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COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

OFFICIAL REPORT

SECOND SERIES

VOLUME XXIV—PART ONE

1946

First Session: 14th and 15th February

CHRONOLOGICAL INDEX

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List of Members of the Legislative Council

SECRETARIAT LIBRARY

President:

HIS EXCELLENCY THE ACTING GOVERNOR, MR. G. M. RENNIE, C.M.G.,
M.C.

Ex Officio Members:

CHIEF SECRETARY, ACTING (HON. E. R. E. SURRIDGE, C.M.G.).
ATTORNEY GENERAL (HON. S. W. P. FOSTER SUTTON, O.B.E., K.C.).
FINANCIAL SECRETARY, ACTING (HON. J. C. MUNDY).
CHIEF NATIVE COMMISSIONER (HON. W. S. MARCHANT, C.M.G., O.B.E.)
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. N. M. MACLELLAN).
DIRECTOR OF AGRICULTURE, ACTING (HON. A. B. KILLICK. (1))
DIRECTOR OF EDUCATION, ACTING (HON. C. E. DONOVAN).
GENERAL MANAGER, K.U.R. & H. (HON. SIR R. E. ROBINS, C.M.G.,
O.B.E.).
DIRECTOR OF PUBLIC WORKS (HON. S. R. BOYD).
COMMISSIONER OF CUSTOMS (HON. A. W. NORTROP).
COMMISSIONER FOR LANDS, MINES AND SURVEYS (HON. G. J. ROBBINS).

Nominated Official Members:

HON. T. A. BROWN (Solicitor General).
MAJOR THE HON. F. W. CAVENDISH-BENTINCK, C.M.G. (Member for
Agriculture, Animal Husbandry and Natural Resources).
HON. R. DAUBNEY, C.M.G., O.B.E. (Director of Veterinary Services).
(2)
HON. K. L. HUNTER, O.B.E. (Provincial Commissioner, Nyanza
Province).
HON. MBARAK ALI HINAWY, O.B.E. (Specially appointed to represent
Interests of Arab Community).
HON. C. E. MORTIMER, C.B.E. (Member for Health and Local Gov-
ernment).
HON. K. G. LINDSAY, O.B.E. (Deputy Chief Secretary, Acting).
HON. C. TOMKINSON (Provincial Commissioner, Central Province).
HON. H. C. WILLBOURN, M.C. (Postmaster General).

European Elected Members:

HON. W. A. C. BOUWER, Usin Gishu.
HON. S. V. COOKE, Coast.
HON. F. J. COULDREY, D.S.C., Nyanza.
MAJOR THE HON. F. H. DE V. JOYCE, M.C., Ukamba.
MAJOR THE HON. A. G. KEYSER, Trans Nzoia.
HON. W. G. D. H. NICOL, Mombasa.
HON. P. G. THORNE (Rift Valley, Acting). (3)
HON. E. A. VASEY, C.M.G., Nairobi North.
HON. SIR ALFRED VINCENT, Nairobi South.
HON. MRS. O. F. WATKINS, Kiambu.
HON. E. H. WRIGHT, Aberdare.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

Indian Elected Members:

- HON. SHAMSUD-DEEN (Central).
HON. S. G. AMIN (Central, Acting). (4)
HON. A. B. PATEL (Eastern).
DR. THE HON. M. A. RANA, M.B.E. (Eastern).
HON. A. PRITAM (Western).

Arab Elected Member:

HON. SHERIFF ABDULLA SALIM

Nominated Unofficial Members:

Representing the Interests of the African Community—

- HON. ELIUD MATHU.
HON. WALTER ODEDE.

Acting Clerk to Council:

Mr. K. W. Simmonds

Reporter:

Mr. A. H. Edwards

- (1) *Vice* Hon. D. L. Blunt, C.M.G., absent on special duty.
(2) *Vice* Mr. W. G. Emerson on return from leave.
(3) *Vice* Hon. W. F. O. Trench, absent on leave.
(4) *Vice* Hon. S. T. Thakore, absent on leave

ABSENTEEES FROM LEGISLATIVE COUNCIL SITTINGS

1946:—

15th February—

- Hon. Solicitor General.
Hon. Arab Elected Member.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

FIRST SESSION, 1946

Thursday, 14th February, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 14th February, 1946. His Excellency the Acting Governor (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

The Proclamation summoning the Council was read.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to: A. B. Killick, Esq., Acting Director of Agriculture; R. Daubney, Esq., C.M.G., O.B.E., Director of Veterinary Services; P. G. Thorne, Esq., Acting Member for Rift Valley; Mr. S. G. Amin, Acting Member for Central Area.

COMMUNICATION FROM THE CHAIR

PURPOSE OF SESSION

His Excellency made the following Communication from the Chair:—

As honourable members are aware, this meeting of Legislative Council has been called for a special purpose, namely, the enactment of certain bills the purpose of which is to incorporate, either as permanent legislation or as temporary legislation, provisions which are at present covered by Defence Regulations enacted under the powers conferred by the United Kingdom Emergency Powers (Defence) Acts. These Acts will come to an end on the 24th of February and will be replaced by less comprehensive legislation, namely, the United Kingdom Emergency Laws (Transitional Provisions) and the Supplies and Services (Transitional Powers) Acts. It is, therefore, necessary to submit to Council a number of bills the purpose of which is to ensure that the amendments which were made to certain of our ordinances by Defence Regulations, but which will not be so

covered when the new United Kingdom Acts which I have just mentioned come into force, shall be continued either permanently or for such periods as may be considered necessary after the United Kingdom Emergency Powers (Defence) Acts expire on the 24th of February. The purpose of each of these bills is fully explained in the Memorandum of Objects and Reasons attached to each bill.

The United Kingdom Emergency Laws (Transitional Provisions) and Supplies and Services (Transitional Powers) Acts, as applied to the Colony by Orders made by His Majesty in Council, confer upon the Governor the power to retain certain types of Defence Regulations. Honourable members will no doubt wish to be informed of the Government's intentions in this regard. It is proposed to retain a certain number of these regulations which, in the main, deal with controls and allied subjects, but a large number are being allowed to lapse. A list of those to be retained will be published shortly. It is my intention to appoint a representative committee whose duty it will be to keep under constant review the Regulations which are being retained and to advise me from time to time whenever they consider that circumstances justify the repeal of any of the Regulations.

As regards war taxation measures, I made a proclamation which was published in the Official Gazette of the 12th of this month which will have the effect of terminating on the 31st of December this year the increases in taxation which were imposed by the seven ordinances mentioned in the proclamation. As honourable members are aware, it is the Government's intention to bring before this Council, at a Session to be held in August or September this year, its taxation proposals for 1947, so far as these

(Acting Governor) can properly be disclosed at that Session. Apart from the seven ordinances mentioned in the proclamation, certain other ordinances incorporate war taxation measures, but since they do not contain a clause providing for their termination it is not possible to bring them to an end under the provisions of the proclamation. The amending bills required in these cases to achieve the same purpose have been published in the Official Gazette of the 12th of February.

In conclusion, I would mention that three bills, namely, the Bill to Amend the Local Government (Municipalities) Ordinance, the Bill to Provide for the Removal of Undesirable Natives from Certain Areas, and the Bill to Amend the Mining Ordinance, which appear on the Order of the Day to-day, are not of the special nature that characterizes those that I have mentioned earlier in my remarks. In these cases also the purpose of each bill is fully explained in the relevant Memorandum of Objects and Reasons.

MINUTES

The minutes of the meeting of 11th January, 1946, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By THE ACTING CHIEF SECRETARY (MR. SURIBODI):

Standing Finance Committee Report on Schedules of Additional Provision Nos. 5 of 1944 and 3 of 1945.

By THE HON. MEMBER FOR AGRICULTURE, ANIMAL HUSBANDRY AND NATURAL RESOURCES (MAJOR CAVENDISH-BENTINCK):

Forest Department Annual Report for 1944.

By THE COMMISSIONER FOR LANDS, MINES AND SURVEYS (MR. ROBBINS):

Land grants return, 1st October-31st December, 1945.

By THE DIRECTOR OF VETERINARY SERVICES (MR. DAUBNEY):

Veterinary Department annual report for 1944.

By THE MEMBER FOR HEALTH AND LOCAL GOVERNMENT (MR. MORTIMER):

Report of Commissioner for Local Government for 1944.

NOTICE OF MOTION

Under Standing Rule and Order Major Cavendish-Bentinck (Member for Agriculture, Animal Husbandry and Natural Resources) substituted the following notice of motion for the one appearing in his name on the Order Paper: "Be it resolved, that the rate of interest charged on loans issued to the Land Bank under the provisions of paragraph (b) of sub-section (1) of section 20 of the Land and Agricultural Bank Ordinance, 1930, be reduced from 4.7 per cent to 3 per cent in the case of the loan of £240,000, from 3.7 per cent to 3 per cent in the case of the loan of £260,000, from 3.07 per cent to 3 per cent in the case of the loan of £150,000, and from 3.07 per cent to 3 per cent in the case of the sum of £76,000 originally raised for the Farmers Conciliation Board but subsequently used by the Land Bank, with effect from 1st January, 1946.

BILLS

FIRST READINGS

On the motion of the Attorney General (Mr. Foster Sutton) the following Bills were read a first time:—

The Customs Tariff (Temporary Amendment) Bill.

The Electric Power (Amendment) Bill.

The Native Authority (Amendment) Bill.

The Certification of Lunatics (Forces of the Crown) Bill.

The Native Liquor (Temporary Amendment) Bill.

The Customs Management (Temporary Amendment) Bill.

The Temporary Rebate and Refund of Customs and Excise Duties Bill.

The Removal of Undesirable Natives Bill.

The Police (Temporary Amendment) Bill.

The Liquor (Amendment) Bill.

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

The Dangerous Petroleum Tax (Amendment) Bill.

The Mining (Amendment) Bill.

The Trading with the Enemy (Amendment) Bill.

The Local Government (Municipalities) (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

The Transport Licensing (Amendment) Bill.

The Local Government (District Councils) (Amendment) Bill.

The Native Registration (Amendment) Bill.

The Employment of Servants (Amendment) Bill.

The Prisons (Amendment) Bill.

And notice was given to move the subsequent readings during this session.

SUSPENSION OF STANDING RULES AND ORDERS

Under Standing Rule and Order No. 108, with the consent of His Excellency, Mr. Foster Sutton moved that Standing Rules and Orders be suspended to enable the following bills to be taken through all their stages at this sitting:—

The Native Authority (Amendment) Bill.

The Certification of Lunatics (Forces of the Crown) Bill.

The Native Liquor (Temporary Amendment) Bill.

The Police (Temporary Amendment) Bill.

The Liquor (Amendment) Bill.

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

The Dangerous Petroleum Tax (Amendment) Bill.

The Mining (Amendment) Bill.

The King's African Rifles (Amendment) Bill.

THE SOLICITOR GENERAL (MR. BROWN) seconded.

The question was put and carried. Standing Rules and Orders were suspended.

NATIVE AUTHORITY (AMENDMENT) BILL

SECOND READING

MR. TOMKINSON (PROVINCIAL COMMISSIONER, CENTRAL PROVINCE): Your Excellency, I beg to move: That the Native Authority (Amendment) Bill be read a second time.

This is merely to replace the existing powers of local native councils to invest

their funds in war loan or other security. Under the present Ordinance they can only do so in the Post-Office savings bank and banks. The present authority for such investments is contained in Government Notice No. 112 of the Defence (Amendment of Laws) Regulations, and this bill is practically word for word as in that Defence Regulation. I think perhaps hon. members know that local native councils have invested some tens of thousands of pounds in war loan, and it is necessary to give them legal powers to retain those investments.

THE ACTING FINANCIAL SECRETARY (MR. MUNDY) seconded.

MR. VASEY (Nairobi North): Your Excellency, just one short point. I trust it will be accepted as a principle that the money invested shall be invested in the country.

MR. TOMKINSON: I did not catch his last word?

MR. VASEY: I asked that it should be accepted as a principle that the money invested by the local native councils will be invested in the country and that they will not be granted powers of external investment at the present moment.

MR. MUNDY: I will give that undertaking. They will not be allowed to invest money outside the Colony.

HIS EXCELLENCY: Will you be able to get suitable investments in the country?

MR. MUNDY: I hope so, sir.

HIS EXCELLENCY: I should like myself to have a little more time to consider that particular point. It is a question of suitability of investments. I am afraid, and I cannot off-hand say that we would be able to find suitable investments for local native council funds in the country.

MR. BOUVER (Uasin Gishu): Your Excellency, I had not intended to say a word about this because I thought that the underwriting would and could be given very readily. I support the hon. Member for Nairobi North very strongly.

MR. COULDREY (Nyanza): I also had not intended to speak, but in view of your remarks, sir, I submit that this bill cannot be considered non-contentious, and I am afraid I cannot support it if there is any question of money being invested outside this country.

HIS EXCELLENCY: The position is that I think at the present time these reserve funds are to a considerable extent invested outside the country.

CHIEF NATIVE COMMISSIONER (Mr. Merchant): The present position is that the surplus funds of local native councils are either invested in the Post Office savings bank or are on deposit at the banks or in East African war bonds.

MR. FOSTER SUTTON: The substantive legislation provides for investment in the Post Office savings bank and in the banks, with the sanction of the Governor—that is on deposit. During the emergency it was thought desirable to allow investments to be made in war bonds issued in this country. A defence regulation was passed to enable that to be done. When the question of continuing this legislation was raised, I suggested that it might be desirable not to limit ourselves and to give a certain amount of flexibility, with the idea that it might be found desirable from time to time to invest money in Kenya in trustee securities, of which I believe a number exist.

HIS EXCELLENCY: With the leave of Council, I should prefer to adjourn the debate at this stage in order that this point may be looked up. The last time I went into this matter—which was admittedly some years ago—my recollection is that some of these funds were invested by the Crown Agents in various securities outside the country, and, if I remember rightly, a better return was secured in that way than might sometimes be possible by investment inside the country. I think it is a point we should really look into a little more closely, I am anxious, naturally, to see that such funds are invested in the country if at all possible, but I should not like to give any definite undertaking at this stage without looking into the matter. I therefore suggest that, with the leave of Council, we should adjourn the debate until the point has been looked up.

The debate was adjourned.

CERTIFICATION OF LUNATICS (FORCES OF THE CROWN) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Certifi-

cation of Lunatics (Forces of the Crown) Bill be read a second time.

The objects of the bill are fully set out in the memorandum of objects and reasons. During the war, as you all know, a large number of troops came to Kenya, and from time to time it has been found necessary to send members of the armed forces of the Crown to mental hospitals for observation. We worked, in normal times, under the Indian Lunatic Asylums Act of 1858, and under that act, in order to obtain admission of a person into an asylum, a rather long procedure has to be followed. That, of course, is a necessary safeguard in ordinary times to prevent people being certified and put away without a thorough investigation being made in the first instance. During the war, Defence Regulations were passed enabling members of the forces of the Crown to be admitted for observation for a limited period, and ample safeguards were provided. The admission only took place on the signed letter of two medical officers of the armed forces. This bill seeks to continue, merely as a temporary measure, that defence emergency legislation. Hon members will observe that the same safeguards are retained in the bill as were included in the Defence Regulations. Clause 6 of the measure provides that it shall remain in force until the end of this year and enables it to be continued by proclamation, with the leave of this Council, for a further period.

MR. BROWN seconded.

SIR ALFRED VINCENT (Nairobi South): Your Excellency, in a number of these bills you have the same clause: I am referring to clause 6, the second part of which reads: "Provided that the Governor may, with the approval of the Legislative Council of the Colony, by notice published in the Gazette, declare that this Ordinance shall remain in force until a date to be fixed in such notice or until repealed". We feel that in all these bills that passage that I have just read should be deleted, the point being that we prefer, if this legislation is going to be allowed to continue for a further period, that it should come before this Council not in the form of a resolution, but as a new bill, and I should like the Attorney General to agree. It may save a lot of talking on the other bills on

[Sir A. Vincent]

this point, which we feel is a fair and reasonable request and would give us a far better opportunity at that time of studying each bill in view of the situation existing at that time.

MR. FOSTER SUTTON: I am prepared to give that undertaking on the part of Government, and will move the amendment of each clause by deleting the proviso which has been referred to by the hon. member for Nairobi South.

The question was put, and carried.

NATIVE LIQUOR (TEMPORARY AMENDMENT) BILL

SECOND READING

MR. BROWN (Solicitor General): Your Excellency, I beg to move: That the Native Liquor (Temporary Amendment) Bill be read a second time.

This bill will continue provisions which are now the law under the Defence (Amendment of Laws) Regulations, and I understand that the proviso to clause 4 will be deleted in the committee stage. Clause 2 will continue to enable the profits made by a local authority from the manufacture and sale of native intoxicating liquor to be expended on projects for the benefit of natives engaged in the military forces. Clause 3 will continue to enable district commissioners to grant permits to establish canteens in their districts for the use of native members of any military unit. The proviso to that clause has been put in with the object of protecting a local authority which has the exclusive right to manufacture and supply native intoxicating liquor. In such case no canteen can be established without the prior approval of that authority.

MR. FOSTER SUTTON seconded.

The question was put and carried.

POLICE (TEMPORARY AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Police (Temporary Amendment) Bill be read a second time.

During the emergency the Police Ordinance of 1930 was amended by means of Defence Regulations with the object of enabling the finger prints of persons in lawful custody to be taken

by certain non-commissioned ranks of the armed forces. That provision, unless it is continued by this measure now before Council, will expire on the 24th February, and it is considered desirable to re-enact the provisions until, anyway, the end of this year. I will move the deletion of the proviso to clause 3 when the bill is being considered in committee.

MR. BROWN seconded.

The question was put and carried.

LIQUOR (AMENDMENT) BILL

SECOND READING

MR. LINDSAY (Acting Deputy Chief Secretary): Your Excellency, I beg to move: That the Liquor (Amendment) Bill be read a second time.

This bill seeks to continue as permanent legislation in the Liquor Ordinance of 1934 amendments which already exist under emergency legislation. The purpose of clause 2 is to extend the same principles to a canteen of mess, or other similar institution provided for the use of members of the British Merchant Service which are already established, for the use of members of His Majesty's armed forces. Clause 3 provides for the sale or supply of beer to any member of the forces of the Crown, including Africans and other members, who but for this provision would be debarred therefrom under sub-section 1 of section 39 of the ordinance.

MR. FOSTER SUTTON seconded.

The question was put and carried.

KENYA REGIMENT (TERRITORIAL FORCE) BILL

SECOND READING

ACTING CHIEF SECRETARY (Mr. Surridge): Your Excellency, I beg to move: That the Kenya Regiment (Territorial Force) Bill be read a second time.

Under clause 2 of the bill, provision is made for keeping on the Defence Regulations appearing under Government Notice No. 844 of 1940, when the "General Officer Commanding the East Africa Force" was substituted for "Commander, Local Forces". In this clause we are proposing to substitute "East Africa Command" for "East Africa Force". The other two clauses are consequential.

MR. FOSTER SUTTON seconded.

The question was put and carried.

DANGEROUS PETROLEUM TAX (TEMPORARY AMENDMENT) BILL

SECOND READING

Mr. MUNDY: Your Excellency, I beg to move: That the Dangerous Petroleum Tax (Temporary Amendment) Bill be read a second time.

Under the principal ordinance a consumption tax of 32 cents a gallon was charged on all dangerous petroleum consumed in the Colony. Under Defence Regulations any petrol used by the forces was exempted from that tax during the period of the war. It was obviously not right that the revenue of the Colony should benefit from the use of petrol by the forces during the period of the war. The third clause provides for the bill to expire on the 31st December, 1946, and, as the hon. Attorney General has said, the proviso there will be deleted in the committee stage.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

MINING (AMENDMENT) BILL

SECOND READING

Mr. ROBBINS: Your Excellency, I beg to move: That the Mining (Amendment) Bill be read a second time.

This bill seeks to amend the Mining Ordinance with a view to extending the maximum tenure of mining locations from 10 to 15 years. Under the original Mining Ordinance a mining location is only valid for a period of one year. It can, however, be extended for successive periods of one year, subject to the fulfilment of development conditions and on payment of the prescribed fees. The maximum then laid down was 10 years, this being considered sufficient time within which to enable holders of registered locations to decide whether they would be justified in applying for a lease. During the war years, however, the mining companies suffered difficulties in regard to personnel and equipment, and the result has been that work on the locations in some instances has been slowed down, so that they have lost a considerable amount of time and in some cases have ceased to work altogether. In order to meet this difficulty and to enable some 175 claims which were due to expire in 1943 to continue,

the original ordinance was amended with a view to extending the period from 10 to 13 years. Conditions have remained very much the same during the past two or three years, and it is now desired to extend these mining locations for a further period of two years. It is proposed to effect this by returning, under clause 2 of the bill, to the original 10 years and by then substituting the new period of 15 years. This will enable the mining companies to overcome their difficulties which they have encountered during the war and the additional five years will enable them to make up for lost time.

Clause 4 of the bill is purely consequential. That explains the purpose of the bill. But I should like to take this opportunity of paying tribute to the mining industry in general. They have during the war years continued, under considerable difficulties, prospecting and production and they have, as hon. members know, sunk considerable sums of capital into their undertakings, and they have not always achieved the success which their capital expenditure and the skill of their personnel might have given them hopes for. It is hoped, therefore, that this extension, which will come to an end in respect of the existing claims on the 30th June, 1948, will give them new encouragement for prospecting and production.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

KING'S AFRICAN RIFLES (AMENDMENT) BILL

SECOND READING

Mr. FOSTER SUTTON: Your Excellency, I beg to move: That the King's African Rifles (Amendment) Bill be read a second time.

This bill seeks to amend the King's African Rifles Ordinance, 1932. Clause 2 merely seeks to substitute a new definition of "Commander" which, during the emergency, was substituted by means of Defence Regulations. If this is not enacted, that amendment will lapse on the 24th of this month. Section 78 of the principal ordinance enables the Governor during a state of war or emergency to keep personnel, irrespec-

[Mr. Foster Sutton]

That is to say, if their engagement has lapsed, he is able, under section 78, to retain their services for such time as he deems necessary. During the war that has been done, and we passed a Defence Regulation which enabled the benefits conferred by section 84 of the principal ordinance, benefits such as gratuities on discharge, and certain benefits in respect of dependants if the soldier dies, to be extended to personnel who had been kept on under the compulsory powers conferred by section 78. Some of those men are still serving, and if we do not enact the new clause 78A, the benefits will lapse on the 24th of this month. It is considered fair and right that they should continue to apply to personnel who have been compulsorily retained.

Mr. BROWN seconded.

The question was put and carried.

BILLS

IN COMMITTEE

Mr. FOSTER SUTTON moved that Council do resolve itself into committee of the whole Council to consider, clause by clause, the following bills: The Certification of Lunatics (Forces of the Crown) Bill, the Native Liquor (Temporary Amendment) Bill, the Police (Temporary Amendment) Bill, the Liquor (Amendment) Bill, the Kenya Regiment (Territorial Force) (Amendment) Bill, the Dangerous Petroleum Tax (Amendment) Bill, the Mining (Amendment) Bill, and the King's African Rifles (Amendment) Bill.

Mr. BROWN seconded.

The question was put and carried.

Council went into committee.

Certification of Lunatics (Forces of the Crown) Bill

Clause 6

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of the second line and the deletion of the proviso.

The question was put and carried.

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

Native Liquor (Temporary Amendment) Bill

Clause 4

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of the second line and the deletion of the proviso.

The question was put and carried.

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

Police (Temporary Amendment) Bill

Clause 3

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line 2 and the deletion of the proviso.

The question was put and carried.

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

Dangerous Petroleum Tax (Amendment) Bill

Clause 3

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line 2 and the deletion of the proviso.

The question was put and carried.

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

Mr. FOSTER SUTTON moved that the Certification of Lunatics (Forces of the Crown) Bill, the Native Liquor (Temporary Amendment) Bill, the Police (Temporary Amendment) Bill, and the Dangerous Petroleum Tax (Amendment) Bill be reported with amendment and the remainder without amendment.

Mr. BROWN seconded.

The question was put and carried.

Council resumed, and His Excellency reported accordingly.

THIRD READINGS

Mr. FOSTER SUTTON moved that the eight bills be read the third time and passed.

Mr. BROWN seconded.

The question was put and carried and the bills read accordingly.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 15th February, 1946.

Friday, 15th February, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Friday, 15th February, 1946, His Excellency the Acting Governor (Hon. G. M. Rennie, C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 14th February, 1946, were confirmed.

SCHEDULES OF ADDITIONAL PROVISION

Nos. 5 of 1944 and No. 3 of 1945

Mr. SURRIDGE: Your Excellency, I beg to move: That the Standing Finance Committee report on Schedules of Additional Provision No. 5 of 1944 and No. 3 of 1945 be adopted. Schedule of Additional Provision No. 5 of 1944 was the last one of the financial year 1944. All the items in both the schedules have been passed by the Standing Finance Committee.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

PENSIONS

Mr. J. ANDERSON

Mr. MUNDY: Your Excellency, I beg to move: This Council approves the payment until further notice of a provisional interim pension at the rate of £228-3-3 a year, with effect from 22nd February, 1946, inclusive, to Mr. John Anderson, formerly instructor-in-stock, Veterinary Department, in respect of his service from 1st June, 1928, to 21st February, 1946, both days inclusive, in lieu of his own and Government contributions to the Provident Fund plus the interest thereon, amounting in all to £894-15-10, which reverts to the general revenue of the Colony.

This is the usual resolution in the case of these interim pensions, and involves no new principle.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

LAND BANK RATE OF INTEREST

MEMBER FOR AGRICULTURE, ANIMAL HUSBANDRY, AND NATURAL RESOURCES (Major Cavendish-Bentinck): Your Excellency, I beg to move the motion

standing in my name, and, for reasons which I will explain, I am going again to ask Council if they would allow a very small amendment in the wording of it. The motion reads: "Be it resolved; that the rate of interest charged on loans issued to the Land Bank under the provisions of paragraph (b) of sub-section (1) of section 20 of the Land and Agricultural Bank Ordinance, 1930, be reduced from 4.7 per cent to 3 per cent in the case of the loan of £240,000, from 3.7 per cent to 3 per cent in the case of the loan of £260,000 from 3.07 per cent to 3 per cent in the case of the loan of £150,000, and from 3.07 per cent to 3 per cent in the case of the sum of £76,500 originally raised for the Farmers Conciliation Board but subsequently used by the Land Bank with effect from the 1st January, 1946." The small amendment, or rather omission, which I wish to incorporate in this motion is the deletion of the two words "paragraph (b) of" in the second line of the motion as it appears on the order paper.

The reason for my asking for this is that the last sum mentioned of £76,500 was part of an amount originally raised for the purpose of the Farmers Conciliation Board which operated through the Land Bank, the actual sum handed over to the Land Bank for that purpose being £100,000. A certain amount was used, but the remainder which was not used, and which is represented by this £76,500, was handed over to the Land Bank and forms part of the capital of the Land Bank to-day. The capital of the Land Bank to-day is £726,500, and the purpose of this motion is to enable the Land Bank to reduce its rate of interest by being called upon only to pay 3 per cent in respect of all these moneys. It gives me very great pleasure to be privileged to propose this motion, more especially as for a great number of years I have always advocated that money should be made available for the agricultural industry of this country at a very much lower rate of interest than has been the case in the past, and this I regard as a very substantial step in that direction. I do not think there is anything more I need say, as I am confident that most, if not all, hon. members opposite will be in support of this motion.

Mr. MUNDY seconded.

His Excellency: I would suggest that a comma goes after the words "Land Bank" in the last line, as otherwise it looks as if it was only after the 1st January, 1946, that the money was subsequently used by the Land Bank.

The question was put and carried.

LAND AND AGRICULTURAL BANK (AMENDMENT) ORDINANCE, 1940

CONTINUATION OF

MAJOR CAVENDISH-BENTINCK: Your Excellency, I beg to move: That the Land and Agricultural Bank (Amendment) Ordinance, 1940, as amended by the Land and Agricultural Bank (Amendment No. 3) Ordinance, 1940, shall remain in force until the 31st day of December, 1947.

The Land and Agricultural Bank (Amendment) Ordinance, No. 14 of 1940, as amended by Ordinance No. 30 of 1940, provided for chattels mortgage loans, and contained the following section, section 13: "This Ordinance shall continue in force during the present war, and shall then expire: Provided that the Governor may by proclamation with the approval of the Legislative Council declare that this Ordinance shall remain in force until a date to be fixed in such proclamation." It was necessary for the Governor whether we should ask this Council to agree to extend the life of this Ordinance and, if so, for how long.

The Ordinance provides for advances, within limits, for the following purposes: (a) Meeting current expenses normally incurred in the production of annual crops. The maximum grant for that purpose is £300; (b) meeting current expenses for the production of perennial crops, provided that the maximum advance that may be made to any one farmer in any one year for this purpose does not exceed 30 per cent of the estimated value of the crop; (c) capital expenditure not exceeding £300 for the purchase of live stock or agricultural machinery and implements; and (d) capital expenditure not exceeding £100 for any other approved purpose. The security which is taken is firstly a charge over the crops grown or to be grown; live stock and produce thereof; and secondly a charge over the land,

where the farmer is a registered owner. These charges carry priority over existing commitments. So far under this Ordinance 129 loans, aggregating £32,121, have been issued, but the figure would have been very much greater but for the increased Production of Crops Ordinance, 1942, under which farmers growing scheduled crops obtain advances at 4 per cent interest per annum, and if a farmer had obtained an advance from the Production Board he was, of course, precluded from applying to the Land Bank for a chattels mortgage loan under the provisions I have just cited.

Since 1942 the Land Bank loans under this Ordinance which I proposed, and hope, Legislative Council will agree, to carry on for another two years have been chiefly confined to coffee planters, but the Coffee Industry (Financial Assistance) Ordinance, 1944, enabled them also until the 31st March, 1945, to obtain short term finance under that Ordinance at 4 per cent per annum. With the possibility of the Increased Production of Crops Ordinance expiring at the end of this year, and despite the advances made under the Coffee Industry (Financial Assistance) Ordinance, it was recommended by the Land Bank Board and by farmers generally, and I myself strongly recommend it, that this Ordinance be carried on until the end of 1947. It is a great help, and may prove of still greater help, to farmers, and the security I think is ample, so I sincerely hope that members will see their way to support this motion.

Mr. MUNDY seconded.

The question was put and carried.

THE NATIVE AUTHORITY (AMENDMENT) BILL

SECOND READING

His Excellency: Yesterday the debate on the second reading of the Native Authority (Amendment) Bill was adjourned. The debate will now be resumed.

MEMBER FOR HEALTH AND LOCAL GOVERNMENT (Mr. Mortimer): Your Excellency, the point raised by hon. members yesterday that local native council funds should be invested only in the Colony has been given very careful

[Mr. Mortimer]

by the Government. It should be observed first of all that no restriction of this kind is imposed upon other local authorities in the Colony in the investment of their funds, although in fact, apart from provident funds, almost without exception all such funds have consistently been invested in the Colony. On general principles it is desirable that local authority funds, which are trust funds, should be invested to the best advantage, consistent with safety, but there is much force in the contention that, other things being equal, investments in the Colony should be encouraged. No reason is seen, however, for any differentiation in this matter between African local authorities and local authorities in the settled areas.

The African local authorities—the local native councils—will shortly become African District Councils, they will have larger powers and responsibilities and should, in a matter of this kind, be treated in a precisely similar manner to local government authorities in the settled areas. The control of local government funds is at present somewhat inadequate, and in my view the whole subject should be brought under examination now that financial conditions may be expected to become more normal. I propose therefore to ask the Local Government Board, when established, to examine the situation and to devise some uniform measure of control, which shall be applicable to all three classes of local authority. In view of this assurance, I trust that hon. members will not press their objection and that the bill now before Council will be passed as drafted.

MR. TOMKINSON: Thanks to the eloquent exposition by my hon. friend the last speaker (Mr. Mortimer), there is no other point to which I have to reply.

The question was put and carried.

CUSTOMS TARIFF (TEMPORARY AMENDMENT) BILL

SECOND READING

MR. MUNDY: Your Excellency, I beg to move: That the Customs Tariff (Temporary Amendment) Bill be read a second time.

The object of this bill is to incorporate in the legislation of the Colony a number of amendments to the customs tariff which were made by Defence Regulations during the war and which would otherwise lapse on the 24th of this month. These amendments were all in the nature of concessions which were necessary owing to war conditions. Briefly, these amendments provided full relief from customs duty in respect of all goods imported for the use of the Armed Forces, including those of the Allied Nations; gift parcels and comforts for the troops; goods purchased by the various forces institutions, welfare organizations and the Red Cross; gift parcels for prisoners of war and internees; and goods purchased for evacuees in recognized evacuee camps. In none of these cases is there any justification for levelling taxation on expenditure by other countries, which was purely for the defence of the Colony. Under clause 4 the ordinance will expire on the 31st December, 1946, and the proviso for its continuance will be omitted in the committee stage.

MR. FOSTER SUTTON seconded.

The question was put and carried.

ELECTRIC POWER (AMENDMENT) BILL

SECOND READING

MR. WILLBOURN (Postmaster General): Your Excellency, I beg to move: That the Electric Power (Amendment) Bill be read a second time.

If this bill becomes law, no new principles are introduced. It is designed to simplify the administration of the principal ordinance, and in doing so will remove possible sources of inconvenience. Sub-section (1) of section 10 of the principal ordinance authorized the Governor in Council to grant bulk supply licences to "generate, convey, transmit, and supply energy in bulk"—to "generate, convey, transmit and supply". The word "and" is the nigger in this woodpile. It has been held that that sub-section authorized the issue of a licence only when the licensee undertakes all these acts. During the war an application was received for a licence for a bulk supply of electrical energy at a place within the Colony and Protectorate

[Mr. Willbourn]

generated at a source outside the Colony. It was essential to the war effort that this should not be held up; it was essential in the public interests. Powers were taken under the Emergency Powers (Defence) Acts to enable the Governor in Council to grant a licence. Clause 1 of the amending bill seeks to incorporate this power in the permanent legislation.

There, Your Excellency, I should have stopped if this bill had been classified as not likely to be contentious, but I think I should give Council some idea of what the effect will be if this amending bill does not go through. The scheme involved in that case that came up during the war, the supply of electrical energy in bulk from Pangani Falls to the coastal area, was somewhat complicated because it falls into three parts: the generation of electricity in Tanganyika, the export of electricity, and the conveying from the border to the distribution area in Kenya. Each of those three parts required licences. Two of those licences are by the Tanganyika Government and one by the Kenya Government, so that although it falls into three parts, as an industrial undertaking the scheme is one indivisible whole. Each of those licences contains a clause to the effect that the licence is issued in conjunction with the licence issued by the Tanganyika Government or, conversely, with the Kenya Government. The Governor in Council considered this application, and appreciates the benefits it will give. He is prepared to issue the licence, but it is dependent on the issue of the licences in Tanganyika. An obstacle has arisen in Tanganyika to prevent the immediate issue of that licence. The obstacle is the fall in the flow of the rivers. The Governor in Council will have no power to issue that licence unless this legislation goes through.

Coming to clause 2, sub-section (1) of section 131 of the principal ordinance says that an applicant for a licence for a generating station shall give 60 to 90 days notice of the intention to apply. Some doubt exists when an extension to an existing generating station is proposed, but it does in law become a new generating station, and the 60 to 90 days notice of intention to apply for a licence is required. A case of this kind arose during the war, and powers were taken

under the Emergency Powers (Defence) Acts to ensure that it should not be held up. This sub-section seeks to incorporate those powers in the permanent law. There again, I should have stopped if this had been classified as non-contentious, but I think a little explanation of the effects of not passing this amendment will clear the air and ensure that the measure is not objected to.

As all hon. members are aware, the output of electrical power in the Nairobi station falls short of the actual plus potential demand. The company have not been able during the war to get additional plant and machinery to meet immediate demands and potential demands. They have taken steps to order plant; but the manufacturing position at home makes that not too easy. Nevertheless, there is completing at home now on test by the manufacturers one unit of 800 kilowatts, which we can expect here in a few weeks' time. The effect of not passing this clause 2 will mean that that station, or that unit, would lie here while 60 days' notice of the intention to apply for a licence was given. A further section in the ordinance says that when an application is received it shall lie for 60 days before the Governor in Council considers it. It is then considered, with any objections that may have been made, and I think it will be reasonable to say that it will be five or six months before the licence was given and the unit installed. I do not think any member of this Council would wish to hold up the supply of electrical power in this manner.

MR. FOSTER SUTTON seconded.

The question was put and carried.

CUSTOMS MANAGEMENT (TEMPORARY AMENDMENT) BILL

SECOND READING

COMMISSIONER OF CUSTOMS (Mr. Northrop): Your Excellency, I beg to move: That the Customs Management (Temporary Amendment) Bill be read a second time.

In order to deal with the disposal of military salvage, powers have been taken under Defence Regulations for the Governor to waive the import duty normally payable under section 135 of the Customs Management Ordinance.

[Mr. Northrop] This section is quoted for reference at the foot of the bill, and I would take the opportunity to point out a printing omission, the comma is left out after the word "whereof" in the fifth line. It is considered desirable to retain the flexibility of allowing the Governor to waive the customs duty in suitable cases as provided for in the bill. In accordance with the statement made by the hon. Attorney General yesterday, an amendment to clause 3 will be made in the committee stage to delete the proviso.

MR. FOSTER SUTTON seconded.

The question was put and carried.

TEMPORARY REBATE AND REFUND OF CUSTOMS AND EXCISE DUTIES BILL

SECOND READING

MR. NORTHROP: Your Excellency, I beg to move: That the Temporary Rebate and Refund of Customs and Excise Duties Bill be read a second time.

In addition to granting freedom from duty under the Customs Tariff Ordinance, similar facilities have been allowed under the Defence Regulations to the Forces and other services in connexion with excise duties on tobacco, cigarettes, beer, tea, and sugar, and in the case of the purchases of imported goods from other stocks refunds of customs duty have been granted. If it is proposed under this bill that these facilities should continue, an amendment to clause 3 will be made in the committee stage to delete the proviso.

MR. FOSTER SUTTON seconded.

SIR ALFRED YOUNG: Your Excellency, under clause 5, the first part (which is not going to be deleted), I want to raise a point of principle on the general continuance of the privileges or refunds which are afforded by this bill, and my colleagues and I do so in no ingenuously spirit in any way.

We realize that the Services, especially those men who are back from Burma to-day, deserve all the privileges justly due to them as provided for by this bill. (Hear, hear.) But we do feel—and I believe the country generally feels—that there is a great likelihood that those privileges and purchases from the institutes which are mentioned in the bill

have been open to very much abuse, and I would ask Government to give us an assurance that they will ask the military authorities to tighten up and make it impossible for such abuses to take place or, if they have taken place in the past, to continue. We are perfectly willing for these rebates and refunds to continue to the end of 1946 in the first place, but we feel that, as we have based our revenue on the assumption that normal conditions will tend to return during this year and that the incidence of these privileges will decrease, it would be unfair—at least I think it unfair—to the traders of this country if they were undersold or if those privileges are abused. While agreeing that it shall continue in the first instance to the end of 1946, I make no threat, I say this—that I should very much dislike to be put into the position of moving a motion in this Council asking for the repeal of these privileges before the end of 1946 if the military authorities find themselves unable to give effect to the spirit of this legislation as we see it. (Hear, hear.)

MR. FOSTER SUTTON: Sir, we know that a certain amount of abuse has taken place, and I understand that representations have in the past been made to the various Service authorities. I can give this assurance: that Government will take the matter up again and endeavour to have it tightened up in the manner contended for by the last speaker.

The question was put and carried.

REMOVAL OF UNDESIRABLE NATIVES BILL

SECOND READING

MR. FOSTER SUTTON: Sir, I beg to move: That the Removal of Undesirable Natives Bill be read a second time.

This Bill, shortly put, seeks to enable the Authority (which is defined in clause 2 as meaning "the district commissioner of a district or any other person appointed an Authority by the Governor, under the provisions of section 4") to order the removal of a native from any municipality or township or any other area defined by the Governor; if that Authority considers that the native's continued presence in the municipality or township is undesirable in the public interest. A person can be deemed to be undesirable, under the bill, if he

[Mr. Foster Sutton]

comes within any of the categories mentioned in sub-clause (2) of clause 5. It might be as well for me to refer hon. members to that particular clause. A removal order may be made on any of the following grounds: "(a) that the native has been sentenced to a term of imprisonment (other than in default of payment of a fine or compensation) for an offence against the person or in relation to property; (b) that the native has no regular employment or other regular means of livelihood; (c) that the native, whose district of origin is within the Colony but outside the municipality, township or other area, has no settled home within the municipality, township or other area". To that paragraph (c) there is a proviso which protects the position of certain individuals: "Provided that a native shall be deemed to have a settled home within a municipality, township or other area if (i) one of his parents is living within the municipality, township or other area; or (ii) being a woman, her husband is living within such municipality, township or other area, or being a widow, she has lived in such municipality, township or other area for a consecutive period of three years". I venture to submit that that proviso contains the necessary safeguards so far as the persons enumerated therein are concerned.

Then clause 6 contains provisions which enable a person against whom a removal order is made to appeal. Sub-clause (1) is the enabling clause, and (2) provides that the appeal shall be made to the provincial commissioner, and the provincial commissioner is empowered under that sub-clause to vary or cancel the removal order, and it seeks to make his decision final. I fully appreciate that that particular clause may be regarded by some persons as unsatisfactory, and I should like to say now that I share that view. It seems to me that, under normal conditions, an order ought to be made by some judicial authority, and the appeal should be to a judicial body, but this bill is really an endeavour to cover the transitional period. During the emergency there have been various regulations which enabled undesirable persons, in settled areas, to be removed, and this bill will carry on those provisions up to the end of this year, when I suggest that

by deleting the proviso to clause 13 this measure should expire. In the meantime, we will have an opportunity of considering the position, and, I hope, of going into the matter sufficiently thoroughly to be able to lay before this Council for its consideration a comprehensive bill that will, I trust, be able to be regarded as entirely satisfactory.

Clause 7 makes provision for substance allowances, either in cash or in kind, sufficient to enable a native against whom an order has been made to leave the place designated in the order. Clauses 8 and 10 contain powers of arrest without warrant in certain cases. Clause 13 I have already referred to.

This measure is a simplification of the procedure provided by the present vagrancy legislation, and whether a person is in favour of this particular bill or not everyone must agree that our vagrancy legislation does require revision and amendment.

MR. MARCHANT seconded.

MR. MATHU (African Interest): Your Excellency, I should like to make some general remarks on the bill, and some detailed observations also in regard to some of the clauses.

In the first place, I should like to say that on the 9th January, 1945, a meeting was held under the chairmanship of His Excellency the Governor at Government House to discuss this bill, when it was then in draft. The two members representing African interests were present, and the bill was criticized on two main points. The first was that it was racial legislation, and that the ground on which an undesirable might be removed from a municipality, township or other area provided for in clause 5 (2) (c) would, I am sure, also be applicable to non-Africans, and the question was whether such non-Africans who had been sentenced to a term of imprisonment for an offence against a person or property should not also be removed from a municipality, township or other area. The other point which was considered was whether the bill would not be taken by the African population of Kenya as an additional hardship to the existing pass laws of the country. A further point was that the grounds of removal of an undesirable African under the Native Liquor Ordinance would, in practice, I think, cause

[Mr. Mathu] some removal of really very good citizens of a municipality, township or other area on the grounds of having been found with native liquor in their own premises, persons who otherwise, as I say, are decent citizens of the country. Subsequently it might be taken as a hardship, or even harsh legislation in that respect.

Another ground of criticism at that time was that persons removed from a municipality, township or other area were to be taken to a specific destination, to use the words in the bill, and instructions were not given as to what they would be able to do. Unless the question of the social amenities in the native land units was considered and were found not to be developed, an endeavour should be made both by the central and local authorities, African and non-African, to see that social amenities should be provided to give healthily entertainment to people. Secondly, consideration should also be given in regard to employment which would enable such removed persons to earn a livelihood, and that was not the case as the provisions of the bill indicate at the moment. In short, the criticisms that were levelled then were that the draft bill at that time, in January last year, was mainly of a negative nature. I think at that time it was thought better to hold up the bill until we could see where such criticisms could be met and have a constructive bill to bring about a more healthier situation than it provided then. That bill is the one now before this Council, and there has been very little alteration to the draft bill of a year and over ago.

A few detailed remarks: One is that in order to meet the criticisms that Africans will make against this bill it might be considered whether the title could not be changed by making it clear it was temporarily to provide for the removal of undesirables from certain areas; that would cover the point made by the hon. Attorney General, that this bill is of a temporary nature and expires on the 31st December this year, covering what he very rightly calls the transitional period. After that the hon. mover suggested that it might be necessary to introduce what he called a comprehensive bill which, I hope, will be able to cover the constructive side and the positive side of

the whole situation. The words "other area" which occur in clause 5, sub-clause (1) (a), and also (c), seem to have a very wide interpretation, and it might be interpreted that the native land units, particularly when the authority is the district commissioner, and under clause 4 the words "any district" occur, will also be affected. Further, in clause 5 (2), (c) the word "colony" appears and I should like to have an assurance from the hon. mover in replying to this debate that the word "colony" there includes the protectorate of Kenya.

Under clause 5, where there is a proviso under sub-clause (2), the people who have been safeguarded are wives and widows, and I am sure that the hon. mover would agree with me that there will be other persons who have had residence of 3, 5, or even 10 years in municipal areas who would perhaps be required to be safeguarded. The powers of arrest provided for under clauses 8 (1) and 10, where police officers are given powers to arrest such people without warrant, I think, are powers that possibly are not warranted. In the draft bill the arrested persons were to be brought to the authority after 24 hours. This has now been lengthened into 48 hours, longer than it appears to be perhaps than is necessary. I should like to suggest that the authority might require to have a tribunal to go into the question as to who is to be regarded as an undesirable person and who is not. As it is, if he is to act as an individual, without such a tribunal, the work might not only be cumbersome to the authority, but perhaps very difficult to effect.

I should like to say that the assurances that Government give in reply to this debate will enable me to support this bill or else to oppose it, but not knowing what assurances Government will give on this point I think I should reserve the right at this stage not to either oppose the bill or to give it my support.

MRS. WATKINS (Kiambu): Your Excellency, I should like an assurance from the other side of Council that this bill is not just a partial bill for removal of people from Nairobi, but that when the recipient of an order reaches his supposed destination he should have to report there every so often to the police, because actually what has happened in

[Mrs. Watkins] the part is that when natives have been removed from Nairobi they get out at Limuru station, or Kabete, or somewhere, and walk down to a convenient spot such as Karura Forest, and there they have stayed and made hay while the sun shone. They were no longer in Nairobi and there was no longer any trace of them, and if the Member for Law and Order would like to call for the particulars of how many lots of stolen property have been found in that forest—I am not referring to my own losses but to military lorry tyres and so on—I think he would find my statement largely substantiated. All round Nairobi these forests, or parks, are used as camouflage nets. It used to be a forest out our way and, as I said before, it is now nothing but a screen for brothels, breweries and hide-outs for stolen goods. It used to be a pleasant place to walk in, but is now completely unsafe. I do not really think that the situation is helped by a partial application of expulsion laws.

My hon. friend Mr. Mathu said that these regulations were racial, but I cannot see that they are, because we have our own laws, in peacetime anyway, under which we deported D.B.S.—I think it means something British subject (I do not know what the "D" stands for)—(MURRAY: Distressed)—anyway, the D.B.S. is deported, not only from a township but anywhere in the colony. If he is a vagrant or if he comes under the definition of undesirable, so I do not consider that it is racial, nor from the African's point of view do I consider it a hardship, as I believe Africans are more disturbed by their own kith and kin living just on the outskirts of Nairobi and depending entirely on those people who are working for a share of the worker's food, which, by the inviolable laws of native hospitality, has to be given. No African will refuse another African food. It is a very generous gesture, but when it comes to supporting the rifle-rail of Nairobi on the rations of the boys of neighbouring farms, it is just a little bit hard on the farms.

I do suggest that we should allow an order to be supplemented in any way that the hon. Member for Law and Order can see fit. I do stress the necessity of reporting to the police at the point of destina-

tion, not necessarily to the police, but to the district commissioner, or someone like that. I should also like to suggest that particular attention be paid to what I would call the camouflage nets of Nairobi; I mean the Ngong Forest and the Kiambu Forest, all these places, because there is the seat of much of Nairobi's trouble, and I do not believe that Nairobi by itself can help itself by considering only itself.

I know my hon. friend Mr. Mathu said that we must find other means of livelihood for these Africans. I can only assure him that during the last exodus from Nairobi the labour officer took infinite pains to get them good jobs (I was one of the employers who was to take them). They did not take the jobs for more than two days, then they took the blankets and *supplies* and everything else. That is the kind of thing we are suffering from, and I do not think it is a question of livelihood. I think the temptation of the immigrant receivers is very great. They spread their nets and they get many of these Africans. I am very sorry for them as I do not think they can now get down to an ordinary job of work. Those Africans are disturbing the peace of the other Africans, as well as disturbing the peace of farms and households and it is bad luck on a decent head boy when he has five or six of these people living with him and feeding in the house and in a short of food himself. Therefore I do submit that the thing is not racial. We have our own laws, and, may I say, they are very stringent against my sex? I think we should take very strong measures to see that the whole area is dealt with and we should regard the parks and forests of Nairobi as especially dangerous.

MR. VASEY: Your Excellency, I should like to thank the hon. Member for Law and Order for the way in which he has met one or two objections I raised in conversation with him. I should like, however, to place on record one or two principles which are involved, so that when the time comes to consider permanent legislation to deal with these problems, those principles will be considered.

In clause 2 it says the authority means "the district commissioner or a district or any other person appointed"

[Mr. Vasey] authority". A district commissioner is a member of the Administration and is an instrument of Government policy. In clause 5 it gives that authority power to make a removal order on the ground of undesirability. I consider it would be a very bad principle if the district commissioner, who is responsible for carrying out Government policy, has the power to use this particular bill in any degree to carry out that policy. What has to be done under this bill is to prove that the African—or perhaps, what the vagrancy law deals with, matter, the European or the Asian—is undesirable, and that is a matter for judicial consideration, I believe, and not for consideration by someone connected with the Administration. Then it goes a little deeper, because in clause 6 it says: "Any native aggrieved by a removal order shall have the right to appeal against such removal order to the provincial commissioner". The provincial commissioner is merely someone a degree higher in the instrumental side of Government's policy.

I think that this question of vagrancy should be lifted above the suspicion of the kind that I have outlined. I would therefore respectfully suggest that when we come to deal with permanent legislation, the authority should be the magistrate, and the appeal should not be to Caesar against Caesar, but should be perhaps to a bench of justices of the peace or, if necessary, to a higher court. I know it will be said that for the convenience of administration and for speed it would be better if it were kept out of the courts, but, rightly or wrongly, I believe that one of the successes of the British race has been its adherence to justice, even when justice caused inconvenience, and I do not think it right that we should accept as a principle that, for the sake of convenience of administration, we should run the risk of betraying one of the fundamental principles of that justice. I think the hon. Member for Law and Order will agree with me, and I will repeat the words of, I think, a legal luminary that "it is not only important that justice should be done but it is important that justice should appear to be done". Because this is a temporary measure I will support it, but I do hope the principles I have out-

lined will be taken into full consideration when steps to deal with the problem that undoubtedly confronts Government are brought into permanent legislation.

CHIEF NATIVE COMMISSIONER (Mr. Marchant): Your Excellency, my hon. friend Mr. Mathu has referred to previous discussions on the bill when it was first mooted, a matter of 14 months ago I think it was, and he is correct in what he has said, but circumstances have since changed. At that time we were at war and Defence Regulations were in force. Since then, peace has come and the Defence Regulations which, although not identical with this bill, give very similar powers of control, will now lapse. It is felt very necessary that some control must be exercised if we are to prevent a very large influx of people into this town, which is already overcrowded in so far as there is inadequate housing. The total figure of people unaccounted is 14,000, so it is obviously in the interests of the people that a further influx be prevented.

The hon. member referred to particular points of detail, among them being the section which enumerates the offences for which people may be removed, and he referred particularly to clause 5 (2) (a), which refers to offences against the Native Liquor Ordinance. There is no intention whatever of removing a man merely because he happens to have had "one over the eight"; so he can rest assured on that point. He then went on to say that no consideration has been given to affording social amenities in the native areas as a means of preventing this influx into townships. He also stressed the need for providing employment for all these persons if and when they are removed. I have a great deal of sympathy with that point but, as I think anybody who thinks about these problems will realize, you cannot bring about a complete change in social amenities in the native reserves in a few months. The local authorities to-day are taking a very active interest in this work and, as I think I mentioned on a previous occasion in this Council, we are now commencing to train welfare workers recruited from discharged soldiers who, when trained, will go into the native areas for this work. So I am hoping that he will take what I say as an indication that we have not entirely

[Mr. Vasey] overlooked the original objections which he raised to this bill on those grounds.

