause, in (i), together with its proviso. This was referred to by the Attorney General yesterday, and I am glad he did. I refer to it again on purpose, because the Nairobi Municipality are very perturbed over this clause. I can give an assurance as far as the drafting committee is concerned, that it is our definite intention that no reasonable normal activity of a local authority, such as water, sanitary arrangements, etc., shall be made subject to the tax, and possibly that will again be confirmed, as even the Attorney General's explanation has not quite satisfied the people concerned.

In clause 8 (n) we have "war pensions or gratuities". This was changed from the original wording by the drafting committee, because they thought it was clearer, and it was thus expressed in another Ordinance. It has been raised that this is not very clear, and that possibly the original wording was better: "pensions or gratuities granted in respect of wounds or disability caused in war."

My next point is a general one on that clause. We have in this clause a number of specified exemptions, but we have no general enabling clause under which the Governor would exempt revenues of other bodies or persons. There are certain revenues, such as those of the Coffee Board, such of which as are used otherwise than for trading, the Kenya Association, and bodies of a semi-public nature or public nature which should be rendered exemptable by a general clause.

I would like to say something about clause 9, the clause under which the Governor may by proclamation provide that interest payable on loans may be exempted. This is a question which has been discussed for a very long period in this country. It is furthermore a clause to which the Attorney General referred yesterday at great length. He informed us that in respect of existing loans, except two, all had the usual clause in their prospectuses saying they would not be subject to local income tax, but with regard to the remaining two loans, from which this clause was omitted, there was so to speak something of the nature of an Order in Council undertaking to repeal any Ordinance passed in the Colony

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rendering those loans liable to income tax. Furthermore, it has been suggested that were these loans subject to local income tax, the Crown Agents would render themselves liable to prosecution because of their representations at the time the loans were floated.

I am not raising this in objection to what has happened over the existing loans, because I do not believe we can do anything about them. I am quite convinced that we cannot, and I had an opportunity of going into it quite thoroughly when I was in England. But I do submit that we cannot in future allow a similar position to arise, such as the Crown Agents rendering themselves liable to prosecution owing to representing things which are not the case. I believe it is not impossible that, in respect of future loans, as a result possibly of discussions between the dominions and colonies, the Crown Agents and the Treasury, that a via media may be found under which the colonies can in future tax to a certain extent the interest on their loans.

The next clause which I wish to deal with is the clause dealing with deductions, clause 10. In (*b*) we have the deduction for rent paid by a tenant of land or building occupied by him for the purpose of acquiring the income. The point has been made that rates should also be a deduction. I believe it was intended that rates should be part of the allowable expenditure, but if so it had better be specifically stated. In 10 (*c*) we have permission to replace machinery which has become obsolete. This was explained yesterday, but we do not think that it goes far enough. My first point in dealing with (*c*) is that the words "and of buildings incidental thereto" should be inserted after the words in the sixth line, "machinery replaced", because in many cases when you renew machinery or plant the old housing is not suitable for the new machinery or new plant. For that reason it is only fair that when, under certain conditions, the cost of replacing machinery is allowed, the cost of replacing the necessary buildings incidental thereto should also be permitted.

Under 10. (*d*) we have deductions allowed in respect of any sum expended for "repair of premises, plant and machinery employed in acquiring the income, or for the renewal, repair, or alteration of any implement, utensil or article so employed." In clause 11 (*f*) we have a list of things included in respect of which no deductions shall be allowed. There we have among those things for which no deduction is allowed the cost of repairs "to any premises or part of premises not paid or incurred for the purpose of producing the income". Those two sections raise doubts in the minds of the public as to whether they are or are not allowed to repair private houses and keep them in order and deduct the amount so expended from their taxable income. There is no doubt that we intended that should be allowed, but as it is not quite clear I am bringing the matter up.

We have my next point in clause 12. Here we have allowances for wear and tear in respect of property, including plant and machinery, and again we feel we should, if possible, have the words "and all buildings incidental thereto" in that clause.

Before I leave this clause I would refer to the proviso thereto. The proviso is twofold: the first part provides that in no case shall any allowance be made for the depreciation of buildings. That, Sir, has raised quite a storm of protest throughout the country. I believe I am right in saying that in no income tax in the world is depreciation allowed on buildings other than factory buildings. Whether that is the case or not, I shall be very glad to hear in reply to this debate. But it is submitted that buildings have a life, and many buildings, owing to the peculiar circumstances of the country, have had to be put up of not very permanent materials, and that this is not quite a fair proviso to have in this country.

The second part of the proviso goes on to say "that in no case shall any allowance be made for the depreciation of . . . other structures or works of a permanent nature." What are works of a permanent nature? I raised this in the drafting committee, and it has been raised by many people since. Is a pipe-line a work

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of a permanent nature? A dam? There are all sorts of things which come into it, and I venture to suggest that if you put these words in there should be an interpretation so that we know exactly what they mean.

My next point is an extremely important one, and refers to clause 13 (2). This question refers to the number of years back for which losses incurred can be counted in assessing the income on which we are going to be taxed on the first year. In the drafting committee we discussed this at tremendous length, and some members of the committee felt that 1934 and 1935 only should be allowed, not, I think, because they wanted to get more money out of the people, but because they genuinely felt that back accounts could not be produced, and that it would cost the public a lot of money to produce them so as to establish anything going back over a further period. I did not subscribe to that view, and I do not believe, judging from the discussions we have had among ourselves, that the members on this side of Council by a majority subscribe to it. We think that as in the Bill five years' losses are going to be allowed, we should be allowed to start on the same basis, and I wish to press this point very strongly: that, for the purposes of this clause, any losses in 1931, 1932, 1933, 1934, and 1935 should be counted.

While dealing with the question of allowances for trading losses there are, I believe, quite a number of factors and difficulties which require very careful and very much further consideration. I said in my opening remarks that I considered this was a most inopportune time to bring in this measure, and as a result of which it would be found that very special complications had to be met when getting down to the details of the Bill; here are some of them. What about a company or partnership which, owing to the frightful times we have gone through during the last three or four years, instead of continuing to show losses has written down its capital? This is not dealt with, and I must say it is unfair if one cannot, because to write down capital is obviously the prudent thing to do in many cases and quite a genuine showing of the losses incurred.

There is another difficulty. A great many people or private companies, who have very big interests in these territories, have divided up their interests departmentally, so to speak, by forming several so-called limited liability companies. They did so for the purpose of giving managers interests or departmentalizing their business. It is done all over the world, and is quite a reasonable thing to do. In many cases it can be quite clearly established that two or three or more of these small limited liability companies in fact all belong to the same one or two individuals. During very bad times they have been obliged possibly to close one or more in order to try and keep others a little more important going. It is very difficult, and I am not sure whether it can be worked out in practice, but it should be carefully considered, in such cases whether, when the owner of such a series of small limited liability companies can clearly prove to the Commissioner or to a court of the first instance that, in point of fact, these are all one undertaking or investment, he should not be allowed to treat them all as one.

With regard to losses again, there is another point. Some people, farmers particularly, have during the last few years suffered enormous losses, and in order to protect themselves from the everlasting drain they have ended up by forming themselves into a small limited liability company. Is such a company, formed say this year or last year, allowed, provided it can substantiate its position, to set off the losses incurred before that company was formed? Or, is it, the minute it makes a profit, although it is not a profit, going to be mulcted? I put up these three instances as examples of the difficulties which I think, in common fairness to the community as a whole, are deserving of a great deal of further inquiry.

The next point I come to arises in connexion with clause 14, a very small point, and I wondered, when the Bill finally goes on the Statute Book, whether one should not put them in the proper order—wife, children, dependants, instead of children, dependants, wife.

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In clause 14 (3) is a more specific point, which is that no individual should be allowed a deduction under the provisions of the section dealing with dependants of a sum exceeding £100. I put up this view, which has been expressed to me, that £100 for dependants seems disproportionate in view of the fact that one gets £150 for one wife (and one generally only has one!) and one can get £255 as a maximum for children, whereas one only gets £100 for dependants, and one may have several dependants. I know it is a very dangerous clause to tamper with, but having been asked to put that forward it is possibly worthy of select committee discussion.

In clause 18 we deal with deductions for children. There are two points which arise in regard to this section. The first point raised is that no provision has been made for any deduction for people who have engaged a governess or tutor to look after their children. It may be said that in other countries people who can afford to do that can afford to pay income tax. I do not agree at all. In a country such as this it is in many cases by far the best way, if not the only way, of getting one's children properly educated. I think some provision should be made for that. My next point is the words "serving under articles or indentures," and I admit my responsibility for putting these in. It has been pointed out to me that putting in these words "articles or indentures" is not specific enough, in that it may allow a loophole by which practically everybody can go and get their son indentured, say, to a garage proprietor or even a hairdressing establishment, or something of the kind. I do not suppose the Commissioner would want to pass such an evasion, but the present wording is very vague, and unless something more specific is put in I do not see how people can be prevented from getting their children indentured when they really are not, and thus securing the deduction.

The next point I have been asked to bring up refers to clause 19, in which I want to refer to several sub-clauses.

The first one is (*a*), under which a deduction can be made in respect of life insurance. It is claimed that if you are allowed to make provision for your death you should also be encouraged possibly to make provision for an accident by which you might be precluded from earning your living for a period. That is to say, a working man or a man in some employment may have an accident, and find his employment cease thereby. It would seem that if he makes reasonable provision to support his wife and children in such an event, some allowance should be made as regards the premium he pays. I know it is not customary in other Bills, but that is no reason to say that it is not a fair suggestion to make here.

Under clause 19 (*b*), I have been asked by the Municipality of Nairobi to have specifically inserted here the words that occur in clause 8 (*g*), that is to say, "the income of any provident fund lawfully established by a local authority" or "the provident fund established by Nairobi Municipality." I told them that they were adequately covered by the existing clauses but they are very anxious to have their particular provident fund specified, and I feel sure that Government would not refuse that request.

Before leaving this clause, we feel there should be, in addition to (*a*) and (*b*), something whereby it can be made clear that any form of compulsory insurance comes under the same heading as these others. It is possible that before very long we may have compulsory third party insurance in Kenya against accidents with motor cars. If so, it is arguable that people should be allowed to deduct the premia they are made to pay. Again, before leaving this clause, I would point out that here we have specific deductions which can be made in respect of insurance. What about the ordinary insurance effected by a company in the course of its ordinary business transactions? Companies have to insure against losses by fire, theft, earthquake, war risks, all sorts of things, and in the normal course of events such insurance is put in the profit and loss account. It is part of the ordinary working expenses of a company in the ordinary course of events, but it has been raised that it is not specifically dealt with, and perhaps the Attorney General could deal with it when he replies and,

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incidentally, tell us what insurance is permissible for a company and what is not. Would insurance against loss of profits be permissible?

We now come to clause 21, which is the most important clause in the Bill because it tells us how we are going to be assessed. I have two points to make on this clause, and I reserved the right to make them as a member of the drafting committee, and I have been asked by a great many people to make them since. I will take the second point first, which deals with the company rate of tax. In this country there are at least 440, and probably a great many more, small private companies engaged in small business. They are really partnerships of smallish people who should, in my opinion, in equity be treated in precisely the same way as an individual. In other countries, in Southern Rhodesia (which we are told to emulate), in most cases companies are taxed at the lower rate, and their rate remains fixed at the lowest rate, and does not go up. Here we start companies off at the higher rate, if we do not give them any allowances or any amount free. A man, wife and child do not pay income tax except on moneys over £650 provided he insures his life, and a man, wife and four children get up to well over £1,000 a year before they are taxed under these proposals. We suggest that the average rate an individual will get tax-free will be £500. If the average individual gets £500, I think that that amount should be given to these small companies. I do not believe it will affect the big companies in the least, and I believe it will be an untold boon, because it will shift the whole scale up to these small syndicates and companies which we want to encourage, for they are the means by which much in this country is accomplished. I therefore press very hard indeed that the proviso should say, "that in the case of a company the rate of tax for every pound of the chargeable income in excess of £1,700 shall be two shillings," and put something in giving them the first £500 free, thereafter on the next £700 one shilling, on the next £500 Sh. 1/50, etc.

The next point that I wish to make is to ask whether there is really any very valid reason for having a Sh. 2/50 tax at all? It does not affect companies, it does not affect private individuals until their income is over £12,000 a year—and there are not many people I know in this country who have £12,000 a year—and it does submit the Bill to the accusation that double taxation will be involved. I really do not think it is worth keeping that in. It would make no difference at all, I believe, in the amount of money collected, but perhaps the Treasurer can tell us about that afterwards.

THE ATTORNEY GENERAL: On a point of explanation, did the hon. member say £12,000, an income of £12,000? It is about £2,700, I think, actually.

MAJOR CAVENDISH-BENTINCK: I did say £12,000. If I am wrong, then what is it?

CAPT. H. E. SCHWARTZE: £2,700 is when the rate goes from Sh. 2 to Sh. 2/50, but not until it gets up to £10,000 does anyone pay an average rate of Sh. 2/50 on the whole income.

MAJOR CAVENDISH-BENTINCK: My next point arises out of clause 26. I only want to say in support of what the Attorney General said yesterday that we did go into this question very carefully indeed. We know that in South Africa it is the custom for people to get married "out of community of property". I have been into the matter as carefully as I can, and I am afraid that I have come to the conclusion that it will be impracticable to differentiate in practice between the income of the husband and wife. I should like to ask this, however: What does happen when a wife goes to England, as often happens, to look after the children who are going to school, and remains in England for a year or more, while the husband remains out here? I take it she is not subject to income tax in England? That is a point that should be taken up with the British authorities.

I just wish to allude to clause 33, and say how glad I am to hear that this is going to be altered and clarified.

That brings me to clauses 36, 37, 38, and 39, dealing with agriculture, and there will be other members on this side of Council who will want to say something

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about them. Meanwhile, I would merely draw attention to one or two points as I have been asked to do.

The first thing is the definition of "permanent cultivation". A number of persons have stated—one only this morning, on behalf of the sisal industry—that they do not like that definition at all. No doubt evidence will be given why they do not like it in select committee. But I notice that the words "permanent cultivation", which are given in the Bill and have a long definition, only occur in one place in the whole Bill, which is in the next definition, which is the definition of an estate, and the word "estate" I do not think occurs anywhere else in this clause. It seems to me that both these definitions are probably unnecessary, and that it is rather raising a storm in a teacup to insert a contentious definition which is only used in another definition.

The next point deals with the last three lines of clause 36, where it is provided "that the initial cost of clearing and/or planting any such immature area shall be deemed to be capital expenditure." During the drafting committee's deliberations I reserved my right to disagree with this provision, and I have since been told that in England, provided you are developing or planting your original holding, it is not treated as capital expenditure. I am subject to correction over that, but I was told that. At any rate, in this country I feel it would be grossly unfair that a man who has purchased a piece of land and planted it up as far as his finances will permit should be mulcted of tax when he has a good year and can at last proceed to plant up a new area on a further bit of his original holding. I shall press very hard indeed that that matter should be given further consideration before this proviso becomes law.

The next clause has probably caused more comment than almost any clause in the Bill. I think we knew it would, because in it we made certain concessions which were very hard to define; furthermore, naturally everybody wants further concessions. My first point is sub-clause (c), "rotation planting of sisal". Why sisal only? To begin with, the sisal people came to me this morning and said this hard and fast formula as laid down would not suit them at all. They want an alternative, something which is done in other parts of the world for technical reasons as regards sisal. They are taking legal opinion on it, and will give evidence as to their point of view in due course. But apart from their representations, the question arises of the replanting of a number of other crops, such as pineapples, wattle, pyrethrum, passion fruit, etc. All must come under the same heading. It is therefore suggested that clause 37 (c) could more advantageously read "rotation replanting of permanent or semi-permanent crops". That might still not suit the sisal people, but at any rate it is a suggestion for improving the present wording.

It has also been pointed out that in clause 37 no special deductions have been allowed in respect of artificial manures or reconditioning of the soil with chemicals and so on. In England you are allowed this, but not the whole cost in any one year. You have to say exactly what you put in the soil, and it is given a "life" of so many years, and the cost is allowable over so many years. Unless it is specifically put in that manuring, reconditioning, etc., are going to be allowed under this clause, it may be allowed, and I suggest that this should be made clear.

It has been pointed out also that if you are going to be allowed to put up dipping tanks and paddock your property with new fencing, you must also be allowed the cost of other incidental improvements such as water pipes or dams or means by which in some way or other you would be enabled to bring water to your dipping tank or your paddock. It is therefore suggested that some such words as "water conservation and distribution", or something like that, should be added to the list.

Council adjourned for the usual interval.

On resuming:

MAJOR CAVENDISH-BENTINCK: Sir, I had reached clause 38 at the adjournment. On the fourth line of this clause it is suggested that possibly the word "planting" may come in as well.

HON. SHAMSUD-DEEN: On a point of order, Your Excellency, do you not think that these little details could be gone into in select committee? I always thought that on the second reading of a Bill only principles were debated and also a clause by clause explanation, but not, I suggest, the deletion or addition of words. That, I thought, was the legitimate duty of a select committee.

HIS EXCELLENCY: The hon. Member for Nairobi North is perfectly in order in referring to these points. The hon. mover referred to them. I rule that the hon. Member for Nairobi North is quite in order in referring to them and giving the general public and this Council an idea of the various considerations that will have to be dealt with. (Hear, hear.)

MAJOR CAVENDISH-BENTINCK: As I said, clause 38 will be dealt with more comprehensively by another member, but I still have one or two small points. The first one is in sub-clause (5), and the proviso thereto:—

"Provided that the Commissioner may for good and sufficient reasons and upon such terms as he may consider necessary for the protection of revenue permit any farmer,"—

and so on.

Strong exception has been taken throughout the country to the condition "as he may consider necessary for the protection of revenue." If that were cut out, the Commissioner would still have ample powers in that it is laid down that "he may for good and sufficient reasons permit any farmer." Possibly Government will give in on that point.

Certain points have come up about the valuation of stock, which I do not think I will deal with, except to again emphasize my personal opinion which I expressed in the drafting committee, that in a country such as this anybody who imports pedigree stock, whether out of income or no matter how he does it, should be given every possible consideration. (Hear, hear.)

I now come to clause 40, the section which deals with insurance companies. I expect that the insurance companies will come and give evidence to the select committee. On reconsideration as a member of the drafting committee, I am not quite satisfied with (b), which establishes the formula whereby all life insurance companies are to be assessed for taxation. Really this formula taxes the hypothetical income of a capital which is not and could not be invested in this country, and it is possible that by adopting thi formula we might tend to prevent reputable life insurance companies setting up offices in this country. Again, there is the question of mutual companies and companies which issue endowment policies and policies "with profit". If you are going to tax the bonuses given in the case of mutual insurance companies and the profits or bonuses that are given to those who take out other policies, you are really not taxing income—you are taxing a reversionary interest. In South Africa they do not tax mutual companies, nor do they tax that portion of insurance company profits which are given back to policy holders in the form of reversionary bonuses, but they have a formula there which I believe is acceptable under reciprocal income tax arrangements, under which only the profits that are distributed to shareholders are taxed. Under such a formula here we should get our share from England in companies that are established in England without any loss to anybody. I put that point forward because I am inclined to believe that it is the fairest way to tax these companies in the present stage of our development.

I now come to clauses 44 and 45, and I am not going to attempt any dissertation on these mathematical problems. Even a Senior Wrangler would take quite a long time to work out the formula laid down in clause 44 (1), but the Revenue Officer has very kindly given us examples, and I believe all members on this side of the Council have endeavoured to understand them and how the formula works out in practice. The only point I wish to make is a general one, and that is, that when I was in England I realized that one of the things people did not want to have to do more than could be helped was to make double applications for refunds. In the case of shareholders in England they will have Sh. 2 deducted at source here, and will be given a certificate to that effect. They

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will then go to the Revenue authorities in England and say, "This is the income I get from Kenya and I have had Sh. 2 deducted at source." The Revenue authorities say "Yes, that is all very well, but your income from Kenya only amounts to £600 a year, of which you get £150 free, and all that should have been deducted in Kenya is Sh. 1 in the £ on £450, and all we will allow you is that," although really three times that amount have been deducted at source. A man having had all that trouble in England has to again come back to Kenya to try and get back the difference.

I know that in the beginning it will be very difficult to do it in any other way, but I do suggest that, as under the provisions of this Bill we are going to prepare lists of those assessable in this country, as and when the lists are prepared it may be possible by ome means to deduct the right amount at source here and send a certificate to that effect to the man in England and to save him having to make not double but treble application for refunds. I look on that as a rather important point.

The next small point is in clause 49, and I have had a good many questions asked as to what is meant. Possibly the Attorney General may think it wise to say something about that clause when he replies to the debate. I think it was put in to prevent people who should pay more than Sh. 2 from keeping moneys back so as to only pay Sh. 2.

The next point arises out of clause 69, but I would refer to clause 70. I notice that in clause 70 (2) there is a safeguard that if, owing to sickness, any person is prevented from attending the hearing of his appeal, the hearing can be postponed. I ask for the same safeguards to be included in clause 69 which provides for the man's appearance before local committee. One safeguard has now been put in, that if a man is out of the country and cannot give his notice within the prescribed period he can give notice when he returns. I should, however, like the other safeguard added, that if when the time comes to appear before the local committee he is ill his inquiry can be postponed. I am sure it will do no harm to put it in.

I now come to Part IX, clause 73, and that deals with special provisions relating to persons who are likely to leave the country permanently. When we discussed this clause in the drafting committee, I pointed out that under sub-clause (3) the wording as it stands at present would enable the Commissioner who "has reason to believe that tax upon any chargeable income may not eventually be recovered he may at any time and as the case may require" do certain things. I said I thought it quite wrong, because it gives the taxation authorities preference in the case of a man in a rocky condition financially, or likely to go bankrupt, over any other creditor. To meet that difficulty these clauses were made a special "part" under a special heading which, I am assured by legal people, is a complete protection. However, I am not quite satisfied, and I do not believe a number of other people are either, and I suggest that, as clause 73 (1) deals only with the case of a person who has been assessed but is considered as likely to leave the Colony before the tax becomes payable, clause 73 (2) should merely deal with the person who has not been assessed. I have suggested a re-wording which I will submit to the select committee when it sits.

In clause 75 it has been pointed out to us in (2) *(a)* that—

"Any person who leaves the Colony before the 30th day of September in any year of assessment and who at the time of his departure has not been assessed for that year of assessment shall pay the tax for that year of assesment within 90 days after the date of his return to the Colony or within 90 days after the date of the service of a notice of assessment."

If he had left the Colony and had not been assessed, the first time he gets assessed is when he gets back, and therefore we need not put "within 90 days after the date of the service of a notice of assessment," as this is a needless complication in the middle of that particular sub-clause.

With regard to clause 76 (1) *(a)*. I am probably in a minority on this, but I have been asked by a number of people to

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bring the matter forward. The question is whether, when you have a proper income tax ordinance, and all the powers given to the Commissioner, to the courts, and so on, it is not a relic of bureaucratic barbarism to leave in a clause of this nature whereby, if the tax be not paid in time, a 20 per cent penalty is added. It is not so in England. If a man does not pay his tax he is run before the court and made to pay the expenses of the suit, but there is no automatic penalty. I venture to suggest that although there may be very good reasons for it, the select committee should go into the matter and see whether they really think, now we have this very comprehensive Bill, there is any need for this method.

That, Sir, completes my list—I am afraid it has been a terribly long one—of comments on the Bill.

It may seem rather odd that a member of the drafting committee as I was should get up and proceed more or less to pull the Bill to pieces. I should like to add in explanation that I do not think any of us on that committee ever felt, or were even vain enough to imagnie, that we could produce a perfect Bill immediately. I personally think this Bill is an incredibly better Bill than the last one produced, but since the drafting committee has sat I have had to attend meetings of Chambers of Commerce, meetings of elected members, and so on and have had their comments and I felt it would save the time of the Council if one of us who probably knew a good deal about the Bill could put forward all these points they raised.

My object in putting them up is, one, to let the public realize they are being attended to; two, to ask the select committee to make careful inquiry into all of them, which I am sure they will, and three, to show that it is all very well to talk about simplicity being required in a Bill of this kind but that, in fact, the simpler you make it in some cases the more trouble you will have as a result. It is not easy to provide for all difficulties in introducing a new tax, again, I stress, at a very inopportune time, and therefore I give this explanation, as otherwise the Chairman of the drafting committee might wonder why I did not raise my points before.

There now remains one very important question, and that is the question of how long the public are going to be given, having seen this draft Bill (which has only been published 14 days or so), to consider it, consult with others with the same interests, and to come and give evidence before the select committee? I know it is in the opinion of Government very desirable, if it is possible, that this Bill should be through and passed before the arrival of the new Governor. But, as was pointed out to us yesterday, "the king is dead, long live the king"; "the governor goes, long live the next governor"; "the Attorney General leaves, long live his substitute!" That is all in the ordinary course of events, and I disagree entirely that with a Bill so contentious as this, as important as this, the whole country should be hurried and hustled because of mechanical happenings that go on in these colonies all the time. (Hear, hear.)

Only this morning I had the President of the Sisal Growers Association pointing out to me some of his difficulties and the necessity of his communicating with people living at the coast, of his taking legal advice, and even of his wiring to England to ask his people what type of representations should be made, people who have very big interests in this Colony although their headquarters are in London. The same difficulty arises in the case of the Farmers Associations. You cannot get a meeting of these associations together in five minutes. People live many miles apart, they have got to be communicated with to attend a meeting, and very often an elected member has to go and explain things to them.

I think, in view of the spirit in which this measure has been received by the majority of us, that it would be grossly unfair and wrong to thrust it on the public and push it through in undue haste. We are not trying to hang the Bill up so that it shall not pass, but we are trying to devise the best possible Bill to meet the very difficult conditions of the country. I think I have said enough to point out that this is a difficult task. I even think, in view of the 10 or more millions invested from London in Kenya, that in

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common fairness we should also give people in London time to see the Bill. I have sent it home by air mail, but I have only had my first reply this morning. It is not unreasonable to give the people who help us time for their comments, because they do help us.

I therefore trust, and I am speaking on behalf of every member on this side of Council and on behalf of the whole Colony, that there shall be no hurry about rushing this Bill through. The new Governor when he arrives will in any event have to take a session of the Council not long after his arrival. If he cannot be present, no doubt somebody else could preside. But I cannot agree that because of mechanical happenings we should rush a thing which affects every single person in the country. We consider that at the very least—and this is not considered enough by the Chambers of Commerce or Sisal Growers Association—that we should give people till the end of this month to give evidence, to consult among themselves, and to understand the true implications of the Bill and make representations which they have the right to make to the select committee which is to sit on this draft Bill, because what we have before us after all is only a draft Bill.

Sir, I am afraid I have taken up a very long time, but it would be wrong of me to sit down without first of all endorsing what the Attorney General said yesterday with regard to the help we have been given in a very difficult and complicated task by members of the public. I especially mention the gentlemen he named, Mr. Robson and Capt. Ward, and I must also mention the E. A. Power and Lighting Co., who not only secured much evidence for us but got us counsel's opinion and a number of very useful documents from England.

Lastly, I should like, as a member of that committee, to pay a tribute to our chairman. It has been a very difficult task, and my inordinately long speech this morning shows that I at any rate must have been a very tiresome member! But he had the most tremendous patience. Anything we asked him to do he did, and I really think that the thanks of the Council and of the whole country are due to him for the meticulous, careful and able manner in which he conducted our deliberations. (Applause.)

MR. N. S. MANGAT: Your Excellency, not only a sense of fidelity to a principle which my community has all along been supporting but also because of that higher principle of fairness, which means that one must give praise where praise is due, places me in the very happy position of supporting this Bill wholeheartedly. I have no doubt that I am expressing the sentiments of my colleagues in this corner, at least most of them, and of my community when I say that by the introduction of this Bill in this Council the confidence which the Indian community has always had in the Government and that feeling which the general public has had in the intentions of the European unofficial members, has been greatly strengthened and enhanced.

I know that even at this late stage there are people who still maintain that this Bill is going to be a curse to this Colony but, as far as the Indian community is concerned, I am happy to say that such element confesses itself that they have given expressions to such a view on behalf of themselves only and not on behalf of their community.

How well I remember the pronouncement made by the hon. and gallant member for the Coast (Major Grogan) last year, that income tax was dead. That was said not in this Council but at Mombasa . . .

MR. BEMISTER: That was me, sir! (Laughter.)

MAJOR G. H. RIDDELL: Right as usual!

MR. MANGAT: By the hon. Member for Mombasa at Mombasa! He said that income tax was dead, but I believe that when he said that he meant it was dead for ever. Then his colleague, the hon. Member for the Coast, took the responsibility of resurrecting it and abusing it as much as he could. It is a happy augury for the Colony that the Bill stands again in this Council in all its awful dignity and ready perhaps to be attacked again, but I hope not to be vanquished!

[Mr. Mangat]
I must say that this Bill is a monument to the earnest efforts of the official and the unofficials for the welfare of the country. On the one hand, Government has shown itself to be tolerant, coolheaded, and possessing a soft corner in its heart for the legitimate feelings of others, and at the same time the unofficial members have extended willing co-operation in meeting the situation. The industry and the study which this Bill must have entailed is apparent from the comprehensiveness of it, and it is really a tribute to the drafting committee and to its chairman, who devoted all that study to the Bill.

Coming to the details of the Bill, I do not wish to go into them minutely, because most of them are such that I am liable to attach undue importance to them because I look on them from the point of view of my community alone, but there are a few others which I wish to mention.

The first one is clause 8, dealing with exemptions. I should very much like to know that while provident funds, and funds established by local authorities, will be exempt, whether the proceeds of life insurance policies are also to be exempt? I do not know whether there is any such expressed provision, but if so I have not come across it. I should, however, like to see these additions at the end of the present list of exemptions, particularly the proceeds of life insurance policies. I say this because I feel that while Government servants or servants of local authorities will benefit from proceeds of provident funds or gratuities, they will have preference over private people who, having invested their savings in life policies, by getting them in a lump sum will have to pay a tax of perhaps Sh. 2/50. Moreover, the proceeds of a life policy come to an individual generally when he is at the age of retirement, and it is only fair these proceeds should not be taxed.

My next point is clause 23, which deals with dividends. We heard yesterday that the tax on dividends, even if paid by a company, will be refunded. That may be so on the interpretation of the section, but I do not find it expressly provided for.

The next clause I will refer to shortly is clause 55. This is a section which very deeply touches the Indian community. It refers to books of accounts, and says the Commissioner "may by notice in writing require a person to keep such records, books and accounts in such language as he may in the said notice prescribe." Here there is danger of creating dissatisfaction among the Indian commercial community. The language in which books are usually kept is Gujerati, or it may be Urdu or other scripts. I can well imagine that the Commissioner will not be unreasonable and require a man to keep accounts in any script which may cause a person to depart from existing practice, but it is possible that he may precribe only one other language besides the English language, and that would be hard on those people who just manage to run their shops with the help of their family members. It would be much better if either a true translation of books were required or certain languages set out in the Bill and the person concerned given the option of selecting any one of them. The Bill may provide for three or four, or may be only one, English, but it must be known to the public that they will not be required to keep books in a language which may compel them to employ clerks which they cannot afford.

The next clause which I will take is 63, under which the Commissioner is authorized to make an assessment, which is more or less arbitrary. It is not sufficient that the Commissioner should simply say "I assess a person at so much." It is most essential that if an appeal is lodged against his decision, the Commissioner must give reasons for his assessment because, after all, a local committee or Supreme Court must have something before it on which that decision was given. Otherwise the whole thing will have to be started again and reasons given why the Commissioner assessed at such and such a figure.

The next is clause 64, which provides for a period for recovery or correction of the assessment. I think it is very unreasonable that a person should be kept in doubt for the whole period of 6½ years as to whether the assessment he paid six

[Mr. Mangat]

years ago is correct or not. It gives actually more than six years to the Commissioner in which he can claim if he had forgotten to claim the tax six years ago. It would be much better if the Commissioner were authorized to correct the assessment within a year of the assessment, and not after that. After all, a person who has paid feels that the assessment made was complete and conclusive and will not be called on at some future date to pay an extra amount of income tax.

In clause 67 the marginal note reads: "Errors, etc., in assessment notices." But it really touches very deeply the fundamental principles not only of the liberty of the subject but the procedure under which these things are carried out. It says in sub-clause (2):—

"An assessment shall not be impeached or affected—

(*a*) by reason of a mistake therein as to—

(i) the name or surname of a person liable; or

(ii) the description of any income; or

(iii) the amount of tax charged;

(*b*) by reason of any variance between the assessment and the notice thereof."

It certainly amounts to this, that a person has no chance of being successful in an appeal if he cannot object to a mistake in his name or figure of assessment or a mistake in the notice of assessment. If these points are not taken out, I feel no appeal will ever be successful. Further, coming to Part VIII, which provides for appeals, under clause 70 provision is made for appeals to the Supreme Court. I may be mistaken, but I understood the Attorney General to say that a person will be entitled to appeal even up to the Privy Council on a matter of mixed law and fact. I wish it was an express provision, because in the absence of it I feel doubtful that a person can appeal even to the Court of Appeal for Eastern Africa.

Further, we come to clause 79, a provision which I feel may be useful to my profession, but which I generally feel will not be in the interests of the taxpayers. Sub-clause (2) says:—

"The Commissioner may appear personally or by an advocate in any suit instituted under this section or on any appeal under this Ordinance."

It may be quite correct for any person, including the Commissioner and Government, to appear through any advocate. If this word "advocate" does not include a private practitioner, it may be quite all right, because, after all, the Attorney General, the Crown Counsel and their staff are also advocates. If it includes private practioners it means an appellant who appeals against a decision of the Commissioner to the Supreme or higher court stands to pay very heavy costs if he is defeated. As hon. members know, the costs of the Supreme Court or higher courts are not assessed on any established scale. They are assessed according to the work the advocate does. If a private practioner engaged puts up even minor cases of appeals where the sum involved may be unimportant, the costs may be easily £50 sterling. Why should not the Commissioner himself or the department of the Attorney General undertake this work when no costs would be payable by the appellant? In other words, if this is not done, appeals will be discouraged, for it will be no use for anyone to take a risk of gaining Sh. 100 or Sh. 200 while he stands to lose ten times the amount in costs.

There are other points, but as the hon. mover said yesterday that the Bill is going into select committee I think these details can be more successfully and more amply discussed over the committee table rather than across the floor of the Council.

Before I sit down, I wish to associate myself with the remarks of the previous speaker about the work of the drafting committee. I think it is a wonderful accomplishment that they have shown the Council in framing this Bill, and, as regards the speech of the hon. member who preceded me, there is only one note of warning I wish to issue. He said that if this tax is going to be levied then the control and administration of the finances of the Colony should be given to those who pay the tax. I am very reluctant at

[Mr. Mangat]

this point, because the atmosphere which prevailed in introducing the Bill does not justify it, but I wish to say that those members who are appealing for financial control must realize that the amount of the tax which is going to be obtained under this Bill is perhaps a hundredth part of the whole revenue of the Colony. There are other communities who have to pay 100 per cent on certain goods they consume. There are Indians who pay 50 per cent or more even on the food they import from India. So it would really sound ridiculous for persons paying one cent in the shilling to claim that they should be given control of the finances of the Colony.

Once more I wish to put on record the toleration of Government, the willing cooperation of the unofficial members with Government, and the industry of the committee in drafting the Bill. (Hear, hear.)

MR. A. C. HOEY: Your Excellency, as a supporter of the Bill I have not a great deal to say, because most of the points have already been covered by the hon. Member for Nairobi North (Major Cavendish-Bentinck). What I am going to say is rather to emphasize some of the points brought up by him.

First of all, I should like to refer to clause 37. The hon. member spoke about (*c*), "rotation replanting of sisal," and he gave very clear reasons as to why this should be reconsidered. I had hoped that ample time was going to be given to those interested parties to put forward their considered views for themselves, because I am perfectly certain that, as the wording stands, it is not at all suitable and will have to be amplified in other directions so as to cover such crops as he mentioned —wattle, etc.

But one of the most important points I wish to touch on—and the hon. member did briefly mention it—is the question of including in the exemptions imported pedigree stock. There is a good deal about stock in clause 38. Anyone interested in stock in this country must realize that the one thing this country is crying out for is imported pedigree stock. Take anyone who is engaged in the stock industry, the moment they get any sort of profit at all the first thing they want to do is to import new blood into their herds, and the benefit to this country is very great indeed. I do hope that under this exemption clause will be included imported pedigree stock.

In the optional clause it is rather difficult to see exactly how this is going to work, because if you refer to first of all sub-clause (6) it states "Every farmer who elects to take into account the value of his live stock" and so on, and it sets out the method by which the assessment is to take place. In sub-clause (9) it says "The value to be placed upon live stock acquired by purchase for stud purposes shall be the purchase price paid for that live stock." I suggest that if this Council agrees that imported pedigree stock shall be exempt we can take out sub-clause (9) altogether, because it would disappear automatically. At present, as the Bill stands, I find it very difficult to see exactly how this is going to work, especially from the point of view of equity. In making up your values let us take, for instance, that you import a young bull, and you have to import him probably when he is 9 months old owing to the very heavy shipping freights. Consequently, it is some considerable time before you get any use at all from that bull. You have imported and purchased pedigree stock, and it says here that in making up your returns the value to be placed on that live stock is the purchase price paid. I think that would be unfair because, in the first instance, it will be a considerable time before you get any benefit from that animal. You are bestowing a benefit on the stock industry here in importing pedigree stock, but supposing you get some slight accident to that animal? Its capacity might become very limited, and it could not possibly be said that it was worth the value that you paid for it.

I do urge that the question of imported pedigree stock should be on the list of exemptions and that, if the optional clause is exercised on a valuation basis, the assessment should be based on fair and reasonable valuation as regards pedigree stocks and not on price paid.

The hon. Member for Nairobi North (Major Cavendish-Bentinck) raised very

[Mr. Hoey]

important points which I am sure will be replied by when the hon. mover replies to the debate. One of the most important points I thought he raised was, what action are Government going to take if, for instance, when this tax is applied, it produces a far greater sum of money than it was said to produce? Are Government going to revise the rates or give relief in other directions, or merely absorb it into the coffers of Government? That is a frightfully important point, and it will have to be made quite clear what are the intentions of Government about this.

I do not think I have a great deal more to say because the select committee will be sitting, so that I will not take up the time of Council going over points already raised. I would associate myself with the speech made by the hon. Member for Nairobi North, and will reserve any further criticisms until the select committee meets.

MR. E. H. WRIGHT: Your Excellency, I was particularly heartened by the speech of the hon. and gallant Member for Nairobi North (Major Cavendish-Bentinck) in that, as a member of the drafting committee, he dealt trenchantly with the clauses of the Bill in a sense which I wish I could emulate as an opponent of the Bill. He spoke as being in favour of it, and I am heartened by the fact that he has the courage to criticise it so well and wisely.

I want to deal with one or two points to which the hon. Member for Uasin Gishu (Mr. Hoey) has referred, notably clauses 37, 38 and 39, comprising the so-called option clauses. Particularly in respect of clause 38 I support what the hon. member has said, but would add that to clause 37 (*d*), "measures for the prevention of soil erosion," some consideration should be given to measures for the restoration of soil fertility lost during the recent years of depression and drought. (Hear, hear.)

I hope it will be dealt with more fully by another member, but since the hon. Member for Nairobi North has mentioned the subject of manures in his speech as needing to be included in the exemptions, I will add that it is recognized in agricultural practice that top dressings and manures, the Director of Agriculture will bear me out, are composed of constituents having diminishing values varying according to their assimilable nature and their availability to the crop, and the farmer who puts down say phosphates in one form or another is aware how long its benefits will be imparted to the crops. It would be unfair if such an exemption were not allowed in this country where the deficiency of phosphates is notable and where every encouragement should be given to restore the fertility of the soil by such means.

The hon. member also mentioned water pipes and works and so on, exemptions which I support, and referred also to several semi-permanent crops, to which I would add geraniums. It is manifestly unfair that wattle and such crops as they expire as capital should have no exemption clause to allow for their restoration.

Among the rebates, the most obvious is that there should be a special rebate—and the trend of the discussion this morning has led to support my belief—for any land development in this country, whether that be done from income or capital expenditure. There is no surer way, and it is the basis of my opposition to income tax as applied to a young Colony, of arresting the development of the country than imposing taxation on capital available for development.

I am always interested when I hear the hon. Indian members support and applaud an income tax bill. Once again I would refer them to the operation of their own Income Tax Act in India, which emphasises and makes it a very notable feature that agricultural profits are especially exempt. I would like one of them to get up and say that that is more fairly applicable to Kenya than anything else.

Coming to the option clause, I have been studying that with a good deal of attention. The hon. mover tells us that the idea came from Nyasaland. I am not aware of conditions in Nyasaland, but I have come to the conclusion that it cannot be very much of a stock

[Mr. Wright]

country, and I also came to the conclusion that the acceptance of this option clause indicated that the drafting committee had not been under a very great obligation to exhaust their brains in evolving a clause applicable to Kenya, because this one is not applicable at all. Any farmer put in a position of choice should have no hesitation in making up his mind. The man who accepts the cash basis has five years cash position to review before he is subject to the tax whereas if, as is common practice, he is improving and increasing his live stock assets, the valuation basis would penalise him unduly. This so-called choice makes the farmer go for the cash position, his receipts as against his outgoings, rather than accept a clause which is arbitrarily designed to act to his deteriment.

I say arbitrarily because in the particular clause referred to by the hon. Member for Nairobi North, (5) of clause 38, the determining factor of the whole [illegible] use is these words: "upon such terms as he may consider necessary for the protection of revenue." The protection of revenue is therefore, the main purpose, which makes it abundantly clear that a farm having once made his choice cannot change in such a way as will be beneficial to him. If you go on with this option proposal, I hope that arbitrary clause will be eliminated forthwith.

One association in the constituency I represent sent me a letter, and, in respect of the option clause, said that after sitting over its details for some hours they did not know what it meant; could I advise them, or should they meantime take legal opinion? In reply, I was very glad to quote the *Law Journal* for January, and I should like to read it for the information of hon. members, particularly the hon. the Attorney General:

"Kenya lawyers may indulge a hope that the income tax, when introduced, will provide problems similar to those which in the old country have afforded members of the profession a lawful source of work and reward."

(Laughter.) I put it to members that that is possibly the only justification for the introduction of this measure. (Laughter.)

One other thing before I sit down. I should like to refer to the much debated clause 44 in respect of double taxation. I confess I was very worried about its vague nature. I asked three intelligent friends of mine to construe its meaning. All gave different answers. My own construction was this: that this was an anticipatory clause against the day when the rate of income tax under the ordinance should exceed that applied in the United Kingdom. Certain it is that it anticipates reaching quite half of that obtaining in the United Kingdom. I take that clause to mean, if it is gone on with, that it is really in effect a sentence of death on the colonists of this country, with a stay of execution, very little else.

My opposition to income tax is based entirely on its effects on farmers and farming, the developing element of the country. That is the most important aspect to look at this Bill from.

In conclusion, as I speak for the land, I hope you will not think it impertinent if I quote an early reference to the tax which appears in the Bible. The ven. and hon. Member representing native interests (Archdeacon Burns) will perhaps take it to heart as a supporter of the Bill! In II Kings, chapter 23, one comes across the following impressive verses:

"And Jehoiakim gave the silver and the gold to Pharaoh; but he taxed the land to give the money according to the commandment of Pharaoh: he exacted the silver and the gold of the people of the land, of every one according to his taxation, to give it unto Pharaoh-nechoh.

"And he did that which was evil in the sight of the Lord, according to all that his fathers had done."

(Laughter.)

SIR ROBERT SHAW: Your Excellency, it is nearly 1 o'clock and as the remarks I have to make are few, this is a good opportunity for me to attempt to make them. All I wish to do is to emphasise a little the points made by two hon. members, about the exemptions allowed to farmers in clause 37, and also to make reference to clause 38.

The suggestion was made that fertilisers should be added to the exemptions in clause 37 for which deductions may be

[Sir R. Shaw]

made, and I should like to connect my remarks on that subject with clause 13, already referred to by the hon. Member for Nairobi North on the subject of allowing losses for past years. It is a well-known fact that during these years farmers have been forced, as a result of the collapse of prices, in order to try and meet their overhead charges, to work their land to death, and the returns have been insufficient to enable them to put back into the land what they would normally put back as good farmers, and the loss of fertility is one of the most serious things we have to face in this country. It is a loss which will never appear in any books, because it cannot be put in them, and no matter how many years are allowed under clause 13 that particular loss will never be met. One way of helping the farmer to make up for it is to allow him to deduct from his assessable income any money he spends on putting fertilisers back into the land now. I am quite sure that hon. members, whether farmers or not, will agree with me that there is nothing more important in the reconstruction period before us than to give consideration to that point.

In regard to the question of imported pedigree stock, I do most strongly support the proposal made by the hon. Member for Uasin Gishu (Mr. Hoey) that that stock should be included in the list of things for which deductions may be made. Apart from that, turning to clause 38 (7) and (9), the hon. member suggested the elimination of those two sub-clauses. I understood him to say, however, that if you included imported pedigree stock in clause 37 the elimination of the references to such stock in clause 38 would not matter so much. I differ from him slightly in this because, while I hope that pedigree stock will be included in clause 37, the point in regard to clause 38 is that its sub-clauses are an attempt to standardise the means whereby farmers are allowed to be assessed if they elect to be taxed on the valuation of the herd rather than the cash basis. Is there any conceivable reason why pedigree stock as described in (9) for stud purposes should be put on a special basis? It has already been explained that there is no necessity for this at all, and if the words in (7)—"(other than live stock acquired by purchase for stud purposes)"—are left out, and if (9) is left out altogether, the result will simply be that if a farmer elects a valuation basis his stud stock will be valued according to some reasonable standard like the rest of his herd. That is the only possible way of doing it. The most important part of the stock, the imported stock, confers a great benefit on the whole of the Colony, and to penalise the farmer on that part of his herd strikes me as being so unreasonable that I cannot believe that Government will insist on keeping these two clauses in the Bill.

That is all I have to say, except to associate myself with the remarks made by the hon. Member for Nairobi North concerning the drafting committee and the work of its chairman, and to say that, inappropriate as the moment may be for the introduction of this measure, because of circumstances well known to you, Sir, I am supporting the Bill.

THE ATTORNEY GENERAL: On a point of personal explanation, Sir, I seem to have been misunderstood yesterday. Manure will, of course, be allowed as a deduction. It is money spent in acquiring income. If you put manure down to produce coffee or whatever the crop is it will be allowable for deduction without being mentioned in the Bill at all.

The debate was adjourned.

ADJOURNMENT.

Council adjourned till 10 a.m. on Friday, 5th March, 1937.

Friday, 5th March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Friday, the 5th March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 4th March, 1937, were confirmed.

PERSONAL EXPLANATION.

MR. BEMISTER: Your Excellency, may I be allowed to make a short personal explanation? Arising out of a question I had asked about the Mombasa Water Works, I stated that two words had been missed out. The mistake was entirely my own; I missed them out in the typing.

HIS EXCELLENCY: Thank you.

INCOME TAX BILL.

SECOND READING: RESUMED.

The debate was resumed.

MR. A. N. MAINI: Your Excellency, I rise to support the Bill which is before the Council, and I do so because I recognize that the passing of the Bill into law will mean the recognition of sound principles of public finance. In doing so, I am not unconscious of the fact that the imposition of income tax may in certain circumstances tend to adversely affect the economic structure. To that the answer is it is possible that by a judicious and wise expenditure of money collected by the levy of this particular tax, these disadvantages might be outweighed and certain hardships removed.

In supporting the measure I want to associate myself with the views expressed by the hon. Indian member who has spoken in this debate (Mr. Mangat), and the comments I have to offer on the detail of the Bill are in the nature of supplementing what he has already said.

It seems to me that on the question of companies the hon. member was not very explicit as to what actually he had in mind. The question really is, that expressed protection should be given to the small man who might find himself taxed in the capacity of a shareholder and when, in the capacity of an ordinary man, an ordinary citizen, he may find that his income does not come up to the level necessary for paying the tax. Therefore, express provision should be made in clause 23 to protect and make it possible for a person in such a position to get a rebate of the tax he pays on that account, because the last words of the clause refer to set-off "for the purpose of collection against the tax charged on" that particular income and, in the case of that man he will have no tax at all charged on his income.

