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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

Second Series

Volume V

1938

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CHRONOLOGICAL INDEX

	Column
5th August, 1938	1
8th August, 1938	15
9th August, 1938	37
10th August, 1938	103
16th August, 1938	148
17th August, 1938	200
18th August, 1938	305

List of Members of the Legislative Council

President:

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

Ex Officio Members:

CHIEF SECRETARY (HON. SIR A. DE V. WADE, C.M.G., O.B.E.)

ATTORNEY GENERAL (HON. W. HARRAGIN, K.C.)

FINANCIAL SECRETARY (HON. C. R. LOCKHART, C.B.E.)

CHIEF NATIVE COMMISSIONER (HON. E. B. HOSKING, O.B.E.)

COMMISSIONER FOR LOCAL GOVERNMENT, LANDS AND SETTLEMENT, ACTING (HON. C. E. MORTIMER, M.B.E.) (1)

DIRECTOR OF MEDICAL SERVICES, ACTING (DR. THE HON. F. J. C. JOHNSTONE) (2)

DIRECTOR OF AGRICULTURE (HON. H. B. WATERS)

DIRECTOR OF EDUCATION, ACTING (HON. R. H. W. WISDOM) (3)

GENERAL MANAGER, KENYA AND UGANDA RAILWAYS AND HARBOURS, ACTING (HON. A. E. HAMP, C.B.E.) (4)

DIRECTOR OF PUBLIC WORKS (HON. J. C. STRONACH)

COMMISSIONER OF CUSTOMS, ACTING (HON. A. W. NORTHPOL) (5)

Nominated Official Members

HON. G. H. C. BOULDERSON (Prov. Commissioner, Coast Province)

HON. H. M. GARDNER, O.B.E. (Conservator of Forests)

HON. S. H. LA FONTAINE, D.S.O., O.B.E., M.C. (Prov. Commissioner, Central Province)

HON. S. O. V. HODGE (Prov. Commissioner, Rift Valley)

HON. G. BERESFORD STOOKE (Deputy Treasurer)

HON. T. D. WALLACE (Acting Solicitor General) (6)

HON. G. P. WILLOUGHBY (Acting Postmaster General) (7)

HON. C. TOMKINSON (Act. Prov. Commissioner, Nyanza Province) (8)

HON. E. J. MULLOAN (Acting Director of Veterinary Services) (9)

European Elected Members:

MAJOR THE HON. F. W. CAVENDISH-BENTINCK, Nairobi North.

HON. S. V. COOKE, Coast.

THE RIGHT HON. THE EARL OF ERROLL, Kiambu.

THE HON. LADY SIDNEY FARRAR, Nyanza.

HON. S. G. GHERSIE, Uasin Gishu.

MAJOR THE HON. F. DE V. JOYCE, M.C. Ukamba (Acting) (10)

LT.-COL. THE HON. J. G. KIRKWOOD, C.M.G., D.S.O., Trans Nzoia.

LT.-COL. THE HON. F. S. MODERA, D.S.O., M.C., Nairobi South.

HON. W. G. D. H. NICOL, Mombasa.

LT.-COL. THE HON. LORD FRANCIS SCOTT, K.C.M.G., D.S.O., Rift Valley.

HON. E. H. WRIGHT, Aberdare.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

Indian Elected Members:

HON. ISHER DASS.
HON. SHAMSUD-DEEN.
HON. R. KASSIM.
HON. J. B. PANDYA.
HON. A. B. PATEL.

Arab Elected Member:

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

Nominated Unofficial Members:

Representing the Interests of the African Community—

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

Representing the Interests of the Arab Community—

HON. SHEIK HAMED BIN MOHAMED BIN ISSA.

Clerk to Legislative Council—

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

Reporters:

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

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

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

5th August, 1938:

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

8th August, 1938:

Hon. J. B. Pandya.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

9th August, 1938:

Hon. J. B. Pandya.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

10th August, 1938:

Hon. J. B. Pandya.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

16th August, 1938:

Hon. Commissioner of Customs.
Hon. C. Tomkinson.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

17th August, 1938:

Hon. Commissioner of Customs.
Hon. C. Tomkinson.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.

18th August, 1938:

Hon. C. Tomkinson.
Hon. A. B. Patel.
Hon. Arab Elected Member.
Hon. Arab Nominated Member.



COLONY AND PROTECTORATE OF KENYA
LEGISLATIVE COUNCIL DEBATES.

SECOND SESSION, 1938

Friday, 5th August, 1938

Council assembled at the Memorial Hall, Nairobi, at 11 a.m. on Friday, 5th August, 1938. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning Council was read.

ADMINISTRATION OF OATH

The Oath was administered to:—

Temporary Nominated Official Member—

G. P. Willoughby, Esq., Acting Postmaster General.

Member for Rift Valley—

Lt.-Col. the Hon. Lord Francis Scott, K.C.M.G., D.S.O.

Member for Nairobi South—

Lt.-Col. F. S. Modera, D.S.O., M.C.

Member for Indian Central Area—

Isher Dass, Esq.

COMMUNICATION FROM THE CHAIR

His Excellency made the following communication from the Chair:—

Honourable Members,

The news that Their Royal Highnesses the Duke and Duchess of Gloucester intend to pay a visit to this country, arriving in about a fortnight's time, has given the greatest pleasure to all the peoples of Kenya.

I take this opportunity of emphasising that the visit is of a purely private nature, and that Their Royal Highnesses are looking forward to a complete rest after a long period of strenuous work in England. I know that Kenya will respect their wishes, will understand that they cannot take part in public functions and will not expect them to do so.

It is a matter of no small satisfaction that they should have chosen Kenya as the particular part of the British Empire in which to seek for rest and recuperation.

I wish to extend on behalf of all of us a very cordial welcome to our new member, Colonel Modera. His long residence in this Colony and his wide and varied experience will, I know, prove of great value in our deliberations. (Applause.)

We are now within sight of the Budget Session and it is not my intention this morning to discuss general topics at any great length. There are a few matters on which I feel that honourable members would wish to have some information, and the first of these is the extent to which we are progressing in our defence programme.

The international situation is still somewhat disturbing, but the fact that nothing more serious has occurred is due, to no small extent, to the resolute manner in which Great Britain, with the whole British Empire, has determined to be strong enough to preserve peace. This is no time to relax our efforts and, as I have emphasised on previous occasions,

[H.E. the Governor] we must continue to take our fair share in the cost and sacrifices entailed by the needs of Imperial Defence. I know that the whole of Kenya is ready to do this.

In a previous statement I mentioned the Defence Committee and the Supply Board, and I will not refer to these further, except to state that for some of its meetings the Defence Committee is being strengthened by co-opting two unofficial members, and that a second unofficial member has been added to the Supply Board.

A Man Power Committee is now functioning; it has the Chief Native Commissioner as Chairman, with three official and three unofficial members. It has been formed with the object of drawing up a scheme for the utilization of the man power of the Colony so as to ensure that, in the event of hostilities, every person will be employed in the capacity in which he will be of the greatest value to the country. It will have to co-ordinate and adjust the many requirements for man power—military forces, air raid precautions, maintenance of essential services, and the normal work of production. It is proving a big job, bigger even than was anticipated, but I know that the work is being done very thoroughly. But in order that it may be a success, I want everyone to co-operate by filling up a form that will be sent out to them very shortly. We all dislike forms, but when I say that the work of this man power committee is an essential part of our general defence scheme and that its work cannot be satisfactorily completed until these forms are filled in and returned, I know that I am not asking in vain for the forms to be returned expeditiously.

I have also appointed a Communications Committee under the chairmanship of the Squadron-Leader of the Royal Air Force. This Committee will consider questions in connexion with the adaptation of the existing system of communications, that is telegraph, telephone and wireless communications, to meet the military requirements with as little disturbance as possible to the normal needs of the community.

On the last occasion on which I addressed this Council I mentioned that a

full scheme for the reorganization of the Northern Brigade of the King's African Rifles had been prepared. Honourable members will observe from the Order Paper before them that during the course of this Session they will be asked to approve the proposals contained in Sessional Paper No. 1 describing in detail the Inspector General's scheme for reorganization.

As regards air raid precautions, the Committee at Nairobi, which, you remember had not started when last I made an address, has commenced its work; it is fully representative, and it is meeting regularly and getting well ahead with its duties. We now have seven certified air raid precautions instructors in the Colony, and under the aegis of our two voluntary organizations—the Red Cross and the St. John Ambulance, 115 persons have been trained in A.R.P. and a further 263 in first aid.

As honourable members are aware, a camp for Class I, Kenya Defence Force, was formed at the Kabete Showground in July. During my inspection of that camp I was very pleased with all its organization, with the keenness shown by all ranks, and their determination to become efficient for their duties. The very satisfactory feature of that training was to find that members of the Kenya Regiment were proving efficient instructors.

A muster of Class II, Kenya Defence Force, of the Nairobi District was held at the same place on July 11th; it was attended by 761 members and proved to be of much value.

Now, I want to turn to the position in Ukamba and say a few words about the factors that have influenced Government in the steps it has taken to deal with the problem of soil conservation in that area.

Many arguments could have been brought up for postponing action, but anyone who has read reports by the different authorities, who has toured through Ukamba and has had experience of desert conditions in other parts of the world, will realize that action is necessary at once, in order to prevent a large area of that country becoming completely and permanently infertile. Much of the present problem is due to overstocking, and it is manifest that a large reduction of stock

[H.E. the Governor] is essential in order to make regeneration of the land possible.

There is no need to search far to find confirmation from independent authorities that our policy is correct; only the day before yesterday a letter from Sir Daniel Hall appeared in the *East African Standard* and I will quote the last sentence of that letter:—

"Poverty is the greatest of all barriers to social development, and since the growing poverty of the Wakamba can only be remedied by a reduction of their live stock as a first step towards a better agriculture, all those who have the welfare of the tribe at heart should lend their support to this measure."

It might be, and indeed has been, argued that we should have waited and have carried out more propaganda as regards the necessity for stock reduction before taking action. But those who argue thus overlook the fact that for many years past officers of Government have persistently preached to the Akamba the evils of overstocking and the necessity for adjusting the number of their cattle to the carrying capacity of their land. The effect of this has been by no means negligible, but is too slow, and at the present rate of progress it would take something like a generation to bring about the result required, purely by a process of education and nothing else. By that time we should have had to have faced a different problem—not that of restoring fertility to the soil, but of supplying food to a starving population. Our action has not been precipitate or premature.

Although it should be unnecessary, I must emphasise that the object of destocking is to preserve the fertility of Ukamba for the present people and for their children. The object is not to provide cattle for Liebigs. The Liebigs factory forms an integral and valuable part of the soil conservation programme, but it is a means to an end, but not the end in itself.

The destocking action coincided with the opening of the Liebigs factory because it affords the outlet for which Government had been waiting. To have destroyed stock without compensation to the owners might have become necessary but it would

have been repugnant to our traditions of fair treatment. The enterprise of Liebigs has provided the means whereby owners can obtain a fair price for stock that would otherwise be unsaleable, and through it destocking has become practicable.

The process is not being carried out in a haphazard manner, but is based on surveys which are as thorough as time and staff allow.

Although reduction of stock is one of the essentials, it is not the only action being taken. Positive action is also proceeding, such as tree planting, terracing and closing certain areas to grazing so as to allow Nature to carry out her work of regeneration. There are certain things which occasionally give cause for despondency—for instance, to find that after encouraging, certainly the Akamba to grow Napier grass and making them a free issue of shoots, they do not use it as fodder for their cattle because they have been told that this is a deliberate attempt on the part of the Government to poison their beasts; this in spite of the fact that Napier grass is used regularly as food for Government cattle at Machakos.

On the other hand, there is much to confirm our confidence in the possibility of regenerating the country. Areas that are closed to grazing recuperate in a remarkable way, and suitable crops grow well. Several locations are co-operating, and apart from cattle reduction, the people are becoming alive to the necessity of soil conservation, are anxious to learn, and are beginning to take steps on their own. It is a long but by no means a hopeless task, because one can already see results from the work that has been done.

I wish to take this opportunity of paying a tribute to the manner in which the officers responsible are carrying out a difficult and delicate task, a task in many ways unpleasant to them and at all times requiring tact and firmness.

You may remember in *Quilliver's Travels* the words that Dean Swift puts into the mouth of the shrewd king of Brobdingnag: "whoever could make two ears of corn or two blades of grass to grow upon a spot of ground where only one grew before would deserve better of mankind, and do more essential service

[H.E. the Governor] to his country, than the whole race of politicians put together". We have got a bigger task in Ukamba—to make land that can at present grow no blade of grass, sufficiently fertile to grow many. The time may yet be far distant when everyone will realize that we deserve well of mankind for the steps we are taking to bring this about, but I am confident the time will come.

I regret that some two thousand Akamba, including women and children, have thought fit to come and bivouac in Nairobi in the hope of inducing me to abandon the policy of destocking. They are without their Headmen or responsible Elders but they have behaved in an orderly manner.

We cannot but feel sympathy for them, and they have been treated with the utmost leniency. The tactics they have been misguided enough to adopt can serve no good purpose and will certainly have no effect whatever on Government's policy. It is to be hoped that they will return to their location and co-operate with us in a policy which, though distasteful to them and to us, is for the ultimate good of them and of their children.

Honourable members will recall that during the last Session of Legislative Council I referred to the proposed early reorganization of the Executive Council, and to the fact that one of the first matters on which I should seek that Council's advice would be the formation of a comprehensive development plan for the Colony which it could set before us as a goal over a period of years. The Royal Instructions which were required to bring the new Executive Council into being were signed by His Majesty on the 26th May. It was then necessary to obtain His Majesty's wishes as to personnel, and the reorganized Council first met on the 17th June for routine business, and on the 18th June for constructive development.

In order to be able to concentrate on development it is necessary to have one's mind freed from routine matters. I have therefore given instructions that, except when Legislative Council is sitting, the routine meeting of Executive Council which is held every fortnight shall be followed on the next day by a meeting at

which nothing but the constructive development programme is considered. Whilst this Council is sitting, the time factor will make this second meeting impracticable. The normal work has to continue. There are only 168 hours in the week and members of Executive Council, official as well as unofficial, are human beings and not machines, and must have a certain amount of time to eat and sleep.

As I said last April, the basis on which the work is being carried out is a series of memoranda which are very useful as a start for consideration of the programme. The Development meetings so far have been devoted mainly to agricultural problems. Action has already been taken in certain directions—for instance, the preparation of an agricultural handbook on soil conditions and crop and stock possibilities has been started and it should prove valuable to new settlers or farmers who contemplate making a change.

As I indicated previously, the principal job of the Executive Council in this connection is to initiate and co-ordinate, referring the detailed work to other existing committees. In accordance with this principle the Standing Board of Economic Development have been instructed to examine the possibilities of starting new industries along certain lines. There are many other matters going on, but the steps that it has been possible to take so far are only of a preliminary nature. Any statement I might make about them might be misleading or, if not, would have to be so vague as to have no meaning whatever, and so I prefer to say nothing about them until I have something definite on which to give information.

I also referred at the last session to the subject of the reorganization of the Central Government, and I informed honourable members that the proposals of this Government, based on exhaustive discussions in Executive Council, were with the Secretary of State. I should like to express my gratitude both to my official and unofficial advisers for the very thorough manner in which they each investigated this matter, for the great trouble which they took in furnishing me with their views, and the readiness with which they helped in the solution of what proved

[H.E. the Governor] to be a complicated problem. The details of the organization which has been adopted are set out in Sessional Paper No. 2 on Sir Alan Pim's Report which honourable members have before them.

Briefly, the goal of the reorganization is the same as that at which Sir Alan Pim aimed—namely, an increase in the number of channels through which work can flow and the transfer from the shoulders of the Chief Secretary of as many as possible of his routine functions. The method we have adopted differs from that indicated by Sir Alan Pim, since it was generally agreed that it would neither be practicable nor desirable to absorb the post of Chief Native Commissioner into that of an executive secretary to Government; because the Chief Native Commissioner must be free to travel round the country. In consequence, the creation of Sir Alan Pim's team of three secretaries was not feasible and the place of these three secretaries has been taken by two, the Chief Secretary and the Financial Secretary, with the Chief Native Commissioner in his proper role and not as a secretary. For similar reasons it has not been possible to group departments under the secretaries to Government in such a water-tight manner as Sir Alan Pim suggested. The re-grouping is, however, being carried out to the maximum extent to which it is possible in the present circumstances and with the present personnel. Reorganization will be made fully effective as soon as certain additions and alterations to existing buildings are completed. It is my belief that as soon as the teething troubles are over, this reorganization will lead to more efficient and more expeditious work and give more opportunity for consideration of broad problems of policy.

I had hoped that the programme of Road Development prepared by the Central Roads and Traffic Board would be ready by now, but it will be laid on the Table before the end of this Session.

The work of the Committee appointed last year to make recommendations for a settlement scheme has progressed steadily, if somewhat slowly. But the subject with which the Committee had to deal was so complex and so intimately related to the general financial position of the Colony

and to the economics of farming that hasty conclusions were inadvisable. Much information has been gathered, and an interim report is being drafted.

Mr. Hosking, who was appointed Chairman of that Committee, finds that his duties as Chief Native Commissioner make it very difficult for him to retain his place on the Committee as Chairman. Whilst regretting the need for making a change, I appreciate the reasons and have appointed another Chairman in his place.

Honourable members will not have forgotten that during the last Session an undertaking was given by the Financial Secretary that full figures in the complete form which it was possible for the Income Tax Department to compile would be placed before the Standing Finance Committee in July. These figures have already been furnished to the Standing Finance Committee in the form of a Report by the Commissioner for Income Tax. I have given instructions that this Report should be laid on the Table of Council at a later date during the current Session. The Standing Finance Committee are not prepared to submit recommendations on the Report until it has received wide publicity and until they have had an opportunity of obtaining evidence from members of the public.

To turn to the public finance of the Colony, the revenue returns for the first half of this year can be regarded as satisfactory, and while I do not anticipate a surplus in 1938 comparable with those realized in 1936 and in 1937, there is no reason to suppose that the result of the year's working will show any marked variation from that forecast in the Estimates. The figures of domestic exports for the first five months of the year have now been published and they show a decline in value as compared with a year ago of approximately six per cent. That decline is of course, more marked in certain industries—namely coffee, cotton and sisal—than in others, but there have been compensatory features and on the whole the level of our exports has been well maintained. The reduction in export values must be expected to have its effect on imports and upon trade generally, and there is some evidence of this effect, but while a decline from the peak reached in

[H.E. the Governor]

1937. It is to be expected, I can find no reason to anticipate anything in the nature of slump conditions or any cause for a serious trade recession when the economic condition of the Colony is viewed as a whole. The only information I can give with regard to what is known as the five-and-a-half million loan is contained in the last paragraph of Sessional Paper No. 2 which I propose to read:—

"As regards the remission of the formal liability for 5½ million pounds on account of the original cost of the construction of the Uganda Railway, negotiations are at present proceeding."

I cannot add anything to that at present.

We had visits from H.M.S. *Emerald* and H.M.S. *Norfolk* recently and these were much appreciated. I have every reason to believe that both at Mombasa and Nairobi our naval guests enjoyed themselves as much as we did in entertaining them.

I will now turn to the legislation which it is hoped to enact during the present Session. Fifteen Bills in all have been circulated to honourable members, including those consideration of which was deferred from the last time we met. These latter number three: The Sugar (Control) Bill, The Kenya Defence Force (Amendment) Bill, and The Shops in Rural Areas (Amendment) Bill. I need not make any further reference to them.

The two main new Bills are the Native Lands Trust Bill and the Crown Lands (Amendment) Bill which are designed to give effect to the recommendations of the Kenya Land Commission. I hope that the passage of these Bills will constitute a big step forward towards the settlement of the land problem which has exercised our thoughts so much during the past few years, somewhat to the detriment, I feel, of the economic progress of Kenya. I hope that once the policy is settled we shall be able to devote more time and energy to tackling the many urgent problems affecting the prosperity and welfare of all races of our community.

The Bill to amend the Public Holidays Ordinance is introduced in order to even out the holidays throughout the year.

The Penal Code (Amendment) Bill is principally intended to bring the laws relating to sedition and the importation of undesirable literature into conformity with those obtaining in the other British Dependencies.

The Bills of Exchange (Amendment) Bill and the Eire and Northern Ireland (Consequential Provisions) Bill are self-explanatory. So also is the Tea (Amendment) Bill, though I must make it clear with regard to that Bill that the figures for new acreage are to some extent anticipatory.

The Transport Licensing (Amendment) Bill is not of a contentious nature and mainly aims at correcting certain anomalies which have been found to exist in the original Ordinance.

The Kerosene Oil (Repayment of Duty) (Amendment) Bill relaxes the rather rigid conditions in respect of claims for refunds of duty included in the main Ordinance, and the 1937 Supplementary Appropriation Bill is complementary to the final Schedule of Additional Provision for 1937 which honourable members have before them.

The Electric Power (Amendment) Bill is designed to obviate an interruption of negotiations at present in progress in connexion with the extension of the licences of the East African Power and Lighting Company.

The remaining two Bills—the Control of Fugitive Belligerents (Amendment) Bill and the Refugees Bill—are intended to regularize the position with regard to numbers of Abyssinian or Italian troops and of refugees from Abyssinia who have entered and are now living in this Colony. The necessity for legislation of this nature is made clear in the Objects and Reasons to the first of the above Bills and in the preamble of the latter one, and it would serve no useful purpose for me to comment on them further.

Honourable members, in opening the second Session of this Council, I most earnestly trust that, with the blessing of Almighty God, its deliberations may lead to the promotion of the peace, prosperity and welfare of this Colony and Protectorate. (Applause.)

MINUTES

The minutes of the meeting of the 3rd May, 1938, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the table:—

BY THE CHIEF SECRETARY (SIR A. WADE):
Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1937.

Standing Finance Committee Report on Schedule of Additional Provision No. 1 of 1938.

Schedule of Additional Provision No. 5 of 1937.

Report on Audit of Accounts, Kenya and Uganda Railways and Harbours Administration, 1937, with Transport Despatch No. 92 of 1st July, 1938.

Game Department Annual Report, 1937.

Judicial Department Annual Report, 1937.

Kenya Police Annual Report, 1937.

Mining and Geological Department Annual Report, 1937.

Printing and Stationery Department Annual Report, 1937.

Prisons Department Annual Report, 1937.

BY THE ATTORNEY GENERAL (MR. HARRAGIN):

Inland Water Transport (Licensing) Regulations, 1938.

Inland Water Transport (Licensing) (Amendment) Regulations, 1938.

Inland Water Transport (Licensing) (Amendment No. 2) Regulations, 1938.

Vehicles Licensing (Amendment) Regulations, 1938.

Recruiters and Labour Agents Rules, 1938.

Select Committee Report on the Sugar (Control) Bill.

BY THE FINANCIAL SECRETARY (MR. LOCKHART):

Financial Report and Statement for 1937.

Sessional Paper No. 1: Reorganization of King's African Rifles.

Sessional Paper No. 2: Résumé of recommendations of Commission appointed to inquire into and Report on the Financial Position and System of Taxation of Kenya and action taken thereon by the Government of Kenya.

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

Return of Land Grants, 1st January to 31st March, 1938.

Return of Land Grants, 1st April to 30th June, 1938.

BY THE ACTING GENERAL MANAGER, K.U.R. & H. (MR. HAMP):

Report of General Manager on the Administration of Kenya and Uganda Railways and Harbours, 1937.

Second Supplementary Estimates, 1937, K.U.R. & H.

BY THE DIRECTOR OF PUBLIC WORKS (MR. STRONACH):

Public Works Department Annual Report, 1937.

BY MR. GARDNER:

Forest Department Annual Report, 1937.

BY MR. WILLOUGHBY:

Posts and Telegraphs Department Annual Report, 1937.

Kenya Savings Bank Annual Accounts for 1937.

BILLS

FIRST READINGS

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

The Bills of Exchange (Amendment) Bill.

The Kerosene Oil (Repayment of Duty) (Amendment) Bill.

The Public Holidays (Amendment) Bill.

The Crown Lands (Amendment) Bill.

The Native Lands Trust Bill.

The 1937 Supplementary Appropriation Bill.

The Eire and Northern Ireland (Consequential Provisions) Bill.

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

ADJOURNMENT

Council adjourned till 10 a.m. on Monday, 8th August, 1938.

Monday, 8th August, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Monday, 8th August, 1938. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of the 5th August, 1938, were confirmed.

ORAL ANSWERS TO QUESTIONS

**No. 18—THIRD CLASS COACHES,
K.U.R. & H.**

MR. KASIM asked:

1. When does the Railway Administration intend to remove the old type 4-wheeler third class coaches in which there are no conveniences?

2. Will drinking water facilities be supplied in the new type of third class coaches?

MR. HAMP: 1. It is hoped to commence the replacement of the old type 4-wheel third class coaches early in 1939.

2. Drinking water facilities will be supplied in the new third class coaches to replace the old type.

No. 20—COLLECTION OF FISHERY FEES

MR. COOKE asked:

Will the Hon. General Manager, Kenya and Uganda Railways and Harbours be pleased to state:—

(a) The amount of fees collected in 1937 in respect of fish traps and native dug-outs and the approximate cost of the collection of same?

(b) Whether he considers that the amount collected in respect of these petty dues is at all commensurate with the cost of collection and the trouble of accounting. And does he not consider that the vexation caused to the fishermen and the opportunities for graft in the collecting altogether outweigh any advantage?

MR. HAMP: (a) The total fees collected by the Railways and Harbours

Administration in respect of Fishing Stakes and native fishing boats and canoes during the year 1937 were:—

Fishing Stakes . . . Sh. 1,802.

Fishing Craft . . . Sh. 2,885

The approximate cost of collecting the fees is Sh. 30 per annum.

(b) The attention of the hon. member is invited to Standing Order 22 (v).

MR. COOKE: Your Excellency, arising from that answer, may I ask the hon. member whether that includes the cost to the Customs Department of collecting fees? I understand that department collects a lot of fees.

MR. HAMP: This includes the cost to the Railway Administration only.

MR. COOKE: Thank you.

No. 21—TRANSLATION OF ORDINANCES

MR. COOKE asked:

With reference to Government Notice No. 437 of 1938, will the Hon. the Chief Native Commissioner be pleased to inform this Council the steps that have been taken to make the native authorities conversant with the ordinances upon which they are thereby empowered to adjudicate.

Are the provisions of these ordinances translated into the dialects of the various tribes and, if so, will he be pleased to supply this Council with a few copies of these translations?

MR. HOSKING (Chief Native Commissioner): Government Notice No. 437 of 1938 refers to the powers of native tribunals established under the Native Tribunals Ordinance, 1930. Steps have been taken, by way of written instructions to the clerks, in many districts where native tribunals have been established to make these tribunals conversant with the nature of the offences which fall within their jurisdiction. In other districts, oral instructions have been given.

The Ordinances are not translated as such, nor is it practicable to translate them into local dialects.

No. 22—ABYSSINIAN REFUGEES

MR. COOKE had given notice to ask:—

Will the Hon. the Chief Native Commissioner be pleased to inform Council whether any steps have been taken to settle some or all of the Abyssinian refugees in the vicinity of Lamu?

If the answer is in the negative, will he give the specific reasons for this inaction?

The question was by leave of Council withdrawn.

SCHEDULES OF ADDITIONAL PROVISION
No. 4 of 1937

SIR A. WADE (Chief Secretary): Your Excellency, I beg to move:—

"That the Standing Finance Committee Report on Schedule of Additional Provision No. 4 of 1937 be adopted."

The Standing Finance Committee has considered the items in this Schedule one by one and has recommended approval of such expenditure as has not otherwise been authorized by this Council. As it was explained when moving that the Schedule should be referred to the Standing Finance Committee on the 2nd May, although the gross additional provision amounts to £122,476 the net expenditure amounts to £50,871 only. This latter sum is accounted for mainly by a total provision of approximately £35,000 under the Heads "Local Government, Contributions to Local Authorities," "Public Works Recurrent," and "Public Works Extraordinary," in respect of unavoidable additional expenditure on roads and buildings; some £5,000 on increased expenditure on mail services; £2,770 on the purchase of the experimental farm at Kibarani; approximately £2,000 on compensation to the K.U.R. & H. for the removal of houses; and the balance of about £5,000 consists mainly of minor excesses under the Medical and Prisons Departments.

MR. LOCKHART (Financial Secretary) seconded.

The question was put and carried.

No. 1 of 1938

SIR A. WADE: Your Excellency, I beg to move:—

"That the Standing Finance Committee Report on Schedule of Additional Provision No. 1 of 1938, be adopted."

In this case also, the Standing Finance Committee has considered the Schedule item by item and recommends the expenditure set out therein. Hon. members will have seen from the note appearing on the cover of the Schedule that the net additional expenditure amounts to approximately £7,500. This expenditure consists mainly in the provision of approximately £5,000 on roads, £1,300 on the Nairobi Telephone Exchange, and £1,000 on Defence.

MR. LOCKHART seconded.

The question was put and carried.

No. 3 of 1937

SIR A. WADE: Your Excellency, I beg to move:—

"That Schedule of Additional Provision No. 3 of 1937 be referred to the Standing Finance Committee."

This Schedule closes the account for supplementary provision during 1937. It makes provision for gross additional expenditure of £76,076. Of this sum £2,404 is covered by savings, and there is a set-off of £4,440 by way of reimbursements. The net additional expenditure therefore amounts to £69,232, the details of which are set out on the title page of the Schedule. Perhaps I should explain that, although it has not previously been possible to consider this Schedule in Council, the excess of expenditure shown therein has been taken into account in the statement of the excess of assets over liabilities appearing in the Financial Report for 1937.

MR. LOCKHART seconded.

The question was put and carried.

MRS. VEREKER: COMPASSIONATE GRANT.

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

"In consideration of the destitution of the widow of the late Commander L. G. P. Vereker, who retired from the

[Mr. Lockhart] service of the Railway Administration on the 1st March, 1921, after rendering over twelve years' service, this Council is pleased to award her a compassionate grant of £207, this amount being equivalent to one year's pension at the rate drawn by her husband."

Commander Vereker died in 1937. During the time of his service he had no opportunity of contributing to the Widows and Orphans' Pension Fund, and with a wife and two children to support on a pension of £207 a year it is not, perhaps, surprising that he was unable to make any provision for his widow, who was left at his death in a state which can fairly be described as one of destitution.

There are precedents for granting assistance to the dependents of ex-Government servants in these circumstances, but the period of service of an officer has to be taken into account and

sad as this case is (and I may say that it has been the subject under Your Excellency's direction of independent investigation as to this lady's circumstances). Government would not be justified in asking this Council to do more than make a compassionate grant of £207 which is in effect extending the pension of the late Commander Vereker for a period of one year.

MR. HARRAGIN seconded.

The question was put and carried.

LOAN EXPENDITURE FOR 1937

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

"Be it resolved that this Council approves the loan expenditure for 1937 as detailed hereinafter in place of the expenditure specified in Appendix P (A) of the sanctioned Estimates for 1937.

SCHEDULE

	Original Estimate	Revised Estimate (if any)	Actual Expenditure up to 31-12-36	Expenditure During 1937
	£	£	£	£
£5,000,000 (1927) Loan— Capital Improvements ..	500,000	527,204	609,584	303
£3,500,000 (1928) Loan— Railway and Harbour Development General Improvements on Main Line and Additional Equip- ment ..	175,000	333,914	244,090	25,052
£3,400,000 (1930) LOAN— Kenya and Uganda Railways and Harbours Railway Development : (a) Branch Lines ..	315,000	287,000	260,082	4,000
Harbour Development : (b) Port Improvements ..	99,542	184,863	180,077	45,952
Colonial Development Public Buildings : (2) Mixed Buildings : (a) Mathari Mental Hos- pital ..	0,308	8,768	8,444	325
(b) Nairobi Group Hos- pital ..	78,500	332,000	2,325	752
(3) Educational Buildings : (a) Boarding Accommoda- tion, Girls' European Secondary School, Nairobi ..	18,000	18,000	0,247	8,004

SCHEDULE—(Contd.)

	Original Estimate	Revised Estimate (if any)	Actual Expenditure up to 31-12-36	Expenditure During 1937
	£	£	£	£
(b) Boarding Accommoda- tion, Boys' European Primary School, Nairobi ..	15,500	10,740	—	0,150
(c) Indian Boys' Elemen- tary School, Nairobi ..	30,800	—	—	01
(4) Other Buildings : (a) Native Market, Kisumu ..	3,500	—	3,310	185
(b) K.A.R. Barracks, Nairobi ..	80,454	34,042	2,642	278
Communications : Main Roads and Bridges ..	50,000	52,000	40,028	2,105
	701,084	847,082	400,301	71,487
£305,000 (1933) LOAN— Loans to Local Authorities : Mombasa Municipality : Town Planning ..	10,000	—	3,791	1,089
£375,000 (1930) LOAN— Land and Agricultural Bank Loans to Local Authorities : Nairobi Water Supply ..	250,000	—	70,000	100,000
	112,000	—	111,250	2
	£ 362,000	—	181,250	100,002

This resolution is formal in character. It relates to loan expenditure, and merely seeks the approval of this Council for expenditure actually incurred which is out of the provision indicated to members in the Loan Schedules from time to time.

MR. HARRAGIN seconded.

The question was put and carried.

KING'S AFRICAN RIFLES: PRO- POSED REORGANIZATION

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

"Be it resolved, that this Council adopts Sessional Paper No. 1 of 1938, 'Scheme for the Reorganization of the King's African Rifles.'"

The object of this resolution is to acquaint hon. members in advance with the financial implications of the scheme for the reorganization and re-arming

of the Northern Brigade, King's African Rifles which Your Excellency proposes to adopt. The necessary financial provision will, of course, be voted by Council in the ordinary course, but since the initiation of a reorganization of this kind necessarily implies its being carried to completion as early as possible it was thought desirable at this stage to present to hon. members a picture of the expenditure involved.

This is not the place to describe in any detail the reorganization and re-equipment which is proposed, but I would say on broad lines that it is intended to replace the three existing battalions which are maintained at partial strength with two first line battalions maintained at full war strength and a cadre battalion which will form a combined reserve depot and training depot in time of peace and which will be capable of rapid expansion in time of war.

[Mr. Lockhart]

The financial effect as far as Kenya is concerned is set out in the second schedule to the Sessional Paper on page 4. It will be seen from those figures that a certain amount of this expenditure is necessary in any event, notably the provision which we wish to make this year of £13,500 for the replacement of the present transport fleet which is worn out and is extremely expensive to maintain. That replacement in itself is economical. None the less, the figures of additional expenditure are large, and I should like to make it clear that, both in the preparation of this reorganization by the military authorities and in consideration of the scheme by Your Excellency's Government, the necessity for economy was kept predominantly in view. Your Excellency and Your Excellency's advisers are satisfied both as to the necessity of the expenditure and also the value in terms of strength in defence which will result from it.

The financial provision which we shall be asked to make forms part of a larger scheme agreed to by the East African Governments, and there can hardly be any hon. member of this Council who will suggest that we in Kenya should fail to take our share in a co-operative organization for the mutual defence of these territories.

MR. HARRAGIN seconded.

MAJOR CAVENDISH-BENTINCK (Nairobi North): Your Excellency, I of course, agree with the hon. mover that this scheme is necessary, that full inquiry has been made, and that every effort has been made to keep the expenditure down. But I would like to ask whether, with regard to military expenditure, it will be possible for Government, either during this session or next session, to give us in the form of a Sessional Paper some reasonably accurate idea of what all these defence measures which we are undertaking are going to cost. We have got a great number, which include aerodromes, roads, vehicles, arms, ammunition, buildings, and I think elected members are a little bit alarmed as to what expenditure is being incurred and they have no idea what the final implications will be.

MR. LOCKHART: Your Excellency, a Sessional Paper of the nature indicated by the hon. Member for Nairobi North will be furnished. Hon. members will, of course, be governed as to the discretion regarding the details given in the Paper, but I can assure them that it will contain all the essential information.

The question was put and carried.

LOAN REALLOCATION: KING'S AFRICAN RIFLES

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

"Be it resolved that this Council hereby approves the expenditure of a sum of £31,000 upon the purposes specified in the Schedule hereto, as a charge against Loan-Account, and further approves provision being made, therefore by re-allocation of the amount from—

Public Buildings, Other Buildings, Nairobi, K.A.R. Lines £31,000

SCHEDULE

Public Buildings, Other Buildings, Nanyuki, K.A.R. Barracks £31,000."

This is further expenditure involved in the reorganization scheme referred to in the previous resolution.

There would be inadequate accommodation for a first line battalion at Meru, or for the present battalion stationed there. The situation is that the barracks there are not suitable from a military point of view and the buildings themselves require replacement. The cost of accommodating a new battalion at the rail-head, Nanyuki, has been examined very closely, and the figure involved which amounts to £54,000, is the least at which the accommodation can be provided and which will prove in the long run to be economic.

It is proposed to provide that figure by the re-allocation of £31,000 which forms the subject of the resolution before Council, and the provision of an additional £18,000 from Loan Account Funds, which will be dealt with in the succeeding resolution, and £5,000 which will be voted from Revenue to the construction of buildings of a type which are not thought suitable as a charge against Loan Expenditure.

[Mr. Lockhart]

The expenditure is necessary from a military point of view. It will also provide some economy by stationing a regiment at the rail-head, and serious as the financial commitment is, after most careful consideration, Your Excellency's Government sees no alternative but to make provision for this expenditure for which approval is now being sought.

MR. HARRAGIN (Attorney General) seconded.

The question was put and carried.

MR. LOCKHART: Your Excellency, I beg to move the last resolution standing in my name on the Order Paper:—

"Be it resolved that this Council hereby approves the expenditure of a sum of £18,000 upon the purposes specified in the Schedule hereto as a charge against Loan-Account, and further approves provision being made therefor by allocation of £8,000 from the £305,600 Loan, 1933, Item 3, 'Such further items as the Governor may wish the approval of the Legislative Council signified, by resolution, and of the Secretary of State determine,' and £10,000 from the £375,000 Loan, 1935, 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.'"

SCHEDULE

Public Buildings, Other Buildings, Nanyuki, K.A.R. Barracks £18,000."

The necessity for this expenditure has been explained in the preceding resolution.

MR. HARRAGIN seconded.

The question was put and carried.

NATIVE LANDS TRUST BILL SECOND READING

MR. MORTIMER (Acting Commissioner for Local Government, Lands and Settlement): Your Excellency, I beg to move the second reading of the Native Lands Trust Bill. The enactment of this measure, together with its companion, the Crown Lands (Amendment) Bill, and the

two Orders in Council, establishing the Lands Trust Board and the Highlands Board, will at long last complete the necessary legislation for carrying out the recommendations of the Kenya Land Commission.

That Commission was appointed in April, 1932, primarily for the purpose of investigating native land problems, and reported in July, 1933. The Report of the Commission was accepted in principle by this Council and by the Imperial Government, and has been debated on many occasions. Therefore, I do not propose to go over old ground again, except in so far as it may be necessary for the proper explanation of the details of the Bill.

It must be gratifying to hon. members that at last we are reaching finality in this long and difficult chapter in the history of the Colony. There have been so many changes in the constitution of this Council that it seems desirable, first of all, to review briefly the reasons for producing a new Native Lands Trust Ordinance, rather than amending the old one.

The Commission's final term of reference was—

"To review the working of the Native Lands Trust Ordinance, 1930, and to consider how any administrative difficulties that may already have arisen can best be met, whether by supplemental legislation or otherwise, without any departure from the principle of the said Ordinance."

Chapter 6 of the Commission's Report contains their views on this subject.

It was first necessary for the Commission to decide what was the underlying principle of the said Ordinance, and they found it to be "security for the natives in respect of their land". On a detailed examination of the then existing Ordinance the Commission found it to be seriously inadequate in carrying out that fundamental principle. The major defect, in the view of the Commission, was that whilst the Ordinance aimed at permanence in the preservation of the outward boundaries of the native reserves, the equally important matter of internal management, control and development was almost entirely ignored.

[Mr. Mortimer]

As the Hilton-Young Commissioners affirmed:—

"It is not sufficient to reserve the land under the dead hand of a rigid and unalienable legal restriction, and it is a necessary consequence of these considerations that a measure which aims at preserving the beneficial use of the land to the natives must include regulations for handling it."

And that is one important feature wherein the 1930 Ordinance almost entirely failed.

The reservation in the 1930 Ordinance of specific areas for specific tribes "for ever" was also criticised as being impracticable, for there is no reason to suppose that the tribal grouping that exists to-day, or even tribalism itself, will last for ever.

There were other grave defects pointed out by the Commission—the entire absence of any provisions for the rectification of frontiers or for agreed exchanges with land outside the native reserves; lack of provision for setting apart land, whether for leases or public purposes; the excessive reference to the Central Authority on matters of minor importance that could quite well be dealt with locally. These were all defects which caused the Commission to reach the conclusion that the amendments that would be required would be so numerous that the only satisfactory method by which the end desired could be achieved would be by complete reconstruction.

The lines on which the Commission proposed that that reconstruction should take place are to be found in a multitude of paragraphs scattered throughout the Report, sometimes in most unexpected places. Honourable members who have studied the Report will need no reminder from me that it is somewhat difficult to find one's way about. The complexity of the subject, no doubt, rendered this inevitable. It was, therefore, no light task for the Attorney General and his staff to gather up all the scattered fragments of this jigsaw puzzle and form them into a complete and well-balanced picture. Unlike a jigsaw puzzle, however, the parts, when they were found, did not invariably fit with precision into their

place. Consequently, there was a good deal of trimming and shaping to be done before the well constructed measure now before you could be produced. With certain minor exceptions to make the legislation workable, this Bill, together with the other measures I have mentioned, carries out the accepted recommendations of the Commission on the subject of native lands.

Before turning to the Bill itself, Your Excellency, it seems important to observe how that fundamental principle of security is dealt with in the new legislation.

First of all, the areas that are recognised as being in native occupation by reason of historical right, together with all the other lands recommended by the Commission to be included in this category, are to be termed Native Lands and no longer regarded as Crown Lands. The natives themselves attach the very greatest importance to this provision. The acceptance of this change of designation will undoubtedly add considerably to the natives' sense of security in regard to his land. The sovereign powers of the Crown which must, of course, be paramount, will be preserved by the Order in Council. Now these lands are to be under the general trusteeship of a Central Trust Board to be established by the Order in Council, which Order will also lay down the terms of the trust. The preservation of outer boundaries of the native lands will be secured by this Order in Council.

The general tenor of the proposed Order in Council has been placed before hon. members in the memorandum which was laid on the table at the last session of the Council and fully debated. The Order will emphatically state that, subject to minor agreed alterations as provided for in the Native Lands Trust Ordinance, these boundaries will be unalterable. It will be seen then that all that legislation can do to preserve security is being done.

But, on what does security ultimately rest? Certainly not upon a local ordinance. The contents of the table before us bear eloquent testimony to the fact that ordinances may be amended! It does not rest even upon an Order in Council; for it must be obvious to anyone who has given serious thought to the subject that

[Mr. Mortimer]

Orders in Council may, in certain circumstances, be annulled and other Orders in Council may be made to replace them.

Such words as "unalterable", "permanent" and other words of that kind, when used in such a connexion must be understood, therefore, in a relative sense only. Nothing human can be regarded as immutable. An Order in Council is the expression of the will and pleasure of His Majesty the King, and can be changed only by the demand of His Majesty in Council. The Native Lands Trust Order in Council will provide that any amendment or any substitution of either the Native Lands Trust Ordinance or the Crown Lands Ordinance shall be reserved for the signature of His Majesty's pleasure, and shall not come into operation without His Majesty's assent.

It is clear then that only by the express will of His Majesty, embodied in another Order in Council and shown by His assent to an amending ordinance can a change be made in the boundaries of the native lands, and the same principle applies to the highlands boundaries. We fall back, therefore, for the ultimate basis of security for the native lands, upon the will and pleasure of His Majesty, and upon that basis security is firmly established.

There is another matter to which I would refer before passing on to an explanation of the Bill, and that is to the debate on this subject which took place during the last session on the motion of the hon. Member for Nairobi North: An assurance was then given that the representations made by hon. members during the course of the debate would be submitted to the Secretary of State. It was also stated that no important alteration could be accepted in any of the legislative provisions that were then under consideration. That assurance was carried out, and the Secretary of State was duly informed of the course of the debate but, as anticipated, no important change has been possible.

Hon. members will, therefore, look in vain in either the Native Lands Bill or the Crown Lands (Amendment) Bill for any adjectival qualification of the word "Highlands" wherever it appears.

I will now refer to the salient features of the Bill and select only the more important for special mention. The Bill is divided into eight parts and two schedules. The first part provides for the setting up of Local Land Boards. These boards are to be under the chairmanship of the District Commissioner, and not under the Provincial Commissioner as in the existing Ordinance. There are to be four other members on each board who shall all be natives. The boards will also have power for the co-option of additional members to represent any special location when matters affecting that particular location are under discussion. With this constitution the native representation of the local boards will be very greatly strengthened.

The second part of the Bill deals with inter-tribal occupation of native lands. This particular section will be used in accordance with the Commission's recommendations. In the event of one unit proving to be too large or too rich for the particular peoples who are occupying it, and the neighbouring tribe suffering from lack of land, it would be possible for the Governor, after consulting the Trust Board, to grant a permit to the tribe suffering from lack of land to occupy a portion of the other native land.

Clause 7 of the second part makes very necessary provision for approved exchanges of native land, a provision entirely lacking in the existing Ordinance. Normally, such exchanges would be carried out by mutual leases. But there is provision in this section, if the natives concerned, and all the native and Government authorities are in agreement in considering that the particular exchange is of a permanent character and, if they so desire, the exchange may be carried out by the permanent exclusion of one portion of the land from the native land and a permanent addition of the exchanged area to the native land. Exchanges under this clause that involve land in the Highlands can only be carried out with the consent of the Highlands Board.

The third part of this measure provides machinery for the setting apart of native land specially for leases, or for the establishment of townships, trading centres, schools, markets, hospitals and for other public purposes, either local or general.

[Mr. Mortimer]

Lack of provision for setting apart in the existing Ordinance was regarded by the Commission as a serious defect. Under the existing Ordinance exclusion or exchange were the only methods by which land in the native reserves could be used for public purposes.

The "setting apart" method recommended by the Commission will secure that all private rights in the land to be leased or used for public purposes are given very full consideration, and that compensation is awarded where that is necessary. Land so set apart will always remain a part of native lands. In order to avoid unnecessary reference to the Central Trust Board the Provincial Commissioner will be empowered to sanction the setting apart of areas not exceeding ten acres; the Chief Native Commissioner may be deputed by the Trust Board to deal with setting apart applications of between 10 and 50 acres; and the Trust Board itself will have to consider matters involving areas larger than 50 acres.

In clause 15 it is laid down that before setting apart can be considered the Provincial Commissioner must be satisfied that the natives of the area in question will benefit by the proposal for which the land is to be set apart; also that the natives concerned, the Local Native Council and the Local Land Board have all been consulted.

Clause 17 and 18 are the compensation provisions payable in respect of the right-holders and the tenants' rights in the land which is to be set apart. The compensation for a right-holder dispossessed by the setting apart of land will be the full agricultural value of the land plus 15 per cent, following the precedent of the Indian Land Acquisition Act.

In order to avoid holding up the development of the mining resources of the Colony, the Native Lands Trust (Amendment) Ordinance was enacted in 1934 in anticipation of the Ordinance we are now considering. "Setting apart" and compensation provisions were there laid down applicable to mining leases, and these provisions became law. They are now repeated with necessary small changes to make them fit into their new setting. There is no necessity, therefore, to make

special reference to these provisions—I refer particularly to clauses 20 and 21.

The setting apart of land for local public purposes such as townships, trading centres, schools, markets and hospitals is covered by clause 22. Clause 24 deals with the setting apart of land for other general purposes such as reservoirs, aerodromes, electric power schemes and the like. By clause 48 the Governor is given power to declare what is a public purpose. The setting apart for roads, railways and roads of access is provided for in clause 25. Again, I emphasise, that all these setting apart provisions are subject to two primary conditions. First, that the natives concerned and the Local Land Board have been consulted, and secondly, that adequate provision for all private rights that have been disturbed, has been deposited by the interested parties.

Throughout the Bill it is to be noted that all reference to the Central Board has been eliminated except in matters of more than minor importance.

We come now, Sir, to Part IV, dealing with exclusions from native lands. Clause 28 provides for the permanent exclusion of land required for public purposes or land required to be conserved for forest reserves. Now this clause will operate only when the majority of the natives concerned and the Local Native Council desire this procedure to be followed instead of the more usual setting apart. Whatever land is excluded from the native lands under this provision, an area of Crown land of equal value must be added to the native land. I expect that the use of this clause will be comparatively rare and that the usual requirements for public purposes will be met by the setting apart of land.

In clause 29 the temporary exclusion of portions of native land for mining purposes is provided for. Here again, this section can come into operation only on the request of the natives concerned. The compensatory addition in this case is to be temporary only, synchronising with the duration of the mining lease for which the clause is put into operation. Under either clause if the land concerned in the exchange is in the Highlands, the consent of the Highlands Board must be obtained, subject to the proviso that if the High-

[Mr. Mortimer]

lands Board refuses to agree, the Governor may appeal to the Secretary of State whose decision shall be final. There are similar rights of appeal by the Trust Board or by the Governor against the Trust Board in other clauses of this Bill and the Crown Lands (Amendment) Bill.

Any native whose occupation of his land is disturbed under either of these exclusion clauses, will be entitled, under clause 30, not only to the cash compensation that is due to him but also to reside in the area which is being added to the native land. An owner of native land if he is not also an occupier, may claim either cash or the right of residence, but not both.

Under Part V of the Bill, provision is made for leases and licences of native lands. The procedure of the existing Ordinance is considerably simplified in the new Bill. The Governor will have the power to grant leases up to 33 years and, with the special consent of the Secretary of State, up to 99 years. But invariably, before any lease can be granted, the setting apart provisions of Part III must be followed out. Consent to the transfer, sub-lease or mortgage of any native land will still be required, but clause 35 will vest authority with the Provincial Commissioner who must consult the Local Board in cases of land up to 50 acres, and the Trust Board if over 50 acres.

Licences for grazing, for removing forest produce, or exploiting common minerals will no longer require the consent of the Trust Board, but will be dealt with by the Provincial Commissioner or District Commissioner on the authorization of the Chief Native Commissioner.

Clauses 34 and 37, sub-clause 6 provide that all rents and all licence fees derived from land in the native lands shall be paid to the Local Native Council concerned. There is an important change here to which I would draw attention, from the provisions of section 8 (3) of the existing Ordinance, which requires that in addition to rents "all other profits whatsoever accruing from land in a native reserve shall be paid to the Local Native Fund." As the Commission pointed out, that clause, literally interpreted, would mean that all revenue derived by any

native from the sale of his own local produce, cotton, wattle bark, maize or the like, would have to go into the Local Native Fund. Which is absurd. The clause in the new Bill more correctly reflects what was clearly the intention of the section in the old Ordinance.

Turning now to Part VI, we have obviously necessary powers laid down to be exercised by the Trust Board, by the Local Native Councils and by the Governor. There is nothing specially worthy of note in this part until we come to clause 49, which is one of the most significant clauses of the Bill. This clause must be considered together with clause 70 to which I shall refer in a few minutes.

Amongst the miscellaneous provisions of Part VII is the power of the Government to declare land in the native lands to be forest reserve, subject always to the consent of the Trust Board.

There is nothing else worthy of note in this Part until we reach clause 65 which is of vital importance. In this clause powers are given to the Government, with the advice and consent of the Trust Board, to exercise the authority of a trustee, to quote again from the Hilton-Young Commission:

"The first and principal need, which may be described as the 'protective need,' is to fix areas to be set aside, and to provide secure protection for the preservation of the beneficial rights over such areas, to the natives. The second and almost equally important need which we will call 'the constructive need' is to provide for the actual use of the land in such a manner as will be of the greatest benefit to the native."

The "protective need", as we have seen, is being met so far as it is humanly possible by the Order in Council and by the various sections of the Bill we are now considering. The "constructive need" brings into view a mass of ever-changing problems, problems that can be solved only by education, experiment, and the slow evolution of native custom.

It would obviously be impracticable to frame sections of an Ordinance to cover all the powers of conservation, management, and development which a conscientious trustee must possess and use. The

[Mr. Mortimer]. need has therefore been met by the provision of these wide and far-reaching rule-making powers.

I refer particularly to the powers under (a), (b), (c), and (d). These will leave the way open for rules of a very drastic character, but it cannot be too clearly emphasised that Government intends to take all necessary steps to save the native heritage not only unimpaired but vastly improved, with a full recognition of the obligations and duties of a trustee to his wards.

Clause 66 preserves the validity of all existing titles to mining or other rights.

Clause 68 will secure the rights of individual natives, groups or families to the use and occupation of their land in accordance with the provisions of native law and custom, except where native law and custom may be repugnant to the Ordinance or the rules made thereunder.

We now turn to clause 70 which, as I have previously indicated, must be read in conjunction with clause 49. These clauses make provision for dealing effectively with a most difficult problem, a problem that is familiar to all hon. members, that of native occupation of various farms held by Europeans on freehold title, particularly in Limuru and Kiambu areas, under claims of right, rights dating back to the time before the land was granted to Europeans, and also with the occupation of European-owned lands and other lands in the Highlands by other natives, whose claim is not so well founded as the claim of those to whom I first referred.

The subject has been again and again discussed in this Council and the principles embodied in these clauses have been accepted, so that there is no need, therefore, to go into detail with reference to these particular provisions. All these native rights of occupation, on whatever basis they may rest, will be extinguished when this Bill comes into operation. Sections 30 and 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance, 1915, which had the effect of preserving native rights on land granted on leasehold title, will be declared by this Bill to be no longer effective.

There are, however, comparatively few cases of this kind as against the large number of cases of occupation on freehold land. Care was taken in clause 70 (1) and in the last proviso to that sub-section, and in (2) to preserve the native rights that are held under specific title, the rights of natives under the Resident Labourers Ordinance, the rights of natives in the Protectorate, and rights of occupation such as may be possessed by the semi-nomadic tribes such as the Suk, Turkana, and Galla.

Clause 49 of the Bill provides that the Governor may order any native whose right has been extinguished under clause 70, to remove himself and his family and property from the land on which he is now residing. No such native may be ordered to remove without the express authority of His Excellency.

This provision is subject, however, to two very important provisos.

First of all, Your Excellency must be satisfied that there is sufficient suitable land available for the particular native and his family to remove into. Secondly, Your Excellency must be satisfied that provision for compensation for disturbance has been made. Plans are well advanced for the provision of suitable land, and every endeavour will be made to carry out the moves with the minimum hardship and inconvenience.

I will draw attention to the provision in clause 70 for the natives concerned to be able to reap any annual crops which they may have sown before the commencement of this Bill.

So far as cash compensation is concerned, some £2,000 are at present available from the Parliamentary grant, but as I stated during the debate in the last session of Council I expect that that sum will prove to be inadequate and will have to be increased. The numbers of natives concerned are at least ten times as many as the Land Commission envisaged.

It would be idle to imagine that this move is going to be carried out with simplicity or ease. It will require all the firmness, all the patience, and all the tact that can be brought to bear on it. I am sure that Government can, with confidence, rely upon the European farmers who are affected by these provisions,

[Mr. Mortimer] whose patience and forbearance have more than once been commended in this Council, to refrain from independent action and to co-operate as fully as possible with the Government officers who are entrusted with this very difficult task.

Finally, Sir, I would refer to the schedules to the Bill which contain the descriptions of the native lands and a list of the nine units into which they are divided.

The Land Commission attached very great importance to this policy of enlarging the land units to embrace groups of tribes having affinities with each other, in order to encourage inter-penetration and to secure a more economic utilization of the available land. If hon. members wish to see how the various tribes of the Colony are grouped in these nine units, they will find a schedule on pages 382 and 383 of the Commission's Report.

The areas described in the schedule comprise all the old native reserves as proclaimed in 1926, subject to such amendments as have been rendered necessary by agreed exchanges, agreed to before the Land Commission commenced its work; for example, such exchanges as that of the Masai Circumcision Area on the Kinaangop for land in the Kedong Valley. The schedule also embraces the Commission's recommendations subject to such alterations as Your Excellency in Council, with the approval of the Secretary of State, has approved. All such amendments which in any way affect the Highlands have been submitted to and approved by the accredited representatives of the Highlands.

The other native areas which the Commission recommended should be set aside for native use will be known as native reserves, temporary native reserves, and native leasehold areas. These are dealt with under the Crown Lands (Amendment) Bill.

It remains only for me to add that the Bill will not come into operation until a date has been fixed by proclamation after Orders have been made by His Majesty in Council establishing the Native Trust Board and the Highlands Board.

MR. HARRAGIN seconded.

Council adjourned for the usual interval.

On resuming:

MAJOR CAVENDISH-BENTINCK: Your Excellency, the hon. mover has explained the Bill so thoroughly and at such length that I do not propose to go into details about the principle of the Bill. I should like to congratulate him on the very able manner in which he has explained the provisions of the Bill, and also on the very tactful way in which he fully justified our anxiety about all these measures, by telling us that Orders in Council can be altered, and that the word "unalterable" is a relative term.

It is for that reason that we have always been very anxious about all these measures, not only from our own point of view but also possibly of the native.

In the first place, I would like to suggest that when a Bill of this kind is introduced, with schedules and with references to maps, it would not be a bad idea to have the maps laid on the table of Council. It would enable us in the interval to look up anything we wanted to look up.

I am going to merely deal with the Bill as it is, and take a certain number of points one by one.

The first point arises under the interpretation clause, 3. In that clause we have an interpretation of the Highlands Board and of the Native Trust Board, and it is suggested that:—

"The Highlands Board means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council",

and the same applies to the Trust Board. I would suggest that there is no question of "may be". It is a board "to be" or "which shall be", because this Bill shall not come into operation until the Orders have been made by His Majesty in Council providing for the establishment of the Trust Board and the Highlands Board. I should like to suggest that the wording should be that "The Highlands Board means the Board to be established as the Highlands Board."

My only other point in that clause is, that I see that mining lease does not include a lease in respect of a subterranean area. There is probably good reason for that, but I would like it explained in the reply.

[Major Cavendish-Bentinck.]

And there seem to be at least two omissions. One, I think, is perhaps a wise omission, but I would like to know what is meant by a "right-holder"; I shall come to that later on when commenting on the Bill. The other is, that I think we should rather like to know what constitutes an "annual crop". That may be laid down in the Interpretation Ordinance, but if not it occurs in this Bill in a very important connexion.

Leaving the interpretation clause and turning to Part I of the Bill, which deals with the establishment of local boards, we notice that a local board shall consist of the district commissioner, "and four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the provincial commissioner." That seems to be rather overriding the Local Native Council and the district commissioner. We suggest that it might be better to have the district commissioner as chairman, two members nominated, and two chosen.

I believe some people would even go further than that.

Part II deals with "inter-tribal occupation permits and exchanges," and lays down that before arrangements can be made for inter-tribal adjustments the land which is the subject of the exchange shall be set apart. It also provides in clause 8 that:—

"No exchanges under the provisions of this part shall be effected in respect of any land in the Highlands, save with the consent of the Highlands Board."

That we consider is as it should be, but I am going to refer to that again when I deal with clause 28, because I am not quite sure that clause 28 may not, to some extent, counter the provisions of clause 8.

Part III deals with the "setting apart" of land in native lands. We are not quite sure whether, under clause 12 (4), the period of 21 days is quite long enough. The period of 21 days occurs in several places in this Bill. In other cases it quite definitely is not long enough. In this case it is "after the date on which he is notified thereof." It may be long enough, but I think it is well worth considering whether

a period of 30 days would not, perhaps, be fairer.

In the same part of the Bill, in clause 17 (5), the same point arises:—

"Any person aggrieved by the award of a provincial commissioner may, within 21 days after the date of making such award, appeal in writing."

We think it ought to be after notification, or after the publication of such award, because 21 days in this sort of country is rather short. The same applies in clause 18 (4).

In clause 17 and 18 and in 20 we have allusions to private right-holders. I do not say that is not perhaps the best way of putting it in the Bill, but a "private right-holder" rather leads one to suppose that it consists of a person with a legally definable right over something which has been surveyed and which also can be established in law. In most of the cases referred to in this Bill, that will not be the case.

I should not have been so alarmed about the inclusion of these words in this Bill had the hon. mover not at one stage referred in his speech to-day to "an owner". I put it down at the time. But, of course, they are not owners; in most cases they have certain rights of temporary occupation. I hope when the Bill goes to select committee that this point will again be carefully gone into, because if we rush this the whole system of native land tenure will be changed—which I think I can say is being encouraged by hon. members on the other side of Council—from tribal occupation to individual tenancies or occupation or ownership, and I can assure you we may get into very serious trouble indeed in the native reserves.

The next point I wish to make arises under clause 18 (4), where it is laid down that "where the provincial commissioner and the local board are unable to agree upon the sum of money which should be so awarded as compensation, or where any person desires to appeal against a sum so awarded, or against any decision of the provincial commissioner as to the existence or non-existence of any system of private right-holding, or against any decision as to the claim of a native to be

[Major Cavendish-Bentinck]

a private right-holder, the matter shall be referred to the Governor, whose decision shall be final."

In view of the importance which I attach to this question of private right-holding and claims to be a private right-holder, I would urge for the consideration of Government that that appeal should lie to the Governor in Council. It is not, of course, that one in any way lacks confidence in whoever may be Governor for the time being, but in similar cases where there may arise a question of rights, a question of awards, or a question of fact as to whether a man is a private right-holder or not, I think you will find that in other Ordinances the appeal does lie to the Governor in Council.

The next point I wish to raise is under clause 21 (2). It is a point which I think should be met, although I think that probably the action visualized in this Bill is a wise one, but I think we should be fair, because it is a question as to whether this is quite equitable; that is, that on every subsequent renewal of a mining lease there is no further consultation with the natives concerned. I do not think actually that it will be practicable for them in many cases to allow natives to object or veto a renewal once a very large sum of money has been spent in establishing a mine, but it is a point which I think we ought to just consider in select committee, because unless we have a good answer to it it may be an awkward point after the Bill has become law. I think that possibly it could be dealt with in another manner.

In clause 24 provision is made for the "setting apart" of land "for general public purposes", and the public purposes visualized are laid down in the clause. Of course, there is a clause enabling the Governor to declare almost any purpose to be a public purpose, but I suggest that we might make specific provision for dams and for bore holes, neither of which is mentioned in the list of purposes for which land can be set apart.

This takes us to Part IV, and it is in this part that we shall find the first serious disagreement which we have with the provisions of this Bill.

When we had the debate on the memorandum which was laid on the table during last session, explaining the action which was visualized as regards these two Bills and the Orders in Council, I ended the debate, in reply, by claiming that we had at least three provisions for which we in equity could ask. The second of them was this:—

"We have a right to ask for an assurance in some form or other that the Board which is to look after these matters should have some power of veto or power of control and, by more than advisory."

When we came to look at this Bill at first we felt that some notice had been taken of that and that in some cases measures visualized were subject to the consent of the Highlands Board. When we come to Part IV we find in clause 28, unless I have misread this Bill, that exclusions may be made "from the native lands any land required for any of the purposes set out in clauses 22, 24, and 52 of this Ordinance, and the land so excluded shall thereupon cease to form part of native lands." Then we find, under subsection (3), that where any land has been so excluded "the Governor shall, by notice published in the Gazette, add to the native land unit from which such land has been excluded an area of suitable land and, where possible, contiguous Crown land of equivalent value." In subsection (4) we read:—

"No land situate in the Highlands shall be added to the native lands under the provisions of sub-section (3) of this section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final."

These provisions do not refer to small areas of land, but if it is a fact that it refers to all the purposes set out in clauses 22, 24, and 52 I might suggest that it means any land excluded for any purpose—air-roads, development, electric power schemes, townships, camps, and even to land set apart for inter-tribal adjustments, and under clause 52 to forest reserves. So apparently if you want to declare part of the native land a forest

[Major Cavendish-Bentick] reserve or for any purpose such as aerodromes or if you want a big electric scheme, it is possible for land to be taken from the Highlands and for us to be over-ruled. It may not mean it, it may not be so, but it certainly reads so and it should be explained and, if it is not explained satisfactorily I am afraid we shall have to oppose this measure unanimously and bitterly, because we have no security at all.

The same applies to the temporary exclusions for mining purposes. They will probably be limited in area and they are temporary. It is not quite the same thing.

The next point I should like to make is under clause 38 in Part V, under which licences may be granted to any person relating to grazing of live stock on native lands, removal of timber or other forest produce, the taking of sand, lime, stone and other common minerals, "provided that no licence referred to in paragraphs (a), (b), or (c) of this sub-section shall be granted for a period exceeding twelve months at any one time."

I presume that if I wanted to set up a saw-mill, for instance, or a manufacture of cement, that that land would be set apart but, if not, it does seem that this curtailment to 12 months might make certain undertakings, which might in themselves be of great advantage to the natives, impossible owing to the short time in which continuity can be granted under this clause. I am wondering whether it might not be wise to have a provision whereby, in exceptional circumstances licences could be granted for longer periods.

That brings us to Part VI, which deals with the miscellaneous powers given to the Trust Board and to the Governor. As was pointed out by the hon. mover, the most important clause is 49, which must be read in conjunction with clause 70. I would like to ask whether the hon. mover or the Hon. Attorney General are quite certain that these two clauses read in conjunction with each other, do in fact provide all the safeguards which they are intended to provide?

Clause 49 is fairly clear.

"The Governor may, by writing under his hand, order any native, who

at the commencement of this Ordinance is not residing in the native lands, the native reserves, the temporary native reserves, or the native leasehold areas, and whose rights have, under the provisions of section 70 of this Ordinance, been extinguished, forthwith to remove himself",

subject to the safeguard that there must be sufficient land available for him.

Clause 70 first of all provides for the extinction of native rights, which is what is referred to in clause 49, with the proviso that a private right-holder shall first also have the right to harvest annual crops. It then goes on to say:—

"Provided further that, notwithstanding the provisions of section 12 of the Native Authority Ordinance, 1937, no native, whose rights in respect of the land upon which he, or his family, is, or are, residing have been extinguished under the provisions of this section, shall be compelled to remove himself from such land except by order of the Governor made in accordance with the provisions of section 49".

so I presume that this really merely means that section 12 of the Native Authority Ordinance cannot be applied to a person who is a right-holder and has an alleged right.

"but the provisions of clause 49 and of this proviso, shall not apply to a native who, having been ordered by the Governor to remove in accordance with the provisions of section 49 of this Ordinance, subsequently cultivates or occupies land outside the boundaries of the native lands, the native reserves, the temporary native reserves, or the native leasehold areas."

I suppose that that really means that once a man has moved, at once section 12 of the Native Authority Ordinance comes into force and the other does not. But what about the man who refuses to move, or who moves and comes back?

But I venture to suggest in all humility that I am not absolutely certain whether that may not mean something exactly opposite or at least something different to what was intended, and whether you might not find yourself unable to apply either Ordinance to a gentleman not in a

[Major Cavendish-Bentick] native reserve, unless you can apply, possibly the Resident Labourers Ordinance, which I think should also come into the picture in certain possible cases of a man going from one farm to another. And that Ordinance, incidentally, is not law yet!

Anyway, it is very complicated, but I do hope there will be another opportunity of going into the wording of these two clauses in select committee.

Now I would like to draw attention to clause 65, which gives the rule-making powers under this Bill:—

"Subject to the provisions of this Ordinance, the Governor may, with the advice and consent of the Trust Board, make rules, relating to native lands, for the purpose of carrying this Ordinance into effect."

A great deal was said about this clause by the hon. mover this morning, stressing the tremendous powers it gave to look after the land and even to regulate the numbers of stock, flocks, and herds held in any native land unit, and also the conditions regulating reconditioning of native land units. I should merely like to ask this: That as these measures can only be done with the advice and consent of the Trust Board, it does very seriously curtail the Governor's powers in relation to matters on which I think he should be given at the present time the greatest possible freedom. One might have a Trust Board which felt it had to side very much with the point of view of the natives themselves, and they might possibly not have quite such a long-sighted view of their duties as we would like.

In the meantime, there may be a Bill brought in for the better preservation or utilization of the land. I would like to ask: supposing there is such a Bill, can that Bill over-ride this clause? because under this clause the only rules that can be made are with the advice and consent of the Trust Board. I am pretty certain that it can, and I am certain that neither Bill will apply equally in what is native land and not Crown land as it does in Crown land.

I should like that clearly stated, that any Bill in connexion with cattle control, and preservation of land can be applied to

native lands regardless of whether native or Crown lands, because I think that is a most important point.

I would like to refer once again to clause 70 and to say what I am going to say on the next Bill which comes before us. I think the provisions of the first part of Clause 70 should appear in the Bill to amend the Crown Lands Ordinance and not in this Bill. After all, what it lays down is that the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance (the existing one) are going to be repealed. When we come to this Bill it deals with native lands, not Crown lands, and therefore allusions to Crown lands should appear in the Crown Lands Ordinance and not in the Native Lands Trust Bill.

Lastly, there is sub-section 2 of clause 70 which reads:

"Nothing in this section contained shall be construed as affecting any native tribes or communities, for whom no specific native land unit is provided by this Ordinance, in regard to any right which such tribes or communities may have to occupy the areas of unalienated Crown land in which they are resident at the date of the coming into operation of this Ordinance."

Well, that seems a little bit wide, although, actually, I am told, the wording was altered at my own request. It has been altered, certainly, but it is less specific. That is to say, before, I believe it read, "in regard to any right such tribes or communities have to occupy the areas". We have put in "may have". At the same time, I would like an assurance that this clause is not going to be used to allow these tribes who wander-wandering tribes to claim that in that they can wander freely all over the country, because half the trouble we have had in the last few years has been from lack of control of the nomadic tribes in the past. I would like to know under what Ordinance it is that these people are going to be controlled. I think that is a most important point, as we have suffered very much in the past from the wanderings of the Samburu and Turkana and other tribes,

[Major Cavenish-Bentinck]

These, Sir, are all the notes I have on this particular measure.

MR. MONTGOMERY (Native Interests): Your Excellency. It is known that, unfortunately, the recommendations of the Land Commission which is this Bill in its amended form are not acceptable to one section and, I think, only one section in the Colony—I mean the Kikuyu. They insist that they do not get enough land and I think it is going to be very difficult to persuade them that the proposed legislation is a very reasonable solution to a very difficult problem. I believe that the land units that are being established under the Bill will make the situation much easier to control. The natives cannot possibly extend their holdings any further where they live now, but if they increase in number they will be able to go elsewhere to unoccupied parts of these land units.

A few months ago the senior elder of the Kiambu people came to me and told me that in the opinion of his people the Commissioners had dealt with the claims of the people they found on certain farms, and had ignored the claims of others who had equal rights but had preferred to have that particular part of the country when it was alienated. I think there is, up to a point, something in that. Somewhat unreasonably, he went on to say that whatever the Government does to find land for these, it would not be accepted by his people unless it was contiguous to their present reserve.

He must have known that there is no land available close to that particular reserve and he ought to know that the Government is doing its very best to find land for his people who may be homeless. But I would like him to know that during all the negotiations that have been going on for the past two or three years many adjustments have been made with the consent of the representatives of the Highlands.

The Schedule to the Bill has five areas and there is no question but that they are more advantageous to the natives than the recommendations of the Carter Commission Report, and the other Bill has other areas which they have arranged for. I think it would be very hard to explain

the matter to the Kikuyu though I hope as time goes on they will forget their grievances.

I have said these few words because I have been approached by a certain association to request or even demand that I should vigorously vote against this Bill. But I intend to support it, and I want to make my position clear.

There are one or two committee points I should like to refer to, some of which have already been mentioned by the hon. Member for Nairobi North.

I, too, think that these local boards in clause 4 are not sufficiently representative of the people, and it does not seem quite right that the Provincial Commissioner, who is to refer matters to the Board, should practically appoint the Board. I would go even further than the hon. member who has just spoken. I think clause 4 (1) (b) should read "three members appointed by the Council and one appointed by the Provincial Commissioner." Again, under that same clause, clause 4 (1) (d), although it states that another member may be co-opted, it does not say what sort of person he is likely to be. Under the 1930 Ordinance, but not under the amending Ordinance of 1934, a European was appointed and I think that in most local Boards now established a European is a member. My experience has been that his advice has been extremely useful, and if this is intended in the clause as drafted, I should like it made clear.