There is another point he made, which was in regard to the use of the phrase "any other areas". He seemed to have some qualms as to whether this phrase might not enable the Governor to apply this ordinance, if it becomes law, to the native land units. There is no such intention, but it is impossible to enumerate in a bill of this nature every possible contingency or type of place to which we may wish to apply it. I have in mind particularly trading centres and also mushroom growths of settlement which may spring up in the neighbourhood of townships outside the native areas. This bill is designed to cover those particular examples. Another point he made was to the fact that the time limit had been increased from 24 hours to 48 hours. My hon. friend the Attorney General will, I think, deal with that point, but the reason, if I remember rightly, for altering this was the fact that if a man is arrested on a Saturday morning he could not possibly be taken to court until Monday. Therefore some latitude was necessary. My hon. friend the Attorney General will deal with that point.

I would at this stage like to give some indication as to how it is proposed that this bill should work, if indeed it becomes law. We have in Nairobi certain native authorities, and they are now being re-formed on a local basis, with their own committees composed of their own people, and the firm intention is to invoke the aid of these authorities to give effect to the provisions of this bill. Those authorities will, with their committees, decide which persons they consider to be undesirable. They will then take them before the district commissioner or other authority, who, in the case of Nairobi, would be the Municipal Native Affairs Officer, and it would then be for him to decide whether circumstances warrant making an order or not. So I think the hon. member can be assured that the administration of this law, if it does become law, will be very largely in the hands of the natives themselves, and I know full well that we shall get the necessary co-operation in this respect. In fact, the local African Advisory Council has strongly supported

the principles of this bill. At their recent meeting this matter was discussed, when they gave the strongest possible support to this bill, or at any rate to the principles of this bill. With regard to the other points of detail, I will leave those to my hon. friend the Attorney General to deal with.

MR. FOSTER SUTTON: Sir, I propose first of all to deal with the points raised by members other than those representing African interests. The hon. Member for Kiambu asked that the provisions of the bill should be extended in order to be able to ensure that a native, when an order has been made against him, will report at the place of designation. If the hon. member will turn to clause 5 (1) (b), she will see that it is possible to mention in the order a definite place of destination. The idea is that an order would be made ordering the person concerned back to his normal place of abode, which normally would be in a reserve, and administrative instructions will be given to ensure that a check up is made. If a person disobeys a removal order, it is an offence, and they can then be apprehended and the order enforced. Everything depends on the method of administration. If it is administered reasonably and sensibly, I think it will meet the point raised by the hon. member for Kiambu, and also by the hon. member Mr. Mathu.

The hon. Member for Kiambu also made the point as to whether it was intended that this bill was to be applied only to Nairobi. The intention is to apply it wherever it is necessary. It will not necessarily be confined to a municipality, and the hon. Chief Native Commissioner has already indicated the types of places that the measure would be applied to.

The hon. Member for Nairobi North, if I may respectfully say so, made his point very clearly, and I should like to say that, speaking for myself, I entirely agree with every word he has said. I think this type of legislation should be operated by a person in a local capacity and not administered because, as he has pointed out, the Administration has its policy, and he has to do in his administrative capacity what should be done judicially, and the same objection he made earlier with as to the method of appeal. I can assure him that when

[Mr. Foster Sutton] new legislation is being considered his point will be met.

The hon. member Mr. Mathu made various points, most of which have been dealt with by the hon. Chief Native Commissioner. I can meet him half way over the title, and insert, in the committee stage, the word "temporarily" to make it perfectly clear that this is only an interim measure to deal with the situation during the transitional period. I give him the undertaking that I will issue instructions to the police to ensure that the power of arrest is operated reasonably. If any cases occur where it is being dealt with unreasonably, all I can say is that I hope he will let me know and I will deal with the matter. A great deal does depend on the method of administration.

The hon. member asked whether colony included protectorate. It does. Under the Interpretation Ordinance, Chapter 1 of the Revised Edition, colony includes protectorate. That being so, in every ordinance where colony is mentioned the protectorate is automatically included.

There is no doubt in my mind that we shall have to revise our vagrancy legislation, and I sincerely hope we shall revise it on a completely non-racial basis. It would, however, point out certain difficulties that arise in connexion with other races that do not exist in the case of Africans. For instance, in the case of a European or Asian there is no reserve to send him back to. A reserve is the native's home, and it is possible to make an order sending him back to his ordinary place of abode, whereas, in the case of most people who have emigrated into Kenya their original place of abode is probably a long way away from the Colony and they can only be dealt with by means of deportation, so that the two problems are wholly different. There is a safeguard which the hon. member was contending for, and it is contained in clause 5 (2) (c), which reads: "that the individual, whose district of origin is within the Colony but outside the municipality, township or other area, which has no settled home within the municipality, township or other area." If a person's home happened to be Nairobi he would not be removed, if it happened to be his settled place of residence.

This bill must, during the transitional period, be administered reasonably and justly, and I shall do my best to see that it is. I hope with this assurance, especially in view of the fact that the bill is intended, as I have already said, to cover the transitional period terminating on the 31st December of this year, that the hon. member Mr. Mathu will see his way clear to vote for it.

There was another point which he made, on which I am prepared to meet him. He complained about the 24 hours being increased to 48. I cannot help feeling that that amendment was intended for the convenience of the people who were going to operate the measure, and I agree that it is far too long. If a person is arrested he should be taken before the Authority at the earliest possible opportunity, and with your permission, sir, and that of Council I will in the committee stage move an amendment to reduce that period to 24 hours.

The question was put and carried.

TRADING WITH THE ENEMY (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Sir, I beg to move: That the Trading with the Enemy (Amendment) Bill be read a second time.

This bill seeks to incorporate in the principal ordinance, the Trading with the Enemy Ordinance, 1939, certain provisions which have been made during the emergency by means of Defence Regulations. I think it is pity that sometimes, probably because of the emergency, it was necessary to make the amendments by way of Defence Regulations, as I think the opportunity should have been taken at the next session of this Council to amend the ordinance in the ordinary manner. That is what this bill seeks to do, otherwise all of these amendments, some of which may not be very important now, others are and ought to be retained, will lapse on the 24th of this month. I do not propose to go into details because the amendments contained in the bill are amendments which have been in force, some of them for years, and all of them for a considerable period, and they introduce no new principle whatever. They deal chiefly with definitions, and also with the question of powers to control and wind up certain enemy businesses. I do not

[Mr. Foster Sutton] I have never had to administer trading with the enemy legislation, know all the implications, but I believe that unless we carry the whole of the defence legislation into our permanent legislation serious difficulties might well arise. As I say, no new principles are introduced, they have all been in force for a considerable period.

MR. MUNDY seconded.

MR. VASEY: Your Excellency, there is one small point which I should like to take this opportunity to ventilate. The definition of enemy territory contained in section 2 (1) says: "Enemy territory means any area which is under the sovereignty of, or in the occupation of, a Power with whom His Majesty is at war". During the period of the war, after this ordinance was passed, a number of countries whose people were friendly to Great Britain and the Allies were occupied by an enemy power: France, Denmark, Holland, Czechoslovakia, the list is fairly long. By the provisions of this ordinance the assets of friendly neutrals in this Colony whose property happened to be in their own countries when those countries were occupied by Germans were treated as being enemy property and therefore vested in the Custodian of Enemy Property in the Colony. It is correct to say that in the terms of Government Notice No. 755 the Custodian was entitled to charge the sum of 10 per cent on all moneys coming into his hands, and the sum of 5 per cent on all disbursements made by him; He also had power to remit the whole or any portion of those fees as he thought fit, and, quite rightly, in the case of enemy subjects, all moneys collected by him should be paid into the general revenue of the Colony.

Nobody, I think, would protest against these regulations as they applied to enemy subjects, but as they were applied in some cases to Danes, Norwegians, and other people, there has arisen a feeling of injustice. I quote from a letter sent to me by an eminent firm of solicitors in Nairobi. While I cannot verify the facts myself, I think we may take it for granted that they are accurate. This letter says: "As an illustration of how this works we give you the details of one Danish subject who, at the time of the invasion of Denmark, had the sum of

£2,000 on fixed deposit with the Standard Bank of South Africa, Nairobi. This sum was duly collected by the Custodian and paid into the Custodian's account with the National Bank of India, Nairobi, for which a charge of £200 was made. We have applied to the Custodian to reduce his charges, but so far he has shown no intention to do so. I do suggest that in the administration of this type of thing, the fact that people in these countries, although these countries were occupied by the enemy, did in many instances a great service to the allied cause, should be taken into account. I do suggest Government to see that, as far as these people who, we are assured, were neutrals and whose intentions to us were friendly, are concerned, the administration of the ordinance is carried out in friendly spirit.

MR. FOSTER SUTTON: Sir, the question of the persons referred to by the hon. Member for Nairobi North is being dealt with, and I know there are a number of agreements, some of which I have seen, with the Government of the United Kingdom and other countries concerned. I am not in a position now, because I cannot recollect what the terms were, to say whether the question of interest is covered or not, but I should like to say that, speaking for myself—and certainly the hon. member is on my right (Mr. Mundy)—we have full sympathy with the statement made by the hon. Member for Nairobi North. It does seem to me pretty hard if, merely through misfortune, people who suddenly become technical enemies in enemy territory should be charged the full fees justifiably charged in respect of enemies. The order he has referred to contains a proviso that the custodian shall have power to reduce or remit any such fees in his discretion, and I undertake to raise the question with the hon. Acting Financial Secretary and it will be looked into. I have no doubt myself that these fees ought to be reduced to cover the Government's out-of-pocket expenses. I think that is a reasonable thing. After all, the property has been taken care of in the interests of the persons concerned. If the firm of solicitors who have written to the hon. member had chosen to address me, as a colleague on the matter, I would have taken it up without the slightest hesitation.

His EXCELLENCY: I would merely add to what the hon. Attorney General has said that special cases in the past have been dealt with in a special way, and I see no reason why, as the hon. Attorney General has stated, if the necessary application had been made in this case and a full statement of the circumstances made out, due consideration should not be given to the special circumstances here.

The question was put and carried.

LOCAL GOVERNMENT (MUNICIPALITIES) (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Your Excellency, I beg to move: That the Local Government (Municipalities) (Amendment) Bill be read a second time.

Later in the year, further draft legislation will come before Council for the amendment of the Local Government Ordinances in order to carry out the intention of Government in relation to the new Local Government organization. The matters embodied in the present bill are, however, for reasons which will appear, sufficiently urgent to justify their being brought forward to-day as a special measure. They relate to the Municipality of Nairobi only, and refer to the constitution of the Municipal Council of Nairobi. They have been brought forward at the unanimous request of the Nairobi Municipal Council.

Two objects are to be achieved by this measure, both of which were deemed to be of sufficient importance to justify a public inquiry before this draft legislation was framed. In consequence, the hon. Attorney General and I were appointed as a commission of inquiry to receive evidence from the public on the desirability or otherwise of carrying out the requests of Nairobi Municipal Council. The inquiry was held, and many members of the public came forward to give evidence and to state their views. The bulk of the evidence submitted to us in our commission was in favour of the proposals of the Council. Small modifications were proposed here and there, which were duly considered by the commission, and reported upon to Your Excellency in Council. The result is the draft bill now before hon. members. The

opportunity has been taken in the bill of clearing up the particular section governing the constitution of the Nairobi Municipal Council. In the law as it stands up to date there are several clauses and provisions which were specially put in to deal with situations that have long since passed and now have no longer any relevance. These have been deleted, and the clause now put forward is a clean, straightforward measure setting forth what is actually the case and what is proposed.

As I have said, there are two main objects in this bill. The first is to set up for Nairobi Municipality a bench of aldermen. This follows the English system, which has stood the test of centuries and is still acknowledged in England as being a very desirable practice. There are criticisms here and there of the way in which it is administered, and I am quite sure that Nairobi Municipal Council will take heed to those criticisms in their operation of this measure. This is the first time the experiment of introducing aldermen into municipal affairs has been tried in Africa—Nairobi is once again making history! (Hear, hear.)

The reasons which have prompted the Nairobi Municipal Council to put forward this proposal are threefold. First of all, the burden which falls upon those public-spirited gentlemen who have taken upon themselves at the request of the electorate the duties of councillors are very heavy. There are no less than eight full committees of the Council, and innumerable sub-committees. Those members of the Council who take their duties seriously, and that I am glad to say is the majority of the Council, do find this burden a very heavy one, and they want some relief. Every councillor must be a member of at least one committee, and several are members of two and three, and even more. That makes a very heavy demand upon their time. They want, therefore, an increase in the number of councillors so that the burden of committee work may be more equitably spread. Another reason is to preserve continuity in the work of the Council in the administration by them of municipal affairs. The existence of a bench of aldermen will preserve that continuity.

The third reason is that it is desired to recognize the public-spirited service

(Mr. Mortimer) of members of the Council and other members of the community by giving them the honour of being aldermen of the municipality. Furthermore, there are members of the public who either cannot, because of their positions, or who do not desire to stand for election as municipal councillors, but who by their public service have merited the honour and recognition by the public, and who would be valuable additions to the Council; they could be brought into the work of the Council by means of this bench of aldermen.

To turn to the detail of the provisions for the appointment of aldermen. There are to be seven in all who are to be elected by the Council by ballot. They need not necessarily be councillors or ex-councillors, but they must possess the qualifications entitling them to be elected as members of the Council; that is, they must fulfil the ordinary qualifications laid down by law for election. The term of appointment is to be for six years, and in order to preserve continuity and to avoid all the aldermen retiring on one particular date, when the first election takes place four are to be elected for three years and three for six years. After that period has passed, the procedure will work automatically, and all aldermen will be appointed for six years. A retiring alderman will be eligible for re-election. Provision is made for the filling of casual vacancies which shall be for the unexpired period of the appointment they are filling. Elections are to take place during May of each year in order to avoid the necessity of having a by-election if an existing councillor, who is due to retire in June, happens to be elected an alderman. If an alderman ceases to be eligible to be elected as a councillor, he shall automatically cease to be an alderman and his place shall be filled. These aldermen will have all the powers of councillors and their responsibilities and privileges, with one exception—that of voting for the appointment of an alderman. There is, however, a proviso to that clause which covers the situation that clause might possibly arise, where the mayor himself is an alderman and where there is equal voting in the Council for the appointment of an alderman. In such an event, the mayor will have a casting vote but no substantive vote. I think that after the inquiry that

has taken place the claim of Nairobi Municipal Council for this innovation is fully justified, and I have no hesitation in supporting it.

The second object is the most important and significant one, which I am sure will meet with the cordial approval of all members of this Council. The unostentatious clause 5 (7) covers a very important advance in municipal affairs in this Colony, and provides for the nomination of two African members to the Municipal Council of Nairobi. For the first time in the history of this Colony we shall have African representing African affairs in a local government body. The Africans of Nairobi have passed through a period of apprenticeship. They have had a Native Advisory Council for some years which has done valuable service. Two members of that Advisory Council have sat with the Native Affairs Committee of the Council and have given valuable help and advice. Now the time has come for a step forward and if this measure is passed, as I feel sure it will be, we shall have two Africans as full members of the Nairobi Municipal Council. These Africans are to be nominated by His Excellency the Governor for the present. There is no practicable means now, in my sight, or likely to materialize in the time we need think of for the moment, for bringing in a system of elections. Therefore we must stick for the time being to the principle of nomination, and I am convinced that the nominees placed upon the Council by His Excellency will merit and will have the full confidence of the Africans in Nairobi. Here again, Nairobi is making history!

MR. FOSTER SUTTON seconded.

MR. PATEL: Your Excellency, I desire to have some information from the hon. mover of this bill in connexion with a statement made by him that the proposal to appoint aldermen was unanimously approved by the Nairobi Municipal Council. As we all know, the composition of the Nairobi Municipal Council is based on racial lines. Whether we like it or not, it has been adopted from the very beginning, and as one sees from the Press reports from time to time of the proceedings of that Council, on occasions voting for the appointment of Indian members to committees takes place on racial lines. What is the safe-

[Mr. Patel] guard which it is intended to provide for the election of these aldermen which is suggested in this bill? I am not opposing this, as the Indian members who are on the Municipal Council have given their blessing, but at the same time I am rather unhappy in this matter on account of what I have seen of the Press reports from time to time in regard to voting when elections take place. I strongly support the provision for appointment of African members on the Municipal Council, and that alone makes me happy to support the bill before the Council.

MR. ODEDE (African Interests): Your Excellency, I am extremely pleased to hear that Africans are going to be nominated as members of the Municipal Council of Nairobi. I congratulate Government on having thought of that point and giving us that provision. I hope that from now on we will have African members on the municipal boards of almost all the towns in the country. I hope that very soon we shall have African members of the municipal boards of places like Kisumu, Nakuru and Mombasa. On this account I am very pleased to see Africans appointed on this important Council.

MR. MATHU: Your Excellency, I should not like to make a speech on this, but I should like to ask the hon. member whether he would be prepared in the committee stage to propose a minor amendment to clause 5, sub-clause (vi), where the word "native" appears as he himself. In his speech one of two African members. Would he be prepared to put the word "African" in place of "native"?

MR. VASEY: Your Excellency, I should like to support the bill and should like to say this, that I do press that there should be no suggestion of restriction as to the race of the aldermen to be elected. I believe that one of the mistakes we have made—and I do not see how it could have been avoided—is the nomination of certain numbers of members of various races from time to time. This bill allows for an election, and I say very candidly that I believe that in the beginning it will be found to mean a majority of European aldermen; but it does allow a system wherein changing events and changing times will play their

part. I can visualize, in time to come, the first African alderman in Africa being elected to the board of the Nairobi Municipal Council. I do hope that the hon. member Mr. Patel will not push his objection to any definite conclusion. I support the bill.

MR. MORTIMER: Your Excellency, I am glad to welcome the practical unanimity with which this measure has been received, and I will now deal with one or two points that have been raised. The hon. member Mr. Patel asked what evidence there was that the Municipal Council unanimously supported the proposal for aldermen. I have a recollection of being informed that the proposal had the unanimous support of the Council, and during our commission of inquiry no question was raised on that point, but I have the letter before me in which the proposal came forward, and it certainly does not seem in regard to this particular item that there was unanimity on the Council. All I can say is that I have no evidence to the contrary.

The hon. member Mr. Odede raised the question of the application of this same principle to other municipalities. I should like to see the principle extended, but I do commend to the African community the desirability of serving a term of apprenticeship in municipal affairs, and proceeding on the same lines as Nairobi has done by the establishment first of all of an advisory council and seeking the opportunity of having members of that advisory council co-operating with the municipal authority in committee. Then the time will come when the Africans themselves prove their ability to take responsibility as full councillors and no doubt there will be genuine willingness to welcome them into the full measure of municipal responsibility.

The hon. member Mr. Mathu raised a question on which I have the fullest sympathy with him; that is the use of the term "African" instead of the term "native." I know full well the susceptibilities of our African friends on this point. The reason for the term "native" being used here is that that term is used throughout the whole of the Municipalities Ordinance. There is in the definition section a definition of the word "native" and no definition of the term "African." If we are to alter the word from "native"

[Mr. Mortimer] to "African," wherever it appears, throughout the whole gamut of our laws, we shall have an enormous number of amendments to consider. I do assure the hon. members that the matter will be taken into account when the wholesale revisions are taking place, but at the moment I cannot support his request for an alteration of the term in this particular ordinance.

The question was put and carried.

TRANSPORT LICENSING (AMENDMENT No. 2) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Transport Licensing (Amendment No. 2) Bill be read a second time.

This bill seeks to amend the Transport Licensing Ordinance, 1937, by repealing paragraph (b) of sub-section (1) of section 11 and substituting a new paragraph therefor. Under the existing paragraph of that section—the Transport Licensing Board have no discretion to refuse to grant a "C" licence. They have found that in the light of experience to be a most desirable provision, and this bill seeks to change the position to confer on them a power which they have in the case of all the other licences, and that is the discretion to refuse to issue a licence if they think it is right and proper so to do.

MR. MUNDY seconded.

MR. PATEL: Your Excellency, I have to oppose this amendment for two or three reasons. In the first place, before the war it was not found necessary to amend this legislation, even in the light of experience gained. In the second place, this amendment is not only for the year 1946, as has been done in most cases. It appears that the Board may refuse even a person who carries on his own business to have a "C" licence to carry his own goods. But there is a further reason why I oppose this amendment, and that is that the Indian elected members do not feel justified in placing confidence in the chairman of the Transport Licensing Board in the exercise of the discretion which is given under this proposed amendment. That chairman, as you know, turned down the recommendation of the Indian elected members for the nomination on the board of an

Indian member only a few weeks back. We were given to understand by the Government that the Indian elected members should make a recommendation for the appointment of an Indian member in place of the hon. member Mr. Thakore, who was retiring, and because that suggestion came from the Government informally, we made a recommendation officially in writing, and the chairman took a fancy to some other Indian member and rejected completely the recommendation of the Indian elected members. If that is going to be the attitude of the chairman of the Transport Licensing Board, we cannot place confidence in the exercise of the discretion which it is now intended to give him. For these reasons I oppose the proposed amendment. I shall be prepared to consider it if the proposed amendment is only for the year 1946. As a matter of fact, the time has come when a committee should be appointed to investigate the whole ordinance and the operation thereof.

MR. ODEDE: Your Excellency, while I have no objection to the amendment of this ordinance, I would raise the question of an African being appointed as a permanent member of the Transport Licensing Board. This is very important from the point of view of the African community, because during the war most Africans tried to buy lorries and they could not buy them. They did all they could, they spent much money on their efforts and yet they could not succeed, and it is during the war that passenger lorries and transport lorries have been so profitable, and I feel that now is the time when they should be allowed to have a member on the Transport Licensing Board. This, I feel, would help the African community a great deal. I have heard that members are being co-opted when the Board is in certain districts, but I feel that new members cannot do much, because actually they do not know what the Board is doing. So I would feel happier if I heard that Africans were now to be permanent members of this Board.

MR. FOSTER SUTTON: Your Excellency, I cannot deal very effectively with the point made by the hon. member Mr. Patel, because I cannot at the moment recollect exactly what took place about the appointment of the Indian member of that board that he referred to, but in

[Mr. Foster Sutton] The Governor in Council, under the Ordinance, is the person responsible for the appointment, and I think that any blame, if there is any blame to be given, must rest with the Governor in Council, who has the final say in the matter. I was very sorry my hon. friend Mr. Shamsud Deen is not here to-day, because he probably will have a clearer recollection of how the appointment came to be made than I have, but it is the Governor in Council's duty and power to make the appointment, and that is where any responsibility must ultimately lie; not in the chairman of the Transport Licensing Board, though, of course, I do know he had certain views as to the person who should be appointed.

The real objective of giving the authority in this discretion is this. These "C" licences have been abused. We all know what they are for. They entitle a person to carry his crops and that sort of thing. If they are his own, but they have been used for other purposes, and although the authority in the early days knew perfectly well that the licences were being abused and often used not as "C" licences, but as one of the others for which a higher fee was payable, they had absolutely no power to say "No," and I think personally they ought to be given that power.

The other question raised by my hon. friend Mr. Patel can, I have no doubt, be given consideration at a later stage. My personal view is that he will have an opportunity at a later stage of debating this matter, because sooner than later we must have new legislation. The present legislation requires so many amendments that I think the best method of tackling it would be to introduce a new measure at a convenient opportunity and allow this Council every opportunity of debating it.

The point raised by the hon. member Mr. Ododo is one with which I find it difficult to deal with, because I do not know what Government's fixed policy is. I know it certainly has been considered, and I have no doubt at a convenient opportunity it will be considered again. The object of the amendment made earlier this year was to enable the appointment of Africans and other persons in certain localities, when the Transport

Licensing Board was meeting there. I have no doubt his remarks have been noted and that the matter will receive the consideration of Government.

The question was put and carried.

LOCAL GOVERNMENT (DISTRICT COUNCILS) (AMENDMENT) BILL

SECOND READING

MR. MORTIMER: Your Excellency, I beg to move: That the Local Government (District Councils) (Amendment) Bill be read a second time.

The object of this bill is to preserve as permanent legislation certain measures which have been introduced during the war by means of Defence Regulations. As the law now stands, before the Defence Regulations amending it came into force, if it was desired to alter the boundaries of any district council or amend the boundary of a ward or alter the constitution of a council, even though it be a very small and minor matter, the Governor "shall" appoint the Commissioner for Local Government to hold a formal inquiry. It was felt during the war that that provision was unnecessarily difficult, and that where a proposed amendment was one that had been reached by agreement between all parties concerned and was only of a minor character this provision might very well be altered to "may." That has been operating throughout the greater part of the war, and it is desired to retain that provision in the permanent legislation.

Skipping now to clauses 4 and 5 of the bill, these deal with the delivery of nomination papers for election to the respective councils. Under the law, they have been compelled to be delivered by hand to the returning officer at a certain date and time. It is not always convenient in our widely scattered districts for this to be done, and that was particularly the case during the war, so that we introduced the system by Defence Regulations of transmitting nomination papers by registered post. This regulation has worked adequately during the war, and it is desired to retain it in the permanent legislation governing local government authorities.

Turning back to clause 3, this deals with the qualifications of voters in district council elections. Defence Regulations

[Mr. Mortimer]

were brought in in the early stages of the war precluding enemy subjects from exercising a vote in district council elections, and prohibiting their admission to the voters rolls. It is desired to perpetuate that restriction, at any rate for so long a period as these people remain enemy subjects, and then it is intended that the matter shall be brought up for review. My own personal opinion is that enemy subjects should be debarred from exercising the franchise in our local government affairs for some period still to be determined, to serve an apprenticeship, and that their admission to the voters rolls shall then be only upon satisfactory proof that they are welcome citizens. However, that can be reviewed at a later date, because hon. members will notice that there is a proviso to clause 3: "that the Governor may, with the approval of the Legislative Council, by notice published in the Gazette, declare that this section shall remain in force until a date to be fixed in such notice or until repealed."

There is another bill which has been placed before hon. members at a very late date, not in compliance with Standing Rules and Orders I am afraid, which might have been embodied in this measure, but unfortunately it was overlooked at the time this bill was published. District councils have the power now to pass by-laws restricting and controlling or prohibiting quarrying in their areas. In the Nairobi district particularly a great deal of harm has been done by unregulated and unrestricted quarrying. The District Council has appointed a quarry inspector. They had no funds with which to pay him, and went to Government for the necessary money, which was provided, but this was subject to the proviso that the District Council should as soon as possible impose licence fees of an adequate amount to cover the cost of an inspection. There is no power under the existing law, so it is proposed by this amendment to give district councils powers to make by-laws to impose fees for quarrying licences. In the committee stage it will be proposed that the original bill be amended by the inclusion of the clause contained within the later bill in order that we may have one ordinance only embodying all these measures.

MR. FOSTER SUTTON seconded.

MR. AXIN (Central Area): Your Excellency, I wish to speak on the amendment which the hon. member referred to in respect of district councils being able to impose fees for quarrying licences. It is intended that by such fees the salary and other allowances of the inspector will be covered. The number of such quarrying licences, according to my idea of the thing, are likely to be comparatively few, while the salary and allowances of the inspector are likely to be substantial. Therefore the fees which are sought to be recovered will not be in the nature of mere licence fees but of taxation of a character which will be substantial. The reason why I think I must take the opportunity on this occasion of speaking about the matter is this, that on Nairobi District Council there are neither Indian nor African members, and the quarry workers are Indians and Africans. It is therefore from the point of view of the principle of "no taxation without representation" that I must register opposition. Nairobi District Council can and should now include in its membership Indian and African members. It is a matter that has been raised several times, and I will not go into it now, but I will say that I think an assurance should be given that the fees will be nominal, or that if they are going to be substantial the membership of Indians and Africans will be considered.

MR. FOSTER SUTTON: Sir, might I intervene in the debate to draw attention to the proviso to sub-clause (2) of 37 I do not know if it is the wish of hon. members to have that proviso deleted from this particular bill? It really is different in its nature to all the others. It is dealing entirely with the question of the right to vote in these elections by enemy subjects. I only mention it because I think you, sir, would like an expression of their views on it.

HIS EXCELLENCY: Is the hon. Member for Nairobi South in a position to express his views on that particular point, whether the proviso to clause 3 (2) should be deleted or should remain?

MR. FOSTER SUTTON: I know I am not entitled to speak again, but on a point of explanation the hon. member on my left has suggested that we should

[Mr. Foster Sutton]

delete the whole of the sub-clause, which I think is quite a reasonable idea, as that proviso will lapse automatically when peace is declared, when we shall have to think again. When the war is declared by His Majesty the King as being officially at an end, they will no longer be enemy subjects, and therefore the clause will die, and if we wish to describe people in another manner we shall have to amend the bill in a different way.

SIR ALFRED VINCENT: Yes, sir, I think that is the complete answer.

MR. VASEY: I do not know whether it would be possible to amend it so that this proviso would be taken out and the clause would read: "This section shall continue in force until the 31st of December, 1946, and shall then be reviewed," because I should dislike intensely that this matter be lost sight of.

MR. FOSTER SUTTON: I think we had better leave the proviso in, and if hon. members agree to that we can bring it up for review.

MR. MORTIMER: Your Excellency, I have only to refer to the point raised by the hon. member Mr. Amin. I cannot give him the assurance that the fees to be charged will be merely nominal; indeed, on the contrary, I think they will be quite substantial, and there is no reason why they should not be substantial. Very large profits have been and are being made by contractors, sub-contractors, sub-sub-contractors, sub-sub-sub-contractors, and sub-sub-sub-sub-contractors (laughter), right down to the African who actually does the work in the quarry. There is no reason at all why some substantial payment should not be made to the public revenue in recognition of the profits enjoyed. The inspection is a very important matter, and is being well carried out now. Endeavours are being made to remedy much of the mischief done, but in some cases the harm has gone too far, and I have no sympathy with any request that the fees charged should be purely nominal. On the other point, I decline to follow the red herring which the hon. member Mr. Amin has drawn across the trail (laughter).

The question was put and carried.

NATIVE REGISTRATION (AMENDMENT) BILL

SECOND READING

MR. MARCHANT: Your Excellency, I beg to move: That the Native Registration (Amendment) Bill be read a second time.

This bill is being proposed as a means of perpetuating certain provisions of the law enacted under Defence Regulations No. 138 of 1943. Clause 2 provides that a magistrate may sign off a *kipande* of an African found in the reserves. Hitherto it was necessary to refer such an application to the employer through the labour officer, and the result was that many days elapsed and there was considerable delay and difficulty in finding the individual who wished to have the *kipande* signed off. It was thought appropriate to introduce by Defence Regulations means of simplifying this procedure. This regulation has been in force for several years and has been found of considerable assistance in the administration of the law and as a means of freeing labour, otherwise the employer retained the services of his employee on paper, while the African if he did not wish to be retained had an assigned-off *kipande* and could not obtain further employment. The opinion in 1944 was that in the interests of the war effort this was undesirable.

Clause 3 permits the Governor, by notice published in the Gazette, to declare certain areas to be labour exchange areas, and within those areas the signing on and off of registration certificates has to be done by the authority who runs the exchange. This provision is of particular value in that it enables a check to be kept on the flow of labour and indicating the class of persons coming in; it also enables a check on the conditions of employment, which is a very important point, and thus to see that labour is adequately housed and conditions are suitable. I understand it is the wish of Council that this bill be referred to a select committee, and in these circumstances I will not go into further details.

MR. FOSTER SUTTON: seconded.

MAJOR KEYSER (TRANS NZIA): Your Excellency, I am very glad to hear the hon. member say that this bill will go to a select committee, because during the

[Major Keyser]

period since it was introduced as a Defence Regulation it has been a source of very great annoyance in a great number of cases to both employers and employees, chiefly in the case of employees who have been given leave and whose leave period has been entered in their *kipandes*. In many cases, as soon as the leave has expired the employee has been seized, his *kipande* signed off and in many cases the employee has been conscripted. But even with the abolition of conscription, there are circumstances under which the same thing could possibly happen, and an employer might lose a good employee through his being signed off by a magistrate. As I have said, there has been very considerable inconvenience caused, and there is a lot of opposition by both employers and employees to the perpetuation of this bill in the form in which it appears to-day. This bill also seeks to give a magistrate the right to fix such a date as may appear to him consistent with the circumstances. I consider that he should not be given those powers, but that the date to fix should be the date on which the *kipande* is signed off.

MR. MATHU: Your Excellency, in case silence is taken as an indication of acceptance, I rise to reiterate the objections I have raised in this Council before for the reinforcing of the native registration office. As this bill, I hear, is going to select committee, I do not propose to go into the details of the objections that the Africans have to the *kipande*, but there will be an opportunity of doing so when the matter comes back again from the select committee.

MR. MARCHANT: Your Excellency, as the bill is going to select committee I do not think there is any point in my replying.

The question was put and carried.

MR. MARCHANT: Your Excellency, I beg to move that the Native Registration (Amendment) Bill be referred to a select committee consisting of Mr. Foster Sutton, chairman; Mr. Mathu, Mr. Amin, Major Keyser, the Member for Agriculture, Animal Husbandry and Natural Resources, and myself.

MR. FOSTER SUTTON: seconded.

The question was put and carried.

EMPLOYMENT OF SERVANTS (AMENDMENT) BILL

SECOND READING

MR. MARCHANT: Your Excellency, I beg to move: That the Employment of Servants (Amendment) Bill be read a second time.

This is another instance of the continuation in permanent legislation of provisions which have hitherto been imposed by means of a Defence Regulation. Clause 2 of the bill makes provision for the recognition of what is known as the 90-day contract. I am given to understand that this form of contract is not often used, but under the law as it stood it is impossible to enter into a 90-day contract. Therefore during the war period it was decided to regularize the position by means of Defence Regulation, and the purpose of this bill is to perpetuate those provisions in a permanent form. I would, however, with the leave of the Council, at the committee stage beg to propose certain amendments to this bill. The first is in clause 4A (d): an alteration of the figure "108" to "106"; and clause 4A (e): an alteration of the figure "36" to "42" and in the proviso to the same sub-clause an alteration of the figure "108" to "106." Also in clause 4A (g), the figure "126" is altered to read "108." The reason for that is that in the normal contract the period during which a 30-day ticket is required to be completed is 42 days. During the war that period of 42 days was reduced to 36, but in practice it has been found impracticable of application, and it is considered desirable therefore to revert to the old period of a 30-day contract being completed within 42 days.

The second amendment which I beg leave to move during the committee stage is to insert a new clause immediately after clause 2 as follows: "The principal Ordinance is hereby amended by adding, immediately after section 16 thereof, the following new section: 'Notwithstanding anything to the contrary contained in this Ordinance, where a servant has been granted leave under the provisions of section 8A of the Native Registration Ordinance (Chapter 127 of the Revised Edition) the period of such leave shall be excluded from the period of the contract.'"

[Mr. Marchant]

The third amendment is to insert a new clause immediately after the new clause 3 which I have just quoted, as follows: "Sub-section (1) of section 79 of the principal Ordinance is hereby amended as follows: (a) by deleting the word 'and' which appears at the end of paragraph (1) thereof; (b) by deleting the full stop which appears at the end of paragraph (m) thereof; and by substituting therefor a semi-colon and the word 'and'; and (c) by adding, immediately after paragraph (m) thereof, the following new paragraph: '(n) providing for the holding of tests in respect of any trade or occupation and for the granting of a certificate of efficiency to any person who voluntarily enters for, and passes, any such test.'"

The point of these two amendments, which were published in another bill on the 12th of February and which it is now proposed to telescope, as it were, into this bill, are as follows. Under the law as it now stands it is general practice in Kenya for leave to be granted during contracts, but when a servant proceeds on leave in the middle of the month (say he has a fortnight's leave) by the time he comes back he has no contract to come back to. Therefore the law is redundant in that respect, and this seeks to rectify the position. The further amendment for the holding of trade tests is particularly welcome to me, because I feel it is only by recognising trade qualifications and giving certificates of efficiency on a recognized standard basis that we can ever hope for greater efficiency among our African workers.

MR. FOSTER SUTTON seconded.

His EXCELLENCY: The hour is now approaching 1 o'clock, and I am not sure what hon. members would like to do. It seems to me we have perhaps, speaking without the book, one hour's work ahead of us and it is a question whether hon. members would wish to go on straight away, or meeting again this afternoon. In that connection I understand there is a meeting of Standing Finance Committee already fixed, quite apart from the fact that I understand this hall will be used for a different form of activity this evening, and requires certain preliminary preparations. The other alternative would be to meet to-morrow at 9 o'clock. I know some of us

have meetings later on to-morrow morning, but if we met at 9 o'clock I think it might be possible to get through the work.

MAJOR CAVENDISH-BENTINCK: There is a meeting here at 10 o'clock on the water situation, which is quite desperate. That also requires a little preparation of the room.

SIR ALFRED VINCENT: If your estimate is about correct we could go on for an hour this afternoon and finish.

His EXCELLENCY: Is anyone in a position to say how long it would take to prepare this room for this evening's activities? I understand the Y.W.C.A. have a dance here this evening.

MAJOR CAVENDISH-BENTINCK: They have been warned that they will not get it until 6.30.

His EXCELLENCY: If we met at, say, 2.15 this afternoon I do not think that would prevent the necessary preparations being made after we have finished.

The debate was adjourned.

Council adjourned at 1.05 p.m.

Council resumed at 2.25 p.m.

The debate was resumed.

MR. MATHU: Your Excellency, there is only one point I should like to raise and that is regarding leave. The amendment is going to be to the effect that leave will be excluded from the contract. What I would like to get from Government is whether that means that wages will not be paid if a servant is granted, say, two days leave, that when he comes back after two days to complete his contract he will get his wages less two days? If that is the intention, I should like to suggest that Government should reconsider that point and make it leave with pay.

MR. FOSTER SUTTON: Sir, I anticipated that point being raised, but I would point out to the hon. member that it is impossible to introduce that principle now. It raises a very much wider question, and is one that I have no doubt will have to be faced in this country, before very much more time has passed. But

if we embark on such an amendment in this particular instance it will work considerable hardship on employers and, I venture to submit, would be completely

[Mr. Foster Sutton]

unjustifiable. If a man works 30 to 90 days and we amend the provision to give him 20 days leave, after he has worked two or three days, for urgent private affairs, it is unreasonable to impose on the employer the condition to pay for that leave. Until we can work the thing out and it can be done comprehensively, it must be left to the employer and employee. If a man has worked for a considerable period, the practice is to give him pay on his leave, but very often that does not happen. I do not think Government on this bill could accept a proposal to make leave paid leave. I think it raises a very much wider problem and one on which my first view is that there is a good deal to be said. If a person has worked for a long period I think his leave ought to be paid, but I do not think we can embark on an amendment to meet the hon. member's suggestion now.

The question was put and carried.

PRISONS (AMENDMENT) BILL

MR. FOSTER SUTTON: Sir, I beg to move That the Prisons (Amendment) Bill be read a second time.

During the emergency for various reasons, many of which appear obvious, the Prisons Ordinance, 1930, was amended to increase the remission which a criminal prisoner could earn, from one-seventh to one-third, of his sentence. The emergency conditions no longer prevail in this connexion, and it is desired to revert to the previous provision of the principal ordinance. It was considered desirable to provide that a prisoner shall not earn any remission if he is serving a sentence in default of payment of a fine. That follows a practice almost universal. As hon. members on the other side of Council who follow my profession will appreciate, the non-payment of a fine imposed is in effect a contempt of court and it is regarded in that way in most of the countries in the Empire, and this bill follows the United Kingdom practice by excluding a person who chooses to act contumaciously and refuses to pay a fine and elects to go to gaol.

The second proviso to the clause was inserted to safeguard the position of prisoners who have commenced to earn

the larger degree of remission which they were enabled to do under the Defence legislation, to protect their positions so that it will not be interfered with, the balance of their sentence continuing to earn the same remission as they were earning before the 24th February of this year. In the committee stage I am going to move a slight amendment, which has been circulated. After the bill was published the prison authorities here became rather perturbed for the reason that, under the bill as printed, a prisoner could earn remission on the first month of his sentence. That apparently is completely contrary to practice, and it is desired to bring our Ordinance into line with the United Kingdom legislation and the practice in other Empire countries by excluding the first month from remission.

MR. MUNDY seconded.

MR. AMIN: Your Excellency, it is on the first proviso that I wish to speak. It is mentioned in the "Objects and Reasons" that it is for the purpose of following the practice in the United Kingdom that this is to be put in, but the circumstances are rather different. Most of the offences for which Africans are sent to prison are in my view offences of a non-criminal nature; that is, statutory crimes created for special reasons and circumstances. The reason why a person does not pay a fine in Kenya is: 99 out of 100 cases it is not because he intends to pay, or wishes to commit contempt of court, but because he cannot afford to pay the fine. When a person cannot afford to pay a fine and has instead to go to prison, then, although he is not normally criminal, in the ordinary sense of the term, he is put into prison among people who are morally criminals. There is no provision in this country for any people of this kind being kept away from the serious criminals. It may be that there may be some opportunity of making arrangements whereby prisoners of this nature are kept separate. It is from that point of view that I urge that although the practice may be perfectly good to follow, here it is not a good practice to follow. If a person does not pay a fine and goes to prison instead, he should be allowed to earn remission of his sentence on the same basis as the more serious criminal is allowed to. I would

[Mr. Amin] has more reason to be allowed to earn remission on his sentence than the real criminal has. I believe that from this point of view the circumstances in Kenya are different from the circumstances in the United Kingdom, and as one concerned professionally with the defence of criminals I think it would be unfair on my part if I did not express my views.

MR. FOSTER SUTTON: Sir, I have not the experience which the hon. member has, who knows a great deal more about the actual set-up here than I do. I understand from the hon. Chief Native Commissioner that at the present time prisoners are not kept segregated from the remainder. I personally think they ought to be. I think we ought to take some steps to ensure they are because, as he says, the offences for which a prisoner is sentenced to pay a fine are not criminal offences such as burglary, larceny and that sort of thing. The hon. member will probably remember that some years ago a Royal Commission set up in the United Kingdom dealt comprehensively with the whole of this subject of fining persons, and laid down the general principle—which I think is a sound one—that a court should not inflict a fine upon a person if it meant automatically, by reason of poverty, that they were bound to go to prison because they were unable to pay the fine; that if a court thought it was an offence of such a serious nature as to warrant a sentence of imprisonment that sentence should be given; that if the court thought a person should not be sentenced to prison and that a fine should be inflicted it should be of a nature that the person was able to pay. I think if that principle was followed this proviso would be completely unobjectionable, but I hesitate to delete it as it was asked for by the prison authorities. If the hon. member would care to discuss it with me at a later stage, I will undertake to go into it and if the position cannot be altered I will advise Government to consider repealing the proviso.

The question was put and carried.

STANDING RULES AND ORDERS SUSPENDED.

With the leave of the President, under Standing Rule and Order No. 108, Mr.

Foster Sutton moved: That Standing Rules and Orders be suspended to enable the Excise Duties (Amendment) Bill, the Customs Tariff (Amendment) Bill, the Personal Tax (Amendment) Bill, and the Beer (Amendment) Bill to be passed through all their stages at this sitting.

MR. MUNDY seconded.

The question was put and carried. Standing Rules and Orders were suspended.

BILLS

FIRST READINGS

On the motion of Mr. Foster Sutton the bills were read a first time.

EXCISE DUTIES (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Excise Duties (Amendment) Bill be read a second time.

The object of this measure is fully stated in the "Objects and Reasons." As hon. members are aware you, sir, made a proclamation which was published in the Official Gazette dated the 12th of February, in which you, for the purpose of the seven ordinances mentioned in that proclamation, declared the state of war to be at an end. That declaration was made for a limited purpose, in order to implement Government's undertaking that the increased taxation measures should be that be prolonged beyond the end of this year. There were certain ordinances, enacted during the emergency period, which did not contain any clause enabling you to bring them to an end by proclamation. The Excise Duties Ordinance is one of them. That being so, this bill seeks to amend the schedule to the principal ordinance by substituting the old rate of excise duties that existed before the war amendment was made and at the same time, by clause 3, continuing the increases imposed by the war measure until the end of the year. Under sub-clause (3) it comes to an end on 31st December, 1946. The same remarks apply to all the bills in connexion with which I was given leave to move suspension of Standing Rules and Orders.

MR. MUNDY seconded.

The question was put and carried.

CUSTOMS TARIFF (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Customs Tariff (Amendment) Bill be read a second time.

The reasons I gave for introducing the Excise Duties (Amendment) Bill apply to this Bill. This seeks to substitute duties that prevailed before the passing of the war-time taxation measure and at the same time, by clause 3 seeks to retain the war increases in duties until the end of this year. As pointed out in the memorandum of objects and reasons, the question as to the duties which will prevail after 1946 will depend entirely upon the legislation passed by this Council in the light of recommendations made in the report on the fiscal survey.

MR. MUNDY seconded.

MR. NORTROP: Your Excellency, I have just noticed a point in connexion with this bill, and I apologize to the hon. Attorney General for not drawing his attention to it. It is in regard to the items on the second page of the bill, items 30, 31 and 33 of the schedule. Since this ordinance was enforced we have withdrawn the alternative of 100 per cent *ad valorem*. It will be necessary at a later stage to withdraw the alternative of 100 per cent in items 40, 31 and 33. It has nothing to do with surcharge; it is merely that we withdrew the alternative rate of duty and kept it entirely specific for tobacco.

HIS EXCELLENCY: You are referring to the rates in clause 3. I think?

MR. NORTROP: I am referring to page two of the bill, items 30, 31 and 33.

MR. FOSTER SUTTON: I merely want to say with the leave of Council, that this does not, of course, affect the surcharges that were made by another ordinance. They remain in force until the end of this year, and that particular ordinance is included in the proclamation I have already referred to. I just wanted to make the position clear.

The question was put and carried.

PERSONAL TAX (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Personal

Tax (Amendment) Bill be read a second time.

This is slightly different to the others. The measure which we are now seeking to amend contains a clause to the effect that the increases should remain in force until the termination of the present war and until the end of the year in which the war comes to an end. Contrary, apparently, to the opinion of some of my colleagues in the profession in this city, my view is that the war does not end in the Empire until His Majesty the King has so declared, for the simple reason that it is he, under our constitution, who declares war and he is the only person with any authority to declare peace. That being so, in order to implement the undertaking that has been given, I considered it right and proper to advise Government that this bill should be introduced into Council to put the personal tax on exactly the same footing as the other war-time taxation measures, and that is what the amendment seeks to do. It provides that the increases shall continue until the 31st day of December, 1946, then the whole matter will have to be reviewed in the light of the taxation proposals which have been referred to already by hon. members.

MR. MUNDY seconded.

BEER (AMENDMENT) BILL

SECOND READING

MR. FOSTER SUTTON: Your Excellency, I beg to move: That the Beer (Amendment) Bill be read a second time.

The reasons for this amending Bill are exactly the same as the reasons I have already given in connexion with the other war taxation measure. This will bring the increase in duty on beer manufactured in the Colony to an end on the 31st day of December this year.

MR. MUNDY seconded.

The question was put and carried.

BILLS

IN COMMITTEE

MR. FOSTER SUTTON moved that Council resolve itself into committee of the whole Council to consider, clause by clause, the following bills: The Native Authority (Amendment) Bill, the Customs Tariff (Temporary Amendment) Bill, the Electric Power (Amendment) Bill, the Customs Management (Temporary Amendment) Bill, the Temporary

[Mr. Foster Sutton]

Rebate and Refund of Customs and Excise Duties Bill, the Removal of Undesirable Natives Bill, the Trading With the Enemy (Amendment) Bill, the Local Government (Municipalities) (Amendment) Bill, the Transport Licensing (Amendment) Bill, the Local Government (District Councils) (Amendment) Bill, the Employment of Servants (Amendment) Bill, the Prisons (Amendment) Bill, the Excise Duties (Amendment) Bill, the Customs Tariff (Amendment) Bill, the Personal Tax (Amendment) Bill, and the Beer (Amendment) Bill.

Mr. MUNDY seconded.

The question was put and carried. Council went into committee.

Customs Tariff (Temporary Amendment) Bill

Clause 4

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line 2 and the deletion of the proviso.

The question was put and carried.

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

Customs Management (Temporary Amendment) Bill

Clause 3

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line two and the deletion of the proviso.

The question was put and carried.

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

Temporary Rebate and Refund of Customs and Excise Duties Bill

Clause 5

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line two and the deletion of the proviso.

The question was put and carried.

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

Removal of Undesirable Natives Bill
Clause 1

Mr. FOSTER SUTTON moved that the clause be amended by inserting between

"Natives" and "Ordinance" on the second line the brackets and word "Temporary."

The question was put and carried.

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

Clause 8

Mr. FOSTER SUTTON moved that the clause be amended by substituting the words "twenty-four" for the words "forty-eight" in the third line of subsection (2).

The question was put and carried.

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

Clause 13

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of a full stop for the colon at the end of line two and the deletion of the proviso.

The question was put and carried.

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

Title

Mr. FOSTER SUTTON moved that the title and preamble be amended by inserting after the words "A Bill" the brackets and word "Temporary."

The question was put and carried.

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

Trading With the Enemy Ordinance

Clause 2

Mr. FOSTER SUTTON moved that the clause be amended by the substitution of "Sub-section (1) of this section 2" for the words "Section 2" on the first line.

The question was put and carried.

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

Local Government (Municipalities) (Amendment) Bill

Mr. PATEL: Your Excellency, under Rule 79 I move: That the bill be referred to a select committee of this Council.

After the reply given on the second reading of the bill by the hon. Member for Health and Local Government, I have given serious thought to the matter, and I believe that a bill like this, which makes a vital change in the constitution of Nairobi Municipal Council should not

[Mr. Patel]

as it is intended to be rushed through this bill was published on 7th February, and I do not think there can be such a dreadful hurry about it that it should be included among these many bills which are now before Council for the purpose of getting them through before 24th February. Between 1 o'clock and a quarter past two I intended to see the Indian members on Nairobi Municipal Council but I could not; I also tried to get other information, for the reply by the hon. Member for Health and Local Government was not satisfactory. Therefore, I propose that this bill be referred to a select committee of members of this Council in order to have an examination of it from all points of view.

Mr. VASEY: Your Excellency, if this bill is delayed it means that the election of aldermen and the appointment of the African councillors will be delayed for some time. The result regarding the aldermen will involve the Corporation of Nairobi in a series of by-elections. I do suggest that as there was a commission of inquiry appointed to deal with this, of which the hon. Attorney General was chairman, they listened to evidence from all sides and we should be prepared to accept the recommendations that were made.

Mr. MORTIMER: Your Excellency, normally, one would have no objection whatever to the reference of a bill to a select committee but, for the reasons just stated by the hon. Member for Nairobi North, I feel I must object to a reference to a select committee of this bill. While the bill itself has been before the country for only a comparatively short time, the principle embodied in the bill has been before the country for about a year, over a year, and everybody who wished has had an opportunity to express their views on the subject. I beg, therefore, to oppose the motion.

Mr. FOSTER SUTTON: The bill was published on the 31st January.

His EXCELLENCY: I think this bill has been published for the usual period of 14 days, and in this case there is no question.

Mr. PATEL: The 7th February.

Mr. FOSTER SUTTON: It was published in the Gazette (I am speaking from

memory) on 31st January of this year; it has been published for the requisite period. That is why I did not move the suspension of Standing Rules and Orders.

His EXCELLENCY: I have before me the special issue of the Gazette dated 31st January, and on page 68 this bill appears, so that in the case of this bill there is no question of the suspension of Standing Rules and Orders or, I think, that undue haste in procedure has been adopted. I do not know if any hon. member wishes to press the matter?

Mr. MORTIMER: On a point of explanation, perhaps the hon. Member for Nairobi North, who is Mayor of Nairobi, could state what the expression of opinion of Indian councillors was when this matter came up in the Municipal Council?

Mr. VASEY: Speaking from memory, the first time this was discussed it was carried by the unanimous vote of the Council, including the Indian councillors. The second time it was discussed, there were six Indian councillors for it, if my memory is right, and one, Councillor Thakore, against it.

Mr. FOSTER SUTTON: Sir, I would correct an impression that seems to have crept in. When the commission set there was further opposition on the part of certain Indian councillors. I understand that originally they voted in favour but afterwards changed their views, and when they came before the commission they expressed views contrary to those already submitted.

His EXCELLENCY: Did the hon. member find a second?

Mr. ASIN: I second.

The question was put and negatived.

Clause 3

Mr. PATEL moved that the clause be amended by the deletion of (i) from the proposed new section 5.

The question was put and negatived.

Local Government (District Councils) (Amendment) Bill

Mr. FOSTER SUTTON moved that the following be inserted as clauses 6 and 7 immediately after clause 5:

[Mr. Foster Sutton]

"6. Section 57 of the principal ordinance is hereby amended by adding thereto, immediately after paragraph 12 thereof, the following new paragraph: '(13) to charge fees in respect of permits issued under any by-laws made under the provisions of paragraph (11) of section 66 of this ordinance."

"7. Section 66 of the principal ordinance is hereby amended by deleting therefrom paragraph (11) thereof, and by substituting therefor the following paragraph: '(11) For prohibiting, restricting or regulating under permit, the carrying of stone, lime, clay or other material on any premises."

The question was put and carried.

The question that these clauses stand part of the bill was put and carried.

Employment of Servants (Amendment) Bill

Clause 2

MR. MARCHANT moved that the clause be amended by (a) substituting the words "twenty-six" for the word "eight" which appears in paragraphs (d), (e) and (g) of the proposed new section 4A, and (b) by substituting the words "forty-two" for the words "thirty-six" which appear in the sixth line of paragraph (e) of the proposed new section 4A.

The question was put and carried.