Then I want to refer to clause 26. Unfortunately not much has been said as regards this clause. I think that as the clause stands at present it makes it possible for the Commissioner in the Colony to recover from the husband the amount that may be charged against the income that might be derived from the wife. Similarly, it should be made optional for the husband or wife to make application to have the tax assessed appropriate to their particular income. If that is provided for, the practice here will be on all fours with the practice in the United Kingdom; this option at present is given to the Commissioner only, who has the power to recover the tax from the husband or wife, but no option is given to taxpayers to determine whether they want to pay the tax independently or together. This, I say, without any opinion on the concept *per se* of marital relations. Even the modern generations of those conservative body of people called lawyers know that whereas in English law the husband and wife used to be one, and that one was the hsuband, to-day things are very different.

As regards the clauses dealing with agriculture, 36 to 39, and the comments by the various members representing agricultural interests in this Council, it seemed to me that their interests could best be served by having only one clause inserted in the Bill—that the farming industry should be exempt from the tax. In a similar manner, the commercial and other interests in the Colony would make representations and say that as they were just emerging from the depression they should also be granted a like exemption.

[Mr. Maini]
Then we could have a "very token Income Tax Bill" in the real sense of the term! I say, Sir, that income tax is a tax on surplus, and leaving alone the questions relating to computation of income, whether from agriculture or any other source, there is no special reason why farmers only should be given protection from this particular kind of tax. If there is income, it has to be taxed. It is a tax on a margin, which does not enter at all into the costs of production. That is a fact which all economists upon income tax will agree.

I want to associate myself with the views expressed by the hon. Indian member regarding clause 55, the clause dealing with the language and manner in which the Commissioner of Income Tax may require a particular taxpayer to keep his books of account. If statutory power is given to the income tax authorities to require a person to keep books of accounts in a particular language and mode, it is only fair that the prevalent commercial practice, particularly among the Indian community, should be recognized and be statutorily recognized. I say that for this reason, that I consider and am well informed that the Indian commercial community have a system of accounting of their own which, if not better, is as good a system as the English system of accounts, and if power is to be given the Commissioner to demand that books be kept in any particular manner it should be made clear in this clause that he should ask them to be kept in any recognized language or manner.

Regarding local committees, under clause 68 of the Bill, perhaps to explain what I mean I may quote a hypothetical case that ought to be provided for. It may be that out of the three members of such a committee two may be shareholders of a particular company, and that company might find itself in the position where they require to appeal from a decision of the Commissioner. If two of them were shareholders, and interested parties, they would not supply the requisite majority which this Bill provides for. I suggest that in this clause there should be a panel of five members, out of which any three may be in a position to sit. It is quite possible that certain circumstances may arise when only one member out of the three may be able to attend. If provision is made for a panel of five, that difficulty can be obviated.

Regarding appeals, clause 70, from the decision of the judge to the court of appeal or Privy Council, we all know that the right of appeal from a high court to the court of appeal is determined by Orders in Council which created the court of appeal and the Order in Council which determines the right of appeal to the Privy Council. Express provision should be made providing for appeals to the court of appeal. There is provision in clause 9 for appeals on mixed law and fact, but I submit that since Orders in Council dealing with appeals to the court of appeal and the Order in Council dealing with appeals to the Privy Council are entirely on a different basis, separate provision should be made in this Bill for these appeals, because an appeal to a court of appeal depends on local legislation; that is to say, if there is a right provided or created by local legislation, whereas in the case of appeals to the Privy Council one can only appeal as a right if the amount in issue is more than £650. I submit that in the case of appeals from income tax the question at issue, the point to be decided, is more important than the amount of the tax. I suggest that in this Bill special provision should be made for appeals to the court of appeal and appeals to the Privy Council.

Those are a few of the comments I offer on this particular Bill. I have no doubt in my mind that when the Bill goes to select committee all the various small points will be thrashed out and a Bill acceptable to the majority of the people of the Colony will be provided.

I should like to associate myself with the desire expressed by the hon. Member for Nairobi North, who asked for a little more time in which to consider this Bill, in order that the views of the various commercial organiations who have headquarters in England may be placed before the committee. I say this, because a period of two or three weeks which will be given will not make much difference to this particular Bill, but, on the other hand, it will solve the main point of the

[Mr. Maini]
opposition—of the recently converted opposition—to this particular Bill. It seems that the "converted" members of this Council have only this point against this particular Bill, and Government will be wise if the request for time is considered and more time granted.

In conclusion, in certain quarters doubts have been expressed and misapprehensions felt about this particular Bill, and it is said the Bill is only the thin end of the wedge. On that particular count I myself and my community have not the slightest misgivings, for we all know the increase in revenue derived from this Bill can arise in two instances: one, by reductions of the regression in our fiscal system, and from my community's point of view that would be very welcome; if the revenue from this tax increases at the expense of a reduction in Customs duties or other indirect taxation, we would welcome it. The second instance in which this increase can arise is when in an increased standard or in the higher stages of the development of the country you find it necessary to increase revenue. On this account, too, I have no misgivings, for I have every hope in the future destiny of this land of ours, and I know that the faith of a Kenyan born and bred on this particular matter will not be wrong. (Applause.)

MAJOR GROGAN: Your Excellency, it has been very interesting in the course of this debate, and in the things which led up to this debate, to watch what is sometimes described as the Rake's Progress, and I take it this is now the penultimate scene of a very undignified happening. The first stage of this happening was obviously inspired by the obsession of His Excellency the then Governor, because we had it quite definitely from you, Sir, on one occasion that this was not inspired from home in the first instance.

We endeavoured to ask why the imposition of a principle of this kind, with all its innumerable ramifications and complications, should not have been introduced as a principle and submitted to honest debate, instead of being pushed in by all sorts of little procedures which can really only be aptly and properly described as a rather cheap form of trickery. At the beginning, this thing appeared suddenly out of the blue in a budget estimate, and that budget estimate was challenged all over the country, largely by myself, and I stated quite frankly and openly that I believed that budget estimate at that time to be a deliberate fake for political purposes. A hard word to use but, I suggest, completely justified by subsequent events.

Immediately before the last of these attacks there was a remarkable innovation made by Government in the publication of a supplement to the Official Gazette, which adopted quite unusual porcedure and which since has been, of course, completely stultified by subsequent events. When the estimates came before Council, the untenable position of Government was so obvious to some of us that I took the occasion to move an amendment to the motion for the reference of the estimates to the Standing Finance Committee, giving Government the opportunity of withdrawing from a position which had obviously become untenable, because the facts already exposed the truth of my contention. Unfortunately, Government did not take that opportunity.

What we suggested was that Government should take the budget back. They had an opportunity then, seeing that this wretched document was printed so many months in advance in advance that there was no opportunity of knowing really what was going on in the country and keeping abreast with the happenings of the world, to take the budget back and revise it on their own. But, for some reason or other, they refused to do so, and the estimates followed the ordinary course; they went through Council here and were submitted to the Standing Finance Committee where this contention of ours after two or three days was immediately justified, and it was agreed there had been a gross under-estimation of revenue.

The only way Government had out of that, I tried to give them a reasonable way by suggesting they had possibly taken an overdose of medinal and were in a state of trance! Instead of doing that, they said that we people, who had no particular access to all the statistics

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at the time but merely had to draw our inferences from the study of economics in the financial columns of *The Times*, were so wise that we realized there had been a gross under-estimate of revenue, whereas Government, with full access to all the facts of the case, did not notice it. That, I submit, was not a very dignified way out of the first position.

We then come to the next phase. Of course, it is obvious that all through this there was the intention to introduce income tax regardless of anything whatsoever. When the estimates were to be submitted to the Standing Finance Committee, my two Arab colleagues paid me the very high compliment of asking Government whether they would put me on that Committee in order to represent the special interests and special point of view of the Coast Arabs. Not that they are not capable of doing it very excellently themselves, but these particular issues do involve the use of a great many highly technical terms, and it is extremely difficult for anybody to discuss so deep a matter in any language than the one in which they have grown up. No valid reason was given for refusing to have a proper representation of those very important interests.

Another peculiar point arose. If you remember, Sir, you made a remark in respect of the reference to the Standing Finance Committee which I had the temerity to challenge. I asked whether or no the committee was a greater body than the Council which appointed them. Eventually I got a correction to that statement, but I did raise the point deliberately, because I had a suspicion, which has since been abundantly proved by subsequent happenings, that the evolution of the Standing Finance Committee was away from its proper path as a sub-committee of this Council and was gradually tending to become something of the nature of an embryonic cabinet. During these strange happenings, the Standing Finance Committee in fact largely usurped the functions of a cabinet, entered into all sorts of negotiations with the local Government and Secretary of State, and, as I understand from my hon. and learned friend the Attorney General in his speech the day before yesterday, he had instructions—I am open to correction—but I understood him to say he had instructions from the Standing Finance Committee——

THE ATTORNEY GENERAL: I said from Government.

MAJOR GROGAN: I beg your pardon; I thought you said the Standing Finance Committee. But instructions were given to follow the precedent of Southern Rhodesia which, of course, is in no way comparable with this country, because conditions are almost a direct antithesis to this country, the purpose of the tax there being to soak an alien-owned railway or externally-owned mining companies which, to all intents and purposes, is the exact opposite of this country, where the railway owns us! (Laughter.)

As a result of the deliberations and recommendations of the Standing Finance Committee, it was found that there was no budgetary reason for the introduction of income tax. That is in respect of the budget as laid and the policy that was covered by the budget. Therefore the position of the particular individual, party, power, authority, whatever it was, determined to have income tax regardless of anything else, their position became difficult. The only way of justifying its retention in the budget was to alter the policy of Government entirely, and we are compelled to accept one of the most important reversals of Government policy which had been closely investigated and was the subject of a report, and that involved accepting the dictation of a gentleman with a very limited experience of this country as against the collective experience of three of our most experienced and responsible Civil Servants, putting them, of course, in an absolutely impossible position.

As I pointed out at the time, it was an insult to them and to this Council. It was only by this means that a new method could be found to justify the retention of this marvellous principle of income tax. It was very obviously a peculiar position, and so I again gave Government another opportunity to withdraw from a position which was

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becoming less and less dignified, by moving a motion that income tax could not be equitably applicable to the present circumstances of the Colony. Various members of Government, if I remember correctly, spoke against that motion, and contended it could be and so on. But I submit that the pressent Bill is the most complete justification which you could possibly have of the truth of the principle underlying that motion, because this Bill as elaborated by my friend the Attorney General is almost entirely concentrated on eliminating the innumerable inequities, iniquities, and injustices that necessarily inhere in the principle of applying income tax to this Colony at this juncture, practically every clause is a special clause relating to those special difficulties, and our acceptance that the principle of income tax is for the moment hopelessly inapplicable to the country, and the only standard clauses of the Bill are the standard clauses that apply to parties outside the country or parties who have no vote, and therefore do not matter.

It is curious, listening to this debate, to note that every gentleman who is an alleged supported of the Bill has always qualified his support by saying it was only because the particular interests he knew intimately were excised from the Bill and exempted that he was in favour of the Bill!

The next phase led to what is now known as the so-called compromise. It is a lamentable thing, but all the arguments in favour of it are that it was forced on this country under duress, and some of the arguments adduced in this Council yesterday are to the effect that this principle of income tax, at this juncture, mark you, had only been accepted qualitatively by the fact that, if not accepted, we should get something a damned sight worse! In other words, it is imposed on this country under duress, that it was advisable to take it because otherwise something much worse would happen. I believe it is a good principle in law that no agreement made under duress is a valid agreement, and I cannot see how anybody can imagine any so-called compromise or agreement forced on the country under duress unsupported by any arguments whatsoever—because we have given you full opportunity to adduce them—can possibly lead to this laying down of the lion and the lamb which has been adumbrated by some of my more generous friends!

To refer to the Bill, we were told from the beginning by yourself and again by the Attorney General that income tax is the most equitable form of tax known, that it is essential for every country to have it because it is the most perfect form of tax, or words to that effect. Where are those principles? The principles suggested were that it was an equitable tax based on the ability to pay, simplicity, and so on and so forth, all the desirable qualities of a tax. Where are those principles in this Bill? In so far as equity is concerned, we have had it quite clearly in debate from the growing number of enthusiastic supporters that the principle of equity of income tax is that it shall apply only to the other fellow. If it applies to the party concerned, it is obviously an inequity, but if to someone else it is equitable. The trend of the whole Bill, in order to get any kind of support in the country, is based on the principle that everybody who has a vote is to be contracted out of the Bill, so that the few who have no vote or are outside the country can enjoy the whole measure of the equitability of the principle.

Coming again to the question of ability to pay. Quite obviously this Bill as before us to-day is not based in any way whatsoever on ability to pay, because the exemptions are such that a very large proportion of the community here would be able to pay very substantial sums in terms of this highly equitable tax, but they will be totally exempt. In fact, the principle of the ability to pay is represented in the Bill as really the principle of the inability to vote. If you examine it carefully, one of the great attractions of the Bill is that 3,500 people—I speak subject to correction—are totally excised from the incidence of the Bill, and the reisduum remains, some 900, most of whom are outside the Colony, and in any case have no electoral value.

In the matter of simplicity, nothing need be said, because one has only to look at the Bill and to sit and hear the

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arguments adduced in favour of it and against it to see that simplicity is not quite so simple in the minds of those who accept it! The only principle sticking out clearly to give it any simplicity, that is to say in terms of collection, is the fact that it gives unlimited powers of arbitrary assessment, and no other means in the world could have been adopted in a Bill in this country calculated to collected the trivial amount of money, which is really not wanted, except the principle of arbitrary assessment which, in non-parliamentary circles, is usually called blackmail. Everybody knows perfectly well that the main instrument of the method whereby income tax is enforced all over the world is the principle of blackmail, this arbitrary assessment of humble individuals, many of whom will find out shortly that they have got to pay so much; if they do not like it they have got recourse to that great arbiter of man's difficulties—the court. Of course, it will cost a lot of money to come to Nairobi to make appeals or go before a court, and to hang about to be heard out of 5,000 others. The ordinary citizen will pay up and make the best of it and swallow it.

There was, undoubtedly, not very long ago an almost universal hostility to the application of income tax to this country, and undoubtedly some of my friends were correct in saying that opposition has been to a considerable extent modified. I have watched the evolution of that modification with a certain amount of cynical delight, seeing how one by one the exemptions reached individuals, and they passed from objectors into qualified supporters. It has got so far now that this Bill, if I understand it, so far as the arithmetical deductions amount to, that to all intents and purposes all of us are now exempt, with the possible exception of my colleague, one of the Arab members, because the exemptions are so high that of course the ability to pay ceases to have any significance whatever.

One of the real objections to the Bill is that it should not be called a Bill to exact income tax from this country: it has to all intents and purposes become a tax on non-residents and accumulation of capital. I will not waste time with a lot of minor objections, because these were admirably laid down by one of the drafters of the Bill yesterday morning (laughter), and it only shows what an extraordinary state of confusion the country has got into when drafters of the Bill find hundreds of things forgotten, which means more complications arising, less simplicity, and more inequity. But some of the things overlooked are of some importance and, if you will allow me, Sir, to take up for a few moments the time of the Council, I should like to draw attention to them.

One very important question is that of rates. As I read the Bill, there is nothing in it to allow a party to deduct rates before his assessment, because nobody can say rates are a charge. Rates are another form of inequitous exaction like income tax. This is a matter which very deeply concerns a number of Arabs at the coast. Many of them are very large land-holders and there is an increasing tendency to bring them within municipalities. The principle, if you can describe it as such, of assessment for rates in this country is based on a dream of a gentleman named Henry George called "unimproved value". Therefore, in consequence of this absurd form of rating, a very large number of people find they have to pay out in rates every year a sum substantially in excess of the total income derived from the land rated. There are a number of cases which I could cite. I am one of the unfortunate victims myself, and it is quite obviously grossly inequitable that a person in fact deriving no income from a place should be assessed for income tax.

I was told in the discussions we had that, in the drafting committee, it was agreed that rates were to be regarded as an outgoing, but as I read the Bill there is no question about it, they will not be regarded as an outgoing. I only meant to ask whether or not that is so, whether that is the intention? If that is so, then it should be put beyond any sort of dispute whatever, because otherwise it will work as a monstrous injustice on a large number of innocent citizens.

There is also a question which applies to a considerable number of Arab gentry at the coast, multiple houses. Some of

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those gentlemen are unfortunate possessors of a large number of houses. In the course of their duties to the State and other duties and their ordinary life, they do undoubtedly inhabit quite a number of houses, but only for a short time at any particular time. As I understand it, all these houses will naturally be assessed under income tax, and it is entirely unfair that a man should be deemed to be occupying three or four houses the whole time when he only derives a wretched income from the occupation of one for a short time.

That is all I have to say on that particular issue.

On the matter of loans, there is no earthly hope of any kind or description of the recovery of one sixpenny piece on any loan issued by this country in the London market, so there is no need to chatter about that any more. [illegible] s to anything being done in respect of existing loans, the tales told are mere twaddle. The suggestion that the Crown Agents are liable to prosecution because something is said in the prospectuses, they do not give any guarantee that a country will never impose income tax, is absolute nonsense, and, being nonsense, has no substance in it. To say that they are liable because people who subscribed to Kenya loans were told there would be no income tax, I submit that Government is equally liable to prosecution for the simple reason that they have in Government documents advertised for the purpose of attracting settlement the fact that there is no income tax here. If the Crown Agents are liable to prosecution so is your Government, Sir. Some of the gentlemen opposite look nervous, but I will verify it. I have not the actual documents here (laughter), but I have them at home, and can give you the references to enable you to find them.

In the matter of agriculture, that has been adequately dealt with by other agricultural friends of mine, except that I should like to draw attention to one little matter I did notice in clause 11 (c). There is a proviso whereby the accumulation of a reserve fund is not allowed, and clause 37 (c) provides for exemption of capital sums applied to rotation planting and so on. It is only a small point, but it is worth noting, for it might be overlooked. For some incompatible reason, this planting of resurrected areas and rotation processes and highly complicated happenings on the land, are apparently a dark mystery to the gentlemen who drafted the Bill, because it does not cover them adequately. It is essential to build up a reserve against the time when money has to be expended on that particular rotational operation, because it is not a thing that goes on year after year; it is to a certain extent rather spasmodic. Therefore it is essential, whether it is sisal or wattle or any other plantation that is a long-range crop, to put on one side special reserves against the day when you have to disperse much money in one year for replacing the crop. It is a small point, probably overlooked, and I suggest that my friend the Attorney General should correlate those things so that if there is anything incompatible he will remedy it.

The matter of family dependants is quite inequitable. The reason they are inequitable is very simple, and that is that the whole of the Bill and the procedure that led up to the Bill and all the happenings I have referred to have been largely based on the Lloyd George method of 9d. for 4d. and electoral bribery. In order to get the necessary support to encountry it was essential to tickle the palates of a large number of gentlemen in the street, and therefore you had to reduce the basic poll tax.

I understood that the expressed policy of Uganda for quite a considerable time —I do not know whether it has been published as such or modified, but I submit the policy of this country should have been the same—would have been a steady increase in the amount of basic poll tax, on the ground that it is a non-native tax and that if you get a very large number of natives in this country being educated now to be able to play their part in the general activities of the country and you want to reserve a proper sphere for them, it is incumbent on us to limit the immigration of those people who compete with them, and if any non-native comes to this country of such little economic value to the country that he cannot

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afford even £5 a year to the maintenance of the general system of government, I say the country is better without him. That principle was clearly recognized and the tendency was to increase it as the best method of limiting immigration. By reducing it to nothing at all, you are giving every inducement to people with low standards to bring their dependants and relatives here and developing a vast Asiatic slum.

It is because of that reduction in the basic poll tax, which was a mere bribe in order to get support for this thing, that we have got tied up in knots in respect of exemptions.

One word on the matter of insurance. I see that insurance exemption is limited to £200. I want to draw attention to this, that in my view it is inequitable, because it ought surely to be related to the capital amount insured and not the annual premia. Otherwise a derelict old gentleman like myself is entirely out of the picture. If I were to start insuring myself or my wife to-day, on the basis of my life, £200 a year premium would not insure anything at all. You may be glad to hear it, but it would not! The limit ought to be the capital insured and not the annual premium.

I now pass to the company tax, and very little has been said about companies because, I suppose, they have no votes as such. To my mind, of the matters included in this Bill the greatest importance is this company tax. I think it is going to have disastrous effects on the country and is entirely inequitable, that a very large proportion of the companies—we have dealt with the small companies, the small partnerships in limited liability companies, but I am now speaking of real companies on which the country is becoming more and more dependent, that is on moneys subscribed by overseas shareholders. It is very important to this country that capital of this sort should be brought in, and it is equally important for the country that it should have every opportunity and facility for accumulating its own capital out of the surpluses which remain over and above the necessary expenditure. I know there are technical difficulties and methods that may lead to evasion, but, after all, it strikes me as a wrong policy to create an injustice to a thousand in order to effect the taxation of one.

I believe that the evils of this unfortunate Bill could be minimized very materially by making that tax applicable only to distributed dividends. That leaves a company free to go on and accumulate and develop and so on. Ultimately, if you go on, you get to the point where you get all distributed dividends because there is no more use for the money, and, after all, the main purpose of nearly every company is to get a dividend, so that you have an automatic protection all the time.

The Attorney General has said that one means of evasion is by accumulating this reserve and then liquidating the company. A certain number of people might be ingenious enough to do that, but on the other hand the accumulation has done the country good by allowing capital to accumulate for the use of the country, and even that evasion would do the country no material harm. In any case, it is vital to my mind that money intended to be retained out of profits for further development should be free of absorption by the State. I go further, and say that if you want to entice people to put money into this country and chance their hand of dividends even being payable, they should be exempt from the local tax, at least to a level rate of interest payable currently on State loans. Why have such a ridiculous position as we shall have under this Bill when anybody who is prepared to lend money with absolute security to the State will not be taxed? whereas somebody who lends with a considerable amount of risk mortgage money to a farmer to develop his land or to put up a building or subscribes capital to a more or less speculative activity such as gold-mining or planting should be liable to the tax! I submit for very serious consideration that all distributed dividends should be immune to the local tax up to 6 per cent, or whatever the current rate of interest on Government loans is, on the capital investment.

I know there are difficulties, but I am now talking in principles, because we are told that this is the most equitable form

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of tax in the world, and I am suggesting that you make it equitable in respect of these matters. The same argument applies to absentee mortgagees, people who lend money to people in this country. They are entitled to the same immunity from income tax as bondholders. There is some argument probably that they live in Clapham and pay income tax at home, but not all of them. An increasing number live elsewhere, and do not pay income tax, and you have to remember that one of the main professions in London to-day is the devising of domiciles and methods whereby people can accumulate reserves free of income tax. I hope we shall not hear any more about the dear old lady who lives in Clapham paying the tax.

That is all I have to say about the Bill in detail. To all intents and purposes the net result is a tax on absentee mortgagees who, of course, have an excellent opportunity of protecting themselves by the simple expedient of, the first time the mortgage is due for revision, adding to the rate of interest. Shareholders overseas have also got a method of redress by the simple expedient of not investing in the country.

The other is the plutocrat who is free to come and go. This country is fortunate in having a certain number of people mainly dependent on overseas resources who spend a large proportion of their time in this country. All the time they are here they contribute very largely to the general revenues of the country through the system of taxation we have operating. The instant you apply income tax, those people have got to study the dates of arrivals and departures, and as they will not synchronize with their own wishes and convenience they will not be here long enough to get income tax from them, while the general revenue will lose what it used to gain from their expenditure.

The other parties are supposed to be banks and insurance and shipping companies, large organized concerns, which have us entirely at their mercy. They are in a good position to defend themselves, and it is as certain now as in the past that any increase in their costs will be carefully distributed among their clients.

So that we have got to this position. We have to consider first of all what is the cost of collection to the citizen, not the State. Anyone has only to look at the Bill and who knows the first thing about the business of running an office and all the frightful complications that ensue, especially agricultural concerns, will realize that the cost to the individual of conforming with the requirements of the Bill is bound to be something in the vicinity of £20,000 to £25,000, judging from my contribution on the last occasion! The cost of the equitable collections under this Bill, if it is not used as a blackmailing measure, will be at least £20,000 to £30,000, the figure given me by the expert before last. You have only to read the Bill to realize that this estimate of an additional £3,000 is perfectly ludicrous. To really apply the Bill equitably the Commissioner, who is a sort of arbiter of everybody's destinies, to apply the Bill equitably has really got to reside for a large part of his time with every farmer. There is not a clause in the whole Bill that does not state that the gentleman has some frightfully complicated activity to perform, and it is impossible for him to do it all without an enormous staff and a large spy system.

We get down to the point when it does not seem to be a very profitable operation. I have pointed out on previous occasions, and I emphasize it again, that any money you exact under a direct tax must not be looked on as a net increase in revenue, because if it were left in the pockets of the citizens the probability is that they would have contributed the same amount through indirect taxation if they were left to spend it. I am perfectly convinced that the sterilizing effect of this dreadful complication—I know my friend opposite objects to my describing this as a great upheaval, but, believe me, it is—will be an upheaval of this Council and, heaven knows, of the ability of the people to whom it applies. The net result will be a net loss of revenue to Government, and to the Treasury over and above what would have been obtained had they left this position alone. I say it is definitely going to lead to loss of revenue and ultimately to the stultification of everybody concerned.

[Major Grogan]

That leads me to the question which I will ask once again, for I have had no answer: What is the purpose behind this, what is the purpose? Obviously, it is not a budgetary purpose. That is perfectly clear now to everybody who watches the trend of things. It has no budgetary purpose whatever. The £40,000 it is alleged we shall get out of it will come from other sources, and it is not necessary for that purpose. What are the motives behind it?

There are only a few I can think of, and one is spite. I think that has a good deal to do with it, that people, subject to the home income tax, get irritable when they hear of other countries immune to that disease, and I think it is an important factor in a lot of people at home saying whether we should be subject to the same troubles. The next explanation is that it is a sort of Hitlerism prestige, "that we must have colonies; they are of no use to us, but we must have them," because some gentleman in the Colonial Office, having nothing to do, was instructed to draft a standard income tax Ordinance. Again and again, the little pigeon-hole referring to Kenya is found to be empty, and it upsets the whole office, and makes them thoroughly uncomfortable, until they fill it with something.

The only other conclusion is that this is a trap to lead the unwary into the position we are in, wherein all our resources are entirely at the mercy of Government by the simple expedient of turning on the tap. That is the only possible sane purpose that I can imagine, and I say without the slightest hesitation that it is up to your Government to tell us the purpose. Is it because the Imperial Government and this Government believe that we are going to be compelled to enormous expense on local defence? If so, why not tell us honestly instead of jerking it along with a series of lamentable and pitiable little tricks.

I submit that it has all been very reprehensible procedure. I suggest that in order to meet innumerable difficulties which are disclosed in the Bill itself as drafted, and to get as far as possible some semblance of reason in the speeches made in favour of it, that the application of the Bill should be deferred for at least four years. (Laughter.) The reason for that is contained in the Bill itself, because if you look at clause 13 (2) you will see there is an admission. I do not suppose that there is any other income tax Bill in the whole world which cites a series of special years as entitling people to all kinds of unimaginable and unexampled exemptions. Why are these cited? Because everybody knows they were years of unparalleled tragedy to everybody engaged in production and to everybody engaged in any sort of commercial activity directly related to production.

Therefore, that being so, why add to the fearful complications in their recovery by introducing a measure of this sort? If you want to have any sort of sense left in the concern, and at the same time want to retain any sort of reputation for—and I was going to say, sanity—this is not the moment to apply it. Do not make it applicable for four years, by which time perhaps a great many people will have come to their senses and will understand what it means.

If the Bill is modified as I suggested and all the exemptions were extended beyond the people whose affairs we know so intimately here to others we do not know so intimately but are equally affected, if all those modifications are applied and the application of the Bill deferred to the Greek kalends, I am prepared to support the Bill! (Laughter.)

Council adjourned for the usual interval.

On resuming:

SIR ALI BIN SALIM: Your Excellency, I only want to say just a few words in connexion with the motion for the second reading of this Bill.

I am entirely in agreement with what the hon. Member for the Coast (Major Grogan) said a few minutes ago because, so far as we know, there is no reason for the introduction of income tax. We know that Government is not in need of money, yet they want this tax. As it is now, I entirely agree with the hon. member, and I am against this Bill. (Hear, hear.)

MAJOR RIDDELL: Your Excellency, I do not want to detain the Council long. There is only one small point which I

[Major Riddell]

wish to make; all the other points have been adequately dealt with by the hon. Member for Nairobi North (Major Cavendish-Bentinck). Incidentally, in passing, I do not know why, because the hon. member was a member of the drafting committee, that is stated to be a reason for mirth on the part of the hon. member for the Coast (Major Grogan), for it seems to me the fact that the hon. Member for Nairobi North, as a member of the drafting committee, found it necessary to make all these statements has proved to me at any rate that it is a difficult Bill to deal with. There are any number of things which the drafting committee itself says are innovations, and to put a Bill in front of the Council for discussion is proof that we, on all sides of the Council, are doing the best we can to straighten out this thing and make it equitable in every sort of way. To me it is not a question of mirth, but a matter of congratulating the hon. Member for Nairobi North.

Regarding clause 44, which is headed "Relief in Cases of Double Taxation", the heading itself is instructive. The hon. mover (the Attorney General) in explaining this clause, and it did require explanation, pointed out to Council that the net result of it was that people liable to income tax in other countries paid where the tax was highest, and left the other countries also imposing such a tax to scramble for it. I think that was right. In other words, following the example of the hon. Member for Aberdare (Mr. Wright), "Wherever the carcass is, there will the vultures be gathered!"

The impression left on my mind by the speech of the hon. mover was that one only paid once, and that was the highest income tax to the country charging it. That, if I may say so, is not strictly true; you pay twice.

What happens is this. If you are liable to pay income tax in England on an income of £600 or £700 a year, you pay that in England, and you receive in due time a certificate to say that you have paid. In the meantime, irrespective of that, the Kenya Government has come down on you for their pound of flesh, and you have to recover from the authorities at home. Therefore you do not pay once; you pay twice, and there is no argument about it.

What happens is that you apply for a rebate in England on the amount you have paid in Kenya, and, after a time (which in my experience, because I pay income tax in England, varies between six and nine months) you get your rebate. By the time you get your refund you are nearly ready to be mulcted again by Kenya.

You may like to know what happens in other countries. I myself pay in two countries now, but it is quite possible that a man may pay income tax in five or six different countries. It may astonish Council to know that it is quite possible to pay income tax in Jersey, because there is a perfectly good income tax there. I regret that the hon. Member for the Coast is not here at the moment, because that would surprise him! But what happens if you pay in Jersey? There is your carcass, and there are the vultures sitting all around!

I had hoped when the drafters of this Bill had drafted it they would have found some formula by which the onus of collection would be thrown on Government and not on the individual. The onus of the collection of the tax, where you are paying in two or three countries, is thrown on the individual and not on the Government. It is Government which is going to get the money eventually from the country with the highest tax, but it is the individual in Kenya who has to collect it for Government. In the meantime he stands out of his money. It seems to me, and I put it to the select committee, that it might be possible—as I know it is an innovation—that they should design some way by which we could throw the onus of the collection of the tax for Kenya on Government in the event of people, and there are many of us, who pay in England.

LT.-COL. KIRKWOOD: Your Excellency, I should like first and foremost to subscribe to every word of the speech made by the hon. Member for Nairobi North (Major Cavendish-Bentinck). That will save me a good deal of time, and save the patience of the Council in

[Lt.-Col. Kirkwood]

listening to me, as I do not intend to discuss, if possible, matters which have already been debated.

I wish to make perfectly clear my own position as regards income tax in this Colony. I have always held the view that I am not against income tax in principle, but I am against income tax in Kenya until the constitution this Colony is governed under—which brings it down in practice to the fact that the Colony is run from Downing Street and not Government House, Nairobi—is changed. It is unfortunate, but I am hoping that in the near future that procedure will be altered.

I should also like to state that I entirely disagree with the remark in the leading article of the *East African Standard* this morning, that this Bill, the onus of this Bill, is thrown on to the Standing Finance Committee. We have been discussing income tax and have fought over it for a large number of years, certainly since 1933; it even goes back further, to the time when such a tax was imposed on this Colony. It was later repealed, and it started again in 1933. So it has been discussed *ad nauseam*, and I do not think there is any technical side of it with which I can help. But I would like to take up that statement to some short extent, and I definitely say it is not true. The present Secretary of State took the trouble after entering office to issue a lengthy despatch to this Government repudiating our claim that we had to some extent gained a constitutional advance when we substituted temporary taxation for the Income Tax Bill in 1933. He took a great deal of trouble, and I gathered from that despatch that we were to have income tax; he said we were, and we had no choice. There could be no other deduction in my mind. Again, quite recently, at a lunch in London, and I believe Sir Robert Brooke-Popham, our new Governor, sat alongside the Secretary of State, the latter again emphasized the necessity of income tax in Kenya. There were other occasions when despatches came out to the effect that it was the intention to impose the tax on the adjoining territories. In passing, I have no desire that it should be imposed, and if they can criticize it I shall be very pleased indeed!

Again, I think, to clinch matters once and for all, we have had Sir Alan Pim's Report, and he recommended this tax, and that report has been accepted by the Imperial Government. I do not think there can be any further argument once that is realized, that the tax is imposed, whether we want it or do not want it.

As regards the present Bill, I would make an appeal to have the agricultural interests omitted from its operation for a period of five years. It has been stated that that should also be done in one or two other cases, the commercial community for example. But there is a great deal of difference between the commercial man and the farmer. The commercial man can either sell his business or close down and can dispose of his stocks without great trouble and, very often, without loss. That is not the case with the farmer. He has land on a Crown lease from Government, and has got to pay rent, and he cannot sell his farm so readily. He has also to rely on his own efforts, but there are always various things working against him, such as the elements, unsuitable seasons, drought, locust infestations, etc., over which he has no control.

I think this is a most inopportune time to impose income tax on the agricultural industry, seeing that they have gone through a very long period of years of unprofitable operations. Ever since 1930 cereal prices have not been productive, and I think farmers could be justly exempt for five years from the operation of the Bill. It may be said it was estimated that the non-native poll tax did not produce more than £2,000 from the agricultural interests; in other words, proving that those interests were lightly taxed, but it is only due to the fact that agriculture does not make a profit, or invariably it does not. There is no question about it, it has gone on for a very long period of years and, knowing my own district intimately, I can definitely say that there have been only four years since 1920 when, I admit, it was possible to make a profit, due to the railway haulage, due to pioneering conditions, and having the railway a hundred miles away

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from a farm necessitating haulage to the station by wagons, an expensive form of transport, plus, when the produce got to the railway, having to pay branch line charges. It is only recently that the latter have come off, and this is the first year in seven years that maize prices have risen to the price they are to-day. But that crop has not yet been sold. These remarks apply also to other districts, and it will take a period of years for farmers to recover the losses incurred over a number of years.

It does not meet the case by allowing a farmer to put in losses from 1933, that will not cover the case of agriculturists. I do hope therefore my suggestion will be given very serious consideration.

With regard to clauses 38 and 39, imported stock, I do not consider it equitable to tax stock imported into this Colony, again right at the beginning of pioneering. The importer of such stock is a benefactor, and should not be taxed but should receive a bonus on every beast imported, with the approval of the Director of Agriculture, or some other authority. He is doing a great benefit at his own expense and risk, to other people, apart from what he hopes to gain himself, and it is a very expensive business. For the reasons I have stated I hope consideration will be given and every inducement offered to people who want to import pedigree stock to improve the stock in this country. It is badly needed, so that I do hope that point will be considered and met.

The depreciation of buildings has not been allowed for, and I maintain it should be. Again, it is a pioneering Colony, and more especially outside Nairobi and Mombasa the buildings, though called permanent, are not built in a substantial manner as in the two places I have mentioned; first, because the people had not got the materials, and, secondly, because they did not have the money. Take even a brick building, it has been in existence for ten years; say you insured it at its cost price when erected, you will find that at the end of ten years, if you have not depreciated it, it will require to be depreciated by at least 25 per cent, and if you depreciate the building you depreciate the insurance. I do not believe there is one single case where an insurance company would pay out at the original cost of the building, but they will submit and prove to you that your building has been depreciated, and is not worth the money for which you insured it.

There are many other points, such as the cost of buildings put up for certain purposes, and as the years roll on the purposes no longer exist and the buildings are unsuitable. Though they are fairly substantial, they cannot be let for any purpose, or are let at a low rent. I could keep on *ad nauseam* on this matter, but I know these points will be considered by the select committee, and I will leave it at that.

But there are great anomalies in this Bill, apart from the minor ones.

In the exemptions the officer administering the Government, the King's representative, is exempt. The basis of all income tax is the ability to pay. I have spoken on this matter before, and I cannot see how it can be argued in favour of income tax, the ability to pay, when the officer administering the Government, the best able to pay, is exempt.

The other anomaly is that whether you have an income or not, a European must pay Sh. 40 and the Asian Sh. 30, and if you have not got the money you have to find it somewhere to prove you have it. It is an anomaly, both of them.

Now I should like to refer to clause 44, a very difficult clause, and I rather appreciate the fact that the Attorney General has evaded an explanation of it beyond saying that it could be explained by examples. I asked for an example, and succeeded in getting a copy of one, under clause 44. It consists of six closely typed sheets, and I suggest, so that there can be no possible misunderstanding as to the meaning of clause 44, that a copy of this document should be incorporated at the back of the Bill.

I should also like to mention the matter of double taxation. Take the mining industry. They are paying, I think I am correct in saying, 5 per cent on the value of the gold won. If after that the companies also have to pay income tax on their profits, that is one form

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of double taxation. I have been told that the question of royalties was to be considered, but I see no mention of it in the Bill, and I hope it will be considered in select committee as to whether the 5 per cent paid on the value of the gold won is a deduction if they pay income tax. It does not seem fair to me that they should pay both, and I would remind Council again of the great benefit that the mining has been to this Colony. I would remind you that not so long ago an Ordinance was passed in this Council, I think for an amount of a million and a half, and the responsibility of this Government was £600,000, to stabilize the East African Currency Board. Fortunately for us (I opposed the Bill for reasons I need not go into), the discovery of gold at Kakamega had the effect of bringing much capital into the country and so saved the face of the Currency Board for the time being, if not for all time. The industry starting when it did saved us from raising that £600,000 to stabilize the currency of the Colony.

This Bill is expected to realize the amount of £43,500. I should like to have it put on record that in my opinion, should that amount be exceeded by any considerable sum, an undertaking will be given either that there will be a revision of the income tax and the rates or that the amount in excess of £43,500 will be given in relief of taxation in other directions in the future, because if the Bill, as is possible, will in future bring in much larger amounts above those which are anticipated, there may be some truth in what the hon. Member for the Coast (Major Grogan) said, that we have been tricked.

In conclusion, Sir, I should like to say that, notwithstanding I disagree with the advisability of this Bill at the present time, I realize it is a *fait accompli*, that it has been insisted upon, and is going through. As far as I am concerned, I will do my best to make it operative, and I also consider it advisable to get the Bill out of the way, as no doubt it will be, before the arrival of the new Governor. Everybody in the Colony, inside and outside of the Council, whatever their opinions on income tax may be, should agree that it is a good thing that income tax, anyhow, will be out of the way as a controversial matter, and we should do all we can to co-operate with Government, and get down to the economic problems of the future and make the Colony what it is, one of the finest countries in the world to live in. (Applause.)

MR. SHAMSUD-DEEN: Your Excellency, my attitude as regards this Bill has, I think, been perfectly clear from my previous speeches in this Council. I have not very much to add to what I have said already, but there is one question which I should like answered; it has not been answered so far. It is: could the hon. mover of the Bill kindly tell me of any country in the world of the age of this Colony with a similar mixed population and other conditions that prevail here, where income tax, poll tax, a Traders Licensing Ordinance, and all forms of indirect taxation are in existence?

It has been said by previous speakers that in some cases income tax will have to be paid twice over. In my opinion, the tax on one's income is paid not once or twice but many times over. After all, what is the meaning of income tax? I take it that the meaning is the money that comes in to one person as a result of his enterprise, labour, or any other form of work. We pay the tax on our income every morning when we buy a loaf of bread, a box of matches, or a piece of cloth for ourselves or our children. At every step we pay a tax on our incomes, because we go to the shop and buy a piece of cloth, and the man not only charges us the value of the commodity but also adds to it what is due to Government, that is, the tax.

That is my main objection to this Income Tax Bill. I have heard of this tax being a very equitable one, and if equity really lies in all other old countries the tax is levied on the rich for the relief of the poor but, as one hon. member has said already, you tax both rich and poor in this country. Whether a man has an income or not he has to pay the basic poll tax of Sh. 40 or Sh. 30. That is my main objection to this income tax. We are again and again very fond of comparing this Colony with old countries. It

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is a great absurdity to compare this young Colony with old countries such as England or India or any other civilized country. I have never heard of such things as poll tax, traders licences and so on in England or in any other country to the best of my knowledge.

I have recently seen a wonderful metamorphosis among the European ranks. It started with the Vigilance Committee with all sorts of avowed objects to resist the tax with force and direct action if necessary, and all that sort of thing, but I think Government have done very good missionary work because, according to my young colleague, most of the gentlemen have been converted—I think the most fervid and truculent pagan has been converted into a good boy, and a good christian; but it is no argument that because Government have made up their minds to impose the tax we must also break down. I also think that if there was united opposition to the Bill as from the beginning, we should have got some assistance either in the form of relief from poll tax and traders licences or relief in indirect taxation, but now we have all of them imposed.

I was rather amused by the opening remark of the Attorney General when he said the Bill to-day is simpler than it was six months ago. I submit that if that process helped then let it be put off for another six months and it will be simpler still! Probably in another six months there will be no necessity for it and it will disappear altogether.

The hon. Member for the Coast (Major Grogan) showed signs of breaking down when he began to attack the details of the Bill and referred to it as being no longer a budgetary necessity. Of course, we all know that "budgetary necessity" is an elastic and vague term, but past experience has shown that if Government gets £100,000 or £150,000 it will soon find ways of spending the money and a budgetary necessity can easily be created. That will not prevent Government from introducing the Bill.

It has been said that the Bill has become simpler. To me it seems like a Chinese puzzle, and it only requires time to prove whether it is really a simple or a very difficult Bill to enforce in a country where there is an Indian population which keeps its books of accounts in various languages that have to be given to a European Commissioner of Income Tax. Owing to these language difficulties, he has got to face enormous difficulties, more than any European member of this Council can realize, in having the financial conditions explained.

I hope, Sir, if it is inevitable that the Bill is going to pass, that Government will not add insult to injury by importing, as is rumoured at the present moment, a Commissioner of Income Tax as was the case last time. The Revenue Officer at the present moment has had experience during the last five or six years and has learnt how to deal with the majority of the inarticulate and illiterate communities in collecting the tax. If you bring in somebody else over his head, it means to say that all the work he has learnt and his knowledge will practically come to nothing, because the whole thing will have to be commenced afresh according to the ideas of the gentleman coming from Europe.

Your Excellency, from investigations I have made, I find that although it is feared that the burden will fall on the rich man, most of the burden will be shifted to the poor man. If you tax the agricultural community and other commercial communities, it will simply add to the cost of living in the country, and ultimately the wretched poor man will pay the whole amount.

These are the reasons on which I oppose the Bill, and shall continue to oppose it until all other plural forms of taxation are removed from this Colony. Of course, I am only a voice in the wilderness when I say that if you must have this Bill the first institution that should be taxed is our prosperous railway. There is no mention in the Bill of taxing the railway, which gets the largest income out of this Colony.

MR. BEMISTER: Your Excellency, this Bill, as suggested in the report of the Finance Committee, is to do away with all the ills of political agitation in the Colony, and we are now going to enter

[Mr. Bemister]
a period of co-operation and peace between all parties. That is one question I would like to take up, because I have never understood that there were any real political differences in the country. I have always held that they were economic, and if you will allow me, Sir, I will quote from an article in the *National Review* for February written by Mr. H. H. Ostler. In one sentence he says:—

"The first and main charge against the Colonial Office system of government is its gross extravagance."

Speaking of Kenya he says:—

"At present there is a commission sitting in Kenya to advise on methods of cheapening the cost of government in Kenya. The settlers have been urging economy for years without effect. The Colonial Office remained deaf to all their cries. But as they began to face ruin the settlers became more vigorous. So bitter is the feeling of helplessness raging against the bureaucracy which governs their destiny and which persists while it declines to economise in reporting that all is well, that there have actually been mutters of rebellion."

If the idea is that this Bill is going to take away that feeling when the people of the country have great difficulty in living, and they view the more fortunate Civil Servants receiving the full benefits every month of their salary—not that I want to take them away—you can take it from me that those feelings will always remain, and no Bill such as this will have any effect on those feelings.

Now, Sir, the hon. Member Mr. Mangat made a point which was taken up by the hon and gallant Member for Kiambu (Major Riddell), that I made a statement in Mombasa that income tax was dead. Sir, when I said those words, I believed in my innermost soul that logic and reason would prevail, and it is only on those grounds that I was wrong. I did not know at that time what the hon. Member for Nyanza Mr. (Harvey) knew and which he said in his speech at the last session—I think these are as near his words as I can get them:—

"There is no doubt about it, and everybody must admit it, that Government has been kicked into income tax."

Will the hon. member correct me?

MR. HARVEY: On a point of explanation, Sir, the hon. member's memory is extremely defective: I said nothing that bears the slightest resemblance to that! (Laughter.)

MR. BEMISTER: I will call for the uncorrected proofs of the debate in which I read it, for I have forgotten. If my recollection is bad, my eyesight and knowledge of English are good. (Laughter.)

Now, Sir, with all your friends who are a majority on this side who have criticized this Bill and really cut it to pieces in such a way that I would never have dared to do, I am proud to be in the minority who oppose this Bill. It is not the first occasion that I have opposed a unanimous Bill in this Council. I have said all along that I opposed the levy on official salaries. I did not move its cancellation but there was the same unanimity to remove it as there was to impose it. The same is going to happen with this Bill. I oppose the Bill because of its principle, but unlike your friends who have proved it cannot work I will try to show you how you can work it, and assist you in getting more money than you have estimated for.

If you take the exemptions, you will notice one printed and one particular omission. The one printed is the exemption on the income of the Kenya and Uganda Railways, and the omission is co-operative societies. Co-operative societies are omitted, except a very small proportion, from the last two budgets in England from all tax on income, yet they are not omitted from this Bill. Comparing the two things, the income of the Railways is of no use to the general revenue of the Colony, none whatever. They have all the benefits of being a Government department because they do not pay duty on their imports, they are free of control from this Council of their revenues, and there is no particular regulation whereby any part of their income is in relief of general taxation but only by rates to the users of the Railways.

[Mr. Bemister]
The Railway, Sir, is an independent trading unit, and it cannot be described as anything else. If the Railway was under the central administration, the surplus of the Railway would automatically go into general revenue and then there would be no question as to them contributing through a tax, which is for trading. Futher down, you have the income of any local authority insofar as the said income is derived from trade or business, and it was explained by the Attorney General that that only means where they competed with individuals. At least, that is how I understood it but, of course, my recollection, as the hon. Member for Nyanza said, may be entirely wrong!

What necessity, then, is there to put this in, not derived from trade or business, if you mean it to merely refer to a few paltry things which are done by municipalities sometimes, not in competition with traders but for the convenience of certain districts?

A municipality, quite different from the Railway, is a public body subscribed to by the general taxpayers of the locality which works for the benefit of those taxpayers, but at the same time it pays customs duties on all its imports. Yet the operation is going to be quite different from the Railway. The Railways is entirely free. If a municipality is taking on any public work it should certainly not contribute to the revenues of the country, that is logical.