Clause 15: This is practically the same as clause 29 of the 1934 amending Ordinance, and I would ask with regard to the composition of the local board that it should be five. In sub-clause (b)—"The proposal to set apart the land must have been brought to the notice of the natives concerned and to the notice of the Local Native Council"—the hon. member has said that they should be consulted. I should like it made quite plain in the case of the natives concerned that their opinion should be recorded and that it should be the Local Native Council and not necessarily the Provincial Commissioner who asks the natives concerned.

The hon. Member for Nairobi North referred to clause 21. I agree with him that the natives should be consulted when the leases are renewed.

[Mr. Montgomery]

Clause 26: I am not quite clear of the meaning of sub-clause 2, or of the question in sub-clause 4 where the native road is constructed jointly by Government and the Local Native Council. I should have thought it would have been equitable that the cost of compensation should also be divided and not that the Local Native Council should pay the whole of it.

In clause 32 the Chief Native Commissioner is empowered to execute leases in the area of that trading centre which has been set apart and where the majority of the leases are annual ones—and there are a great many of them. I should like it to be considered whether the Provincial Commissioner could not sign these particular yearly leases, they do not have to be registered. They are not nearly as formal as a thirty-three years' lease in the same area.

Clause 29: This is the same as section 35 of the 1934 amending Ordinance. I have never been able to understand how, in practice, sub-clause (4) will work. I do not think there is a case that has ever arisen yet. Supposing a man and his family move off before the leased land, which was subject to a mining lease, was excluded; and he moves off to another area which has been added; he dies and his family grows up. That family has forgotten entirely where they came from and they will object strongly going back to an area which they did not appreciate was theirs.

With the risk of incurring the wrath of the hon. member who has just spoken, I am going to suggest that these areas should always be small and that these areas should be added permanently. I would like that to be considered in Select Committee, and in clause 38, as under the 1930 Ordinance, to make it necessary that the right-holder or occupier should be consulted before the licence is given to dig up sand or excavate stone on that holding.

The hon. member who has just spoken mentioned under clause 70 "annual crops." I have a note on that point too. I suppose an annual crop is one which is planted annually, but I think the Committee may examine the point because we may have an enormous amount of sweet

potatoes planted say, in Tigi, in the near future if we are not careful, and whether sweet potatoes are an annual crop or not, I am not quite sure.

It is with some diffidence that I speak at all about the interpretation of a right-holder. I have always understood it to mean right of occupation, and a private right-holder to mean individual right of occupation. This is coming very, very near to individual ownership which is actually the order of the day in certain districts in this Colony.

LADY SIDNEY FARRAR (Nyanza): Your Excellency, I should like to bring to the attention of the Select Committee clause 20, paragraph 1, in which it is laid down that a lump sum of money by way of commuted rent shall be payable in every case by a mining lessee.

I submit that this provision, whereby a lump sum of money shall be paid might well prove a serious handicap to the small mining companies in the early stages of their development, and I would ask that this matter should be sympathetically considered by the Select Committee.

DR. WILSON (Native Interests): Your Excellency, I had hoped that I might have been able to wait until I had heard the views which I am perfectly certain will be expressed during the course of this debate by some of the hon. members on this side of the Council. I think it rather unfair since there are only two of us to hold the fort in the interests of the natives, that we should be compelled to follow one another. I think it is only fair that the other hon. members intending to take part in this debate should give a chance to one of us to speak later on and answer any controversial points that might be raised.

Another reason why I did not want to jump to my feet in a hurry was because I understood that the Bills were to be taken in the other order; that is the Crown Lands Bill would be taken first. And so, if I get involved between the two Bills it will be unfortunate. In any case I do not intend to discuss either of these Bills at any great length. They are, in my opinion, two extremely important Bills, but I am not quite convinced that very much good

[Dr. Wilson]. can be done by discussing them in this Council at great length.

My colleague has just referred to certain details of this Bill which we think require amendment in Committee. So I need say no more about that except to express my agreement with what he has said.

But there is one other small point which I think might be considered in Committee: In clause 23—that local native councils are to pay compensation "in respect of the setting apart of any land under the provisions of section 22 of this Ordinance." But clause 22 (1) (b) of this Bill proposes to set apart land "for the purpose of issuing intertribal occupation permits as provided in section 6 of this Ordinance," that is, "permits to occupy areas of land in a native land unit for the benefit of any native tribe, group, family or individual or any other native land unit." Surely, in such cases, the compensation should come from the persons benefiting.

Then there is another detail, which to my mind is a very important detail, in clause 50. Clause 50 (1) (c) provides that the Governor "may at any time enter upon any land in the native lands and there construct a dam and divert any river or stream". According to sub-clause (3) this may be done before compensation is paid; and according to sub-clause (4) "it shall not be competent for the Trust Board to make any representations in regard to the exercise of any powers under this section."

Now, Sir, the construction of a dam or the diversion of a river is a large scale undertaking. It may be a large scale undertaking with far-reaching consequences to the country in which this undertaking is carried out. I should have thought that this was particularly a matter which would have been very appropriate for consideration by the Trust Board. Instead of that it is expressly provided that the Trust Board shall have no say at all in the matter.

And it must be remembered that works of this nature may be carried out for the benefit of a community at a distance from the neighbourhood of the works, and that they may be not only not in the interests of the natives inhabiting the area or

natives in the neighbourhood of the works, but may be directly to their detriment. I might mention a case, in point—the dam of the Nairobi water supply which is for the benefit of Nairobi and not for the inhabitants in the neighbourhood of the dam. I think that point might be considered in committee.

Taking the Bill generally, my colleague has already said that this legislation has not been accepted without grumbling by certain sections of the natives. I entirely agree with what he has said about this Bill. I think it is a genuine attempt to settle once and for all those disputes which have arisen as a result of white settlement in this country. I believe that the members of the Kenya Land Commission did their very best to arrive at fair and just decisions after the most painstaking and meticulous consideration and examination of all the facts and evidence that were available. This Bill, according to its objects and reasons, is to give effect to the recommendations of the Kenya Land Commission, and such alterations as have been made from those recommendations are certainly not to the disadvantage of the natives.

In a wide and far reaching Ordinance like this, it is quite inevitable that everybody will not be pleased. It must happen that some individuals or some natives will feel that they have been unfairly dealt with in the general settlement. I do think that it is of the greatest importance that every attempt should be made, as far as possible, to mollify any sense of injustice that any individuals or groups may be feeling as a result of this proposed legislation. I do think that the fullest concession possible should be made in favour of those who are suffering from a sense of injustice.

Now, if I am in order, I should like to mention a specific case of what I mean. It may not be strictly in order in this debate because it refers more to administrative action rather than to the provisions of this Bill. I think I may properly mention it as an illustration of what may or may not be done to make this legislation either a success from the point of view of the native or a continuing cause of trouble.

[Dr. Wilson]

In paragraphs 408 to 413 of the Kenya Land Commission Report there is set out the case for the Kikuyu families who were originally at Kabete on the land which was taken from the natives for the Government farm. The Report says that the undertaking was given that the local natives should be compensated. And it continues:—

"We recommend the case of these particular mbari to the Administration and remark that an obligation lies to ensure that they are suitably accommodated, and, in so far as may be practicable or generally desirable, we recommend that an area be set aside for their use not less in extent and value than the area originally lost."

Now, my information is, that the land which has been offered to these mbari is actually less in extent and value than that originally lost. It is less in extent in that a large part of it is vlei and so unfit for cultivation, and it is very much less in value because there is no permanent water, whereas the land they lost was adequately watered. Of course, I know the difficulties that the Administration is experiencing in trying to meet these claims and to find suitable land for all dispossessed natives. For instance in this particular case a further complication is that other people are claiming this land as having been originally theirs. And of course in all these questions the biggest difficulty I think, is to find land which is watered.

If I might digress for a moment, I think it is an excellent opportunity for Government to make intensive efforts in discovering and developing new water supplies for the various parts—waterless parts—of the native reserves. I think nothing would do more to persuade the native that this is fair legislation and that they are being given a fair deal if Government, at this point, could make renewed efforts to provide some sort of water supply by boreholes or dams, or by any other method such as irrigation to improve the rather indifferent land which is being offered to some of these dispossessed natives.

To go back to my specific case: If some further concession could be made to these dispossessed families to remove the sense

of injustice they are now feeling, a great deal will have been done to change the attitude of distrust and suspicion with which this legislation is viewed by certain natives.

I mention that case at some length in particular, because I am given to understand that it is being taken as a test case and those natives who have read this Report of the Kenya Land Commission, not once but many times—they know it one might almost say by heart—and have noticed that particular recommendation, are now under the impression that they are not getting all that the Commission recommended. I understand that there is a feeling of unrest that if it is not done in this case, in other cases the natives will not get all that the Kenya Land Commission has recommended.

Now, I do not know if I should be in order in discussing the constitution of these two Boards, because—strangely enough, in this Bill, which is supposed to be concerned with the powers and duties of the two Boards, there is not even a hint as to their constitution. I suppose one must assume, and take it in good faith, that the Boards will be in accordance with the memorandum which was laid on the table last session. One cannot help noticing the difference in the wording of the two paragraphs in the memorandum: Paragraph 5, "The Trust Board will, it is proposed, be constituted as follows". But when it comes to the Highlands Board in paragraph 9 it says, "This Order will provide for the establishment of a Highlands Board consisting of the following persons."

This point, of course, was raised by the hon. Member for Nairobi North, who said that he wanted it laid down that with these Boards, it was not a case of may be or would be, but that they are to be established. I want to go further. I just want to be quite sure in my own mind that they are actually to be constituted as is proposed in the case of the Trust Board, and as stated in the case of the Highlands Board. Because it will be rather a queer state of affairs if we pass this legislation and then at some subsequent date we are told that the Boards have been

[Dr. Wilson] established with an entirely different constitution to that promised in this memorandum.

I suppose this is merely idle talk—I suppose we can be perfectly certain; in fact, during the speech of the hon. member he spoke with such assurance as though he was reading from the Order in Council. As regards the actual composition of the Trust Board, of course, there is an obvious criticism that can be made and may be made in some quarters. Of the five members no less than three will be directly nominated by the Governor while another will be a Government servant and so, in a sense, the servant of the Governor. The only member independent of the Governor's favour will be a European elected member of this Council. At first sight it does not seem that he would be the most suitable member to have a say in questions affecting native land interests, considering that he owes his position, in the first place to the favour of the European electors of his own constituency, and in the second place to the choice of his fellow elected members.

I just want to say—and I want to be perfectly clear on this—I think the constitution of the Board as proposed is the best possible, under the present conditions, in the interests of the natives of this country. I can imagine no better method than nomination by the Governor in the present circumstances, to secure an impartial and fair-minded body, and I can imagine many other methods of selection or election which might be infinitely worse.

I do welcome the proposal for adding one European member to the Board as that will help towards a good understanding and co-operation with the Highlands Board and European interests generally.

Because we have got to acknowledge that the European and native interests are interdependent, even in questions of land tenure.

As regards the powers of these two Boards, one difference is that any decision of the Trust Board, if I read it aright, can be over-ruled by the Secretary of State, whereas apparently it is proposed that a decision of the Highlands Board should be unchallenged except in one or two cases.

I would like to say that I think the most important part of these two Bills, or one of the most important parts, is that it does allow for some elasticity in the future tenure of the land by different tribes and units, and I think the provision for inter-penetration of one tribe with another instead of a hard and fast locking up of land to different tribes, is a step in advance.

I do not think I had better question the advisability of a hard and fast definition of the Highlands under the control of this Highlands Board. I can only say that I think time will show whether that delegation of authority to a certain Board composed of Europeans will prove to be in the best interests of this country. I can only say that, should it prove in the future that certain lands have been allocated to any community—and I speak now of native lands as well as land in the Highlands—and that community is unable to make full economic use of that land, it will be impossible to resist the claim of the economic needs of any other community which might have need of more land.

Sir, I shall support this Bill.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Tuesday, 9th August, 1938.

Tuesday, 9th August, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, 9th August, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 8th August, 1938, were confirmed.

PAPERS LAID ON THE TABLE

The following papers were laid on the Table:—

By SIR ARMOIGEL WADE:

Report of Standing Finance Committee on Schedule of Additional Provision, No. 5 of 1937.

Statement required under section 150 of the Electric Power Ordinance, for the year ended 31st December, 1937.

BILLS

FIRST READINGS

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

The Tea (Amendment) Bill.

The Transport Licensing (Amendment) Bill.

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

NATIVE LANDS TRUST BILL

SECOND READING

The debate was resumed.

MR. HARRAGIN: Your Excellency, as a preface to the few remarks that I have to make on this Bill I would like to refer to the legal points made by hon. members on the other side of Council. I would first of all like to read Standing Rule and Order No. 69, which reads as follows:—

"On the second reading of a Bill the principle of the measure may be debated and if the question that this Bill be now read a second time is carried the Bill shall be referred

to a Select Committee and so on. I will now proceed to deal with the many points of principle that were raised yesterday.

The first point was made with regard to the drafting of the definition of the Highlands Board, and comment was made on the fact that I had put in the words "may be" instead of "to be". Well, the reason for that must be obvious, as it is impossible for us to say at this stage whether in fact His Majesty in Council will pass the Order in Council which we all hope and believe will be passed in the very near future. It is therefore necessary for us to leave it in that form trusting that His Majesty will see fit in due course to appoint the Highlands Board.

The next query was with regard to the definition of a mining lease, from which we particularly excluded "subterranean areas." The reason for that is that it is our endeavour to encourage mining companies not to take large surface rights in the native reserves, but if it is possible, and we say that it is possible and in fact it is usual, to be able to put down one shaft and then extend outwards and follow the particular reef, the rights of the natives are, in no way disturbed. Such rights as exist, exist on the surface and there is no disturbance whatever if some miner happens to be mining 500 feet below. It was for that reason and of malice aforethought that we excluded subterranean areas. But it is always up to a mining company, if it so desires, to apply for surface rights and get an ordinary mining lease, in which case the land has to be set apart in the ordinary way.

The next point made was in regard to a definition of a right-holder and annual crops. Now, in that connexion these two definitions have been deliberately left out. I do not think there is anyone clever enough to define what in fact a right-holder is, seeing that right-holding differs in different tribes. We therefore left it in that nebulous state so that such rights as the person is able to prove, he has still. But they will have to be proved by him. "Annual crops" is not defined in England although it is of frequent use. It can only be taken to have the ordinary

[Mr. Harragin] meaning that the two words have—"annual" and "crops".

Clause 4 has been criticised because of the constitution of the Local Boards. I, personally, hold no brief for the constitution of a local board as it is set out in the Ordinance, and in Select Committee we can go into that. Whether two should be nominated by the Provincial Commissioner or whether it should be three is a matter of detail which can be gone into.

The hon. and gallant Member for Nairobi North is anxious that the time of lodging the various appeals should be extended. I inserted twenty-one days for the simple reason that that is the usual time. But if there is any reason in this particular case why the appellant should be given longer time, I am sure there will be no objection on the part of Government. But it is desirable to force these appeals on as soon as possible and not have them hanging over the heads of the applicants for long periods.

Clause 18 (4) which deals with the appeal to the Governor, is put in that form because it is in fact the present law. It has been found in the 1934 Ordinance that it has worked perfectly satisfactorily and I merely reinserted it because no exception had been taken to it. If the Select Committee are of the opinion that it is necessary to clutter up the unfortunate Governor in Council with still further duties there is no constitutional reason why this should not be done. I merely suggested that, if possible, this should be avoided.

Clause 21 too, was referred to with regard to when there is a renewal of a mining lease there is no provision for further consultation with the various bodies. Well, that is not quite correct because there would have to be in each case a further setting apart and, in that event, the usual provisions will apply with regard to setting apart, so that in fact all these Boards will be consulted as to the further setting apart of land with the usual provisions.

Clause 24 has been criticised because it left out reference to such things as

dams and bore-holes amongst innumerable things that are in fact laid down there. It is true they do not appear in the clause, but a reservoir does appear, and I suggest that a reservoir would cover a bore-hole or a dam. In any event if we take a bore-hole, it would be ridiculous to suggest the complicated setting apart of a bit of land a few yards square. However, I have not the slightest objection to inserting any additional provisions with regard to any matter of public importance such as is likely to arise under that section. It would be very useful to have them all in. I know, but in my own opinion they are covered by the general sub-clause at the end which gives you, Sir, the power to declare any of these matters, that may arise from time to time, as coming within the purview of that section.

Clause 28 is a clause which is rather more important. It deals with land which might, under certain circumstances, be excluded from the Highlands (I am referring of course to clause 28 (4) where it says that if the Highlands Board objects to an exchange of land from the Highlands) after reference to the Secretary of State. This, of course, is rather more theoretical than practical, because although hon. members would be perfectly entitled to say it might under certain circumstances amount to a large area, in point of fact this is not likely to arise.

If we consider the position of the ordinary land holder to-day with regard to the Government he is exactly in the same position: namely, that we can under certain circumstances, such as one visualizes in this particular section, compulsorily acquire a person's land if it is wanted for any public purpose. And it is only for public purposes that land will be required from the Highlands. I do suggest that we cannot go further than make the Secretary of State the final court of appeal in this matter. Someone has got to be the final court of appeal and if it is going to be only a small area of land I do suggest that it is asking rather a lot of the King in Council to have to alter the Order in Council every time some small matter of that description arose.

[Mr. Harragin]

The hon. Member for Nairobi North then raised the point with regard to licences. I think the example he gave was with regard to saw-mills in the native reserves, which he or anyone else might wish to put up. The answer to that he really gave himself, when he visualized that with regard to yearly licences if there is to be anything of a permanent nature constructed then the applicant should apply for the land on which the permanent building or whatever it may be, is going to be constructed to be set apart. The applicant so applying for an area of land will have it set apart in the usual way. It is not contemplated in that particular section dealing with licences that any licence for more than a year should be given. If the construction is to be of a more permanent nature it would have to be applied for through the ordinary setting apart method.

The hon. member was a little bit apprehensive as to whether clauses 49 and 70 provided all the safeguards necessary. I can assure him that they do. The reason that the last six lines were added was to make it clear that where the right-holder had been paid up and had been removed from the particular piece of land over which he claimed some right, he then became just an ordinary citizen, and if he returned the provisions of the ordinary law would apply, the law of trespass or the Native Authority Ordinance. The hon. member was perfectly correct when he suggested that section 12 of the Native Authority Ordinance would apply which would mean that the Provincial Commissioner can order the person to remove himself.

Clause 65 was referred to with regard to the fact that the advice of the Trust Board would be required in certain cases. It is perfectly true that this is giving the Trust Board very considerable powers, but we must presume that they are going to be reasonable people. After all, enormous powers are given to the Governor in Council and if the Governor in Council became unreasonable presumably the normal workings of this Colony would cease. If they were unreasonable we shall have to acquire a Trust Board that is more reasonable and although that

would not be impossible, it would be undesirable.

I can further assure him that with regard to any other laws that are passed, laws with regard to soil conservation or anything else that you can think of, crop production and so on, the ordinary laws of the land would apply equally in the native reserves as over the rest of the Colony, and will over-ride anything which appears in the Bill now before you.

Then there is the suggestion that clause 70 should be repeated in the Crown Lands Ordinance. I will deal with that when I come to the Crown Lands Ordinance, but I can assure the hon. member that it is quite unnecessary once power has been given in one place it should be repeated every time you are dealing with a similar type of Ordinance.

He also asks under what Ordinance will wandering tribes be controlled and the answer to that is under the Ordinances which exist in the Colony to-day.

A question was raised; I think, by the hon. member representing Native Interests, Mr. Montgomery, as to whether a European could be co-opted on the Local Council. Well, in fact, as the Bill is drafted he may be, but I think I should only say in fairness that, on reference to the Land Commission Report it does not seem to contemplate that action being taken.

Clause 38 he further comments upon and I think this is a question we shall have to go into very carefully in Select Committee. He referred to the possibility of a right-holder not having his right observed when certain way-leaves were granted which might pass over his property. That is a matter we will have to go into.

The hon. member representing Native Interests, Dr. Wilson, was rather perturbed on the question of water. Well, as he is well aware, water is in fact the property of the Crown and all those sections to which he referred deal with the right of the Crown to enter and look after the water which is in fact theirs. The reason why the Trust Board has not been consulted in these matters is to be found in the Commission's report, at

[Mr. Harragin] paragraph 1783, which reads as follows:—

"We consider that the actions of the Governor or his authorized agents under this section should not be liable to be called in question by the Lands Trust Board or by the Local Board except in so far as the Provincial Commissioner may refer to the Local Board any question of compensation which may arise."

And that was why that particular clause to which he made reference was inserted.

He also referred to the constitution of the Boards and in that he will find that the clause reflects the sense of paragraphs 1518 and 1519 of the Report.

I think these are all the legal points that were raised and I hope I have explained why they appear in the form in which they do in the Bill before you as they do. I can assure hon. members on the other side of the Council that all these points will be gone into in Select Committee and if any further clarity is required we will endeavour to insert it.

MR. LA FONTAINE (Provincial Commissioner, Central Province): Your Excellency, the hon. members representing native interests have referred to the dissatisfaction which has been felt by the Kikuyu tribe regarding the compensatory land which has been awarded under the recommendations of the Commission's Report. This dissatisfaction is a fact which cannot be ignored and is at present receiving the sympathetic consideration of Government.

What are the facts? The Land Commission awarded an area of 21,000 acres of agricultural land as compensation to the Kikuyu people. Much of this land was already under occupation and a considerable part of it was forest reserve which was excised for the purpose. The Land Commission realized the difficulties which would be faced—which would have to be faced—if any attempt were made to compensate by an exact area of land, by an exact amount of land suitable for agricultural purposes, every claim which had been put forward to the Land Commission. That this was so is evident

from section 337 of the Report which reads:—

"But if we are over-solicitous for the various sectional interests and try to reproduce on the new land all the rights that existed on the old, so that the tribe, the group, the right-holder and the tenants should all of them be precisely compensated, we are convinced that such solicitude would defeat its own end by embittering relations between groups, and that in any case, so precise a settlement is certainly not practicable at this date. The best interests of the people will be served if the compensatory area is given as a simple addition to the reserve and placed under the general protection of Government and the Land Board without any special conditions or obligations."

Well, Sir, the District Commissioner for Kiambu, in whose district the bulk of the claims have been made, has, during the past two or three years, been busy allocating the land to the claimants in accordance with the recommendations. Such land as has been allocated by him has been in the immediate vicinity of the Kiambu reserve and the allocation has been carried out with considerable success and with a surprising absence of complaint, considering the factors involved. In regard to the particular claim of the *mbazi ya Nyungu* to which the hon. Dr. Wilson referred, it was not possible to give an exact equivalent in agricultural land to these people. An exact area similar to that surrendered in the past—at least by a section of these people in the past—was given to them, but it was not, as Dr. Wilson pointed out, all agricultural land. Well, Sir, it is the problem of the five thousand and the loaves and fishes. If there had been more land it would have been given to them, but there was not. What has been done as far as water is concerned is that a section of land has been excised from the forest reserve giving them a right of way, 200 feet wide, for watering their cattle at the Mbogathi River.

I will turn to a much more vexed question: right-holders on farms. I have not had an opportunity yet of paying my

[Mr. La Fontaine] tribute to the patience and moderation with which the European farmers in the area, which is a part of my province, have faced this very difficult situation. But, at the same time, the position is a very complex one. In 1936 Mr. Phillips, who was then district officer in the Kiambu area, was appointed to examine and go into all these various questions of the rights of right-holders on European farms. He made a very exhaustive and valuable report and recorded the names of all right-holders who, in his opinion were entitled to the land on these farms. When the settlement of some of these people who so agreed to be settled in some of the areas available for compensation took place, it was found that for almost every right-holder on each of these farms that there were at least several others who had equal claims, but who were not actually resident and who in the recent past or in the remote past had moved to farms in the Naivasha or Nakuru areas, and who were, from the point of view of native custom, equally entitled. So it must be realized that this presents a very great problem indeed.

Last year I compiled a schedule of the land available in the forest reserves adjoining Fort Hall, South Nyeri and the Embu Districts, for the compensation of right-holders whose claims had not been recognized in this Report, and that schedule has on record what land is available for these people should they agree to go there. But I must mention that, so far, at repeated barazas, offers of this land have been met with no agreement on the part of the people concerned or on the part of some of the native leaders. Then, what is to be done? There is no doubt that there are vast numbers of natives who are landless and no matter how fairly or how equitably the land available is distributed, we still have no place for them.

The Land Commission visualized this problem and they contemplated the dispersion of a number of the Kikuyu amongst the Embu and Meru Districts where a vast area of land is available for occupation. I have tried at repeated barazas to interest the Embu and the Meru peoples in this question. I would

have liked hon. members to have been present at a meeting of the Meru Local Native Council in 1936 when this matter was put up to them. It had a tremendous effect. In fact, the effect was so tremendous that had any Kikuyu been present at that meeting they would have run for miles!

It had not, I should mention, a very favourable reception, but, at the same time, the idea is making progress in the Embu District and there is a limited settlement of Kikuyu people who have been accepted by the Embu right-holders, but on very strict terms of tenure and there is no question of any right being transferred from the Embu right-holders to the Kikuyu.

These are some of the difficulties which have to be faced in the consideration of this question of the Native Lands Trust Bill. In fact, I was asked by the members of the Kiambu Local Native Council to ask Government to hold up the application of sections 49 and 70 of the Bill until more land had been obtained. Well, of course, that is a point of view which I find difficult in supporting because this question of right-holders on farms has been before Government for a considerable time and it is about time that it was settled finally and once and for all.

Looking at the matter from a purely human point of view, I hope it will be possible to redress a grievance which is a very strong one at the present time amongst the Kikuyu people. They are a progressive people and have played and will play a great part in the future of this country and any steps which it is possible to take to satisfy their grievances will reap a rich harvest of loyalty and contentment.

MR. ISHER DASS (Central): Your Excellency, I wish to congratulate the hon. mover on the way in which he has presented his case and tried to solve this crossword puzzle!

In his opening remarks he said, and it is in the "Objects and Reasons" to the Bill; that this Bill is based on the recommendations of the Kenya Land Commission. We have to see how far those recommendations have met with the approval of the people concerned, for whose

[Mr. Isher Dass] benefit that Commission was appointed. For the Report of the Commission has never been presented to the people in England, it has never been presented to the Houses of Parliament, it has never been presented to this Council, it has never been presented to anybody else, but it was approved before any of it was known by the people concerned.

From time to time objection has been taken that this approval by the Secretary of State for the Colonies and the Imperial Government is not in accordance with democratic principle, and I draw attention to the fact that even the Kikuyu and other native tribes have not accepted this Report, and therefore have objected to it.

It is also mentioned that the Land Commission went beyond their terms of reference in suggesting certain measures such as an Order in Council, which they were never asked to do, and when this Bill is published as being based on the recommendations of which I have spoken the hon. mover told us that once and for all, they wanted to decide the question and reach some finality, and thereby security will be established for the sons of the soil. How far that security is to be firmly established can be well judged by clause 49 and clause 70 of the Bill, under which, by a stroke of the pen, all the rights of the natives in the land they have possessed for centuries will be taken away, and they will be left dispossessed. This is the security they are given, this is how they are protected, and when the natives concerned ask the Provincial Commissioner, Central Province, to withhold these two clauses he does not see any reason to support them.

The hon. mover also said that much was made about trusteeship, that is, the trusteeship of the sons of the soil, and that it was their duty to decide what is good for the sons of the soil. I really cannot understand this trusteeship business. Under the present existing law, in every part of the world wherever a trustee is appointed there must be somebody to appoint him and some deed under which a trustee will have to act. The natives themselves have submitted a letter to the hon. members in this Council

representing native interests, and this is what they say about trusteeship:—

"We the Kikuyu Central Association representing the Kenya natives have learnt with great surprise that the above Bills (Crown Lands Amendment Bill and Native Lands Trust Bill) are framed in order to sweep away the native rights wholesale in everything and violate Government's solemn promises and pledges, i.e. the Royal Charter granted to Imperial British East Africa Coy. (I.B.E.A.) by Queen Victoria of 3-8-1888 and Native Policy of 1930 and the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance shall no longer have effect in respect of land alienated under such Ordinances respectively. This Association understands that the objects and reasons of these Bills are to give effect to the recommendations of the Kenya Land Commission which were not accepted by the natives as final."

This is in connexion with trusteeship. Now I will read clause 4 of the Bill, in which the intentions of the trustees are known better. I do not understand for one moment if this Bill is being enacted in the interests of the natives, but under this Bill you have to appoint members of a Trust Board and Local Boards, so that where is the necessity for the Provincial Commissioner? Clause 4 (1) (b) reads:—

"Four members of the Local Native Council, one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner."

The natives selected by the Provincial Commissioner can be said to be no more intelligent than others selected from the same lot, so that why not have all four elected, thus giving them more representation and so satisfy them with their own representatives, instead of the Provincial Commissioner coming in and appointing people of his own choice?

In (c) it says:—

"Four members appointed by the Provincial Commissioner from among

[Mr. Isher Dass]

the native inhabitants of any administrative district where there is no Local Native Council."

It is very easy for the natives of a location to appoint four people themselves. Why not have all elected instead of nominated members? In (d) the same suggestion is made again, and it surprised me to hear from the hon. members representing native interests that "such additional members as may be co-opted" should be Europeans; the hon. Attorney General also said that, although it was not specifically mentioned, one European could be appointed.

May I ask the hon. mover if he thinks that on the Highlands Board under the other Bill there should be any natives appointed to it because some interests of natives may be involved? No.

If these Local Boards consisted of natives who were elected by the natives themselves, with the district commissioner as chairman, that would have been more practical and would have shown a more honest intention than at the moment is contained in this legislation.

Nowhere have I seen that whenever a trustee is appointed for any estate or person or to execute a trust that he has any sort of legal powers. If these people do not obey the orders of the people over them having that trust, the group is punished by law, but in this case, not only have they the right to punish those people actually concerned who do not act in accordance with the rules laid down by trustees, the Local Board or Trust Board or anybody else, but the people who are the trustees are not answerable to anyone. In ordinary cases trustees are responsible to a court of law or some people concerned, but in this the trustees are not answerable to anyone. I might also point this out, that under clauses 53 and 54 not only are these trustees not answerable for deeds or acts done in the execution of their trust, but these two clauses make them dictators. Whatever they have done in the past or may do in the future, they are to be exempt for all acts of negligence or carelessness.

Another point which was raised by the hon. Member for Nairobi North was

when he spoke about the control of wandering tribes. The hon. Attorney General has informed him as to existing legislation under which these wandering tribes will be controlled, but he should always be prepared and should not be surprised to hear from one of the trustees that they are wandering tribes because there is not enough land.

Dealing with the Bill itself, Africans themselves have submitted a memorandum and have instructed me to raise these points.

I have mentioned their objection to clause 4 and that they expect Government to see fit in select committee to grant a system of election and not nomination on a Local Board by a Provincial Commissioner or any other authority. In this connexion they say:—

"Native Land Trust Board. We sincerely trust that the Government will choose one or two Africans to serve on this very important body. If we have been given 'utmost security' for our lands, it would be right and proper to have direct representation on this Board."

As to clause 7, Part II, they say:—

"The whole clause is unfair and particularly sub-section (4). Does the reverse of the provision of the latter sub-section hold good?"

The say, regarding clause 7, that under no circumstances would the Highlands Board ever agree to exchanges in the Highlands, but there is provision made for the exchange of land in native reserves. That is what their fear is, and the suggestion is made that clause 28 (1) should read like this:—

"Subject to the provisions of sub-section (2) of this section and notwithstanding anything in Part III of this Ordinance contained, the Governor, after obtaining the consent of the Local Board and the Trust Board, may exclude from the native lands any land required for any of the purposes set out in sections 22, 24 and 52 of this Ordinance."

and so on. They say that consultation with the Local Board is not enough but that before any exclusion is made possible there should be the definite consent of

[Mr. Isher Dass] the Local Board, and if they do not agree it shall not be done.

In Part V of clause 38 (1) (a), (b), and (c) they say:—

"It would be unfair for the Government to interfere unduly with the property in the native lands. The disposal of such property enumerated in this section and sub-sections should be left to be arranged by the landowners and the purchasers concerned."

This clause means that where there is land not occupied by any native in a native reserve, Government shall have the right to deal with the land or to grant a lease. They say that where land is actually in possession of a native or family, Government should not interfere at all but leave this entirely to the seller and the buyer. If a man who possesses land wants to charge money for timber Government should not interfere with their private possessions.

Of clauses 47 and 48 in Part VI, they say:—

"These are a source of fear and of a sense of insecurity. The native lands should not be subject to these provisions."

And of clause 61 (2), Part VII, they say:—

"This is most objectionable. Many natives have been prosecuted because of trespass in European lands. Why should there be this discrimination?"

That is their opinion, Sir.

I have already said enough about clause 70, but this is what they say:—

"We urge that no native rights should be extinguished until all the natives outside native lands, native reserves, temporary native reserves and the native leasehold areas are adequately accommodated. We recommend that land be found for these people, i.e. those who are Kikuyu, preferably in the Kikuyu land unit, which land should be gazetted as native lands. The land in Kikuyu which is in the hands of the Government or which has been alienated to Europeans are said to be Crown's for ever. It is only just that land granted

to people who were dispossessed of their land should be theirs for ever."

There is one thing. The hon. the Provincial Commissioner, Central Province, said just now that the Kikuyu have no reason to be dissatisfied because, under the recommendations of the Land Commission, 21,000 acres are to be added to their reserve. In this connexion they have expressed their views, and they say:—

"Most of this land is poor in agricultural value compared to the land that was taken away from the Kikuyu. We strongly recommend that land for the Kikuyu people be found within the forest lands of Ngong, Dagoretti, Njugua, Ngubi, Nyanjeru, Kafu-Kombini, Roi, Karura, Riara and Kamiti in Kiambu and other forest lands in Eort Hall, Nyeri, etc.; grasslands such as Ruiji, Thika, Ruai and others in other places could also be added to the Kikuyu land unit to become native lands."

MR. LA FONTAINE: Your Excellency, on a point of order I never said anything of the sort. I said the Kikuyu were not satisfied.

MR. ISHER DASS: I understood the hon. member to say they had no reason to be dissatisfied because 21,000 acres were being added to the native reserves.

That is all I have to say about this Bill.

There is only one other thing, and I hope I shall be excused for mentioning it in this connexion if it is not relevant to the question, that the natives still feel on such important issues concerning their life and death and future generations the need of their own representation on this Council. On behalf of all the Africans the Kikuyu Central Association say:—

"We feel that those who have been nominated to represent our interests in the Legislative Council are unsuitable. We consider that time is now ripe to be allowed to have direct representation; if this should be considered otherwise, we suggest that Africans elect their own representatives instead of their being nominated for them as hitherto. The inadequacy of representation in regard to our land question has forced us to this decision."

EARL OF ERROLL (Kiambu): Your Excellency, I fear that my ears are not as yet sufficiently attuned to what was said by the last speaker to understand quite what he meant! But what brings me to my feet are certain things said by the hon. member the Provincial Commissioner, Central Province, about the extinguishment of native rights on European farms.

I made a thorough nuisance of myself at the last session of Council on this question, and I stressed the importance then of introducing this particular measure as soon as possible, in view of the very serious position that had arisen in the Limuru area. The hon. member and the hon. and learned Attorney General have assured us that clauses 49 and 70 do deal, if taken in conjunction, effectively with the situation, but I must admit to some worry on one or two points.

I am worried that even if these two sections do, as is claimed, provide the necessary machinery for the solution of this problem, the time factor may render the Ordinance useless in effecting a peaceful settlement of the problem. I do wish to impress on members of this Council that this time factor is of the greatest importance.

For instance, clause 2 of the Bill— which reads:—

"This Ordinance shall not come into operation until Orders have been made by His Majesty in Council providing for the establishment of a Native Lands Trust Board and a Highlands Board and shall thereafter come into operation on such date as the Governor shall by proclamation in the Gazette appoint"

—might, I think, give cause for a certain amount of worry on the question of the time factor, and I do hope I may receive some assurance from Government that there is no likelihood of any very serious delay in the Orders in Council. Secondly, another point which I want to emphasize is that my apprehension is accentuated to a considerable extent when I recall the Resident Labourers Ordinance, which actually received the Royal Assent in September, 1937, is still inoperative in this country.

To refer to clause 49. The proviso to that clause may, I think, also tend to delay matters. Sufficient land must first be found for these natives, and I quite agree that such land must, indeed, be found. I understand, however, from the hon. the Provincial Commissioner, Central Province, that there is not sufficient land at this moment for this purpose, and my fear is, that although we pass this Bill during this session, all this uproar may come up again because Government will be unable to take the necessary forceful and tactful steps to, to summarize the words of the hon. Commissioner for Local Government, alleviate this position.

I fully realize, I think we all do on this side of Council, the very great difficulties as explained by the hon. the Provincial Commissioner and the great difficulties which face the Administration in carrying out this change-over. But what worries me is that if the period of the change-over is to be prolonged to any very considerable extent, it may not be able to be carried out with that equity and peacefulness which we all desire.

The hon. member also referred to the question of compensation for the natives who are to be turned off. He said that the £2,000 visualized by the Carter Commission was insufficient, because there were ten times as many squatters, or claimants, on these farms than had been estimated by them. I would suggest that one of the reasons for this is the inordinate delay, or prolonged interval, between the publication of the Report and the introduction of the Bill. We heard from the hon. member that claims have not only been received from resident claimants but also from natives living miles away, who have suddenly awakened to the fact that once, many years ago, their ancestors might have bred a goat on one of these particular farms—at least, that is what I understood him to say. The longer the present situation exists, the more likelihood there is of frivolous claims being entered.

One small point was mentioned by the hon. Member for Nairobi North and the hon. member Mr. Montgomery, the definition of an annual crop. The hon. and learned Attorney General tells us that an annual crop is exactly what it means, an

[Lord Erroll] annual crop; but when I hear the hon. member Mr. Montgomery suggest that sweet potatoes might be an annual crop I think that perhaps there may be a certain amount of confusion, because I submit that as grown by natives this crop is almost perennial. It would save a lot of confusion if they only have the right to reap their cereal crop, which is really the intention in this Bill.

MR. HOSKING: Your Excellency, in the first instance I should like to explain why it was that my hon. friend the Commissioner for Local Government is responsible on the Government side for the introduction of the Native Lands Trust Bill. The Commissioner for Local Government has always been in charge of the Kenya Land Commission Report, and, under the proposed reorganization that will shortly take place, the Commissioner of Lands will be responsible for native lands as well as other lands. And it is perfectly obvious from the very able way in which the hon. member dealt with the Bill that he will do it ever so much better than I could myself!

A mining matter raised by the hon. Member for Nyanza was, unless I misunderstood her, an objection on the part of mining companies to the lump sum payable. I would remind the hon. member that a mining location title can be held now for 10 years, and if in 10 years people cannot make up their minds as to how long they require a lease they should divert themselves with other occupations! A lump sum is required because a lump sum often has to be paid. Several right-holders may possibly be concerned in the area built over or leased, and their interest may be only small. In certain cases a right-holder's interest may be, say, Sh. 27. If that was payable over 21 years he would not realize he was getting much in exchange, consequently, from a native point of view.

These mining people I find are somewhat optimistic in estimating the life of their mines, and although they apply for a 20-year lease it may happen that they wish to abandon the land earlier. If they were paying by instalments the instalments would cease and they would be

handing back to the native land not valuable from an agricultural point of view, because it would be years before it was suitable for intensive agriculture again.

The hon. Member for Nairobi North threw down a challenge as to the definition of a native right-holder, which my hon. and learned friend the Attorney General kicked aside. But I should like to take it up. I do not, especially at this time of the morning, wish to go in for a long and learned dissertation on the whole theory of native land tenure, but there are certain aspects to which I must invite the attention of Council:

As you all know, there has been a gradual evolution from the concept of tribal tenure to that of the clan and group, and inevitably we must come eventually to the concept of individual tenure. In certain undeveloped reserves anyone is free to cultivate anywhere; but his right to possession lasts only so long as he maintains cultivation. That, of course, can only obtain in sparsely inhabited areas. In other areas, exclusive hunting rights are first established or such rights are bought from other tribes, and you gradually get in those areas to the step of family or group tenure, with the head of the family responsible for administration of the land. The land can only be cultivated with his authority, and he is responsible for it; for instance, on his deathbed he may even refuse to allow the land for which he was responsible to be subdivided.

That is a very brief and inadequate outline of the githaka idea of tenure. But where land is scarce and valuable, we come far more quickly to the state of individual tenure. In Maragoli, where there are over 1,000 natives to the square mile, the outright purchase of land is recognised by the natives themselves. In most of Kikuyu outright purchase is not recognised, but in Kiambu, where land is extremely valuable and the population thick the outright purchase of land rights is recognised by the natives.

Can we close our eyes to the facts and pretend that a native has only the right of occupation and not the right of individual tenure?

[Mr. Hosking]

In other areas outright purchase is recognised, but for somewhat different reasons. In Machakos, there is no communal land left. All the land is subject to right-holding, except the fly areas, and outright purchase is again recognised. Can a man sell what he is not held to possess? and there is no doubt that the natives themselves recognize individual right-holding. Turning to our authority, in section 523 of the Land Commission Report it is said:—

"On the issue of tribal versus individual tenure we shall say no more than: (a) that in all the Kikuyu districts the tenure is certainly not tribal, but is a species of group tenure; (b) that the groups are likely to become smaller, and that in the Kiambu District individual tenure is well in sight; (c) that while the devising of an adequate means of control may well tax the ingenuity of the Administration, yet the emergence of individual tenure in the Kiambu District must be expected at no distant date, and it is likely that it would be neither wise nor practicable to try and prevent it."

On second thoughts, they did say something more. In section 1650 it is:—

"On the question raised on the first term of reference, whether the tenure of land should be tribal or individual, we recommend that the tenure of each reserve should be built on the basis of the native custom obtaining therein, but that it should be progressively guided in the direction of private tenure, proceeding through the group and the family towards the individual holding."

If there is any further authority than the Carter Commission Report required, I should like to quote Lord Lugard in "The Dual Mandate," wherein he says:—

"It is clear from this description that African land tenure is not 'communal' in the sense of tenure in common. Its fundamental characteristic seems rather to be an individual tenure of land derived from the common stock at the disposal of the tribe or family. Such a tenure would tend to develop very

rapidly into individual ownership, and evidence that this was the case was given by several witnesses—and much more is available."

I could quote *ad nauseam*, but I will turn for one minute to the book of Westermann on *The African To-day*:—

"For a large part of Africa the conclusions apply which were made by the distinguished author, M. Delafosse, concerning French West Africa:—

"One of the most outstanding principles is that there is not an inch of land without an owner, not one inch over which a proprietor, and, most of the time, also an occupier, does not claim his rights."

There are other quotations that I could give, but I must not prolong this debate unduly. I think I have said enough to show that there is such a thing as individual right-holding generally recognised in Africa.

From our own point of view, I look on the individual holding of land as the one solution of this problem of soil erosion. The agricultural officers in the native reserves are fighting an uphill battle against soil deterioration, and the only areas in which, almost literally speaking, they are holding their ground is in those areas where individual tenure is recognised.

Recently I visited South Nyeri where there are 47 farms which people call mixed farming—it has got to be mixed or it is not a farm!—there are 47 farms where natives are observing not only soil conservation but proper rotation of crops, where a third of the area held is kept under grass, where animal husbandry is practised, where the native farmer is putting back into the ground as much as he takes out of it. These are the only areas where the unequal battle is being won against soil deterioration.

I will say no more on the subject of right-holding.

The hon. member Mr. Isher Dass has saved me much work by reading out this list of queries from certain Kikuyu. All I will say is that these points will, I am sure, be most carefully gone into in select committee, but no further object would, I think, be achieved in debating principles

[Mr. Hosking] of these matters of detail which are often due to certain misconceptions which can be put right.

Council adjourned for the usual interval.

On resuming:

MR. RAHAMTALA KASIM (Western): Your Excellency, in view of the very large Indian interests involved in all the native reserves, not particularly in land, but we are interested in the setting apart of trading centres and in regard to markets for produce and we have also certain interests in water mills and other things which interests will come up for consideration before such a Board, it is only fair that Indians should be appointed on that Board to represent the case from their point of view.

LORD FRANCIS SCOTT (Rift Valley): Your Excellency, it is a little difficult to discuss this Bill and detach one's mind and thoughts from the other Bill which will follow, and from the Orders in Council about which a memorandum was laid on the table of this Council some months back. I was not present when that was discussed, and there are a few points which I should like to emphasize.

First of all, the Carter Commission started its deliberations in April, 1932, and made its report in July, 1933. This report was adopted and approved in the House of Commons. I think I understood the hon. Mr. Isher Dass to say, I may have misunderstood him, that it had never been approved in the House of Commons. Actually, this Kenya Land Commission Report was laid on the table of the House of Commons and approved in July, 1934—that is, four years ago. And we have now reached the stage when we hope we will get finality.

Many speakers have referred to the patience and forbearance of people and I agree, Sir, that quite extraordinary patience has been displayed in waiting for the finality of this very difficult question. And what I do urge is that, in spite of pleas for further delays, Government will not listen to any idea of any further delay but will bring this vexed question to

finality and settle all conditions about right-holders or anybody else.

The hon. mover said that the object of this Bill was to give security to the natives in regard to their land as recommended by the Carter Commission. In that Commission's report it was very strongly emphasized that if security in the country as a whole was to be achieved then there must be equal security for the European areas as well. Though I can claim to take a very real interest in the security of the native people—all of us on this side of Council agree on that point—we have our special duty to see that there is also security for the European Highlands. What one has to look for in these Bills is whether we have got that or not.

Now, I would like to point out that there is no such thing as that. Everything will be changed if the Orders in Council can be annulled. Our security rests with His Majesty the King. If it was purely a question of His Majesty no one would have any qualms or doubts whatever. But it has got to be remembered that His Majesty the King is a constitutional monarch and as such has to be guided by the advice of his constitutional advisers. Governments come and go, and what might be considered to be perfectly right by one government in the United Kingdom may not be approved by a government formed from a very different political creed or party. So we come to the question, as far as we are concerned, of—Have we got that security?

In the beginning of this Bill we have got a definition of the Highlands and Highlands Board. It is a very curious fact, and one which has been commented upon by my hon. colleagues, that whereas always previously it has been called "European Highlands", in this Bill now, there is no, what the hon. mover called, "adjectival qualification." That may or may not make any difference, but I am afraid it is an instance of an exhibition of sheer funk on the part of the Imperial Government, because, as I understand it, it is administered by this Government and by the Government of Great Britain, that the present custom—administrative custom—is to be followed with regard to the European Highlands.

[Lord Francis Scott].

I believe that is so, and I am told and I hope that in their reply Government will reiterate that point. It does seem a great pity that in the definition of the Highlands it should not be called the European Highlands as it has been called and even approved of by the House of Commons in this White Paper of 1934, where it says that "The Commission has defined the boundaries of the European Highlands and His Majesty the King proposes to accept our recommendations in regard to this."

In dealing with this particular point of whether we have got proper security or not brings me to that very important reservation in section 28 which the hon. and gallant Member for Nairobi North has already referred to. In many parts of this Bill, it says that no land shall be added under the provisions of whatever it is, save with the consent of the Highlands Board. But in section 28, sub-section (4) it says:

"If the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final."

In other words, the Highlands Board will have no authority whatever. Now, it has been put forward on the other side of Council that it will only refer to very small exclusions, but if you read paragraph 28, sub-section (1) carefully, you will see that it refers to and also embraces sections 22, 24 and 52 of this Ordinance.

Section 22 deals with the setting apart of land for townships, trading centres, markets, schools, hospitals, stations, camps, etc., also for the purpose of inter-tribal occupation, and also for any other purposes that the Provincial Commissioner thinks will be beneficial to the natives. In Part II where that is referred to it is definitely subject to the approval of the Highlands Board without any over-ruling of the Secretary of State. But as section 22 is brought into section 28 it seems that this latter section is over-ruling the safeguard in Part II.

Section 24 deals with aerodromes, watercourses, et cetera, and section 52 with forest areas of any size.

I consider that this is one important point in this Bill with which I am not satisfied and I trust that when it goes to Select Committee, Government will see that the safeguards we are supposed to get with regard to the Highlands Board will not be over-ruled in such a way as to make their powers absolutely futile and useless.

I see I have written down here—I have forgotten which speaker it was—that one speaker said that this was merely a theoretical and not a practical difficulty and it was not likely to arise. I am afraid I cannot accept that at all. It is a very practical difficulty and there should be safeguards in this Bill to see that it cannot arise.

With regard to the tenure of land, my hon. friend the Chief Native Commissioner gave us a long dissertation on the question of land tenure and what is meant by right-holders and so on. He stated that he thought that individual tenure was the only hope of dealing with soil erosion. He may be right in that, but he told us earlier in his speech that Machakos had already got a system of individual tenure. If that is so I am afraid that his theory rather falls to the ground, for there soil erosion is worse than in almost any other part of the country.

He may be quite correct but, as I say, the fact is if he is correct that it has been the custom in Machakos for a long time, it does not seem to have been very effective in the past. This is the point I want to raise in regard to that. He did not answer the point we wanted to know and that is—what is the status of a right-holder on freehold land which has been sold by Government to coffee farmers as freehold land? How does a right-holder come into that? That question was not answered and that is the question which arises in the majority of these cases of so-called right-holders on the European farms. This is the point we have chiefly to deal with in this Bill.

I do not think there are any other points I wish to make, but I do wish to emphasize that, in trying to help Government to arrive at finality, some of us, who have acted as the accredited

(Lord Francis Scott)

representatives of the Europeans, have gone as far as we possibly can to try and meet Government in this matter. We have, perhaps gone beyond even what some of our colleagues might have approved. I think the hon. members on the other side of Council who have had to deal with this Bill will agree with that statement.

I do say that having proved ourselves to be reasonable people and people who have taken responsibility and looked to the broader issue rather than the narrow one, we have proved that we are worthy of trust, and that therefore it is not necessary to put these very powerful safeguards into the hands of the Secretary of State power to over-rule anything we say in the future when these Boards come into existence. I trust that Government will take that point of view into consideration and frame this Bill in the final stage in such a way as to let us feel that Government trust us, that they feel we mean to play the game and that we have the interests of the natives at heart as well as the interests of our own people, and wish to bring this very difficult and vexed question of land—a most difficult question in a country of this sort—to as sound and as wise a finality (you will never get complete finality) or conclusion as is possible.

MR. SHAMSUD DEEN (Central): Your Excellency, this is a very painful subject with which to deal, this question of what we call the native lands. As a matter of fact, it is a misnomer to call this a Native Lands Bill, for I submit that all the land in this country is native land and all of it ought to be such. There is no rhyme or reason why we should deal with the land in this country as native land or Highlands or any other land, and I submit that the only justification for non-natives coming to this country is that some sons of Adam and Eve have known of and are skilled in using a little bit of powder and fire and using rifles—and recently what the natives have now come to know as *adege* or aeroplanes.

That is, I submit, no reason why one tribe should go and claim the territory of other tribes. The Europeans have taken

upon themselves to poke their noses into all sorts of territories in the world, Asia, Africa and other places, and taken upon themselves the biggest responsibility that was ever laid upon the children of men, without knowing anything about the people's customs, and I submit that here is a very good illustration of the ignorance of the white people in their treatment of the black people.

Here we have the Wakamba—please do not think that I am going to refer to delicate matters, but these things have already been referred to. These people have been in Nairobi for the last fortnight. We talk about the erosion of the soil. The fear of the land being denuded for all times by soil erosion is almost as idiotic a fear as that entertained by a friend of mine who remarked, once upon a time, when he saw the colossal flow of water from the Victoria Nyanza at Jinja forming the source of the Nile, that because of this the lake would run dry very soon! I submit that this soil erosion is merely a phantom of the brain of Sir Daniel Hall.

These people, the Wakamba, are in camp here because you have taken away their land and have given it to the Europeans, land which has been theirs from time immemorial. Ever since they could first remember they were able to graze their cattle wherever they pleased, and when there was no grazing left in one particular spot they went away, and perhaps six years afterwards they came back when it was all right again. It is because we have come and interfered with their country, that is what is upsetting them. I have seen it in the Masai Reserve, and I have seen wild game actually eating not only the roots of the grass but the sand itself. However, after a year or two the land, after a generous shower of rain, was as green as the garden of Eden.

I submit that all this soil erosion business has no bearing at all on this question.

HIS EXCELLENCY: I would ask the hon. member to confine his remarks to the subject under discussion, the Native Lands Trust Bill. We are not discussing soil erosion at the present moment.

MR. SHAMSUD DEEN: Yes, Sir. This is the Native Lands Trust Bill, but this is a question which concerns the land of course. I will bow my head to Your Excellency's ruling and not say anything about it, but I submit that soil erosion and land are not different subjects.

I am now coming to the fact that we are dealing with native land. And, as I said before, all the land in this country is native land. There should be no such thing as non-native land, for I think the question is interwoven in this Ordinance, the Highlands is merely another name for stolen land. It came from the natives and it was stolen from them and you call it the Highlands. I submit that it is entirely a misnomer. If you want to steal the land well, I think you ought to leave something for the sons of the soil and have some regard for the sons of the soil.

May I be permitted, Sir, just to refer briefly to the changes that have taken place in this world in the last twenty or twenty-five years. I have before me a book, which is the Red Book for 1930-1931, which says:

"The first Governor and Commander-in-Chief of the East African Protectorate was Lt.-Col. James Hayes Sädler, C.B. (later Sir James Hayes Sädler, K.C.M.G., C.B.) who had held office as Commissioner since December 11th, 1905. In the Instructions issued to him under the Royal Sign Manual and Signet, dated November 9th, 1906, he was forbidden to assent to certain types of legislation" (I am only going to refer to this) "which might be passed by the newly appointed Legislative Council, without the previous sanction of His Majesty. Eleven types of legislation were cited viz: Those which concerned (1) Divorce; (2) Grants of Land or gratuities to himself; (3) the increase or diminution of salaries of public officers; (4) currency and issue of bank notes; (5) the Establishment of a Banking Association; (6) Differential duties; (7) Interference with the discipline of H.M.'s Forces by land or sea; and Ordinances, (8) whose provisions are inconsistent with any obligation imposed by treaty, (9) which

are of an extraordinary nature, or importance, whereby the prerogatives or rights of property of British subjects not residing in the Protectorate or the Trade and Shipping of the United Kingdom or British Dependencies might be prejudiced, (10) whereby persons not of European birth or descent may be subjected to or made liable to any disabilities or restrictions to which persons of European descent are not also subject; (11) containing provisions to which His Majesty's assent has once been refused. . . . In 1907—by additional Instructions of November 16th, 1907—unofficial membership on the Legislative Council was permitted, but no definite number of unofficials was provided until the issue of Royal Instructions of September 4th, 1919, which followed upon the promulgation of the E.A. Order in Council, 1919, dated May 30th, 1919, Article 7 of the E.A. Order in Council, 1906, which had constituted the Legislative Council was therein repealed, and it was now provided that "There shall be a Legislative Council in and for the Protectorate constituted in such manner as may be decided by any instruction under His Majesty's Sign Manual and Signet, and as may be provided by any law for the time being in force in the Protectorate. The membership of Legislative Council was considerably extended; and the principle of elected representation of unofficial European members was recognised, and marked a very important phase of constitutional development. By Article 39 of the Order the Governor was forbidden to assent to any Bill of the Classes which have already been recited above."

I submit that this Ordinance and the next one that comes, are such as violate that principle. And I suggest that anyone who is prepared to go all over the world and over-ride other people's land ought to pay attention to the customs of those people—there is no question of natives' land or non-natives' land—and the non-native must leave the land of the natives as they found it before Stanley came here. I think there should be no law at

[Mr. Shamsud-Deen]

all which divides humanity and I emphasize that the land should be left as it was found before we came here.

SIR ARMIGEE WADE: Your Excellency, I did not mean to speak in this debate, as we have heard both the hon. the Commissioner of Local Government and the hon. the Chief Native Commissioner. But, the latter having spoken, perhaps it is worth while for me to get up to refute most emphatically what I call the most extravagant claims on behalf of the natives put forward by the hon. member Mr. Shamsud-Deen.

He has taken the line that all land should be called native land, which is too extravagant, to say, to be contemplated for a moment. What actually happened when we came to settle the country? There were warring tribes and invading tribes all over the place. Would the hon. member say that the Masai land extended to the Tana River merely because they massacred a mission station there on one of their periodical raids? There was a great deal of unoccupied land to which no tribe had a claim, and how better could it be used than by bringing people of our own race here to the advantage of the natives and the advancement of civilization?

The hon. member went on to say that the European Highlands had been stolen, from whom? They were vacant lands, and were rightly treated as Crown land.

My considered opinion as a former Chief Native Commissioner who had a good deal to do with native reserves and various limitations, is that I am perfectly certain—and I think the hon. Chief Native Commissioner will agree with me—that we have probably been more generous to the native tribes in the treatment of their land than almost any other part of the world. We found warring tribes, and we found vacant land; we also found tribes settled on their land, and we preserved that land for them for all time and gave them generous boundaries. In many cases the present reserves are much more generous, the boundaries are wider and the lands more extensive, than the lands the natives occupied when we first came here. That is perfectly true of

the Meru and Nyeri reserves. The Kavirondo reserves are adequate for the present population, or at any rate are as big as when we came, possibly larger. There are only two native reserves—one, the Nandi, which has been put right, the other Kiambu and Limuru farms—where in the early days, owing to uncertainty of occupation, a sort of no man's land, mistakes were made, and it is these mistakes we are now trying to remedy and put right for all time. I certainly re-echo the hope expressed by the Noble Lord that we are at last reaching finality. But if anybody says that we have stolen land from natives and that all land should be native land; he simply does not know what he is talking about! (Applause.)

MR. COOKE: Your Excellency, I did not intend to intervene in this debate; but after what I think was a thoroughly mischievous speech made by the hon. member Mr. Shamsud-Deen something should be said.

I deprecate as much as anybody rancours introduced into this debate, and I am afraid that this side of Council is not guiltless, but I do feel, as an Administrative officer who has taken a part actually in the land disputes of the country, that the natives have got a really square deal under this particular Bill. I feel that the Kikuyu have a very great grievance in certain instances, but with a little good will these may possibly be overcome. I think that perhaps, not the terms, but our implications, have been broken in certain respects, and I should like to remind the Council of a quotation from that great pro-consul, Lord Cromer, in which he said:—

"It was a cardinal principle that a promise to a native must not under any circumstances be broken and that no arguments based on expediency should be allowed to over-rule this imperative necessity."

I think that, if this Kikuyu land question is allowed to simmer there will probably be a great deal of trouble in this country, and we should make every effort to solve it before long.

MR. MORTIMER: Your Excellency, the various speakers on this side of the Council chamber have already said what

[Mr. Mortimer]

practically the whole of the questions that were raised in the earlier part of the debate, and there remains very little for me to say.

First of all, the hon. Member for Nairobi North suggested that when Bills of this kind were under discussion, illustrative maps were required should be based on the table of Council. That can be done in the present instance: the maps are already in the Council chamber, and they can be laid on the table at the close of the present sitting. They also include maps relating to the Crown Lands (Amendment) Bill.

The hon. Member for Nairobi North, with reference to Part II, clause 6, of the Bill, suggested that this provision for inter-tribal lease was countered by clause 28. I submit that that is not the case, as they are two sections complementary to each other, providing for two alternative methods of doing the same thing: One is by setting apart and the other is by exclusion.

The hon. member representing native interests, Mr. Montgomery, brought up the question of clause 22, where it requires that certain things shall be brought to the notice of the natives concerned and also the Local Native Council, and suggested there should be provision for obtaining and recording the views of those parties. I think that in practice that will invariably be done, but there is no objection, I think, to bringing this matter up in select committee to see if the clause can be strengthened in any way.

He also referred to clause 26 (2) and (4) dealing with the compensation payments in respect of roads; and suggested that where the cost of the construction of a road has been in part contributed by Government, Government should share on the compensation payments to the extent of the contribution towards the construction. That, again, is a matter for select committee.

In clause 32 (1), he suggested that the Provincial Commissioner should be empowered to sign yearly leases. That again is a select committee matter.

In clause 29 it was suggested that land added to the native land in compensation

for land taken for mining leases, should be added permanently to the native lands and not merely temporarily. In this connexion I would draw attention to the proviso to the clause, which lays it down that if the land temporarily taken from the native lands is rendered unfit for occupation on the termination of the mining lease, then a portion of the land added to the native lands shall be permanently added. I think that will adequately cover the point, but no doubt that that will be considered in select committee.

The hon. member Dr. Wilson mentioned clause 23, which provides that the compensation for setting apart inter-tribal lands shall be paid by the Local Native Council concerned. He suggested that the compensation should be paid by the parties benefiting by the lease. Of course, that will be so in the long run. A lease presupposes some consideration. In this case, the consideration would, of course, be rent, whether that rent would be the full economic rent representing the value of the land, or whether some lesser sum would be determined in the individual circumstances, but that amount of rent will be paid the Local Native Council who will then pay out compensation as might be required. That principle has been followed throughout the Bill. The parties benefiting by any proposal to set apart will pay the Local Native Council such sums as are required; the Council will then dole out the compensation to the parties concerned.

Most of the points mentioned by the hon. member Mr. Isher Dass have already been dealt with. One was amazed when he said that this Report had never been considered by this Council, and no words of mine are needed to refute that statement.

MR. ISHER DASS: On a point of explanation, Your Excellency, by the people at home. The Report was not discussed in this Council before it had been approved. It was approved first and then discussed.

MR. MORTIMER: Yes, that, I think, was the case. It had been approved in principle by His Majesty's Government, but it has been discussed repeatedly since,

[Mr. Mortimer] and the Bill now before Council represents the embodied results of the various discussions.

I am glad that the hon. Chief Secretary took the opportunity of very forcibly repudiating the extremely loose and unwise statements made by the hon. members Mr. Isher Dass and Mr. Shamsud Deen with reference to the stealing of land from the natives. I would very earnestly deprecate the making of such grossly exaggerated statements of a kind which receive publicity far beyond the confines of these walls and are calculated to do infinite damage to the Colony as a whole. (Applause.)

MR. ISHER DASS: On a point of order, Sir, I never used the word "stealing" in my speech at all, and I am really very sorry that the hon. member should have thought so. And included my name with the name of somebody else.

MR. MORTIMER: I agree that he did not use the word "steal", but I did gather the impression. He made the remark that the land that had been occupied by the natives for centuries was going to be taken from them by means of this Bill. And that, I think, suggests stealing.

When the hon. member spoke about land occupied by natives for centuries—I think he was referring to the land in the Klambu and Limuru areas, which is the subject of claims of right—I should be very much surprised if conclusive evidence could be brought forward to show that anything beyond a comparatively minor portion of that land had been in the occupation of the Kikuyu 20 years before the beginning of this century.

The hon. member Mr. Isher Dass referred to the selection of members for the local Boards and, as already stated, that will be discussed in select committee.

He seemed also to deprecate the provision of any penalty clause in the Bill for breaking the laws of the land or for breaking rules made under the laws. I suggest that the Bill would not be complete without some penalty clause for breaking the law.

The hon. Member for Kiambu referred to clause 2 of the Bill, and asked for an assurance that His Majesty's Government would proceed as quickly as possible with the Order in Council. So far as this Government is aware, His Majesty's Government has every intention of seeing that the Order in Council is made at the earliest possible moment after this Bill is placed on the statute book.

The question was also raised by the Noble Lord of "annual crop". What is an annual crop? The hon. and learned Attorney General has dealt with the legal aspect of that question. I would suggest that if there are any border-line cases where there is some doubt as to whether a crop is annual or not, the time factor would come in, and obviously any crop that has not been harvested within 12 months of the commencement of this Ordinance will not be an annual crop sown before the commencement of the Ordinance, and therefore would not be protected under the terms of the clause.

The hon. member Mr. Kasim raised again the question of the appointment of an Indian on the Trust Board. As was explained in the debate during the last session of Council, there is one member of the Trust Board open to the free and unfettered nomination of Your Excellency, and there is nothing more to be said on that point.

The Noble Lord, the hon. Member for Rift Valley, raised the question, very fully debated during the last session of Council, of security for the European areas in addition to the security for native lands. Nothing useful can be added, I think, to what has been said during the present debate and to what was said during the debate in the last session on the motion of the hon. Member for Nairobi North. But, in response to the invitation of the Noble Lord, I would reaffirm that there is no intention whatsoever of His Majesty's Government departing from the administrative custom that has been in force for the past 30 years.

Reference was also made to clause 28 of the Bill, which provides for an overriding power of the Secretary of State

[Mr. Mortimer] after the Highlands Board has expressed its views. That matter will be discussed in select committee.

We are asked for a definition of right-holder. Well, all that one can say is that a right-holder is the holder of a right, and that seems to be rather self-evident. When we are asked to define that right, we get into rather deep waters, and I think it would be very unwise to attempt in a definition clause of a Bill of this kind to define "right".

I should like to take this opportunity again, Sir, of expressing grateful acknowledgment to the accredited representatives of the Highlands for the excellent and helpful manner in which, during the course of long discussions on the carrying out of the recommendations of the Commission, they have met and assisted in the settlement of the various difficult adjustments that have from time to time arisen.

I think, Sir, that that covers all the points referred to in the course of the debate to which I desire to reply.

The question was put and carried.

THE CROWN LANDS (AMENDMENT) BILL

SECOND READING

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

This Bill is the companion to the Native Lands Trust Bill previously under discussion, and, together with that Bill and the Orders in Council will complete the legislative measures necessary for giving effect to the Kenya Land Commission recommendations.

In addition to the native lands, the Commission recommended the setting aside of other areas for native occupation, areas not previously in the legal occupation of natives who now require them, for the satisfaction of their economic needs, either temporary or permanent. The Commission designated these areas as B1 and B2 respectively, or native reserves and temporary native reserves, according to whether the reservation was to be permanent or temporary.

Those areas were to remain Crown land, as the Commission considered that a distinction in fact should be emphasized by a distinction in name between the lands to which natives have a claim on historical grounds and the land which has been given them by Government in satisfaction of their economic needs.

There was further reason for that differentiation in the view of the Commission, and that was that the country's assets in land should be kept as fluid as possible. Also, in the Commission's views, this differentiation would ensure that the land available for native occupation was properly and efficiently utilized. The relative strength of the tribes and consequently their requirements in land is subject to rapid fluctuation, said the Commission, and it would be imprudent to lock up land too rigidly against the possibility of any redistribution. The permanency of the allocation should depend on the duration of the need.

In order to carry out this intention and at the same time to secure reasonable security of tenure for the natives who occupy and develop this land, the Commission recommended the division into Classes B1 and B2, the former to be added to the reserves on conditions, and the latter to be leased to the tribes. In both cases very strict conditions of conservation and use were to be imposed.

The native reserves, that is, Class B1 areas, were to be under the protection of a Trust Board, they were not to be diminished or taken away without the consent of the Trust Board, and there was to be an appeal to the Secretary of State with over-riding authority against a recommendation of the Trust Board. Leases of a temporary reserve were to be terminable by the Governor only after consultation with the Trust Board.

The Commission recommended that there should be a third class of land for the occupation of natives, to be known as native leasehold areas, Class C. These were intended for the development of private rights on leasehold terms.

There were three classes of natives supposed by the Commission to be willing to take an interest in such lands. First of all, there were advanced natives

[Mr. Mortimer]

in the reserves who desired to have some individual tenure of the land they occupied. Then there were returned resident native labourers from European farms who might find it difficult to get accommodation in the reserves from which they originally came and to whom also tribal conditions might not now be congenial. Then there were the de-tribalized natives loosely attached to municipalities and townships in the Colony. In addition to these groups of natives the Commission, in another section of the Report, recommended that special provision be made in the leasehold areas for the accommodation of Somalis.

There were three blocks of land recommended as C areas, and they are described in paragraph 1879 of the Report.

The first area was in the Masai reserve known as the Kiserian area, but that is not available as the Masai will not, on any consideration, part with that particular piece of land. The second area was on the Yatta Plateau, a narrow wedge lying between the Kamba land unit and the native reserve. That, with the approval of Your Excellency in Council and the Secretary of State, has been classified as temporary native reserve for the accommodation of the Kamba tribe.

The third section was at Isiolo, about 700 square miles, and that is the only remaining portion of the C areas as recommended by the Commission.

The boundaries of these native leasehold areas were to be safeguarded by an Order in Council. They were not to be diminished or extended except by another Order in Council. Exchanges were to be permitted with the consent of the Trust Board. Leases were to be granted, when required, to individuals, to groups or families of natives. Leases might also be granted to non-natives with the consent of the Trust Board if the land which is to be the subject of the lease is not at the time required for native occupation.

So far as native reserves are concerned, the lands which are required for native use in satisfaction of their permanent economic needs, it would have been far

simpler to have amalgamated them with the native lands, but in the light of the Commission's expressed views, on this point the Commission's recommendations have prevailed and the necessary legislation has been framed as part of the Crown Lands (Amendment) Bill.

Since all these groups are to be Crown lands it was, of course, inappropriate to include the legal provisions required in the Native Lands Trust Ordinance. Therefore the Crown Lands (Amendment) Bill has been framed to cover all the necessary requirements.

The Bill first of all provides for the necessary additions to the definitions in section 5 of the principal Ordinance, Chapter 140. These definitions call for no special mention.

The main portion of the Bill is the insertion of a new Part VI in substitution for Part VI of the original Ordinance, which dealt with land for the use of natives. This Part VI was repealed by the Native Lands Trust Ordinance, 1930.

In this new Part VI, sections 54 and 55 provide for the reservation of native reserves and temporary native reserves as specified in the schedules to the Bill for the tribes also specified in those schedules.

Before passing on to details, I invite Your Excellency's attention to discrepancies in the schedules connected with both of these sections. If I do not draw attention to them, I am sure some other hon. member will, as for those discrepancies I am responsible. It will be noticed on turning to the schedules that the tribes are not specified. The hon. Attorney General supplied the draft Bill to the Government Printer and I supplied the schedules. When I sent the schedules to him I had not the Bill before me, and in consequence did not notice the omission. When the draft Bill was under consideration the omission was noticed, but to have corrected the discrepancies at that stage would have necessitated a delay in the production of the special Gazette in which the Bill appeared, so it was considered desirable to leave it open for correction in the committee stage.

[Mr. Mortimer]

The other sections of the Bill purport to carry out the recommendations of the Commission which I have just recited.

Section 56 gives the Governor power to vary the boundaries of native reserves and temporary native reserves after consultation with the Trust Board. If the Trust Board refuses consent the Governor may appeal to the Secretary of State for a final decision.

Section 57 gives the Governor power to set aside other areas as temporary native reserves. The leases of them shall be subject to the payment of rent by the tribes concerned. The Highlands Board is to be consulted if the land comprised in these additional areas is in the Highlands.

Section 57A provides that permits to occupy these temporary native reserves once given can only be revoked with the consent of the Secretary of State.

Turning to section 58A to avoid needless repetition the sections of the Native Lands Trust Ordinance which deal with native reserves and temporary native reserves are all made applicable in this Bill. The object has been to bring these lands as far as practicable, and always subject to the major principles which the Commission laid down for the occupation of these areas, under the same general conditions as native lands. This section, therefore, applies all the provisions of the Native Lands Trust Ordinance, with certain express exceptions.

These exceptions are that the native reserves and temporary native reserves shall be under the protection of, but not vested in, the Trust Board. Sections 22 and 24 are further exceptions. These are provisions for setting apart for public purposes and are not to apply because there is power in section 58H to exclude land for these purposes. The only necessity is to preserve setting apart for townships and trading centres in order to make it clear that the revenue derived from such setting apart is to go to the Local Native Council. Other sections are also excluded which are mentioned by number for reasons which I think will be obvious on looking up the various sections concerned.

We pass now to the native leasehold areas. Section 58 (b) and (c) provide for leasehold areas and for the granting of leases of land therein to any native groups, families or native individuals. The rents in these cases are to go to general revenue because there will be no local Native Council concerned. Such leases may be transferred to a non-native subject to conditions that may be imposed and with the consent of the Trust Board. Under section 58 (d) provision is made for the Governor to grant leases up to ten years to non-natives if the Chief Native Commissioner and the Provincial Commissioner consider that the land is not needed for the immediate or future requirements of the natives. The Governor may also grant leases up to 99 years with the consent of the Trust Board if he is satisfied that such leases are desirable in the native interests. If the Trust Board rejects the proposal of the Governor he may appeal to the Secretary of State whose decision shall be final.