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

MR. MARCHANT moved that the following new clauses be inserted immediately after clause 2:

"3. The principal ordinance is hereby amended by adding, immediately after section 16 thereof, the following new section: '16A. Notwithstanding anything, to the contrary, contained in this ordinance, where a servant has been granted leave under the provisions of section 8A of the Native Registration Ordinance (Chapter 127 of the Revised Edition) the period of such leave shall be excluded from the period of the contract."

4. Sub-section (1) of section 79 of the principal ordinance is hereby amended as follows:—(a) by deleting the word "and" which appears at the end of paragraph (1) thereof; (b) by

deleting the full stop, which appears at the end of paragraph (m) thereof, and by substituting therefor a semi-colon and the word "and"; and (c) by adding, immediately after paragraph (m) thereof, the following new paragraph: '(n) providing for the holding of tests in respect of any trade or occupation and for the granting of a certificate of efficiency to any person who voluntarily enters for, and passes, any such test."

The question was put and carried.

The question that these clauses stand part of the bill was put and carried.

Prisons (Amendment) Bill

Clause 2

MR. FOSTER SUTTON moved that the clause be amended by deleting the words "convicted criminal" down to the words "or sentence" in the proposed subsection (1) of section 40 and substituting therefor: "Every criminal prisoner under sentence of imprisonment for more than one month and less than three years may after the completion of one month's imprisonment earn a remission of one-seventh of the remaining period of his sentence by industry accompanied by good conduct."

The question was put and carried.

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

Customs Tariff (Amendment) Bill

Clause 3

MR. NORTON moved that the clause be amended by the deletion from items 30, 31 and 33 of the words and figures and brackets "or 100 per cent *ad valorem* whichever is the greater."

The question was put and carried.

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

MR. FOSTER SUTTON moved that the following bills be reported without amendment: The Native Authority (Amendment) Bill, the Electric Power (Amendment) Bill, the Local Government (Municipalities) (Amendment) Bill, the Transport Licensing (Amendment) Bill, the Excise Duties (Amendment) Bill, the Personal Tax (Amendment) Bill, and

[Mr. Foster Sutton]
the Beer (Amendment) Bill, and the remainder with amendment.

MR. MUNDY seconded.

The question was put and carried.

Council resumed. His Excellency reported accordingly.

THIRD READINGS

MR. FOSTER SUTTON moved that the following bills be read the third time and passed: The Native Authority (Amendment) Bill, the Customs Tariff (Temporary Amendment) Bill, the Electric Power (Amendment) Bill, the Customs Management (Temporary Amendment) Bill, the Temporary Rebate and Refund of Customs and Excise Duties Bill, the Removal of Undesirable Natives (Temporary) Bill, the Trading With the Enemy (Amendment) Bill, the Local Government (Municipalities) (Amendment) Bill, the Transport Licensing (Amendment) Bill, the Local Government (District Councils) (Amendment) Bill, the Employment of Servants (Amendment) Bill, the Prisons (Amendment) Bill, the Excise Duties (Amendment) Bill, the Customs Tariff (Amendment) Bill, the Personal Tax (Amendment) Bill, and the Beer (Amendment) Bill.

MR. MUNDY seconded.

The question was put and carried.

The bills were respectively read the third time and passed.

VALEDICTORY

HON. E. R. E. SURRIDGE

HON. C. E. DONOVAN

MR. NORTON: Before we adjourn I should like to mention that this is probably the last occasion on which two of our members who are here to-day will attend this Council. Hon. members are aware that Mr. Surridge is leaving shortly on promotion to the post of Chief Secretary, Tanganyika. While congratulating him on his promotion, we sincerely regret his departure (hear, hear) (applause). He and I have worked in the closest association for the past five and a half years and it says much for his tact and patience that our relationship during that time has been of the happiest. From my intimate knowledge of his work I clearly

realize how valuable his services to this country have been; he is a good friend of Kenya and I am confident that he will always remain one. I am sure that all hon. members will join with me in wishing him, his wife and his family the best of fortune in the future. (Hear, hear) (Applause.)

Hon. members are also aware that Mr. Donovan is leaving shortly on promotion to the post of Director of Education, Sierra Leone. During his 18½ years service in this Colony he has worked hard in the cause of education and his departure will leave a gap which will not be easily filled. I am sure all hon. members will join with me in wishing Mr. and Mrs. Donovan every success in their new sphere of activity. (Applause.)

ADJOURNMENT

Council rose at 3.35 p.m. and adjourned *sine die*.

WRITTEN ANSWERS TO QUESTIONS

NO. 153. (1945)—PURCHASES IN UNITED KINGDOM

MRS. WATKINS:

Is Government aware that colonial officials are able to purchase household equipment and other articles in the United Kingdom free of purchase tax for export to the colonies whereas settlers are denied this privilege and will Government please say (a) whether, and if so what, action is being taken to remedy this situation which savours of class distinction, and (b) if not, why not?

Reply:

This Government understands that there is no such distinction as is alleged in the first part of the question; the second part, therefore, does not arise.

The position in the United Kingdom is that Purchase Tax is not chargeable in respect of goods which are exported either direct or through an export broker from stock which has not already borne tax by a manufacturer or a wholesaler who is registered with the Customs and Excise Department for Purchase Tax purposes. This applies whether the registered person is exporting on his own behalf, or on behalf of another person in

the United Kingdom. There is, however, no relief from tax where goods are delivered to an unregistered person in the United Kingdom, even though they may be subsequently exported or taken abroad.

NO. 1—LUMBWA LAIBON

MR. COULDREY:

Will Government state if it is a fact that a number of Laibons, formerly evicted from the Kipsigis Reserve, have been permitted to return there? If the answer is in the affirmative, will Government state what is their general policy with regard to these Laibons and whether it is their intention to encourage or permit them to regain their former influence with the Kipsigis?

Reply:

The Lumbwa Laibon were removed to Gwasi in South Kavirondo in 1934.

They have not, as was anticipated, in any way associated themselves with the surrounding inhabitants, with the result that their young men and young women have remained unmarried and generally unsettled. There has even been evidence of incest in the settlement. It was, therefore, decided that this community could not be permanently maintained under such conditions and arrangements were made to move some 20 of the younger men each year who, by reason of their ages, were guiltless of crime at the time of their removal to Gwasi, to a settlement in the Kericho district, where they are under strict control and where an attempt is being made to educate them. It is hoped that this experiment, which already shows signs of promise, will be

successful and that it may be possible in time to close the settlement at Gwasi. It is not true that any of these people have been permitted to return to the Kipsigis Reserve. No such permission will be given until it is reasonably assured that they have been weaned away from the undesirable practices of their cult. The policy of the Government is to take every possible precaution to prevent the Laibon from regaining their former influence over the Kipsigis.

NO. 3—SALVAGE DEPOT, NAIROBI

MR. PRITAM (Western Area):

Is Government aware that despite persistent representations, controlled and other salvage goods from the Salvage Depot, Nairobi, are still being supplied to certain favourite firms practically every afternoon under some mysterious arrangement? If so, will Government please devise ways and means to stop this evil practice and also take such legal action against the parties concerned in these illicit transactions as it may deem fit?

Reply:

Government is not aware that preferential treatment is given to certain traders at the Salvage Dump in the afternoon.

The Salvage Dump is only open in the afternoons for sales to up-country buyers who are unable to arrive at the Dump in the morning and, in special circumstances, to Nairobi buyers who visit the Dump in the afternoon to complete work begun in the morning.

If the hon. member will give specific details of any complaints of preferential treatment they will be investigated.

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SECOND SERIES

VOLUME XXIV—PART ONE

First Session: 14th and 15th February, 1946

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I.C. = In Committee; SC. = Referred to Select Committee; SCR. = Select Committee Report; Re.Cl. = Re-committed to Council.

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List of Members of the Legislative Council

President:

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

Ex Officio Members:

- CHIEF SECRETARY (HON. SIR G. M. RENNIE, C.M.G., M.C.).
ATTORNEY GENERAL (HON. S. W. P. FOSTER SUTTON, O.B.E., K.C.).
FINANCIAL SECRETARY (HON. J. F. G. TROUGHTON, M.B.E.).
CHIEF NATIVE COMMISSIONER (HON. W. S. MARCHANT, C.M.G., O.B.E.).
DIRECTOR OF MEDICAL SERVICES (DR. THE HON. N. M. MACLENNAN).
DIRECTOR OF AGRICULTURE, ACTING (HON. A. B. KILLICK). (1)
DIRECTOR OF EDUCATION (HON. R. PATRICK, E.D.). (2)
GENERAL MANAGER, K.U.R. & H. (HON. SIR R. E. ROBINS, C.M.G., O.B.E.).
DIRECTOR OF PUBLIC WORKS (HON. S. R. BOYD).
COMMISSIONER OF CUSTOMS (HON. A. W. NORTHROP).
COMMISSIONER FOR LANDS, MINES AND SURVEYS (HON. G. J. ROBBINS).

Nominated Official Members:

- HON. R. P. ARMITAGE, M.B.E. (Secretary to Member for Agriculture, Animal Husbandry and Natural Resources). (3)
HON. T. A. BROWN (Solicitor General).
HON. MBARAK ALI HINAWY, O.B.E. (Specially appointed to represent interests of Arab Community).
HON. J. R. HUDSON (Director of Veterinary Services, Acting). (4)
HON. K. L. HUNTER, O.B.E. (Provincial Commissioner, Nyanza Province).
HON. K. G. LINDSAY, O.B.E. (Deputy Chief Secretary).
HON. C. E. MORTIMER, C.B.E. (Member for Health and Local Government).
HON. C. TOMKINSON (Provincial Commissioner, Central Province).
HON. G. P. WILLOUGHBY, O.B.E. (Postmaster General, Acting). (5)

European Elected Members:

- HON. W. A. C. BOUWER, Uasin Gishu.
HON. S. V. COOKE, Coast.
HON. G. M. EDYE, Nyanza. (6)
MAJOR THE HON. F. H. DE V. JOYCE, M.C., Ukamba.
MAJOR THE HON. A. G. KEYSER, Trans Nzola.
COL. THE HON. F. S. MODERA, D.S.O., Mombasa (Acting). (7)
HON. W. F. O. TRENCH, Rift Valley.
HON. E. A. VASEY, C.M.G., Nairobi North.
HON. SIR ALFRED VINCENT, Nairobi South.
HON. MRS. O. F. WATKINS, Kiambu.
HON. E. H. WRIGHT, Aberdare.

LIST OF MEMBERS OF THE LEGISLATIVE COUNCIL—Contd.

Indian Elected Members:

HON. SHAMSUD-DEEN (Central).
 HON. S. G. AMIN (Acting) (Central).
 HON. A. B. PATEL (Eastern).
 DR. THE HON. M. A. RANA, M.B.E. (Eastern).
 HON. A. PRITAM (Western).

Arab Elected Member:

HON. SHERIFF ABDULLA SALIM

Nominated Unofficial Members:

Representing the Interests of the African Community—

VEN. ARCHDEACON THE HON. L. J. BEECHER.
 HON. W. ODEDE (Acting). (8)

Acting Clerk to Council:

Mr. R. Tatton Brown

Reporters:

Mr. A. H. Edwards
 Miss Bennett

- (1) *Vice* Mr. D. L. Blunt, C.M.G., on leave.
 (2) *Vice* Mr. C. E. Donovan, Acting Director.
 (3) *Vice* Major F. W. Cavendish-Bentinck, C.M.G., Member for Agriculture, on leave.
 (4) *Vice* Mr. R. Daubney, C.M.G., O.B.E., on leave.
 (5) *Vice* Mr. H. C. Willbourn, M.C., on leave.
 (6) Returned at by-election on 13th July, 1946.
 (7) *Vice* Mr. W. G. D. H. Nicol, on leave.
 (8) *Vice* Mr. E. Mathu, on leave.

ABSENTEES FROM LEGISLATIVE COUNCIL SITTINGS

3rd July—

Hon. Member for Coast.
 Hon. Member for Aberdare.

17th July—

Hon. Commissioner of Customs.
 Hon. Member for Eastern Area (Dr. Rana).
 Hon. Arab Elected Member.

18th July—

Hon. Commissioner of Customs.
 Hon. Member for Eastern Area (Dr. Rana).
 Hon. Arab Elected Member.

19th July—

Hon. Commissioner of Customs.
 Hon. Member for Eastern Area (Dr. Rana).
 Hon. Arab Elected Member.



COLONY AND PROTECTORATE OF KENYA

LEGISLATIVE COUNCIL DEBATES

SECOND SESSION, 1946

Tuesday, 2nd July, 1946

Council assembled in the Memorial Hall, Nairobi, at 11 a.m. on Tuesday, 2nd July, 1946, His Excellency the Governor (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

The Proclamation summoning the Council was read by the Clerk.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to: Acting Director of Agriculture (Mr. A. B. Killick), Director of Education (Mr. R. Patrick, E.D.), Mr. G. P. Willoughby, O.B.E. (Acting Postmaster General), Mr. J. R. Hudson (Acting Director of Veterinary Services), Mr. R. P. Armitage, M.B.E. (Secretary to Member for Agriculture, Animal Husbandry and Natural Resources), Colonel F. S. Modern, D.S.O. (Acting Member for Mombasa), Archdeacon L. J. Beecher (African Interests).

COMMUNICATION FROM THE CHAIR.

THE LATE HON. F. J. COULDRY, D.S.C.

His Excellency: Honourable members, it is with very deep regret that I have to refer to the great loss which this Council and the Colony have suffered by the death of one of our members—Commander F. J. Coudrey—who died on Saturday, the 20th of April, at Nakuru. It is not necessary for me to speak at length about the public services which Commander Coudrey rendered not only in his capacity as a member of this Council, but also in many other

throughout the Colony, for they are very well known. Suffice it to say that the country has lost a citizen, and this Council a member, whose distinguished services and wise counsel have been of great value to Kenya for many years.

I know that honourable members would wish that we should this morning offer our sympathy to his bereaved family, and pay a tribute of respect to his memory and I propose that we should do this by rising and remaining standing in silence for a little while.

Council rose and stood in silence.

MINUTES

The minutes of the meeting of 15th February, 1946, were confirmed.

PAPERS LAID

The following papers were laid on the table:—

By THE FINANCIAL SECRETARY (MA THOUGHTON):

Schedule of Additional Provision No. 4 of 1945—Report on Kenya, Uganda, and Tanganyika Savings Banks for 1944.

By COMMISSIONER OF LANDS, MINES AND SURVEYS (MR. ROBERTS):

Return of land grants, 1st January to 31st March, 1946.

By DEPUTY CHIEF SECRETARY (MR. LINDSAY):

Annual Report of Transport Licensing Board, 1945; Second Interim Report of the Game Policy Committee; the Vehicles Licensing (Amendment) Regulations, 1946.

ORAL ANSWERS TO QUESTIONS

No. 6—NATIVE POLL TAX

MAJOR JOYCE (Ukamba):

Is it a fact that squatters on some farms in the Central Province have not paid poll tax for some years? If so, how did this come about? Will Government see that this tax, together with arrears, is paid in 1946?

CHIEF NATIVE COMMISSIONER (Mr. Marchant): It is possible that, owing to shortage of administrative staff, some squatters on farms in the Central Province have avoided their tax liabilities during the last year or two. But the number of such defaulters is not thought to be large. Government will make every endeavour to ensure that a full tax collection is made during 1946 and to recover arrears due in respect of previous years.

No. 7—INDIAN TEACHING STAFFS

MR. PRITAM (Western Area):

(1) Having regard to the very poor annual examination results mainly due to the employment of cheap, unqualified, untrained and inefficient teaching staff, will Government please state the steps that it proposes to take to replace the unqualified Indian teachers whose number was stated by the hon. Acting Director of Education during last budget debate to be something approaching 80 per cent of the total Indian teachers?

2. In view of Government's utter failure to engage new teachers with reasonable academic and teaching qualifications, will Government please state when does it propose to introduce the new terms of service, which were recommended by the Indian Education Advisory Council on 14th September, 1945?

MR. TROUGHTON: Although it is true that examination results leave much to be desired, the Government cannot admit the accuracy of the statement contained in the preamble to the second part of the question. Subject to that reservation, the answers are as follows:—

1. A campaign to recruit teachers has been launched in India and Kenya. As a result 11 graduates with approved

teaching certificates and 13 untrained graduates have accepted appointments in the Education Department during the past 15 months. Offers of appointment have recently been made to a further four trained graduates in India.

A training college for Asian women teachers has been opened in Nairobi and 12 girls of School Certificate standard are now taking a two-year course of professional training. A similar training college for Asian male teachers will be established as soon as buildings and staff become available.

New grant-in-aid rules have been introduced with the object of encouraging managers of aided schools to employ a higher percentage of trained teachers.

2. The Government does not intend to introduce new terms of service for Asian teachers until the proposed committee to examine educational expenditure has reported. In this connection, the attention of the hon. member is invited to paragraph 100 of the Report of the Standing Finance Committee on the 1946 Draft Estimates.

No. 9—LAND BANK DEALINGS

MR. PRITAM:

1. Will Government please state the number of farms and their acreages which the Land Bank had to take over, right from the date of its inception to 31st December, 1945, because of the inability of the mortgagors to discharge their obligations?

2. Will Government please state how did the Land Bank dispose of farms thus seized and, if sold by public auction, did the bank recover all the money it advanced plus interest? If not, will Government please state the total amount the bank lost in such transactions right from its inception to 31st December, 1945?

MR. TROUGHTON: From the inception of the Land Bank up to 31st December, 1945, the bank had taken over 44 farms totalling 44,322 acres through default by mortgagors due to death, bankruptcy, liquidation or abandonment of the properties. Four of these properties were owned by enemy subjects.

[Mr. Troughton]

2. Of the 44 farms so acquired, 37 have been sold by the Land Bank by private treaty, involving losses of £15,220-19-07 principal and £7,083-16-53 interest, which were borne by the general funds of the Bank and not by the public revenue of the Colony. The remaining seven farms have not yet been sold.

No. 11—WATER SHORTAGE, NORTH NYERI

MR. ODEDE (Native Interests):

Is Government aware of the extreme scarcity of water for the Mukogodo, Ndigali and Engwesi, these being the sections of Ndorobo in the North Nyeri district? If the answer is in the affirmative, will Government please take the necessary action to provide adequate water for these people by boring or by some other means?

DIRECTOR OF PUBLIC WORKS (Mr. Boyd): Government is aware of the scarcity of water in the area generally referred to as the Mukogodo Area.

In 1945 two boreholes were drilled in the Mukogodo Area by the military authorities for the Government. Both boreholes were successful, but one borehole requires deepening, and this has been awaiting the availability of a suitable boring plant.

It is proposed to drill a further four boreholes in the Mukogodo Area when a drilling plant becomes available.

MR. COOKE (Coast): Arising from that answer, Your Excellency is not the correct course to allow the Ngara Ndare river to resume its old course in the river bed?

HIS EXCELLENCY: We should like notice of that question!

No. 14—FUNCTIONS AND POWERS OF MINISTERS

MR. COOKE:

Will Government clearly define the functions and powers of ministers and say how far they can initiate policy and enforce it against the wishes and advice of heads of departments?

CHIEF SECRETARY (Sir Gilbert Renzie): The attention of the hon. member is invited to Sessional Paper No. 3 of 1945, in particular to paragraphs 2 and

12. The terms of the latter paragraph apply, *mutatis mutandis*, to the other officials members of Executive Council.

MR. SHAMSUD-DIEN (Central Area): Your Excellency, are there any ministers in this Colony at all?

HIS EXCELLENCY: There are ministers of religion! (Laughter.)

No. 15—SOCIAL SURVEYS

MR. COOKE:

With reference to my Question No. 87 of 1942 regarding the desirability of a social survey of Nairobi and Mombasa and having regard to the recommendations on that subject in the Phillips and Silberman reports, will Government state (a) whether it has been decided to conduct such surveys? (b) if so, when are they likely to start?

MR. LINDSAY (Deputy Chief Secretary): I will reply to (a) and (b) of the hon. member's question together. The Government is aware that the Development Committee has had the matter under consideration and it is awaiting the committee's recommendation.

No. 17—NEW EDUCATIONAL SYLLABUS

COL. MODERA (Mombasa):

With reference to Question No. 55 tabled by the Hon. W. G. Nicol at the May, 1945, session of Legislative Council and the reply thereto, will Government now state: (a) If the new syllabus referred to in the original question is now ready for issue; (b) If the answer to (a) is in the affirmative, when will this syllabus be distributed to all primary schools in the Colony and become available for purchase by the public; (c) If the syllabus is still not completed, when will it be ready?

DIRECTOR OF EDUCATION (Mr. Patrick): It is regretted that progress on the new syllabus has been delayed. This has been chiefly due to the sudden departure of my predecessor, Mr. Foster, and the transfer on promotion of the previous Deputy Director, Mr. Donovan. Work has, nevertheless, gone ahead and a committee has been appointed to prepare a final draft. It is hoped that the task will be completed by the end of the year.

BILLS

FIRST READINGS

On the motion of the Attorney General (Mr. Foster Sutton) the following bills were read a first time: The Immigration Control Bill, the Hospital Services (European) Bill, the Customs Duties on Foodstuffs (Provisional Exemption) Bill, the Kenya European Civil Service Contributory Pensions Bill, the Native Foodstuffs (Amendment) Bill, the Sial Industry (Amendment) Bill, His Majesty's Forces Pensions (Amendment) Bill, the Passion Fruit (Amendment) Bill, the Coffee Industry (Amendment) Bill, the Medical Practitioners and Dentists (Amendment) Bill, the King's African Rifles (Amendment) Bill, the Increased Production of Crops (Amendment) Bill, the Pyrethrum (Amendment) Bill, and the Sugar (Amendment) Bill.

MR. FOSTER SUTTON: Sir, in connexion with the Education (Amendment) Bill, certain points have arisen which Government would like further time to consider, and with the leave of the Council I propose to defer the first reading of this bill.

Notice was given by Mr. Foster Sutton to move the subsequent readings of these bills, with the exception of the Immigration Bill, at a later stage of the session.

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 3rd July, 1946.

Wednesday, 3rd July, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 3rd July, 1946. His Excellency the Governor (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

COMMUNICATION FROM THE CHAIR

PUBLIC INQUIRIES INTO AIR ACCIDENTS

HIS EXCELLENCY: Honourable members, before we go on to the confirmation of the minutes, I should like to say that my attention has been drawn to a leading article in the daily newspaper this morning on the subject of the recent accident to a machine of the East African Airways Corporation. I think it desirable to say straightaway that of course there will be a public inquiry. Air accidents are extremely technical things, and I shall want a day or two as this Council is sitting to consider precisely what form of inquiry is appropriate to this accident and the composition of the body that is to hold the inquiry. But I think it desirable to say this now, in case it is thought that there will not be an inquiry. There will, of course, be a public inquiry into every air accident.

MINUTES

The minutes of this meeting of 2nd July, 1946, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

By MR. MARCHANT:

Statement containing the information required by Question No. 5 asked by the hon. Member for Ukamba.

ORAL ANSWERS TO QUESTIONS.
No. 5—FAMINE RELIEF IN MACHAKOS, ETC.

MAJOR JOYCE:

1. How many tons of famine relief food have been supplied at reduced prices to the Machakos, Kitui and Meru districts—

(a) during 1945,

(b) during January and February, 1946?

[Major Joyce]

2. How many tons of mwele have recently been railed from the Central Province to Mombasa, intended for export, and what action has Government taken about this mwele?

3. Why was the export of this mwele from the Central Province allowed? Will Government take steps to see that a similar abuse of famine relief measures does not happen in future?

MR. MARCHANT: A written statement giving the hon. member the information he requires has been laid on the table.

STATEMENT CONTAINING THE INFORMATION
REQUIRED BY QUESTION NO. 5 ASKED BY
THE HON. MEMBER FOR UKAMBA.

1945

1 (a) Machakos	.. 14,789 tons approx.
Kitui 927 tons approx.
Meru Nil

January, 1946

(b) Machakos 1,784 tons
Kitui 448 tons
Meru Nil.

February, 1946

Machakos	.. 2,877 tons approx.
Kitui 345 tons approx.
Meru Nil

2. It is estimated that between November, 1945—February, 1946, 753 tons of mwele were railed from Central Province to Mombasa intended for export. No export licences were issued, and 728 tons were repurchased at Mombasa by the Maize Control.

3. There was a surplus of mwele in Meru and it was expected that the withdrawal of this grain, chiefly from Embu, Meru and Nyeri, would relieve the cereal position within the Colony, but with speculative prices offered in overseas markets traders sent a quantity to the Coast. The Government does not agree that there was an abuse of famine relief measures but when the situation was appreciated a Proclamation was published on the 21st February, 1946, and necessary instructions given to the Railway Administration prohibiting the export of all native foodstuffs from the Central Province.

LOCAL LOAN ALLOCATION

FINANCIAL SECRETARY (Mr. Troughton): Your Excellency, I beg to move: Be it resolved that this Council hereby approves the expenditure of the sum of £600,000 raised under the Local Loan Ordinance (No. XXIII), 1945, for the purposes specified in the schedule hereto. Schedule 1: To augment the Supplementary Sinking Fund of the Kenya Government 6 per cent Inscribed Stock 1946-56 (commonly known as the 1921 Loan), £350,000; 2: For the European Settlement Scheme, £250,000=£600,000.

As hon. members will be aware, last year we raised a sum of £600,000 by way of local loan, and the purposes of the loan were described in the Ordinance as first, to strengthen the Colony's sinking funds, and secondly for such other projects as you, sir, with the approval of this Council might decide. The purpose of this resolution is really to dot the 'i' and cross the 't' of that loan. It is proposed, with the consent of the Standing Finance Committee, to allocate £350,000 for the purpose of strengthening the sinking fund of the 1921 loan, and the remaining quarter of a million towards making a start with the European settlement schemes.

Taking the sinking fund question first, the fact is that that old 1921 loan has been for many years a serious burden on the taxpayers of this Colony because of the onerous terms on which the loan was raised. It can be redeemed, and it is being redeemed, this year. The accumulated sinking fund will fall short of the amount required to redeem the Colony's share of the loan by something approaching £400,000. We do not know the exact amount, because that will depend upon the market value of the securities at the actual time the payments are made; but we feel that it is safe to put £350,000 into the supplementary sinking fund, leaving the balance to be provided by special warrant from surplus balances later in the year. Getting rid of this old loan will make a difference of about £30,000 a year to the taxpayer by way of interest and sinking fund charges, and I think we will all be very glad to get rid of it.

The remaining £250,000 it is proposed should be paid to the Development and Reconstruction Fund, with the object of making a start with the European settle-

(Mr. Troughton) ment schemes. A start has already been made by the provision of advances from revenue. As hon. members will be aware, the full cost of the European settlement schemes is estimated at £1,600,000, and this quarter of a million represents only a beginning. I shall be coming back to this Council in due course with proposals for raising additional funds.

THE ATTORNEY GENERAL (Mr. Foster Sutton) seconded.

The question was put and carried.

PENSIONS

MR. KARAM CHAND

MR. TROUGHTON: Your Excellency, I beg to move: This Council approves the payment until further notice of a provisional interim pension at the rate of £57-5-4 a year with effect from 1st December, 1945, inclusive, to Mr. Karam Chand, formerly clerk, grade II, Audit Department (previously of the Police Department) in respect of his service from 1st October, 1928, to 30th November, 1945, both days inclusive, in lieu of his own and Government contributions to the Provident Fund plus the interest thereon amounting in all to £328-3-10, which reverts to the general revenue of the Colony.

This resolution raises no new principle. Mr. Karam Chand retired from the Service on the ground of ill-health, and the award of a pension to him is in accordance with precedent.

MR. FOSTER SUTTON seconded.

SIR ALFRED VINCENT (Nairobi South): Your Excellency, could the hon. Financial Secretary say whether the figure should be £57-5 and 4 cents or 4 pence? I should not like to rob the pensioner!

MR. TROUGHTON: I shall verify the amount—it appears to be cents!

The question was put and carried.

MISS R. M. DENNIS

MR. TROUGHTON: Your Excellency, I beg to move: This Council approves the payment until further notice of a provisional interim pension at the rate of £189-19-7 a year with effect from 3rd July, 1946, inclusive, to Miss Ruth Minnie Dennis, formerly clerk, grade I

(K.E.C.S.), Veterinary Department, in respect of her service from 1st January, 1926, to 2nd July, 1946, both days inclusive, in lieu of her own and Government contributions to the Provident Fund plus the interest thereon amounting in all to £683-18-1, which reverts to the general revenue of the Colony.

Miss Dennis recently retired from the Veterinary Department on reaching the age limit.

MR. FOSTER SUTTON seconded.

The question was put and carried.

MRS. M. A. COLEMAN

MR. TROUGHTON: Your Excellency, I beg to move: This Council approves the payment until further notice of a provisional interim pension at the rate of £175-1-4 a year with effect from 7th June, 1946, to Mrs. Mildred Annie Coleman, headmistress, Education Department, in respect of her service from 13th May, 1929, to 6th June, 1946, both days inclusive, in lieu of her own and Government contributions to the Provident Fund plus the interest thereon amounting in all to £856-10-3, which reverts to the general revenue of the Colony.

Mrs. Coleman recently retired from the Education Department on reaching the age limit.

MR. FOSTER SUTTON seconded.

The question was put and carried.

MR. J. T. DENWETT

MR. TROUGHTON: Your Excellency, I beg to move: This Council approves the payment until further notice of a provisional interim pension at the rate of £260-5-8 a year with effect from 26th June, 1946, inclusive, to Mr. John Theobald Denwett, formerly stock inspector, Veterinary Department, in respect of his service from 16th June, 1925, to 25th June, 1946, both days inclusive, in lieu of his own and Government contributions to the Provident Fund plus the interest thereon amounting in all to £1,036-1-3, which reverts to the general revenue of the Colony.

Mr. Denwett, formerly a stock inspector in the Veterinary Department, has been invalided from the Service.

MR. FOSTER SUTTON seconded.

The question was put and carried.

KENYA AND UGANDA RAILWAYS AND HARBOURS

LOAN FOR CAPITAL EXPENDITURE

GENERAL MANAGER, K.U.R. & H. (Sir R. E. Robins): Your Excellency, I beg to move: This Council hereby approves the inclusion in the schedule of a future Loan Ordinance of a sum of £293,550 to cover the estimated cost of capital expenditure in respect of railways and harbours general improvements in accordance with the Kenya and Uganda Railways and Harbours approved regulations, together with such further sum as may be necessary to cover the relative expenses of issue and discount.

In my last two budget speeches in this Council, I indicated that the Railway Advisory Council and Harbour Advisory Board had under consideration capital improvements to the undertaking which would amount in all to approximately two million pounds and which the Council and Board considered ought to be financed from loan funds. For various reasons, mainly physical reasons, it is not possible to contemplate at the present moment carrying out the full schemes. In the first place, there are difficulties in regard to supplies and, secondly, there are also staff difficulties. But there are a number of important works which have been approved by the High Commissioner, on the recommendation of the Railway Advisory Council and the Harbour Advisory Board, which ought to be carried out straightaway, and it is necessary therefore to obtain financial authority for these works to be financed by internal borrowings; advances pending the raising of a loan, and that is the reason for this resolution.

The Railway Advisory Council and the Harbour Advisory Board have had under consideration for some time the question of seeking authority for the raising of loans on the Railway's own account, instead of raising them on the Governments of Kenya and Uganda, and at the present moment I am in communication with the two Governments to see whether means can be devised whereby the Railway Administration can raise these loans on their own account. If that is so and at a later date it is possible for the Railway Administration to raise loans, then a recommendation will be put forward that these items

should be transferred to the loan raised on behalf of the Railway Administration.

The details of the expenditure, which in total amounts to £293,550, is £4,000 in regard to track improvements, and £122,500 in regard to water supplies, and £127,050 in respect of housing. These are all related to the Railway, and there is also a sum of £15,000 in respect of housing for the Harbours. The housing referred to is mainly a large housing scheme for the Africans, both in so far as Railway staff is concerned and Harbour staff. Each of these items has been examined in detail by the Railway Advisory Council and the Harbour Advisory Board, and have been approved by the High Commissioner.

MR. TROUGHTON seconded.

The question was put and carried.

HOSPITAL SERVICES (EUROPEAN) BILL

MEMBER FOR HEALTH AND LOCAL GOVERNMENT (Mr. Mortimer): Your Excellency, I beg to move: That the Hospital Services (European) Bill be read a second time.

This bill represents the most important advance the Colony has yet made towards a complete health service, and requires no words of commendation by my part to ensure its acceptance by this Council. The bill is free of racial character, and provides for the taxation of one section of the community only—the Europeans—in order to provide a European service.

It is a truism that the greatest asset of any country is a healthy population. We have a very long way to go in Kenya before we can say that our population is entirely healthy. There are many hard conflicts still to be fought in the battle for health, and in that great battle not only doctors and nurses are concerned, and there is much more in it than medicines and hospitals. It involves proper housing for the people, adequate sanitation, ample, wholesome food, congenial and full employment, the right use of leisure and a multitude of other factors which all go to the making of a healthy people. Keeping people well is of considerably more importance than healing people when they are sick. No health service can be complete without emphasis on positive health measures. Before

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we reach that happy state when we can say all our people are fit and well, there are unfortunately many people who fall sick or who have injuries and who require hospital treatment. The expense of that hospital treatment has been in the past a serious burden upon many sections of the European community, and other communities too, causing grave anxiety which in some cases has deterred people from going to hospital when they ought to have gone, and in cases where they were under hospital treatment has delayed their recovery because of anxiety concerning the meeting of the bill when they came out. We are fully aware, of course, that the cost of hospital treatment is not the only cost incurred when people are ill. There are medical fees which have to be met, and other expenses incurred during illness, and these, too, are all part of this serious burden of anxiety which falls upon people during times of illness.

This bill, however, deals only with one aspect of the treatment of illness: that is hospital treatment. As I shall explain later, a committee is sitting dealing with other aspects of this problem of sickness and how the cost is to be met. For many years there have been strong and persistent representations made by members of the European public that some relief should be afforded to those members of the community who could least afford to pay for hospital treatment, and with that cost being the cost of maternity, which was acting as a deterrent to young married couples in taking upon themselves the responsibilities of family life. With the objects in view of finding relief for the burden of hospital costs and of finding some remedy for the burden of maternity costs, a committee was appointed in 1938. It had only got into its stride when he broke out and all its work was suspended. A new committee was appointed in 1943 under the chairmanship of Mr. Mundy, and that committee reported in August, 1944. During the ensuing months discussions took place throughout the Colony, both in the Press and on the platform and in committee rooms, on the major recommendations of the Mundy Committee report. When it was tabled to the Government that the great majority of the European population of the Colony accepted the main

principles of the report, the Government expressed in Sessional Paper No. 4 of 1945 its willingness to adopt the scheme, subject to the approval of the Legislative Council.

The Sessional Paper was debated in this Council in July, 1945, and a select committee was appointed to examine details of the scheme and to report. That committee presented its report in November, 1945, recommending approval of the principles of the committee's report, and urging that legislation should immediately be enacted to put the scheme into operation forthwith. This Council adopted the recommendations of that select committee, and the necessary legislation was passed to provide for the recovery from the public of a portion of the cost of putting the scheme into effect; that is, the portion which was to be collected as personal tax. But that is only a small portion of the total cost. An Interim Hospital Authority was set up to administer the scheme until the permanent machinery could be established. That Interim Hospital Authority has been working since the 1st January, and disbursements have been made in accordance with the principles laid down in the adopted report.

Of the three local semi-public hospitals—Nakuru, Kitale and Eldoret—the two last-named have come fully into the scheme as semi-public hospitals. The committee of the Nakuru War Memorial Hospital has, however, preferred to remain outside the full scheme, for the time being at any rate, and to be treated as a private hospital. Arrangements have been made accordingly with the Interim Hospital Authority.

The main principles of the scheme recommended by the Mundy Committee have been almost universally accepted by the European community of the Colony. Unfortunately public memories are short, even the memory of one gentleman who was actually a member of the Mundy Committee! During the period when the report was open for public criticism and comment there were four major lines of criticism. The first was—and this was the most persistent—that the scheme did not go nearly far enough; that hospital treatment was only one portion of the requirements of the community for a general public health

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service. That criticism could not fairly be levelled either at the committee or its report, but should have been levelled rather at the terms of reference with which the committee was entrusted. It is true that the report dealt only with hospital treatment, but that was all that it was empowered to deal with. This scheme does, however, represent a beginning of a general public health service for the European community and as such should be welcomed. It is the bottom rung of the ladder, and there are still more rungs to be climbed, and we hope they will be climbed in the not distant future.

The second ground of criticism came from the supporters of the local hospitals in Nakuru, Eldoret, and Kitale, and arose from a general and real Government interference in the local management of their well run hospitals. That fear is entirely groundless, and it was one of the principles of the Mundy Committee report that local management and local interest in local hospitals should be maintained at a high level. Without that local interest, without the participation of those who have done such splendid service in the past in establishing and maintaining their own hospitals with Government assistance, the scheme cannot fully operate. I think the majority of those who raised that criticism have had reason to withdraw their comments; any have seen that the Hospital Authority has as its main desire in its relations with local hospital boards to work in the closest co-operation and maintain their interest and support.

A third ground of criticism was as to the method of raising funds for this hospital scheme. Various methods were considered by the Mundy Committee, and this particular one was accepted as being the best and fairest all round. It was supported by the select committee of this Council, and ultimately adopted by the full Council. There is one proviso, however, and that is that the scheme of finance shall come up for review after the lapse of two years' trial.

The fourth ground of criticism is that there are not enough hospital beds available to-day to meet the requirements of the public: would it not then have been wiser to wait until there was adequate hospital accommodation for all requirements and then impose the scheme of

taxation which is embodied in the bill? If we had waited for that time we might have waited for very many years. I agree that there is not fully adequate hospital accommodation at the present time, although the situation is not nearly so bad as the critics are disposed to represent. Efforts are being made to increase hospital accommodation, and those efforts will, I am sure, be successful in the near future and there will then be adequate accommodation. I have had no evidence brought before me so far to show that anyone who really needed to get into hospital has been denied admission because of lack of accommodation.

I will now turn to the provisions of the bill itself, which has as its main object to establish a European hospital service on a firm foundation both for administration and for finance under the control of the representatives of the people who are mainly concerned. This, if I may say so, is a scheme for the people and by the people, in the sense of the principles of democracy. (Laughter.) With this object in view, the bill makes three major provisions. First of all, it will set up a Hospital Authority, an authority independent and entirely representative. Secondly, it will establish a hospital fund. Thirdly, it will empower the Authority to make payments from the fund of the amounts and to the extent specified in the bill to European contributors for their hospital treatment and maternity services.

For convenience, I wish first to deal with the financial aspects of the bill. The evidence before the Mundy Committee was to the effect that in 1942 the total cost to the public—and I am speaking of the European public—of hospital treatment, whether in public, semi-public or private hospitals, was round about £50,000. Of that sum, about £41,000 came directly out of the patients' pockets, and the other £9,000 was contributed by the Government from central revenue. It is reasonable to believe that since 1942 the costs to the public of hospital treatment have gone up, if only by reason of the increase in the population. The Mundy Committee was faced with the problem of how best that cost of £50,000 could be distributed or re-distributed fairly and equitably among the people who have to pay it. It was clear from

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being adequate to cover the costs of putting the scheme into operation and maintaining it. It provides not only for the costs of hospital treatment, but also for certain maternity benefits which are specified in the bill, and which can be given to an amount of £25 in each individual case. In the bill, the contribution system is somewhat simplified in order to make it quite clear to the public what they have to pay in any given set of circumstances.

I refer now to the Government contribution, and I want to make it quite clear, in spite of comments in the Press and elsewhere, that the Government is not attempting to offload on the community any charge which have hitherto been borne from the general revenue and at the same time is making no relief from taxation in other directions. The Government contribution is estimated to be certainly not less and probably more than has been paid by the Government up to the end of last year on hospital treatment. The Government contribution will be assessed on a pound for pound basis on all contributions in the income tax section from people whose chargeable income is more than £250. The estimated amount to be derived from this contribution of Government will be, as I say, not less and probably something more than has hitherto been paid by the Government. The select committee of this Council, after examining the Mundy report in detail and hearing criticisms from outside sources, came to the conclusion that this scheme of taxation was the best and fairest in all the circumstances of the case, but they said, in submitting their report to this Council, that in their opinion the system should be brought under review after two years of trial. The select committee also made other recommendations relating to the system of contributions. They said that there must be no alteration in the rate of contribution without the approval of Legislative Council, and provision for that has been embodied in the bill. They also said that the charge must be made only on the income of people resident in the Colony. That, too, has been provided for in the bill. There is one small point which I think is of some interest, to which I shall refer later on, and which will no doubt be considered in select committee.

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A third point they made was that appropriate payments should be made by the Government and other employers to the fund where the terms of service of employees included free hospital treatment. No provision is made for that in the bill, and quite rightly. The tax is a personal tax payable by every individual European resident in the Colony. Where hospital treatment is one of the terms of service of an employee the matter of service is entirely one between the employer and the employee for settlement. So far as Government is concerned, discussions will no doubt take place between the Government and its servants and an equitable solution will, I have no doubt, be reached so that Government servants are not unjustly treated in relation to this hospital measure. Other employers likewise will no doubt bring the matter under review with their own staffs. There is one point here I would like to emphasize, as statements to the contrary have been made outside this Council, and that is that Government servants will pay the tax required under this bill just in the same manner as any other members of the community. The fourth point made by the select committee was that there should be provision, on which nothing had been said in the Mundy report, for nursing benefits at some when hospital accommodation was not available. What they had in view was that someone might need urgent admission to a hospital, there might be no bed in any hospital available, and therefore a private nurse would have to be provided to nurse the patient in his or her own home. Provision is made in the bill for contributions to be paid to the patient in such circumstances.

I will refer now to other main features of the bill, and the first in importance is that in clause 3, where provision is made for the setting up of the Hospital Authority. The constitution of the Authority as laid down in the bill is that recommended by the Mundy Committee and accepted by this Council on the report of its own select committee. I want to emphasize that this Authority is not a Government body. It is quite obvious that certain Government members must have a place on the Authority in order to safeguard the finances and administration, but the effort has been made to make it as widely representative as pos-

sible of the local bodies who have done such magnificent work in establishing their own hospitals, and also of other bodies who have a right to representation on a public authority of this kind. It will be noted in the bill that the Authority is to be given the right to elect its own chairman. A certain amount of suspicion has been aroused in some quarters by the provision that some members of the Authority are to be nominated by the Governor. The fear has been expressed that the Authority will be made a Government body acting as a puppet of the Government, entirely under the dictation of Government officers and nominees who will be members of it. In order to remove that suspicion entirely which, I may say, is quite groundless, the Interim Hospital Authority has framed certain recommendations which it will make to the select committee, and one is that instead of having any nominees of the Governor these people are to be appointed by certain other Government bodies. That is a matter which can be fully discussed in select committee and is one for which I am sure the right solution will be found. But I want to repeat that it is not intended to make or regard this Authority as a Government body but to make it as independent as possible. The bill provides that the members of the Authority shall hold office for two years. The Interim Hospital Authority is suggesting to the select committee that the term of office should be three years and that provision should be made for retirement in thirds, so that continuity of policy and administration will be preserved.

In clause 6 provision is made for the Hospital Authority to be a corporate body and to have all the usual powers of such a body. In the latter part of clause 8, from (g) onwards, there are specified certain powers which the Authority will have in carrying out the principles of the bill. It may have been noticed that the Authority will have power to provide hospital treatment, but no power is given in the bill to provide hospital accommodation. It is felt that this is a weakness that needs to be remedied, and the select committee will no doubt consider whether that provision should not also be made. There is also another omission from the bill, and that is the power to raise loans. If the Hospital

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Authority is to have full financial responsibility for hospitals, then there must be power to raise loans. It is to be noted that in clause 11 the hospital fund shall consist of various items, including the proceeds of loans, so quite obviously the raising of loans must be one of the Authority's powers. It will also be noted that there is power to enable them to acquire land or buildings and to erect and maintain buildings.

These powers I regard as enabling powers for the Authority to work upon after some years of experience when it has got fully into its stride and is entrusted with the full task of maintaining hospital services for the European community of this Colony. In Sessional Paper No. 4 of 1945, sub-paragraph E of paragraph 2, there occurs this passage: "The Hospital Authority's function should be, in the first place, to administer the hospital fund, but its executive powers should be gradually extended until it finally becomes the authority responsible to Government for the provision of a unified European hospital service throughout the Colony. The Authority itself should formulate the progressive steps by which this end may be brought about, conduct any necessary negotiations with local authorities and the boards of independent hospitals and make recommendations to Government accordingly". That is a long-range policy for which it is desirable to make provision in the bill at this stage. It may be that the Government will decide that capital costs of future hospitals and for extensions of existing hospitals will be the responsibility of the Authority and will, therefore, have to come from loans raised by the Authority.

I would draw attention now to the earlier sub-clauses of clause 8, in which the powers of the Authority with regard to benefits are specified. Here are laid down the benefits which the public will derive from the taxation which this measure will impose. There is one important feature about these benefits, and that is that they are all worked on a family basis. A contributor is entitled not only to personal benefits but also to equivalent benefits for his wife and family. The first provision in paragraph (a) is "to provide hospital treatment for contributors upon such terms and condi-

tions as may, from time to time, prescribe". That is somewhat vague and has been the subject of misunderstanding and misinterpretation. The Mundy Committee recommended, and this Council accepted the recommendation, that the standard rate of payment in a public or semi-public hospital should be Sh. 5 a day. The Hospital Authority is working on that basis, and the charge to any patient going into a Government hospital or into a semi-public hospital is now Sh. 5 a day. I will specify the hospitals concerned to make the matter quite clear: they embrace Nairobi, Mombasa and Kisumu Government hospitals, and the Eldoret and Kitale semi-public hospitals. In the drafting of this measure that paragraph was deliberately left vague as it was not considered desirable to specify a standard rate of Sh. 5 a day, in order to leave a certain amount of elasticity in the operation of the measure. It may be possible to reduce the charge a little, and it may be necessary to increase the charge a little, but round about Sh. 5 a day will be the standard rate. It is possible, of course, that the rate may have to be increased slightly where patients, at their own request, are provided with private wards, in those hospitals where they have such luxuries.

The second provision is to make payments out of the fund to any hospital. That is now being operated upon, and the Kitale and Eldoret hospitals are deriving their funds so far from the Interim Hospital Authority. The third power, under sub-section (c), is "to enter into any agreement with the governing body of any hospital for any of the purposes in this Ordinance". Agreements have been entered into with the Eldoret and Kitale hospital management boards, to the satisfaction of those boards. The Nakuru War Memorial Hospital Committee has not yet seen its way to come fully into the scheme. Perhaps a word of explanation here would not be out of place. The community of Nakuru and district have a very good hospital insurance scheme which includes in its benefits not only hospital treatment, but also medical treatment. The Nakuru population who were benefiting by this scheme (and I should say that must exclude the very poor members of the community, because they could not afford to pay the premia for husband, wife and family,

[Mr. Mortimer]

the Nakuru community in general, however, have so far expressed the desire to keep going with their insurance scheme and to modify it in order to fit in with the terms of this present measure. The Hospital Authority has no objection to that, if that is the considered opinion of the people concerned, and will, I am sure, not desire to exert any pressure upon the population of Nakuru to force them into the scheme.

The comment has been made by participants in the Nakuru Hospital insurance: "Why should I, who pay £5 a year: in order to get free hospital treatment and free medical services, be forced to pay Sh. 5 a day when I go into hospital and to pay considerable sums, according to income, on the taxation measures?" Of course, if people choose to go in for double insurance, that is their affair, but a colony-wide scheme of this kind could not possibly be expected to exclude merely one small community. The members of the Nakuru insurance scheme do, however, derive quite considerable benefit from this measure, in that when they go into hospital, although they pay nothing for their hospital treatment, they will be entitled to draw from the Hospital Authority the sum of Sh. 15 a day as being patients in a private hospital. That should be some consolation to them for having had to pay the tax! I hope it will not have the effect of inducing more of them to go into hospital than otherwise would have done so!

I have said that we have already entered into agreements with Eldoret and Kitale. There is a recruit to the hospital scheme which will be coming into existence in the very near future, and that is the very welcome addition of the children's hospital at Gertrude's Garden. The management committee of that hospital has already expressed its desire to come fully into the scheme, so that the charge for patients in that children's hospital will not exceed Sh. 5 a day.

The next provision under sub-clause (d) permits the Authority to pay allowances not exceeding Sh. 15 a day, for such periods as may be prescribed; towards the costs incurred in going into private hospitals. It was necessary to bring private hospitals and nursing homes into the scheme. For one thing, without them, there certainly would not have been

an adequate supply of beds for the European population. Those who prefer to go into a private nursing home and to pay their Sh. 30 or Sh. 32 a day will have the benefit from this scheme of getting a rebate from the Hospital Authority of Sh. 15 a day. Under sub-clause (e) there is included provision which the select committee asked for whereby the Authority is empowered to pay up to Sh. 15 a day for nursing expenses incurred when hospital accommodation is not available. Hon. members will notice that in the middle of that paragraph there is a phrase: "towards nursing and medical expenses actually incurred". The words "medical expenses" I think have crept in there in error, and I will ask the select committee to consider whether they should not be deleted, because this bill does not provide for medical treatment, except under the maternity sections of the bill.

Under sub-clause (f) provision is made for maternity benefits, and these should be of great consequence to young people on whom the cost of maternity has been a heavy burden and has acted as a deterrent in family life. The Authority may pay up to £5 for pre-natal medical attention, up to £5 for medical attention at the confinement, up to £5 for any exceptional medical or nursing treatment that is essential, and up to £10 for a confinement in the home where hospital facilities are not used.

I draw attention now to clause 10, which provides that the Hospital Authority "may declare any hospital, nursing or maternity home to be a hospital for the purposes of this Ordinance". The Interim Hospital Authority has already given its approval to six private hospitals and nursing homes. Great care has been taken, before such hospitals were approved. They have been strictly examined by the Director of Medical Services; he has gone into the question of staff, equipment, facilities and standard of accommodation provided. The Authority has given its approval conditionally upon these standards being maintained and fees not being upon the treatment and fees not being altered, to the detriment of the patients, without the consent of the Authority. That will ensure that the patients, and not the proprietors of the private hospitals or nursing homes, will get the benefit of the provisions made under this

[Mr. Mortimer] bill. Any deliberate breach by any of the controlling authorities of these homes or hospitals will render them liable to disapproval and the cancellation of the approval already given.

Clause 11 makes provision for the establishment of a fund from the sources already indicated. Clause 12 lays down provisions for the contributions required from individual contributors. They apply to all European residents. Clause 12 (1) provides for a personal tax of Sh. 5, Sh. 10 or Sh. 20. Clause 12 (2) provides for the income tax portion of the contributions. There has been a small slip here, in that the words "resident in the Colony" have been omitted in clause 12 (2). That is accounted for by the fact that clause 12 was originally not sub-divided. When the sub-division took place the qualification "every European resident in the Colony" remained in sub-clause (1) but was inadvertently left out of sub-clause (2).

Clause 16 provides safeguards for the public and for this Council in ensuring that the scheme is being properly worked. The Authority is required to furnish every year a full and complete report and balance sheet and statement of account, which is to be laid before the Legislative Council of the Colony. That will give an opportunity for debate on a motion in this Council. If any member is dissatisfied with the manner in which the Hospital Authority is doing its work.

Clause 20 provides for the making of regulations, and these regulations, which will ensure the proper working of the Authority and the scheme in general, have to be laid on the table of this Council within 14 days, if possible, after their having been made. Clause 18—to revert—provides that the benefits under the scheme shall be inalienable; that is, they are personal to the contributors only. Clause 21, the final clause, is intended to protect the fund against the wrong party getting the benefit from any double insurance. The benefits are intended, not for the coffers of insurance companies, but for the pockets of the contributors to the scheme, and this clause is intended to protect the scheme against misuse in that way.

As I have already said, this bill is not a complete health insurance measure. It is not a medical services bill; it is purely

a hospital services and maternity services bill. A committee is now sitting with terms of reference covering medical treatment, and I hope that members of the public and members of this Council will take the opportunity of presenting evidence before that committee and stating their views on the provisions they desire for medical services.

As I have already said, it is a "European only" measure. Africans already have free hospital and medical treatment. So far as the Asian community is concerned, as hon. members are aware, there is a committee now in existence under the chairmanship of my hon. friend the Director of Medical Services and the secretaryship of the hon. member Dr. Rana, with similar terms of reference to the Mundy Committee. These terms of reference have recently been enlarged to include medical services. I should welcome a very early report from that committee and recommendations for a scheme on similar lines to the present one for Europeans, or on such other lines as will be acceptable to the Asian community. That committee will, I have no doubt, watch with keen interest the progress of the experiment in the provision of European hospital services, and I cannot do better than recommend them to follow the example of the European community and take steps to look after themselves.

I have, I think, covered the main provisions of the bill, and I now move the second reading and commend the bill to the goodwill of hon. members. (Applause.)

MR. THROUGHTON seconded.

SIR ALFRED VINCENT (Nairobi South): Your Excellency, I should like to take this early opportunity of paying tribute to the hon. Member for Health and Local Government and to Mr. Steel, the executive officer of the Interim Hospital Authority, for the very excellent way in which they are carrying on the interim measures under very great difficulties. I have had a number of questions put to me from all over the country which I have referred to them, and the answers have been lucid and straightforward, and very speedily given.