Then as to co-operative societies. Why have you not left them out? They work for the benefit of their members, they do not make profits, and yet you have left them distinctly in the scope of the Bill. They are not in the exemptions. You cannot tax them because they divide their profits, but unless you put them in here as a definite exemption there is no doubt about it that the Commissioner will come along and say that as they are not in the exemptions they must be taxed according to their general profits, although they divide them, and that they must be taxed on the same basis as companies, that is, Sh. 2 level, because they are working for their shareholders. They are considered to be working in the same way as the big companies and therefore should pay the full amount and the shareholders may try and get it back later if they are above the level.

There is one particular item I want to refer to. That is, why is it that you are not reckoning a man and his wife as two different people? They are two individuals; they have two identities, and yet if they are married and living together the income of the man and wife are taken together, and only £150 is allowed as rebate for the wife's income. To go further. If a man and his wife are separated, they are allowed full rebate as two individuals. In other words, if a gentleman and lady decide to have a co-operative household without the benefit of the church, their two incomes, if both work, will then get a rebate of £700, £350 for each, whereas a man and wife living together will only get £500. Is it really worth while to make a bonus on a co-operative arrangement outside the church? (Laughter.)

The last point I have is this. I want an explanation from the Attorney General as to his method of calculating the income of an insurance company. I would estimate that at least nine-tenths, perhaps a little more, of the income of the insurance companies in this country is fire and marine, where the risk in the marine is finished at the time of the delivery of the goods and the fire is finished within twelve months of the payment of the premium. Life, of course, is a different matter. It is worked on a 3 per cent actuarial basis and is a contingent liability. What I could not undersand, if I heard correctly, was that some system was going to be made by which you were going to add up the world's trade of a company and then allow so much: X for Kenya. I would like that explained, because personally I do not see any difficulty whatever in assessing the income of an insurance company in this country, except so far that you might have to take away the premia paid from say Uganda, Tanganyika, or Zanzibar. If it is the case that you are going to exempt them, the revenue received from other territories, by insurance companies, I am afraid it will do a great deal of harm to the Colony, because the insurance companies are obviously not going to build

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big buildings here but will trade automatically under a Lloyd's insurance, where the premia and consequent income is paid in London. It is done now, but you will not be able to tax the income on insuring residents in London. Yet, if we encourage the companies to come here and incur risks here and make their interests here, then you have a taxable entity. I am showing you now how you can get a little more money than your friends have suggested.

ARCHDEACON BURNS: Your Excellency, I have only one or two words to say with regard to this matter. I may be questioned, as this is a Bill which affects the European community chiefly, why I, as representing native interests, should have anything to say regarding it. I have only one or two words, regarding questions which have been raised by two hon. members yesterday and also reiterated to-day.

That is, if the Bill brings in more than the £43,500, which is supposed to be the figure that it may bring in, what is to be done with the residue of the money? Is it to be returned to the taxpayers or what?

There is one word I want to say with regard to the people I have the honour to represent. That is, the improvement in the customs during the last twelve months surely must be due in a very great measure to the amount of things which are brought in for consumption by and use of the native peoples of this land, who are bringing them in and buying them to retail in the reserves and other places, so that the native is contributing in a very large way not only by direct taxation but by this indirect taxation through customs duties to the revenues of the Colony. Therefore, if there is any money to be spared which is not necessary and which has to be returned, I do make a strong plea that the natives should in some way or other receive some benefit from such moneys.

I remember during last session one hon. member, who is not present at the moment, the hon. Member for the Coast (Major Grogan), said with regard to the alternative taxes that of course it did not refer in any way to the natives. I had not an apportunity then of answering it, but I say now most emphatically that the alternative taxes had to do with the natives in a very real way indeed; that is, when the slump came in this Colony men looked around as to where they could find means of cutting down their overhead charges, and the very first thing that was done was that the wages of the natives were reduced by 25 per cent. I have heard of no place or works where that money has been restored to the natives, that is, money they had been receiving before the slump came has been reimbursed.

I therefore make a strong appeal on behalf of the natives that if there is any mony accruing as a result of this Bill, which I entirely support—and I think, whether I am misunderstood or not, that it is the most equitable Bill that can be brought into this country—the natives should receive some benefit from those moneys.

Before I sit down, I should like to pay tribute, because I cannot think for a moment that the gentlemen who, to my knowledge since I sat in this Council have worked for the good of the country and have done everything they could do to make this country the place it is a delight to live in, could enter into an agreement with Government or anybody else for any other reason than that they were convinced that the introduction of this Bill as produced is to eventually be for the good of the whole country and the whole population. I have such confidence in the members who made up the drafting committee that I believe that what they have done they have done earnestly and sincerely for the good of the whole country, not only for the good of the Europeans but also of the Indians and Africans so that the country may cease this, shall I say, quarrelling? that is too strong a word, well, this agitation which has been going on all these years, that we may all try and pull together and make the country what it can be made, a country which it is a delight to live in. To such gentlemen I myself feel that I can only say that I believe they have done the very best they can do for the country in drafting this Bill, and I hope

[Arch. Burns]

when the Bill comes back from select committee and they will have gone into the small details to which attention has been drawn, that there will be unanimity in this Council for the reception of the Bill and that it will be passed before the new Governor comes into the country.

THE ATTORNEY GENERAL: Your Excellency, after the long opening speech which I made on this Bill two days ago, I feel that every member of Council will agree it is quite unnecessary to go through all the details again, but I should like to say at the outset that I am extremely grateful to the hon. Member for Nairobi North (Major Cavendish-Bentinck), not only for this quite undeserved remarks about myself but for having taken the trouble to epitomise the various objections to and defects in the Bill in one speech which I was able to follow easily and will be able to deal with clause by clause. It makes it much more simple for everybody who is listening to understand the various defects.

He started with the general remark that this was an inopportune moment to introduce income tax. I suppose that could be said by every speaker at any time income tax is being introduced under any conditions in the world; if in the depths of depression it would be a desperate time to bring it in, and if conditions were the other way it would be unnecessary. So that for some reason or other somebody would always get up and say that income tax or any other taxation measure was undesirable at that particular time.

He followed that up by saying it was also the wrong time because everybody else in East Africa had not brought it in —Uganda and Tanganyika of course. He gave the answer himself, that they have promised to assist us in the event of evasions, and it has been suggested that perhaps they themselves might be considering it later on. In any event, that is none of our business. We stand on our own feet and do what we think best for this Colony.

If I may take the different points one by one, I will endeavour to elucidate a few of them.

The first point made was with regard to clause 5 in which it was suggested that it was not clear whether house allowance or the value of a government house would be included in income. If the hon. member will look at clause 5 (*b*), he will see it particularly laid down there as being included in "gains or profits from any employment, including the estimated annual value of any quarters or board or residence" and so on, so that there is no question about it. The amount a Government house is assessed at will be included in the income of the official occupying it, in the same way that people who are not Government servants but serve on similar terms will have the annual rental value of their houses assessed.

Regarding clause 7, I am afraid I did not quite follow the hon. member's difficulty. He seemed to suggest that any company which made up its accounts after the end of June would not be afforded relief under that particular clause. In the ordinary way, the books of a company are presumed to be kept from the 1st January to the 31st December, and when the balance sheet is made up that is the balance sheet which will be handed in in due course to the Commissioner of Income Tax. But if for any reason the company makes up its books to any other period, say from the 30th June or the 30th September, this clause permits the Commissioner to say that he will accept the balance sheet made up to that date for the purpose of assessment. I do not see the difficulty, unless the hon. member is thinking of this. A company, let us say, makes its books up on the 31st October, and if the suggestion is that the Commissioner should wait until the accounts up to the 31st October, 1937, have been made up and duly submitted, there might be some difficulty; in that case I suggest they would submit the last balance sheet which had been audited. That will, I presume be the manner in which that particular clause would work.

The next clause is 8 (*d*), with regard to the Railway, and it was suggested that they should pay tax to the shareholders, namely, Kenya and Uganda. Actually, you all know the theory of why the Railway is not taxed. It is a very attractive form of taxation to some of us to think

[Attorney General]
in I do not think there will be any serious objection, but I can assure him also that no one in the world would ever believe that planting was not an agricultural operation!

Later on, in the same clause, we come to (5), where the hon. member took exception to the words "protection of revenue". This clause, as you all konw, deals with the option given the farmers to come under one form of assessment or another. All that this sub-clause (5) does is to say to the taxpayers and to the Commissioner this: "If at any time, having made what should be your definite choice of the form of assessment, you want to change over from (*a*) to (*b*), with the permission of the Commissioner you will be entitled to do so." It is entirely permissive, and as a guide to the Commissioner it states that in permitting the change he has got to look after the revenues of the country, and that it is not being made with the object of avoiding taxation. For instance, if in any one year one form of assessment suits you, and the next year it suits you to come under another, you cannot walk in and say, "I paid no tax under one form of assessment last year, can I come under the next, because if I do I can avoid assessment again?" In other words, you cannot eat your cake and have it. If you decide to come under one form you must stick to it unless you show the Commissioner good reason for doing otherwise.

Now we come to clause 40 (*b*), and that is with regard to life insurance and mutual insurance. Strange to say, since I introduced the Bill to this Council, two days ago, there has been received a despatch from the Secretary of State containing a suggested clause for our consideration which has been put up, no doubt, by insurance companies at home. It suggests a new form of definition of the manner in which they shall be assessed, and in due course I will put that before the select committee. Whether it is better or worse is a little beyond me to express an opinion at the moment. It is just as complicated, I can tell you that! But it has this advantage, that apparently it has been agreed to by the head offices of the companies at home.

While I am dealing with this particular point, the hon. Member for Mombasa (Mr. Bemister) asked me a question as to how insurance companies would be taxed and to repeat the example I gave before. I can only repeat this, and I am dealing now with ordinary insurance companies, which comes under clause 48, not with the life insurance companies, which we shall consider in committee.

You take the gross premiums paid in Kenya, and take off from that the reserves for your unexpired risks at the end of 1936, but you add on the reserve outstanding at the beginning of 1936. You then take off naturally all outstanding claims paid and which you have got to pay, and then take off the expenses of running the business. And the net result is your profit in this country. I will repeat that. Take the gross premiums paid in Kenya. You then take off the reserve for unexpired risks at the end of 1936. You then add on the reserve you had at the beginning of 1936. You then take off what amounts have been paid out in claims and have got to pay out, and then take off the ordinary office expenses.

I am sorry if I have not made it clear, but if you write it down it is quite easy to work it out.

It is one o'clock, Sir, and I am afraid I have another three-quarters of an hour at least before I finish, for I have twelve pages of notes to reply to.

The debate was adjourned.

ADJOURNMENT.

Council adjourned till 10 a.m. on Monday, the 8th March, 1937.

Monday, 8th March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 8th March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

OBITUARY.

W. MACLELLAN WILSON, ESQ., O.B.E.

HIS EXCELLENCY: Honourable members will learn with deep regret of the death this morning of Mr. W. MacLellan Wilson, one of the earliest members of this Council. The funeral will be at Kiambu at 5 o'clock this afternoon.

I would ask hon. members to stand for a few moments in silence as a respectful tribute to his memory.

Council stood in silence.

ADMINISTRATION OF THE O. TH.

The Oath was administered to—

Nominated Official Member:

H. C. Willan, Esq., M.C., Solicitor General.

MINUTES.

The minutes of the meeting of the 5th March, 1937, were confirmed.

PERSONAL EXPLANATION.

MR. BEMISTER: Your Excellency, I beg leave to make a personal explanation concerning a matter which occurred on Friday.

Inadvertently, my memory was at fault in connexion with the quotation from a speech made by the hon. Member for Nyanza (Mr. Harvey). I have now the uncorrected proofs of Hansard, and that quotation reads:—

"Although I am not an anti-income-tax fanatic, I should like to express my very profound disappointment that income tax should have been thrust on Kenya in the very, very brutal manner in which it has been thrust recently by the Secretary of State for the Colonies."

PAPERS LAID ON THE TABLE.

BY THE ACTING COLONIAL SECRETARY:

Schedule of Additional Provision No. 4 of 1936.

INCOME TAX BILL.

SECOND READING: DEBATE RESUMED.

The debate on the second reading was resumed.

THE ATTORNEY GENERAL: Your Excellency, when the debate was adjourned on Friday last I had reached clause 40, dealing with insurance companies, and I had explained that, with regard to life insurance companies, a new formula had been sent out by the Secretary of State. This will be examined by the Select Committee on the Bill, and possibly will be eventually accepted.

With regard to the other clauses dealing with insurance and shipping, they are in common form and have been accepted all over the Empire, so we must presume they are in order.

The next point taken was one with which I have the greatest sympathy, and that is with regard to clause 44, where the hon. member begged for simplicity. I can assure him that no one is more anxious than I am, or Government, to make this as simple as we possibly can, and also to meet the hon. Member for Kiambu (Major Riddell) when he said a taxpayer might have to apply to two governments for two rebates in the case of Empire tax. It is perfectly true what he said, and I am sorry if in my opening speech I gave the impression that one only had to apply once. What, in fact, happens at the end of all these manoeuvres is that a person has to pay the largest tax which is imposed in either of the places that apply to him.

I have been asked to explain clause 49. It is inserted with one object, and one only. Take, for example, a small private company of four or five people, and let us assume that their taxable income would amount to £2,700 irrespective of what they were receiving from this private company. The fact is that if they were able to reserve all their profits they would only have to pay on that reserve Sh. 2 in the £, whereas if they distributed part or all of it to the dividend-holders it would go over the Sh. 2 boundary into Sh. 2/50. It is for that reason that this clause was inserted. It means in effect that only genuine reserves will be counted

[Attorney General]
we should allow more for dependants. Listening to this debate, and going over this Bill, I am not sure that we have not gone too far with dependants, and that we shall not have to make certain amendments in committee. I am not at all sure as it stands that the fifth child is not better off under certain circumstances than the first, because the fifth child will become a dependant, in which case he will be able to get a relief of £100. But, having said that, I must add that £100 is the most generous allowance I have been able to come across in any income tax law. Whether or not we shall be able to increase it I do not know. I do not think so, but I would suggest that in the committee we should define more accurately what a dependant is.

In the same way, I regret that at the moment I cannot support the suggestion that there should be a deduction for governesses, because where we shall end if all these deductions go on I do not know. We shall have to deduct the amount which is paid for the boy! (Lord Francis Scott: You are allowed it in the English tax.) At any rate, the allowance made for a child is for that very thing. In one case a boy goes to school, and the allowance is £75, and in the other you have a governess and £75 is also allowed.

CAPT. SCHWARTZE: On a point of explanation, I do not think the hon. member perhaps understood. The point is that once a child becomes 16 you do not get the allowance unless he is at school, but if you have a governess or a tutor there should be an allowance in the same way. It does seem odd to me.

THE ATTORNEY GENERAL: I am grateful to the hon. member. I was thinking of a child under 16 having a governess. The point of a child over 16 having a governess we can go into in committee, but personally I do not hold out any hope at the moment of including the governess allowance.

I am inclined to agree with the hon. member with regard to the points in clause 18 about articles of indenture, where he pointed out that in order to evade the tax a man would be able to article his son to a hairdresser for an unlimited time. I hope in committee to put that right.

We shall also have to go into the question of accident insurance. We shall have to be very careful with regard to that question, because if you allow accident insurance there will also be a claim for every other sort of insurance. That is the difficulty. Once you start allowing these things and depart from accepted principles there is no limit to which somebody or other will not want to push you.

There is also the point with regard to Nairobi municipal funds. We will put them in if desired, though they would have been excluded under the general exemption clause.

A point was made as to whether the ordinary insurance of business risks would be allowed. Assuming a contractor contracts to build some building for Government or anybody else, and under the terms of the contract he has to insure. Clearly, when he puts in his return of profits made out of the building, the amount he paid for insurance will naturally go on the debit side, because without that he could not get the job of building, and therefore it is an ordinary expense incurred in producing income. I do not know if that quite answers the point, but we can go into it later. Generally speaking, I should say yes.

Under clause 21 there is a suggestion that small companies should have exemption up to £500. With regard to that, though I make no final pronouncement on it, it seems to me we would be going a little too far. It is a genuine profit made by a company. To allow a company to build up a reserve free of tax would put them in a better position than an individual who has not formed himself into a company. If he sees that a company is allowed to put away £500 towards its reserve without being taxed, surely he will demand similar treatment.

I am afraid I do not understand the point as to why the tax of Sh. 2/50 is in when it only affects incomes over £12,000. I think we are all a little confused about that. The position is that even if a company made a million it could never actually pay Sh. 2/50 on every £ of profit

[Attorney General]
made, because it starts off by paying Sh. 1 on the first £700, Sh. 1/50 on the next £500, and so on, but it is perfectly clear that after the first £2,700 of its profits it will pay at the rate of Sh. 2/50. When I say company I mean person, because it is made perfectly clear in the Bill that a company never goes over Sh. 2. In fact, if we have any of these rich people here, there is no reason why they should not contribute a fair proportion.

CAPT. SCHWARTZE: On a point of explanation, the point was as to these people, if there was a 2s. 6d. limit, say the rate of tax would be 2s. 4½d., therefore they would not get relief, because twice 2s. 4½d. is 4s. 9d., the English tax.

THE ATTORNEY GENERAL: That is true. The English refund is 2s. 4½d., so that if these people pay Sh. 2/50 they will be out of pocket a penny-halfpenny, or whatever the amount is.

I was then asked, as far as the Bill is concerned, an academic question as to what will happen when a wife goes home to England for a year or so. The answer is, Ask the Income Tax Commissioner at home! I can tell you what happens here, but, as a matter of interest, I will say I have never been caught, or my wife caught, for income tax when she has been home over six months, and various other people I have spoken to have also escaped! And anybody who escapes the Income Tax Commissioner is, I can assure you, probably on a very good wicket. I think the basis of the problem is that if the wife takes a house in her own name she then becomes taxable on the income she receives from you. If you do not get registered as a householder you escape.

There is a small drafting amendment in clause 36 regarding the definition of immature areas. If we use the words "immature areas" at all we have got to have a definition, but if we can find some other words to take their place so much the better.

Then there is the suggestion that the last three lines of clause 36 be deleted. It presumably is the proviso:—

"Provided that the initial cost of clearing and/or planting any such immature area shall be deemed to be capital expenditure."

The real fact of the matter is it is capital expenditure in the ordinary way, and if granted it will be one further example of capital treated as income. In spite of a head nodding at me, I can assure you it is a fact. It is capital expenditure in every Income Tax Ordinance you care to read. Whether or not it should be treated as that in this country we can discuss in committee.

I am told that "rotation replanting of sisal" is the wrong way of putting it. I am quite willing to put it the right way, but for the information of members I can tell you that before putting these words in the Bill I rang up one of the most distinguished members of the sisal community, and asked what was the right word, and those were the words given me. But I shall be only too pleased to put it right. The question of whether we shall do it for other produce such as wattle will be a matter for consideration. Personally, I do not quite see that wattle is on the same footing, but as I know nothing about it I am a little frightened to express an opinion. I have never grown any wattle or sisal, but I thought that wattle grew itself after it was cut down (laughter), so that no rotation planting was necessary as with sisal. That is entirely a matter of detail. What is sauce for the goose is sauce for the gander, and if it is necessary to put it in for sisal it is necessary to put it in for similar products.

I have already made the point clear regarding manures, and I am very sorry I did not make it clear in my opening speech. If manures are used in order to produce crops, clearly it is an out-of-pocket expenditure which you have incurred in order to produce whatever you are producing. It is the whole basis on which the Bill is drafted, and I can assure you you need have no doubts about it.

The next point is with regard to clause 38, line 4; that is a drafting point. The hon. member wants the word "planting" put in, but he adds, "I have been assured by all the legal people I have consulted that the words 'agricultural operations' would cover planting." If he is particularly keen on the word "planting" going

[Attorney General]

in I do not think there will be any serious objection, but I can assure him also that no one in the world would ever believe that planting was not an agricultural operation!

Later on, in the same clause, we come to (5), where the hon. member took exception to the words "protection of revenue". This clause, as you all konw, deals with the option given the farmers to come under one form of assessment or another. All that this sub-clause (5) does is to say to the taxpayers and to the Commissioner this: "If at any time, having made what should be your definite choice of the form of assessment, you want to change over from (*a*) to (*b*), with the permission of the Commissioner you will be entitled to do so." It is entirely permissive, and as a guide to the Commissioner it states that in permitting the change he has got to look after the revenues of the country, and that it is not being made with the object of avoiding taxation. For instance, if in any one year one form of assessment suits you, and the next year it suits you to come under another, you cannot walk in and say, "I paid no tax under one form of assessment last year, can I come under the next, because if I do I can avoid assessment again?" In other words, you cannot eat your cake and have it. If you decide to come under one form you must stick to it unless you show the Commissioner good reason for doing otherwise.

Now we come to clause 40 (*b*), and that is with regard to life insurance and mutual insurance. Strange to say, since I introduced the Bill to this Council, two days ago, there has been received a despatch from the Secretary of State containing a suggested clause for our consideration which has been put up, no doubt, by insurance companies at home. It suggests a new form of definition of the manner in which they shall be assessed, and in due course I will put that before the select committee. Whether it is better or worse is a little beyond me to express an opinion at the moment. It is just as complicated, I can tell you that! But it has this advantage, that apparently it has been agreed to by the head offices of the companies at home.

While I am dealing with this particular point, the hon. Member for Mombasa (Mr. Bemister) asked me a question as to how insurance companies would be taxed and to repeat the example I gave before. I can only repeat this, and I am dealing now with ordinary insurance companies, which comes under clause 48, not with the life insurance companies, which we shall consider in committee.

You take the gross premiums paid in Kenya, and take off from that the reserves for your unexpired risks at the end of 1936, but you add on the reserve outstanding at the beginning of 1936. You then take off naturally all outstanding claims paid and which you have got to pay, and then take off the expenses of running the business. And the net result is your profit in this country. I will repeat that. Take the gross premiums paid in Kenya. You then take off the reserve for unexpired risks at the end of 1936. You then add on the reserve you had at the beginning of 1936. You then take off what amounts have been paid out in claims and have got to pay out, and then take off the ordinary office expenses.

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[Attorney General]
as reserves, and the surplus will be treated as if it were distributed dividends.

With this comment on clause 69, I am quite prepared in select committee to insert a similar clause to that which appears at 72.

In clause 73 (2) I can only repeat what he said had been told him by his legal friends. He may rest assured that the same person is referred to in (2) as in (1), namely, a person who is going to leave the Colony without the intention of returning.

Clause 75 (2) *(a)* is alleged to be unnecessarily complicated, and I shall be the first to try and make it less complicated when we go into select committee. But one point I should like to make is, that although a taxpayer may leave the Colony without being assessed, it is quite possible to send him his assessment by registered post, so that in fact it might be necessary to make provision for a man who had left the Colony without assessment and who would not get it until he got back, in which case he would be entitled to 90 days after the assessment, and also for a person who left the Colony who afterwards received his assessment and then was given 90 days on his return. It is a small point, and there will be no difficulty in reaching agreement in select committee.

The only other point of importance which I have noted was made by the hon. member with regard to the penalty. That is a very vexed question, and I would only say that it has been found with the graduated non-native poll tax that the presence of a penalty made all the difference in the world, as is proved by the fact that, assuming the last day of payment to be the 30th June, I can assure Council that 80 per cent of the taxpayers paid on the 29th or 30th, showing that the penalty effective on the 1st July had some effect in bringing in taxation.

Some doubt was cast by the hon. member Mr. Mangat, and I think by his colleague, with regard to clause 23, and he said he was not quite sure whether the tax deducted at source on dividends would be counted in full towards the tax payable by the individual. If the hon. member refers to clause 80, I think he will be satisfied that, with clause 23, that point will be covered.

I was not quite certain what he was referring to in clause 8, but the note I made is that "proceeds of life policies should also come under the exemption clause." If he means the amount, the lump sum paid, on a life policy, of course that will be capital, and would not be shown on the income side of a taxpayer's return. As I hope the hon. member Mr. Mangat will be on the select committee, we can go into this matter later.

Some comment was made on clause 55, the Commissioner's power to order books to be kept in a particular language. I am sympathetical with the hon. member, but I must put up the other side of the question to him, and it is this. It would be very difficult to set out in a Bill a list of languages in which books must be kept, because he knows that one would be left out, or half a dozen, and I should be in greater trouble than I am at the moment. It is wiser to leave the discretion to the Commissioner, and in this country there is no chance of it being abused.

The hon. member also asked that the Commissioner should be made to give the reasons why he refused to accept returns sent in by a taxpayer. While such a provision might make it easier for counsel appearing for a taxpayer, the answer would always be the same, "I do not believe the return truthfully reflects the income of the taxpayer," which I do not think would carry us very much further!

The hon. member also thought the time of six years given the Commissioner in which he could claim moneys was too long, and suggested one year. I can assure him that as a matter of practice one year will be quite insufficient, because it takes some time to get any complicated figures together. He will have noticed how often in the English newspapers we see accounts of taxpayers being fought out after something like ten years. The last case I remember was that of Johnson, of Layton and Johnson, which went back eight years.

Exception was also taken to clause 67, which, I submit, can only be considered in the same way as "E. & O.E." at the

[Attorney General]
foot of an ordinary bill. I do not think anybody objects to the E. & O.E. principle, and this clause seeks to do the same thing.

The last objection I frankly did not understand. The hon. member objected in clause 79 (2) to there being inserted provision that an advocate could appear on behalf of the Commissioner. I only wish his fears were well grounded and that it meant that the Attorney General and his staff were not going to appear for the Commissioner, but I can assure him that that is not the intention. In the ordinary way my department will certainly appear on behalf of the Commissioner, but if for any reason we are unable to attend it seemed wise to have in a clause to say that any advocate could appear on behalf of the Commissioner.

The hon. Member for Uasin Gishu (Mr. Hoey) made a point with regard to blood stock, and I think I can tell him that the door is not closed to inserting that later on. The matter will have to be gone into, but one can see no reason at the moment why it should not be inserted in the place he suggested, and stock for stud purposes.

He also wished to know what action Government would take if more money was produced under the Ordinance than was estimated for. Though I have received no instructions in this matter as to what the answer should be, I should imagine the answer would be that Government would do exactly the same as in other cases when it receives more than it estimates for! (Laughter.)

The hon. member Mr. Maini rather surprised me by suggesting that in England husband and wife were able to opt as to whether they should be taxed separately or together. It caused me several hours looking up to try and find out if it were so. I regret to say that I cannot corroborate that statement. I find that for the purpose of ascertaining the chargeable income the two incomes are added together, though for convenience of payment husband and wife may elect as to how much of the total due each will pay. I have no doubt some arrangement such as that can be made here.

He also made a new point with regard to members of the local committees, where he pointed out that two of the members might in fact on occasion be interested shareholders. I personally had thought it would be better to make provision for that in the rules, but I have no objection, if it is stressed in committee, to making some provision to deal with that particular case. I am not sure whether he suggested there should be one more member, five instead of four. I think he did. With regard to that, my experience of these committees is that the smaller the committee the better it works. These committees will also cost a certain amount of money, and we want to keep the cost down as much as possible.

An appeal was also made as to whether we could not put into the Bill what usually appears, I suggest, in rules, with regard to appeals to the Privy Council, and the hon. member suggested for some reason that in income tax cases a lower amount than £650 should be permitted as appealable to the Privy Council. I personally cannot see that income tax is any more important than any other tax with which we have to deal, and I see no reason why, except perhaps in exceptional cases when, as the hon. member knows, permission will be granted to go to the Privy Council, even though £650 is supposed to be the minimum, such a provision should be included.

I then come to the characteristic speech of the hon. Member for the Coast (Major Grogan). And it is characteristic in more senses than one. It is not only characteristic of the hon. member, but it is characteristic of any general of a defeated force who, retiring in disorder, adopts guerilla warfare, shoots at friends and enemies indiscriminately (laughter), interspersing curses on the enemy, whom he explains he tried to save from impossible positions, and all they did was remain where they were, and eventually put him to flight! (Laughter.)

With regard to details, the first point the hon. member made was with regard to rates. As I think I explained, the position is perfectly clear. If a rate is an outgoing which is incurred in producing income, then it will be allowable as a deduction. If a rich man were to come

[Attorney General]
here and buy a plot of land in the town on which he paid rates and which produced no income, I doubt whether that would be allowed as a deductable amount.

There was a suggestion that clause 11 (c) and clause 37 were incompatible in that in 37 we allow for rotation planting and in 11 we did not allow reserves which, he suggested, would be used for this rotation planting, as a deduction. Of course, in practice, it works out quite fairly, because what will happen is if in 1936 you put aside £5,000 to reserve you will be taxed on it. If in 1938 you spend £2,000 in sisal rotation planting and you only make in that year £1,000, there will be a loss of £1,000 on that year's showing. But, in fact, you will be able to carry forward that loss of £1,000 which you incur in that year for the next five years, so that you will be given all you deserve with regard to what you spent on rotation planting.

There is a suggestion that we should increase the poll tax to limit immigration. I submit that that does not come within the purview of this Bill, and it certainly would appear on the face of it to be unfair that a man with £5,000 a year should pay exactly the same as a man with £500 in direct taxation.

To meet the point with regard to overseas shareholders, he said that this Bill frightened away capital. As I have explained before, the only possible person who could be frightened away under this Bill from investing his money in Kenya would be someone who lived in a place which had no income tax. There may be one or two living in foreign parts, but their number must be few, and it will affect nobody in the British Empire. The fact that you have to apply to two places for the rebate is the worst that can be said against this Bill from the point of view of frightening away capital. The actual amount that you pay in the long run will be the same. I am not quite sure what the hon. member meant about frightening visitors away, because the clause allows a person to be a visitor for six months without paying tax.

With regard to the cost of collection, I feel that the gentleman whom he quoted as saying it would be £30,000 was only quoted in order to bolster up this particular case, because if it were to cost that and we only collected £43,000 naturally everyone in this Council would agree that it would be absurd to introduce the tax. But we are told that it will cost in the vicinity of only £3,000.

There is, of course, the usual suggestion that this Bill has merely been introduced because of the spite or whim of the Secretary of State, the Governor, the Colonial Office, or this or that official, and that no reason has been given by Government as to why income tax is necessary at all. I can only repeat what has been said on innumerable occasions, that everybody who has examined the position and who is entitled to express an opinion has declared that income tax is a suitable tax for this country and, in support, I would point to the fact that practically every civilized country in the world has it, so that I think it is a little absurd to try and blame it on any one particular person as having introduced it as a matter of spite.

The hon. member also suggested that the money is not required. I do not quite know what he means by that. If he means that the budget can be balanced without it, he has a greater knowledge than anyone else as to what will happen by the 31st December. If, on the other hand, he does not think the budget should be balanced by this £40,000, I respectfully disagree.

I do not think there was any other point of importance that cannot be dealt with by the select committee.

I was asked by the hon. member Mr. Shamsud-Deen if I could point to any other country with exactly similar legislation as Kenya. Of course I cannot point to any other country with similar legislation, but if he meant any other country with poll tax and income tax, I can quote one, Northern Rhodesia.

I have already dealt with the point regarding the Railway, and there is one other point with regard to municipalities and a suggestion that they should be exempt. That is a matter to be gone into very carefully, and there are two sides to

[Attorney General]
the question. In the ordinary way, naturally all the activities of a municipality will be exempt, but if by any chance we get a municipality going into competition with merchants who have to pay income tax it would be unfair with regard to that particular income if whereas a merchant were taxed a municipality competing with him were not taxed, and that is the only reason this provision is put in. I can assure the hon. member that in the ordinary way all the normal activities of a municipality will be exempt.

I think, Sir, those are all the points of detail raised during the debate. I can assure this Council that each and everyone will be gone into most carefully in select committee, and I am most grateful for the general support the Bill has received from the Council. (Applause.)

The question was put and carried by 33 votes to 5.

Ayes: Messrs. Bale, Boulderson, Major Brassey-Edwards, Archdeacon Burns, Major Cavendish-Bentinck, Messrs. Fazan, Gardner, Harragin, Harvey, Hayes-Sadler, Hebden, Hoey, Hosking, Col. Kirkwood, Messrs. La Fontaine, Logan, Maini, Mangat, Montgomery, Morris, Dr. Paterson, Sir Godfrey Rhodes, Major Riddell, Capt. Schwartze, Lord Francis Scott, Sir Robert Shaw, Dr. de Sousa, Messrs. Stronach, Vidal, Walsh, Waters, Willan, Wilson.

Noes: Mr. Bemister, Sheriff Abdulla bin Salim, Sir Ali bin Salim, Mr. Shamsud-Deen, Mr. Wright.

THE ATTORNEY GENERAL moved that the Bill be referred to a select committee consisting of—

The Attorney General (Chairman),
The Treasurer,
Mr. H. C. Willan,
Major Cavendish-Bentinck,
Capt. Schwartze,
Mr. Hoey,
Dr. C. J. Wilson,
Mr. N. S. Mangat.

THE TREASURER seconded.

The question was put and carried.

PASSION FRUIT BILL

SECOND READING

THE DIRECTOR OF AGRICULTURE (MR. H. B. WATERS): Your Excellency, I move that the Passion Fruit Bill be read a second time.

The general object of this Bill is to enable passion fruit growers to co-operate with a view to building up an export industry in passion fruit juice. The Bill is designed to assist passion fruit growers to organize their own industry, and as such I feel it will be supported by every member of this Council.

The passion fruit industry is one of the most promising of the subsidiary agricultural industries of this Colony. The plant grows well, it gives a high yield per acre, and we think it will give a fair return for the year per acre. Reports from the Imperial Institute and our own Trade Office and through trade channels show that our products are of excellent quality, and also indicate that there would be a good market for them at a price profitable to the growers in Kenya. Those who have studied the question of the market do not fear competition from elsewhere. So far as an expansion of the market is concerned, in these days of increasing consumption of fruit juices of all kinds one cannot anticipate the size to which this small industry at present may grow.

The main essential for the creation and maintenance of an export industry is to export products of a standard high quality, and the principal requirement for this purpose is that all the juice to be exported should pass through some central factory. Juice processing, when it comes to export at any rate, cannot be done suitably on the farm, because with modern methods of extraction one has, in order to get a standard quality, to use rather complicated plant which involves the use of centrifuges and refrigeration. The cost of an adequate single plant has been estimated to be £10,000, and proposals are under consideration which are likely to lead to an application by the growers to the Colonial Development Fund for help to enable about one-half of the cost of the plant to be met by that fund. What is required in Kenya,

[Director of Agriculture]

therefore, is that all the fruit should pass through the hands of a single processor and that the sale of the product should be in the hands of the same agency.

The means by which it is proposed to assist the passion fruit industry, therefore, in this Bill, is by the establishment of an agency on the same lines as the pyrethrum agency. The agency is empowered in the Bill to buy passion fruit, to export passion fruit products (as a sole agency), and to distribute the returns to growers in proportion to the deliveries of the fruit.

Coming, now, to the clauses of the Bill. Clauses 1 to 4 follow closely the Sale of Pyrethrum Ordinance, 1935, and therefore call for no comment.

Clauses 5 and 6 are also similar, except that in this Bill the agency, while controlling the export, is not empowered to control the production for sale locally. I will come to the question of local sales in a later clause of the Bill.

Clause 7 gives the Governor power to impose a levy on all passion fruit produced in and exported from the Colony. The object of this is to provide a method by which the growers may be enabled to pay for the capital cost of the processing plant. It may be considered desirable to amplify this clause so as to indicate or possibly prescribe the purposes for which this levy fund may be used.

In that connexion, I should mention that it is proposed that this Bill should go to a select committee of this Council.

The remaining clauses call for no comment except clause 10, which is the rule-making clause. Sub-clause (c)—"controlling the manufacture and sale of products of passion fruit grown in the Colony"—gives the Governor in Council power to make rules for the control of the manufacture and sale, and this clause might be brought into operation for the control of the preparation of products for sale locally and for the sale of passion fruit products locally.

Under sub-clauses (*h*) and (*l*) rules may be made to regulate supplies to the agency, that is supplies to the factory, by the allocation of quotas. This may be necessary, because the factory cannot accept supplies which are greater than its maximum capacity. In this connexion I should mention that the passion fruit growers have in mind that the first processing plant should be erected at Nakuru and that the juice for sale locally should be prepared at outlying farms which could not supply economically to the central factory. If the project is a success then, of course, a second factory would be erected in some other locality, such as Sotik which, of course, is a long way from Nakuru when it comes to transport of the passion fruit.

The remaining sub-clauses in clause 10 are either the same as in the case of the Pyrethrum Ordinance or provide for ordinary things such as submission of returns, grading of passion fruit, and control of agency fees by a general meeting of passion fruit growers.

This Bill has been prepared at the request of the passion fruit gorwers of the Colony. At a meeting held at Nakuru in February last, and representative of all the districts where the fruit is grown, it was agreed that Government should be asked to introduce legislation for the control of the industry on the lines prescribed in this Bill. Government was given to understand that this Bill had the full support of every passion fruit grower in the Colony, and that was the information which I also had received. Even up to date I have not heard from one passion fruit grower that he is in any way opposed to this Bill, but I have a list of a number who are. I have heard, however, that there are objections to this Bill, and I hope they are objections not to the principle of the Bill but to matters of detail and that the difficulties which have arisen since the publication of the Bill will be readily removable in select committee.

THE ATTORNEY GENERAL seconded.

MR. WRIGHT: Your Excellency, I have no grave objection to the principles of this Bill but more serious objections as to detail.

First of all, I would remind you that it is rather striking that a meeting held in Nakuru last month should have the remarkable result of having a Bill like this in our hands to-day.

[Mr. Wright]

A matter of a score or so of growers are affected by this measure. Some of them, in spite of what the Director of Agriculture has said, are very critical of it and are apprehensive that it will go through as drafted. Two points strike me. First, it is a remarkable thing that in an industry relatively small affecting a score of growers such a Bill should be rushed through, whereas a matter of 800 dairy farmers have been knocking at the door of this House for a Bill to control their own industry of far more vital importance for a very long time. Similarly with the Squatters Bill, several years have passed and one has not been produced yet. It is remarkable that when there is a certain amount of unanimity among a small coterie of people things happen with great speed, but when the whole community wants a thing done there is no end to the delays.

I would call attention to the fact that clause 2 of this Bill refers to one variety of passion fruit—*Passiflora edulis*. I am credibly informed that there are no fewer than 246 varieties! (Laughter.) I personally know of three grown in this country, and I can imagine no easier way of evading the Ordinance than by growing *Passiflora quadrangularis* or *Passiflora laurifolia* and not *Passiflora edulis*, getting the same juice, and thus defeating the purpose of a stupid Ordinance. In point of fact, I believe the pawpaw belongs to the same family, and, in view of the fact that one hon. member of this Council grows most delectable fruit in an orchard famous for that variety, it might be well to call it *Passionata Conway Harveyii!* (Laughter.)

A Bill drafted at a speed like this one has been defeats its own object. I am a great believer in co-operation and control, but this is not the way to achieve them. I was glad to hear the Director of Agriculture amplify the purposes of the Bill, but his proposal to put up a central concentration factory at Nakuru is a sore point and has frightened several people. The hon. Member for Nyanza (Mr. Harvey) will be able to substantiate me when I say that there is in his constituency a most excellent factory owned by a settler named Mr. Lanyon, producing such an excellent product that I passed on a bottle with all speed to the Trade Commissioner for South Africa, who, in turn, was so impressed that he prevailed on me to wire for some which was sent to the Johannesburg Exhibition. That is a product any settler might be proud of and of which Kenya might be pround in turn, and such a scheme as this would kill that private enterprise.

That is why I am dealing with the objections to the purpose underlying this measure, a concentration factory. I am told that this plant costing £10,000 is not a proved thing. It is the invention of a German and is now in operation in Switzerland in the concentration of apple juice, but I believe it has not been commercially applied to passion fruit which to-day presents difficulties to the Government of New Zealand which have a considerable export market and subsidize the industry. I am also told that in the concentration process it reduces the bulk by three-quarters and thus will save an enormous amount of freight. It is called fractional refrigeration; but latest authorities say that such a process is bound to remove a good deal of the extract of the more volatile components which make for the palatability of such a fruit as this. On the face of it, the matter of a few hundred acres of crop likely to be restricted in the near future, could not lightly warrant an expenditure of £10,000 on a factory.

I have no wish to criticize the industry, it may yet be valuable to Kenya, but when other things of more vital importance are crying for help, it is a fantastic suggestion to say that 20 growers should have £10,000 and to take funds from the Colonial Development Fund to bolster an industry not nearly proved for the export market. I therefore beg that when the matter is referred to the select committee it be not rushed through. I know of several keen growers who say that if they have to send their fruit 60 miles it is going to affect them very adversely indeed, or even the juice, because all experience has shown that fruit which is fresh and unwrinkled produces better juice of a better colour than fruit stored or transported 60 miles.

[Mr. Wright]

If, therefore, Government would take the generous view, and having rushed the Bill with great expedition to this stage, agree that every possible opportunity should be given to those vitally concerned, I shall be content.

MR. HARVEY: Your Excellency, as an ardent supporter of agricultural co-operation and orderly marketing, I welcome this measure as an effort towards establishing a new and very promising industry on sound lines. I feel, however, it has been rather sprung on us like a bolt from the blue and it suffers badly from the abnormalities and imperfections commonly associated with premature birth. There are so many bad point in this very small Bill that it clearly indicates that it has been produced after very immature consideration, and I suggest, with all respect, that it might quite properly have been referred to the Board of Agriculture or the Board of Economic Development for scrutiny before it reached its present stage.

I do not intend to embark upon a passionate denunciation of the measure, because I am going to vote for the second reading, on the clear understanding that it will be entirely remodelled and very greatly changed as a result of a more careful examination of the various points involved than has hitherto been made.

I am going to ask now for an explanation of certain items and to express my most violent objection to other clauses in the Bill.

The first one which cries for some explanation is the first line of clause 4, in which it is stated that "every person carrying on the business of a passion fruit grower shall" do certain things. What on earth does that mean? What is "carrying on the business of a passion fruit grower"? We are told that 22 most estimable gentlemen, all friends of mine, met at Nakiru and made certain recommendations but, Sir, it would not be exaggerating to say that not less than 5,000 people in Kenya grow grenadillas, the common or garden name for passion fruit, in their gardens. Some eat all they grow, others sell some of the fruit for a few cents, others for a few shillings, and others sell their passion fruit on a large scale. Where is the line drawn? and what constitutes the business of a passion fruit grower? and how many of these classes I have briefly enumerated will be called on to pay the licence fee imposed under this measure? I have no doubt the Director of Agriculture can assure us on that point.

The clause to which I have taken the most violent objection is clause 7, which says:—

"It shall be lawful for the Governor from time to time by proclamation in the Gazette to impose a levy on all passion fruit produced in and exported from the Colony."

I suggest that imposing taxation on primary products is fundamentally unsound and cannot be contemplated by anyone who really has the advancement of the Colony at heart. The enactment more closely analagous to this Bill in this respect is the Cotton Tax Ordinance. Those hon. members who were here in the middle of 1923 will share my recollection of the most bitter hostility that the introduction of that principle aroused in all quarters of this Council in the year 1923, and it was only agreed to with some reluctance on the very clear and explicit assurance from Government that the proceeds of that particular tax would be devoted to the purpose of advancing the cotton industry. Even then, I should like to repeat that in my humble opinion the taxation of a primary product at its source is the worst possible form of raising revenue.

Another objection I have taken to this Bill is that, unlike the Sale of Wheat Ordinance and the Pyrethrum Ordinance and the Coffee Industry Ordinance, those who are closely identified with the passion fruit industry as growers do not appear to be brought into the Bill in any shape or form, and I suggest it is absolutely vital, if a nebulous body called in the Bill "agency", is to function satisfactorily it must be under the control and guidance of accredited representatives of those closely identified with the industry, whose interests are proposed to be served by the more orderly marketing of passion fruit.

[Mr. Harvey]

That is all I wish to say, and I sincerely trust that these points will be given the most serious consideration in select committee. I think it will be a very great pity to throw out the Bill, and I think there is a case for going on with any proposals for the more orderly marketing of passion fruit, and anything that may possibly lead to the advancement of what appears an extremely promising industry.

SIR ROBERT SHAW: Your Excellency, I want to rise one moment to explain that I am anxious the Bill should go through its second reading and to vote for the motion before Council, and that is because I think the organization of an export market is essential and if it is not done from the start of the industry it will never start. But I strongly support the remarks of the previous speakers. I also know of a factory which has begun to produce the passion fruit juice, and it appears to be a very excellent article, so much so that in that particular part of the world a new drink known as "gin and pash" has begun to take the place of almost every other drink! (Laughter.)

I could not agree to a Bill which contains clauses 5 and 6 as this does, for they would inevitably put such private enterprise clean out of business. Quite possibly, in the future, some of these enterprising people, who deserve all the credit we can give them for what they have done, may develop into the big processing businesses.

I want to emphasise, and have a very good reason for saying, that I hope we shall not see the report of the select committee on this Bill for a long time, although I hope the Bill will be read a second time to-day.

MR. HOEY: Your Excellency, previous speakers have covered the important points in this Bill. I am supporting the motion before Council, the second reading. I am not supporting the Bill as it stands, but simply to get the Bill into a select committee.

I personally think this is very hurried legislation, and I know it to be a fact that there is one very important grower who has over 100 acres of this fruit who has not yet been consulted. We have not been able to get hold of him, and it does seem to me very inadvisable that we should proceed to very hurried legislation like this without giving everyone ample opportunity to criticize the Bill and put forward their general ideas.

As regards myself, I support the principle of the Bill, which is the co-operative control of marketing. The most important point, I think, to take into consideration is that which has been raised by the hon. Member for Nyanza (Mr. Harvey), that a board of control should be established to control the agency. No Bill dealing with such an industry as this is of the slightest use in my opinion, unless it contains that provision.

I do hope we shall give ample time to go into this Bill, because I feel it is a very important matter which requires most careful consideration. I do hope there will be no effort to rush the Bill through to its third reading without ample time given to all concerned to go carefully into the provisions of it.

MR. SHAMSUD-DEEN: Your Excellency, since the growing of this passion fruit is really forbidden fruit for the community, I have the honour to represent, it might appear to some gentlemen rather strange that I should get up and say anything on the subject. But the hon. Member for Aberdare (Mr. Wright) has really driven me to say a few words. Lest Government should be stampeded into precipitating the Dairy Bill for introduction, I wish to say that, although the passion fruit is a sort of monopoly enjoyed by a certain community, as far as growing and marketing is concerned, the Dairy Bill is entirely on a different basis. It forms the staple food ...

HIS EXCELLENCY: I would ask the hon. member to keep to the motion before Council, which is that this Bill be read a second time. This is not the place to discuss the merits or demerits of the Dairy Bill.

MR. SHAMSUD-DEEN: But since the hon. member made reference to it . . .

HIS EXCELLENCY: He made reference to it merely by way of introduction. I cannot allow a debate on the Dairy Bill.

MR. SHAMSUD-DEEN: As far as the agency for the marketing of this passion fruit is concerned, and which has been described by the hon. Member for Nyanza (Mr. Harvey) as a nebulous body, I submit that a body very well known to all of us is going to be appointed as the agent. It is not a nebulous body but, as far as power is concerned, ranks only next to the Government or perhaps the Railway Administration. In due course of time, I think if Government does not put a check on it on the lines suggested by several members today it will have the monopoly for the marketing of all produce grown in this country in the name of agricultural co-operation, sometimes in the name of standardization, and sometimes in the name of rationalization all of which, in fact, means collectivisation and drifting to communism.

LT.-COL. KIRKWOOD: Your Excellency, I rise to support the general principles of the Bill. It is for co-operative marketing and also co-operative growing. I have taken a good deal of interest in the Bill for a considerable time, or in the growing of passion fruit, in the hopes of ultimately getting one passed on the lines indicated in this measure. I wish first and foremost to congratulate Government in bringing the Bill before the Council. I do not propose to discuss it in any great detail, but Government are to be congratulated. They have been amiss in the past over certain Bills, but it is a hopeful sign that a Bill is brought before Council in the manner in which this one has been.