In section 58 (e) provision is made for exchanges of land in the native leasehold areas with the consent of the Trust Board, and if the land to be exchanged is in the Highlands, then, with the consent of the Highlands Board. 58 (f) provides for the forfeiture of land as a consequence of high treason. Under section 58 (g) the Governor may grant a permit to native tribes to occupy Crown land adjacent to the native land unit. Once more, if such land is in the Highlands then the Highlands Board's consent is required before such land can be leased.

58 (h) gives the Governor power to exclude for any public purpose any land in the native reserves, temporary native reserves or leasehold areas. Compensation is to be paid only for native buildings or crops. 58 (i) provides for rule-making powers.

A special section, 58 (j), provides for the Northern Frontier District and Turkana. In these areas native interests are to be safeguarded in accordance with the recommendations of the Land Commission in paragraphs 805, 806 and 807, the latter paragraph with special reference to the Leroki. As the precise wording of these paragraphs is of special importance I will, with Your Excellency's consent,

[Mr. Mortimer] read them in full in order to forestall the inevitable reference to Leroki in the later stage of the debate.

The Commission said:—

"Our general recommendation in regard to the Turkana and Northern Frontier Provinces therefore is that, with exceptions noted at sections 808 and 816 below, the land should not be proclaimed native reserve nor be regarded as wholly devoted to native purposes; but that it should be recognized as land in which natives have a prior interest, and leases to non-natives should not be allowed to such an extent as to justify the apprehension that the natives might not have sufficient land remaining for their use. We further recommend that although the land should not be native reserve, the priority of native interests should be safeguarded by a special section under the Lands Trust Ordinance.

806. This special section should deal with the question of leases. Power should be allowed to the Provincial Commissioner to set aside for social service centres and trading centres; and, subject to the approval of the Governor, for residential sites and for townships. Leases which are not of this character should be subject to the approval of the Lands Trust Board; save that, if the Governor disagrees with the decision of the Board, the Secretary of State should decide.

807. In the case of the Leroki Plateau there are special circumstances which have to be taken into account, and we have devoted a chapter (Chapter VI) to their consideration. The conclusion which we reach is that the above recommendation should apply generally to the Leroki Plateau as well as to other parts of the Northern Frontier and Turkana Provinces, at least for many years to come, but that leases of large areas to non-natives on the Leroki Plateau should not be allowed except for purposes directly beneficial to natives. The ultimate destination of this land after the lapse of many years is a matter with which we do not find it necessary to deal."

I would also refer to the conclusions in paragraph 884 (a), in which the Commission said:—

"Our final recommendations are as follows:—

(a) That the 'Kittermaster Line' be kept as one of the boundaries of the Northern Frontier Province subject to any minor adjustments which Government may consider necessary, and that all the land to the north and east of it, including the Leroki Plateau, be reserved for native use and occupation for such a time as may be necessary. We do not at present recommend that the area be declared native reserve for reasons which we stated in Chapter V on the subject of the Northern Frontier Province generally."

And because the Commission recommended that, at any rate, for a long term of years, there should be no differentiation between the Leroghi and the rest of the Northern Frontier District, no differentiation has been made in the Bill.

Section 58 (k) refers to mining leases and makes it clear that the operation of the Mining Ordinance has no effect on this Bill, and that for all the purposes of that Ordinance, native reserves and temporary native reserves are to be treated as native land.

In section 58 (n) there is a special definition of natives which has been found necessary for the purposes of this part in order to include Somalis who were definitely and expressly excluded from the Definition of Natives Ordinance. Section 6 provides for the definition of Crown lands in the principal Ordinance to be amended by the addition of native lands. In section 7, section 86 of the Crown Lands Ordinance is repeated. That section which has frequently been referred to had the effect of preserving native rights on areas granted with leasehold tenure to non-natives.

Sections 30 and 31, the corresponding sections of the Crown Lands Ordinance, 1902, are not specially referred to in this Bill as, by virtue of the Native Lands Trust Ordinance, the operation of these

[Mr. Mortimer] sections will have been declared non-effective, and there is no need to do the same thing twice.

He came finally to the schedules of the Bill. It will be noticed that they commence with the fourth schedule, as there are three schedules already in the principal Ordinance. The native reserves are five in number and I would just explain briefly where they are since the native tribes concerned have not been specified in the schedule as at present drafted:

The first is Ngelesha, that is, West Laikipia, which is intended for the Njoms tribe. The second, Esageri, which is the old Uasin Gishu Masai Reserve, is intended for the Kamasia tribe; the third, Taveta, north of Taveta Township, is to be used for the occupation of the Taveta tribe; the fourth, North Yatta, for the occupation of the Kikuyu tribe; the fifth, Southern Yatta for the Kamba tribe.

In the fifth schedule, the temporary native reserves are described. The first, Churo, north-west of Laikipia, for the Pokwot people; the second, Legisianan, which is to the east of the old Uasin Gishu Masai Reserve; and in this reservation there is a departure from the Commission's recommendation. The Commission recommended that certain farms should be acquired on a ten-year lease for the occupation of the Kamasia. It was found on inquiry that it was quite impracticable to acquire these farms on a lease and equally impracticable to purchase for any reasonable sum. In consequence, with the consent of the

accredited representatives of the Highlands, another farm was purchased for the use of the Kamasia, and that is the farm described as Legisianan. The third, Kitui, in the Central Yatta, is for the use of the Akamba tribe. This is the area referred to by the Commission as a C area, a leasehold area, which has now had its designation altered. The fourth, Teita, between Voi and Maktau, north of the railway line, is intended for the Dabida.

In the sixth schedule, native leasehold areas, there is only one, Isiolo.

In the seventh schedule the Highlands are defined as indicated by the Commission, except for such alterations that have been approved by the accredited representatives of the Highlands.

In the eighth schedule the Northern Frontier and Turkana Districts are defined, following previous proclamations except for the exclusion of portions of the Pokomo native lands and the Isiolo leasehold area which fall within the previously proclaimed boundaries.

It now only remains for me to add that this Ordinance will come into force on a date fixed by Your Excellency by proclamation after the Orders have been made by His Majesty the King in Council establishing the Native Trust Board and the Highlands Board.

MR. HARRAGIN seconded.

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 10th August, 1938.

Wednesday, 10th August, 1938

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

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 9th August, 1938, were confirmed.

ORAL ANSWERS TO QUESTIONS

NO. 19—INDIAN GOVERNMENT SCHOOL, KISUMU

MR. KASIM asked:—

In view of repeated assurances since 1928, when do Government intend to fulfill those assurances to build the Indian Government school at Kisumu?

MR. WISDOM (Acting Director of Education): It has not been possible to erect a Government building for the Kisumu Indian School because funds for this purpose have not been available. The rented accommodation has been increased from time to time and the last addition to the premises used by the school was made as recently as January of this year.

2. The school building is included in the schedule of requirements in respect of new Indian Educational buildings, but it is not yet possible to state when funds are likely to become available.

CROWN LANDS (AMENDMENT) BILL

SECOND READING

The debate was resumed.

MAJOR CAVENDISH-BENTINCK:

Your Excellency, before commenting on the Bill itself, I would like just to allude to certain remarks which were made by the hon. and learned Attorney General before he replied to the various legal points which were raised during yesterday's debate on the other Bill.

The hon. member quoted Standing Rule and Order No. 69, and I suppose he did so by way of a polite intimation

that we were tending to adopt a procedure which was not orthodox. In other words, I suppose he felt that we were going too much into the detail of these Bills, and dealing with select committee points rather than merely sticking to the principle of the Bills.

I realize that there may be some justification for that, but I would plead that, in the case of certain Bills such as these, which do very much affect, and very seriously affect, the interests of those whom we represent, a certain amount of latitude be given, because if it is not, our only alternative will be to have the Bill, after the second reading, referred to committee of the whole Council, and I am sure that that would take far longer than allowing us a little latitude in regard to dealing with the details of some of these Bills.

Turning to this Bill, which was introduced yesterday, as was explained it is a Bill to make provision for setting aside certain areas of Crown land as native reserves, temporary native reserves, and native leasehold areas, and also makes provision for the delineation of specific areas in which certain conditions will be observed. The Bill, I would point out, also contains a number of schedules, which are not merely schedules to this amending Bill but are, of course, schedules to the principal Ordinance. At the present moment there are only three to the principal Ordinance, and they are quite short. One deals with permanent improvements, and two others deal with lists of minerals referred to in the Ordinance.

I am going to venture to suggest that, in view of these new schedules, this Bill which is before us to-day amending the principal Ordinance does not go nearly far enough, and I am going to raise what I consider is quite an important point of principle as regards this Bill.

In order to explain what I mean, I want to try and remind hon. members what the enactments which are before us really do provide for and how they fit into and replace the various laws under which we have been working hitherto, because the machinery is a little complicated. I did not quite follow

[Major Cavendish-Bentinck] myself, until I went into it rather carefully.

The original Crown Lands Ordinance, 1902, was repealed by the Ordinance of 1915, and the 1915 Ordinance contained as Part VI five short clauses which were all that, in those days, were considered necessary to enable Government to deal with the problem of the reservation of land for native tribes. I would like to stress the words "the reservation of land for native tribes," because it shows that the whole idea then was land for tribal occupation.

In 1926, 11 years later, the 1915 Ordinance was brought up-to-date and it was amended in certain respects, and the Governor took the opportunity at that time of availing himself of the provisions which he had under section 54 of the old Part VI to declare certain areas to be native reserves. He did that by publication of a Government Notice dated 11th October, 1926, and that notice can be found on page 1227 of the Laws of Kenya.

To that notice were, of course, voluminous schedules demarcating in much the same way as is demarcated in this Bill areas which were to be considered as native reserves. I would stress that those schedules, although similar in character to those we have before us to-day, were schedules to a proclamation or Government Notice and not to the Ordinance.

In 1930, the Native Lands Trust Ordinance was passed, with the object of turning the areas referred to in those schedules into permanent native reserves to be set aside for the use and benefit of the native tribes for ever. And the new Ordinance of 1930 repealed Part VI of the 1915 or 1926 Crown Lands Ordinances, but it did not repeal the notice issued under it, nor did it, of course, repeal the schedules. On the contrary, the Crown Lands Ordinance refers to those schedules, and makes that scheduled demarcation native reserves for all time.

I have explained that, because this Bill before us, the majority of it, is replacing Part VI of the old or existing Crown Lands Ordinance. But of course this Part VI was repealed by the Native Lands

Trust Ordinance which in turn will be replaced by the Bill we passed yesterday. This Bill which is before us to-day, although it is an amending Ordinance, in fact only amends, or rather adds, a few interpretations and repeals that very important clause 86. Otherwise you see nothing on the page opposite the letterpress containing the major part of the Bill, because it is merely a new Part VI, and the old Part VI was repealed in 1930.

The whole of this Ordinance is meant to deal with Crown lands, and in the old days we had one part of the Crown Lands Ordinance which dealt with the question of the reservation of land for native tribes. That has now been turned into a new Bill to deal with native lands, and what we are asked to pass to-day to my mind should not be another Bill to deal purely with native lands but to make provision in existing Ordinances for the setting apart or reservation of land for various specific purposes. And I venture to suggest that this Part VI should be headed not purely a part to deal with the reservation of land for native use and occupation but for dealing with the classification of lands or the disposal of lands or the reservation of land. I do not mind what the heading is, but it should be that, because in effect it is what this Bill before us is meant to do; that is proved by the schedules.

After all, there are here a number of schedules in which certain areas of land are demarcated for certain purposes. We start with a demarcation by schedule of native reserves and temporary native reserves. We proceed to native leasehold areas, and then we deal with the two special districts as recommended in the Carter Commission Report.

And there is another schedule dealing with what is to be known as the Highlands. But it is rather peculiar that no reference is made to it except in the interpretation clause to that schedule. I suggest, Sir, that there should be in this Bill a section reading something to this effect:—

"The areas of land, the schedules of which are set out in the seventh schedule to this Ordinance, shall constitute those areas in regard to which

(Major Cavendish-Bentinck) "the Highlands Board shall be established, and shall be known as the Highlands."

That is practically the same wording which you have got with reference to each and every schedule of this type contained in this amending Bill.

It may be suggested that my argument is rather specious and that there is no necessity for anything of the kind, because of the Order in Council. I absolutely deny that, Sir. I think if we are going to bring in schedules to a Bill and are going to bring in a new Part to replace one repealed many years ago, in equity we have the right to demand that this new Part should in fact say what it is meant to do, which is to allocate certain portions of Crown land for specific purposes and to make reference to the schedules which are being introduced as part of the Bill, and all reference should not very conveniently be left out regarding one schedule only, more especially in view of the history of this Part VI of the Crown Lands Ordinance to which I have made reference this morning.

Turning to certain details of the Bill, and I will endeavour not to touch more than I can help on what should be select committee points again, I would start by suggesting that in clause 3 in the references to the Highlands Board and the Trust Board the words should not be "which may be established", but that they should read "to be established". I know my learned friend opposite said that that was hardly reasonable and that his wording is the right one. I am afraid that I do not quite agree. I think at any rate we ought to stress the principle that neither of these Bills can be brought into force until these two Boards are established by Order in Council.

There are two other points in connexion with the definition of "European" and "Farm" which will bring up in select committee, both of considerable importance.

I hope that we shall find it possible in clause 4 to change the heading which appears under Part VI in capital letters, or rather, big type. This Part VI should not be considered merely a part to deal

with lands for native use and occupation. It is a part that should deal with the reservation of Crown land for any specific purpose.

"In section 57 on page 3 you have a proclamation "setting aside" land, and at the top of the next page you have a section which deals with the manner in which you are going to "set apart" the land under the other Ordinance. I suppose "setting aside" is the right expression, but I cannot help feeling that we might get into a certain amount of confusion when talking about "setting apart" and "setting aside", because the terms are so very similar.

"In section 58A there is a point of principle which I think should be raised. That is, that I notice that both B1 and B2 lands—that is, both native reserves and temporary native reserves—are going to be treated exactly alike.

I understand from the Carter Commission Report, paragraph 1459, that:—

"Class B1 lands should, in our opinion, be under the protection of the Lands Trust Board. They should not be diminished or taken away without the consent of the Board, excepting only that an appeal should lie to the Secretary of State."

Paragraph 2125 clearly shows that:—

"The security proposed for native reserves (B1) is that they should be Crown lands under the protection of the Lands Trust Board. They could not be diminished or taken away without the consent of the Lands Trust Board, excepting only that an appeal should lie to the Secretary of State (section 1459). "Temporary native reserves" would be held on lease terminable by the Governor, with the approval of the Secretary of State."

I think there should really be some differentiation, but I do not really think it is a matter of very grave importance, except that if one is going to depart at all in principle it should be explained why it has been done.

In the same section I am not very happy about mining. Under section 58A—

"the native reserves and the temporary native reserves shall be subject

(Major Cavendish-Bentinck) "to the provisions of the Native Lands Trust Ordinance, 1938, as if the expression "native lands" appearing therein contained a reference to the native reserves or to the temporary native reserves as the case may require."

Then, under sections 58A (c) and 58A (b) a lot of the provisions of the Native Lands Trust Ordinance are made inapplicable to these particular types of land. As far as I can see, setting apart under sections 15 and 16 of the Native Lands Trust Ordinance can be done, but one cannot exclude except for public purposes, and no temporary exclusions appear to me to be possible. When it comes to leasing, there again it does not seem that it can be done as regards native reserves or temporary native reserves.

In the next section, which deals with native leasehold areas, the Governor may lease land which is native leasehold land, and apparently he can override, by appealing to the Secretary of State, the Trust Board, but it appears that he cannot override the opinion of the Chief Native Commissioner, from the wording of this. I may be wrong.

In short, it appears that something can be done in native leasehold areas that cannot be done in native reserves or temporary native reserves in which the same provision should be made, and it does seem that no temporary exclusion can be accomplished in any of this land. I should have thought one would have had the same provision for temporary exclusion and other purposes.

There is another point to be made in section 58F. I am afraid that I am not sure whether the hon. mover referred to it or not. This is the question of forfeiture of land where an offence of treason or rebellion against His Majesty has been proved. The wording of the section in this Bill is the same as the wording of the Bill we dealt with yesterday. I submit that it should not be the same. The Bill we dealt with yesterday dealt with native land. In the event of rebellion or treason this should be forfeited to His Majesty; in other words, then become Crown land. This Bill deals with Crown lands, and I hope we shall not forget it, which are the

property of His Majesty, and I suggest they can only be forfeited.

Section 58f would appear to deal with all classes of land, and therefore it seems strange that it should appear in a section dealing purely with native leasehold areas. It should come, I think, under the general section.

I now come to section 58j, and we heard yesterday that this section deals with the Leroghi Plateau, and therefore what we feared would happen four years ago has in fact happened.

When we originally debated the Carter Commission Report I said, on behalf of my colleagues, that—

"I must, in no unmeasured terms, press our claim that the Leroghi Plateau be regarded as land which in future will still be available for white settlement."

In accepting the Carter Commission recommendations wholeheartedly, we made one definite exception; and that was the definite exception to the somewhat vague recommendations made with regard to Leroghi Plateau. Then, when the debate was being closed, I referred to the speech of the then Commissioner for Local Government, Lands, and Settlement, by saying that—

"he had mentioned there were three particular subjects on which the Carter Commission had pronounced definite judgment to which exception had been taken by the unofficial members. Those were the questions of Leroghi, the question of the Mile Zone, and some details in the Profit and Loss Account."

I then said that we accepted the Profit and Loss Account. We have since done what we could to meet Government over the Mile Zone but—

"I would point out that they gave no definite verdict (and would refer him to paragraph 807) as to what the future of Leroghi was to be after a period of years."

We had it read out yesterday that the future of Leroghi was to be reserved to native use and occupation as such time as might be necessary, and I will add in the words of the Commissioner:—

"The ultimate destination of this land after the lapse of many years is

[Major Cavendish-Bentinck] matter with which we do not find it necessary to deal."

I admit that the Carter Commission Report did suggest that Leroghi should be included in the Northern Frontier District, and that the Northern Frontier and Turkana districts should be treated alike, but they were a little bit careful in what they said about Leroghi Plateau, and we were quite definite in what we said about it. In any event, they did not say that the interests of the natives at present residing therein shall have priority over all other interests presumably for all times. The phrase they actually used was, that the natives residing therein should have a prior interest, which is rather different.

I suggest that the words "priority over all other interests" should be expunged from section 38 (1), and that the words "prior interest" be put in, which are the words used, after all, by the Commission itself.

Again I would state that I consider that we still have a claim in a year or two's time to have this question of the Leroghi Plateau or part of the Leroghi Plateau reconsidered. I would go further, Sir, and ask for an assurance from Government that, in the schedule which is attached to this Bill, the Kittermaster Line has been accurately plotted, because I can find no mention made of the Kittermaster Line which was specifically mentioned by the Commission, and from a cursory examination of the boundary I am not quite sure whether that line has been followed.

I have only two other points.

One is merely a legal one which is, that in clause 6 the definition of Crown land in section 3 of the principal Ordinance is going to be amended by an addition which goes on to say:

"The definition of 'Crown lands' in section 2 of the Interpretation and General Clauses Ordinance (Chapter 1 of the Revised Edition) is hereby amended."

I suppose it can be done, but it seems strange to amend another Ordinance in this Bill, that we have to bring in an amendment to the Interpretation and

General Clauses Ordinance, because presumably "Crown land" is now going to mean something different in every single measure in which the words appear.

—Lastly, I should like to ask that clause 7 be made to also refer to sections 30 and 31 of the Crown Lands Ordinance, 1902. In the Bill making provision for native lands in the Colony, it is specifically laid down that—

"the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and section 86 of the Crown Lands Ordinance shall no longer have effect in respect of land alienated under such Ordinances respectively."

This land was alienated under the principal part of the Ordinance we are dealing with to-day, and therefore that should certainly be referred to in this Bill as well.

Before sitting down I would again stress that now we have got one Bill to deal with native lands, now we have another to deal with Crown lands and any specific uses to be made of them. We do not want two Bills to deal with native lands.

MR. ISHER DASS: Your Excellency, when we read the "Objects and Reasons" of the Bill we find that they say:—

"This Bill, together with the Native Lands Trust Bill, is designed to give effect to the recommendations of the Kenya Land Commission which was appointed to inquire into and report upon the claims and needs in respect of land of the native population in the Colony and Protectorate of Kenya, and certain other matters."

We have on previous occasions made our position very clear, we made it yesterday, and to-day if I am allowed to repeat it: that any legislation which is designed to give effect to the recommendations of the Land Commission is not acceptable to us. We reserve to ourselves the right to oppose such a Bill and to take measures in time to come in the shape and form which my community decides.

For doing so, I made it clear that we have two reasons.

The first reason was that the Land Commission which was appointed had no

[Mr. Isher Dass] Indian representative on it, nor had the Government of India any consultation to safeguard our interests. Secondly, the Report of the Commission, before the Command Paper was issued by His Majesty's Government, had never been discussed by the Houses of Parliament, by the people of England, by the people of Kenya, or by the Kenya Legislative Council.

I was surprised when I heard the statement by the Noble Lord, the Member for Rift Valley, that the Report had been discussed in the House of Commons. It never was.

LORD FRANCIS SCOTT: On a point of explanation, I said it was approved by the House of Commons and it was.

MR. ISHER DASS: Your Excellency, there was a Command Paper approving of the recommendations placed before the House of Commons, but the Report itself was not discussed, and no benefit would have arisen if it had been discussed since it was accepted by the Imperial Government first. It surprised me when the hon. member in his eloquent speech yesterday made the statement that the Report had been discussed in the Legislative Council of Kenya. I have to repeat that it has never been discussed here before its acceptance, but was approved first and discussed afterwards.

Now that I have given the first reason, the question will probably be asked by one of the European unofficial members: how on earth does the Government of India come into this? What have the Government of India or the people of India got to do with the administration of Kenya or the Government of Kenya or any land question?

For the information of hon. members who have, from time to time, made such a loose statement that the Government of India and the people of India have no concern whatever with the problems of Indians overseas, particularly in Kenya, and other parts of the Empire, they will do well to listen carefully for the first and last time.

In Command Paper No. 1987 issued by His Majesty's Government, it is written on page 19—this is "The Summary of

the Proceedings of the Imperial Conference, 1923":—

"The Secretary of State for the Colonies, on behalf of the British Government, cordially accepted the proposal of Sir Tej Bahadur Sapru that there should be full consultation and discussion between the Secretary of State for the Colonies and a committee appointed by the Government of India upon all questions affecting British Indians domiciled in British Colonies, Protectorates and Mandated Territories. At the same time the Duke of Devonshire was careful to explain that, before decisions were taken as a result of discussions with the Committee, consultations with the local Colonial Governments concerned, and in some cases local inquiry, would be necessary.

Further, that while welcoming the proposal, the Duke reminded the Conference that the British Government had recently come to certain decisions as to Kenya

referring to the 1923 White Paper which the Noble Lord mentioned yesterday— "which represented in their considered view the very best that could be done in all the circumstances. While he saw no prospect of these decisions being modified, he would give careful attention to such representations as the Committee appointed by the Government of India might desire to make to him.

Sir Tej Bahadur Sapru, while taking note of the above statement of the Duke of Devonshire, desired to make plain that the recent Kenya decision could not be accepted as final by the people of India."

In accordance with the promise made by the Secretary of State, for all time to come the Government of India and the people of India are, as much interested in our welfare as the people at home who are entrusted with your welfare.

The Noble Lord, the Member for Rift Valley, referring to clause 3 of this Bill and the definition of "European" and "Highlands," said he was surprised that the words "European Highlands" were not mentioned. At the same time, he also said he was glad that Europeans meant persons of European origin. I have serious

[Mr. Isher Dass] reason to believe that the Noble Lord is very much in favour of and a supporter of the ideal commonwealth of the British Empire and the mutual goodwill and understanding of the people who inhabit it. For his information, if he had only suggested in all sincerity that the word "European" should mean not a person of European origin but of British descent, I could have understood his motives, but when he emphasises that European shall be a person of European origin who might come from Italy and other countries owing no allegiance to the British crown, my community in no circumstances can accept any reservation of the Highlands or the principle of preferential treatment to such Europeans who will not owe any allegiance to the British Empire or who will assist in times of trouble.

Therefore my community is perfectly justified when they do not accept any Bill designed to give effect to the recommendations of the Commission. I may say that the time is not far off, the world moves on, and probably in a short time when the future generations meet in goodwill and mutual understanding the future European generation, every true son of Englishmen, will bow their head in shame before my countrymen when they find that the older generation have given preferential treatment to non-British subjects over British subjects of His Majesty.

I hope that this statement will be refuted by the hon. Chief Secretary if he speaks, for we can hardly be any party to these things.

The Noble Lord went on to suggest that we have proved ourselves very reasonable people, people of the world, and have the full confidence of the world. I would in some cases absolutely agree with him and his idea, but I may say here that, with all due deference and respect for him, I under no circumstances could agree to such preposterous suggestions by agreeing to this preferential treatment, and that he or nobody else has proved himself worthy of the confidence of the people of Kenya as a whole.

In regard to the Bill, it has certain clauses which say that if in the event of

any land being found surplus in the native reserves or temporary native reserves, it shall be diverted to the Crown. In this connexion I will quote the needs of the Africans from an article which appeared in *The Hindustan Times* of the 12th February, 1938:—

"Quite apart from the racial issue involved, which is bound to hurt Indians vastly, it is an uneconomic proposition to reserve 5,689,965 acres of the most fertile land of the Colony to about 17,000 Europeans, leaving the balance of 1,157,395 acres for non-natives, who include about 40,000 Indians. The effect of this reservation during these many years has been to foment land speculation by the whites, while, from the Colony's economic point of view, it has been most disastrous. *The Manchester Guardian*, which cannot be accused of any pro-Indian and anti-British leanings, described this reservation as singularly bad agricultural economy. The 48,295 square miles which have been gazetted as native reserves are quite inadequate for the African population. As the rest of the land, fit for cultivation in Kenya, is very little, unless the highlands are intensively cultivated, the Colony is bound to suffer. And reservation of the highlands to the whites will definitely mean leaving the major part of it uncultivated."

And in the last 35 years not more than 14 or 15 per cent of the total land in occupation by European settlers has been cultivated. If that uncultivated land cannot be declared surplus or taxed or taken off the European community for the benefit of the sons of the soil, how can the little left for the Africans ever be considered surplus under this Bill?

No one can deny the fact, much less the hon. Chief Secretary, that the land actually belongs to the Africans. Not one Indian, European or anybody else can deny that, and can say honestly that this country does not belong to the Africans. Very recently in the House of Commons the Secretary of State made it clear that they are doing everything in their power with a view to seeing the days when the Africans will be able to control their own destinies. He may have meant self-government, I do not know. That the land

[Mr. Isher Dass] actually belonged to the Africans no one can deny, and I was very sorry to hear the hon. Chief Secretary yesterday mention that the land belonged to no one and that we have been here to do good and have been more generous and reasonable so far as the interests of the Africans are concerned, and he went further to suggest that we gave the best for all civilization.

I am not here to inform the Council, but I must say that I should be failing in my duty if I did not support the suggestion or the statement made by my colleague which seems to have been imaginarily refuted by the hon. Chief Secretary. For his information, in the history of mankind there have been 27 civilizations altogether, and at the moment there are only five survivors. Out of the 5, the best civilization has shown what it was capable of during the years 1914 to 1918. It shows that civilization in Europe is an absolute fallacy and even to-day in Europe there is no such thing.

If European civilization is real, there are two distinct civilizations, one based on fascism and the other on communism. The hon. Chief Secretary told us that the suggestion made by the hon. member Mr. Shamsud-Deen was more a communistic suggestion; he forgets that there is civilization in Europe to-day based on that principle. But that is not the point. (Laughter.) The point is this. When the hon. Chief Secretary denies that the land belongs to the sons of the soil, to whom does the land belong? and how did it happen to come into the possession of the white people? He will be very interested in listening to this:—

"European Contact.

Now I come to the historical part of my inquiry, namely, the European connexion with Africa. Up to the 15th century there seems to be no European connexion whatsoever till in 1447 Portuguese started that horrible traffic in human beings.

LORD FRANCIS SCOTT: Your Excellency, has this anything to do with the amendment to the Crown Lands Ordinance?

HIS EXCELLENCY: I am hoping you shall come to it presently. I will let the hon. member go on for the present, but he must come to this particular point we are discussing, the amending Bill, very soon.

MR. ISHER DASS: I was reading this extract to prove that the land actually belongs to the African people and by what means it passed into the hands of other people. I think I should be perfectly justified in refuting the statement of the hon. Chief Secretary yesterday, that the land did not belong to the Africans. If Your Excellency desires me to get on, I must say that with great reluctance I shall have to do it, but otherwise I should be absolutely justified in disproving the statement that the land did not belong to the Africans, to whom it has all along belonged and should belong, and the policy of any honest European and this Government and the Imperial Government should be that there should be no land alienated to non-natives of this country under any circumstances. When it is found surplus after only 35 years occupation, it should revert to the Africans.

Well, Sir, if you are not desirous of knowing the reasons, this is all I have to say: I am very sorry I should have been asked not to mention as a right, which other members have when they speak in the course of discussion, of all sorts of subjects which have nothing to do with the Bill itself.

Coming to the Bill now, the Kikuyu Central Association and the other Africans they represent have already issued a statement, a copy of which I understand is in the possession of the hon. Chief Native Commissioner. I may point out that in their statement they have very strongly criticised various sections of the Bill: Part VI, sections 361, 38c (2), 58c (3), 58d (1); 581 (3); 581 86 (1). To these they have taken objection.

Besides the points raised by the Africans, there are one or two more points which I would like the hon. mover to explain in his reply to the debate.

On page 2 of the Bill, section 34 reads:—

"The areas of Crown land, the boundaries of which are set out in the

[Mr. Isher Dass]

fourth schedule to this Ordinance, shall be reserved for the use and enjoyment of the native tribes specified in the said schedule, in satisfaction of their economic needs, and shall be known as the native reserves."

Instead of the word "enjoyment" it should be "occupation", because the Africans fear that the word "enjoyment" means at the will and pleasure of the hon. mover. If "occupation" were substituted, they would find more security, because enjoyment can be curtailed here and there to suit Government.

Section 56 (1) says:—

"Where the Governor is satisfied that, as a result of a diminution in the numbers of a tribe, or for economic reasons, any area of land in the native reserves is no longer required for the use and enjoyment of the tribes referred to in the Fourth Schedule to this Ordinance, or where the Governor is satisfied that any area of land in the temporary native reserves is no longer required for the use and enjoyment of the tribes referred to in the Fifth Schedule to this Ordinance, he may, by Proclamation, alter the boundaries of the native reserves or of the temporary native reserves, as the case may be, and with effect from the date of publication of such Proclamation any area of land which may be excluded from the native reserves or from the temporary native reserves in consequence of such alteration shall cease to form part of the native reserves or the temporary native reserves, as the case may be."

The Africans have reasonable fear as to why this only applies to native reserves or temporary native reserves, while the same legislation does not apply anywhere in this Bill or in the other Bill to land occupied by the Europeans. As I said before, there have been six million acres of land in the possession of Europeans for the last 35 years out of which 14 or 15 per cent have been developed. What happens to the other 86 per cent? There is no clause of this Bill which authorizes His Majesty's Government or the Kenya Government to declare that land undeveloped should revert to the natives. If that is not possible, it should not be

possible in the case of the natives; there should not be different legislation for the two races. In 56 (2) the decision of the Secretary of State shall be final, but in section 57 it says only if the Highlands Board consent can the land be set aside. There are two distinct types of legislation on one subject.

In one, if the members of the Trust Board refuse to give consent you, Sir, as head of the Government have power to refer the matter to the Secretary of State "whose decision shall be final". But in section 57 (2) you have no power whatsoever over the Highlands Board. It does not consent or does not agree to a transfer of land, and the matter rests there. May I ask if this legislation is to suit a particular race, or if it is one legislation for the whole of Kenya and its people? I really am not surprised that the Africans fear that justice has not been done.

In section 58c (2) it is provided that:—

"Any rental payable in respect of a lease of land in the native leasehold areas shall be paid into the general revenues of the Colony."

Any sensible person would have thought that at least those rentals which will accrue should be paid over to the local native council; in the event of there being no such council the money should be put in a special fund which could be used for the betterment of the Africans themselves. Why pay it into general revenue when the land has actually been declared as native reserves or temporary native reserves? If a lease is given to a non-native you expect the rental for the benefit of the whole and not a particular section.

Section 58n (3) says:—

"Subject to the consent of the Trust Board and to the provisions of subsection (3) of the next succeeding section, the Governor may, for such term and upon such conditions as he may deem expedient, sanction the transfer of a lease in the native leasehold areas from a native lessee to a non-native."

May I ask the hon. mover to explain in his reply if there is any provision whereby a non-European can be given a

[Mr. Isher Dass]

lease for any purpose, agricultural or industrial, in the Highlands?

Section 58f is very amusing. I understand that under the British law, anybody who commits an offence is entitled to punishment for that offence, but that he cannot be punished twice for it. In this section it is provided:—

"Notwithstanding anything in this Ordinance contained, the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any land in the native leasehold areas, held or occupied by any such tribe, group, family or individual, be forfeited to His Majesty. Every such order of the Governor shall be subject to the approval of the Secretary of State."

May I ask whether, if any native tribe, group or family is proved to have committed treason or rebellion and they are punished for it, there is separate legislation provided and in addition they are going to forfeit their land? Are you going to make them walk the streets of Nairobi without provision? What are you going to do with them? For you are going to punish these people already lawfully punished for the offence and thus give them two punishments for the same offence. There may be some legislation to satisfy me on this point, and I would ask the hon. mover to explain the dispersal of such tribe, group or land after their land is forfeited, because I should like to know the exact position.

Again, our fear is justified by reference to section 58g (2):—

"No such permit may be granted for the occupation of any land situate in the Highlands, save with the consent of the Highlands Board."

Does the Governor in such cases refer it to the Secretary of State, "whose decision shall be final"? Under no circumstances will the Highlands Board for any industrial development or agricultural purpose ever consent to grant land to non-Europeans in the Highlands, and I

wish, in the interests of the country as a whole and the people, to have some clause inserted so that the Highlands Board shall not be the final authority on this subject.

Section 58t (3) on page 7 says:—

"No compensation shall be payable in respect of an exclusion of land under this section except for buildings and crops destroyed or damaged and for disturbance or other loss or expense caused by such exclusion."

One could understand there being no compensation for loss, but when this provides that by proclamation made under 58t (1) the Governor in Council may exclude land for certain public purposes there must be some kind of company floated in England or elsewhere for starting, say, a tramway. That would be a company responsible to the shareholders to whom all the profits would go, and they will probably not add to the revenue of the country or of Government, but yet they will not be required to pay compensation for the benefits they are getting.

I see no justification for this clause, and will say that where Government takes any land for the betterment of the country or improvement or development it is no use expecting compensation, but where a public utility company or group of individuals come here to develop this country I say that since the profits go to the shareholders they must pay compensation; that where Government finds any such land excluded from native reserves being affected by some individual there is no justification for compensation not being granted or to see that some compensation is paid to the individual whose land is taken for the benefit of the country. It happens every day in townships that compensation is paid from general revenue, and I see no reason why the same principle should not apply here.

Regarding section 58m, the Africans have expressed their fear in no uncertain tones. It says:—

"Every omission or neglect to comply with, and every act done, or attempted to be done, contrary to the provisions of this Part of this Ordinance or of any Rules made thereunder, or in breach of the conditions and restrictions subject to or upon which any

[Mr. Isher Dass]

license or permit has been issued, shall be deemed to be an offence against this Ordinance, and for every such offence for which no penalty is specially provided the offender shall be liable, on conviction by a magistrate, to a fine not exceeding fifty pounds or to imprisonment for a period not exceeding six months or to both such fine and imprisonment.

Is it fair or reasonable to expect a little offence committed by an African should be punished by a fine of £50? I personally believe that very few Africans are left in this country who possess £50 any more, and when you treat them when it comes to the question of punishment the same as you treat Europeans and Indians and other of His Majesty's subjects, it seems very unfair and unjust that the punishment should not be in accordance with the economic conditions of the people concerned. Some do not earn more than Sh. 10 a month, and it would take them 50 years to pay the fine.

Having said all this in connexion with the Bill, I will once more repeat what I said in the beginning, that any legislation designed or enacted to give effect to the recommendations of the Land Commission cannot be accepted by us, and we can take no part in it. Whatever criticism I have offered is as a citizen and at the request of the Africans, and in my personal capacity, because I always feel interested in the welfare of the sons of the soil.

For the information of some Government officials who are trying to find out my interest in the matter and how I come into it, I make no mistake in saying, without any hesitation, that I am always prepared to take the consequences of my action in any form—fine, punishment, or other sentence—that they like to inflict upon me. As long as I remain a member of this Council, in all sincerity I shall put the case of the Africans before you.

I ask in all sincerity once more that in any legislation affecting these Africans, who in the not very distant future will be a nation, and for their betterment and that of the future generation, it should be remembered that Government will have to answer to them, and that the African

will one day judge us or you or members of the Government for every act done. Therefore, when we come to adopt serious measures affecting the country, we cannot afford to lose sight of the just demands of the Africans.

They have asked only that sections 49 and 70 which take away their rights in these lands, should not be proceeded with, that we should not be hasty in arriving at our judgment, because they had no opportunity of criticising the Report before it had been accepted by His Majesty's Government. They therefore repeat that this Government is doing no good to them or the generations of Africans to come but, in fact, are doing more harm and creating more hatred towards Government in the minds of the sons of the soil.

I therefore oppose this Bill very very strongly.

Council adjourned for the usual interval.

On resuming:

DR. WILSON: Your Excellency, I did not intend to take part in this debate but, in view of what the hon. member Mr. Isher Dass has said, it may be imagined that he is the only representative of native interests in this Council.

I just want to make it perfectly clear that both my hon. colleague and myself have been in consultation with those people who consider that they have a grievance in connexion with this legislation, and I just want to make it perfectly clear also that we are in touch with them and we intend to represent their interests to the best of our ability. (Applause.)

MR. HARRAGIN: Your Excellency, I would like to deal very shortly with one or two legal points made by the hon. and gallant Member for Nairobi North, but before I do that it might be of interest to this Council, to know how Bills such as the two Bills which we have been considering ever come into being.

In the first place my Department is handed over a *fait accompli* in the shape of a large tome known as the Carter Commission Report, and we were told to take all the recommendations out of that and make them up into one Ordinance, or two Ordinances as the case may be. Also,

[Mr. Harragin]

we were asked to preserve, and preserve as far as possible, all the existing legislation which had not been criticised or condemned by that Commission. I am making these opening remarks because it explains some of the criticisms on the other side of Council as to why a particular word has been used or why a particular phrase has been used. The answer is that in nearly every case it is the word or phrase that has been used in a particular paragraph of the Carter Commission Report which we were told to adopt or else it has stood the test of time in the existing Ordinance and we reproduced it faithfully as it has caused no trouble in the past.

I think the hon. Member for Nairobi North will agree with me that the biggest point he made with regard to the law was why we were having two Ordinances when one could do. He himself has actually given the answer. The reason is because we were told by the Carter Commission to take the native lands out of the Crown Lands Ordinance and produce an Ordinance dealing with them and certain native reserves which were, as the hon. and gallant member quite rightly said, to be preserved as Crown lands. It is therefore necessary at once, as everyone will see to produce an Ordinance dealing with native lands and another part of the existing Crown Lands Ordinance to deal with the part of the native lands which will remain Crown lands under the laws of the Colony. And that is why we find to-day before us, two Bills which some hon. members seem to think might easily have been reduced to one.

Of course, the hon. member laid some stress on this Bill—quite understandably—namely that he objected to the definition "may be" and suggested that it should be "to be" in the definition of the Highlands Board. Well, of course, as I explained before, this is a matter in abeyance that is being dealt with by His Majesty in Council. It makes not a ha'porth of difference in the long run as to which words are used. Various objections were made as to why we used the words "setting aside" when talking about "setting apart". I have no objection whatever if, in select committee, we can find

better words than "setting aside"; I will be perfectly happy to put them in.

I was asked why we have not also repealed sections 30 and 31 of the Crown Lands Ordinance, 1902. The reason why they are not in the Bill before us is because they were repealed, as they had to be repealed, in the Native Lands Trust Bill considered yesterday when dealing with native rights. If I may say so, the hon. member is a pessimist because he asks me to do the same thing twice. I think I can give three examples of where—as the hon. member says—it has been done somewhere else, and it can be done again. Actually it would not make any difference if we did it again, but, and I think you will agree with me, that it would be a waste of time.

A very important point which he raised was with regard to the heading of Part VI as it appears to-day. He will probably expect me to say that the heading does not make much difference and why object to it. That I must say did seem to be the argument, but this goes further, because, if he gets me to amend the Bill so as to include the Highlands, then naturally there must be an amendment to the heading, for he says now we are dealing with native lands—what about putting in something concerning the Highlands. Thus we get the real reason for the amendment.

I am perfectly prepared to have it considered in select committee, but I would like to remind Council of the position we are in at the moment. This Bill is the result of a report, published some four years ago, which has been travelling backwards and forwards between this Government and the Colonial Office and their legal advisers. For three of these years there have been consultations at the Colonial Office between at least four different members of Government when they have been home on leave, and eventually the two Bills before you are the Bills which we are prepared to recommend to His Majesty for his blessing.

If by any chance we make any serious alteration—and I am not referring to the trivial alterations that the hon. member has suggested in many places (I could quite happily make them and be quite sure that there would be no alteration.

[Mr. Harragin] from the other end) but if there is to be any serious alteration in the structure of the Bill—and I think you will all agree that it would be a major alteration suddenly to insert in Part VI this definition of the Highlands, though I will agree that it will make no difference whatever to the ultimate result because what we are putting in this Bill we expect to see in due course in the Orders in Council—nevertheless I should have to advise His Excellency that the Bill must be sent home first before he can assent to it. Quite apart from that the position would be so complex that I do not think the Bill would be passed. As I said before, it is a serious matter and I will go into it most carefully in due course, but I hope hon. members will bear in mind the question of delay.

I think the hon. member will agree with me that the other points he has raised are really committee points, together with the points he made about land which will be forfeited being the same as the wording as that used in the other Bill, and it is probable that that will be dealt with in select committee.

MR. GHERSIE (Uasin Gishu): Your Excellency, I should like to record my protest against what I consider the lack in this Bill of legal security of European privileges in the Highlands. When one considers the length of the debate which took place at the last session and the sound and constructive arguments that were sincerely advanced that the word "Highlands" should be prefixed by the word "White" or "European", it seems almost incredible to me that the Secretary of State should have thought fit to ignore the request.

I do not propose to take up the valuable time of this Council by reiterating the arguments so well presented at the last session, but I maintain that if this legislation is accepted and the word "European" or "White" is not included, then Government will be breaking faith with the European settlers of this Colony, and if we condone and assent to Government's action we run the risk of putting the future of the coming European generation in jeopardy.

We are all aware of the trials and difficulties which attended the early settlers in this Colony, but what Colony and what section of colonists have had such a succession of difficulties as the settlers in this Colony since the settlement scheme of 1919? We are aware of the flax boom and the subsequent depression which ruined a great number, and following closely on its heels was the currency stabilization which, I know, caused losses of tens of thousands of pounds to individual settlers. We also know of the years of drought and the locust infestation and later, more recently, the world-wide depression of markets. But where, on one hand, most countries thought fit to subsidize industries to tide over the depression, and are continuing to do so, this has not occurred in Kenya, and the settlers here have been allowed to struggle on on their own.

I maintain that we are asking for no more than what was promised by successive Secretaries of State and recommended in no uncertain manner by the Carter Commission. The hon. mover made a statement in the last debate to the effect that Government from the administrative point of view had always considered the Highlands essential for the occupation of Europeans and that he had no reason to think that that policy would be altered or varied in any manner in the future. I believe the hon. mover was very earnest in his remarks and sincere and sympathetic in his comments, but that is no guarantee that the same policy is to exist for the next thirty months. And were I to turn to the hon. Attorney General and say what measure of security does this Bill give to European settlers, he would undoubtedly say "none whatever".

As the hon. and Noble Lord representing the Rift Valley pointed out yesterday, a change of Government or a change of Government policy would make a very big difference, and it requires no comment from me for you to realize the possible results more particularly when you have a Secretary of State of what one might term a sympathetic Government who, despite previous promises, definitely refuses our requests; I think we have definite cause for our misgivings. I

[Mr. Ghersie]

feel that we are a pawn on a political chess board and would be sacrificed to-morrow morning if it was considered necessary.

In conclusion, I would like to emphasize that this is in no way a racial issue, and we are not asking Government to create a precedent. This policy exists in the Dominions and notably in South Africa and in Canada, and I would go so far as to say that in the major portion of India, Europeans are definitely debarred from acquiring land.

From my own point of view I visualise in the not too distant future, the amalgamation of Kenya, Tanganyika and Uganda, and at a later date the linking up with Nyasaland and the Rhodesias and perhaps in the more distant future, the United States of Africa. That being so, we must have vision and not lose our privileges or identity, as it is the coming generation we have to think of and not ourselves.

In making my final appeal to you, Sir, I realize the difficulty and realize the difficulty of the hon. members on the other side of the Council, but I would like to say this: that heads of Government departments come and go, and when their period for retirement arrives the percentage that make their homes in this Colony is very small, and perhaps, when I consider this type of legislation, I do not blame them. But, on the other hand, we have made our homes here and we have the future of the coming generation to consider and make provision for. This type of legislation reminds me of an incubator in which some of the eggs are good and others are not so good. But while one cannot blame the incubator for the origin of the egg, if the bird which is hatched out is deformed then it should be strangled at birth.

Having introduced legislation that will subsequently affect the privileges of the coming generation, it is not you who will be blamed, you will probably be gone and forgotten. But, we, if we are not still living here ourselves, will be living in our children.

As the Bill stands at the moment, it means that the efforts of the elected members and others to bring about the

security of the Highlands is resulting in a complete failure, and unless the constitution of the Highlands Board in this Bill is such that its decisions cannot be vetoed by the Secretary of State, I suggest we had better forget all ideas of closer settlement rather than lure new settlers to this Colony in a sense of false security.

COL. KIRKWOOD (Trans Nzoia): Your Excellency, in rising I wish to state that I agree with the general principles of the measure now before Council. It has been gone into at great length by different speakers, and I do not want to waste time or delay Council by going over the points already debated. But I would like to see it put down in Hansard that the Hon. Member for Trans Nzoia agreed with the speech made by the Hon. Member for Nairobi North. You can put that down at the bottom of his speech, it will probably save a lot of time and trouble.

There is one point, and one point only, that I intend to deal with in the course of the next few moments, and that is the definition of the Highlands. It has been admitted both in the House of Commons and in this Colony and even at a recent date by the hon. the Acting Commissioner for Local Government, Lands and Settlement on the same subject. Assurances are all very well, but assurances do not assure me that the danger does not still exist and that the designation of the Highlands is not what it intends to be. In my opinion, as it stands it is no security whatever to persons of European descent.

As a result of the Land Commission Report, and I refer to the Carter Commission Report on which there was a very long debate in this Council as all hon. members will remember, every elected member of this Council—and I wish to state it again with deliberate intent—emphasized the fact that we agreed *in toto* with the implications of the Carter Commission Report. That means what it states. The Report was accepted by the House of Commons, I presume that meant *in toto* also.

I myself agreed to the Carter Commission Report *in toto*. The point made by the Hon. Member for Nairobi North in reference to section 58 J. of the Crown Lands (Amendment) Bill is one glaring

(Col. Kirkwood) instance: I refer to the last line, which reads:—

"in which the interests of the native tribes at present residing therein shall have priority over all other interests."

I suggest it should read as it is detailed in the Carter Commission Report, for this is not the phraseology of the Report. It was not their intention and it was not our intention—not the intention of this Council. We accepted the wording of the Report and passed it by a majority in this Council.

To get back to the definition of the Highlands: "The Highlands means the areas of land the boundaries of which are set out in the Seventh Schedule of this Ordinance"; and "The Highlands Board means the Board which may be established as the Highlands Board in accordance with the provisions of any Order of His Majesty in Council." With regard to the last few words, we have no information as to what these Orders in Council are going to contain. It is all conjecture, and though we can try and reconstruct it we shall probably go wide in our way of reading it, for it is not published yet, and until it is published we will not be made aware of its contents.

Again, referring to the terms of reference of the Carter Commission Report, the sixth term of reference is "To define the area generally known as the Highlands within which persons of European descent are to have a privileged position in accordance with the White Paper of 1923."

As every member of this Council is aware, on many occasions in the House of Commons when this question has been raised, the answer generally given was in terms such as that there was no intention to alter the administrative practice which has existed for the last thirty years. That has been stated time and time again. Reference has also been made on numerous occasions by previous Secretaries of State in referring to the Highlands they referred to it as the "White Highlands" or "European Highlands". Also, on other occasions they tacked on "an area in which persons of European descent have had a privileged position."

What, now then, is the reason—for I presume it is the present Secretary of State and I am not blaming the Kenya Government for having anything to do with the situation—what is the reason for jibbing at this now? It savours to me that this is what they call in America a "double cross". It has been agreed time and time again, and reference can be quoted from the speeches of previous Secretaries of State and others where there has been no shirking of the definition of the Highlands, that the Highlands is an area in which persons of European descent have had a privileged position during the last thirty years. In the Carter Commission Report the terms of reference read more definitely even than that:—"Within which persons of European descent are to have a privileged position."

There is no doubt about that, nor is there any doubt as to what was originally intended. But there is very grave doubt indeed in my mind as to what is intended by the definition of the "Highlands" and the "Highlands Board" in the proposed Orders in this Bill now before Council. I do hope that, before it goes any further, when it goes back to Select Committee they will find that they can and will agree to make some alteration that will satisfy the European members of this Council who represent the Europeans that are affected in this measure as far as it affects the Highlands in the Colony of Kenya.

LORD FRANCIS SCOTT: I have no intention of going over what has already been said, except to this extent, that I do wish to associate myself very fully with the points made by the hon. and gallant Member for Nairobi North. In his reply the hon. Attorney General said that these points would all be given very full consideration, for which I thank him.

But I should like to point out that what was proposed by my hon. friend in no way affects the principle of the Bill nor does it alter any of the material contents of it. What it will do, and which I think it is more important that it should do, is to clarify these principles and the intention of this Bill so that in years to

[Lord Francis Scott] come it shall be quite clear for those that come after. As my hon. friend, the Member for Trans Nzoia has stated, we have to think not so much of ourselves but of the future generation who will be living in this country and, therefore, it is our duty to try to get the intentions of this Bill put as clearly as possible.

I quite agree that if we demanded the words—which I think would be a justifiable definition of the Highlands as that area in which Europeans are to have a privileged position—as stated as long ago as in the time of Lord Elgin, if we asked for that Government would have to send the Bill back again to England. But if we agree to the suggestion put in by the hon. and gallant Member for Nairobi North, I cannot see that it affects any principle whatsoever. It is merely putting something into this Bill which should be in without having to move an amendment. Otherwise the definition of the boundaries of these Highlands are not connected in any way with anything in this Bill except the definition in the first part.

MR. MORTIMER: Your Excellency, most of the points on legal matters raised during the debate have been dealt with by my hon. and learned friend the Attorney General. But there are just one or two matters remaining to be dealt with. The hon. and gallant Member for Nairobi North drew attention to Clause 58 (A) and requested that the native reserves and the temporary native reserves should be treated exactly alike so far as the termination of native occupation is concerned. I think that Clause 56 (1) covers the point which he made, but that can be considered in Select Committee. In that clause the Governor is given power in certain circumstances, if he is satisfied that any area of land is no longer required for the use and enjoyment of the tribes concerned, to alter the boundaries of the native Reserves and the temporary native reserves.

Some misgiving was expressed as to whether mining activities in the native reserves and temporary native reserves were sufficiently well safeguarded. The

intention was to safeguard these activities by a clause expressly designed for that purpose. If that has not been done the point can be considered in Select Committee and any alterations can be made that are considered necessary.

So far as the Leroghi is concerned, the express intentions of the Land Commission have been very carefully followed in the inclusion of Leroghi in the Northern Frontier District and in bringing Leroghi under the general provisions applicable to that district. If in future times the conditions which the Commission presupposed to exist in Leroghi cease to exist, then it will be open to Government to consider the introduction of an amending ordinance to exclude Leroghi from these special provisions.

The question was asked as to whether the Kittermaster Line has been adequately defined and accurately plotted. The principal bone of contention in that line was at a place known as Sugota Marmar. Very careful consideration has been given to the precise alignment of the division between the Northern Frontier District and the Laikipia District at that point and an agreement has been reached between the native authorities on the one side and the settlers on the other. The land has been demarcated in accordance with that agreement by cairns of stones and has been accurately reproduced on the plan to be read with the Schedules of this Bill.

Now, Sir, coming to the eloquent if somewhat irrelevant speech made by the hon. member Mr. Isher Dass upon this Bill and in fact upon a number of other matters, I would like to correct a false impression under which the hon. member seems to be labouring, with reference to the duties and powers of the Native Trust Board. He seemed to be under the impression that the duties of that Board included the protection of Indian interests. I would refer him to the memorandum which was circulated to hon. members during the last session of this Council and which set out the proposed contents of the Native Land Order in Council, including also the terms of the Trust under which this Board will act. The only protective duty which the Board will have will be the protection of

(Mr. Mortimer) native interests. Neither European nor Indian interests will come within the purview of the Board.

The hon. member had a good deal to say about the reservation of the Highlands for European occupation. As the hon. member is quite well aware, the Bill contains no such reservation but only a description of an area to be known as the Highlands. Consequently his remarks on that subject appear to be quite irrelevant.

Certain objections raised by Africans to various clauses in the Bill were also mentioned and I was glad to hear the hon. Member representing Native Interests remind this Council that the hon. Mr. Isher Dass is not the only member of this Council who has thought for native interests and given concern for safeguarding these interests. The hon. members on this side of Council also give very serious consideration to native interests and I may say that the Hon. Chief Native Commissioner and myself were interviewed only a few days ago by certain African chiefs who made all the various points that the hon. member Mr. Isher Dass had referred to and we gave an assurance that their representations would be very carefully considered in select committee.

Reference was also made to section 56 (1) which gives the Governor in certain circumstances power to alter the boundaries of the native reserves or temporary native reserves. It must be remembered that these native areas are being set aside for native occupation for a very specific reason. They are being set aside because they are required on economic grounds by the natives, either to meet a temporary need or to meet a permanent economic need. The whole intention of the Land Commission was that that setting aside should last only so long as the need lasted, and that when the need had ceased to exist the setting aside would also cease, and I think that every one, every reasonable person, will agree that this is not an unreasonable condition.

Reference was also made to the differentiation between the powers of the

Highlands Board and of the Trust Board in the matter of appeals to the Secretary of State. Assurance has already been given that this point will be brought under review in select committee.

The next clause to which reference was made was Clause 58 C (2) in which it is specified that the rents derived from the leasehold areas shall be paid into the general revenue of the Colony. The hon. member Mr. Isher Dass appeared to think that that clause applied also to the native reserves and the temporary native reserves. But that is not the case. Rents derived from these areas will be paid into the funds of the Local Native Council concerned. In the case of leasehold areas it was, however, necessary to make this provision because there will be no Local Native Council and therefore, the only place to which the revenues derived from leases could be credited is the general revenue of the Colony. When hon. members remember that there is only one native leasehold area specified in the Bill and that that is 700 square miles at Isiolo, they will realize that it does not matter very much.

With regard to the inquiry as to the operation of the forfeiture clause, 58 F, I am unable to state what would happen to the native families or tribes concerned in the event of the forfeiture of leasehold areas under this clause on account of treason or rebellion. All that I can say is that the question of the disposal of such people will be considered in the light of all the circumstances, if and when such an event arises.

The next section referred to was 58 (H) (3) in which the hon. member complained that no provision was made for compensation for the land as distinct from crops or buildings when land is to be excluded for public purposes. A certain amount of play was made with the use of the word tramway. The hon. member seemed to picture the kind of tramway with which we are familiar in city streets. That is not the point at all. The word tramway is used as being equivalent to a light railway.

It must be remembered that these native reserves and temporary native reserves are not native areas by historical

[Mr. Mortimer] right, and consequently the natives will have no really vested interests in such land. But they are added only because of temporary or permanent economic needs. The point made by the hon. member will, however, be given consideration in select committee.

Coming now to the very well phrased, excellent and moderate speech by the hon. Member for Uasin Gishu, I must take up again that question of the charge of breach of faith against successive Secretaries of State. It has been stated two or three times during the course of the debate that Secretaries of State and Imperial Government have promised that certain things will be done and that those promises are not now being fulfilled.

As I explained in the last debate on this subject during the last session of Council, the attitude of successive Secretaries of State has been perfectly consistent in this matter, and no charge can justifiably be laid against their door. Again and again successive Secretaries of State have stated in Imperial Parliament that there is no intention of departing from the administrative practice but that no legislative discrimination between various races would be made or permitted by Imperial Government, and those promises have been meticulously carried out.

I have nothing more to say in reply to the various points raised in debate.

The question was put and carried.

SELECT COMMITTEE

MR. HARRAGIN moved that the Native Lands Trust Bill and the Crown Lands (Amendment) Bill be referred to a select committee consisting of:

Mr. Harragin, Chairman,
Mr. Hosking,
Mr. Mortimer,
Lord Francis Scott,
Major Cavendish-Bentinck,
Earl of Erroll,
Mr. Montgomery,
Mr. Isher Dass.

MR. WALLACE seconded.

LORD FRANCIS SCOTT: Your Excellency, I must rise to object to the hon. member Mr. Isher Dass being on the select committee, in view of the fact that he stated here that he did not agree to the implementation in any way of the Carter Commission Report, and he did use these words: "We can be no party". If the hon. member feels like that how can he possibly serve on the select committee except for one purpose, and that is the purpose of obstruction? If that is his object, I submit it is very unfair on the other members of the select committee to be put in such a position. (Hear, hear.)

SIR ARMIGEL WADE: Your Excellency, as against that, I think it is possibly a reasonable attitude for an hon. member to take up to say "While this is a Bill I don't think ought ever to be passed, I will serve on the select committee and do my best not to make it so objectionable to me." That is the kind of attitude we have taken up before, and there are precedents for putting on select committee members who have shown themselves to be thoroughly opposed to the principle and details of any such bill.

I think the hon. member would probably give an undertaking of that kind.

MR. ISHER DASS: Your Excellency, the Indian Elected Members Organization was approached by the authorities to select one member for this committee, and the Organization decided on me. If Government does not see fit or my presence would be an injustice to the cause of the settlers, I have nothing more to say, but my appointment is in accordance with the wishes of the Indian Elected Members Organization.

MR. SHAMSUD-DEEN: May I be permitted to say this: I have no knowledge of any such authority being made? (Laughter.)

MR. KASIM: Your Excellency, the hon. member Mr. Shamsud-Deen was absent from the meeting. The hon. member Mr. Pandya was there, and the hon. member Mr. Isher Dass was appointed to the committee.

HIS EXCELLENCY: I understand that, so far as regards the procedure now, the only thing to be done is for an amendment to be moved for some particular name to be deleted. No amendment has been moved at present.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move as an amendment that the name of the hon. member Mr. Isher Dass be deleted from this particular committee.

It has been suggested by my hon. friend the noble Lord, the Member for Rift Valley, quite justifiably, that in view of the attitude the hon. member takes he is not likely to be of very much use to the deliberations of this particular committee. The hon. member suggests that he is the nominee of what I understand to be the Indian Elected Members Organization. Another hon. Indian member is apparently unaware of this fact. I suppose he is the nominee, but I would go further than this and would express the view that the organization which nominated him may not have been entirely representative.

I am not sure in some of these bills— you have sometimes to face facts over these things—that we ought always to simply go for so many European elected members, so many Indian members, and one member representing native interests. These bills deal with native interests and an area known as the Highlands, and where the administration and executive authority think the natives of the country are concerned that has to do with the Europeans and Government, and where the Indians have to represent their own interests by all means they should be adequately represented.

That is a matter of principle. In practice, I agree that out of courtesy one member of a committee should, wherever possible, be an Indian member, and when these measures are discussed in select committee, give him an opportunity of knowing what has happened. Normally I would always support that, but in view of the attitude the hon. member Mr. Isher Dass has taken in debate and in the past few years in this Council,

I move that his name be deleted and one other name substituted therefor.

EARL OF ERROLL seconded.

SIR ARMIGEL WADE: I have Your Excellency's authority for saying that, after full consideration, Your Excellency must instruct members on the Government side of Council to vote against this amendment.

MAJOR CAVENDISH-BENTINCK: That being the case, Sir, I personally think it would be a great pity to put it to the vote. At the same time, on a point of order, I protest that the select committee should be as moved by the hon. the Attorney General. I believe that had there been a free vote, although the majority of the Council would have suggested the name of an Indian member I do not believe that the hon. member Mr. Isher Dass would have received one single supporter.

Having brought the matter up, which I believe a very good thing, I ask leave to withdraw the amendment.

The amendment was by leave of Council withdrawn.

MR. ISHER DASS: If I may say a couple of words, Your Excellency?

HIS EXCELLENCY: You can make a personal explanation by permission of the Chairman, but I cannot allow any more statements, as regards the amendment. It must be purely a personal explanation.

MR. ISHER DASS: Yes, Sir. All I can say is that as you and your Government thought fit to vote against the motion, I wish to withdraw my name. (Laughter.)

HIS EXCELLENCY: The original motion is now before Council, that these two Bills be referred to a select committee whose names were read out. That is the motion on which members are still at liberty to speak.

SIR ARMIGEL WADE: As I understand the hon. member Mr. Isher Dass has withdrawn his name and does not wish to stand for election on this committee, I venture to propose the name of the hon. member Mr. Kassim.

MR. LOCKHART seconded.

MR. KASIM: Before I accept I have to consult the Indian Elected Members Organization.

MR. SHAMSUD-DEEN: I think my hon. friend is betraying some ignorance of the procedure. There is no such thing as reference to the Indian Organization. The select committee has to be appointed here and now, and if my hon. friend thinks that he has not got the consent of the Indians to serve I do not think that can interfere. The select committee has to be appointed here and now, and if my hon. friend's friends cannot make up their minds the select committee will have to be appointed without any Indian member.

LORD FRANCIS SCOTT: On a point of order, Standing Rules and Orders quite clearly state:

"A select committee shall be appointed on motion made and question put and shall consist of such members as may be chosen by the whole Council or by committee of the whole Council."

I suggest the simplest way is for this Council to appoint the select committee as proposed, and if the hon. member Mr. Kasim does not wish to serve he need not.

HIS EXCELLENCY: I think that is the correct procedure. I will therefore put the question to Council: that these two Bills be referred to the select committee, the names of which were read out by the Hon. Attorney General, with the substitution of the hon. member Mr. Kasim for the hon. member Mr. Isher Dass.

The question of the amendment was put and carried.

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

1937 SUPPLEMENTARY APPROPRIATION BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the 1937 Supplementary Appropriation Bill be read a second time.

This Bill is to give approval by this Council to the expenditure incurred during 1937 in excess of that authorized by the 1937 Appropriation Ordinance, 1936. The total of the Schedule is £179,759. That represents only the heads which were over spent; there is a saving of some £50,000 on other heads, and the balance was, of course, covered by surplus revenue. The details of this expenditure during the year were approved by Council through the Schedules of Additional Provision, and the complete details of the expenditure can be found in the Financial Report which is already in the hands of hon. members.

MR. HARRAGIN seconded.

The question was put and carried.

BILLS OF EXCHANGE (AMENDMENT) BILL

SECOND READING

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

The purpose of this Bill is to give the banks the protection against unauthorised endorsement of bankers drafts which is provided by the English Act. The necessity and the reason for this protection has been agreed by the three Governments of East Africa, Uganda and Tanganyika are introducing similar legislation, and it is understood that the commercial community have no objection to offer.

MR. HARRAGIN seconded.

The question was put and carried.

KEROSENE OIL (REPAYMENT OF DUTY) (AMENDMENT) BILL

SECOND READING

MR. LOCKHART: Your Excellency, I beg to move that the Kerosene Oil (Repayment of Duty) (Amendment) Bill be read a second time.

Cases arise in which claims are made by members of the public for refund of duty on kerosene oil used for agricultural purposes which are out of time under the principal Ordinance. A number of such hard cases has arisen, and the Treasury's hands are tied if the claim is out of time, and nothing can be

[Mr. Lockhart] done, if desired by this Bill to afford the Treasury a certain latitude in dealing with such cases.

MR. HARRAGIN seconded.

The question was put and carried.

PUBLIC HOLIDAYS (AMENDMENT) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Public Holidays (Amendment) Bill be read a second time. The object of this Bill, as hon. members are well aware, is in order to provide for a new public holiday in this Colony—and, incidentally, it will be done in the neighbouring Colonies—to be known as the King's Day instead of having a holiday on the anniversary of the King's birth. The reason for this is obvious: it is in order to spread out the various public holidays over the course of the year.

The opportunity has also been taken to amend the principal Ordinance in two minor respects: one, permitting in Clause 3 the Governor to substitute one day for another, which he could not do under the principal Ordinance, and the other is merely a drafting amendment for the sake or clarity.

MR. WALLACE seconded.

The question was put and carried.

EIRE AND NORTHERN IRELAND (CONSEQUENTIAL PROVISIONS) BILL

SECOND READING

MR. HARRAGIN: Your Excellency, I beg to move that the Eire and Northern Ireland (Consequential Provisions) Bill be read a second time.

Hon. members are well aware of the objects of this amendment. The pronouncement of Eire is somewhat difficult to those of us who have been away from Ireland so long. Sufficient to say that in view of the alteration in the name of the Ireland we knew and the one it is to-day, it is necessary to introduce this Bill.

MR. WALLACE seconded.

The question was put and carried.

TEA (AMENDMENT) BILL

SECOND READING

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

The object of the amendment is to permit the cultivation of tea in the Colony in excess of that which is allowed at the present moment. The Ordinance as it exists, which was introduced as a result of the International Tea Convention, limited the area to be cultivated in this Colony to 1,000 acres. In view of representations and negotiations which have been taking place over the last two years, we are now altering that 1,000 acres to read 3,800 acres, which we hope in due course will permit the increased cultivation of tea in this Colony.

MR. WALLACE seconded.

LORD FRANCIS SCOTT: Your Excellency, in supporting this Bill and expressing our gratitude to Government for having got this extended acreage, it is generally felt among the European elected members that due consideration should be given to the small planters and to some of those who will have to change over their farms from coffee, which is perhaps unsuitable, to tea, which is more suitable in those areas, and that this extension of acreage will not be given to the large companies and existing large plantations.

SIR ARMIGEL WADE: I think, Sir, that perhaps I should make it quite clear that this Bill is to some extent anticipatory. We have not actually yet got the full 2,800 extra. The position is that we have got 1,300 acres and have every reason to expect the other 1,500 acres in the near future.

The question was put and carried.

TRANSPORT LICENSING (AMENDMENT) BILL

SECOND READING

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

The principal Ordinance provides that the hon. Attorney General shall be

[Mr. Wallace]

Chairman of the Licensing Board. The chief reasons for appointing him to hold that office were, firstly, that he was *au fait* with the transport problems of the Colony, having been chairman of a committee two years ago, and secondly, it was considered highly desirable to have a lawyer as chairman in the initial stages of the operation of an Ordinance of this character.

It is considered preferable, however, not to lay this down in the Ordinance, and to give Your Excellency in Council complete discretion in the appointment of the chairman.

As the Ordinance was being amended in several other respects, the opportunity was taken to do this by Clause 2. Another small amendment in Clause 2 empowers Your Excellency to appoint a substitute member in place of a member absent from the Colony.

Coming to Clause 3, section 12 of the principal Ordinance gave certain protection to existing interests. That is, to a person requiring an A or B licence, or inland transport licence. But no such protection is afforded to those requiring licences for passenger-carrying vehicles. The Secretary of State has suggested that it would be only fair to put them on an equal footing with A and B licences. The board to whom this matter was referred agreed with the Secretary of State, and the object of (a), (b), and (c) of Clause 3 is to make that amendment.

By (d) of that clause effect is given to the decision arrived at some time ago, which was announced in the public press, to defer the coming into operation of section 4 of the principal Ordinance until the 1st January, 1939. It also rectifies a drafting omission in the principal Ordinance.

By Clause 5, the power of stopping vehicles on roads is limited to police officers in uniform. This was again suggested by the Secretary of State, and discussed at great length by the board, who eventually came to the conclusion that the Secretary of State was correct: there was the danger that if any person other than a person in uniform was entitled or authorized by the Board to

stop vehicles, drivers would not know whether they were required by law to stop nor whether it would be prudent for them to do so.

MR. HARRAGIN seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I understand that the Bill is going to select committee, and I sincerely hope it is, because one is a little bit worried about what one hears of what is being done in regard to these matters.

For one thing, there have been so many objections that we are obliged not to introduce section 4 of the principal Ordinance until January of next year. When the Bill comes back from select committee, or perhaps now, I shall be glad to hear from whom all these objections have come and what sort of form they take, because they were rather unexpected.

The other point is, I see the board have agreed with the Secretary of State over his recommendation about affording certain protection to existing interests, but if you overdo the protection to existing interests and go on and postpone the introduction of the measure, I think we shall get into a pretty serious mess before another two or three years have passed.

I do hope these points will be taken into consideration, and that perhaps we shall be given some indication to-day or when we get the select committee report.

MR. WALLACE: Your Excellency, I can give the hon. Member for Nairobi North the assurance which he asks, that the two points he has raised—one regarding the objections and the other with regard to the protection of existing interests—will be considered by the select committee.

I am very glad he brought the first point up. As far as the second point is concerned, it was considered very carefully indeed by the board, and they came to the conclusion that it would appear to be quite inequitable to give protection to persons requiring goods vehicles licences and not to those who required passenger vehicle licences.

The question was put and carried.

MR. HARRAGIN moved that the Bill be referred to a select committee consisting of:—

Mr. Wallace, Chairman,
Mr. Stronach,
Mr. Montgomery,
Colonel Modera,
Colonel Kirkwood,
Mr. Kasim.

SIR ARMIGEL WADE seconded. The question was put and carried.

ADJOURNMENT

HIS EXCELLENCY: In view of the fact that the only work we can do tomorrow or Friday would amount to a total of about half an hour, I shall adjourn Council until 10 a.m. on Tuesday next. That is the first day on which we shall really get down to any long work again. It would only be wasting the time of members to assemble before that.

LORD FRANCIS SCOTT: May I ask if the motions will be taken on Tuesday?

HIS EXCELLENCY: Yes.

MR. HARRAGIN: Select committee reports will be laid and then we shall go on to motions and the other orders.

Council adjourned till 10 a.m. on Tuesday, 16th August, 1938.

Tuesday, 16th August, 1938

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Tuesday, August, 16th, 1938. His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 10th August, 1938, were confirmed.

PAPERS LAID.

The following papers were laid on the table:—

By SIR ARMIGEL WADE:

Schedule of Additional Provision No. 2 of 1938.

By MR. HARRAGIN:

Report of Select Committee on the Native Lands Trust Bill.

Report of Select Committee on the Crown Lands (Amendment) Bill.

By MR. LOCKHART:

Report on the Operation of the Income Tax Ordinance, 1937.

MR. LOCKHART: Your Excellency, in laying this paper I have been asked by the hon. Chief Secretary as Chairman of the Standing Finance Committee, which has been given the task of examining this Report, to request that hon. members—and the same applies to members of the general public—who have representations to make to the Committee on this subject, will do so at as early a date as is convenient to those concerned. The Standing Finance Committee is anxious that its report to Your Excellency on the operation of the Ordinance should not be unduly delayed.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I take it that in due course any report made by the Standing Finance Committee on income tax will be laid in this Council?

SIR ARMIGEL WADE: It is a matter for Your Excellency to decide, because the Standing Finance Committee reports direct to Your Excellency and not to this Council.

MAJOR CAVENDISH-BENTINCK: I rather gathered that would be the answer but, on a point of order, I should like to say that I at any rate personally do consider that on any matters of taxation the Standing Finance Committee should report back to this Council.

SIR ARMIGEL WADE: I am afraid that we shall have to follow the Standing Rules and Orders and I, as Chairman of the Committee, must follow them as much as anybody else. The Standing Finance Committee reports to Council its deliberations on the Estimates, but on any other matters which Your Excellency refers to the Committee it reports to Your Excellency.