In a measure of this type upon which we are trying to build the first real social service of this country, the danger of its being wrecked is always because of a

[Sir A. Vincent]

great deal of misunderstanding, and for that reason I am going to ask the hon. mover if he will agree to some of the undertakings he mentioned this morning being incorporated in the bill. As I have said before in this Council, if undertakings are given it is far better to do it that way so as to allay the suspicions of those who have not read the debates, and they can then understand that this scheme can be revised. The Nairobi Chamber of Commerce did put up other ideas regarding the financing of the scheme, but their management committee and their general meeting have accepted this bill, but they wish to have the whole bill reviewed after three years and the financial structure of it reviewed every year. I think that is essential, because we know that we shall be asked to amend this bill in many particulars as a result of its actual working. I think that it will be necessary to examine the financial implications and results each year, not only in respect of the revenue or the income from the measures which the bill provides but also we may find that the Sh. 5 may have to become Sh. 6 or, we hope, it may come down to Sh. 4.

On the general principles of the bill, as you know I entirely agree with it, but there is one point I would just like to draw attention to, because there may be a misunderstanding, and I may not have heard the hon. mover right. That is, clause 8 (e) in association with clause 8 (f) (iv), I would like an assurance in the hon. mover's reply that there is no limit to 8 (e), and although I am fully aware that (f) specifically mentions confinement cases it is still part of clause 8, and some financial pundit—if we have any in this country!—may at a later stage claim that 8 (e) is governed by 8 (f) (iv). If that is the intention, I shall certainly oppose it, because I cannot see any reason why there should be a limit to the amount paid out under clause 8 (e), and I hope there will not be any limit.

With those few remarks, I beg to support the bill.

MR. VASEY (Nairobi North): Your Excellency, I rise also in principle to support the bill, but there are one or two details that I should like clarified, one or two principles I would like to see established. I think that everyone on this side of Council will agree with the hon.

Member for Nairobi South when he congratulated the hon. Member for Health and Local Government and the executive officer of the Hospital Interim Authority on the work they have done in the preliminary stages of putting this scheme into operation. It must have been extremely difficult to have operated the Interim Authority without the law actually laid down on which to work, and I have a great admiration for their work.

This Hospital Authority, as we have heard outlined by the hon. mover, is to become a body run by representatives of the European community elected by various bodies, if the amendments are put into force, with a leavening of Government, as perhaps a stabilizing influence. But, if that is to be so, I cannot see why certain clauses are in the bill. I cannot see, for instance, under clause 14, where it says: "The fund shall be applied towards—(a)—with that I have no quarrel, (b)—with that I have little quarrel, (c) the payment of interest on loans and the repayment of loans to the Governor may require". If this is to be a responsible body, one of the things it will have to have is complete control over its own finances, once that finance has been established. It must not be, I imagine, operated under a possible threat that it will have to pay what interest on its loans the Governor at the time may require, and certainly not under a threat that it will have to find the capital to repay the loans as somebody outside the Authority requires. I would like that point cleared up, and would ask the select committee that they will pay particular attention to it.

The hon. mover said that the Government would contribute no less than last year and possibly more, and on that he based the contention; I believe that, in effect this scheme would not relieve, I think he said, the Government—I would say general revenue—of any burden. While that may be correct at the moment, it is not, I think, in fact entirely correct, because this scheme will relieve the general revenue of a certain amount of the burden of the expansion of hospital services for the European community. I think that there are a number of details that I should like clarified, one or two principles I would like to see established. I think that everyone on this side of Council will agree with the hon.

[Mr. Vasey] burden of the future on the general revenue. Because of that, I would ask that clause 13 should be carefully considered by the select committee. Clause 11 I say: "There shall be paid into the fund" by Government—as I say, I prefer the term out of the general revenue of the Colony—pound for pound "in respect of chargeable income in excess of £250". I believe that Government has placed that figure too high. If one works out the allowances that are made before any Income tax is chargeable and then adds on to it the figure of £250, you will see that Government only takes over the equivalent burden of a fairly well-to-do man. I think Government could step that figure down, after consideration, on grounds of equity and having again consideration to the fact that this scheme will relieve, I think, Government of a certain amount of burden of general revenue to be devoted to hospital schemes in the future.

Clause 21 has aroused some misgivings in certain sections of the European community. If I may take up Council's time to quote a case. Certain firms have in the past covered their staff by accident policies. Irrespective of that fact, the individual employees will have to pay compulsorily into this hospital fund. The hon. member himself, referring to the Nakuru case, said that if people chose to go in for double insurance that is their own risk. I think, if I may say so, that what applies to Nakuru is also applicable to commercial firms—that if commercial firms care to ensure that their employees that is their own risk. But that has not been the interpretation, because I have heard a case from a company in Nairobi, which happened quite recently, "where a member of our staff was admitted to hospital, and as he stated that he was covered against accidents the Interim Hospital Authority advised that no claim for a rebate could be accepted as the company was covered by a comprehensive accident policy." In the Authority's letter addressed to the company it says: "As Mr. Blank's accident was covered by you under a comprehensive accident policy, I regret that no refund is available under the European hospital services scheme".

I suggest in equity that this position is a little unjust. If a man pays his personal tax and/or income tax proportion to the hospital scheme, he must of right be

entitled to the receipt of any benefits under the scheme. If in addition the firm has insured him, that is no affair of ours. They have incurred the cost and risk of payment of double insurance, and their willingness to undertake that extra insurance cannot be held, surely, as any reason to deprive the man, or for that matter them, of the full benefits of the scheme to which they are contributing compulsorily the full payment demanded. I do trust that this clause will be gone into very carefully by the select committee in order to see that no injustice of that kind is possible.

One other point on the financial side. Clause 11 (2) says "The fund shall consist of": (a) contributions, (b) money paid from general revenue, (c) "the proceeds of any loan which may, from time to time, (i) be raised by the Governor, with the approval of the Legislative Council of the Colony, for the purposes of this ordinance"—with which I have little quarrel—"(ii) be made, with the approval of the Governor, out of the general revenue of the Colony". The general revenue of the Colony is zealously guarded by my hon. friend the Financial Secretary, and that general revenue from time to time becomes, as it were, the arena of a scramble. In my capacity on another council I know how hard it is to extract from the Financial Secretary what we consider our share, and what he considers more than our share, of the general revenue of the Colony, and I do hope that this Hospital Authority is not going to be placed in the position of having to fight for what it considers its share of the general revenue of the Colony in this respect. I do suggest that, when this bill goes to select committee, it should be considered whether, as it is going to be a responsible Authority and has provision made for it to acquire land and buildings, to erect and maintain buildings and, indeed, to own property in general, it will not be possible to allow this Authority to raise loans on its own behalf, if necessary in such places as South Africa, where money is, I understand available.

That is all I have to say, except that I congratulate the hon. Member for Health and Local Government on the way in which he explained the bill, and to say that in general I support the scheme because I believe it is a great

[Mr. Vasey] move forward on behalf of the European community and will, I trust, be an example to other communities to find services for themselves out of their own finances.

DR. RANA (Eastern Area): Your Excellency, I rise with no intention of giving any complimentary remarks to the hon. mover, nor is it my intention to criticise or oppose this bill, but on some of the remarks made by the hon. mover and the general principle of the bill I rise with a view to just expressing my views and those of my community in this issue.

First of all, in his very elaborate and lengthy speech he made the straightforward statement that the bill is racial. That is a very plain word, and on that issue I am not justified in supporting the bill on principle, but I must say as a practitioner who has spent nearly 22 years of his life in healing those whom this bill applies to that in my own mind I very much doubt, unless there are some real amendments and improvements made by the select committee, the bill will be a successful measure. I am talking purely from the patient's point of view, whether he be a European, Asian or African. I do not want to anticipate anything, except to wish them the best of luck, and I hope they will be able to do all that is set out in the bill. Coming to the statement made by the hon. Member for Health and Local Government, that I am the honorary secretary of the Asian Hospital Committee, I may with Your Excellency's permission say for the hon. member's information that that clearly shows how much real interest he takes in our community, for I am not the secretary. I have never done any of that work or even been asked to do it.

This question of hospital facilities has been under consideration for a long time, and it has been a very great source of complaint by all races. I am glad the Government is now fully awake and intends to remedy the defects which are prevalent among all the hospitals in the Colony, but in my view I do not think this is the right way to go about in making it, from a hospital point of view, a racial question. No community on the face of the earth can get a healthy life while other sections are not provided with reasonable facilities. I think that on

an issue of this type no right-thinking people in the world will congratulate either the hon. mover or Government or even the European section for bringing in this bill which is purely confined to their own selves. I admit that every race wants to preserve its own species, they are entitled to, but we look at this bill in that we are in a British colony with Europeans predominant as the ruling race, and we say that they should start from the opposite side instead of looking after themselves first. My only request is that whatever is being done for the Europeans will be done for the Asiatic and African races. This is not so to-day, and I think from the time this Colony came under the British rule this side has always been neglected. Perhaps I should not use the word neglected, it was perhaps due to financial reasons, but Government has not done what it should for all races. My community particularly, the Asiatics, have to various Governments and on the floor of this Council begged for better hospital facilities, and I am very sorry to say that so far I cannot see any light in front, and I am very much worried since I have heard that not even the Development Committee has very much intention of doing any good for Mombasa, either for the European, Asiatic or native.

On this issue I take the opportunity of expressing my humble opinion to Sir Gilbert Rennie, the hon. Chief Secretary on this matter, and I intend to go further, but I will take this opportunity of impressing on the Development Committee that they must not provide a hospital for Europeans only and ignore all other races. Furthermore, I regard that as far as Mombasa is concerned the Municipal Board and the Government have always been making different promises not only to the Asians and natives but to the Europeans, and in Mombasa both the European, Asian and native races have very inadequate hospital facilities. I am sure that hon. members will agree that Mombasa has never had a fair share as far as Kenya finances are concerned, and I would point out as a matter of this importance that the Municipal Board has very great potentialities for increasing the attractions of the town. There are all kinds of visitors to the town, of all races, and if they have the misfortune to become ill

(Dr. Ken)

I do not think they take away very good recommendations of Kenya because of the over accommodation they get in hospital. I take this opportunity to impress on you, Sir, and the other members who are responsible that we must have a real, decent, up-to-date combined hospital opened in Mombasa at the earliest opportunity.

I do not want to add any more words. In I think it shall have an opportunity again when our committee submit their report. We have submitted our recommendations, and I would request the hon. Member for Health and Local Government to be a little considerate and at least give us 75 per cent of what we are asking for. With those few remarks, I do not want to pay any compliment to the hon. mover nor to say any more on this question. I only take the opportunity of impressing on Your Excellency and members of this Council the main point about this bill being racial, and we hope that when the Asian hospital committee's report comes before this Council we shall have your support.

ASSOCIATION EXECUTIVE (African Interests): Your Excellency, I had not intended to intervene in this debate but there are certain remarks made by the hon. mover which need some correction.

In the opening remarks of his very able speech he described this measure as a most important step towards a complete health service, and then in a singularly able way proceeded to describe what was his conception of a complete health service. He indicated that it implied a great deal more than hospitalization. I take it that implicit in all those remarks he made was the fact that the complete health of this country concerns not one race only, but all races in the country. He then described this measure as a purely racial measure. It would be singularly inappropriate for the representative of the interests of another race to do anything but wish well a scheme such as this. I am sure that the African people would desire healthy European partners in the affairs of this country rather than unhealthy ones.

It is, therefore, not on any racial ground that I rise at this stage, but the hon. mover, as he closed his speech, made a remark which leaves room for very considerable misunderstanding, and I am

making him now to correct that when he makes his reply. Having referred to this scheme in fairly considerable detail, he referred to the fact that he trusted that the members of the Asian community in this country would put forward proposals for a comparable scheme, and then in respect of the African community he used these words: "The Africans already have free medical and hospital treatment." That would imply that the African community of this country has at its disposal medical facilities and hospital facilities which are wholly adequate for that community. Repeatedly in this Council, I and my colleagues and our predecessors in office have urged for more adequate hospitalization for the African community. I do press that these words, which will go down in Hansard and be capable of misinterpretation, will be elucidated by the hon. member in his reply.

MR. PATEL (Eastern Area): Your Excellency, I congratulate the hon. mover on the able and lucid manner in which he presented the bill to this Council this morning, but I cannot congratulate him on introducing a bill of such far-reaching importance for a small fraction of the people, to be run by a small fraction of the people. I strongly opposed the principle of this scheme when the report of the European hospital committee was debated in this Council, and I do not desire to repeat those arguments this morning, but I should like to say this that it is no credit to the Government or the European community, who hold themselves up as leaders of the population of this country, to put forward a scheme for the health services of this country in this piecemeal manner. They should have attempted at least to present the whole picture for all the inhabitants of this territory, but unfortunately their group interests have proved stronger than the larger interests of the community as a whole. This is likely to leave the impression in the minds of the non-European communities that, however much the European section may claim to serve the interests of all the inhabitants of this country, they always desire to give the highest priority to their own interests and to their own needs. One cannot escape from that conclusion.

I, personally, think it is wrong that in a matter of health services the question

(Mr. Patel)

should be approached in this racial manner. Efforts should have been made to approach the subject with a view to serving the whole country. The Indian community have been asked by the hon. mover to follow this lead, and the hon. Member for Nairobi North also asked that the Asian community should be allowed to provide services from their own resources. In view of the fact that Government is accepting this principal of racial provision for an important service like this, the Asian community is in the difficult position of having to do something of that nature. But for the wider circles outside this Council I should like to say one thing, that while all the civilized states of the world are trying to work to the principle of taxing people according to their capacity, and running services according to the need, we in this country say that you will get educational or medical services according to your earning capacity and capacity to pay taxes. That is reversing the whole general trend of modern civilization, and I personally submit that it is no credit to the Government of this country or the European section of this country, who claim to be the leaders of the inhabitants.

With these remarks, I should like also to add that I am glad that at last they are doing something, even if it is for a very small fraction of the people of this country. I wish them well, but at the same time I hope that in future, for other services like education and agriculture and other matters, Government will not come forward and say that for all these purposes the inhabitants of the country will be divided into four watertight compartments—Europeans, Indians, Arabs and Africans—and that for those services they must provide money for themselves.

Before I sit down I want to say that, although I am not going to vote against the bill, for the reason that I wish the European community well in their efforts, I think that in the report of future historians it will be said that the Member for Health and Local Government, when he introduced his first important bill in this Council, introduced a racial measure which will not be considered as a credit to this country.

COLONEL MODERA (Mombasa, Acting): Your Excellency, in my few remarks I

hope to confine myself strictly to consideration of this bill. I listened with interest to the clarity with which the hon. mover moved this bill, and in doing so, and in dealing with matters of principle he naturally had to refer to various clauses of the bill, but he did not in particular mention clause 2. It is a definition clause, admittedly, but I think it does involve one, at all events, question of principle, and that is in the definition of "hospital". It reads: "hospital" means any Government hospital, and I take it that when this bill goes to select committee there will not be any question of excising from that definition any particular Government hospital. I had rather hoped that the hon. mover would refer to that when he moved the second reading this morning. If the select committee when considering this bill make any qualification to that particular definition, it would involve a matter of principle, as opposed to a matter of fact.

The only other thing to which I wish to make reference is the hon. mover's remarks in regard to the fact that, when this bill becomes law, it will become purely a question of between employer and employee as to how each is to be affected. One can visualize, as a result of this bill becoming law, potential breaches of contract as between employer and employee, and I would, as I understood it, the hon. mover's undertaking that Government would proceed to go into the matter as to how their various servants are affected, and that the matter will be settled in an equitable way. The same thing will doubtless apply to a great many other employers of Europeans who have contracts in regard to the provision of hospital and medical treatment.

Subject to those remarks I support the bill.

MR. TROUGHTON: Your Excellency, there are one or two points that have been raised in the debate so far, which I should like to mention. First, the hon. Member for Nairobi South suggested, or passed on the suggestion of the Nairobi Chamber of Commerce, that the whole financial structure of the Authority should be reviewed at the end of a year. That, I feel, is not possible, although the matter can be considered by the select committee. My point is that any review would be useless unless at least the accounts of a full year's working are available. We

(Mr. Troughton) really have not the foggiest idea as to how the Hospital Authority will come out as regards revenue and expenditure, and I do not think that any review should take place until at least the accounts of one full year's working are available.

The hon. Member for Nairobi North said that it was not entirely true that the Government and the general revenue would not be relieved; that, in fact, it would be relieved of the burden of financing the expansion of European hospitals. Well, the fact is that we have recently been investigating the amount of funds likely to be available for the purpose of capital expenditure by the Government during the next few years. We are already committed to an extent on the expansion, or rather the construction, of the European section of the group hospital in Nairobi, and that is a commitment which the Government does not propose to pass on to the Hospital Authority. The Government is also committed to making a substantial contribution towards the cost of a new European hospital at Nyeri, and that again is a commitment which the Government does not propose to pass on to the Authority. But apart from these two commitments, which involve considerable expenditure, we quite frankly cannot see funds in sight to finance any further substantial expansion of the hospital facilities available to Europeans, and the plain fact is that, apart from those commitments, unless responsibility for financing the future expansion of European hospitals is assumed by the Authority, there will not be any expansion at all, so that it is really not correct to say that Government is being relieved of the burden, because it is only not to be in a position to assume the bill, in any case, during the next few years.

That brings me to the important point of the Authority being able to raise its own loans. I sincerely hope it will and that no objection, technical or other, will be taken to it, because if it only through the Authority raising its own loans and these loans not forming a part of the public debt of the Colony that any real expansion of hospital services for Europeans can be foreseen. On the particular point that the hon. Member for Nairobi North made about loans from general revenue, I think it is important that we should envisage the possibility of such

loans, despite the difficulties in securing them, and hence the presence of clause 11 in the bill in its present form. But I hope that the bulk of the finance required for capital expenditure by the Authority will be found by the Authority itself raising funds on the security of its revenues, and that the Authority will have the greatest possible financial autonomy and control over the expenditure of those funds.

The hon. Member for Nairobi North also indicated that in his view the figure of £250 in clause 13 of the bill was too high and that Government might well contribute more. I have no doubt that if it were put at £300 in the bill the hon. member would be content with a reduction to £201. We might have put it at £300 or £250 or £200, but the whole thing is rather shot in the dark. We do not know what the revenue will be: it will depend on the level of personal income. And we do not know what the expenditure will be. The thing is experimental, but I do agree that clause 13 is open to review just as much as clause 12 every time the financial structure and the incidence of this scheme are examined.

Finally, I should like to refer to one point made by the hon. member Mr. Patel, in which he said: "Why should the European community lead the way in this particular matter?" I have been associated with this question right from the beginning, from the time it became a live issue, and the point was that the European community wanted it and made its desire quite clear to the committee. They wanted the amount they paid towards hospital facilities should be spread in a more equitable manner among the European community. I have never heard of any demand that the amount paid by the Asian community towards the provision of hospital facilities should be spread among that community in a different way from the way it is spread to-day. The demand came from the European community—no comparable demand has come from the Indian community. After the European case had been examined, the Indian community said they wanted their case to be examined, and that will be done.

Mr. PATEL: On a point of explanation, that is not correct, the two cases are not comparable. The Asian demand was for the provision of hospital facilities whereas

[Mr. Patel] in the case of the Europeans the demand was for a reduction of the cost of treatment.

Mr. TROUGHTON: In answer to the hon. member, this bill does not deal with medical facilities but the cost of hospital services, and I assure the hon. member that whatever proposals the present Indian committee put forward they will receive just the same careful consideration from Government from the financial standpoint as well as the standpoint of my hon. friend the member as the recommendations of the report on which this bill is based received. I support the motion.

Mr. ODEDE (African Interests): Your Excellency, I had not intended to rise in the discussion on this bill, but after hearing the views of hon. members who have spoken I find that I cannot help it. One other thing that made me stand was the remark of the hon. member that the African community is provided with adequate free medical facilities. I thought that that was not a statement that should come from a man who I regard as a great friend of the African community, because most of the Africans think that they have anything like adequate medical facilities. I would say that in my district of Central Kavirondo medical facilities are very poor and cannot be called adequate, and I believe that in other parts of this country the Africans are suffering a great deal because they are not provided with enough medical facilities.

Again, the most important thing is that this bill is racial. The African community is anxious that all the communities in this country should co-operate; but as most bills discussed in this Council are usually racial I do not think that that co-operation can be considered. Surely in a thing of this kind there should be no racial scheme. The hon. member Mr. Patel remarked on the fact that as the hon. member said this bill is purely racial, they also would be forced to face racial issues. I think this is going to bring discord between all the communities of this country, which should actually not happen. In this bill the provision for contributions to the fund of the scheme is very important, because the contributors are employers of African labourers, especially farmers and commercial people who are employers of the African com-

munity. Therefore, when bringing a radical scheme like this Government should think a lot about what they can do for the African community, because the money contributed for the scheme is mostly got from the African assistance. This is why a racial scheme I think is very bad.

I should not have spoken in this discussion, but I could not help it because the provisions of the bill have brought about an issue which cannot be tolerated. What I am asking for at this moment is that there should be a bill for a combined hospital scheme for all races of this country, although it is possible that the Africans may not be able to pay these contributions. But the fact that the employers of Africans are members of such a scheme then surely the Africans ought to be included too. Again, when such a thing as this is to be considered, the feeling of the African community should be sought from that community. If their leaders say they do not like it, it can then be left for the Europeans or other communities, but if the African leaders think it is a very good scheme and they wish to join, they should be allowed to do so.

ATTORNEY GENERAL (Mr. Foster Sutton): Sir, there are two points with which I should like to deal. The first was raised by the hon. Member for Nairobi South, who asked if paragraph (f) of clause 8 had anything to do with paragraph (h). The answer to that is in the graph (h). The answer to that is in the negative. Paragraph (f) is hereby empowered (f) Authority to pay an allowance not exceeding Sh. 15 per diem for such period as may be prescribed; and clause 20 empowers the Authority, with the approval of the Governor in Council, to make regulations prescribing anything which may be prescribed under the ordinance, and whether or not any limit is placed to the allowance payable under (e) will entirely depend on the Authority and the policy they think right to adopt. The other point was raised by the hon. Member for Nairobi North, who suggested that clause 21 might create some hardship. Well, in reply to him, I should like to say this, that I think the point he made was mainly for the consideration of the select committee.

But when I was drafting this bill, it occurred to me that it was not intended

[Mr. Foster Sutton] as a measure to relieve employers from any liability they might incur to their workmen. If a workman receives injuries in the course of his employment, it was not intended to relieve the employer of that kind of liability, and also it was not intended to relieve a negligent motorist or other negligent person who injures somebody else from having to pay special damages to that person. In an action for special damages you have to prove that you have actually suffered the damage you claim. If an injured party received payment from the Hospital Authority he could not then go to court and say: "I have taken money out of my own pocket. Sh. 15 a day, and paid it to the hospital". In other words, he could not recover, and it seemed to me quite wrong that the general fund of the Authority should be mulcted to relieve negligent persons or employers of labour, from liabilities which normally, in every civilized country in the world, they are expected to assume and which, as soon as we have workmen's compensation in this country, they will by law be bound to assume. As I say, it is a matter for the select committee, but I do not know if the case the hon. member cited was the case of a person who took out an ordinary accident policy. If that is the case, then the ruling was wrong, and it is not intended to relieve the Authority from payment in such cases.

MR. MORTIMER: Your Excellency, there is little left for me to say, except to express my thanks for the measure of approval which this bill has received on its second reading.

The hon. member Dr. Rana drew my attention to a mistake I made in saying that he was secretary of the Asian Hospital Committee. That was a mistake on my part. I find that he is not secretary but is a prominent member of the committee, and I hope he will do his best to spur it to action and get a report at a very early date. The hon. members Archdeacon Beecher and Mr. Odede referred to my remarks upon African hospital provision. I chose my words rather carefully when I said that Africans have free hospital and medical treatment. I did not say they have adequate hospital and medical treatment, and I should be the last to say that because I do not believe they have. There is a vast deal

of work to be done in providing adequate hospital and medical treatment for the African population of this Colony, and I am quite sure that Government will undertake the necessary provision when funds can be provided for it. It is a very expensive matter and one on which we shall have to tread on firm ground before we proceed far. I would point out that there is already one very large hospital erected in Nairobi as part of the group hospital scheme. It has been in the occupation of the military authorities all through the period of the war but will, I hope, very shortly be released to the African community for its proper use. Another large hospital is already planned to go alongside the first one, and that, I hope, will be finished within a year or so, and will then be available for the African community. Other hospitals in other areas will be undertaken as and when funds are available, and we shall look forward to seeing the Development and Reconstruction Authority's report to see what provision they have been able to make for meeting that very urgent need.

The hon. Member for Mombasa drew attention to the definition in clause 2 of hospital "Hospital means any Government hospital". No doubt he had at the back of his mind the important question of hospitals for mental diseases and for infectious diseases. I think there is no ambiguity about the situation, because the Hospital Authority in clause 8 is empowered in its discretion "to provide hospital treatment for contributor upon such terms and conditions as it may, from time to time, prescribe". The Authority does not, at any rate at present, propose to take into its scope mental diseases hospitals or infectious diseases hospitals. The public will in no wise suffer by that exclusion, because treatment in an infectious diseases hospital for a resident of the Colony is free; treatment in a mental diseases hospital for a European resident is charged for at some rate to be prescribed by the magistrate when a committal order is given. The Hospital Authority has made recommendations to the Government, and I think I am safe in saying that Government will accept the proposals, that the charge made for the treatment of a European resident of the Colony in a mental diseases hospital shall not exceed Sh. 5 a day; which will be the ordinary charge for any other

[Mr. Mortimer] kind of hospital. The time may come when the Hospital Authority gets fully to work when the mental diseases and infectious diseases hospitals can be taken under their charge to round off the whole scheme, but that time is not yet, and I feel sure the Hospital Authority would object to accepting responsibility for these hospitals at present.

I welcome the statement of the hon. Financial Secretary that the proposed new Nyeri hospital would be assisted by Government finance for its capital expenditure without calling on the Hospital Authority to make provision. I should also like to express cordial appreciation of the work done by the Nyeri Hospital Committee. They produced a somewhat too elaborate scheme in the first instance and it had to be cut down. That has been done, and the Nyeri Hospital Committee is now proceeding with its work and I hope to see the hospital completed within a year's time at the latest. The Nyeri Hospital Management Committee has expressed its desire to come fully into the hospital scheme, and when the hospital is ready and equipped the treatment there will be at a charge of round about Sh. 5 a day and the rest of the burden will be borne by the Hospital Authority.

In conclusion, I should like to join very cordially in the tribute that has been paid to the executive officer of the Authority for the work that he has done during this interim period. He has brought to the task not only knowledge, energy and other qualifications, but a real eagerness to make this hospital scheme work, and I think that the thanks of this Council and the community at large are due to Mr. Steel for what he has done, and what he is going to do to make this scheme a very sound addition to the public services of the Colony. The question was put and carried.

MR. MORTIMER moved that the bill be referred to a select committee consisting of: Mr. Foster Sutton, chairman; Mr. Troughton, Dr. MacLennan, Mr. Mortimer, Mr. Trench, Major Keyser, Mr. Bouwer and Mr. Vasey.

MR. TROUGHTON seconded.

The question was put and carried.

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 4th July, 1946.

Thursday, 4th July, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 4th July, 1946. His Excellency the Governor (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 3rd July, 1946, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

By MR. FOSTER SUTTON:

Select Committee report on the Hindu (Marriage, Divorce and Succession) Bill.

NOTICES OF MOTION

Notices of the following motions were given:—

By MR. TROUGHTON:

That, whereas His Excellency the Governor in Council has approved of a resolution of the Municipal Council of Nairobi to levy a rate at 3 per centum of the unimproved site values in the municipal area for the year 1946, and whereas it is provided by sub-section (2) of section 87 of the Local Government (Municipalities) Ordinance, 1928, that the maximum amount which may be paid from the general revenue of the Colony as an annual contribution in lieu of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such land, this Council approves the payment to the Municipal Council of Nairobi of a sum not exceeding £14,000, being the estimated difference between the amount statutorily payable and the approximate amount which would be payable in respect of a rate of 3 per centum.

By MR. PATEL:

That the Select Committee report on the Hindu (Marriage, Divorce and Succession) Bill be adopted.

ORAL ANSWERS TO QUESTIONS

No. 16—AFRICAN MIDWIVES PAY

Mr. VASEY:

(a) Is Government aware of the dissatisfaction which exists in African circles over the low rates of pay given to trained African midwives?

(b) Does Government know that African midwives, trained at the Pumwani Maternity Hospital with Government certificates, received at the end of their training Sh. 37 per month plus feeding plus housing, and that if they stay as staff nurses they receive Sh. 50 per month as a minimum plus Sh. 10/50 as cost of living bonus?

(c) Is it correct that the Government official scale is Sh. 35 plus Sh. 5 cost of living plus housing?

(d) Is Government aware that the ordinary African ayah, untrained, can get from Sh. 50 to Sh. 80 per month?

If this is so, will Government, in view of the urgent need for trained African women for this work, revise their scales of salary?

DIRECTOR OF MEDICAL SERVICES (Dr. MacLennan): (a) The answer is "Yes".

(b) The answer is "Yes".

(c) The answer is "No".

The scales laid down for African midwives in the Regulations for the African Civil Service are:—

Grade II—Sh. 40 by Sh. 2/50 to Sh. 60.

Grade I—Sh. 60 by Sh. 3 to Sh. 90; with the usual privileges accorded to members of the African Civil Service.

It is, however, pointed out that no African midwives have, as yet, been appointed by the Government and it is thought that the Hon. Member refers to African midwives employed and paid by Local Native Councils and working in maternity wards built and maintained by Local Native Councils as part of Government hospitals.

(d) The answer to the first part of (d) is "Yes", and to the second part of the question, that the terms and conditions of employment of African midwives are matters for determination by local authorities. Steps will be taken to invite the attention of local authorities to the desirability for early review.

SCHEDULE OF ADDITIONAL PROVISION No. 4 of 1945

MR. TROUGHTON: Your Excellency, I beg to move that Schedule of Additional Provision No. 4 of 1945 be referred to the Standing Finance Committee.

MR. FOSTER SUTTON seconded.

The question was put and carried.

TRANSFER OF FOREST REPLANTING FUNDS

MR. TROUGHTON: Your Excellency, I beg to move: That covering approval be accorded to the transfer of £1,447/13/69 from "Deposits—Appropriated Funds—Forest Replanting and Development Fund" to the Revenue Head "Reimbursements—Forest Replanting Fund on account of Forest Department expenditure", in respect of expenditure of a like amount charged to the Forest Department votes during 1944 in excess of the sum of £12,490 already approved.

This is purely a formal motion. In 1944 it was decided, in connexion with the Estimates, that certain development expenditure by the Forest Department should be a charge against the Forest Replanting and Development Fund, and the expenditure was approved on that basis. It now transpires, that, in the opinion of the Hon. Attorney General and of the Auditor, the specific approval of Council is necessary by resolution: for any transfer from the Fund to revenue. Consequently this resolution is put forward to regularize the matter.

MR. FOSTER SUTTON seconded.

The question was put and carried.

CUSTOMS DUTIES ON FOODSTUFFS (PROVISIONAL EXEMPTION) BILL

SECOND READING

COMMISSIONER OF CUSTOMS (Mr. Northrop): Your Excellency, the purpose of this bill is to give powers to the Governor in Council to waive the customs duties on any foodstuffs from time to time, in order to encourage importation when a food shortage exists in the Colony. The other East African Governments are in general agreement with the proposed measure. The main articles concerned are rice, millets, wheat, maize,

[Mr. Northrop] cassava and cassava flour, ghee and any other suitable foodstuffs which might be available from outside sources during a time of shortage. In ordinary circumstances the amount of customs duty collected on foodstuffs of this nature is not appreciable. In fact, importations are discouraged by the relatively high rates of duty which apply. Hon. members will accordingly understand the need to remove a handicap to importations at a time when Government will be endeavouring to obtain foodstuffs from every possible source.

Clause 3 of the Bill proposes to limit the period of operation to the 31st December, 1947, with the proviso that it may be extended by the Governor, with the approval of this Council.

MR. FOSTER SUTTON seconded.

The question was put and carried.

KENYA EUROPEAN CIVIL SERVICE CONTRIBUTORY PENSIONS BILL

SECOND READING

MR. TROUGHTON: Your Excellency, I beg to move: That the Kenya European Civil Service Contributory Pensions Bill be read a second time.

I propose, if I may, in the first place to discuss the principles of this measure and then the financial implications, and finally I am afraid it may be necessary to worry hon. members with some of the more important details of the bill.

This bill raises no really new principle which has not already received the approval of this Council. The Kenya European Provident Fund Ordinance, which became law in 1935, provided for a provident fund. It was recognized at the time as being an interim measure, pending the introduction of contributory pension legislation. Nothing happened for some years, but at an early stage during the war it was realized that the provident fund was unsatisfactory—quite unsatisfactory—and could not be regarded as meeting the need for superannuation benefits by the Civil Service. Action was taken then at the instance of the Kenya European Civil Servants Association, and the Government, with the full approval of this Council, expressed in countless resolutions moved by my predecessors and myself, introduced

a scheme of interim pensions. Under this scheme individual members of the European Civil Service were granted when they retired, as an interim measure, pensions at three-quarters of the rate which it was expected would come into operation when a contributory pension scheme was introduced. These interim pensions involved the surrender of whatever amount was standing to the officer's credit in the provident fund. There have been many of these pensions granted, and in fact this Council approved several of them only yesterday.

The Surridge Committee, of which I was a member, sat in 1943, and it recommended that these interim pensions should be stepped up to the full level which it was expected would operate when the contributory pension scheme came into force; that is a constant of 1/600, which means that a person would earn a pension at the rate of 1/600th of his retiring emoluments for each month's service. In other words, he would get about half pay after 25 years. This recommendation of the Surridge Committee, as I say, has been accepted by this Council, and this bill merely dots the i's and crosses the t's and places the whole thing on a proper financial basis.

I should like here to say something to clear up a misapprehension. A great many members of the Kenya European Civil Service appear, for some strange reason, to think that they are only on provident fund terms, and that the only benefit which they will get on retirement is the rather small capital sum standing to their credit, and that when that sum has been exhausted they will be dependent on charity. Why they should think that I do not know. Perhaps it is because they have acquired the habit of not reading Secretariat circulars! But at any rate the fact is that ever since the interim pension scheme came into force each member of the Kenya European Civil Service whose service has been satisfactory and who has retired on reaching the age limit or on the ground of ill health after ten years service, has been eligible for pension.

In so far as the bill is concerned, this merely seeks to give legislative effect to the existing practice of this Council and the existing practice of benefit. Perhaps to provide certain other words about at this stage I should say a word about other races—Arab and African—civil

[Mr. Troughton]

scrivants have already got the equivalent of a contributory pension scheme in the shape of the Government Staff Provident Fund Ordinance, under which the Government contributes equally with the officer to the fund, and the employee with long service is eligible for an annuity from the fund on retirement. That is tantamount to a contributory pension. As regards Asian officers, an interim pension arrangement analogous to the original interim pension arrangement in the case of Europeans is in force and it is the definite intention of Government to introduce contributory pension legislation for Asian officers in due course.

Turning now to the financial implications of the bill in the first place the main financial implication, I suggest, is that we will meet our pension liability to members of this service currently year by year as the pension is earned. We will therefore not be faced with a continuous growth of the pension bill in so far as this particular class of servant is concerned. I may say that the growth of the pension bill at the moment is, to say the least of it, alarming. This year's estimates are put at £50,000 over last year's, and the indications are that there will be a similar increase in the 1947 Estimates.

Secondly, the officer will contribute in the case of a male 5 per cent of his salary and in the case of a woman 7½ per cent. The reason for this distinction is not another injustice to the other sex, but lies in the fact that the normal retiring age for the woman is 50, whereas in the case of the male it is 55. We have been advised by the Government actuary that for that reason a further 2½ per cent should be paid by the woman because she may be expected to draw more in the aggregate by way of pension. That actually dovetails in quite well with the present provident fund, because those are the rates of contribution which apply under the provident fund. It might perhaps be argued that the additional 2½ per cent payable by women, or payable in respect of women, should be borne by the Government rather than by the individual officer. To that there are two points of objection. In the first place, the salaries of women members of the Kenya European Civil Service have been

based on the assumption that they will be subject to a deduction of 7½ per cent in respect of contributions towards superannuation benefits. Any reduction in the amount of contribution would therefore mean a general revision of the salaries of women in a downward direction. In the second place, women do not contribute, as men do, to the widows and orphans pension scheme, and it is therefore reasonable that they should pay a little more towards superannuation benefits.

The total additional recurrent cost, if this bill becomes law, would be something of the order of £11,000 to £12,000 a year, on the basis of the present establishment. If, of course, the establishment increases, the annual cost of pension contributions will go up proportionately. In addition, it will be necessary to start the fund off on a proper basis by appropriating the amount necessary in respect of back contributions of people who have been contributing to the provident fund and of people who were in the Service before even the provident fund became law. This has been tentatively estimated to amount to round about £12,000 capital payment. Provision of a round sum of £100,000 has been made in the current estimates and has been approved by this Council. It is proposed to pay this £100,000 into the fund as soon as this bill becomes law. Then the amount of each individual officer will have to be worked out in order to assess the additional amount, if any, which will have to be paid into the fund. That amount cannot be foreshadowed with any degree of accuracy until the necessary calculations have been made.

There is a further financial point. It is proposed under the bill that the officer will pay 5 per cent or 7½ per cent of his or her salary, as the case may be, and the Government will pay 11 per cent under clause 14 of the bill. That means that there will be a total annual payment to the fund of 16 per cent in the case of a male and 18½ per cent in the case of a woman. The Government actuary has pointed out that these figures are quite all right in the case of people who join the service at an early age, as most people do, but that a small additional amount should be payable in the case of people who join later in life, and that additional amount would depend on the

[Mr. Troughton]

age of the person at the time of joining. It is considered that the best way to deal with the matter is to have the fund valued by an actuary from time to time, and provision for such a valuation has been made in clause 43 of the bill. If that valuation at any time shows a deficit, then that deficit to be made good out of general revenue, in such instalments as you, Sir, may direct. It is clear from advice given by the Government actuary that this type of payment will arise from time to time. On the other hand, actuaries are sometimes wrong (they are conservative gentlemen) and if any valuation shows a surplus, consideration could either be given to leaving it as a reserve or to a reduction of contributions or to a stepping up of benefits. It will be time enough to consider that when we have a report of a substantial surplus.

Turning to the details of the bill, clause 3 provides for a board consisting of the fund by a board consisting of the Accountant General and four European officers to be appointed by yourself, Sir, one of whom at least should be a contributor to the fund, and I hope at least one of whom will be a woman. Clause 5 provides for the setting up of the fund, for the investment of the money in securities approved by yourself, Sir, and for the regular audit of accounts.

Clause 6 gives every contributor to the provident fund the option of becoming a contributor to the contributory pension fund within a period of six months and there is provision for extending this period in the case of people who happen to be on leave or on military service. When this bill becomes law all new entrants must become contributors. Unless in the case of a male, he has reached the age of 45, or in the case of a female if she has reached the age of 40. This is because, as a matter of policy reflected in all our pensions ordinances, no person is eligible to draw pension on the grounds of retirement for ill health or on reaching the age limit unless he has put in ten years service. There is therefore no point in admitting to membership anyone who cannot put in ten years service before the time of retirement.

Clause 7 is of a formal character, and provides for the transfer of money from the provident fund to the contributory pension fund in the case of officers who transfer across. Clause 8 deals with the particular case of officers who were in the Service before the provident fund became law, and implements the recommendation of the Surridge Committee to the effect that the whole of the service of those people should count for a contributory pension, as soon as this bill becomes law. Clause 9.1 have already dealt with. It deals with the rates of contribution. Clause 12 deals with payment from general revenue where there is a retroactive contribution. That refers to the £100,000 that I mentioned earlier.

Clause 13 deals with the case of people who are on leave or under suspension of part of their salary. Clause 15 deals with the age of retirement and merely reflects the existing practice. Clause 16 deals with the calculation of pensions. I have already explained that. I should mention that provision is made for a maximum pension of two-thirds of the highest pensionable emoluments drawn by a person. That is common form in all our pension legislation. Clause 17 provides that an officer, instead of taking the rate of three months' pay, may take a pension at the rate of three months' pay and a cash payment in lieu of the reduction so made in the pension. That again is common form in our pension legislation.

Clause 18 deals with re-employment of pensioners and gives you, Sir, power in individual cases to suspend pensions during re-employment, so that the person can go on earning a higher pension. As an alternative, it will be permissible for the person to retain his pension and be employed on a purely temporary basis, as many people are now. Clause 19 is in common form dealing with the sequestration and attachment of pensions. The next few clauses are again common form and deal with bankruptcy, conviction and mental incapacity.

Clause 23 provides that a contributor, if invalidated from the Service before completing 25 years service, should be entitled to a refund in the case of a male of 2½ times his contributions with accumulated interest and, in the case of a woman, of 1½. (Mr. Watkins: Shame!) On the contrary, it is perfectly logical and not a shame. One third of a

[Mr. Troughen.]
 her husband's contributions is due in respect of her right to retire at the age of 50 years instead of 55. (MRS. WATKINS: She may want to stay on.) If she is permitted to stay on, well and good, but her sisters often want to retire!

Clause 24 deals with retirement for inefficiency, and gives you in Council, Sir, power to grant such pension or other payment as you think proper not exceeding the amount for which the contributor would be eligible if invalidated out of the Service. Clause 25 deals with the case of retrenchment in the case of a person who has not completed ten years service, and clause 26 deals with the case of the retrenchment of a person who has. There is a curious provision here, and it is this: that the man who is retrenched will not draw a pension from the fund but the fund will pay Government such amount as it would have paid the man if he were invalidated out and the Government will pay the pension from general revenue. The reason for this device is that the finance of the fund is based on actuarial considerations, and no actuary in the world can estimate the chances of a man being retrenched from the Service. It is, therefore, considered proper that Government rather than the fund should bear any risk consequent on retrenchment.

Clause 27 deals with dismissal for misconduct and voluntary resignation before reaching the age limit, and simply provides that the contributor shall get his own contributions back, but no payment from the Government share of the fund is thought to be justified in such circumstances. Clause 28 deals with death, and provides that an officer's dependants shall get payment of the same amount as the officer himself would have got if invalidated from the Service. This at first sight may seem a bit inadequate, but it must be remembered that all male officers have got to contribute to the widows and orphans pension scheme, and their dependants receive pensions from that source. Clause 29 provides for the death of a pensioner, and seeks to ensure that if the pensioner has not been paid in the form of a pension, as much as he himself has paid into the fund, the balance is payable to his dependants.

Clause 30 and onwards deal with the precise person to whom payments should

be made on the death of a contributor. Clause 32 is formal. Clause 33 exempts payment from estate duty. That again raises no question of new principle, because gratuity payments under the Pensions Ordinance are exempted. Clauses 34 onwards deal with the question of people transferring to or from other public services, and seek to remedy a difficulty found in the provident fund in its operation. A member of the Kenya European Civil Service who has contributed to the Provident Fund but is not in a pensionable office and is admitted to a pensionable office in another territory outside East Africa, suffers badly in that it is not possible for any of his service here to count for ultimate pension, and we have attempted to get over that difficulty by in effect providing here that such service can count for pension in East Africa, and if such service counts for pension in East Africa the officer, if he is already in the Service, would get his own contributions with interest refunded to him. That is a generous concession, because the salaries are based on the assumption that there is a deduction for superannuation, and we see no reason why that concession should apply to new entrants, although we regard people in the Service as having a fair claim to it.

Clause 38 empowers the board to make reciprocal arrangements in the case of other public services having contributory pensions legislation. The remaining clauses of the bill are all of a formal character, and I do not think I need burden the Council with them now. There are a number of points of detail which should be discussed in connexion with this bill, and it would therefore be convenient if it could be referred to a select committee once it has passed its second reading.

MR. FOSTER SUTTON seconded.

MR. PATEL: Your Excellency, under Standing Rule and Order No. 29 (B) I beg to move: That the debate on the bill be adjourned until similar bills for the Asian and African Civil Services are published for introduction in this Council.

I am not doing this to withhold the progress of the bill, but to express my annoyance and resentment, and also to draw forcibly the attention of all con-

[Mr. Patel.]
 crned to the usual procedure of preparing such bills for one section of the population only and leaving bills for other people sometimes in abeyance for years. I sat on three committees regarding Asians during the last three years, and I know that similar assurances were given in this Council when any bill was moved for the European Civil Service that there would be one later for the Asians, but it has taken months, sometimes years, before there was a completion of the work. Moreover, I feel it is the duty of Government to as far as possible publish one bill embracing all races and, where that is found impracticable to do so, bills for all the communities should be published for introduction in this Council at the same time. In fact, I would say that official members in charge of the various bills dealing with the European race have it as their duty to express and show breadth of vision and mind in seeing that bills for other races are published along with the bills pertaining to their own race, and that is the reason why I am moving this motion.

I hope that in this case the Hon. Financial Secretary will not have to say, as he did in the case of the European hospital scheme, that the Asian Civil Service has not approached him so far. In fact, they have been clamouring for such things, and I hope he will not have an excuse on this occasion. With these words I beg to move this motion, to draw forcibly to the attention of Government that it will be helpful to maintain the good relations and confidence of other races to see that in matters like this all people are treated alike.

MR. AMIN (Central Area): Your Excellency, I beg to second.

The question was put and negatived.

The debate on the second reading was resumed.

MR. VASEY: Your Excellency, I rise in principle to support this bill, with one reservation. I am at present serving on a committee inquiring into the terms of service of the Police Force. It is not my duty to try and anticipate their report in any degree, but to say that, with regard to the police and police pensions, I should like to reserve my opinion.

On the second point I trust that Your Excellency will rule that what I am about to say does come within the scope of this bill. It deals with the position of local government bodies and the pensions of their staffs. The growth of local government bodies, their responsibilities and the part they are playing in the administration of the country, has, I think, been recognized by Government for some considerable time. Many local government authorities find themselves in a very difficult position in the recruitment of the best quality staff, and not only in the recruitment but in the holding of staff of quality. If it recruits people from Britain with first class experience a local government body has nearly always to offer them terms to compensate them for the sacrifice of the superannuation benefits which they enjoyed in local government service at home. That means that unwittingly the amount of salary offered is forced up. When they arrive out here there is nothing but a provident fund to offer them, and after a time they realize the disadvantages of that position and inevitably move away to some service which offers them a pension and reasonable security.

A number of local government authorities had hoped that provision would therefore be made for us to enter, obviously on terms laid down by Government, our servants into the scope of this bill. A suggestion has been made that the local government authorities of this country should get together and try to form a pension scheme, but many of the local district councils are only just entering the province of rating themselves and of accepting anything in the nature of full responsibility. It will be some time, I imagine, before they are capable of formulating and joining together in such a scheme. In the meantime, the townships and municipalities that are developed are suffering under this handicap of not being able to offer their servants a pension. Municipalities like Nairobi and Mombasa obviously have not large enough staff to run at the present moment an actuarially sound scheme purely on their own. I therefore would suggest that when the Select Committee, which the Hon. Financial Secretary has said will consider this bill, meets they should consider whether it is not possible to lay down terms and conditions upon

[Mr. Vasey] which local government bodies could enter their servants in this scheme if they so desire. I beg to support the motion.

MR. ODEDE: Your Excellency, I congratulate the hon. member Mr. Patel on his action in opposing this bill. The reason for my doing so is because when I studied the bill we passed yesterday for the European hospital service and looked at this bill in front of us now, I found that what came out of their pockets is compensated for by what is drawn from the general public funds. I therefore agree with the hon. member that this bill should not be passed until such a time as the same scheme of pensions has been thought of for all three races. As far as I know, the Africans on the old terms of service are not allowed to enter any provident fund scheme; only the Africans who enter on the new terms of service are allowed to do so. I think that at least the Makerere trained Africans should be allowed to enter this scheme, because they do exactly the same work that most Europeans do, and I am not wrong in saying that, because I have seen in the Veterinary Department stock inspectors doing exactly the same work as assistant veterinary officers. We have Africans doing quite good work and actually doing what Europeans are doing, and they do pass the primary school certificate very well. In the Medical Department we have got assistant medical officers who are doing exactly the same work as members of other communities. In the Police Force we have African inspectors who actually pass the same examinations as Europeans, and yet their terms of service are different. I think, as I said yesterday, the Government should bring co-operation between all the communities of this country, otherwise we shall never be happy, and I think it is good that we should always work together. Such a policy of having one scheme for one community and leaving the others behind and I trust the hon. mover, in revising I think is not good, and that is what contributes to the Africans' suspicions, in not having things which are common to all, and I believe in the Indian community too.

I never thought that I would ever side with the Indian community as I now do, but I am forced by circumstances and cannot help it. I must therefore say that

in this Council the Indian members are more helpful to the African community than the Europeans, because they think of what the African community desire. This forces me again to quote one of the most important things on which Government took action last year, the dismissal of an African who was qualified and was doing as good work as Europeans do, Mr. Jeroge, the biochemist, who was forced to leave the Civil Service because he was dissatisfied with the Government terms of service. I think if this is going to continue most of the good Africans will leave their Government jobs, and I think that is not right. When I think of what the Africans do and what they can do for Government and for the development of this country in the future, it is very important to consider their case equally with that of others and to give them the lowest part I think is very wrong. I did not intend to speak about it, but I must add again that the African Makerere trained staff should be allowed to enter such a scheme like this, while the African members on the old terms of service are fixed in the usual sort or provident fund, and I think that will be quite good. There are some Africans on the old terms of service because they felt the new terms were not good for them and they remained on the old terms. If they are forced to enter the new terms by refusing them the possibility of getting a provident fund I think it is not good. I quite side with the hon. member Mr. Patel in his opposition.

ARCHDEACON BEECHER: Your Excellency, I rise to call attention to one remark in the hon. mover's speech. He said that the African community has the equivalent of a contributory pension scheme in the provision of the Arab and African provident fund. I feel that this remark may, in like manner with that of the hon. mover on the Hospital bill, be liable to misinterpretation. That scheme is unwieldy; indeed, it is unworkable. The situation is crying out for drastic revision and I trust the hon. mover, in revising up the debate, will give us assurance that a measure similar to this we have before us will be provided for the African community which, as my colleague has been saying, is wholly deserving of consideration.

MRS. WATKINS (Klambu): Your Excellency, there is one point I should like

[Mrs. Watkins] to make, and that is that when a man voluntarily retires it seems that he is just going to get his payments back. I think he should get the interest on those payments. If he has done say 15 or 20 years, or something like that, it seems rather bad luck if he gets no interest at all.

The real point I wanted to reply to was the hon. member Mr. Odede's remark that nothing had been done for the African. I seem to remember the hon. Archdeacon Beecher and myself being on a committee which was trying to consider the African standpoint long before this came up. (ARCHDEACON BEECHER: Government steam-rollered us out of that.) I know, but we tried to do our best on that committee and if Archdeacon Beecher was not very successful then I wish him better success next time. After all, we were on that committee and we did try to do something. I am distressed that Mr. Odede should consider that the African is being left behind. I believe that the African is being given almost more responsibility than he can take, and I do not believe he realizes the exact meaning of the responsibilities that some Europeans have taken.

When he says the Indians have helped the African more than the Europeans, I am sure they think this, but I would ask him to look around and count the schools, count the hospitals, count the things which technical schools and other things which the Indians have done for the African, all nil, and then to look at that body of men opposite who are working flat out for the African and for whom he has no "thank you", because they do not support the African's premature demands in this Council.

MR. TROUGHTON: Your Excellency, dealing first with the points of detail raised by the hon. member for Klambu, I am afraid that the hon. lady could not have read clause 27 of the bill which does provide that when a contributor resigns voluntarily he will get his contributions back, plus—the exact words are—"contributions to the fund accumulated at the rate of 3 per cent per annum compounded annually," so that in fact a person on voluntary resignation gets compound interest.

I feel I must make the position about

the Government African Staff Provident Fund Ordinance quite clear. The position there is that members of the fund do contribute 7½ per cent of their salaries. The Government caps that contribution by another 7½ per cent and, if the person has long service at the time of retirement and more than a certain amount to his credit, he is eligible to an annuity based on the total amount standing to his credit. If that is not a contributory pension scheme I do not know what is. If the provisions of that Ordinance are in the hon. member Archdeacon Beecher's and the hon. member Mr. Odede's opinion unworkable, it has not come to my personal notice, but if an indication can be given to me showing exactly how this ordinance is not working I should be very glad to have the matter reviewed and, if necessary, appoint a small committee to go into it. But I am not personally satisfied that it is not working; there is no real reason why it should not work.

The point has been made both by the hon. member Mr. Patel and by the hon. member Mr. Odede that we really should have one scheme for all three races. It is not, in fact, possible to have one scheme for all three races, because the expectation of life varies as between the three races, and therefore the contribution which will earn such and such a pension in the case of a European will not necessarily earn the same pension in fact it will earn a different pension in the case of an Asian and a different pension still in the case of an African. So that it is not in fact . . .

DR. RAHA: On a point of explanation . . .

CHIEF SECRETARY (Sir Gilbert Remble): On a point or order, is the hon. member Dr. Raha in order in rising now?

DR. RAHA: Yesterday I saw one member rising on a point of explanation.