I also congratulate the Kenya Farmers Association on the interest they have taken in the matter. As representing a very large percentage of growers in the Colony, as far back as 18 months ago I was asked for advice regarding passion fruit. I expressed the opinion then as I do now that it is one of the bright hopes for the future of this Colony. It has a great future in front of it. I advised communicating with the Director of Agriculture, New Zealand, which was done; the Director of Agriculture, California, which was done, and also of New South Wales, and that was done. The Imperial Institute on my advice was written to, and very helpful answers received, the Colonial Development Fund, and manufacturers in England. It all took time, but a large and valuable amount of information was gathered from the correspondence, which was laid before the growers some time ago at Nakuru. I am not suggesting there was nothing to learn: I think there is still a great deal to be learnt, and I hope it will be learnt.

I do not agree that the Bill in detail is on correct lines, and I agree with other speakers that we want a control board over the marketing agency. Clause 10 (*h*) empowers—

> "the agency to assign to each passion fruit grower quotas of passion fruit which shall be sent to the agency for preparation of passion fruit products."

I hope there will be no restriction on the amount of fruit sent the agency when it is established, but that they will take all that can be produced. The regulating should be along the lines of acreage rather than the quantity of friut, as the latter would have grave consequences to the growers.

In clause 10 (*l*) it says:—

> "regulating the quantities of passion fruit which hall be accepted by the agency."

Again my previous remarks apply, that they should be compelled to accept all fruit of a standard quality, subject to any regulations that may be brought in as regards the agent.

I am not satisfied at the moment without inquiry of opinions elsewhere that Nakuru is necessarily the centre where the factory should be set up. It is central for upcountry such as Solai, Elburgon, Londiani and Uasin Gishu, but I was thinking more on the lines of the dairy factories under which creameries are set up in different parts to supply the central factory, because if passion fruit has to be moved as a fruit it will be expensive from a transport point of view.

[Col. Kirkwood]

But these are details which I do not wish to bring up now.

There has been a general desire for this Bill from the growers, and co-operative marketing and co-operative growing is the proper principle to get down to right from the start, so that I hope there will be no undue delay, provided the present growers—they are not yet great in number—will come and give evidence and express their opinions on all the different points raised in this Bill, and that they will be given a reasonable opportunity of doing so, and that there will be no undue delay before the Bill finally comes before this Council.

ARCHEDEACON BURNS: Your Excellency, there is just one point that I would like to ask the Director of Agriculture to make clear to me. That is, that Africans will not be hindered from taking part in this industry as long as they pay the Sh. 5, or whatever r y be the sum laid down when the Biu has passed through all its stages.

As far as co-operation of growing and sales are concerned I have nothing to do with them, but so long as Africans are allowed, under the control and supervision of members of the Agricultural Department, to take their full share in this, if they so desire, I should like an assurance from the hon. member on that point.

THE ATTORNEY GENERAL: Your Excellency, as an innocent agent of Government accused of hustling this measure into Council, I think perhaps I ought to give some explanation of how it happened, particularly as the hon. mover was away at the time the wicked deed was done! It so happened that his deputy came to my office, together with a gentleman who I understood to be one of the prinicpal passion fruit growers in the country, and also the head of the prospecting agency, and I was told that unless something was done quickly that the industry might easily be ruined. I replied "You know Government takes a long time to move in these matters, and I should have to refer it to various bodies" (properly referred to by the hon. Member for Nyanza (Mr. Harvey), and they explained to me that if that happened the whole object of the Bill practically would be gone but they could assure me that everybody who was going to be interested financially in the matter had given it their consideration and would, at a meeting which was coming off in the near future, give it further consideration.

I admit that I very hastily drafted out the Bill practically as it stands to-day, but I said "Before I move in the matter will you take a copy of this Bill to your meeting at Nakuru and let me have their views on it?" Before I put it before Government, I was informed that the meeting had unanimously approved of the Bill as presented to them. I think that if I had neglected to put it up to Government immediately, I would have been in the dock as causing unnecessary delay, and that is the reason you have it to-day.

There is another important point, the question of time. If I had not acted quickly, as far as one could tell the Bill would not have come on this session, and the next session might not be until October, and I was told that it was vital to these people who were unanimous about it to pass the Bill at once. Mark you, we hear to-day they are not unanimous, but that was the information given Government at the time. I think it would have been a gross injustice to them if I had omitted to put it up and, in any event, as we have been told, it was merely put up to be criticized and is going to a select committee and, as you know perfectly well, the passion fruit growers should be able to come and give their evidence.

But, if my information is correct, there is only one person to give evidence, because all the others have agreed to it, so that I am sure that arrangements will be made for that one to appear and give evidence to the select committee as soon as possible.

I am certainly not going to be drawn into an argument as to the meaning of long Latin words, the hon. mover I hope will be able to deal with that, but I would merely say that possibly the greater includes the less, and I was given to understand by the person who gave it to me

[Attorney General]

that that name covered every conceivable form of passion fruit ever grown. I will admit that he did not mention paw-paws!

One other point, this question of a control board. This Bill was taken lock, stock and barrel from the Pyrethrum Ordinance, and the question of a control board at that moment had not come up and everybody, as far as I was aware, was perfectly happy with the ordinance as such. But after I sent the Bill up to Government, I received information that an amendment might be required in the near future providing for some form of control board, so that the fact that you see no board provided for is accounted for by the knowledge that I was never informed that there was any demand for a control board.

Council adjourned for the usual interval.

On resuming:

THE DIRECTOR OF AGRICULTURE: Your Excellency, I am grateful to hon. members who have spoken on this Bill for the way in which they have received a Bill which they consider to be defective in a number of particulars. I can assure Council that ample opportunity will be given for the submission of evidence to the select committee, and that Government has no desire to rush this measure through.

The hon. Member for Aberdare (Mr. Wright) pointed out one error, which he considered an error, and that was the definition of passion fruit being known as *Passiflora edulis*. That, I think, can be dealt with in committee. I would not commit myself at the moment! I thought that this definition would cover all the usual strains grown in this Colony for the manufacture of commercial juice, but if that is not the case we shall have to find another definition.

The hon. Member for Nyanza (Mr. Harvey) thought the first line of clause 4 would have to be altered, that every person carrying on the business of a passion fruit grower would have to be better defined. On consideration, I think the hon. member is correct. This line, of course, was copied exactly from the Sale of Pyrethrum Ordinance, and there has been no difficulty there, because in the case of pyrethrum everything has to go through the agency. Here, as this Bill stands, at present, only products exported go through the agency, and for that reason it may be necessary to alter the first line in clause 4.

With regard to clause 7, the question of a levy on all passion fruit, this was put in at the desire of passion fruit growers at the time, and while there are arguments on both sides I personally think it will be possible to have a levy, provided it is laid down exactly what it is to be used for.

The hon. Member for Nyanza (Mr. Harvey) and others raised the question of the committee advisory to the agency. Of course, it was thought in this case, as in the case of the Pyrethrum and Wheat Ordinances, that there would be a committee advisory to the agency, but in neither of those two cases does the committee appear in the Bill at all. Government has, in the case of wheat and pyrethrum, appointed committees advisory to the agencies and so far as we know those committees have worked quite smoothly. As to whether it would be better to have a control board or not is a question which could be considered in committee. I am quite prepared to go into that question, and if we find the passion fruit growers would rather have a control board than a committee advisory to the agency I see no particular reason why Council should not agree to it. (Hear, hear.)

The hon. Member for Ukamba (Sir Robert Shaw) asked for consideration to be given to changes to clauses 5 and 6, which would appear to alter the whole principle of the Bill, and possibly he may have some better method for consideration in select committee. I understood that hon. member to say he wished to support the second reading, and I take it that he will put his point of view before the committee.

The hon. Member for Trans Nzoia (Col. Kirkwood) referred to clause 10 (*h*) and (*i*), which empowers the agency to assign the quantities of fruit to be sent to the agency, and he suggested it might be better for the control to be exercised over the acreages rather than over the

[Director of Agriculture]

supplies, and that the agency should be compelled to accept all fruit of a standard quality. Government in this case have merely tried to put in exactly what the growers themselves wanted, and it seems quite reasonable request that a factory should not be compelled to take more produce than it can possibly manufacture.

With regard to the question raised by the hon. Member Archdeacon Burns, I can see nothing in the Bill as it stands to prevent Africans from sending fruit to the agency if they pay their Sh. 5.

The question was put and carried.

THE ATTORNEY GENERAL moved that the Bill be referred to a select committee consisting of:—

The Director of Agriculture, *Chairman.*

Mr. Willan.

Mr. Wright.

Mr. Harvey.

THE TREASURER seconded.

The question was put and carried.

NATIVE AUTHORITY BILL

SECOND READING

THE CHIEF NATIVE COMMISSIONER: Your Excellency, I beg to move the second reading of the Native Authority Bill.

I should like to make it clear at the beginning that this is mainly a consolidation Bill, and that there is very little new provision in it. The original ordinance was passed in 1912, and I think I am right in saying that the administrative officers—among whom I should like to include you, sir—and all those who have had anything to do with it will admit that it has been an extremely useful measure, of great assistance in administration all these years. It is only necessary to look at the ordinance and see that it has hardly ever been amended. Section 11 was one amendment, which dealt with the removal of natives from what was originally crown land, land outside their reserves. That is the only real amendment of importance all these years.

Of course, there have been additions. The whole section dealing with local native councils was put in in 1926, and at various times the purposes which the Governor might authorize headmen to issue orders under section 8 have been added. All these have been included in the consolidation Bill now before Council. In other words, if it had not been thought convenient to bring all these amendment and all these additions into one cover, I should now only be proposing a very short amending measure, dealing with the investment of local native council funds and the addition of two purposes for which local native councils can make resolutions. I hope hon. members will realize that, although the Bill looks formidable, it is exactly the same as the original ordinance with the additions I have just mentioned. Of course, we have taken the opportunity to do away with one or two small anomalies and to rearrange certain sections, and I will explain that as I take each clause of the Bill.

In clause 2 the definitions of native and native tribunal have been brought into form with existing legislation. Clause 3 is the same as the Principal Ordinance, except that we have taken out any reference to collective headmen and councils of elders, as they no longer exist.

Clause 4 and 5 are exactly the same as they were 25 years ago, and I may say that I have always thought the original section 4 was probably one of the most important in the Ordinance. It lays down that headmen shall maintain order in the area to which they are posted.

Clauses 6 and 7, dealing with the power of a headman to arrest offenders and compel attendance before a native tribunal, are the same as in the original Ordinance.

Now I come to clauses 8 and 9.

In the 1912 Ordinance, section 8 dealt with the powers of a headman to give orders for purposes which were approved by the Governor. We found out recently that while it worked it was not consistent to have all these purposes under one section. The original section 8 dealt with natives residing within the local limits of the jurisdiction of the headman,

[Chief Native Commissioner]

and some of the purposes were inapplicable to natives who came in to reside for perhaps one night. To take rather an extreme instance, for the burial of a deceased person. We could hardly expect a person coming in for a short time to be ordered to do any of these purposes. So we have divided these purposes which will be seen in the original Ordinance and are scattered about the text of the Ordinance for the last 25 years, and in clause 8 of the Bill we have taken those applicable to all natives either residing or being within the local jurisdiction of a headman, and in clause 9 are the purposes applicable to natives who merely reside within those limits. No new purpose has been added to either clause; all have been approved by the Governor at various times under the original section 8.

Clause 10 is exactly the same as the original section 9, and says that if any headman neglects to give an order the District Commissioner may do so himself.

In clause 11, the same as the old section 10, we have taken the opportunity to alter the punishment to make it exactly the same as that which could be awarded for breach of any resolution passed by a local native council which became a by-law.

Clause 12 is the same as the original section 11, and, in the committee stage of the Bill I propose to move an amendment to delete the words "or district officer" in the first and second lines. This section deals with power to order all natives residing on land outside a native reserve to move into the reserve unless there is a valid contract that they may do so. I think it is a very drastic power, and I hope hon. members will agree that perhaps it would be better to keep that power in the hands of a very senior officer.

The old section 12 has been omitted. It dealt with attendance before tribunals, and is dealt with in this Bill in clause 7.

We come back to the old numbering, and clause 13 is the same as the section in the original Ordinance, except that we omit reference to the councils of elders which no longer exist.

Section 14 in the Ordinance dealt with the remuneration of headmen, but that is now, quite rightly, dealt with in the annual estimates so that there is no need to have it in this Bill.

Part II, Famine Relief, may I think be taken as a whole, unless any hon. member has any questions to ask afterwards, which I may be able to answer, for it is exactly the same as in the original Ordinance, except that clause 14 (4) is new and is not an addition:—

"preventing the export of grain or vegetable foodstuffs from the local limits of his jurisdiction during any period of scarcity in the Colony."

It is a very reasonable power to give, as hon. members will see, and the first step has to be taken by the Governor in Council to declare such a state of scarcity.

Part III deals with local native councils, and the first five clauses are exactly the same as in the original Ordinance and deal with the constitution of these councils.

Clause 23 is important and that, as hon. members are aware, is permissive. Local native council have power to pass certain resolutions for certain purposes which have been approved by the Governor and are detailed here. Under (n), resolutions "for any other purpose" can be added by the Governor. I may say in this connexion that these purposes are not added lightly, and in every case the Secretary of State has asked that he be informed of what they are.

Clause 23 (1) (a) (ii) deals with forests; we have added "and the fees for cutting or removing timber therefrom." This refers, of course, not to existing native reserve forests or crown forests but areas of bush or forest in native reserves looked after by local native councils themselves. It is only right that these councils should be able to charge for timber for which they give permission to be cut.

There is no further change until we come to (f). The old wording was "markets and market dues"; we now put "the establishment and regulation of markets" as giving wider scope to the power of local native councils.

(i) and (j) are two new purposes to which I referred in my opening. The

[Chief Native Commissioner]

Kiambu and North Kavirondo local native councils have now, and others probably will, asked for these powers to make resolutions to register births, deaths and marriages in their reserves. I think it has the support of every single person I have spoken to about it. The regulation of the payment of marriage dowries was particularly asked for by the Kiambu local native council. They wanted to have power to register all these marriages in terms of cash. It does not follow that the payment will be in cash, it might be made anything: cattle, sheep, or goats, but they wanted to be able to register in terms of cash. One reason was that they hoped—and I feel confident they may succeed—to demonetize the goat. At the present moment 80 goats is the marriage dowry or bridal price in that district, and for some reason they themselves know best a goat can be taken as Sh. 10, which is Sh. 800. A goat only really costs Sh. 1, so that if the dowry is registered in terms of cash it is quite possible no one will accumulate 80 goats in order to pay the equivalent of them, or Sh. 800.

I personally think these are very sound propositions, but of course it must be realized that the whole clause is purely permissive. No tribe will be called on to make resolutions to this effect. Any tribe that wants to can, if this Bill becomes law, and again of course hon. members are aware that every resolution passed under this clause has to have the approval of the Governor in Council.

Sub-clause (m) is new, and includes part of the old section 8. Minor communal services are detailed in the Compulsory Labour (Regulation) Ordinance, and the particular section which hon. members will see we propose to repeal in the last clause of the Bill can be more properly dealt with here. These are minor communal services which do not come under the compulsory labour definition of that Ordinance, but which can be authorized by resolution of local native councils with the approval of the Governor in Council.

Clause 24 deals with the power of a local native council to pass a resolution proposing a rate. In the committee stage I propose to propose to move a small amendment to make it possible to impose a rate or rates, and in the second and third sub-clauses to substitute the word "rates" for rate. This is necessary, because in some districts of the Colony there are two rates now in existence.

Clause 25 is the same as the original section 26, and deals with the submission of resolutions to the Governor in Council, as I have just explained.

Part IV deals with local native funds, and is exactly the same as in the original Ordinance, except that in clause 27 we use in line 2 the word "President" instead of district commissioner. In practice, the district commissioner is the president, but I do not know how long that will last, and it seemed preferable to use the term president.

Sub-clause (2) is new, in that it allows the president to invest these moneys in the post office savings bank or with any banker approved by the Governor. The moneys always have been invested in banks, but it was never laid down strictly in the original Ordinance.

The next three clauses are exactly the same as in the original Ordinance, that is, how the money shall be spent and accounted for.

Part V is the other innovation to which I referred in my opening. It is entirely new, and deals with the investment of surplus balances of local native council funds for which, up-to-date, there have been no means of investing, other than the savings bank or fixed deposit in one of the banks where the interest is pretty small. We propose now that these surplus balances, or such part as every local native council will decide, shall be handed over to trustees in exactly the same way as the native trust fund is, that is, to the Treasurer, Chief Native Commissioner, and one other, generally an unofficial, appointed as trustees.

I think I am right in saying that the total amount of these surpluses in the Colony is in the neighbourhood of £92,000; some are very large (North Kavirondo has £17,000), and others are very small, but in the aggregate they come to a big sum of money. If each council decides that it can invest a certain

[Chief Native Commissioner]

proportion of its money, quite possibly a sum in the neighbourhood of £50,000 might be handed to the trustees, leaving each council with sufficient money to carry on with. The trustees would then invest this money, possibly in the same way that colonial funds are invested, in trustee stock or joint colonial funds, and if any council had an emergency and wanted a couple of thousand pounds it would be possible that the trustees, without selling out small quantities of stock, could give it. It is recognized as a step forward. It will help the councils, and their money will be just as safe as it is now.

In the last clause of all we repeal section 17 of the Compulsory Labour (Regulation) Ordinance, 1932, as it is already dealt with in clauses 8 and 9 and in 23. These services, being minor communal services, do not come within the heading of compulsory labour.

I hope, Sir, that I have said sufficient to show that this Bill is not a new one. It is merely consolidating a number of clauses and additions which have been approved, some by this Council and some by the Governor, from time to time during the last 25 years.

Of the two new purposes, one is the joint fund which can, I think, raise no criticism, nor do I think that the registration of births, deaths and marriages and the regulation of payment of marriage dowries under clause 23 can be said to be anything but good.

THE TREASURER seconded.

ARCHDEACON BURNS: Your Excellency, there are a few things which I should like to bring before the Council in the way of, perhaps, criticism, although not in any real spirit of criticism of the Bill but things that I know in my experience of natives I find they may not be so helpful to natives as they should be.

The first thing that I see in the Bill is that the Governor may appoint any native he may think suitable to be an official headman. I do not suppose the Governor knows very much about any headman, apart from his officers, those who give the names to him or send in the names, and he acts; I quite understand that on their recommendation as to the appointment of that headman or headmen. One cannot see how that can very well be altered. But the point I want more particularly to bring before the Council is in clause 5:—

"A headman may employ any person or persons subject to his jurisdiction to assist him in carrying out the duties imposed upon him by this Ordinance or otherwise by law, and any person so employed may carry out and give effect to any lawful order given by a headman."

When the Commission was going round investigating the paying of taxes and abuses that came under the payment of taxes this, in my opinion, was one of the things that caused more abuses than anything else throughout the whole of the native reserves. That is, that a headman, without recommending a man to the district commissioner and without giving him any sign or any badge to show that he was connected with Government in the duties that he was carrying out, could employ a man. I have heard district commissioners say, "We know nothing about him, they do not come under our cognisance at all."

I found, and I think other members of the Commission found, that these were the men who were causing more trouble in the reserves than any other class of man. I should like to see that a headman could only recommend to the district commissioner or district officer any person or persons subject to his jurisdiction to assist him in carrying out his duties, and at the same time such person or persons should have given to them some badge by which the peasant in the area of that jurisdiction would know when that man came to his village that he was indeed acting for Government and was there on Government business.

The next point I make is very small, in clause 7:—

"Any headman may compel the attendance before a native tribunal of any native within the local area of his jurisdiction and subject to the jurisdiction of such tribunal."

[Archdeacon Burns]

I presume the hon. mover means man or woman can be ordered by the headman to appear before a native tribunal. Whether it is good that women should be compelled to appear depends on how and when she is brought.

The next point I want to make is in connexion with clauses 8 and 9, connected with 10 and 11, that any headman may issue orders for certain reasons such as are given in clause 8. I should like to see it "Any headman instructed by the district commissioner or district officer shall from time to time issue orders to be obeyed by natives residing or being within the local limits of his jurisdiction," and the reasons or the matters for which he would issue orders are given below.

In this clause 8 (d) there is no explanation of what "arms" means, the carrying of arms. I think an should be defined in the Bill.

In 8 (g), "regulating the cutting of timber and prohibiting the wasteful destruction of trees," the hon. mover a moment ago gave an explanation of that, that it means virgin forests where timber that could be used for sale should be saved, and with that I entirely agree. But, at the present time, natives are planting trees all over the whole countryside, and 8 (g) should not refer to the black wattle or any other trees they have planted on their own shambas and that they should be prohibited or restricted from cutting down those trees too.

There is one point in 8 (l) that I should like to draw attention of the mover to, and that is "prohibiting natives from holding or attending any meeting or assembly within the local limits of his jurisdiction which in his opinion might tend to be subversive or peace and good order."

Now, Sir, I want to draw the attention of this Council to a thing that happened not very long ago in the Fort Hall area. We have mission work going on throughout the whole of that area, and we have at the present time ordained native men in charge of the various churches throughout the district. Occasionally they have what we would call a parish tea at home, or something of that kind, when all the people come together, and when there is no tembo allowed and no intoxicating drink of any kind. They have just a cup of tea, it is usually held during moonlight, and after tea they have a jollification, play games, etc., round about in the compound under the supervision of the man who is in charge of those people.

If the headman did not wish for any reason such an assembly to be held, he could prohibit it and, more than that, he could, as he has done, arrest the people engaged in that jollification and bring them before the district commissioner.

THE CHIEF NATIVE COMMISSIONER: On a point of explanation, Sir, could the hon. member give me some information to go on? He said something had happened. Could he instance what?

ARCHDEACON BURNS: I can give you an explanation, and I think the Provincial Commissioner, Central Province, is cognisant of what I am referring to. I am not bringing it up, but I am trying to point out how a difficulty might arise where a man who did not want and was against that particular mission, or that particular person engaged in that work there might bring to bear upon him this authority that is being given in this Bill and would prevent him from holding a perfectly harmless assembly of his people where no drink was allowed and where nothing stronger than a cup of tea was used.

If the Chief Native Commissioner would like me to inform him of what I know I should certainly do so, but I would rather the Provincial Commissioner, Central Province, would give him the facts, as I think he knows them, either now or later on as he feels inclined.

MR. S. H. LA FONTAINE: On a point of order, may I ask the hon. member to state the facts, because I am ignorant of what he is referring to?

HIS EXCELLENCY: No point of order has arisen yet!

ARCHDEACON BURNS: I can give the whole facts, not necessarily to this

[Archdeacon Burns]
Council, nor do I want to, but either to the Chief Native Commissioner, and I would also inform the Provincial Commissioner, Central Province, of the facts I am referring to.

There were 24 people arrested and brought to the District Commissioner at Fort Hall, and some were fined Sh. 5 to Sh. 6 each. There was no drinking, no rowdyism or anything of the kind, or so I was informed by the man who is responsible for that innocent gathering outside Fort Hall.

What I am after is to prevent such a thing taking place in the future, giving a headman authority to prevent such a meeting or such a gathering of people for the purpose of having tea together and perhaps games in the compound of the school or church to which they belong.

I want to draw attention to clause 9. I should like to see inserted in the Bill when it comes before the select committee that "any headman, under instructions from the district commissioner, shall from time to time issue orders to be obeyed." The same thing applies in clause 9 as in clause 8. The reason why I say that is because in clause 10 we have it thus, "Whenever a provincial commissioner or district officer considers that, for the proper administration and good government of the area for which any headman has been appointed, it is necessary or desirable that any order or orders should be issued." That is the point I want. It does not leave a headman free to issue orders off his own bat. He is given instructions by the administrative officer, whoever he may be or wherever he may be.

"If any headman neglects to issue any order which he may be directed to issue as aforesaid, the provincial commissioner or district officer may himself issue the order or orders." An impossible position to place a district officer or provincial commissioner in. It is, I take it, to be the principle that a headman should receive his instructions from the provincial commissioner or district officer and that he is expected to carry out those orders, and if he does not do so would be dealt with by the authority that issued the orders to him.

"(2) Whenever a provincial commissioner or district officer considers that any order issued by a headman should not have been issued or should not be enforced he may direct the headman to cancel the order or to refrain from enforcing the order."

That is one of the reasons why I think it would be better if a headman did receive in the first instance his orders from the provincial commissioner or district officer.

Clause 11 deals with the penalty for the man who does not carry out the orders issued to him.

In clause 12 there is only one small point which I want to refer to—

"he may order such native to remove from such land on to land . . ."

I should like to see inserted "shown him by whoever is responsible where he can build his house or make his own home." I have reasons for this which I have put in a question to Council.

"Any native who, without lawful excuse, neglects to obey an order issued under this section . . ."

I entirely agree if a native cultivates in a place where he should not cultivate and receives such an order, he shall obey, but if he has a crop growing on that land he should be allowed to carry on until the crop came to maturity. I should like to see inserted in this clause 12 (2): "Any native who, without lawful excuse, neglects to obey an order issued under this section within three months," thus allowing him time to collect the crops which he has planted and which are maturing and to take them away with him. There should be, in my opinion, a time limit given, that a person should collect his crops and take them with him. If he is turned out straight away without being allowed to take his crops with him it would be a hardship, and I do not think that could possibly be in the mind of Government or of the Chief Native Commissioner in drawing up this Bill. He should be allowed to take them away, otherwise I shall look on that as a rather harsh measure from the point of view of the native.

There are only one or two other things to which I wish to draw the attention of the Council.

[Archdeacon Burns]
In clause 14 (2) it requires—

"any native to move to such place as the headman may direct in order that such native may be more conveniently fed."

We have in another sub-clause that a native is not to move out of the jurisdiction of the headman under which he lives to be under the jurisdiction of any other headman. This, of course, is an exception case where famine has come and natives are ordered to move into a centre where they can be fed conveniently, and cared for and are also under the jurisdiction of one headman. That, I think, is quite reasonable, as long as it does not clash with the other section to which I have referred.

In clause 17 it states:—

"Any native who fails to comply with any order issued or given by a headman under this part shall b[e] [g]uilty of an offence and shall on con[v]iction before any magistrate or before a native tribunal be liable to a fine not exceeding thirty shillings."

This is a native who is being fed, who has been removed from his own area and brought to another centre so that he may be given food and also work, with which I agree, that he could do during the time he is being so treated, but if he fails to comply with that order issued or given by a headman he shall be guilty of an offence and shall be liable to a fine not exceeding Sh. 30. When we say "not exceeding" it may be Sh. 7 or Sh. 8 or something of the kind, but if a native is hungry and has no food and has Sh. 30 stowed away somewhere by which he can pay a fine at the instruction of the magistrate, I do not see why he should be given food free by Government if he has that money. It therefore seems rather hard, if there is a famine, and he has to obey orders given, that he should be fined Sh. 30 because he disobeyed an order.

There is just one other small point I want to draw the attention of Council to before I sit down, that is in Part III with regard to local native councils. It says in the second last line of clause 19 "with such headmen and other natives as the Governor may appoint thereto." In conversation with natives throughout the whole of the reserves they have pointed out to me that one of the greatest difficulties they have is that on these councils there is not only a chairman of the council who, of course, is what they call chief, but that there are also headmen on that council, and that they find it very difficult indeed to get justice done to them when their cases are brought before the local native council because of the multiplicity of headmen. They have expressed it very strongly that in every local native council there should be one chief, or headman, and that that headman should, of course, be the chief headman in that district. Instead of headmen I should like to see—and I am giving you what the natives have told me of their impression about the matter—headman.

With regard to clause 23, that a local native council may make and pass resolutions, I am in entire agreement with certain sections of it, but I should like the hon. and learned Chief [N]ative Commissioner, when answering the debate, to tell us distinctly whether all these things which the people are supposed to do—outspans, cattle dips, roads, bridges and culverts, public health, etc.—are they all included in the six days per quarter which the natives are called on by Government to give in free labour, or are these things extra to the six days per quarter?

With regard to the regulation of payment of marriage dowries, I sincerely hope that the Chi[e]f Native Commissioner will be successful in this, for I look on the goat as the greatest menace to the whole of Kikuyu country, and if it could be by the will of the natives, and at their request, that the payment of the bride price should be in cash—supposing a goat were worth Sh. 5 and the cash is put down at Sh. 500—just think of it! A boy living in Nairobi earning Sh. 30 a month has, out of that, to support himself, buy clothes and keep himself clean, and yet has to collect Sh. 500 or Sh. 800 to be paid as the bride price may be before he can be married. I hope this will be passed and that Government will take such steps as to make this effective not only in Kiambu but also in other areas.

[Archdeacon Burns]

Just one more point before I sit down. With regard to clause 24 (3)—

"Payment of such rate is made otherwise than by legal tender may be so converted by such local native council,"

here, again, is one of the points which the Commission had brought before them when going round the country. They said that their cattle was seized, and goats and cattle and were sold among those who took them at a figure entirely below their market price. I would therefore like to see added to this clause words after local native councils "at full market value".

I think that is all, Sir, that I have to say with regard to this Bill. With regard to Part V I am in entire agreement. I think it a very good thing that the local native councils' moneys should be invested but, I presume, interest accruing from such investments would be returned in proportion to the local native councils that contribute them.

One other point, and that is with regard to natives being compelled to supply their oxen or animals for the conveyance of district commissioners when on tour. I should like that to be defined in this way. The natives in Kikuyu have their oxen and little carts with which they bring their produce into market, firewood and other things like that, and I think if Government use them and pay at the full market price the natives should only be expected to convey the goods of the district commissioner on tour from one camp to another, and that they should not be expected to go round the whole of the country with that officer as long as he is on tour. I think that would be more equitable and helpful to the native.

With these remarks I shall support the Bill because I think it may be helpful, but I do earnestly ask that what I have tried to put before Council will be taken into consideration either when the Bill is in select committee, if it goes to one, or is considered in committee of the whole Council.

MR. HARVEY: Your Excellency, the Chief Native Commissioner, whom I most heartily congratulate on his promotion, to the dignity of learned folk stated in his opening remarks that there was nothing new in clause 8, which details the powers with which headmen have been and will continue to be endowed. I suggest there should be an addition to that list, especially as there are still one or two letters of the alphabet left over. It is only recently, as you are aware, that the evils of soil erosion have been fully realized, and I suggest in all sincerity and with all seriousness, for the consideration of the hon. member and his select committee, that some power in that direction might very well be put at the top of the list, preferably in black letters, something like this—

THE CHIEF NATIVE COMMISSIONER: On a point of explanation. It may save time if I refer the hon. member to clause 23 (1) (*k*).

MR. HARVEY: Well, Sir, I did not overlook that it might possibly be sandwiched in somewhere, but I consider soil erosion is of such very great importance that I think in all our legislation dealing with land we should in every possible shape and form, in and out of season, do all we can to emphasize the importance of keeping our soil. And, if anti-erosion measures were taken, these midnight jollifications, to which the venerable member has referred would be greatly assisted!

SIR ROBERT SHAW: Your Excellency, I rise for a moment only because I feel it is necessary, with all due deference, to contest some of the proposals made by the ven. member in regard to clauses 8 and 9.

He suggests words should be inserted at the beginning of these clauses that any headman "ordered by his district commissioner" shall do so and so. I submit that were these words put in the purpose of the Ordinance would be largely destroyed. This is a Native Authority Ordinance by means of which we are trying to regulate the authority given the natives for administrative action. That may be a right or wrong policy, I am not discussing that, but it is our policy to encourage native authority to act by careful legislation to enable them to take their proper share in local

[Sir R. Shaw]

administration. If you provide in the Bill that a native headman, who has a large number of responsibilities, must run to his district commissioner every time before he can take action in a matter, of course his position as a native in authority becomes a complete farce.

I think I can give you an example to show that. The hon. member referred at some length to this jollification and suggested that the headman possibly got rankled. I do not know anything about the details, so I am not concerned with that. There are many kinds of assembly that might take place in a native reserve other than such a jollification, and they might require immediate suppression. What is a headman to do if he has to rush to the district commissioner before he can take any sort of steps to put an end to an assembly he considers improper?

If a headman interferes improp[erl]y out of spite or jealousy with a properly run local proceeding, I have no doubt his administrative officer will deal with him in a proper manner.

Again, in clause 9, where the hon. member would like to have a similar restriction. Look at (*f*), under which a headman may require any native to report immediately on the illegal passage of stock in his area, how can he do that if he has to go to the district commissioner first?

I submit, though I quite understand what it at the back of the hon. member's mind, and I take the liberty of reminding him, that the insertion of such words will make the Bill quite impossible of administration. (Hear, hear.)

I would ask one small question of the Chief Native Commissioner: it is with reference to clause 24 on the subject of raising a local rate, and (1) says "the area or any portion of the area." Area is not defined. We know a large number of tribal natives live outside their reserves. I do not wish to drag the Chief Native Commissioner into the much vexed question of the application of a native rate to such people, but would ask him—and will accept his opinion on the subject—whether the words "area or any portion of the area" are sufficiently definite for the purposes of the Ordinance?

I have only one other remark. That is with regard to the ven. hon. member's criticism of the proposal to fine a starving native Sh. 30. I quite see his argument, that if a native is in a position to pay a fine of Sh. 30 it cannot be argued that he is in need of relief. These, however, are our methods which we are today trying to enforce. The imposition of a fine is the civilized method we employ, and I do not see how we can avoid it. If the hon. gentleman would support me in an amendment that the clause should read "liable to a punishment not exceeding 30 lashes" I will be with him, but I am afraid he will not!

LORD FRANCIS SCOTT: Your Excellency, I have little to say except on what I think is a most important point. In Kenya we are frequently accused of not progressing far enough in the direction of indirect rule so far as native administration is concerned. I understand that Government's policy is to progress in that direction not too rapidly but certainly to keep on progressing, and the objects of the Bill before us and the Native Tribunals Ordinance is in that direction.

Every point my venerable friend, who is sitting here in behalf of the native people of the country, has put up is in the direction of going back to direct rule as opposed to indirect rule, and the question I ask is "Do the natives of Kenya not wish to progress to indirect rule but wish to revert to direct rule on the old basis?" (Hear, hear.)

DR. C. J. WILSON: Your Excellency, the Chief Native Commissioner in introducing this Bill explained that it was for the most part a re-enactment of the existing law and that, of course, is the case but, as a matter of fact, it does not in itself put this Bill beyond the reach of any comment or criticizm, as I think the ven. and hon. member (Archdeacon Burns) has clearly shown. As a general rule, of course, if any legislative measure has been in force for a considerable period of time, that fact can be put forward is a reason for its continuance, but

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not always, because obviously there may be occasions when the re-enactment of existing law may be contested more reasonably and more forcibly than the enactment of new legislation because, in the first case, the law has been put to the test of experience and may have been found wanting and, in the other case, the working of the proposed legislation has still to be tried out in practice.

It would be, therefore, reasonable to criticise every one of these clauses of the Bill, even though it has been in force for some years, but I do not intend myself to add anything to what has been said in comment on the existing law by my colleague, and no doubt we shall hear in due course what the Chief Native Commissioner is thinking about the suggestions put forward.

The only comment I should like to make is on this question of the degree of authority, how much authority should be given to a native headman. That has already been referred to by the two hon. members. If I may put this forward as an expression of my own opinion—I do not say for a moment that it is answering the question the hon. Member for the Rift Valley (Lord Francis Scott) has asked, but as an expression of my own opinion—I should say that if the policy of indirect rule is to be followed at all a certain amount of authority must be given to the native headman. Accidents may happen, but if we do not keep on trying to put into practice the elementary idea of self government, little progress is possible at all. (Hear, hear.)

It may be that under the existing conditions of the law we have given the headman more authority than he has always exercised without injustice, and it may be that in re-enacting the present law we shall still be giving the African so much responsibility in the management of his own affairs that there will still be a possibility of regrettable incidents occasionally occurring. But, on the other hand, I hope that in course of time and with further mental and moral development, it will be possible to delegate even more authority to the African without danger of that authority being misused.

As regards the new provisions in this Bill, the most important innovation to my mind is undoubtedly the provision in clause 23 for allowing local native councils to arrange the registration of births, deaths and marriages and for the regulation of the payment of marriage dowries. If that authority is utilized, as it almost certainly will be, by some of the local native councils, I think there will follow results of the very greatest importance in native social life. The institution of the registration of births and deaths will be a very notable advance in the interests of public health; the registration of births and deaths is the foundation or, at least one may say, one of the foundation stones in an organized system of public health. In attempting any measures for the maintenance and improvement of public health of any community, it is of primary importance to know how many people are born and die, even though it is not possible at first to register the cause of the deaths which are recorded. That is a development we hope will follow later.

If the registration of births and deaths is of importance from the public health point of view, I think the registration of marriages and the regulation of the payment of marriage dowries may be a still more important innovation in native society. I do not think there is anyone who has the interests of the native at heart who will not welcome the opportunity now being given for the introduction of a more satisfactory method and more satisfactory system of marrying and giving in marriage. No one pretends that the present system has not been open to grave objections, and if those disadvantages can be removed without introducing other evils it is, I think, a very hopeful advance which will have been made in native social life. I think the application of this authority to register marriages and to regulate the payment of marriage dowries will be watched with great interest by everybody concerned with the welfare of our natives, with great hope that any change in results that may follow will be only for good. Time alone will show how far reaching and what sort those changes may be.

The only other chief innovation, the joint investment fund, seems so sound in

[Dr. Wilson]

principle that I see no reason for making any other comment, except to say this, that I hope it will tend not so much to the accumulation of a reserve fund by the more prosperous districts but rather will encourage the borrowing and spending of money in other districts, so that money which otherwise might be lying idle may be immediately used for the development of many of the backward districts, because the need for expenditure in native districts is immediate and very urgent, and I suggest that this is no time to build up large financial reserves.

In conclusion, there is one thing I should like to make it clear that my reason for not criticising the Bill clause by clause is not because I think the clauses are too perfect for criticism and certainly not that they are too unimportant to be worth worrying about, but because I think that on the whole the existing law has stood the test of time fairly well up to the present. It is not to say that it may be expected to stand for all time, because that is far from being the case. Conditions in native reserves change so rapidly that there may need to be frequent changes in the law to keep pace. A rigid code of laws may have suited the Medes and Persians, but such would not do for the Kavirondo and Kikuyu. I should like to say that I look on the amending of an old Ordinance not as an admission of failure but rather as an indication that the law, in its own ponderous fashion, is trying to keep abreast of the times, so that I hope this new Native Authority Ordinance, which will shortly take the place of the old, will be again amended from time to time in the future or, to use an official phrase, in the near future, in order to meet the changed conditions in the native reserves.

I support the motion.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, the 9th March, 1937.

Tuesday, 9th March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 9th March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 8th March, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 5.—Dr. Gordon

CAPT. SCHWARTZE asked:—

1. Is Government aware of the Resolution passed by the Kenya Branch of the British Medical Association on the 3rd February, 1937, deprecating the method by which Dr. Gordon's "retirement" was made public?

2. In view of this, and of the personal apologies already expressed by certain individual members of the Standing Finance Committee (in Legislative Council on the 18th December, 1936), has any official apology been tendered?

3. If not, is it proposed to tender any official apology?

4. Were the members of the Standing Finance Committee, when approving the proposed appointment of a full-time officer for Mathari in Dr. Gordon's place, aware that Dr. Gordon's "retirement" was not voluntary?

5. With regard to the opinion expressed by the Director of Medical Services that the Kenya Branch of the British Medical Association would approve such appointment, has Government's attention been drawn to the Resolution passed by that branch on the 3rd February, 1937?

6. Does not that Resolution make it clear that the Kenya Branch of the British Medical Association would not, if they had been consulted, have approved any appointment involving the dismissal of Dr. Gordon?

7. With reference to the statement of the Director of Medical Services that Dr. Gordon's age would debar him

[Capt. Schwartze]
from accepting the post of full time officer, is it not a fact that the Director actually offered such appointment to Dr. Gordon less than a year ago?

8. In view of the above, is Government prepared to reconsider the dismissal of Dr. Gordon?

THE DIRECTOR OF MEDICAL SERVICES: 1. The answer is in the affirmative.

2. No official apology, other than that which was made by the Colonial Secretary in open Council on the 18th December and subsequently published in the Press, has been tendered.

3. In view of the answer to (2), this question does not arise.

4. In the absence of a verbatim report of the proceedings of the Standing Finance Committee, Government is unable at this date to say whether or not the members of the Standing Finance Committee were aware that Dr. Gordon's retirement was not voluntary.

5. The answer is in the affirmative.

6. The answer is in the negative.

7. The answer is in the negative.

8. There is no question of dismissal. Dr. Gordon's appointment has been terminated on the abolition of the post which he held and in accordance with the terms of his letter of appointment. Government is not prepared to reconsider its decision.

LORD FRANCIS SCOTT: Sir, with reference to the answer to the fourth paragraph of the question, is it not a fact that in the Standing Finance Committee we were informed that this procedure, or proposed alteration in procedure, at Mathari Hospital was in full agreement with Dr. Gordon's own wishes and, further, that the British Medical Association would definitely approve such alteration?

THE DIRECTOR OF MEDICAL SERVICES: I can, of course, only answer for what took place in Standing Finance Committee while I was personally present.

LORD FRANCIS SCOTT: It was the hon. member who gave me the answer!

HIS EXCELLENCY: You have not heard what the hon. member said. He said the could only answer for what happened at the time he was in the Committee.

THE DIRECTOR OF MEDICAL SERVICES: So far as that is concerned, I do not think any definite statement of the kind was made in regard to the first part of the question. With regard to the second part, it was not stated in the Standing Finance Committee that the British Medical Association would approve. I was asked whether the matter had been referred to them, and I said, in reply, that I had no doubt the British Medical Association would approve of the appointment of a full time officer.

CAPT. SCHWARTZE: Arising out of the original answer, paragraph 6 of the question says:—

"Does not that resolution make it clear that the Kenya Branch of the British Medical Association would not, if they had been consulted, have approved any appointment involving the dismissal of Dr. Gordon?"

I understood the answer to that to be in the negative. Is the hon. the Director of Medical Sevrices aware that the last part of the resolution reads:—

"It appears to this Council that it would be a great pity if the experience of Dr. Gordon were to be lost to this Colony, and that it would be a great advantage if his services could be retained in some capacity advisory or otherwise."?

Does the hon. member still say the answer to paragraph 7 of the question is in the negative?

THE DIRECTOR OF MEDICAL SERVICES: In the opinion of Government, the answer is that the resolution does not make it clear.

LORD FRANCIS SCOTT: Is it the view of Government that this is the proper way of getting rid of the services of officers who have done good service to Government, by allowing them to read for the first time in the Press that their post has been abolished?

THE ACTING COLONIAL SECRETARY: On that point the statement

[Acting Colonial Secretary]
made by Your Excellency as Colonial Secretary is an adequate answer. A full apology was in that connexion made by the Colonial Secretary in this Council.

No. 7.—ARAB AND AFRICAN CLERICAL SERVICES

ARCHDEACON BURNS asked:—

Will Government please state the position in the Arab and African Clerical Service:—

(*a*) With regard to promotion, is there a schedule showing the way by which such promotions are granted?

(*b*) Do all the Departments grant promotion on the same lines?

(*c*) Will Government state whether there is any likelihood of some form of pension scheme being brought into being in the not distant future?

(*d*) How much leave is given to African Civil Servants who have reached the first and second grades?

THE ACTING COLONIAL SECRETARY: (*a*) The terms and conditions of service laid down for the Arab and African Clerical Service are outlined in sections 851 to 871 inclusive of the Code of Regulations. Promotions from one grade to another are made departmentally and by selection as vacancies occur in the higher grade, subject to the passing of prescribed examinations.

(*b*) Yes, except in the case of the Posts and Telegraphs Department where in addition to the prescribed Clerical Examination a departmental test has to be passed.

(*c*) It is not the intention of Government to introduce any pension scheme for this service but the introduction of a Provident Fund Scheme will receive consideration in due course in the light of experience in the working of the Provident Fund Schemes recently introduced for the European and Asian Local Civil Services.

(*d*) No differentiation is made as regards the amount of leave for which I and II Grade Arab and African clerks become eligible. Vacation leave on full pay is granted at the rate of 1½ days for each completed month of service. This may be taken after one year's service at one time or in broken periods at the discretion of the Head of Department or may be accumulated up to 72 days.

A member of the Service after accumulating 54 days' leave may, at the discretion of the head of the department, be granted additional leave on full pay for the period necessarily occupied in travelling to and from his home, subject to a maximum of 14 days. In addition 7 days casual leave which is non-cumulative may be granted by a Head of Department at his discretion once in any calendar year.

No. 9.—RESIDENT NATIVE LABOURERS BILL

MAJOR CAVENDISH-BENTINCK asked:—

Can an assurance be given that the long overdue draft Resident Native Labourers Ordinance will be published forthwith for information and criticism?

THE ACTING COLONIAL SECRETARY: The Resident Native Labourers Bill is being published for information and criticism in the next issue of the Official Gazette.

No. 10.—VOTERS ROLLS

MAJOR CAVENDISH-BENTINCK asked:—

In implementing Schedule 2 of the Ordinance to provide for the nomination and election of members to the Legislative Council of the Colony and Protectorate of Kenya, No. 26 of 1935, can an assurance be given that every endeavour will be made to work on the existing Registers of Voters which have been compiled as a result of many years' work, and that no unnecessary attempt will be made to force all those qualified to have their names inserted in the Roll of Voters to re-register themselves by again filling up Form A?

THE ACTING COLONIAL SECRETARY: The hon. member is no doubt aware that for the election of the next Council in 1938 a new Register of Voters has to be compiled. This provision has been embodied in the Legislative Council Ordinance No. 26 of 1935, and any person who desires to vote at that and subse-

[Acting Colonial Secretary]
quent elections must enrol himself afresh on the new register by completing the new forms.

In order, however, to assist prospective voters Government has instructed Registering Officers to make the fullest use of the present registers and to ensure that the new form A, B and C are sent personally to every voter previously registered.

DR. DE SOUSA: May I inquire, Your Excellency, whether the same would apply to the sending of forms to the registered voters on the Indian electoral roll?

THE ACTING COLONIAL SECRETARY: The answer is in the affirmative.

NATIVE AUTHORITY BILL

SECOND READING, RESUMED

The debate was resumed.

MR. SHAMSUD-DEEN: Your Excellency, the present Bill is undoubtedly an improvement on the old Ordinance, but I submit that we ought to take this opportunity of revising the whole of the legislation on this subject in the light of the experience that has been gained in the last 25 years. As some hon. member raised the question yesterday, we have got to consider as to the success that has been achieved by the indirect rule in the past few years, and I am also wondering if something cannot be embodied in this Bill which will ratify and respect solemn treaties that have been entered into with some of the chiefs of the Colony by representatives of Great Britain.

It has come to my knowledge that some of the chiefs who had entered into solemn treaties with representatives of Great Britain as far back as 1889 have been entirely thrown out of the picture. These treaties have been ignored altogether and those chiefs have been reduced first to the ordinary position of paid headmen and finally made to retire on a pension, and their heirs and successors have been ignored entirely. With your permission, Sir, I will give one instance of such a case, and I think in this Native Authority Bill we ought to make some provision by which such a glaring injustice done some of the chiefs and to the authority of the chiefs should be rectified, even though at this late date.

I have before me a book written by Sir Frederick Jackson just before his death, and in that book he refers to one of these cases in this Colony. Before I begin, we must not forget that we have arbitrarily divided the Colony of Kenya and Uganda. I cannot name the year, but quite a long time after the Foreign Office took over the administration of the Colony, the Uganda Protectorate extended up to Naivasha, and subsequently that portion was taken into Kenya. I think all those people who have studied native conditions here will agree that the people in the Kavirondo Province are more akin to the Uganda people rather than the people of Kenya and that there was a system of chieftanship or even kingship.

In order to illustrate that I want to give a brief quotation from Sir Frederick Jackson's book, *Early Days in East Africa*. Sir Frederick was the first Britisher who, on behalf of the Imperial British East Africa Company, went to Uganda and made solemn treaties with the native chiefs at that time. In this book, on page 221, he gives a description of King Mumia:—

> "A short march on November 7th (1889) brought us to Kwa Sundu, where we were welcomed and greeted by Mumia. My diary records him as: 'A tall thin young man, appears to be rather shy, and holds one hand in front of his mouth, possibly to hide his very prominent teeth, or maybe only a mannerism. Appears to have more authority over his people than anyone else so far met in Kavirondo. He has given us a large open space in corner of his village to camp in. Tells us it is the *dusturi* (custom) in Kavirondo. He and many of his people speak Swahili fluently.'"