LORD FRANCIS SCOTT: I presume, Sir, that the Standing Finance Committee having reported to Your Excellency, there is nothing to prevent Your Excellency from ordering that the report shall be laid on the table of this Council?

HIS EXCELLENCY: Nothing whatever.

By MR. WALLACE:

Report of Select Committee on the Transport Licensing (Amendment) Bill.

ORAL ANSWERS TO QUESTIONS

No. 26—MOMBASA-TANGA ROAD

MR. NICOL asked—

Will Government inform Council as to why there has been such great delay in the construction of the Mombasa-Tanga Road?

Do Government realize that such delay is holding up the development of two very valuable cotton-growing areas on the Coast?

Do Government appreciate the difficulty in which merchants are placed in regard to their communications with Tanga due to the present disgraceful state of the road?

Will Government indicate when work will be started on the Mombasa-Tanga Road?

Will Government give an assurance that they will take steps to see that no further delay in the construction of the

Mombasa-Tanga Road is allowed to occur?

MR. STRONACH: Provision for the new route has been made in the Report of the Central Roads and Traffic Board on a Programme of Road Improvement, which it is hoped to lay as a Sessional Paper this week.

The new road cannot, however, be constructed until funds can be made available for the purpose.

No. 30—ATHI RIVER BRIDGE

CAPT. JOYCE (Ukamba) asked—

In view of the fact that the low-level drift over the Athi River close to Athi River Station is liable to be impassable for several days of each year, and seeing that this drift is an essential connecting link on the road from Nairobi to (a) Machakos, (b) Mombasa, and (c) Tanganyika and the South, will Government undertake to include the construction of a bridge at or near this point in the 1939 road programme and to give it priority over other less urgent work?

MR. STRONACH: The construction of a bridge at Athi River to replace the existing drift has been included in the recommendations of the Central Roads and Traffic Board in their Report on a Programme of Road Improvement, which it is hoped to lay on the table this week. If and when funds are available to carry out these recommendations, the construction of the bridge will be given priority.

SCHEDULE OF ADDITIONAL PROVISION

No. 5 of 1937

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That the Report of the Standing Finance Committee on Schedule of Additional Provision No. 5 of 1937 be adopted."

Hon. members will see from the Report that the Schedule considered by the Standing Finance Committee at its last meeting item by item, and that approval is recommended of such items as have not already been specifically sanctioned by this Council.

MR. LOCKHART seconded.
The question was put and carried.

SUGAR (CONTROL) BILL SELECT COMMITTEE REPORT

MR. HARRAGIN: Your Excellency, I beg to move that the Select Committee Report on the Sugar (Control) Bill be adopted.

As hon. members are aware, this bill was referred to a select committee at the last session of this Council.

In going into the matter very fully, we have decided to recommend that no deviation of principle can be recommended, in view of the international agreement which has been entered into by Great Britain. But we do think that the bill as it stands is rather too complicated for the ordinary person who will have to obey the law on the subject to understand and, merely with a view to clarity, we have recommended that clause 2 be amended by deleting the definition of "total stocks of sugar in the Colony", and that a new clause 4 be substituted for the existing clause 4, which we submit makes it much more clear as to what is to happen.

The whole object of the bill is to control the export of sugar, and with that we all agree. But it is also necessary, if we are to control that export, that we should have some control over the sugar in stock in the Colony at any particular time. It is with that object in view that we have recast clause 4, which will give Your Excellency power to control stocks in hand. I may say that, on the evidence before us, it seems extremely unlikely that Your Excellency will ever have to exercise these powers, but as it was part of the agreement that these powers should be taken, we have included them in the report.

The other two amendments are merely verbal. In clause 3 we recommend that, in addition to the Commissioner of Customs and Director of Agriculture, it might be desirable that Your Excellency should have power to order returns to be made to such other person or persons as you see fit. In clause 7 we have inserted provision that imprisonment can only be

given in default of payment of a fine. The last clause also is entirely formal. It provides that this bill shall continue in force until the 31st August, 1942, which, actually, is the date when the agreement comes to an end.

MR. WATERS (Director of Agriculture) seconded.

The question was put and carried.

THIRD READING

MR. HARRAGIN moved that the bill be read the third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The bill was read the third time and passed.

PARLIAMENTARY RAILWAY GRANTS

MR. WRIGHT (Aberdare): Your Excellency, I beg to move—

"That in view of the concern which will be occasioned throughout the Colony by the publication of paragraph 127 of Sessional Paper No. 2 of 1938, and in consideration of the serious financial setback which any payment by the Kenya and Uganda Railways or by the Colony in respect of the Parliamentary Grants of £5,502,592 (made under the Uganda Railways Acts of 1896 and 1902) would occasion at the present time, this Council trusts that Government will find it possible to publish a statement as early as possible explaining the position."

That, Sir, is a harmless motion, almost unsuited to be associated with my name! (Laughter.) There is no single degree of opposition registered anywhere and, at the very outset, I would say that it is no part of my intention to attack anybody, not even the Secretary of State who may, perchance, be slightly implicated. I rather want more to lead the attention of members to a retrospect of the circumstances whereby this particular debt which is now claimed has arisen, leaving it to later speakers to deal with the more modern aspect.

I want to deal with ancient history as becomes my own age and dignity as a settler in Kenya, because I fear we have

(Mr. Wright) short memories. It is quite extraordinary how publications are made from time to time of great import to the welfare of the body politic and in a month or so people have forgotten all about them.

Perhaps the most picturesque account of the facts leading up to the construction of the Uganda Railway are contained in that delightful book "White Man's Country", wherein Elspeth Huxley writes as follows:—

"Never before or since has such an impracticable, extravagant and uneconomic railway been planned. There was not the slightest chance of its paying, so far as anyone then could see, within reasonable distance of time. The British taxpayer was to provide the money without thought of interest. And in these days five-and-a-half million pounds, which was what it cost, was a considerable sum. The strategic reason was an important one. It was built up as follows: Whoever rules Uganda controls the Nile; whoever controls the Nile dominates Egypt; whoever dominates Egypt holds the Suez Canal; and whoever holds the Suez Canal has his hand upon the throat of the Indian trade.

So, in a roundabout way partly through sentiment, partly for convenience, partly for security and partly perhaps because the fun of building railways had not quite worn off and this would be rather an exciting one to build, Britain embarked on the Uganda Railway. The only factors she did not take into account were the economic justifications for a railway (there were none) and whether it was ever likely to pay. Almost within a decade the development which immediately followed its construction had forged ahead and the railway was paying its way and making a profit.

When Atkinson bought his beads and calico in Zanzibar in 1897 shiploads of Indian coolies were pouring into Mombasa from Bombay on three years' contracts to lay the line. Altogether about 35,000 Indians were imported under the Government's paternal care to dig and blast and shovel and hammer their way in the wake of British engineers to the lake."

That picturesque account summarizes the fact that the construction of the Uganda Railway was one of major Imperial policy. Perhaps behind that major Imperial policy there were subsidiary ones. There is no question that at that time when all the European countries were seeking zones of influence and, under the Brussels Treaty, it was an obligation to stop the slave trade at its source, Great Britain was more than apprehensive of the French pretensions in the Sudan. Marchand had started his famous march from the West Coast, and the flurry and rush followed to get to the headwaters of the Nile to safeguard Egypt and the hitherto unknown territory of the vast Sudan.

But that was not the sort of policy to appeal to the British electorate, and as long ago as about 1891 Lord Salisbury, speaking in Glasgow, emphasizing the case, had to bring in the issue of missionary aspirations in that area and the need for extinguishing the slave trade with all speed, and the securing of the headwaters of the Nile and defeating French pretensions had at that time to be kept *sub rosa* while activities were going on.

At that time the missionaries of several denominations were most active in Uganda and around the sources of the Nile. One could almost say it represented the Church Militant! Certain it is that the congregations were more than militant, because Bishop Tucker records consternation at finding his congregation coming to church at Mengo with rifles loaded.

The history is rather interesting at that time, because the denominational battle was intense. Bloodshed actually took place, and the issue was between the Wa Engreza and the Wa Franza at that time. The race for the Sudan therefore took relatively less importance in the view of the people who had the missionary zeal at home, and it was largely on account of the denominational battles, which were thoroughly unsatisfactory and regrettable to this day in their effects, that the railway started.

I have here by the courtesy of a friend the White Papers presented to both Houses of Parliament. The first one, by

[Mr. Wright] command of His Majesty, is July 1901, respecting the Uganda Railway.

I want to make reference to very brief extracts which will bear out what Mrs. Huxley has stated in her book. This report is by Colonel Gracey, R.E., to Parliament, and he says:—

“The paying prospects of the railway in the next few years are not bright, as working estimates show that even with one train each way daily the expenditure will not be far short of 30 lakhs of rupees (£200,000), and I do not think it would be safe to estimate the receipts in the immediate future to be more than 15 lakhs of rupees (1,000,000). The Government may therefore expect to have to find £100,000 in 1902-1903, gradually decreasing to nothing in about 1910, and after that a small net return on the capital expended may be reasonably looked for.

The value of the Uganda Railway cannot, however, be reckoned by the direct returns obtained on the capital expended, as without it, it would be impossible to hold for any length of time the country round the headwaters of the Nile, or to deal with the slave hunters up-country, but with these and such like matters this Report is not concerned.”

The second reference is dated August 1901, a Paper similarly presented to both Houses of Parliament, in which Sir Charles Elliot, in reports brightened by a good deal of light asides, reported as follows. Describing the railway for the benefit of the Parliaments, he says:—

“On the platforms naked savages peer and grin with good-humoured curiosity; their nudity is rendered more conspicuous by the fact that they wear short cloaks hanging down their backs and carry elaborate ornaments, often including old janpots, in the slits cut in their ears. Near the stations the ostrich and the barn-door fowl almost intermingle. The obstinate rhinoceros, who assimilates new ideas more slowly than other beasts, sometimes disputes the passage of the train in a narrow cutting and derails it, though he

perishes in the attempt. A troop of more intelligent elephants occasionally occupy a station, and in their curiosity ravage the booking office and take tickets, which cannot be accounted for afterwards. But, while giving the railway the fullest tribute of praise and gratitude, I cannot help feeling that it has somewhat unduly monopolized public attention, to the exclusion of other interests, in East Africa. Nearly £5,000,000 have been voted for it, while the grants expended on the rest of the Protectorate since its formation in 1895 amount to about £750,000 in all. I do not say this as a criticism of the expenditure on the railway, but I think it would be financially more advantageous, both for this Protectorate and His Majesty's Government, if it were recognized that the prosperity of a railway depends on the prosperity of the country through which it passes. There seems to be a tendency to treat the railway as something apart, built in the air, so to speak, and independent of terrestrial things. But in reality, a railway is intimately connected with its surroundings. It is the backbone of the East Africa Protectorate, but the backbone is as useless without a body as a body is helpless without a backbone. If it is worth while to spend £5,000,000 on a railway, it must be worth while to spend a few thousands in making that railway pay. But until a greater effort is made to develop our East African territories, I do not see how we can hope that the Uganda line will repay the cost of construction. Its future must certainly depend on the exports from Uganda to the coast. But, as I have continually insisted in this report, I believe the East African Protectorate has possibilities for commerce and colonization which may in future contribute materially to the prosperity of any line which traverses it.

The territory for one mile on each side of the track is known as the railway zone, and is the private property of the line. The discovery of minerals or valuable vegetable products within this zone would, of course, materially help the railway finances.”

[Mr. Wright]

There were great efforts from time to time as the railway went through to begin to recognize in the railway zone a hinterland that could conceivably be of value. It had never previously been envisaged to be so, and the liberal opinion at home was at that time destructive of the Salisbury regime which, only after a long struggle, got the railway put through. Labouchere, who voiced that opinion quoted this *terra incognita* as being “utterly useless country” and the railway as a “senseless burden”. The people who finally voted the money to build the railway would have none of Kenya then, and it is a remarkable commentary that the debt should now be laid to our door.

Referring to the railway zone, many efforts were made to colonize it. At one time, even the Indian coolies who did so much in the construction of the railway, I am credibly informed got offers of a mile on either side for very long distances. At that time; however, lions were very active on the railway, interfering with the work of the coolies quite a bit, so that by the grace of God and the man-eaters of Tsavo we escaped titles of that nature to the zone.

When the railway got as far as Nairobi, then a swamp, the land was deemed by some to be virtually useless. Mineral rights, in fact, were held over what is now Sixth Avenue by a very well-known gentleman. Land in the surrounding district was offered to reluctant buyers at Rs. 4 per acre freehold. Within my own experience, in 1912 I was offered freehold land near Nairobi at Rs. 2/50 per acre! So there was some substance for the belief that, at that time, even as late as that, there was no great faith in the capital value of the railway, and that it was a liability unlikely to be redeemed by the activities in this Colony.

Going back again, Sir Charles Elliot in 1903 reported to Government:—

“Many millions have been expended on the construction of the railway; that expenditure is a matter of the past, and it is of no practical use to inquire whether it was excessive or not. But what is certain is that the railway can only be made to pay by developing the countries through which it passes

and by expending a reasonable sum on that development. I do not propose at present to extend our effective Administration, and I trust military operations may be unnecessary, but the present East African Budget cannot be profitably reduced. With an adequate Administration, proper investigation of the resources of the country, and encouragement to European settlers and merchants, I consider it certain that the country will pay its way in ten years, and I have a good hope that it will do so in a much shorter period.”

Sir Charles Elliot showed remarkable prophetic powers in that respect!

Now Sir Marchand made a very active march and got across to Fashoda, only to be forestalled by Kitchener of Khartoum when the latter was compelled to deal with the Mahdi and his wild Derivishes; and the affair culminated in that famous battle of Omdurman. That established the British right of title along the Nile which hitherto had been lacking. Presently, Marchand arrived at Fashoda. Kitchener of Khartoum, with the British flag flying, went up and told him he had no right there and gave him marching orders. Diplomatic courtesies were exchanged for a while, but we were very near war with Franco at the time of the Fashoda incident. After diplomatic negotiations had gone on for a long time, Marchand was allowed to go via Lake Tsana and Abyssinia, and so home.

It is just as reasonable that this Colony or Uganda or both or the railway should be called on to pay for the Fashoda incident as that Kenya or Uganda or the railway covering both should be asked to pay for the original Uganda Railway. It is fair to state that perhaps not a single sleeper, not a mile of the railway, scarcely a building, perhaps a viaduct here and there, of the original railway remains to-day. Subsequent developments and extensions have been paid for, and chiefly paid for by natives and European settlers whose products alone have warranted subsequent loans for extension and made it possible safely to borrow and secure amortization of the line.

I can imagine nothing more crippling to the future of the country—already

[Mr. Wright] informed by Lord Swinton when Secretary of State that it was no longer credit-worthy—to have a burden of 54-million pounds, or even a small fraction of it, laid at our door at this stage of our development. If that debt can ever be justified legally, in equity it can never be so justified. The railway as originally composed was built for Imperial purposes, largely outpost; since then what has been built up along the same alignment more or less has been achieved by the producers of this country, European and native, and it would be an intolerable burden on us and those who follow us. If debts, already heavy in their bearing upon us, were to be added to by such as this.

The history of the country is interesting because it all bears on the railway.

When Sir Charles Elliot reported so hopefully, it was essential to get settlement, and desperate expedients were used to get settlers. There were offers of 10,000 acres of land free in this part of the world to anybody who cared to take it up and had a little means to support it. That offer of 10,000 acres carried with it the right of 1,000 acres freehold. There were certain pioneers of the country who deserved it thoroughly who had offers of 30,000 acres wherever they cared to choose. I refer to such distinguished pioneers as Robert Chamberlain, Russell Bowker, Flemmer Brothers, and Frank Watkins. A somewhat extraordinary case in point is the East African Syndicate, Gilgil. Originally an exploration company in the care of the famous scout Burnham who, having applied for and got a sole diamond exploration licence, spent £50,000 in a vain attempt to find them, they were given a grant by the home Government of 320,000 acres, with the right of making it freehold on payment of Rs. 2 per acre.

Those are significant points in the history of the country. They show that the Governors of the time were right in their contention that the only hope for the continued existence of the railway was by fostering settlement, especially white settlement, along its lines.

In conclusion—I have taken a longer time than I intended—I would just say that, for a struggling body of colonists still in the early stages of development, hit at by other means, taxes and so on, it is a remarkable feature of the tendency of the times that Ireland, in recent times, surely infinitely more troublesome than the settlers of Kenya to the Home Government, should be granted complete relief of £100,000,000, and that the same Government, through its Treasury, should seek on our existing debts to superimpose a 54-million loan that occurred forty years ago, for which we have no liability whatsoever.

MR. NICOL: Your Excellency, I rise to second the motion so ably proposed by the Hon. Member for the Aberdares.

At the outset I should like to join with the hon. mover of the motion in repeating and making it as clear as possible that Your Excellency, your Government, and above all the present Secretary of State, have the sincerest sympathy of us in being faced with this demand.

I wish to make it quite clear that we on this side of Council realize that Your Excellency and the hon. members opposite are as much perturbed in this matter as we are. We are out to help you and you may be assured that you will find the fullest support from this side of Council in your efforts to combat what, in my opinion and also the opinion of my colleagues, is an unwarranted demand to saddle this generation with an expenditure over which not even their most recent ancestors had any control.

I do not intend to reiterate in detail the past history which has been so ably laid bare by the hon. mover. I second the motion because I am so amazed, and that amazement is not unminged with a touch of indignation that we, the inhabitants of this Colony of Kenya should be called upon some forty years after, to reimburse to the Home Treasury a colossal sum of money for a venture that was embarked on in the dim and nearly distant past, as a matter of expediency for Empire and international policy.

Despite what successive Secretaries of State may have affirmed, reaffirmed, or called it what you will, since 1924, I do not

[Mr. Nicol] consider that there is any legal or moral reason why we should be called upon to produce this sum. I go so far as to say that there is no debt, nor has there ever been, in so far as the people of Kenya is concerned.

This Colony, like so many other peoples in the world, has just weathered one of the worst economic blizzards that has ever descended on a unit of Empire, or in fact on the world. I take this opportunity of paying a tribute to those very gallant men and women who set their teeth and got down to it. They are deserving of the highest praise for their gallant and let me say, their victorious fight. And now suddenly from out of the blue, comes the cry: "Wapi our 54-million pounds."

In case the hon. mover has not made himself quite clear I think it is desirable that I should emphasize certain points, particularly to support the justification of the astonishment I have expressed in regard to this demand received from home. A reference to Sir Gerald Portal's despatch of November 1st, 1893, emphasizes, *inter alia*, that to kill the slave trade a railway must be constructed. Other authorities supported this contention, pointing out the eventual saving to the home Government in that the maintenance of a fleet and military posts would cease to be necessary. The naval squadron was estimated to cost from £108,000 to £110,000 per annum, and military posts were estimated to cost £25,000 per annum.

There is a most important point why we are not liable to any debt as suggested. In the Uganda Railway Acts of 1896, 1900 and 1902, wherein are the initial subsequent authorizations to the home Treasury to issue out of consolidated funds the sum of 54-million pounds, or, to be exact, £5,550,000, there is nothing stated or laid down in these Acts to lead to the assumption that this money was ultimately to be repaid to the home Treasury by the Protectorate or the Colony or the Railway.

In 1904, somebody suddenly had a brain-wave. They suggested that provision should be made calculated to

ensure the ultimate refund of the cost of the railway to the home Treasury.

You will see, Sir, that even between the years 1902 and 1904 the original urgency of the railway had apparently been forgotten and I suggest that in 1938 the reason for this preposterous demand is because there is no one in the British Treasury to-day who realizes or appreciates that when the railway was first commenced it was a time of urgency to Great Britain to demonstrate her sovereignty to other nationals and to safeguard her own interests elsewhere than in these territories.

I will not burden you with the development between 1904 and 1926, suffice it to say it is quite obvious from facts available that were this Colony to pay even a proportion of the British Treasury's claim, such payments would be a windfall to the home exchequer. It would not be credited by the Imperial Government to the repayment of advances. Conversely, there would be no need to write off an asset if the home Treasury abandoned their claim. It would be a repayment of an advance, that is, capital, as from the accounts at home it appears that all advances from the consolidated fund have been wiped out by annual instalments borne by the Colonial Office vote between 1896 and 1926.

The scheme evolved as a result of the suggestion in 1904 that steps should be taken calculated to reimburse the home Treasury for the original cost was in brief, that the profits of the railway, if any, should be paid into the British exchequer. These payments are quite apart from the instalments paid by the Colonial Office vote. In 1906 as the Protectorate was in receipt of a grant-in-aid it was admitted that it was somewhat absurd that it should receive a grant-in-aid with one hand and pay out railway profits to the source of the grant-in-aid with the other. It was therefore agreed to waive the payment of railway profits and so in effect reduce the grant-in-aid paid out by the home Government.

By this means the time would be accelerated when the Protectorate or Colony would be free from the control of the home Treasury. In other words,

[Mr. Nicol] it is fair to argue that in effect the construction of the railway was recognized in 1906 as a grant-in-aid. A grant-in-aid is not refundable, and as we contend the construction of the railway was in every other respect but name a grant-in-aid I repeat my assertion that there is no debt. This is borne out further by the answer given to a question asked in 1914 in the House of Commons. In support of this contention, I will quote from an extract from Hansard, that is the home Parliament Hansard of the 23rd April, 1914: 1

"British East African Protectorate. 22. Sir J. D. Rees asked the Secretary of State for the Colonies whether any debt against the East African Protectorate was made on account of Uganda Railway; if not, how does the account stand between the taxpayer and the beneficiary in respect of that undertaking; what is the annual charge upon the consolidated or other fund for interest; is there any and, if so, what, provision for a sinking fund and how does the account in that behalf also stand?"

The Secretary of State for the Colonies (Mr. Harcourt): Under the provisions of the Uganda Railways Acts, advances up to a total of £5,502,592 have been made from the Consolidated Fund for the purpose of construction, and the expenditure out of these advances had amounted to a total of £5,460,294/8/4 in the period to 31st March, 1913. Repayment of the advances from the Consolidated Fund is being made by instalments of annuities (terminating 15th November, 1925) at the rate of £319,112 a year, for which provision is made on the Colonial Services Vote. No repayment has been made by British East Africa in respect of these advances, and no such payment is contemplated under the Acts." (Hear, hear.)

It has been assumed in Kenya generally that that statement was the last word.

In view of the fact that in none of the Uganda Railway Acts I have quoted is it even faintly suggested that the moneys raised under those Acts should be a legacy left to posterity I suggest that the gentleman who had the brain-wave in

1904 was in effect perpetrating what today is known as "working a quick one". I have always understood that in interpreting documents of antiquarian interest and importance, very strict attention is paid to the spirit prevailing at the time such documents came into existence. I can find no trace of any intention in 1896, 1900 or 1902 of saddling the peoples of what is now Kenya with the cost of this strategic railway built mainly for the protection of the head-waters of the Nile and in an effort to abolish slavery. But rather do I find that between 1896 and 1926 the advances from the consolidated fund, as I have said before, have actually been repaid by instalments borne on the Colonial Office vote.

The economic history of Kenya is a very short one; and even to suggest that her development should be retarded by either direct or indirect extra indebtedness is the action of one who, probably through no fault of his own, is entirely out of touch with local conditions and history. After all, continued repression as a policy is doomed to failure. I am astounded that the Treasury at home who, I believe normally take a real live interest in the welfare of the particles of the British Empire, should make so preposterous a demand, and I am most indignant that we, the dwellers of 1938, should have it suggested against us that we are the ones responsible for the excessive capital outlay of the railway laid down forty years ago as an expediency of major Imperial policy. When I say "we", I refer to all of us, Europeans, Indians and especially the natives, and I hope my hon. friends representing native interests will support this motion as my view is that the native is or would be as much affected as any of us.

I would here quote from Sir Edward Grigg's despatch of the 21st September, 1930, a despatch to the Secretary of State for the Colonies that Sir Edward Grigg wrote as High Commissioner for Trans-

"I do not see that the native population of Kenya and Uganda can be asked with justice to undertake the repayment of this debt. The railway was not built for their benefit. It was built as a great measure of Imperial policy

[Mr. Nicol]

to assist in suppressing the slave trade and to secure the head-waters of the Nile. It achieved both of these objects, the beneficiaries of which are multitudinous, spreading from the Lake basin and the East Coast of Africa, through the countries bordering its north and eastern shores, to the crowded population of Egypt and the Sudan."

And then, further on, he says:—

"Neither as a measure of justice nor as a measure of policy can such a charge against the peoples be easily upheld." (Applause.)

The construction of the railway was, Sir, notably a rush job and what is more, one that appears to have been embarked upon regardless of the ultimate cost to the taxpayer. And now the home Treasury sees fit to turn round to us, forty years after, and more or less by their demand suggest that we the peoples of Kenya are the villains of the piece and that we should pay for the extravagances of those statesmen who guided the destinies of Great Britain in the days of old.

At this stage I propose to quote from Sir Alan Pim's Report as I think he has made some very telling arguments which support the view I hold and which I have tried to convey to Your Excellency. In paragraph 395, that is on page 239, Sir Alan Pim gives a brief history of what happened in the early days:—

"After the British activities in Uganda from 1889 onwards which followed on the conquest of the Sudan by the Mahdi, the British Cabinet decided to abandon that country. This decision was reversed as the result of a popular protest against the abandonment of long established missionary work and because of our obligations to Egypt in regard to the Nile reservoirs in the great lakes."

Then, further on, he says:—

"The adoption of a policy of effective occupation was ultimately found to be unavoidable, and the construction of a railway connecting the coast with Lake Victoria Nyanza was recognized to be essential to carrying that policy into effect."

On the lines of this a bill was introduced into Parliament authorizing an expenditure from the Consolidated Fund not exceeding £3,000,000 for this purpose, and there was a certain amount of criticism at the second reading.

Somewhere in July 1896 Mr. Curzon, as he was then, and later the Marquis of Curzon, actually in a speech on behalf of Government did not mention that the railway was at all being built on commercial grounds. As Sir Alan Pim says here:—

"It was not, however, on commercial grounds that he maintained the necessity of constructing the railway but on the ground that it was a necessary corollary of the dominion we have established that we should have a railway communication between the interior and the seaboard. If you do not establish that communication, Germany will do so."

Then, in August 1896, the Prime Minister, the Marquis of Salisbury, in advocating the construction of the railway dwelt on the blow that this railway would have on the slave trade. And Sir Alan Pim writes:—

"The only reference made by the Prime Minister to commercial possibilities was that the railway would have a most beneficial effect on fostering British trade and establishing the new dominion."

Then, in 1900 it was found, Sir, that money was wanted and at the second reading of the 14th of May, 1900, in the House of Commons, Mr. Broderick (later Lord Middleton) replied to the criticisms:—

"The House is fully aware that the Government entered upon that construction with the view not of any purely commercial interests, but also with political objects."

Sir Edward Grey criticized the phrase "the policy of the railway." Sir Alan Pim's Report continues, "because in his opinion the real question of policy was one of staying in Uganda or not", and he said:—

"If Uganda is to be held it could not be held without a railway... therefore, let us start the debate from the

[Mr. Nicol] point that the railway is an absolute necessity."

In paragraph 397 Sir Alan Pim writes:—

"The commercial prospects of the line, or the possibility of developing what is now Kenya Colony, played practically no part in those considerations."

That is, the considerations of this railway. In paragraph 398 he writes:—

"By the year 1913, the Protectorate was paying its way and the Treasury agreed to its being released from their financial control. No mention was made of the capital liability on account of the construction of the railway."

And that is borne out by the quotation from Hunsard which I gave just now answering the question asked in 1914. Then, Sir Alan Pim puts forth a very definite recommendation in paragraph 402:—

"In view of the present financial and economic position of the Colony, as set out in this report I trust that it may be found possible to relieve the Colony of the prospect of this heavy additional burden."

In paragraph 403, he deals very effectively with the burden that this debt would have on the native:—

"There are, however, wider considerations which would appear to justify a generous policy in regard to this liability. Although the Colony has succeeded in balancing its budget and, given moderately favourable conditions, it should continue to do so, it has nevertheless suffered very severely during the last few years, and its taxable capacity is small, more especially that of the preponderating native community. At its present stage of development it requires expenditure in many directions if either European agriculture is to be able to compete on fair terms in the markets of the world, or if, the remaining communities, and more especially the three millions of the native population, are to advance in economic prosperity, in education, or in health. They labour already under a burden of debt which is very heavy in

comparison with their resources and, as much the greater part of this debt has been incurred in connexion with the Railway and the Port, its service has to be mainly provided for by heavy railway rates.

High railway rates are one of the most serious handicaps to the agricultural prosperity and to the trade of Kenya."

And then, finally, Sir, at the end of paragraph 403, Sir Alan Pim writes:—

"Taking into account the history of the Railway and the present financial and economic position of the Colony, the case appears to be one in which the greatest ultimate advantage to Great Britain would accrue from looking rather to the increased trade which would result from the growing prosperity of the Colony (which with Uganda took 36.8 per cent of its imports in 1934 from the United Kingdom) than from attempting to recover a sum which would represent a serious handicap to its advance." (Hear, hear.)

"The absence of a direct return would be compensated by greater indirect advantages." (Hear, hear.)

I hope I have without undue waste of time managed to show the position as we see it and that not only are we astounded at the suggestion that we of Kenya owe the Home Treasury 54-million pounds, but we are also filled with a sense of righteous indignation at the suggestion. Therefore, I urge that in view of what I have said Government will be able to publish a statement on this matter, as soon as possible.

LORD FRANCIS SCOTT: Sir, in rising to support this motion, I wish to emphasize that, in my opinion, this is a test case of the attitude of His Majesty's Government of the United Kingdom towards its overseas possessions.

It has been said, and it has been often quoted, that the attitude of the Home Government towards the colonies is that they look on them as places to be administered rather than as a large estate to be developed. And this question goes right to the root of what that policy is. Lord Milner, one of the greatest Imperial statesmen of recent years, was fond of

[Lord Francis Scott]

saying that the amazing thing about the British Empire was how it continued to exist, and even to progress, in spite of the British Treasury.

To-day, we have as our Prime Minister in Great Britain, a gentleman, whom I personally have the greatest admiration for, a gentleman whom one must expect to have a very deep sympathy with colonial aspirations in view of the fact that as a young man he started his own career in one of the British colonies, the West Indies, and that he was brought up under the influence of his father, the greatest colonial administrator the British Empire ever had.

I feel that if our case can be brought to the attention of the Prime Minister he would never allow the members of his Cabinet to demand from us this large sum of money.

At the risk of boring this Council, I should like to add one or two small points with regard to history, perhaps not exactly the history of the railway, but the history of those early days.

We have already heard how, in 1890 and 1891, in Lord Salisbury's Government, they were already discussing this question of building this railway. In 1892 Lord Salisbury's administration went out of power, and Mr. Gladstone became Prime Minister with his last administration.

At that time in Uganda, there was a small nucleus of British authority, and the senior officer was a young captain of the name of Frederick Lugard, now so well known to us all as Lord Lugard. He received orders to haul down the Union Jack and withdraw his officers from Uganda. He did not do so, but put the letter in his pocket, left the Union Jack flying, he left his officers there and he himself returned to England and put up the case to the Foreign Secretary, who was then Lord Rosebery, in whom he found a ready listener.

In fact, he had such influence with Lord Rosebery that Capt. Lugard had to face the whole Cabinet, and was subsequently sent around Great Britain preaching the gospel of Uganda, which became quite an important question in British politics.

That is a long time ago, when you and I, Sir, were small boys at school, and many of the members of the Council were not even born! And it is a remarkable tribute to the character of Lord Lugard that though it is nearly half-a-century since he left East Africa, in 1892, many people still look on him as the latest authority on all East African matters!

The result of Lord Lugard's representation was that the Imperial Government decided to send Sir Gerald Portal from Zanzibar up to Uganda to report on affairs himself. He was accompanied by a small band of rather distinguished Army officers, some of whom were certainly distinguished in other walks of life: his own elder brother, Captain Raymond Portal (whose grave is now in Kampala); Roddy Owen, the most famous amateur flier ever seen; and Frankie Rhodes, afterwards famous at the time of the Jameson raid in South Africa.

Sir Gerald Portal wrote a book describing that journey, one of the most interesting books I have ever read, and I trust that all members of this Council either have or will read it, because it is of the very greatest use and information to those of us who came afterwards. One passage in that book is of peculiar interest in view of a discussion which took place in this Council a few days ago, as to all the land in the country belonging to the natives as, after they left Fort Smith, between Kabete and Kikuyu, they never saw any natives except a few marauding tribes of Masai, until they got right into the Kavirondo country, somewhere near Mumias.

The result of Sir Gerald Portal's mission resulted in a short period of quiet for this country and a strong recommendation that the railway must be built: do not want to go over again the grounds which have been put forward by hon. members, that the origin of the railway was entirely for Imperial strategic purposes and nothing whatever to do with the development of this country, and there is no question that it was built hurriedly and extravagantly, and probably inefficiently. Nor is there any question, I think, that to-day all that is left to us of that original asset are some bridges and viaducts and earthworks.

[Lord Francis Scott]

"We have heard how a Secretary of State, Mr. Lulu Harcourt, afterwards Lord Harcourt, said there was no intention of asking for this money to be paid. We have heard how there was no original intention of it being repaid. And, Sir, it does seem quite amazing that if His Majesty's Government in the United Kingdom have any real desire to develop their overseas possessions, that some forty years afterwards the peoples of these countries, Kenya and Uganda, of all races in these countries, should be asked to produce 51 millions to pay for something which they had nothing to do with in the original case and which was built for entirely different purposes.

Might I put the position in the form of a slight parable?

There was once a man who had great possessions and many sons. He was told that one of his rather further away possessions would be lost to him, that somebody would come and take it unless he took steps to prevent it. So he built a house there. At that time one of his younger children was only just born, still in his cradle. But in years to come that son grew up and proved himself a person of virile and determined character. And he lived in that house and he looked after his father's property there, and from that house he developed that property until it became a paying concern.

Many years afterwards the father had a bright idea, and said to his son: "Look here, son, that house, you know, I built when you were hardly born. It had nothing to do with you, but you have lived in it and had a very good time in it and made money in it. It is now only right that you should pay me for the original cost of the house." The son said: "That's all very well, father, I had nothing to do with the original building. That house cost a great deal of money, and though I admit that by saving and by judicious work and by hard work I have accumulated a small credit balance in the bank, I certainly have not got enough to pay you for the original cost of the house. How do you propose I should pay you?"

"Oh," says the father, "you can borrow it from the moneylenders." The son

said: "Father, only a very short time ago, when I suggested borrowing a sum of money for really productive and constructive work to increase the value of the property, you told me I was not credit-worthy and could not possibly borrow any money." (Laughter.) The father replied: "That is quite a different affair. I admit that when you wanted to borrow money for some really good productive purposes I said you were not credit-worthy, but this is another matter altogether. It won't do you any good and will make it difficult for you to borrow money in future for productive purposes, but I want money for myself, and therefore you have to pay it."

Then the son, exceedingly sorrowful, said to himself: "I am afraid father does not love me as much as I hoped he did." (Laughter.)

Now, Sir, I have heard it suggested that we must contribute this money because of Great Britain's need for rearmament and largely increased expenditure. I do suggest that we are doing all we can at this moment to help with our share of defence. We are expending very large sums this year and in coming years, such sums which might necessitate sacrifices on behalf of the taxpayers of this country, and I maintain that His Majesty's Government in the United Kingdom have no right to ask for anything further than that, especially, as already pointed out, when only recently they came to an agreement with another part of the Empire, Ireland, an agreement which was hailed as a great constitutional achievement but which actually resulted in the letting off entirely of £100,000,000 of her debt to Great Britain.

I do not think that one is incorrect in quoting that sum, because it was mentioned in the House of Commons and I do not think it was contradicted.

Then, Sir, there is another point. We are rather accustomed here to having gentlemen sent out to make reports, and when those reports have been made we are told that His Majesty's Government in Great Britain have accepted them *in toto*. Then we all get down and work to implement those reports. When it comes to the final stage we find that, although

[Lord Francis Scott]

perhaps 90 per cent of the reports are implemented, one bit in them, the part which we are particularly keen about, is left out.

In this case, of course, I am referring to the report by Sir Alan Pim. We are told that Government had accepted that *in toto*, and we are told that because of that we must have income tax in this country. Surely, if that is the case, the Imperial Government must also be held bound by that report, which very definitely and strongly recommended the wiping out of this contingent debt.

I know perfectly well that you, Sir, and your Government and your advisers, in conjunction with the Government of Uganda, are doing your very best to try and get off this repayment. I hope you realize that nothing any of us have said in this Council is in any way criticism of Government, because we know we are all playing on the same side, and I also believe the Secretary of State is on our side. The person we are up against is our old friend the British Treasury, who boasts that it is a completely soulless entity.

But I must warn Government that there is a very deep feeling of indignation throughout the country—and this is, I am glad to say, no racial question, we are all in it, whatever race we are. If this money has got to be found, it has got to be found by all inhabitants of the country, irrespective of creed, race, or anything else. It is deeply felt, and there is a fear lest this matter shall be settled over their heads and they know nothing at all about it until the whole question has been settled. If, of course, it is settled to our advantage, then they will be delighted, but if it goes the other way they will be full of deep resentment.

It is also felt that before final settlement is arrived at, this Council should have some further say in the question.

I trust very much that Government will see its way to accept this motion and that, all standing together, united, whether we are from Kenya or Uganda, whether Railway, official, unofficial, European, Asian, or African, that we shall all stand together, all one in this

matter, and if a united protest is sent home forcibly enough, I cannot believe that the Imperial Government in Great Britain can force this question against us!

MR. SHAMSUD-DEEN: Your Excellency, to a casual listener the lengthy debate would appear to be entirely disproportionate, because it is almost incredible that the Imperial Government could be serious in such a thing as demanding 51-million pounds from the community at this stage. But yet I can see that a lengthy debate is really necessary as a sort of proper answer to the practical joke which is being played on this Colony.

I would suggest, in addition to what has been said, that the Imperial Government should be reminded that they made a very serious error of omission, in having forgotten to add to this 51-million loan all the expenses of the militia incurred, or actually spent, in the defence of this Colony in the Great War, because that matter was as much an Imperial responsibility as the building of the Uganda Railway was a strategic necessity for the Imperial Government.

Quite apart from the protection of the headwaters of the Nile, the Suez Canal and the roads to India, this 51-million has been very well spent indeed by the British Government. Had it not been spent, there would have been no Kenya Colony to-day, and probably no British mandate in Tanganyika.

A great deal of reference has been made to history, but this requires no reference: it is only a very recent event and is known to everybody. Certainly it does not require any reference to history by me, because I have seen it myself, for I have been in the country not from the beginning of the construction of the railway but soon after, when it was only completed as far as Naivasha. It was a question of a race between the railway, the Germans and the British Government, and there was no question of its being a commercial enterprise at all.

Unless it is proposed to penalize the immigrant races and the natives for the part they have taken in the development of the country, the whole idea of claim-

[Mr. Shamsud-Deen] ing repayment of the money is preposterous; and I wish to say that the hon. Indian members of this Council support the motion.

MR. LOCKHART: Your Excellency, in accepting this motion on behalf of Government—(applause)—I shall not be expected, in view of the terms of the motion itself, and of the fact that it has been accepted by Government, to offer any comments on the observations of the hon. members who have spoken so effectively in this debate, except to say, as I do say, that full weight will be given to these views which will, of course, be communicated to the Secretary of State without delay, and that the force of the hon. members' arguments and the importance of the question are fully appreciated by His Government.

In view of the observations that have been made, I think I should explain the present position, which is this: this question was due for review in 1938, as it has been reviewed on other occasions in the past, and on this occasion a determined effort is to be made to dispose of this long-standing matter once and for all.

The stage has not yet been reached at which a fuller statement can be made, but a statement will be made by Government as soon as it is in a position to do so. More than that I cannot say, or be expected to say, at this juncture.

MR. GHERSIE: Your Excellency, I wish to support the views already expressed in favour of this motion. We have already heard in detail the origin of the reason for the initial expenditure on this railway, and while I take a very serious view of it I do not propose to go into these details again. Rather look at it from an accounting point of view.

The Imperial Government built the railway for very obvious reasons and I feel, as has been said, that they have been amply repaid for their investment. The present railway has been built up at the expense of the present generation of Kenya, and while the railway authorities make necessary provision for the repayment of loans, I maintain that this money has been obtained from the people of Kenya and Uganda.

What is the position we are faced with at the moment? The Imperial Government are suddenly confronted with a liability or debt of 54-million pounds which they wish to write off, and due to the rather antiquated system of accountancy enjoyed by the Colonial Office and the Imperial Treasury, they find that this amount must be written off in one lump sum and, fearing criticism, they are looking for some one, and in this particular instance, Kenya, to hold the baby.

I suggest that had they employed the ordinary elementary principles of accountancy which we all appreciate and which are accepted in commercial finance, they would have made sufficiently reasonable reserves for depreciation. I submit that had they taken this at the very small figure of 24 per cent per annum, that liability would have been liquidated during the last forty years. I am sure that the hon. General Manager will agree with me when I say that 24 per cent per annum is hardly a large sum for depreciation on the railway, more especially when we realize the colossal sums that are required for replacements.

I suppose I can hardly blame the Imperial Treasury in a sense for trying on this colossal bluff, and if they could get away with it I should be the first to take my hat off to them; though the suggestion is absolutely ludicrous. We are to blame to a certain extent for having allowed the railway authorities to have incorporated it in their balance sheet. We should have challenged it before. But I submit it is purely a question of accountancy and can quite easily be remedied.

DR. WILSON: Your Excellency, I only rise in response to the direct invitation—it was nearly a challenge—of my hon. friend the Member for Mombasa. I noticed in saying that this was a question that affected all races, that he only invited my colleague or myself to speak in support of his advocacy. He did not invite the Indian members knowing perfectly well that they are always ready to speak without prompting!

I think it is trying me rather high to expect me to add anything to the extraordinarily able speeches which have been made in protest against this preposterous

[Dr. Wilson] claim by the Treasury, and I can only say that, speaking in the interests of the natives, of course, add my support to the protest against this demand, and say that, whatever the need of the British Treasury at the present moment for funds, I think the attempt to steal it from Kenya is, to put it very mildly, reprehensible.

MR. WRIGHT: Your Excellency, there is no reply called for, but I should like to take this opportunity of thanking you, Sir, and Government, for the very ready acceptance of the motion which I have had the honour to sponsor.

The question was put and carried.

AGRICULTURAL POLICY

MOTION

MAJOR JOYCE: Your Excellency, I beg to move the following motion:—

That in view of the paramount importance of agriculture to Kenya, this Council respectfully urges that the introduction of measures for the development and consolidation of the agricultural industry is essential and should take precedence in those deliberations of Executive Council to which His Excellency referred in his Communication from the Chair. Further, that, as part of any agricultural policy, problems of soil conservation and pasture regeneration must be regarded as of vital importance and that, in furtherance of that policy, drastic and rapid destocking in certain native reserves is essential, but that steps taken for this purpose should be such as to cause the least possible hardship to the natives concerned."

Well, Sir, it is hardly necessary for me to stress that agriculture is of paramount importance to Kenya, but I would like to quote one or two particulars from the total exports for the year 1937 in this country which amounted to just a fraction under four million pounds, actually £3,950,000 in round figures. Of these, agricultural exports amounted to £3,200,000, which is a matter of about 80 per cent. Now, to divide up these agricultural exports further it is interesting to note that the animal products amounted to something less than half-a-million. I men-

tion these figures because I think they indicate an improper balance in agriculture in this country.

I would also like to draw attention to one point about these agricultural exports of something over £3,000,000, and that is that the European settlers of this country produce, I estimate, about £2,300,000-worth of these exports; on the whole, a matter of about 75 per cent.

One word about this question of unbalanced production.

It is well known of course that the export of animal products from a country make less claim on the fertility of the soil than crop exports in bags. That is an accepted fact and I think that a drive and a lead from Government—and from the farmers themselves—should be given in the direction of increasing the animal side of agriculture and restoring to some extent the balance between the two. We have often been criticized in this country for the small proportion of occupied land that is under the plough. The figure is actually about 11 per cent. That figure is in fact a greater proportion than the proportion under the plough in England, and I suggest that, so far from that being too small a proportion, it is too large a proportion. A very false assumption is constantly made that any land not under the plough is not being properly developed. We have heard that criticism not only at home, but only the other day from one of the hon. members representing Indian interests.

Of course if we wish to retain the fertility of our soil, the more of our land that is under grass or forests the better. And when I talk of soil fertility I include the water resources of the country.

There is another lesson I think to be drawn from a comparison between the expenditure—the revenue expenditure—on all the services of the Colony and on that of agricultural services. The net expenditure for this year is round about 24-millions, although the amount spent on agricultural and veterinary services is about £137,000, or 6 per cent of the whole. Actually, it is interesting to note that that sum of £137,000 is approximately covered by the Customs duties on giti and whisky! I do suggest that here there is an unbalanced expenditure, an

[Major Joyce] unbalanced ratio of expenditure on agricultural and on other services. But I wish to make it quite clear that I am the last person in the world who would like to see a large and bureaucratic Agricultural Department established. There are many ways in which the money can be spent to the advantage of the land and the agricultural industry of this country, and I will touch on these a little bit later.

I think one ought to get in one's mind some clear idea as to what the functions of Government are in regard to agriculture. I should put at the head of the list efforts to conserve the land and the fertility of the land and all that that implies in this country, which is not an industrial country, and seeing that we all depend upon the land for our existence. A part of that is soil control, which is a comparatively modern development and which in the past has not been thought of to any great extent. Loss of soil, as we know, has been going on for years and little thought has been given to it except in the last few years. Again, I must ask leave to go back to that later. Then I maintain that research in all its aspects is a main function of Government and the application of research should be left as far as possible to individuals.

There is, I think, a tendency on the part of some people to expect great results from asking Government to control this industry and to control that industry. Control is, of course, necessary in certain instances, such as to prevent spread of disease, whether it is plant disease or whether it is animal disease; also a system of grading in the interests of this country to see that no produce leaves this country which does not come up to a certain standard. With regard to research into markets there, I think, Government must and should intervene in the interests of agriculture. But as far as possible I should like to see the development of industries left to those industries and to the individual. I think there is a grave danger, if we have too much control, in the people engaged in agriculture becoming less independent than they should be.

Another function of Government undoubtedly is that of education and instruction. Up to a certain point this refers

more particularly to natives. As far as Europeans and others are concerned the information should be more concise and more available than I consider it is at present. We wade through long reports for the results of research, but when they are obtained we have to take a great deal of trouble to find out for ourselves the results. I think possibly the results might be made more readily available to the public generally.

With regard to the natives, there is no doubt that Government must assume a certain responsibility in teaching them how to conserve the assets of their land. There is a great danger in my opinion in stressing unduly in native areas the value of cash crops. In many instances that leads to great disappointment and it leads to soil erosion. I think, moreover, care should be taken that native cultivators are not misled into adopting an unwise system of agriculture by promises of possible cash results which very often do not eventuate. (Hear, hear.)

Finally I think one of the most important functions of Government must be finance in regard to agriculture, because some of the things we are asking for will need money. I do not propose to touch on that at great length. I think other people will do that, but by finance, of course, I refer to loans for agricultural purposes where necessary for assisting certain industries, if it is considered wise to do so, over a period, and for the Land Bank and the working of such Boards as the Farmers Conciliation Board, which I understand is subject to inquiry, now.

I will turn for a moment to the question of soil erosion.

Pasture regeneration is a very large subject on which other people can talk. I would commend to the notice of all members of this Council a most excellent publication which is called "Erosion and Soil Conservation", issued by one of the Imperial Agricultural Bureaux in Britain. It comes from Aberystwyth and its full title is "Erosion and Soil Conservation, No. 25". It gives actually ten pages on the subject in this country, Uganda and Tanganyika, and it covers practically every country in the world, and shows everybody who takes the trouble to read it that it is a problem of world-wide

[Major Joyce] importance. When we consider all these countries, Turkey, Russia, Japan, Cyprus and Trinidad, and others who are taking active steps to deal with this erosion problem I think it must be evident to all hon. members of this Council that we are lagging a little bit behind in our efforts to deal with what is undoubtedly a most serious question in this country. For, ultimately, if the soil is allowed to disappear we would all lose our means of livelihood.

It has been shown that there is an outward spread of the desert. For instance, in Turkana it has been spreading outwards at the rate of six or seven miles a year and that is rather a serious thing to consider; and the same has happened in other places. I understand that in East and West Suk, Elgeyo, and Marakwet, at any rate, the spread of the desert, though possibly not as rapid as in the area I mentioned first, is, however, rapidly taking place.

I must touch for a moment on the fundamental reason for these happenings.

Of course, soil erosion has been going on for centuries in certain parts of this country, but it was accentuated by the arrival of the European because we stopped all tribal wars, and inter-tribal wars between the various sections of one tribe. These wars killed off the population, caused the spread of cattle disease and in that way re-established some balance between nature and the animals living in the country. Further, by veterinary and medical measures, we have increased the rate of increase of cattle and other live stock population and of the human population. And lastly, we have introduced the plough into the native areas. And I suggest that nothing has been more disastrous in causing soil erosion than the use of the plough by the African. Then the rate, I keep repeating this, the rate of soil erosion has of course been accentuated by locusts and droughts during the last few years.

The figures are astronomical in certain cases and there are very many examples in native reserves where no protective measures have been taken at all, and where the top soil lost has amounted to 10 tons per acre per year, and it goes

up to about 200 tons per acre per year. This is the most fertile part of the land, and it has been known that as much as twelve inches of top soil has been lost in a year in a single field.

I want to quote one more figure from the results of research in America, on the comparative rainfall and the comparative soil lost on a field with a slope of 9 per cent, as between a field in grass and a field in cotton. The nature of the soil happens to be a sandy loam. In that of cotton the tons per acre lost per year is 19 and that under grass 0.2, and the rainfall loss of the field under cotton is 20 per cent and on the field under grass 1.5 per cent—and I think that illustrates the type of thing we must all guard against.

The need for destocking action is referred to in the motion and it is again self-evident that you cannot restore the grass and the fertility of the soil when the land is heavily and completely overstocked.

I would like to give one or two figures in connexion with the Ukamba Reserve. Again they are only approximate. I make no attempt to describe the conditions there because I suggest that every single member of this Council should pay a visit to that Reserve now, within the next month or two. If he puts it off too long he will see matters in even a worse state than they are even now. It does not take very long to do down, and I think especially after the references made by the Hon. Mr. Shamsud-Deen a few days ago, who pooh-poohed the idea of the necessity for control measures, and who rather implied that Sir Daniel Hall who reported on this matter in 1929 was a fantastic crank (I cannot quote his words because I do not remember them), I think nothing but good can arise from members of this Council taking a visit and seeing for themselves the conditions existing now in the Ukamba Reserve.

If you take that area—the Kitul Reserve and the Machakos Reserve—and take the estimated number of cattle, goats and sheep, there are actually 2,166 square miles on which there are about 300,000 cattle, 269,000 goats and 60,000 sheep. When you convert the goats and sheep into their equivalent in cattle, it means

[Major Joyce]

approximately one cow or head of cattle to three acres. Well, it is quite impossible, of course, to carry anything like one beast to three acres on that country even if it were not suffering from erosion: If you doubled the acreage or halved the cattle, it would mean that six acres would maintain one beast, an extremely good carrying capacity for that type of land.

The inference, of course, is obvious. We have got to get rid of these cattle as a part of a necessary plan to regenerate the pasture. The need for destocking is not a matter that has arisen within the last few months: I would like to draw attention to the fact that as long ago as 1924 or 1925, when the Ormsby-Gore Commission came out here, the Settlers Association in that area, then known as the Ulu Settlers Association, put up a memorandum to the Commission drawing attention to the very great need for steps to be taken then—in 1925—and making suggestions, constructive suggestions, of the type of things that were required.

I will not read you the memorandum but I would like to quote one or two points from it and I am afraid they do imply some reflection on the Administration in that very little has been done from that date to within the last two or three years. What was said then was, among other things, that:—

"These processes"—that is, referring to the soil loss and overstocking—"have been allowed to continue owing to a complete lack of a definite administrative policy in the past. Up till quite recently the Government's policy, as far as this reserve is concerned, has consisted in tax collection as the main issue and for smaller for all other issues."

And nobody can deny the truth of that statement, but I am not going into that now.

At a later stage, in 1929, when Sir Daniel Hall came out with an Agricultural Commission, the same sort of recommendations were made. Yet again, in 1933, when the Carter Land Commission came out to this country this matter was again brought up by these same peo-

ple, and I would like to quote one paragraph from a memorandum put up to that Commission:—

"It would be wrong to hold out hopes to natives of periodically increasing their land but, subject to a really determined and definite policy of land improvement being adopted and pushed by Government in the Wakamba Native Reserve, there is no objection in principle to adding to this reserve moderate areas where such addition would further the above policy and give time for it to become effective. The term 'prospective needs of native population' would then have some meaning and some end."

Of course, since then, the Yatta has been included, and we only hope that the Yatta Plateau will be used in assisting other areas to get back into the condition in which they should be and will not in due course become in the nature of a desert itself.

There are one or two other points in connexion with this. One is that where we have got indigenous native populations in these areas, we ought to see, for instance, that if their standard of living improves then their health will also improve. Another aspect is that if this land is allowed to go back and back there is no doubt that the proceeds of tax collection will go on becoming lower and lower, and if you put it on that low plane it will be easy to see that these natives and others will be in a state worse than the preceding one.

One comes to a rather difficult part of this resolution and this I am going to come back to later on. But if I may, for a moment, I would like to touch on the question of "the least possible hardship to the natives concerned".

It is obvious that the time factor is of importance in this regeneration of pasture. The rate of acceleration of denudation has been increasing very rapidly in the last five years, and therefore we have not time to allow for the effects of an educational and propaganda policy. Had this been started in 1924, we might not have the difficulties to face now that have arisen but, in the interests of the natives themselves, we must keep in mind the

[Major Joyce]

time factor and therefore not allow any consideration that will allow the land to go on deteriorating, not to allow any consideration of that nature to debar us from the main issue, which main issue we are all extremely glad to see Government supports absolutely, the main issue being to improve these reserves.

The actual method by which that is to be accomplished or by which we are being, or Government is, to tackle it, I do think leaves some room for criticism. I think fundamentally it boils down to a complete lack of plan. It seems to me a plan should have been worked out, not now, not when this or that factory was ready to receive cattle, but two or three years ago, when negotiations were started, when it was realized that this problem would have to be tackled.

There have been, of course, various conferences—too many. I sometimes think with the natives concerned, for it is not always by a series of *baraza* that the closest contact is established with the African. My difficulty is in putting a finger on the tangible reason which, I am afraid, does stand out, that for some reason there has been a lack of understanding between the natives concerned in this particular problem and the Administrative officers.

In point of detail there has been some confusion of thought between the auctions and the actual destocking measures which have been started under the Live Stock and Crop Production Ordinance, 1926, under which, in November last year, rules were published giving to each location its quota of cattle.

To revert for a moment to these auctions, it is a fact that in a number of these early auctions at any rate the number of cattle sold approximated to the number of owners. In other words, I know, at one auction approximately 1,600 head of cattle were sold by 1,500 owners. That points to the fact that the headman went round and told everybody to put up one.

I do realize there must be occasions when as much as possible must be left to the natives themselves but this, I do not consider, is one of those occasions. Let them collect their own taxes by all

means, there will be pilfering and so on, which does not matter. This is a more fundamental question to these natives, and I think the administrative officers ought to be right into it on every occasion and in every detail.

Another point of criticism is the sale of a large number of young and immature cattle. I know it can be argued that the more young heifers these people sell the quicker will they destock themselves, but I cannot help thinking it is a pity to allow these young animals to be sold at Government's organized auctions. If they choose to sell them themselves, there is nothing to be said, but it must leave some bitterness behind in the minds of a cattle-loving tribe when they see young beasts sold at two or three shillings, and sometimes less. I do not think one can get away from that fact, and I think it a pity that Government was in any way associated with the sale of these very young cattle.

I cannot leave the subject without some reference to goats, because there are nearly as many goats in the Ukamba Reserve as there are cattle, and it appears to me somewhat illogical to take steps to get rid of the cattle without steps to get rid of the goats, which actually do more harm to shrubs and young trees and prevent any question of afforestation of hills-tops.

I think the question will have to be faced fairly soon. I understand that no canning factory will look at a goat, dead or alive! But I do think it is merely a question of courage, of facing facts, and that these goats must be got rid of or replaced. There are areas, of course, where goats do nothing but good. There are areas of the Ukamba Reserve where the tsetse fly exists. The goats are resistant to *Glossina palpalis*—is that the correct word?—and by sending them down to those areas they get rid of the scrub and thereby the fly. I think research on those lines should be pushed forward, because an essential part of this policy for restoring native reserves must be a real drive to show these people that we intend to produce a better place for them to live in, although it may take a few years, but there has been too much dilatoriness, the issues were not faced, and

[Major Joyce]

we do all sympathize—and I should like to stress this—with the grave difficulties that, now we have really got down to it to-day, are faced by individuals.

There is no doubt that when destocking is carried to its logical conclusion a large number of natives will be found without any animals at all and possibly, as a result of inquiries into the native system of land tenure, without any land. There, again, this must not be allowed to produce a workless population living out or in a reserve. Some inquiries, I suggest, ought to be set on foot to establish village industries.

It may sound quite fantastic, but why should they not be encouraged to have half-bred sheep and do a bit of weaving or making their own blankets or something of the sort. These people are also good blacksmiths and metal workers, and that side must not be forgotten, because no doubt there will be people without land and without cattle.

Finance, of course, must be provided for some of this business of reconditioning, but I do not envisage—I should like to stress this—the necessity for buying large and expensive tractor units. It has been proved in all countries—America, South Africa, richer countries than this—that no country can stand the financial strain of controlling erosion by these methods. But, with the co-operation of the natives concerned, it is quite surprising the amount that can be done by very much simpler means. Small ox-drawn graders are now being employed by the reconditioning staff to very good effect in the Ukamba Reserve and, of course, it can be done without any implement other than the jembi.

But you must get the tribe working with you and not against you. As an instance of the difficulties in which these people sometimes find themselves, I cannot but quote the question of the disposal of trash on their *shambas*.

Not long ago, a year maybe, they were told that all trash from their maize and stalks and so on had to be laid down in lines on the contour of the field, and they would be fined or imprisoned even if they persisted in refusing to do so. Whether any actually were or not I do not know.

but they were told they would be. Recently, the whole thing has been changed. Now they get convicted unless they burn their trash and unless they burn those maize stalks. Probably a very proper measure.

It is the stalk borer that has caused the change of policy, but the point I wish to make is that it is very confusing to an African. It may be perfectly all right if the right person is there to tell these people that Government have made a mistake and for this or that reason have changed their policy. But I do think that quite often touch is lost between these people and the Administration or reconditioning officers or whoever it may be by a failure on the part of the people concerned to admit to a mistake. And we all make mistakes, and nobody is quicker to realize it than the African. No loss of prestige whatever would result by admitting the mistake to them, but there is a considerable loss if one tries to get away with it.

I now come to the last part. I think, and that is going back to the early part of the motion dealing with the measures for the development and consolidation of the agricultural industry. I will only touch on some of this, because I hope other members will go into it in more detail.

I shall start again by hoping that measures will be introduced in the near future for the control of soil erosion and loss of fertility in the land, not only in the native reserves but in all areas. Although I am absolutely opposed to too much Government control in industry, I feel that even if an individual holds the land freehold that land belongs to the country. In that case only, Government is entitled to see that the happiness or standard of life of future generations is not jeopardized by allowing the present occupiers to ruin their land.

Of course, I feel convinced that it will meet with a great deal of opposition, but we have got to make up our minds if we believe land is the ultimate thing in this country, to face this unpleasant form of control which may have to be exercised to prevent land going down to the sea.

I am purposely not referring at any length to increased settlement, because it

[Major Joyce]

is a long subject, and it is quite obvious it must be in the interests of everybody on the land to foster and encourage not only the people here now, but to encourage fresh white settlement. I must confess to a great deal of disappointment at not having heard any results whatever from the Settlement Committee, not having received a report or interim report. That committee was appointed about a year ago, and it is discouraging to all of us to think that a committee discussing such an important subject has not reported. I am sure there are a variety of reasons for the delay, but I do not think any of them could not be overcome, and that is the only reference I will make to white settlement.

The protection of certain industries I will just touch on, and the question of coffee I hope other people who know more about it will amplify.

It is not realized by everybody that the exports of coffee are roughly three-quarters of a million pounds, representing the largest individual export of the agricultural produce of the country. Experts tell us, and I believe they are right, that the present depression is unlikely to persist for more than two years, and Government is being approached, I understand, with some plan to provide assistance for that period, two years. I hope, without going into details of the plan, that Government will give it its real consideration and not turn it down as if coffee were an industry of minor importance.

Another matter which should have behind it some guiding principle, to my mind, is that of encouraging the stock industry in order to get a more balanced system of agriculture.

I will take one or two points in connexion with the stock industry. I am not referring at this moment to dairy or meat control, but I will in a moment.

The Resident Labourers Ordinance, which has received the Royal Assent, we were told long ago was being held up for the reason that the Secretary of State refuses to allow it to be implemented until land is found and earmarked in which to place squatters who might be

affected as a result of putting the ordinance into force. Here we are, several months later, and we would like to have some assurance from Government or some statement as to what the position is, because there is throughout the country and on the part of the stock owners a feeling of some disappointment that this new ordinance, talked of for so long, has not been brought into force.

I must refer for a moment to the Fencing Ordinance, which was passed in 1929 but was not put into force. That is nine years ago. We have been told year after year that it cannot be put into force because of the great cost. I wonder if any real inquiry has been made into what the cost of enforcing that ordinance would be?

Actually, it only envisages fencing with posts and strands of barbed wire and so on, but I should like to see an inquiry into the possibility of fencing one side of the railway, the Administration of which has a great deal of money, with a sisal fence or live hedge. The same applies to native reserves. I myself have a plantation adjoining a native reserve, and I do not consider it a hardship on me or the natives to share the expense of putting a sisal hedge along that boundary.

It is a minor point, but the farming community feel that if a real inquiry into the cost of the ordinance were carried out, not a large and expensive thing but two or three people, and they were definitely told it would cost so much money and that it was impossible, they would no doubt accept the situation. But I am not sure that that has been done.

Roads—I do not propose to touch on them except two points only, which will assist the farming community.

As you know, ox-drawn wagons generally have to go on the side roads. There is a movement now for people to put rubber tyres on their ox-wagons and carts. I do feel that wagons with rubber tyres should be allowed on the main roads or, alternatively, that the side roads should be improved, because some of these side roads have no money spent on them at all, and it is not in the interests of the farming community that the main road should only be kept for high

[Major Joyce] speed motor and lorry traffic. I do think that at any rate the experiment could be made of allowing, with suitable restrictions and conditions about brakes and so on, vehicles with rubber tyres on the main roads.

The other point I should like to bring up about the roads which would help farmers considerably, especially stock farmers, is the question of grids.

Until we have this Fencing Ordinance implemented, the unfortunate farmer has to fence both sides of the public road which happens to go through his farm. That is a great hindrance to development which can be overcome by allowing the system of grids. They are in use in Australia and South Africa, and they are of no great inconvenience to the motoring public. Horses and oxen go around these grids by a small by-pass, and they will considerably reduce the cost of paddocking to a stock farmer; in that way, they advance the interests of the stock industry.

I have not referred to the question of the change-over policy for those farmers who are farming coffee, or whatever it may be, and who wish assistance and advice to change over to other forms of farming, but I hope somebody else will deal with that.

Meat Control.—We all hope that in perhaps five years there will be more meat exported from this country. The home authorities, the Board of Trade and the Minister for Agriculture, turn any question of exporting meat from this country—cattle I am talking about, chilled beef—turn it down straight until large areas of the country are free from rinderpest. I suggest that before the time comes when there may be available a surplus of chilled meat ready for export, that steps be taken to control and entirely eliminate rinderpest from a large part of the country, because that is not impossible to do.

Dairy Control.—This old stagger has been flitting about from pillar to post for the last four years approximately. I personally, as is known, am not particularly in favour of it, but I do suggest that if any sort of referendum to the industry is taken as to whether the industry re-

quires control or not, that referendum shall be on an absolutely fair and impartial basis, recognizing that the dairy industry is not one complete whole but sub-divided into various parts.

I do ask, however, that a decision one way or the other will be arrived at say before the end of the year, because it can do nothing but harm to the industry to be kept in a state of indecision.

Water resources of the country.—I am referring to water on farms particularly and in native reserves. The question of dams must, of course, be left to the individual. Possibly we may get the services of somebody in the Public Works Department who could assist those people who have little or no knowledge of dam-making, to tell them what to do, but in water boring I think the main difficulty is the selection of sites. I do not think it would be advisable to reopen the old water boring department under the Public Works Department, for the reason that I think it always better to encourage private contractors. There are, however, a number of machines there, and a decision should be arrived at either to recondition two or three of them and scrap the rest, or sell the whole lot.

All I ask is that a decision of some sort should be made about it. Actually, I have been using one myself for some time. But I think the right thing is to encourage private industry on that particular line.

But in the selection of bore hole sites there is a great responsibility, nobody wants to run the risk of a series of unsuccessful bore holes, and I think it possible that a geologist or scientist of some sort might be usefully employed in assisting farmers and others in the selection of bore hole sites. A very interesting development has arisen in Southern Rhodesia, where they have what is called a geophysicist prospecting for water. As a result of that, the number of successful bore holes has increased quite incredibly. Before they employed this method the number was rather low. I cannot remember the details but the cost is not great.

It might pay us to get a geophysicist, and inquiries should be made. Anything which will tend to make the underground

[Major Joyce] water resources cheaper than what they are now, must be in the interests of the country as a whole.

In regard to land alienation, I have another constructive suggestion possibly, that a lot of the land that is now Crown land and which has found no one to take it up, would be readily taken up if Government faced the expenditure of finding water by boring, and then add the cost of doing so to the upset price of the land.

I should like to refer for a moment to the question of large areas of undeveloped land in the country.

When the demand for land arises, as I feel sure it will arise, and in the not very great distant future, if a forward policy is adopted on all these matters I think consideration should be given to the question of these large areas of undeveloped land. In other words, I think people should be obliged to develop, or part with the land at a reasonable price.

I know that is a very difficult question. It is extremely difficult from every point of view, from the point of view of Europeans and Africans also; but we see large areas of alienated land held up indefinitely undeveloped, and if any offer is made or approach made to negotiations towards buying the land up goes the price to a fantastic figure, and the land remains undeveloped.

I think that matter ought to be gone into.

Finance, of course, is not a subject on which I shall do more than say that I hope Government will realize that we realize all these things cannot be done without money and that they will face up to the necessity for an agricultural loan for agricultural purposes.

And lastly, this question of land control, I am going to refer to it again because I think that when it comes up, and I hope some statement may be made by Government on that question, I hope that all members of Council will realize the necessity for it. Kenya is an agricultural country and agriculture depends upon the land. Many farms are now emerging from the experimental stage and are now developing on more or less

fixed lines. I am not one of those people who believe that we are on the downward grade in agriculture, and if Government will consider taking these various steps, and others that I have omitted to mention, and realize the necessity of maintaining soil fertility I believe that we shall have the start of a forward rather than a backward move in agriculture.

LADY SIDNEY FARRAR: Your Excellency, in rising to second the motion so ably proposed by the hon. and gallant Acting Member for Ukamba, I should like to take this opportunity of expressing my entire support of the points made by him, both as regards the agricultural position in Kenya and also the vital importance of definite action being taken to preserve the soil fertility of this Colony. I would also like to add my plea that Government should see fit to give us a more detailed statement as to the action which is being taken to safeguard the interests of agriculture in this Colony.

The hon. proposer has spoken at some length on the subject of the native reserves. I will therefore omit any reference except a very slight one to the last part of the motion, and will direct my remarks chiefly to the European agricultural community and its needs.

Your Excellency's opening speech from the chair was eagerly waited for and was read by all sections of the European farming community, who very greatly appreciated Your Excellency's reference to agriculture. But I venture to suggest that it is necessary that the European agricultural community should have more detailed information on the steps that are being taken and to which you referred. It can hardly be denied that European agriculturists in this Colony have reason for anxiety—the blow that has hit the coffee industry, the drop in the price of sisal and the results of a prolonged drought in certain districts in this Colony—I mention a few of the contributory factors causing this anxiety, coming at a time when agriculture was only slowly rising from the depression caused by the slump and locust infestation periods.

That the public should feel certain that their interests are being safeguarded, or, at least, that steps are being taken to

[Lady Sidney Farrar] wards that end, is essential if they are to be encouraged to continue their fight. Your Excellency laid considerable emphasis on the steps that are being taken for the defence of this Colony with which there has been agreement. The equally unmerited agreement of the Elected Members to support Government in the very heavy expenditure involved in the re-organization of the K.A.R. was a tribute to Your Excellency's personal interest in this question. But I would suggest that the problem of the initiation of a complete long range agricultural policy is equally as urgent and is one that must be faced without delay. (Hear, hear.)

We were reminded by you, Sir, in your speech during the last session, of the urgent need for the organization of the Defence Scheme, and we found it possible to give that argument some measure of support when speaking on a matter whose urgency has only become apparent recently. But I submit that where agriculture is concerned the urgency for some more definite policy of development has been apparent ever since the Department of Agriculture was founded in this Colony, and while recognizing the need for and the urgency of an internal defence, for which there is so much support in the Colony for Your Excellency's point of view, I believe that a most important contribution to Imperial defence may well be not the production of a large body of armed troops, but a well organized food production. I submit, therefore, that assistance for agriculture is as vital and urgent a problem as the reorganization of the King's African Rifles at the present time.

The agricultural community is the backbone of the country, but without industry and natural resources it cannot struggle to make good when essential support from Government is lacking. Funds apparently can be found to meet the heavy expenditure for defence, and I sincerely hope that at the same time the vital necessity and urgency of finding funds for the development of agriculture in Kenya will not be lost sight of, a really well thought out, well founded and well recommended scheme with funds for that policy, and not merely palliatives to fritter

away on doles to farmers struggling on from day to day at the expense of the fertility of their farms, and on innumerable committees and commissions, and on meagre subsidies for moribund industries. The individual officers of the Government Department, I feel sure we all agree, have done noble service both in the field and in the research stations, but I am afraid that the farmer and planter have seen so little co-ordination in the Agricultural Department and not a little of departmental jealousies, that there seems to have been little or no forethought in any of the recommendations made by this Department of Government.

The hon. mover made reference to a point which I think illustrates something of what I am trying to say, the question of wheat export, not only of wheat but also of pork. There is no doubt at all that the switching over to mixed farming, which we believe is necessary for this export trade in beef and pork, must be encouraged. The time has come when the industries concerned are very nearly able to take advantage of that export trade. At any rate they certainly must be encouraged to make the attempt. But I contend that it must have been known by that Government Department for years that the meat industry in England would not consider having meat from Kenya Colony until we had eradicated rinderpest throughout the country. And yet it is only now that effective efforts are really being made to implement this export trade and that it has been brought really clearly to our notice that a complete eradication is necessary.

I contend that if the Veterinary Department or the department concerned had made this clear some years ago and had really used propaganda to make sure that the farmers understood the need for stringent measures in order to eradicate rinderpest, those stringent measures would have been accepted and we would not have found that difficulty confronting us now when we are on the verge of starting that export trade.

Up to the present I think hon. members have sometimes wondered whether the farmers have received any sympathy and, at times even question whether the Government is even in favour of settle-

[Lady Sidney Farrar] ment at all. Possibly the policy was that of administration rather than of development. That is perhaps the kindest way of putting it. Such direct assistance as has been given has rarely been available until long after the need was urgent. The coffee industry is an example of this assistance being given only when farm after farm is being deserted. It is only at this point that we have any real hope and then it is only a hope because we have not been able to build on anything except that Government may venture to sanction assistance. Even so I contend that this would be too late to many of the small planters.

Again, the need was more than urgent when the Land Bank was brought into being, and then it was only brought into being with a proviso that it should be self-supporting. Loans, therefore, bore a crippling rate of interest, which for many farms has resulted either in the bleeding of the land or, at any rate, in the hopeless prospect of the owner having little or no hope of ever freeing himself of debt. Even so, these palliative measures have had to be initiated by the farming community themselves, and have to be fought for by their representatives. I submit that it is time men well qualified by experience and by easy access to relevant information, and by applying this information, should give a lead in initiating such schemes for placing agriculture on a sound basis in this Colony, and in particular to forestall such disastrous blows as have hit the coffee industry.