HIS EXCELLENCY: If the hon. member is rising on a point of order he is in order; but otherwise he is not in order and must not interrupt.

MR. TROUGHTON: I was pointing out that it was not in fact possible to have an identical scheme for all three races. I have given an assurance that it is the intention of Government to introduce a contributory pension scheme for Asian.

[Mr. Troughton] That scheme will differ from the European scheme in certain respects. There is a very good reason why that scheme cannot be introduced simultaneously with this. In the first place, the actuarial considerations regarding Asians have got to be examined. In the second place, one of the main features of this particular bill was to deal with the Europeans who were appointed to the service before the Provident Fund bill became law. There were a number of Asians who were appointed to the service before the Asian Provident Fund bill became law, and the case of those Asians and how best to bring them into a scheme of this sort has got to be examined. An Asian Civil Service Board has been appointed recently with the object of examining just this type of problem. The hon. member Mr. Patel quite properly took me and my predecessors to task that this particular question should have been examined before. Certainly, but the short answer to that is that what we really need in East Africa is the 36-hour day. As it is, we have only got 24, and there is a limit to the amount of work that the particular people concerned with terms of service can do.

A committee was appointed to go into the question of European terms of service and it made certain recommendations, and those recommendations have been dealt with. We have given an undertaking to investigate the Asian case, which is difficult and complex, and the people concerned have not had up to now the time to do it. But I can give this assurance. We are awarding interim pensions now to members of the Asian Local Civil Service who retro— I moved one yesterday myself—and if and when an Asian Contributory Pensions Ordinance comes into operation all those awards will be adjusted, with retrospective effect, so that no injustice will be done, and I sincerely hope that it will not be very long before I can get up in this Council and move an Asian Contributory Pension Bill.

Finally, the point raised by the hon. member for Nairobi North. Personally, I think there are difficulties, financial difficulties, about employees of local authorities coming under this bill, but the matter is one which could better be discussed, as the hon. member himself

suggested, in select committee and I hope it will be fully ventilated there. That, I think, is all I have to say.

The question was put and carried.

Mr. THOUGHTON moved: That the bill be referred to a select committee consisting of: Mr. Foster Sutton, chairman; Mr. Troughton, Mr. Mortimer, Mr. Cooke and Mr. Vasey.

Mr. BROWN seconded.

The question was put and carried.

NATIVE FOODSTUFFS (AMENDMENT) BILL

SECOND READING

Mr. ARMITAGE (Secretary to Member for Agriculture): Your Excellency, I beg to move: That the Native Foodstuffs (Amendment) Bill be read a second time.

The purpose of this bill is to transfer to the Member for Agriculture, Animal Husbandry and Natural Resources the powers conferred by the Native Foodstuffs Ordinance on the Governor in Council. These powers vary. One of them is to declare what articles of food and drink used by the natives are to be classed as native foodstuffs as being necessary for the support of life. Under section 3 of the Ordinance the Governor in Council is empowered to prohibit the purchase for re-sale of native foodstuffs and the export from a district or province, as the case may be, of native foodstuffs without the permission of the provincial commissioner or the district commissioner. The Governor in Council is also authorized to prohibit the use of native foodstuffs for the manufacture of liquor, or the concealment or destruction of native foodstuffs.

There is one case in which the authority is not exercised by the Governor in Council, and that is in the Coast Province where the powers are exercised by the provincial commissioner. This procedure was introduced as a result of a recommendation by the Food Shortage Commission of Inquiry, as the Coast Province is not a large producing area and is liable to sudden famine. The normal procedure under the Ordinance as it stands at present is for a provincial commissioner to write in asking that, in order to conserve native foodstuffs, the export of certain foodstuffs may be pro-

[Mr. Armitage] prohibited from certain districts. This request is considered in conjunction with the supply authorities and it is then referred to the Governor in Council for decision. Alternatively, the supply authorities may bring to our notice the fact that certain foodstuffs are becoming short in certain areas, and in that case the consultation is with the provincial administration. When the matter has been considered by the Governor in Council, a proclamation is issued and published in the Official Gazette.

It is evident that this procedure is somewhat cumbersome, and even if it is operated with the best will in the world at times delays will occur, and these delays may be serious. It is therefore proposed that the powers now conferred by the Governor in Council should be exercised by the Member for Agriculture, Animal Husbandry and Natural Resources, who, in consultation with the provincial administration, the supply authorities and the Director of Agriculture, will minimize any delay which may take place and thus jeopardize the supply of native foodstuffs in any area. (Applause)

Mr. FOSTER SUTTON seconded.

The question was put and carried.

SISAL INDUSTRY (AMENDMENT) BILL

SECOND READING

ACTING DIRECTOR OF AGRICULTURE (Mr. Fillick): Your Excellency, I beg to move: That the Sisal Industry (Amendment) Bill be read a second time.

This bill seeks to make two amendments to the principal Ordinance. In clause 2 it is proposed that provision should be made for members of the Board, in addition to receiving travelling and out-of-pocket expenses, to receive also, with the approval of the Governor and on the recommendation of the Board, such fees as may be fixed. This proposal follows similar arrangements in force in the case, for instance, of the Pyrethrum Board, an amendment to that Ordinance on similar lines was passed by this Council in 1943.

The second proposed amendment is contained in clause 3 of the bill, which proposes that provision should be made

for the Board to appoint such committees as it may consider desirable to further the work of the Board, and it is provided that such committees, if appointed, may receive from the Board powers to act in accordance with the provisions of the Ordinance. Again this provision follows existing practice as in the case of other crop boards, such as the Pyrethrum Board, with its general purposes committee, the Coffee Board, with its executive committee, and the Production Board, with its executive committee.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

HIS MAJESTY'S FORCES PENSIONS (AMENDMENT) BILL

SECOND READING

Mr. BROWN (Solicitor General): Your Excellency, I beg to move that His Majesty's Forces Pensions (Amendment) Bill be read a second time.

As hon. members are aware, three select committees of this Council were appointed to consider the regulations dealing with war pensions to members of the armed forces—European, Asian and African. Each of these committees made the same recommendations in regard to the matter of appeals, namely, that appeals from the Pensions Assessment Boards should be to a Pensions Appeal Tribunal. Pensions Appeal Tribunal Regulations will therefore have to be made establishing these tribunals and regulating their procedure, but under the principal ordinance as it now exists there is no power to make those regulations. The object of this bill, therefore, is to amend the principal ordinance to give the necessary powers to make those regulations, and hon. members will see that under clause 2 (4) those regulations must be laid before this Council.

Mr. FOSTER SUTTON seconded.

COLONEL MONDRA: Your Excellency, I welcome this bill, which I may term long overdue. I have little doubt that the answer will be similar to that which was given by the hon. Financial Secretary just now—that Kenya requires a 36-hour day. I hope he did not envisage an Ordinance to that effect in this Council. At the committee stage of this bill I shall consider asking for a small amendment to enable an applicant or

[Col. Modera] as the case may be, to be represented in putting forward his case.

I would only add this: I hope that when this bill becomes law that the provisions will be implemented as soon as possible so that the tribunals can be appointed and we can get to grips at once.

Mr. BROWN: Your Excellency, with regard to the point made by the hon. member, I can give the undertaking that provision will exist for an appellant to be represented. That provision actually already exists in the regulations which are now in draft. It may be necessary to amend this bill as he suggests, or it may be that it is sufficient to have them in the draft regulations. That point will be considered and, if necessary, an amendment to the bill will be moved in the committee stage, but I can undertake that this will be dealt with.

The question was put and carried.

PASSION FRUIT (AMENDMENT) BILL

SECOND READING

Mr. KILLICK: Your Excellency, I beg to move: That the Passion Fruit (Amendment) Bill be read a second time.

For some time past the passion fruit industry, through the medium of the Passion Fruit Board, have been pressing for certain amendments to be made to the principal ordinance to enable the industry to exercise a closer measure of control over production and over the disposal of the products of the industry. It is felt that if the industry is to plan ahead it must be in a position to make forward contracts for the disposal of its products. For instance, at the present time there is a large demand for passion fruit juice from overseas, a demand which cannot be met to the full and, indeed, contracts cannot be met unless the industry is in a position to control the disposal of all products of the industry.

The main provisions of the bill are, therefore, twofold: firstly, to introduce a system of annual licences for growers in place of the existing system of permanent registration, and secondly to provide not only for the control of export sales, provision for which exists in the principal ordinance, but also to provide for sales of passion fruit juice on the local market. The first provision is desired by

the industry for the reason that I have indicated, namely, to enable the industry to exercise closer control over production. It will be noted from the bill that a measure of regulation of production is visualized under the terms of the annual licences, if such regulation of production is considered warranted in any set of circumstances. In regard to the second main provision of the bill, namely, control of local sales as well as export sales, this is considered desirable in order that the industry may make those forward contracts which will enable it to maintain production at a maximum level.

I do not think I need go through clause by clause the various clauses of the bill, because they are designed to give effect to the two main amendments I have described. There is just one clause in which I would draw attention, and that is clause 9, to which I have not referred. That provides for an annual statement of accounts, audited in the proper manner, to be produced annually and to be circulated to each licensed grower.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

COFFEE INDUSTRY (AMENDMENT) BILL

SECOND READING

Mr. KILLICK: Your Excellency, I beg to move: That the Coffee Industry (Amendment) Bill be read a second time.

As in the case of the last bill, this has been introduced at the request of the industry concerned. The principal ordinance has been amended from time to time to bring it into line with developments that have taken place in the industry, and the present bill is designed for the same purpose. In regard to clause 2, the present membership of the Coffee Board consists of four members from the areas west of the Rift Valley and four members from the areas east of the Rift Valley. Since that membership was drawn up the extent of coffee cultivation in the two areas has changed considerably. For instance, during the three-year production period 1942-1945 the percentage of production east of the Rift was 80 per cent and west of the Rift 19 per cent. Similarly, the number of producers east of the Rift during the year 1944-45 was 325 and west of the

[Mr. Killick]

Rift 210. It is considered, therefore, that a more equitable representation on the board would be given if the present membership of four and four was changed to five from the east of the Rift and three from west of the Rift. This is the proposal in clause 2 of the bill.

Clause 3: Since the Coffee Licensing Advisory Committee was formed the coffee trade has undergone a reorganization. The Coffee Trade Association as such has been dissolved and has been replaced by two bodies, the Mild Coffee Trade Association and the Hard Coffee Trade Association. Clause 3 is intended to permit of representation on the Coffee Licensing Advisory Committee in accordance with the new organization of the trade. Clause 4: Under the existing arrangement for the collection of coffee licensing fees these are collected annually by district commissioners. I refer to the annual plantation licence which has to be taken out by a coffee planter annually. The proposal is that the collection of these licences should now be vested in the board and not in the local district commissioners, to enable the board to maintain up-to-date statistical records of the industry. Similarly, regarding clause 5, it is proposed that the coffee levy fund shall now be the responsibility of the Coffee Board and not of the Accountant General.

Mr. FOSTER SUTTON seconded.

Mrs. WATKINS: Your Excellency, I rise to support this bill, which, as the hon. mover has said, is at the request of the planters generally. There is one point which I think needs a little extra stressing (all the other points have been very well covered), and that is we are trying now to do away with some of our marginal areas and we cannot get our statistics under the present system. The hon. mover referred to some figures of 20 per cent coffee being produced by only one third of the owners, which shows that there are a number of marginal areas which, with very little labour situation, could very well be cut out. Also we have no real indication of exactly how many coffee estates there are. I had that experience myself when I was trying to get out a referendum some years ago, and there were nearly

110 farms which, though they were still registered as coffee farms were not really producing coffee. It is extraordinarily difficult to get out statistics or to know anything about it; and also we do not know whether everybody has paid their levy or not (which reminds me I have not paid mine this year!). No other body can do the job as well as our own Coffee Board. They should know exactly who has paid and who has not—and if not why not—whether they have gone out of coffee, and so on and so forth. We very much want that part left to our Coffee Board, and we want more responsibility for our own industry, now that we no longer have any fear of over-hanging us of multiple voting, which was put a stop to when Mr. Harragin was chairman of the committee of inquiry; now that has been stopped, we feel we should have control over our own responsibility for our own funds, and our own levies and our own statistics. I support the bill.

The question was put and carried.

MEDICAL PRACTITIONERS AND DENTISTS (AMENDMENT) BILL

SECOND READING

DIRECTOR OF MEDICAL SERVICES (Dr. MacLennan): Your Excellency, I beg to move: That the Medical Practitioners and Dentists (Amendment) Bill be read a second time.

There are two principal features in this bill. One is to reconstitute the board on more modern and democratic lines. This ordinance dates back to 1910, and the section dealing with the constitution of the board has not been amended since that date. The second feature is that it seeks to make provision to allow certain doctors who are not entitled to registration in the Colony to be licensed in times of emergency or stress, or where there is a definite shortage of doctors in the Colony. Furthermore it seeks to legalize the position of certain doctors in the Colony who were licensed under Defence Regulations and are now illegally practising since the regulations have lapsed.

The first reconstitution of the board, has been considered for some time by the board itself and also by the medical profession generally in the Colony. I think the original draft legislation was considered as far back as

[Dr. MacLennan.] 1944. However, due to the fact that there has been legislation of a greater priority it has not come before this Council before. The whole of this proposal is contained in clause 2 of the bill. The existing board was appointed by Your Excellency and consisted of about six doctors. It is now proposed that the board shall consist of two nominated doctors, three medical practitioners to be elected and one dentist. I may say that the Dentists' Association has made representations for some time to have a member on the board, which only seems reasonable. It is now suggested that the Member for Health and Local Government should appoint the two medical practitioners and also the one dentist, whom I presume would be nominated by the Dentists' Association of Kenya. In the original draft legislation the method of election had been incorporated, but since it seems rather cumbersome it was felt better to make rules regarding the procedure for election. These rules are now to be made by the Member for Health and Local Government and I have no doubt in my mind that he will do that to the satisfaction of all concerned. The remaining sub-clauses of the proposed new section relate to procedure, the question of members being absent through illness, and so on, and I do not think these require any special explanation.

I now come to clause 3, and I should say here that there is still a considerable shortage of registered medical practitioners in the Colony. The position is improving, but we are still dependent on a number of non-registrable medical men who have given us good service during the emergency and whom we cannot do without. Actually at the moment there are about twelve involved, six of whom are employed by Government and the remainder by outside bodies such as the Highlands Co. at Kericho, a gold mining company, missions, and so on. As they were licensed under the Defence Regulations and those regulations are now no longer available, their position must be legalized.

I should like to draw attention in this clause to the fact that there are quite a number of safeguards. The Director of Medical Services is no longer able himself to license; he can only do so with

the consent of the board. Furthermore, the licence, which is granted under the provisions of this section can be terminated at any time, but only with the consent of the board. Personally, I feel that under the new section there are sufficient safeguards and that there need be no apprehension as to any discrimination against registered practitioners. During the committee stage the hon. Attorney General will ask leave to move an amendment to the proviso attached to 10 (1); it is short and it clarifies the wording, and I do not need to explain it further at this stage.

Clause 4 seeks to extend the privileges of free registration which were given to officers in the service of Uganda, the Army and Navy to Tanganyika, and the Royal Air Force. When this ordinance was enacted Tanganyika was a German colony and the Royal Air Force did not exist, and it seems now that we should extend the same privilege to our sister colony and the Air Force. There is just one point about this, and during the committee stage the hon. Attorney General will move a short amendment. I propose to state here why we consider this amendment necessary. Unfortunately Tanganyika is not a colony in the true sense of the term, it is a mandate, and what it is going to be in the future I do not know. I have myself worked in a mandated territory, not Tanganyika, and I know legislation there is apt to be complicated and that pressure may be brought on the territory concerned to introduce legislation which might allow people who are licensed to become registrable. It is therefore proposed after the word "such" in the fifth line of the proposed new section 15 to add the following words: "who would be entitled to registration under the provisions of section 6 of this ordinance". That will give a complete safeguard to any possibility such as I have envisaged.

I think those are the only main points to which I wish to refer. I sincerely hope this bill, which I consider helpful and useful legislation, will have the support of hon. members.

MR. FOSTER-SUTTON seconded.

DR. RANA: Your Excellency, I rise to give my wholehearted support to the second reading of this bill moved by the hon. Director of Medical Services.

[Dr. Rana.] (Members: Hooray! and laughter.) At the same time I congratulate Your Excellency's Government on bringing in a bill of this progressive nature. I do not want to waste the time of the Council and Your Excellency, but I do want to make one or two suggestions under sub-clause (2) of the proposed new clause 9. The hon. Member for Health and Local Government is going to make rules as to the procedure for the appointment of three medical practitioners to the board under paragraph (d). I am sorry to state that it is unfortunately the case that the racialism which has permeated this colony for years has infected the medical profession as well, which, to us, should have no distinction of race, colour or creed, as we have got two organized societies—one the British Medical Association, of which we have local branches here, and the other is the Indian Medical Union. I would say that, thank goodness, I do not know whether it is a case of sanity at sea level or insanity, but at Mombasa all doctors, both European and Indian, are members of the British Medical Association, but unfortunately in Nairobi there are two associations. I suggest to the hon. member that when he is making the rules he will take into consideration the numbers of the Indian as well as European doctors. So far, we unfortunately have no African doctor with qualifications, but I suppose the time will come when we have. He should also take into consideration all these various bodies so that there shall be no heartburning among the practitioners.

MR. PATEL: Your Excellency, I rise to support this bill. At the same time I should like to ask one question of the hon. mover and that is this. That one reason why a later portion of this bill was drafted was in order to meet the shortage of medical practitioners in this country. At the same time, when medical practitioners who are entitled to be registered under the law of this country seek permission to enter this Colony it has been very difficult to obtain such permission. I know of a case at the beginning of last year when an Indian medical practitioner applied for a permit and it was twice turned down. Then I went personally as a member of this Council, to see the Director of Medical Services and told him that there was a shortage

of medical practitioners in a particular place, that it was necessary that this man should be allowed to come in and practice, and then, with great difficulty, he obliged the Indian community by recommending that permit. So I hope the Director of Medical Services will advise the Government to be more liberal in granting permits to medical practitioners to enter this Colony.

MR. FOSTER-SUTTON: Your Excellency, if the last speaker (Mr. Patel) is referring to a case which concerned Mombasa I am in a position to state exactly what happened. The representations that were made to the Government officer responsible for those regulations were to the effect that there was simple medical advice available in Mombasa. It was only after further representations had been received and the matter was again reviewed, as he said, that the individual concerned was allowed entry, but we understood that the whole of the medical profession in Mombasa were against allowing any new entrants.

DR. MACLENNAN: Your Excellency, I must thank the two hon. members, Dr. Rana and Mr. Patel, for their support of the bill. With regard to the remarks of Dr. Rana regarding elections, I am perfectly sure we can leave it to the impartiality of my hon. friend on my right (Mr. Mortimer) in his capacity of Member for Health and Local Government. The other remarks will be borne in mind as time goes on.

The question was put and carried.

KING'S AFRICAN RIFLES (AMENDMENT) BILL

SECOND READING

MR. LINDSAY: (Deputy Chief Secretary.) Your Excellency, I beg to move that the King's African Rifles (Amendment) Bill be read a second time.

The object of this bill is to ensure that locally enlisted warrant officers, non-commissioned officers and soldiers should remain under military discipline until the date of their release, as indicated in their release documents or discharge certificates. Certificates of discharge are handed to the soldier at the dispersal centre, and the practice is that these certificates are post-dated to a date on which it is estimated that the soldier will arrive at his

[Mr. Lindsay] district commissioner's office. The effect of this amendment to the ordinance will be that such soldiers will remain under military discipline during the period of the journey from the dispersal centre to the district commissioner's office, whereas under the law as it stands at present, they are not subject to military discipline during that period.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

PYRETHRUM (AMENDMENT) BILL

SECOND READING

Mr. KILLICK: Your Excellency, I beg to move: That the Pyrethrum (Amendment) Bill be read a second time.

This short bill has been introduced at the wish of the pyrethrum industry as expressed at the recently held annual delegates' conference, and I feel sure it is one that will receive the support of all interested in the land of this country. As stated in the objects and reasons, there are cases of pyrethrum growers who neglect to grow adequate supplies of fuel on their farms—fuel required for use in connexion with their pyrethrum activities, in the matter of drying pyrethrum in consequence the timber assets of the country are being denuded by one section of the industry, the section which, it is considered, should aim at being self-supporting in the matter of fuel supplies.

Section 20 of the principal ordinance which it is proposed to amend is the rule-making power of the ordinance, and if this bill is passed it will, of course, be necessary for the Pyrethrum Board, on behalf of the pyrethrum industry, to draw up a scheme and to draft rules to give effect to the objects underlying this bill.

Mr. FOSTER SUTTON seconded.

Mr. COOKE: Your Excellency, I should like an assurance from the hon. mover that it is the intention, and indeed it is in the power of Government, to implement this amendment. From time to time we have in this Council bills which purport to restore our soil and to rehabilitate our country, but it is my experience, and it must be the experience of most hon. members of this Council, that nothing whatsoever is done. We had

the Land and Water Preservation Ordinance some years ago, and I do not believe that one can truthfully say that, taking everything into consideration, it has had any material effect in the restoration of the soil of this country.

It was my intention to introduce a motion in this Council urging Government to take action, but in the absence of the hon. Member for Agriculture I refrained from doing so, but it is my intention to do so when he returns. It is deceptive and misleading to bring in an amendment such as this if the Government has no real intention of implementing it. You, Sir, if I may say so, very rightly went throughout the native areas and severely reprimanded the Africans for not taking measures to protect their soil, but there was no follow-up whatsoever, and things are infinitely worse now than they were when Your Excellency went round twelve months ago. I hope I am not being entirely irrelevant, but I would say just this, that on the African Land Settlement Board, of which I am a member, we have now been sitting for nearly a year, and I think it is perfectly true to say that we have not established one native on one acre of land.

As I repeat, my reason for rising to-day is to get an assurance from the hon. member that this is not merely a phoney war he is waging; but that he is determined to wage a real total war against the destroyers of the only real asset Kenya has, and that is its land and water supply. I know my hon. friend the Director of Agriculture is almost as keen as I am to restore and rehabilitate the land, but he does not get the opportunity of putting his ideas into force. I hope he will be able to give me the assurance that some real effort will be made in this matter.

Mr. TRENCHE: Your Excellency, I rise to support this bill. As a member of the Pyrethrum Board I should like to say that we have been pressing for some years for such an amendment to the ordinance, and I can assure the hon. member for the Coast that there is no question of this being a phoney business. If we can get legislation to back up the Pyrethrum Board we are determined that this question of tree planting shall be really carried out, and therefore I do hope this Council will support the bill.

Mr. KILLICK: Your Excellency, dealing with the remarks by the hon. member for the Coast, he indicated that at a later stage he proposed to raise the whole question of land and water conservation, so I will not deal this morning in general terms with that subject, but I should like to emphasize that, as the hon. member for Rift Valley has indicated, it is the very sincere intention of the Pyrethrum Board, as representing the pyrethrum industry, to make this measure effective. It is really more a matter for the industry, which is highly organized, perhaps, than for direct Government action. (Mr. COOKE: Nothing will be done.) The Government can and will assist in this matter. For instance, there is a system of annual licences for pyrethrum growers, and it is not too much to suppose that it would not be possible to make it a condition of the annual licence that a certain area should be planted annually with trees.

The hon. member also referred to other legislation, and he quoted the Land and Water Preservation Ordinance and said, if I heard him aright, that nothing had been done under that ordinance. I cannot agree entirely with him in that matter. I know myself that during the last eight months we have served on farms somewhere, speaking offhand, between 50 and 70 orders prohibiting cultivation of certain areas; ensuring protection of river banks and so on. (His Excellency: One of them "on my self") (laughter). In that respect, though perhaps not to the extent we should like, progress is being made.

In conclusion, I should again like to give the undertaking that the hon. member asked for that both Government and the industry itself, through the Board, has the intention of making this measure a real measure (applause).

The question was put and carried.

SUGAR (AMENDMENT) BILL

SECOND READING

Mr. FOSTER SUTTON: Your Excellency, I beg to move that the Sugar (Amendment) Bill be read a second time.

For a long time past we have known that there has been a considerable amount of illicit movement of sugar, and the Government has been from time to time pressed to take whatever powers that at present exist under the Sugar Ordinance,

Chapter 34, in order to enable us to control, or better control, the position. The bill now before Council seeks to introduce a wider measure of control. Under the principal ordinance, which this bill seeks to amend, no one is permitted to supply any native in any area in the colony with sugar juice. We all know the reasons for that prohibition. The section has in fact been applied to the whole colony. There are further provisions which prohibit the importation of sugar or sugar juice into any prohibited area—that is an area which has been declared a prohibited area under section 10 of the ordinance—without a written licence from the district commissioner of the area.

Those provisions are all very well in their way, but most of the sugar is carried into prohibited areas by means of lorries, and unless this measure is enacted into law the position will continue to prevail that the police are unable legally to stop any conveyance on this road. They just have to take the chance of stopping it, and if they find absolutely nothing in it and that the law has not been contravened they lay themselves open to an action for damages. This bill seeks to enable any police officer and any tribal police officer (tribal police officers have been included because in the main in the reserves the regular police force does not operate) to stop any vehicle and search it. If any sugar is found on the vehicle and the police officer or the tribal police officer is not satisfied with the explanation, as to why the sugar is there, he will be able under this measure to take the lorry and its contents to the nearest police station and to have the sugar detained there until proper investigations as to the truth of its presence in the vehicle has been ascertained.

The bill also seeks to amend the principal ordinance by making certain minor verbal amendments, which I do not think it necessary for me to go into here.

This is only one step in what I feel hon. members may agree is the right direction. It will also be necessary and Government has already approved of such an amendment being introduced, to amend our Criminal Procedure Code to give wider powers to the police for stopping vehicles. The new measure will not apply to the whole of the Colony. They will apply to any area of the colony to which the Governor, under sub-section

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(4) of the new clause 8, applies them by notice in the Gazette. It was considered that to make them applicable to the whole colony might cause considerable inconvenience to people. After all, a lot of the people who will be administering the new provisions are not extremely intelligent and it was felt that they should only be applied if and when conditions made it reasonable to apply them.

MR. BROWN seconded.

ARCHDEACON BECHER: Your Excellency, I should be grateful if the hon. Attorney General would give an assurance that there are adequate safeguards against vexatious inconvenience to normal trade, because, as he has already indicated, some of the persons operating the provisions which are now proposed are by way of being ignorant and unlearned men, and it is quite easily conceivable that the seizing of sugar from a particular vehicle might be operated in a vexatious manner against a person wholly innocent. If that is the case there should be some safeguards for that innocent party, both at the time and subsequently, to obtain redress.

MRS. WATKINS: Your Excellency, there is just one point which I raised the other day and which I should like to raise again, and that is I should like to see a little bit more buttressed up in this way: that if you have found sugar on a lorry and have stopped the lorry and there is no visible source from which the sugar could have come (it may not be grown in the reserve) I think it should be presumed that it has been stolen. The mere fact that you have got 14 or 15 bags of sugar and cannot say where you have got it from, I think that in itself should be proof of stealing. After all, if it is controlled, you cannot get sugar now, and if you have got it and cannot say where you got it from, it seems to me that confiscation of the sugar is not enough. I am rather distressed to hear that after sugar has been confiscated the man concerned is allowed to go if it cannot be proved that he has stolen it. But if anyone in possession of 14 bags or so of sugar cannot say where they came from, it seems obvious to the ordinary commonsense citizen that they have been stolen, and more particularly to the African, who has no sense of justice and no sense of the technicalities

of the law. It should be easy in respect of controlled goods for the owner of a lorry which has been stopped to say where he got them from. Otherwise it is obvious that the source is not a legitimate one. It seems to me it is no good confiscating the sugar and allowing the man to get off.

MAJOR KEYSER: Your Excellency, I have not referred to the principal ordinance and so I do not know what the definition of the word "vehicle" is, but could the hon. Attorney General tell us whether a donkey is a vehicle? (laughter.)

MR. VASEY: Your Excellency, I rise to support the bill. I feel that, with all due respect to my hon. friend the member for Kiambu, I must dissociate myself from the suggestion she has made. I think it would be very wrong in principle—and I am sure my hon. friend the Attorney General will agree with me—if, because of a temporary increase in crime of any kind we should deviate from the principle that the onus of proof of guilt must always rest with the Crown. The deviation from that principle has been recognized from time to time during such emergencies as war, but that we should endeavour to carry that principle into peace would, I think, be regrettable, and to assume because there is no visible source of supply of an article that that article was stolen would, I think, be contrary to the general principle of justice, and I therefore must dissociate myself from the speech made by the hon. member for Kiambu. (Hear, hear.)

MR. FOSTER SUTTON: Sir, to deal with the point raised by the hon. member representing African interests, I should like to say this, and I want to be perfectly frank, that I do not see how it will be possible to provide the safeguards he asks for. What the bill does is to allow any vehicle, which has its ordinary dictionary meaning (laughter)—and I have not got a Webster with me—any vehicle to be stopped and searched. If sugar is found on it and no proper or satisfactory explanation is given, in the opinion of the police officer stopping the vehicle, it will be taken to the police station, and any statement that person makes will be verified. Under this measure, if the police are not satisfied, they will be able to keep it for a period not

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exceeding one month. Hon. members will appreciate that a vehicle may be stopped out in the blue and that it may take some time to verify a statement made by the person in charge. I put it at a month as being a reasonable period to have. After that period, if no case is brought in relation to the sugar found on the vehicle, the police will be bound to release it to the person claiming ownership. These are the only safeguards which it seems to me it is possible to devise in a law which seeks to do what we want to do and at the same time not be vexatious. That is why I pointed out that it was not right to apply the measure to the whole colony, only to such areas where we know that illicit movement of sugar is taking place. I should also like to make it clear that if the police find within a month that they have made a mistake there will be no remedy. The person who owns the sugar will have no remedy against the police, because it will have been detained legally.

At the present time we have a certain amount of control, although I know perfectly well that it does not satisfy the hon. member for Kiambu, but under the Defence Regulation there is a certain amount of control over rationed goods. Any person found with more than a certain quantity is committing an offence unless they are persons who trade or have some business in connexion with the article. I entirely agree with the remarks of the hon. member for Nairobi North. It is so easy to cast the onus of proof on an accused. The whole of our legal system for centuries has been based on the theory and practice that it is the duty of the Crown to prove its case. Exceptions to that rule have been made, by statute, and have been made very sparingly, and I think that is right. Usually it is an expedient for excusing people responsible for investigating a crime from doing their job properly. If a case is properly investigated and an offence has been committed it ought to be possible to prove it. I should very much dislike being suddenly arrested in the street and asked to prove where I bought this box of matches! I have not the faintest idea. If that were carried to its logical conclusion the situation of an ordinary member of the public would become impossible.

The question was put and carried.

COMMUNICATION FROM THE CHAIR

REPRESENTATION OF AFRICAN INTERESTS
HIS EXCELLENCY: I have consulted hon. members, and I understand that it is agreeable if we adjourn now to 10 a.m. on Wednesday, 17th July, and we will do so.

Before we adjourn, there is a matter upon which I think I should give hon. members some information.

They are probably aware that there has been a widespread expression of opinion, in the Press and no doubt elsewhere, from that part of the African population which takes an interest in the proceedings of this Council, that the two seats on the unofficial side of this Council specifically assigned to the representation of African interests should be held by Africans. The Ven. the Hon. Archdeacon Becher, who has recently been on long overdue leave to the United Kingdom, and in his absence an African member did in fact act for him, and is now acting for the hon. member—Mr. Mashu. It is a very understandable and proper aspiration for the African people to entertain that these seats should be held by their own people, and it is an aspiration which will no doubt be fulfilled at the proper time. But when it is suggested that a vacancy should be created in this Council in order to give effect to it now, I feel obliged to disagree. I am aware that the situation has caused some embarrassment to the venerable and hon. member concerned, but I have expressed to him my hope that he will not consider resigning at the present time on this account. He has shown himself to be a wise, courageous and effective representative of African interests in this Council (hear, hear, and applause), and he was nominated in 1944 for the life of this Council. If there should be any occasion during the life of this Council for any important change in its membership, that might be an occasion to reconsider this matter, but unless that should happen I and my advisers see no reason to make a change now, and very strong reasons why at this difficult time the hon. and venerable member should continue to represent African interests, and I accordingly propose to leave it at that for the present. (Hear, hear.)

ADJOURNMENT

Council adjourned till 10 a.m. on Wednesday, 17th July, 1946.

Wednesday, 17th July, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Wednesday, 17th July, 1946, His Excellency the Governor, (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

ADMINISTRATION OF OATH

The Oath of Allegiance was administered to: G. M. Edye, Esq., Member for Nyaiña Electoral Area.

MINUTES

The minutes of the meeting of 4th July, 1946, were confirmed.

PAPERS LAID

The following paper was laid on the table:—

By MR. TROUGHTON:

Standing Finance Committee report on Schedule of Additional Provision No. 4 of 1945.

ORAL ANSWERS TO QUESTIONS

No. 18—AFRICAN MEDICAL FACILITIES

MR. ODEDE:

Is Government aware that it is the belief of the natives of the Central Kavirondo District that they are neglected, as far as medical facilities are concerned, because their request for a hospital at places such as Rhamba cross-roads or Slaya is answered by the 'expansion' of Kisumu Hospital, while it is known that this hospital is over 60 miles from locations of the western parts of the district, and patients suffering from acute diseases such as pneumonia, meningitis, etc., cannot reach it safely in ambulances?

DR. MACLENNAN: Government is aware that the natives of the Central Kavirondo District have expressed dissatisfaction with the existing medical facilities in that area. The hon. member is, however, reminded that natives in Central Kavirondo can receive attention at the Church Missionary Society Hospital at Maseno, to which the Government has made recurrent grants for a number of years and which has recently also been aided with a grant of one-half of the cost of approved extensions. Government is

aware that, at the moment, the Maseno Hospital is without a European medical officer and has assisted the Mission by posting an African assistant medical officer to the hospital. The request for the establishment of a hospital in the western part of the Central Kavirondo district is being considered, but the decision that immediate relief should be given by extensions to the Native Civil Hospital, Kisumu, was, in view of the shortage of medical officers and nursing sisters, taken after careful investigation.

MR. SHAMSID-DEEN: Your Excellency, arising out of that answer, may I ask if Government will consider the question of Asian accommodation at the hospitals of Kisumu and Nairobi, which is entirely inadequate and unsatisfactory?

DR. MACLENNAN: The conditions in the Indian wards at Kisumu are not entirely satisfactory, but we have in view improvements and extensions to that hospital next year. Regarding the hospital in Nairobi, the wards were recently constructed and improved, and the combined hospital scheme that we propose for Nairobi includes provision of very fine accommodation for Indians.

No. 21—WATER SHORTAGE,
CENTRAL KAVIRONDO

MR. ODEDE:

Is Government aware of the fact that during drought women and cattle in most parts of Sakwa, Uyoma, Samia, Alego and Asemo locations in Central Kavirondo district travel for over six miles, i.e. twelve miles altogether, for water? What steps does Government propose to take in order to deal with this matter?

MR. HUNTER (Provincial Commissioner, Nyanza Province): The Government is aware that parts of the locations referred to are badly watered, but it is the exception for it to be necessary to journey as far as six miles to obtain water. Plans have already been made for the improvement of supplies principally by the construction of dams. These plans form part of a larger scheme dealing with the rehabilitation of the country in this area. In the meantime steps are already being taken locally in some places to deal with the situation. Government officers are always willing to advise the local inhabitants on the construction of dams. At

[Mr. Hunter]

Alego funds have been collected locally and the Agricultural Officer has arranged to assist in carrying out the work.

No. 24—FOOD FOR BRITAIN

MRS. WATKINS:

Would the Government of Kenya inquire of the British Government whether a fund could not be floated to cover some of the foodstuffs Britain wishes to export and, without moving these from the British Isles, allow people overseas to subscribe one or more pounds and name the addresses who would receive the goods within Britain, particularly in view of the large response this would receive and the amount of shipping that would be saved?

MR. TROUGHTON: The reply is in the negative. The Government considers that the question of payment for, and distribution of, available supplies of foodstuffs in the United Kingdom should be left to the competent authorities in that country.

I would also invite the hon. member's attention to the reply which I shall give to Question No. 25.

No. 25—FOOD FROM BRITAIN

MRS. WATKINS:

Would the Government of Kenya not request the British Government to postpone all imports into Kenya of biscuits or other goods containing flour and sugar until supplies at home are easier, particularly in view of the fact that future markets for Britain are not likely to be lost thereby?

MR. TROUGHTON: Such exports of biscuits, wheaten products, chocolates and sweets as have been allowed from the United Kingdom were purely in token quantities to maintain contacts essential to the very important food export trade of the United Kingdom, and were allocated when the world food position was not so critical as at present. The Secretary of State for the Colonies has already been asked whether His Majesty's Government would have any objection to the elimination of such commodities from the East African imports programme, in view of the food position in the United Kingdom.

MRS. WATKINS: Arising out of that answer, is Government aware that the Bermudas and various other Colonies, States, and so on, have refused to take these imports and also, I believe, have guaranteed that they will not therefore cut off the future markets of the country? It seems to me that Britain is trying to get future markets and, after all, we could guarantee that and not take flour and sugar from her now.

MR. TROUGHTON: Government has no information regarding the situation in the Bermudas or other Colonies and, as I stated in reply to the substantive question, Government has taken action in respect of East Africa.

No. 26—ARAB AND AFRICAN TERMS OF SERVICE COMMITTEE

ARCHDEACON BELCHER:

Will Government appoint forthwith a committee to examine and report on the operation of the Arab and African terms of service and the Government Staff Provident Fund Ordinance, making such recommendations for the improvement of these measures as circumstances require?

MR. TROUGHTON: The Government proposes to appoint a committee forthwith with the following terms of reference:—

- to examine the salaries and terms of service applicable to the African Civil Service in the light of experience gained;
- to examine the Government Staff Provident Fund Ordinance and Regulations made thereunder in the light of experience gained;
- to make recommendations, having due regard to the need for economy in public expenditure, any recommendations in regard to salaries being based upon the pre-war commodity price level;
- to recommend a formula or formulae applicable to the various scales of salary (including the proposed revision, if any, recommended under (c)) designed to adjust salaries to the increase which has taken place in the cost of living since 1939, to such extent as the committee may consider to be reasonably necessary in each case with due regard to the need for economy in public expenditure.

NO. 30—GOVERNMENT OFFICIALS AND POLITICAL BODIES

Sir ALFRED VINCENT:

Will Government now reconsider, if necessary in consultation with the Secretary of State, in view particularly of recent developments in the United Kingdom, the whole question of Government officials being allowed to become members of political bodies, with a view to the revision of the present policy which forbids this?

Mr. LINDSAY: Yes, Sir.

NAIROBI MUNICIPAL COUNCIL GOVERNMENT CONTRIBUTION TO RATES

Mr. THOUGHTON: Your Excellency, I beg to move: That, whereas His Excellency the Governor in Council has approved of a resolution of the Municipal Council to levy a rate at 3 per centum of the unimproved site values in the municipal area for the year 1946, and whereas it is provided by sub-section (2) of section 87 of the Local Government (Municipalities) Ordinance, 1928, that the maximum amount which may be paid from the general revenue of the Colony as an annual contribution in lieu of rates in respect of Crown land shall not exceed 2 per centum of the total unimproved value of such lands, this Council approves the payment to the Municipal Council of Nairobi of a sum not exceeding £14,000, being the estimated difference between the amount statutorily payable and the approximate amount which would be payable in respect of a rate of 3 per centum.

Under section 87 of the Local Government (Municipalities) Ordinance, the Government is bound to pay the Nairobi Municipal Council a contribution in lieu of rates. This contribution is assessed on the unimproved value of Crown land and is calculated in exactly the same way as if the Crown land were private land. The Government, with the approval of this Council, has paid such contributions for many years, provision being made in the annual Estimates. There is, however, a proviso to section 87, which says that the total Government contribution in any year should not exceed 2 per cent of the unimproved value of the Crown land. This proviso was inserted in the ordinance on the advice of the Freeham Commission, on which the whole structure of our local government legislation is based.

The reasons for the restriction were, I think, two. In the first place it was a measure of protection for the taxpayer against a local authority which was not financially responsible, and, if a situation arose in which a local authority decided to impose an excessive rate, it formed a protection to the taxpayer of the Colony. The second reason was, I think, that the Government of the day wanted to encourage municipal councils to impose rates on improvements. The fact is that the Nairobi Municipal Council has decided to impose a rate of 3 per cent this year, with the full consent of the Government. The Government is entirely satisfied, after consultation with the Council, that without the additional revenue forthcoming from a 3 per cent rate the Council would be faced with alternatives of either having to curtail municipal services or having its financial stability jeopardized. There is nothing irresponsible in the least about this imposition of a 3 per cent rate, and I feel that in the circumstances Government should bear its fair share.

The whole fiscal system of the Nairobi Municipal Council is coming under review in the future. This resolution, if passed, commits Government to this payment for one year only. The question of corresponding payment during future years will come up year by year with the annual Estimates, but as this proposed payment this year raises a new question of principle, the Government thought it well to seek specific approval of this Council by resolution. The Standing Finance Committee agree with the payment.

Mr. FOSTER SUTTON seconded.

The question was put and carried.

KENYA AND UGANDA RAILWAYS AND HARBOURS REALIGNMENT: NAIROBI AND NAKURU

Sir REGINALD ROBINS: Your Excellency, I beg to move: That this Council approve the realignment of the Kenya and Uganda Railways and Harbours between Nairobi and Uplands and between Gilgil and Nakuru and the removal of the existing line through Eburru and Elmenteta. Council further approves the inclusion in the schedule of a future loan ordinance of a sum of £572,500 to cover the cost of capital expenditure in respect of the work alter-

[Sir Reginald Robins—

ized in realigning the Kenya and Uganda Railways and Harbours between Nairobi and Uplands and between Gilgil and Nakuru in accordance with the Kenya and Uganda Railways and Harbours approved regulations governing the allocation of expenditure, together with such further sum as may be necessary to cover the relative expenses of issue and discount.

In all progressive business undertakings there is always a constant search after means for reducing costs, and in this country for the Kenya and Uganda Railways is no exception. It is our constant duty to find out how best we can reduce the cost of operation of the railway in order to comply with the ordinance and provide cheap transport in East Africa. Two of the biggest factors which influence costs of railway operations are the grade of the line and the distance.

In 1938 Mr. Hamp, who was then Chief Engineer of the Railway, in an attempt to achieve this objective, examined the line between Nairobi and Nakuru to see what could be done to reduce operating costs in that area. As a result of his examination, he came to the conclusion that it would be possible to find much easier grades than at present exist over that route, which incidentally are 2 per cent uncompensated grades, and also that it would be possible to shorten the line between Naivasha and Gilgil.

In 1940, after Mr. Hamp's report had been considered in detail by the management and the Railway Advisory Council, a white paper was prepared by the then General Manager for the information of the Legislative Councils of Kenya and Uganda and for the information of the general public. Mr. Hamp, in his report, came to the conclusion that, if proposals which he then put forward were adopted, it would be possible to make a sound economic case, after paying interest, depreciation and so on on the money expended, which would justify taking action on these lines. That white paper was published, but the war intervened and no definite conclusion was reached.

There was considerable opposition to his proposal to shorten the line between Eburru and Elmenteta. Since that time new factors have been introduced. The present line between Nairobi and Nan-

yuki, which was laid with 50 lb. material taken out of the main line, has given cause for some concern in regard to safety; and it has been necessary to consider how best in the interests of the present generation and how cheaply that line could be re-laid. At the same time there has been a considerable development in locomotive design, and most of the modern locomotives now are so heavy that they cannot operate over a 50 lb. track. These two factors have a bearing on this question of the alignment of the railway and the re-grading of the railway between Nairobi and Nakuru, and the conclusion was reached by the management that the cheapest way to deal with this situation was to re-lay the line between Nairobi and Nakuru in 80 lb. material—this would enable heavy engines to work right through to Nakuru—and to use the existing 50 lb. rails which were displaced by the re-laying of 80 lb. material for re-laying the Nairobi-Nanyuki line, and to use a number of sleepers so retained for strengthening the line west of Nakuru, which also has given a certain amount of trouble.

If the Nanyuki line is not re-laid in this manner it would mean that the Administration would have to buy brand new 50 lb. material for the Nairobi-Nanyuki line. This would mean very heavy costs. It would also mean that between Nairobi and Nakuru we should be prevented from taking advantage of modern locomotive improvements and we could not work the heavy locomotives through to Nakuru. Furthermore, it is probable that within a year or two it would be necessary, in view of the fact that we should have smaller trains to open additional stations between Nairobi and Nakuru to deal with the traffic passing over that section of the line. It seems, therefore, in the general interests of the users of the railway to adopt a policy of re-laying the line between Nairobi and Nakuru in 80 lb. material, and so release the 50 lb. material for the Nanyuki line.

The case was then examined in the light of these new factors. The question of re-grading and re-laying the line between Nairobi and Nakuru falls into these parts.

The first is that portion of the line between Nairobi and Uplands. For many years pressure has been exerted on the

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Railway Administration to find a route out of Nairobi which did not cross the centre of the town. Furthermore, there are some very serious adverse grades against up trains between Nairobi and Limuru. It was therefore in the general interest to consider whether it was not possible to find a better route out of Nairobi and at the same time eliminate these adverse grades. A route has been found out of Nairobi which leaves Nairobi in a southerly direction and which will rejoin the existing line west of Kabele station. This route means that the present Kabele station will have to be abandoned and a new station will have to be built on the new line about four miles or so from the existing station. It also means the abandonment of the present show ground siding which used in pre-war days to be used for agricultural shows. This was inevitable, but I understand that consideration is being given to finding an alternative show ground somewhere else. So far as I am aware, this proposed route out of Nairobi meets with the approval of all those who are responsible for town planning in Nairobi, and up to now I have heard no objection raised to the proposed route, and I believe that this proposed route does generally meet with public approval and acceptance.

The next section of the line is between Uplands and Nalvasha, where we go down the escarpment into the Rift Valley. Here there are very heavy grades against down train. This question was examined, and in fact this Council has already approved the realignment of the section between Uplands and Nalvasha, and the only change in present day circumstances from that at the time the approval was given is the substitution of 80 lb. material for 50 lb. material.

The next section—that from Naivasha to Nakuru—is the section over which considerable objection was raised when the matter was under consideration previously. It is proposed in this section to re-grade and re-align the railway and to provide a shortened route between Eburru and Elmenteta, which will have the effect of saving about 13 miles on all traffic passing over that route. It also involves the closing of Eburru and Elmenteta stations and the provision of new stations on the re-aligned route some distance

away. The precise distance is not quite known; it depends upon the lay-out of the rail system, but the new station which would take the place of the Elmenteta station would be at a distance of approximately eight miles from the existing Elmenteta station.

When the matter was considered before there were three schemes, all of which involved leaving the 50 lb. material at present in use between Nairobi and Nakuru. The first scheme was to shorten the line, re-grade and re-aligned with the 50 lb. material; the second scheme was to re-grade the existing line in its present alignment, leaving the 50 lb. material; the third proposal was that the new line should be built in 50 lb. material on the easier grades and that the existing line should be left as a loop-line and a very limited service provided over it. None of these proposals was really acceptable to those who raised objections and, as I mentioned just now, no definite conclusion was reached. The war intervened and, for physical reasons and the fact of staff difficulties and the difficulties in connexion with the supply of material, the matter was allowed to remain in abeyance until after the war.

The position has now changed, for the reasons I have just given. In my own view, and I have no hesitation in recommending this view, we ought to take advantage of modern locomotive practice and to re-lay the line between Nairobi and Nakuru in 80 lb. material. If that is so, then there is no economy in leaving the loop-line, because in fact you would have to re-lay that loop-line in 80 lb. material. Otherwise you would be restricted in regard to the use of heavy engines between Nairobi and Nakuru. These heavy engines would not be able to pass over the loop-line, and it would lead to constant friction and difficulty in operation and would, of course, dissipate the savings. It seems to me, therefore, that the issue must be a straight one? It must be the issue whether, when this line is re-aligned and re-graded, and 80 lb. material provided, this line should remain in its present situation or whether advantage should be taken of shortening the line by 13 miles.

When these arguments in regard to shortening the line were under consideration, the question of compensation was raised and a committee was appointed

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to examine what the claims actually were. But the law officers, the legal advisers of the Railway, and the then Attorney General advised that there was no legal obligation to pay compensation from railway funds. The issue became rather heated and the decisions were referred to the Secretary of State. The law officers of the Secretary of State took the same opinion as had been expressed by the law advisers here, that there was no legal case for compensation. I think myself that that decision is absolutely vital and fundamental. It would mean, if the principle of compensation were accepted, that it could not be restricted to re-alignments of the railway—it would apply to re-alignments of the roads; it would also apply to quite a number of other public acts by the Government in the interests of the community as a whole so that there is a corollary. If, in fact, compensation were to be paid to those persons who suffered from the loss of the amenity of having the railway close to them, then surely there is some obligation on those who have the advantage when the railway is re-aligned of having the railway much closer to their door step. I think, therefore, that this issue must be considered in the light that compensation for the loss of an amenity is not possible, and the issue must be judged whether it is in the public interests or the interests of the railway users as a whole to have a shorter line or whether the line should remain where it is, which is a very round-about route.

I have sympathy with those who feel that this may be a dangerous precedent, and who feel there is a risk of a general manager making up his mind to move the main line several miles away in many places throughout East Africa solely for the purpose of getting a better route and alignment. On the other hand, I think it must be assumed that the general manager holds a position of responsibility in this country and that he is not likely to indulge in proposals for moving the main line merely for whims. It is a very serious question this question of moving the main line, and that is the reason why it is necessary that the matter should be under the control of this Council. But it must be remembered that this line was built over half a century ago. It was not built

with the object then of being a commercial proposition—its primary object was the suppression of the slave trade, and little regard was paid then to commercial prospects. I think it is a matter of some congratulation to those who staked out the route in those days that they were as accurate as time has proved them to be, and that there are so few locations which require reconstruction of this sort.

I myself have not in mind any other extensive re-alignments of the main line. The only case which I have in mind which may require examination at a later date is the question of the Vol-Kabe line, which again was not built for commercial purposes but as a military line and paid little regard to commercial prospects. That line has 40 per cent grades, and these grades can only be eliminated by a fairly extensive re-alignment, and if, as I hope, one day that line may prove to be part of the connexion between this country and Tanganyika, it will be necessary to give very serious consideration to the re-alignment of the Vol-Kabe line. In mind that is the only line which I have in mind at the present moment which may require some major decision similar to the proposal I am speaking about now.

Furthermore, on this general question of compensation, so far as can be ascertained in other countries where re-alignments have taken place no such compensation has been paid. It is only fair to say, however, in that connexion, that I personally know of no case in the Colonies where there has been a major re-alignment of the main line. But the real reason for that is, I think, the reason I have just mentioned, that most railways which have been constructed in the Colonies have been based on commercial prospects and were not built in circumstances similar to the circumstances under which the Kenya and Uganda Railways and Harbours was built, but re-alignments have taken place in other and more settled countries such as North America, in Canada and the United States. When this question of compensation was dealt with by the Secretary of State, the Secretary of State in a dispatch addressed to the High Commissioner of Transport, I said: "Such is the importance which I attach to this aspect of the matter, that, more especially as, according to the advice referred to above, the landholders would not be legally entitled to compen-

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For that reason, therefore, I consider that this question must be regarded in the light of the fact that compensation from railway funds may not be paid.

It may be said in connexion with my proposal, should the Nairobi-Nakuru line be relaid in 80 lb. material, are we in a position in fact to operate this line with heavy engines? The answer to that is that at the present moment there are on order three of the heavy type engines; furthermore, there are three heavy type engines at present out of service owing to the fact that the frames have gone and we have been unable to get new frames during the war, but there is every prospect of getting those new frames in a reasonable time. We shall, therefore, have six additional heavy locomotives over and above those at present engaged in moving the traffic between Nairobi and Mombasa. There is also another factor, and that is that if we did not relay the line between Nairobi and Nakuru in 80 lb. material the existing 50 lb. material would before long have to be replaced. The reason for that is that it is getting on towards the expiry of its life, and it is subject to very heavy conditions in the main line, whereas if it is now transferred to the Nanyuki line with a relatively light traffic on that line we can expect a considerable number of years' life from that material.

It is now necessary to examine the economics of the case for shortening the line in this area compared with re-grading and relaying the existing line in 80 lb. material. To do this it was necessary to examine the traffic which was passing over this line, not only the traffic which originates in the area of Eburu and Elmenteta, but also the traffic passing to the east and west over this line. To do this we took out details of the traffic which passed in 1937. From that we calculated the number of trains and took the costs per train mile. When the question had to be reviewed after the end of the war we had then to assess what would be the traffic in the post-war period. It would have been obviously wrong to have based the figures on the traffic which passed in

the years 1944 and 1945, because during that period the traffic passing over that area was inflated by war-time conditions. There was a good deal of traffic carried on behalf of the military and other services, and it was not reasonable to expect that that traffic would be maintained at that level for all time. In the case, therefore, which I examined I assumed that the traffic passing over that line in 1946 and onwards would be a 40 per cent increase over the traffic which passed in 1937. I do not think that that is an unreasonable figure. In fact, if you plot the curves of the traffic increase prior to the war and continue them and ignore the war period, the traffic would have been indicated by that curve as being greater than 40 per cent over 1937, but I was very anxious not to overstate the case. Therefore, we assumed a figure of 40 per cent over the 1937 figure. In actual fact, I think myself that it is a pessimistic figure and that in 1946 it will be found that the traffic will exceed it. On that assumption, the annual saving amounts by the construction of a shorter line to £20,000, after paying interest on the capital raised, depreciation and all other fixed charges.