In other places he tells how Dr. Carl Peters ran a race with him of entering into treaties with native chiefs at that time. Here he says that this man Mumia "appears to have more authority over his people than anyone else so far met with in Kavirondo." What is the position of that man to-day? He is still alive, and

[Mr. Shamsud-Deen]
he has been made to retire on a small pension.

As I say, I do not want to take up the time of the Council by quoting this book to show what Jackson says of the exchange of solemn treaties with these people—treaties which I believe are still in the records of the Foreign Office, while Mr. Fitzgerald, who has written a book called *I.B.E.A.* and was one of the officers of the company, says definitely they are there—but they have been broken and these people thrown back into insignificance, while ordinary people who were at one time their subjects are appointed as headmen and ride roughshod over them, ruling their people, while they themselves have become useless nonentities as it were.

I submit that this is an opportunity when we ought to embody something in this Bill that will maintain the prestige not only of the white man but the Britishers and show that even to say an Englishman's word is as good as his law.

I submit, Sir, that there is a lot in what the hon. Member Archdeacon Burns said yesterday, that the natives do not like the idea of there being too many headmen on these local native councils. I think we have got wonderful material at our disposal for making use of these old kings and paramount chiefs who understand the working of the native mind in its real condition. At present a local native council is presided over by the district commissioner, and they are to all intents and purposes merely a nominal council owing to the over-aweing influence of the district commissioner presiding.

Those paramount chiefs entered into treaties with the British people understanding that they would be given protection and their positions maintained. In this book Jackson also mentions that he gave them the Union Jack as representing the authority of the British Government. I believe they are still in possession of that Union Jack. We ought to do something to reinstate the position of those people, otherwise you can carry on the administration by sheer force of authority, but the sore in the heart of those people will still remain.

I understand the people of this man Mumia—after whose name Mumia's Station is well known and which has been for a long period the headquarters of the district commissioner—sent a petition to the Colonial Office that they wanted their chief, or his heirs and successors, to be reinstated to their previous position. But the petition as coming from the people was not entertained, and while there was a question put in the House of Commons it was rejected.

I do not wish to dwell on past history, but I must say Dr. Peters met a number of chiefs in the neighbourhood of Mumia, and one of the chiefs in the neighbourhood of that country was so hostile to the British that he actually murdered Bishop Hannington. This chief (or King Mumias) gave the British people help, and Jackson kept his base camp there for two months.

If we do not wish to see the prestige of the British people undermined in the minds of the natives, we must do something to respect the treaties that have been solemnly made.

There is only one other point I wish to refer to, Your Excellency, and that is with regard to the definition in clause 2 of a native. It says:—

> "Native means a native as defined by section 2 of the Interpretation (Definition of "Native") Ordinance, 1934, but shall include a Somali."

I think the Somalis are in a different category altogether to the natives of Kenya. There is a large settlement of them in the Northern Frontier district, and it may refer to them generally, but if you refer to all Somalis I do not think they should be included. Your Excellency must have noticed a large agitation that has been going on in the local newspapers by a section of the Somali community called Ishakia. They claim and have persistently claimed for 20 years that they come from Arab stock, that they are not Africans and should be treated as non-natives. They have even gone to the extent of offering to pay non-native poll tax which has, I think, been accepted for a number of years but now I understand it has been declined. I should think it would be a very wrong policy to refuse money like that from

[Mr. Shamsud-Deen]

people about whom there is evidently a doubt.

We cannot say they are definitely natives of Africa and I hope if there is a select committee on this Bill they will take this point into consideration and debate those words "but shall include a Somali," or else say that it includes Somalis other than the tribe of Ishakia community or something of the sort. Evidently Somalis are more in the category of Asians in this Colony, for as far as I notice in Nairobi and other places they observe all the conventions of civilization, and most of them speak and write English, and are engaged in occupations which no native of Africa has done up to now. I submit this for the serious consideration of Government.

MR. S. H. LA FONTAINE: Your Excellency, I have only a few remarks to make on what has been said by my hon. friend Archdeacon Burns.

He performs with consummate effect the role of Don Quixote in these debates affecting natives, with commendable chivalry but with a rather sketchy acquaintance with the facts, he creates windmills of his own imagination and tilts at them with refreshing but somewhat unconvincing ardour!

He has referred to statements made to the commission which was appointed to investigate certain abuses, or alleged abuses, resulting from the collection of native taxes. These allegations are made against retainers of chiefs in the Fort Hall district, and I understand they are the basis of a suggestion by the hon. member that control should be exercised on the activities of those retainers by keeping a record of their names and giving them a badge to distinguish them. I have no quarrel with this suggestion, because any form of control which will remove temptation and minimize the risk of abuses is highly to be commended. What I do quarrel with is the underlying suggestion that these abuses are widespread.

The main allegations as to abuses were made in regard to the Fort Hall district, after the district had been thoroughly canvassed for complaints by the hon. member and other members of the society to which he belongs. The Kikuyu Central Association also took a hand in the hue and cry for complaints, and for some weeks the district was in a ferment. This happened about the time of my arrival in the Central Province last year, and an inquiry was made into the allegations, being conducted over a period of three weeks. Speaking from memory, only two complaints had any substance in fact, and the charge was found to be less serious than was originally imagined. In both cases, of course, adequate punishment was inflicted on the offenders.

The other incident to which the hon. member referred was the subject of a personal complaint to myself by the hon. member, and a mission teacher was concerned. An order was at once given to the district commissioner to investigate the complaint, and his report showed that no cause for grievance existed.

Generally speaking, in the province chiefs display both tolerance and discretion in dealing with these meetings, and meetings which could be described as seditious or objectionable are practically unknown, because at no time in recent history has the province been more economically prosperous or more politically contented.

Before I sit down, I should like to refer to the proposal of the hon. Member Archdeacon Burns that no orders should be issued by chiefs except at the prior instance of the district commissioner or provincial commissioner. It is a matter of surprise to me that the hon. member has come forward as a champion of direct rule through district officers as opposed to indirect rule which, in its modified form, is the system prevailing in this country. If the proposal of the hon. member were adopted, it would mean that the chiefs would lose their initiative and it would make them puppets of the central authority. Our ideal is gradually to give to natives a large and increasing share in the management of their local affairs, and this proposal goes back on the procedure that has been in existence for a considerable time and which experience shows has been entirely successful. The chaos which will result if chiefs refrained from giving orders, for instance, to quell a disturbance or fight a locust infestation,

[Mr. La Fontaine]

if they had to wait for prior instructions from the district commissioners, had better be imagined than described!

The proposal of my hon. friend springs from the fear, the obvious fear, that the powers wielded by chiefs have been abused in the past and will be abused again. Abuses have occurred and will continue to occur. No reasonable person will maintain that chiefs are not human and do not occasionally yield to temptations.

But considering the temptations to which they are exposed and the difficulties which they have to face, they are on the whole a loyal and efficient body of men, immeasurably superior to their predecessors in the past. Moreover, in these progressive days with the widespread literacy and increase of knowledge held by the rank and file of the people, opportunities for offences are comparatively rare. The ordinary citizen knows full well what a chief can do and cannot legally do, and he is not slow to complain if he thinks he has been the victim of an injustice. The proposal, therefore, of the hon. member would not only be impracticable but also strongly resented by the people who are jealous of the powers of local government which they already enjoy and for which they are urging extension.

ARCHDEACON BURNS: On a point of explanation, Sir, all I said yesterday, I said on behalf of most of the people of the Colony as against the few to whom these powers we have heard about are being given and who to my knowledge abuse that power. I was speaking on behalf of most of the people and not a certain few.

MR. S. H. FAZAN: Your Excellency, those of us who are in charge of native areas are contented with this Bill, and we are glad to see it is not in jeopardy from the few criticisms that have been brought against it. I am certain that the Chief Native Commissioner will be able to deal with them in his reply, and my principal reason for speaking is because of the feeling that in so large a native province as that of Nyanza it is right that the provincial commissioner in charge should speak on so important a Bill.

Moreover, I have found the speech of the hon. Member Archdeacon Burns in certain respects an incitement to utterance.

His first point was with regard to clause 5, and that was his best point, in which he points out that the power there provided for a chief to call on any person to help him in the execution of his duty does on occasion lead to abuse. Of course it does, but in an area in which there are millions of natives clearly there must be abuses on occasions, and all we can say is that as we learn we render those abuses fewer and fewer. We were not so fortunate as Tanganyika and Uganda in finding ready to hand a system of native administration already in being, and we had to improvise as we went on, and regularize by ordinance as occasion arose.

We began with the Village Headman's Ordinance, 1902 or 1903, and we found as time went on that that was inadequate in certain respects, and we introduced in 1912 the Ordinance which has had small amendments from time to time until it became like a scrap-book, and now we have the present clarification.

Clause 5 has remained from the 1912 Ordinance until now, and it is clearly necessary. It is obvious that a chief must be able at certain times to call on any man to help him, and it is also obvious that if you provide him with a paid system of messengers it will be expensive for one thing, and the second thing is these messengers in their turn will employ other people not wearing uniform and not on the Government pay list, and we shall be much as we were. We employ an increasing paid staff under the headman, who was more or less at one time the only representative of Government in his location and had to do what he was told as best he could. In the larger locations now there are native representatives of most of the departments: Agricultural, Public Works, health workers, forest workers and so on and the chief has become a sort of chairman of committee to those people. He also, as we can afford it, has paid tribal police attached to him. I was fortunate this year in the estimates in getting an increase in the Nyanza vote to

[Mr. Fazan]
enable us to do this, and we have given definite orders that no chief shall have anybody arrested under a warrant except by a paid tribal policeman and also shall not send any cash to the boma or guard any cash except with tribal policemen who are paid.

The occasions for abuses are in that way very much curtailed, and the messengers which the chief still keeps in his own private livery are now down to the simple carrying of messages.

The second point the hon. Member Archdeacon Burns raised was one with which previous speakers have already dealt fairly adequately. That is his suggestion that chiefs and headmen should not be allowed to issue orders except as the mouthpiece for orders previously given by the district commissioner. I entirely agree with every word the previous speakers have said, and should like to say that in my opinion practically all the good work done in the last 20 years training of native staff would be knocked sideways by a decision of that kind.

As to specific orders, he takes exception to the powers of headmen under clause 8 (i) for the prohibition of public meetings, and the hon. member instanced a tea party which was held in some part of the Central Province which apparently ended up by the participants being fined Sh. 8 each. I had not previously heard of that tea party. I did not know it had taken place, but it was a curious coincidence that about the same time another tea party took place in the Nyanza Province on the premises of the same mission at Maseno. It was apparently an old boys' meeting, and they took the opportunity, having disposed of the business of the day, of raising complaints against the Administration. The upshot was that the hon. member Archdeacon Burns asked that an inquiry be held, and eventually I made the inquiry. That inquiry lasted three days, and the gist of the complaints was that natives had not access readily to the district officer. Out of fifty odd instances which these people mentioned, not more than half a dozen were related in any way to the matter under investigation, but were mostly complaints about certain chiefs. These were exhaustively examined, and the conclusion I reached and recorded was that there was no difficulty whatever in any native getting access to district commissioners. I was extremely surprised how readily such a large number of people had access without treading on each other's toes! and how extremely well the complaints they made were recorded.

That was my finding, and I was supported by Archdeacon Owen, who put in a written statement to the same effect. The moment a complaint was made to him, he spent a fortnight trying to find out complaints against the Administration, and as a result of all the inquiry he set in motion all over the district they were successful in producing two cases of hardship, neither of which had anything to do with the particular allegation in question. They were cases of hardship, and have since been investigated.

That is the type of tea party which you can imagine does occasionally annoy a headman! People meet ostensibly on some harmless affair, and spend their time criticizing the headmen. I am not saying for one moment that the chief would be wise to prevent such a meeting, but that is not a typical meeting. If they can do that on tea, they could do a lot more on other stimulants! (Laughter.)

The chiefs have found it wise from time to time to regulate the holding of meetings. I saw a great deal of this at the time of the disturbances in the Central Province about female circumcision, and I know what we tried, what failed, and what succeeded. As a general rule, the attempt to stop a meeting fails, and therefore it is unwise to try to do it. But the power to regulate and say it must be held at a reasonable time, that the agenda must be published before, that it must be held on a particular site somewhere near the road where the place can be got at, and that Government servants must be allowed to attend, all proved extremely useful and were, in fact, one of the main planks in suppressing the whole trouble.

I think the provision, therefore, is extremely valuable, although headmen will seldom have to go to the full length of prohibiting a meeting altogether.

The next point is in regard to the local

[Mr. Fazan]
native councils, clause 23 (j), in which it is provided that they may regulate payment of bride price. The clause says "marriage dowry"—but "bride price" is the usual term.

The reason why I think Government supports and has included that provision and the reason why the hon. member Archdeacon Burns supported it, are widely different. It is clearly right that there should be a power to lay down that bride price must be paid before witnesses or on certain ceremonial occasions so that there is a proper check on it. It may or may not be wise to lay down that that bride price, although perhaps paid in kind, should have its value stated in cash. That may occasionally be of use in subsequent litigation. What I understood the hon. member to say was that he was delighted to see the inclusion of the provision, because it would mean that wives are bought for cash and that both amounts would be subject to limitation, which would be tantamount to fixing a maximum price for wives! There is clearly no intention on the part of Government to include a provision for fixing the amount of the bride price; and it was a considerable surprise to me, if I understood him aright, that he should advocate it. The whole value of the provision is merely that we should be able to check up and keep a record of what has actually occurred.

Another point was with regard to local native councils in general. He stated that most of the natives who had access to him are opposed to chiefs being on these councils. I have never heard of that, and I have been in the reserves a good many years. What makes me wonder whether he has got in some sort of muddle was because he said they might have their cases heard by people who are not chiefs. Chiefs have nothing to do with the hearing of cases, that is the work of the native tribunals on which there are no chiefs in most cases.

This provision if carried out would go further than any administration of any country has gone. It would amount to a complete separation between the executive and deliberative. That is not done, even in England. The cabinet is composed of executive heads. Our sister countries, Uganda and Tanganyika, have not gone so far as we have along the lines of unofficial representation on native councils. The Lukiko of Uganda is composed of the Kabaka, his prime minister, treasurer and Saza chiefs. In Tanganyika they do not, as far as I am able to ascertain, have anything corresponding entirely to our native councils. Their chiefs in certain cases are a group acting presumably under a common seal, and every one of those members clearly is an official. We have in Kenya a practice whereby nearly half the members on these councils are subject to election. That, I think in the opinion of all of us, has been a good measure, but it is quite as far as I conceive it should go at the moment.

ARCHDEACON BURNS: On a point of explanation, I said not more than one chief who would act as chairman.

MR. FAZAN: I am sorry if I misunderstood the hon. member.

The last point is one raised by the hon. member Mr. Shamsud-Deen. I cannot quite let that pass, but I did not know it was going to be brought up to-day, but, on the other hand, as he is referring to something which happened in Nyanza and these representations are a farago of nonsense I must correct them, although I am without notes.

He speaks of old kings or paramount chiefs. In this country there were no such things. It so happens that the instance he cites of the Mwanga family, that is the Kitsetse family really, there was some form of recognized authority there. This was a great many generations ago, it may be eight, that a man called, I think, Wamoi, and another called Wahabiakala, and one or two others went up from Tiriki and settled at Mumias, then called Lurego. They increased and multiplied the way that polygamous people do if they have luck. The history of the family is interest, and I spent some time, years ago, in working on it. It is one of constant fights in the family, brothers fighting and, on two occasions, killing each other. When Mr. Jackson (as he then was) got into that neighbourhood he found this position, and he went and settled at Mumia's, where Shundu, Mumia's father, was at that time chief. Karl Peters, carry-

[Mr. Fazan]
ing the German flag, went and settled in Mukulu, where Shundu's cousin, Sakwa, the head of the rival section of the family, was chief. The two places were at a distance of 15 miles or so. Mumia is still alive, and is still drawing pay as a chief of the area where he was found, and a descendant of Sakwa is still drawing pay as chief of the area where he was found, so there seems nothing whatever to grumble about there.

MR. SHAMSUD-DEEN: On a point of information, I mentioned the case of Mumia who has in his possession the Union Jack and thirteen tables of genealogy.

MR. FAZAN: It is a strange thing I have never seen it. I made careful inquiry about the history of the Kitsetse family 20 years ago, and I certainly should have remembered seeing it if I had seen it.

I support the Bill.

DR. A. C. L. DE SOUSA: Your Excellency, I have only a few words to say in connexion with one principle that does not seem to have been recognized in this Bill or referred to by any speakers so far. That comes naturally from the information we have just had that Government is going to devolve part of its authority on to the local councils or the people who represent them.

The point I wish to make is that Government might also consider the question of giving the natives direct representation in this Council because, if that is not done, I do not see how the decisions taken by the natives or by their councils can properly be represented in this Council and to Government. The change-over from direct to indirect rule is being made by this Bill, and the time has come as far as this Council is concerned to change over from indirect to direct representation.

The second point I wish to make is in connexion with various provisions made in order to help the native change his tribal life. I suppose the results, for example, of clause 23 and the various provisions made under it, are going to improve the social life of the Africans. There are one or two things I should very much like Government to bear in mind, and that is that they cannot change the social life of the natives as it obtains in this Colony or such parts of Africa as Kenya in a moment or in a generation. I notice that a big drive is being made in regard to marriage dowries, and registration of births and deaths. I also see some provision is being made to prevent what they call the immoralities of the natives, such as village dances. I do not think it is realized that these customs are a part of native tribal life, and what may appear immoral to us may not be so to natives. And we all know that "morality" is a relative term.

All the important powers which district or provincial commissioners should have are going to be given to headmen. This question must be considered very carefully because this is one of the fertile causes of disturbance among natives because of interference with their old customs.

MAJOR RIDDELL: Your Excellency, I have only one small thing to say as regards the debate, because so far as my main objections to the speech of the hon. member Archdeacon Burns are concerned they have been thoroughly well answered for me by the hon. members Mr. La Fontaine and Mr. Fazan. What I have to say concerns the statements made by the hon. member Mr. Shamsud-Deen on the subject of the Somalis.

I do not know why Somalis come into this debate at all, but if anybody speaks on the subject of the tribe or any section of the tribe then it is essential such person should know the facts. To start with, the Ishakia community is comprehensive of all the Somalis; it is not a tribe. The tribes of the Somalis are well marked, such as Aden Madoba, Mohamed Zubeir, Aurihan, and so on. But when Somalis in this country speak of themselves it is as the Ishakia community.

The Somalis have been agitating to be classed as Asiatics, and at the same time call themselves British subjects, but surely the two things do not go together. If they call themselves Asiatic or an Arab tribe living outside a small bare patch which constitutes the Colony of Aden, they have no claim to be British subjects. Also many of the Somalis have come down from what is known as Italian

[Major Riddell]
Somaliland, which is very much the largest area in the world which includes a Somali tribe. Thus they are Italian subjects, so that the claim the Somalis make is not actually a genuine claim. What lies behind it is the desire not to be classed as a native of this country and to receive the same treatment as the Indian community, especially as regards hospital accommodation.

THE CHIEF NATIVE COMMISSIONER: Your Excellency, a great many points have been mentioned in debate, but, taking it generally, I think the majority of members are in favour of passing the Bill as drafted.

I will take first the points raised by the hon. member Archdeacon Burns. In clause 3 he suggested that it was wrong to lay down that the Governor might appoint natives to certain positions. The hon. member must know that the Governor does not actually appoint them, that he delegates his powers to those nearer the natives and who know more about the people concerned. It is always delegated by the Governor to the executive head.

Clause 5 has been well dealt with by the hon. member Mr. Fazan. It must be read in conjunction with clause 4 which, as I said in my opening speech, is an important one. The headman is there to maintain order or to call on certain people. It does not justify a whole army of scallywags, but it is necessary to have this power, and if there are occasional abuses it is to be regretted. As we get to know about them we redress them.

In clause 7 the hon. member asked whether the power of a headman to compel the attendance of any native would include women. Well, it does.

Under clauses 8 and 9 he took considerable exception to the fact that headmen have certain powers, and that they have this restricted power on the authority of Government. It is obviously necessary to educate our people. He strikes at the very root of this Bill if he wishes to take away the power of the people. We are trying to train them to local government, and he, instead of training them, wants to chain them, which I think is completely wrong. These powers are wide, I know, and necessarily wide, because we want to give these people a chance to learn. Our policy is to rule as far as possible through the people themselves, and the only way we can do it is by appointing headmen and giving them adequate powers and having adequate supervision to see those powers are not exceeded.

In clause 8 in particular, the first question was with regard to the carrying of arms. I may say that in the committee stage I shall have to correct a printer's error where it says "carrying or arms" into "carrying of arms". The hon. member wanted a definition of the word arms. I am particularly anxious there should be no definition. We are dealing with about forty different tribes who have different arms and who use them in different ways. Offences under this can be tried by native tribunals, and the right way to do it is to give discretion. It is very difficult, if not impossible, to define that word in connexion with all the different kinds of arms used by the many different tribes.

In clause 8 (*g*), regulating the cutting of timber, he suggested that natives might not be able to cut down their own wattle plantations and use it for commercial purposes. Of course this must refer to indigenous forests, which we want to preserve in most cases.

The real reason for (*l*) of clause 8, dealing with meetings, is to prohibit political meetings, and you must read the words "subversive of peace and good order". It does not give a headman power to prohibit all meetings, but if he finds a particular meeting is against peace and good order he has power to stop it. The hon. member himself quoted a case at Fort Hall, but not having the particulars I did not know what it was. It probably was not political, but there are occasions when a meeting, a so-called tea party, can cause great offence to other people.

One instance I can give. In another part of the Colony a certain number of people, including the headman, seceded from a certain mission and joined another. Both sects were rather sick about this, and the headman and his following who joined the other denomination got together a large group of people, got a

[Chief Native Commissioner]

big drum and several trumpets, and played what they called their own hymns outside the house in which the other people were having silent prayer! Those people were punished, quite rightly, and a case like that would come under this clause.

The objection to clause 9 was the same as to clause 8. I may say that it is quite impossible for Government to accept the suggestion that these powers should only be exercised after consultation with or on the authority of the district commissioner in each casee.

We then come to clause 12, which deals with the removal of natives. The hon. member asked that natives should be shown land to which they could be returned and also allowed to reap their family crops. That would be the normal procedure, and to make quite sure that no injustice will be done I have already said that in the committee stage I will make it clear that only a provincial commissioner can give orders.

In clause 17, the hon. member asks why we should punish a man who is hungry from the result of famine and has money to buy food for doing something against the section. I daresay it will seldom happen, but it may happen, that a man not at all affected by the famine would export grain and vegetables in contravention of the new sub-clauses (4) and (12), and he necessarily would have to be punished.

Regarding the composition of local native councils, the hon member objected to too many chiefs being on them. They are the representatives of their people, and their advice must be of use. I do not know how much he knows about local native councils or whether he has attended many, but I venture to think that he has been approached by an association called the North Kavirondo Association, who are shouting at the moment and sending petitions to Government that they are not properly represented on that council.

ARCHDEACON BURNS: That is not so, Sir.

THE CHIEF NATIVE COMMISSIONER: I am glad to hear that, but I will mention this particular fact because it applies to the particular argument. The North Kavirondo Association is asking for better representation on that particular council. If you take all the councils in the Colony you will find that about half the personnel are nominated by Government and the other half are elected, or perhaps selected is the better word, and they represent every part of the natives themselves. Christians, pagans, Mohammedans, you have members of various missions and churches, all represented on these councils, and every three years there is a new election, and people have every right to put forward their own views and candidates in very much the same way as we do in other institutions.

While on this particular subject, I might mention the remark of the hon. member Mr. Shamsud-Deen, when he said local native councils were just there to do exactly as the district commissioner tells them. That is not so. The district commissioner sits there as president, but he has very little to do. They have every right, and use it, and they are not affected in any way by what the president may think. In fact, they often go definitely against him.

In clause 23, which gives local native councils the power to make and pass resolutions, the hon. member Archdeacon Burns asked whether the labour employed on the various purposes could be employed for more than six days. It cannot, unless it comes under the Compulsory Labour Ordinance, when it is paid.

Under clause 24 (3) he asked whether it was right not to regulate the conversion into legal tender or anything tendered as payment for rates. In fact, all the rates are paid in cash, but it is useful to have this clause in case goats or something else have to be converted into money.

He also asked whether the interest accruing from the investment fund would be paid the councils. The answer is in the affirmative.

He referred to clause 9 (g), and asked about the use of baggage animals, whether the animals would be used for a very long period or not. It only applies to the hire of camels, because motor cars have taken the place of cattle in the ordinary native reserves.

[Chief Native Commissioner]

I am very grateful to the Noble Lord (Lord Francis Scott) and the hon. Member for Ukamba (Sir Robert Shaw) for supporting me in regard to the suggestions about clauses 8 and 9. They pointed out quite clearly the utter futility of making it necessary for headmen to have specific permission to issue any orders.

The hon. Member for Nyanza (Mr. Harvey) is not here, and I am sorry, because I hoped he would not press his point that legislation regarding soil erosion should be taken out of clause 23 and put into clause 9. The fact that it is well down the list in clause 23 does not matter, because it is in the forefront of everybody at the moment, and I submit to him that it is quite hopeless to put it in at the end of clause 9, giving a headman power to issue any orders he likes about soil erosion. It is a technical subject, and the right way to deal with it is by investigation, then by resc[illegible] of local native council to carry out what is recommended, and then for the headman to issue the necessary orders.

The hon. member Dr. Wilson was good enough to agree with me in what I said about the powers of headmen in clauses 8 and 9, that it was necessary to educate these people and that we should keep the sections as they are.

The point about the paramount chief of North Kavirondo has been dealt with by the hon. member Mr. Fazan. There again I venture to think the hon. member, who is not here, has been approached by the association I mentioned which has petitioned Government on several occasions to restore what they call the paramount chief, but he has never really existed.

The hon. member Dr. de Sousa asked why there was no provision in this Ordinance for native representation on this Council. It would not come under the Native Authority Ordinance.

Government cannot accept the proposals to amends clauses 8 and 9 in the way suggested by the hon. member Archdeacon Burns, and as the debate has shown pretty general agreement with the Bill and I myself have only two amendments or possibly three minor verbal amendments, I suggest to hon. members that there is no necessity to have a select committee on this Bill. Unless it is pressed for by the hon. elected members generally or the members representing native interests, I suggest to Your Excellency that we take the Bill in committee of the whole Council at the appropriate time.

The question was put and carried.

Council adjourned for the usual interval.

On resuming:

WIDOWS' AND ORPHANS' PENSIONS (AMENDMENT) BILL.

SECOND READING.

THE TREASURER: Your Excellency, I beg to move the second reading of the Widows' and Orphans' Pensions (Amendment) Bill.

This Bill has been introduced into the various East African dependencies at the instance of the Secretary of State, and it is not quite so complicated as it appears.

In August, 1935, the Secretary of State instructed the Government actuary, Sir Alfred Watson, to investigate the East African pension scheme and prepare new pension tables based on 6 per cent interest, taking into account the mortality experience in recent years. The Government actuary reported that when the existing tables were framed it was apparently assumed the current rate of interest for long-term contracts was about 6 per cent, and to that was added the Government bonus of 2 per cent, making 8 per cent in all. In view of the decreased income now obtainable on investments, there was no longer justification for so high a rate of interest, and 6 per cent is substituted as a rate more proper and one that has been recently applied to similar analogous schemes.

This reduction in the interest rate has not caused any revision in the tables, because experimental values based on interest at 6 per cent and on mortality which, after careful investigation of known factors, had been computed, did not appear sufficient to warrant supersession of the tables. The Government actuary states that for the present the tables should be regarded as based on interest at 6 per cent. The effect in the reduction in the rate of interest has been considered as broadly compensated by the

[Treasurer]

assumed reduction so far justified by experience of the rates of mortality on which the tables were based.

In practice the alteration in the interest rates only affects bachelors' contributions made after the 30th June, 1936, and a small and almost negligible reduction in their pensions will result.

Table A, clause 2, refers to the rate of pension related to bachelor contributions. It remains unaltered except that it is extended from 49 years to 54 years to cover cases of bachelors who may marry between those ages while still in the Service. Table C appearing in clause 3 relates to widowers on remarrying while still in the Service, and has been similarly extended.

As stated in the objects and reasons, no additional expenditure of public money will be involved if this Bill becomes law.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

STATE RAILWAY PROVIDENT FUND (AMENDMENT) BILL.

SECOND READING.

THE GENERAL MANAGER, K.U.R. & H.: Your Excellency, I beg to move the second reading of the State Railway Provident Fund (Amendment) Bill.

This is a very short Bill. As hon. members know, our staff is divided into two main sections. One section contributes to a provident fund, and one section is pensionable. In the present provident fund section we have, in addition to the compulsory contributions to the fund, a voluntary fund to which servants who are included in the provident fund can contribute. It is our wish to make that voluntary section applicable to all members of the staff. At present, as hon. members will see, under the old Ordinance "a servant means Government servant serving on the non-pensionable establishment of a State railway and who, under the rules of the fund, is eligible to become a depositor". By amending that definition of servant to read: "Servant means a servant as defined by the rules of the fund," we are able to make this Bill applicable to the whole of the staff for this particular purpose.

This amendment involves no expenditure of public money. It is something which should be encouraged, and calls for no further comment on my part.

THE TREASURER seconded.

The question was put and carried.

MINING (AMENDMENT) BILL.

SECOND READING.

THE ACTING COMMISSIONER FOR LOCAL GOVERNMENT: Your Excellency, I beg to move that the Mining (Amendment) Bill be read a second time.

A few weeks ago I said it was difficult to reach finality in mining legislation, but I did not so soon anticipate addressing this Council on the same subject! Unfortunately, in the Ordinance as passed, two mistakes were made in the drafting which this Bill corrects. There is no alteration of principle, only matters of detail which we unfortunately omitted in the previous Bill. I do not think any further explanation is required.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

STAMP (AMENDMENT) BILL.

SECOND READING.

THE ATTORNEY GENERAL: Your Excellency, I beg to move the second reading of the Stamp (Amendment) Bill.

This short Bill is being introduced in order to implement an international agreement which was reached last year or the year before with regard to bills of exchange.

The implication is very simple, and merely means this. Where a bill of exchange is presented for acceptance outside Kenya, the mere fact that it was not properly stamped will not subsequently prevent the acceptor suing on it. The reason for the amendment is because a person in a foreign country cannot be expected to know what the stamp duty in Kenya is, and as the law stands at present a man who wishes to deceive the acceptor by putting the wrong stamp on a bill could never be sued on it.

[Attorney General]

This permits the acceptor in due course to have it properly stamped, as, for example, if they wish to use it in a court of law for the purpose of suing. It is quite unnecessary when the acceptor is in Kenya to have reciprocal provision, because it is presumed the man in Kenya should know what the stamp duty on a particular bill should be, and he has 30 days or a considerable time after the arrival of a bill in Kenya in which he can put on adhesive stamps to make it up to the correct amount on the bill to present it before a court.

The second point is with regard to instruments used in connexion with the savings bank, and we are permitting their exemption from stamp duty. It is no innovation, it appeared in every Savings Bank Ordinance, not in the Stamp Ordinance where it should have been, and was omitted when the new Savings Bank Ordinance was passed. I am given to understand by the Postmaster General that it is most necessary this exemption should be made as its absence interferes with the ordinary course of business.

Unlike the Passion Fruit Bill, this Bill has been before every conceivable body that could be interested—the Law Societies, Chambers of Commerce in Nairobi and Mombasa, and so on—and all approve of it.

THE TREASURER seconded.

The question was put and carried.

BILLS.

FIRST READINGS.

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

The Traffic (Amendment) Bill,
The Kerosene Oil (Repayment of Duty) (Amendment) Bill.

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

BILLS.

IN COMMITTEE.

THE ATTORNEY GENERAL moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Native Authority Bill,
The Widows' and Orphans' Pensions (Amendment) Bill,
The State Railway Provident Fund (Amendment) Bill,
The Mining (Amendment) Bill,
The Stamp (Amendment) Bill.

THE TREASURER seconded.

The question was put and carried.

Council went into committee.

The Native Authority Bill was considered clause by clause.

Clause 5.

ARCHDEACON BURNS: I would ask that in clause 5 there be inserted words to the effect that each such servant as the headman may employ in the prosecution of his duties shall have some token to indicate that he is the servant of such headman in connexion with Government work.

THE CHIEF NATIVE COMMISSIONER: There is no need to put that in the Bill. Instructions will be and have been given in most cases that these people should have the necessary badges. I cannot support the proposal.

HIS EXCELLENCY: The proposal would be quite impossible. If a headman has to arrest someone and has to call on people standing round about to help him, it would be impossible to stop and issue badges first.

MR. HARVEY: If occasionally it is found necessary to have some distinctive badge, I suggest the Governor in Council will be able to do it under the provisions of clause 37.

HIS EXCELLENCY: Does the hon. member Archdeacon Burns move a definite amendment?

ARCHDEACON BURNS: That every such servant shall wear a badge that makes him known as the servant of the headman.

THE CHIEF NATIVE COMMISSIONER: The clause does not apply to servants.

HIS EXCELLENCY: Servants are not mentioned.

THE CHIEF NATIVE COMMISSIONER: I have said that all regular employees who come within the section will have badges.

HIS EXCELLENCY: There is no definite amendment yet to consider; I am afraid I must pass the clause as it stands.

Clause 8.

THE CHIEF NATIVE COMMISSIONER moved that clause 8 be amended by the substitution of the word "of" for the word "or" in sub-clause (*d*).

The question was put and carried.

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

Clause 12.

THE CHIEF NATIVE COMMISSIONER moved that clause 12 be amended by the deletion of the words "or district officer" on lines one and two.

The question was put and carried.

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

Clause 24.

THE CHIEF NATIVE COMMISSIONER moved that clause 24 be amended by the insertion of the words "or rates" after the word "rate" on line 3 of sub-clause (1) and the substitution of the word "rates" for the word "rate" on line 1 of sub-clauses (2) and (3).

The question was put and carried.

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

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

Clause 1.

THE ATTORNEY GENERAL moved that clause 1 be amended by the substitution of the figures "1937" for the figures "1936" in the second line thereof.

The question was put and carried.

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

The State Railway Provident Fund (Amendment) Bill was considered clause by clause.

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

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

THE ATTORNEY GENERAL moved that the following Bills be reported to Council with amendment—

The Native Authority Bill,
The Widows' and Orphans' Pensions (Amendment) Bill,

and the following Bills without amendment—

The State Railway Provident Fund (Amendment) Bill,
The Mining (Amendment) Bill,
The Stamp (Amendment) Bill.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY informed Council that the five Bills above mentioned had been considered clause by clause in committee of the whole Council, and that the first two had been reported with amendment and the latter three without amendment.

THE ATTORNEY GENERAL moved that the five Bills just reported be read a third time and passed.

THE TREASURER seconded.

The question was put and carried.

The Bills were each read a third time and passed.

KENYA REGIMENT (TERRITORIAL FORCE) BILL.

SELECT COMMITTEE REPORT.

THE DIRECTOR OF EDUCATION: Your Excellency, I beg to move that the report of the Select Committee on the Kenya Regiment (Territorial Force) Bill be adopted.

At this time of crisis in the affairs of the world the question of defence is occupying the attention of statesmen throughout the Empire. As hon. members are aware, the United Kingdom is embarking on a stupendous programme of armaments. Here in Kenya our resources are so limited, our financial resources, that we are not able to make any direct contributions in money to Imperial defence, but I maintain that our manpower, if numerically almost insignificant, is in calibre unsurpassed.

[Director of Education]

His Majesty the King has appointed a very distinguished soldier to the important office of Governor and Commander-in-Chief of this Colony, and it is incumbent upon the Council to pass the legislation necessary to place at his disposal the manpower of Kenya. Training must be provided, and this Bill and another which will shortly come before the Council will deal with all the provisions of that training.

The report of the select committee necessitated, owing to the large number of verbal amendments, reprinting the Kenya Regiment Bill. There are not very many vital alterations; it is rather a question of redrafting.

However, in paragraph 3 of the report, hon. members will notice that the definition of active service has been altered. In the previous definition, active service was when called out for repelling external aggression. The definition is now widened and the wording is that active se ice is when the regiment forms part of a force engaged in operations against an enemy.

I think the next important alteration is on page 3, paragraph 4 (2), where you will notice that the committee have recommended that the age limit shall be reduced from 45 years to 35. The reason for that is that the main function of this Kenya Regiment is to train officers, non-commissioned officers and instructors to take their place as such in the event of hostilities. For that purpose it is necessary to secure youngish men not over the age of 35 years. There is a proviso that the age limit may be extended by regulation as the Governor may decide.

Paragraph 6 of the report is a very important one. Active service now includes active service outside the Colony, whereas under the former Bill it was suggested that on engagement members of the Regiment should sign a special declaration that they were willing to serve outside the Colony.

Paragraph 7 alters the conditions of service in the reserve. Members are required to serve for four years in the reserve normally, but if they have not attained the age of 30 by the time the four years have expired, they are bound to remain in the reserve until they attain the age of 30 years. That is very necessary, because otherwise the value obtained from the training may be lost.

All the following amendments are purely verbal or redrafting, until we come to paragraph 21 of the report, where there is a small point, and the hon. the Attorney General will, when the time arrives, move a short amendment.

The old clause 28 has been deleted and is now dealt with under the Army Act. The old clause 33, now 28, has been redrafted. Clause 30 of the new Bill is the old clause 35, and is the same as before except that a bona fide purchaser for value without notice is now protected. Clause 35, the old 34, has been redrafted, but there is no alteration of the sense.

I think that embodies all the important alterations; the others are merely small questions of redrafting and rewording.

LORD FRANCIS SCOTT: Your Excellency, I beg to second.

In rising to second the motion before the Council, I should like to say that the select committee went into this Bill very carefully and very thoroughly, and we had the assistance and views of the Officer Commanding the Northern Brigade, King's African Rifles, which was of very great assistance to us, and of the Staff Officer of the Defence Force. As a result of our deliberations our report was entirely unanimous. What we aimed at was to get the original Bill which we had before us into a more efficient and practical form, and the result was that we had to amend nearly every clause of the original Bill, and, as the hon. mover pointed out, we though it more convenient for Council to have the whole thing reprinted.

I should like to impress on people that this particular Bill to establish the Kenya Regiment of the Territorial Force is, in fact, a Bill to form really an officers and n.c.o.s training corps. The idea is that we have, as the hon. mover said, a very high quality of young men in this Colony thoroughly fitted to be officers in H.M. Forces, and the idea of this particular Bill is to enable such young men to be trained as well as is possible under the circumstances, so that in case of trouble and any expansion of our forces there

[Lord F. Scott]
should be a ready supply of young men fitted to fill the positions of officers and n.c.o.s and instructors in such expanded forces.

I do trust that when this Bill becomes law it will meet with support from the youth of the Colony and that it will have the desired effect. But I do suggest that it will be difficult to achieve the object unless the training for these young men is so arranged as to make it as practicable as possible for them to get away from their jobs to avail themselves of the training. Obviously, if you want to train the young men for this sort of position it is no good giving them a very scamped training but as thorough a one as possible. Obviously, too, if you ask too much of them they will not be able to afford the time and therefore the object will not be achieved. That, of course, does not come into the Bill, it remains to be done afterwards by the authorities who arrange what training is necessary.

This country is not rich enough to make contributions to Imperial defence. All we can do is to try and organize as well as possible so that if, as all hope will not be the case, we find ourselves at war we have at any rate organized a valuable European personnel in the country. This Bill, together with the one which is to come later, has that aim in view, the organization of the European manpower of the Colony.

The hon. mover mentioned one or two alterations. I think the only one which is really material is the one altering the definition of active service and making everybody liable to serve outside the Colony if required. You may remember that when this Bill was debated on its second reading, I raised the point myself, and it did seem the original provision was unnecessarily cumbersome and unnecessary, because we all know that anybody joining the force will be prepared to serve wherever the country may require them.

THE ATTORNEY GENERAL: Your Excellency, I beg to move the following amendment:—

"That the report be amended by the deletion from paragraph 18 of the words 'officers and' in line 3 of new clause 21 (1)."

The reason for this amendment is obvious. It is not the intention of Government to issue uniforms to officers, but, under the regulations, provision will be made for a uniform allowance.

THE TREASURER seconded.

LORD FRANCIS SCOTT: I think the reason why officers were included deliberately was because we were not certain whether there would be any other means by which they would get uniforms. If they can be provided under regulations the point is met.

The question of the amendment was put and carried.

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

KENYA AUXILIARY FORCE BILL.

SELECT COMMITTEE REPORT.

THE DIRECTOR OF EDUCATION: Your Excellency, I beg to move that the report of the Select Committee on the Kenya Auxiliary Force Bill be adopted.

I think the most important alteration is to the title of this force, for it has now been changed to the Kenya Defence Force. This amendment was pressed for by the Noble Lord, the hon. Member for Rift Valley (Lord Francis Scott), during the second reading of the Bill. He pointed out that this name was held in great esteem by many members of the old Defence Force, and that it would be a great pity to throw away the traditions and prestige of that force. I may say that the committee unanimously agreed with the Noble Lord and recommended accordingly.

There are very few alterations from the original Bill. On page 2, paragraph 4, of the report, hon. members will notice that it is mandatory for the Government to establish a permanent force, and Commander has now been defined.

In paragraph 6 there is a slight amendment to clause 5 of the Bill, and in that connexion the hon. the General Manager of the Railways has a small amendment to offer. Clause 25 is deleted. It was felt it was a mistake to have the force under active service conditions subject to both civil and military law. Clause 29, now clause 28, is amended by the deletion of (a) and the substitution of the following:

[Director of Education]

"by dismissing an employee or by reducing his wages or in any other manner whatever penalizes him for entering upon or carrying out any service or training under this Ordinance."

This relates to the co-operation of employers, and the concluding sentence of the first Bill was left out as it was felt it cast rather a reflection on the loyalty and co-operation of employers.

The clauses about permanent disability and pensions and gratuities have been made identical with those in the Kenya Regiment Bill.

In the first schedule certain people have been added to those exempted, because the previous list was not quite complete: officers of the Royal Navy and Royal Air Force have now been added, as well as officers on the Emergency List of the Royal Navy and serving officers and men of the regular forces serving in the Colony.

There was one rather important matter, and that was in regard to clause 8. The age limit of 55 had been originally contemplated, but the Committee recommend that no age limit should be imposed and that all able-bodied men should be included in the scope of the Bill. The reason was that they felt that otherwise there would be a number of European males outside the defence scheme, and the military authorities might be hampered in organizing defence of life and property in the event of internal disturbance. That recommendation has, I understand, gone forward to the Secretary of State.

I should like to endorse what the Noble Lord has said about the great assistance we received from the Officer Commanding the Northern Brigade, the Staff Officer of the Defence Force (Lord Stratheden), and also from Col. Dunstan Adams.

LORD FRANCIS SCOTT: Your Excellency, I beg to second.

I have not very much much to add. As I said before, this, together with the Bill we have just dealt with, is for the purpose of organizing the whole of the European manpower of the Colony. I should like to say this, that I feel extremely grateful to the committee and to Government for accepting my proposal to go back to the old name, and I may say that I have met several people, keen old Defence Force officers, who are extremely pleased that this has been done. I have met with that in many parts of the Colony, and I should like to express my gratitude.

I am not so sure that the hon. mover has stressed one very big alteration in this Bill, in connexion with clause 23, where it says that the provisions of the Army Act—

"shall apply to . . . members of the Defence Force when they are on active service, when they are called out for active service, during peace training, when they are engaged in any military exercise of drill or musketry, when they are carrying out any escort duty or guard of honour, and when they are in uniform at any time or place, subject to the following modifications".

That is a very big alteration. It does mean that when the Defence Force is doing its training it comes definitely under military discipline. I always thought it was a great weakness of the old scheme that the officer commanding had no legal authority whatever while his people were in camp. All he could do was to run them before a court where they might be liable to a fine of £50 a month or two after the offence. I suggest that is an impossible way of running any disciplined force, and I am very glad this change has been made, because I think it will be much better for all, both from the point of view of those in authority and those serving in the camps, to know exactly where they are and not be tied up with court cases and so on.

One point has not been mentioned, the question of commissions. You may remember that the hon. the acting Member for Nairobi North (Lt.-Col. W. K. Tucker) pressed very much that there should be King's commissions given. That we were unable to deal with in committee but a recommendation was sent to Government, and I understand Government have forwarded it home to the Secretary of State. As far as I know, no reply has yet been received. We felt it would be no good holding up the whole of the report until the reply came. I believe, as a matter of fact, that in no other

[Lord F. Scott]
colony is the King's commission held in a similar force, but I am not sure, and I do not know whether Government has received any answer.

THE GENERAL MANAGER, K.U.R. & H.: Your Excellency, I beg to move, that paragraph 20 of the Report be amended by substituting the figures "34" for the figures "35" which occur in the second line, and by substituting the figures "33" for the figures "34" which occur in the second line, and that after paragraph 26 of the Report the following paragraph be added:—

"26A. That after clause 34 (now clause 33) there be inserted the following clause:—

34. Notwithstanding anything contained in this Ordinance the Kenya and Uganda Railways and Harbours Administration shall be deemed to be a Defence Force District (in this section referred to as the 'Railway District') and every person in the service of such Administration who, under this Ordinance, is liable to be enrolled as a member of the Defence Force shall be deemed to be enrolled as a member thereof in the Railway District."

The object of this amendment is to see that in time of trouble, whether internal trouble or external trouble, the Railway is able to work to its maximum efficiency. Under the Bill as drafted, members of the Railway staff might be enrolled in separate districts and taken away altogether from the control of the Railway or from Railway work. I would then have been forced to apply to the Governor in Council for the exemption of the Railway staff under clause 12 (2), which reads:—

"The Governor in Council may by order exempt any person or any class of persons from all or any of the obligations imposed by this Ordinance or by the regulations."

That would have been necessary in order to keep the Railway running, and it would have been an undesirable step.

I am very anxious indeed that my people should come under the organization which is envisaged in this Bill and should in time of trouble be subject to military law. After consultation therefore with the hon. the Attorney General, we came to the conclusion that the best way to meet the position would be by showing the Railway as a special district. In that way all the European members of the staff are enrolled in a Railway district under the General Manager as District Commandant, and I think that will meet the situation in an adequate manner. I would, of course, in time of trouble, like to see authority to have the whole Railway staff under military law, but that is outside the scope of the Bill, and I therefore only ask for the European section to be dealt with in this way.

THE ATTORNEY GENERAL seconded.

LORD FRANCIS SCOTT: I was wondering whether this ought to be mentioned in clause 5 (1), where it says the Governor shall divide the Colony into districts to be known as defence force districts.

THE ATTORNEY GENERAL: I do not think it is necessary. We make the Railway into a definite district by this wording.

The question of the amendment was put and carried.

THE ACTING COLONIAL SECRETARY: I rise to speak in connexion with the remarks of the Noble Lord with regard to the granting of King's commissions. In the select committee's report on this Bill no mention is made of that point at all. Mention was made in the select committee report on the Kenya Regiment Bill which we have just dealt with. I wish to make it plain that representations have gone home specifically in connexion with the Kenya Regiment only.

DR. DE SOUSA: Your Excellency, I beg to move that the report be amended in paragraph 7, page 2, by the deletion of sub-paragraph (*f*) and the substitution therefor of the following: "(*f*) by the deletion of sub-clause (2) of clause 9 and by the renumbering of the succeeding sub-clauses."

I move the amendment for this reason, that non-British residents are eligible for military service. Whether you call this

[Dr. de Sousa]
an Auxiliary Force as it was first intended to be called or a Defence Force as you do now, the objection from our point of view is because the privilege is given European residents to defend the country while at the same time British Indians resident here are denied that privilege.