I submit that the Department of Agriculture has failed on this side of its work and, in the maze of office routine and the compilation of statistics, has lost sight of its most vital function in the service of agriculture in this Colony.

At a meeting held at Nakuru recently, attended by farmers representing many sections of the agricultural community, a very careful and exhaustive discussion took place as to some of the measures that would prove of practical and lasting benefit to the Colony. The resolutions passed at this meeting undoubtedly hinge on three factors: Government leadership in initiating and giving measures throughout the Colony; the arrest of soil erosion

and the conservation of soil fertility; and the furtherance of settlement schemes. The promotion and giving of assistance to these needs has been and surely is a sound justification for the raising of or extension of a loan for agricultural purposes. That, they agreed unanimously, was essential and must be faced.

Fifteen resolutions were passed which went into considerable detail and in many respects covered European and Native interests. They mention certain action which they believed should be taken in the immediate future—the provision for existing and further water supplies, the change over to mixed farming and soil erosion matters. And I would particularly mention Resolutions 12 and 13:—

"That this meeting is of the opinion that the extension of the loan is necessary for agricultural purposes."

"That, in the opinion of this meeting, when funds are made available, expenditure on agricultural development must take precedence over non-productive expenditure."

This is further summarized in the Memorandum submitted to Your Excellency, to which I am quite sure that the hon. mover of the motion entirely agrees, which reads as follows:—

"Everybody felt that the agricultural industry was at the parting of the ways, and that if timely and firm measures were not taken to consolidate and develop on definite lines, the present position of the farming industry could not be maintained and there would inevitably be serious retrogression."

I believe that the agricultural policy will certainly be much more criticized than the defence policy and may be actively opposed. We all know that the farming community of this Colony is highly individualistic and resents interference. As a matter of fact, speaking personally, I entirely agree, for I dislike control of any kind and interference in any form! But is it not possible by means of propaganda to establish and keep them in touch week by week or month by month giving them information as to what is being done and the reasons why? I am convinced that the majority of these findings will eventually receive very real

[Lady Sidney Farrar]

support, and the criticism aroused will often be illuminating rather than purely destructive.

What is wanted is a long range policy based on certain accepted principles, the realization of the need for soil conservation, assistance for the passing over to mixed farming, preferential subsidies, including railway rates which at the present so handicap the Colony which is dependent on its exports being conveyed hundreds of miles, the protection of key industries before, and not merely after, the small producer has been killed. We want a more sympathetic interest on the part of Government Departments in individual industries, and closer co-operation between those departments and between them and the Boards appointed to control these industries, and a whole-hearted recognition of the value of European settlement and the sympathetic consideration of the settlement of new farmers from the farming community of Great Britain.

These are, I submit to this Council, principles on which we can agree to base a sound agricultural policy for Kenya, adding to it, perhaps, the facing of the need for relief from certain millstones which hang around our neck, such as the Congo Basin Treaty, instead of hushed acceptance of this sacrosanct indistinctibility.

The debate was adjourned.

BILLS

FIRST READINGS

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

The Control of Fugitive Belligerents (Amendment) Bill.

The Refugees Bill.

The Electric Power (Amendment) Bill.

The Penal Code (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, 17th August, 1938.

Wednesday, 17th August, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 17th August, 1938, His Excellency the Governor (Sir Robert Brooke-Pogham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

BUSINESS OF SESSION

HIS EXCELLENCY: I wish to say that in view of the present rate of progress it is proposed that we should sit this afternoon in order that we may get through the business of this Session. But I will make a definite statement on this later on in the morning.

MINUTES

The Minutes of the meeting of 16th August, 1938, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By SIR ARMIGEL WADE:

Sessional Paper No. 3 of 1938: Central Roads and Traffic Board Report on Programme of Road Improvement.

Registrar General's Annual Report, 1937.

By MR. MORTIMER:

Annual Report of Commissioner for Local Government, Lands and Settlement, 1937.

ORAL ANSWERS TO QUESTIONS

No. 23—KIBOS ROADS

MR. KASIM asked—

Is Government aware that no proper roads have been made in the Indian settlement area at Kibos to bring farm products to the railway station, since the allotment of farms to the Indian settlers in 1904?

Is Government aware that the existing tracks, which pass through black cotton soil, are hardly passable even in the dry weather?

Is it not part of the Government's obligation to provide all-weather passable roads for the farming community, and will Government give an assurance that the necessary funds will be included in next year's Estimates?

MR. MORTIMER: Government is aware that no proper roads have been made in the Indian settlement area at Kibos for the conveyance of farm produce to the railway station.

Government is also aware that the existing tracks are in need of improvement.

It is not, however, part of Government's obligation to provide all-weather roads for the farming community in the Kibos or any other area.

At this stage no assurance can be given that provision will be made for this purpose in the 1939 Estimates.

No. 27—GULLING OF CATTLE, KAMBA RESERVE

MAJOR CAVENDISH-BENTINCK asked—

Will Government give an assurance that adequate steps will in future be taken to ensure that the very necessary culling of cattle in locations in the Kamba Reserve is carried out in the fairest possible manner, normally proportionate to the number of head owned by each individual, due consideration being given to those who only own one or two beasts?

MR. HOSKING: The answer is in the affirmative subject to the proviso that it is Government's policy to relate the number of cattle to the land and to brand for retention only as many as the grazing can sustain. Orders have been given under which any owner of less than four head of cattle will not, at present be affected by these necessary measures.

No. 28—CATTLE AUCTION TENDERS

MAJOR CAVENDISH-BENTINCK asked—

(a) Will Government inform Council what tenders were received for the auctioning of Kamba cattle, and the terms of such tenders?

(b) If it is a fact that the tender accepted was not the lowest, will Government please explain why the unusual course was taken of accepting the higher tenderer?

MR. HOSKING: (a) Eight tenders were received. The terms of tenders are confidential and therefore cannot be disclosed.

(b) The lowest tender was 4 per cent and there were good reasons for not accepting it. The tender accepted was 14 per cent and the reason for its acceptance, among other reasons, was the great advantage of dealing with an auctioneer resident at Machakos.

LORD FRANCIS SCOTT: Sir, arising out of that, is it not a fact that a very reputable auctioneer, who was also a resident in that neighbourhood, did tender 4 per cent lower than the accepted tender?

MR. HOSKING: Your Excellency, in reply to that I would say that a tender was received from an auctioneer of repute but he was not a resident in that district. He was resident adjacent. His was not the lowest or the highest tender.

COL. KIRKWOOD: Your Excellency, may I ask why the tenders were not put through the Tender Board?

MR. HOSKING: I see no good reason for them to be put through the Tender Board.

COL. KIRKWOOD: Your Excellency, further to that, again, may I ask if it is the policy of Government to use the Tender Board to decide upon which tender is approved or not, is it left to the District Officers to accept tenders at 4 per cent higher than the lowest?

SIR ARMIGEL WADE: Your Excellency, I think we should have noticed of a question of that kind.

COL. KIRKWOOD: I think it is a very easy question to answer, and I think Council is entitled to know why the Tender Board was ignored in this particular case and why the natives have got to be handicapped by a 4 per cent higher rate on the tender for the sale of cattle.

SIR ARMIGEL WADE: Your Excellency, I would ask that notice should be given of the question. It would be dangerous to answer such a question on the spur of the moment and without having the papers here at the moment to refer to. That is why I suggest that we should have notice of the question.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I might point out that I have not had any answer to my question.

No. 29—IMMIGRATION OF GERMAN NATIONALS

COL. MODERA (Nairobi South) asked—

(a) What is the incidence of the immigration of German nationals into Tanganyika Territory during the years 1931 to 1937 and the first six months of 1938?

(b) What is the incidence of such immigration into Kenya Colony during the first six months of 1938?

SIR ARMIGEL WADE: (a) No information is available to Government regarding the incidence of German immigration into Tanganyika Territory.

(b) The answer to the second part of the question is 49 males, 28 females and 10 children.

LADY SIDNEY FARRAR: Your Excellency, with regard to the Question 29, will Government give some information as to the number of aliens entering Kenya across the Tanganyika border and the precautions taken to ensure their restriction and the payment of the £50 deposit.

SIR ARMIGEL WADE: Your Excellency, I would ask for notice of that question.

No. 35—FOOT AND MOUTH DISEASE CURE

COL. KIRKWOOD asked—

What action, if any, has Government taken to investigate the reported discovery of a cure for foot and mouth disease?

MR. MULLIGAN (Acting Director of Veterinary Services): The Department of Veterinary Services keeps in close touch with research in every part of the world in connexion with foot and mouth disease, through the scientific Press.

Reports have recently appeared in the local Press concerning vaccines prepared in Denmark and Germany. Danish vaccine appears to be still in the experimental stage. German vaccine has been used in the field, and, it is stated, given immunity for from two to three months at least, but details of the method of preparation have not yet been published.

QUESTIONS OUTSTANDING

COL. KIRKWOOD: Your Excellency, might I ask when I might expect an

answer to the two other questions I have put in; with reference to the Kitale Native Hospital, and the other with reference to the Advisory Council on European Education. I just want to know whether they will appear on the Order Paper of the Day during the present session or not.

SIR ARMIGEL WADE: Your Excellency, there will be other questions for answer on the Order Paper tomorrow. I cannot be certain that these two will be answered tomorrow but I hope so.

MCMILLAN MEMORIAL LIBRARY BILL

PETITION TO PROCEED WITH

A petition to proceed with the McMillan Memorial Library Bill was read, in accordance with Standing Rule and Order No. 97, by the Clerk.

The question was put and carried.

AGRICULTURAL POLICY

MOTION: DEBATE RESUMED
The debate was resumed.

LORD ERROLL: Your Excellency, I am of course a whole-hearted supporter of the motion before Council, and I support it with all the more sincerity because I feel, and have felt for some time, that we in this country have been trying to put the cart before the horse. By that I mean we have been told, and we were reminded of it by the hon. seconder yesterday, on frequent occasions that we were expected to find large sums, and to my mind terrifically large sums, for the purposes of the defence of this country. We have, I think, shown ourselves quite willing to contribute what we can to the general defence of the Empire, but we also know that we may be called upon for other expenditure for group hospitals, etc., and also for the appalling state of our roads; in that connexion we have a sessional paper to-day to show that further expenditure is necessary on that. But very little has been said about any financial assistance—to use the words of the motion—for the development and consolidation of the agricultural industry in this Colony.

As the hon. mover indicated yesterday, the entire economic structure of Kenya is based on agriculture, and unless this

[Lord Erroll]
industry and the various industries making up the general agriculture of this country are nursed and developed there will be no possibility of finding any funds for the matters which I have already enumerated, nor will there be any necessity for finding these moneys as there will be no one to defend. There may be a few old crocks left for the hospitals, but there will certainly be nothing to put on the roads.

The two previous speakers have between them most ably covered a very wide and large field in their speeches, and I think it is up to those of us on this side of the Council in supporting the motion, to speak more specifically on certain subjects.

I make no excuse, therefore, in urging on this Council the absolute necessity of assisting the coffee industry of the country at this time. We know that the crisis which has hit that industry is likely to be of limited duration only. It is unnecessary for me in this Council to reiterate the state in which the coffee industry is in, for it is known to all hon. members and also to all those who take a general interest in the affairs of the country.

I would like to stress one point which the hon. mover made yesterday, and it is that for some years now the average export value of this crop has amounted to over three-quarters of a million pounds, that is to say, roughly about one-third of the total export value of the European export crops in this country, and in value it is, of course, by far the largest single crop we export from Kenya. Apart from that, I would mention that the industry pays to native labour in the country, and has done for a period of years, something over a quarter of a million pounds per annum. This sum of money is, of course, distributed through the reserves. It goes into the Indian dukas and a certain amount finds its way back into the coffers of Government. With reference to the proceeds of the coffee industry the Indian dukas take about £45,000 for maize every year and about £100,000 for general farm purposes. So, in effect, this industry has an enormous economic effect upon the whole country.

We are in this country exceedingly fortunate, I think, in one thing, and that is that the particular type of coffee which is grown here is in increasing demand in the world markets and the peak of consumption has not yet been reached. I think there is a certain amount of confusion in thought about the difference between the mild and hard types, and people are inclined to think that there is too much coffee in the world. This is not so. Admittedly the hard type produced in Brazil is very much over produced, but the mild type can still demand a premium.

The policy which was initiated by Brazil at the end of last year we all know and I will not go into it in detail, but it has brought about a severe crisis in the coffee industry not only in hard coffees but also in mild coffees. This has very severely hit the coffee industry of Kenya. What actually has occurred, of course, is that the industry has been built up under an enormous umbrella which has now collapsed, that is, as far as Kenya is concerned, but it affects all the coffee growing countries in the world. I should like here to quote from the memorandum of the Coffee Board on this particular subject. They say this new policy of Brazil's has led the governments of other coffee growing countries to provide special measures of assistance and relief and also primarily—and this is the important part—to ensure the continuity of a high level of production for coffees falling within the 'mild' category."

It is obvious, therefore, that the maintenance of a high level of production is of paramount importance to the industry in Kenya, as such maintenance will assist rapid recovery when conditions become normal. Any serious fall off in production at the present stage in the industry will inevitably mean a loss of buying interest and a consequential withdrawal of buyers from the local market.

Kenya coffee planters have, during the last few years, made tremendous efforts to reduce the cost of production and they have now, I think, got down to an absolute minimum. The average cost of production over the last four years has fallen by £25 per ton. This is an enormous saving and I think it is a very great effort on their part. The cost of

(Lord Erroll) production to-day is £34.16 per ton. During that same four-year period the average price level was £38.8. Since the 1st of December, 1937, and up to the 30th June of this year that price has fallen to £33.3. Hon. members will realize that this means a deficit of 21 shillings to the planter and, of course, they cannot be expected to carry on under those circumstances.

The Coffee Board issued a questionnaire, as all hon. members are aware, a short time ago and the answers to this prove quite conclusively that planters have had to cut down, for lack of finance, firstly their manurial programme and secondly their efforts to combat pests and diseases. I think that shows that they are in a most serious position. We cannot allow, to my mind, a lack of finance to ruin the good quality name of Kenya, nor can we allow what is just as important, and some may even think more important, and what is specifically mentioned in this motion, we cannot allow them to ruin the fertility and productivity of the soil which must occur if finances are not available for these purposes.

I think I have said enough to show two things: That the coffee industry is worth preserving because the world demand is likely to increase rather than diminish so long as the levels of production and quality are maintained, and, in order to maintain these levels, financial assistance is now urgently required. We are aware that the Coffee Board has put up two proposals to Government with regard to finance. And I might mention here and I think I might remind hon. members firstly that this finance is only needed for a limited duration of two years to enable these assets to be kept up to a high level, and secondly, the amount necessary will be between £150,000 and £200,000 which I do not think is an exorbitant amount when you realize the economic influence of this industry on Kenya as a whole.

The first method by which they proposed to assist the industry was by a direct subsidy upon production, and the second was by direct loan upon production with a guaranteed payment of interest at 3 per cent by the industry as a whole, subject to a scheme of repayment of

capital over a period of years when the average price level has reached an agreed datum line. It is not necessary here to go into the implications of these two methods or proposals, that is for the financial experts and the Coffee Board to fight out between themselves.

I do hope and trust, however, that whether these methods are adopted or not some agreement will be come to as soon as possible on this question. Otherwise, we may very likely and almost certainly lose a great deal of the coffee industry.

Another way of helping the industry is, of course, by increasing the margin of Empire preference. I quite agree that this would help the coffee industry in the future, but it is a long range policy and cannot be of any help whatsoever at the present moment. I want to stress that there is a definite urgency to get some help now.

There is another aspect of this question, and a very difficult aspect indeed, but one we cannot shirk and it is this: Although we are all anxious to help the coffee industry as a whole we cannot afford at this stage or ever perhaps, to assist financially the uneconomic planter, nor can we afford to keep a man growing coffee on land which is unsuitable for that crop. And I agree entirely with my hon. friend Major Joyce when he says that these uneconomic farmers should be helped to change over to some other kind of farming. As I said earlier, we must have two definite schemes; one to help not the uneconomic, but the economic planter to carry on until the times are more normal; and one which is to help and assist the uneconomic planter of coffee to change over who is a man—and there are many of them—who is already an asset to the country but may be a greater asset if he was helped to grow something more suitable to his particular farm.

We want two schemes—one to help the coffee industry and another to change over the uneconomic planter. Any assistance given to the latter must be strictly controlled. We do not want him to spend money on frivolities but to spend it on such things as fencing, dipping and the purchase of stock. It is true, I think, to say that in certain districts, not in very heavy coffee producing districts, but in

(Lord Erroll) other districts, that coffee can be grown as part of mixed farming operations and pay its tithe to the annual farm budget.

In conclusion, I would like to assert once again that the coffee industry is absolutely essential to the economic structure of this Colony; it has over many years now shouldered a very large proportion of the taxation of Kenya, and that in the teeth of a world crisis over which it had no control, immediate assistance should be forthcoming. I would stress that the problem is above all things urgent and one which cannot be left another day, and I urge on Government and on the Colony that it is absolutely essential to have some financial assistance for this industry as soon as possible, and if any loan can be raised for agricultural purposes might I ask that the coffee industry be given priority of place?

MR. COOKE: Your Excellency, in supporting the motion before Council, I shall confine my remarks to reflections on the destocking campaign.

I should like, if I may be permitted, first of all to say that when this Council sat in April I felt pretty strongly about this matter, because I felt that the methods it was proposed to adopt might change the feelings of a loyal and friendly people. But I was dissuaded, and quite rightly, by my colleagues sitting on this side of Council, not to bring the matter up then, because it was felt that it might embarrass Your Excellency's Government.

I think the hon. Chief Native Commissioner and the hon. member Mr. Montgomery will bear me out when I say that on several occasions since I have brought this matter up, and they were good enough to allow me to discuss it. I mention this to show that I am not wise after the event.

I should like to make it clear that any comments I make are not against the policy of compulsory destocking—because I feel that drastic destocking is necessary—but I shall criticize the methods which have been adopted. I should also like to make it very clear that anything I say is in no way a reflection on the officers at present in the Machakos Reserve, because I think they are carrying

out a very distasteful policy in a very fine way. All my reflections, I am afraid, are directed against gentlemen on the other side of Council who, it seems to me, have displayed almost a cynical indifference to the consequences which may arise.

If I may be permitted and I am not wasting the time of the Council, I should like to indulge in a very brief retrospect on this policy of culling.

As my hon. and gallant friend said yesterday, it was first taken up by the Ulu Farmers Association in their very convincing and able memorandum which they presented to the Ormsby-Gore Commission. That Commission, I think I am right in saying, recommended that destocking take place. In 1925 Sir Edward Denham, then Acting Governor of Kenya, in a despatch to the Secretary of State, stated that the veterinary officers were at that time conducting an investigation in the Machakos Reserve and he hoped very shortly to carry out a policy of destocking.

Yet nothing was done. No doubt it was one of those soporifics which this Government from time to time administers to the Secretary of State! In 1929, the Daniel Hall Report was published, which also recommended destocking. It is interesting to record that the late Lord Delamere, with that presence he so often displayed, recommended that if destocking took place there should be a loan to the local native councils to establish their own fertiliser factory. That would have obviated any criticism that the present factory is being run for the benefit of Messrs. Liebig's, a most unfair reflection.

In 1931, during the depression, there occurred an unrivalled opportunity to pursue this destocking campaign. Prices of cattle were low, natives found great difficulty in getting money for their taxes but, instead, there was an intensive and extensive campaign of cash crops production in the Machakos Reserve, thus enormously increasing the problem we are called on to solve to-day.

We next come to the Carter Commission Report. That Report, as everybody knows—the chairman was a man of unrivalled experience, one of the members

[Mr. Cooke]

was probably the most distinguished administrative officer the Colony has ever produced, and the other was a well known and old settler—that Commission's Report recommended that certain steps be taken and, as we know, the Secretary of State accepted those recommendations *in toto*. But, if I may call them, the pundits of Secretariat Hill knew better than Downing Street and they completely disregarded the advice of this Commission composed of distinguished and able gentlemen, and followed their own.

The recommendations of the Commission were, briefly: that before any destocking should take place, there should be a committee to go into the matter; they recommended also that for the first one or two years nothing but the maimed, halt and blind should be seized; they recommended possibly subsidising a factory; they recommended that before anything should be done an intensive educational campaign. Well, Sir, not all those recommendations were followed, and that is my chief criticism to-day.

Then we have—I hope I am not saying something I should not say now—a very unwise and provocative measure taking place; and that was, I consider, the drafting of the King's African Rifles for training in the reserve. That could have only one possible implication to the natives concerned; that it was the intention to use force, and as Edmund Burke said:

"When peaceful methods fail force remains, but when force fails nothing remains."

Dealing with the cattle of these people, it seems to have been completely overlooked that we are not dealing with a sack of potatoes or a load of turnips, but something which essentially enters into the tribal life of the people, something customary, and something almost religious, and for that reason it does seem to me that great circumspection should have been used from the start.

Your Excellency in your speech the other day, made a very apt quotation from Dean Swift. May I be permitted to make two quotations, one from the Royal Commission on Agriculture in India which, dealing with a precisely similar situation to that which occurs in this country to-day, wrote:—

"We prefer to wait the growth and development of a strong public opinion in its favour rather than to incur the risk of a premature resort to legislation which might bring the whole scheme to odium."

The other is from Lord Cromer:—

"It is wiser to put up with an imperfect reform carried with native consent than to insist on some more perfect measure executed in the teeth of strong although often unreasonable native opposition."

The word "unreasonable" I think might be emphasised.

To us it seems entirely unreasonable that natives should take up this attitude, but there are a great many unreasonable people in England. For instance, when the re-housing movement to abolish the slums took place, it took people a long time to see the need of it. And when the question of a census came up in England 150 years ago, it was rejected by the House of Lords, who said that the making of a census was contrary to the law of nature and would bring all sorts of evil on the English people! So that, after all, we were thinking about the same way ourselves some years ago.

I have no doubt it is said that speed is necessary. Speed often is, but if by speed you destroy the confidence of the natives it does not seem to me to be a very wise course. It may also be said by the other side that we have not lost the confidence of the natives. Well, Sir, I will not mention anything because it may be used elsewhere, but if we still have the confidence of the natives they have a mighty funny way of showing it!

No doubt we shall be told that agitation has been responsible. I have no doubt that agitation has been behind it, but agitation cannot flourish on infertile ground, and the best way to remedy it is to remove the ground from underneath the agitators' feet. The cause of the agitation is there. It is there in the grievances of the people, and those grievances, I understand, are roughly these: that prices have been low in consequence of the compulsory sales, that heifers and breeding stock have been seized, that absentee boys like askaris, personal boys, domestic servants, and workers on farms have had their stock seized.

[Mr. Cooke]

I submit that there was too little propaganda before the start. Was wireless, for instance, used? Did we employ a cinematograph? Did we send a sufficient number of officers into the reserve? because, after all, when undertaking an important work like this you have got to spend money on it.

I am afraid that a good deal was left to minor officials, because this Colony is probably understaffed with administrative officers at the moment. I need not remind Your Excellency that we on this side of Council are often accused of being oppressors of the natives, but there is no greater oppressor than the minor official himself, and possibly that took place.

There is also the question of lack of money; I think the hon. Provincial Commissioner, Central Province, alleged that reason last November. I think that lack of money is a poor excuse, because there never is much difficulty in obtaining money where white settlement is concerned, and I submit that no expenditure of money is too great to retain the confidence of these very friendly Kamba people. Might I suggest that some means of subsidising Liebig's could be devised, or Government should put aside a sum of money every year to pay the natives a higher price for their cattle? That might go some way towards alleviating their feelings.

I have no more to say, except to submit that the present methods—it is not the policy I criticise—are the very negation of all wisdom and statesmanship. I make a personal appeal to Your Excellency to interfere before it is too late. As the hon. and gallant member Major Joyce said yesterday, no prestige whatever will be lost and a great deal of trouble may be avoided. Firmness there must be, but firmness, I submit, tempered with mercy and wisdom.

We talk about trusteeship, etc., but this is merely sounding brass and tinkling cymbals unless we retain the confidence of the Africans. Our efforts must be to produce a happy and contented and actively loyal lot of natives, and this cannot be brought about if we really insist on a sort of passive acquiescence to our authority.

COL. KIRKWOOD (Trans Nzoia):

Your Excellency, I rise to support the motion, and I hope that anything I say will not be taken in the form of criticism, but I do propose to endeavour to put it in the form of advice. I am also conscious that Government has done a very great deal for agriculture, and that the difficulties of agriculture are probably exercising their minds at the present time more than it has done in the past.

It will be noted that on the Order paper to-day the motion following the one we are now discussing stands in my name. I propose to endeavour to incorporate that motion in the present motion and, after that has been cleared out of the way, to withdraw mine and thus facilitate the business of Council.

I want to take up one point mentioned by the last hon. member, when he said the prices of the destocking sales were too low. After all, experience is better than theory. I have purchased some 250 head, and the prices I paid were Sh. 14, 16, 24, 28, and 33—all young stock and all very small. I certainly can honestly say that the first 50 I bought will take me 12 months before I realize my money, and I have to move them into my district with the expense of rillage, etc. I do not think that the hon. member's statement was quite fair criticism.

Speaking to this motion, I should like to mention at the outset that, at a public meeting recently held in Kitale, three resolutions were passed, of which the one on to-day's Order paper was the third.

The first was:—

"That in the opinion of this meeting, if any real agricultural progress is to be made in this district, it is essential to inaugurate a definite agricultural and stock policy without delay."

I hope everybody will agree with the principles enumerated in that resolution.

The second was:—

"That, in view of the serious position of the agricultural industry, every possible step should be taken immediately to make provision for a change-over policy into mixed farming, and that finance be made available for such purposes as dipping and fencing—

[Col. Kirkwood]

and purchase of stock, such finance to be made available on special conditions through the Land Bank."

The third resolution was:—

"That in order to ensure the success of the change-over policy, it is imperative to have a veterinary officer and an agricultural officer who has specialized in animal husbandry stationed at Kitale, to deal with the stock problems which are daily increasing, and to give advice and help to those who are embarking on stock farming, as an essential part of mixed farming."

That is the motion which I have on the Order paper in my name.

Those three resolutions are very sound resolutions. They also will give you the impression that, in my own district anyhow, we know what is wanted and we are endeavouring to help ourselves. I suggest they should be implemented by Government in some shape or form.

Council is aware that agriculture is the key industry of this Colony, and it is likely to remain so for any time we can visualize to-day. That being so, there is nothing too much which can be done to keep the agricultural industry on a sound basis. It has passed through very severe crises since 1930 to 1937. Take maize prices, for instance. The average pool price paid out by the Kenya Farmers Association from 1933/4 to 1937 was Sh. 3/55 a bag, which was under the average cost of production.

We have in the past discussed this matter, and some four years ago, after many meetings, we succeeded in persuading the Land Bank to earmark £40,000 for the turnover to mixed farming in the Trans Nzoia for the purpose of dipping and fencing, with special conditions, etc. Unfortunately, the district at that time could not see its way to involve itself in any further loans from any source whatever. I maintain that that was wrong, and I am quite sure the farming community realize they were wrong at the time. It is a policy of development of that particular part of the country, and since then they have been changing over without having accepted that loan from the Land Bank. During the last 18 months to 2 years 42

dips have been built in the district or are in course of construction.

The changeover is taking place, and the great difficulty, I realize, is that while for dipping and fencing money is procurable from the Land Bank, I do suggest that the Land Bank should be more sympathetic and generous as regards the purchase of foundation stock to assist in the turnover. No assistance was provided by the Land Bank of this Colony, and I suggest for consideration that a sum of not less than £10,000 should be earmarked for a limited time by the Bank for the Trans Nzoia people who wish to buy foundation stock and accelerate the changeover, so that money will be available, not necessarily to people on the Bank at the present time, and with conditions to be made as easy as possible.

My remarks also apply to other districts and would have my support if they wish to turn over, and thus not only help their own district but the Colony in general. I am perfectly satisfied from my own experience, which is not inconsiderable, in agriculture that it is essential that changeover should take place and be accelerated as far as possible by assistance and sympathetic consideration from Government, not only in my own district but throughout Kenya.

We ask also in these resolutions I have read out for a veterinary officer to be stationed at Kitale. I am told by some of my friends, who ought to know, and I think they ought to know better, that a stock inspector is a more valuable asset to the district than a veterinary officer. I must confess that that leaves me cold that a specialist can be beaten by a non-specialist at his own particular job!

I hope I shall be excused if I mention two or three instances that occurred in my own knowledge and in my own district. In one case a man bred horses, and something went wrong with them. There is no veterinary officer, the nearest station is 45 miles away. His beat is from Kisumu to Kapenguria, if not further. Imagine such a position for a veterinary officer to be in! For that reason I did ask some time ago a question regarding the research officers at Scott Laboratory and the field veterinary officers in the Colony. Council will remember that there was a

[Col. Kirkwood]

shortage of both. I hope the opportunity has been taken by the Director of Veterinary Services (Mr. Daubney) in England during his holiday to secure these necessary officers, who are absolutely essential to keep Scott Laboratory going and the veterinary officers in the field.

As regards the other officer we have asked for, an agricultural officer, trained in animal husbandry, he would be very valuable, because not only on the agricultural side but he would have had a great deal of experience on the animal husbandry side. He would be a most valuable man indeed in propaganda advocating the changeover, and in also giving advice to the different farmers throughout his area, such as on dipping, precautions as to ticks, fencing, subdivision, intensive grazing and rotation grazing. This is all tied up with the one subject.

I myself am trying to do what the Colony might have endeavoured to do at the Colony's expense, to improve the value in the carrying capacity of the land in this Colony. I have up-to-date kept records to show that I have carried not less than 100 head of cattle continuously on 100 acres, for 18 months back, and in the last six months that 100 has increased to 140 head, still on the 100 acres, and grass is increasing. I have no hesitation in saying that by the end of next year it will carry 4 beasts to the acre on that 100 acres. In my own country, New Zealand, they have succeeded in carrying up to 10, and in some areas like Waikato 6 and 8 is not uncommon. It is not a question of dipping with them, but of paddock fencing, intensive grazing and rotation grazing.

These are the main questions I request Government to give serious consideration to. It may be seen a parochial point of a district point, but we do know what we want, and we want to help the Colony by helping ourselves by developing that Trans Nzoia District, which is admitted by everyone to be unsurpassed anywhere.

On the general question, as regards agricultural policy, I will deal with that in a summary at the end of my remarks.

As regards the Land Bank, I want to draw the attention of Council to the fact that the interest of 6½ per cent is far too high, and is impossible for any agricultural community to pay. I suggest that if Government increases the capital to somewhere about a quarter of a million, they will not only increase the capital for the benefit of the Colony but will be able to decrease the interest by increasing the capital; the overheads will proportionately remain the same as they are to-day.

As regards the changeover, I will quote paragraph 82 from the Hall Report to show that this is nothing new and is not something raised for the purpose of debate:—

"82. The Commission is fully convinced of the necessity for building up a system of mixed farming, if the agriculture of the Colony is to be placed upon a stable foundation. Such mixed farming is just as necessary to the economic maintenance of the fertility of the soil as to the production of immediate income. In all countries farming has proceeded from an initial system of exclusive crop growing to the establishment of mixed husbandry."

It goes on then for a page and a half which I will not weary you with.

As regards foundation stock, I have already mentioned in passing that I hope Government will earmark not less than £10,000 for this purpose. It will help to accelerate and increase any turnover both in Uasin Gishu and elsewhere if you make the money available say in the next six months. I would also ask for more sympathetic consideration from the Kenya and Uganda Railways and Harbours for lower agricultural rates. Agriculture, I know, has preferential rates on the railway to-day, but I maintain that the railway should use some of that money to develop the Colony rather than to make the huge profit they are making. When one reads the balance sheet of the railway it needs seeing to realize the millions of pounds that have been put away, which means that the basic industry of this Colony is paying more than it should do to allow them to make these profits. I am quite certain it will not interfere with the successful running of the railway if

[Col. Kirkwood] these profits were cut down by another 25 per cent.

With regard to the veterinary officer, as I stated a few moments ago, there are three horses, thoroughbreds, that had some infection in the form of a disease over six weeks ago. The Veterinary Officer has, I admit, seen them and he has done something for them, but he has not seen them during the last four weeks. These horses are suffering and are likely to be destroyed, all for the want of veterinary service. Then comes Col. McCall, who was the late Veterinary Officer in Tanganyika Territory, and who settled in Trans-Nzija; he had two valuable bulls imported from England. One has been down and whether it is still alive or not I cannot say. But that beast could not stand on its feet for over six weeks before I left and that is over six weeks ago. Another bull, worth a considerable amount of money has died. Most people pay, pay in an endeavour to improve their stock by importing animals into this country, and to improve conditions in the dairy industry, and I consider it is not asking too much that veterinary service should be made available. There are many other cases which I do not propose to quote, because they are indisputable.

With regard to the Scott Laboratory, I do hope Government will take the necessary action to fill up the vacancies that exist there. I was also going to suggest that His Excellency in Council should go into the question of the staff of the Scott Laboratory and the maintenance of an adequate staff. The levelling up of course comes in. It is not at the moment, but certainly, a little time ago, the situation in the Scott Laboratory in my opinion was a very serious one indeed.

There is the question again, and a very big question on which little has been said, and that is the question of settlement, and when I talk of settlement I am talking about installing people of our own race, of our own tongue and with our own ideals. I think that if a sound, well thought out settlement scheme was made available by Government they would be perfectly justified in raising the necessary money and carrying out a settlement

scheme on loan funds. I do not think that even a million pounds would be too much.

We have a contingent liability of 5½ million pounds, but I do not think for a moment that we are likely to pay it. It is a contingent liability and it is a disability in raising funds. I will suggest that if the home authorities who regulate to a great extent the destiny of the Colony gave a little sympathetic consideration and granted, at your request, a loan of £1,000,000 to spend on our own people in this Colony they would be doing more than we could be likely to do by talking here for the next twelve months.

With regard to the native side of agriculture, I would suggest that improvement of the native stock is essential. It is far below the average it should be, and it would be quite an inexpensive operation to improve the stock by 25 per cent in the matter of two or three years, by introducing the best type of bulls from one of the reserves into another, and by destroying or castrating or otherwise by sending to the factory those animals that are not likely to improve the native herds. I would also suggest that the Government policy towards the natives should be to increase, as far as possible, and encourage the production of food crops and not commercial crops. Commercial crops are all very well and I am perfectly satisfied with them, but the food crops are not being given the attention that they should be given in the interest and welfare of the natives of the Colony as a whole.

As regards conservation and soil erosion in the native reserves, I definitely state, as I have done on previous occasions, that the essential to success under that head is the control of the cattle kept by the natives in their reserves. In 1929 when the Agricultural Commission met under Sir Daniel Hall, the figure estimated in the Wakamba Reserve was 200,000. Its carrying capacity then was estimated at 60,000 head, and I am told to-day that the cattle infiltration is 300,000. It is not the fault of the present Government. It has been the result of delayed action which, however, is starting now and I hope that it will be kept going, for that the great number will have to be decreased down to a reasonable figure.

[Col. Kirkwood]

And from that, Sir, it must be quite obvious that that reserve has gone back a great deal.

I should like to quote one or two paragraphs in this very valuable report indeed in support of the action that has been taken by Government. The first and foremost is with regard to Liebig's. I do not think that sufficient propaganda has been carried out by Government to combat the ideas that appear to be held at home and also appear to be held by irresponsible individuals in this Colony that the destocking is nothing more and nothing less than to keep Liebig's factory in existence. As a matter of fact, if the report is read and understood by those people they they would realize that Liebig's is only subsidiary to destocking and is only an essential part of destocking that is meant to be carried out with profit and justice to the native.

In paragraph 117, I will not weary the Council, it says:—

"Of the native live stock, the goats constitute probably the greatest danger. They not only graze but they attack the shrubs and young trees on the higher land and so destroy the scrub and forest which should regulate the retention of water by the soil and prevent the starting of dangerous erosion. It will be remembered that to the goat more than anything else may be attributed the deforestation of Greece and other Mediterranean districts, where the former soil has been completely washed away, creating on the one hand a bare hillside and on the other swamps in the valleys."

Well, that indicates to you, Sir, and everybody else, that the goat should be exterminated. I have suggested it before and I will have the temerity to suggest it here and now. The first step towards the eradication of the goat should be by the extermination of all males over three months, to the gradual changeover then from goats to sheep. But the question is not going to be solved in destocking if in destocking the cattle and the goats are to be allowed to increase, for that is what is happening and that is the tendency to-day in destocking the cattle. This will mean an increase in the goats and this is

not going to help conservation or the prevention of erosion in the reserves.

If you read paragraph 121, it says:—

"It is not too much to say that a desert has already been created where grazing formerly was good, and where even cultivation existed, and that the same desert conditions are steadily approaching the land at present carrying stock and cultivation. The droughts of the past two seasons have intensified the rate of destruction and are causing grave disturbance in the tribe. Although additional grazing has, in fact, been provided for the tribe on the Yatta Plains, the Commission is informed of several movements to take stock out of the desolated country to the Crown land to the south of the Reserve, the land to the south-east of the Nyeri Native Reserve and to the Giriama country near the Coast. This illustrates the unrest that is being caused in the tribe by the destruction of the grazing within their own country."

It is all very well to say that the destruction in their own reserves is caused by the natives themselves, but rather is it because of the delayed action of past Governments in carrying out the recommendations of this Commission, by not starting years ago.

I do not want to worry you more than is necessary, but these paragraphs justify any action taken by Government, and I hope that they will refute the criticisms that are going on in different parts of the Colony and at home.

In paragraph 122 it says:—

"Mr. Silvester, the District Commissioner at Machakos, states that about 150 bags of maize a day are being imported into Machakos and each of the neighbouring stations upon which the Wakamba are living. The members of the tribe seem for the present to be able to subsist by buying food with hoarded money but whether the supplies will last until a new crop can be harvested is a matter on which the Commission has no information. Meantime there is very little evidence of any attempt to sell stock and it is stated that members of the tribe have been known to die of starvation rather than kill any of their stock for food."

[Col. Kirkwood]

And in paragraph 123:—

"The Commission received the evidence of a member of the tribe—Munyao. He stated that he and some of the headmen are conscious of the destruction that is impending over their country; that he could specify many areas which formerly carried good grazing and are now practically desert. He stated that the majority of his people do not appreciate the danger, and are not conscious of the progressive deterioration, but took upon it rather as a temporary affair due to bad seasons. Speaking generally, they would not change their attitude towards live stock and would not part with it except under compulsion—that is the natives themselves. The paragraph goes on:

"He did not apprehend that grave disorder would arise from compulsion, provided steps were taken to impress upon the natives, through the Local Native Council, the gravity of the situation and the necessity for a forced culling of their stock."

Paragraph 124, and the last, states:—

"The Wakamba solution of the difficulties of this tribe is that they should be given more land. But there is no considerable area now open, and even if new land could be found the process of destruction would only be renewed. No space would be big enough for the Wakamba so long as they only aim at increasing the number of their stock without utilizing them."

I think these quotations are valuable and have a direct bearing on the problem before Government at the present moment.

Now, Sir, to sum up the grounds that I have hurriedly gone over, might I say that it seems to me that the problems today are the delusions of tomorrow, for the simple reason that there is no long range factor. This Commission, when they sat, helped considerably to solve the remedy the difficult problems not only in native agriculture but on the European side as well, but if nothing is done, well then, naturally the problems we thought we had solved become a delusion in a very short time.

To sum up my remarks, I will recommend in the first place the appointment of an Agricultural Minister in this Colony. I shall have to go back and quote one more paragraph in support of this. Paragraph 14:—

"Some of the considerations that have led to the demand for an unofficial Minister of Agriculture have also suggested the formation of a Council or Board, which would meet at regular intervals."

It is quite a long paragraph and I think if hon. members will take the opportunity of reading it on page 4 of the Report it will not be necessary for me to carry on with it. But I think it is a very valuable suggestion indeed and gives a great deal of food for thought and discussion. But looked upon probably from the constitutional point of view, it is a move that may not be sanctioned by the Secretary of State for the Colonies. But I do not agree that the difficulties are impossible to overcome, and I am quite sure that if it was put forward to Government, Government would consider it and consider it favourably, and I think we will go a long way towards solving the difficulties of this Colony if we had an Agricultural Minister responsible to this Council. He would be open to criticism and he would have to justify himself, but I think it would be a very great move in the right direction. It also ties up in this paragraph 14 a Board of Agriculture. It was visualized in that Report that the Board consist or is made up of 9 members.

I would suggest as a second recommendation of policy that the Agricultural Board be revised at an early period and the number of members be reduced to bring it down to a working number, and let them have an unofficial chairman not tied to the agricultural officers for help.

The Land Bank and 6½ per cent interest: if you increase the capital you decrease the interest. That is, I think one of the major ways of helping, as so much money is wanted for agriculture. The Land Bank could lend money out and carry out the suggestions embodied in the Report. That is only my suggestion for helping the change over to mixed farming, etc., and to make money available.

[Col. Kirkwood]

Settlement: An early settlement scheme for our own people, if necessary by loan funds, remembering that the man who is at the present a farmer should have sympathetic consideration and the first consideration.

On the native side, the goat question has got to be tackled and destroyed by some way or other. I suggest the method of extermination, unless somebody else has a better one, but I suggest in all sincerity that that should be done. The type of native cattle must be improved, probably through imported bulls from other areas and also the extermination of the weak strain. The crops of the natives should be food crops. And as regards the water policy, I think a very large number of water bore holes is required in different areas, especially in those areas where the cattle have got to go some miles and in doing so destroy all the grazing. And I am afraid there is another thing, there are many boring plants lying idle in the Public Works Department. I think it is a scandal that they should not be used to improve the water supplies in the land and especially in the native reserves.

I suggest also that an area of land between Nairobi and Mombasa should be appointed for getting farmers on that land. If the Asians are to be taken seriously they should be encouraged on that land and should be assisted if that inducement is required (it would not be very big) by the Colony and the Railway, if only to fill those empty spaces between Nairobi and Mombasa.

The K.U.R. & H. should reduce their rates on agricultural products and the Scott Laboratory should be brought up to strength and further officers should be appointed to that laboratory, which is one of the best assets between here and South Africa.

With these few suggestions I hope I have not bored Council. On these questions one can talk almost indefinitely but I have tried to keep them down to headings and I will not weary you any further. But I hope Your Excellency will give my suggestions your blessing.

Council adjourned for the usual interval

On resuming:

MR. ISHER DASS: Your Excellency, more than once in this Council I have given the assurance that any criticisms I make must not be taken as directed against any person or persons, or against unofficial members of Council or Government members.

There is one thing before I actually speak on the motion: I request Government to take some kind of immediate measures before it is too late, as suggested by the hon. Member for Trans Nzoia, that the people in the Trans Nzoia are being sorely tried.

Speaking on the motion itself, the motion may be divided into five parts.

The first part is "the importance of agriculture to Kenya." No one in this country can deny that. The second part is that measures should be adopted for the development and consolidation of the agricultural industry. Here again, no right thinking or sensible man will deny this request. Some kind of immediate measures should be taken for the development of the agricultural industry.

The third part asks that measures be adopted in connexion with soil conservation and pasture regeneration. Every right thinking man should do exactly the same thing. I am perfectly sure that Government is as anxious as the settlers themselves to adopt such measures.

The fourth part is the question of "drastic and rapid destocking" measures. Having heard Sir Daniel Hall's Report and other reports, no one can deny that there is soil erosion in this country and that it needs some kind of remedy. You, Sir, in your opening speech also suggested that your Government was very anxious to take all necessary measures in connexion with tree planting, the closing of certain areas to grazing, and so on.

The last part of the motion is, that in carrying out a policy of destocking in connexion with soil erosion, any measures taken for this purpose should be such as to cause the least possible hardship to the natives concerned.

Discussing these parts one by one, I do not entirely agree with the hon. member when he said the land, which is undeveloped to the extent of 86 per cent, in

[Mr. Isher Dass]

the possession of European farmers is due to soil erosion in the native reserves or in other parts of the country. I do maintain, and have spoken about it in this Council, that we have in this country farmers of three different kinds. There are genuine farmers interested in agriculture, and they are very useful indeed to the community; in trouble and depression they deserve every word of sympathy. In fact, I feel exactly as the hon. European elected members about them, as Government feels for them, and as every right thinking man should feel for them.

Then we have retired officials and officers settled on farms. That may be very good from the Imperial defence point of view, but when it comes to the agricultural industry, I do not for a moment think that they form any part of the backbone of the country at all or are very useful for the industry.

Then there is the third kind, who, for no reasons deserve anybody's sympathy, and they are the remittance men. Some are remittance men, sent out here from England, he can do well who never did well and will never do well here.

There is only one class which deserves sympathy, and assistance, which deserves that Government should take all measures to encourage them, and they are the residents who are going to be very useful for the country as a whole. Here, again, when the unofficial elected members representing the settlers ask for assistance, and we also sympathise with them and support them, we do not whip the willing horse. We have to see if, after all, Government may not be directly responsible not to the people of this country but rather to the home Government. Government also has some limitations. The resources in the possession of Government are not so wide as to permit of any kind of suggestion of help or means to be adopted; always it must be whether Government can afford it out of the general revenue or limited resources, and that is another question.

Government, I must admit, has been most generous in dealing with this genuine class of settlers. They have in the Masters and Servants Ordinance all

kinds of monopolies for wheat, butter and maize, and were also given financial assistance by the introduction of the Land Bank by loans, and every possible assistance Government could afford, they have given. But when these genuine settlers ask Government to meet every possible demand made by them, it seems rather impossible even for Government to give all they are asking.

There again the opposition of some Indians and the Indian elected members comes, that is, that these genuine people, in co-operation with other classes, make this lack of support by Government a demand for self-government or for further control in the financial affairs of the Colony or for constitutional advancement. Therefore we say, while they have our sympathy and Government is willing, and we are willing, to co-operate because their case is absolutely genuine, there are limitations. We say that before they make demands, they must remember two things: beggars cannot be choosers, and that they must always cut their coat according to the cloth, so that Government's policy is there.

That is all I have to say in this connexion.

I am very glad hon. members on this side of Council, and particularly the hon. mover and the hon. Member for Trans Nzoia, pointed out in their speeches that agriculture does not only mean one section of the community, but all sections, natives as well as Indians. There is an Indian industry at Kibos which needs a good deal of assistance in road making, and I hope Government will not overlook them and will try to help them, particularly in the reduction of freight on joggrey. Similar assistance was given to the coffee industry, and I see no reason why the same concession should not be granted to the Indian farmers at Kibos from Kisumu and different stations in Kenya.

The last, and the most important, point with which I shall take up a little time of Council, is the question of the destocking policy.

As I have already mentioned, I admit there is a question of soil erosion which needs very careful and immediate measures to deal with it. I believe a destocking policy is part of the permanent

[Mr. Isher Dass]

policy in connexion with soil erosion, but the methods adopted have certainly not been fair nor correct.

In March, 1926, the Crop Production and Live Stock Ordinance was passed in this Council, and until 1937 no action seems to have been taken under that measure by Government. If during those years some kind of action had been taken, I personally agree that there would never have arisen the necessity of taking the harsh measures which have been taken now. I am not alone in that criticism. Here is a newspaper which is by no means the mouthpiece of anybody except perhaps the European settlers, the *Kenya Weekly News* of the 5th August, 1938, on page 11 of which is written:—

The Root of the Trouble

The root of this trouble is not by any means entirely because of any action of the Government of the moment, but is largely due to want of action by the Government in the past. This destocking problem should have been tackled years ago, certainly nine years ago when Sir Daniel Hall made his report. The whole of the veterinary activities in the pastoral reserves should in the first place, have been directed to propaganda, showing the need for culling, and when that need had been impressed on the natives, then properly organised culling should have been carried out under official supervision and direction. That the native is peculiarly susceptible to propaganda, the way this sit down strike has been carried out is only one more illustration, and if the Government itself will not go in for propaganda, then I am afraid that other, and less beneficial forces, will.

I maintain that no reasonable action has been taken during these 9 years. If sufficient propaganda had been carried out among these natives, I am sure that in their own interests they would have certainly agreed to some kind of reasonable method being adopted by officials in carrying out a destocking policy in connexion with soil erosion.

Before I proceed, I must point out here the potential value of cattle to the natives. In March, 1926, the then hon. member,

the late Mr. McLellan Wilson, speaking on the Crop Production and Live Stock Bill, said:—

"I would like to state that we are dealing with a class of people whom I have seen follow this procedure in a time of famine. I have known natives sell first their children, secondly their wives, and thirdly their stock, in order to get food for themselves."

I do not agree with this, but here you have a statement from a person that the value of live stock to these natives is exactly the same as cash or money to civilized people. We cannot ignore it. It is a vast part of their social life and custom, and we have to consider all these things in the light of the Africans and not from our point of view.

When dealing with such a serious problem as destocking I believe a tactful form of measures should be taken and, as the motion suggests, they should not in any way cause hardship to the natives. But I maintain that the measures adopted recently have been definitely against that spirit and have caused hardship. Whatever measures Government have taken since December, 1937, in this connexion I do not know, but I know that whether it was carried out in the spirit it should have been is a question for Africans to decide themselves and Government officials.

But here is a memorandum submitted by the Wakamba in April, 1938, on the measures adopted. It is addressed to the Right Honourable the Secretary of State for the Colonies and the Governor and Commander-in-Chief of Kenya. The reading of this letter will give an exact and true impression of what is actually in the minds of the natives. It will also show how far they were willing to co-operate and agree to all the methods adopted, provided those measures were not harsh. The memorandum states:—

"Right Honourable Sir,

We the undersigned, members of the Mkamba tribe in Kenya Colony, beg leave most humbly and respectfully to petition in the following manner:—

2. We are a pastoral and agricultural community occupying as our reserve the lands near Athi River Station on

[Mr. Isher Dass]

the Kenya and Uganda Railway—a station some 15 miles from Nairobi.

3. Recently a European firm and company has erected a factory for the canning of beef and other meat products, on lands adjoining the said Athi River Station.

4. It seems that, as a result efforts are being made by the administration to ensure a steady supply of cattle for slaughter at that factory.

5. The said factory adjoins European owned farms where cattle are stocked.

6. Whether, because there are no, or not enough European owned cattle to keep the factory going, pressure is being brought to bear on our tribe to dispose of our stock.

7. It is being stated that our reserve is overstocked and such overstocking is the root cause of soil erosion and that is being made the excuse for compelling us to sell our cattle to the Company owning the factory, at a price being 1/3 or 1/4 (or even less) of the ordinary local market price. Ordinary prices vary from Sh. 50 to Sh. 100.

8. We beg to instance a typical example of the methods employed:—

(a) At a place called Matungulu in the Machakos District a baraza was held by the District Commissioner and the Akamba were told outright at that baraza that the Government had decided that the Akamba cattle (both male and female) would be sold by force at a price fixed arbitrarily—Sh. 12, so that they may be reduced in number, and that those which were not compulsorily sold would be branded with a Government mark. There was distinct unanimous opposition to such forced selling and after discussion it was agreed that the baraza should be held at a later date at Machakos, where there would be a larger representative gathering.

(b) Accordingly another and a larger baraza was held at Machakos on 10th February, 1938. The officials presiding at the barazas

again expressed their 'view' viz. that stocks in the district must be considerably reduced and those left must be branded on the forehead.

(c) Akamba elders disagreed with the principle of forced sales but pointed out that there were markets all over the district and that any companies wishing to purchase cattle should do so at those markets at market price.

(d) The baraza was adjourned to the 2nd March, 1938, and the Akambas told the District Commissioner that they had come to the final conclusion that they did not intend to sell their cattle other than in the ordinary way, i.e. if and when any one owner wishes to sell to satisfy his needs.

9. It should here be emphasised how stock is regarded by the Akamba. With us cattle represent our wealth and we do not wish to change by force that form of wealth which is bound up with all traditions of the past and is generally a part and parcel of our social system.

10. Money (silver coins and still less paper) has no attraction for those pastoral people, neither can it be kept and the general level of education has not yet created the wants and desires which will make money as such something to be valued for its own sake.

11. We feel that it is—to say the least—a strange doctrine which lays down that one should not possess more than a certain number of cattle, or more than a certain amount of money for that in effect is what the order means.

12. We cheerfully pay our taxes and would equally cheerfully pay more each according to his means, if the extra taxation were for our benefit, education, and general uplift and the progress of our district, but the policy of compelling even the poorest among us—those who have three cows must sell two and keep one—to contribute to the profits of a wealthy concern, is not understood by us.

13. In these circumstances we sent you the telegram following:—

"We representative Wakamba tribe strongly protest stop Kenya Government forced our cattle sold

[Mr. Isher Dass]

without our consent stop beg no action be taken immediately our petition follows Kenya Government notified.

14. As this memorial is being signed, comes the report that more cattle have been forcibly seized and sold.

We therefore pray that you will issue instructions for the discontinuance of this policy of forcible seizure and sale of our cattle."

That is signed by three of the Wakamba.

After submitting this memorandum, no right thinking man will blame the Africans that they were not willing to cooperate or did not agree that there was such a thing as soil erosion for a policy of destocking to be carried out, but they had some objection to and protested against the methods employed by Government all along until the 28th July, when we had 2,000 Wakamba with their children and women walk into Nairobi.

It has been argued that there may be some force behind this. It has been suggested by the local Press that some people were trying to make material out of the issue. I sincerely hope hon. members will not take notice of any such statements but believe them for what they are worth, for such statements made in the Press that these things were carried out at the instigation of an agitator do more harm than good. It may be suggested that I was one of them, but I was in India until the end of June.

On the 28th July we had 2,000 men, women and children come to Nairobi to protest against the methods adopted in their reserve. And here comes the whole unfortunate tragedy of the case. It was rumoured in the town and rumoured among the Africans, that these Africans had decided to march on Government House to protest in person to Your Excellency. Having heard such a thing, I personally went with friends of mine among the natives and told them that that was not the right kind of policy, that they should never attempt such a thing, because I know personally of a similar incident that took place in 1922 when Wakikuyu were shot.

They listened to me, and I advised them that the best method to be adopted by them was to write a very respectful letter to Your Excellency with a copy to the Chief Native Commissioner. The letter was very simple, and reads like this:

"May it please Your Excellency,

I, on behalf of the Wakamba tribe, having been duly authorized to do so, humbly beg Your Excellency to grant me with others, an interview in connexion with our grievances about the forced sales of cattle.

There are over three thousand Wakamba men, women and children in Nairobi now near the Native Market who await a favourable reply from Your Excellency.

I beg to remain,

Sir,

Your humble servant,

Samuel Mwindi.

At that moment, in order to avoid any native being seen in or around Government House or even in the Secretariat and thus causing an impression which might lead to an unfortunate incident, I volunteered myself to act as a messenger and carry that letter of humble request to Government House and the Chief Native Commissioner in person. The letters were delivered. At Government House I was directed by the A.D.C. to proceed to the Chief Native Commissioner's office. I went and delivered the letter, and I must say that the hon. Chief Native Commissioner throughout those four, five or six days was very sympathetic and he was most considerate. Where we disagree with him is on the question of the talk of official prestige.

I advised, and suggested in all humility, that it would be a very easy thing for him to grant an interview to the Wakamba, or a deputation only, because 2,000 or 3,000 people would in no circumstances be granted an interview. He was kind enough to listen to the suggestion, and gave me a letter to be handed over to the Provincial Commissioner of the Ukamba Province, and it was delivered in the market where the Wakamba were sitting.

[Mr. Isher Dass]

I was told to go away from there because I could not understand the language of the official baraza being held. Before I left, I appealed and asked for an assurance from the officials there that the police would not under any circumstances take any harsh measure against these people, and where humanly possible to give means of service by Government and the Municipality so that some kind of comfort would be provided the unfortunate women and children who were not to be blamed for any political demonstration or for attending their husbands in such demonstration.

The assurance was given to me, but to my regret, while there was no harsh action taken by the police, no comforts were provided. It could be argued, what possible comforts could Government provide, and especially for people who had marched to Nairobi to protest against Government methods? I have made it clear that these women and children could not be blamed, and the least Government could have done was to provide them with not shelter or blankets but a little bit of fuel or charcoal to keep them warm. It has not been done.

They were told that evening that a deputation would interview the Chief Native Commissioner, and if only that had been done and the interview granted, as I humbly suggested, these people would have been satisfied by the persuasion and reasonableness of the Chief Native Commissioner. But, I do not know who did it, a clause was put in that unless the others left the station the deputation would not be granted an interview.

Here my objection is and my criticism is, that whenever such a demonstration is held and a deputation is granted an interview, no such provision should have been made or condition attached, because the very fact of interviewing these people and moving the rest out of town would have created the impression in the minds of the raw natives that the deputation would be arrested. In other parts of the world, I have seen it in England, when demonstrations are held such as hunger

marches, the position is the same: that while the deputation is interviewed the rest of the people are asked to keep quiet. But they are never turned back because no men, especially oppressed people, who are the people suffering, like to be away from those who are going to interview.

These natives absolutely refused. The deputation should have been given a chance to interview the Chief Native Commissioner, and afterwards the people would have gone away.

The next morning, at 9 o'clock on the 29th, I interviewed in the company of Samuel Mwindi the Provincial Commissioner, Ukamba Province, and the District Commissioner in his office. Whatever I say now I said to the Chief Native Commissioner, the same expressions, words and ideas. He promised he would convey this suggestion of seeing these people and the removal of the clause or condition of the other people leaving the town, and said the Chief Native Commissioner would probably consent to waive this condition and grant an interview. I am very happy and grateful that the Chief Native Commissioner did accept the suggestion, and the deputation had an interview at 2.30 p.m. on the 29th.

The deputation promised after leaving the Chief Native Commissioner that, whatever the gist of the conversation was, it should be conveyed to the 2,000 Wakamba sitting near the market. I have reason to believe that, whatever conversation took place, the gist of it was honestly and genuinely conveyed by that deputation to the rest of the Wakamba sitting near the market, and I should like to be contradicted if that was not so.

These people, after hearing the statement from the deputation, agreed that they would move, but they wanted the Chief Native Commissioner to give them in writing whatever he said in conversation. That position as agreed by them would have saved the whole unfortunate affair to-day. But an unfortunate thing happened. How was that decision of the masses conveyed back to the Chief Native Commissioner?

[Mr. Isher Dass]

At 4.15 p.m. on Friday the 29th July, when it was decided that the message should be sent to the Chief Native Commissioner to ask him to give it in writing. I am sure that if any official there had conveyed the message he would have definitely agreed to give it in writing and these people would have moved from the town. But at 4.15 p.m. exactly, when I was there, these people were told by the Commissioner of Police that if they did not leave at 9 p.m. the same evening the 2,000 people would be arrested.

Naturally, these kind of tricks did not create any good impression, especially in the minds of the people whom your Government and officials and European community and local Press admit is one of the finest of loyal tribes in the country. I am quite sure that, if we are so anxious or conscious of our prestige and talk of official wisdom, this threat would have created more impression if it had been carried out. But, because it was not and it was never intended it should be—it was only a bluff which spoiled the position.

When they were told they would be arrested, the news was conveyed to the masses again, and the masses said that they would like to be arrested at 9 p.m., but they were not moving out of town.

When the same message was conveyed to me, I went to the Chief of Police and told him it was very unfortunate, but was it the wish of the Chief Native Commissioner that if these people did not move away at 9 p.m. they would be arrested? He said no, the Chief Native Commissioner had nothing to do with it. I asked if it were in accordance with the wishes of the Municipal law that prohibits natives staying in town more than 36 hours without a pass? He said no. "Then someone must be responsible for the instructions", I said. "I am not willing to discuss with you whose responsibility, but I am going to say that the Chief Native Commissioner had nothing to do with it whatever, but I shall not discuss with you who was responsible for the instructions", he said. I said, "All right, but I will ask a personal favour: will you kindly convey the

wishes of the people to the Chief Native Commissioner that they will move out of town if they are given in writing what he said in conversation?" He said "No, the Chief Native Commissioner in unmistakable terms made it clear to this deputation that he was not giving any writing, and whatever he has said they must clear out of town."

There comes the difficulty, and that is exactly the unfortunate position created that evening, which has been the cause of all this unpleasant controversy. Whatever you may call it, agitation or anything else, that is the cause of the greatest hardship these men, women and children are suffering. It may be argued that the men are quite a willing party to it, but no one can argue about the women and children.

Feeling that a very unfortunate thing had happened, I immediately telephoned Government House, and asked that a message be conveyed to Your Excellency to grant me an interview so that I should be able to explain. I had an interview with you, Sir, on the Saturday, the 30th, at 12.30 p.m. What I have said now I conveyed to you. There is one thing: I appealed to you, Sir, that the Governor would have created a much better impression in the minds of the people, that whenever there is a difference between the rulers of a district and the people concerned there is someone impartial, who is willing to act in an impartial way, in a just and faithful manner. If you had refused to grant an interview, but had pacified these people by just going there and showing your face, they would have been absolutely satisfied. But such refusal is most probably and likely to create an impression in the minds of the more sensible people, Indians, Europeans, and others, that probably Your Excellency is quite willing to stand by every act, whether right or wrong, of your officials.

If that is the attitude of your Government and you, Sir, I say that all kinds of suggestions of trusteeship or equity are very very unfortunate, and are not true. Even the local papers and the European papers agree with the suggestion that

[Mr. Isher Dass] the refusal on your part was very unfortunate. I do not suggest for a moment that there is any political reason, but from a humanitarian point of view, the welfare of the natives is more to you than anything concerning them, not only as an individual but as the representative of His Majesty's Government in this country.

The natives talk of you in their own language as the big Bwana, as their father. Even in this *Kenya Weekly News*, on page 9, it says:—

"I regret that this request to see H.E. was refused. Again it is a question of native mentality. They naturally do not look on the question from our point of view. They do not see that the Governor must support his officials, their predominating idea is that when you cannot make any progress with the officials, then the right thing to do is to see the Big Bwana."

I say with all humility and respect that your unfortunate refusal was a step that no right-thinking man could approve. Leaving aside all question of you being impartial, you are just the man in whom every individual has faith and, as a last resource, the man who should listen to these grievances and, under any circumstances, you should have agreed to pacify these people, which would more than have satisfied them than hundreds of bluffs to persuade them to leave town. In all sincerity, I say the position will remain the same if you do not see them. If you appear just to satisfy them that there is someone impartial at the head of Government, you need not say more than this: "You people can go back, and I will see that your grievances will be heard." That is all, a couple of innocent words spoken with all sincerity would have done more good than any amount of suggestions of threats or bluffs.

But, unfortunately, it has not been so. It did not take place, it did not happen, and I do not believe that any head of department should confirm whatever is done by a subordinate official. It is not the right policy. The policy of Government should be at the moment as it has been all along, to rule people, but with

co-operation, with mutual understanding. You cannot rule people against their wishes.

Unfortunately, some officials seem to think that their prestige and their dignity are much more, and in every way they are to be considered as superhuman beings, than the welfare of the country they are supposed to govern as Government servants who are paid for their labour from the general revenue.

That is just the whole unfortunate position in connexion with these Wakamba who came here to protest against the methods adopted.

Since then, nothing has been done, and everybody in this Council will agree, even the extreme of extremists among Europeans, and Indians also, that these people have acted in a very, very peaceful manner, giving no trouble to the police or the town people in any way. Therefore, I think there is time before it is too late when I suggest, what is the good of keeping so many people, when the Municipality even objects, both in the interests of health and in the interests of the Wakamba themselves and of their women and children, that you, as head of the Government, very kindly see them to try and pacify them.

These people agree to the policies initiated by Government. But before I sit down, I will say that there are measures which Government can easily adopt in connexion with the destocking policy if it is to be carried out. If you grant them an interview and they have not been pacified and moved back, the best thing is as suggested in some newspapers, it will not be out of place for you to spare a few moments, as you have done before, to have a baraza in the Ukamba Reserve, and ask these people whether they wish to co-operate with Government to carry out a policy of destocking.

I am perfectly sure that if things are explained, they will be quite willing to co-operate and suggest methods themselves.

If possible, while the destocking policy is being carried out, could land be made available for the grazing? After all said

[Mr. Isher Dass] and done, we have got land in this country. Government is in possession of it and knows where the land is situated, and it can find some surplus land near Machakos. Even at the cost of spending some money out of the Native Betterment Fund or some other fund, land could be bought and made available for grazing. If that were done, I personally believe that Government would not be doing the wrong thing, and at the same time the people will co-operate in a policy of destocking.

Having said all that, I hope Your Excellency of your Government will see to it that no kind of any harsh measures will be taken, in the interests of the people concerned, for it will do them no good unless the matter is carried out with their co-operation. Besides, Sir, as head of the Government it is up to you to act in the most impartial and just manner as in the past. If your officials are wrong in adopting some of the methods or in carrying out the policy of Government, without hesitation it will not be out of place to ask them to modify their attitude. After all we are all human and are not infallible, but are liable to make mistakes as individuals. It is better always to act in a faithful manner, and wherever there is wrong it should be adjusted. Where there is right it should be appreciated.

I appeal again, that whatever measures Government adopt in their policy of destocking, it should be done with the co-operation and willingness of the people. As I have indicated, they are willing to co-operate, and I ask Your Excellency as head of the Government to see whether you can grant an interview to these people, otherwise no useful purpose will be served. After all, prestige is something which is earned by good deeds. If good deeds cannot create an impression in the minds of innocent people, no amount of force or oppression against those people will create that impression.

I support most wholeheartedly the motion which has been moved.

MR. KASIM: Your Excellency, too much has been said in connexion with the destocking of cattle, soil conservation

and developments of the agricultural industries of the Colony. I am of the opinion that more attention should be paid to the needs of the Kibos Indian farmers.

I would like to emphasize the need of encouraging the natives to grow cash crops on a larger scale in the native reserves, and the dual policy should be adhered to. More agricultural officers should be engaged in the native reserves. It is a recognized fact that it is in the interests of the Colony as a whole to encourage the natives to grow cash crops and increase their spending power and, on the other hand, the natives would be easily able to pay their taxes and there would be more money going into circulation and the Colony would easily balance its budget.

MR. WRIGHT: Your Excellency, after listening with extreme reluctance to the pulmonary efforts of the last speaker—whose concern seemed to be to use this motion chiefly as one to cover his self-assertive orations—I would like as briefly and as quickly as I can to come down to the issue of the motion before us.

I support the motion, for it is one designed to elicit from Government what their agricultural policy is, and also to get their comments on the constructive ideas put forward by the hon. proposer and seconder and subsequent speakers to the motion.

We are all agreed that there is a real need for a long range agricultural policy, and some of us believe that Government indeed must have such a scheme. But it is only fair to tell Government, and the debate has made it clear, that the feeling is abroad that there is a dangerous complacency prevailing and that Government to-day in this Colony still fail to realize that agriculture is the great determining factor in the wealth of Kenya and that they are tardy in making provision for its future.

I do not seek to speak about the long range view on agriculture. I want to stress the need for immediate action.

We have heard of a loan and we all speak in the same strain about the need for a change over. I am a great believer

[Mr. Wright] in mixed farming and I am convinced that it is necessary, but a change over in agriculture is not so easily effected as at half-time on the football field. It is a slow process and a tedious one that is apt to be rather expensive, and I would urge the heads of departments concerned, as I deal with this issue, to realize by what ways they can expedite that process.

I will first begin by a reference to the Veterinary Service. We know the disabilities they suffer to-day; their research division is short and their field division is short by a complement of five men. It has long been so in that parlous condition, and it is no comfort to the settler to know that no expert advice or facilities are available or that the laboratory staff is so overworked that serum or vaccines (or whatever it is issued in order to give the protection which it is hoped to give in a case of rinderpest) that that serum, in one or two cases, has been in such a bad condition or so inactivated that it has been virtually useless.

I do not want to prefer a grave charge against the Veterinary Department, but I know where there are cases where stock owners and settlers have done their own vaccinating and very thoroughly; whether by virus or inactivated vaccine, they have done it. But I do know, however, that settlers who, in spite of having taken all the proper precautions, have suffered grievous losses in their herds of cattle. I am prepared to give full particulars if required, but I use that as an illustration of the need of getting essential services put right.

If, after a long interval, a lack of full strength in laboratory research continues, if the Colonial Office cannot supply us with University-trained men—as the Colonial Office invariably stipulates—let us go to the Colonies for such men or, alternatively, even to Austria, where research work is just as advanced as in the home country. The point I want to emphasize is that we cannot afford to be without these essential services, and this is a dominant factor if we are to urge on this change over.

Now another point which upsets at present a change over: In 1929 the Dipping and Fencing Ordinance was passed but, owing to the cost—and it was the cost, presumably to Government rather than to the settler—it was held in abeyance. Now for some time an excellent system has been prevailing in this country. Timber cutting licences have allowed a settler to do certain buildings, dips, fencing and so on. The Forestry Department unfortunately appears to be looked on by Government as a revenue earning department when in fact its function should be for the benefit of the country. In dealing with climate, rainfall and soil conservation, and notably in the matter of supplying royalty-free fence posts, that department could help this change over, and the farmers as they are to-day, enormously.

The modern practice in the management of farm pasturage is that paddocking should be done from within outwards; boundary fences are not so essential. A mistake was made in the Ordinance in 1929, and much money we have seen wasted or which has subsequently proved to be wasteful and largely unnecessary is through boundary fencing. I would urge that while keeping in view the revenue side of a department, its activities which might be of help to the agriculture of Kenya should be chiefly borne in mind.

There are other disabilities which the farmer suffers and which should be touched on here and now.

It is a reflection on transportation arrangements that it takes two nights and a day to bring trucked steers from Nan-yuki to Nairobi, a matter of 130 miles, while I believe that even the minimum period for the journey is 24 hours. That fat cattle for the abattoir for slaughter should be kept in trucks for 36 hours with consequent bruising and damage with harmful results, is a reflection on the efficiency of the present system of transport.

Other matters applying to mixed farming are equally overlooked. One hears of people who want to improve the condition of their flocks of sheep, for as the pasturage improves it is only logical that sheep should follow cattle. And

[Mr. Wright] it is a bit disheartening to find that it is very difficult to import Merino rams and ewes from Australia, and it is not also very cheering for the prospective sheep farmer to know that there is no system laid down for the improvement and control of the wool industry which is becoming a very important one. It is most disappointing of all to realize that there has been no freight reduction in wool on the railway for some twelve years. These are all factors which affect the change over and the need for Governmental help other than in cash.

Overstocking is another important question. But when we realize that in certain reserves it is proving very difficult indeed to arrest grazing not on account of the stock but on account of the herds of zebras, then we realize that another Government Department has to step in. Such is the position in the Samburu Reserve for, with all the good will in the world, cattle control by moving them from one area to another to rest the grazing while leaving zebra to do an infinite amount of destruction would prove absolutely futile. The one thing alone cannot be dealt with; overstocking cannot be dealt with unless the game question is dealt with at the same time—that is my point.

To return to the main charge, I am waiting, impatiently rather, to hear Government's view as to what can be done and has been in contemplation and how soon it can be effected. Clearly a loan is indispensable to prosperity and it has got to be a pretty big loan.

I would urge Government to go into the question of that loan, accept it courageously, believing that as the land is the one and only permanent and irremovable asset in Kenya so also the land of Kenya, from a borrowing point of view is a gilt-edged security.

DR. WILSON: Your Excellency, I must say that when I first read the wording of this motion last week I was rather in doubt as to what useful purpose it would serve. In fact, to use a slang expression, I did not think it would "cut much ice". But I must confess that after listening to the speech of the hon. mover

I was converted. One must agree with the main contention of the motion as presented by him and one must admit the value of the discussion. Speaking of my conversion, I have to admit that during the course of the debate I was in some danger of backsliding, and in fact at one stage I nearly subsided into my state of original sin!

I think the hon. mover stated his case very reasonably and convincingly. In the course of that speech he covered a great deal of ground; of course it is quite impossible for me to attempt to cover all that ground or to refer to all the points that have been raised during the further stages of this debate. I can only refer to one or two points.

I was particularly glad to hear—I am going back to what I should like to say I think has been the most interesting feature of this debate and that was the opening words of the hon. mover—I was particularly glad to hear him refer to the need for some encouragement of industries. How he managed to work that into a speech entirely devoted to agriculture I am afraid I do not know, but as he has succeeded in doing it perhaps I might be allowed to follow his example for a moment. He was talking about village industries, and I should like to extend that to larger manufacturing industries. I should like to see some recognition by Government of such industries as the one recently opened near Nakuru, where a start has been made on tanning and shoe-making and blanket weaving and other most important and useful manufactures. With the encouragement of such manufacturing industries, and with the promotion of these village industries, I think that agriculture, though it might still be of "paramount importance to Kenya", to use the words of this motion, would not be the only consideration. However, with that brief digression I will get back to the question of agricultural policy.