There is one point which I might mention here, that in the examination of this case I did not make any provision for the amortization of the actual capital raised. The reason why I did not do that was this. I thought we ought to take a reasonably pessimistic case rather than an optimistic case, and if I had included a sum for the amortization of the capital—which, incidentally, would have to be added to both proposals, the relaying and regrading of the long line and the provision of the shorter line—that would have shown, if anything, a rather more optimistic figure, because we should have had to take into consideration the fact that when the capital was paid off the saving would be very much greater than £20,000. I thought it wise, therefore, to eliminate that and to make the case on the theoretical assumption that the interest on the capital was to be paid in perpetuity, and if the traffic remained at the level which I assumed the saving also would be made in perpetuity. It means in effect, therefore, that if the long line is to be maintained it is going to cost the users of this railway, not only of Kenya but of Uganda as well, a charge of at least £20,000 in perpetuity, which is

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for a very heavy cost to pay. Let us assume for a moment that I was unduly optimistic—I do not think I was, but it will be reasonable to examine the case on a pessimistic basis. I therefore had the case examined on the assumption that the traffic would not increase but would fall considerably less than the 1937 figure, and I examined the case on the assumption that only 60 per cent of the traffic passing in 1937 would pass over this route. If that were so, the saving in perpetuity would be £9,000 per annum, and I do not think anybody would assume that the traffic was going to fall to anything like that level. I should be absolutely surprised if we do not find in actual practice far more than 40 per cent above the 1937 level, but I was most anxious that the case should not be overstated. I felt it was my duty to point this out to all those affected by this proposal and, in fact, to put this worst possible case, and the worst possible case would be only a net saving of £9,000 per annum in perpetuity.

I feel, therefore, that a very strong case exists for the most careful and close examination of this burden which is going to be placed for all time on the users of the railway if, in fact, we decided that the railway shall be relaid and regraded on its present alignment. The cost of relaying and regrading the existing line will amount to £211,662 with an annual fixed cost of £14,477 plus the operating cost of hauling the number of trains based on the 40 per cent increase over 1937 of £57,227. The cost of constructing the shorter line will be £307,367, plus an annual fixed cost of £14,045 and an operating cost in respect of working the number of trains indicated over the short line of £36,801. The interesting point about these figures is that the fixed cost by either route remains the same, but the savings are actually achieved through the shorter line which has been taken into the line. That factor has been taken into consideration. All the figures and the details on which this case has been based were published in 1940 in the White Paper, but they have since, of course, had to be amended because of the two factors I have previously mentioned, and also because of the considerable change

in actual costs. But when the case was presented to the Railway Advisory Council and the High Commissioner, approval in principle was obtained to it.

I sent to every person who had objected in 1940 full details of the calculations and figures, and up to date not one of those figures has been challenged, although a general statement has been made by certain objectors that the figures will not be accepted. I think hon. members will agree with me that I cannot do much about a general statement of that sort, and I think hon. members will also agree with me that there has been quite a fair amount of time in which the objectors could have drawn my attention to any figure they considered inaccurate or which they considered required further amplification. However, I believe myself that these figures are beyond challenge. I myself paid tremendous attention to the calculations which have been used in the arguments I have now put forward, and the figures which have been used in connexion with that argument have been checked time and time again. None the less, no one is infallible, but even if you allow almost a 20 per cent error in any one of the figures it will still come to a very considerable annual saving. Furthermore, I think if one examines a map of the route and sees the long way round the railway line goes between Gilgil and Nakuru, and when one considers that by pulling in a shortened line it will save 13 miles on every train operating over that route. I think, the answer is really one of commonsense and that it must reduce the costs.

It may be asked, having reduced these costs, what are we going to do with the savings? My answer to that is that these savings would be made available and would be provided upon by the Railway Advisory Council, and that Council would decide what is the right and proper manner in which those savings should go back to the public. My reason for suggesting that this is the method of dealing with it is that I have in mind the interests of those in that particular area. It would not be practicable or feasible simply to reduce the chargeable distance by 13 miles because, in fact, that would probably divert the advantage where it is most required. Furthermore, there are other complications in that question in that quite a large number of the rates on vital

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products, farm products, agricultural products, in this country are not based on rates which vary with the distance, and a reduction of 13 miles would in fact make no difference to these zonal rates.

Finally, I would like to make this point. I have said on many occasions in this Council that it is not the duty of a general manager to decide policy, and I have myself carefully refrained from trying any attempt at dictating the policy which should be followed by the Administration. That responsibility rests on the High Commissioner, advised by the Railway Advisory Council. It is, however, my duty to point out what, in fact, the users will have to pay if a particular policy is adopted, and that has been my objective in this particular case. It is my duty to point out to all those who use the railway that if, in fact, you do not take advantage of the shortened line you must pay £20,000 in perpetuity for operating the railway over a longer line. From a technical point of view it makes no difference to me whether it operates over a longer or shorter line. In fact, if the line is laid with 80 lb. material and the adverse grades are withdrawn, there is no reason why successful operating should not take place over that route, but it will be a more costly operation than it need be.

Mr. THORNTON seconded.

SIR ALFRED VINCENT: Your Excellency, the hon. General Manager has given us a very clear statement of the whole position, and I agree with him that the Railway as such is a business concern and must be run for the country as a business concern. What I am going to say is not a reflection on the Railway Advisory Council, but it is upon the General Manager himself. The Council is constituted to enact legislation for this country, and at the same time I feel it part of my duty, and I am certain that duty is shared by my colleagues, that we should see that justice be done.

As far as the legal obligation is concerned, the mover has told us that all the legal people who have been consulted are of the opinion that no compensation is payable, and it is suggested thereby that the interested people who consider they have a claim would have no case if it went before the courts, but if they doubt it, then they have the right

to go to the courts and eventually to the Privy Council. But this is a matter of profound principle and precedent, and, whereas the railway, as the operator concerned, may say that they are unable legally to give compensation—and they apparently are quite within their rights in doing so and may escape it on those grounds—I do feel that we must consider the matter of compensation.

As hon. members are aware, the Harragin Committee, which went into this question in 1939 were of the opinion that compensation was justifiable to the extent, I believe, of about £92,000, and it is because of the confusion which arises from one decision on the part of one committee, and then with the lapse of time we have another Government, as it were, which takes a different line, that I feel this case merits our very closest consideration. We cannot rush this matter in this way, although I admit, as the hon. General Manager has pointed out, that the aggrieved parties have had plenty of time to consider this, but maybe they were under the impression that the matter had gone to sleep for ever and that it was unlikely to come before the country again. I feel that, under the whole of the circumstances surrounding this case, it would be quite unfair, and hardly moral, to expect these landowners who are vitally affected to go to court and take their chance. I believe that that is an obligation which we should remove from them.

I am not twisting the hon. mover when he, in all seriousness, said he had no further ideas in mind of re-alignment except the Voi-Kahle line; but his successor might have. There is another point I should like to take him up on in his arguments. He brought in the question of Uganda expecting, and rightly expecting, that the 13 odd miles saved by the re-alignment should be to their benefit. On the contrary, I do not think that Uganda really has got much claim, and if we are going to use Uganda as an argument we are on very dangerous ground. As the hon. General Manager is aware, the original line went to Kisumu, and thence by steamer to the Uganda ports, and when we put the railway through on its present alignment, they objected because of the long haul in comparison with the old haul. Therefore they get free railrage, or what is equivalent to free railrage, for

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a distance of 117 miles, as against the actual mileage haul. If now that the line is going to be shortened, and they are going to claim that they should get another concession, surely they cannot have it both ways. The alignment of the railway within our own territory is a matter for ourselves. Otherwise we are putting ourselves in the position of any interested party like Uganda saying: "well, you have shortened your line by so much, and we consider we are justified in asking you to give us such-and-such a concession". I think we should take very great care not to dwell on arguments made in that way, although if I were in Uganda I should probably be the first one to produce them in a very vociferous manner!

What we feel is this: that the figures have been challenged, not perhaps as to their present accuracy but on other grounds of omissions and because the comparisons in some people's opinions who are interested should be different. As this is such an important matter, I am going to ask Government if they would be prepared to adjourn this debate and in the meantime appoint an *ad hoc* committee to consider the proposals, both in principle and in detail, to examine thoroughly all arguments and figures by which it is either supported or opposed, and to make recommendations to the Council as to whether, in their opinion, the re-alignment as suggested by the Railway authorities is justifiable on economic grounds and in the public interest generally, giving their reasons therefor; and also that in the event of the re-alignment being proceeded with, a select committee of this Council be appointed at a later stage to consider and advise whether the landowners affected by such re-alignment should be compensated for any consequential loss, and if the answer is in the affirmative, to advise on the nature and extent of such compensation. It is our wish that if it is a perfectly reasonable and just request, I know my hon. friend the Financial Secretary will not like what I am going to say, but it is my opinion that if the Railway, by its association with this country and Uganda, finds that it has got a cast iron case against the payment of compensa-

tion, then I believe the obligation for compensation devolves upon the general revenue of this country.

I hope that Government will accept this suggestion. The hon. Member for Aberdare will probably give you the outline of certain details as to why this *ad hoc* committee is essential. It is put forward in no spirit of frustration; it is put forward on the grounds of logic and justice, and we hope that those two qualities have not been lost to this Council. (Applause.)

MR. SHAMSUD-DEEN: Your Excellency, I, on behalf of my colleagues, support the suggestion made by the last speaker, but my reasons for supporting it are somewhat different from those put forward by him. This is my personal opinion, and I do not wish to commit my colleagues in any way, that in a new country like this, unless we wish to remain dormant and allow our railway alignments to remain on what was really a hurried survey of the then Uganda Railway (now called the Kenya and Uganda Railway) we must once and for all state here and now, unequivocally, that the question of compensation cannot possibly be entertained by the Government to any of the persons interested. If this committee, as proposed, is appointed and if for some reason they decide on giving compensation to any particular owners of land or interested parties, then I think it will have to be retrospective, and a very considerable sum of money will be involved, because, after all, it was due to the re-alignment of, for instance, the Thika railway that the old Thika trading centre was thrown out of business. The same applies to Mombasa station and so on and so forth.

I do not wish to take up the time of Council, but I must say that the time has now arrived when we should consider the development of this country on a rational basis. I know that when the alignment of the Usain Gishu railway was decided upon, a number of farmers who were interested influenced the Railway authorities to make an alignment in a manner to benefit certain individual interests, with the result that the alignment of the Usain Gishu railway was in places made so ridiculously parallel to the existing line to Kisumu that people who come to this country cannot understand the meaning of it at all.

(Mr. Shamsud-Deen)

I think this motion before Council does not enable hon. members to realize fully what is meant by this re-alignment unless a proper illustrated map is available. I think all members are entitled to have a vivid picture of what is going to be done.

Finally, I wish to say that you cannot adopt a policy for Kenya Colony quite distinct from any other part of the world. I should like to hear from some hon. gentlemen if any precedent exists even in the western countries where railways have been established, such as in England, or America or other countries, and whenever a re-alignment is made in the interests of the railway, any fantastic sums are paid to the parties who might be affected. If that principle is adopted, I submit that it will be a deterrent to any improvements in a new country like this.

MR. WRIGHT: Your Excellency, I want at once to associate myself with the speech made by my hon. friend the Member for Nairobi South, and particularly with the two requests he has submitted to you, Sir, calling for an adjournment of this debate and claiming that there is a case for an *ad hoc* finding committee and, in the event of its deliberations leading to certain conclusions, for the appointment of a select committee to deal with the matter of compensation. Your acceptance, Sir, of that request, or these two requests, would greatly curtail the debate on this motion and would be reassuring to a number of people who think that a dangerous precedent is being established in this country and that a decision to straighten out a line between Gillig and Nakuru might easily become a precedent leading up to that which was depicted in the beautiful chart prepared by Mr. Hamp some years ago, which, if adopted by a later General Manager, as was suggested, would involve the fate and the prospects of hundreds of farmers from Nakuru to Turbo. We want these things to be considered.

The removal of this line a distance of some 13 miles away from its present alignment will involve the farmers affected in a considerable reduction in the value of their land. It goes without saying that the value of land is in relation to the railway and other services, and particularly the railway. It will also involve them in considerable additional

transport capital expenditure, and it will deprive them in the case cited of certain postal and other services. Incidentally, the natives on these farms will be seriously affected in that the shops now serving them will have very little justification for their existence so far from the railway, and obviously it will compel these farmers to alter the whole development scheme of their farms today.

This is a test case and accordingly cannot be rushed, and it is for that reason that I associate myself with the request that serious consideration be given to the case put up by a small group of farmers who will be very seriously affected. There is not in my mind, absolute proof that the railway need be straightened out and, while one realizes that every good engineer would prefer a straight railway line to a crooked one, the present grade, with 80 lb rails, would probably serve the Colony very well.

The opponents of the re-alignment scheme dispute the accuracy of the railway figures. I, Sir, do not. I am not so foolhardy as to cross swords with the hon. General Manager on issues affecting figures, and I want to make it clear here that, if it seems incongruous that I, as a member of the Railway Advisory Council, should be extremely critical of the line they have recommended, at the Railway Advisory Council meeting held at Kampala last March, when this issue was discussed at considerable length, I reserved the right to oppose the proposals when they came up in this Council. I do so now.

On the last occasion, I think it was Sir Godfrey Rhodes wrote on the same issue about this cut-off as follows: "I can say at once that the cost of the whole scheme of re-alignment between Uplands and Nakuru leaves very little margin for the payment of compensation of landholders and if, after examination, it would appear that claims on account of disturbances are likely to be heavy," it will, as I have explained, merely mean the abandonment of the scheme." It is that examination that we would now call for.

I have today received a letter from Mr. Powys Cobb, who is hon. secretary of the Eburu-Elmenteita group of farmers involved, in which he gives me a whole lot of figures which it would take

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me some time to assimilate. Well knowing his courtesy, I would ask the hon. General Manager if, in his reply, if indeed a reply are and there is no adjournment put up by this letter. It reads: "I have not received answers to a string of questions which I sent to the General Manager, K.U.R. & H., on June 26th". Perhaps I should not have read that part! "His answers are vital to the presentation of a reasonably full set of figures for your use, so I am obliged to send you only those I have. You can rely on their accuracy so far as they go, but they are not complete. However, the omissions are figures which will increase the comparative advantages of regrading the present line, and therefore you are safe in using those I send." In the circumstances—I have just read this—I cannot use the figures, which are incomplete, but I do urge, in view of what Sir Godfrey Rhodes said years ago, that before a decision is taken on this vital matter these two committees be appointed by you, Sir.

Mrs. WATKINS: There is only one small point I wish to make I am going to have the temerity to challenge one statement which was made by the hon. General Manager of the Railway. He says there is no precedent for compensation when the railway want to re-align a railway. I think that accurately and legally it is perfectly true; ethically it is not true. We have just had the case quoted by the hon. Member for Nairobi South when 117 miles was allowed off Uganda freightage by way of compensation for putting the railway where it is instead of putting it where Uganda wanted it. That compensation is paid, to Uganda straight over every consignment; they do not pay on their freight for 117 miles, but the other users of the railway have to pay a little more, presumably, because of that free haulage of freight. If that is not ethically compensation, I do not know what is. Of course, I am only a farmer and do not know the finesse and the wangles based on the technical accuracies that go on over these things, but if the General Manager does not call that compensation, then I call it a wangle, because in ordinary parlance, if you allow somebody a privilege because his something has not gone according to his

plans, it does to an ordinary farmer mean compensation. It may not be to an individual, it may be to the general public.

I do not think in any case that we have asked for individual compensation for these farmers—we have asked for communal compensation, which I think it would be roads or other transport aids. Now, I know that I am going to have the answer given to me at once that a certain amount has been allowed for a road to the new station, but after all you are going to save money by putting more expense onto the farmers, and they are not going to be allowed cheaper freight because of it. They will still have to pay as if the mileage was the same as before. The farmer is going to have to pay more for his freight, or rather to pay the same for his freight as he did when the line was longer. They then talk about the savings which will be effected at the expense of the farmer and they say that there has been no precedent for the payment of compensation. To my mind that is all perfectly legally accurate. I am sure, but ethically it is quite wrong.

MR. AMIN: Your Excellency, I rise to support the suggestion which has been put before the Council by the hon. Member for Nairobi South. There is a very strong case for compensation in respect of areas affected by the re-alignment. The hon. member, the General Manager, has stated that there is a station between Uplands and Nairobi which will be affected; that station is not by itself, there is a trading centre which has been established because of the station, and not only one trading centre but many others will be affected by the re-alignment of the railway. These farms and trading centres were developed on the basis of the railway line as originally laid, it was not a mere venture for private gain or otherwise, it was public policy which dictated it. It was also public policy which allowed so many miles on both sides of the railway to be the highlands boundary to begin with. We are not told what will be the general effect, for there is no map before us.

We are told that discussions took place in 1939 and earlier, and it is unfair to expect the public to preserve all schemes on paper and discuss them now after so many years' interval. It is necessary that the schemes then proposed and now should be made available for mem-

[Mr. Amin] members of the Council, and the least that can be done is to have a sub-committee to go through them all and take public opinion on the schemes as they now stand. The interest of others beside land-owners must also be taken into account. I gather that a Sudanese location called Kibera, near Nairobi, will be affected. I am told that the railway will run through this location, and compensation will naturally have to be paid to those people because of the obligations on the part of Government.

My suggestion is that this committee should not only go through the details of the schemes but should also have the opportunity of consulting public opinion, and on the basis of the findings of this committee another committee might afterwards, if necessary, be appointed. My strong view is that compensation will have to be paid because various interests, such as farms and trading centres, did not come into existence of their own accord, but they were encouraged to grow at the different stations, so that they will have to be considered. I therefore support the suggestion of the hon. member.

MAJOR JOYCE (Ukamba): Your Excellency, in hoping very much that Government will be able to accept the suggestion made by the hon. Member for Nairobi South, I speak as one not embroiled in this controversy some years ago, and I do not propose to touch on any of the aspects of that matter now. But it does occur to me that if the Harragin Committee made certain recommendations four or five years ago, we can presume, I suppose, that the members of that committee were reasonable people, and I feel that Government would be well advised at least to agree to have some further inquiry, whether or not their recommendations were agreed to or otherwise.

I would also like to stress the fact that the public have a considerable feeling of insecurity on the question of further possible major re-alignments, and I was very glad that the hon. General Manager made the statement and admitted that point in the way he did. In spite of his assurances that he himself had no thought in his mind of any major re-alignment except on the Voi-Kahia line, it is not

inconceivable to suppose that in future something of the sort might be contemplated by his successor. Furthermore, there is a point which I think should be made, and that is, what in fact is the function of a railway? or for that matter a road? It is not always to get from point A to point B in the shortest possible distance. Presumably the main function of a railway is to pick up traffic, and to a lesser extent passengers, and that is another reason why I hope very much you will accept the suggestion that has been made.

In regard to the question of compensation, I have no particular views one way or the other at this moment, but I believe the Harragin Committee made a statement that there would be very little money left for compensation of any kind. On the other hand, accepting the railway figures as I do, as put in this memorandum, that a saving of £20,000 will be effected, it seems obvious that if a part of that saving were capitalized at 4 per cent you would get a very considerable sum from which compensation in some form or another could be made available. One minor point, and that is in regard to the claim by Uganda that a shorter alignment should be adopted. I cannot see that there would be any major difficulty in giving them free transit over the 13 extra miles that would be saved on the same principle as they are now receiving on the 117 miles. That is just a minor point, and I hope Government will be able to accept the suggestion of the hon. Member for Nairobi South.

MR. VASEY: Your Excellency, I should like to make one or two remarks to support the hon. Member for Nairobi South. First of all, dealing with the question of compensation, I cannot believe that the hon. General Manager meant that there would be no intention to pay compensation for disturbance. I think he would admit that compensation for disturbance as distinct from the type of compensation he is contesting now is a natural and admissible thing. The Harragin report itself assessed the full cost of transport to the farmers in this particular area which is under discussion at £42,000 per annum. That was nothing to do with the drop in the value of the land, but according to their definite statement in respect of extra transport

[Mr. Vasey] the cost would amount to approximately £42,000.

MR. MORTIMER: On a point of explanation, I think the hon. member is incorrect in saying per annum. Surely that is a capital cost?

MR. VASEY: If it is, then we can move to the annual cost. I do not think it says in any paragraph of the report that it is capital cost, but I am sure the hon. member, as a member of the committee, knows more accurately than I do. However, there is a mention of the cost of £42,000. After considering that, the committee went on, on page 14, to recommend the retention of the loop, and then went on to say that should their recommendation for the retention of the loop not be accepted "we recommend that cash compensation be paid, the exact amount to be assessed after a detailed survey of individual farms by a competent authority". After that inquiry had been held at Nakuru, the Railway published a White Paper, 1940, to which the hon. General Manager has referred and in that paper they make one or two remarks about the Railway not being able to accept the principle of compensation.

It is fairly obvious that the Railway could not accept the principle of compensation. They sent a questionnaire round to a number of railways. It was natural they should send that questionnaire round to a number of railways, and it was equally natural all railways should reply that compensation should not be paid. (Laughter.) That was only natural. But, in the reply of the Canadian National Railways, there is this example given: "No case similar to the abandonment between mileage 412 and 4462, as shown on the map which accompanied your questionnaire, has occurred so far in our experience. During the Great War, however, some 200 miles of railway track were removed from two independent transcontinental lines in the vicinity of Yellow Head Pass through the Canadian Rockies in order to augment the supply of track materials then being shipped to France. The two lines in question (the Canadian Northern and the Grand Trunk Pacific) at the time were destined to be and since have become part of the Canadian National Railways system.

After a survey it was decided to take up certain portions of either line between points where crossovers could be conveniently made, thus retaining a through line with the best possible gradient. The Imperial Government—"and this is the interesting point—"authorized equitable cash contributions to persons who were injuriously affected by the removals and voluntary adjustments were made by negotiations conducted through the Claims Department with each person affected." Then it goes on, and this is very interesting: "I might say, however, that the territory in the foothills was but sparsely settled, and settlement diminished to zero through the Pass. Generally speaking, in no case was the abandoned trackage so far removed from the retained trackage as to cause material hardship from the railroad standpoint. Sawmills, grain elevators, etc., provided with siding facilities and entirely dependent for justification and existence upon the railway way were, of course, definitely damaged and their owners were compensated." I consider the committee should consider that example among their consideration of the refusals to admit the principle of compensation which the railways naturally replied to.

It is, however, on the general principle that I am worried. In the White Paper of 1940 the Railway said that it recognized there would be additional transport costs, but it said that "as the Colony would not receive the additional motor and petrol revenue resulting from the new road transport," the Railway administration could not recognize the necessity to pay compensation. In other words, the poor farmers were to pay additional taxation to the Government, in which we presume the Railway is to some extent partner, but the Railway which compelled them to pay the extra taxation was, of course, not prepared to recognize any principle of compensation in that way. Use has been made of the parallel of roads. Speaking from the point of view of a township, if you take a main road and move it a hundred yards to the west and establish a thoroughfare, or to the east and establish a thoroughfare, you do in effect pay compensation, because when you come to the valuation of the amount on which those people will be rated, your valuer recognizes the fall in valuation which has been created by the move-

[Mr. Vasey]

and as a result they are compensated to some extent in their rates.

The then Secretary of State recognized this principle, after having said that nothing must be done in the way of compensation, because in paragraph 9 of his dispatch he says: "Moreover, as the realignment of the railway will, notwithstanding the provision of roads of access, modify considerably—one sees how cautious he is in his language!—"the advantages attaching to the land held by the memorialists, it would be reasonable for the Government to consider, from this aspect, whether any reductions should be made in their rentals." He then goes on hurriedly to say that, of course, the reduction is only for an acreage of 166,000, and would not be very substantial. I think that there again there is ground for a committee to reconsider this matter.

But the difficult aspect, if I may say so, to me of the whole of the hon. member's speech is that he looks upon it as railways always look upon it—with all due respect to railways—from the Railway's point of view. He speaks of the reduction in costs, and says that business enterprises reduce costs as soon as possible. I may say they try, they always try very hard to, but not at the expense of putting customers out of business so that the customers cannot buy from them. They do reduce costs, but always with regard to the policy not of a particular department reducing costs but of the whole. I think I can do no better than quote the words of Sir Robert Brooke-Popham in his dispatch to the Secretary of State dated the 16th August, 1939: "Among some general considerations which I wish to bring forward, I desire to emphasize that the railway must exist for the benefit of the country and not the reverse. It must therefore serve the areas through which it passes in order to develop the country as a whole, and not base its policy merely on the traffic between termini and main centres." I wonder whether the hon. Member for Agriculture would feel very pleased at the damage which is being done to 166,000 acres, the production from that area, the additional costs which would be inflicted upon those people. I do feel that this committee which has been suggested by the hon. Member for Nairobi

South should consider it entirely from the economic whole and not only from the railway point of view.

It may be when that committee has sat it will say that the best thing to do is to put the 80 lb. line right through the present main line area, because the savings to the railway may be a cost to the Colony and what may be a cost to the railway may in fact be a benefit to the Colony, to the development of the area and, finally, to the general revenue because of the resulting taxation. This is merely a request for an investigation. It is to see, in my opinion whether in the development of the Colony this particular re-alignment would be of any use. If the Colony feels that it can dispense with the development of these areas beyond a certain stage, then I imagine the committee would say so. But, before I close, I would quote once again from Sir Robert Brooke-Popham's dispatch to the then Secretary of State, Mr. Malcolm Macdonald, paragraph 14, which seems to me particularly applicable at the present time: "At the present time in Kenya an attempt is being made to foster the increase of British settlement, and I have reason to believe that His Majesty's Government in the United Kingdom are in agreement with this policy. This being so it is most undesirable to take any action that might induce a feeling of uncertainty or insecurity, and this would occur if it were found that the railway, which is, of course, a very important factor in the success of any farming enterprise, might be shifted a distance of ten miles or more without the grant of any form of compensation." It may be that the railway is right, but I should like to see the matter considered rather more carefully by a committee which takes general conditions into consideration and not only the railway point of view.

Mrs. COOKE (Coast): Your Excellency, I regret that I must oppose any proposal to adjourn this debate. (Laughter.) The hon. General Manager, who prides himself—and rightly prides himself—on being one of the few trained economists in this country, has made, I think, an unanswerable case from the economic point of view, so that the only point of view which seems to me arises now is that concerning compensation. The hon. Member for Nairobi South argued that

[Mr. Cooke]

there was no analogy between by-passing roads and by-passing railways. Of course, he was forgetful of the fact that in most country districts in Kenya villages are constantly being by-passed and no compensation whatsoever has ever been suggested to be paid or has been paid to the villagers concerned.

Mrs. VASEY: On a point of explanation, I never mentioned by-passing roads or villages, but the alteration of roads in towns.

Mrs. COOKE: The point has been made that there is no analogy, and it is my view that there is an analogy between the by-passing of roads and the railway. Take the case of Takauungu on the coast, that village was by-passed about ten years ago, and the petty tradesmen have suffered quite a considerable loss, but there was no claim for compensation, and rightly so. I was sorry to hear the hon. Member for Nairobi South say, or perhaps only indicate, that he was not greatly interested in the Uganda view as to their gain by having this railway realigned. Of course, that seems to be a totally wrong standpoint, because we should have in matters like this an East African outlook rather than a narrow-minded Kenya point of view, for what is good for Uganda must be good for Kenya. At any rate, that is my view. (Laughter.)

There is another matter, that saving which the hon. General Manager has pointed out of £20,000 a year will affect the railway throughout the country, the coast and Mombasa will tend to get improvements from the money saved by this proposed alignment. Of course, it is perfectly absurd to suggest, as the hon. Member for Nairobi South I understood suggested, that farmers at Eburu and Elmenteta might go out of farming because their expenses might be greater. There is no possibility of that. These are practical farmers who have made money in the past and will not abandon their farms because this re-alignment takes place.

Sir ALFRED VINCENT: On a point of explanation, I disclaim having made that statement. I did not make that statement.

Mrs. COOKE: In such matters there must be a certain amount of justice.

done. Hard cases make bad law as an old saying. The late Lord Delamere had an uncanny instinct for choosing land for his farms which the railways subsequently traversed. In fact, he seemed to have a magnetic attraction for these railways which usually followed where he settled! And no doubt Lord Delamere, and rightly so, had the vision to foresee where they were going to run and bought his land accordingly! As the hon. General Manager very rightly said, if people are going to be paid for the depreciation of their property, those whose land is appreciated by the railway should pay a special rate to Government.

There is a tendency in this country, where a question has already been discussed *ad nauseam* and very little chance for all facts emerging for further consideration, a tendency on the part of this Council to defer a decision. I cannot see that the country will gain one little bit by having a committee which will probably come to the conclusion already come to by the hon. General Manager. There will be more and more delay and, of course, the savings which the hon. General Manager adumbrated will not begin to take effect as soon as they otherwise would. I regret that I have to disagree with my colleagues over the matter, because it is one which demands immediate attention.

Mrs. TRENCH: Your Excellency, I rise to support the suggestions put forward by the hon. Member for Nairobi South. I do not propose to go over the points that have already been made, because I think they very clearly display the feeling of many members on this side of Council, but in support of the hon. Member for Nairobi South there is one point I should like to make; and that is this. The hon. General Manager of the Railways circularized or wrote to some of the dominions and asked them what they did on this sort of occasion. The reply I gather he got from several of the dominions was that parliamentary provision is made for hearing and adjusting hardships proved to arise from any alteration in railway facilities. If that is done in the dominions, why should it not be done in this country? Because we are under the Colonial Office I hope the steamroller may not be ready to come into operation! I suggest that such an action should not be

[Archdeacon Beecher] namely, the recognition of decrees of nullity made in accordance with Hindu law and custom. From such inquiries as I have been able to make, I understand that Hindu law does make provision for decrees of nullity, as distinct from decrees of divorce made in conformity with Hindu custom. And it is in my opinion most important that any marriage legislation, affecting whatsoever community it may be, should include provision for the recognition by Colony law of decrees of nullity made in conformity with that community's law and custom. I would suggest, however, that, rather than hold up the passage of the select committee report, consideration should be given at the appropriate stage to introducing an amendment to the ordinance in order that Hindu law and custom may be fully recognized in this particular matter of nullity.

MR. PATEL: Your Excellency, it is a very important point that has been made by the hon. Member Representing Native Interests, but I personally believe that, though this bill does not provide for the nullity of Hindu marriage, the court will have power to declare a nullity as it is recognized by Hindu law in certain circumstances. In any event, if it is found necessary to have specific provision made for it, the Indian members will certainly approach the hon. Attorney General for the necessary amendment in the future. But this bill has been pending for a long time and it should become law as early as possible, and if it is found by experience or by a close study of the question that it is necessary to make special provision for the inclusion of decrees of nullity, I am quite certain we will approach the hon. Attorney General.

WAR REFUGEES (CONTROL AND EXPULSION) BILL

FIRST READING

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

ADJOURNMENT

Council adjourned till 10 a.m. on Thursday, 18th July, 1946.

Thursday, 18th July 1946.

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Thursday, 18th July, 1946, His Excellency the Governor (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

PAPERS LAID

The following paper was laid on the table:—

By SIR GILBERT RENNIE:

Report of the Development Committee, Vols. I and II.

ORAL ANSWERS TO QUESTIONS

No. 19.—TRANSPORT FOR AFRICAN CIVIL SERVANTS

MR. ODEDE:

Is Government aware that the Makerere trained veterinary, agriculture and medical assistant officers might be more efficiently employed if they had motor transport at their disposal instead of bicycles?

Will Government please take steps to secure such improved transport, either by offering Government vehicles or improved rates of remuneration which will enable these officers to purchase and maintain their own?

MR. LINDSAY: The Government agrees that in certain cases African Civil Servants might carry out some of their duties more speedily and efficiently with the use of motor transport.

2. As regards the second part of the question, provision already exists for interest-free advances to African Civil Servants to purchase their own motor bicycles and for the payment of mileage allowances which are, in the opinion of the Government, sufficient to cover maintenance and depreciation. These allowances are payable in respect of journeys undertaken on duty when the approval of a senior officer.

3. Where departmental transport already exists it is in the discretion of Heads of Departments to make it available for the use of African Civil Servants but the Government does not favour the provision of additional departmental transport when it is possible for officers to make their own arrangements and draw the appropriate allowance.

No. 20.—AFRICAN ADMINISTRATIVE ASSISTANTS

MR. ODEDE:

Would Government please let this Council know the policy and conditions under which the five African Administrative Assistants recently selected in Nyanza would be employed and the time when this scheme is expected to extend to other provinces?

MR. MARCHANT: The policy of Government is to encourage Africans to play an increasing part in the government of the Colony and, with this object in view, African Administrative Assistants have been appointed. They are not Local Government officers; their posts form a part of the District Administrative Staff. They will in effect be administrative assistants to the District Commissioners as the title of their office implies.

2 African Administrative Assistants will become members of the African Civil Service with all the attendant privileges. Their initial salary scale will be that under Scale "D", namely Sh. 170 x Sh. 10 to Sh. 220 x Sh. 12/50 to Sh. 320 per month and the commencing salary offered to each individual selected will take into consideration his previous experience and qualifications. The question of promotion to the scale of Sh. 325 by Sh. 20 to Sh. 525 will be considered at the end of two years service in the field and in the light of experience.

3. It is proposed to make a start with this experiment in Nyanza Province and consideration of its extension to other provinces will be given in the light of the experience thus gained.

No. 22.—FOUNDATION STOCK SCHEME

MAJOR JOYCE:

Will Government make a statement on its activities in connexion with the Foundation Stock Scheme, more particularly in the Machakos district, such statement to include the following information: (i) what land it has acquired for the purpose of the scheme; and on what terms; (ii) what further land it intends to acquire; (iii) whether any land allocated or under consideration for this scheme is already in occupation and beneficial use by existing settlers; (iv) whether the local authorities have been consulted about

the acquisition of land for this scheme; (v) what rate of stocking in terms of acres per beast will be adopted; (vi) who is responsible for such development as has already taken place, the cost of same to date, the terms of any contract which has been entered into for making cattle dips, developing boreholes, etc., and whether the carrying out of such contracts has been satisfactory; (vii) what Government department is now responsible for operating the scheme; (viii) is it intended that the scheme shall be financially self-supporting and from what source funds are now derived for capital and recurrent expenses?

ACTING DIRECTOR OF VETERINARY SERVICES (Mr. Hudson): The Foundation Stock Scheme was designed to assist in meeting a serious shortage of good foundation stock for new settlers and was originally approved at a joint meeting of the Production and Settlement sections of the Agricultural Production and Settlement Board. The scheme envisaged the establishment of a stock breeding farm, on which Somalia heifers would be artificially inseminated from pure-bred bulls, first producing half-bred progeny heifers for sale to new settlers. The capital and recurrent expenditure on this scheme, which was expected to be self-supporting, was estimated at about £85,320 spread over nine years.

For various reasons this scheme was not implemented and, on the recommendation of the Foundation Stock Subcommittee of the Agricultural Production and Settlement Board, the Live Stock Controller and the Commissioner for European Settlement have now drawn up a new plan which has been approved by the Lands Committee of the European Settlement Board and by the Central Settlement Board.

The present intention is to have a holding ground at Konza to which heifers will be drafted for insemination. When in calf they will be purchased by the Commissioner for European Settlement and will be moved to farms bought for settlement purposes in the Soy and other districts and the half-bred heifers will be sold to assisted settlers under the approved schemes. The original heifers will therefore be re-inseminated. It is further expected that a number of the in-calf

[Mr. Hudson]

Somalia heifers will be available for sale to established settlers and new settlers not under the schemes.

The answers to the detailed questions are as follows:—

- (i) 18,990 acres have been leased by Live Stock Control from Estates and Investments, Ltd., for a period not exceeding five years at a rent of £65 a year.
- (ii) and (iii) Consideration is being given to the possibility of reserving some 12,000 acres of unoccupied Crown land adjacent to the property and inquiries are being made as to whether a further area of some 4,000 acres at present held on a Temporary Occupation Licence is available.
- (iv) Yes, the proposals have been submitted to the Machakos Area Committee of the Nairobi District Council.
- (v) The estimated carrying capacity of the area is 15 acres to the beast, but no more animals will be put on the area than it can carry.
- (vi) The development programme was approved by the then Agricultural Production and Settlement Board. Expenditure has totalled £3,500 approximately. The work was carried out on the basis of costs plus 10 per cent. Trouble has been experienced with the dip and an inquiry is in progress.
- (vii) The Live Stock Control is responsible for the operations at Konza and the Commissioner for European Settlement subsequently.
- (viii) It is expected that the scheme will be financially self-supporting. All expenses to date have been met from Live Stock Control funds.

No. 23—NATIONAL PARKS

MRS. WATKINS:

Is it Government's intention when placing certain forest areas and game reserves into the trust of the National Park that local residents will have their freedom of ordinary movement therein curtailed, or will they have to pay for such ordinary citizen rights as walking or riding in the Ngong Hills or picnicking in the Karura Forest?

MR. ARMITAGE: The answer to the question will be found in the National Parks Ordinance, 1945. Section 12 stipulates what acts cannot be done in a National Park except with the permission of the Trustees, and section 18 thereof empowers the Trustees, with the approval of the Governor in Council, to make regulations with respect to the conditions of entry, to fees, to the regulation of traffic and to a number of other matters.

The Kenya National Parks Trustees have not yet considered what regulations should be applied to the various areas recommended by the Game Policy Committee as National Parks, if and when they are declared as such.

The Ngong Hills do not fall into any proposed National Park, but it was recommended by the Game Policy Committee that the Trustees should endeavour to obtain certain rights of preserving fauna and flora in that area on the basis of a Park Adjunct. The restrictions or regulations which the Trustees will consider should apply to the Ngong Hills will depend largely upon what rights they will be granted by the Native Lands Trust Board.

The Karura Forest has not at any time been included in any proposals for a National Park or a Park Adjunct.

MRS. WATKINS: Arising out of that reply, I hope the Trustees are aware of the anxiety expressed by the public in the matter of their freedom and ordinary citizen rights which might be seriously curtailed.

No. 27—SILO STORAGE

MR. TRENCH:

Will Government please give an assurance that, before the end of the present session, it will make a statement as to what decision it has taken in regard to silo storage, as this matter is of pressing urgency.

MR. ARMITAGE: The whole question of the provision of silo storage for holding a reserve of cereals in Kenya was examined by a sub-committee of the Agricultural Production Board which, in 1945, submitted a detailed technical report with estimates of cost. The report of the sub-committee was considered in Executive Council, when it was decided that, in view of the inter-territorial aspect of the

[Mr. Armitage] problem and of the effect on the proposals of East African cereal production policy it would be desirable to refer the report to a committee under the chairmanship of the Economic Adviser to the Governors' Conference.

This committee has recently met and its recommendations are awaited. The position for 1946-1947 is secure and the Member for Agriculture, Animal Husbandry and Natural Resources is discussing the matter in London. No decision on long-term policy can be taken until the report of the committee has been received and examined by the Government.

MR. BOUWER: Arising out of that reply, could Government tell us what action is being taken on the plots frozen?

MR. ARMITAGE: They will be released.

No. 35—INDIAN IMMIGRATION STATISTICS

SIR ALFRED VINCENT:

What are the facts known to Government regarding statistics of the Indian population having regard to the discrepancy that appears to exist as between the figures supplied to the Secretary of State based on immigration statistics and the present ration strength on the books of the General Commodity Board?

MR. LINDSAY: The facts known to Government regarding statistics of the Indian population are:—

- (i) those revealed by the 1931 census;
- (ii) the total number of migrants entering or leaving the Colony through the recognized ports since that date;
- (iii) the total number shown on the books of the Commodity Distribution Board.

In order to arrive at estimated totals of the Indian population in 1939 and 1946 which were required in order to enable the Secretary of State to answer a question in Parliament on the 15th of May last, it was necessary to take the 1931 census figure, adding to it the total number of immigrants and subtracting the total number of emigrants since that date, and to fix upon a percentage figure to cover the natural rate of increase. This was taken as being 1 per cent. After

deducting 6,000 Goans and 100 Cingalese, this gave a figure of 13,280 less than the total on the books of the Commodity Distribution Board.

It is thought that the discrepancy may be accounted for through the natural rate of increase having been underestimated through unrecorded inter-territorial migration, and because a certain number of persons still shown on the books of the Commodity Distribution Board are in all probability no longer in the country or have died. The true total could only be ascertained by a full census, plans for which are at present under consideration.

SCHEDULE OF ADDITIONAL PROVISION No. 4 of 1945

STANDING FINANCE COMMITTEE REPORT

MR. TROUGHTON: Your Excellency, I beg to move: That the Standing Finance Committee report on Schedule of Additional Provision No. 4 of 1945 be adopted.

MR. FOSTER SUTTON seconded.

The question was put and carried.

RULES OF DEBATE OFFICIAL PARTICIPATION

HIS EXCELLENCY: Before I call upon the hon. Member for Nairobi South to speak to the motion standing in his name, I should say that it deals with a matter upon which His Majesty's Government have already declared their decision, both internationally and in Parliament. Accordingly, in so far as the official side of this Council is concerned, the matter is one which has been decided and upon which it would be inappropriate for official members either to speak or to vote. I should also make it clear that the Government of the Colony is bound by the decision of His Majesty's Government in this matter.

MR. SHAMSUD-DEEN: On a point of order, how can hon. members of this Council discuss a motion which does not state clearly what it is about? I do not know what we are talking about.

HIS EXCELLENCY: As I understand it, the hon. member will know what we are talking about when the mover has proposed the motion. (Laughter.)

TANGANYIKA TERRITORY
PUBLIC TRUSTEESHIP COUNCIL
(1946)

THE ALDERMAN VICE-CHIEF...
I have the honor to advise that in the opinion of the Council it would be in the best interests of all the inhabitants of Kenya and Tanganyika if Tanganyika Territory were transferred to the United Kingdom and incorporated with part of the African Colonies Trustee Territory (Kenya) under the terms of the Declaration contained in Articles 7 and 7a of Chapter XII of the United Nations Charter regarding non-self-governing territories instead of which provisions of Chapter XIII of that Charter and that the Secretary of State is requested to inform His Majesty's Government accordingly.

I am very grateful to you for having made the arrangements regarding this matter because a deep personal interest was manifested. But at the same time I must say that the reasons for this matter are because the British Government has made decisions which affect the lives of thousands of British subjects in other territories directly and indirectly. Before the different considerations with the present Tanganyika who are concerned. These facts should be taken into account of the Council, or anyone else, in this that there is an entire people, people of the East in a number of the "great" regions where small people appear today. In the course there of administration to be entirely ignored. We are British subjects and this matter is not as simple as it seems. either this Government or the Home Government. It is not a matter of "rights" but of "responsibilities" that we have made a world-wide and we had to our duty to make representations to the United Nations which would have been the only way to have the inhabitants support of practically all the inhabitants of this territory.

We are prepared to be advised, both past and present history. In fact, the United Nations has the responsibility and the power to make a decision regarding this matter. It is not a matter of "rights" but of "responsibilities" that we have made a world-wide and we had to our duty to make representations to the United Nations which would have been the only way to have the inhabitants support of practically all the inhabitants of this territory.

...of the United Nations...
...in the best interests of all the inhabitants of Kenya and Tanganyika...
...the United Nations Charter regarding non-self-governing territories...
...the Secretary of State is requested to inform His Majesty's Government accordingly...

In order to give...
I am very grateful to you for having made the arrangements regarding this matter because a deep personal interest was manifested. But at the same time I must say that the reasons for this matter are because the British Government has made decisions which affect the lives of thousands of British subjects in other territories directly and indirectly. Before the different considerations with the present Tanganyika who are concerned. These facts should be taken into account of the Council, or anyone else, in this that there is an entire people, people of the East in a number of the "great" regions where small people appear today. In the course there of administration to be entirely ignored. We are British subjects and this matter is not as simple as it seems. either this Government or the Home Government. It is not a matter of "rights" but of "responsibilities" that we have made a world-wide and we had to our duty to make representations to the United Nations which would have been the only way to have the inhabitants support of practically all the inhabitants of this territory.

On the 17th January, 1946, the Secretary of State for Foreign Affairs informed the United Kingdom members of the United Nations that it was the intention of the United Kingdom Government to place Tanganyika Territory under the trusteeship of the United Nations...
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[Sir Alfred Vincent]
and, indeed, it did appear at the outset that Tanganyika was in danger of being completely ignored. In registering the strongest possible protest at the treatment accorded to us in this matter, I hope to show how vitally concerned we are and the reasons for our concern.

There seems to be confusion in the minds of some people as to the difference between a protectorate and a colony, and I think we should clear that point up. A British protectorate does not form part of His Majesty's dominions. Consequently, as stated by the Prime Minister, the inhabitants are not British subjects and they cannot even qualify to become British subjects by naturalization, no matter how long they may reside in a protectorate. In Tanganyika the status of that territory has caused considerable hardship to many of the inhabitants, who have been under British rule for many years and who are unable to become naturalized British subjects because that territory is not a British colony.

What would the position of Tanganyika be under the terms of this motion, as opposed to Chapter XII of the United Nations Charter? It would indeed come within the identical terms of the United Nations Charter, such as Kenya comes within to-day, and would be subject to the same obligations. It is not generally known or realized that Kenya, as a non-self-governing state, is now subject to the United Nations Charter under the system of the United Nations Organization. To be precise, Kenya has now been placed under the Declaration of the Principle relating to all territories whose people have not yet attained a full measure of self-government. This was agreed to by the British Government at San Francisco at the United Nations Conference which took place between April 25th and June 26th, 1945, and is recorded in Chapter XI of the Charter. Articles 73 and 74 of the Declaration of Principle regarding non-self-governing territories, of which Kenya is one.

My first concern in dealing with this problem is the difference in the composition of the old and the new authorities, and in order to understand the position fully let us compare the two authorities concerned. Firstly, the Permanent Mandates Commission of the old League of Nations, and secondly, the Trustee-

ship Council of the United Nations Organization.

The old Permanent Mandates Commission, how was it constituted? According to the United Nations Organization Information Paper No. 6, page 6, it states: "The Permanent Mandates Commission was set up by the Council of the League. It consisted, at first, of nine members, but later of ten and at one time eleven members—when a place was found for Germany after she joined the League. In 1938 there were ten members. An expert from the International Labour Office, at with the Commission when questions concerning labour were under discussion. The majority of the members had to be nationals of non-mandatory Powers. All were selected for their personal merits and competence and they could not hold any office which put them in a position of direct dependence on their Governments while they were members of the Commission. The labour expert was appointed by the International Labour Organization."

The foregoing was the constitution under the old League of Nations Mandates Commission, but the similar body under the United Nations Organization, new Trusteeship Council is an entirely different matter, and I can best illustrate that by quoting fully a short speech made by Lord Hailcy on February 27th to the members of the Royal Empire Society in London, and the Royal African Society in London. He very lucidly set out the comparison of the two Councils and drew attention to a grave uncertainty.

"In general terms," he stated, "the objectives and functions of the new Trusteeship Council were similar to those of the existing Mandates, but its functions differed in one respect; whereas the Permanent Mandates Commission did not claim and, indeed, rather rejected the idea of making inspections of mandates territories, it was now provided that the Trusteeship Council could arrange for periodic inspections of its mandated territories, at times to be arranged with the Administering Authority. And there was also a very material difference in the composition of the two bodies. The Permanent Mandates Commission was composed of a body of men nominated by their personal qualifications; they sat on the Commission for a number of years making a close study of the reports

TANGANYIKA TERRITORY POSITION UNDER UNITED NATIONS CHARTER

SIR ALFRED VINCENT: Your Excellency, I beg to move: That, in the opinion of this Council, it would be in the best interests of all the inhabitants of Kenya and Tanganyika if Tanganyika Territory were forthwith declared a British Colony and henceforth form part of His Majesty's Colonial Empire, thus bringing the Territory within the terms of the Declaration contained in Articles 73 and 74 of Chapter XI of the United Nations Charter regarding non-self-governing territories, instead of within the terms of Chapter XII of that Charter, and that the Secretary of State be requested to inform His Majesty's Government accordingly.

I was very grateful to you, Sir, for having made the announcement regarding this motion, because it does remove any misunderstanding. But at the same time I must say that the very reason for this motion is because the British Government have made decisions which affect the lives of thousands of British subjects in these territories, directly and indirectly, without the slightest consultation with the people themselves who are concerned. (Hear, hear.) I should not like members of this Council, or anyone else, to think that this is an empty political gesture; it is not. It is because of this vital principle where small peoples appear today, in the strange form of democracy, to be entirely ignored. We are loyal British subjects and this motion is not an attempt to embarrass either this Government or the home Government. It is merely a matter of method. We consider that a mistake has been made, and we feel it our duty to make representations by means of this motion, which I can assure you will have the wholehearted support of practically all the inhabitants of this territory.

My argument is based on history, both past history and recent history. In fact, history itself supplies the argument, and before I commence to quote somewhat profusely from various documents and various speeches, I should like to point out to members that Monsieur Orts, a very well-known Belgian character—one of their experts on colonial matters who represented the League of Nations, I believe, at San Francisco, and also Bel-

gium at the United Nations Conference recently in London—in a lecture in Brussels made this remarkable statement. (You will also find later that Lord Hailey, in quieter and more modified terms, expresses the same doubts). Monsieur Orts described the trusteeship system as a "powder magazine—not dangerous in itself, but if absent-minded or evilly disposed people were allowed to approach it, anything might happen. Everything would depend upon the state of mind that prevailed. Unfortunately," he said, "the spirit at these international meetings was hostile to Colonial powers".

In order to give members a very brief history leading up to these decisions, I should like, first of all, to quote from a statement made by Mr. Bevin and a further statement made by the Prime Minister recently.

On the 17th January, 1946, the Secretary of State for Foreign Affairs informed the General Assembly of the United Nations that it was the intention of His Majesty's Government to place Tanganyika, Togoland and the Cameroons under British Mandate under the International Trusteeship system of the United Nations Charter. A further statement by the Prime Minister on the 23rd of January, 1946, confirmed this statement, and added that the draft terms had been sent to the "States directly concerned"; the States "directly concerned" in the case of Tanganyika being the Union of South Africa and Belgium. His statement ended as follows: "Finally, there is one point which I should like to emphasize in regard to the status of the inhabitants of these territories. These territories have, for over 25 years, been under British Administration on behalf of the League of Nations and will continue to be under British Administration on behalf of the United Nations. They are not British Colonies and the inhabitants are not, therefore, as such, British subjects. They are, however, and will continue to be, 'British protected persons,' of exactly the same status as the inhabitants of any British Protectorate not under mandate or trusteeship."

It seems strange to me that "we in Kenya are regarded as not being directly concerned, merely because we are not a self-governing state, and we were apparently to have no voice in this matter at all. We were to be completely ignored

(Sir Alfred Vincent) and, indeed, it did appear at the outset that Tanganyika was in danger of being completely ignored. In registering the strongest possible protest at the treatment accorded to us in this matter, I hope to show how vitally concerned we are and the reasons for our concern.

There seems to be confusion in the minds of some people as to the difference between a protectorate and a colony, and I think we should clear that point up. A British protectorate does not form part of His Majesty's dominions. Consequently, as stated by the Prime Minister, the inhabitants are not British subjects and they cannot even qualify to become British subjects by naturalization, no matter how long they may reside in a protectorate. In Tanganyika the status of that territory has caused considerable hardship to many of the inhabitants, who have been under British rule for many years and who are unable to become naturalized British subjects because that territory is not a British colony.

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"In general terms," he stated, "the objectives and functions of the new Trusteeship Council were similar to those of the existing Mandates, but its functions differed in one respect; whereas the Permanent Mandates Commission did not claim and, indeed, rather rejected the idea of making inspections of mandates territories, it was now provided that the Trusteeship Council could arrange for periodic inspections of the mandated territories, at times to be arranged with the Administering Authority. And there was also a very material difference in the composition of the two bodies. The Permanent Mandates Commission was composed of a body of men nominated on their personal qualifications; they sat on the Commission for a number of years making a close study of the reports

[Sir Alfred Vincent]

which came up, and they thus became possessed of a considerable knowledge of colonial conditions. It was a well understood convention that they were not there to represent national interests. How was the new Trusteeship Council to be composed? It was composed of a number of nations, about half of whom administered Mandates, while the other half was composed of nations who were, roughly speaking, the same as those who were prominent on the Security Council. It was not unreasonable to suppose that their representatives would be concerned mainly with the interests of the nations they represented. How this will work out in practice only time will show. Whether the main interest of the Trusteeship Council can be in the outlook of the nations it represents or in the welfare and progress of the territories themselves it was not yet possible to say. The point is one which should be borne in mind when forecasting the possibilities of the new trustee set-up."

I submit, Your Excellency, that this is a risk which we should not and cannot afford to take, because risk there undoubtedly is.