And it is not only a question of allowing European residents that privilege. The least Government can do is not to add insult to injury. You do not want His Majesty's Indian subjects to enter the territorial service because it is said that this service is only meant to train officers and n.c.o.s, but in bringing in this Bill you have given no assurance whatever that we are going to have a similar Bill for Indian subjects of His Majesty. But you are adding insult to injury by making provision in this Bill for non-British subjects to join it.

I have not forgotten that the Kenya Defence Force has a very long history in this country, and we have been objecting to the principles on which it was worked. I would mention that since the publication of the change in the name from Auxiliary Force to Defence Force, the local Press made a very significant remark in this matter. If you would allow me to read it, that remark was:—

"In this matter of defence there is to be found one of the soundest bases for political claims for greater responsibility, because the settlers of Kenya will be accepting the burden of providing one of the most practical of all the guarantees of effective trusteeship."

That has been mentioned in connexion with the change of name since the Bill was published, and that is given in the Press on behalf of the European community. I do not in the least grumble, but when you bring in a Bill of this kind and know that a large section of His Majesty's subjects here are dissatisfied with it and insult them by not allowing them the rights of ordinary manhood, it is an injury to us, and you are now insulting us by making provision for non-British subjects to help in the defence of the Colony.

SHERIFF ABDULLA BIN SALIM seconded.

The question of the amendment was put and negatived.

THE DIRECTOR OF EDUCATION: Your Excellency, the point raised by the Noble Lord has been answered by the hon. the Colonial Secretary.

I should like to point out to the hon. member Dr. de Sousa that this Bill is dealing entirely with Europeans. There is nothing to preclude Government from bringing in other legislation at a later date.

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

THE ATTORNEY GENERAL moved that the Kenya Regiment (Territorial Force) Bill and the Kenya Defence Force Bill be read a third time and passed.

THE TREASURER seconded.

The question was put and carried.

The Bills were each read a third time and passed.

NOTICE OF MOTION.

BY MAJOR CAVENDISH-BENTINCK:

"Be it resolved that in implementing clause 7 of the Legislative Council Ordinance, 1935, the Rules contained in Schedule 2 should be so amended as to provide for the retention of the existing Registers of European voters as normally revised from year to year subject only to the classification of the names contained therein into alphabetical divisions and to the allotment of a serial number to each name."

ADJOURNMENT.

Council adjourned till 10 a.m. on Wednesday, 10th March, 1937.

Wednesday, 10th March, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, the 10th March, 1937, His Excellency the Acting Governor (Hon. A. de V. Wade, C.M.G., O.B.E.) presiding.

His Excellency opened the Council with prayer.

MINUTES.

The minutes of the meeting of the 9th March, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS.

No. 11.—COMMITTEE ON MINING ROYALTIES.

MR. HARVEY asked:—

Will Government be pleased to appoint a small committee to investigate the incidence of mining royalties and to report whether, in the light of such investigation, some modification is desirable in the best interests of developing the mineral resources of the Colony on sound lines?

THE ACTING COLONIAL SECRETARY: Government will be pleased to appoint a committee as suggested.

MR. HARVEY: Is Government aware that a continuance of the present system of royalties may have a most adverse effect on public revenues, paradoxical though it may sound?

THE ACTING COLONIAL SECRETARY: That, I understand, is the purpose of the appointment of the committee, to examine that incidence.

PROVIDENT FUNDS CONTRIBUTIONS.

THE TREASURER: Your Excellency, I beg to move the following motion:—

"Be it resolved that this Council approves the expenditure of £26,402 upon the purposes specified in the schedule hereto, as a charge against the revenues and other funds of the Colony for the year 1936.

Schedule.

Interest and Unfunded Debt—

Redemption of Arrears of Contributions to Provident Funds ..	£26,402."

This motion has the full support of the Standing Finance Committee, and it also has the approval of the Secretary of State.

Under section 6 (*b*) of the European and Asian Provident Fund Ordinances, 1934, Government assumed liability of certain back payments in respect of officers who were already in the Service at the time when the Ordinances were enacted. At that time, the financial position of the Colony was such that it was considered the provident funds could only be inaugurated if a full charge off of the liability were postponed. After consideration, the authority of the Secretary of State was accorded to a scheme whereby the amount was charged to a suspense account which it was proposed to liquidate by instalments. In effect, although a definite statutory liability existed, such liability would be written off by annual instalments, a course of procedure which in those abnormal circumstances was justified but which should in my opinion, be rectified as soon as conditions changed for the better.

Since then, as hon. members know, the finances of the Colony have materially improved, and although a few Civil Servants may still be in a position to come under the provident fund scheme who were in the Service in 1934, the ultimate liability of Government under the section I have quoted can now be computed. It is therefore desired to clear the suspense account in one operation, and so eliminate it from future balance-sheets and estimates. By the final writing off of this suspense account in 1936 the excess of assets over liabilities as reflected in the Colony's balance-sheet will naturally be reduced in respect of that year, but the position will be correspondingly improved in 1937 and subsequent years. So far as the 1937 estimates are concerned, the £5,000 provided under Head XII, 4, of the expenditure estimates will hardly be required, a few hundred pounds perhaps, and in 1938 and future years that item should be eliminated from the expenditure estimates.

I strongly recommend this motion.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

LOAN REALLOCATIONS.

THE DIRECTOR OF PUBLIC WORKS: Your Excellency, I beg to move:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £99,571 upon the purposes specified in the schedule hereto as a charge against Loan Account and further approves provision being made therefor by a reallocation of the following amounts from the sums already approved and unallocated:—

Public Buildings—	
Other Buildings—	
Nairobi Central Offices	£88,573
Unallocated ..	10,998
	£99,571

Schedule.

Education Buildings—	
European: Nairobi (Boys Boarding European Primary School) ..	£15,500
Indian: Nairobi (Indian Elementary Boys School)	29,800
Other Buildings—	
Nairobi K.A.R. Lines ..	31,313
Investigations and Designs for Abandoned and Deferred Projects	22,957
Maize Drying Installation	21
	£99,571."

In amplifying the proposals contained in this motion it will be necessary to refer to a second motion which stands on the Order Paper to-day in my name.

This resolution deals mainly with the most outstanding of the public scandals which are well known to hon. members and which have from time to time been mentioned in the Council. The works proposed have been recommended by the Loan Works Building Committee, and have the approval of Government. The total reallocations proposed in both the motions amount to £106,571.

The first item is a boys' boarding block at the Nairobi European Primary School. The present buildings are entirely unsuitable, and have been condemned by the medical authorities. It is proposed that a new building be erected similar to the girls' boarding block at present under construction, and it will contain dormitories for 75 boys of school age, with matron's and teachers' quarters. The estimated cost is £15,000. The work will be carried out by contract, and in view of the fact that the new building will be practically a replica of the building now under construction it is hoped that the work can be undertaken at a very early date.

The second item is the Indian Elementary Boys School, Nairobi. The present buildings are in a most dilapidated condition, and the school is housed in two buildings in Whitehouse Road which are badly ventilated, in an appalling condition, and overcrowded. It is proposed that the new building will be erected on the education reserve close to the present Indian Secondary School, thus permitting the assembly hall of that school to be used for both. The accommodation proposed is for 800 pupils, but in view of the fact that this will not meet the full requirements provision will be made in the drawings for extensions in the future. The estimated cost of the work is £36,800. The present motion covers £29,800, and the motion that follows will cover the balance of £7,000.

It is proposed to hold an architectural competition for the design of this school, and the competition will be restricted to resident architects in East Africa. (Hear, hear.)

The third item in the motion is the King's African Rifles Lines, Nairobi. As hon. members are aware, these buildings have been condemned a good many years. Funds were available in 1927, but were reallocated for urgent anti-malarial work such as hospitals and housing. The proposal now before Council makes provision for new barracks and an African sergeant-major's quarters. The accommodation allows for 318 married African ranks, 256 single African ranks. The total estimated cost is £31,700, of which £387 is already standing to the credit of the K.A.R. Lines. The buildings will be erected on the present site of the K.A.R. Lines, and the work will be executed by the Native Industrial Training Depot. Drawings are almost ready, so that the

[Director of Public Works]

work can be started in the very near future.

In connexion with the K.A.R. Lines I should like to point out to the Council that an arrangement has been made with the Uganda Government under which 6 per cent of the capital expenditure will be met from joint military votes, so that this Colony will not have to meet the full loan charges.

The fourth item is £22,957 for investigations and designs for abandoned and deferred projects. This item was approved by the Council on a motion put forward on the 22nd May, 1936, so that this motion only deals with the reallocation of the funds required to cover that motion.

The fifth item is in connexion with the maize-drying installation at Mombasa—the large sum of £1. It is merely a financial adjustment to cover expenditure that must have occurred about ten years ago.

The Loan Works Building Committee have, in addition to the above figures, approved of a reserve of £3,141 to meet unforeseen contingencies on the first three items. I imagine that with the very considerable rise in prices which has recently occurred in home materials, we shall probably have to delve into that reserve.

THE TREASURER seconded.

MR. SHAMSUD-DEEN: Your Excellency, for once I wish to be permitted to congratulate Government heartily and sincerely for removing grounds of public scandal, and especially on the erection of the Indian Primary School which really has been a great public scandal of very long standing. I wish to associate myself most heartily with this motion, and to congratulate Government for, though belatedly, providing requirements very badly needed.

The question was put and carried.

THE DIRECTOR OF PUBLIC WORKS: Your Excellency, I beg to move the second motion:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £7,000 upon the purposes specified in the schedule hereto as a charge against Loan Account and further approves provision being made therefor by reallocations of the amount from Item 3, 'Such further items as the Governor may, with the approval of the Legislative Council signified by resolution, and of the Secretary of State, determine' of the £305,600 Loan, 1933.

Schedule.

Public Buildings—
Educational Buildings—
Indian: Nairobi (Indian Elementary Boys School) .. .. £7,000."

This motion has been more or less explained in connexion with the previous one. It seeks authority to reallocate £7,000 from Item 3 of the 1933 Loan to the subhead "Public Buildings, Educational Buildings," to provide the full amount required for the Indian Primary School.

I do not think I need take up the time of the Council in elaborating this motion, except to say that the Secretary of State has approved of the reallocation.

THE TREASURER seconded.

LORD FRANCIS SCOTT: In view of the remarks made by the hon. member Mr. Shamsud-Deen, I should like to draw his attention to the fact that when Indians put up a good case for worthy objects they also get the support of the unofficial side of Council as well as of Government. (Hear, hear.)

The question was put and carried.

SCHEDULES OF ADDITIONAL PROVISION.

THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move:—

"That the report of the Standing Finance Committee on Schedule of Additional Provision No. 3 of 1936, be adopted."

This report deals with the Schedule of Additional Provision No. 3 of 1936 covering the months from 1st July to 30th September, 1936. The total additional provision amounted to £30,820, but actually the net additional expenditure is only £12,727. Each item has been examined in detail by the Standing

[Acting Colonial Secretary]

Finance Committee, and that Committee has unanimously recommended approval of the schedule.

THE TREASURER seconded.

The question was put and carried.

THE ACTING COLONIAL SECRETARY: Your Excellency, I beg to move:—

"That Schedule of Additional Provision No. 4 of 1936 be referred to the Standing Finance Committee."

This schedule covers the period from the 1st October to the 31st December, 1936. The total additional provision amounts to £28,729, but the actual net additional expenditure is £11,143. Each item will be examined in detail by the Standing Finance Committee, and I beg to move.

THE TREASURER seconded.

The question was put and carried.

AGRICULTURAL ADVANCES WRITE-OFF.

THE TREASURER: Your Excellency, I beg to move:—

"That this Council approves the write-off as final expenditure of a sum of £5,465-0-10 advanced under the provisions of the Agricultural Advances Ordinance, 1930, this write-off operating in further reduction of the authorized appropriation of £113,201 approved by this Council as follows:—

£100,000 by motion dated 30th May, 1930.

£7,000 by motion dated 8th May, 1933.

£6,000 by motion dated 20th December, 1933.

£201 by motion dated 26th November, 1934."

This is a further step in the necessarily protracted business of winding up the agricultural advances scheme instituted in 1930.

Four cases are involved in the present motion, and it involves the writing off of a further £5,465-0-10, bringing the total write-off to date to £27,737-10-2. If this motion is adopted, the position of the scheme as at the end of 1936 will be as follows:—

Of the 105 original participants 54 will remain on the books of the Board, 34 having repaid their advances in full, and 17 having been written off as bad debts. The capital sum outstanding on the books of the Colony as at the 31st December last as advanced under the scheme is £90,463 as compared with £101,057 at the end of 1935. The gross collection of interest from the date of the inception of the scheme to the end of 1936 has been £28,377, the amount contributed to revenue after payment of administration expenses being £18,782.

THE ATTORNEY GENERAL seconded.

The question was put and caried.

PENSION: S. V. COOKE.

THE TREASURER: Your Excellency, I beg to move:—

"This Council approves the payment of an unreduced pension of £318-13-3 a year to Mr. S. V. Cooke, who retired from the service of the Government of Tanganyika, with effect from the 30th January, 1937, inclusive, in lieu of a reduced pension of £238-19-11 a year, together with a gratuity of £796-13-4."

This is in conformity with many other motions of a similar nature which have come before this Council and have been approved. The particular officer in question was first appointed to Kenya in the Administration on the 1st January, 1917. He was transferred to Tanganyika Territory on the 16th July, 1931, and retired on the 30th January of the present year. He originally opted to receive a reduced pension and gratuity, but now wishes to revoke that option, and it is considered to be in the interests of Government that he should be allowed to do so.

THE ATTORNEY GENERAL seconded.

The question was put and carried.

EUROPEAN VOTERS ROLL.

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

"Be it resolved that in implementing clause 7 of the Legislative Council Ordinance, 1935, the Rules contained in Schedule 2 should be so amended as to provide for the retention of the existing Registers of European voters

[Major Cavendish-Bentinck]
"as normally revised from year to year subject only to the classification of the names contained therein into alphabetical divisions and to the allotment of a serial number to each name."

This motion arises out of a reply to the question which I asked, and which was answered in Council this morning.

I feel that possibly Government does not realize the implication of enforcing the re-registration of all European voters prior to the next election. Under the new Ordinance, which I believe has not yet come into force but will prior to the next general election, provision is made in section 7 that "For each electoral area a separate register of the persons entitled to vote in such area for the election of a member or members" should be prepared. Schedule II lays down rules for the preparation of registers of voters. The rules start by saying "When it is necessary to prepare a new register for any electoral area, the Colonial Secretary shall publish a notice in the Gazette." That notice, I believe, has already been published.

The point is that it has been extremely difficult in practice in the past to get anything like an adequate register of voters prepared. One thinks it is quite easy, that one simply has to put a notice in the paper or send notices around to people, and people will register themselves. Unfortunately, that is not the case. Many people are too busy and do not worry about it; a great many are abroad or in England when the notice goes out and forget about it; other people are absent. The existing registers are the result of many, many years' work.

If it is proposed to disregard the existing registers and ask everybody to re-register, I am quite certain that half the country will be disfranchised when the next election comes. If Government think that by asking the police or the district officers to send messengers around as per the existing lists they will get the re-registration fairly easily done, it will be found that that will not work in practice. People live enormous distances apart, and when the police messenger appears at a farm the resident will be absent or away or for some other reason will not be got at.

We feel it is a matter of the utmost importance that when the new Ordinance comes into force, if it is not in force already, that for this year at any rate in preparation for the next election the existing registers of European voters should stand. All that is necessary, as far as we can see, is that the existing registers shall be taken (and I will add that they have been kept up to date and altered in the last few months) and that all the names thereon should be classified into alphabetical divisions and a serial number allotted to each name on the existing registers brought still further up to date if necessary. If any attempt is made to re-register the whole country, I am afraid that half the country, as I said before, when the election comes next year, will find it is disfranchised and there will be a tremendous outcry.

We realize that in the case of the Indian rolls there has got to be re-registration, and that for the very good reason that a completely new system is going to be brought in for carrying out an election among the Indian community. But, as far as we are concerned, there is no new system at all. All that has been done is a simplification of the postal vote and so on, and we see no necessity for a re-registration of the whole country. Therefore we do hope that we can get some assurance from Government that, when they have realized what the position is, they will see whether some means cannot be found to amend the Ordinance to obviate the necessity of re-registration.

LORD FRANCIS SCOTT seconded.

CAPT. SCHWARTZE: Your Excellency, may I be allowed to support the hon. member's motion, and I would base it chiefly on the fact of the time which will elapse between now and the next election. If it were a case of the Ordinance coming in and no election for another four years, there might possibly be some argument that in that time everyone would have had the opportunity, and those interested in seeing they were on the electoral roll would have had the opportunity of getting the form filled up in an adequate and proper manner. But, human nature being what it is, I can assure you that what the hon. member has said is

[Capt. Schwartze]
perfectly true, that you will not get any kind of representative voters roll either in the town constituencies or in the country between now and the time of the next election, which is some eleven months hence.

So far as Nairobi is concerned, I do not think it is too much exaggeration to say that a man like my hon. friend the Commissioner of Mines, in sitting in another capacity, as Chairman of the Civil Servants Association, might become a local Hitler, as the vast majority of voters would be Civil Servants in the time between now and next February and, of course, we all know they all jump to his whip, though I am told that the present council is not so amenable as the last one!

I do urge Government that those at present on the voters roll should not be made to re-register, whatever may be done between 1938 and 1942, and that the rule should be amended accordingly.

MR. BEMISTER: Your Excellency, may I support this motion, particularly because I have always expressed the opinion that the present voters roll is formed on an entire misapprehension of the interests and intention of Government. The intentions of Government, it is obvious, are to get the opinions of the people on various matters, and for that reason this is a council and not an assembly. It does seem to me it is Government's duty to secure the names of every man or woman in the country to enable them to express their views. If we had party Government here, then it would be the duty of the parties to urge their adherents to vote and be on the registers. But the present position is that you require a liaison between yourselves and the people, and to that end I contend it is the duty of Government to prepare these lists. If that were done, then the individuals who wish to represent the views of the people would make it their business to consult the people who are on the registers, and they could then represent the full amount of opinion in the Colony. This is entirely your business, and I do think if you grant this it will be one step in favour of Government preparing the lists of voters.

LORD FRANCIS SCOTT: Your Excellency, I should like to support the motion on the grounds already put forward. I think perhaps people do not realize what a terrible business it is to get some of the citizens of the Colony to register their names as citizens who should be enrolled on the voters roll. The same thing applies to the Municipal rolls, and district councils as well. I should like to point out quite frankly that if this question had not been raised now but after I had left this country, I should have been unaware of the danger I was in and, when I came back next October, I should have found that I was disfranchised and unable to sit in this Council at all because the roll closes in September. I should not have taken any steps about it. That might well happen with other people, intending candidates at the next election.

I trust that Government will see its way to agreeing to this motion, purely as a practical method of getting the greatest number of citizens of the Colony on to the voters roll.

THE ATTORNEY GENERAL: Your Excellency, I have been instructed by you to say that you are perfectly willing to appoint a small committee to go into the matter and, if necessary, to recommend to Government what legislature should be passed to rectify the position.

I would like to say, as chairman of the committee which sat to revise the old Ordinance, that this is no drafting error, and that it certainly was my intention at the time that a new roll of voters should be prepared and I thought everybody else on that committee agreed with me there.

The reason why we do not have to have a new Indian roll has already been explained by the hon. mover, but I think everybody on that committee will agree that we had a lot of evidence that the European rolls in the various districts were in a very sad state and that they wanted a revision. All sorts of schemes were put forward, and I thought that the only way of doing it properly was to see that the people exercised what is in fact a privilege and got themselves registered. It was not the intention of Government to have an emasculated roll as

[Attorney General]
a result of which representative members would not sit in the Council.

The Ordinance is, in fact, in operation at the moment. All that has been done is to have a suspending clause that in the event of a by-election between now and the general election the old rolls may be acted on, so that a by-election can be held under the old system.

With regard to the point made by the Noble Lord (Lord Francis Scott) that he might be disfranchised, actually Government has been taking practical steps to encourage people to register themselves. We have taken administrative action, and if it is not done already, by the time hon. members get back to their homes they will probably find notices from the registering officers providing forms and asking them to register. I think the Noble Lord probably has time before he sails to fill his form up! Even if he forgets there is a revision I think in October or November, when any names omitted can be put on.

As I said before, Government has quite an open mind about the matter, and a small committee will be appointed immediately. As I visualize it at the moment, there will be a small amendment to the regulations and not to the Ordinance itself, and in due course it will be laid before Council but it becomes law immediately.

CAPT. SCHWARTZE: On a point of personal explanation, I take full blame myself for not realizing at the time as a member of the committee, especially as the unofficial legal member, all the implications. I do not think my colleagues on the committee realized them either, but it was my duty to point them out, and I am sorry I did not. I can assure the hon. the Attorney General that if I had realized the implications I would have raised the point and not have passed it.

MAJOR CAVENDISH-BENTINCK: Your Excellency I think we are very appreciative of the action Government has taken in this matter. I also would like to say that as a member of the committee which drew up the Ordinance I did not at the time realize the implications of what was actually provided for in the Ordinance. What I thought was that every attempt would be made to bring the existing registers up to date, and I did not understand the wording entailed a complete reclassification.

As regards the remarks made by the hon. the Attorney General that we shall in due course get a form to fill up, that is the whole point. That form has no doubt been or is being sent out to everybody appearing on the roll, but if it is not sent back again filled in those people will be taken off the roll. That is what we want to avoid.

In view of the statement made on behalf of Government, with your leave, Sir, and the leave of the Council I should like to withdraw my motion.

HIS EXCELLENCY: With the leave of Council the motion is withdrawn.

TRAFFIC (AMENDMENT) BILL

SECOND READING

THE ATTORNEY GENERAL: Your Excellency, I beg to move that the Traffic (Amendment) Bill be read a second time.

This amendment is necesary in view of the Ordinance passed last session altering the time of the Colony. Under this it is proposed to leave the lighting-up time to rules made under the Traffic Ordinance.

THE TREASURER seconded.

The question was put and caried.

KEROSENE OIL (REPAYMENT OF DUTY) (AMENDMENT) BILL

THE TREASURER: Your Excellency, I beg to move the second reading of the Kerosene Oil (Repayment of Duty) (Amendment) Bill.

This Bill is designed to simplify the procedure so far as applications under the Kerosene Oil (Repayment of Duty) Ordinance, 1930, are concerned. Under the principal Ordinance it is necessary for a person making a claim for repayment of duty on kerosene oil used for agricultural purposes to subscribe to a statutory declaration before a magistrate, justice of the peace, or a commissioner for oaths. This procedure has been found in practice to be somewhat burdensome on farmers particularly those living in the outlying districts, and it is con-

[Treasurer]
sidered that the interests of Government will be sufficiently safeguarded if that statutory declaration is abandoned and its place taken in future by a certificate, provided, of course, that the penalties for knowingly subscribing a false certificate are adequate.

THE ATTORNEY GENERAL seconded.

LORD FRANCIS SCOTT: Speaking on behalf of the farmers, Sir, who are affected by this Ordinance, I would express their gratitude to Government for taking this step. It will be a great boon and a help.

The question was put and carried.

In Committee.

THE ATTORNEY GENERAL moved that the Council resolve itself into committee of the whole Council to consider, clause by clause, the following Bills:—

The Traffic (Amendment) Bill.

The Kerosene Oil (Repayment of Duty) (Amendment) Bill.

THE TREASURER seconded.

The question was put and carried.

Council went into committee.

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

The Kerosene Oil (Repayment of Duty) (Amendment) Bill was considered clause by clause.

THE ATTORNEY GENERAL moved that both Bills be reported to Council without amendment.

The question was put and carried.

Council resumed its sitting.

HIS EXCELLENCY informed Council that the two Bills had been considered clause by clause in committee of the whole Council, and had been reported without amendment.

THE ATTORNEY GENERAL moved that the two Bills be read a third time and passed.

THE TREASURER seconded.

The question was put and carried.

The Bills were each read a third time and passed.

ADJOURNMENT.

Council adjourned till 11 a.m. on Thursday, April 8th, 1937.

Thursday, 8th April, 1937

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Thursday, the 8th April, 1937, the Hon. the Colonial Secretary (A. de V. Wade, Esq., C.M.G., O.B.E.) presiding.

The President opened the Council with prayer.

ADMINISTRATION OF OATH.

The Oath was administered to—

Ex Officio Member:

C. H. Walmsley, Esq., M.C., M.Inst.C.E., Acting Director of Public Works.

Nominated Official Member:

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

Acting Elected Member for the Rift Valley:

E. Caswell Long, Esq.

MINUTES.

The minutes of the meeting of the 10th March, 1937, were confirmed.

PAPERS LAID.

The following papers were laid on the table:—

BY THE HON. THE ACTING ATTORNEY GENERAL:

Report of the Select Committee on the Income Tax Bill.

The Preparation of Registers of Voters (Amendment) Rules, 1937.

Report of the Meat and Live Stock Inquiry Committee.

Report of the Committee on the Working of the Resident Native Labourers Ordinance, 1925.

BY THE HON. THE TREASURER:

Report of the Standing Finance Committee on Schedule of Additional Provision No. 4 of 1936.

Report of the Board of the Land and Agricultural Bank of Kenya, 1936.

BY THE HON. THE DIRECTOR OF AGRICULTURE:

Report of the Select Committee on the Passion Fruit Bill.

ADJOURNMENT.

Council adjourned till 10 a.m. on Monday, the 19th April, 1937.

Monday, 19th April, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, the 19th April, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF OATH

The Oath was administered to—

Ex Officio Members:

G. Beresford Stooke, Esq., Acting Treasurer.

H. Wolfe, Esq., O.B.E., Acting Director of Agriculture.

Acting Elected Member:

Marcuswell Maxwell, Esq., Nairobi South.

WELCOME TO HIS EXCELLENCY

MAJOR CAVENDISH-BENTINCK: Sir, as this is the first occasion on which you are presiding over the Legislative Council of this Colony, I would crave permission of the Council to intervene for a few minutes in the normal order of the day.

I wish to do so in order that I may have the opportunity, on behalf of all the members on this side of the Council, to extend a cordial and whole-hearted welcome to Your Excellency and to Lady Brooke-Popham on your arrival in this Colony. (Applause.)

We all appreciate the great difficulties and responsibilities inevitably entailed in the task you have undertaken, but, Sir, we venture to express the hope that after a few months' experience you will have come to the conclusion that at least a few of the predicted complications are not in fact as real or as formidable as portrayed to you prior to your arrival. Notably we trust, Sir, that this will be your experience as regards this Council, as I have little doubt that you have been warned that one of the principal potential thorns in your side might be over-vocal Elected Members and stormy passages in this Council! (Laughter.)

Admittedly members on this side of the Council, being elected members, have on occasions been compelled to express the views of their constituents somewhat forcibly, and, confident as we are that your period of office will be marked by harmonious co-operation—(hear, hear)—and not variance, it would be unreasonable to imagine that differences of opinion as to methods will never occur again as between Government and ourselves. But, Sir, this does not mean that we can always expect to have our own way, and I can assure you that we will endeavour to retain breadth of vision and sense of proportion, and that when we are satisfied that our representations have been carefully considered and we are told that for good reasons you, Sir, and your Government do not see fit to agree with our point of view, you will find us neither unreasonable nor petulant. Our desire is not to hinder but to help, and you will not find us unmindful of the fact that in this Council all are assembled with the same thing in view, and that is the achievement of the greatest good for the future of our Colony. (Applause.) Given this spirit, I am certain that satisfactory solutions to the many intricate problems which lie ahead will be found.

In conclusion, Sir, I would express the sincere hope that when what we members hope will be a long, unbroken period of your sojourn among us has passed, both you and Lady Brooke-Popham will look back on the years spent among us as really happy years, spent among friendly people, and, under your wise leadership and guidance, you will look back on years of unprecedented advancement and prosperity. (Applause.)

ARCHDEACON BURNS: Your Excellency, on behalf of the natives I have the honour to represent, I associate myself entirely with the words of the hon. member regarding yourself and Lady Brooke-Popham.

MR. SHAMSUD-DEEN: Your Excellency, on behalf of the Indian community I very heartily associate myself with all that has been said by the hon. Member for Nairobi North (Major Cavendish-Bentinck).

I do not think there is any need for elaborating the point any further, but I

[Mr. Shamsud-Deen]

do wish to say this much: that Your Excellency has, in administering this Colony, one of the most difficult jobs in the British Empire. You have here, Sir, representatives of no less than three continents, but we are quite certain that with the one firm and sound principle of justice you will find that the difficulty is not as enormous as has been experienced by some of your predecessors.

I will conclude by saying that you will find the Indian community second to none in loyalty, co-operation, and sincerity, and all that they will expect of Your Excellency will be reasonable opportunities of taking part in the development of this beautiful land of ours. (Applause.)

SHERIFF ABDULLA BIN SALIM: Your Excellency, on behalf of the Arabs of the Colony and Protectorate of Kenya, I wish to associate myself with all that has been said by hon. members, and to extend to you on behalf of the Arabs a cordial and sincere welcome to this country of which you have been appointed Governor. (Applause.)

HIS EXCELLENCY: Honourable members, I thank you most sincerely on behalf of Lady Brooke-Popham as well as myself for the very kind expressions of welcome and sympathy which you have extended to me to-day.

I am well aware that there are many problems to be faced, but they are problems not only of surmounting difficulties but also of developing the great potentialities of our country. We all have our duties in this work: duties of initiation, of execution, and of criticism, but so long as we are all animated by one idea—the idea of the constructive development of Kenya and the welfare of its peoples—so long as we take that as our guide, use that as our basis of test, we can all foresee steady advance along the path of progress the end of which is still beyond our sight.

Again, honourable members, I thank you. (Applause.)

MINUTES

The minutes of the meeting of the 8th April, 1937, were confirmed.

ORAL ANSWERS TO QUESTIONS

QUESTION WITHDRAWN

On Question No. 19 being called from the Chair—

MR. BEMISTER: Sir, in view of the fact that since the time I asked this question the appointment has been made, I would ask your leave and the leave of the Council to withdraw the question.

With the leave of Council the question was withdrawn.

No. 20.—KIBIGORI-KIBOS ROAD

MR. HARVEY asked:—

Will Government be pleased to state what the present position is in regard to the provision of reasonable road facilities between Kibigori and Kibos, especially in view of the serious and frequent dislocation of transport on this important section of the main trunk road system?

THE ACTING DIRECTOR OF PUBLIC WORKS: In March, 1937, the Secretary of State informed this Government that the approval of the Lords Commissioners of the Treasury had been received to the reallocation of £5,500 from the provision made for the Jamji-Chemagel Lolgorien Road to construct a road from Kisumu to Kibigori.

In 1930 Government propounded a scheme for the construction of this latter road through the land owned by a certain company and this scheme was accepted by that company.

A re-survey of the original alignment of this road has been attempted within the last few weeks, but the company has now raised certain difficulties which cannot be settled until a communication is received from the company's board in Australia.

If the contents of this communication now awaited conform to the 1930 scheme, Government is prepared to put the work in hand as soon as possible.

MR. HARVEY: Arising out of that answer, Sir, in the event of the company continuing to be recalcitrant, will Government investigate the possibilities of an

[Mr. Harvey]
alternative alignment to supply this most essential link in our main trunk road system?

THE COLONIAL SECRETARY: That, I suggest, is a hypothetical question which Government would be well advised not to give a definite answer to at the present moment. It might be necessary to overrule the objections of the company. If so, we cannot raise an alternative in such an event.

INCOME TAX BILL.

SELECT COMMITTEE REPORT.

THE ACTING ATTORNEY GENERAL: Your Excellency, I beg to move that the report of the select committee on the Income Tax Bill be adopted.

Hon. members will remember that this report was tabled on the 8th of this month. A perusal of it shows that it is very full and comprehensive, and therefore it is unnecessary for me in moving its adoption to speak at any great length.

I wish to make my position clear at the very start, and that is, that in moving its adoption I shall only deal with the clauses to which reference is made in the report itself and, for the convenience of members, I had better say now that the clauses to which I shall refer are the clauses as renumbered in the reprint of of the Bill, a copy of which is in the hands of each hon. member.

The first clause to which I wish to refer is clause 7. By clause 6 the normal basic period of assessment is the 1st January to the 31st December in the year immediately preceding the year of assessment, and clause 7, as originally drafted, gave an alternative period where the taxpayer's year ended on a date prior to the 31st December in the year immediately preceding the year of assessment. In the case of coffee and other crops it was represented to us in select committee, or rather, we were informed, that the crop season ends somewhere about the end of March, and so we were asked to give a further alternative period, namely, to allow a taxpayer's financial year to end on a day during the year of assessment.

If hon. members will turn to Clause 7 of the Bill they will see that the latest date aimed at for the collection of the tax is the 30th of September, and while the select committee was in sympathy with this further suggested alternative period they could only meet that suggestion half way and allow a taxpayer's financial year to end not later than the 31st March. So hon. members will see that the 31st March is the crucial date inserted in clause 7 to deal with a further alternative period.

Now I come to the exemption clause, Clause 8. There are only two amendments here which I need mention. The first refers to new sub-clauses (r) and (s), which exempt the income of the Coffee Board under the Coffee Industry Ordinance, 1934, and the income of the Sisal Industry Committee established under the Sisal Industry Ordinance, 1934. The reason for the inclusion of these two exemptions is this: that the two bodies exist solely for the welfare of these two industries and they are in no way profit-making concerns. It was therefore felt only right that their incomes should be exempt from the tax.

The other amendment I wish to mention with reference to clause 8 is that one paragraph which appeared in the original draft has been deleted, namely, the paragraph which exempted the income of the Kenya and Uganda Railways Provident Fund from the tax. The reason for the deletion is that from enquiries made the select committee discovered that, apart from compulsory contributions to this fund, it is also possible to make non-compulsory contributions; in other words, voluntary contributions. Hon. members will see that, with regard to compulsory contributions, they of course can only be withdrawn on death or termination of employment, and that is all right. But with regard to voluntary contributions, they can be withdrawn at any time.

To have left this paragraph in clause 8 exempting the whole fund from the tax would have afforded a loophole of escape from the payment of the tax altogether; therefore that paragraph was deleted. That does not mean to say that the income of the compulsory fund

[Acting Attorney General]
will be taxed, because in paragraph (g) of the same clause there is power for the Governor to exempt, and if application is made with regard to the exemption of the income of the compulsory part of the fund it will receive careful consideration, and I think I can say it will be exempted.

Now I come to clause 10. That is the clause dealing with deductions which are allowed, and the clause has been extensively re-drafted.

Paragraph (c) of sub-clause (1) has been extensively amended, and the reasons for these amendments are contained on page 2 of the report of the select committee. I cannot do much better than to refer hon. members to that page setting forth the reasons for these amendments to paragraph (c) of sub-clause (1).

The other amendment in this clause is to sub-clause (2). The reason for that is set out fully on pages 4 and of the report, and there it is explained why the unrestricted allowance of £150 a year in the case of non-residents has been deleted.

Having deleted that allowance, we then had to consider the question of non-residents drawing widows and orphans pensions, and also the case of non-residents who draw pensions from funds to which they had been forced to contribute during their time in Kenya. These two classes of persons are specifically dealt with in paragraphs (a) and (b) of the first part of sub-clause (2), and to these persons a deduction of £150 a year is allowed.

Having specifically provided for these two classes of persons, then we had to consider the case of Government non-resident pensioners and also non-residents who draw small incomes from investments in Kenya, and, of course, there may be other cases which have not been brought to our notice. With regard to this class of persons, hon. members will see they are provided for in the proviso to sub-clause (2); that is, that the Governor in Council is given very wide powers to make rules to cover their cases. These rules will be laid before Legislative Council when they are drafted, and hon. members will thereby be afforded an opportunity of debating and considering those rules.

Now I come to a very important clause, 11, dealing with deductions which are not allowed. In this clause there are two minor amendments proposed, and one major one. The two minor amendments are to paragraphs (b) and (e), and the major one is in paragraph (c).

Paragraph (b), as originally drafted, only allowed a deduction in the case of expenses "wholly and exclusively" incurred in the production of income. Under that paragraph, as originally drafted, take the case of a business man who must use a motor car for his business and who also uses that car for pleasure. He would not have been allowed deduction for the use of the car. This the select committee felt was a hardship, and so paragraph (b) was re-drafted to omit the words "wholly and exclusively" and, in the example I have cited, that business man will now be allowed the cost of his motor car.

In paragraph (e) of the same clause as originally drafted, the cost of repairs to premises was not allowed as a deduction. Now, in the re-draft as suggested by the select committee, the cost of repairs will be allowed.

As to the major amendment in paragraph (c), in order to understand it it is necessary to turn to clause 19. This clause 19 is quite new. The pages of the report which deal with it are pages 5 and 6. This clause 19 allows a company or a registered co-operative society to build up a reserve fund by setting aside from its profits only such sums as to the Commissioner of Income Tax seems reasonable. But—there is a "but" in this, and I emphasize this—that reserve fund can only be used for a specific purpose, and that is for setting off against future losses. For instance, if in 1937 a company from its profits is allowed by the Commissioner to set aside £2,000 to this reserve fund, and if in 1938 the same company sustains a loss of £1,000, that company is bound under clause 19 as now drafted to take £1,000 out of its reserve fund and set it off against the loss of £1,000 sustained in 1938.

[Acting Attorney General]

There is another "but", and that is in paragraph (a), that the reserve fund must be kept in liquid assets. Under paragraph (c) of the same clause, if any sum of money is withdrawn from that reserve fund and is not utilized for setting off against a loss, then the sum so withdrawn becomes immediately taxable. Under paragraph (d), on the winding up of the company or on the reconstruction of the company, any sum remaining in that reserve will immediately become liable to the tax.

That is the explanation for the amendment in paragraph (c) of clause 11, and also the reason for the inclusion of this new clause 19.

Now I go back to clause 13, and there I would point out that in sub-clause (2) the year 1932 has been included in addition to the years 1933, 1934 and 1935. The inclusion of the year 1932 in clause 13 was pressed upon the select committee by several witnesses, and it was pointed out to us that on account of returns which had to be rendered under the Graduated Poll Tax Ordinance particulars of expenditure and income are available as far back as 1932. Hon. members will see from page 3 of the report that this matter was debated not once but several times in select committee, and it was only after considerable discussion that we agreed to include the year 1932. I only trust that time will prove the correctness of this recommendation.

Now, as to clause 17, which deals with dependent relatives. Sub-clause (2) of this clause has been entirely re-drafted. The reason for that was to remove an anomaly which existed in the original draft of the Bill. Under clause 16, which deals with deductions for children, a total deduction of £255 a year is allowed; that is, a maximum of four children. Under clause 17 as originally drafted and which was intended only to cover the case of dependent relatives, it would have been possible to obtain another £100 a year in respect of a fifth child, which would have been a total deduction of £355 a year, instead of £255 as was intended. In order to remove that anomaly sub-clause (2) of clause 17 was entirely re-drafted so that with the exception of two cases, that is a widowed mother of the husband or the widowed mother of the wife, the condition to entitle a taxpayer to the deductions allowed by the dependent relative clause is that a dependent relative must be incapacitated either by old age or infirmity.

Clause 18 deals with deductions in respect of life insurance and contributions to widows' and orphans' pensions funds and other such funds. Doubts were expressed to us in select committee as to whether a deduction would be allowed in respect of an employer's contribution as well as an employee's contribution, and in order to remove these doubts the words at the beginning of paragraph (b) have been inserted—

"shall, whether as employer or employee, have contributed"

to the various type of pensions schemes named

"there shall be allowed a deduction of the annual amount paid by him for . . . the annual amount of such contribution as aforesaid."

The proviso to clause 18 is new:—

"Provided that no deduction shall be allowed of any contribution made to any such provident fund unless such contribution is made pursuant to a statutory or contractual obligation to a provident fund under the rules of which such contribution may not be withdrawn from the fund except upon the death of the contributor or upon the termination of his employment."

The reason for the insertion of that proviso was to close the same loophole of escape which I pointed out when dealing with the Kenya and Uganda Railways Provident Fund, the loophole of escape afforded by voluntary contributions.

I now pass on to Part IV of the Bill. The only clauses with which I need deal are clause 21 and sub-clause (3) of clause 24.

In clause 21 as originally drafted a sliding scale of rate of tax was applicable to companies as well as to individuals. It was pointed out to the select committee that if a sliding scale of tax were maintained with regard to companies it would be very difficult, in fact almost impossible,

[Acting Attorney General]

to ascertain the proper rate of tax to be deducted from interim dividends, and in order to do away with the difficulty we substituted a flat rate tax of Sh. 2 in the £.

In sub-section (3) of clause 24 provision has been made making it incumbent on a mortgagor to forward the Commissioner's certificate to the mortgagee for payment of the tax on mortgage interest. I might add that if the mortgagor fails to carry out the provision of that sub-clause he is liable to penalties under clause 82 of the Bill.

I make a big jump now to clause 33, which deals with the payment of the tax on the estate of deceased persons. It has been re-drafted in order to make it quite clear that the personal representative of the estate of a deceased person only pays tax on the estate of such person up to the year in which death occurred. As originally drafted, this clause appeared to us to convey the meaning that the tax was also payable in the year next succeeding the year in which death occurred. In order to remove that doubt this clause 33 was re-drafted in its present form.

Now I come to the farmer, in clauses 36, 37 and 38. I have just noticed a misprint. Clause 37 consists of four sub-clauses, of which (2), (3) and (4) are numbered and (1) is not. On looking at the schedule to the report of the select committee, I find that there it has been numbered, so it is not necessary to move an amendment.

Clause 37 has been almost entirely, or very extensively, re-drafted, and further concessions have been allowed. This clause deals with special deductions allowed to farmers. Hon. members will remember that in the original draft of this Bill the concessions allowed to farmers under clause 37 were in respect of the cost of dipping tanks, the cost of new fencing, the cost of measures for the prevention of soil erosion, and also the cost of rotation planting of sisal. Those were the four specific deductions allowed under sub-clause (1).

The first three deductions remain without amendment, but the fourth, the rotation planting of sisal, has been enlarged, because we felt in select committee that if the cost of rotation planting of sisal were allowed why should not the rotation planting of other permanent or semi-permanent crops equally be allowed? In order to be quite fair, paragraph (d) was re-drafted to cover not only sisal but permanent or semi-permanent crops as defined in clause 2 of the Bill.

Having dealt with these matters, the importance of the conservation and distribution of water was pressed on us. With that suggestion we agreed, and so paragraph (e), which is wholly new, was inserted, and it gives a further deduction for the cost of conservation and distribution of water in respect of dipping tanks or new fencing put up or approved measures taken for the prevention of soil erosion.

It was also pointed out to us that it is important in a Colony like this to encourage the importation of pedigree stock, and so paragraph (f) was inserted, which allows a further deduction with regard to such stock imported in this Colony.

Sub-clause (2) gives a farmer the option of setting off an annual sum against his profits for the purpose of getting back the initial cost of planting up his farm and also the cost of clearing or reclaiming his land. But I would emphasize this: if he does claim the deduction allowed by sub-clause (2), he cannot claim the deduction allowed under paragraph (d) of sub-clause (1).

A further concession to the farmer is given in sub-clause (3), that, if having elected to come under sub-clause (2) he wishes to change his mind, he can do so if he is able to satisfy the Commissioner that it is reasonable for him to change his mind. Having done so, he may change from sub-clause (2) and come under paragraph (d) of sub-clause (1).

Before I leave agriculture, I would refer hon. members to the new proviso to sub-clause (3) of clause 38. This provides that when the Commissioner is satisfied that—

"the sale of any stock is in the nature of a capital transaction and that the money received therefrom has been expended in purchasing stock of a different kind or on purposes essential to a change over from one type of framing to another type of farming, he

[Acting Attorney General]

may exempt the money so received and expended from being taken into account as part of the income of such farmer."

In other words, if a sheep farmer wishes to change over to cattle farming and, having sold all his sheep, utilizes the money received from the sale in buying cattle, then that money is not liable to tax.

Now as to insurance companies.

Hon. members will see that a new proviso has been added to clause 40. As originally drafted, the method of taxing insurance companies was one only, and that was on the premium basis. By the terms of this new proviso—

"In the case of an insurance company having its head office outside the Colony, the Commissioner may, by regulation, substitute some basis other than that herein prescribed for the purpose of ascertaining the portion of the income from investments to be so charged as being income derived from business carried on in the Colony."

I am unable to say now what regulations will be made, but before they are made I can assure hon. members that they will receive most careful consideration and, without in any way attempting to bind the Commissioner, it is possible that he may decide that a fair basis for the assessment to income tax of a life insurance company operating in Kenya will be to apportion the total invested income by reference to the ratio of liabilities, actuarially calculated, in respect of the Kenya business to the liabilities in respect of the company's whole business.

So much for insurance, and that brings me to the end of the most important amendments suggested in the select committee's report.

There are only three other clauses to which I need refer. The first is clause 51, which deals with notice of chargeability and returns. Sub-clause (2) has been redrafted, and deals with the case of a person who receives a notice from the Commissioner, say, at the beginning of April, in which he is given one month to supply his return of income, and who, within a few days of receiving that notice, is going on leave from the Colony. In such a case that person must supply his return to the Commissioner within one month of returning to the Colony, or, if he is going to be absent for more than twelve months, then within twelve months of the date he left the Colony.

The second of the three further amendments is contained in clause 69, which deals with local committees. In this clause three more sub-clauses have been added, (2), (3), and (4). New sub-clause (2) gives the local committee power so that if it is satisfied that the appellant is overcharged it may reduce the amount of the assessment by the amount of the overcharge; if, on the other hand, it is satisfied that the appellant is under-charged, it may increase the amount of the assessment by the amount of the under-charge. In other words, the local committee is given exactly the same power that a judge of the Supreme Court has under subclause (5) of clause 70.

New sub-clause (3) of clause 69 is analogous to sub-clause (2) of clause 70, which deals with Supreme Court procedure, and it gives every person appealing the right to appear either in person or by agent, and also provides that if a local committee is satisfied that an appellant cannot appear due to sickness or absence from the Colony it may postpone the hearing of the appeal.

The last clause to which I wish to draw hon. members' attention is clause 90, which gives extensive powers to the Governor in Council to exempt any person or any class of person from any of the provisions of this Bill.

Now, Sir, before I sit down, there are only two other observations that I wish to make.

In a Bill of this kind, which deals with a complicated matter, it is practically certain that after it has been in force for some time amendments—I hope not extensive ones—will be necessary. That has been the experience of every country which possesses income tax legislation. It is only possible to find out what these amendments will be after the Bill has been in force for some time. I can assure

[Acting Attorney General]

hon. members that if, when the Bill has been working for some time, any alleged defects are brought to the notice of Government, they will receive the most careful consideration, and if in fact they are found to be defects amending legislation will be introduced in due course.

Finally, I wish to offer my personal thanks to all the members of the select committee who worked so hard to achieve unanimity on this most difficult piece of legislation, and also to those members of the public who, either by appearing as witnesses or by submitting memoranda, greatly assisted the select committee in its deliberations. In particular, I wish to pay a tribute to Mr. A. A. Lawrie, who not only appeared as a witness but came forward on several occasions and gave us the benefit of his extensive knowledge on company matters.

THE ACTING TREASURER (MR. STOOKE) seconded.

MR. MAXWELL: Your Excellency, to one who realizes the enormous amount of work the select committee has put in and has listened to the very able speech of the hon. and learned Attorney General, it may seem unnecessary to bring forward further points, to ask for further consideration for those already dealt with. Here I should like to express my appreciation of the great assistance given to witnesses by this committee, and the unremitting care with which they considered every point put up to them by any witness. However, it appears to me that there are one or two points that require further consideration.

The first point I want to refer to arises out of clause 5 (*b*), the second paragraph, in the Bill as finally drafted. This subclause provides that passage allowances to employees shall be taxed. To my mind, one small point arises from that. These passage allowances are taxed, according to this provision, in one year, but in actual fact such allowances accrue in the years for which the passage is granted. It can well be seen that this may prove a considerable hardship to employees who get passages, for the amount of the passage to England and back for a man and his family may well prove to be a very big sum in proportion to the salary he is drawing and may well raise his taxable income for that year up to such a point that it will come into a higher taxable scale.