I admit that in the past I sometimes viewed these demands for an agricultural policy with some suspicion, because in my own experience, it seemed to coincide too often with a demand for an agricultural subsidy. But that is not the case as presented by the hon. mover of this motion though, without using the word

[Dr. Wilson]

subsidy, financial assistance has figured rather largely in subsequent speeches.

I welcome this motion particularly because it refers to that part of an agricultural policy which concerns the native reserves. It was to this aspect that the hon. mover paid particular attention, and he treated it, I think, in a very sympathetic manner. It is unfortunate from my point of view that this motion particularly refers in its wording to a restrictive and suppressive measure—drastic and rapid destocking—rather than to measures of assistance and development. And I think it is rather unfortunate that the word "drastic" should have been used. Strictly speaking, it may be the correct word, but to me it has an unhappy sound and I would much prefer the word "adequate".

We must remember that the proposal of destocking involves very real hardship to the natives concerned. It is a very great sacrifice that they are being called upon to make. If I may refer to an article in one of our local newspapers, the protest against destocking was compared with a protest against income tax. I do not think that this is at all a fair comparison. To take a large proportion of one's stock and sell it at any price possible is something much more severe than a levy on one's annual income. A more appropriate comparison would be a compulsory realization of one's capital, property or shares; in whatever form it might be, at slump prices. One can imagine the uproar that such a proposal as that would create. So that, if we have with reluctance and regret to resort to measures of destocking, all our sympathy must be with the natives and, in proposing such regrettable measures, I should like to avoid using a word such as "drastic", which anyway seems out of harmony with the last part of the motion and not in keeping with the general tenor of the debate.

To turn, as I must, to the immediate problem of destocking in the Kamba Reserve. No one who knows the facts can question the need for it. There is no argument about that. The only argument that can be raised is about the method to be used. Government has been blamed for the particular method adopted and I

must say that I think it was perhaps not the best. But I will say this, that I think it was the method which appeared to be least suggestive of hard and oppressive measures. It was probably adopted on that account. Other methods would, I think, have aroused more protest than the method actually attempted, not that I think too much attention need be paid to any outcry that is being raised.

I do not want to be misunderstood on this. I am not referring to cases of individual hardship, hardship resulting from the application of the method of carrying out Government's policy—that point has been dealt with by other speakers and I do not intend to refer to that myself. What I am referring to is the outcry against Government's policy which has been raised recently mostly outside the Colony. It is annoying and regrettable, but I do not think it should be allowed to embarrass Government action. Kenya ought to be so hardened now to the senseless clamour of critics—and clerics!—as not to worry too much about a little more slander and a few more lies.

If I may say so respectfully, Your Excellency, in your address at the opening of this session you stated the case perfectly clearly and perfectly fairly, and there could be no room whatever for any misconception. I only hope that the truth as stated now will overtake and overwhelm the poisonous lies which are being circulated in England at the present time. (Hear, hear.)

Now, to criticize Government, Sir.

I agree that Government should have set about this work long ago, this work of destocking, or rather, I think, preventive measures should have been taken in hand before the damage had gone so far. I think the hon. Member for Ukamba, considering his long and intimate knowledge of local conditions, was very moderate and restrained when he reproved Government for not having taken steps when attention was called to this trouble many years ago. That reproach has been taken up in other speeches rather more forcibly, and I do maintain that this is a case where prevention would have been much better than cure. And I do think Government is greatly to blame for not

[Dr. Wilson]

having realized the position earlier. Again, I think that when it was realized that—I shall have to use the word "drastic"—drastic steps would have to be taken, preparation for the campaign, or call it what you like, should have started earlier and been made more effective before the actual measures were taken in destocking. The result was, I think, that as a result of a not intensive enough preparation, action, when it came, came rather suddenly. It is always a mistake to hustle the African.

I suppose the answer from the other side will be that preparation in the form of prolonged propaganda has been undertaken. But unfortunately, words—whether threats or promises—unless followed by action have little or no effect on the average African. In fact, with a threat, the more often it is repeated without action, the less effective it becomes. So it would not seem to have been much good to go on telling the Akamba that they must get rid of some of their cattle and that, if they did not, something would have to be done about it, without taking some sort of action in the way of reducing the number of their stock.

In the hon. mover's speech there was mention of the lack of touch between the administrative officers and the people. There has also been raised that most regrettable misconception on the part of the Akamba that Government action is confined with profit-making by a commercial firm, and there is another form of misconception on the part of the Akamba which was mentioned in Your Excellency's address, their ideas about Napier grass.

Thinking over this supposed lack of touch, and the failure of the Administration to get it home to the Akamba what was intended and why it was being done, seemed to me that it is something like this. An African tribe like the Akamba is in an intermediate state between savagery—or, if that is not too strong a word, shall be say between their original state of society—and our idea of civilization; they are in that state of transition. There are certain more intelligent individuals in the tribe among whom new ideas can circulate and through them

they are communicated to the rest of the tribe. But the rest of the tribe, is not yet sufficiently educated to react to other and foreign ideas, foreign in the sense of being strange to the native mind, presented to them by external authority. That is to say, that some pernicious notions such as the evil intentions of Government, can readily become current and be widely circulated among the tribes, whereas reasoned argument and explanation as conceived and expressed by European administrative officers penetrate to the mind of the tribe practically not at all. The remedy for that state of affairs is education and closer touch between the Administrative officers and the people governed. That closer touch will be likely to result as the general mass of the tribe becomes more educated. It can happen that way but it can happen more rapidly by increasing the number of Administrative officers. But it is no use discussing that now.

The scope of this resolution, or motion, in its wording is so wide and the subjects touched upon during the course of the debate are so varied that of course one can wander on almost indefinitely. But I have taken up rather too much time already in expressing a few personal opinions on this subject, and I must stop.

I support this motion, with a mental reservation with regard to the word "drastic".

Council adjourned at 1 p.m.

Council resumed at 2.30 p.m.

On resuming:

COL. MODERA (Nairobi South): Your Excellency, never having been a farmer myself nor versed in agriculture, I had not intended to intervene in this debate, but I do not propose to detain the Council longer than a moment or two.

But there was one point which was referred to by the hon. mover and to which other speakers have not referred, and which I would like to emphasize. That is the delay in there being placed before this Council any report by the Settlement Committee. The hon. mover stated that there was probably some very good reason, and doubtless there is, but

[Col. Modera] whether it may be because of the size of the committee itself or whether because that committee contains a number of very busy men who are unable always to be got together, I do feel that we should press for some report of that committee as early as possible.

I think it will be agreed that some settlement scheme must form an important plank in any agricultural policy and that, without that spoke, the wheel of any agricultural policy which Government may form will not revolve. One visualizes that that settlement scheme will envisage control, or partial control, of certain industries, particularly perhaps in regard to the areas in which these industries can be carried out. It will envisage some recommendations with regard to undeveloped land, and will envisage finance, and so forth.

But my reason for pressing for a report is really this: that if this Government is to frame, as we hope it will, an agricultural policy containing, as it must, a settlement scheme, then we shall be in the position to go forward with that settlement scheme, to take it home, and advance propaganda which will induce white settlement for which we are all so anxious on this side of Council. (Applause.)

MR. GHERSH: Your Excellency, in speaking in support of this motion and agriculture being accepted as the most important industry in this Colony, I feel we are dealing rather with the general policy of the Colony, and I suggest this motion rather leads itself to elasticity.

I realize, and I think we all do, that the necessity for any progress is the necessary finance. It is no use urging an agricultural policy unless the necessary provision can be made in financing it, and financing the various subjects that surround it. Most of these subjects have been dealt with by various speakers, and I do not propose to reiterate what they have said. But I would like to make one or two comments, some possibly from a parochial point of view, that do occur to me.

The hon. Member for Nairobi South has just dealt with the question of closer

settlement, which is a matter I had intended to bring up, and we do feel very grave doubts about this delay in regard to this committee's report. I suggest that there should be some pressure brought to bear to extract this report as soon as possible.

Quite frankly, in this closer settlement scheme, if I may say so, I visualize not only settlers coming from overseas, but I visualize more in particular a number of the people we have in this country, both the future generation and the people without farms, who could be settled in Kenya if the necessary scheme were forthcoming, and adequate finance was provided. I suggest that they are the people we must consider first, and before any recommendations are accepted in regard to closer settlement I hope a carefully considered scheme will be formulated showing the whole of the Crown land available, its suitability for a particular crop, acreages, altitude, and so on, and that a financial scheme will be available to back the people of this Colony in acquiring land.

The hon. Member for Trans Nzoia dealt with the question of veterinary research. This is a matter I have very much at heart too, and it affects the district I represent in particular. I will not go further into details except to say that it is positively absurd to expect one veterinary officer to attempt to attend to the necessities of an area stretching from the Abyssinian border to Lumbwa. With all due respect as far as the individual is concerned, we have no right to expect that; no matter how able and willing the man is, he cannot do justice to himself or anybody else.

Another matter affecting the district is the question of police, and I maintain that this comes under an agricultural policy. In outside areas there are continual thefts of cattle, maize, as well as grass fires continually burning because there is not the right amount of control. Again I am not blaming the individuals concerned but the system. I suggest that in many instances experienced police officers are doing the work of what one may term *karanis*: they are obtaining information and preparing graphs and schedules, no doubt really required for the

[Mr. Ghersi]—benefit of headquarters, but I submit that these these officers would be far better employed doing a policeman's job in the outside districts, their places being taken by young clerks.

On the subject of roads, this leaves very little for me to say. Some of our roads are a disgrace to this Colony. There again, I am not laying the blame entirely at the door of the Public Works Department. It all boils down to the question of finance. Our main roads and district roads are being held up due to the lack of finance, and I submit that in a young Colony like this, where the roads form one of our main arteries, provision should be made for the development of adequate roads. To quote one case. We have a railway station that does not function because there is no road of access, and there have been terrific discussions about this particular road in the last ten years. At the present moment, farmers are wallowing in mud in going two or three stations away to deliver their crops. I understand that provision will be made in the Estimates next year, but I consider it is a very sorry state of affairs that this has existed for so long.

We know that £250,000 was considered to be available, or we thought it would, for a large road programme. This has now been cut to £150,000. We know that in addition the general revenue benefits to a very considerable extent by the users of the road. In other words, far more is derived from the users of the roads than ever goes into the roads. I maintain that that is an entirely wrong policy in a young Colony such as this.

If I may touch on one other subject, the question of education. It is not so irrelevant for this reason: that some farmers, due to present conditions, are unable to educate their children, and it may surprise some hon. members to know that there are children in this Colony receiving no education whatever. There is no money. Again, I do not blame the Education Department; it is finance.

We hear of a native secondary school to be erected in Uganda. In this Colony, some European children are not receiving a primary education. We cannot

afford to have in this Colony either a poor white question or an uneducated white question.

I did hope somebody would bring up the question of an experimental agricultural farm, to which a number of youngsters could be sent and trained to do their job on farms in the future.

With regard to the Land Bank, a subject also touched on, I personally feel that there is not sufficient control as far as that bank is concerned. I think inspectors should be created for the purpose of inspection of the securities of the Land Bank, and when the Land Bank finances an individual it might be taken into consideration—if it would not be better, rather than giving him cash, to finance him with actual material required, so that we do know the money is being spent correctly. After that, again, supervision should take place to see that the money supplied has been spent in the way it was meant to be.

We then have the question of rail freights which all know are, in the majority of cases, excessive. What I suggest is this: that in connection with the agricultural industry attention should be paid to fertilizers and cattle food. We know what is being done by the Imperial Government in Great Britain in this connection. They have realized the necessity of preserving the soil. I submit—I stand open to correction—but I imagine that most of the rolling stock that comes up-country (and when I say up-country I mean to the Plateau and Trans Nzoia and ultimately to Uganda) goes up empty to bring down cotton and agricultural crops. I suggest for consideration that fertilizers and cattle feeds should either go free or at very reduced rates.

During my short sojourn down here in Nairobi, I have realized more than ever the amount of unemployment among the younger generation which exists here. I submit that by a properly organized closer settlement scheme, and the proper fostering of various industries, we can alleviate that position very considerably.

I would like to touch on just one other subject, and that was really the crux of the debate, the speech of the hon. Member for Nyanza, what I term the lack of

[Mr. Gherrie]
co-ordination or foresight on the part of Government.

"We all seem to have arrived at a stage where things have happened. We do not anticipate things sufficiently, and I suggest that there is a definite lack of co-ordination and foresight. In one particular instance, this question of rinderpest. Only to-day, when people are taking to mixed farming and in that way associating stock farming, we are informed that there is no question of exporting cattle or meat until such time as rinderpest is eradicated.

I do hope Government at some stage in this debate will give us some indication of when rinderpest may be eradicated from Kenya.

I realize that while one should never over-capitalise neither should we under-capitalise. Siftically speaking, the Imperial Government should be pouring money into this Colony at the present moment, and if we are to get progress we must develop, and I think we should show the conviction we have in this Colony by going out for a large loan. I go further than my colleagues have said. When they talk of a million pounds, I suggest three, or five if considered necessary.

When one realizes what is being done in the adjoining territories and what could be done here if somebody else possessed it, it is a pity that we are starved for finance. I dislike the formation of committees, as there are so many, and a certain amount of criticism can be levelled at their heads, but a committee should be formed to formulate a financial policy, to investigate the necessities in regard to finance, and then go out for a large loan and tackle all these problems as we see them to-day.

I support the motion.

MR. MONTGOMERY: Your Excellency, I just want to refer very briefly to two points in the speech of the hon. member Mr. Isher Dass.

If I heard him correctly, he read the last part of the motion to the effect that no measures should be taken which would cause hardship to any native. Actually, of course, it is not so, and the

hon. mover has drafted his motion to read that steps to be taken for the purpose of destocking "should be such as to cause the least possible hardship to the natives concerned". The hon. mover knows as well as I do and all other members of Council know, that it is impossible to conduct a destocking campaign without some hardship and considerable inconvenience to individuals.

It would be idle to say that the position in Machakos to which reference has been made is entirely satisfactory, because it is not. But, so far as my information goes, any agitation is confined to one section of that native reserve and not to the official headmen in that area. A very good instance of that is the fact that within the last week or so Messrs. Liebiggs have bought 3,000 head of cattle without anything to do with auction sales.

The hon. Member for the Coast said there had not been enough propaganda and that Government had stepped in and had had drastic auctions at the last moment. To my certain knowledge, while I was serving as Chief Native Commissioner that is not correct.

The Crop Production and Live Stock Ordinance was produced in 1926, and if my recollection is correct Mr. Stone, District Commissioner at Machakos in 1928, had a complete scheme for destocking the reserve at that date, but Government decided, and I think wisely, that it was quite impossible to do anything of that nature then because there was no possible outlet for the number of cattle which would have been affected.

Even to-day, it has happened in these sales which have been held, that until the market became glutted the prices at first were very good; when the market became glutted prices fell. Admittedly the beasts were not well chosen, but that has been mentioned to-day; some went at Sh. 1, some at Sh. 2/50. But, as soon as the local market was glutted and the export people, Liebiggs, came into operation, prices immediately rose, and have been very fair.

There must be some hardship and there must be inconvenience to individuals, but if that tribe was to co-operate then I think there would be less inconvenience than might be the case now.

[Mr. Montgomery]

Reference has been made to the fact that the destocking campaign has not been well conducted. I am of opinion that when other reserves are tackled, I daresay that from the lessons learnt in Machakos the campaign may be conducted in another way. But I do know, and I have been honoured by being kept informed by the hon. Chief Native Commissioner of what has been happening in this reserve; I do know that in order to get the co-operation of the people they were allowed to select animals instead of a more skilled system of culling through the agricultural officers. That will happen when tackling other native reserves. At the moment, I can say that the very best course of action that can be taken is being taken.

Another point made by the hon. Mr. Isher Dass which was, I think, when he used the words "the bogey of official prestige" when he said that in a sense Your Excellency should have seen these people. I cannot of course agree that this is a grievance. You have the law of the land that certain measures of destocking shall be taken. I have just said that there are only a few malcontents in the native reserves who will not come into line, and that the official headmen are on Government's side. And it seems to me quite inconceivable that Your Excellency should see a band of malcontents every time they want to obstruct the passage of the law.

These were the points I wished to make in this debate.

MR. WATERS (Director of Agriculture): Your Excellency, I have been authorized by Your Excellency to accept the motion on behalf of Government. (Applause.)

I confess that when I first read the motion I took it to be primarily a destocking motion preceded by a simple request, and consequently I did not expect a full dress debate on agriculture in all its phases. The acceptance of the motion, therefore, does not imply the acceptance of a very large number of suggestions that have been made by hon. members of Council. However, the subject is such an important one, with agriculture being our chief source of wealth, that no mem-

ber of Council will object to the time spent on this motion, which presents a valuable opportunity for constructive debate.

In the course of my remarks I hope to dispel the illusion that Government has no agricultural policy, whether in the Wakamba, or in the other native reserves, or that European agriculture in Kenya is on the verge of collapse. At the same time, I wish to emphasise that Government is anxious to improve its agricultural policy and that sympathetic consideration will be given to the proposals that have been made.

In opening this admirable speech the hon. mover mentioned certain agricultural statistics such as the total agricultural exports, the agricultural exports from European farmers, and of animal products and so on. One of the conclusions that the hon. mover came to was that the exports of animal products to the total agricultural exports were disproportionate or unbalanced. If by that the hon. mover means that the amount of animal products should be increased, I agree. But I do not agree that crop exports should be decreased.

Several hon. members have mentioned that one of the chief usages of stock is the manuring of crops, and I know from my own experience that there are many farms in Kenya where a manuring programme would be valuable; farm manure and composting would result in greater yields and monetary returns per acre. The reason why farmyard manuring is necessary in the tropics, as in the temperate climates, is because while the weathering of the soil under cultivation in the tropics is more rapid, so is decomposition. While the future of the stock industry must be encouraged in terms of export, it is important that increasing crop exports should not be forgotten.

The hon. mover examined the Colony's expenditure on services for agriculture and came to the conclusion that 6 per cent was too little. I agree with that view. The hon. member, however, was careful to forestall any aspirations on my part for improving the services of agriculture, and suggested that additional funds should be given not for recurrent expenditure but by way of special grants or loans.

[Mr. Waters]

The hon. mover then gave his views on the policy that should be adopted. His first point was to conserve the land and fertility of the land, his second point was research in all its implications; the third was education and instruction; and the fourth was the item of finance. Bearing these items in mind, it is interesting to look at the progress of work that we have in the native reserves. I should mention that wherever an agricultural officer is stationed there is an agricultural policy not only for the district but for every location, and in every location for every altitude zone.

Taking first the precedence of work in the Central Province, the first item is "the maintenance and improvement of fertility, the control of erosion and proper land utilization will be the first concern of the officers in their respective areas." That has been the first item of work for the last two years. To continue, take the precedence of work in the South Nyeri districts, the first thing is "the prevention of erosion by the planting of suitable grass as live wash stops on the contours, the native names of which are Mugutu and Rugutu, and papier grass." After that comes "land reclamation," then "the maintenance of soil fertility," and after that "wattle planting" and so on, "beans, maize, tobacco, potatoes," etc.

The point I wish to make is that the first item that we consider to be most important is to conserve the land and the fertility of the soil. It is possible that the progress that has been made is not so much as we should like, but I am confident that it is in the right direction. The fact is that the agricultural officers in the reserves have got to know the natives by means of helping them with their cash crops (they have to get them to understand that our work is intended to assist them), and now we have got to the stage where we can use their confidence we can go a further stage and help them to improve and maintain the fertility of their soil.

In the case of the Nyanza Province we are doing the same thing. Precedence of work "soil control, management and improvement will take first place in the programme for the year," and the second

item is the "prevention of famine by planting cassava, sweet potatoes and rice growing, etc., in suitable areas."

I therefore agree with the first item in the hon. mover's list on agricultural policy so far as the native reserves are concerned.

Secondly, we come to research in all its applications. Again, applying this to the reserves; in the case of the Coast Province we have a very good agricultural station at Kibitrani, near Kilifi, and the main work there is the improvement of food crops by plant breeding. In the Central and Nyanza Provinces we have not as yet got any agricultural research stations. We have a certain number of seed farms which have had to suffice, but it is hoped that before long there will be two agricultural research stations, one in the Central Province and one in the Nyanza Province. The plants are very fully advanced and almost in final form.

The hon. mover also mentioned market research, and I would say we have a marketing officer in the Department who is in touch with the Colonial Marketing Board (he has called there while on leave), and he has also been given certain problems to unravel while he is in England.

There is the point about education and instruction. There again, all has been done that can possibly be done with the funds at our disposal so far as the native reserves are concerned. I should like to see the school at Kabete moved somewhere to the Central Province and the school at Bukuzi moved because it is not in a suitable place. But both the schools are now doing useful work, and the instructors they turn out are fulfilling their functions as useful agricultural instructors.

The fourth item, finance. In the case of the native reserves there is no finance with regard to the ordinary native farmer. We have no co-operative system of societies in this country and, so far as I can judge, and I have had quite a long experience of co-operative societies, there is at the moment no need for such societies in the native reserves in Kenya.

Coming now to the policy in the European areas, I must thank the hon. Member for Trans Nzoia for saying that

[Mr. Waters]

Government has done a great deal for agriculture.

In the case of coffee, wheat, sisal, pyrethrum, and the passion fruit industries, Government definitely has a policy and is endeavouring to carry it out.

In the case of the sisal industry, for example, the growers themselves are organized, and in addition to that there is a statutory board which controls the funds, which are subscribed to by the growers themselves and by the Government. The funds are used for the welfare of the industry and have been devoted among other things to a scheme for research into uses of sisal, especially to new uses of sisal, which is being done in Ireland and is very promising. In addition to that the Sisal Industry Committee is now planning a research station at Thika. An application has been prepared for the Colonial Development Fund in order to assist this, but sisal growers have saved up quite a considerable amount of money and are prepared to go ahead with some sort of scheme even if it is not a full scheme.

Wheat—in the case of wheat they have what is known as an agency, and they have also an advisory committee to the agency which watches over the interests of the whole industry. The Agricultural Department is constantly in touch with this committee, and whenever there is a question affecting the policy of the wheat industry the utmost endeavour is made to meet the wishes of the Wheat Advisory Committee.

I think it must be admitted that that particular industry has been served well. Not only has it been served well so far as organization has been concerned, but it has also been served well in the matter of research and in the work that is going on at Njoro by the Plant Breeder, who is doing very good work indeed. In America they have a number of scientific workers working on this problem of rust-resisting properties of wheat. But here, of course, we can only afford to have a few workers, but the results that have been achieved here have been astounding.

Next we come to the coffee industry. There again the industry is organized and

has a very strong and a very good Coffee Board and, as far as research is concerned, a considerable amount of research work is being done. The planters themselves have subscribed by means of a levy on their product something like £10,000 a year, and the Department also spends a similar amount. There is, as you know, a five-year plan of research, and in my view it is going to give very useful results. One line of research which is most interesting at the moment is the introduction of parasites of the mealy bug. I am informed that if this work is successful it will mean that the planters will be saved some £50,000 a year. Not only that, growers of sweet potatoes and other products in the native reserves will also be saved considerable losses.

The hon. Member for Kiambu quoted from the memorandum prepared by the Coffee Board on the subject of a subsidy or a loan. The position with regard to that is that Government of course has been aware that the coffee industry's prices have gone down considerably and that the coffee industry must be in low water on that account. As the industry is organized the Government awaited a memorandum from the Coffee Board, and that was received by Government on August 4th. It was a very long memorandum and it takes quite a long time to read, let alone to digest its contents, but I can assure the hon. member that Government is giving it their earnest and sympathetic consideration.

In the case of the dairying industry, I think the policy of Government so far as that butter is assisted by means of a levy on local sales. There is the possibility of introducing a Bill under which the whole of the dairying industry becomes one. The Bill is still being considered, but I understand that the reason why we have not got to that stage yet is not through any fault of Government but on account of difficulties within the industry.

If you examine what has been done—Government's policy—in regard to all the industries in Kenya, one is left with practically only one thing, and that is that the hon. members opposite require further finance for agriculture.

In the case of the control of meat export, as soon as it became apparent that there was too much meat on the local

[Mr. Waters]

market and that some outlet would have to be found, Government appointed a Meat and Live Stock Committee, and that Committee has reported and its findings are being considered by Government. I understand that a Meat Bill is being prepared by the Director of Veterinary Services who is on leave in England. Hon. members can be assured that the members on this side of Council are as anxious as anybody else that this meat export shall be facilitated without delay.

I now turn to the subject of erosion and soil conservation.

The hon. mover expressed the view that possibly we were lagging a little behind other countries in dealing with this menace. In my view we are dealing with it as fast as it is possible to do so. The attention of Government was brought to this very difficult question, or has been brought, for some years, and the result now is that, I think, everybody in Kenya is soil conservation minded. It is a subject which everybody now is quite prepared to tackle, and even some of the natives I am told are quite anxious to tangancza soil erosion. Government has shown its interest in the matter, and its concern, by the appointment of a special soil conservation service, and at present every effort is being made so that the technical data at the disposal of the officers will be as up to date as possible.

Hon. members will recollect that three officers have recently been on a visit to South Africa and it is interesting to note that, looking at the terms of the motion, one of the officers was an officer who had been concerned in grass and grass research for the last five years, while another was a soil engineer whose duty, of course, is to supply technical information for soil conservation.

In addition to that, Government has recently circulated a draft Bill called the Land and Water Preservation Bill. I hope when the hon. mover reads the Bill, if he has not already done so, he will consider that the terms in it are sufficiently drastic. It says:

"Whenever a local committee is satisfied that an owner or occupier of land within the jurisdiction of such local

committee has failed to adopt protective measures adequate to prevent erosion . . . it may with the approval of the occupier

to stop cultivation such land or to remove stock or retire such land from cultivation.

I think it was mentioned by some hon. members that, if we are individualistic, in this particular case it is essential that drastic powers should be given so that the resources of this country of ours should not be frittered away.

"The natural resources of Kenya are our heritage and should be conserved and utilized for the benefit of all our people. The gains of civilization should be administered for the benefit of the many rather than the few. Our priceless resources of soil, water and minerals are for the service and for the promotion of the welfare and well-being of all the people of Kenya."

That is from an extract from a book which deals with the natural resources of the United States of America.

The hon. mover also mentioned that at one time natives were told to dispose of their trash in lines across the *shamba*, and that they were next told to burn it. Actually the policy was changed, because we got the stalk-borer in the maize, and had to take means to destroy it. I think in the particular case the hon. member was thinking of, although they had been burning the stalks for some years, we altered the rule because the stalk-borer was no longer a menace and allowed them to put their trash across the *shambas*.

I am indebted to the hon. Member for Aberdare for giving the reason why the Fencing Ordinance has never come into operation, that the proper way to fence is to start from the middle and paddock outwards and not start with boundary fences. With regard to live fences, I think it is a very good suggestion that, wherever possible, a live fence of sisal or wattle should be used.

With regard to rubber tyres on ox-carts, I am informed that this matter has been considered by the Central Roads and Traffic Board and at the moment it is still under consideration. This also applies to a system of grids on roads which the hon. member suggested.

[Mr. Waters]

I consider that it is fortunate that there are not many more members on the other side of Council, because this particular motion, having started with no reference to loans at all, the hon. Mover spoke about a loan, and the amount of the loan increased gradually from one million pounds up to three and then five millions! However, I do not propose to comment on the question of loans and the Land Bank except to say that any proposals made will receive the consideration of Government.

The hon. Member for Nyanza spoke in rather a vague way about the various things that could be done to assist agriculture. For example, the hon. member suggested that Government should adopt a bold and long range agricultural policy. That, of course, can mean all sorts of things, and if you reduce it to an industry or to some part of Kenya then it is rather difficult to substantiate it. In the case of passion fruit, I think the Passion Fruit Board has adopted a very bold and long range agricultural policy; they are trying their best to start a new and difficult industry.

The hon. member also spoke about the astonishing lack of foresight by Government. There again, I think it can be shown that every possible policy of Government is either in force or is at the moment receiving consideration.

The hon. Member for Trans Nzora asked that his next motion should be considered with this one so far as concerns an agricultural officer who specialises in animal husbandry. I think that at the meeting at which that suggestion was made, an assurance was given by my deputy that I would station there an agricultural officer who specialises in animal husbandry. That may be done in two ways. I may take an officer from somewhere else or, as two new officers are expected this year, one of those who may be suitable could be stationed at Kitale. In that case I hope the officer will be as successful there as the officer who was stationed in the Nakuru District some few years ago.

With regard to mixed farming, of course this Department has been in favour of it for many years. I think if

you look up the agricultural reports you will see year after year the suggestion made that certain farmers would be well advised to turn over to mixed farming. That has been the advice given time and time again. I realize that so far as this motion is concerned the requirements are, as I said before, finance.

With regard to the proposal for an Agricultural Minister, I think the Agricultural Board proposed by the Hall Commission Report was to take the place of the minister. There is a footnote on page 4 which explains that I can inform Council that, at the moment, Government has under consideration a proposal from the Board of Agriculture for that Board to be reconstituted.

I have already explained that, although it is necessary that we should help natives with their food crops, it will also be agreed that we should help them with their cash crops. The hon. member Mr. Kasim emphasised that point, and while I agree that the first consideration should be food crops, at the same time I feel we should be lacking in our duty if we did not also assist natives to grow cash crops.

Two hon. Indian members asked for help for the Kibos farmers. I think those particular farmers are receiving all possible help. They have been assisted in their export of jaggery and, as far as one can judge, they are doing better than they have done for some time.

There are some other points with which I do not propose to deal, such as destocking and the Settlement Committee, and so on. These will be left to other speakers on this side of Council. The main point I wish to make, in answer to the motion, is that a tremendous amount has been done in agriculture, not only in the native areas but in the European areas; that, so far as the Agricultural Department are concerned, we are anxious to do much more, and we are prepared to do more if funds can be made available.

I congratulate the hon. mover in starting such an interesting debate, and I hope the next time he does so he will give us some better preparation by wording his motion in such a way that it will cover the remarks he has to make.

MR. LOCKHART: Your Excellency, reference has been made by more than one member to the rate of interest charged by the Land Bank. That rate is fixed by section 32 of the Ordinance, which lays it down that no loan shall be made by the Bank except at a rate of interest which covers the average rate payable by the Bank on its own capital, together with the costs of administration including provision for losses. Limited as the Board is by that consideration, which comes from this Council, it is not possible to reduce the rate of interest below 6 per cent. If it is desired to do so, it will be necessary to amend the Ordinance, and it will be necessary, in effect, to provide that if any person has a loan from the Bank and is unable to pay the interest on it, that interest will be paid from public revenue. Unless some such provision is made, the only prospect of reducing the rate of interest is that a higher proportion of interest payable to the bank shall be paid by borrowers. When that state of affairs arrives, it will be possible for the Bank to reduce the rate of interest.

It is true, as the hon. Member for Trans Nzoia said, that as the capital laid out by the Bank increases so by the fact of reducing the proportion of overhead charges the current position of the bank will improve. That is a rather slow process, and consequent upon whether the new persons borrowing pay their interest. If they do not, the contrary effect will arise.

On the general question of finance, there are at the moment, as more than one hon. member of Council knows, proposals which have actually been put forward by Your Excellency in connexion with finance for agricultural purposes. But the stage has not yet been reached when any useful purpose will be served by discussing those proposals here, though I will confess at once that they are on a somewhat less heroic scale than was suggested by the hon. Member for Uasin Gishu.

On the particular question of coffee, Your Excellency has been in direct touch with the Coffee Board, and discussions with that Board are taking place now. It is hoped that some workable scheme will be evolved. But, as the report of the

Board is examined, their proposals for the application of their scheme of assistance do not assume quite that aspect of limpid simplicity that one would suppose from listening to the speech of the Noble Earl, the hon. Member for Kiambu. There are very considerable practical difficulties of administration which emerge, but I am sure that, with the co-operation of the industry and with what I am satisfied is essential, some coercive legislation, they may be overcome.

On the financial side as far as provision for agricultural services is concerned, although this has reached somewhat the proportions of a budget debate, that is not what it is and I do not think this is the time or the motion to deal with that point.

As to the provision of loan capital, it is not a question of deciding on one million or two or three million pounds, borrowing the money and then deciding how to spend it. Finance must be related to concrete proposals, and they must be on an economic basis, and I would point out that finance is available for proposals for agricultural development put up by individuals which are on an economic basis.

I am not sure that one or two hon. members who have spoken in this debate might not be a little surprised to learn that the amount owed by the agriculturists of this country to the Land Bank is the figure of £675,000. It is being added to every week, so that finance has been made available for economic schemes of agricultural development.

I am afraid also it has been made available for some uneconomic schemes of agricultural development, and I entirely agree there is some force in the criticism made by the hon. Member for Uasin Gishu that perhaps closer supervision might be exercised in future. But to exercise close supervision requires staff, and that involves expenditure, and proposals have been put forward (they have been put forward in connexion with the Farmers Conciliation Board by the coffee interests) that some, not merely supervision but actual handling of finance and management of estates, might be taken over by the Land Bank.

[Mr. Lockhart]

It is not for me as chairman of the Land Bank Board to suggest that the Board is not competent to handle other people's affairs better than they themselves, but I am, a little, alarmed as to what would happen if that Board was charged with the administration of too many farms and estates in this country.

In view of the fact that the operations of the Board of the Land Bank are controlled by law, and the same also applies to the Farmers Conciliation Board, I rather regret that the hon. Member for Trans Nzoia should have used the expressions "unsympathetic and ungenerous" in relation to the attitude of the Board. I can assure him that the Board are neither unsympathetic nor ungenerous, but they are charged with the duty of making advances only when they are satisfied that there is a prospect of the applicant's success. They are dealing with other people's money, but I think to say that the Board or any of its inspectors are unsympathetic is—I am sure the hon. member did not mean to be unfair but I do feel that it is an unjust statement.

MR. HOSKING: Your Excellency, I too was taken unawares by the terms of this motion. I realized that I should be on my defence as to the policy of de-stocking, I did not realize that I should also be in the dock as the late chairman of the Settlement Committee!

I will take this opportunity of dealing first with that opportunity. I have been charged with undue delay in preparing a report. All I can say is that the report has entailed a great deal of work, the net had to be very widespread, and although the draft report was prepared some months ago circumstances over which I had no control delayed the production thereof. I will say no more on that subject.

I regret that the hon. Member for Nyanza should have taken this opportunity to make what I consider injudicious strictures on the attitude of Government to settlement. One of the greatest difficulties the Settlement Committee have to contend with is this attitude towards Government's policy. Government's policy was enunciated clearly by the

former Commissioner for Local Government, Mr. Logan, before he left the Colony. Let me quote from Hansard of the 1st August, 1935:—

"Your Excellency, this Government has given substantial pledges of its belief in white settlement. It has built branch railways to various hitherto remote parts of the settled areas; it has created a network of excellent road communications throughout the Colony; and it has provided less visible but equally effective and expensive services in other directions, and it yields to none in its desire to see the empty spaces filled by happy, smiling, prosperous new settlers. (Applause.)"

(Laughter.) If the applause to-day is less hearty than it was in those days, it may be that the "network of excellent road communications" perhaps is receiving some criticism at the present time!

I will now pass on to what I consider the main object of this debate, and that is the de-stocking problem of the native reserves. There are three points which I wish to stress.

The first is, Government have been alive to this problem for many years. Secondly, we have done all we can to impress on people the gravity of the situation. Thirdly, it is a problem not confined to Kenya, though I am proud to say that in Kenya we have had the courage of our convictions to strike at the root of the evil, which is overstocking. No other country has yet dared to attempt it, and we are determined to go through with it.

As to the past, I burnt the midnight oil delving through archives, but I must keep this as short as possible because I have quite a considerable amount to quote from at my feet, if not at my finger tips!

In 1924 Mr. Traill, then Provincial Commissioner, Ukamba, now part of the Central Province, wrote orders to the district commissioners to induce the natives of Ukamba to eat or sell their surplus stock. In August of that year Mr. Maxwell advised that "every step should be taken to recondition those areas which have been rendered useless through being overstocked." In September, 1925, the Ulu Settlers Association took the credit

[Mr. Hosking] of initiating the first awakening of Government to this problem by demanding the regulation of the stock by legislation and the establishment of a canning factory.

Later in that year, there was a meeting of the Chief Native Commissioner's office presided over by one Lord Francis Scott. The final paragraph reads:—

"Ultimately the Chief Veterinary Officer agreed to press on the immunization of the cattle and the Senior Commissioner, Ukamba, and the District Commissioner, Machakos, undertook to encourage a campaign of propaganda to prepare the natives for the compulsory sale of their stock."

The next letter on the file is that of the District Commissioner, Mr. Fazan, who feared this would cause a glut in the cattle market. Later, Mr. Doherty, Chief Veterinary Officer, reported that "the stock held must be reduced to the carrying capacity of the reserve, and again that native stock owners should be allowed a period in which to immunise their stock against rinderpest in order to prevent undue hardship when and if the reduction of stock was ordered by Government. The question of reconditioning the Machakos-Ukamba country has been freely discussed in connexion with these people and the grazing requirements of their stock."

Again, Mr. Trail, home on leave in 1927, wrote advising legislation to restrict the number of stock, as it was badly needed, and there was precedent for it in Scotland. In 1927 the Provincial Commissioner held a baraza in Nzama-Kuu, Machakos, and I quote from the minutes of that meeting:—

"The Senior Commissioner (that was Mr. Campbell) explained that they had all heard in barazas untold the views of Government in regard to the abnormal number of cattle owned by the Ukamba. The reserve was barren just because the Akamba did not wish to dispose of their dud stock. All the Senior Commissioners in the past have told you to kill the duds. We are trying to improve the Reserve. But you have done nothing. You reported that you would sell your dud stock and you have done nothing in the matter."

In 1929, the report of Mr. Scott Little was:—

"Generally speaking the natives seem to regard all discussion with complete indifference and scepticism. The attitude is not one of hostility but conveys the impression that nothing will happen except further talk.

It is no longer a question of removing the poor stock but that cattle as a whole must be reduced, whether good or bad, and second that in view of the fact that the natives have been told their stock will be reduced it might be as well to do it as soon as possible."

In 1930-1931 we almost succeeded in obtaining a loan from the Colonial Development Fund for the establishment of a meat factory to deal with the surplus stock in Ukamba, but the powers that be ruled that such a factory was not 'developmental' but only for the purpose of arresting decay, and the project failed.

In 1933, I am passing through the years as quickly as I can, the Chief Native Commissioner, then Sir Armgel Wade, now our Chief Secretary, drew up a circular that was issued to all provincial commissioners, with copies for district commissioners, giving extracts from the report of the South African Native Economic Commission, 1930. I will only quote very little of this which really has a cumulative effect and should be quoted in full.

Quoting from paragraph 69:—

"The result is that we have now throughout the Reserves a state of affairs in which, with few exceptions, the carrying capacity of the soil for both human beings and animals is definitely on the downgrade; a state of affairs which, unless soon remedied, will within one or two outside two decades create in the Union an appalling problem of native poverty."

Paragraph 71 says:—

"To what has this led? To a state of affairs in which, with the exception of a few favoured parts, a native area can be distinguished at sight, by its bareness."

Is that not true of Machakos Reserve when you look from the green hills of settlement to the bare plains of the native reserve?

[Mr. Hosking]

Paragraph 106 says:—

"At the root of the whole evil, as already pointed out, is the outlook of the great bulk of the natives in the reserves, the religious rather than the economic way of regarding cattle. It is difficult for a native to sell cattle in cold blood. Education must accordingly be directed towards modernizing his outlook."

Again:—

"The magnitude of the problem is appalling. But the problem which will present itself, if the Reserves continue at their present rapid pace towards desert conditions, will be even greater and more appalling."

I will not quote further, except perhaps from paragraph 290, referring to meat factories:—

"Such factories provide one of the most important practicable outlets for the surplus cattle of the natives and consideration should be given to the granting of all possible facilities for their working."

These and other extracts were contained in that circular sent to the Provincial Commissioners, and they were asked to make their contents known throughout their areas.

We come almost to modern times.

The hon. Member for Ukamba suggests that we should have organized everything as soon as we heard of Liebig's. That, I suppose, means that we should have branded all cattle for disposal and dated them with the date on which they should be disposed of.

With his long experience of Akamba, the hon. member must realize the absolutely wooden opposition one meets with when one touches on the question of stock. Surely 15 or 16 years ago he was faced with the problem on his own estate when he wished to save his own farm from destruction by overstocking. I think I am correct in saying that when he took a firm line some, if not many, of his squatters walked out and left him there. Incidentally, they subsequently came back and lived happily ever afterwards!

We did not hear that Liebig's were coming here until February of last year.

It takes time to organize stock to obtain the necessary money, and I do not think we let things slip through our fingers. Your Excellency addressed a meeting in Ukamba in July of that year. You met them face to face, and explained things personally to them. I myself, as Acting Chief Native Commissioner, met them again later in the year, and again early this year.

They would not listen, and the time for talk was long past. Intensive propaganda had been taking place for the last two years, but they were deaf adders: they stopped their ears.

We did not actually get the Colonial Development Fund loan until October of last year, and I do not think it can be said that we were unduly slow in getting into action: It is said, of course, that we have been unduly precipitate.

The hon. Member for the Coast I think is my chief opponent in this matter, and I believe the hon. member Mr. Isher Dass is with him too. We should have got back and formed committees, and talked; we should have let the grass grow under our feet, but that is exactly what the grass will not do. Nature is against us. We have defied and insulted Nature, and all the forces of Nature are allied against us: the sun, wind and rain are stopping the grass from growing under our feet—

MR. COOKE: On a point of explanation, my point was that the matter should have been talked about a year ago and a committee should then have sat before a decisive action was taken.

MR. HOSKING: The hon. Member for the Coast quoted that volume of infallibility, the Carter Commission Report. Let me quote from an early section, 731, talking about overstocking:—

"Our general impression on our tour through the district was that erosion, though serious, was scarcely so great as is commonly believed. Reconditioning schemes should prove both practicable and profitable in the locations which are at present eroded."

They did not realize the seriousness of the situation. Admittedly this was written some years ago, admittedly conditions have gone from bad to worse. We were

[Mr. Hosking] honoured recently by a visit of Dr. Pole-Evans, one of the greatest experts in the world on the question of grasses: he was appalled at the condition of the Ukamba Reserve, and painted a considerably gloomier picture than the experts on the Land Commission.

I have said that the problem is not confined to Kenya. The Union of South Africa is spending ten million pounds a year on the acquisition of land for additions to their native reserves; they are spending £100,000 a year on soil erosion in the native areas. But they have not tackled the problem; that is, overstocking. Adding acre to acre is useless, absolutely useless. You cannot solve the problem of overstocking merely by granting additions of land while native mentality remains what it is. You have got to deal drastically, and I agree with the hon. member's motion that "drastic and rapid action" is necessary. You have got to deal drastically with this problem. You have got to get at the root of the problem and to take the bull by the horns.

There is a similar situation in Basutoland where £162,000 has been spent on a ten-year programme of soil erosion and reconditioning. Five years ago, 250,000 head of cattle died from drought. They are still as far off as ever they were from solving their overstocking problem, because again they will not get to the root of the evil.

I think I have said enough to show that Government has been alive to the situation, that we have done our best to impress on the people the gravity, and that we are far ahead of other people in the way that we are tackling the problem.

Coming down to this particular problem, I know I am on my defence to-day. I am not personally charged, but I rightly assume full responsibility for Government's policy and actions in this matter. I am proud of the position I am in.

In Machakos, as already stated, there is a beast to three acres, and we all know the carrying capacity is probably in the neighbourhood of twenty acres per beast. No account is taken in that estimate of sheep and goats. The hon. Member for Ukamba painted a gloomy picture. It was

not half gloomy enough. He left out one-half of the arguments. He made no reference to the cultivation in that area which has consumed about half the available pasture land.

It must be remembered that the tribe is as much agricultural as pastoral. Not only do they supply their own requirements but they export the surplus of their own requirements to the value of £20,000 a year. Some of these are food crops: £6,000 maize; £3,500 legumes, £2,000 is sold locally to farmers; their fruit, gourds and the like are estimated at £5,000, but I have written it down to £1,000. These are the total sales of cash crops. There are also cotton, £6,500, and wattle, £5,000.

These all come off the land which has to carry a beast to three acres. It is a manifest impossibility, and there have been years and years of warning of this problem which I, as Chief Native Commissioner, have been called on to tackle.

The way we are tackling it is this. Detailed surveys of locations are being made, a Domesday Book in effect is being compiled. We have already mapped some fifty parishes. The co-operation of the local Elders is required, and a certain number, I think ten, have been sworn in in each parish to allot the quota that the grazing of the parish can carry. Years and years of propaganda was not absolutely of no effect, it has had some effect. There are remarkably few male stock left in the reserve, disposable male stock, and the result is that in locations which were required to dispose of surplus cattle quite a number of young female stock were brought in.

I need not tell stockmen that not every heifer is good for breeding, some should be knocked on the head at birth, and these particular cattle were chosen by the people themselves in lieu of other cattle, and presumably were the stock they valued least. Good types fetched good prices. We have heard of two or three shillings. I can tell you that Sh. 30 and Sh. 50 was paid for the better types of heifers.

These contributions, call them levies, if you will, are in the nature of an advance payment, a payment in advance of the contributions to be brought in from each

[Mr. Hosking] locations. Orders have been given in these preliminary levies that those with less than four head of cattle may not be touched. They may be eventually, because the land cannot carry all that it is endeavouring to at the present moment. More than 17,000 head of cattle have been sold, and over 5,000 have found their way to Liebigs.

The campaign was proceeding with the co-operation of the Akamba. They were pointing out boundaries of their parishes, helping to allocate the quota and to dispose of surplus stock. Opposition was met with in a sub-division of Poeti, or rather non-co-operation.

Take the case of this particular area. There were 5,600 acres under cultivation, 4,200 under grazing, and easily 3,500 head of cattle. This is more than a beast to an acre, and the quota was naturally in the neighbourhood of 450. It must be realized that communal grazing in these areas has disappeared. We have got to the stage of individual holdings, and these individual holdings can obviously not afford to carry cattle that belong to neighbours in the surrounding district. We can prevent possibly over-planting of crops, but if one-seventh of the area now under cultivation in some of those areas were to be planted with fodder crops we know that in the future the quota allocated a particular parish could be increased by 100 per cent, in some cases 300 per cent.

But they want to have their cake and they want to eat it. They want to cultivate the land and to carry an excess number of cattle. And it cannot be done. The sole object of these measures is to recondition the soil, and while this surplus cattle remains on the soil we can do nothing.

Our aim is entirely constructive: to restore the balance between crops and stock, to achieve adequate nutrition for the people living there. The grassland is potentially excellent, and one ray of hope from Dr. Pole-Evans is that the grassland of Kenya is inferior to none, and possibly superior, to any in the world and, if given a good chance, it will again become our ally.

This problem of destocking is not confined to Machakos.

In Kitui they have agreed voluntarily to cull cattle and to hand them over in exchange for the immunization of the rest of their stock from rinderpest, an excellent scheme. In Masai, over 3,000 head of cattle were voluntarily supplied to finance water supplies, an excellent scheme. Other schemes are contemplated in the Rift Valley Province, but I will leave it to my hon. friend the Acting Provincial Commissioner to explain himself what is being done there.

We realize that drastic measures are required, we are interfering with private property, we are going absolutely contrary to the Africans' instincts with which his fortunes are bound up at present in the fortunes of his stock. He has looked to Government to protect him from disease, and now suddenly finds Government the raiders of his stock.

We can sympathize and understand his attitude, but we cannot allow it to interfere with our policy in doing what we know is for their good. Everybody who has spoken agrees that we are doing the right thing, but there is some difference of opinion as to whether we are doing it in the right way.

Sir, turning to the speech of the hon. mover, he invited people to go and see the appalling desolation of Machakos. I want them to see the other side of the picture, to come and see how we are tackling the problem in the Central Province, to come to Nyeri and see the small holdings, the smiling and prosperous dusky farmers who are really farming. You call it mixed farming—I, who come from farming stock, call it farming! (Laughter.)

I think I have dealt with most of the points he raised in the course of my discourse.

I want to turn now to the remarks made by the hon. member Mr. Isher Dass.

He was scrupulously correct in most of the statements he made as to what happened during the early days of the invasion of Nairobi by certain of the Akamba. He said that no action had been

[Mr. Hosking]

taken and no propaganda distributed during the last five years. I think I have adequately dealt with that point. Then he quoted from the petition addressed to the Secretary of State. Does it not really put the case in a nutshell? I quote the paragraph (d):—

"The *baraza* was adjourned to the 2nd March, 1938, and the Akambas told the District Commissioner that they had come to the final conclusion that they did not intend to sell their cattle other than in the ordinary way, i.e. if and when any one owner wishes to sell to satisfy his needs."

That is just what we have got to combat.

They state that cattle is their wealth. That, too, is what we have to combat.

Their land is their wealth, and the land can only carry a certain amount in the way of crops and a certain amount in the way of cattle. If they look on cattle as their wealth we must educate them otherwise.

The hon. member has complained that no comforts were provided for our rather unwelcome visitors. I must admit the soft impeachment. But they have the free use of water, for which they have not paid, and other conveniences for which sometimes a fee is levied.

Now I come to the crux of the matter.

The hon. member Mr. Isher Dass has said that the deputation, having failed to gain access to Your Excellency, asked for and obtained an interview with me, Sir, I am your representative in native affairs. I am your voice and your ears in dealing with these natives. I was ready to see that deputation, and, as the hon. member pointed out, I met them, I think willingly and courteously. He tells us that things were going well until the Commissioner of Police threw a spanner in the works, and that the Akamba were going quietly back home when that officer was tactless enough to say that "If you are not out by 9 o'clock I will arrest the whole 3,000."

The Acting Commissioner of Police is my friend, but he is also an honourable and efficient officer. The duty of the police, the first duty of the police, is the

prevention of crime, the second duty is the detection of crimes. The Acting Commissioner of Police informs me that all he did was to warn these people that if they remained for three days in the Municipality without passes they would be committing an offence. He considered it his duty to tell them. How can you look on that as an unfriendly action? Why should it have stopped them from going to their homes? If, being frightened by the Commissioner of Police, they ran into the bush and were eaten by hyaenas and were tackled by rhinoceros on their way home, one could imagine they would have some complaint. But their complaint is "You promised to arrest us and did not, so here we are." I do not think they have justifiable grounds for complaint.

MR. ISHER DASS: On a point of information, I suggested that the Commissioner of Police should convey the message that they would be satisfied if the Chief Native Commissioner would give them in writing what had been said, and that should have been done. That message was not given and that is the complaint.

HIS EXCELLENCY: You must not make another speech, you can only raise a point of explanation.

MR. HOSKING: They have changed their ground. I was asked for a letter to the effect that the Governor would not see them. I gave them a letter to that effect. They had written a letter asking to see the Governor; on behalf of the Governor I said he did not see his way to seeing them. I offered myself to go into the reserve and listen to the complaints of all and sundry.

Dealing with those Akamba who have come to Nairobi to see Your Excellency, I was authorized yesterday by Your Excellency to state that, on your way to the Coast, you will be passing through Ukamba and will hold a *baraza*. They, like any other Akamba, may attend and present all their grievances to your in person. The date at present, Sir, is the 25th of this month, and the place Machakos, but if any alteration should take place as to the date and the place they will be duly notified.

[Mr. Hosking]

We shall then be able to judge whether the object of these people in squatting in Nairobi is a childlike desire to see the Governor, their father, or a more sophisticated plan organized with the intention of influencing by unconstitutional methods the policy of Government.

The second part of this motion reads: "drastic and rapid destocking in certain native reserves is essential, but that steps taken for this purpose should be such as to cause the least possible hardship to the natives concerned".

May I clarify that phrase? Doctors who have called themselves into consultation recommend a drastic and rapid purge as being essential, only with the proviso that it shall appear as a chocolate-coloured laxative. If we can find the prescription I can assure hon. members that we shall be most glad to use it.

COL. KIRKWOOD: Your Excellency, on a point of explanation, with your indulgence, I only want to confirm my remarks referred to by the Hon. Chief Native Commissioner in his speech. Looking up my notes on settlement schemes in Kenya, I think I asked not that the farmers should have only sympathetic consideration, but I asked, or demanded, that they should have first consideration.

MR. HODGE (Acting Provincial Commissioner, Rift Valley): Your Excellency, it may be of interest to hon. members if I try to explain briefly what has been done, and what our future intentions are as regards the problems of stock control and reconditioning in the Samburu, Kamasia and Elgeyo districts.

I will deal with the Samburu first. These natives are estimated to possess some 140,000 head of cattle, whereas the carrying capacity of the district, including the Leroghi Plateau, is at the most 90,000 head of cattle. We have, therefore, to dispose of some 50,000 head of cattle. With this object in view, a scheme for destocking has been submitted to Government as it is regretted that, in spite of constant propaganda, the Samburu have shown practically no desire to cut down their own cattle themselves.

I feel sure that it will be agreed that destocking without stock control and reconditioning is practically useless. All these must be combined, as it is obvious that if an area is already heavily overstocked, if a portion of this area has to be closed for reconditioning purposes for two or three years the result will be that we shall have to graze excessive numbers of cattle on the remaining grazing areas, and in Samburu the question is complicated, as the hon. Member for Aberdare pointed out, by the seasonal incursions of large herds of game.

This is the real problem in Samburu, where a large portion of the country is unsuitable for cattle owing to fly bells, the scarcity of water, or entire lack of grazing due to the stony nature of the soil. We hope to find means to carry out these projects, but they must be carried out gradually so as not to make them too unpopular or too oppressive and also, as we go along, to enable us to rectify the mistakes which I am afraid we are bound to make. Stock control is already known to the Samburu as it was introduced on the Leroghi plateau in 1936. I think I can say that it has had very beneficial results. The Samburu have taken quite kindly to this stock control, and have really given us no trouble by attempting to introduce on the plateau cattle in excess of the quota allowed.

One great difficulty that is sticking out is, how we are going to advise them to spend or utilize the cash which they will receive from the sale of their stock. Personally, I hope they will contribute a portion of it anyhow, to the Local Native Council for reconditioning schemes, and I intend to send members of that Council into the Kamasia Reserve so that they can see for themselves the benefits derived from the reconditioning there and towards which the Kamasia themselves have contributed a certain amount of money during the last two years.

Now, to deal with the question of the Kamasia, and I refer especially to the southern portion of it.

Reconditioning in that area started in 1930 when Mr. Langridge was appointed reconditioning officer. By the end of this year Government funds amounting to

[Mr. Hodge] £6,246, and Local Native Council Fund amounting to £1,023 will have been expended on this work. It is estimated that approximately 23,000 acres have been reconditioned by the actual planting of grass or sowing of seed, and this area now has a good grass crop. A further area of 20,000 acres has been controlled, and allowed to recondition itself, and this is also promising good results. This total of 43,000 acres may not seem very much, when we are told that there are in all 647,000 acres needing reconditioning. It must be remembered that 50 per cent of that total consists of rocky ridges to which little can be done, and therefore, it is all the more incumbent upon us to use every endeavour to see that every square foot of the balance of 337,000 acres is restored to a good condition.

It is an established fact that of this balance, practically all of it, from 75 to 100 per cent, has lost its grass cover, and therefore the work of reconditioning must necessarily be slow. There are two other reasons why this work has in the past been undertaken slowly. One is the shortage of funds due to the financial depression through which this Colony has passed. The other was the necessity of overcoming the suspicions of the Kamasia who, like other tribes, thought that we were probably going to acquire land for other purposes as soon as reconditioning work started. As regards this, we are progressing slowly, and the reconditioning officer, by the tactful way in which he has dealt with the natives, is undoubtedly winning their confidence. Members of the Local Native Council and other natives have from time to time especially more recently voluntarily stated their appreciation of his work and have asked that his sphere of work might be increased. Furthermore, since January, 1937, the Local Native Council, excluding the Suk section, have voted a special rate for reconditioning work which amounts to about £450 per annum.

In the reconditioned areas stock control has been carried out, and here again we have had very little trouble from the natives over this. We were lucky that in 1935 the Uasin Gishu Masai were moved down to the South Masai Reserve, leaving

available 47,000 acres adjoining South Kamasia, which have since been utilized for settling those Kamasia whom we moved out when we wanted to recondition their locations.

As regards the question of overstocking in Kamasia, most of the trouble arose from the vast numbers of goats owned by the natives but, at the same time, there are probably from ten to fifteen thousand or even more excess cattle which will have to be disposed of in the course of time.

As regards the water supply question, we have three boreholes; from one of these water supplies are obtained by a hand pump, and from the others by two engine pumps. The interesting thing is regards the latter is that one was bought by the natives themselves. They, in an incredibly short time, raised the necessary funds by the voluntary sale of their stock. The running expenses of these boreholes are paid for out of funds allocated by the Local Native Council whilst the repairs are undertaken by Government. The reconditioning officer has also constructed some twelve dams of varying capacity, from 5,000 to 14-million gallons. He also carries out anti-erosion work including anti-gully erosion measures.

Before leaving this question of the Kamasia, I would like to say that quite recently Dr. Pole-Evans visited that area and spent a day or two there, and he expressed himself as being highly gratified with the work carried out by the reconditioning officer.

As regards Elgeyo-Marakwet district, the position is somewhat different, as we are not faced to the same extent by an excess cattle problem. The natives annually sell a good number of bullocks on the plateau, and it must also be remembered that in that part of the world, when the native goes out to work or rather squat on a farm, he takes a proportion of his cattle with him, and we estimate that there are some 25,000 head of Elgeyo-Marakwet cattle grazing on alienated land. The real problem out there, apart from the ubiquitous goat, is excessive soil erosion on the precipitous hillsides. It is a very similar problem with which we

[Mr. Hodge] have to deal in the Kamasia hills where most of the cultivation takes place.

Here again we have an energetic officer engaged by the Local Native Council in June, 1936, who is making strenuous efforts to combat this erosion. I cannot say that we have effected very much but we have made a start and we hope it will be progressive. He is endeavouring to develop a system of terracing on similar but better lines than those practised by the natives themselves, so that in that way he may be more likely to obtain their co-operation.

In addition he is trying with what funds he has at his disposal to-day to improve the water supplies by leading off trenches from the mountain streams so as to increase the cultivation on the flat land at the bottom of the hills in the Kerio Valley, because unless irrigation is used on that land the rainfall is so uncertain that they are unlikely to obtain good crops.

From what I have said, it is apparent that we are endeavouring with the co-operation of the natives themselves not only to preserve their land but to improve it, so that it may be a real inheritance for their descendants.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am sorry to add to the length of this debate but there are two major reasons why I should intervene. But before I go on to those, and in reply to two of the speakers this afternoon I should like to explain why this motion was phrased in the manner in which it was.

The whole country is going through a nervous time and is talking about Government's agricultural policy, which for some years past they have considered has been very lacking in direction and definition. We therefore felt in the first place that we would like to give Government an opportunity of letting us know what the present position was. Secondly, we wanted to make it perfectly clear that we supported Government's policy as regards destocking, because there has been a good deal of criticism both in this country unfortunately, and outside. And by wording the second half of the motion as we did we felt that we would do this

and at the same time give anybody who had any suggestions to make the opportunity of making them.

As regards the second half of the motion, one does not want to go back over the past, that has been covered fairly fully both by the members on this side of Council and the other, but I would recall the Carter Commission Report debate and what we all said at that time and, in spite of the Chief Native Commissioner, I still suggest that something more might have been done. At long last, however, something very definite and in the face of great difficulties is being done, and I can assure you that we are not here to make the position more difficult by criticizing Government in its action. (Applause.)

In this connexion I am going further, and I would suggest that members of this Council have certain privileges. If you are an elected member you always, I believe, have the right of access to Your Excellency, the right of access to the Chief Secretary of Government and the right of access to the Heads of Departments, and if, when there are any difficulties with native peoples or something of that kind, one feels one has useful advice to offer, I suggest that the proper procedure is to give it to the right person. I suggest that it is of the greatest possible disservice to both the natives and to Government for people to go running backwards and forwards pretending they are ambassadors for any disaffected section which in fact they are not. (Applause.)

As regards the first part of this motion, one of my reasons for intervening in this debate is because I happen to know that a great deal is being done at the present moment in the hope of assisting agriculture and its kindred problems, but it is very difficult to get other people to appreciate that. I hoped, and I believe we all hoped on this side of Council, that as a result of this debate we would be given such information by Government speakers as would tend to help the country to realize what is being done.

Well, Sir, I am afraid that actually, so far, at any rate, that has not been the case. I am afraid that a great many people who are sitting in this Council still

[Major Cavendish-Bentinck] feel that very little actually is being done. In view of what has been said by the hon. Director of Agriculture, I must suggest that it is the duty of Government to do perhaps a little more than was even suggested by the hon. mover of this motion. The hon. mover suggested that Government should deal with soil conservation, research, education and instruction, and lastly, finance. I say that it is the duty of Government to give a lead to the farmers who are notably individualistic people, rather parochial in their outlook, whose ideas are perforce rather limited to the particular area in which they are trying to make their living. I say that it is time Government came forward and said: "What are you going to do in this area? Some of you are on the wrong track and may I suggest doing this or that?" Alternatively, some time back Government might have said: "You are relying on a rather unbalanced form of agriculture. I do not want to go into details now because I know when you talk about a definable policy on agriculture you are covering such an enormously wide field that it is very difficult to tabulate everything in answer to the motion. But I do say we should have been given something more definite in the course of the debate, as some members on this side of Council will otherwise leave the debate very depressed people because they will believe in their heart of hearts that very little lead is being given.

I must touch on settlement, which is perhaps my chief reason for intervening in this debate. Several members have said that there has been an inordinate amount of time spent in the preparation of the report. Of course they are right. There has been a very long time spent over it. Actually, the Settlement Committee was appointed on the 26th September, and the notice appeared in the Official Gazette on October 5th. I have it here. Now, Sir, I, as much as anybody can shoulder that blame because I think it is possible that I can claim, at any rate, to have a great deal to do with the formation of this particular Settlement Committee, and with the actual deliberations of the Committee itself.

If you read the terms of reference which were given to this Settlement Committee you will find that they have been rather carefully thought out:—

"To consider, with a view to encouraging additional and closer settlement, what further assistance and facilities to new settlers can reasonably be provided, and to make recommendations for the inauguration of practical settlement schemes, and for the setting up of a permanent body for the administration and control of such schemes."

Now, we have suffered in the past from Settlement schemes which were not based on anything sufficiently tangible. I have always had in mind that any settlement scheme must form part of the agricultural policy of the country. It is rather like the house that Jack built. If you want a successful settlement scheme you must first compile a certain amount of positive information for people who would wish to come out here as settlers; then you must see what shipping concessions you can give them, and see how you can get them up-country on advantageous terms; then how best to advise them and give them information about local conditions; then provide them with land under some scheme so that the purchase of land will not absorb the whole of their capital and leave nothing for development; this entails finding out where they can get reasonably priced land, and that means sub-dividing, and you cannot sub-divide without water, and you cannot provide water without finance, and you cannot put up schemes for finance without trying to get loans and you cannot get loans without a carefully thought out financial programme.

I suggest that it is very easy to produce some sort of a scheme, but if such a scheme is to be effective you have got to fit it into the agricultural policy of the Colony, and if people realized that I believe that they would also realize that it is easier to criticize than to carry into effect.

There is one thing which I wish to say in support of what the hon. Chief Native Commissioner has said. I have been kept in touch with the figures of the cattle which have been purchased by Liebig's

[Major Cavendish-Bentinck]

I know it has been suggested that Government's destocking policy is all wrong and that all sorts of things are wrong in detail. But I can say that the position is getting better and better every day. The thing is that we have got destocking started and I think that Government's action is justified because at least by making this move they can claim to have achieved something.

Lastly, I would like to ask about the Pyrethrum Bill, which is connected with agriculture. During the last two months I have been approached by growers on several occasions in connexion with this proposed bill. I think such a bill is overdue, and I would like to ask the hon. Attorney General whether there is any likelihood of its being produced, and whether it could not be produced at this session, and if not whether the draft bill portrays Government's policy until such time as the bill is likely to be introduced?

MR. HARRAGIN: Your Excellency, I was afraid that I was not going to have the opportunity to intervene in this debate (laughter), particularly as I consider I do more for agriculture than anybody else in this room! As you all know, there is not a single agricultural industry or crop that is not controlled by some rule or ordinance. I turn these out day after day, week after week, and if you cannot grow under those circumstances you will never grow anything at all!

The Pyrethrum Bill is a typical example. Too late for this session, the bill is demanded, it is produced, it does for the moment represent the policy of Government. We had hoped that, if you had managed to continue this debate into next week—as I thought you would at one time—to be able to get the bill through this session, but it seems unlikely now, as the bill cannot be read for the first time until Friday morning. So that I can assure hon. members that, as far as Government is concerned, at the moment the Pyrethrum Bill as laid on the table represents the pyrethrum policy of Government.

MR. MULLIGAN (Acting Director of Veterinary Services): Your Excellency, I do not intend to detain the Council very

long, but there are one or two things which I should like to say on points raised by hon. members on the other side of Council.

I will deal first of all with the question of destocking.

It has been stated that practically since the year 1925 nothing has been done by Government to attempt to carry out destocking in native reserves. It is within my recollection that the Crop Production and Live Stock Ordinance, 1926, was specially framed and enacted for this particular purpose. In his speech yesterday the hon. Member for the Coast referred to a despatch by the late Sir Edward Denham, in which it was stated that a veterinary officer would be appointed to go to the Kamba Reserve and find out exactly the position there. That was carried out, and the veterinary officer presented a very valuable report but, as stated by the hon. member Mr. Montgomery, no markets were available and so Government was not prepared to take out machine guns and slaughter cattle!

Later, the factory scheme mentioned by the hon. Chief Native Commissioner was considered for the special purpose of destocking the Kamasia and other native reserves in the Rift Valley Province, because at that time the Kamasia Reserve was considered in a bad state indeed. This originated, I believe, after the visit of a Colonial Secretary to this country.

As hon. members will remember, the sum of £23,000 had been granted by the Colonial Development Fund for the purpose of a factory, and the proposal at that time was to pay Sh. 5 per head of cattle to be utilized in the factory for no other purpose than the production of hides, bone meal, and so on. Some hon. members will also remember that a state of desperation had been arrived at, and in order to try and find some way out of the difficulty an arrangement was made with the Nairobi Municipality whereby experiments could be carried out at the abattoir with cattle from the Masai to find out if they were worth anything at all. The arrangement was that 1,000 head of cattle would be sent in costing Sh. 5 to Sh. 7 per head, but unfortunately the scheme did not go through because many

[Mr. Mulligan]

of the cattle were in such a bad condition through drought and starvation at the time that they died on the road, so that the experiment was never properly concluded.

The Eldalal factory scheme was deferred in view of the larger scheme in sight, the establishment of Liebig's factory.

While on that subject I will say that something over 10,000 head of cattle have already been supplied to Liebig's factory, most of them from the native reserves, and that in a period of six months of the opening year, which is not at all a bad effort, to my mind. This is very satisfactory, I am sure, when one remembers that that 10,000 head of cattle were surplus to ordinary requirements and have been removed mostly from native reserves.

The hon. mover in his excellent speech talked about the disparity between the export values of animal and crop products, and mentioned a sum of something like half-a-million as the annual amount of revenue coming into this country from the export of stock and stock products. It is not quite as high as that, it is about £450,000. Hon. members may like to know how this is made up. Over £300,000 is from the export of hides and skins, and very nearly £100,000 for butter, over £50,000 for wool, and there is about £25,000 made up from odd things like a small export of cattle to Lamu, a small export of ghee, a very small export of mohair and sheep and goat skins, and so on.

The point I want to make is that it is fully realized that there is a great disparity between the export of stock and stock products and the export of crop products. Government fully realizes this, and in 1935 appointed a Live Stock Inquiry Committee, which my hon. friend the Director of Agriculture referred to, under the chairmanship of the Hon. Attorney General. A report was presented in 1936, and I may say that one of the terms of reference of that committee was to inquire into ways and means of expanding the stock industry. The report was, I believe, approved by Government, and I can assure hon. mem-

bers that there is hardly one recommendation of that report that has not been considered, and several are being considered, from some aspect, almost every day since the report was produced. At the present moment the Director of Veterinary Services (Mr. Daubney) is going into various relative matters at home.

The hon. mover also spoke about markets. As far back as 1931, I believe, a consignment of pork was placed on the home market, not entirely by Government, but certainly with the approval and assistance of Government. That consignment was not very satisfactory, for various reasons with which we are not now concerned. Later on, a consignment of meat was placed in Palestine, and a consignment of frozen lamb placed on the London market. A consignment of bacon has been placed in the last month or so and is now on the London market. This shipment was not made by Government but with the assistance of Government.

The Director of Veterinary Services recently paid a visit to Palestine to discuss with the authorities there the possibility of opening up a meat trade with this country, either chilled or on the hoof. He has also made contact with countries on the West Coast of Africa with the same object in view. Hon. members will remember that about 1929 there was such a thing known as the Empire Marketing Board scheme of assisted freight for the importation of pure bred stock into this country. The Board contributed half the amount of the freight and Government the remaining half. That terminated about the end of 1931 or 1932, because the Board had no longer any money available for the purpose, and money was very scarce in this Colony.

The hon. mover also spoke about the education necessary in connexion with agricultural and veterinary services. We have done a certain amount for the natives. At all events, we have five schools at which they are taught how to milk and feed calves, and how to utilize forage crops, and so on. I suggest these are all matters of very great practical importance. As far as Europeans are concerned, we are able from time to time

[Mr. Mulligan]

to take a few pupils at Kabete, at which place we give them as much training and information as possible on the various aspects of the stock industry.

The hon. Member for Aberdare spoke about vaccines and the unfortunate results that have occurred in a few farms in the Nanyuki district. I am afraid that is the case, and that certain farmers at all events have had very unfortunate results after the administration of the vaccine. It was no fault of preparation. This matter has been very carefully examined, and it is not directly due to a shortage of staff. It is for some reason with which we are not quite *au fait* yet, but we are still investigating it, to see if there was some inherent fault in the vaccine. But we know that, in spite of that, the vaccine is a very useful instrument for the protection of cattle against rinderpest, and usually stands up to normal infection. But there are cases of infection which are very serious, where, say, game animals are dying on a farm, and it is also possible that in certain animals vaccine will not cause complete immunization. However, we are investigating.

The hon. Member for Uasin Gishu talked about thoroughbred horses and bulls, and goats and sheep. I was not quite certain whether he intended to convey that the veterinary officer at Eldoret was able to give the required attention or services to those thoroughbred horses and bulls or whether he neglected to do so. In any case, I shall make inquiries into that.

COL. KIRKWOOD: On a point of explanation, I hope I did not cast any reflection on the veterinary officer concerned?

HIS EXCELLENCY: I think that is quite correct. The hon. member simply referred to the fact that the veterinary officer had too big an area to cover, and therefore, for that reason, he was unable to get around as much as was expected.

MR. MULLIGAN: The hon. member talked about sheep and goats in Ukamba. It is a very important matter indeed, and one which has exercised our attention for a very long time. We have only got so far that we hope we shall be able to

utilize a certain number of goats for the preparation of rinderpest virus and perhaps even rinderpest vaccine. There must be some way of getting over the difficulty, and I can assure hon. members that it has given us a very great deal of anxiety and that we are carefully considering the matter.

The hon. Member for Aberdare also mentioned wool and the fact that very little attention was given by Government to the development and improvement of wool. I am afraid that is the case. I remember several years ago the wool producers in the Colony started an association. I was present at the opening meeting, that is about nine or ten years ago, and since that time I have heard nothing whatsoever from the association.

I feel sure the hon. the General Manager of the Railways, if representations were made to him, will do his utmost to grant some sort of reduction on rail freight on wool for export (Laughter).

The hon. mover did not mention anything about contact between the farmers and farmers associations and the Veterinary Department, I would, however, like to explain that it is our policy whenever possible for a member of the department to attend an association meeting in order that he might make greater contact with the farmers of the district, and thereby ascertain their needs and requirements. In this connexion, I would mention that Mr. Daubney was the first chairman of the recently constituted Stock Owners Association.