With regard to the legal position I do not wish to bore hon members with detailed comparisons and cross references as between the Tanganyika Draft Agreement and the provisions contained in the present laws of Tanganyika, but I have most carefully studied the Agreement in relation to the existing laws, and I have found that practically every article of the Agreement, with perhaps two main exceptions, is already provided for in the Revised Edition of the Laws of Tanganyika, Vol. III, pages 1 to 5. Indeed, the Draft Agreement closely follows the laws already in existence, covering all the essentials, including administration.

Both enable the constitution of a customs, fiscal or administrative union or federation with His Majesty's adjacent territories. They both provide for the safeguarding of the rights and interests, present and future, of the African population, and impose safeguards and restrictions for the transfer of native lands. They provide for equal rights to all nationals of members of the United Nations in respect of: (a) entry into and residence in Tanganyika; (b) the acquisition of property, both movable and im-

movable, and (c) concessions and other privileges. They provide for measures to be taken to promote the social, economic and educational advancement of the inhabitants, religious freedom, etc. Finally, they impose an obligation to make an annual report to the Trusteeship Council.

The only new features which I can trace, which are not already provided for, either in the present laws of Tanganyika or in Chapter XI of the Declaration regarding non-self-governing territories, are:—(1) The periodic visits by members of the Trusteeship Council to Tanganyika, which is contained in Article 87 of the Charter, and referred to in Article 3 of the Draft Agreement. (2) The statement made in Article XI of the Draft Agreement and its implications, to which I will refer later. Any other difference, such as the new powers which were not enjoyed under the Mandate, to establish naval, military and air bases and to erect fortifications in Tanganyika would automatically be provided for if that territory were to be declared a British Colony.

Before dealing with the new features referred to, hon members would do me the favour to hear the details of the Declaration regarding non-self-governing territories—even if it be only just to refresh their minds and memories!

It will be realized that Chapter XI of the Charter, this very part which I will now quote verbatim, does without doubt, without any doubt whatsoever, provide fully for the security, welfare and progress of the inhabitants of these territories, which is the avowed aim of the Charter:—

"United Nations Charter, Chapter XI. Declaration regarding non-self-governing territories, Article 73. Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognize the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and, to this end:—

[Sir Alfred Vincent]

(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational advancement, their just treatment and their protection against abuses;

(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions according to the particular circumstances of each territory and its peoples and their varying stage of advancement;

(c) to further international peace and security;

(d) to promote constructive measures of development, to encourage research, and to co-operate with one another and, when and where appropriate, with specialized international bodies, with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article, and

(e) to transmit regularly to the Secretary-General for information purposes, subject to such limitations as security and constitutional consideration may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are respectively responsible.

Article 74. Members of the United Nations also agree that their policy in respect of the territories to which this Chapter applies, no less than in respect of their metropolitan areas, must be based on the general principle of good-neighbourliness, due account being taken of the interests, and well-being of the rest of the world, in social, economic and commercial matters."

Those are the terms of the Declaration which affect Kenya today and, as you will see, they are all-embracing, even providing for the rendering of an annual report to the Trusteeship Council, and demand without doubt adequate safeguards for the inhabitants of any non-self-governing territory such as Tanganyika.

I will now refer to the new features contained in the Tanganyika draft agreement.

Periodic visits from the Authority: For the last 25 years Tanganyika has been

under British administration, and during that time I claim there has never been the slightest necessity, or any ground of suspicion, for a visit of inspection from any authority to safeguard the welfare of the inhabitants. (Hear, hear.) In dealing with this matter it would be quite useless unless I was completely outspoken on the subject. Such visits may be a source of great danger, great danger, to the peace of the inhabitants and may cause Tanganyika to become the centre of much conflicting propaganda from nations who are represented on the Trusteeship Council who might consider it their task to further the interests of their own governments rather than those of the inhabitants of Tanganyika. (Hear, hear.) I also believe that such visits would be a disturbing factor and will militate against the authority of the administering Power, for, as I repeat once again, such visits have never been necessary in the past, especially under the British system of justice, which is without doubt unexcelled in the world, because any nation at any time could without difficulty ascertain what was happening in any British possession. (Hear, hear.)

The new Article XI reads as follows: "Nothing in this Agreement shall of itself entitle any member of the United Nations to claim for itself or for its nationals, companies or associations, in Tanganyika, the application of a more advantageous regime than that member itself grants in its own territory, to Tanganyika and its inhabitants."

"This paragraph sounds very innocent, and although innocent if itself has grave implications, in my opinion, which may give rise to untold trouble to the Administering authority. In practice I have no doubt that some nations may claim that they are entitled to receive in Tanganyika all those advantages which they themselves offer in their own territory to the inhabitants of Tanganyika and, indeed, they may offer advantages which they well know the inhabitants of Tanganyika are never likely to take advantage of, lest they be lost in the other country or, perchance, liquidated! (Laughter.) I feel that this Article is quite unnecessary and will give rise to a great deal of friction, and ultimately create great difficulty. The safeguards contained in Chapter XI of the Declaration, the welfare of the inhabitants, if indeed that be the

[Sir Alfred Vincent] real aim—and I repeat, if that be the real aim—are amply sufficient for the spirit of the Charter to be given proper effect to.

Dealing with strategic needs, it is necessary for me to refer to past history, and to the fact that we in Kenya are certainly directly concerned with the future of Tanganyika in every possible way. (A member: How?) Because of the perils which have faced us twice in the last 30 years. (Hear, hear.)

I would say here that it may be thought that we in Kenya, as a small entity, are being quite futile in expressing an opinion by means of this motion, when we are not apparently considered by the great Powers to be directly concerned. It must be remembered, however, that history tells us and the facts are that, prior to the last war, had it not been for the work of the Tanganyika League—and particularly the work of the then hon. member for Nairobi South, Major Cavendish-Bentinck (hear, hear)—Tanganyika would have most likely, almost certainly, been returned to Germany by way of appeasement in 1938. And with what result? Therefore, if that voice was heard then, we can equally hope that our voice will be heard today (Hear, hear). There is very little doubt in my mind that if that had happened, not only would this country have been invaded and the inhabitants placed for at least the period of the war under the German yoke, but it would have made possible the existence of German air bases, and that, together with the harbours of Tanganyika, would have been a very grave menace to our shipping which had been denied to a very great extent (the use of the Mediterranean). Had this happened it might have altered the whole course of the war, not to mention the invasion of the territories to the south and the grave threat to South Africa itself, because the large Italian army in Ethiopia, together with and under the guidance of the considerable forces which would undoubtedly have been built up in Tanganyika, would have been most formidable. Assuredly, then, we are "directly concerned" and we should do all in our power to get this position corrected before it is too late.

I must refer to the difference in our standing and our privileges and our rights

to those enjoyed by the Union of South Africa. Kenya should not be at a disadvantage compared to the Union of South Africa merely because it is a small country, a crown colony. After all, the residents of a crown colony are still human beings and have a right to express an opinion, and although the view has been expressed by a visiting member of Parliament that the day of small units is over, and although this may prove to be the case, I maintain that it is vitally necessary that the rights and privileges of small units, especially the small units of the British Empire, should not be obscured and overridden by hasty Government decisions which should not be made without the full consent and agreement of the peoples themselves.

The Union of South Africa has very rightly claimed that the territory known as South-West Africa should be annexed to the Union, because the Union could no longer be faced with a continuance of the state of affairs which have obtained during the past 25 years. It was emphasized when that statement was made that such a course was in the interests of the natives as well as the other inhabitants, and although I know it will be argued, and I shall be told, that the territory of South-West Africa is a "C" Mandate and comes under a slightly different category to Tanganyika, which is a "B" Mandate, nevertheless the basic principle governing the position is the same. Strange to say, when the inhabitants of South-West Africa expressed the opinion—and, after all, I imagine that they are "directly concerned"—and stated that they wished to become part of the Union of South Africa, their opinion did not seem to be welcome to the United Nations Organization. In my opinion, there is every justification on the ground of the perils which have faced us in the past and which may face us in the future, for asking that Tanganyika be declared a British colony, if only on the ground of the Empire's vital strategic needs.

The interpretation of democracy today is somewhat strange and, as also after the last war, under the benevolent League of Nations, to me it is very hard to understand. The inhabitants of Jubaland, for instance, including thousands of British subjects, found overnight and without any consultation with them, that they were transferred under Italian rule.

[Sir Alfred Vincent] Again, during the present war, by agreement evidently with the big Powers, the Kurile Islands were ceded to Russia for their intervention in the Japanese war, although such intervention could never honestly be said to have occurred. And I cannot understand, and I am afraid that I am not alone in this, we cannot understand why there should be one practice and one international law for Russia and one for Britain. I wonder whether Mr. Bevin, who made this gesture of good intent on the 17th of January, a gesture of good faith, setting a worthy example of good fellowship, co-operation, and so on, would now, six months later, at this moment, be prepared after his experience in Paris at the meeting of the Foreign Secretaries, and the strange happenings at the meetings of the United Nations Assembly, make that gesture today? I very much doubt it. If it is the case that this gesture was made to honour an undertaking made by the British Government before the days of Pearl Harbour, I submit that any such undertaking can with all honour be seriously reconsidered in view of what has taken place since. Surely the inhabitants of Tanganyika and this country can claim that the British Government really has no right to make them directly or indirectly the subjects, if not indeed the victims, of yet another international experiment? Surely show that the whole of the non-self-governing territories have, in the interests of their inhabitants, been placed under the Charter, the uncertainty of the future of Tanganyika should be removed once and for all by the methods suggested in this motion.

The Secretary of State for the Colonies just recently said in the House of Commons, referring to the Tanganyika draft terms, this: "The draft terms published are not necessarily in their final form and it may be that, following on publication, certain amendments to the draft may appear desirable and, if so, we shall be quite free to make such alterations before approaching the United Nations in September. In particular, it is important that we shall take account, so far as we can, consistent with the Charter, of any opinion which may be expressed by the inhabitants of the territories themselves". Colonel Oliver Stanley, a former Secretary of State, stated: "In

Kenya, Tanganyika and Uganda the economic argument for some form of co-operation was perhaps stronger than elsewhere in the Colonial Empire", and the attitude of His Majesty's present Government, since they came into power, surely endorses this statement.

Therefore it is our right, and it is right and it is our duty, to ask His Majesty's Government not only to take into account the opinions expressed by the inhabitants of the territories themselves but also of the neighbouring territories of the British Empire which are so vitally affected, and to call upon that Government at this juncture not merely to consider amendments to the terms in the draft agreement but to realize that the only way in which His Majesty's Government can act completely in the interests of the inhabitants of Tanganyika and Kenya is by reconsidering the whole matter and recognizing that there is no justification for going forward with the Trusteeship Agreement and instead of placing Tanganyika as a non-self-governing territory under Chapter XII of the Charter to declare it a British Colony and thus avert a tragedy which, in years to come, may not only affect Tanganyika and Kenya but inevitably the whole of Africa.

Finally, no one will dispute that the peoples of these territories, and, indeed, the peoples of the world, have far greater reason to have an unbounded faith in the British Commonwealth and Justice of British rule than in the uncertain future and workings of the United Nations Organization.

Sir, I beg to move. (Applause.)

MR. BOWEN: Your Excellency, I beg to second.

The hon. mover has given us all the factual points and arguments as to why every person who is at all reasonable, should agree that the best thing that could possibly happen to Tanganyika would be to declare it a British colony at the earliest possible moment. Apart from referring to one or two of those factual arguments, I intend to go into the matter more from the ordinary man's point of view: what the ordinary man thinks as about it all. I speak as one who fought, who sweated, who toiled through many weary miles in Tanganyika 30 years ago. There were others who

[Mr. Boucher] fought, who died there, and I should like to think that I speak for them as well.

It is a great pleasure to me that so many people have at last realized that, in the interests of the inhabitants of all these territories, it is absolutely essential that Tanganyika Territory should be declared a British colony. Between the two wars I, like many others, had to travel in and through the Territory on many occasions, and I was always very depressed whenever I went into it by the visible signs on every hand of the dead hand of the Mandate system which rested on the Territory and retarded its progress. By that I do not mean to say that between the wars there was no progress in the Territory at all, or that the Administration there did not do its best under the circumstances, but what I do mean is that that Territory could, and indeed should, have gone very much further had it been declared a British colony right from the start and not been subjected to all the uncertainties of a Mandate.

The main reason for the lack of progress in the Territory was one of confidence. There was no confidence in the future of the Territory, and for a very good reason. My hon. friend the mover has reminded you, if indeed you needed reminding at all, that it was just touch and go at one time whether that Territory went back to Germany or not. I leave it to your imagination, and, indeed, he pointed out what an unfortunate position this Colony would have been in had that taken place, and I support him most wholeheartedly when he says that we are very, very definitely concerned in the future of the Territory and that we should be consulted as to that future. We might have been overwhelmed in the last war had Germany got that Territory back, and the point is this: Can we afford to take that risk again? I say most definitely—and I am certain every reasonable member of this Council must say so in his own heart as well—that we just cannot afford to take such a risk again, and the only thing that would obviate such a risk would be for Tanganyika to be declared a British colony at the earliest possible moment.

If these East African territories are to develop as they should, it is absolutely

essential that there shall be full confidence as to what their future will be. But apart from that, is it fair to people who in the last war gave their lives to fight the battles of the Empire, who did not wait to be forced to go, but who went at the earliest opportunity to help—is it right that, when that fight has been won, they should be cast aside like an old glove and told that they can now go back to their protected status? Are we being fair to those people? Are we being fair to them and to ourselves if we do not express our fears at the present moment in the most distinct and unequivocal terms, by saying that we, the people of this country, are not prepared to be subjected to the risks that we have undergone in the last 30 years. It is common knowledge that in one generation we have been twice threatened with deadly danger, and it was only by the generous and timely help of our neighbours to the south of us that we managed to survive at all. I yield to no man in my admiration for the high ideals expressed in the United Nations Charter, but we are living in a dangerous world and, while we ought to do everything in our power to achieve those ideals, we certainly do not want to hide our heads in the sand and not see the writing on the wall. We cannot afford to take risks.

Let us look at Article 11 in the draft terms of agreement under the trusteeship system, which the hon. mover has referred to. It appears on the face of it to be a very innocent article, but I leave it to your imagination, when you start thinking about Article 11, what could happen and what our position could be if there was some country, some nation, that was determined to get a footing in Africa. It reads: "Nothing in this agreement shall of itself entitle any member of the United Nations to claim for itself or for its nationals, companies or associations in Tanganyika the application of a more advantageous regime than that member itself grants in its own territory to Tanganyika and its inhabitants". One can quite easily visualize that there might be a nation who wants to get a footing in Africa who would offer all sorts of advantageous terms to Tanganyika nationals in its own country, knowing quite well that those terms would not be taken advantage of under any circumstances, but the offer of which

[Mr. Boucher] to [might entitle it to push its nationals into Tanganyika. That, I believe, is a danger that we have to guard against.

Mr. Bevin made it quite clear in his statement to the United Nations General Assembly on January 17th, 1946, that, although he was prepared to place Tanganyika under the trusteeship system, he was only prepared to do so under certain conditions, and I think we ought to be very grateful that he did not go further than that, but I maintain that, be the conditions what they may, Tanganyika will not enjoy the same confidence of the people in these territories as it would were it to be declared a British colony. I think it is an incontrovertible fact that the future destiny of this Colony lies to the south, for obvious reasons. We have twice in one generation had occasion to be very thankful that we had friends and kith and kin further to the south. I believe it would be a vital danger to this Colony if that thin red line which we want to exist between here and our kith and kin to the south was interrupted in any way, no matter how thin the interruption was in theory, because it may be a very real danger and a very real interruption in practice.

I sincerely trust that every member on this side of Council will give his motion his or her wholehearted support, as I know that in the hearts of every member opposite it has their wholehearted support. (Hear, hear.)

Mr. SHAMSUDD-DEEN: Your Excellency, I think that the limit of latitude has now been reached in this Council when hon. members are allowed to waste not only time, but actually the public money of the taxpayers. At one time I calculated that the time taken by this Council cost the taxpayers at the rate of about £1 per minute, and my hon. friends have already wasted nearly £90 at that rate. (SIR ALFRED VINCENT: Well, don't waste any more!) (LAUGHTER.) I will try to show how, in my humble submission, it may be possible to save time for the future.

I am only wondering why the hon. mover spoke for so long and whether he said one word in all his speech about facts which are not already known to the British Government, the Colonial Office and the whole world. There was

a time in this Council when some members were in the habit of reading their speeches, a habit I have very seldom indulged in. I thought that the hon. mover was reading almost the whole of his speech this morning. I do not object to that, but I submit that if we can all waste our time like this, discussing and debating matters about other colonies, then there will be no limit. If this goes on some of the hon. members would be perfectly justified in bringing a motion commenting upon the confusion that exists at the present moment in India, or asking that this colonial system should be extended further north to administer the Sudan and other places. After all, those territories adjoin Uganda.

Mr. VASEY: On a point of order—

Mr. SHAMSUDD-DEEN: I myself have very often felt like a frog which when it has crossed a pond feels that it has crossed the whole Indian Ocean! (Laughter.) I am afraid there are other members of this Council who feel likewise.

Mr. VASEY: On a point of order, is the hon. member challenging the ruling from the Chair?

Mr. SHAMSUDD-DEEN: The Council is competent to discuss this matter.

His EXCELLENCY: I have not heard him do so.

Mr. SHAMSUDD-DEEN: No, Sir, I am not. All I say is that there should be some limit to future debates in this Colony.

Coming to the fact as to why we should have anything to say about Tanganyika, I felt most of the time as if I was sitting in the Legislative Council of Tanganyika rather than of Kenya Colony. It is a great pity that the hon. mover is not a member of the United Nations Organization, as this motion could have been very appropriately introduced at San Francisco, but not in Nairobi. I submit that in the last quarter of a century the unofficial European element in this country as a result of their treatment of other races has not proved itself fit for any measure of self-government because there is no understanding of the meaning of the words "equal rights for all civilized

[Mr. Shamsud-Deen] men". For instance, the principle of "Government of the people, for the people, by the people" is a thing that they could not possibly accept; nor the law of "no taxation without representation", or perhaps representation according to taxation is not acceptable to them. The numerical strength is no criterion of representation to them. The only standard of representation is evidently according to the colour of the skin. If they had not wasted the past 35 years but had tried to foster the sense of responsibility and respect for the rights of all the inhabitants of this Colony, including Indians and Africans, then they could have said to the world and to the Government "We have managed very successfully all the affairs of the Colony; now let us extend the benefits of our wisdom to the adjoining colonies".

I do not think I am indulging in any recrimination when I say that the adjoining territories could not tolerate their association in any form with this racial prejudice-ridden Colony of Kenya. To them it is an infected place, and they loom upon us as like someone who is infected with some contagious disease.

Talking about the relevance of this resolution I personally think that the motion could have been more appropriately brought by some Indian members because, as far as the trusteeship of Tanganyika is concerned, it would be quite a fit revival of the subject which was shelved at the end of World War No. 1, when the trusteeship of Tanganyika was very nearly handed over to the Government of India. (Laughter.) It is a well-known fact I hear laughter because very few of you know anything about the political affairs of this time. Very few gentlemen here know that Sir Theodore Morison was sent out to Kenya Colony and Tanganyika by His Majesty's Government to make investigations and report, and was very nearly going to be Governor of Tanganyika on behalf of the trusteeship of the Government of India, and I think that after all the help that India has rendered during this war, that matter should have been revived, but knowing the speed of events in the world the decadent Government of India has not had the courage to bring that matter up again.

The hon. Member for Usin Gishu

said he thought he had a right to have a say in the matter because he had fought in Tanganyika Territory. That is a very admirable claim, but I think if it was carried to its logical conclusion South Africa and all the united nations which took part in the defence of Africa could advance a much stronger claim than he can, and everybody who fought in the defence of the Colony and the military authorities would be competent people to speak on it. I submit that the proper people to have put this viewpoint before the Government would have been the party concerned; that is to say, the people in Tanganyika. This motion would have been an appropriate one to debate in Tanganyika and not in this Colony at all. All that this debate shows is that we are giving ourselves away and that we want all the racial discriminations extended to that colony also. The hon. Member for Usin Gishu also said the proper thing would be for us to be affiliated to South Africa—

MR. BOWSER. On a point of explanation I did not.

MR. SHAMSUD-DEEN. He certainly said something about extending the territory to the south. I think His Majesty's Government have not in a haste decided on what they have done, and it is the proper thing which they have done, and I do not think we need worry ourselves about Tanganyika going to the Germans again as some hon. members apprehend or anticipate. I think that His Majesty's Government probably know all these things much better than we do. The most unfortunate part of the thing is that many of us are still living in the 19th century without realizing it, and the best thing for us is to get alive and face the new era that has dawned in the world. The hon. member mentioned one or two speeches by Lord Hailey and others. There is something new about it at all, and when we sit in one corner of the Empire and try to tell the Government in London what to do I think the reaction on their minds is the same as on mine.

As an hon. member said at the beginning of this speech, I must not "waste my time". (Laughter.) I do hope there will be a division on this motion and that all right-thinking members, including Europeans, Indians and the African, will vote against it.

MR. PATEL: Your Excellency, the forceful and able speech of the hon. mover does not persuade me to be in favour of this motion. The reasons are that, as far as the Indian community is concerned—and I believe also other communities except the unofficial Europeans—they find insuperable difficulties and a great many disadvantages in associating themselves with the motion. I would very much like to have taken sides with him, and to give anxious and careful thought to this motion, and came to the conclusion that, in view of the attitude of the unofficial Europeans during the last 50 years towards Indians and Africans in this territory, it is impossible for me to do so.

I am going to show by chapter and verse that Chapter XII of the United Nations Charter is decidedly more favourable to the Indians and Africans in Tanganyika as far as the future is concerned. I refer particularly to two clauses in Chapter XII, Article 76 (c) and (d), which are non-existent in Chapter XI. These are the words of Article 76 (c): "to encourage respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion, and to encourage recognition of the interdependence of the peoples of the world". That Article does not exist in Chapter XI. (d) says: "to ensure equal treatment in social, economic, and commercial matters for all members of the United Nations and their nationals, and also equal treatment for the latter in the administration of justice, without prejudice to the attainment of the foregoing objectives and subject to the provisions of Article 80". That does not appear in Chapter XI.

Examine what has been done in Kenya in the last 50 years. A great deal of racial legislation to the great disadvantage of the Indian and African communities has been brought on to the statute book of this country during the past 50 years. That would not be possible under Chapter XII, clauses 76 (c) and (d). That is one of the reasons which influences me in strongly opposing this motion before Council. The constant and continuous demand by the non-official European community of this country to have a privileged position and also to have legislation at the same

time brought on to the statute book to maintain these privileges for all time, and the various obstructions which have been placed by them in the progress of the general political and economic advancement of the Indian and African communities, compel me to say that we have no confidence so far in the non-official European elements in this country. If we examine the recent utterances and statements of policies issued by the leaders of the non-official European community in this country, and particularly after the publication of the White Paper on reorganization, there should be no doubt in the mind of any Indian or African in this country that it is impossible to rely upon the good sense or fairness of the non-official European community in this Colony, and if that should extend to Tanganyika I for one say that we shall have nothing to do with it.

I am quite certain that if the British Government in the United Kingdom had unfettered opportunities to rule over Tanganyika and administer that territory, I would have no objection to the proposal made, but I am quite conscious and aware after a long experience in this territory that His Majesty's Government in the United Kingdom and their official representatives on the spot have been largely influenced by the constant pressure and propaganda from the unofficial European side to the great disadvantage of the Indian and African communities and that is the reason why I say I should like to see His Majesty's Government rather administer Tanganyika under Chapter XII than under Chapter XI, because Chapter XII lays down principles which are certainly to the great advantage of the Asian and African communities residing in Tanganyika.

There is another thing which I would like to bring to the notice of this Council. The hon. mover mentioned about the interests of the inhabitants of this territory. I know what they mean when they use the word "inhabitants"; they and the "public" in this country; they always mean the European population, and "public" means the Indian population. If that is the definition of the word "inhabitants" which the hon. mover has in mind, I have no quarrel with him, but if he means thereby all the inhabit-

[Mr. Patel] ants of this territory I join issue with him, because I know the Indians and I believe the Africans, in Tanganyika are opposed to administration under Chapter XI. They would prefer to be governed by the British Government as the administering authority under Chapter XII of the United Nations Charter. I am quite certain that if a referendum was taken of the inhabitants of Kenya and Tanganyika (and I challenge any one to dispute that correctness) including Indians and Africans, the majority would vote for Chapter XII as against Chapter XI.

There is another thing. Indeed, His Majesty's Government has already made a statement of their policy after very careful consideration, and it appears that the inhabitants of this territory, as the hon. member Mr. Shamsud-Deen has said, do not like to move with the times. What we need is to recognize the new era and should not ask a giant to follow the advice of a pygmy. His Majesty's Government has considered the high ideals involved and given due consideration to all factors, and have decided on a certain policy. And now for pygmy Kenya to come forward and say "You should not follow those ideals because they do not suit us, they will not suit us because we will not be able to have racial legislation in Tanganyika as we do in Kenya, therefore you should follow Chapter XI", is wrong. I am afraid I cannot support that view, because that view discloses nothing but selfish reasons on the part of those able to acquire a privileged position in this Colony. Another thing. After all, it has been made very clear in this pamphlet which was distributed to all members of the "Trusteeship territories in Africa under the United Kingdom Mandate" that for all practical purposes Tanganyika is going to be part of British territory, and that the only difference it would make is that it will have a better system of administration than is possible in Kenya.

The other thing which we want to take note of is that the hon. mover has prejudiced the issue by referring to what would have happened in 1938 if Tanganyika had been handed over to the Germans. Under the proposed trusteeship system there is no possibility

whatever of Tanganyika being handed over to any other country, because it has been made clear by the Government that for all time the administering authority will be His Majesty's Government in the United Kingdom. I think the hon. mover has tried to prejudice the minds of people when he confused the issue by referring to the circumstances existing in 1938 and comparing them with the present.

I should now particularly like to refer to the proposed article of Agreement of which mention has been made. Article 9 says: "Subject to the provisions of Article 10 of this Agreement, the administering authority shall take all necessary steps to ensure equal treatment in social, economic and commercial matters for all members of the United Nations and their nationals, and to this end:—". Here I should like to mention that when a certain amendment of the companies law was passed in this Council some time back it prohibited Indians from acquiring shares in any industrial concern if that concern acquired some piece of land in the Highlands. I at that time pointed out that a great injustice had been done, that it was a great departure from the general policy which was followed since 1906. I gave an instance at the time. Assuming that the Electric Power and Lighting Company, a large industrial concern which has nothing to do with farming in the Highlands, did acquire five acres in the Highlands for some purpose. That would prohibit Indians from acquiring any share in that concern. That has been done by law passed in this Council against the united opposition of the Indian members. That will not be possible under Chapter XII in Tanganyika. It was done in Kenya, and that is the strongest argument for Indians and Africans to vote strongly against this motion.

There is another thing. Sub-clause (a) of Article 9 states: "shall ensure the same rights to all nationals of members of the United Nations as to his own nationals in respect of entry into". There again I want to make it very clear that the unofficial Europeans know that they have been clamouring for discrimination in matters of immigration against Indians for a long time, and have made no secret of it. Under Chap-

[Mr. Patel] when Tanganyika comes under it, they will have the same privilege of clamouring for discrimination against Indians, but if Tanganyika is administered under Chapter XII these gentlemen will not have the privilege of doing so. The law will have to be non-racial. Another thing. Sub-clause (a) goes on: "and residence in Tanganyika, freedom of transit and navigation, acquisition of property both movable and immovable, the protection of professions and trade". There again Kenya will not be able to repeat the circumstances of Kenya in Tanganyika if Tanganyika comes under Chapter XII, but if it is administered under Chapter XI my friends here might pull wires in Tanganyika and ask for the same privileged position there.

Sub-clause (b) of Article 9 says: "shall not discriminate on grounds of nationality against nationals of any member of the United Nations in matters relating to the grant of concessions for the development of the natural resources of Tanganyika, and shall not grant concessions having the character of a general monopoly". There again, I want to state this very clearly, that it has been made impossible in Kenya for Indians to acquire shares in certain companies, while under this Article it would not be possible for the governing authority to do that in Tanganyika. Further, I would refer to Article 11 on which comment has been made by the hon. mover: "Nothing in this agreement shall of itself entitle any member of the United Nations, companies or associations in Tanganyika the application of a more advantageous regime than that member itself grants in its own territory to Tanganyika and its inhabitants". Here is a clear mandate in this Article, that the companies law which was passed here two years ago would not be possible to be enacted in Tanganyika. That companies law which was passed in this Council, I maintain even now, was passed against the provisions of the Congo Basin Treaty and also against all the promises which His Majesty's Government had made from 1906 to 1939. That amendment of the companies law prohibited non-Euro-

peans in this country from acquiring shares in any concern which held even one acre of land in the Highlands, although operating in industrial matters, and that was never in industrial matters, and that was the intention of His Majesty's Government while reserving the Highlands for Europeans. It was the influence of the non-official European community in this country which brought about the situation, and this Government became a party to it and brought about the situation whereby non-Europeans were debarred from holding shares in companies meant for industrial undertakings.

Under these Articles, having read this Charter very carefully, and having read the proposed agreement, another thing one finds and should take note of very carefully, is that for Africans in Tanganyika there is to be real paramountcy of native interests. Under this Charter and the Articles of the agreement it is expressed that the interests of the Africans in Tanganyika shall be paramount. That was not so under the mandatum system, but under the new trusteeship system, their interests will prevail against others. We know very well that in the controversy between Europeans and Indians in 1923, both sides put forward the excuse of African interests to defeat the other fellow, and His Majesty's Government frankly said that the interests of Africans must prevail when there was conflict between African and immigrant communities. Europeans then found that from their point of view that was a great mistake, and in their agitation, and finally His Majesty's Government was persuaded to alter this statement into saying something to this effect—I do not remember the words—that the interests of any community will not be subordinate to those of others, however influential.

The question of the paramountcy of the natives was then revised owing to the large influence of the non-official European community in this country, while the previous statement of policy was made by His Majesty's Government at their instance in 1923 because they thought it would defeat the interests of the Indians. That would not be possible in Tanganyika if it were administered under Chapter XII of the United Nations Charter. I repeat, in the first place there will be no racial dis-

[Mr. Patel] crimination and, in the second place, the interests of the Africans in Tanganyika will be supreme. I strongly oppose with all the force at my command that this motion should not be passed.

Before I all down I should like to say this. Even now if His Majesty's Government could have an unfettered opportunity of governing Tanganyika I for one would not mind whether it was governed as a British colony or a trusteeship, but I know for certain that I cannot trust the non-official European communities. That is the reason why I say that His Majesty's Government will not be able to resist the demand of the unofficial European community to bring about racial legislation in Tanganyika if Tanganyika is brought under Chapter XI. That is the reason why I repeat that Chapter XII is the only security for Indians and Africans in Tanganyika, and I strongly oppose this motion. (Applause.)

MR. VASEY: Your Excellency, in rising to support the motion so ably moved by the hon. Member for Nairobi South, I would remind Council that before the motion was introduced the hon. member Mr. Shamsud-Deen wanted to know what it was about. I can only presume that the hon. member now knows what it is about.

MR. SHAMSUD-DEEN: On a point of explanation, even the last speaker (Mr. PATEL) was talking about Chapter XI and I have not the remotest idea what he was saying. (Laughter.)

MR. VASEY: Well, I was about to say that education is never a waste of time, but I am afraid that it has failed to educate the hon. member, Mr. Shamsud-Deen.

I listened with interest to the speech of the hon. member Mr. Patel. The point of his sword wavered, or should I say the blows of his bludgeon—because I feel that would be a more appropriate simile—wavered between the Government, as I understood it, and the unofficial Europeans on this side, because at times it seemed that we were responsible for all the legislation and at times he seemed to think that His Majesty's Government was responsible for the legislation, and at times he

seemed to think that the hon. members opposite were responsible for all the legislation. I would remind the hon. member that, if we on this side of Council do wield influence at all—and that is not an admission—we are not the real rulers of this Colony. The real rulers and administrators of this Colony are His Majesty's Government in London and the Colonial Office. If the European community here does wield influence, I believe it wields influence only on one ground: that in the great majority of its actions it is honest, sincere and impartial, and I do not believe that we should wield any influence if we departed from those standards, which have been laid down by the British race throughout its entire administration.

There is very little doubt that the history of the British Empire shows that in the past we made mistakes and in the past, perhaps, we acted from motives not always understandable and not always perhaps of the highest order. That, I think, is admitted by historians, but I believe that everyone will admit that this century has seen a great change in the attitude of the British race towards its responsibilities and its imperial policy, and I believe it is laid down in the hearts and minds of the British Government that self-government for the peoples of the colonies shall be the ultimate objective. I do not believe that there is one hon. member on the opposite side who has not sincerely and conscientiously worked, and is working, to fulfil that responsibility (hear, hear), and I would dissociate myself from any attack upon the hon. members opposite or His Majesty's Government in that respect.

The hon. member Mr. Patel seemed to think that the advice of the inhabitants of Kenya was of very little use. He seemed to think, if I remember rightly, that we were a pygmy trying to lead a giant. I should like to take him back to the old fable of the lion and the mouse when, if my memory serves me aright, it was illustrated that the mouse, by nibbling away the ropes that bound the lion, was able to set the lion free. I believe that this is a case of the mouse trying to warn the lion of the ropes that may bind him and help him once again in his hour of trial and tribulation and responsibility.

[Mr. Vasey]

To deal first of all, if I may, with the hon. member Mr. Patel's eloquent reading from Articles 9 and 15 of the provisions of the draft Agreement. I would draw attention to his remarkable facility for skipping Article 10 (hear, hear) which was a somewhat remarkable acrobatic performance, because, if he read this paper properly, he would have seen that on page 3 it says: "Articles 9 and 10 of the draft terms of trusteeship (which must be read together) . . ." but he omitted to read Article 10 because it did not quite suit the tenor of his argument. However, let us read Article 10 in order to correct the hon. member and put him back on a solid footing again. Article 10 says: "Measures taken to give effect to Article 9 of this agreement shall be subject always to the overriding duty of the administering Authority to promote the educational, economic, social and the political advancement of the inhabitants of Tanganyika . . ." In other words, whether it is under the Trusteeship Council or whether it is a British colony, should His Majesty's Government decide, and decide rightly, that any step is necessary to promote the welfare of the inhabitants of Tanganyika, it will take such steps under either agreement, and it is a remarkable omission on the hon. Mr. Patel's part that he should forget—

MR. PATEL: On a point of explanation, I thought that Article 10 gave paramountcy of native interests.

MR. VASEY: It is correct that it gives paramountcy of the interests of the inhabitants—of the inhabitants.

MR. PATEL: The natives are in the majority.

MR. VASEY: It gives paramountcy, if the hon. member will read, of all the inhabitants, in the same way as His Majesty's Government in its colonial policy lays down the paramountcy of the inhabitants, and it is my contention that "inhabitants", in His Majesty's Government's mind, cannot be dissected into various portions and parcels.

A lot of the argument in this debate seems to have been based on the conclusion that a decision has already been reached, I would respectfully read from the Secretary of State for Foreign

Affairs' remarks to the United Nations General Assembly. He said: "I must make it clear that our willingness to place these territories under the Trusteeship system naturally depends upon our being able to negotiate terms which in our view are generally satisfactory, and which achieve the objectives of the Charter and are in the best interests of the inhabitants of the territories concerned." He then goes on to say, in his confirming statement: "These terms will be communicated to Parliament and the local Legislative Councils."

In this document giving the trusteeship details, which was published some time after this statement, and which is presumably an official statement by His Majesty's Government, he says: "It is the present intention of His Majesty's Government to bring the terms of trusteeship before the General Assembly at its next meeting in September, 1946. Any amendments to the draft before publication of the draft be found necessary or desirable, and which are agreed to in accordance with the provisions of the Charter, may subsequently be incorporated in the terms of trusteeship to be presented to the General Assembly for approval." Elsewhere in this document he says also that the opinion of the states directly concerned must be ascertained, and he states that these will be communicated to Parliament: "I believe that we are part of His Majesty's Government." When that is communicated to the Parliament, if it follows the ordinary procedure there will be a debate, and I believe that this motion will have served a very useful purpose in placing before His Majesty's Parliament the opinion of a number of the people in this territory.

A great deal of stress has been laid, and rightly so, upon the serious military situation in which this territory has found itself twice during the lifetime of most of the members of this Council. It is common knowledge that a large proportion of our African troops in the East African forces were drawn from Tanganyika, and the British Association of Tanganyika has publicly stated that they were drawn by means of conscription. What is the position under the Trusteeship terms? The position under the Trusteeship terms is that the administering authority can

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make use of volunteer forces. In other words, should the British Empire and the British Commonwealth once again face a crisis equal to 1914 or equal to 1939-40, the Government of Tanganyika, under the Trusteeship terms would not be entitled to call upon compulsory military service for the inhabitants of that territory, whereas if it was a British colony the people there could be compelled to take their equal share in the defence of the Commonwealth and of their own land. I therefore suggest that one of the useful things that this motion will do will be to draw the attention of the people of East Africa to that particular clause.

In common with most ordinary people, I place great hopes in the success of the United Nations Organization. I believe that to-day it is passing through its feeblest troubles, and that eventually the big nations of the world will realize that only by compromise and adjustment can international peace be obtained. I would regret it greatly if the small states of the world had no adequate voice in those councils. I would regret it greatly if the small places, like Kenya, could not through His Majesty's Government in Great Britain make their voice heard. It is our opinion, the opinion of a number of members of this Council, that the handling of Tanganyika to the Trusteeship Council of the United Nations Organization does contain a greater danger for East Africa as a whole than if it were declared a British colony, which we believe to be a beneficial state. But it is not only a danger to East Africa; it is a danger to the world in general.

Before I move to my concluding point I should like to stress one point, which I think is agreed by all unofficial European members on this Council. We have not in this motion made any suggestion that we should interfere with the internal Government of Tanganyika. This motion is deliberately framed to place the responsibility for the Government of Tanganyika in the hands of the Government of Great Britain. I speak of my faith and hope in the United Nations Organization, but I, in common with most members of this Council, can remember the same outburst of enthusiasm, the same idealism and the

same faith, and almost the same speeches being made about the League of Nations. I can remember its passages from hope to bitter wrangling, and from bitter wrangling to failure. I can remember that in 1940, when the League of Nations disappeared, one thing and one thing only, stood between the world and the imposition of a system of government abhorrent to all men, and that was the strength of the people of Great Britain and the British Commonwealth, and had the British Commonwealth not had the strategic points that it enjoyed; had it not had the strength that it then possessed, the picture of the world to-day would be one of vast difference. Although people may grumble at the measure of freedom they enjoy, there is little doubt that the measure of freedom they would have enjoyed under that system would have been negligible, if not non-existent.

Moving in accord with modern feeling, His Majesty's Government at home has agreed to withdraw its troops from Egypt, and one lifeline, one connecting link, between ourselves and the people at home is gone. The price that we paid for loss of control in the Mediterranean during the war can be measured in the mourning of hundreds of thousands of British homes. We cannot dispute that, with the move of modern thought, His Majesty's Government, having considered all the points, has arrived at a decision which it thinks right, but it has made it all the more necessary that to the south we should have security and certainty, because should, once again, the world have to rely upon the British Commonwealth and the British race to stand between it and disaster, there is little doubt that East Africa would be one of the key points of the strategy of the British Commonwealth of Nations.

Much as I place my faith and hope in the United Nations Organization, I take this proud opportunity of declaring my belief that, without the British Commonwealth of Nations, justice, moral right and moral truth stand very little chance of prevailing in the years to come, and it is because I believe that, because I believe in the British race and its ideals, that I wish to see Tanganyika Territory placed where it will be of value to the British Empire, where it will have a government of value to itself

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and where, in time of crisis should crisis come again, it will be of value to the betterment of the world. (Applause.)

MR. ODDE: Your Excellency, in view of your communication from the Chair at the beginning of this debate, I feel that it is difficult for me to speak on the motion. But, on behalf of the African community in this country, I beg to oppose the motion, and to support the arrangement of His Majesty's Government that Tanganyika be brought under the United Nations Charter or, alternatively, that it be brought in as a protectorate as in the case of Uganda.

ARCHDEACON BEECHER: Your Excellency, I rise to support the motion, and in doing so I would crave the indulgence of Council and ask to be allowed to make my position quite clear.

My colleague has felt it necessary to oppose the motion. He did so on behalf of the African people of this country. He having said that, placed on me the responsibility of saying that neither he nor I have within the brief space of 24 hours had the opportunity of consulting in any way effectively African public opinion in this country. (Hear, hear.) The opinions, therefore, which I express must be purely of a personal nature, for while I have had no opportunity of consulting the African peoples of this country still less have I had the opportunity of consulting African public opinion in the adjacent territory of Tanganyika. Neither have I any mandate to speak on their behalf. I can, however, understand that my opposite number of the Tanganyika Legislative Council supports the principles which are embodied in the motion which is before this Council. (Applause.)

I think it is clearly obvious to every member of this Council—indeed, to every member of the several communities which comprise the inhabitants of this country—that it is very desirable to have very much closer co-ordination of all the interests concerned in the three major territorial units in East Africa. Indeed, it is essential that there should be the closest possible co-ordination of all those factors which make for the advancement of all the communities in these territories. My reading of the situation, however, is that

the harmonious co-ordination we all so very much desire is very seriously jeopardized by the uncertainties—I repeat, the uncertainties—of the outworkings of the trusteeship system. African interests in this matter were in no way consulted, either in Tanganyika itself, or in the adjacent territories, and I submit that the African peoples, both in Tanganyika itself and in the adjacent territories, should have been deemed to have reached a stage at which they were entitled, and able, to express an opinion about their political future. Nor, indeed, were those principles of good neighbourliness to which reference is made in the several chapters of the Declaration, neither were those principles of good neighbourliness extended to the self-governing territory of Southern Rhodesia, which might be deemed to have a point of view in this matter.

The hon. Member for Usin Gishu in his very able speech seconding and supporting this motion, referred to the mornmain of the Mandate. While I fully agree with the hon. member on the subject of the non-necessity for visitations by an inspecting body in order to examine the way Great Britain was administering its responsibilities in its colonial empire or mandated territory, my personal opinion is that the advancement of the vast majority of the African peoples in Tanganyika Territory under the mandate system fell short of the advancement of the African peoples in this Colony and if, as the hon. member has suggested, the condition of the African peoples in Tanganyika was good, I would submit that it is better here.

Chapters XII and XIII and the Articles in the White Paper on Trusteeship have failed to convince me that the African peoples of Tanganyika will, may I say as strongly as I can, benefit as greatly as they would had they been administered in accordance with Chapter XI. Their lot will be far short of that which they would enjoy as British subjects enjoy the full benefits and privileges of British citizenship and British administration.

The hon. Member for the Eastern Area, Mr. Patel, drew, if I may say so, a rather lurid picture of the situation that he thought it was desired to create

[Archdeacon Beecher] . . . It is quite certain that in accepting Articles 73 and 74 as the basis for the administration of non-self-governing territories, the British Government has bound itself to the progressive development of such a colony as this under terms which fully satisfy the highest and best political aspirations of the African and other communities in it. Furthermore, I would not like the African peoples to be misled by the hon. Member for the Eastern Area in what I can only feel to have been a misquotation of Articles 9 and 11 of the Trusteeship document, the draft terms of which were published as a White Paper. My reading of these Articles leads me to believe they deal not with the immigrant peoples but with other members of the United Nations being granted concessions in the territory concerned. Indeed, I would go so far as to say that if we were to follow the hon. member's interpretation—or misinterpretation—of Articles 9 and 11, they might very well operate in a singularly adverse manner to the African people of Tanganyika.

He also went on to refer to the paramountcy of African interests, and claimed that paramountcy of African interest was specifically safeguarded by Article 10 of the draft terms of Trusteeship and that it was in no way included in the Articles which it was proposed should become operative if the principles of this motion were accepted. The same words given us in the opening paragraph of Article 73 of Chapter XI are used in Article 10 of the draft terms of Trusteeship and, if I may say so with respect, it is purely misleading for the hon. Member for the Eastern Area to offer you the suggestion that there is any difference between the terms that would be meted out to the African peoples of this Colony under Article 73 than would be meted out under Article 10 of the draft terms of Trusteeship. The words are that they "recognize the principle that the interests of the inhabitants of these territories are paramount". These appear word for word in both places.

I wish to stress this as strongly as I possibly can, because I feel there is a great danger that the African peoples of this country may be misled by the speech of the hon. Member for the Eastern Area, Mr. Patel (hear, hear) in suggesting that the intentions of the British Government in respect of them and their political future have been undermined by this Charter of the United Nations, and I feel it should be made known to the African peoples of this country that it is the opinion of at least one of their representatives in this Council that the provisions of Articles 73 and 74 are full, precise, and that they meet fully the aspirations of the African peoples in particular, as, indeed, they meet fully the aspirations of all communities that comprise such a colony as this. And the Articles in question, Nos. 73 and 74, leave absolutely no room, no room at all, for any adverse racial discriminations against the Africans which the hon. Member for the Eastern Area is such as attempting to speak so eloquently, if such racial discriminations there may be or may have been.

My submission is that it would be in the interests of the peoples of East Africa as a whole that one system, and one system only, should be operative in their administration. More particularly is that so in the case of the African peoples. With two systems operative and

[Archdeacon Beecher] the possibility of playing one off against the other, progress towards the goal of advancement which we have in mind for all races in East Africa would be considerably impeded. Take those tribes which are divided by that artificial line which runs across the map and separates them into two meaningless units, tribes not only such as the Masai but smaller tribes divided by the artificial line between Kenya and Tanganyika. Such tribes as the Masai and smaller tribes would, to my certain knowledge, welcome a unification of the policy under which they come, and I would welcome most wholeheartedly the implementation of proposals which this motion places before Council.

Sir, I beg to support. (Applause.)

MR. AMIN (Central Area): Your Excellency, I am afraid I cannot support the motion before Council. My reasons are not the reasons which have already been expressed by other members. The main reason I have is the historical background of the whole question of trusteeship and the colonies.

During the war, in the early stages when the Allies were in difficulty and the Nazi and Fascist powers in Europe and Asia were almost on the verge of success, as it looked, it became necessary for the Allies to seek the support of the peoples of Asia, Africa and the United States of America. But these peoples were suspicious because of the past record of European peoples and began asking the question as to why the non-Europeans of the world were being invited to join and give their lives and demagued that the Allies should declare their war aims, and one of the most important replies which convinced those non-Europeans that the aims of the Allies were not dishonest was that the Allies were fighting for the freedom of the world, that they had no intention of acquiring additional territories to bring under their sovereignty. That was the thing which convinced, I am quite sure, and led hundreds of thousands of people in Asia and Africa to support the war efforts of the Allies with greater sincerity than they thought of previously. (A member: It failed to convince some people in India.) I am told that it failed

to convince some people in India, that is what I gather. I must say that the people in India had to a greater extent than any other colony or dominion supported the war effort of the Allies and shed more blood in North Africa and the southern portions of Europe, and they have a right to say what they think in respect of the promises given during the war which it is now being suggested should be forgotten. (A member: Did the Kenya Indians say anything?) We were not allowed to join on equal terms (laughter), and it was the Governor of the Colony who said so, and that has been quoted several times. But without any attention being paid to it such tricks are being played against us and the people of India without any shame.

There is this important thing about the promise that there would be in effort to acquire additional territories in the world arising out of the war; that is, as to what is required at present in respect of Tanganyika. England never had the sovereignty over Tanganyika under the mandate system. The terms of the mandate were such that the mandatory power did not acquire sovereignty, it was to be responsible for the administration of the territory and had to report to the Mandates Commission every year, satisfactorily to the Commission, how, if this motion is accepted by the hon. the Government it will mean that Great Britain will forget the assurance given during the war and acquire sovereignty over Tanganyika which it never possessed, because the main difference between a colony and a mandated territory will be the question of sovereignty. It may appear to be a small matter to the people here who are moving and supporting the motion, but it will assume a grave aspect in the eyes of people outside Kenya and in the world generally who have nothing to do with colonies—I refer to the people of the United States of America and South America—in India and South-east Asia and China also, people who are fighting this war. Even if suggestions are to be cast against some United Nations members, like Russia and others, you could not throw such suspicions on the United States or South American Republics or nations of Asia such as China and India. They have done nothing to upset the smooth work-

[Mr. Amin] ing of the United Nations Organization or the Trusteeship Council.

Coming to the main and only important point raised in this debate, the question of the defence of Tanganyika, that under the mandate it was difficult to defend Tanganyika, and that during the last war, if the territory had been transferred to Germany as it was likely to be under certain circumstances, what possible things would have happened here? The point was made that adjoining territories would also have been invaded. I am surprised that none of the members supporting the motion seem to realize that according to the proposed terms under which this territory might be placed under the Trusteeship Council provision has been made to meet that danger. I refer to the Articles themselves in the Command Paper No. 6840 which His Majesty's Stationery Office has issued, and read the Article 5 on page 6: "For the above-mentioned purposes and for all other purposes of this agreement, as may be necessary, the administering authority"—then follow paragraphs (a) and (b) and this is the most important—"it shall be entitled to establish naval, military and air bases, to erect fortifications, to station and employ his own forces in Tanganyika and to take all such other measures as are in his opinion necessary for the defence of Tanganyika and for ensuring that the territory plays its part in the maintenance of international peace and security," and so on. (A member: Please finish it!) All right. "To this end the administering authority may make use of volunteer forces."—(laughter)—"To this end the administering authority may make use of volunteer forces, facilities and assistance from Tanganyika in carrying out the obligations towards the Security Council undertaken in this regard by the administering authority, as well as for local defence and the maintenance of law and order within Tanganyika."

In this laughter intended to suggest that, even in colonies where the Government is not representative of the people themselves or the overwhelming bulk of the people, that the Government, or their own nationals, who are temporarily residing there, should have authority to conscript manpower to fight their own

war? My submission is that Great Britain, in providing for this condition in Article 5, has made all the provision that can be justified before the nations of the world. All that it can ask for is the authority to make provision for the defence of the territory and for carrying out the aims and objects of the United Nations. You can raise armies or voluntary armies and you can establish all the naval, air and other bases which you did not have during the last war. Under the terms of the Mandate, which is the authority under which Great Britain administered the territory during the last war, no such provision was made. Article 4 of the terms stated that the mandatory power "shall not establish any military or naval bases, nor erect any fortifications nor organize any native military force in the territory except for local police purposes and for the defence of the territory." There was no question of even volunteer armies.

Now the Labour Government which has come into power has made good the defect which existed under the Mandates Commission. My reading of the situation is this. In conformity with the great aims and objects which were declared to be the aims of the British Government during the war, and in conformity with Britain's promise that she did not want any further territory anywhere, the present Government is carrying out those terms by declaring that the Mandates will be transferred to the Trusteeship Council, and that even the colonies will in certain matters be subject to report to the Trusteeship Council.

During all these years, a few decades in some cases and hundreds of years in other cases, when the subject peoples of the British Empire have remained under British rule, the reason for their patience, the reason for their trust and goodwill has been this: the great liberal, radical tradition of the people of the British Empire. That is the reason which made people think that sooner or later the people who are really good in Great Britain will obtain power and will carry out the promises that have been made, and that is why we have been waiting, the subject peoples of the Empire have been waiting, patiently for the day when the people who have been believing in these great liberal Christian traditions will come into power and carry out those

[Mr. Amin] promises. And now Labour, which inherits those ideals, has come into power and is at last carrying out some of those promises and fulfilling some of the hopes. If the advice given by this motion is to be followed by the people of Great Britain and the Labour Government of Great Britain, the result will be that the last hope of the subject peoples of the British Empire will be gone. The last straw on the overweighted camel's back might prove to be the withdrawal of Tanganyika from the Trusteeship Council and turning it into a colony.

The method and manner of administering colonies in the British Empire is not strange to us. We know how they are administered. We know by experience that when European officials and European settlers combine to rule a country inhabited by non-Europeans there is no hope of any justice or fair play for the non-European—

MS. WATKINS: That is a libel: a Jim libel!

HIS EXCELLENCY: The hon. member must withdraw that, I am afraid.

MS. WATKINS: I withdraw the bad word but not the libel!

MR. AMIN: Because of such experience we say that no new territories should become subject to colonialization of the last century, the 19th century. Because we know how the colonies are being developed in the British Empire, if allowed to remain free from public opinion of the world, we say that Tanganyika, which up till now has been subject to the criticism of world opinion, should remain subject to world opinion under the Trusteeship Council and should not become the private property of the British crown.

On the question of the Articles which the hon. member Archdeacon Beecher quoted and tried to make out that hon. Member for Eastern Area, Mr. Patel, was wrong in what he said, I wish to say that there is a great difference between the idealism which pervades the provisions of Chapter XI and the provisions of Chapter XII of the United Nations Charter. I will only quote two parts of it to make my point clear. Under Article 73 (b) of Chapter XI it is stated: "To develop self-government, to take due

account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement." The composition of section under Chapter XII is under Article 76 (b) which states: "To promote the political, economic and educational advancement of the inhabitants of the trust-territories, and their progressive development towards self-government or independence as may be appropriate to the particular circumstances of each territory and its peoples and the freely expressed wishes of the peoples concerned, and as may be provided by the terms of each trusteeship agreement". The difference between the two is that the real method and manner of developing self-government in one case, in the case of a colony, will be left to be decided by the administering Government and its official advisers. In the other case the method and the manner of development, not only of self-government, but even independence, will be determined not only according to the light, which indeed is a very dim light, of the Governing authority, but also the expressed wishes of the peoples inhabiting the territory. These two things are distinct.