On the other hand, if an employee is allowed to spread such an allowance over the years during which he accrues the passage allowance, when it comes to being taxed he will be much less affected. Again, under the Bill as it is drafted now, the employee will have to pay the tax on this allowance the year after he has been home. I do not think I need remind the Council that the year after anyone has been home is a grim one financially! (Laughter.) I therefore suggest that an employee entitled to passage allowance should be allowed to spread that allowance for taxation purposes over the years for which the passage accrues.

I agree that the principle of selection must be allowed, for while there are many employees able to calculate exactly what passage allowance is coming to them, on the other hand, in the commercial world and in farming, many employees do not know what will be their position or that they will get such passage allowance.

My second point arises under clause 12, and is dealt with on pages 2 and 3 of the report of the select committee. It is the question of depreciation on buildings. I note in the committee report that this point was very fully considered and that they could find no precedent where depreciation of buildings had been allowed. I can quite understand that in an old country such as England, where buildings are built in a permanent manner, depreciation, if any, is infinitesimal and therefore it would probably be unnecessary to allow any depreciation. But conditions in a country such as this are completely different.

This country, as regards buildings, has hardly reached the Stone Age! Many, if not most, buildings are of a temporary nature, constructed cheaply of cheap materials, and, where stone has been used, in many cases cheap mortar was used. Industries have been unable to afford to put up more permanent types of buildings, nor, I submit, were they justi-

[Mr. Maxwell]
fied in the early days of their businesses in doing so. Furthermore, I would point out that deterioration of buildings is greater in a country such as this than at home. Here we have to face ravages due to climate, ravages due to insects, and ravages due to the ill-handling of buildings by untrained native labour. All these factors lead to very vast depreciation.

I admit that precedent is a very nice thing to have behind one, but I submit there are many cases where one must break away from it. If you read the last paragraph but one of the committee's report you will see this is admitted, and I suggest that this is one of the cases where precedent must be broken away from and that we must allow such depreciation.

Finally, I would observe that the select committee in the paragraph dealing with this subject have stated that depreciation is allowed on buildings which are incidental to machinery and that the case, therefore, of industrial organizations is met. As I read the provisions of clause 10 (c) I note—and I think this is borne out by reading the report of the select committee—that replacement of buildings is only allowed in cases where the machinery itself is actually replaced. Where a building is replaced without the machinery being replaced, no such replacement is allowed. I think, therefore, there is a strong case for depreciation of buildings in a country such as this.

There is another point arising under depreciation which I have been asked by several of my constituents to bring up and which the Nairobi Chamber of Commerce is very much in favour of. That is the question of short leases.

These leases are expiring and their value is consequently depreciating each year. Such depreciation is therefore definitely a commercial loss, and any prudent man allows for this in his balance sheet. If a case such as this can be substantiated such depreciation should be allowed when it comes to a question of income tax.

I should like to add in connexion with these two matters that I very much doubt whether any auditor would pass any balance sheet which did not show depreciation to cover both buildings and leases in this country as a definite loss.

The next point that arises is under clause 13 (2) of the Bill, and it is referred to in page 3 of the report of the select committee. The hon. the Attorney General has also just referred to it. I refer to the question of the years 1932 to 1935 being allowed when carrying forward losses.

The principle is rightly admitted that losses made in any year which exceed the profits made in that year may be carried forward up to five years, and it is logical, therefore, in a Bill such as this that five years back from this year have been included. But the Attorney General has pointed out that unless a man is able to produce his books for the whole of these years, including 1932, he is debarred from claiming on his losses for any of these years.

I do submit that this is a great hardship and quite unfair as regards the year 1932. In 1932 nobody knew, anyhow definitely, if income tax or poll tax would be levied in 1933. In 1932 the depression probably hit people harder than in any other year, and accounts were not kept fully in consequence. Many people may find—and these are the smaller people—that they cannot produce their books for that year.

I do submit, therefore, that a proviso should be added to enable the Commissioner to allow a man to bring in his losses from 1933 to 1936 and not to worry about the year 1932 when he is satisfied that, genuinely, no books were kept for that year. (Hear, hear.) I would point out that 1932 was probably the worst year of the depression, and it is very doubtful whether many people made profits that year, but the Commissioner can go a long way to satisfy himself that a man has not made profits when he claims he was unable to keep books and made losses for that year. As you know, in 1933 the poll tax came in, and I understand the Treasury still have records of all payments made by individuals of that tax. Under that particular Ordinance, a minimum amount of Sh. 40 or Sh. 30 had to be paid, and when the income of a man reached the £100 mark he came on to a

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sliding scale. I do suggest that if the Commissioner looks up those records and finds that an individual only paid the minimum tax he can feel that the Revenue Officer at that time was satisfied the individual had not made sufficient profit to pay more. I suggest that if Government did lose the tax on a few hundred pounds it would not make very much difference to the receipts from this Bill.

I do not want, however, anything I have said on this point in any way to suggest that I feel the year 1932 should be cut out, but that a fair and equitable proviso on the lines I have suggested should be added.

The next point arises under clause 19 of the new draft Bill, and this is commented on on pages 5 and 6 of the report and has been touched on by the hon. the Attorney General. I refer to the question of companies being allowed to put certain sums to reserve.

In my opinion, this is a very wise move and will help all companies in this country in many ways. I think that one of the biggest lessons we have learnt from the last slump is how difficult it was to put one's house in order at the beginning of a slump, and without a doubt many companies were just on the verge of going under because they had not sufficient reserve to carry them over until they could readjust their expenditure.

But I find it very hard to understand why such a provision should be applied to companies and to co-operative societies and not be extended to businesses owned by private individuals or partnerships. I see no reason, where a business is kept as a separate entity, with a separate set of books and a separate balance sheet, why such provision should not be extended to it, even though such a business is owned by a private individual.

I am told that the remedy of the private individual is this: that he can incorporate his business. That may be so, but it is an extremely expensive thing to do by the time you have paid the company fees, the lawyer's fees, and the tax on the transfer of taxable property to such a company. In most cases it makes it probably not worth an individual's while to incorporate. I can appreciate that some slight difficulty might arise in that an individual is taxed on a sliding scale and that when it comes to withdrawing any sum of money from such reserve created it may be difficult to know what rate that sum should pay, but I do not think it would need much ingenuity to find a method whereby the Commissioner can ascertain, when he allows such a reserve, what tax should be paid.

I do suggest this is a matter for grave consideration, and that such facility should be extended to the private individual who keeps his business as a separate entity and has a balance sheet and profit and loss account audited by an auditor as a separate entity.

The only other point I wish to bring up and ask for an assurance from the Attorney General arises under clauses 37 (1) and (2) of this draft Bill and which is discussed in the report on page 7.

Permanent and semi-permanent crops, when it comes to accountancy, are covered in two ways, as regards the cost of planting and the cost of field work. Some individuals, when it comes to the question of rotation planting, charge all expenses in connexion with it direct to the revenue account. Others prefer the alternative method, which is to charge all expenditure in connexion with field work to a development account and then to redeem that development account against the produce of the fields up to such time as the profits from these fields has been exhausted.

When carrying out rotation planting, such planting may be carried out on a reclaimed area which has already borne one rotation of that crop, or it may be carried out on a fresh, virgin piece of land. Usually, until an estate has completed planting the full area it intends to handle, such rotation planting is carried out on fresh land. In many cases, estates have found the old land is not satisfactory for their crops and are forced to go on to fresh land, and therefore it is essential that planting on fresh land as well as reclaimed land should be included under clause 37 (1) (d).

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But certain of my colleagues have represented that sub-clause (2) might be read as qualifying 37 (1) (*d*), and that because provision is made in it for the cost of clearing and reclaiming land it might be held that clause 37 (1) (*d*) only refers to planting on reclaimed land. I had some slight part in drafting this clause, and I thought it was quite clear that there was no connexion between 37 (2) and 37 (1) (*d*), but in view of the fact that my colleagues, who know more about it than I do, interpret the Bill in this way and feel there is a distinct possibility of (2) being considered as qualifying the other, I would ask the Attorney General whether there is anything in this or not, and to tell us definitely that clause 37 (1) (*d*) applies to rotation planting, whether carried out on reclaimed land or fresh virgin soil.

I should like to give notice, Sir, that amendments covering these various points will be put forward in due course, with your permission.

Council adjourned for the usual interval.

On resuming:

MR. WALLACE: Your Excellency, there is only one portion of the report, the adoption of which has just been moved, to which I would like to draw the attention of Council. That is the portion which deals with the allowable deductions in cases of non-residents.

The select committee after much deliberation came to the conclusion that to allow £150 in respect of every non-resident was somewhat generous, and accordingly they have recommended that clause 16, which contained that provision, should be deleted. It is unnecessary for me to go into the reasons which prompted the committee to suggest this recommendation, as these are fully discusesd on page 4 of the report. I might, however, remark that although they have suggested that the general provision should be deleted, they have, as the hon. the Attorney General pointed out, also suggested that wide powers be granted to the Governor in Council empowering him to make rules to deal with hard cases.

From a reference to clause 28 (1) of the Bill it will be observed that in assessing the chargeable income of a non-resident he shall be treated in like manner as if he were a resident. But to that bald statement there was a proviso to the effect that the only allowable deduction in respect of a non-resident was the deduction of £150 provided for under clause 16. At first blush it would therefore appear that if clause 16 were to be deleted the natural corollary of doing so would be to delete the proviso to clause 28 (1), and this is, in fact, what the select committee have recommended.

The effect, however, of deleting that proviso is that a non-resident is governed by clause 28 (1) as it stands, under which, as I have stated, he is to be treated as if he were a resident; in other words, a non-resident would be entitled to make the various deductions under clauses 14, 15, 16, 17, and 18, and also, if he were a non-resident deriving income from farming operations in the Colony, he would be entitled to make deductions under the special farming clause 37.

While the select committee intended that if a non-resident derived his income from farming operations in the Colony he should be allowed the deductions under clause 37, clearly they never intended that he should also be allowed to receive the benefit of clauses 14 to 18. If, therefore, the intention of the committee is to be carried into effect, it will be necessary to make a small amendment to their report providing that clauses 14 to 18 are confined to residents only.

The simplest method of doing this, I suggest, would be by inserting a proviso to clause 28 (1) debarring non-residents from the advantages of these clauses, and accordingly I beg to move:—

"That paragraph 19 of the Schedule to the report of the select committee be amended—

(*a*) by deleting sub-paragraph (*a*) thereof; and

(*b*) by deleting the full stop at the end of sub-paragraph (*b*) thereof and adding the following immediately after the word 'thereto':—

'and substituting therefor the following proviso:

'Provided that in the case of any individual who is not resident in the Colony no deduction shall be allowed under sections 14, 15, 16, 17, or 18 of this Ordinance.'"

[Mr. Wallace]

THE COLONIAL SECRETARY seconded.

The question of the amendment was put and carried.

The debate on the motion as amended was resumed.

LT.-COL. KIRKWOOD: Your Excellency, I shall not detain the Council very long, but there are two or three points which I made on the Income Tax Bill in its earlier stages to which I should like to refer this morning, bearing in mind that we are now discussing the report of the select committee on the Bill now before the Council. I wish the hon. the Attorney General to note that I will give him notice now of amendments to be moved to-morrow.

I wish to refer to clause 12 of this Bill, and what I say concerns the question of depreciation of buildings, a matter on which I spoke before, which has not been allowed. I maintain that conditions in Kenya are not the conditions in England or any other of the older colonies. Although we term our buildings permanent, or thought they were when erected, we find after years of experience that had we had the cash available and the material available they might have been permanent, but probably 50 per cent of the buildings in this Colony are definitely not permanent. I maintain that it is only fair and equitable that there should be an allowance for depreciation.

Every business man is in the habit of allowing for depreciation in his own balance sheet. We were told there was no precedent. All I can say that we should establish one. After all, precedents have got to be established, and I can see no reason why we should not establish one in Kenya and not give older countries the monopoly. I suggest to the Attorney General that a slight alteration could be made to clause 12 by the insertion of the words "and depreciation" after "wear and tear". The amount that should be allowed is 2½ per cent, but that is for consideration. All I am now asking is that the question of depreciation shall be considered before the close of the debate to-morrow. I am told they do allow depreciation on factory buildings in England at the rate of 2½ per cent, and I am perfectly certain that the average buildings in Kenya, more especially in the up-country districts, are not as stable or as permanent as the average factory buildings in the old country.

Again, Your Excellency, the principal property at home is freehold, and when I say that I am aware there are leasehold properties in England as well, but the great majority of the title deeds are held on a freehold basis, whereas practically the whole of the properties in Kenya are held on a leasehold basis. It must therefore stand to reason that at the expiration of a 99 years lease the building on the land has got to be written down at least 50, if not 100, per cent, and the leaseholder is not aware whether the terms of the lease will be renewed, if renewed at all. It is a problematical question, and should be taken into consideration.

With reference to clause 36, which deals with agriculture, I did suggest in a previous speech that agriculturists should be exempt from making returns for a period of five years. I do not see that embodied in this Bill. I have no doubt that we shall be told that it will be difficult to define the meaning of the word "agriculturist". Well, I can try and help by saying that if you can define planters as coffee planters and sisal planters, all the others who come outside the range of that definition could be held to be agriculturists!

I believe that experience of the non-native graduated poll-tax showed that an amount of £2,000 was paid by the whole of the agricultural industry. Admitted that it is a very small amount, but what I know to be a fact is that as a result of this Income Tax Bill farmers as such invariably do not keep accounts. They are farming on their own account. They will, however, now be compelled by circumstances over which they have no control to keep proper sets of books, and it will be within the knowledge of this Council, knowing the farmers as we do,

[Col. Kirkwood]

that they are incapable of keeping proper sets of books.

That is a specific job. It means that a farmer will have to employ a chartered accountant, who will not keep any set of books, no matter how small they may be, for under £15 or £20 a year. It is that amount which would be a saving to a farmer if we exempted him for five years and allow him to get on his feet and make some recovery from the last seven years of depression which the farming community, plus everybody else, has been facing in this Colony.

I pointed out previously that it is not that the average farmer will pay income tax, but he will definitely have to spend £15 or £20 a year to prove that he is not liable to pay the tax. I see no sense or justice or equity in imposing that obligation on him under the present circumstances. I hope that matter will be given consideration to, and will be answered to-morrow.

Now, Sir, I should like to turn to clause 70, which is something I have spoken on before. I do not think it was the intention of the select committee to include sub-clause 11, the appeal to the high court. I take it the appointment of these local committees was to help the small man and prevent litigation between himself and the Commissioner. I think the appointment of these committees will certainly meet that object, but I do maintain that their decision should be final.

Under clause 70 (11)—

"The Commissioner may, if he is dissatisfied with the decision of a local committee, appeal against the decision to a judge," etc.

enefits are going to accrue from the ppointment of local committees by their dgment on the minor cases that will me before them, but the ground will cut from under their feet if sub-clause l) remains and destroys any value from eir appointment at all. It will invariably an that if an appeal is made to the h court by the Commissioner, the poor agriculturist will foot the bill and the money demanded because he will be able to take his case to the high rt. Then it becomes blackmail.

I do hope the Attorney General will agree to delete sub-clause (11). In my opinion, if that is done, it will meet the objections I have to this sub-clause. That does not mean that I am not prepared to take any other alternative or suggestion that will have the same object in view.

There is just one question I should like to ask before I sit down. Could the hon. the Attorney General tell us what is the position as regards natives under the Bill before the Council?

I am well aware that this Bill is not a racial matter, but I am exercised in my mind to know whether many wealthy native chiefs and others in this Colony—who are really wealthy in the form of cattle, etc.—will come under this Bill, and whether it is the intention of Government to impose income tax on those who are in a position to pay it, and who should pay it according to the first clause of the Bill.

Before sitting down, Your Excellency, I should like to say that I appreciate the form in which this Bill has been presented. Of course, like everybody else, I do not believe in any taxation! But if we have to have income tax I believe the Bill before Council is a reasonable one. What everybody fears is that once it becomes law there is a danger of an alteration in the rate. I would like to express here and now that I hope that during Your Excellency's term of office these rates will not be tampered with.

MAJOR GROGAN: Sir, my intention is to oppose this motion for the adoption of the committee's report.

We began this discussion on income tax in the form of a glorification of the principle of income tax, and it has now drifted into a very extensive apologia of the tax and an enormous multiplication of expedients whereby the incidence of income tax is denied to a very large proportion of the population of the country.

This document before us is extremely interesting in that it is a candid admission of the innumerable difficulties of the application of this glorious principle of income tax to a country such as this, and is also a clear recognition of the number-

[Major Grogan]

less inequities and, I may say, iniquities, involved in attempting to apply the principle of income tax to a country in an embryonic stage of development and with a mixed population.

It began, of course, with the excuse or the allegation that there was a budgetary need. That was challenged, and the excuse was withdrawn. It was then resurrected with an entirely different complexion, as necessary to alleviate taxation in respect to one of the sections of the community, and its retention on the legislative programme involved the flat turning down of the carefully considered opinions of three of the senior Civil Servants of the country—the Colonial Secretary, the Treasurer, and the Chief Native Commissioner.

Eventually it remained in the picture with the acquiescence of certain members on this side of the Council an subject to a proviso laid down by themselves: that because logic and reasoned argument have ceased to prevail, therefore they accept this measure.

Now, Sir, surely it is not unreasonable to describe the measure at this juncture as an ill-omened measure born in an atmosphere of suspicion and strife, and I am perfectly convinced it will continue as such and eat its way like a maggot into this apple during a very large portion of your reign. Contrary to what has been alleged elsewhere, there is a mass of opinion against the introduction of income tax at this stage——

THE COLONIAL SECRETARY: On a point of order, Sir, is the hon. member discussing the report or discussing the principle of income tax? If he is discussing the report, may we know what page or section of it or what paragraph he is discussing?

MAJOR GROGAN: I am leading up to an amendment which I beg leave to move.

There is at the present time, there has been throughout, a very large opinion against the introduction of this measure at this juncture. All of the European elected members were unanimous in opposing the introduction of this measure at this juncture and asked for an international conference on the matter. They were also unanimous in opposing the introduction of this measure until the arrival of Your Excellency, so that you might have an opportunity of studying the position and considering the implication of a measure the effects of which would transpire during your reign. The Arab members were unanimously against it. One of the Indian members was entirely opposed to it, and said so in this Council. And I say, without the slightest hesitation, that except for the measure of acquiescence under duress there is, to all intents and purposes, unanimous opinion against the introduction of the measure at this juncture. There is, I believe——

THE ACTING ATTORNEY GENERAL: On a point of order, Sir, may we know what clause in the report or paragraph of the report or paragraph of the schedule the hon. member is referring to?

MAJOR GROGAN: Certainly, Sir—clause 11. (Laughter.)

I was going to say, on the Government side of the Council there cannot really be any genuine enthusiasm, for the simple reason that they have been afforded every opportunity of explaining the benefits that inhere in this measure and so on and so forth, but no sort of case has been put up of any kind or description. Therefore I am safe in saying that there is virtually a unanimous opinion against the introduction of this measure at this juncture on both sides of the Council.

The one main objection—a great many others have, of course, gradually transpired as a result of examination by individuals and bodies of its actual application—but the main objection to my mind is this: that in a very large number of——

THE ACTING ATTORNEY GENERAL: On a further point of order, Sir, if the hon. member is referring to paragraph 1 of the report that paragraph reads as follows:—

"On the 8th day of March, 1937, we were appointed a select committee to consider and report upon a Bill to

[Acting Attorney General]

impose a tax upon incomes and to regulate the collection thereof."

MAJOR GROGAN: By way of explanation, I was referring to clause 1 of the Bill!

THE ACTING ATTORNEY GENERAL: Well, clause 1 of the Bill is not mentioned in the report of the select committee.

MAJOR GROGAN: Surely the Bill as a whole is the subject-matter of the report of the committee? Am I still in order, Sir?

HIS EXCELLENCY: We are discussing the report of the committee.

MAJOR GROGAN: Certainly, but the report of the committee is on the Bill as a whole and suggesting certain amendments, and we are now presented with a Bill, the third reading of which we are now considering, and therefore anything involved in the Bill is relevant to the issue we are discussing and any amendment to the Bill now is in order.

THE ACTING ATTORNEY GENERAL: The hon. member is entirely wrong. This Bill was reprinted for the convenience of members, and is neither attached to the report nor referred to in the report. The only matter we are now debating is the document I hold in my hand, the report of the select committee, and I emphasized this at the beginning of my speech in moving the adoption of the report.

MAJOR GROGAN: Am I to understand that no amendment to the Bill on its third reading is admissible unless there is some reference to it in the report?

THE COLONIAL SECRETARY: I would emphasize the fact that the principle of income tax has been admitted and the Bill has passed its second reading. We are now discussing the report on the method and application of that principle, and I suggest that the hon. member is entirely out of order in discussing the principle in any shape or form.

HIS EXCELLENCY: I think the hon. member wished to move an amendment to the report, and he should confine himself to that.

MAJOR RIDDELL: May we have that amendment, Sir?

MAJOR GROGAN: It is an incredible position when one cannot move an amendment when the report itself suggests all sorts of amendments to the Bill.

MAJOR RIDDELL: On a point of order, the hon. member said he was preparing to move an amendment?

HIS EXCELLENCY: If the hon. member will speak to that?

MAJOR GROGAN: I was leading up to the amendment I wish to move, and if I am not in order I had better not go on with it, because I do not know what I am doing. If any member of the committee can move an amendment surely anybody else can.

HIS EXCELLENCY: We are waiting for your amendment.

MAJOR GROGAN: I am sorry, Sir, but I was interrupted.

I was going to say that in so far as these proposals are concerned and in the various clauses of the Bill, most specific suggestions have been made, so that this Bill involves not only taxation of income but here, there, and everywhere throughout it the principle of taxation on capital. That is perfectly clear in respect of the question of the exemption of redemption funds and depreciation of buildings.

That has been referred to in detail by colleagues on this side of the Council, and I do not wish to press the matter very far, but I would draw Your Excellency's attention to the fact that there is in this country, as has already been pointed out, the leasehold system. A number of leases are short in their period, some only 30 years, and a very large proportion are now expiring. It has also been the practice in this country in a very large number of cases to give permits to erect temporary buildings which are liable to be pulled down at the dictate of some functionary practically without notice.

Quite obviously, every one of these buildings which are temporary and short or long leases or leases for indefinite periods, represent so much capital. If you do not put on one side a sufficient amount

[Major Grogan]

to cover the extinction of that capital at the end of the period when you have any right to that property, quite obviously any tax on that amount you should put aside is a tax on capital and not on income. I say without hesitation, that the effect of the Bill will, here, there and everywhere, be a tax on capital. It is no use telling me it is done in England, because I know it is, but there it is perfectly well recognized to be a tax on capital, and if it is intended to be a tax on capital here why not say so in the Bill?

It is quite clear, from everything said about it—first from its apologia from my hon. friend the Attorney General and various comments on this side of the Council—that the measure is by no manner of means a perfect measure, even for the purposes of applying this so-called principle to this country. It requires, in my humble opinion, a large number of business men who understand the implications of an income tax measure to give it a large amount of additional consideration, and I suggest that that consideration should be given in conjunction with the other territories that ultimately, we are told, will be equally involved.

It is absolutely impossible to have a watertight-compartment Bill if it is going to function properly. We have been told that some kind of spy system is going to be introduced, or some other lamentable system, in contiguous territories to stop the evasion of this tax. If that is so, and it is a matter of common knowledge that the acceptance of this measure can only be justifiable if it is applied to all territories, surely the obvious thing is that its incidence should be deferred until they all come in together and there is proper consideration of it.

I therefore do suggest to you, Sir, that as you have had no responsibility in this measure up to date, and it is obvious even in this debate which you have listened to that there are still grave difficulties in its application and grave objections to it, you should press for this matter to be deferred until the thing has been considered in relation to the other territories.

There is another very good reason for that: that we are now well advanced in the year while the matter has been under discussion, and in all large serious businesses of plantations, farming, and others a large amount of preparatory work has got to be done in the reorganization of staff, the introduction of book-keeping systems and the reorganization of book-keeping systems, in order to prepare for every activity in connexion with the incidence of this form of taxation.

Therefore, every justification exists in my opinion for deferring the application of this Bill, for a short period anyway. There is no possibility of suggesting that there is any budgetary necessity for the measure at the present time. The total amount budgeted for under the measure is quite trivial, and revenue, as everybody knows, is pouring in through every channel and will continue to do so on a rapidly rising commodity market. The idea that the measure has any budgetary significance has long since been exploded in the minds of everybody.

There is thus no real justification for it, and every reason dictates that application should be deferred until it has been brought in collectively for all the territories. It will then be very easy, on further examination, to reject it altogether in respect of the whole lot of them! And I do suggest that this atmosphere of duress should be removed.

It is a very insulting beginning to your reign, Sir, when the whole country feels it has been bulldozed into this lamentable thing by methods that are highly questionable. That is the general opinion, which may be justified or not. It should therefore be put off for a few months' further consideration until it is made a uniform measure through these territories. That is a reasonable suggestion, and for that reason I propose to move the following amendment in respect of clause 1 of the Bill:—

"That clause 1 be amended to read: 'This Ordinance may be cited as the Income Tax Ordinance, 1937, and shall come into operation on the same date as the application of similar measures in Uganda, Tanganyika Territory, and Zanzibar.'"

THE ACTING ATTORNEY GENERAL: On a further point of order, Sir, the hon. member is moving an amendment to a clause of the Bill which is not referred to in the select committee's report. He is entirely out of order in moving this amendment.

MR. WRIGHT: On a point of order, does this decision by the hon. the Attorney General imply that if any particular clause is omitted in a report vital to a Bill it cannot now be amended? I want to know in respect of clause 44, concerning which the select committee have ignored representations, and no grounds for doing so are given.

SIR ROBERT SHAW: On a point of order, I would suggest that the hon. member, Major Grogan, put himself in order at once by moving something to this effect: "That the schedule to the report of the select committee be amended by the inclusion of the following amendment to clause so-and-so of the Bill." He is then moving an amendment to the report of the select committee, and if put in those words it will be perfectly in order.

THE ACTING ATTORNEY GENERAL: If the hon. member does that, of course, he is in order, but he is not in order in moving an amendment to the Bill.

MAJOR GROGAN: I accept with gratitude the explanation of what I ought to do. I am rather ignorant of procedure and somewhat intolerant of it! The suggested amendment meets the purpose, and if it is given effect to in the proper way I hope I shall be allowed to do so. I am grateful to anybody who puts me in order now that they understand my intention, and I move the amendment in the terms provided for by those more expert in procedure than I am:—

"That the schedule to the report of the select committee be amended by the inclusion of the following as paragraph 1:—

'1. That clause 1 of the Bill be amended as follows: '1. This Ordinance may be cited as the Income Tax Ordinance, 1937, and shall be deemed to have come into operation on the same date as the application of similar measures to Uganda, Tanganyika and Zanzibar.'"

MR. WRIGHT: I beg formally to second.

THE COLONIAL SECRETARY: I take it, Your Excellency, that the amendment proposed to the report is as the hon. member Sir Robert Shaw has said, that the report be amended by an addition which provides that this Income Tax Ordinance shall not come into operation until similar legislation is incorporated in the neighbouring territories?

MAJOR GROGAN: Thank you.

THE COLONIAL SECRETARY: This is an amendment, Your Excellency, which Government cannot, of course, accept. As I said before, the Bill has already passed its second reading, and my own belief is that the hon. member is not, strictly speaking, in order in proposing an amendment of that kind, which is contrary to a decision which has already been arrived at.

Our Standing Rules and Orders No. 36 (3) says:—

"An amendment on a question must not be inconsistent with the previous decision on the same question given at the same stage of any Bill or matter."

At the second reading of the Bill it was decided in this Council that the Bill should be deemed to have come into operation on the 1st January, 1937. On the other hand, Your Excellency is "the sole judge" of what amendment is admissible. If Your Excellency decides that this amendment is admissible all I can say is that Government cannot possibly accept it.

MAJOR GROGAN: I understood that this committee was appointed to redraft the Bill. If they have, surely it is open for discussion in any respect whatsoever.

DR. DE SOUSA: On a point of order, Your Excellency, I submit, with reference to the Standing Rule and Order read by the hon. the Colonial Secretary, that no "previous decision" has been taken by this Council to enforce income tax from the 1st January.

HIS EXCELLENCY: Whether the amendment is exactly in order or not, I am not prepared to say, but at any rate the decision apparently rests with me. I will admit the amendment. The question now before Council is that the amendment as proposed by the hon. Member for the Coast (Major Grogan) be approved.

The question of the amendment was put and negatived by 32 votes to 6.

Ayes.—Mr. Bemister, Major Grogan, Col. Kirkwood, Sheriff Abdulla bin Salim, Sir Ali bin Salim, Mr. Wright.

Noes.—Mr. Bale, Mr. Boulderson, Major Brassey-Edwards, Archdeacon Burns, Major Cavendish-Bentinck, Messrs. Fazan, Gardner, Harvey, Hayes-Sadler, Hebden, Hoey, Hosking, Dr. Karve, Messrs. La Fontaine, Logan, Long, Maini, Mangat, Maxwell, Montgomery, Morris, Dr. Paterson, Sir Godfrey Rhodes, Major Riddell, Sir Robert Shaw, Dr. de Sousa, Messrs. Stooke, Wade, Wallace, Walmsley, Willan, Wolfe.

The debate on the substantive motion as amended was resumed.

THE COLONIAL SECRETARY: As I understand, Your Excellency, from the speech of the hon. Member for Nairobi South (Mr. Maxwell) that hon. members wish to move certain amendments tomorrow, and as it does not appear now that any other member wishes to speak, I suggest that it would meet the convenience of the Council if Your Excellency adjourned this debate until to-morrow in order that the amendments may be drafted, and that in the meantime we can proceed with the other business on the Order of the Day.

MAJOR RIDDELL: On a point of answer, may we have an answer to the question which the hon. member Mr. Wright asked? I am in doubt myself as to whether we can speak now to any further clause of the Bill which is not mentioned in the select committee report, and I should like an answer to that question.

THE ACTING ATTORNEY GENERAL: With regard to the question asked by the hon. Member for Kiambu, if an amendment is moved which is an amendment to the report, then that amendment will be in order; but if it is proposed, as the hon. member Major Grogan proposed one a few moments ago, as an amendment to any of the provisions in the Bill, then that is out of order.

MAJOR RIDDELL: I am still in difficulty, because a specific question was asked as regards clause 44. That clause is not discussed in the report, and I want to know if I am allowed to speak to that clause or not.

THE ACTING ATTORNEY GENERAL: I am sorry if I did not make myself clear. If the hon. member wishes to move an amendment to clause 44 he is perfectly entitled to do so provided he puts forward his amendment as an amendment to the report.

HIS EXCELLENCY: With the permission of Council the debate is adjourned until to-morrow.

The debate was adjourned.

THE PASSION FRUIT BILL

SELECT COMMITTEE REPORT; THIRD READING.

THE ACTING ATTORNEY GENERAL: Your Excellency, I beg to move that the report of the select committee on the Passion Fruit Bill be adopted.

Here, again, this report was tabled on the 8th April, together with a re-draft of the Bill with all the proposed amendments underlined in red for the convenience of hon. members. The schedule of amendments attached to the report is very long, while the report itself is very short. This may seem somewhat peculiar, but the reason is this: that in effect there is only one amendment proposed by the select committee.

That amendment is the provision for the setting up of a board to control this industry. This provision was inserted by the select committee at the unanimous wish of all the representatives of the passion fruit industry who appeared before the committee, and follows very closely similar provisions which appear

[Acting Attorney General]

both in the Sisal Industry Ordinance and the Coffee Industry Ordinance of 1934.

Turning to the typewritten copy of the Bill, clause 7 provides for the constitution of the board, the members of which shall be the Director of Agriculture, one other member to be appointed by Your Excellency, and "three persons registered under the provisions of this Ordinance who shall be elected at the Conference." The conference is a representative meeting of all persons who are registered under this Bill. So, in effect, the persons who control this industry have a majority on the board, and this board will be controlled by a majority of the persons who are vitally interested in this industry.

The other provisions in clause 7—namely, sub-clauses (2), (3), (4), (5), and (6)—are all in common form and follow more or less similar provisions under the other two 1934 Ordinances I have just mentioned.

New clause 8 provides for the board meetings, and I do not think it is too much to ask members of the board to meet at least once every three months.

Clause 10 gives Your Excellency power to impose a levy, but that levy can only be imposed by Your Excellency on the recommendation of the board. The control also of the proceeds of the levy is given to the board by clause 11. At sub-clause (3) of clause 11—

> "The Board shall apply such moneys to all or any of the following purposes,"—

and the two main purposes are experiments and advertising.

Clauses 12 and 13 provide for the publication of the accounts of the board and also for the publication of the annual report.

To make provision for the setting up of this board consequential amendments were necessary, and the first is in clause 3. Clause 3 as originally drafted gave Your Excellency in Council power to appoint an agency. Now it is the board which appoints, with the approval of Your Excellency in Council.

Another consequential amendment is in clause 15, which formerly read that "any person aggrieved by any decision of the agency may appeal to the Governor." Now the select committee suggest that the right of appeal should be to the board and not to Your Excellency, and accordingly clause 15 has been re-drafted with that suggested amendment.

In the rule-making clause, 17, paragraph (i) is entirely new. That has been inserted also as a consequential amendment on account of the power given to impose a levy. Rules will now be able to be made regulating the procedure for the collection of the levy.

There are only two other matters which I need bring to the attention of hon. members.

First, the definition of "export" has been inserted in clause 2. As hon. members are aware, under the Interpretation Ordinance, export means to export from the Colony, but it was represented to us that this Bill should not cover passion fruit or the products thereof which are sent from this Colony to either Uganda or Tanganyika or Zanzibar. That wish has been carried out by this special definition of export, which means—

> "export from the Colony to a place outside the limits of the Protectorate of Uganda or of the Tanganyika Territory or of the Zanzibar Protectorate or of the Colony."

Secondly, the definition of passion fruit has been extended in order to get over the difficulty raised by the hon. Member for Aberdare (Mr. Wright), who informed us on the second reading of the Bill that there are 246 varieties of passion fruit.

THE COLONIAL SECRETARY seconded.

ARCHDEACON BURNS: Am I right, Your Excellency, in coming to the conclusion that, provided an African pays his fees, there is no reason why he should not take part in this industry as well as any other section of the community?

MR. SHAMSUD-DEEN: Your Excellency, I do not like the idea of altering the right of appeal to Your Excellency and having instead an appeal to the board. The original provision in the old Bill for an appeal to you was more

[Mr. Shamsud-Deen]

appropriate, I think, than that now provided.

The agency to which this new industry is likely to be entrusted is very well known to everybody, and the board will, also, most probably be the same board which is constituted at present as the Wheat Advisory Board. I can quite see the answer of Government will be that the same agency will not necessarily be appointed for this industry, but past experience has shown that appeals to these boards are not very satisfactory. There is a very good example of the board of an agency existing at the present moment in the Colony, and the members of the board and the industry itself are liable to be mixed up with the interests of the same industry.

I submit that the original provision for an appeal to Your Excellency is more desirable than to the board.

MR. HARVEY: Your Excellency, I should like to point out to the hon. gentleman who has just spoken that no provision whatever in the original Bill was made for the appointment of a board, but inasmuch as a board which is to control the activities of the agency is to be nominated by those identified with the industry, namely, the passion fruit growers, it is hard to imagine any more democratic arrangement calculated best to serve the interests of the passion fruit growers.

Surely, Sir, no one who has a grievance could desire a better tribunal than a body of people whom he has assisted in appointing?

So far as the point of the hon. member Archdeacon Burns is concerned, the interests of native passion fruit growers were fully considered by the select committee, and until they grow passion fruit for export they will have to pay nothing. They can go on as they do now, growing their grenadillas and selling them in the local market as long as they like. It is only when they produce the fruit on a sufficiently large scale to necessitate export that they will become liable, in common with all other members of the community, irrespective of race, for the registration fee of Sh. 5.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I propose to vote for the adoption of this report, but I should like to refer to it just to place on record a caveat.

We have had during the last few years of depression a great many Bills of this nature, and I suppose they have been necessary to keep industries on their feet and to help through bad times. Here on page 2 of this report we see that no passion fruit shall be exported from the Colony except through or by an agency. That is probably all right; it is what the growers want, and therefore I shall support it.

But I think we ought to remember that the real object of these Bills is to secure proper processing, proper grading, and proper packing of our products, and not, possibly to the disadvantage ultimately of the Colony, to interfere too much with the normal business methods of marketing and the activities of the merchant houses who, in the past, and probably again in the future, have been a great help to industries in this Colony. (Hear, hear.)

MR. MAXWELL: I should like, Sir, to associate myself with the remarks made by the hon. member, *in toto*.

COL. KIRKWOOD: Your Excellency, while I am in favour of the general principles embodied in this Bill, I propose to move one amendment, to clause 4 (1) (*a*), on the third line, to delete the words "for export".

As the Bill stands, the agency are the only people who can export, but there is to be no control over the local market such as Kenya, Uganda, Tanganyika, and that to a very large extent will defeat the object of the Bill. The object of this Bill is rationalization on a co-operative basis to enable this industry, which is a new one and a very promising one indeed for this Colony, to be assisted, and I do not want to see this terrific handicap imposed on the agency by preventing them from competing in the local market.

It will also have the effect of preventing a small man, who probably has five or ten acres of passion fruit for the purpose of selling his fruit to be manufactured

[Col. Kirkwood]

by the agency and who will not be in a position to install his own machinery, from competing in the local market for the same reason, that he will want funds.

In reconstructing this matter, I take it the proviso was put in by certain people who have had a pull on the select committee. There is at least one producer who will come into production next year with 100 acres, and as far as I know his intention is to increase that to 400 acres. He will put in his own machinery and will capture the local market. The man with five or ten acres will not have his own machinery and will have to sell to the agent who will manufacture it, and he will be compelled under the Bill to export.

I think this clause has been cleverly worded, and I hope it will be precisely and concisely defeated, but if the Attorney General will agree to my amendment to take out these two little words "for export" it will go through with my blessing.

I move:—

"That the report of the select committee be amended by the deletion of the words 'for export' from clause 4 (1) of the Bill."

SIR ROBERT SHAW: I formally second.

THE ACTING DIRECTOR OF AGRICULTURE (MR. WOLFE): Your Excellency, I should like to correct a misconception on the part of the hon. member. There is nothing in the Bill to prevent the agency from selling passion fruit products on the local market in competition with any other crop.

COL. KIRKWOOD: I may have misled the House inadvertently. The hon. member is correct, but it will mean that instead of getting rationalization there are other people who can also compete on the local market who are not compelled, under the conditions of the Bill, to export. If you study the amendment I have moved you will see how it is going to work.

THE ACTING ATTORNEY GENERAL: Your Excellency, if this amendment is agreed to, sub-clause (1) of clause 4 will read:—

"From the commencement of this Ordinance any person growing passion fruit for the purpose of selling such fruit shall register himself as a passion fruit grower at the office of the district commissioner of the district or one of the districts in which he grows such passion fruit."

It may not be within the recollection of the hon. Member for Trans Nzoia (Col. Kirkwood), but it is certainly within mine, that on the second reading of this Bill the point was raised by the hon. Member for Nyanza (Mr. Harvey). He pointed out that as clause 4 was originally drafted it would cover any person who had one grenadilla growing in his back garden. The result would be that if he had one he must register himself as a passion fruit grower. That is the reason why clause 4 was re-drafted in its present form, to cover only persons who wished to export their fruit. If you have grenadillas growing in your back garden and do not wish to export them, you need not register, and that was the sole reason why clause 4 was re-drafted in its present form.

MAJOR CAVENDISH-BENTINCK: In connexion with the explanation given by the hon. the Attorney General, he says that this clause is intended to protect persons who wish to export their fruit. I should like to ask how he proposes to protect them under the clause as re-drafted from a person who sends his fruit into Tanganyika, and somebody there buys it and re-exports it either as Kenya or East African passion fruit? I do not see how he could be prevented from doing so.

THE ACTING DIRECTOR OF AGRICULTURE: It is true that is possible under the Bill, but no reasons connected with legislation could prevent that. On the other hand, economic reasons will prevent it, because the cost of the transport to Tanganyika on fruit for preparation will be much too high.

MAJOR GROGAN: In correction of what the hon. member has just said, I happen to live on the border, and also to

[Major Grogan]

grow passion fruit, and it is entirely immaterial as far as I am concerned whether I export via Moshi and Tanga or via Voi and Mombasa. The issue is a real one, and shows the difficulty of introducing this class of legislation unless it is similarly applied to the surrounding districts.

The only objection to the principle is, I believe, and I submit it for consideration, that the term "passion fruit" as such should be excluded from the Bill altogether and the Bill should be confined strictly to processed passion fruit, because the purpose, as I understand it, is to ensure a standard export product. There is no point whatever in trying to grade passion fruit because it is an impossibility, and a ludicrous thing that if I want to send a case of passion fruit to a friend in Aden I should have to refer to some gentleman in Nakuru to get permission.

The handling of the whole fruit is going to be a very small matter, but the handling of the processed juice may be an important industry, and I submit that the Bill ought to be strictly confined to processed passion fruit and leave the fruit as such alone.

MR. HARVEY: We are interested to hear that the sisal princes of Taveta are developing a passion for the production of grenadillas! (Laughter.) I suggest, however, that the case might possibly be met, if it ever arises, and I do support what the hon. the Acting Director of Agriculture said in that connexion, that if these difficulties arise they might quite easily be met by invoking the rule-making powers under clause 17 (f) of this Bill.

MR. MAXWELL: Your Excellency, I understand that the amendment is that the words "for export" be taken out. I understand, too, that the purpose of this is that the control of the sale of all passion fruit in the Colony should be vested in one agency. If I am right, I do submit it is much too early for such legislation to be brought in. As far as I can see, the ultimate effect of this legislation will be to prevent the sale of fruit from one man to another, from a man to a shop, and by the native who sells from door to door, while the agency will not as yet have its facilities ready. I therefore suggest that it is too early for such legislation as this to be brought in.

MR. HARVEY: On a point of explanation, I would say that the object of including the words "for export" was to absolve from the liability to pay Sh. 5 everybody who has a passion fruit plant in their garden, otherwise it would involve payment of the fee on the part of anything between 10,000 and 15,000 people, including natives, Indians, Europeans and everybody.

THE COLONIAL SECRETARY: In view of what the hon. Member for Nyanza (Mr. Harvey) and the hon. Member for Nairobi South (Mr. Maxwell) have just said and the arguments advanced, this amendment is not one which Government can accept.

COL. KIRKWOOD: On a point of order, have I the privilege of replying as the mover of the amendment?

THE ACTING ATTORNEY GENERAL: With reference to that point, Sir, my hon. friend in moving the amendment has spoken to the original motion, and therefore, in my submission, he is not entitled to speak again.

COL. KIRKWOOD: While I am not going to dispute that ruling, you have a right to rule me out of order, Sir, but it has never been accepted on this side of the Council. Having moved an amendment and put up a case, and having listened to the replies, it is always the privilege of the mover of a motion, even though it be in the form of an amendment, to have the right of reply.

THE ACTING ATTORNEY GENERAL: With reference to those remarks, the person moving the substantive motion is entitled to the right of reply, but a member who moves an amendment to the original motion has already spoken to the original motion, and therefore, since he has not moved the original motion, my submission is that he is not entitled to reply.

HIS EXCELLENCY: On this point I must accept the ruling of the hon. the Attorney General.

MAJOR RIDDELL: May I ask, on the point of information, if in a previous case this matter was referred home and they replied that Government's interpretation of these rules was wrong?

THE ACTING ATTORNEY GENERAL: I have no knowledge of that, but, referring to previous rulings in this Council, I find the ruling given as I have just stated.

DR. DE SOUSA: For the information of the hon. member, there is a ruling on page 367 of Hansard, Part 1 of Vol. II, 1936.

HIS EXCELLENCY: There was a ruling given on the 4th November of last year:—

"An hon. member who moves an amendment to a motion is, when he moves that amendment, speaking to the motion, and he is therefore unable to speak again to that motion later in debate, but once the new question has been put to Council a member is not debarred from speaking to the original motion if he speaks to the amendment."

I do not think that covers it.

MR. SHAMSUD-DEEN: On a point of order, I do not think that ruling applies here. I was the member who raised the point in connexion with the ruling you have just quoted, Sir, but that merely gives a ruling as to the right of a member to speak on the substantive motion after having spoken on an amendment. Here it is an entirely different question, as to whether the member moving the amendment has the right of reply or not. That is not. That is the question.

THE ACTING ATTORNEY GENERAL: On the point raised by the hon. member Mr. Shamsud-Deen, if the hon. member will refer to Standing Rule and Order No. 1 of this Council he will see:—

"In all cases, not herein provided, resort shall be had to the rules, forms, usages and practices of the Commons House of Parliament of Great Britain and Northern Ireland which shall be followed so far as they may be applicable to the Council and not inconsistent with the following Rules and Orders nor with the practice of the Council."

I may now quote from May's *Parliamentary Practice*, 13th Edition, page 314, the second paragraph on that page:—

"A reply is only allowed to the peer or member who has proposed a substantive question to the house; . . . It is not conceded to a member who moves . . . an amendment."

MR. HARVEY: Incidentally, we have exactly the same thing in our own rules, page 9, No. 43 (vii).

HIS EXCELLENCY: I accept the ruling of the hon. the Acting Attorney General, as supported by May's *Parliamentary Practice*, on the procedure in the House of Commons.

The question of the amendment was put and negatived.

THE ACTING ATTORNEY GENERAL: Your Excellency, my reply to this debate is very short, owing to the hon. member Mr. Harvey, who has effectively answered the two questions raised by the ven. member Archdeacon Burns and the hon. member Mr. Shamsud-Deen. The amendment proposed by the hon. member for Trans Nzoia (Col. Kirkwood) has just been defeated, and I understand from the speeches of the hon. Members for Nairobi South and North that they are supporting the report of the select committee, and therefore there is no further need for me to add anything.

The question of the adoption of the report was put and carried.

THE ACTING ATTORNEY GENERAL moved that the Passion Fruit Bill be read a third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bill was read a third time and passed.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, the 20th April, 1937.

Tuesday, 20th April, 1937

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, the 20th April, 1937, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of the 19th April, 1937, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

BY MR. GARDNER:

"The Commercial Possibilities and Development of Forests in British East Africa," by Major F. M. Oliphant, Forest Economist, of the Colonial Forest Resources Development Deparment, Colonial Office.

INCOME TAX BILL

SELECT COMMITTEE REPORT: THIRD READING

The debate on the substantive motion as amended having been adjourned,

The debate continued.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I should like first of all to thank Government and you for having adjourned this debate yesterday so as to enable members on this side of Council to get their specific amendments written out, considered and properly put forward this morning.

While on this subject, may I refer to a point of order? I should like to say this. On very rare occasions it happens that in Council we get a Bill of this nature; that is to say, an extremely complicated Bill with many, many clauses in it, on which there is a pretty wide divergence of opinion throughout the country and between members of the Council. Normally, either a Bill comes before the Council and it is not considered that it is necessary to send it to a select committee, and it is taken in committee of the whole Council with probably no alteration, and goes through in the normal way. Slightly more complicated Bills are sent to select committee and, normally, they are reported back with the recommendations of that committee; the committee's report is then laid, and is usually accepted with little or no discussion.

But, on rare occasions, we get a Bill of this nature, which goes before a select committee, and in due course that committee reports back to the Council, and a tremendous lot of discussion follows and amendments are put up.

When you want to put up a whole lot of amendments to a report of a select committee, I suggest that the right and simplest way of doing it is not to do it as we are on this occasion, which admittedly may be in order, but to do it by the way envisaged in Standing Rules and Orders: by re-committing the Bill to the committee of the whole Council. (Hear, hear.)

In that way we can then go through the Bill clause by clause, amendments are prepared beforehand and put up, and every members knows what amendments are being discussed and what is happening to the Bill. Under the procedure we have adopted now we dodge about from clause to clause and nobody knows where they are, and there is some doubt as to procedure and as to whether one can speak once or twice or do this or that.