Now we come to rinderpest.

The hon. Member for Nyanza asked why, all these years, the Veterinary Department had not considered the question of eradicating rinderpest from the Colony. It is a very big question, and our main reason for not doing so was that we had no weapon with which we could fight this terrible scourge. In other words, no form of immunization that was practicable to apply to the whole of the Colony.

Rinderpest is prevalent, it exists in all the native reserves of the Colony, it crosses the borders of our neighbouring territories, and unless we get a measure of co-operation with them it is impossible

[Mr. Mulligan]
to eradicate the disease from this Colony and keep the Colony free from it. During all these years we have been making preparations, and we have immunized tens of thousands of cattle every year. Our department has been largely concerned with controlling outbreaks, but it is the case that the main activities of our veterinary services are concentrated on the control and eradication of rinderpest.

Actually, at the present time, research holds out promising results, and we shall perhaps be able to obtain the funds now so necessary that we could not obtain in years gone by, and a scheme is being prepared having for its object the eradication of rinderpest from the Colony. The hon. Member for Usin Gishu asked how long that was going to take. It is a very difficult question to answer, but provided our research gives us the anticipated results, which are, very promising at the moment, we can obtain the necessary funds, and that neighbouring territories give us their wholehearted co-operation, we hope to eradicate rinderpest from this Colony in the course of three or four years.

SIR ARMIGEL WADE: Your Excellency, the wholehearted acceptance of this motion by Government without any reservation, not even so mild a reservation as that voiced by the hon. Member Dr. Wilson, shows at least that Government wholeheartedly endorses the opening statement, that agriculture is of paramount importance to Kenya. It also shows quite clearly that Government does genuinely and honestly want to help to the very best of its ability.

At the same time, it is of no use our refusing to face the facts. The facts brought out very clearly in the course of this debate show that the crux of the whole matter is largely finance. It is the limitation of our financial resources that condition the amount of assistance we are able to give, not the amount that we would like to give.

In the course of the debate, I was at one time a little apprehensive that a false impression might have been given, an impression that agriculture in Kenya was in a bad way and, secondly, that Government was either unwilling or unable to

help. In the course of the debate there have been suggestions made for financial assistance in many ways by Government, financing the Land Bank, reduction of freights, police, roads, veterinary officers, education, and sundry other things.

The point I would like to make is that that list is really a very modest list of requirements for agriculture. If we compare for one moment that list with the extent of assistance given to agriculture in nearly every other part of the world, and there is not the slightest reason why people who read this debate should really come to the conclusion that agriculture in Kenya is in a hopeless condition. It is nothing of the kind.

But, as I say, it is no use not trying to face facts, and the limitation of our finances depend so much on another factor brought out in this debate, that agriculture is the real source of our wealth in the Colony. If agriculture is the source of our wealth, and if we have got to help agriculture out of our wealth, it looks almost as though subsidising agriculture must be agriculture subsidising itself. I do not want, of course, to be taken too literally. I do not suggest that because of that Government has got to sit down and do nothing. Obviously it can help within the limits of its annual revenue, loans, and assistance from the Colonial Development Fund, and obviously we can distribute our wealth either badly or prudently.

What I am getting at is that we have no copper or diamond mines or really extensive gold mines to finance our agriculture. We have heard of the Union of South Africa being able to provide ten million pounds for soil conservation throughout the Union but just in their own little native reserves. What could we do if we had ten millions for agriculture, even a tenth, a million pounds? Even if somebody could give us a tenth of that, £100,000, we could do something.

So that with all the best will in the world to help agriculture—and I may say that in listening to the debate I do not think I have heard one single suggestion for helping agriculture that was unreasonable—with the best will in the world—I do not see how we can help

[Sir A. Wade]
agriculture in all the ways that have been suggested, and I am afraid that the proposal for a five-million loan is not within the bounds of practical politics.

I wish, if I may, to make one more contribution to the argument about Government's destocking policy in the past, why nothing was done. I am concerned in that case, because in that particular respect it is not my hon. friend the Chief Native Commissioner who is in the dock. If it is anybody it is myself.

The hon. Member for Nairobi North very gently and mildly said he had a sort of idea that something ought to be done. This problem, as the hon. Chief Native Commissioner said, has been a very live one with Government for many years. Quite naturally it might be asked if Government was alive to this tremendously grave issue, why on earth did it not do something active? For instance, take immediate action on the Hall Report.

Well, this problem was submitted to every sort and kind of committee, it came up at Provincial Commissioners' meetings, it went to the Animal Industry Division of the Board of Agriculture and, about 1932, to the Governors' Conference. The burden of the recommendations of these committees was this: "We cannot do anything until we get an outlet." In that view we were fully supported by the Economic Committee, in South Africa from which report quotations have been made. We hoped to get an outlet soon, and we almost got a meat factory in 1931 but, at the last moment, the Colonial Development Fund would not supply all the money, and it was going to cost this Government £70,000 although the Colonial Development Fund proposed to give us £30,000, the depression and slump came along and we could not find the £70,000, so that that had to wait.

We could not destroy cattle without an outlet. If we destroyed them without paying compensation to the owners, that would have been an intolerable injustice, and if we had destroyed them and paid anything like the market value it would have been an intolerable burden on our finances. So, as a corollary to this definite policy and being unwilling to com-

mandeer native cattle until there was an outlet, in the meantime every effort had to be made to induce natives to eat their surplus stock.

That did not seem quite such a hopeless proposition as it might seem now because, after all, in Nyanza they own more cattle than in the Central Province, and the problem has solved itself by natives eating their own surplus cattle. Some years ago it seemed that the problem might be partially solved by the inhabitants of the Central Province doing the same thing. Unhappily that did not materialize, at least not to a very great extent.

As to propaganda, that was continuous, but you know what natives are. They will say that they talk about their having too many cattle is *manga mazuri*, but what they mean is "the other fellow ought to get rid of his cattle to make room for mine." So propaganda was not very effective. But, as a second corollary to this policy of doing nothing until we had an outlet, it is recorded, certainly in the minutes of the Board of Agriculture to which I have referred, that as soon as an outlet could be provided, whatever that outlet was, then we were going to reduce the number of cattle, if necessary by force and whatever the consequences might be.

It is recorded that a good many of us knew that this would mean trouble, or at any rate we feared it could not be done without trouble, and it is also recorded that even if trouble meant the use of the military forces, the policy of Government was to reduce the cattle as soon as there was an outlet, because the land must come first.

All I claim in defence of Government's policy in this matter is that it has been perfectly plain and perfectly consistent.

There is one point I think that the hon. member Mr. Mulligan forgot to mention. It was in answer to the hon. Member for Trans Nzoia about the veterinary officer. I think I am right in saying that we have already secured one veterinary officer and we are on the point of securing another one for research work. I think that is so. Possibly the hon. member might confirm it?

MR. MULLIGAN: On a point of explanation, we have already got a research officer, and we hope in the course of the next week or so to get a field veterinary officer. We hope they will come out to this country in the course of the next month.

SIR ARMIGEL WADE: While I am on the matter of additions to staff, it is Government's intention to engage a geological expert mainly for water purposes. Various references have been made to the necessity for the provision of water by boreholes or otherwise in connexion with a settlement scheme.

There have been a great many difficulties in finding the right place to bore holes, and Government is advised that perhaps the best way of meeting that would be to appoint an officer specially qualified, who would go round and advise from his own geological knowledge the best place to put water holes, dams, or anything to provide water.

I am rather sorry that the hon. Member for Nairobi North was disappointed with the information he has received. I rather wish I knew more clearly what sort of information he wanted. It seems to me the hon. Director of Agriculture mentioned practically every crop that can be produced and gave a statement of the position. The hon. member Mr. Mulligan has done the same about the stock industry. I am afraid I am not in a position to add anything to the information that has already been given as to the position. In conclusion, I am authorized by Your Excellency to say this: that, in connexion with the recommendation in the motion that the agricultural industry should take precedence in the deliberations of Executive Council, you accept that wholeheartedly and, not only that, but it has actually been given priority. It was given priority in the discussions which began immediately on the inception of Your Excellency's deliberations in Executive Council on the subject of general development.

These discussions go on regularly in Executive Council. We have already had a long discussion on many points made by the hon. mover, and others will come in due time. I am able to assure him that all these points which he made in, if I

may say so, his very interesting speech, which we all seemed to think of interest, if not already dealt with certainly will be dealt with and will receive the most careful consideration.

MAJOR JOYCE: Your Excellency, I have a very long list, I am afraid, of notes resulting from the debate on this motion. But this does, I think, indicate the importance which hon. members attach to agriculture, and if only for that I hope that it will have done a great deal of good.

I should like to start off by saying how very much I appreciate your acceptance on behalf of Government of this motion.

I am now going to refer, point by point, and as briefly as possible, to the various matters that have been brought up by different speakers. My first reference is to a point made by the hon. Member for the Coast, in which he suggested the possibility, in connexion with the supply of cattle to Liebigs, of subsidizing these supplies. I suggest that if anything of that nature were to be done it would be better for Government to find money for spending in those locations of the native reserves which have produced the cattle, to speed up pasture regeneration rather than supplying extra money, either to the natives or the factory concerned.

On a point brought up by the hon. Member for Trans-Nzoia, in connexion with pasture research, he told us that as a result of experiments on his farm he had been able to increase the carrying capacity of his land to a very large number of beasts per acre. This is extremely interesting, and I hope that such a source of information will be made available to people in future instead of being kept to members themselves. Actually, the other day, when Dr. Pole-Evans visited this country, he suggested that this was a most fruitful field for research—research into the very valuable pastures in this country.

And that brings me to the point raised by the hon. Director of Agriculture when he agreed that research was a necessary function of his department, but rather complained that I qualified my statement in moving this motion, that I was unable to support any suggestion for increasing his department. I think he misquoted me

[Major Joyce] I must personally support any increase for the research side of agriculture, but I think what I stated then was that I did not want to see a large and bureaucratic Agricultural Department.

I must confess to a certain amount of disappointment to the reply given by the hon. Director of Agriculture. Taken point by point, it seemed that he commended the resolution to some extent. But I did not get the feeling that there was the same drive or initiative behind his answers as was behind those of the hon. Chief Native Commissioner, the hon. Acting Provincial Commissioner for the Rift Valley and the hon. Director of Veterinary Services, all of whom gave us the impression that things were really being done in the various departments for which they were responsible.

The hon. Mr. Isher Dais supported the motion to some extent, and agreed that some measures for destocking are necessary in native interests. He misquoted the terms of the resolution on two occasions. On one occasion he was urging that no such measures should be taken as they would cause hardship. Of course that is not included in the resolution, and we realize that it is quite impossible to carry out the policy of Government without some measure of hardship. What I say, and what I think we all wish to see, is that there should be no undue or unnecessary measure of hardship. But when keeping in mind the urgency of the situation, it must be remembered that measures would have to be drastic and a certain amount of hardship would be unavoidable.

The hon. Member for Uasin Gishu suggested a new committee. He deprecated the number of committees, and then he suggests one that will deal with this whole problem. I suggest that this is unnecessary. We have a very able committee in the Standing Board of Economic Development and no doubt there are some others which, should it be necessary, would give valuable assistance in a decision on policy. I suggest that Government would be well advised to use one of these committees that already exist. I also rather deprecate the possibility of a loan to the extent of £5,000,000

as suggested by the hon. member, but I do think we ought to realize that a loan of half-a-million or thereabouts will not meet the case. We must face up to the necessity of a considerable loan and the sooner that is gone into, the better.

MR. GHERSIE: Your Excellency, on a point of explanation I think I suggested that this matter should be thoroughly investigated with a view to formulating a policy, and the loan I visualize might be in the region of £3,000,000 or even £5,000,000 if it should be necessary. Though it was a fact that I did mention £5,000,000, I think I qualified it.

MAJOR JOYCE: The hon. Director of Agriculture asked me a question, as to whether I would prefer to balance up the exports between the animal and crop products or whether I meant to preclude the production of crop products and only increase the animal products. Of course I refer actually to both. I should like to see an increase in animal products and an advance in crop products. That to me is not a retrograde step but I think, in the interests, at any rate of the next few years, of the system of agriculture, it would be beneficial that certain lands now growing crops should go out of cultivation and be put back to grass.

I appreciate very much the reference to the new Bill which it is said has been circulated. Actually I have not seen the Bill, but the Bill referred to was one for the conservation of land and water supplies, and I do feel that this is a great step forward even that such a possibility is contemplated to the point of having the Bill.

MR. HARRAGIN: Your Excellency, on a point of explanation, the Bill has been circulated to all the Farmers Associations.

MAJOR JOYCE: I suggest, Sir, that if it has not been difficult to circulate it to the Farmers Associations, it shows some lack of organization at least when hon. members of this Council have not had it yet.

The Hon. Financial Secretary refers to the necessity for altering the Land Bank Ordinance if further facilities can be

[Major Joyce]

provided. I suggest that that is another thing that could be gone into by the Standing Board of Economic Development, and I am sure that he and other members of this Council must appreciate the fact that unless Government is prepared to take some risk for the Land Bank in connexion with this loan, the Land Bank is not doing what it is really meant to be doing, which is, to be of a help to the farming industry. If no risks are taken then there appears to be no need for the Land Bank.

I should like to give every possible support to the Hon. Chief Native Commissioner in his argument that there is a definite need for speed in dealing with the destocking problem, and I commend to the whole of government the urgent need for tackling this very difficult problem of destocking.

It is somewhat of an indictment on Government in the past to think that there was so much discussion on the need for destocking measures, referred to by the Hon. Chief Native Commissioner, and that these discussions went on from 1925 up until quite recently. I cannot altogether agree that the absence of outlet is an entire answer. A great many cattle could undoubtedly have been at least transferred from overstocked areas to other areas by relaxing the quarantine regulations and encouraging trade.

Another point made by the Hon. Chief Native Commissioner, and I think we were all extremely glad to hear it, is that an agreement on this policy of destocking has to a great extent already been achieved in certain sections of the Masai, and in the Kitui part of the Ukamba Native Reserve. That rather brings into relief the failure to reach agreement in one small section of the Machakos Reserve. However, I feel and I hope, we all hope, that that will be overcome.

Referring to the remarks by the hon. Acting Commissioner for the Rift Valley, I was not quite sure whether he included the necessity for dealing with game in one particular part of that Samburu country. I note that it was referred to by some other speakers, and if that also has been included for reducing the wast-

age of grass in that area I feel that a great deal has been done there.

I regret, Sir, very much if, in proposing the motion yesterday, I failed to show a proper appreciation of the work done by the Veterinary Department. If that was so, I assure the hon. members of this Council that it was an omission on my part. Particularly I should like to record my appreciation of the work done by the Hon. Director of Veterinary Services, who has spent a large part of his leave while at home in furthering the interests of this country in regard to such matters as the export of beef and the export of pigs, and going into the question of the future export of chilled beef, and the necessity for rinderpest control. I would like to pay a tribute to all the members of the veterinary research station at Kabete who, in spite of being understaffed and overworked, are doing real good and furthering the interests of stock breeders.

Finally, I would like to state my appreciation of the acknowledgment by the Hon. Chief Secretary that the land must come first. And lastly, I would like again to say how much I appreciate that this motion has been accepted and supported by Government.

The question was put and carried.

VETERINARY AND AGRICULTURAL OFFICERS AT KITALE

COL. KIRKWOOD: Your Excellency, with your permission and the permission of Council I wish to withdraw the motion standing in my name on the Order Paper of the Day, which is as follows:—

"That in view of the necessity of encouraging a policy of change-over into mixed farming in the Trans Nzoia in which stock must play an essential part, it is urgent and necessary that immediate financial provision be made for the stationing of a veterinary officer and agricultural officer (who has specialized in animal husbandry) at Kitale."

The motion was by leave of Council withdrawn.

ADJOURNMENT

Council adjourned at 5.30 p.m. until 10 a.m. on Thursday, the 18th August.

Thursday, 18th August, 1938

Council assembled at the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 18th August, 1938, His Excellency the Governor (Sir Robert Brooke-Popham, G.C.V.O., K.C.B., C.M.G., D.S.O., A.F.C.), presiding.

His Excellency opened the Council with prayer.

MINUTES

The Minutes of the meeting of 17th August, 1938, were confirmed.

ORAL ANSWERS TO QUESTIONS

NO. 25—COTTON QUOTA TO GINNERIES

LADY SIDNEY FARRAR asked:—

In view of the energy displayed by agricultural officers in the encouragement of cotton growing in certain native areas, will Government give an assurance that it is in no way pledged to ginneries to supply a certain quota of cotton per annum?

MR. WATERS: While the Government gives proper assistance and encouragement to cotton growing in suitable native areas, especially in the form of services by the Agricultural Department, the Government is in no way pledged to cotton ginneries to supply a certain quota of cotton per annum.

NO. 31—GERMAN COFFEE SUBSIDY

CAPT. JOYCE asked:—

(a) Is it a fact that German nationals growing coffee in East Africa are guaranteed by the Reich Government £55 per ton on the farm for their coffee?

(b) Is it a fact that the Government of the Belgian Congo gives a subsidy to their coffee growers of approximately £10 per ton this year, £7-10-0 per ton next year, and £5 per ton the following year to help producers over the present slump?

(c) Is the Government of Kenya prepared to do something on these or other lines to help coffee growers of this country over the present depression?

MR. WATERS: (a) No official notification of such assistance has been received by Government.

(b) The amount of assistance in this case has been published by the Belgian authorities and is approximately as stated by the honourable member.

(c) The Government has under consideration proposals designed to help the coffee growers of this country over the period of depressed coffee prices. These proposals are contained in a comprehensive memorandum which the Government has recently received from the Coffee Board of Kenya.

LORD ERROLL: Arising out of the last part of the answer, will the hon. Director of Agriculture give an assurance that Government will treat this as a matter of urgency?

MR. WATERS: Yes.

NO. 32—CHEPALUNGU FOREST

LADY SIDNEY FARRAR asked:—

In view of the considerable destruction of forest in the Chepalungu area which has been occasioned by natives since this area was set aside for native use, will Government give details as to the action which is being taken to implement the recommendation contained in sub-section 3 of paragraph 1176 of the Kenya Land Commission Report?

MR. GARDNER (Conservator of Forests): It is stated in paragraph 1175 of the Kenya Land Commission Report that most of the Chepalungu is low grade forest. A portion of this has been cleared along the eastern boundary to allow for sufficient cultivatable lands to meet the needs of some 800 Tinderet Dorobo moved thither in accordance with paragraphs 977-980 of the Report. In the western portion considerable areas of cultivation are apparent, but these are restricted to places which had been illegally occupied before 1932, during which year a number of natives were removed from Chepalungu. Additional damage, since that date has been inconsiderable.

Orders have been issued to prohibit the grazing of goats in the forest and to forbid any extension of present cultivation therein, until such time as a survey can be completed which will show exactly what areas can be cultivated without detriment to the preservation of the forest and grazing land.

[Mr. Gardner]

To ensure the fulfilment of these orders a District Officer has recently made an extended tour of that area, and special precautions will be taken during the months when cultivation for next year's crops is imminent.

An Agricultural Officer has been newly appointed to Kericho District and the conservation of this area will form part of his duties in conjunction with the Administration staff.

Consideration is being given to the question of declaring certain portions of Chepalungu to be a forest area or forest areas as defined by the Forest Ordinance.

NO. 33—KITALE NATIVE HOSPITAL

COL. KIRKWOOD asked:—

Will Government please state when the addition to the Kitala Native Hospital will be proceeded with?

DR. JOHNSTONE (Acting Director of Medical Services): Building has already commenced. The walls are already three feet high.

COL. KIRKWOOD: Arising out of that answer, why was it necessary to send a telegram to Kitala to ask what the situation was?

NO. 34—ADVISORY COUNCIL ON EUROPEAN EDUCATION

COL. KIRKWOOD asked:—

(a) Will Government state the position with regard to the Advisory Council on European Education?

(b) What is the date of the next meeting of the above Council?

MR. WISDOM (Acting Director of Education): The last meeting of the Advisory Council on European Education was held on the 15th September, 1937. The members' three years' term of office expired in May this year. Nominations to membership of the new Council were recently received and have now been approved. One month's notice of a meeting requires to be given. It is proposed to hold the first meeting of the new Council about the end of September.

COL. KIRKWOOD: Arising out of the answer, is the date of the next meeting so dated as to make it twelve months since the last meeting?

MR. WISDOM: Not at all. A large number of people have to be consulted when a new council is set up, and we had considerable difficulty in securing agreement in two particular areas. Nominations have now been finally approved, and the meeting will be held as soon as possible.

NATIVE LANDS TRUST BILL

SELECT COMMITTEE REPORT

MR. HARRAGIN: Your Excellency, I beg to move that the report of the select committee on the Native Lands Trust Bill be adopted.

Before I deal with the details of the Bill, I should like to make one small amendment with regard to the schedule, where there is a typographical error. In referring to page 66, in line 6 the word "unit" should be inserted after "land"; the word was left out.

This report is the result of a great deal of labour, and I should like to take this opportunity of thanking hon. members of the committee on the other side of Council for staying the very long hours I was obliged to keep them in school in order to have this report presented in time for this session. I do think those who have been able to understand the report will agree with me when I say we have made some very radical and excellent improvements. We have clarified the Bill, we have removed what we thought to be injustices, and certainly we have removed several anomalies.

I must apologise for the length of the report, and I know it must be very difficult for the ordinary layman to follow. Probably this is because it is drawn up in legal language and, as you know, it is always said of lawyers that they tell laymen things which they know in a language they cannot possibly understand. I must say, looking at the report I must admit that that would seem to be borne out, but in the course of this morning I hope to be able to show how really simple the majority of the amendments are.

[Mr. Harragin]

I will admit that there are several small and unimportant amendments from my point of view, and I sometimes think that select committees, when sitting on a Bill, treat the draftsman very like Alice in Wonderland used to treat her little boy. She always said:—

"I always smack my little boy

Although he only sneezes.

He only does it to annoy

Because he thinks it teases."

I cannot help feeling that sometimes a select committee, when the draftsman says 21 days, asks "Why? we say it should be 24 or 30 days," and there is really no reason why it should be 30 any more than it should be 21. But still, there it is! they like 30 and the change has to be made.

Turning to the report, the first amendment is found in clause 3, where, you will remember on the second reading of the Bill, we had a certain amount of discussion as to whether the Highlands Board should be described as "the Board which may be established" or "to be established." I said it was merely a matter of politeness and made no difference, and we have decided not to be polite and say exactly what we mean, that "the Highlands Board means the Board to be established."

Naturally, having done that, it was necessary to adopt the same wording when dealing with the Trust Board, which comes at the end of the clause.

Clause 4 (b) has been amended in view of the criticism in this Council when dealing with the four members of the Local Native Council, "one of whom shall be chosen by the members of such Council and three of whom shall be selected by the Provincial Commissioner." Now we elaborate that by making it read "two of whom shall be chosen by the members of such Council" and two by the Provincial Commissioner.

We have also made it quite clear that the additional members who are provided for in sub-clause (d) shall not exceed two. As it read, it might have been possible to co-opt so many members as to completely outdo the jurisdiction of the permanent members, so that it is made

clear that only two may be co-opted, and they will only be co-opted when there is some special measure or matter to be considered by the Council.

We have also added the following proviso:—

"Provided that, in any administrative district where there is no Local Native Council, the Provincial Commissioner shall appoint from among the native inhabitants of such district, four members in lieu of the members referred to in paragraph (b) of this sub-section."

That is in order to clarify the position. As it stood, I think sub-clauses (b) and (c) were likely to be confused, and therefore we have improved (c) and added this proviso to (b). To that extent it is a drafting amendment.

The next amendment is in clause 8, where we insert the following words:—

"No exchanges under the provisions of section 7 of this Ordinance shall be effected."

instead of—

"No exchanges under the provisions of this Part."

As it read, "this Part" might have led to further confusion when, of course, it is only the section which is referred to.

In clause 12 we alter 21 days to 30 days, the object being that it is thought that, in some of the outlying parts of the country, it might take a long time for the offended person who wishes to appeal to be able to get legal advice. His time is therefore extended. The original period of 21 days was put in because it is the usual time allowed for civil appeals in certain cases and it is a matter of some urgency. One wants to get appeals over so that the successful party can get on with his business.

The next amendment is to clause 15. As it stood, we made provision that the representatives of the location or section concerned should have an opportunity of expressing their views, but we did not make it perfectly clear exactly how it should be done. We have therefore substituted a new sub-clause (c):—

"(c) The Local Board must have been consulted and representatives of the location or section concerned must have been given the opportunity of

[Mr. Harragin]

appearing before the Local Board, for the purpose of expressing their views upon the proposal which views if given shall be recorded in writing."

I think Council will admit that that is a great improvement. As the clause read, these people could have been consulted and no one would have taken any notice whatever, because there was no provision that their views should be recorded. Now, if a matter goes to appeal, their views will be on record and seen by those considering the appeal.

In clause 18, at the end of sub-clause (2), we have added the following sub-clause in order to make assurance doubly sure:

"The payment of compensation under the provisions of this section shall operate to extinguish every right, title or interest vested in the private right-holder or in any person claiming under, by or through him."

That clause makes provision for full compensation to be paid to these private right-holders, and once that money has been paid it is necessary to make it perfectly clear that all rights thereafter cease.

In sub-clause (4) we have also made a small amendment, not only with regard to 30 instead of 21 days, which I will not refer to again (it appears all through the amendments), but that the 30 days shall start to run from the date of the notification of the award, making it quite clear that a man has 30 days in which to appeal from the date on which he actually receives official notification.

The major amendment here is with regard to the matter being referred to the Governor, "whose decision shall be final." We felt that it was quite unfair to saddle the Governor with the task of delving into what might be a ticklish proposition, and we have inserted in the report "Governor in Council", where all interests are represented, and we know he will have the frank advice of all those sitting.

Clause 22 is amended by deleting the word "Government" before school. It was pointed out to us that Government were not the only people by any means in this country to put up schools, and it

was necessary that a provincial commissioner should be able to set apart land for schools of any sort, kind or description. We have therefore transposed the word "Government" to make it apply to Government stations or camps. Naturally we do not want to set these aside for private individuals.

Clause 24 we have amended, as a result of a very useful memorandum sent in by the Director of Public Works, and I should like to pay tribute at this stage to two memoranda with regard to roads and water from the Director of Public Works. They were most helpful. Also to the Mining Department, who sent in some excellent suggestions which, wherever necessary, were incorporated. I had promised to take them all one by one but, on reflection, it would take too long to go into the reasons. They are both Government departments, and I will see them after the end of this session and explain how we met them in every particular.

In clause 24, the first that I can remember of the Public Works Department recommendations, we have inserted another sub-clause to make provision for setting apart land for "outspans, stock routes, cattle dips and labour camps." It is unnecessary for me to explain that further. It is an obviously necessary amendment, as we have to have outspans, stock routes and so on in native reserves as well as elsewhere.

Clause 25 is enlarged, it deals with the setting apart for railways, tramways and roads. The draftsman had omitted to recognize that it would be necessary to have in connexion with certain works buildings and so on which would not occupy the road and it might be necessary to set apart land for those buildings, so we have inserted at the end:

"or for buildings or works in connexion with any of the foregoing purposes, together with the necessary curtilage of such buildings or works."

There is a small amendment in clause 25 (4), in the last line but two. Instead of the words "any land so added", which is rather imperative, we suggest that the words be "if any land is so added". In the same way when dealing with sub-clause 5. That Board may make representations to the Governor or to the

[Mr. Harragin]

Secretary of State. There we think it better that the usual procedure should be followed, that their representations should be sent through the Governor to the Secretary of State, so that we have added the words "who shall refer the matter to the Secretary of State".

The next amendments are rather more important, in clause 26, which deals with compensation for setting apart of railways, etc. I can assure Council that there is no change in principle, but is an amendment merely to clarify the meaning of sub-clause (2). Instead of the sub-clause as written at present, we suggest the following:

(2) Where the setting apart is in respect of a road, the whole cost of the construction of which has not been defrayed from the general revenues of the Colony and the whole cost of the maintenance of which has not been, and at the time of such setting apart is not so defrayed, the compensation payable shall be paid from the revenues of the Local Native Council concerned and from the general revenues of the Colony; and the amount of compensation payable from the general revenues of the Colony shall bear the same proportion to the total amount of compensation payable as to the portion of the cost of the road to be defrayed from the revenues of the Colony bears to the total cost of the road."

That I believe to have been the original intention, and I think it is obviously fair to suggest that the compensation should be paid in that proportion.

We then pass on to Part IV, which deals with exclusion.

We have deleted clause 28 (1), and substituted the following:—

"(1) Subject to the provisions of sub-section (2) of this section and notwithstanding anything in Part III of this Ordinance contained, the Governor, after consulting the Local Board and with the consent of the Trust Board, may exclude from the native lands any land required for any of the purposes set out in section 22 (but not for the purpose set out in paragraph (b) of sub-section (1) of that section) and in sections 24 and 52 of this Ordinance,

and the land so excluded shall thereupon cease to form part of the native lands. In every case where the Local Board is consulted by the Governor for the purposes of this section, representatives of the location or section concerned and of the local natives concerned shall be given the opportunity of appearing before the Local Board for the purpose of expressing their views and such views if given shall be recorded in writing."

That is really an amplification of a clause I referred to earlier, whereby we made provision for the opinions of local inhabitants to be recorded in writing in order that the Court of Appeal shall be able to do justice to the case.

The next important amendment is in clause 28 (4) and (5), which we have deleted and substituted the following:

(4) No land situate in the Highlands shall be added to the native lands under the provisions of sub-section (3) of this section; or under the provisions of sub-section (4) of section 25 of this Ordinance, save with the consent of the Highlands Board.

(5) No land situate in the Highlands shall be added to the native lands under the provisions of sub-sections (2) and (4) of this section, save with the consent of the Highlands Board."

You will remember, that, at the second reading of this Bill, several hon. members on the other side of Council took the point that whereas the Highlands Board were given the right to veto, so to speak, any major question, when it comes to what I alleged were smaller matters they could have been overridden merely by the word of the Secretary of State.

Actually, in going into it, they put up an extremely good case and showed that, assuming we wanted to make use of this clause to its full, we could set apart huge areas of the Highlands, and that there was really no protection for the Highlands Board except that would have to be referred to the Secretary of State.

There is no logical reason why they should not be just as omnipotent in regard to these three sections as with regard to the main section of the Bill, and we have therefore given them the necessary veto.

[Mr. Harragin]

Coming to Part V, in clause 31 we have added the following words:—

"but, where any land in the native lands has been set apart for the purpose of being so leased, it shall not be necessary again to set apart the land for the purpose of granting any renewal of the original lease."

The object of that must be obvious to everybody. Assuming land is set apart for 21 years, let us say for a mining company, and at the end of 21 years the company wish to renew their lease, under the provisions of the law as it would have stood in the Bill it meant they had to go through the whole gamut of the setting apart process, much of which we all know would be perfectly useless, because by then all the people concerned have been paid up and have gone, and there would be unnecessary delay, apart from the fact that it would be unjust as mining companies would be uncertain if at the end of 21 years the various bodies would be prepared to set apart the land once more.

I do not think anyone can cavil at the amendment, because once land is set apart and compensation paid there is no hardship in continuing in setting it apart.

In clause 32 we have added the following as sub-clause (6):—

"(6) The Chief Native Commissioner may delegate to any Provincial Commissioner the power conferred upon him by subsection (1) of this section in respect of any lease granted for a term of one year or less."

It was pointed out that it was quite unnecessary for these very short leases of a year in every case to have to come up to the unfortunate Chief Native Commissioner and be signed by him. As you know, there are numerous leases of that kind, and naturally we all know that in practice the Chief Native Commissioner is guided by the opinion of the provincial commissioner. It is a waste of time that he should have to sign every one of those leases himself, and we therefore make provision for the provincial commissioner to sign these small leases.

In Clause 34, which deals with rent, there was an omission in the Bill, namely "stand premiums." As you know a stand premium is really a commuted rent and

must be treated as a rent in order to avoid complications.

In clause 35 for the sake of clarity sub-clause 5 has been added and reads as follows:—

"(5) Nothing in this section contained shall be deemed to apply to leases granted under the provisions of the Mining Ordinance, 1933."

As you know a special provision is made with regard to mining leases and we therefore wish to make it clear that the provision of this section will not apply in the case of mining leases.

In clause 37 we have made rather an important amendment. As it stands at present, in order that a lease should be forfeited it was necessary to go to the Supreme Court, and it might interest the Council to know that a lease which had been for an acre of land, cost £50 to get it done, and having that in mind to a great extent we have given jurisdiction to courts of the First Class to deal with cases of leases. As you know courts of the First Class are in practice presided over by professional magistrates and we have just added the following words at the end of page 21 after the word "notice":—

"may, notwithstanding the provisions of the Courts Ordinance, 1931, commence a suit in a First Class Subordinate Court."

In clause 38, which deals with licences for the granting of and taking of sand and limestone, grazing of stock, the removal of timber and the granting of way-leaves, we have amended the provision so that it reads:—

"Provided that no licence referred to in paragraphs (a), (b) or (c) of this sub-section shall be granted for a period exceeding twelve months at any one time."

It is perfectly obvious that it might be necessary to give security of tenure for more than one year and we have no wish that the Trust Boards should be ousted in any way, and therefore we have put the burden on to them and now put in the following proviso:—

"Provided that no licence referred to in paragraphs (a), (b) or (c) of this sub-section shall, except with the consent of

[Mr. Harragin]

the Trust Board, be granted for a period exceeding twelve months at any one time."

The effect of that will be that where a man wants to take lime and leave the timber for a period exceeding one year, before the licence can be granted it will have to be formally referred to the Trust Board and, if they give their consent, a longer period will be permitted.

Paragraph (4), which deals with way-leaves, has been amplified to some extent by setting out exactly what type of way-leave is intended. There were a few additions in the sub-clause, namely in-line 4 where we refer to "the purposes of laying pipes, settling electric power or telephone lines, cables, or aerial ropeways." Now, after "laying pipes" we have added the words:—

"making canals, aqueducts, weirs, dams and/or any other works required for the supply and use of water."

And we have added a proviso at the end of clause (4) which reads as follows:—

"Provided that, where the native land concerned is the subject of a mining right under the Mining Ordinance, 1933, or of a lease granted under the provisions of the Crown Lands Ordinance or of this Ordinance or of the Ordinance repealed by this Ordinance, the Provincial Commissioner shall not grant a way-leave licence in respect of such land except with the consent of the lessee or the holder of the mining right, as the case may be; and if any such lessee or holder refuses his consent, the Provincial Commissioner may appeal to the Governor in Council whose decision shall be final. In any case where a way-leave has been granted over any such land and any compensation is payable in respect of disturbance, or damage to the interests of the lessee, or holder, as the case may be, the amount of compensation shall be such sum as may be agreed upon between the applicant for the way-leave and the lessee or holder, as the case may be, and in default of such agreement, such sum as may be determined by arbitration under the provisions of the Arbitration Ordinance."

The effect of that proviso must be clear to everybody. It would be very easy to allow a Provincial Commissioner to grant a way-leave over a man's land, and in this case I am thinking particularly of land in the occupation of a mining company, and it is also equally clear that the construction of a canal or the putting up of telegraph poles might be of the greatest inconvenience and disturbance to the unfortunate occupier of that land. Therefore we have made provision in dealing with land that is subject to a mining right that, unless there is agreement there should be an appeal to the Governor as to whether there should be a way-leave there at all. And if the Governor grants a way-leave the lessee or holder will have the right to submit the matter to arbitration for compensation. I think that if we facilitate too much the granting of way-leaves it might do enormous damage to anyone operating a mining lease.

Clause (5)—incidentally the "5" was omitted from the original copy of the Bill—we have added the words:—

"(other than compensation payable under the provisions of sub-section (4) of this section)"

between the word "compensation" and the word "which" which appear in the third line. This is merely for the sake of clarity as we do not want to pay compensation twice for the same thing.

There is a small amendment in Part VI, clause 43. The committee were informed that the words "water sanctions and/or water rights" were better than "water permits."

Clause 49 shows a very drastic amendment, but in effect it makes no difference whatever to the original Bill. We have transposed from clause 70 the two provisos which appear therein and put them in as subsequent provisos to clause 49 (1). Now, clause 49 gives the Governor power to remove a native under certain circumstances, and we thought the appropriate place to put in a provision which safeguards to some extent the rights of the natives was in the first clause where we give authority and power to remove.

The first deals with the private right-holder who—

"shall not be required to remove himself until he shall have harvested

[Mr. Harragin]

any annual crops which may have been planted before the date of the coming into operation of this Ordinance."

and the second, and this is particularly important:—

"And provided further that, notwithstanding the provisions of section 12 of the Native Authority Ordinance, 1937, no native, whose rights in respect of the land upon which he, or his family, is, or are, residing, have been extinguished under the provisions of section 70 of this Ordinance, shall be compelled to remove himself from such land except by order of the Governor made in accordance with the provisions of this section; but the provisions of this section and of this proviso shall not apply to a native who, having been ordered by the Governor to remove in accordance with the provisions of this section, either removes himself or is removed under the provisions of this section, subsequently cultivates or occupies land outside the boundaries of the native lands, the native reserves, the temporary native reserves or the native leasehold areas, as the case may be."

The object of that is to make it perfectly clear that once the Governor's order has been given the right has been extinguished when the crops have been reaped. And the man cannot just remove himself for a few days and then come back. And from the time he removes himself he is liable to be dealt with under the Native Authority Ordinance as if he were a trespasser.

In clause 50, again for clarity and at the request of the hon. Director of Public Works we have recast sub-clause (b) and we say now, with regard to the powers of entry to certain land:—

"Enter upon such land for the purpose of setting up poles and carrying electric, telegraph or telephone lines across such land, and laying sewers, water pipes, electric, telegraph or telephone lines therein"

and the important part is—

"and for maintaining and/or affording access to any such works and to any other works of a public nature."

There was an omission in the Bill as drafted, namely where we made provision that you could enter land in order to set up these poles, etc., but no provision was made for keeping them in order and seeing that they were kept in order.

Sub-clause (c) has been amplified by adding the words "streams, lakes, swamps, etc." This is merely a formal matter.

Clause 56 (2) has been amended by giving further time for the service of notices. At present a notice must be served or is deemed to be served not later than the seventh day succeeding the day on which it was posted and now it is the fourteenth day. With regard to the publication of the notice we have made a slight amendment and have recommended that it shall be put up in the district commissioner's office and in some other public places.

And we have made a very necessary amendment to sub-clause (3) which, as it reads, might easily force an unfortunate district commissioner or one of his servants into committing a criminal offence by saying:—

"(3) Any person tearing, defacing, altering, injuring or removing any notice so affixed shall be guilty of an offence against this Ordinance, and shall be liable on conviction by a magistrate to a fine not exceeding ten pounds."

Of course, there will come a time when it will be necessary to remove a notice when it expires, and as the clause reads he could then be fined £10 for removing it. Therefore we have amended it by saying:—

"(3) Any person who without lawful cause or excuse, tears, defaces, alters, injures or removes any notice so affixed, shall be guilty of an offence against this Ordinance and shall be liable on conviction by a magistrate to a fine not exceeding ten pounds."

In clause 61 (2) we have added after that clause another sub-clause which really incorporates the provisions which at present exist in the Crown Lands Ordinance, and that is with regard to travellers. We have made it clear that:—

"(3) Travellers shall be allowed to encamp with their servants, transport

[Mr. Harragin]

and baggage on any uncultivated land in the native lands for a period not exceeding forty-eight hours, and, with the consent of the District Commissioner, for a longer period, and they shall with their servants be allowed access to any spring, river, stream or lake upon the land."

This is merely a repetition, as I say, of the existing law in the Crown Lands Ordinance.

We have added somewhat to the rule-making powers by adding a further sub-clause dealing with trees which are not actually in the forest reserves, and we have given power to make rules:—

"(i) for the protection of trees and forest produce on land, not within a forest area within the meaning of the Forest Ordinance, and for regulating the felling or removal of such trees or forest produce, as the case may be."

I think everyone will agree that that is a very necessary amendment as we shall be able to control trees which do not happen to be within the forest area.

There is no need for me to make further reference to clause 70 because, as I said before, the two provisos there have been transposed to clause 49. And in sub-clause (2) of 70 we have added the following words after the word "land" which occurs in the last line but two:—

"other than land situate in the Highlands"

Now that is a matter of some importance and the meaning of that amendment is this. The clause says:—

"(2) Nothing in this section contained shall be construed as affecting any native tribes or communities, for whom no specific native land unit is provided by this Ordinance, in regard to any right which such tribes or communities may have to occupy the areas of unalienated Crown land in which they are resident at the date of the coming into operation of this Ordinance."

We have inserted after the words "Crown Land", "other than land situate in the Highlands", and the reason for that is this: Although actually there are no natives in that happy position, or

there should be no natives at the moment, there is one small section of a tribe who have been ordered to leave a certain area in the Highlands and to go to another area which has been allotted to them; and in order to avoid any misunderstanding with them, that they had no rights to remain where they are, as a result of that sub-clause we are making it clear by excluding rights in the Highlands.

These, Sir, are all the amendments that have been made by the select committee with the exception of the amendment of the various schedules which are attached and which require no explanation except that the Survey Department have informed us that these are now correct.

I do not think it can be said that the committee has departed in any way from the principles of the Ordinance and every amendment that has been made has been done in order that the intention of the Ordinance should be made more clear to everyone concerned.

MR. MORTIMER seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, before I speak to this motion may I rise on a point of order and ask for a ruling on the procedure which is to be adopted, because when we debate reports by select committees on rather complicated Bills we have, once or twice, got into difficulties in Council. When such a Bill is sent to select committee their report comes back and often, as in this case, there are recommendations with regard to a very large number of sections. As I understand it, it is possible for a member to get up and move an amendment to one or more of the sections of the report of the select committee, and having done that he cannot speak to the main motion. But I presume he can speak as often as may be necessary to move all the amendments he may wish to propose or, alternatively, he must move all his amendments at one time. Having moved his amendments, I take it that Council will have the opportunity of considering them one by one, because there might be some amendments which members might agree with and some with which the majority disagree. I take it that because one has moved more than one amendment at the same time it does not follow that the amendments are put

[Major Cavendish-Bentick] to Council *en bloc*. I ask this because we did last year get into difficulties.

HIS EXCELLENCY: A member will have to move all his amendments at the same time, because he can only be allowed to speak once. But we will certainly adopt the procedure normally of considering each one of these amendments separately and in turn, and putting the question from the chair. The second thing is this, an amendment may become a little bit complicated, and without considering the matter very deeply I think the procedure would be easier if say, Mr. "X" proposed three amendments and Mr. "Y" seconded all three amendments. It would, I think, make the procedure easier. I would take the opportunity of reminding hon. members that a member who seconds an amendment cannot speak again to the original motion because the original motion is still before Council until the question is put from the chair. And, similarly, a member who has already spoken to the original motion cannot second an amendment.

LORD FRANCIS SCOTT: Your Excellency, just to clarify that point, should someone only second an amendment formally and not speak to it he then has full rights to speak to the main motion afterwards?

HIS EXCELLENCY: No.

MR. HARRAGIN: Yes, Sir.

LORD FRANCIS SCOTT: If he does not speak?

MAJOR CAVENDISH-BENTICK: Your Excellency, I suggest Standing Rule and Order No. 49 (ix) of the Rules of Debate applies.

HIS EXCELLENCY: I will abide by that ruling, but I should like to look into that particular procedure afterwards. But we will take the actual wording of that for to-day and that includes this afternoon if we sit.

MAJOR CAVENDISH-BENTICK: Thank you, Sir. May I ask what the decision is with regard to a member who has proposed an amendment? He cannot, of course, speak to the main motion

again, but should any further amendment be proposed at a later stage is he allowed to then?

HIS EXCELLENCY: Once a question has been put from the chair then it is entirely a new question before Council, and certainly a member who has spoken on some other amendment can speak on the new one.

MAJOR CAVENDISH-BENTICK: I must apologise, Your Excellency, for holding up the time of Council, but it is rather an important matter.

HIS EXCELLENCY: I agree.

MAJOR CAVENDISH-BENTICK: Your Excellency, I do not intend to take up the time of Council for very long because the hon. mover has very carefully gone through all the provisions which have been made and suggested by the select committee. I would, however, like to take this opportunity of paying a tribute to the hon. Attorney General for the way in which he conducted the proceedings of the select committee, because we were, I know, I was, very tiresome, and I think his patience was particularly exemplary.

Your Excellency, in clause 8 the hon. mover explained that a small change had been made confining the powers of the Highlands Board to section 7. He did not quite explain why, because he apparently thought it was obvious. But in order that it may be understood I take this opportunity of explaining the reason why we did that, which was because section 6 purely refers to an arrangement made as between two native tribes and, therefore, the Highlands Board could not possibly come into the picture at all. But as there has been an amendment there I thought I would just explain why it has been put in.

I am shortly going to move an amendment with regard to clause 18, but for the moment I would like to skip that and refer to clause 28.

Clause 28 has had a major amendment, an amendment for which we pressed very strongly in the debate on the original introduction of the Bill. The reason that sub-section (4) has been altered has been

[Major Cavendish-Bentick] explained by the hon. mover this morning. It is because when we inquired into the question we found that in fact, it might be possible, as the Bill was originally worded, to exclude very large areas of land from the Highlands and to add to native lands very large areas from the Highlands without the Board being given adequate control. But I would stress that, in giving these further powers to the Highlands Board, we have given equal powers to the Lands Trust Board with reference to the provisions made under sub-section (5). I stress that point because the hon. mover merely said we had expunged sub-section (5), and possibly people might not realize that by doing that we gave equal powers to both Boards.

I now come to section 18 of the Bill. Notice has been given of an addendum to the select committee's report that it is the desire of three members of the select committee to move an amendment. The amendment suggested is the deletion of the last line and a half of sub-section (2) of section 18 of the Ordinance as printed and the substitution therefor of the words—

"of the value of the natives' interest in the land, plus fifteen per centum of such value. The maximum compensation payable under this section being calculated on the basis of the full agricultural value of the land, plus fifteen per centum of such value."

Clause 17 and 18 deal with the compensation which is to be paid in the matter of "setting apart", and similar provisions are made under clause 20 for "exclusion". If any amendment is agreed to in clause 18 a similar amendment will have to be inserted in clause 20. Provision for compensation appears both in clauses 17 and 18, and under clause 17 it is very rightly provided that any native who is affected by the setting apart of land is entitled to apply for compensation to the District Commissioner, in respect of disturbance, in respect of annual lease, or expense likely to be caused to him by such setting apart, and the compensation will include full payment for the vacation or destruction of any hut or buildings, for any growing crops, etc. That is only right and proper.

We then come to clause 18 where provision is made for paying extra compensation, for, as it is worded at present, a native who is in such a position that the Provincial Commissioner considers that a recognisable form of private right-holding exists. That provision is perfectly fair. But I would submit that recognisable forms of private right-holding must vary according to circumstances.

The wording of section 18 is largely taken, I think, from the Indian Land Acquisition Act, but I am not certain. At any rate, the practice is that if you compulsorily acquire land you do so by payment on a fair valuation compensation in respect of that person's interests in the land. In the case of natives I submit that their interest varies very considerably in different parts of the country, I think that by including a formula, which is the formula invariably used for assessing compensation to persons who own freehold rights over land in a section of this kind we are, by inference, implying, even more than my hon. friend would wish, that every native is a freehold owner of land. It is for that reason that I am putting forward this amendment, and I stress that in the wording of the amendment there is nothing to suggest unfairness.

All we suggest is that, after consultation with the Local Board, the Provincial Commissioner, being satisfied as to the claim of any native so applying for "compensation payable under this section being calculated on the basis of his interest in the agricultural value of the land, plus fifteen per centum of such value." I have added that the maximum compensation payable shall be such as laid down in this section, and therefore, in fact, the powers of the Provincial Commissioner will in no way be altered. But we shall get away from what might be a very unhappy precedent which laid down by inference that any native having any right was *ipso facto* to be paid compensation as though he had freehold rights. That is the reason for moving this amendment.

My second suggestion may or may not be viewed as being of very much importance. I personally think it is of considerable importance. I suggest that clauses 49 and 70 should be expunged from this Bill and should be inserted in

[Major Cavendish-Bentinck] the Bill to amend the Crown Lands Ordinance, with the necessary renumbering of the clauses, 49 to 68-10 become 50 to 69, and 71 to become 69.

If you glance through this Native Lands Trust Bill you will realize that it is a Bill dealing purely with those areas of land which are to cease to become Crown land and which will be vested in a Native Trust Board, and which are in future to be known as native lands. This Bill takes the place of the old Native Lands Trust Ordinance, which in turn took the place of that portion of the Crown Lands Ordinance which dealt with the reservation of land for native tribes. Therefore, this Bill should deal solely with natives and native lands.

If you glance through the Bill, the first 48 clauses apply purely to native lands. Clauses 47 and 48 give certain miscellaneous powers to the Governor under Part VI, "Miscellaneous Powers," with reference to minor adjustments to native land units and that he may declare certain areas as wanted for public purposes.

Suddenly, we come on to clause 49, which gives the Governor power to order natives out of Crown lands into native reserves or into some other area of unalienated Crown land. We then pass on to clause 50, which deals again purely with native lands and we go on dealing purely with native lands until we come to clause 69, when we come, suddenly again to clause 70, which starts off by dealing with the Crown Lands Ordinance and suggesting extinguishment of any rights which may have been held under the provisions of sections 30 and 31 of the Crown Lands Ordinance, 1902, and of section 86 of the Crown Lands Ordinance.

It does more than that. It actually in sub-clause (2) declares rights within areas of Crown lands and yet such a section is contained in a Bill which is solely designed to deal with native lands.

I therefore suggest that, although it may not much matter which Ordinance one puts these things in, we should include these two sections in the Crown Lands (Amendment) Bill, because that is the measure that deals solely with matters in Crown lands. To suggest it does not matter what Bill you put any amendment

in, may perhaps be going a little bit too far, but I was seriously informed that we could easily include all amending Ordinances passed in any one year in any Bill, even though it were a special Bill dealing with a specific subject, and even were the amendments designed to affect twenty or more Ordinances. That, of course, is *reductio ad absurdum*. I suggest that if we have very vital provisions affecting Crown lands and you wanted to find them, you would look up the Crown Lands Ordinance and not look up an Ordinance affecting native lands, or any other Ordinance dealing with some totally unrelated subject.

I beg to move two amendments:—

That the report be amended by the inclusion of the following paragraphs:—

(a) That clause 18, sub-clause 2, be amended by the deletion of the penultimate and last lines from the word "of" to the word "value," and the substitution therefor of the following: "of the value of the natives' interest in the land plus 15 per centum of such value. The maximum compensation payable under this section being calculated on the basis of the full agricultural value of the land, plus 15 per centum of such value."

(b) That clauses 49 and 70 be removed from the Native Lands Trust Bill and be inserted in 'A Bill to Amend the Crown Lands Ordinance, 1938,' and that the necessary renumbering of clauses be effected in that clauses 50 to 69 become 49 to 69 and clause 71 becomes Clause 69.

LORD FRANCIS SCOTT: I beg formally to second.

HIS EXCELLENCY: We will take the first amendment first after the interval.

Council adjourned for the usual interval

On resuming:

HIS EXCELLENCY: The debate will be continued on the first amendment.

MR. HARRAGIN: Your Excellency, in considering this amendment I would like to say that at first sight it appears to be a very reasonable proposal were we

[Mr. Harragin]

dealing with ordinary land holding in Nairobi or London. But may I remind you of the history of that section. As it appears at the moment that clause was taken from the existing laws, the 1934 Ordinance, and it also has the blessing of the Carter Commission in paragraph 1541, sub-paragraph 7. In dealing with this same point it points out:—

"That outright compensation should always be assessed on the same basis as if the land were being taken over under the Land Acquisition Act—the full value, plus 15 per cent."

So that, as far as I am concerned, the clause as drafted is the existing one and it is also the recommendation of the Carter Commission, which, as you know, Sir, and the members of Council know, has been accepted *in toto*, and for that reason if for no other reason.

COL. KIRKWOOD: Your Excellency, on a point of order, is the hon. Attorney General entitled to say that the Carter Commission has been accepted *in toto*?

MR. HARRAGIN: I will not quibble about words. We have all heard it a hundred times in Council and, as far as I am concerned, I was instructed to have the Ordinance drafted on the lines of the recommendations, which is what has been done.

The history of the clause is also interesting because members on the other side of Council will remember all the trouble that we had with regard to mining in the native reserves when it was first started—a number of despatches, letters in the papers, questions in the House at home, and so on. As a result of it all that particular clause appeared in the 1934 Ordinance and, as far as I know, has not caused undue hardship to anyone, and for these reasons if for no other, I feel on behalf of Government that it is quite impossible to alter what is in effect the basis of calculation when depriving these natives of their rights, such as they are. Whatever they might be we have agreed to pay this amount plus 15 per cent and I feel it would be equivalent to a breach of faith at this moment suddenly to jump in and put in an amendment to the Ordinance which might in effect mean a great deal less.

The question was put and negatived.

HIS EXCELLENCY: We will now proceed with the second amendment to the Bill proposed by Major Cavendish-Bentinck, with regard to removing these two sections 49 and 70 from the Bill under discussion, to the Crown Lands Ordinance.

LORD ERROLL: Your Excellency, perhaps, as a member of the select committee I should explain why I have not signed this reservation put in by the hon. Member for Nairobi (North). My point is that, although I think he is probably right when he says that these sections should be removed from this Bill and put into the other, I do not really think it matters two hoots whether they are in this Bill, in the E fugitive Bill, or in any other Bill as long as they appear somewhere. My particular position is that I am most anxious to see these two clauses passed as soon as possible for my own particular people in the Limuru District, and I am afraid if we fiddle about with them too much the Bills may have to be referred back and extra delay will ensue.

MR. HARRAGIN: Your Excellency, as the noble Lord representing Kiambu has rightly said, we are really discussing a point of no importance whatever. My only answer to the hon. Member for Nairobi (North) is that it is a pity to keep a dog and do the barking yourself. It so happens that the particular dog which the Colony keeps and who advises where a particular clause should go, is myself, and I submit that this is the proper place for it to go.

Quite apart from that, Council will be relieved to know that people far greater than myself entirely agree with me; that far bigger dogs in Downing Street have examined this Bill and they consider that it is a perfectly suitable place for it, and they agree as does the Noble Earl has already said, that it does not matter where it appears in the Ordinance provided that it does appear somewhere. Therefore I suggest that this objection is a little pet, nickety. I can assure Council that the reason why this is the proper place is because the lands that these natives are being turned out of are, at the moment, regarded in a sense as native lands.

[Mr. Harragin.]

You are aware that in the Crown Lands Ordinance when a property is conveyed there is always a reservation to make provision for extinguishing native settlements. That clause has been done away with, and we follow up in clause 49, for the information of the unfortunate people who are having their rights taken away, with a further definition as to what rights are reserved to them, and I submit that this is the proper place.

The question of the second amendment was put and negatived.

HIS EXCELLENCY: The debate on the select committee report is now continued.

MR. PANDYA: Your Excellency, I should like to move that the select committee report be amended by the deletion of paragraphs 14 (b) and 15.

The point I wish to make in this connexion is that I am not quite clear as to what will be the position of Government if paragraph 14 (b) remains. The hon. mover simply explained the purposes of this amendment; but when I went further into this question, I found that this was not as it was made out to be in this debate.

The original clause 28 (4) which I want to see remain in the Bill reads:—

"(4) No land situate in the Highlands shall be added to the native lands under the provisions of sub-section (3) of this section, save with the consent of the Highlands Board, and if the Board does not agree to any such addition the Governor may refer the matter to the Secretary of State, whose decision shall be final."

The main portion, the appeal to the Secretary of State whose decision shall be final, has been deleted from the clause which is in the select committee report.

The point I should like to make is that in the previous debate when we had the memorandum from Government in regard to the proposed Order in Council, it was made quite clear that the Highlands Board was the advisor, and that the Governor's veto would be maintained. Now, in this Bill the power of the Governor and the power of the Secretary

of State has been taken away. I should like to be clear as to what is actually going to happen in this particular instance, and who has the final authority or say in regard to this matter. If, in this Bill, that particular authority which is given to the Secretary of State is taken away, would it be right for him to assent that the Highlands Board is the final authority in this matter to do what they like with the land in this country?

MR. ISHER DASS seconded.

HIS EXCELLENCY: As I understand it, the hon. member wishes to move two amendments, and I think they could therefore be considered together.

MR. PANDYA: Yes, Sir, I have no objection, and I would like to move the second amendment which is to delete paragraph 15, with reference to clause 29.

HIS EXCELLENCY: To avoid confusion we will take paragraph 14 (b) first. It may simplify matters if we take the two amendments separately. The amendment is that paragraph 14 (b) of the select committee report, which refers to clause 28 (4) of the original Bill, be deleted. The effect will be that the original clause shall stand, and that is the question before Council.

LORD FRANCIS SCOTT: Sir, I rise to oppose the amendment.

This question was very thoroughly debated at the second reading, and when we went into select committee the argument we put up on this side of Council proved to be even stronger than was put up here, and our contention was accepted by the members of that committee.

I ask you to consider for a moment the composition of that committee. We had the hon. Attorney General, who is the representative of justice here—I am not certain, but I do not think that perhaps the judiciary would approve of that! (Laughter.) We had the hon. Chief Native Commissioner, whose duty it is to look after native interests; we had the hon. Commissioner for Local Government, Lands and Settlement whose duty it is, as the Government's servant, to see that there is no maladministration; and also we had the hon. Mr. Montgomery, formerly the Chief Native Commissioner,

[Lord Francis Scott]

who, I think, everybody recognises as one of the fairest-minded men, who is determined to see that the natives are not treated badly. Also we had an Indian member who signed the report.

That point was unanimously agreed to by that select committee, and it was gone into very thoroughly. In actual fact, what it really means is the Board had the power to agree and not the power to disagree, because if it disagreed the Governor had power to over-rule and refer the matter to the Secretary of State whose decision would be final.

I felt very strongly, and I think most of the select committee felt the same, that the object of these Bills before us was to get a settlement on this difficult question. If we are constituted as a responsible body in this country then we are to have responsibility to do something.

One of the weaknesses, I think, in this Colonial Government very often is that so much is always having to be referred home, and in saying this I have in mind what was said to me in the Colonial Office only last year by a distinguished person there: "I wish to goodness you would settle more of your affairs in the Colony and not send them back to the Colonial Office."

In these amendments which the select committee have recommended, they have considered that the Highlands Board should be trusted as a reputable body to deal fairly with these things, and we further considered that the Native Lands Trust Board should equally be trusted and not over-riden in the same way. And that is why sub-section (5) of clause 28 was deleted.

I do feel that nearly everyone in this Legislative Council here cannot wish to put anything back into the Bill which is going to necessitate, unless it is absolutely necessary, referring it back to the Secretary of State. I strongly oppose the amendment.

MR. MONTGOMERY: Your Excellency, I signed the report without the reservation, and for the reason set out by the Noble Lord I vote against this amendment.

MR. HARRAGIN: Your Excellency, I am afraid I cannot accept the amendment for the reasons I had hoped I had given in introducing the original motion. If hon. members will turn to clause 8 they will see that the Highlands Board has complete power, with regard to exclusions. It reads as follows:—

"No exchanges under the provisions of this Part shall be effected in respect of any land in the Highlands, save with the consent of the Highlands Board."

That was dealing with exchanges, not exclusions. So, we are starting off in clause 8 of the Bill by saying that if the Government wish to exchange native land with Highlands land, they cannot do it except with the consent of the Highlands Board. Then, I am sure, unwittingly, what they do later on with regard to exclusions is to take power to themselves. I ask hon. members to refer to the fifteen clauses which are referred to in clause 28, starting with 22, then 24 and then 32-33. 22 deals with the setting apart for local public purposes—now you can realize how much land will be taken for that; 24 deals with the setting apart for general public purposes—and if you just look at the innumerable public purposes, you realize how much land could be taken for that; and lastly, if you look at 52 you see that there an area could be taken out for forest areas. So that, in fact, although pretending that we were giving the Highlands Board power to protect their boundaries in fact, subsequently, we whittle the whole thing down so that theoretically in course of time we could take away the whole of the Highlands.

When this argument was put up it made the case unanswerable. I had thought of leaving this clause unaltered, because it was thought that it would only refer to minor matters and to small areas for which it would be a nuisance to alter the Order in Council and ridiculous if Government could not find some simple way of dealing with it. But, when we went into committee, it became perfectly clear that having said that they could preserve their boundaries we then subsequently provided the machinery for taking away considerable areas of the land, and for that reason, I considered it reasonable to accept the amendment put up by the hon. members on the other side

of the House. I am sure that the Government will be able to find a way of dealing with the matter which will be satisfactory to all concerned. I am sure that the Government will be able to find a way of dealing with the matter which will be satisfactory to all concerned.

(Mr. Harragin) of Council, and nothing I have heard to-day induces me to alter my view.

MR. SHAMSUD-DEEN: Your Excellency, the reasons given by the Noble Lord the hon. Member for the Rift Valley certainly do not appeal to me. It does not matter how strong the personnel of this select committee may be it cannot make two and two five. I submit that we are dealing with a matter of fundamental importance and a very great principle is being involved. I have maintained consistently, that we ought to conform with the terms of reference of the Land Commission in trying to secure land for non-natives.

Here we are asked to deal with native lands, which, as I said before, were all native lands at one time throughout this Colony. We are primarily concerned in this Ordinance to preserve land for natives for all times and to see that the native lands will not be taken away any more at any future period. But we cannot say the same about the land alienated for non-natives. Many thousands of acres of native lands have been set aside for non-natives which have not been taken up by anyone up to this date.

We have heard of the numerous difficulties which may arise in the future. I do not agree with the hon. Attorney General when he says that only in minor matters he did not wish to refer the whole thing to the Secretary of State for the Colonies. It is just possible that in the next five or ten years we will be confronted with the problem of finding land for 150,000 squatters as was mentioned the other day, and also, there are various other problems, such as destocking, soil erosion, etc., which we have to control. We may have to take not only a small portion which has been described as a minor matter, but we may have to take quite a few thousand miles of land that have been set aside as Highlands in order to accommodate the native population to whom it originally belonged.

We cannot take away powers from the Governor and the Secretary of State for all time and hand them to the Board, which is now to be constituted, against the undertakings given by various Secretaries of State for the Colonies in the

House of Commons for times without number that there will be nothing new in the Orders in Council or as a corollary thereon.

I think we ought to go on with the practice of the last thirty years. Here we have a new Board which is going to be vested with powers which can override the Governor or the Secretary of State for the Colonies to deprive the natives of all possibility of getting any addition to their present lands at any future date at all. I submit that this is a matter of very great importance, and I am very sorry indeed that the Government members have seen fit to succumb to an amendment of this sort. I strongly support the amendment.

MR. HOSKING: Your Excellency, as Chief Native Commissioner I served on this select committee. I would like to say that in my position I have had innumerable dealings with the accredited representatives of the White Highlands who may be taken as the prototype of the Highlands Board. At all times generous, it helped me to support their demands for this amendment to the Bill, for I have every reason to believe they will not abuse confidence. If we limit their powers we drive them, I think, into an obstinate position; but we trust they will not betray their trust.

MAJOR CAVENDISH-BENTINCK: It is suggested that the Carter Commission exceeded their powers. One of their terms of reference was:—

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

Still more important is the very last paragraph of the Report, and the very last words:—

"We recommend, therefore, that the external boundaries of the European Highlands be defined under the Order in Council, and be subject to analogous safeguards as to exclusions, additions and exchanges."

which is precisely what this amendment to the Bill is for.

The question of the amendment was put and negatived.

HIS EXCELLENCY: The question now before Council is the second amendment moved by the hon. member Mr. Pandya.

MR. HARRAGIN: Your Excellency, for the reasons given with regard to the last amendment Government cannot accept this.

The question of the amendment was put and negatived.

The question of the original motion was put and carried.

MR. SHAMSUD-DEEN: May I ask for a ruling, Your Excellency? I am not quite clear. I spoke in support of the amendment. Having done that, am I to understand that I lost my right to speak on the main proposition?

HIS EXCELLENCY: As far as I remember, you spoke on the amendment after the question had been put from the Chair. You were therefore speaking on a new question, and that was the particular amendment. I have not got you down as having spoken on the motion to adopt the select committee report. We have now finished with that motion.

THIRD READING

MR. HARRAGIN moved that the Native Lands Trust Bill be read the third time and passed.

MR. WALLACE seconded.

The question was put and carried.

The Bill was read the third time and passed.

CROWN LANDS (AMENDMENT)

BILL

SELECT COMMITTEE REPORT

MR. HARRAGIN: Your Excellency, I beg to move that the report of the select committee on the Crown Lands (Amendment) Bill be adopted.

As hon. members are aware, this amending Bill is a sister-Bill to the one we have just considered and passed. Although the references in the Bill are much more complicated and difficult to follow, I am glad to say that the actual number of amendments is fewer.

The first amendment is to clause 3, where we delete the definition of the word "Highlands", because that appears later in the Bill.

We make the same amendment with regard to the establishment of the Highlands Board and Trust Board as we did in the last Bill, substituting the words "to be" for the words "which may".

The next amendment is to the heading of Part VI, which now will make some reference to the Highlands. It is therefore incorrect to refer to that Part as "Lands for native use and occupation" as it also refers to the Highlands, so that we have put instead the words "Reservation of land for special purposes".

On page 3 of the Bill, dealing with section 56 (2), the marginal note there has slipped into the wrong place and should be opposite section 57 (1), a minor amendment.

The next is to section 58A, where we take out paragraph (b) as it is now unnecessary. The main amendment comes in 58b and onwards.

The first is the deletion of 58b (1) and the substitution of the following:—

"(1) The Governor may grant, for a term not exceeding ten years, leases to non-natives of land in such areas of the native leasehold areas as, in the opinion of the Chief Native Commissioner after consultation with the Provincial Commissioner, are surplus to the requirements of the natives at the time the lease is granted and which will be surplus to the requirements of the natives during the currency of the term of the lease."

The object of that amendment is to make it clear that when an application is made for a lease by a non-native in this area, the Chief Native Commissioner will have to be satisfied that the land is surplus to the requirements of the natives, not only at the moment the lease is granted but also that it will remain surplus during the currency of the lease.

We then come in (2) to a small amendment, to some extent a drafting mistake originally, where we alter in line 2 the words "Chief Native Commissioner" to "Trust Board". As it reads at present the Chief Native Commissioner might almost

(Mr. Harragin) be said to override the powers of the Governor, so that to their alteration no one can object.

Section 58 F has been deleted and will be reinserted later on. It deals with forfeiture for treason and rebellion.

We then make this important addition. We have brought in the Highlands. No reference had been made in this Bill as originally drafted to the Highlands, although in fact we all know it is an area of land which is going to be reserved to some extent for certain specific purposes. It therefore appears necessary that some reference should be made in the Crown Lands Ordinance to a reservation of this description. We have put a new heading in after section 58F, and inserted a new 58F reading:—

"The Highlands

"58F. The areas of Crown land the boundaries of which are set out in the Seventh Schedule to this Ordinance, shall be known as the Highlands, and shall be subject to the protection and control of the Highlands Board in accordance with the provisions of any Order of His Majesty in Council and of this Ordinance and of any other law for the time being in force in the Colony."

I do not know if anyone will imagine that the official members on that select committee have given away anything they should not in allowing that section to go in over their signature, but I can assure hon. members that it does not alter the position actually in law in the slightest. We know perfectly well that what we are saying is going to be done by an Order in Council. If there is no Order in Council, you can take it from me we shall never hear anything more of these two Bills we have been considering this morning, so that in fact, if there is going to be some reference to an area of land known as the Highlands in the Order in Council, it seemed appropriate that some reference should be made in the Crown land laws of the Colony as well. We therefore see no reason why this section should not be inserted.

We then deal with the Northern Frontier District and the Turkana

District. There is a new section 58 G (1), which reads:—

"(1) The areas of Crown land, the boundaries of which are set out in the Eighth Schedule to this Ordinance, and which are therein respectively described as the Northern Frontier District and the Turkana District, shall be areas in which the native tribes at present residing therein shall have a prior interest. The Governor may, from time to time, with the approval of the Secretary of State, by proclamation vary the boundaries of the said areas, and where any such variation has been made the Eighth Schedule to the Ordinance shall be read and construed subject to the variations specified in such proclamation."

"Prior interest" that is the important part.

You must realize that we are dealing with Crown land and not with native land. We are also dealing with land you all know about—Turkana and Northern Frontier, which is sparsely populated and which, under the best circumstances, can hardly be called fertile. You also know that these districts are the boundaries in that particular direction of Kenya, and it may be necessary from time to time to vary these boundaries. You also know that the Samburu occupy part of the district referred to therein, and it may be necessary in time to come, for various reasons we need not go into, to alter those boundaries.

We therefore have made it possible for the Governor to alter them by proclamation, with the consent of the Secretary of State. We go to the highest referee we can possibly find in case anyone thinks we are trying in some way in the future to deprive these unfortunate natives of their rights. These rights cannot be taken away save with the prior consent of the Secretary of State.

I think when you are dealing with tribes who really have very nebulous rights—they wander about and do not do much cultivation and keep a few goats and sheep and cattle and move from place to place—it should be possible for the Governor, with the consent of the Secretary of State as I said, to make an adjustment of boundaries.

(Mr. Harragin)

We are then transposing the remaining sections of what used to be 58F to follow after this new section which I have just read out.

There is a small amendment in section 58G, as it is now re-lettered, making reference to the Kenya Native Lands Order in Council, 1938. The word has now been changed to "area".

I then come to the section to which I told you I would refer to later on, which comes under the heading of "Miscellaneous" and deals with forfeiture for treason or rebellion. It is now numbered 58K, and reads:—

"Miscellaneous

"58K. Notwithstanding anything in this Ordinance contained, the Governor, in cases where the offences of treason or rebellion against His Majesty have been proved to have been committed by any native tribe, group, family or individual, and in addition to any other punishment lawfully inflicted in respect of an offence so committed, may order that any rights, permits or leases in respect of any land comprised in the areas defined in the Fourth, Fifth, Sixth and Eighth Schedules to this Ordinance, shall be forfeited. Every such order of the Governor shall be subject to the approval of the Secretary of State."

I remember in the discussions that took place on the second reading of the Bill, that someone asked what on earth we were going to do with these people if their rights were expunged in this way. Of course, that will be the business of the Government of the day. But where we actually give rights, whether you call them leasehold rights, priority or any other type, it is only right and proper—and there are innumerable precedents—that those rights should be forfeited in the event of treason or rebellion. If those rights are forfeited, what Government does for those people is a matter for the Government of the day, and not for us at this time.

We then come to the section now known as "Miscellaneous," and call it "General." There has been re-lettering all through, and except for a few amendments to the schedules which are attached

these are all the amendments to the Crown Lands (Amendment) Bill which we have to consider.

There are one or two amendments which some may imagine will have far-reaching consequences. This is not so. The fact that you put into an Ordinance something which you know will appear in an Order in Council, cannot be said to represent a great constitutional advance, and if it makes hon. members on the other side of Council happy I can see no objection to it.

MR. WALLACE seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, the report of the select committee has been explained, and therefore I merely rise to move two amendments. I notice that the first amendment is not quite correctly worded owing to the fact that when I wrote the reservation to the report I only had before me the first draft of the select committee's report, which was differently lined and paged:

I move as my first amendment:—

That the report be amended:—

"by the insertion in the proposed new section 58F of the words 'within which persons of European descent are to have a privileged position, in accordance with the White Paper of 1923,' after the word and symbol 'Highlands,' where they occur on the third and fourth lines of the proposed section."

This amendment is perhaps all the more necessary in view of the phraseology used by the hon. and learned Attorney General in moving the adoption of this report and in referring to this particular section.

In making this last appeal for what, after all, is only fair treatment, I am going a little bit to refer to the history of the 1923 White Paper which, indeed, is the history of these two Bills.

As long ago as in 1906, this question of ownership of land in the Highlands had brought Indian and European interests into conflict. It is no good hiding the fact. What we do want, and what we consider we are entitled to, is a special privileged position as regards the area to be known as the Highlands.

[Major Cavendish-Bentinck]

As far back as 1906 the policy of the reservation of the Highlands for Europeans who had been coming out to this country since 1887, was approved and was laid down by Lord Elgin when Secretary of State for the Colonies. That has held good ever since. In 1913, Sir William Simpson, who came out to report on various difficulties being experienced in Kenya at that time, made a report in which he recommended racial segregation in residential and commercial areas of large towns, as well as a special privileged position for Europeans as regards ownership of land in the Highlands.