I am one of those who think that these territories of East Africa will one day, within a few decades sooner than we imagine, become independent. It will not be a white or a brown dominion, but be a white or a brown dominion of East Africa, surely a black dominion of East Africa. It is because of that idea that I think that the treatment of this territory under Chapter XII is more fitting and that the treatment under Chapter XI will not be treatment under Chapter XI will not be sufficiently progressive. Because of this I am opposing the motion and, because I am quite sure the people in Great Britain have thought fit to put Tanganyika under the provisions of Chapter XII and not under the provisions of Chapter XI. They realize their duty to the world in general; their interests dictate that they realize their duty to the public opinion of the world.

My suspicion at this stage is this, and I regret having to express it. When Egypt was promised by the Government of Great Britain that the British armies would be withdrawn from Egypt, a great noise and shouting took place in Britain

[Mr. Amin]

which did not come from the majority of the people, but from the people with the tradition of conservatism behind them, which is a dying force in the world. They shouted and shrieked against the Government. I believe that what is being done in this Council today is in a line with what the Conservatives did in Great Britain in respect of Egypt, crying down the action of the Labour Government of Great Britain in carrying out the promises the British people have given to the world in general up till now. It is in the tradition of conservatism that this motion is brought up. All that is said about Tanganyika being thrown to the wolves of Russia, etc., is wrong. Sufficient provision for the defence of the territory is made in the draft terms under which Great Britain will administer Tanganyika under the Trusteeship Council. Therefore, without going further, I would say that I oppose this motion wholeheartedly, realizing in my mind that there is not a vestige of racialism dictating my feelings on this matter. (Laughter.)

The debate was adjourned.

ADJOURNMENT

Council adjourned till 10 a.m. on Friday, 19th July, 1946.

Friday, 19th July, 1946

Council assembled in the Memorial Hall, Nairobi, at 10 a.m. on Friday, 19th July, 1946. His Excellency the Governor (Sir P. E. Mitchell, K.C.M.G., M.C.) presiding.

His Excellency opened the Council with prayer.

MINUTES

The minutes of the meeting of 18th July, 1946, were confirmed.

ORAL ANSWERS TO QUESTIONS

No. 28—FOODSTUFFS FOR AFRICAN LABOUR

MR. TRENCH:

Will Government please give an assurance that it will exercise the very strictest control to ensure that the Uganda bean crop and other foodstuffs shall be made available to employers of African labour in the first instance so that such foodstuffs may be used to replace the cut made in the maize meal ration?

MR. ARMITAGE: Arrangements are being made for beans from Uganda to be allocated to selected traders in various zones of the Colony, the quantities allocated to each zone being based on the recorded number of employed natives in that area. The beans will be frozen in the traders' hands and will only be sold to employers of labour on a permit to be obtained from the Production Subcommittee of the area concerned in the case of agricultural labour or from the local Rationing Officer.

TANGANYIKA TERRITORY POSITION UNDER UNITED NATIONS CHARTER

The debate was resumed.

MR. COOKE: Your Excellency, I think I ought to apologize for rising at this late stage in the debate, because I did not intend at first to speak on this motion at all, but there were one or two observations made yesterday which, if I failed to oppose them, might lead those who read these debates to believe that "I acquiesce in what was said."

If this debate has done anything it has unfortunately done one thing, and that is it has emphasized the gulf which exists today between the various races of this

[Mr. Cooke]

country. It is a wide gulf, and I am afraid it is a widening gulf, and I am one of those who believe that there is indeed a very dismal future in front of this country unless that gulf can be bridged, not only from the political sense but from the economic sense. (His Excellency: Hear, hear.) I would emphasize that word "economic", because even the people of South Africa have realized that it is absolutely essential to make use of the great purchasing power of the many millions of Africans they have in that country, and we must, for the economic if for no other reason, do our best to encourage in every way African development and racial good will.

I say right away that I wholeheartedly support this motion (hear, hear), but I am not one of those who criticize the Indians for the line they took yesterday. I personally, if I had been in their position, would probably have taken precisely the same line. I regret to say that it is true that there is a lack of faith in the bona fides of the settlers of this country, and not only in the settlers of this country but in the Government of this country. It is not for me, it would be irrelevant if I suggested any reasons for this, but it is no use disguising that unpalatable truth. If I may employ, for expressive, but somewhat mixed, metaphor of my hon. friend the Member for Uasin Gishu, it is no use holding our heads in the sand and refusing to read the writing on the wall! (Laughter.) Anyone who reads, as I have read, the African vernacular Press, cannot but be struck by the extreme feelings of some of these articles. I personally believe in the freedom of the Press, and I only emphasize here, to those of you who have not had the opportunity of reading that Press, that there is a very extreme view being taken at the present moment.

I am now going to say something which might, and probably will, not be received very well. I think there are only two logical alternatives, and two honest alternatives, before the Europeans of this country. The one is to reject completely and categorically all the native policy of the Government at home, including that which was referred to by Mr. Creech Jones in the speech reported in today's paper, and to take the course of those intrepid voortrekkers of South Africa and

leave this country. That would be a courageous and honest course to take. The other alternative is to make our protest, and then loyally accept the decisions of the British Government. But the fatal course is the course we are now adopting. We are, as it were, in a sort of cave of Abdullah, forging out now and again to attack the British Government and to stir up bad feeling. That course can only have one result, as the reading of history teaches us, and that is to leave a legacy of hatred to your children and grandchildren of this country. I know these alternatives are severe ones, but the sooner we face them in this country today and choose one or the other, the better it will be for the inhabitants of all races.

There are just two more points, perhaps minor points. The hon. Member for Uasin Gishu, I think, contrasted the administration of Tanganyika adversely with the administration of this country. I suppose you, Sir, and I are possibly in the position best to judge, because we both spent many years in both countries, and I would say this, because there seems to be some advantages even in the mandate system, that although Tanganyika was behind Kenya, in my opinion, in such essential services as medical and educational it was ahead of Kenya in administrative services; and I think that the system of tax collection for Africans in Tanganyika and the system of administering native law was a good deal better than that which prevailed in Kenya certainly up to a few years ago.

There is just one more point, and that is the old friendliness between Africans and Europeans in this country seems to be gradually disappearing. (Members: No.) It is not anything like as strong as it used to be. There is a reason for this. The Europeans, seeing increased crime in this country and the growing illiness of the African are inclined to put all the blame on the African. Those two phenomena, I might call them, are common to all races in every country at the present moment, and they can only be rectified by an increased supply of consumer goods and other natural means by which the native will have an incentive to work. It is a pity, in my opinion at any rate (if it may be entirely wrong), but there does not seem to be that old good feeling that there was between the European and the

(Mr. Cooke)
tribal African. I have often been a critic of the Europeans of this country, but I will say this, that I am convinced at the present moment that the vast mass of Europeans are genuinely anxious to promote the welfare of the African (hear, hear) and that applies especially to the younger Europeans, and that is one reason why I welcome the presence here of my hon. friend the Member for Nyanza, because he represents the youth of this country to a large extent, and I do feel that despite his grey hairs (laughter) at any rate he is youthful in heart (laughter).

I have had a great deal of opportunity of studying these repercussions, having been a member of the Elected Members Organization for some years. I have perhaps been a little vexatious at times and I have not always agreed with my colleagues, but without trying to court any favour from them whatsoever, I will say this, that in every discussion on native policy they have shown themselves genuinely anxious to promote the welfare of the African, and where they and I have differed has been more on matters of method than on the objects which we wished to attain (Hear, hear).

I must apologize for keeping Council

SIR ALFRED VINCENT: YOUR Excellency, first of all I think I should, on behalf of this Council, thank you most sincerely for your attitude towards this debate. The debate has ranged over a very wide field and, although some of the points may not have been thought relevant, nevertheless it has given an opportunity for this debate to be a full one and not stifled in any way, and we accordingly thank you for it.

I am not going to take much time in replying to the debate, because I think that the attitude of members on this side of Council is generally known, but there are one or two points which I must reply to. First of all, in reply to the hon. member Mr. Shamsud Deen, I am afraid that sometimes—it may be my own fault—I could not follow his logic, but evidently on more mature consideration he really felt that it was worth wasting the time of this Council, as he put it, in order to debate this motion, and, as far as I could gather from him, if I had made my speech in San Francisco I could possibly have

replied upon him to support it! As regards the point he made that it was quite unnecessary and futile for this small Council, representing a small entity of the British Empire, to debate such a subject, I would appeal to him to reconsider that point, because his community, surely, is the last one which would advocate the suppression of free ventilation of public opinion, and I feel that this debate will reach the various authorities in just as efficient a manner as it would have done if, for instance, we had sent a deputation to Delhi!

With reference to the speeches of the hon. members Mr. Patel and Mr. Amin and the points they raised, the hon. Member for Nairobi North and the hon. member Archdeacon Beecher have replied adequately. The only difference between their case and mine was this that my facts were correct! I do try when I come before this Council to take great care that, although my opinions are my own, my facts are correct, and I took the greatest possible trouble to carry out detailed comparisons between the Draft Agreement and the implications of Chapter XII, and the present laws of Tanganyika Territory, together with Chapter XI and not only did I do it personally, but I had it very carefully checked by a legal friend of mine, in order that my facts should be very carefully checked. I can assure you that I have here (though I did not attempt to bore this Council yesterday with all the details) complete information regarding all the points in the Agreement which are already covered by the laws of Tanganyika, with the two exceptions I have mentioned.

There is one point, however, to which I should draw attention. I believe that there is so much racial feeling and so much misgiving—quite unwarranted, I believe, in this case—that the two hon. Indian members who spoke with so much feeling were really under the stress of racial hysteria. I would stress that this particular motion is not the only motion which raises the racial issue, because every bill that comes before this Council, if there is the slightest opportunity of raising the racial issue, those that fear it so much always bring the racial issue before us. The question of the Immigration Bill has been brought in by one speaker. I feel that I must say that that bill, although the criticism against it is

[Sir Alfred Vincent]
said to hinge upon the racial feeling between Europeans and Indians, it is not really of that character, because I have many Indian friends, and I talk to them because I do try, if I possibly can, to solve these racial questions in order that the communities of this country may live in peace together. After I had been talking to one of my Indian friends about the Immigration Bill, he said: "I quite agree with you; there is no doubt that it is in the interests of the Kenya-born Indian that very strict immigration laws should be enforced in order to protect them." My reply was: "Well, if that is so and if your leaders believe it, why don't they say so?" and the reply, which was a very true and natural one, was because they feared that if they did so they would meet the same fate as the late Mr. Isher Dass. Therefore it is not a matter of racial feeling between communities. It is within the communities themselves that this racial feeling exists.

The hon. member Archdeacon Beecher did touch upon a very important point, and a point which probably must exercise the minds of Government in a very serious manner today, and that is the point of incorrect statements being made which give the native of this country an entirely wrong impression of the real truth and the real facts. I would not under any circumstances accuse the two members who spoke yesterday of deliberate misrepresentation in any way whatsoever, but I do point out in the strongest possible manner to His Majesty's Government that even the Mal-Interpretation of a word such as "inhabitants" or the quoting of a clause by itself out of its context or out of its association with another clause, is likely to give rise to a great deal of misgiving, in the eyes of the African especially, when such misrepresentations appear in the Hansard of this Council. There is no doubt, as has been pointed out by the hon. Member for the Coast in his remarks, that subversive propaganda, and deliberate propaganda, is creating a gulf between the races of this country, which should not be allowed under any circumstances. You, Sir, very wisely remarked to me in another place that this is a strange world, because the laws of the countries of the world make it an offence to poison the body, but there is no law to prevent the poisoning of the

mind and the soul. Therefore, I do make a plea that Government, in fact all of us in our various walks of life, must take every opportunity and give special attention to contradicting the wilful racial propaganda which is being spread in this country today.

There is one point which I should like to make on this subject, and that is that the hon. Indian members have in their comparison of Articles XII and XI and the intent behind them, respectively, endeavoured to show that their contention is right, but so great is the racial feeling on these matters that they will remember that this whole question was pre-judged by some of their compatriots in Tanganyika even before this Agreement was published.

My hon. friend the Member for the Coast has talked about the Tanganyika Administration. I did not want to mention this, and it is no slur on the Tanganyika Administration in any way whatsoever, but many people who have had property in Tanganyika over the past years have found that so scrupulous was the endeavour of the Administration of Tanganyika to see that the terms of the Mandate were carried out, those terms were very often carried out to the detriment of British subjects in favour of those who were not.

On the question of a protectorate, the hon. member Mr. Odede mentioned a protectorate. A protectorate, of course, arises from a treaty between the "protected" and the "protector"; but there is one point I should like him to realize and that is this: that those in a protectorate have really no nationality, and until it becomes a British colony they cannot have any nationality.

I have on more than one occasion in this Council paid tribute to the hon. member Archdeacon Beecher for his courage, his honesty of purpose and his fearlessness (hear, hear) and I cannot add to those tributes I have already paid to him except to say that he is in the most difficult position, and I have the greatest admiration for his courage in standing up in this Council to speak the truth, and not make statements for the sake of popularity. (Applause.) He dealt with the terms of the Charter in a most unblinded way, and I submit that if there is an unblinded member of the Council it is the Archdeacon himself.

[Sir Alfred Vincent]

I have been asked to make a point by a member who otherwise would have spoken, that the African members are thus entitled to express the views of the Africans, and not the Indian members. I feel that the honest statement made by the hon. member Archdeacon Beecher yesterday, when he said those were his opinions, summed up the position adequately, and on such a matter, this is the most difficult matter, I should imagine, to consult the whole of the Africans of this country and to get an opinion which is really worth while, because it takes such a lot of understanding, and one must rely upon men of standing and integrity such as is represented by the hon. member Archdeacon Beecher to give his views as to what he feels is really for the honest benefit of the inhabitants.

Finally, Sir, it is quite wrong for any member of this Council to suggest that to make Tanganyika a British colony at the present time would cause it to become the private property of the British Crown. This is completely untrue. The Coalition Government in the persons of the present Prime Minister, and Mr. Cranby Eden, Lord Halifax and Lord Cranborne, at San Francisco, agreed that all British colonies and the inhabitants of all present colonies should come within the Charter of the United Nations as declared in the Declaration regarding non-self-governing territories as set out in Chapter XI of the Charter. Therefore, if Tanganyika did become a British Colony, as we suggest, the inhabitants would be fully safeguarded under Chapter XI of the Charter and come within the United Nations Charter in accordance with the Declaration made therein. Therefore, any attempt to insulate that this motion in any way makes Tanganyika a private possession of the British Crown, I say is contrary to fact and entirely without foundation.

We sincerely believe that it is in the best interests of the inhabitants of both these territories that Tanganyika be declared a British Colony under Chapter XI. We are certain that the British Government has made a mistake and, if we did not take this opportunity to point this out to His Majesty's Government, we would indeed be failing in our duty as British subjects. I am certain that this

motion is completely in order and equally certain it represents the opinion of all people who take an unbiased view of the subject, and it is an attempt on our part to strive once again to remove the uncertainty of the status of Tanganyika and thus try to ensure peace in Africa for all time. (Applause.)

The question was put and carried, by 12 votes to 5, 19 members on the official side not voting: *Ayes*—Archdeacon Beecher, Messrs. Bouwer, Cooke, Edey, Major Joyce, Major Keyser, Colonel Modera, Mr. Trench, Mr. Vasey, Sir A. Vincent, Mrs. Watkin and Mr. Wright (12). *Noes*—Messrs. Amin, Odede, Priyam, Shamsud-Deen, Patel (5). *Did not vote*—Messrs. Armitage, Boyd, Brown, Hudson, Hunter, Killick, Lindsay, Dr. MacLennan, Mr. Marchant, Mbarak Ali Hinawy, Messrs. Mortimer, Patrick, Sir Gilbert Renne, Sir R. E. Robins, Messrs. Robbins, Foster Sutton, Tomkinson, Troughton and Willoughby (19).

RULES OF DEBATE

HIS EXCELLENCY. Before I call on the hon. Member for Kiambu to move the motion standing in her name, I should like to take this opportunity, arising out of the remarks of the hon. mover of the last motion, to say this. In my view, and it is a view I hold, subject to the wishes of this Council, within reason one should allow as much time and as much reasonable latitude in debate as possible. If I were to apply the relevancy rule strictly I should be calling hon. members to order with some frequency. If I heard protests from hon. members against the abuse of the rule by their colleagues I should apply the rule but, in the absence of such expressions I assume it is the wish of the Council that I should continue the practice of allowing very considerable latitude.

CRUELTY TO ANIMALS LEGISLATION

SELECT COMMITTEE TO REVIEW

MRS. WATKINS: Your Excellency, I beg to move: That, having regard to recent reports of cruelty to animals in Kenya, a committee of this Council be appointed, with power to co-opt as members of such committee such other persons as to the committee may seem desirable, for the purpose of inquiring

[Mrs. Watkins]

into the incidence of cruelty to animals in Kenya, and advising what steps, if any, should be taken for implementing existing legislation and what, if any, further legislation is desirable.

You, Sir, and the Council will no doubt be very relieved to hear that I am not going to keep you very long, but it is necessary that Council should know on what this motion is founded. Reports have been coming in from the Coast to the Lake, including Nairobi, they have been coming in to me and to others, and from Tanganyika as well (which is rather in our outside our line of action), but from all over the place they have been coming over and many of those reports have appeared in the Press. Certain members of a Municipal Council, some of them incredulous, have been down to the slaughter house and various other places to inspect, and they came away convinced. It is not possible, when you are dealing with many forms of cruelty and when you know there is a perfectly good ordinance already on the statute book, to bring before this Council a schedule of exactly what should be done for the proper implementation of such legislation as already exists and, if necessary, for the introduction of supplementary legislation.

So I have asked for a committee of this Council because I consider that this Council is ultimately responsible for any abuses that may arise in this country from whatever source. I have asked also that they may be allowed to co-opt such people as may seem to them desirable and who have knowledge of the facts and the remedies, so that we may get on with the business and clear up what is really a blot on our escutcheon. I expect that committee will take evidence. I have a small bunch of it here. Your Excellency, it is very gruesome reading. But, having gone through that evidence, I expect they will make a number of recommendations, and I will refer in a moment to some of the recommendations, perhaps the most important ones, for which I am hoping from that committee.

I have now to refer to the main kind of cruelty I am hoping to defeat. I am under duress from this side of Council not to make the Council sick (hear, hear) and, on the other hand, the other side of Council told me this morning that

if the facts are such as to make us sick, let us be sick! There I am, rather on the horns of a dilemma, but I think the latter are right. However, I will confine the examples to, first, two main examples: that of a Municipal Councillor who went down to one of the less well-run slaughter houses. He went down incredulous, thinking that the reports he had heard were those of a sentimentalist and must after all be rubbish. He went down incredulous and came back convinced, because he had found in the short half-hour he was there that an ox was being flayed alive. The other example I would give to you is this, that when a terrified animal, smelling blood all around, is being propelled to go where it will be slaughtered, if it will not go in quickly they stick a knife into the nerve of the tail, so that the animal, in complete agony, rushes forward and is then brought down. I think that gives you just sufficient example of two kinds of things I am hoping to defeat.

Let me at once say that one of the difficulties—It certainly is a difficulty, although one which is only there to be overcome, like other difficulties, but it has been used as an excuse over the years for not doing anything more in the slaughter houses—is the fact that the Mohammedan rites insist on an animal's throat being cut. This excuse has been tendered over the years, and makes most people shrug their shoulders and pass on, saying they can do nothing about it because it is a religious rite, but cruelty—real, long, bestial suffering and terror—is not implicit in those rites. It is only implicit in the inefficiency in which those rites are at present applied.

Here I would stress that this is not a racial issue—at least, I do not think anybody can make it racial. Shall we call it purely animal? My criticism is not directed against the African, nor is it directed against the Indian or the Mohammedan, nor indeed against the European or that collection of people whom we call the Government, but it is directed very strongly against all of us, and the negligence which we have all shared in common, perhaps due to a certain squeamishness because we did not want to upset ourselves by seeing dreadful things, and so we allow the cruelty to proceed. It is moral cowardice, of which I too have been guilty, and of

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which nearly every member of this Council has probably been guilty. There is an exception, I know, sitting on my left (Mr. Vasey) at the moment, who has done his very best, who would be the first to tell you that he has not done enough, but who are we to blame him who have done less than he has, or perhaps less than nothing? He might have done more if he had had our backing and possibly financial backing.

So today I will deal with cruelty, if I can, in two parts: one, the cruelty which has nothing whatever to do with the Mohammedan rites and which is rife all over this country; and the other is the cruelty which, while not being implicit in Mohammedan rites, is sheltering behind them and is thus being excused by butchers and other people who say: "Oh, we cannot do anything about this." These are two kinds of cruelty; one is sheltering and one can find no shelter. I believe we could do more for the animals in Kenya and all over the country if we do not raise a ritual issue, the Mohammedan issue, but if, instead of saying how far apart we must remain we see how close we can get together in a conference round a table, seeing how we can eliminate all these cruelties which have nothing to do with those rites, and seeing how we can also in those rites lessen the cruelty almost completely.

This is a British colony and our religion does not condone cruelty, but I think this Council and we all should remember that neither does the Mohammedan religion condone it. Of course, I stand to be corrected, but I believe that it is expressly stated in the Koran that cruelty should be avoided, but it is still true that behind these Mohammedan rites these cruelties have grown up. We know that neither the Mohammedans nor the Christians want to shelter these abuses behind whatever customs there are, and it is for that reason that I am more than grateful to the hon. Liwali for the Coast, Mbarak Ali Hinawy, for seconding this motion from the other side of Council. It is a very courageous thing to do. He knows that I am not fighting him or his community, but that I am only fighting on behalf of the animals, and that I hope, with the co-operation of the whole of the community, together with me, may indeed do something worthwhile for the animals

of the whole of Eastern Africa. The hon. member Dr. Rana has written to me and stated in an extremely kind letter that he congratulates me on this motion and backs me to the hilt and would like to come on to the committee.

The sheltered cruelty I want to refer to really lies in the fact that we are not proficient in the manner in which we kill for Mohammedan rites. In the first instance, I hope that the committee will recommend that we sort out the beasts that are wanted for the Mohammedan market and that only those should go through that special ritual. All the others should be killed by the humane killer or electric stunner. At the moment I believe that neither our humane killers nor our stunners are always in order and not always available. To show you how strongly the R.S.P.C.A. at home feel about it, they have offered to give us these instruments free. Of course, our municipalities would not want to accept such a gift, but again, if the committee sees its way to recommending that slaughtering places in the reserves were put under compulsion about no cruelty. Government might be very glad to accept such a gift to help the Africans forward in their progress towards civilization and learning newer methods.

For killing with a stunner we have not got any skilled or very few skilled throwers and we have too little good apparatus in this country. The real cruelty consists in securing a hefty animal which does not want to go into the killing pen because it sees all that is going on around it and is filled with terror at what is to happen. It sometimes takes as long as half an hour, which bones get broken before the animal, in agony, is secured. It is a pretty grim picture. On one occasion when a councillor went down to a slaughter house (I think he was a councillor; a prominent citizen anyway) he could not secure the beast at all, and 50 people were standing round while the ox was stabbed (for half an hour, until it goes so weak from loss of blood that it dropped and was secured.

Casting pens and skilled throwers are what we shall want. The choice in procuring apparatus lies really between expensive apparatus and new methods, and much cruelty. I have no hesitation about putting that choice, if necessary, to the whole country. If it is a case of cruelty

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or cost I know quite well what the answer will be from all of us. We are a tolerant nation, but tolerance, if it is extended towards cruelty sufficiently far removed from ourselves is not tolerance; I think it is rather a partnership in brutality—rather a cowardly partnership in brutality—and again tolerance based on deliberate ignorance of the foul conditions that do exist is not accepted as an excuse in a British territory. It is rather reminiscent, is it not?—"I did not know"—"I cannot believe"—"I did not have access." Behind closed doors anything can happen, but the community at large still remains entirely responsible.

That brings me to the first of the recommendations, or one of the recommendations that I particularly want made, and that is that visitors to the abattoirs should be instituted, much as they are at other places of confinement, and not only that they may visit, but that they must visit, unexpectedly, at frequent intervals. A fairly senior official who was recently in charge of one of the slaughter houses told me most emphatically: "In my slaughter house nobody comes in without notice and without my permission." *Strengts verboden*, a command to which the Germanic peoples have always been so amenable, but which, somehow arouses our sense of humour in the British and which to the Irish is merely an irresistible temptation! I had already been, but I regret that I did not have time to go again next day. Who goes to the slaughter house from choice? They must be hard indeed who can go to even the best slaughter house and can come away without the joy of life being damped for several days. Indeed I have here a letter—which can be turned into an affidavit—from a man whom I would, without undue reluctance, describe as a hard-boiled manager of one of our biggest dairy farms, who visited one of the better run slaughter houses and said he could not eat for several days afterwards. One does not go from choice, one goes on principle; one goes because one has to exercise a citizen's rights for the proper discharge of a citizen's responsibilities, and I, for one, will not be kept out of any slaughter house in this country so long as I have two legs to carry me there and two eyes to see with.

The second recommendation which I hope the committee will make is that all the municipal abattoirs, and even, perhaps the slaughter houses and places in the reserves, should employ licensed killers, and these licensed killers should be trained in the use of the humane killer and the electric stunner, and also in the quick throwing of animals for Mohammedan rites. Quick throwing should take 30 seconds; quick cutting of the throat another 30 seconds. That does not constitute cruelty. Cruelty comes in with the delay, the smell, the terror. Therefore we want trained killers, and we want them to be specially employed by the municipalities, and perhaps most important of all because that is where the implementation of the present ordinance is so difficult, we want one man responsible in each slaughter house, and we do not want him to be in a position to evade his responsibility. For instance, if you put a man in charge and then give him a number of other duties, if you want to run that particular abattoir for cruelty he can say "I have all these duties and I cannot attend every killing." That is not what we want. We want one man responsible in every case. That is, I think, a very important point where perhaps supplementary legislation may be necessary.

Further recommendations which I hope will be dealt with are in the other places of detention, not in the slaughter houses but in dairies of confinement of animals. When a dairy cow is tied up for five or six years at the end of a three-foot rope, on a cement floor without any floor, it can constitute cruelty. There are other consequential cruelties which I saw myself which literally did make me sick, and another man with me also. Those dairies of which I speak are in an indescribable state of filth and sordid conditions; and a disgrace to every one of us connected with local government and inimical to public health.

There is another question and that is regarding starving and apparently ownerless dogs. We have rabies with us, and it is spreading fairly fast all over this country. I wonder how many children will have to die of rabies before we really take steps to prevent one of the main sources, which is the ownerless or apparently ownerless, starving or running round the country—generally known

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as pie dogs. I think a recommendation to control these animals might be made.

There are one or two other recommendations for which I am hoping, which will be more in the nature of an educational measure for the less advanced of our communities perhaps. For instance, the native practice of breaking up birds alive. They break their wings and their legs and expose them for one, two or three hot days in the market places in the Provinces, and nothing can be done because it is more often than not a young native girl who is involved and she does not know any better and one cannot take any steps against her. But there might be some measures we can have brought in which would gradually eradicate this kind of practice out of existence. At least, I am hoping we may see our way to making some recommendations of that kind.

I would draw the attention of this Council to the fact that action on this matter is long overdue. I have cuttings here from the Press from 1932, from 1936, from 1938—protests made to the Municipality—and always a promise of a beautiful new abattoir (if an abattoir can be beautiful) or a beautiful new dairy, and so on. But nothing happened in 1932, nothing happened in 1936. Nothing was done until 1938, I think it was, or just after. The hon. Member for Nairobi North has done his best, but, as I said, he would be the first to admit that it has not been enough, and that he needs more support and more co-ordinated effort on the part of all our communities, and I do hope that in this one measure at least we shall get no racial feeling. What we need is co-ordination between all of us, and a real all-out effort to do away with this cruelty and get new apparatus and, even more important, a new outlook on the whole situation. (Applause.)

Mr. MBARAKI ALI HUNAWY: Your Excellency, I second the motion, and in doing so I must say that I regret the hon. mover has said that there has been no attempt to do away with any cruelty that may be involved in the carrying out of their religious rites by the Mohammedan community. I say that because there is general misunderstanding as to what is required under the Muslim law in regard to the slaughter of animals, and it appears

that a very large number of people are ignorant of the requirements of the Muslim law. I say quite definitely that the Arab community and the Muslims generally do not condone cruelty either to animals or to anything else. I can give an assurance that the Muslims will be ready at any time to do anything in their power to put a stop to any cruelty that may exist. But I must say that when it comes to a question of any attempt at all to do away with the fundamental principles of religion, that, of course, will have to be resisted in every respect. I do not, however, visualize that any such attempt will be made, but there may be some people who might try to do so. If that attempt is not made, and I believe it will not be made, then I say definitely that the Muslims will wholeheartedly support the hon. mover to stop any cruelty at all to animals. (Applause.)

Mr. FOSTER SUTTON: Your Excellency, on behalf of the Government I am pleased to say that it is prepared to accept the hon. member's motion, and I have submitted to you, Sir, a list of names of hon. members of this Council who are prepared and are, indeed, anxious to serve on the committee.

His EXCELLENCY: The question is—

Mr. SHAMSUD-DEEN: I have a lot to say on the subject and I hope an opportunity will be given to everyone to express their views on the subject.

His EXCELLENCY: I do not wish to deny the hon. member the opportunity of speaking, but I was under the impression, the motion having been accepted, that there was nothing further to say. Is the hon. member opposing the motion?

Mr. SHAMSUD-DEEN: I am not opposing it, but I have various views to put forward before Council.

Your Excellency, I talked yesterday about wasting the time of this Council, but I feel this morning like following the very bad example set by other hon. members and speak for a long time, as the subject is very interesting indeed. However, I shall not take up more time than can possibly be helped. To begin with I must say that I think totally unnecessary time has been wasted by the hon. mover in giving us a lecture on cruelty which is known to everybody. There are some suggested arrangements of which I think I must warn Council, that in appointing

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a committee the people on it should know something about the subject.

If I were to explain what the word "cruelty" meant—going through all the dictionaries and through all the different meanings of the word—it would take up a lot of time. I submit that a member of the fair sex should be the last person to know anything about cruelty at all! (laughter.) I should very much like the hon. mover to let me know if there is any part of the world where there are women butchers employed for slaughtering animals. I maintain there is no part of the world where that is done, but in spite of this it is a fact that ladies usually take a great delight in eating all the meals on the table containing meat.

The hon. member thinks that the act of killing animals is cruelty. I think the subject is so repulsive to my Hindu friends here that they would not like to hear or know anything about killing any animal at all. I was once travelling in a car belonging to my hon. friend the member for Western Area (Mr. Pritam) with a Hindu gentleman. We stopped near Kedong and wanted to have our luncheon in the car. When he found there was meat in it he begged of us to take the meal out of the car and eat it outside.

The hon. mover said that this was a non-racial measure. I do not think it is quite non-racial, because after all there are different colours among animals also and they can be described as separate species or races. I hope the hon. mover is not moving that certain animals with a different coloured skin should be slaughtered in a different way.

As to Mohammedan rites, I think these Mohammedan rites of slaughter are not thoroughly understood. The methods are the most humane in the world, but the fundamental principle is that an animal should be bled thoroughly before its meat is consumed. I am not going to take up any more of the Council's time as I think this is an appropriate subject for the committee to go into, and I hope that a Muslim member will be appointed to that committee to explain to the committee all the various aspects that have to be observed from the point of view of Mohammedan rite.

The word "cruelty" has such a vast meaning that to be cruel means, for instance, to hurt the feelings of anybody. For instance, if a member was to call

another person a damn liar, knowing perfectly well that he could not retaliate, that is cruelty in itself! (laughter.)

Coming back to the question of Mohammedan rites, they are not peculiar in any way to this Colony. They are not even racial; they are universal and they lay down that an animal must be killed with the least possible pain. This subject has been going on in this Colony since 1920. After a great deal of trouble on my part and others, by-laws which were introduced by the Municipality about ten years or so ago, which were contrary to Mohammedan rites of slaughtering, were repealed. The main point is that the animal must be facing towards the north in the direction of Kaaba. The name of God must be repeated on it three times and there must be only one method of killing it. Honestly, I think the subject is so interesting that I could go on speaking till tomorrow. For example, if an ignorant person witnesses a woman undergoing the labours of motherhood, he might consider it extremely cruel-of-nature to inflict such pain on the fair sex, but to a woman it is the highest blessing of the Creator.

It is on record that on one occasion when somebody who threw down a sheep or goat for slaughtering could not control it and had to lay it down the second time in the presence of the Prophet he got very annoyed and asked the man how many deaths he was going to inflict on the animal. He told him he should throw it as mercifully, and as gently as possible and then cut its throat with the least possible delay and pain. If the knife is sharp and if the throat of the animal is cut according to the rites of the Muslim law, I think it takes a fraction of a second before the animal is absolutely stunned. However, these are matters of detail. There are so many religious points involved. For instance, according to Muslim records, Abraham when he was about to sacrifice his son Ishmael, and, according to Christian books, his son, Isaac, he threw him down on his forehead so that he should not see the face of his son. Many Mohammedans think that an animal should be thrown on its forehead before it is slaughtered. The real gist of the Mohammedan rite is that an animal should be slaughtered with as little pain and as little struggle as possible.

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On the subject of other forms of cruelty to other animals, I wish some hon. members could see me when I have my bath or wash my face. It takes me several minutes to extract small insects from the bath- or wash basin. I doubt whether the hon. mover has even had to do that sort of thing! (Laughter.) I entirely agree with the motion. Now that everyone is so keen on modernizing everything, one should be careful to see that there is no interference with the religious rites of the Mohammedans. That is a very important point, and if an attempt is made to interfere in that respect I am afraid there will be a lot of trouble. Certain things you cannot modernize; you cannot modernize the sun or the moon or the circulation of the blood in the body, and certain things from the religious point of view cannot be altered, notwithstanding the fact that there may be members of the fair sex who may wrongly consider the same to be cruel.

I support the motion.

Mrs. WATKINS: Your Excellency, I will reply very briefly.

I am very glad the hon. member Mr. Shamsud-Deen spoke because it gives me an opportunity to remedy one omission due to forgetfulness. I never thanked the hon. Attorney General for all the help he gave me, and for all the kindness with which he has always received me when I wait any help of this sort. I should also like to point out to the last speaker that for 20 years before women got on to this Council the men were here, and all that time the cruelty has gone on, and, to my disgrace, it has gone on for four or five years after I came on to the Council. But I will try to stop it now, and I should like to say that if you men would like to come alone and do these things yourselves no one would be more grateful than the women, because it was on behalf of the women that I took it on—the women persuaded me—not the men. I am taking it on behalf of the women of this country.

I must say I did not think it was a racial measure. I do not see how it can be made a racial thing. I was talking about cruelty to animals—not the particular cruelty of my Mohammedan conferees.

The question was put and carried.

Mr. FOSTER SUTTON moved: That a committee be appointed with the terms of reference contained in the motion, consisting of: Mr. Brown, Mr. Wright, Mr. Cooke, Mr. Vasey, Mrs. Watkins, Dr. Rana, Mbarak Ali Hinaway and Mr. Odede.

Mr. LINDSAY seconded.

The question was put and carried.

WAR REFUGEES (CONTROL AND EXPULSION) BILL SECOND READING

Mr. FOSTER SUTTON: Sir, I beg to move: That the War Refugees (Control and Expulsion) Bill be read a second time.

As hon. members are no doubt aware, during the war thousands of war refugees were evacuated from the combat areas of Europe and received into the East African territories. We in Kenya received many thousands of them. In order to accommodate them camps were created, in which they were housed, in several areas of this Colony. When you get a large number of person congregated in a camp it is essential to have some means of enforcing discipline. During the War Defence Regulations under the Emergency Powers (Defence) Acts were passed known as the War Evacuees Regulations, 1943. They enabled control to be exercised in the camps, but they lapsed on the 24th February this year when the United Kingdom Emergency Powers (Defence) Acts themselves lapsed. There has been a hiatus, during which nothing untoward has occurred, but it is considered desirable that the provisions of the Defence Regulations should be continued. It is necessary to have some measure of control until the camps and their occupants are dispersed.

Clauses 1 to 8 of the bill seek to reenact with certain modifications those Defence Regulations. Clause 10 seeks to give the Governor power, if any war evacuee refuses to leave the Colony after proper arrangements have been made for his return to his own country or some other country, to order his deportation. That provision is considered necessary, because we think that some refugees may not wish to leave; such a position cannot be dealt with under the present immigration legislation. They were allowed to come into this colony for reasons of

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humanity, and none of them complied with the existing immigration laws.

At the present moment we have approximately 7,700 Italians in Kenya and there are upwards of 600 Poles. We are only dealing here with war evacuees, that is civilian evacuees; this bill has nothing to do with prisoners of war. In order to allay certain misgivings which people have, the present policy is that the Italians will be returned to their own country. There might be certain modifications for a limited period, but the general policy, I understand, is that they will all return. On the other hand, the Poles are now being given the option to return to Poland or to remain here until some other arrangements can be made to accommodate them in some country other than Poland; as a matter of fact the Poles themselves are now exercising that right to opt, and those who so opt will be taken over and will be the responsibility of U.N.R.R.A., not of this Colony, once they have opted.

One other point is this. Hon. members may have observed that in the memorandum of objects and reasons on the bill it is stated that a certain number of war evacuees are still being received into this Colony. That is a fact. They are, in a limited number, for administrative reasons. Arrangements have been made with other territories and we have been helping each other. That is why I considered it necessary to include clause 9, which enables them to come in without being subject to the immigration and customs legislation.

Mr. BROWN seconded.

Mrs. WATKINS: Your Excellency, I rise to make one or two comments on this bill. First of all, I should like to see these camps have proper public visitors as they have for other places of detention, whether it be a prison or an asylum or anything else, as under the British law. I see that the commandants are being very firm that they do not want anybody in. I think that should be possibly allowed to stand, but I do not think we have at present—I stand to be corrected—any public visitors there. Several complaints have reached me because of that one purpose. I think that should be implemented forthwith.

My next point is that I see in the objects and reasons the words "removal

to suitable places". I want that word "suitable" defined, if possible, for this reason: if suitable consists of a boat, a few clothes from the League of Mercy and a little money to get home with, it may not be altogether "suitable" for them if the destination is not suitable. I am not going to keep Council more than a few minutes. This is not a Kenya but a world problem, and I do not think we must find some answer before we send these people away. It is not very merciful to take people in so that they should not go into a concentration camp, and then remove them when the likelihood is that they will go straight back into a concentration camp. If they are Poles or German Jew refugees they may be going back to the people who killed their children and who tortured them, and for no reason given here they are all, without any kind of differentiation, to be placed under a perpetual and indiscriminate threat of expulsion at any moment. That sounds to me such cruelty.

We heard the Director of Medical Services say the other day that we could not have got on without some of these people in this war because they were doing valuable medical work. One doctor I know who came out here has saved in return the lives of at least several British children. It seems to me perhaps that Shakspeare, for some odd reason, could put it in better words than I can: "The quality of mercy is not strained; It droppeth as the gentle rain from heaven upon the earth: beneath; it is twice blessed; it bleaseth him that gives and him that takes; 'tis mightiest in the mightiest; it becomes the throned monarch far better than his crown."

As I look round this country I see many problems. If we are to solve even the majority of the problems we shall need our fair share of God's blessing and I think we might be continuing to be merciful. But it is not merciful to put a whole lot of people, for no reason except that we do not want them here any more, under the perpetual threat of being returned to terrible conditions. I heard from a senior Government official that some of the professional men here now would go overboard probably if they are sent away. I do not call that merciful and I want this Colony and this Council to realize what they are doing. If we said that the immoral, or amoral,

[Mrs. Watkins] or those who for any other reason are undesirable, should go, well and good, but do not send back people who have tried to repay our hospitality by doing anything they can, with all their skill and knowledge. Their one thought is to become British subjects, a thing I should want to do if I was not a British subject I should like the United Nations Organization asked whether they cannot solve the problem by possibly having some corner of the world set aside where these people can go, or some corner in these Colonies where they can go. But do not send them overboard; do not send them back to the concentration camps.

MR. VASEY: Your Excellency, I was puzzled at some of the remarks of the hon. Member for Kiambu, and I should like my own mind cleared up. The definition of "war refugee" means "any person who has entered any part of East Africa during the war in pursuance of an arrangement made by any Government in East Africa for the reception of persons evacuated from war areas," and it is, I think, therefore only applied to those people who have entered the Colony during the war. I think that is the correct interpretation. There is one question I should like to ask, because I am rather puzzled. Clause 3 gives the right to appoint a "Director of War Refugees and such other persons" as may be necessary. Then the bill goes on to provide for camps being erected and giving the Governor power to order people to move against their will and, generally, to undertake a certain amount of spending money on various projects. When it comes down to the memorandum of objects and reasons of the bill itself, "No expenditure of public monies will be involved if the provisions of this bill become law", I cannot see how Directors can be appointed, camps created, people removed against their will, without some expenditure of public money being involved, and would like that explained.

MR. FOSTER SUTTON: Sir, first of all dealing with the points made by the hon. Member for Kiambu, I can only repeat what I have already said that, in relation to the Poles, to whom I think her remarks were directed, they are being given the option. They can elect to stay, in which case they will become the responsibility

of U.N.R.R.A., who will be responsible for placing them in suitable countries. If they elect to go, it will be of their own free will, and I think we are entitled to assume that a person will not elect to go if he feels there is a high possibility of being placed in a concentration camp when he returns to his own country. Moreover, regarding the point made about the shipping, the Government has really no control over that. We all know that shipping is extremely difficult and when our own people go home to visit the countries from which they emanate they often have to sleep in hammocks and do not travel under very pleasant conditions. (Mrs. Watkins: I was only questioning the destination, not the method of travelling.) Then I need not pursue the point.

With regard to expenses, before I put my name to the memorandum I did check up with the person responsible for the refugees, and he assured me that the expenses in connexion with the Italians are a charge against the Colonial Office, and we understand that the money will be recovered by the Secretary of State for the Colonies, from Italy, but it is a charge against United Kingdom funds. When we say that no expenditure of public money will be involved, in our "Objects and Reasons", we mean no expenditure from the general revenue of this country. With regard to the Poles, the expenses are being paid by an Interim Treasury Committee in the United Kingdom, which it is believed will recover the expenditure ultimately from the Polish Government. That is a matter which concerns them, but there is no expenditure from the general revenue of Kenya. If any money is spent by us it is recovered.

The question was put and carried.

BILLS IN COMMITTEE

MR. FOSTER SUTTON moved: That Council do resolve itself into committee of the whole Council to consider, clause by clause, the following bills:—The War Refugees (Control and Expulsion) Bill, the Customs Duties on Foodstuffs (Provisional Exemption) Bill, His Majesty's Forces Pensions (Amendment) Bill, the Passion Fruit (Amendment) Bill, the Native Foodstuffs (Amendment) Bill, the

[Mr. Foster Sutton] Coffee Industry (Amendment) Bill, the Medical Practitioners and Dentists (Amendment) Bill, the Sisal Industry (Amendment) Bill, the Sugar (Amendment) Bill, the King's African Rifles (Amendment) Bill, the Pyrethrum (Amendment) Bill.

MR. BROWN seconded.

The question was put and carried. Council went into Committee.

His Majesty's Forces Pensions (Amendment) Bill.

Clause 2

COLONEL MODERA moved that clause 2 be amended by inserting in item (b) of the proposed sub-section (1) of section 2 between the words "by" and "any" in line 2 thereof a comma followed by the words and comma "or on behalf of."

The question was put and carried.

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

The Medical Practitioners and Dentists (Amendment) Bill

Clause 3

MR. FOSTER SUTTON moved that clause 3 be amended by deleting therefrom the words "is by law entitled to practise medicine, surgery and midwifery in", which appear in the first and second lines of the proviso to sub-section (1) of section 10B thereof and substituting therefor the words "is entitled to practise medicine, surgery and midwifery by the law of."

The question was put and carried.

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

Clause 4

MR. FOSTER SUTTON moved that clause 4 be amended by inserting therein after the word "such" which appears in the fifth line of section 15 thereof, the following words "who would be entitled to registration under the provisions of section 6 of this ordinance".

The question was put and carried.

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

MR. FOSTER SUTTON moved that His Majesty's Forces Pensions (Amendment) Bill and the Medical Practitioners and Dentists (Amendment) Bill be reported to

Council with amendment, and the remainder without amendment.

MR. BROWN seconded.

The question was put and carried.

Council resumed. His Excellency reported accordingly.

THIRD READINGS

MR. FOSTER SUTTON moved that the eleven bills, together with the Hindu (Marriage, Divorce and Succession) Bill be read the third time and passed.

MR. BROWN seconded.

The question was put and carried and the bills read accordingly.

ADJOURNMENT

HIS EXCELLENCY: That concludes the business on the order paper, and if it is agreeable to members—we will adjourn *sine die* which in effect will be somewhere about the middle of September, as far as we can see at present. I will keep in touch with members, and fix a date to suit the convenience of all.

WRITTEN ANSWERS TO QUESTIONS

1945

NO. 102—ITALIAN CO-OPERATORS

MR. BOWEN:

Will Government please state if it is a fact that Italian co-operators only do an average of four hours' work per day on the Kijabe Escarpment section of the new main road?

Reply:

It is not correct to say that Italian co-operators only do an average of four hours' work per day on the Kijabe Escarpment section of the new main road.

Endavours were made in the latter part of 1944 to increase the output of the co-operators, who in the first instance began operations on an eight-hour day basis, by introducing task work for approximately two-thirds of the labour strength. Unit rates which were in operation for prisoners of war were not permitted under the co-operator scheme. The task set proved to be too small for the more energetic of the co-operators,

and it was found that they completed the task in from 4½ to 5 hours. On the other hand, any attempts at increasing the task resulted in failure to complete it, thereby reducing the output still further.

Arrangements have recently been made for an increase in the tasks over the whole of the works and the Public Works Department will refer to the Military Authorities for appropriate disciplinary action in any case where the increased task is not completed in the allotted time.

NO. 105—ASIAN CIVIL SERVANTS

MR. PRITAM.

(1) Is Government aware of the considerable discontent prevailing among the Government Asian staff owing to the absence of any general investigation into the terms and conditions of service introduced 10 years ago during severe financial depression while various improvements have been effected in the case of European staff as a result of two committees of inquiry during recent years, if so, what steps have been taken or are being proposed to alleviate the dissatisfaction and when the results are to be expected?

(2) Will Government please consider the advisability of allowing Asian civil servants to retire voluntarily with a view to absorbing younger men into the Service, as was done in 1931?

(3) Is it a fact that special grade posts for Asians provided in the 1945 Estimates have not yet been filled? If so, will Government please take early steps to have them filled?

(4) Has the Government accepted the principle that an officer who has been at the maximum of his grade for five years and has been unable for no fault of his own to obtain promotion to the next higher post should be given an increase in his salary, and, further, is the Government aware of the widespread discontent prevailing among the senior Asian clerks for not having had any increase in their salary for upwards of 11 years? If so, will Government please consider the advisability of granting them immediate increase with retroactive effect and without waiting for Mr. Hill's report?

Reply:

(1) The answer to the first part of the question is in the affirmative. A general investigation was arranged in 1944 by the appointment of a Committee under the chairmanship of Mr. H. J. Webster, O.B.E., the Accountant General. The deliberations of this Committee were, however, discontinued as much of the ground to be covered under its terms of reference were included in the scope of the separate investigation by Mr. L. C. Hill, C.B.E. Mr. Hill's report has now been received and is under consideration.

(2) The answer is in the negative. The Government is not prepared to consider any special facilities for the retirement of the existing staff before attaining the normal retiring age. The present restriction on the retirement of staff who have reached the normal retiring age will be removed when the Defence (Reserved Occupations) Regulations are repealed. No indication regarding the time of such repeal can yet be given.

(3) The answer to the first part of the question is in the affirmative. The filling of these posts has been delayed owing to consideration of proposals for altering the present method of filling such vacancies. The answer to the second part of the question is in the affirmative.

(4) The answer to the first part of the question is in the negative, except in so far as certain technical and specialist posts are concerned. The answer to the second part of the question is in the affirmative. The answer to the third part of the question is in the negative. The Government, as at present advised, is of the opinion that the salary scales concerned are commensurate with the duties and responsibilities of the posts to which they apply and no reason is seen to extend them.

NO. 110—JAGGERY IMPORTATIONS INTO KAMBA RESERVE

MAJOR JOYCE:

Is Government aware that a large amount of jaggery is going into the Kamba Reserve, where it is being sold for 50 cents per lb. for making drink? If the answer is in the affirmative, will Government state how this jaggery is getting in and whether it is with their approval? If the answer is in the negative, will Government take early

steps to stop it and, further, if the traffic is illegal, take action against those responsible?

Reply:

As regards the first part of the question, the Government is aware that jaggery is being imported into the Kamba Reserve on a considerable scale. As regards the second part of the question, this jaggery is being smuggled into the reserve without the approval of the Government. As regards the third part of the question, such steps as are possible have been taken to prevent this illegal traffic by enforcing the provisions of the Sugar Ordinance. It must be appreciated that the length of the district boundaries make it impossible to stop this traffic completely with the limited number of police available. The Government is, however, investigating the matter further with a view to instigating a closer degree of control.

1946

NO. 29—SURPLUS SERVICE STORES

MAJOR JOYCE:

In view of the vital importance of increasing general agricultural production, is Government prepared to establish and sponsor an organization to acquire certain Navy, Army and Air Force surplus stores which are essential to production, and to give such an organization the necessary priority to enable it to acquire such stores and to sell them to producers with the least possible delay?

Reply:

Very few stores of the types required by producers have been deemed surplus by the Army, Navy and Air Force. Stores declared as surplus do not include, for example, building materials, water piping, materials in common farm use or fencing wire. For the rest, such items as machine tools and machinery are first offered to local agents, and consumable articles such as iron and steel goods are disposed of through trade channels. Motor trucks, light delivery vans and cars are similarly released to the public through the trade. Permits are required in respect of certain controlled articles in short supply and these permits are issued

on the advice of Production Sub-committees. These arrangements are considered to be satisfactory.

NO. 36—TRAINING FOR SERVICE PROMOTION

SIR ALFRED VINCENT:

Will Government give an assurance that steps are being taken, or will be taken in the near future, to provide training facilities for local youth, to obtain the necessary technical or professional qualifications for promotion to the higher posts of the Service?

Reply:

Yes. For the information of the hon. member it is pointed out that at the present time there are three local students undergoing a two-year course of training in Forestry at George in South Africa at Government expense, while an Assistant Agricultural Officer has been granted financial assistance to enable him to qualify himself at the Imperial College of Tropical Agriculture, Trinidad, for promotion to a higher post in the Service. In addition, arrangements have been made by the Secretary of State for suitable candidates from the Colonies to receive at overseas institutions the kind of training which the hon. member has in mind and this Government has already instructed Heads of Departments to put forward for consideration names of persons who would be likely to benefit from courses of training of this nature.

The hon. member will realize that a sum of money is included annually in the Estimates of the Education Department to provide overseas bursaries to local youths of all races.

NO. 37—PASSAGE PRIORITIES

MR. VASEY:

1. How does the Passage Priorities Committee make its allocations?
2. If each application is given a grade of priority, what is the qualification for each grade, and how many grades are there?
3. Are passages for (a) Government servants, (b) Railway servants, (c) employees of big business houses allocated on the same lines as others, and if not, how are the priorities graded?

4. Have any Kenya civilians obtained passages to the United Kingdom other than through the Passage Priorities Committee and, if so, how were the passages obtained?

5. Will Government issue as soon as possible, and before the steamer sails, the names of the Kenya civilian passengers allocated accommodation on the s.s. *Alcantara*, their occupations and the grade of priority accorded to each?

Reply:

1. The Committee makes its allocations by an individual examination of each case, taking into account the following factors: medical, educational, business and compassionate grounds and length of tour.

2. Each applicant is given a grade in priority; the qualifications required for registration in the various grades are as follows: passage required immediately, passage required urgently, passage required. The immediacy or urgency of each case is assessed in the manner indicated in the reply to the first part of the question.

There are three main grades.

1 The answer to the first inquiry in this part of the question is in the affirm-

ative; the second part, therefore, does not arise.

4. Apart from a small number of persons who sailed recently on the *Mantola* and two cases in which the Service Authorities have assisted, the Government has no knowledge of any Kenya civilians having obtained passages to the United Kingdom except through the Passage Priorities Committee. The persons who travelled on the *Mantola* secured their accommodation by virtue of their position as members of the staff of the shipping company; in this connexion the attention of the hon. member is invited to a statement which appeared in the *East African Standard* on the 5th of July.

5. The Government will make arrangements for the publication of a list of successful applicants for passages on the s.s. *Alcantara* as soon as possible after final allocations have been made; no guarantee can, however, be given that circumstances will permit of the publication of this list before the steamer sails.

It is not considered that any useful purpose would be served by listing occupations, but an indication will be given as to which of the persons concerned are Government servants and which are not.

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I.C. = In Committee; SC. = Referred to Select Committee; SCR. = Select Committee Report; Re.Cl. = Re-committed to Council.

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