I therefore suggest that possibly you, Sir, and your officers might go into this question of procedure at a future date and that we might perhaps discuss the matter, because although we are following a recognized procedure to-day I am sure it is not the best, and it does lead to a lot of complications. I realize that this is not the occasion to raise a point of order in the Council. You, Sir, have just arrived, this is an old subject, and there is a new Attorney General. I do not wish to raise it but merely draw your attention to it.

Referring to the debate, I should like to put forward certain amendments as a result of the remarks made yesterday on this side of the Council. I think I am the sole survivor of that unfortunate body of people who were both on the drafting committee and on the select committee, and practically all the points which I shall now bring up were very carefully considered by the select committee and by the

[Major Cavendish-Bentinck]

drafting committee. We could not reach agreement on them, and for one reason or another by a majority we did not include them in our report.

Since that report has been published, and since members of the public and Chambers of Commerce and members of this Council have had an opportunity of reading the Bill as altered by the labours of the select committee, these points have come up again, and I have reason to believe, Sir, that Government is inclined to view the four points which I shall bring up with sympathy. Therefore I am going to move them together.

The first one I wish to move is:—

"That the schedule to the report be amended by deleting paragraph 3 thereof and substituting therefor the following:—

3. That clause 5 be amended—

(a) by deleting the figure '5' from line one thereof and substituting therefor the figures and brackets '5 (1)';

(b) by deleting paragraph (f) from sub-clause (1) thereof and substituting therefor the following—

'(f) rents, royalties, premiums and other profits arising from property.';

(c) by adding thereto the following new sub-clause as sub-clause (2)—

'(2) Any employee in receipt of a passage allowance under paragraph (b) of sub-section (1) of this section may elect within the prescribed period to apportion such allowance over a prescribed number of years.'"

The first alteration in paragraph (f) is merely taking out the word "any" before "other profits". The object of that I think the hon. the Attorney General will explain to us.

The object of the other alteration is in order to conform with the suggestion put forward by the hon. Member for Nairobi South (Mr. Maxwell) yesterday, that it would perhaps be a benefit to those who, in the course of their work, are entitled over a period to a passage allowance, by enabling them to have that allowance assessed at an annual rate instead of the whole of it being assessed in one year, thus possibly increasing their income for that year by perhaps £200 or more, which would bring them right up in the scale. This amendment, I would urge, would do nobody any harm and might be of benefit to a section of the community.

The second amendment is:—

"That the schedule to the report be amended by deleting sub-paragraph (a) of paragraph 6 thereof and substituting therefor the following:—

'(a) by deleting paragraph (c) and (d) from sub-clause (1) thereof and substituting therefor the following—

'(c) where any person engaged in any trade, business or vocation has expended any sum in replacing any premises, plant or machinery used or employed in such trade, business, profession or vocation, an amount equivalent to the cost of the premises, plant or machinery replaced, after deducting from the cost such sum as shall represent the total depreciation which has been allowed by reason of wear and tear since the date of erection or purchase of such premises, plant or machinery, or, in the case of such premises, plant or machinery erected or purchased before the first day of January, 1937, since that date, and any sum realized by the sale thereof or recovered under any insurance or indemnity;

Provided that for the purpose of this paragraph and notwithstanding the definition of the term 'premises' contained in section 2 of this Ordinance, and subject to the provisions of the proviso to section 12 of this Ordinance, the term 'premises' means any building in which such plant or machinery was situated;

(d) any sum expended for structural alterations to premises employed in acquiring the income and any sum expended for repairs of

[Major Cavendish-Bentinck]

premises, plant, and machinery employed in acquiring the income, or for the renewal, repair or alteration of any implement, utensil, or article so employed:

Provided that no deduction shall be made for the cost of renewal of any property which has been the subject of an allowance under section 12 of this Ordinance;'."

It was pointed out yesterday that as the Bill reads at present that it only dealt with the renewal of buildings which contained machinery when that machinery was replaced; this amendment, I understand, will provide for the renewal of buildings which contain machinery at any time, and will also allow the expenditure incurred in structural alterations to any premises used in acquiring income, which goes really very much further than the select committee recommended.

That will, of course, be a great help to many people, as it will enable them to meet an objection which has been raised, that in this country a business is often started in premises which, perforce, are cheaply put up, so that conditions in this country cannot be treated precisely as conditions in England. This is the second amendment which I venture to put up.

The third amendment is:—

"That the schedule to the report be amended by deleting paragraph 9 and substituting therefor the following:—

'9. That clause 13 be amended—

(a) by inserting therein between the word 'years' and the figures '1933' which appear in the second line of sub-clause (2) thereof the figures and comma '1932,';

(b) by substituting a colon for the full stop at the end of sub-clause (2) thereof and adding the following proviso—

'Provided that where any person proves to the satisfaction of the Commissioner that he is unable to produce any evidence of his profit or loss during the year 1932 the Commissioner shall apply the provisions of this sub-section to such person as if the figures '1932,' were deleted therefrom.'"

This amendment is in accordance with the views expressed on this side of Council yesterday that it does, perhaps, seem a little hard, when you have a Bill passed on the conception that you can bring forward losses for five years in future, that you should only on its inception be allowed to go back four years and that you should, in the event of not being able to produce accounts for a period of four years before there was any thought of income tax, be debarred from counting your losses for the last year or two.

This was brought up again and again in select committee, and I think there was a difference of opinion, but by a majority they felt it should be all or nothing. I would still urge that this is a fair thing to do under the conditions under which the Bill has been brought in, and I hope Government will see its way to accept it.

The next amendment I wish to bring forward is:—

"That the schedule to the report be amended—

By adding at the end of paragraph 32 the following:—

'(5) In the case of a person who has been assessed to pay a total tax of an amount not exceeding two hundred shillings no appeal shall lie from the decision of the local committee under the provisions of section 70 in respect of the whole or any part of such tax, provided that such person has certified in writing on the notice under sub-section (1) of this section that he desires the decision of the local committee to be final and conclusive.'

By adding immediately after paragraph 32 the following new paragraph:

'32A. That clause 70 be amended—

(a) by inserting immediately after the word and comma 'or,' in the fourth line of sub-clause (1) thereof the words 'subject to the provisions of sub-section (5) of section 69,';

(b) by writing immediately after the word 'may' in the first line of sub-clause (11) thereof the words 'subject to the provisions of sub-section (5) of section 69,'."

[Major Cavendish-Bentinck]

The first part of this amendment means that if a person appeals to a local committee in respect of a sum not exceeding £10, he can make that local committee's decision final by electing to do so, and that goes very far to meet the representations that have been put forward by certain people that they would like the local committee's decision to be final on all cases that go up to it on questions of "fact". To do that absolutely regardless of the sum involved I think, personally, would be wrong, but this amendment goes a very long way to meet the demand.

The second part of the amendment is purely consequential re-wording on account of the first part.

I have put up these amendments, copies of which I understand are before you, Sir, and members opposite, and I trust that Government will see their way to meet them.

As it is unlikely that I shall have an opportunity of speaking again, as I was on both of these very tiresome committees I would like, Sir, to again pay tribute to the tremendous assistance we have had from Government. And I would like to thank the present Acting Attorney General very sincerely indeed, not only for the very able way in which he took charge of our deliberations, having come quite new to the country, in a very difficult moment, but the way in which he met us and helped us in every way possible. These amendments I have proposed are the result of his voluntary work up to a very early hour this morning, and we are very grateful to him. (Hear, hear.)

MR. HARVEY seconded.

THE ACTING ATTORNEY GENERAL: Your Excellency, I thank the hon. member for the tribute he has just paid me. But the work is not mine alone, because if I had not had the help of the hon. the Solicitor General (Mr. Wallace) these amendments would not have been ready as they are this morning.

I am authorized by Government to say that all the four amendments proposed by the hon. member and duly seconded are accepted by Government. (Hear, hear.) There is no need for me to explain them at any length, because they have already been adequately explained by the hon. mover.

With regard to the passage allowance, we have provided for rules to be made in order that that allowance may be apportioned over a prescribed period of years and thus remove the hardship which might have arisen if the allowance was confined to one year. That might have brought a taxpayer into a higher scale of tax.

With regard to the second amendment this, I think, is the most important of the four. As paragraph (c) of clause 10 (1) of the Bill was drafted, it only provided that "any person engaged in any trade, business, profession or vocation and so on could get the allowance in respect of premises incidental to the plant and machinery which was replaced, and those premises could only be replaced if the plant and machinery were replaced at the same time.

The amendment as now proposed gives the further concession by allowing premises where plant and machinery are housed to be replaced even though that plant and machinery are not replaced at the same time. Thus, if an employer wishes to put up a better building for the benefit of his employees, he can do so without replacing the plant or machinery at the same time.

There is a second part to this amendment, to paragraph (d), which provides a further concession with regard to sums expended in structural alterations on buildings employed in acquiring income.

I pass on to clause 13 (2). As the hon. member has said, this clause was discussed several times in select committee. Now it is provided that where a business man cannot produce his books for 1932, his losses can be computed for the whole of the years 1933, 1934, and 1935. I do not want to go back on my friends in the select committee or disappoint those friends who are putting forward the amendment, but so as to keep a foot in both camps the amendment has been redrafted in this form with an extra proviso.

The fourth amendment is to clauses 69 and 70 of the Bill, and deals with appeals

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from local committees to a judge of the Supreme Court. There is no need for me to go into that. The amendment in clause 70 is consequential on the amendment made to clause 69, which the hon. member has already adequately explained.

The question of the amendments was put and carried.

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

"That the schedule to the report be further amended—

By re-lettering sub-paragraph (b) of paragraph 6 thereof as sub-paragraph (c) and by inserting immediately after sub-paragraph (a) thereof the following new sub-paragraph as sub-paragraph (b)—

by deleting paragraph (f) from sub-clause (1) thereof and substituting therefor the following paragraphs:—

(f) an annual depreciation in respect of an interest in land becoming less valuable by effluxion of time;

(g) such other deductions as may be prescribed by any rule made under this Ordinance."

I agree, Sir, that it is very confusing in trying to make amendments to a complicated Bill of this nature when one is mixed up with paragraph, sub-paragraph, clause and sub-clause, but to elucidate the position I refer hon. members to Part III of the Bill, clause 10, page 8, after (e) at the bottom of the page.

That particular reference in respect of diminishing values of leasehold land should be inserted, to be followed by what is now (f) being made (g).

I have no wish to belabour the point as it was dealt with yesterday in the two clear speeches made by the hon. Members for Nairobi South (Mr. Maxwell) and the Coast (Major Grogan) respectively. I simply want to move this. It is not of such a nature, I imagine, as may commend itself to Government, but nevertheless it has at least the merit of logic and reasoned argument in its favour, and I beg to move.

MR. HOEY seconded.

THE ACTING ATTORNEY GENERAL: Your Excellency, this proposed amendment cannot possibly be accepted by Government.

After I had listened to the speech of the hon. Member for Nairobi South yesterday, I thought there might be something in his point, but during the adjournment I was able to make fairly extensive inquiries, and I find there is really nothing in his point.

First of all, dealing with farm leases, they are for 99 years or 999 years and, in the case of a 99 years lease that can be converted into a 999 years lease. Therefore, in effect, all the farm leases are really freehold, and they can be dismissed from the argument at once.

With regard to township leases, they are for 99 years or 25 years, but, with respect to the 25 years lease, it is possible to convert them into 99 years by putting up the appropriate buildings, so in effect a 25 years lease is a 99 years lease.

I think hon. members on the other side of Council will agree with me that leasehold property which has more than 50 years to run has no depreciation. In other words, depreciation does not begin until there are less than 50 years to run. Therefore, in effect, the point raised by the hon. Member for Nairobi South is, at the present time, a purely hypothetical question because all these leases have many more years than 50 years to run if they are converted.

I do say it is not at all practicable, because if you take a lease for 25 years which can be converted into a 99 years lease and in one case the lessee converts after two years and gets his 99 year lease, then, of course, he cannot be allowed depreciation. The other man, on the other hand, converts after 24 years, and during those first 24 years he claims depreciation. What is the answer to that? There is no answer. He has already been allowed his depreciation for 24 years and in the twenty-fourth year converts into a 99 years lease. How are you going to meet his case as against the case of the first man who converts in two years?

Your Excellency, on this point we are discussing a purely hypothetical question

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which will not arise for a number of years. It will not arise in my time here, and I doubt whether it will ever arise in the time of the youngest member of the Council, and I therefore think that when that time does arise, in about another 30 years, it will be occasion enough to discuss it, but not now.

MAJOR GROGAN: Sir, I should like to take this opportunity of traversing directly practically everything my friend opposite has just said, because the whole of his argument is entirely out of accord with actual facts to-day.

This is not by any manner of means hypothetical, and if he really seriously believes that the issues on which this principle is involved will not arise during the time of his presence among us it is a matter of great regret to us, because it means he will be getting the sack to-morrow, for this is definitely an issue of to-day.

There are a number of cases within my knowledge where there is no 999 years lease, and I think my hon. friend has forgotten that these 999 years leases contain clauses whereby the rent is revisable at the expiry of 30 years, and there are quite a number of cases where the land value has appreciated to such an extent that the actual revisable rent at the end of 30 years will be substantially in excess of the current rent. Therefore, the person's interest in that property is going to be proportionately depreciated in the interval. If he wants to keep his books correct and avoid trouble with other parties, he is bound to write that interest off in order that his capital appearing on the balance-sheet may remain constant.

There is also another very important category which my hon. friend has forgotten, and that is that all leasehold land is not held from Government. There are quite a number of leases held from private individuals, and quite a number of these leases are of short duration, and the present leaseholder who has built on it, if he wants to maintain his capital intact must depreciate in his books his interest in that land.

It seems to me quite an incredible contention put forward by the hon. the Attorney General, that it does not matter twopence whether the principle of the thing is right, and that the only question is whether or no the thing is hypothetical in fact. Surely the main objective of legislation is to get your principles right. If the principle is going to apply to-morrow or the day after or ten or fifteen years hence, what has that to do with it? The primary purpose of legislation is to be based on principle.

I have had a great many opportunities in this Council of saying that this legislation is based on no principle at all, because it is perfectly clear from the Government's refusal to accept these amendments that this is, in fact, not an Income Tax Bill but a deliberately determined attempt to tax capital. There is no getting away from it, it is a matter of arithmetic. And you cannot argue with arithmetic, not even the hon. the Attorney General.

If you to-day have an estate standing in your books at £100, and ten years hence it disappears and is out of your control altogether, and you do not depreciate and set aside a reserve equivalent to £10 a year, your books are not right. And if you get a tax in operation on that £10 a year which is set aside to maintain capital, it is a tax on capital and not income.

That confirms my contention that, in practice, this lamentable measure has transpired very largely as a tax on capital, quite apart from the deterrent effect it will have on the accumulation of capital.

MAJOR CAVENDISH-BENTINCK: Speaking to this new motion, Sir, I would like to say something.

This has been put forward by the Chamber of Commerce, and they have also, on other occasions, asked Government to see whether something could be done to clarify the immediate future as regards Crown leases. If Government can make it perfectly clear what their policy is, possibly there is no reason for asking for this amendment.

I was given to understand that this question, which is by no mean a hypothetical one, it really is not, is going to be discussed at the next Governors Conference. I am rather alarmed at the line of argument of the hon. the Attorney

[Major Cavendish-Bentinck]

General, and I hope Government will realize that this is a very real issue and that a large number of people who have sunk money in the country are very worried about it.

The question of the amendment was put and negatived.

SIR ROBERT SHAW: Your Excellency, I, too, have to propose a further small amendment to this great work of art before we allow it to proceed to the end of its passage to the statute book. It has reference to clause 12 of the Bill.

As was explained so very clearly and admirably by the hon. Member for Nairobi South in his speech yesterday, this is a question of depreciation of buildings. As he explained, and as you will perhaps realize, no small part of the famous picturesqueness of this country is due to the somewhat unorthodox style of architecture which we were compelled to adopt in our earlier years.

You will note in the proviso to clause 12 of the Bill the reference to "buildings, or other structures of a permanent nature". As explained by the hon. member yesterday, we have often been forced to put up buildings which have to serve permanent purposes out of material such as we could collect at the moment, and they are not permanent, and depreciation on such buildings becomes very serious. The people engaged in trades, professions, avocations, etc., described in this Bill have to face the replacement of buildings owing to the very rapid degeneration, which is inevitable from their very nature.

Consequently, we do think it fair that some concession should be made to the owners of such buildings. Again I would draw attention to the fact that they are buildings definitely used for the purpose of acquiring income as is provided for here, where it refers to property used in the trade, profession or avocation of the property owner.

There is no question of providing any improper loophole for a tax-dodger. There is much to be said for the proposal, and I therefore beg to move:—

"That the schedule to the report be further amended by deleting paragraph 8 thereof and substituting therefor the following:—

'8. That clause 12 be amended—

(a) by deleting the words 'wear and tear' from the third and fourth lines thereof and substituting therefor the words 'maintenance and depreciation';

(b) by substituting a full stop for the colon at the end of the seventh line thereof;

(c) by deleting therefrom the proviso thereto.'"

MR. WRIGHT seconded.

THE ACTING ATTORNEY GENERAL: Your Excellency, I regret that I have to disagree with an amendment drafted by myself! (Laughter.) With regard to the suggested allowance for depreciation of buildings, Government is unable to accept this amendment.

Hon. members are aware that large concessions have been given in this Bill with regard to buildings connected with industry. For instance, there is replacement in clause 10 (1) (c); structural alterations in 10 (1) (d), and again in clause 12. As emphasized at the bottom of page 2 of the report of the select committee, this matter was really very carefully considered in that committee, and that committee has stated in its report:—

"We were strongly urged to provide for depreciation on buildings, but we came to the conclusion that such a course would be without precedent and, that, in view of the fact that the replacement provisions relating to plant and machinery would, if our recommendation is adopted, apply to buildings incidental thereto, the case of industrial organizations would be met."

There is no precedent either in England or in any of the income tax ordinances of the colonies that I have been able to peruse for depreciation on buildings, and I notice in the report of the Standing Finance Committee on the draft estimates of revenue and expenditure for 1937, paragraph 4, on the first page, which is signed by five members on the other side of the Council, that that committee recommended certain reductions with regard to native hut and poll tax, non-

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native poll tax, etc. The report goes on to say:—

"In this connexion the European elected members stated that in their opinion the revised estimates of revenue had removed any budgetary necessity for the introduction of an income tax at the present time, and asked that it should be recorded that their acceptance of the principle of a light income tax on the lines of that enforced in the Rhodesias was actuated by the desire that finality should at last be reached on the subject of taxation, disagreements in regard to which had over a period of years exercised so damaging an influence on the economic conditions of the country, and by the feeling that the best interests of all communities would be served by an equitable compromise. Their willingness to accept such a compromise had been strengthened by the recent announcement of the Secretary of State that the Governor designate would be instructed to inquire into the reconstitution of the Executive Council. They accepted the modifications recorded in the first paragraph of this report on the definite understanding that their introduction would not result in any increase of direct taxation on the non-native communities but might be described rather as a redistribution of the existing yield from other forms of direct taxation."

I would remind hon. members on the other side of this Council that in neither Northern or Southern Rhodesia is depreciation on buildings allowed.

Finally, I would also emphasize this: that with regard to buildings here there are different types and different kinds. How are you going to fix your rate of depreciation? Are you going to have 2½ or 5 per cent? In my opinion, it is impracticable to have this depreciation of buildings, and, secondly, there is no precedent for it.

MAJOR GROGAN: Again, Sir, I find myself obliged to traverse the statements of my hon. and learned colleague.

Apparently in his statements he is inspired not by principle but by precedent. It has been shown quite clearly that the procedure even of the venerable Old Country is obviously wrong and inequitable, and there is no reason why we should follow a bad precedent. The issue surely is: Is this income tax or a capital tax? Quite obviously, if you do not allow depreciation of buildings, and sums are not properly set aside to cover extinction of the building in time, it is particularly absurd to tax these sums under the guise of income tax. The term is a misnomer, and it should be capital tax.

The clause as drafted appears to me to be perfectly ludicrous, because the term "permanent nature" is a relative term and has no possible specific meaning in law. Whether a thing is of a permanent nature has to be decided by some body, and that body would surely be capable of deciding on the rate on which that building should be depreciated, which my colleague says is an impossible task.

We have several classic examples in this country of what happens to so-called buildings of a permanent nature. Some years ago, a much respected citizen of this country, Mr. McGregor Ross, built what was regarded then as one of the most striking architectural gems in this country in the form of the Treasury, a permanent building of a permanent nature, of solid stone and every kind of embellishment. In a short time it fell down! (Laughter.) And the State went to a considerable expense in removing the derelict remains. The identical thing happened to a still more pretentious and theoretically permanent building in the form of the Mombasa Reservoir, one side of which parted with the other three sides. Fortunately, it was so far removed from Mombasa that there was no particular damage, except to the finances of the country.

When it comes to the question of whether or no depreciation should be allowed in respect of a house of domicile—I do not know whether it arises under the same issue, but I hope it does—if I read the Bill aright we are in this ridiculous position, that a person who builds a house to let it it must obviously be interpreted as being part of his business and that the house he has built is part of the machinery whereby he gains his income, and if he lets it to somebody else, the

[Major Grogan]
advantage he derives from letting that house is regarded as income and is assessable as such. But apparently, if he occupies it himself he is excluded from the so-called advantages given in the Bill, though if he lets it to somebody else he gets those advantages. I presume the only thing to do is to have a Mutual Building Association where everybody builds everybody else's house, and they live in each other's houses! By that method they would get the necessary reliefs, which means that it would not be a capital tax but an income tax.

Everything the hon. the Attorney General says confirms more and more conclusively the intention of Government that this shall not be confined to a tax on income but is, in effect, a tax on capital, and therefore I suggest in all humility that the title of the Bill is a fraud! (Laughter.)

The amendment was negatived.

MR. SHAMSUD-DEEN: Your Excellency, from the trend of the debate as it is proceeding, I can see that quite an appreciable portion of the Council is opposed to this Bill, and if this procedure goes on of bringing amendments, having them seconded, and there are speeches, I foresee a very long time being taken up.

That is one way of delaying the passage of the Bill which, I think, is in accordance with the general desire of the community, but I am going to propose:—

"That under Standing Rules and Orders No. 80 (iii) the report of the select committee should, if ten members so request, be referred to a committee of the whole Council."

If I am supported in this request by any ten members of the Council—I think there will be seven who will vote for it and we want three more members who will see the advisability and desirability of this Bill being properly considered. According to the rules, Bills must be referred to a committee of the whole Council.

HIS EXCELLENCY: The hon. member Mr. Shamsud-Deen has, I understand, moved that the adoption of the report of the select committee be referred to a committee of the whole Council. In accordance with the provisions of Standing Rule and Order No. 80 (iii) he has to be supported by a further nine members. The question is whether there are nine members willing to support this proposal?

MR. SHAMSUD-DEEN: For the sake of facility, would you, Sir, ask members in favour to raise their hands or to stand up?

HIS EXCELLENCY: I think that is the best way. If any member is in favour of the procedure of referring the Bill back to a committee of the whole Council will he kindly stand up?

MR. SHAMSUD-DEEN stood.

HIS EXCELLENCY: The proposal is negatived.

MR. HOEY: Your Excellency, I have an amendment to propose, and I hope it will be the last one from this side of the House! (Laughter.) I move:—

"That the schedule to the report be further amended in paragraph 14 thereof—

(*a*) by deleting from the fourth, fifth and sixth lines thereof the words 'company, or of a co-operative society registered under any law for the time being in force relating to the registration of such societies,' and substituting therefor the words 'person engaged in trade or business';

(*b*) by adding the following further proviso at the end of the proposed new clause 19—

'Provided further that any such person not being a company, or a co-operative society registered under any law for the time being in force relating to the registration of such societies, shall keep such books of account and comply with such directions as may be prescribed.'"

This point was brought up yesterday by the hon. Member for Nairobi South (Mr. Maxwell), and I think it is a very important point, because when you think of what this country has passed through—

[Mr. Hoey]

and it has passed through very difficult times—the need of creating reserves has been brought before us in every possible walk of life, from Government downwards.

This Bill does provide that reserves can be created, but the Bill only goes so far as to allow that privilege to companies. It is very difficult to see why a person conducting a business which is a separate entity should be treated in an entirely different way to the way a company is treated. I do not want to take up a lot of time labouring this point, because it was clearly dealt with yesterday by the hon. member Mr. Maxwell, but when you come to consider the proviso where it is suggested that it makes it absolutely necessary for that business to keep proper books in the prescribed manner I fail to see why an individual should not receive the same privilege as that which is to be afforded companies under this Bill.

Sir, I do strongly think that here is a case which has every justification for an alteration by means of the amendment which I propose.

SIR ROBERT SHAW seconded.

THE ACTING ATTORNEY GENERAL: Your Excellency, I am heartened by the introductory words of the hon. member and therefore the more regret that I am unable to accept his amendment on behalf of Government.

I am sure my hon. friend will be the first one to appreciate that there is a considerable difference between a company and a registered co-operative society as opposed to a partnership or an individual. By that I mean, that a company is hedged around with statute law and it has its memorandum and articles of association. In them all the objects of the company are set forth. Those articles and memorandum have to be filed with the registrar of companies.

When you come to a partnership or a one-man business, there are no restrictions like that. There is no memorandum, no articles of association. With regard to the one-man business there is no statute law hedging him around.

Therefore I do suggest that there is a considerable difference between a company and a registered co-operative society on the one hand and a partnership and one-man business on the other hand. There is this further point, that of course a company has shareholders who control the company, or attempt to control it, and they of course can see that not too large sums are put aside to reserve fund but that it is paid out in dividends. There is this further point, that a partnership or a one-man business can always be turned into a company, and when that is done they will obtain the benefits provided for in clause 19.

MR. MAXWELL: Your Excellency, after listening to the speech of the hon. the Attorney General I fail to be convinced by his reasoning.

His first reasoning was something to do with articles of association of a company. Apparently because articles of association lay down what a company can do, it is suggested that a company could not branch out into odd activities which it might be hard for an auditor to control. My limited experience of articles of association is that they provide for almost every activity, from the growing of beetroots to the running of the *Queen Mary*. Certainly some articles of companies I am associated with do, so that I do not see the force of the hon. member's arguments.

He next suggested, I think, that companies have shareholders and that such shareholders, because they wanted their dividends, were not likely to create a reserve on too large a scale. I would point out that in clause 19 it is provided that only a reserve which may seem reasonable to the Commissioner shall be set aside.

Thirdly, the hon. the Attorney General suggested that the private individual had his remedy, namely, to incorporate. I dealt with that point yesterday. It is a very expensive business to incorporate a company. I took the trouble to work out roughly the cost of incorporating a company with a nominal capital of, say, £20,000, to which approximately £15,000 was transferred. Anybody who attempted to do this would have little change left out of £500. That is a large figure.

[Mr. Maxwell]

I still submit that it is reasonable to allow a private individual or partnership which runs a business as a separate entity to be able to set aside a reasonable reserve, and I do hope that the hon. the Attorney General may be able to reconsider his decision.

MAJOR GROGAN: I wish to say a word in support of the amendment, Sir.

I entirely agree with the force of the argument adduced by my hon. colleague opposite for a change! But what has not been mentioned in debate and should be mentioned is the fact that, as far as the great majority of people and companies and businesses of this country are concerned, it is not at this juncture a question of building up reserves but of redeeming the vast accumulation of debt that they have been compelled to incur during the last four or five years. It is perfectly obvious from the social point of view, the Colony's point of view, that where people are heavily in debt, companies or individuals, provision should be made whereby any margin they may have in future should, if they choose, be allocated to the redemption of that debt and should be free of this imposition.

The question of the amendment was put and negatived.

Council adjourned for the usual interval.

On resuming:

MR. BEMISTER: Your Excellency, I want to refer you to that part of the Bill entitled "Exemptions", which is dealt with on page 9 of the committee report, and I want to ask you, Sir, if you will use your power which is given in this paragraph, immediately. I ask it on behalf of the native co-operative societies, which have been the ambition of Government for years to create but which are not exempt from income tax in this Bill.

You will see that you have power to exempt any person "from all or any of the provisions of the Ordinance on the ground of poverty, hardship, or on any ground which to him may seem sufficient." I want to suggest to you that it is the greatest hardship that could ever be imagined for a native co-operative society not to be excluded from the provisions of this Bill.

A co-operative society, like a company, would be taxed at Sh. 2 in the £. Let us assume that a native co-operative society has 10,000 members and it makes £10,000 a year, which is not a huge amount, but it would be a £ to each native. Under the provisions of this Bill, Sh. 2 in the £ is taken from the income, the profits, of the society. In consequence, an individual native is taxed 10 per cent on his £1.

It will be said at once that this is quite all right, he can put in a reclamation form and that will be lodged with the Central Revenue Office which will examine his claim and, if he comes under a certain amount, the Sh. 2 will be refunded on a certificate which will undoubtedly be given by the co-operative society. I cannot understand why any co-operative society has been included in this Bill. I spoke against it when the Bill was up before, and I know I am out of order in mentioning it now, because co-operative societies are not mentioned in the committee report, so I cannot go on with it.

But, in conclusion, I would like to refer to the final paragraph but one of that report. I think it is one of the finest pieces of literature and criticism that I have ever read. The committee say:—

"We are sensible to the fact that some of our recommendations are unusual and that no precedent exists for them in the Income Tax laws of other countries, but the Colony is only just emerging from an unprecedented depression and, as it is vitally necessary for the welfare of the Colony as a whole that commerce and industry should be given the opportunity of rehabilitating itself, we consider that special provisions are necessary."

Sir, that is the finest condemnation of the whole proposition that has ever been put before this Council!

ARCHDEACON BURNS: Your Excellency, I would like to associate myself with what the last speaker has said, more particularly because of the fact that cotton is becoming one of the very large industries of the Colony, especially at the

[Archdeacon Burns]

Coast. No doubt these co-operative societies will be formed in the future, and the native, who gets very little profit from the cotton which he grows, should not be taxed in this way. Such co-operative societies should be exempt from taxation.

MAJOR RIDDELL: As regards what the last two speakers have said, Your Excellency, their point seems to be covered by clause 90 of the Bill, which says:—

"The Governor in Council may exempt any person or class of persons from all or any of the provisions of this Ordinance on the ground of poverty, hardship, or on any ground which to him may seem sufficient."

MR. BEMISTER: I quoted that clause.

MAJOR RIDDELL: It seems to cover your point.

I hardly ever agree with the hon. Member for Mombasa (Mr. Bemister) and I do not agree with him now. In the give and take, or whatever you choose to call it, of debate certain small points are often missed, or not taken at all. The acting Chairman of the Elected Members has asked me to register one point which occurred during the deliberations of the drafting committee, and also in the deliberations of the select committee which followed it.

On the 27th January of this year he asked Government to cable for a copy of the report of the Income Tax Codification Committee for the benefit of the drafting committee and of the select committee afterwards. At the same time, he himself took steps to obtain that report, which I might say is obtainable on every bookstall in England, and was then. He obtained two copies by air mail, and they were used by the select committee and, of course, by ourselves and by the Colonial Secretary.

We wish to point out to Government that no copies have come as a result of this cable, and we ask that Government should make a very savage protest against the delay in sending to us by air mail a document of such importance as this report.

Turning to clause 90, which I have just quoted, or misquoted, I do not know which, the point I wish to make in a general discussion of this Bill is that this Income Tax Bill was intended, in the first instance, to be a tax on all sections of the community. I should like to know and have a specific statement from the hon. the Attorney General, on behalf of Government, as to whether that is still intended, or whether clause 90 is intended to be a loophole through which the natives will go, because I believe—and I say it without hesitation here and now—that it is quite impossible, on an estimated cost or expenditure of £3,000, to adequately or fairly include the natives of Kenya in the provisions of this Bill.

There is a way of getting out of it, and it is in that clause 90. I should like to know from Government whether they intend this Bill will be equitably applied to all the three races of this country—Europeans and Indians and also natives?

In Uganda and Tanganyika I believe there are a considerable number, especially in the former country, of natives who can claim to be enjoying an income of £3,000 or £4,000 per annum. It is necessary to clear this point up, in my opinion, at the present time.

I regret, to change another subject, that the select committee were unable to alter clause 44 in any way. I do not know whether I am in order in bringing that up again, but my remarks on that subject at the second reading of the Bill still apply and still stand. That is, as regards double payment of income tax.

THE ACTING ATTORNEY GENERAL: Your Excellency, with regard to the remarks made by the hon. Member for Kiambu (Major Riddel), it is perfectly true that copies of the report of the Income Tax Codification Committee were not available from home, but we did have the advantage of having this one copy kindly supplied by an hon. member on the other side of Council. I do not quite know who the hon. member wants beaten with regard to this savage protest, but I feel sure Government could not make a savage protest, as suggested by the hon. member, though representations will certainly be made.

[Acting Attorney General]

With regard to clause 90, it is in very general terms, and refers to all persons or classes of persons, irrespective of race or creed.

With regard to clause 44, this is in common form with all other income tax legislation, and therefore we are unable to alter it.

With regard to the remarks of the hon. Member for Mombasa (Mr. Bemister) and the hon. member Archdeacon Burns, with reference to clause 90, it is somewhat unusual for a request to be made to the Governor in Council to exercise his power of exemption in an Ordinance which has not yet been passed. Therefore, I submit, the application made by the hon. members is somewhat premature. When the Bill has been passed applications can be made and they will be considered by the Governor in Council in accordance with the terms of the clause.

There are only two other matters which need my attention.

One is the assurance asked for by the hon. Member for Nairobi South (Mr. Maxwell) yesterday, with regard to clause 37 (2) and clause 37 (1) (*d*). He asked for an assurance from me that the provisions of clause 37 (2) in no way qualified the provisions of clause 37 (1) (*d*), and I give him that assurance.

The other point was the point raised by the hon. Member for Trans-Nzoia (Col. Kirkwood) that agriculturists should be exempt from making returns for a period of five years. I discussed this question with the hon. member yesterday afternoon, and informed him that that was a concession which could not be granted by Government, or rather that it was an amendment which could not be accepted by Government. That was the reason the hon. member did not raise the amendment to-day.

The question of the adoption of the report of the select committee as amended was put and carried.

THE ACTING ATTORNEY GENERAL moved that the Income Tax Bill be read a third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bill was read a third time and passed.

SCHEDULE OF ADDITIONAL PROVISION NO. 4 OF 1936

THE COLONIAL SECRETARY: Your Excellency, I beg to move:—

"That the report of the Standing Finance Committee on the Schedule of Additional Provision No. 4 of 1936 be adopted."

The Standing Finance Committee considered the items in this schedule one by one and recommended approval of such expenditure as had not already been sanctioned by this Council. A summary of the financial effect appears in the footnote to the title page. From this it will be seen that the net total additional expenditure recommended for approval amounts to a sum of £11,143 only. This total is made up of a number of small items, and as they have been considered by the committee and in view of the explanation in the memorandum, I do not feel that any useful purpose would be served by discussing individual items.

THE ACTING TREASURER seconded.

The question was put and carried.

PENSIONS

THE ACTING TREASURER: Your Excellency, I beg to move:—

"This Council approves the payment of an unreduced pension of £533-17-11 a year to Mr. A. H. D. le Poer Trench, who is due to retire from the service of this Government with effect from the 3rd May, 1937, inclusive, in lieu of a reduced pension of £400-8-5 a year together with a gratuity of £1,334-15-0."

This motion is, apart from the name of the officer and the amount concerned, identical with a number of resolutions which have been passed by this Council during the last few years.

Mr. Trench is retiring voluntarily after just over twenty years' service, and the proposal is that he should be allowed to revoke the option which he had exercised to commute one-quarter of his pension

[Acting Treasurer]
and, instead, to draw the full amount of the pension. The financial effect is, of course, that we are relieved from paying a capital amount this year but will pay a slightly larger recurrent pension.

THE CHIEF NATIVE COMMISSIONER seconded.

The question was put and carried.

THE ACTING TREASURER: Your Excellency, I beg to move:—

"This Council approves the payment of an unreduced pension of £122-10-10 a year to Mr. H. N. Pandya, who retired from the service of this Government with effect from the 17th March, 1937, inclusive, in lieu of a reduced pension of £85-19-9 a year together with a gratuity of £286-12-6."

This motion is identical with the last one, with the one exception that the officer is not retiring voluntarily but is retiring on account of the abolition of his office.

THE CHIEF NATIVE COMMISSIONER seconded.

The question was put and carried.

LOYAL ADDRESS TO H.M. KING GEORGE VI

THE COLONIAL SECRETARY moved:—

"That Standing Rules and Orders be suspended in order to permit a motion to be proposed of a resoluiton of loyal and humble duty to Their Gracious Majesties King George VI and Queen Elizabeth on the occasion of their Coronation."

MAJOR CAVENDISH-BENTINCK seconded.

The question was put and carried.

THE COLONIAL SECRETARY moved:—

"That the following Address be presented to His Majesty the King:—

'The Legislative Council of the Colony and Protectorate of Kenya.

To His Most Excellent Majesty, King George the Sixth, by the Grace of God, of Great Britain, Ireland, and the British Dominions beyond the Seas King, Defender of the Faith, Emperor of India.

May it Please Your Majesty,

We, the Members of the Legislative Council of the Colony and Protectorate of Kenya, on the occasion of Your Majesty's Coronation, tender our loyal and humble duty to the persons of Your Majesty and Queen Elizabeth, and we most humbly and reverently pray that Your Majesty may enjoy a long and prosperous and peaceful reign under the blessing of Divine Providence.'"

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am sensible of having the extreme privilege on behalf of hon. members of this Council to second the resolution that an Address of loyal and humble duty be presented to His Majesty the King. (Applause.)

The question was put and carried.

The Address was then signed by all members.

ADJOURNMENT

Council adjourned *sine die*.

WRITTEN ANSWERS TO QUESTIONS

No. 1—CIVIL SERVICE: LEAVE TERM

BY LORD FRANCIS SCOTT:

Were the views of the Government of Kenya sought by the Colonial Office before the decision to alter the leave term of Civil Servants was arrived at?

If so, why was the matter not referred to the Standing Finance Committee in view of the fact that it must affect the Colony's expenditure estimates which were so recently approved?

Reply:

The reply to the first part of the question is in the affirmative.

Apart from the duties specifically assigned to the Standing Finance Committee in Standing Rules and Orders, reference to Standing Finance Committee is entirely within the Governor's discretion, and in this case the Governor did not consider such reference necessary as the matters had been under review since early in 1933 by the Colonial Office and by the Governors Conference. The financial effect is inconsiderable and requires no amendment to the Estimates.

There is no intention of shortening the tours of service, which will continue in normal circumstances as at present to be two four-year tours followed by subsequent tours of three years.

No. 8—REMOVAL OF NATIVES

BY ARCHDEACON BURNS:

Will Government inform this House what provision has been or is being made for the people numbering, I understand, 826 who were ejected from the Karen Coffee Estate some few years ago and were given a place called Riu, where they have built their houses and cultivated their gardens, but, I am informed, have now been told that they must leave that place and go the know not where?

If they are moved to Muguya, what provision is being made to supply them with water for theemselves and their stock, as I am given to understand that there is no water there?

Reply:

Arrangements are being made for the removal of these natives to a piece of land excised from the Muguga Forest which is being added to the Kikuyu Native Reserve on the recommendation of the Land Commission.

Steps are being taken to supply water for the Muguga Forest area from the sum of £5,000 which was allocated to the Kiambu Reserve by the Colonial Development Fund for water supplies in that Reserve.

No. 14—LONDON OFFICE AND CORONATION PROCESSION.

BY CAPT. SCHWARTZE:

1. Is Government aware that, in order to meet the cost of decorating the exterior of the London Offices, one-half of the windows looking out upon the route of the Coronation procession have been leased?

2. To whom have these offices been let, and under what terms and conditions?

3. Was this arrangement concluded with the prior sanction of the Government of Kenya?

4. Has any arrangement been concluded whereunder residents from the subscribing territories shall have a first chance to purchase places in the accommodation leased?

5. Was it ever suggested to Government that instead of leasing this accommodation to a contractor, residents from the subscribing territories should be invited to purchase places?

6. Is it a fact that Major Dale, at present in charge of this office, has laid down that in respect of the remaining accommodation whose windows overlook the Coronation route, each room is the property of the employee who occupies it for the accommodation of the friends and relations of that employee and the clerical staff of the office, and to the total exclusion from the East African Dependencies Office of any resident from the subscribing territories who happens to be in London at the time of the Coronation?

Does Government approve of this policy?

Reply:

1. Government is aware that the accommodation provided by the reception office and the waiting room of the Trade and Information Office has been let for the day of the Coronation procession with a view to the provision of funds for decorating the exterior of the office to conform with the scheme of decoration of Grand Buildings.

2. Since these two rooms will be in use up to and including the day before the Coronation, and again the day after, it was decided that it was impossible to erect a stand with numbered seats in the waiting room, and the two rooms were therefore let as a whole to Messrs. Keith Prowse & Co., Ltd., with the definite proviso that no stand is to be erected but that the rooms should be let by them to persons desiring a whole room for a party.

3. This Government was not consulted, but the Commissioner of the Trade and Information Office reports that the arrangement was concluded with the prior sanction of the Colonial Office.

4. In view of the fact that the accommodation in the Trade and Information Office is very limited and insufficient for the number of applicants who had already applied to the Office for seats, it was felt that it was better to deal with the applications all on the same basis, and a general application was therefore made by the Commissioner to the Colonial Office for an allocation of seats to cover these applications.

5. No suggestion of this nature was made to this Government.

6. It has been arranged that members of the staff whose windows overlook the procession route shall be allowed to retain the use of their rooms where there will also be accommodated those members of the staff whose rooms do not overlook the route. The Commissioner reports that all these officers have invited East Africans to be their guests for the procession in the rooms concerned.

In the circumstances, Government has no objection to the arrangements made.

No. 15—DAIRY CONTROL BILL

BY COL. KIRKWOOD:

Will Government please state its intentions with reference to the Dairy Control Bill?

Reply:

The report of the Standing Board of Economic Development, including a revised draft of the Dairy Industry Control Bill, will be issued shortly.

No. 16—MAIZE CONTROL BILL

BY COL. KIRKWOOD:

Will Government please state what the position is as regards the Maize Control Bill?

Reply:

In view of the fact that considerable opposition to the proposed Bill was expressed, the Bill was submitted in draft to the Secretary of State in August last for his advice, and the observations of the Secretary of State have not yet been received.

No. 17—RENT INQUIRY COMMITTEE OF ADVISORY LAND BOARD

BY COL. KIRKWOOD:

Will Government please state the cost to Government of the Rent Inquiry Committee of the Advisory Land Board?

Reply:

The cost to Government of the visit of the Advisory Land Board to the Trans Nzoia, Uasin Gishu and Kisumu-Londiani Districts in February, 1937, was £110.

No. 18—KENYA REPRESENTATIVES AT CORONATION

BY MR. WRIGHT:

Whether the selection of persons purporting to represent Kenya Colony at the Coronation was decided by the Imperial Government or was the result of the recommendations of the local Government?

Reply:

The persons in question were selected by His Excellency the Governor.

No. 21—TRAINING OF INDIAN TEACHERS

BY DR. DE SOUSA:

1. What was the number of pupils in the class for training of Indian teachers started at the Nairobi Government Indian Secondary School for Boys during 1936?

2. How many of these pupils appeared for the College of Preceptors examination or any other overseas examination, and what is the result of such examination or examinations?

3. Is the training of Indian teachers continued in the above school during 1937? If yes—

(a) how many pupils were in training from January to March, 1937?

(b) are all of these students who have completed their secondary studies in Kenya Government schools, or are any or all of them members of the permanent establishment of any Government Indian School?

4. What has been the cost to Government of the class to train Indian teachers in Nairobi during 1936 in salaries and other emoluments of—

(a) pupil teachers;

(b) a teacher or teachers of this class?

5. How many of the pupil teachers who failed in their overseas examinations during 1936 continue to be in the service of the Education Department during 1937?

6. Is it a fact that Government have recently dispensed with the services of a number of temporary teachers with university qualifications who had been in service for some years in an acting capacity? If so, could the services of these teachers not be utilized by the Education Department in any of the Indian schools in the Colony or Protectorate?

Reply:

1. Eight.

2. All appeared for the A.C.P. examination and one passed.

3. The answer is in the negative; (a) and (b) therefore do not arise.

4. The allowance paid to pupil teachers was £48 per annum; total, £384. A European teacher was seconded for the work. The additional cost to Government was one relief teacher, £240.

5. First term, 4; second term, 3.

6. The services of two graduate Urdu teachers who had come to Kenya at their own risk and had accepted temporary relief posts, had to be dispensed with for the second term as the substantive holders of the posts had returned from leave. It is possible that there will be temporary vacancies for them in the third term.

No. 22—DAIRY INDUSTRY CONTROL BILL

BY MR. LONG:

Can Government give any information as to whether the Secretary of State has as yet given his telegraphic approval of the introduction of the draft Bill amended by the Standing Board of Economic Development with regard to the control of the dairy industry?

Reply:

The report of the Standing Board of Economic Development upon the Dairy Industry Bill, together with a draft Bill recommended by the Board, was sent on the 31st March to the Secretary of State from whom no reply has yet been received.

No. 23—SUPERANNUATION OF SCHOLARS

BY DR. DE SOUSA:

1. Since when has superannuation been carried out in the Government secondary schools of the Colony and Protectorate?

2. How many boys have been superannuated up to the 31st March, 1937, in each of the following secondary schools:—

(a) Prince of Wales School, Nairobi,

(b) Allidina Visram High School, Mombasa,

(c) Government Indian Secondary School, Nairobi?

3. How many boys have been superannuated on account of—

(a) age,

(b) lack of progress, and

(c) age and lack of progress?

Reply:

Superannuation has always been necessary to some extent. Superannuation in the Government schools was placed on a legal footing under the Education (School Discipline) Rules, 1932. Paragraph 6 of these Rules, which authorizes the Director to superannuate, applies equally to all Government schools irrespective of the race of the pupils or the classification of the school.

2. Superannuation normally takes place during or at the end of the primary course, namely before the pupil is allowed to embark on the more difficult and more expensive secondary course. Superannuation in secondary classes is therefore comparatively rare. In 1936 they were:—

(a) Prince of Wales School, Kabete, nil.

(b) Allidina Visram High School, Mombasa, 6.

(c) Government Indian Boys School, Nairobi, 8.

Figures in respect of previous years are not available.

3. In all cases the reasons for superannuation were both age and lack of progress.

No. 24—WHEAT REBATES

BY DR. DE SOUSA:

1. Is Government aware that a certain firm of wheat millers in the Colony has been granted improper allowances of rebates on the Mombasa Line?

2. Is it a fact that the Wheat Advisory Board received a complaint in this respect from interested parties and that the Board, being satisfied as to the veracity of the facts disclosed, has asked for the audit of all rebate claims since the inception of the Wheat Advisory Board and for the appointment of an official auditor to report on the matter?

3. If the answer to the above is in the affirmative, will Government state what action they have taken with regard to the above request of the Wheat Advisory Board?

Reply:

1. Government is aware that allegations have been made that a certain firm of wheat millers in the Colony has been granted improper allowances in respect of rebates on the Mombasa Line.

2. It is a fact that the Wheat Advisory Board received a complaint in this respect from certain parties. In consequence of this complaint the Board conducted a preliminary inquiry which established the fact that certain unauthorized rebates amounting approximately to £170 over two years had been given, which the Agents stated were due to errors on the part of the staff. The Board thereupon resolved, at the request of the Agents, that a full audit of all rebate claims since the inception of the Wheat Advisory Board be made, and that the auditors be requested to report to the Board; and further, that as the accounts had been annually certified, the Director of Agriculture be asked to appoint an auditor, if possible a Government auditor.

3. The Wheat Advisory Board was informed that it was regretted that the Government was unable to comply with should be carried out by a Government auditor, and that it was considered that it should be possible to appoint an independent auditor, if such was required, who would satisfy all parties. An auditor recommended by the complainants has now been appointed.

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