In 1919, the grant of elective representation was approved by Viscount Milner, which took effect at the beginning of 1920. This may not sound relevant to the particular position we are debating to-day, but it is when I explain what these various matters led up to. Under that constitution, we were given eleven elected members, and the Indian community had none. Previously, in 1909, they had had one nominated Indian member. That particular experiment did not prove very successful, and in 1919 it was not repeated.

Quite naturally, as a result of those decisions, the Indian community in this country became restive and, as a result of that, in 1920 Lord Milner addressed a despatch to the Governor of Kenya avowing the decisions on the various points at issue. That despatch was published in the Official Gazette in this country, and was read by all who at that time were coming out here and making their homes in this part of the world.

In that despatch which was published there were five decisions:

The first was: that to meet the wishes of the Indian community arrangements shall be made for the election of two Indian members of the Legislative Council on a special franchise. The second point was: a similar arrangement for Indian-elected representatives on municipal councils. The third—

MR. SHAMSUD-DEEN: On a point of order, Sir, are we discussing the Highlands or political history?

HIS EXCELLENCY: I think this is germane and has a bearing on this particular question.

MAJOR CAVENDISH-BENTINCK: The third point was: no restriction of Indian immigration. The fourth point, Lord Elgin's decision in regard to the Highlands for European use, was that this was to be strictly maintained, but that reasonable opportunity was to be afforded for Indian agricultural settlement in areas of adequate extent in lower altitudes. Lastly, the principle of race segregation was to be adhered to. That was in 1920.

In 1921 the Government of India reviewed the position and certain despatches changed hands. It so happened that there was a Joint Parliamentary Committee on Indian Affairs sitting at the time under the chairmanship of Lord Islington, not with reference to affairs in this country but with reference to Indian affairs generally outside this country; the question of Indian immigration into various parts of the Empire was subsequently raised at that conference.

To cut a long story short, the conference passed one resolution to which certainly one Dominion, and I believe others, refused to subscribe.

Meanwhile, the settlement of the position in Kenya was discussed between Mr. Churchill, then Secretary of State for the Colonies, and Sir Edward Northey, then Governor of the Colony. As a result of this discussion, and also partly as a result of Lord Islington's committee it was decided to set up what is known as the Wood-Winterton Committee, an inter-departmental committee consisting of the two Under Secretaries of State for the Colonies and for India and various representatives of the Colonial Office and of the India Office.

That committee published what can only be described as a most fatuous report. It tried to please everybody, compromised right and left, and came to no reasonable decision. But, in spite of its efforts to compromise and please everybody, the eighth recommendation of the Wood-Winterton Committee, which was not accepted by us at any rate, was that "the Colonial Office cannot contemplate

[Major Cavendish-Bentinck]

any change in the existing law and practice having regard to past policy and commitments". That is, as regards the reservation of the Highlands.

That brings us to 1922, and I submit that when you think of the people who were coming into this country from 1897 to 1922, you must admit that they came in with the very definite understanding that they were coming in under the conditions laid down by Lord Elgin in 1906, 1907, and 1908 when they were finally ratified.

As the position was, from the Colonial Office point of view, and here, unsatisfactory, they had further discussions, and the 1923 White Paper was published. This White Paper was to settle matters more or less for all time. It was published on the 17th August, 1923, under Government Notice No. 281, with this preamble:

The following memorandum summarizes the history of the Indian question in the Kenya Colony and Protectorate, and sets out the general policy which has been laid down by His Majesty's Government, together with the decisions which they have taken on the practical points at issue.

Since 1921—I am coming to the decisions later—we have been working under the 1923 White Paper. In that White Paper the word "European privilege" obtains and appears on several occasions.

In 1933 the Carter Commission was appointed, the Kenya Land Commission, with the idea of settling various differences and difficulties respecting the division of land in this Colony. Its terms of reference were given out by the Secretary of State himself. The term of reference with regard to this particular matter was, I submit, perfectly readily understood. The sixth term of reference was—

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

The difficulty was not to say what that privileged position was, because it is clearly laid down. The task was to define

the boundaries, and they were at great pains to do so as appears in Chapter 9, Part III, of their Report. But note that the word "European" appears in the terms of reference.

Now that Report was accepted by His Majesty's Government in a White Paper, dated May, 1934, laid on the table of the House of Commons and headed "Kenya Land Commission Report; Summary of Conclusions reached by His Majesty's Government", and in section 9 it says—

"The Commission have defined the boundaries of the 'European Highlands' and His Majesty's Government propose to accept their recommendations in regard to this."

Again we have the words "European Highlands" in the White Paper accepting the Commission's Report. That, in short, is the history of what led up to this Carter Commission Report. We know that, roughly speaking, from 1897 until to-day, it has been repeatedly laid down that within the area to be known as the Highlands, Europeans are to be given a privileged position. And it is on that understanding that the people who are at present colonizing this country came out here to settle.

It may be said: "Well, after all it was only administrative practice", and I think it was said by the hon. member introducing this Bill that ever since the days of Queen Victoria it has not been customary to make legislative racial differentiation. It may even be suggested by the hon. members opposite that what we are asking for is something which it is impossible for them to give. I think they will put up two reasons, the first being that it is Government policy not to make legal racial discrimination, and the second will be that there are difficulties in connexion with certain international treaties, notably one known as the Congo Basin Treaties. I am going to deal with both these objections and I will take the second first.

They knew perfectly well of the incidence of the Congo Basin Treaties and at the time when Lord Milner wrote his despatch in 1920, and nobody knew more about these than Lord Milner; they also knew about them in the Wood-Winterton

[Major Cavendish-Bentick] time, and when the Carter Commission came out. And they certainly knew all about them in 1934 when the White Paper was laid on the table of the House of Commons. And in spite of knowing all about them they still talked about "European" privilege and talked about the area of land called the "White" or "European" Highlands. So I do not think that now, at the last minute, they can make a convenient excuse of the Congo Basin Treaties.

As regards racial discrimination, what have we just passed this morning? a Bill to provide for Native Lands, where land is actually going to be removed from its present category and be no longer called Crown Lands, and invested in a Trust Board. I think that is correct, and I cannot see that that is not racial discrimination.

It may be said that legal racial discrimination was not intended by the White Paper in the past. But I wonder how many of the hon. members opposite have really carefully read the last part of the 1923 White Paper. That is most carefully phrased, and if it does not actually lay down that there shall be in all respects legal racial discrimination in deference to the alleged policy of the British Government since the days of Queen Victoria, it does lay down quite definitely that:—

"The existing practice must be maintained as regards both initial grants and transfers."

If we were asking you for something which by rights we certainly ought to ask for, which is complete legal racial discrimination, I could understand that there might be some difficulty in accepting this amendment. But we are not. All we ask for is for something that we have been promised, which is the insertion of the identical word or words used in the 1923 White Paper, in the terms of reference given to the Carter Commission, and in the English Government's acceptance of their Report, so that in future amending ordinances the practice maintained since and laid down in 1923 will continue.

I suggest that if the wording on which we have depended for a long time is not

retained in the two Bills brought in and about which there has been considerable discussion, it might tend to make people think that these new ordinances are going to over-ride the practice of the past. We are told that that is not the case, but cannot we have that established in these ordinances. I suggest that we can.

We are not asking for any new legal racial discrimination; all we are asking for is a confirmation in this Ordinance that the practice which has been maintained since 1923 will be maintained in future as regards the area now delineated and to be known as the Highlands. That is all we are asking and in common equity I consider that we have a right to demand this.

Sir Phillip Cunliffe-Lister in 1935 said:—

"Ever since 1906 the alienation of agricultural land in the European Highlands has been granted only to Europeans. That practice is tantamount to a pledge and it has been followed by every Government since, and I have no intention of changing it."

Three years have now passed, and I might suggest that it has largely passed but from the sight of Government.

Mr. Ormsby Gore again repeated the same sort of thing:—

"It is not intended that the Order in Council defining the boundaries of the Highlands area shall include any provision involving legal or administrative discrimination on the basis of race or nationality in connexion with the occupation of land in that area. The issue of the Order will, therefore, not affect the policy which has been followed since 1906, as set out in Command Paper 1922 of 1923."

Well, that is not a very satisfactory pronouncement.

"The Kenya Land Commission framed what they recommended as a comprehensive and final settlement of Kenya's land problems, and from an administrative point of view such a settlement is of the first importance."

Well, all we want by this amendment is that in that area the actual practice which we are told is going to continue.

[Major Cavendish-Bentick] will continue. We are asking for nothing but ordinary and fair treatment. In our view we consider that we have not got that, and I consider that the white people would have been dealt with in an unspeakable manner if this amendment is not agreed to by Government.

LORD ERROLL: Your Excellency, I beg to second the amendment to this Report.

In doing so I have nothing to add to what my hon. friend the Member for Nairobi North has said. He has covered the ground perfectly clearly and ably and it is only necessary for me to add my protest to the omission in the Ordinance.

HIS EXCELLENCY: There is certainly a very minor amendment made to the original motion which was put forward in the Order Paper but still it does not alter the meaning of the motion in any way; and, therefore, I do not think it worth while to refer to the fact. The amended proposal can stand; it was simply an alteration to conform purely verbally with regard to the section to which it referred. I had better write out the resolution to make it quite clear:

"By the insertion in the proposed new section 58f of the words 'within which persons of European descent are to have a privileged position, in accordance with the White Paper of 1923,' after the word and symbol, 'Highlands,' where they occur on the third and fourth lines of the proposed section."

COL. KIRKWOOD: Your Excellency, I am rising to support the motion before Council, that is, the amendment proposed.

In doing so I am not going to reiterate what I have said in the past or what has been pointed out this morning. For the last thirty years there have been definite statements made in White Papers, and public statements made by different Secretaries of State, as has already been stated, and as I have said on many previous occasions.

We also had the honour of hearing the hon. Attorney General speaking on the other Bill in reference to paragraph 1541 of the Carter Commission Report, that

the report of the Commission had been accepted. It would appear to me that the argument put up by the hon. mover of this amendment is quite clear and that the hon. Attorney-General has gone back on us—that his original declaration could not be accepted by him when it had been accepted by everyone else and accepted by the House of Commons.

I think it is only beating the air to continue talking on what has been said on many previous occasions and said here this morning. I am sure that the hon. gentlemen on the other side of the Council could have a free vote they would vote for the amendment, and I would ask you, Sir, to give them a free vote on this occasion.

I would like to say before I finish that, as far as this Government measure is concerned—and I presume it will go through—I can in no way associate myself with the designing of the Bill in its present form. If the amendment is omitted from the Ordinance I consider, if I may say so and to put it mildly, if the Bill is passed and the amendment is turned down, then every statement made by every responsible Secretary of State for the last thirty years has been ignored by someone, on whose instructions I cannot say, but it does not appear to be the home authority who for many years and even in the 1934 White Paper accepted the Carter Commission Report and the demarcation of the European Highlands.

I can only say that under the circumstances the wool has again been pulled over our eyes, and we have been double-crossed and tricked into a position to-day so that no honourable member on this side of Council can vote for the Bill without this amendment inserted therein.

MR. GHERSIE: Your Excellency, I should like definitely to associate myself with this amendment. I consider that this is a final appeal on the part of the Elected Members in an attempt to secure a promise of legal security. And I can say quite definitely now that if the Bill is passed without the amendment I cannot support.

MR. SHAMSUD-DEEN: Your Excellency, am I in a position to move a further amendment? If so I have a very minor amendment to move.

HIS EXCELLENCY: You are quite at liberty to move an amendment.

MR. SHAMSUD-DEEN: Your Excellency, my amendment is that the word "European" in the proposed amendment be deleted and the word "British" substituted.

MR. ISHER DASS seconded.

HIS EXCELLENCY: The question now before Council is that an amendment by the hon. member Mr. Shamsud-Deen be adopted. The amendment is that the word "European" in the original amendment by the hon. Member for Nairobi North be substituted by the word "British".

LORD FRANCIS SCOTT: Sir, I should like to point out that the words in the amendment moved by the hon. Member for Nairobi North are a direct quotation from the Carter Commission Report, that is why the word "European" appears in it. Personally, I cannot support the amendment moved by the hon. member Mr. Shamsud-Deen.

The question was put and negatived by 32 votes to 3.

Ayes.—Messrs. Isher Dass, Pandya and Shamsud-Deen, 3.

Noes.—Mr. Boulderson, Major Cavenish-Bentley, Mr. Cooke, Earl of Erroll, Mr. La Fontaine, Lady Sidney Farrar, Messrs. Gardner, Gherrie, Hamp, Harragin, Hodge, Hosking, Dr. Johnstone, Major Joyce, Col. Kirkwood, Mr. Lockhart, Col. Modera, Messrs. Montgomery, Mortimer, Mulligan, Nicol, Northrop, Lord Francis Scott, Messrs. Stronach, Stooke, Sir A. Wade, Messrs. Wallace, Waters, Willoughby, Dr. Wilson, Messrs. Wisdom, Wright, 32.

Council adjourned at 12.50 p.m.

Council resumed at 2 p.m.

The debate was continued on the amendment moved by the hon. Member for Nairobi North.

MR. SHAMSUD-DEEN: I wish to move an amendment, that the word "European" remain...

HIS EXCELLENCY: I think the hon. member has spoken to the amendment.

MR. SHAMSUD-DEEN: I am moving another amendment.

HIS EXCELLENCY: You have spoken and we are now debating the amendment moved by the hon. Member for Nairobi North, that these particular words be inserted. Before we adjourn, you had spoken to that amendment in moving a second amendment, that the word "British" be substituted for "European". You cannot propose another amendment, because you have already spoken to this.

MR. SHAMSUD-DEEN: This is quite a new amendment.

HIS EXCELLENCY: You cannot propose another amendment to the amendment as moved by the hon. Member for Nairobi North. You have already moved one, you cannot move two. You could have moved two at the same time, but you cannot now speak for a second time on the question now before Council.

MR. SHAMSUD-DEEN: Do I understand that the hon. Member for Nairobi North moved only one amendment?

HIS EXCELLENCY: A member can only speak once to the motion before Council. When speaking, he can move more than one amendment, as the hon. Member for Nairobi North did on the Native Lands Trust Bill, when I informed him that he must move them at the same time as he could not speak twice.

MR. PANDYA: In view of your ruling, Sir, I should like to move the amendment: the addition of the word "British" before "descent".

"I wish to move it in order to test the sincerity of hon. members on this side of Council.

MR. ISHER DASS seconded.

SIR ARMIGEL WADE: On a point of order, is it not a fact that we have already disposed of a similar amendment? There is no difference between European and British descent, and therefore this matter cannot be debated again?

COL. KIRKWOOD: On a point of order, I think there is a great deal of difference between European descent and European British descent.

HIS EXCELLENCY: I think there is a difference, and I must allow this amendment to go forward.

SIR ARMIGEL WADE: Is the amendment that the words "European British descent" or "British European descent" be inserted?

MR. PANDYA: Whichever is correct English, Sir. (Laughter.)

HIS EXCELLENCY: Could you explain whether the word "British" is to come between "of" and "European" or between "European" and "descent"? You moved the amendment. I am asking exactly what it is as we have not got it in writing.

MR. PANDYA: It should be "British European descent".

HIS EXCELLENCY: The question is, that the word "British" be inserted between "of" and "European".

LORD FRANCIS SCOTT: Well, Sir, I personally would be prepared to accept that amendment, because it does mean that British people of European descent are to take a privileged position: It does not make any legal disability against people of other races and, as far as I am concerned, I would accept it, but I do not know whether Government will.

MR. HARRAGIN: Your Excellency, I am afraid the Government cannot accept it for various reasons.

The first is that it is practically the same. It is only verbiage to say there is nothing different to the amendment which has just been lost, and, secondly, the argument that might be advanced with regard to the wording as it is at present would go by the board, because of the quotation by the hon. mover in support of "European" descent, which must go by the board the moment you introduce a further qualification, namely, "British", which has never been laid down by anybody at any time.

MR. SHAMSUD-DEEN: On a point of personal explanation, what the hon. and learned Attorney General has said is quite correct. I meant that, but in certain quarters it was said I meant by "British" descent to include British Indian subjects, which was not the case at all.

COL. KIRKWOOD: As regards this, I take it this concerns a further amendment?

HIS EXCELLENCY: We are speaking on what we could call a secondary amendment.

COL. KIRKWOOD: Your Excellency, the hon. and learned Attorney General, for the reasons he has given, has advised Your Excellency not to accept this amendment. Why not put it in for the very reason stated, that it has never been laid down by anybody at any time? I think one argument is just as good as the other.

MR. COOKE: Your Excellency, I shall support the amendment of the hon. Indian members, because I object to any discrimination between Indians and foreigners in this country. "British European Highlands" would be the correct term.

The question of the amendment was put and negatived.

The debate continued on the amendment moved by the hon. Member for Nairobi North.

LADY SIDNEY FARRAR: Your Excellency, I should like to place on record my wholehearted support of the amendment moved by the hon. Member for Nairobi North, and I take this opportunity of expressing my entire agreement with the views brought forward by him in support of the amendment.

MR. HARRAGIN: Your Excellency, I hope the hon. mover will not think me rude when I dismiss his amendment very shortly. I know how deeply he feels about it, but when I say that Government are unable to accept it for the very excellent reasons he gave himself, I think he will understand what I mean exactly. For instance, in his many quotations in support, he finished up with a quotation from the then Secretary of State, Mr. Ombay-Gore. Replying in the House of Commons, the Secretary of State said there would be no legal discrimination in the laws which were going to follow the Commission's Report.

Naturally, if we accept this amendment, in view of the fact that reference is made to the "privileged position in accordance with the White Paper of 1923" we shall immediately be making

[Mr. Harragin] legal discrimination, so that, apart from the arguments he put forward, from the legal point of view there is the statement of the Secretary of State that there will be no legal discrimination in this legislation.

MAJOR CAVENDISH-BENTINCK: My quotation was:—

"It is not intended that the Order in Council defining the boundaries of the Highlands area shall include any provision involving legal or administrative discrimination."

These are Ordinances, not Orders in Council.

MR. HARRAGIN: In effect, as the hon. member is aware, the one is complementary to the other, and they depend on each other and hang together entirely, so that in point of fact it must be taken to have meant the legislation which was going to follow the recommendations of the Carter Commission.

There were other points the hon. member made. He mentioned a treaty, another he did not mention. He also mentioned a legal point regarding racial discrimination in legislation. I know perfectly well that he might be able to find here and there in matters of detail, particularly in a country such as this, certain racial discrimination, but I do not think the example he gave was particularly good because, with regard to native lands, we are not in fact giving them anything; we are merely preserving what is there, which is a very different thing. I do not think there can be any argument from anybody outside that they had any right to interfere with legislation in which we preserve the rights they really have already but which have never been reduced to the statute book.

For those reasons I regret that Government cannot accept the amendment.

LORD FRANCIS SCOTT: Sir, in rising to support the amendment before Council, there are just a few points on which I should like to be clear.

Great play has been made of this word "legal". We have been told that there cannot be any racial discrimination. The words we suggest should be put in are

not racial discrimination. It is a definite description of the Highlands as it should be. When the hon. and learned Attorney General says that the instances of natives is not one, that definitely is a legal enactment reserving land for natives against people of any other race. I cannot think of any more definite racial discrimination which you could possibly find.

I do want to get this clear in my mind. We, as you know, Sir, do feel very strongly on this. We do feel we have been let down over the terminology. I understand, and my hon. friend will correct me if I am wrong, that the argument is that whether there is any definition of these Highlands or not makes no real difference, because the practice is to go on just as it has done for the last thirty years and, in fact, whether the wording of any Ordinance is "Highlands" or "European Highlands" or not, it means exactly the same as the Highlands mentioned in the Carter Commission Report.

I should like to be quite clear as to whether I correctly understand that?

MR. HARRAGIN: On a point of explanation, Your Excellency, all I was intending is this: that whether the administrative arrangement goes on or not is nothing to do with the law. That may or may not happen; we know it will, but it is neither here nor there as far as the legal position is concerned. The legal position is that we cannot make any legal discrimination in the particular Bill we are discussing.

LORD FRANCIS SCOTT: Well, then, the hon. member did not answer the second part of the question: whether the word "Highlands" has "European" before or not it has the same meaning in this Bill as in the Commission's Report. I understand he agrees? (**MR. HARRAGIN:** Yes.) I do not want to labour this point. It is a point on which we feel strongly and perhaps some hon. members think unnecessarily, but this is the last occasion we shall have to bring this up, and we have very tremendously increased support for our contention to-day in the fact that the hon. Indian members have moved definite amendments in this Council that British Europeans should have a privileged position in the Highlands.

[Lord Francis Scott]

I do hope that point will be brought to the notice of the Secretary of State.

The question of the first amendment was put and negatived by 23 votes to 11:—

Ayes: Major Cavendish-Bentinck, Mr. Cooke, Earl of Erroll, Lady Fairair, Mr. Ghesrie, Major Joyce, Col. Kirkwood, Col. Modera, Mr. Nicol, Lord Francis Scott, Mr. Wright; 11.

Noes: Messrs. Boulderson, Isher Dass, Gardner, Hamp, Harragin, Hodge, Hosking, Dr. Johnstone, Messrs. Lockhart, Montgomery, Mortimer, Mulligan, Northrop, Pandya, Shamsud-Deen, Stronach, Stooke, Sir A. Waide, Messrs. Wallace, Waters, Willoughby, Dr. Wilson, Mr. Wisdom; 23.

MAJOR CAVENDISH-BENTINCK: In order to save time I am prepared to withdraw the second amendment, but I had hoped it might be considered whether it might as well be included in this Ordinance.

With the leave of Council the second amendment was withdrawn.

The debate was resumed on the original motion.

MR. PANDYA: Your Excellency, there is one point which is not clear to me and which was not made clear by the hon. mover. It is in connexion with the proposed new section 58F occurring in paragraph 1 (f) of the select committee report: "and shall be subject to the protection and control of the Highlands Board in accordance with the provisions of any Order of His Majesty in Council". I want to be quite clear as to what is the implication of the subsequent wording: "and of this Ordinance and of any other law for the time being in force in the Colony".

"Any law for the time being in force in the Colony" would mean, as far as I can understand, that to-morrow we could pass some further legislation which might have nothing to do with the Order in Council by which this particular thing is restricted, but that further legislation would have an effect as far as this Highlands question is concerned.

I want to be quite clear as to what is the implication of this part of the clause.

One point I would like to make clear, regarding what the Noble Lord, the hon. Member for Rift Valley, said a few minutes ago, that it should be conveyed to the Secretary of State that the Indian members were willing to consent to the reservation of the Highlands for British Europeans. In this connexion I should like to say that the Indian members, at a certain stage, wanted to test the sincerity of hon. members on this side of Council. If the European elected members had accepted our assurance they should have withdrawn the amendment. Not having done that we are not bound by what we said at that time. In view of their attitude the offer, if it meant anything, now lapses.

MR. COOKE: I do not want to waste the time of the Council, but I wish to propose an amendment to the report of the select committee on page 3, paragraph 1 (m). I move that that paragraph be amended by deleting from the proposed new section 58a all the words following the words and symbol "prior interest".

There seems to me to be rather vital matters involved in this, because it seeks, in place of an opportunity of discussing any amendment to the boundaries of the Northern Frontier and Turkana in this Council, to substitute for that a proclamation. I am surprised that my hon. friend the Member for Nairobi North, whom I had always looked upon as being the staunchest upholder of the rights and privileges of this Council, should now acquiesce in such a curtailment of those rights. In fact, I thought that this Council would have reverberated with his indignant protests but, as he has not done so, I wish to move this amendment.

MR. ISHER DASS seconded.

MR. MORTIMER: Your Excellency, the principal reason for the inclusion of that wording is that the attention of the select committee was drawn to the fact that the description of Turkana, taken over from the old description of the Turkana district, included the area at present occupied by the East Suk people, and the area generally known as the extension from Uganda occupied by the West Suk was not included in that description. It was impracticable so to

[Mr. Mortimer]

include it at this stage, because at the bottom of the southern portion there is a debatable area, the precise destination of which is under discussion with the Uganda Government. Consequently, the description at this stage could not have been precise.

In order to enable Your Excellency to make an amendment to include such portion of the extension from Uganda in the Turkana district when the time was ripe to make it without an amending Ordinance, this provision was inserted in order to safeguard the "prior interest" of the natives residing in that area.

MAJOR CAVENDISH-BENTINCK: Your Excellency, I am speaking to this amendment as my name has been mentioned by the hon. mover who drew attention to the fact that this is an amending bill to the Crown Lands Ordinance. That ordinance dealt with all areas of land other than those which, by the Bill, passed this morning, have been turned into native lands. It was necessary, in order to comply with the recommendations of the Carter Commission, to definitely delineate certain specific areas of Crown land, some to form additional native reserves, some temporary native reserves, and some leasehold areas, and these have been so delineated by means of schedules to this amending Bill.

In addition, there are the Highlands, and the D areas, which latter represent the rest of the country, and are not mentioned in this amending Bill, and lastly there are the special areas which are also subject to the Crown Lands Ordinance. Those two particular areas were mentioned by the hon. mover this morning, and he said there were difficulties with regard to the interests of the natives who were there, "wandering people with nebulous rights" I think was his phrase.

It would quite obviously be a very unwieldy system if, in dealing with nomad people with nebulous rights we had, every time there was an alteration of boundary or every time there was an alteration of some land arrangement, to have an amendment to the Crown Lands Ordinance, which is the principal ordinance of the Colony which deals with land.

I know what we are suspected of: we are suspected of trying to slip in some arrangement whereby Leroghi could eventually be returned to those whom we maintain should have right of occupation in the future. However, that cannot be a very real danger, as pointed out by the hon. mover, as we have got to apply to the Secretary of State himself before any alteration can be made.

For those reasons, backed up by those given by the hon. Commissioner for Local Government, I suggest that there is every reason for standing by the proposals put forward by the select committee.

The question of the amendment was put and negatived.

The debate on the original motion was resumed.

LORD FRANCIS SCOTT: Sir, in speaking to the motion before Council there are one or two points I should like to make.

This, Sir, is the last occasion presumably on which we shall be dealing with these Bills. It has taken a very long time to come to the final stage, and during all that time I think Government will admit the European Elected Members have done everything in their power to co-operate and collaborate. We believe that these Bills are of immense importance and benefit to the country in conjunction with the two Orders in Council which will be published as soon as these Bills are finally dealt with.

I know it was my wish and I believe it was the wish of all my colleagues, that we could have walked side by side with Government in that path of co-operation right up to the final winning post. Unfortunately, by Government's inability to accept these provisions which we feel are so important, we have been precluded from being able to support Government in this final stage. It is with great regret that I am saying what I have to say, and I believe it is with the regret of all my colleagues. But it is a fact.

Turning back to the debate last April, I think it was my hon. and gallant friend the Member for Nairobi North who said that there were three conditions which we

[Lord Francis Scott]

thought were of absolute necessity to us. And one was this—a clearer definition. That, Sir, you and your Government have been unable to give us. The other two were with reference to the Orders in Council and they do not come into this Bill except by implication. But we do feel that we should be given a stronger position on the Highlands Board: that the Highlands Board should be put in a stronger position not merely in an advisory capacity but that they should have some power of veto. That, from the general tenour of the debate at that time, I gather the Government are unable to give us.

I am quite sure that you and your advisers will realize that we are very sincere in this opposition. We are not just eleven people speaking for ourselves and of just what we think. We are here to represent the views of all our fellow colonists, who have sent us to this Legislative Council to represent them. I think that on this matter there is a pretty unanimous feeling. But that is comparatively a small point compared with the fact that it is our duty to look ahead and see that there is as much protection as is possible given to the future generations; those that are growing up to-day and those still unborn. It is for these reasons that we have tried very hard by every possible way within constitutional methods to achieve what we consider was necessary to obtain that security for all our people.

We have been told very clearly by responsible Government officers that the constitutional practice will continue. It was put very plainly last April by the Hon. Commissioner for Local Government, Lands and Settlement, and I do not know whether the Hon. Chief Secretary is going to intervene in this debate or not before it closes, but I shall be grateful if, once more at this final stage, with a statement at this time, he could give us the fullest assurance that is possible on this point. I am really genuine when I say that it is with great regret that we cannot wholeheartedly support Government in this last stage of the question. We cannot do so because one of the vital conditions which we made a *sine*

qua non all through the discussion, has not been accepted.

May I refer to what was actually said in the Carter Commission Report, because these Bills are founded on that; this is what it says:—

"We therefore recommend that the boundaries of the European Highlands should be safeguarded by Order in Council, so that the European community may have the same measure of security in regard to land as we have recommended for the natives."

And the last paragraph of all says:—
"We consider that it would be invidious if the native reserves were to be protected in this manner and no similar security be given to the European Highlands. We recommend therefore that the external boundaries of the European Highlands be defined under the Order in Council, and be subject to analogous safeguards as to exclusions, additions and exchanges."

We cannot support Government because we have not got these analogous safeguards. We have got some safeguards, we have made an advance, we recognize that; we recognize that by the appointment of the Highlands Board we will be much better off than in the past. But I submit that we have not been given what we ourselves have called the *sine qua non* when helping Government to implement these two Bills. Therefore we regret that we cannot in this last stage support Government. (Applause.)

SIR ARMIGEL WADE: Your Excellency, I had not the slightest intention of intervening in this debate because I think the hon. the Attorney General has covered the ground of the motion very thoroughly. But I have been asked as the spokesman of Government to give such assurance as is possible again, that the fullest measure of protection of the Highlands will be preserved. I do not know that I can add very much to what the Secretary of State for the Colonies has said—that the administrative practice will continue. That, I believe will be safeguarded and preserved, first of all by the provision in the Crown Lands Ordinance giving the Governor in Council the right to veto inter-racial transactions; and secondly by the establishment of this Highlands Board.

[Sir A. Wade]

It has been objected that the Highlands have not received the same, or an analogous, measure of protection as that provided for native reserves. While the measure of protection is not identical, I think it might be said to be analogous, both the native reserves and the Highlands are each to be controlled by a Board, and it must be remembered that the grounds for requiring the protection are not the same in each case.

What the native wants, and what he is afraid he may not have got, is protection against incursions by Government for public purposes or possibly the alienation of his land for certain purposes. And it was the individual native who was concerned with the land that was going to be taken away from him, and for that he wanted protection. In the European Highlands I do not think there was any apprehension of that kind. The individual holder has his protection in the title deeds he possesses which should be sufficient for him. As far as protection in the case of the Highlands is concerned, and that protection I should have thought would have been provided by the Highlands Board in conjunction with the existing legislation, it certainly is our hope that it will be secured, and so far as any assurance by Government can be given, I can only repeat the assurances of the Secretary of State that the administrative practice will continue and I am afraid that is all I can do.

MR. HARRAGIN: Your Excellency, I would like to add to what the hon. Chief Secretary has just said and I would like to dispose of the fears of Mr. Pandya with regard to there being anything Machiavellian in section 58 (f) that reads as follows:

"58 (f). The areas of Crown land, the boundaries of which are set out in the Seventh Schedule to this Ordinance, shall be known as 'the Highlands', and shall be subject to the protection and control of the Highlands Board in accordance with the provisions of any Order of His Majesty in Council and of this Ordinance and of any other law for the time being in force in the Colony."

If I may say so, it is inserted in that form because we are given to believe that there is going to be an Order in Council which will give certain powers to the Highlands Board. We therefore make mention of that in this section. We also know, by reading this Bill, that the Highlands Board also has certain duties and privileges and powers under this particular Ordinance. We therefore make mention of that. And as we do not know whether in future any other Ordinance will be passed which will give further powers or privileges, we make provision for that also. It is drafted in this form in order that when we pass such an Ordinance we will not have to make alterations to the section.

I also regret very much that the hon. members on the other side of Council are unable to support the Bill. I suppose I have never had the honour of presiding over a select committee where there was better feeling or a greater feeling of give and take than in this particular select committee which is now rendering its report to Council. I can say on behalf of myself that I imagined that, by giving way on two or three clauses (I have forgotten how many there were) with regard to the veto of the Highlands Board, I had gone the whole way to meet the hon. members on the other side of Council. At any rate, certainly as far as I was able to go unless I was to override the directions of the Secretary of State. If, in spite of that hon. members still feel that there is something I was holding back from them which they thought they were entitled to receive, I can only express my deep regret and say that at this moment I am in the unfortunate position of not being able to accede to their request.

The question of the original motion was put and carried.

THIRD READING

MR. HARRAGIN moved that the Crown Lands (Amendment) Bill be read a third time and passed.

MR. WALLACE seconded.

COL. KIRKWOOD: Your Excellency, I beg to move that this Bill be rejected for the reason that has been stated. For over thirty years we have been told that

[Col. Kirkwood]

we had certain rights and had the right to expect that the promises of numerous Secretaries of State right up to 1934, which have been accepted by Government would be kept, and the hon. the Attorney General used the words that the Carter Commission recommendation has been accepted, and I hope that this Council will not allow this Bill to pass.

I am afraid I have used up my stock of adjectives but I do feel that we, the European Elected Members, representing the Europeans of this Colony, should not allow this Bill to go through and allow all the promises that have been made, and broken by the present Secretary of State, and nobody else than he, nobody in Government, I do hope, I have their support that the Bill will be rejected. In any case I can have nothing at all to do with it—not in its present form due to the interpretation of the clauses and the definition of the word "Highlands".

HIS EXCELLENCY: A motion for the rejection of the Bill has been moved.

The motion was not seconded.

The question that the Bill be read a third time and passed was put and carried.

TRANSPORT LICENSING (AMENDMENT) BILL

SELECT COMMITTEE REPORT

MR. WALLACE: Your Excellency, I beg to move that the Report of the Select Committee on the Transport Licensing (Amendment) Bill be adopted.

The Select Committee only recommend two amendments, the first of which is formal and is contained in paragraph 1. The object of this is to make it clear that, in the absence of the chairman, the person chosen to act as chairman shall with the other members form a quorum and that he shall be in the same position as the substantive chairman, that is, that in the event of equality of votes he has a casting vote.

The other amendment, contained in paragraph 2, requires a little more explanation. It will be recalled that at the second reading the hon. Member for Nairobi North raised the question of

objections and, if my recollection is correct, he stated that he was under the impression that a considerable number of objections had been received and the Board had experienced a certain amount of difficulty in operating the Ordinance as a result of that. That is so. We have received a considerable number of objections, more than we expected. But I do not think that next year we are likely to receive the same number. It is true, Your Excellency, that on the advice of the Board it has been decided to defer the operation of the Ordinance on account of the numerous number of objections.

The select committee have considered the whole question and have come to the conclusion that the position is not at all satisfactory in that the Ordinances are silent on the question of what amount of proof is required by an objector, and therefore the Transport Licensing Board would be in some difficulty in adjudicating on the various applications. We came to the conclusion that it would be in the interests of all parties concerned, that is of the applicant, the objector and the Board, if the position was categorically set out in the Ordinance. Then every one would know what the position was.

It is entirely unnecessary to deal with applications by persons protected by section 12, because in that case objections cannot be considered as the Board has no discretion at all in dealing with an application by a person who has been operating on the road for twelve months prior to the 15th of August of this year.

But in so far as other applications are concerned, the Board has a discretion which, of course, it must exercise subject to the provisions of the Ordinance, and those other applications fall into two categories. Firstly, applications by persons who have operated on the roads for a certain time although not over twelve months; and secondly, applications by entire newcomers to the road.

The Select Committee came to the conclusion, having heard the principal objector, that it was only fair and equitable and in accordance with well established principles of law, that in the case of applications falling within the first category the objector should be required to prove his objection. In so far as a

[Mr. Wallace]

newcomer is concerned, we came to the conclusion that there was no reason why he should not, in the first instance, prove that there was a necessity for him to be on the road, and that he should be required to do so.

The object of paragraph 2 of the report is to insert a new clause 5 with the object of giving effect to the recommendations of the select committee on this matter.

MR. STRONACH seconded.

MAJOR CAVENDISH-BENTINCK: Your Excellency, what I did ask for when this Bill was introduced was that information should be given to this Council as to roughly the number of objections received and the percentage of such objections that were put up by one particular body. My reason for making that request was because I believe that a very large number of objections, about 80 per cent or 90 per cent, have been made by the Railway, and I am not certain whether it is altogether wise for the Railway to object on principle to every single application for a transport licence. If that is happening, I think we have a right to know that that is happening.

My other point is this: Strictly speaking, this is an amending Bill. Why, then, did the select committee in its report insert a completely new provision concerning something that we had not discussed during the second reading? They have inserted a completely new clause dealing with a major principle which we have never had any opportunity of discussing. I am not formally objecting on this occasion, but what I say is that this as a rule is an undesirable practice.

I would like to know the answer very much as to the total number of objections made and by whom they were made.

MR. WALLACE: Your Excellency, in reply to the hon. Member for Nairobi North, to the best of my recollection the number of objections which were received in respect of applications for licences for the year 1938 was over 3,000, and it was for that reason, as I pointed out when I was moving the adoption of this report, that the Board advised Your Excellency to defer putting the Ordinance into active operation until the 1st January, 1939.

It is true that 95 per cent, if not 99 per cent, of the objections received were received from the hon. the General Manager of the K.U.R. & H. But I should say in fairness to him that at that time, owing to the fact that the applications had not been properly completed by the applicants, we were not in possession of the amount of information which we had hoped to have been in possession of at the time we published the applications. Therefore, the hon. General Manager felt compelled to lodge objections in order to preserve his rights, owing to the sparsity of information published. I do not think that will happen in so far as the applications for 1939 are concerned.

I quite agree that it is rather unusual to recommend the insertion of a new provision of this character in a select committee report; but it was only because this point was raised on the second reading of the Bill and because the select committee thought it was in the interests of all parties concerned that we should in the first year of the Ordinance make the position perfectly clear.

The question was put and carried.

THIRD READING

MR. WALLACE moved that the Transport Licensing (Amendment) Bill be read the third time and passed.

MR. STRONACH seconded.

The question was put and carried.

The Bill was read the third time and passed.

SCHEDULE OF ADDITIONAL PROVISION

No. 2 OF 1938

SIR ARMIGEL WADE: Your Excellency, I beg to move:—

"That Schedule of Additional Provision No. 2 of 1938 be referred to the Standing Finance Committee."

This Schedule provides for additional expenditure amounting to £40,368, but with specific savings, reimbursements and so on the net additional expenditure is £17,335. Explanations as to the necessity for this additional expenditure are given in the margin of the Schedule.

MR. LOCKHART seconded.

The question was put and carried.

CONTROL OF FUGITIVE BELLIGERENTS (AMENDMENT) BILL

SECOND READING

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

As hon. members will probably realize, the object of this Bill is contained in clause 7, whereby the application of the Ordinance which we are amending is made to persons interned after the cessation of hostilities between Abyssinia and Italy.

The point about it is this. This Ordinance was intended merely to control and confine fugitive belligerents who came into the country during a period of hostilities. It is perfectly obvious that hostilities have ceased, but, owing to the particular circumstances of this case, it is necessary for us to keep these people incarcerated after the hostilities are over.

It is therefore necessary to pass an amending Bill to that effect.

The moment a Bill is on the tapis, immediately everybody having to do with the Ordinance finds some reason why some little amendment should be made, possibly to clarify the Ordinance they have to administer. So the rest of the Bill contains nothing more or less than a few clarifying clauses.

Clause 2 substitutes the word "appoint" for the word "detail", as it is not possible to detail a person to certain duties until he has been appointed, while the words "to serve under such commandant" are redundant.

Clause 3 deals with the question of escapes and attempts to escape. The point was that the principal Ordinance dealt with those who attempted to escape but said nothing about those who were successful in their attempt, and there was some question when they made their escape as to whether we could deal with them. That is now amply covered.

Clause 4 authorizes the commander to delegate certain of his duties: there was some doubt as to whether he could or not.

Clause 5 merely deals with the points raised in regard to escapes and attempts

to escape, and clause 6 amplifies the provision in the principal Ordinance whereby under section 24 certain acts which we had done before the coming into force of the Ordinance are validated. The exception taken to it was that I merely put in the original Ordinance words relating to the treatment of internees, and it was suggested that there were many other things to be dealt with. You see on the opposite side to clause 6 the section which is amplified by adding "control, treatment or internment of belligerents". It is a small extension of the original intention of section 24.

I have already referred to clause 7, which gives us power to retain these people in camp until such time as we are fortunate enough to get rid of them.

MR. WALLACE seconded.

The question was put and carried.

REFUGEES BILL

SECOND READING

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

Hon. members are well aware that we have to deal in this country not only with fugitive belligerents but, unfortunately, in the last year or two we have been inundated, to the extent of some 6,000 people, by Abyssinians, who have crossed the frontier. Obviously the ordinary laws relating to strangers coming into the country could not be invoked when dealing with these huge numbers, and it was necessary, the moment they arrived, to declare the camp in which they were to be provided for, though it is in no sense a prison, as an internment camp; nevertheless, it is a settlement in which they have to confine themselves at any rate during the night.

There was, of course, no provision made in law for such a camp, and it is therefore necessary for us to validate that action. The principal clause I refer you to is clause 10, which merely authorizes us to take the action we have done with regard to these internees.

Having got them into this camp, it is then necessary to be able to keep them under some form of discipline, and you will find in clause 4 innumerable powers

[Mr. Harragin] given to the Governor for the purpose of maintenance of good order in the camp. We have put in that clause practically everything we could think could possibly arise and it merely authorizes law and order and discipline to be kept in the refugees' camp.

In addition to that, of course, in clauses 6 and 7, we preserve the existing laws because these people happen to be incarcerated in a camp at the moment it must not be thought that they are not going to be subjected to the other laws of the land as they exist at the moment.

In clause 8 provision is made for the transfer from the internment camp to the refugees' camp. The reason, perhaps, is not obvious, but it is this. The internment camp is created and controlled by the military authorities, and in a sense is more a prison than a camp, whereas the refugees' camp is more a type of village where all live happily together. But it is sometimes necessary to take a truculent inhabitant of the village under closer discipline, and therefore we have taken power under clause 8 to transfer such cases to the fugitive belligerents' camp.

We also have made provision whereby if any further inhabitants of Ethiopia should feel disposed to come into this Colony, we shall be able to intern them without any difficulty in the camp provided.

As I said, clause 10 is a validation clause, whereby all acts previously done in putting them into the camp and controlling them are validated.

MR. WALLACE seconded.

MAJOR CAVENTISH-BENTINCK: Your Excellency, with reference to this Bill, I should like to ask, because I know the public are anxious to know, firstly whether all expenditure connected with this is met by the home government eventually and secondly, whether there is any information to be given as to how long they are likely to remain, whether there are, as I understand, some negotiations going on between the Foreign Office and Italy or Ethiopia?

SIR ARMIGEL WADE: As to the first part of the question, subject to correction by the hon. Financial Secretary,

the entire expenses of the camp are paid by the home government. As to the second part, it is not possible to give any information at present. The hon. member is quite right to this extent: that we have always wanted to know what is going to happen to these people in the end but I am afraid I know no more than he does.

The question was put and carried.

ELECTRIC POWER (AMENDMENT) BILL

SECOND READING

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

As most hon. members of Council must be aware, the East African Electric Light and Power Co. have submitted an application, which is being considered by Government, which is subject to section 18 of the principal Ordinance. Section 18 lays down that a decision must be made by Government within six months of the receipt of the application.

In point of fact, the six months is approaching, or has reached us to-day or to-morrow, and negotiations are still proceeding, and it would seem to be a pity if the negotiations fall through merely on this time question. We therefore submit this amending Bill with the object of permitting the Governor in Council to consider an application after the six months has in fact elapsed.

I am not in a position to tell you why it was ever put in the original Ordinance that the Governor in Council must make a decision within six months, but there it is, and unless we make this amendment the application will go by default. It is therefore necessary that Your Excellency should have the necessary powers to consider the question after the six months has elapsed and make a decision.

MR. WALLACE seconded.

The question was put and carried.

PENAL CODE (AMENDMENT) BILL

SECOND READING

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

[Mr. Harragin]

This amending Bill is practically a model Bill which has been sent round to most, if not all, Crown colonies.

For a considerable time, particularly those outside, the colonies were not aware of what exactly the legislation was with regard to sedition and undesirable literature in the particular colonies. Every colony had its own idea and dealt with it in a different way, and it was considered desirable not only to tighten up these provisions all over the Empire, but if possible to have them all the same.

Actually, there is very little difference in effect in the model Bill you are now considering and the present law as it is, except perhaps in one small particular, and that is with regard to Your Excellency's power in Council to prohibit any literature coming in that you deem undesirable.

As hon. members will realize, the difficulty when dealing with sedition is that it has got to get a certain amount of publicity before you can get hold of it and, secondly, you have to prove in fact that it is seditious. We make no alteration with regard to sedition within the Colony, but what we have taken power to do is to prohibit literature which is considered undesirable, and which we know has existed outside the Colony, from entering the Colony.

That is the only advance which this Bill makes, and I submit a very necessary amendment. That is reflected in the proposed new section 48 contained in clause 2 of the Bill:—

"If the Governor in Council is of the opinion that the importation of any publication would be contrary to the public interest he may, in his absolute discretion, by order, prohibit the importation of such publication, and in the case of a periodical publication may, by the same of a subsequent order, prohibit the importation of any past or future issue thereof."

I can only repeat that so far as Kenya is concerned I consider this really the crux of the Bill, the most important provision, because, as you know, we as a rule get hold of this literature after it has been published and too late to do any

good, for it will have gone forth into the highways and byways; although we may have learnt it was coming in we have been unable to prevent its entry under the Code.

We naturally follow with the usual clause dealing with what happens to people who deal with this literature after it has been prohibited, so that in the new section 49 it is made an offence for any person—we are dealing with people inside the Colony—to publish this literature after it has been prohibited. In (2) of this clause it is an offence to have it in one's possession after it has been prohibited. That may sound very drastic, but in point of fact it is watered down somewhat by the new section 50, which provides that if you innocently have prohibited literature in your possession, for it to be delivered to the nearest district commissioner or police officer, and if this is done within a reasonable time there will be no prosecution.

We then give powers to certain officers of the Posts and Telegraphs, Customs and police officers, to search and open and examine packages which they have reason to believe contain any prohibited literature.

In new section 52 there is a definition of sedition. Now we really come back to the law of the Colony as it exists to-day, and we make it clear in sub-clause (1) that although it is an offence "to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors", or the Government; "(ii) to excite His Majesty's subjects or inhabitants of the Colony"; to improperly alter any matter by law established; or (iii) to "bring into hatred or contempt or excite disaffection against the administration of justice in the Colony"; (iv) to "promote feelings of illwill and hostility between different classes of population of the Colony", nevertheless (a), (b), (c) and (d) make possible genuine criticism of the Government to be permitted now as always in the past. In these paragraphs it is set out clearly what you can do.

Section 52 (2) merely deals with the definition of the word "intention", and says in effect that you must intend the

[Mr. Harragin]

natural consequences of what you have written.

Clause 53 enacts that any person who in fact does a seditious act, or utters seditious words or phrases, or imports seditious literature, can be dealt with under that Ordinance.

In order to make it clear, in sub-clause (2) we say a "seditious" publication is still seditious though it may not have been prohibited. I would explain to you that the Governor can prohibit the importation of any undesirable literature, and this clause makes this point clear that because the Governor does not happen to have been informed of this particular type of literature you cannot escape if you have it in your possession and it is in fact seditious.

There is a saving clause in 54 that no proceedings may be taken except with the permission of the Attorney General and that within six months.

In the next two clauses we have made a small amendment to the existing law. The first is with regard to the words "public place", for which we substitute "publicly". That may seem a small matter but, as the law stands at present, certain offences are committed, or may be committed, or words may be uttered "in a public place". Well, it is not always very easy to prove that the place is a public place. Someone may have rights over it. Therefore it is suggested that the word "publicly" should be used.

Clause (4) is a printer's error where unfortunately the word "lawful" was printed for "unlawful", which I think you will agree makes some slight difference to the law.

MR. WALLACE seconded.

The question was put and carried.

BILLS

IN-COMMITTEE

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

Control of Fugitive Belligerents (Amendment) Bill;
Refugees Bill;

Electric Power (Amendment) Bill;
Penal Code (Amendment) Bill;
1937 Supplementary Appropriation Bill;
Bills of Exchange (Amendment) Bill;
Kerosene Oil (Repayment of Duty) (Amendment) Bill;
Public Holidays (Amendment) Bill;
Eire and Northern Ireland (Consequential Provisions) Bill;
Tea (Amendment) Bill;

with the resumption in committee of the Kenya Defence Force (Amendment) Bill.

MR. WALLACE seconded.

The question was put and carried. Council went into committee. His Excellency moved into the chair. The Kenya Defence Force (Amendment) Bill was considered clause by clause.

MR. NICOL: Your Excellency, I beg to move an amendment that clause 3 be amended as follows:

(a) by deleting the word "and" which occurs at the end of paragraph (d) thereof, and (b) by deleting paragraph (b) thereof and substituting therefor the following paragraph: "(b) by repealing sub-section 2 thereof."

I do not propose to go over the ground which I covered when this Bill was introduced at the last session, but I do still feel very strongly about allowing aliens into our defence force until such time as other British subjects are permitted to be in the defence forces of the country on a volunteer basis. I do not propose to say anything more than that, I just want to reassert that I do not approve of allowing aliens into the Defence Force.

COL. MODERA: Your Excellency, I second the amendment. I have not had the opportunity of speaking in Council on this matter before, but as long as the Defence Force Ordinance visualizes the enrolment of the Defence Force for two specific purposes, I shall be in favour of this amendment. When I say that the Defence Force Ordinance visualizes the enrolment for two purposes I mean, of course, for internal security on the one hand, and for war on the other.

377 K.D.F. Bill

[Col. Modera]

As far as internal security is concerned, that visualizes a racial conflict, which we hope will be over in a very short time, and in which doubtless every inhabitant of the Colony will wish to help protect his own property and the property of other people.

But it is another question to visualize enrolment for war; I think that is a different matter altogether. In the first place, one does not know at the moment who the adversaries are likely to be, and one supposes such a war would commence in Europe. In the event of all nationals being allowed to enrol in the Defence Force I suggest, Sir, that it is placing you in an invidious position to have to choose which nationals you should accept and which you should not accept.

History has shown us that foreign nationals sometimes have been of very great assistance to British Forces, but I do not consider that such nationals should be invited to join a British force raised in a British colony for the assistance of that colony, before the issues have been determined and before it is known with whom the war is likely to be. I suggest that the time for that will be when war has broken out and when we can enlist the sympathy and help of such nationals as we wish and who will not be in the opposite camp.

It is suggested, I believe, that it would be a good thing to have nationals of other countries in the Defence Force because one will be able to keep in touch with them, to put one's hands on them and place them into an internment camp. I suggest that other provisions may be made for that.

Similarly, I suggest that foreign nationals living in this country have an alternative to that, that when the necessary time has elapsed they can become naturalized and so accept such protection as the British Government can afford them.

Furthermore, I have two more reasons why I support the amendment. The first is that foreign nationals enrolled in the Force may be a source of danger, and I think you only have to look at the trouble which is going on in Spain at the present time to realize that the aggrava-

tion of that trouble is largely due to the presence of foreign nationals in that country.

Secondly, I suggest to this Council that it does go against the best moral principle of a British force that there should be enrolled therein with Britishers a number of foreign nationals.

One knows very well that at the outbreak of a war the Defence Force will not be probably as effective in strength as it would be in the case of measures for internal security, because there are many other parts which its members will have to play and which will have to be played by the male population of this country in the event of war, unless the actual war is situated here, so to speak. I do suggest that it is not in the best interests of the morale of the force or in the best interests of its organization to enrol people who on the outbreak of war are to be taken away straight away.

Before concluding, I wish to emphasize that my objection to foreign nationals is only while the Defence Force Ordinance visualizes enrolment for two purposes, namely, for war and for internal security.

MR. HARRAGIN: Your Excellency, since this point was raised in no uncertain manner on the last occasion that we considered this particular Bill, some of us have had the opportunity of discussing the matter with those who are responsible for the defence of the Colony. I can only say that it is our considered opinion that it would be wiser, taking all things into consideration, that the Bill should remain as it is printed. There is no question, as the hon. Member for Nairobi South would seem to suggest, that the one great objection would be that we would not be able to intern an enemy because he happens to be in uniform. The fact is that if we go to war with anyone, whether a member of that nation happens to be in the Defence Force or not, that person will be interned, right away. So that question does not arise.

He hit on a very sound point when he made reference to the fact that the Bill does deal with two possibilities, namely war and internal trouble. And I do not think he will disagree with me when I say with regard to internal trouble

[Mr. Harragin]

Surely it will be better to keep these people in uniform assisting us than for them to be on farms where they will be without any control whatever.

A point made by the Commander of the Defence Force has been that if he is going to have people on farms dotted all over the place it will be his duty as far as possible, in the event of trouble, to see that those people, no matter what nationality they are, are protected. Further, the Force is immediately weakened not only by not having those men in uniform and under control but by having possibly to send out people to protect them. He is particularly anxious that all these people should be under control so that we shall know where they are and what they are doing. So much for internal trouble.

With regard to the eventuality of war, I suggest that having disposed of our enemies by putting them inside internment camps, there is no conceivable reason why other nationals willing and anxious to assist should not be in uniform doing so. Further, it will be a matter of Your Excellency deciding what national to accept—I do not visualize that you will accept either X or Y nationals, but having obtained all the information about the individuals it will be for you to decide as to who should serve in the Defence Force, with the result that before it ever reaches Your Excellency the most careful investigation will have been made as to the right people to get in and those to keep out. It will be a matter of permission and not a matter of right as to which foreigners join the Defence Force.

It does seem to me that the Brigadier is perfectly right in his contention that in a country like this, with a comparatively small number of Europeans, to waste the man power that we have would be a mistake.

COL. KIRKWOOD: Your Excellency, I rise to oppose the motion, I cannot see any sense in the argument.

In the first place originally the Defence Force in this country was required for the defence of Kenya. Secondly, I think that in cases of internal trouble everybody has a right to defend their wives

and children, their families, homes and property, and should have the right to join the Defence Force.

As regards being at war, it has been pointed out by the Hon. the Attorney General that it is a question of individuals and not a question of race, and Your Excellency has decided that if we are at war with any particular nation their nationals will naturally be interned. The difficulty therefore solves itself.

I see no rhyme or reason in this amendment.

The question of the amendment was put and negatived.

The question of the original motion was put and carried.

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

Clause 2.

MR. WATERS: Your Excellency, I beg leave to move the following amendment:

"That clause 2 be amended by the deletion of the word 'eight' and the substitution of the word 'three' therefore."

The reason for this change is because the initial acreage available to Kenya under the International Tea Restriction Scheme has proved to be 2,300 and not 2,800 as was hoped. This new acreage of 2,300 together with the 1,000 received in respect of the five years' period 1933 to 1938, makes 3,300 acres which should now appear in this Bill.

It will be remembered that on the occasion of the second reading of this Bill it was stated that the original figure was to some extent anticipatory, and as a result of subsequent negotiations, it has been shown that the amount put in was too optimistic. Although the amount received was not as much as we hoped for, I should mention that whereas on the last occasion we received 1,000 acres, on this occasion we have received 2,300 acres. This amount of 2,300 acres is the greater part of 7,000 acres which has been allotted to East Africa, that is, to Nyasaland, Kenya, Tanganyika and Uganda.

Finally, I would say that had it not been for the representations made by Your Excellency, the amount we would have received would have been 1,300

Reply:

The total number of aliens who entered Kenya from Tanganyika Territory by air, road, rail and lake between the 1st January and 2nd September, 1938, is 86. This figure includes temporary visitors, old residents, and immigrants in transit in addition to persons admitted on conditional permits.

2. Immigrants entering the Colony by air or by lake are required to report to Immigration Officers at Mombasa, Nairobi and Kisumu.

3. Although no Immigration Officers are posted on the boundary to deal with aliens who enter by road or rail the law requires such aliens to report to the nearest Immigration Officer, and all possible steps are taken by the Police to ensure that the law is followed in this respect.

4. All immigrants who are unable to adduce satisfactory evidence that they are unlikely to become charges on public funds are refused entry unless they can deposit £50 in the case of Europeans or £10 in the case of Asians or provide security in a like amount.

No. 37—JAGGERY EXPORT RATE BY MR. KASSIM:

In view of the low price realized for jaggery in the overseas market, will the Railway Administration reduce the export freight on jaggery by half until the market improves, analogous to the relief afforded by the export freight on coffee?

Reply:

In the absence of any information to justify such a concession, the Railway Administration is not prepared to reduce the rate for jaggery by one-half, because the existing rate represents a return of only 3.43 cents per ton mile from the Kisumu area, which is less than the Administration's average ordinary working costs.

acres, and not 2,300 acres. An assurance has already been given that the new acreage is to be allotted to small estates of not more than 500 acres and to small growers and new entrants to the industry.

The question was put and carried.

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

The remainder of the Bills were considered clause by clause.

MR. HARRAGIN moved that all the Bills except the Tea (Amendment) Bill be reported without amendment, and that the Tea (Amendment) Bill be reported with amendment.

The question was put and carried.

His Excellency vacated the chair. Council resumed its sitting.

His Excellency reported the Bills, with the exception of the Tea (Amendment) Bill, without amendment, and the Tea (Amendment) Bill with amendment.

THIRD READINGS

MR. HARRAGIN moved that the eleven Bills be read a third time and passed.

Mr. WALLACE seconded.

The question was put and carried.

The Bills were read the third time and passed.

ADJOURNMENT

Council adjourned *sine die*.

Written Answers to Questions

No. 36—ALIENS ENTERING KENYA

BY LADY SIDNEY FARRAR:

Will Government give some information as to the number of aliens entering Kenya across the Tanganyika border and the precautions taken to ensure their registration and the payment of the £50 deposit?

Index to the Legislative Council Debates
OFFICIAL REPORT
SECOND SERIES **VOLUME V**

Second Session, 1938: 5th to 18th August

EXPLANATION OF ABBREVIATIONS

Bills: Read First, Second or Third Time—1R, 2R, 3R.
Com. = In Committee; SC. = Referred to Select Com-
mittee; SCR. = Select Committee Report; RC. =
Resumption in Committee.

Administration of Oath—

Isher Dass, Mr. 1
Mödera, Lt. Col. F. S. 1
Scott, Lord Francis, 1
Willoughby, G. P. 1

Attorney General—

See Harragin, Mr. W.

Bills—

Bills of Exchange (Amendment), 1R,
14; 2R, 142; Com., 375; 3R, 381

Control of Fugitive Belligerents
(Amendment), 1R, 199; 2R, 369;
Com., 375; 3R, 381

Crown Lands (Amendment), 1R, 14;
2R, 93; SC., 137; SCR., 337; 3R, 364

Eire and Northern Ireland (Conse-
quential Provisions), 1R, 14; 2R,
143; Com., 375; 3R, 381

Electric Power (Amendment), 1R, 199;
2R, 372; Com., 375; 3R, 381

Kenya Defence Force (Amendment),
RC, 376; 3R, 381

Kerosene Oil (Repayment of Duty)
(Amendment), 1R, 14; 2R, 142;
Com., 375; 3R, 381

McMillan Memorial Library, Petition
to proceed, 204

Native Lands Trust, 1R, 14; 2R, 25, 57,
103; SC., 137; SCR., 308; 3R, 337

Penal Code (Amendment), 1R, 199;
2R, 372; Com., 375; 3R, 381

Public Holidays (Amendment), 1R,
14; 2R, 143; Com., 375; 3R, 381

Refugees, 1R, 199; 2R, 370; Com.,
375; 3R, 381

*Sugar (Control), SCR., 151; 3R, 152

Supplementary Appropriation, 1R, 14;
2R, 141; Com., 375; 3R, 381

Tea (Amendment), 1R, 57; 2R, 144;
Com., 375; 3R, 381

Transport Licensing (Amendment), 1R,
57; 2R, 144; SC., 147; SCR., 365;
3R, 368

**Brooke-Popham, Sir Robert (H.E.
the Governor)—**

Communication from the Chair, 1
Rulings re amendments, 323, 324, 337,
351, 352

Select committee procedure, 139, 141

Cavendish-Bontleck, Major—

Agricultural policy, 283

Cattle auction tenders, 201, 202

Crown Lands (Amendment) Bill, 103;
342, 355, 357, 359

Culling of cattle, Kamba Reserve, 201

Income Tax Ordinance, 1937, report
of operation of, 143, 149

King's African Rifles reorganization,
23

Native Lands Trust Bill, 38, 324, 335

Refugees Bill, 371

Ruling re amendments, 322, 323

Select committee procedure, 139

Transport Licensing (Amendment) Bill,
146, 367

Chief Native Commissioner—

See Hosking, Mr. E. B.

Chief Secretary—

See Wade, Sir A. de V.

**Commissioner of Local Govern-
ment, Lands and Settlement,
Acting—**

See Mortimer, Mr. C. E.

Communication from the Chair—

Conservator of Forests—

See Gardner, Mr. H. M.

Cooke, Mr. S. V.—

Abyssinian Refugees, 17

Agricultural policy, 209

Crown Lands (Amendment) Bill, 354,
357

Fishery fees, 15, 16

Native Lands Trust Bill, 88

Translation of Ordinances, 16

- Director of Agriculture—**
See Waters, Mr. H. B.
- Director of Education—**
See Wisdom, Mr. R. H. W.
- Director of Medical Services, Acting—**
See Johnstone, Dr. F. J. C.
- Director of Public Works—**
See Sironach, Mr. J. C.
- Director of Veterinary Services, Acting—**
See Mulligan, Mr. E. J.
- Divisions—**
Crown Lands (Amendment) Bill, 351, 357
- Erroll, Earl of—**
Agricultural policy, 204
Crown Lands (Amendment) Bill, 349
German coffee subsidy, 306
Native Lands Trust Bill, 73, 330
- Farrar, Lady Sidney—**
Agricultural policy, 194
Aliens entering Kenya, 381
Chepalungu forest, 306
Cotton quota to ginners, 305
Crown Lands (Amendment) Bill, 354
Immigration of German nationals, 203
Native Lands Trust Bill, 50
Rulings re amendments, 337
- Financial Secretary—**
See Lockhart, Mr. C. R.
- Fardner, Mr. H. M.—**
Chepalungu Forest, 306
- General Manager, K.U.R. & H.—**
Acting—
See Hamp, Mr. A. E.
- Gervais, Mr. S. G.—**
Agricultural policy, 251
Crown Lands (Amendment) Bill, 127, 350
- Gillimentary railway grants, 175**
- Gurnee, H. E., the—**
See Brooke-Popham, Sir R.
- Hamp, Mr. A. E.—**
Fishery fees, 15, 16
K.U.R. & H., third class coaches, 15
- Hargrin, Mr. W.—**
Agricultural policy, 289
Control of Fugitives, Bellgerents (Amendment) Bill, 369
Crown Lands (Amendment) Bill, 124, 337, 353, 354, 355, 356, 363
Electric Power (Amendment) Bill, 372
Ireland and Northern Ireland (Consequential Provisions) Bill, 143
- Kenya Defence Force (Amendment) Bill, 378**
- Public Holidays (Amendment) Bill, 143**
- Refugees Bill, 370**
- Sugar (Control) Bill, 151**
- Tea (Amendment) Bill, 144**
- Hodge, Mr. S. O. V.—**
Agricultural policy, 281
- Hosking, Mr. E. B.—**
Agricultural policy, 269
Cattle auction tenders, 201, 202
Culling of cattle, Kamba Reserve, 201
Native Lands Trust Bill, 75, 336
Translation of Ordinances, 16
- Isher Dass, Mr.—**
Administration of Oath, 1
Agricultural policy, 226
Crown Lands (Amendment) Bill, 112
Native Lands Trust Bill, 66
Select committee procedure, 140
- Joyce, Major F. H. de V.—**
Agricultural policy, 177, 300
Athi River bridge, 150
German coffee subsidy, 305
- Johnstone, Dr. F. J. C.—**
Kitale native hospital, 307
- Kassim, Mr. R.—**
Agricultural policy, 241
Indian Government school, Kitumu, 103
Jaggery export rate, 382
K.U.R. & H. third class coaches, 15
Kibos roads, 200
Select committee procedure, 138, 141
- Kirkwood, Lt.-Col. J. G.—**
Advisory Council on European Education, 307, 308
Agricultural policy, 214
Cattle auction tenders, 202
Crown Lands (Amendment) Bill, 130, 349, 352, 354, 364
Foot and Mouth disease, 203
Kitale native hospital, 307
Native Lands Trust Bill, 79, 329
Veterinary and agricultural officers, 304
- La Fontaine, Mr. S. H.—**
Native Lands Trust Bill, 63
- Lockhart, Mr. C. R.—**
Agricultural policy, 267
Bills of Exchange (Amendment) Bill, 142
Income Tax Ordinance, 1937, operation of, 148
Kerosene Oil (Repayment of Duty) (Amendment) Bill, 142
King's African Rifles, loan reallocation, 24, 25

- King's African Rifles, reorganization, 21, 24**
- Loan expenditure, 1937, 20**
- Parliamentary railway grants, 175**
- Supplementary Appropriation Bill, 141**
- Verker, compassionate grant to Mrs., 18**
- Moders, Lt.-Col.—**
Administration of Oath, 1
Agricultural policy, 250
Immigration of German nationals, 203
Kenya Defence Force (Amendment) Bill, 376
- Montgomery, Mr. H. R.—**
Agricultural policy, 255
Native Lands Trust Bill, 47
- Mortimer, Mr. C. E.—**
Crown Lands (Amendment) Bill, 93, 133, 357
Kibos roads, 201
Native Lands Trust Bill, 25, 88
- Motions—**
Agricultural policy, 177, 204
K.A.R. loan reallocations, 24
K.A.R. reorganization, 21
Loan expenditure, 1937, 20
Parliamentary railway grants, 152
Verker, compassionate grant to Mrs., 18
Veterinary and agricultural officers, Kitale, 304
- Mulligan, Mr. E. J.—**
Agricultural policy, 289
Foot and Mouth disease, 203
- Nicol, Mr. W. G. D. H.—**
Kenya Defence Force (Amendment) Bill, 376
Mombasa-Tanga road, 149
Parliamentary railway grants, 160
- Pandya, Mr. J. B.—**
Crown Lands (Amendment) Bill, 352, 353, 357
Native Lands Trust Bill, 331, 332
- Papers laid—**
Audit of Accounts, K.U.R. & H., 1938, with Transport Despatch No. 92, 1938, 13
Crown Lands (Amendment) Bill, Select Committee Report, 148
Electric Power Ordinance, Statement for 1937, 57
Financial Report and Statement, 1937, 13
Forest Department Annual Report, 1937, 14
Game Department Annual Report, 1937, 13
- Income Tax Ordinance, 1937, report of operation of, 148**
- Judicial Department Annual Report, 1937, 13**
- Kenya Police Annual Report, 1937, 13**
- Inland Water Transport (Licensing) Regulations, 1938, 13**
- Inland Water Transport (Licensing) (Amendment) Regulations, 1938, 13**
- Inland Water Transport (Licensing) (Amendment No. 2) Regulations, 1938, 13**
- Kenya Savings Bank Annual Accounts, 1937, 14**
- K.U.R. & H., Report of General Manager on administration of, 1937, 14**
- K.U.R. & H., Second Supplementary Estimates, 1937, 14**
- Land Grants, Return of, 14**
- Local Government, Lands and Settlement Annual Report of, 1937, 200**
- Mining and Geological Department Annual Report, 1937, 13**
- Native Lands Trust Bill, Select Committee Report on, 148**
- Posts and Telegraphs Department Annual Report, 1937, 14**
- Printing and Stationery Department Annual Report, 1937, 13**
- Prisons Department Annual Report, 1937, 13**
- Public Works Department Annual Report, 1937, 14**
- Recruiters and Labour Agents Rules, 1938, 13**
- Schedule of Additional Provision No. 4 of 1938, Standing Finance Committee Report on, 13**
- Schedule of Additional Provision No. 5 of 1938, 13**
- Schedule of Additional Provision No. 5 of 1938, Standing Finance Committee Report on, 57**
- Schedule of Additional Provision No. 1 of 1938, Standing Finance Committee Report on, 13**
- Schedule of Additional Provision No. 2 of 1938, 148**
- Sessional Papers—**
No. 1: K.A.R. Reorganization, 13)
No. 2: Resumé of action taken by Government on recommendations of commission appointed to inquire into and report on the financial position and system of taxation in Kenya, 14

- No. 3: Central Roads and Traffic Board report on programme of road improvement, 200
- Sugar (Control) Bill, Select Committee report on, 13
- Transport Licensing (Amendment) Bill, Select Committee report on, 149
- Vehicles Licensing (Amendment) Regulations, 1938, 13
- Petitions—**
- McMillan Memorial Library Bill, to proceed with, 204
- Questions, Oral—**
- Abyssinian refugees, No. 22, 17
- Advisory Council on European Education, No. 34, 307
- Athi River bridge, No. 30, 150
- Cattle auction tenders, No. 28, 201
- Chepaluigu Forest, No. 32, 306
- Culling of cattle, Kamba Reserve, No. 27, 201
- Cotton quota to ginneries, No. 25, 305
- Fishery fees, No. 20, 15
- Foot and Mouth disease, No. 35, 203
- German coffee subsidy, No. 31, 305
- Immigration of German nationals, No. 29, 203
- Indian Government school, Kisumu, No. 19, 103
- K.U.R. & H. third-class coaches, No. 18, 15
- Kibos roads, No. 23, 200
- Kitale native hospital, No. 33, 307
- Mombasa-Tanga road, No. 26, 149
- Translation of Ordinance, No. 21, 16
- Questions, Written—**
- Aliens entering Kenya, No. 36, 381
- Jaggery export rate, No. 37, 382
- Rulings—**
- Amendments re, 322, 351, 352
- Schedules of Additional Provision—**
- No. 4 of 1937, 17
- No. 5 of 1937, 150
- No. 2 of 1938, 368
- Scott, Lord Francis—**
- Administration of Oath, 1
- Cattle auction tenders, 202
- Crown Lands (Amendment) Bill, 132, 351, 353, 355, 356, 360
- Income Tax Ordinance, 1937, 149
- Native Lands Trust Bill, 79, 332
- Parliamentary railway grants, 168
- Select Committee procedure, 138, 141
- Tea (Amendment) Bill, 144
- Select Committees, Appointment of—**
- Crown Lands (Amendment) Bill, 137
- Native Lands Trust Bill, 137
- Transport Licensing (Amendment) Bill, 147
- Select Committees—**
- Procedure re, 138
- Sessional Paper No. 1 of 1938—**
- K.A.R. Reorganization, 21
- Shamsud-Deen, Mr.—**
- Crown Lands (Amendment) Bill, 350, 351, 352, 353
- Native Lands Trust Bill, 83, 88, 335
- Parliamentary railway grants, 174
- Select Committee procedure, 138
- Stronach, Mr. J. C.—**
- Athi River bridge, 150
- Mombasa-Tanga road, 150
- Wade, Sir A. de V.—**
- Agricultural policy, 295
- Cattle auction tenders, 202
- Crown Lands (Amendment) Bill, 357, 353, 362
- Immigration of German nationals, 203
- Income Tax Ordinance, 1937, 148, 150
- Native Lands Trust Bill, 87
- Refugees Bill, 371
- Schedules of Additional Provision—
- No. 4 of 1937, 17
- No. 5 of 1937, 18, 150
- No. 1 of 1938, 18
- No. 2 of 1938, 368
- Select Committee procedure, 138, 140
- Tea (Amendment) Bill, 144
- Wallace, Mr. T. D.—**
- Transport Licensing (Amendment) Bill, 144, 146, 365, 367
- Waters, Mr. H. B.—**
- Agricultural policy, 257
- Cotton quota to ginneries, 305
- German coffee subsidy, 305, 306
- Tea (Amendment) Bill, 360
- Willoughby, Mr. G. P.—**
- Administration of Oath, 1
- Wilson, Dr. C. J.—**
- Agricultural policy, 245
- Crown Lands (Amendment) Bill, 124
- Native Land Trust Bill, 50
- Parliamentary railway grants, 176
- Wisdon, Mr. R. H. W.—**
- Advisory Council on European Education, 307, 308
- Indian Government school, Kisumu, 103
- Wright, Mr. E. H.—**
- Agricultural policy, 242
- Parliamentary railway grants, 152, 178